FIRST AGREEMENT ARBITRATION IN BRITISH COLUMBIA: 1974 - 1979

by

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ABSTRACT

Sections 70-72 of the Labour Code of British Columbia provide the Labour Relations Board with the discretionary authority to impose a first collective agreement when the actions of the employer, employees or union are motivated by a desire to totally frustrate collective bargaining and prevent the negotiation of a first collective agreement. This thesis examines the application of these provisions and their effectiveness in establishing collective bargaining relationships.

The data is based on the thirty cases involving applications for imposition of a first collective agreement which occurred in British Columbia between 1974 and 1979. Research was done by review of the decisions of the Labour Relations Board and by a questionnaire for each case completed by an employee of the Board.

Most Section 70 applications involved unskilled workers employed in either the service or manufacturing sectors of the economy. The unions involved organized on either an industrial or miscellaneous basis and were affiliated with the British Columbia Federation of Labour. The most significant feature of the unions involved in Section 70 applications was their tendency to be involved in multiple applications with different employers. The size of the bargaining units was relatively large when compared to the size of all bargaining units certified during the time period of the research.

In the cases where the Section 70 application was granted the imposition of the first agreement was not effective in assisting the employers and unions to establish an enduring collective bargaining relationship. Although the imposition of the agreements established first collective agreements which otherwise would not have been concluded, the

employers continued to oppose recognition of the certified trade unions. The bargaining units were usually decertified after expiry of the first agreement imposed under Section 70.

In the cases where the Section 70 applications were settled without a formal ruling by the Labour Relations Board, the legislation was moderately effective in providing the employees involved with the opportunity to experience collective bargaining. The existence of the Section 70 provisions gave the Labour Relations Board the entrée to become involved in these disputes. Through mediation, the Labour Relations Board was able to remedy the parties' initial difficulties in concluding first agreements. In many of these cases second and third agreements were subsequently negotiated by the employers and unions.

The emphasis placed by the Labour Relations Board in attempting to settle applications for imposition of a first agreement without issuing a formal order is an important aspect of the deterrent effect of the Section 70 provisions.

The major factors which prevented the establishment of enduring collective bargaining relationships were the marginal support the unions had among bargaining unit members at the time of certification; the continued and persistent opposition by the employers to recognition of the unions; and, the role played by small groups of employees who did not support the union. The union certifications were not able to survive the combined influence of these factors.

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CHAPTER I - INTRODUCTION

In 1971 the Canadian Union of Public Employees attempted to organize the employees of Sandringham Hospital. The union had been certified to represent the employees of Sandringham for the purpose of collective bargaining. The employer was required to bargain collectively and in good faith with the union. In spite of this, the employer's persistent opposition to unionization totally frustrated the exercise of the collective bargaining rights of these employees.

> ...the union was on strike for months in an effort to gain a first collective agreement before the employer was found by the Board to have failed to bargain collectively...For this situation where there was a failure to bargain in good faith, there was no means under the Labour Relations Act by which the policy of the legislature could be effected. Despite the finding that the Hospital had failed to bargain in good faith, the Board and the Minister of Labour had to stand idly by and watch the intent of the certification be completely thwarted and frustrated by an employer's determination to refuse to recognize a trade union.[1]

As a direct result of situations such as Sandringham Hospital, the British Columbia Labour Code (the Code) now gives the Labour Relations Board (the Board) the power to impose an arbitrated first collective agreement. These provisions, found in Sections 70 - 72[2], are designed to remedy situations where, although the union is certified, it is unable to exercise the bargaining rights deemed to follow from certification because of employer opposition.

This thesis examines the cases where the Section 70 - 72 remedy has been applied. The objectives of the thesis are to describe the cases and their respective outcomes and to determine whether or not the remedy has been effective.

The following chapter provides a brief overview of organizing and outlines the general legal framework governing the actions of employers, employees and unions during and after certification. The chapter also discusses the reasons why an employer may be inclined to oppose unionization and why the employees and unions involved may require protection both during and after certification. Its purpose is to explain how a union organizing drive can initiate a series of events which generate a great deal of conflict, ultimately requiring extensive involvement of the Board through Sections 70 - 72, to remedy the situation.

The third chapter discusses the Section 70 - 72 provisions in detail. The policies behind these provisions, the assumptions upon which the provisions are based, and their objectives are discussed. Chapter four describes how the data for the cases was obtained and chapter five summarizes the findings. The remaining chapters discuss the findings in detail.

FOOTNOTES TO CHAPTER I

1. Grandview Industries Ltd., L.R.B.B.C. Decision #30/1974.

2. Section (70), (71) and (72), Labour Code of British Columbia (1979). These sections were proclaimed on January 24, 1974.

CHAPTER II - UNION RECOGNITION: ORGANIZING, CERTIFICATION AND NEGOTIATIONS FOR A FIRST AGREEMENT

INTRODUCTION

This chapter provides an overview of union organizing. It outlines why an employer is likely to oppose recognizing a union and discusses how this opposition may be reflected in the employer's behaviour during certification and during negotiations for a first collective agreement. The chapter also describes why the employees are vulnerable and subject to influence by their employer. The legal framework for certification and collective bargaining is outlined from the perspective of a series of protections, and the need for strengthening the protection in the collective bargaining stage is identified.

Union organizing can be separated into pre-certification and post-certification periods. Each of these periods can be further divided into two separate stages. The pre-certification stages are: (1) initial organizing to application for certification, and (2) application for certification pending. The post-certification stages are: (3) negotiations for a first collective agreement, and (4) post signing of the first agreement.

Although the objectives of this thesis are concerned with the two post-certification stages, these cannot be examined in isolation. The factors which influence the behaviour of an employer during the pre-certification stages continue to govern the behaviour after certification is achieved. Examination of only the second half of the story would be incomplete.

Stage One - Initial Organization Drive

This stage begins when the initial contact is made between the Union and the employees. The contact can be initiated by either the employees or the union, and if initiated by the employees is likely to be triggered by a specific grievance or set of grievances.[1] Stage one continues up to the date when the union makes an application for certification.

During this preliminary stage it is usual for one or more union representatives to meet with some of the employees away from the work place, gain a general impression of the likelihood of succeeding in an organizational campaign and, if this impression if favourable, to sign up employees as members in the union. At this time the union representatives are likely to enlist the support and assistance of several employees who would discuss the matter informally with co-workers and request them to sign membership cards. There may be considerable discussion of the issue at work and there would likely be several meetings with the union representatives away from the work place to report upon the status of the membership drive.

When the union has signed up at least forty-five percent of the employees, they may make a formal application to the Labour Relations Board for certification. Stage two then begins.

Stage Two - Application for Certification

Stage two covers the period of time during which the application for certification is pending. It is usually of relatively short duration. The employer is formally notified by the Board that a particular union has applied for certification. Employees, both those who are union members and those who are not, the union, and the employer await notification of the outcome of the application. The outcome is determined by the wishes

of the majority of the employees in the bargaining unit, as indicated by union membership or by the results of a representation vote.

Stage Three - Negotiations for First Contract

If the application for certification is successful, the union acquires exclusive bargaining authority for employees in the certified unit. Soon after the certificate is authorized, the union will serve notice to the employer to commence collective bargaining. The parties subsequently meet and discuss proposals for the terms and conditions of a first collective agreement. A work stoppage and picketing may occur during this stage. The number of meetings held, scope and number of topics discussed and the duration of this stage vary greatly. Stage three concludes with the signing of the first collective agreement between the parties.

Stage Four - Post First Agreement

When the first collective agreement has been negotiated, the parties have a new set of rules, both substantive and procedural, which define the continuing relationship. The majority of research in Industrial Relations is concerned with the relationship during this stage.

Two points concerning the post-certification stages are significant. The first is that, for the purpose of this research, employees have not obtained effective representation and the union has not achieved recognition from the employer until the first collective agreement is negotiated. The purpose of certification is to have the certified union act as the bargaining agent for the employees. The ultimate goal of certification is to achieve a collective agreement and until that goal is achieved the union's certificate is a piece of paper and collective representation is without substance.

The second point is that not all organizational campaigns reach the end of the third stage; e.g., a first collective agreement is not concluded.

Given that the application for certification was successful, there can be a variety of reasons why a first agreement is not concluded. For example, the union and the employer may strongly disagree over issues such as union membership or demands for a standard contract. Negotiations break down and, as the matter drags on, the employees and/or the union lose interest. Another reason, the focus of attention in this research, is that through determined opposition the employer is able to totally frustrate the union in its attempt to conclude an agreement.

A fundamental policy of the Code is to facilitate collective bargaining when it is the choice of the majority of employees. One way in which the legislation attempts to accomplish this objective is through provisions designed to protect the parties, primarily the Union and the employees during the above stages. Protections provided to employees during collective bargaining, the third stage, place a duty upon the employer and the union to bargain collectively and in good faith and temporarily limit the employer's ability to alter working conditions.

Although designed to encourage collective bargaining, the Code does not guarantee that collective agreements will be achieved. In the absence of such a guarantee, a dilemma is created when an employer engages in surface bargaining with the intent of not concluding a collective agreement. The balance between guaranteeing employees the opportunity to engage their employer in collective bargaining, but not guaranteeing they will achieve a collective agreement, is clearly upset by the employer's bargaining behaviour, particularly in negotiations for a first agreement.

Sections 70 through 72 represent a significant extension of the protections in stage three. By giving the Board the power to impose a first collective agreement these provisions do provide a guarantee that

a collective agreement will be obtained when the Board exercises this discretionary power.

LEGAL FRAMEWORK GOVERNING UNION RECOGNITION

Stage One

During stage one the conduct of the parties is regulated with a view to facilitating peaceful organizing and creating an environment in the work place where employees are free to exercise their choice in regards to union representation. Sections 3 and 5[2] of the Code identify actions of the employer which have the impact, or the potential impact, of interfering with this freedom of choice. These behaviours are considered to be unfair labour practices and as such are prohibited. Because of the importance of unfair labour practices to the research, the relevant provisions are quoted in full:

> 3. (1) An employer or a person acting on his behalf shall not participate in or interfere with the formation or administration of a trade union or contribute financial or other support to it.
>
> (2) An employer may, notwithstanding this section, permit an employee or representative of a trade union to confer with him during working hours or to attend to the trade union's business during working hours, without deducting time so occupied in computing the time worked for the employer and without deducting wages for that time.
>
> (3) An employer or a person acting on his behalf shall not
>
> (a) discharge, suspend, transfer, lay off or otherwise discipline an employee, refuse to employ or continue to employ a person or discriminate against a person in regard to employment or a condition of employment because the person
>
> (i) is or proposes to become, or seeks to induce another to become, a member or officer of a trade union; or
>
> (ii) participates in the promotion, formation or administration of a trade union;
>
> (b) impose a condition in a contract of employment that seeks to restrain an employee from exercising his rights under this Act;

(c) seek by intimidation, by dismissal, by threat of dismissal, or by any other kind of threat, or by the imposition of a penalty, or by a promise, or by a wage increase, or by altering any other terms of employment to compel or to induce an employee to refrain from becoming, or continuing to be, a member or officer or representative of a trade union;

(d) use, or authorize or permit the use of, a professional strike breaker or an organization of professional strike breakers; or

(e) refuse to agree with a trade union, certified as the bargaining agent for his employees under this Act who have been engaged in collective bargaining to conclude their first collective agreement, that all employees in the unit, whether or not members of the trade union, but excluding those exempted under section 11, will pay union dues from time to time to the trade union,

but, except as expressly provided, this Act shall not be interpreted to limit or otherwise affect the right of the employer to

(f) suspend, transfer, lay off or discharge an employee for proper cause;

(g) communicate to an employee a statement of fact or opinion reasonably held with respect to the employer's business; or

(h) make a change in the operation of the employer's business reasonably necessary for the proper conduct of that business.

5. A person shall not use coercion or intimidation of any kind that could reasonably have the effect of compelling or inducing a person to become, refrain from becoming or continue or cease to be a member of a trade union.

Section 4 prohibits the union from organizing on the employer's premises during working hours without the consent of the employer, and prohibits the use of picketing or other acts which limit production or service as tactics for organizing.[3] Both parties are prohibited from engaging in work stoppages during this stage.

Stage Two

The actions of the parties continue to be regulated while the disposition of the application for certification is pending. The behaviours during stage two are still governed by Sections, 3,4, and 5. In addition, Section 51(1) contains specific regulations prohibiting the employer from increasing or decreasing rates of pay or altering other conditions of employment for employees affected by the application.[4] This section attempts to protect employees and the union from a potentially powerful vehicle for

employer influence. The parties are still prohibited from declaring or engaging in a work stoppage or picketing.

Stage Three

Upon certification the union acquires exclusive authority to represent the employees, and the parties are obligated to commence bargaining. Section 63 requires that the parties meet and commence bargaining within ten days of the receipt of notice[5]. Section 6 places a duty upon the employer and the union to bargain in good faith.[6] If an employer is found to have failed to bargain in good faith, the response of the Board is to issue an order requiring the employer to engage in good faith bargaining. When the employer has already demonstrated his unwillingness to do this, the effectiveness of this order and consequently the degree of protection provided employees during bargaining for a first agreement is certainly open to challenge. This type of order is also deficient in that it does not remedy the damage done by the employer's failure to bargain in good faith. At a minimum the employees have been denied the benefits of a collective agreement for the period during which the employer avoided his duty to bargain in good faith. Where the employer has avoided this duty for a considerable time period the absence of the benefits from a collective agreement may have seriously undermined support among the employees for unionization and collective bargaining.

During this stage the actions of the parties are further regulated. Section 61(1)(c)[7] prevents the employer from increasing or decreasing the rates of pay of the employees for a four-month period following certification, unless this is accomplished by means of a collective agreement, or prior authorization is received from the Board. Such unilateral action on the part of the employer has been considered inconsistent with effective recognition

of the union as the representative of the employees.

Section 39(2)(a)[8] prevents another union from making application for certification for the same bargaining unit until six months have elapsed since the date of the original certification, and Section 52(2)[9] prevents the processing of an application for cancellation of the certification until ten months have elapsed from the date the certification was issued.

These provisions establish a period of grace or protection during which the newly certified trade union must demonstrate to the employees, both members and non-members, the utility of its presence if it is to remain a viable entity in the company. In some instances, the union is unable to do this. As indicated in the Sandringham Hospital case the achievement of a first collective agreement, and with that agreement, union security clauses, and improvements in terms and conditions of employment can be frustrated and ultimately prevented by an intransigent employer, determined to resist the unionization of his employees.

EMPLOYER OPPOSITION TO ORGANIZATION

Why is an employer likely to oppose the organization of his employees by a union? Generally, the reasons can be grouped into two categories: ideological reasons, and secondly, perceptions of the impact of unionization. The second category can be sub-divided further into perceptions of the impact upon the profitability of the firm, upon managerial autonomy, and upon the employer's relationship with his employees.

Ideological Reasons

Thompson and Moore[10] and Goldberg et. al.[11] identify and discuss the ideological basis of these attitudes. An employer might be fundamentally opposed to unionization because of beliefs described by the following type of statements: "unions are designed to protect the incompetent and lazy"; "I made it to the point of owning my own business without anyone's help, why

can't they"; "A good, hard-working employee gets paid what he deserves"; "Unions are run by communists"; "having a union deprives employees of their freedom of choice".

Such attitudes are based upon deeply held beliefs and, as Goldberg et. al. point out, are rigid and not susceptible to influence.[12] Attitudes based on ideology are likely to be reinforced by selective perception of events and unlikely to be altered by an external agent or force.

Employers with this pronounced anti-union attitude do not view trade unions as a legitimate actor in the industrial relations system. In this environment there is no understanding or acceptance of the procedures for establishing the web of rules, nor is there general agreement on the role to be played by the respective parties.[13]

Perceptions of the Impact of Unionization

An employer may oppose the unionization of his employees because he views the impact of unionization as unfavourable for the company, and possibly, for the employees as well. These perceptions can be held along with a corresponding ideological frame of reference, or can be quite separate from ideology. In the latter example, it is possible for the anti-union attitude to be situational and specific, that is; unions in general could be viewed as legitimate organizations, but not right for his company because of a particular set of circumstances.

(1) Impact on Profitability

It is generally viewed that wage rates in unionized organizations are higher than those paid in non-union firms for comparable jobs. This could be debated and challenged on a macro economic plane, examining the long term impact of unionization on labour's share of the gross national product.[14]

On a micro level, however, the statement is supported by salary survey data which is reported separately for union and non-union employers.[15] An employer, faced with the prospect of unionization may perceive himself as

unable to afford the higher wages and improved benefits. Alternatively, he may view unionization as adversely affecting his competitive position by placing him at a relative cost disadvantage compared to other employers in the same product market. This would be particularly relevant if a small number of employers in the industry were unionized. If the employer views unions as providing protection to incompetent employees through limitations on dismissals, he may fear a decline in the quantity and/or quality of output, with a consequent erosion of market position and profitability.

(2) Impact on Managerial Autonomy

In addition to monetary items such as wages and benefits, collective agreements contain provisions related to union security, procedures for hiring new employees and making promotions, disciplining employees, terminating their services, and for resolving grievances regarding the application or interpretation of the collective agreement. Dunlop[16] discusses the various forms these rules may take and the variables which influence the content of the rules. Whatever their form, however, their impact is to reduce to varying degrees the autonomy of the employer. Decisions which were previously made independently by the manager or owner are now made jointly through the collective bargaining process and the procedures it establishes which operate during the term of the agreement.

It is likely that an employer may view these restrictions as excessive, their ultimate impact hampering his ability to operate the company as he knows is the "best way". An employer with this perception fears a loss of control over day-to-day decision making and does not view the interjection of a union into the managerial decision making process as legitimate.

(3) Impact on Relationship with Employees

An employer may view unionization as harmful to what he considers a good relationship between himself and his employees. This perception is centred

around two complementary ideas. Firstly, the employer may view the union and the employees as separate entities; the union represents its own interests, not those of the employees, and these interests do not correspond. Specific examples of attitudes which would follow from this perception are: through union dues, money is being taken from employees, its expenditure to be determined by union executive; the union in attempting to organize this group of employees wants to build up a large and powerful organization in which the interests of these employees will be subjugated.

The second idea relates to what is described as a paternalistic employer attitude. The employer believes he knows what is best for his employees and he will look after them as he has in the past. Such perceptions frequently are at odds with the fact that the employees want to be represented by the union, they have invited its presence. Under these circumstances an employer may feel confused or betrayed by his employees and may ask himself, "Why didn't they come to me if they had a problem?"

Either or both of these perceptions can be supported and reinforced by employees who do not want to become union members. Under these circumstances the employer does not view the union as beneficial to employees.

Brief mention should be made that these perceptions and the resultant attitudes are likely to be more strongly adhered to by the small owner/operated business than by the professional manager of a larger firm. The personal identification with the business and its employees is stronger in the first instance.

As mentioned above, attitudes which have their basis in ideology are unlikely to change easily, while an attitude of opposition based on perceptions of the impact of unionism may be altered more readily through direct experience which contradicts the perceptions.

The beliefs discussed above result in the employer viewing the unionization of "his" business as a threat, or possibly an insult, and

create a situation where the employer is likely to take specific actions to oppose the certification drive. In these situations both the employees and the union may be in need of protection.

UNION AND EMPLOYEE VULNERABILITY

Implicit in a stated need for protection is the understanding that the party requiring the protection is in a vulnerable state. In the situation discussed here, the union and the employees are vulnerable while the employer has the relative power advantage. Why is this so?

Basis of the Employer's Strength

The strength of the employer and his relative power position is founded on four major factors. The employer controls access to employment and controls the continued employment of employees, therefore having control over job security. Although provisions in the Code quoted earlier make it an unfair labour practice to dismiss an employee for union membership,[17] the numerous examples of employers doing this indicate that although the provisions may curb this power somewhat, they do not prevent its exercise.

The employer also controls working conditions and can make life either pleasant or not so pleasant for employees through changing job assignments, working hours, rates of pay or varying other job factors as a "punishment" for union activity. Again, such actions are contrary to the Code and are unfair labour practices because their intent is to influence employees to refrain from becoming union members or to discontinue their membership.[18] If the union files a complaint with the Board in these cases, the employer will likely be ordered to cease and desist from these activities.

Such an order is, however, directed towards future action and is likely to have a minimal impact in remedying any damage incurred.

Of possible lesser importance is the employer's access to employees. Prior to certification union representatives can not organize at the work place without the consent of the employer. The employer, on the other hand, has almost continuous access to employees and has, therefore, a greater opportunity to discuss the matter with employees or to utilize certain favoured employees to present his views. An indication of the potential for influence through this contact is found in the controversy which surrounds the employer's right to freedom of speech in presenting his views regarding unionization.

The fourth factor contributing to the employer's power is the respective financial positions of the parties. In many cases the employer is in a better financial position to withstand a strike. Such a strike may impose immediate financial hardship upon employees, modified only by the extent to which the union is able to provide strike pay or by finding alternative employment.

Basis of Union and Employee Weakness

Control over job security, control of working conditions, access to employees and financial strength contribute to the employer's strength. The absence of these factors contributes to the relative weakness of the union. The union's power is derived primarily from the level of employee support and the resulting degree of cohesion within the bargaining unit. Uncertainty amongst the employees regarding the ultimate results of the organizational drive will reduce the support for the union and consequently its relative power.

Initially, the uncertainty surrounds the issue of whether or not the

application for certification will be successful. Given that it is successful, uncertainty remains regarding whether or not union membership will result in improvements in wages and/or working conditions. Employees may hold negative expectations concerning the manner in which the employer is likely to react when informed of the organization campaign. These expectations and the uncertainty are reinforced through casual hints from the employer when he first hears of the activity, or by more drastic actions such as dismissal of a key union member.

These expectations and the uncertainty act in unison to possibly deter employees from going out on a limb to support the union, or result in support which although provided initially, is tenuous and difficult to maintain, and is susceptible to influence by the surrounding events. Whereas an employee was willing to become a member of the union, he may reconsider that membership if the cost is his job or his pay cheque.

The picture which is painted is one of employees becoming members of the union and voting in favour of union representation if a vote is necessary. Their continued support, however, is based upon a favourable cost/benefit evaluation[20] of their membership. The benefits are defined in terms of the impact unionization will have upon wages and working conditions; the costs are related to the strength of the employer's opposition to the idea of unionization and to the actions taken, possibly including a strike, to conclude the first agreement. The costs are incurred up front; the benefits realized only after the agreement is signed and implemented.

The employees' uncertainty about the outcome of the certification, uncertainty about the improvements in wages and working conditions they will achieve through collective bargaining, and their possibly fearful expectations of the employer's reactions combine to result in a highly variable and low degree of attachment to the union. This in turn places the union in a low power position.

SUMMARY

This chapter has outlined the regulations governing the actions of the employees, the union, and particuarly of the employer, during and immediately following certification. It has also described the relationship between the parties during an organizational campaign and presented a picture of the employer operating from a relative power advantage vis-a-vis the employees and the union. Finally the chapter has explained why an employer may oppose an organizational campaign.

The scene is set for an employer, opposed to unionization, to take specific actions to resist the unionization of his employees. These actions can range from relatively neutral statements regarding the impact of unionization upon the business to threats of closure of the business or dismissal of employees for union activity. Taking another approach the employer can promise increases in wages if the organizational attempt is defeated, or may rectify the conditions which provided the impetus for organization. The employer may effectively use employees who do not support the union to reinforce these messages and the anti-union sentiments..

Once certification has been granted the employer can attempt to frustrate collective bargaining by delaying meetings, refusing to meet or by making offers directly to the employees while refusing to discuss them at the bargaining table. Some of these tactics may be legal; many are considered to be unfair labour practices; while others are in a grey area somewhere in between. The number of complaints of unfair labour practices made to the Board serves as an indication of the frequency of the actions in either the illegal or grey category.[22] The purpose of these actions is to demonstrate to the employees the disadvantages of supporting the union while at the same time identifying the relative advantages of not supporting the union.

Throughout this chapter the assumption is made that the actions of the

employer will have considerable influence over the decisions made by employees regarding support for the union. The employer, through control over working conditions and employment is seen to be in a strong position of influence. One study would dispute this assumption. In a study of behaviour during representation votes Goldberg et. al. concluded that employer actions had little influence on the outcome of the representation vote. The authors reported that the initial decision to join a union, and the choice made in a representation vote are based upon basic and unchanging attitudes towards unions in general.[23] The study does not however follow these cases to determine whether subsequent actions of the employer influenced employees to discontinue their support for the unions. While the initial decisions may have an ideological basis, a subsequent decision of whether or not to strike in support of contract proposals or to continue to support the union after witnessing co-workers dismissed for such activities is an entirely different matter.

In concluding, it is pointed out that the attitudes and actions described in this chapter are not typical of the vast majority of parties involved in organization campaigns. This atypical scenario is concisely summarized in the following:

> A union has made its first appearance with an employer and has organized a relatively small unit. The employer opposed certification by one device or another, perhaps making veiled threats about the consequences of unionization or even going to the lengths of firing a union supporter. Not withstanding this opposition, the union receives certification from the Board, but its bargaining authority is tenuous. From that position it must try to negotiate a first contract. The employer may drag these negotiations out, consenting to talk only about the language and structure of the agreement, and refusing to put any monetary offers on the table until all these details are settled. Meanwhile, some members of management may have hinted to the employees that they could receive a substantial pay increase without the union. Eventually, the union, unable to secure an agreement, calls a strike. However, some employees, both those originally opposed to the union and those now disenchanted by the lack of tangible results, refuse to go out. Those who strike are easily replaced because of the small size

> of the unit and the fact that the employees are not highly skilled. In that situation, the union has no economic leverage to budge the employer, negotiations and mediation are futile and the employer can wait the union out. Eventually, a decertification application becomes timely and those who are then working may be a sufficient majority to achieve that result.[24]

In response to this scenario, the legislature in British Columbia has found it necessary to go beyond the regulatory prohibitions placed upon the behaviours of the employees, union and employer contained in the Code regarding unfair labour practices and the requirement placed upon the parties to bargain in good faith.

When the Section 70-72 provisions were introduced, the B.C. Federation of Labour strongly declared their opposition to the legislation. Paul Weiler, a previous Chairman of the Board, pointed out that the B.C. Federation of Labour

> ...led the fight against the statutory innovation. Though its members would be the primary beneficiaries in this special context, the Federation feared that it would be a precedent, 'the thin edge of the wedge', for the growing use of legal compulsion elsewhere. This issue produced one of the pitched battles between Bill King, the Minister of Labour, and the leadership of the B.C. Federation of Labour, in the fierce political struggle over who would shape the new NDP labour policy.[25]

The Section 70-72 provisions (hereinafter referred to as the Section 70 provisions) act to reinforce the unfair labour practice provisions and significantly extend the regulation of the parties' behaviour to the post-certification stage. These provisions are discussed in detail in the next chapter.

FOOTNOTES TO CHAPTER II

1. If the contact is initiated by the employees the impetus is provided by a perception among some or all employees of a benefit to be gained through collective representation. For a detailed discussion of reasons for seeking certification, see I. Chafetz, "Decertification: The British Columbia Experience" (Master's thesis, University of British Columbia, 1977), PP. 18-37.

2. Sections (3) and (5), Labour Code of British Columbia (1979).

3. Section (4), Labour Code of British Columbia (1979).

4. Section 51(1), Labour Code of British Columbia (1979).

5. Section (63), Labour Code of British Columbia (1979).

6. Section (6), Labour Code of British Columbia (1979).

7. Section 61(1)(c), Labour Code of British Columbia (1979).

8. Section 39(2)(a), Labour Code of British Columbia (1979).

9. Section 52(2), Labour Code of British Columbia (1979).

10. M. Thompson and L. Moore, "Managerial Attitudes Towards Industrial Relations: A U.S. - Canadian Comparison." Relations Industrielles, 1975, Vol. 30, #3. The first three questionnaire items in this study of attitudes towards unions relate to the legitimacy of unions as a force in the work place. Answers to the questions were based on attitudes, affected at least partly by ideological principles of achievement, individualism, and egalitarianism.

11. S. Goldberg, J. Getman, and J. Herman, Union Representation Elections: Law and Reality (New York: Russell Sage Foundation, 1976).

12. Ibid.

13. J. Dunlop, Industrial Relations Systems (New York: Henry Holt & Company, 1958).

14. A. Rees, The Economics of Work and Pay (New York: Harper & Row, 1979).

15. Vancouver Board of Trade, Clerical Salary Survey (Vancouver: Board of Trade, 1981).

16. Dunlop, Industrial Relations Systems.

17. Sections (3) and (5), Labour Code of British Columbia (1979).

18. Ibid.

19. Section 4(1), Labour Code of British Columbia (1979).

20. I. Chafetz, "Decertification: The British Columbia Experience", PP. 18-37.

21. Dunlop, Industrial Relations Systems.

22. For example, in 1978 there were 220 complaints of unfair labour practices filed with the Board. Labour Relations Board of British Columbia, Annual Report, 1978, p. 50.

23. Goldberg, Getman, and Herman, Union Representation Elections: Law and Reality.

24. London Drugs, L.R.B.B.C. Decision #30/1974, p.4.

25. P. Weiler, Reconcilable Differences: New Directions in Canadian Labour Law (Toronto: Carswell Co. Ltd. 1980) p. 52.

CHAPTER III - THE LEGISLATION

THE NEED FOR A REMEDY

The unfair labour practice provisions protect employees from intimidation by their employer and from interference with their freedom to become members of unions. The standard remedy for violations of these provisions is issuance of a cease and desist order. The Code in Sections 43(3)[1] and 8(4)e[2] contains an additional remedy to be utilized in extreme cases where the employer's intimidation has made it unlikely that the true wishes of the employees regarding certification can be determined. This remedy, applied in the pre-certification period gives the Board the authority to issue a certification without reference to union membership cards or to the results of a representation vote.

A parallel situation exists in the post-certification period with respect to the requirement placed upon the employer to bargain in good faith. The standard cease and desist order is the traditional remedy, and the Section 70 provisions are a remedy for extreme cases. The extreme remedy is necessary to ensure that the rights of the employees to engage their employer in good faith bargaining are protected.

> The fundamental premise of the statute is that collective bargaining is to be facilitated when it is the choice of the majority. The reality is that a large number of small units, although organized and certified, never succeed in reaching a collective agreement. There is a specific requirement in Section 6 of the Code that parties should bargain in good faith but experience has shown that this does not cast a fine enough net to deal with the variety of methods by which bona fide and reasonable collective bargaining may be frustrated. What the legislature has proposed in Section 70 is a positive remedy which it is hoped will do a better job that the standard device of cease and desist orders.[3]

Another fundamental premise of the Code is that the terms and conditions of employment should be settled by mutual agreement of the parties concerned, not imposed from the outside under legal authority.[4] The Section 70 provisions, which contradict this premise, acknowledge both the severity of the problem and the necessity for an extreme remedy to accomplish the overall objective of encourage collective bargaining.

THE PROVISIONS

The relevant provisions of the Code are as follows:

> 70(1) Where a trade-union certified as bargaining agent and an employer have been engaged in collective bargaining with a view to concluding their first collective agreement and have failed to conclude an agreement, the minister may, at the request of either party and after such investigation as he considers necessary or advisable, direct the board to inquire into the dispute and, if the board considers it advisable, to settle the terms and conditions for the first collective agreement.
>
> (2) The board shall proceed as directed by the minister and, if the board settles the terms and conditions, those terms and conditions shall be deemed to constitute the collective agreement between the trade-union and the employer and binding on them and the employees, except to the extent to which they agree in writing to vary any or all of those terms and conditions.
>
> 71. In settling the terms and conditions for a first collective agreement under section 70, the board shall give the parties an opportunity to present evidence and make representation and may take into account among other things,
>
> (a) the extent to which the parties have, or have not, bargained in good faith in an effort to conclude a first agreement; and
>
> (b) the terms and conditions of employment, if any, negotiated through collective bargaining for comparable employees performing the same or similar functions in the same or related circumstances.
>
> 72. In no event shall the collective agreement settled by the board under section 70 be for a period exceeding one year from the date the board settles the terms and conditions for a first collective agreement under that section.[5]

An application under this section can be made by either the employer or the union, and is made to the Minister of Labour who has the discretionary authority to do several things. He can order an investigation; he can deny the application outright; he can refer the matter to the Labour Relations Board for investigation, with or without conducting a preliminary investigation;

or he can attempt to resolve the issue. Once the matter is referred to the Board, the Board is under an obligation to follow the direction given by the Minister and conduct an investigation into the matter.

This establishes a two-stage screening process. Applications are initially screened by the Minister of Labour and subsequently, if the Minister directs, by the Labour Relations Board. This process differs from the normal process whereby applications and complaints related to certification, unfair labour practices, strikes, picketing and other matters within the jurisdiction of the Board are made directly to the Board. One possible reason for this dual screening process is that the outcome of the application may eventually require an employer and a union to enter into a binding contract. This may be considered a decision of too great a magnitude to be left exclusively in the hands of an administrative tribunal as the Board.

Once the application has been referred to the Board, and after conducting its investigation, the Board has the discretionary power to impose a collective agreement. In exercising this discretion the Board is not given specific guidance by the wording of Sections 70-72. This guidance is found, however, in Section 27(1) " which outlines the manner in which the Board should exercise its general powers, among which is its power under Section 70 to determine whether or not a collective agreement should be imposed."[6]

> 27. (1) The board, having regard to the public interest as well as the rights and obligations of parties before it, may exercise its powers and shall perform the duties conferred or imposed on it under this Act so as to develop effective industrial relations in the interest of achieving or maintaining good working conditions and the well being of the public. For those purposes, the board shall have regard to the following purposes and objects:
>
> (a) securing and maintaining industrial peace, and furthering harmonious relations between employers and employees;
>
> (b) improving the practices and procedures of collective bargaining between employers and trade unions as the freely chosen representatives of employees; and

(c) promoting conditions favourable to the orderly and constructive settlement of disputes between employers and employees or their freely chosen trade unions.[7]

Section 71 gives the Board direction concerning two factors they may consider in settling the terms of a first agreement: (1) the extent to which the parties have or have not bargained in good faith, and (2) comparable terms and conditions of employment negotiated for similar employees in similar situations. At the Board's discretion, these criteria may be considered in determining the content of an agreement imposed via Section 70.

Section 71 also requires that the Board provide the employer and the union with the opportunity to present evidence and make representation regarding the content of the agreement.

Section 72 limits the duration of any collective agreement imposed under Section 70 to a one-year term. This is consistent with the predisposition of the Code towards settlement of the terms and conditions of employment directly by the parties without the intervention of an outside, third party.

In the London Drugs case, the first instance where the Board imposed a first agreement[8] they were subsequently required to interpret the continuation clause of that agreement in terms of the one-year duration of a Section 70 agreement. In its decision[9] the Board ruled that in spite of the wording of that clause, the agreement could not continue in effect past its one-year expiry date.

The first agreement arbitration provisions apply only to newly certified bargaining units who are bargaining for a first collective agreement.

OBJECTIVES OF FIRST AGREEMENT ARBITRATION

The objectives of Sections 70 through 72 were outlined by the Board in a policy statement issued in the first decision made under the provisions. The overriding and most general objective of the legislation, as stated by then Chairman Paul Weiler, is to get a collective bargaining relationship underway, and through an enforced one-year trial marriage, to foster an enduring collective bargaining relationship.[11] In a typical Section 70 situation, where establishment of such a relationship is not likely to be the outcome of certification, the immediate objective is to intervene in order to establish a first collective agreement. A certification only gives the union the licence to bargain. Section 70 gives them a collective agreement, in spite of employer actions taken to frustrate this end. Although the Code does not in any way guarantee that collective agreements will always be achieved between the respective parties, neither can the legislation ignore actions of one of these parties which are deliberately obstructionist and, in most situations, prohibited by the Code.

Through the imposition of a one-year agreement the employees are able to experience the benefits of collective representation, benefits they are entitled to as a result of certification, but would not likely have achieved without this particular form of third party intervention.

Given the objective of establishing a collective bargaining relationship, the manner in which the Code addresses the problem has two distinct elements. The Section 70 provisions are designed to provide a disincentive or deterrent to behaviours which are prohibited under the Code, and to provide a remedy when the deterrent fails. As a deterrent, the provisions deprive an offending party of the benefits of their illegal conduct. As a remedy, Section 70 seeks to repair the damage done by the employer; this damage is defined as the absence of a first collective agreement. If, however,

the inability to conclude a collective agreement is only a symptom, the real damage being erosion of support for the union and the collective bargaining process, the remedial nature of the provisions is not obvious.

ASSUMPTIONS UNDERLYING THE PROVISIONS

If the Section 70 remedy is to operate effectively, a number of assumptions must have been made by those who wrote the provisions. These assumptions need to be examined. Many of these assumptions, relating to the employer, the union, and the employees, were alluded to in the London Drugs decision.[11]

Relating to the Employer

Underlying the Section 70 provisions and provisions dealing with unfair labour practices is the premise that the employer is in a unique position and can, through his actions, influence an employee's choice in regards to the decision of whether or not to support the union. Support for this premise was provided in the preceding chapter. The rationale of Section 70 assumes that this influence has occurred, to the detriment of the employees and the union. A corollary to this assumption is the view that in the absence of the employer's influence and anti-union behaviour a collective bargaining relationship would have been established. The Section 70 provisions in themselves make no assumption regarding whether or not the employer will continue his attempts at interference subsequent to the imposition of a first collective agreement.

A second assumption of the provisions is that an enforced, one-year "trial marriage" will remove enough of the distrust and bitterness felt by the employer, to whom unionization is a new and unwelcome fact of life, so that meaningful collective bargaining will be possible when it is time to renew the agreement. If the experience under the first agreement is to erase the fears and misconceptions of the employer regarding the impact of unionization upon his business (one reason cited earlier upon which employer opposition could be based) the actual experience during the agreement must not live up to the fearful expectations. The assumption rests on the idea of these fears having their roots in the lack of firsthand knowledge concerning the realities of living on a day-to-day basis with a collective agreement.

The idea underlying the legislation operating as a deterrent assumes that an employer, realizing that the ultimate result of his anti-union efforts may be the imposition of a collective agreement, will choose a less unattractive alternative; presumably to sit down, meet with the union and negotiate terms more favourable to the employer than those which may be imposed by a third party in the role of arbitrator. This 'rational man' assumption applies to all traditional types of interest arbitration.

Relating to the Union

The imposition of a first collective agreement gives the union involved a breather, an extended period of protection during which time they can regroup and consolidate support within the bargaining unit. If, in fact, this is to occur, two assumptions must be made. Firstly, it must be assumed that the union will consciously seek to consolidate its power. If union power in this instance is defined in terms of support among the employees in the bargaining unit, this assumption implies the union embarking on a course of action(s) which will 'gain' new members from the ranks of the non-members while retaining support among existing members.

It also assumes that given such a strategy, the union is in a position to influence employees in the bargaining unit through rewards and/or sanctions or through demonstration of the benefits of unionization. To be successful in consolidating support the influence of the union and its supporters would have to exceed that held by the employer and the vociferous non-members.

Relating to the Employees

One of the objectives of the provisions, in their remedial aspect, is to restore the support for the union among the employees to the level which prevailed when the application for certification was made. The effective operation of this remedy assumes that living under the terms and conditions of a collective agreement for one year will be a positive experience for employees; one which can counteract the previous, and perhaps continuing, influence of the employer. This assumption hinges on a second; the employees will view any improvements in working conditions and wages contained in the arbitrated agreement to be visible results of the union's presence. In situations where there is turnover among union members, the assumption is that this link is sufficiently developed to attract union supporters among the new employees.

As many of the assumptions identified in this section are related to the anticipated consequences for the parties of the "trial marriage", it is probably important when reviewing the cases under Section 70 to examine the terms and conditions of the various marriage contracts, and the behaviour of the parties during the marriage.

SUMMARY

In this chapter the objectives of the Section 70 provisions have been discussed within the broader context of labour legislation which recognizes the need, in this case of the employees and the union, for protection from actions of the employer which can have a detrimental impact upon an organizational drive. The discussion recognized that the employer opposition to organization and, consequently, the continued need for protection, may continue into the post-certification stage. Recognition of a trade union by an employer does not follow automatically upon certification. The Section 70 provisions were developed as a remedy for the situation where continued employer opposition, coupled with the tenuous bargaining authority of the union would have the distinct possibility of defeating the bargaining rights deemed to follow certification. The assumptions upon which the legislation is based were discussed, primarily from the perspective of the impact that the experience of living within the "trial marriage" could have upon the respective parties.

At this point we could expand upon the scenario described in the summary of the second chapter:

> The union has called the employees out on strike in an attempt to use its economic leverage to force the employer to conclude a first collective agreement. Some of the employees have been on strike for several months, but the employer continues to operate, using management personnel, employees hired after the strike began and those employees who did not support the union initially. The employer continues to refuse to discuss proposals for settling the strike and at the same time promises those employees who are now working a significant increase in wages if they will make an application to have the union's bargaining certificate cancelled. While the employees are waiting for such an application to be timely, the union, fearing this application would be successful, makes application to the Minister for intervention under Section 70.[12]

The next step in assessing the operation of this legislation is to examine the cases where it has been applied and to identify the outcomes of these cases.

Before doing so, it is necessary to describe the manner in which the case data were gathered. It is also useful to speculate on the outcomes under various circumstances. These are the objectives of the fourth chapter.

FOOTNOTES TO CHAPTER III

1. Section 43(3), Labour Code of British Columbia (1979).
2. Section 8(4)(e), Labour Code of British Columbia (1979).
3. London Drugs, L.R.B.B.C. Decision #30/1974.
4. London Drugs, L.R.B.B.C. Decision #30/1974, p.3.
5. Sections (70), (71), and (72), Labour Code of British Columbia (1979).
6. Vancouver Island Publishing, L.R.B.B.C. Decision #32/1976.
7. Section 27(1), Labour Code of British Columbia (1979).
8. London Drugs, L.R.B.B.C. Decision #30/1974.
9. London Drugs, L.R.B.B.C. Decision #80/1975.
10. London Drugs, L.R.B.B.C. Decision #30/1974, p.6.
11. London Drugs, L.R.B.B.C. Decision #30/1974.
12. London Drugs, L.R.B.B.C. Decision #30/1974, p.13.

CHAPTER IV - METHODOLOGY

INTRODUCTION

The objectives of the research are to describe the cases where Section 70 has been applied, describe the outcomes of these cases, and determine whether or not the Section 70 provisions are effective in resolving the conflicts caused by continued employer opposition to collective bargaining.

The research strategy selected for this study is a longitudinal case analysis. This chapter outlines the population included in the study, the type of data gathered, and the methods used to gather the data.

POPULATION

The population includes all applications for arbitration of a first collective agreement that were referred to the Board between January 1974, when the new code was enacted, and December 31, 1979. The four applications referred to the Board between January 1, 1980 and December 31, 1981 were not included in the sample because insufficient time has passed since the Board dealt with these cases to identify their respective outcomes. A summary of these cases is contained in Appendix 1.[1]

Applications submitted to the Minister, but not referred to the Board are not included in the population because detailed information on these cases, approximately thirty-five in number, is not available. It is also reasonable to assume that if these applications warranted further examination and involvement of the Board in order to determine whether arbitration of a first agreement was necessary, they would have been referred to the Board.[2]

The population was identified through review of the Board's Annual Reports, published decisions and letter decisions and a case list was prepared with the assistance of the Board. This resulted in a population of thirty cases distributed over the six-year period, according to the date on which the application was referred to the Board, as outlined in Table 1.

The distribution of cases over this six-year period requires some explanation. Review of Table 2 shows that the certifications of thirteen of the cases were issued prior to 1974. First agreements had not been negotiated in these cases and it appeared as though many of the employers were opposed to the idea of collective bargaining. To a certain extent there was, therefore, a backlog of cases to be dealt with by the Board under new legislation as no channel had previously existed to resolve these disputes. Ten of the certifications were issued during 1974. The relatively high number of applications referred to the Board in 1974 and 1975 could also indicate certain "testing" of the new provisions by the unions. There have been surprisingly few cases referred to the Board since 1974.

During this same time period over four thousand applications for certification were filed with the Board.[3] It is evident from this that the population described in this study is not representative of the vast majority of employers and unions involved in new certifications. A Section 70 application is rare. This may in itself indicate that the provisions are accomplishing their objective of operating as a deterrent.

The population was divided into four categories according to the disposition of the application. These categories correspond with those used by the Board in their Annual Reports.[4] The first two categories, GRANTED and DENIED, include applications in which the Board adjudicated the merits of the application and determined that the arbitration of a first collective agreement was, or was not, appropriate. The Board's decisions in these

applications are recorded in either detailed published decisions or in unpublished letter decisions.

The third category includes applications defined by the Board as SETTLED. This category includes cases in which the application for arbitration of a first agreement was withdrawn following some investigation and the involvement of either an Industrial Relations Officer from the Ministry or a panel of the Board.

The final category, WITHDRAWN, includes applications which were withdrawn at the request of the applicant prior to the investigation of an Industrial Relations Officer or panel of the Board. Table 3 summarizes the distribution of the population according to the four categories. There were eleven cases which were GRANTED and six which were DENIED. Eleven cases were SETTLED and two cases were WITHDRAWN.

The division of the population into these four categories was done primarily for comparative purposes. Although the small number of cases in each category makes it difficult to draw generalizable conclusions from such comparisons, the information yielded from a subjective analysis has value. The analysis describes differences in the characteristics of the cases among the categories, and differences in their respective outcomes.

Table 4 summarizes the distribution of the population according to both the date the application was made to the Minister, and the disposition of the application. The distribution among the categories during the first two years was relatively even. It would appear, therefore, that the relatively low incidence of cases in 1976 through 1979 was not because the unions perceived that all applications would be rejected.

Table 5 contains a case list which identifies the employer and the unions involved in each case.

TABLE 1

DISTRIBUTION OF CASES BY YEAR OF APPLICATION

Year of Application	No. of Cases
1974	17
1975	9
1976	0
1977	1
1978	3
1979	0
Total	30

Source: Labour Relations Board of British Columbia, Annual Reports, 1974-1979.

TABLE 2

DISTRIBUTION OF CASES BY YEAR OF CERTIFICATION

Year of Certification	No. of Cases
prior to 1973	1
1973	12
1974	10
1975	3
1976	1
1977	3
Total	30

TABLE 3

DISTRIBUTION OF CASES BY DISPOSITION OF APPLICATION

Category	No. of Cases
granted	11
denied	6
settled	11
withdrawn	2
Total	30

TABLE 4

DISTRIBUTION OF CASES BY YEAR OF APPLICATION
AND
BY DISPOSITION OF APPLICATION

	C A T E G O R Y				
Year	no.granted	no.denied	no.settled	no.withdrawn	totals
1974	5	3	7	2	17
1975	3	3	3	-	9
1976	-	-	-	-	0
1977	-	-	1	-	1
1978	3	-	-	-	3
1979	-	-	-	-	-
Total	11	6	11	2	30

Source: Labour Relations Board of British Columbia, Annual Reports, 1974 - 1979

TABLE 5

CASE LIST

Employer	Union
Adanac Lumber Ltd.	Retail, Wholesale and Department Store Union, Local 580
Armorlite Industries Ltd.	United Steelworkers of America, Local 2655
Bond Brothers' Sawmill Ltd.	International Woodworkers of America, Local 1-424
Burroughs Business Machines Ltd.	International Brotherhood of Electrical Workers, Local 213
Cannery Seafood Restaurant Ltd.	Hotel, Restaurant & Culinary Employees & Bartenders' Union, Local 40 (Hotel Employees' Union)
Century Plaza Hotel Ltd.	Hotel Employees' Union, Local 40
Chevron Canada Ltd.	International Association of Machinists & Aerospace Workers, Automotive Lodge, No. 1857
Childrens' Rehabilitation & Cerebral Palsy Association	Health Sciences Association of British Columbia
Cypress Disposal Ltd.	Service Employees' International Union, Local 244
Dayton Tires Ltd.	Teamsters, Local 351
Dominion Chain Company Ltd.	United Steelworkers of America, Local 2952
Dominion Directory Company Ltd.	Federation of Telephone Workers of British Columbia, Clerical Division

TABLE 5 (cont'd)

CASE LIST

Employer	Union
Grandview Industries Ltd.	Teamsters, Local 351
Kelowna Daily Courier	International Typographical Union, Local 226 & The Vancouver-New Westminster Newspaper Guild, Local 115
Kidd Brothers Produce Ltd.	Teamsters, Local 351
Kootenay Hotel Ltd.	Hotel Employees' Union, Local 40
London Drugs	Teamsters, Local 351
Marpole One-Hour Cleaners Ltd.	Teamsters, Local 351
McCoy Bros. Ltd.	International Union of Operating Engineers, Local 115
Medieval Inns (Victoria) Ltd.	Hotel Employees' Union, Local 40
Metropolitan Bus Pickup Ltd.	Teamsters, Local 31
Mexicana Motor Inn Ltd.	Hotel Employees' Union, Local 40
M & H Machinery & Iron Works Ltd.	International Union of Operating Engineers, Local 115
Parta Industries Ltd.	International Woodworkers of America, Local 1-423
Sandman Inn (Kelowna)	Hotel Employees' Union, Local 40
Sandman Inn (Revelstoke)	Hotel Employees' Union, Local 40

TABLE 5 (cont'd.)

CASE LIST

Sandman Motels (Cranbrook) Ltd.	Hotel Employees' Union, Local 40
United Food Services Ltd.	Hotel Employees' Union, Local 40
Vancouver Island Publishing	International Typographical Union, Local 226
Victro Registry	Service Employees' International Union, Local 244

DATA MEASURES

The discussion in Chapter II related to organizing, the possible reactions of an employer during an organizational campaign, and the relative power positions of the parties, identified some of the information required for the study. The policy statements made by the Board, the Board's statement of the criteria which would be utilized in applying the legislation and the descriptive information contained in the London Drugs case[5] also assisted in identifying relevant information.

After compiling a lengthy list of information which would be of interest, the items were divided into two groups depending on the availability of the data. Those items for which data could be readily obtained were retained, provided the information would add to the general description of the cases. There were two key factors which limited the availability of the data. The information was either not recorded, or was unavailable due to confidentiality of Board records.

The variables for which data were collected are identified below, as are the reasons for inclusion of each variable. The data collected were descriptive of the employers, employees, unions and bargaining units, the context, and the process of the Section 70 applications.

A recently completed study by George Bain has utilized many of the same variables to develop a framework for examining certifications, first agreements and decertifications.[6]

Board Decisions

The disposition of each application was allocated to one of the four categories used by the Board described earlier. Each application was classified as WITHDRAWN, SETTLED, DENIED or GRANTED. The allocation of the cases to one of the four categories formed the starting point for comparison of their characteristics and outcomes.

Outcomes

Identification of the outcomes of the Section 70 cases was one purpose of the research. Outcomes were categorized as decertification, no agreement concluded, first agreement only, first and second agreements, and more than two agreements. The outcomes were also defined in terms of the status of the certification, i.e. active certification, dormant certification and decertification. Dormant certifications encompassed outcomes where the previous collective agreement had expired more than twelve months previous but there was no decertification, or where the certification was still in effect but no collective agreement had been concluded.

Multiple outcomes were possible; the parties could, for example, successfully conclude two collective agreements and the union could subsequently be decertified.

The outcomes were discussed in terms of the number of first agreements concluded; the number of agreements negotiated by the parties after disposition of the Section 70 application; the status of the certification; and in terms of what the outcomes indicated about the propensity to remain unionized.[7]

Support for the Union

Data were collected on the size of the bargaining unit; numbers of union supporters at the time of the application for certification, as indicated by union membership or the results of a representation vote; significant changes in support for the union, reflected by support for another union or association, an application for decertification, or turnover among bargaining unit members; and whether or not bargaining unit members worked for the employer during a work stoppage. Collectively these describe the level of support for the union among bargaining unit members.

Because the level of support for the union is subject to increases and decreases over time, the data measures were constructed to reflect the dynamics of this variable.

The relevance of support for the union was identified in Chapter II. In order to be a viable representative of the bargaining unit members it is essential that the union maintain the majority support it has at the time of application for certification. The importance of maintaining majority support, and ironically the difficulty in doing so, is increased by the extent to which the employer is determined to undermine this support.

Comparisons of differing levels of support for the union among the cases with their respective outcomes may provide some insight into a definition of marginal support.

Employer Reactions

Chapter II also discussed possible reactions of an employer when faced with potential unionization and the impact of these reactions upon the employees and their support for the union. Data collected to describe the reaction of the employer to unionization were: employer appeals of the certification (yes/no and frequency); unfair labour practices committed by the employer (their number, nature and timing); and violations of other sections of the code (their number, nature and timing).

Negotiations

Data describing the negotiations between the parties were desirable for descriptive purposes and because of the reference made by the Board in London Drugs to an employer using drawn out negotiations and delays as a tactic to continue resistance to the certification.[8] Section 71(a)[9] also makes specific reference to the negotiations between the parties.

Of significance for this study was the presence of allegations made by the unions and/or findings of failure to bargain in good faith; indications of delays in the bargaining process; and whether or not a third party was involved in an attempt to mediate settlements.

A violation of Section 6[10], the requirement to bargain in good faith, was defined by a formal ruling by the Board that a violation had occurred. The time limit by which the parties are required to commence bargaining after serving of notice to bargain[11] was used to indicate possible delays in bargaining. Repeated delays in arranging meetings are one of the tactics which an employer can utilize to frustrate collective bargaining before it even gets started.

Work Stoppages

The use of, duration, and impact of work stoppages are useful to describe the relative power positions of the parties. To the extent that strikes involving negotiations for first collective agreements can be termed as strikes for recognition, description of them is of particular importance to this study. Work stoppages were defined as strikes or lockouts and by their legality or lack thereof. Duration of the work stoppages was measured in number of calendar days. The impact upon the employer, the employees and the union was assessed by whether the employer continued to operate during the strike, and if so, for how long; and by the source of labour utilized to operate during the strike. Labour sources in turn were defined as non-bargaining unit members, members of the bargaining unit, and new employees hired to replace those on strike.

Contract Provisions

Through arbitration of a first collective agreement and the related enforced one-year "trial marriage" the Section 70 provisions attempt to remedy a situation in which it is unlikely that effective representation of the employees by the certified trade union will survive. A first

collective agreement is important for its demonstration to the employees of the tangible results from the certification.

The Code requires that all agreements contain provisions related to grievance and arbitration procedures and related to technological change.[12] These grievance and arbitration procedures provide the union with a vehicle to review and challenge management decisions such as dismissal of bargaining unit members. During an organizational campaign the employee (union) can only challenge a dismissal through the unfair labour practice provisions of the code. Once a collective agreement is signed, dismissals can be challenged through the grievance and arbitration procedures on the much broader grounds of unjust cause. The employees' job security is greatly enhanced.

First agreements also create the opportunity through provisions for union membership and payment of dues to consolidate the union's support base. As discussed by Weiler, provisions requiring employees to join the union after a specified time period or those requiring union membership prior to being hired by the company provide the Union with a degree of control over the actions of the members in crucial activities such as strikes and picketing.[13] In a closed or union shop, membership is a prerequisite to continued employment. Within the constraints of the union constitution, the duty of fair representation and majority rule, the locus of control over job security can shift from the employer to the union, thereby increasing the relative power of the union vis-a-vis the employer and the employees.

Support for the union may be increased through a strengthening of the attachment among existing employees in the unit resulting from improvements in wages, benefits and working conditions provided in the agreement. These improvements should reinforce the usefulness of the union

in the eyes of the bargaining unit members.

Data were examined for the following provisions in the collective agreements: union security, including membership provisions, check-off and stewards rights; job security, including the role of seniority in promotions, lay-offs and recalls and contracting out. The contract provisions were categorized according to the definitions contained in Negotiated Working Conditions.[14]

Although comparison of provisions for vacation, statutory holidays, health and welfare benefits and wages was desirable, an analysis was beyond the scope of this research. Subjective comments related to the impact of unionization in these areas provided in interviews or in Board decisions were made where possible.

General Information

For possible use in comparing the bargaining units in this population to those in other studies, and to assess the extent to which these cases fit the scenario outlined in the London Drugs case[15], data measures were defined which are descriptive of the participants in the cases. Definitions of skill level, type of union and type of industry were borrowed from Chafetz[16], with minor modifications. The affiliation of the union, to a provincial, national or international federation was also included as descriptive of the type of union. The B.C. Federation of Labour has gone on record opposing Section 70 at each of its annual conventions since 1974.[17]

The question arises as to whether or not the Federation attempted to prevent its members from utilizing these provisions. Were there relatively few applications from affiliates of the B.C. Federation or was their opposition a stance taken only in public? Affiliation of unions is

reported in the B.C. Labour Directory[19] which was used as the source of the information.

From the London Drugs scenario it is anticipated that the employers involved in Section 70 applications would tend to employ unskilled labour. As the service and trade sectors employ predominantly unskilled labour, it is also anticipated that there will be more Section 70 applications in these industrial classifications than in manufacturing or construction.

From the same scenario it is anticipated that the bargaining units will be relatively small and that Section 70 applications will come primarily from industrial and miscellaneous unions.

The accuracy of these expectations is one of the topics discussed in Chapter V.

Effectiveness

Another objective of the study is to assess the effectiveness of the Section 70 provisions. The literature on organization theory[20] contains many approaches to defining effectiveness, there being no consensus on the one best way. For this study several measures were selected.

A stated objective of the legislation is to foster an enduring bargaining relationship between the parties. For Section 70 applications which were GRANTED, attainment of this objective is indicated by the achievement of a second agreement. Negotiation of subsequent agreements indicates with a greater degree of certainty that this objective has been met. Therefore, to the extent that the parties involved in applications which were GRANTED successfully negotiate second and/or subsequent agreements, the legislation can be assessed as effective. This assumes that these agreements would not have been achieved in the absence of the Section 70

provisions. A direct measurement of this assumption is, of course, not possible.

The Section 70 provisions are intended to be remedial and not punitive. The extent to which either or both of the parties involved view it as punitive, however, and therefore something to be avoided, also provides a measure of the effectiveness of the provisions. The underlying assumption is that the parties would avoid Section 70 applications by not committing actions which lead up to an application. This deterrent effect is a potentially useful indication of the effectiveness of the legislation. It is difficult to measure directly because the cases which could have ended up in a Section 70 application, but did not, are unknown.

As proxies for this measure the research strategy included data in three areas. The first is a comparison for the years 1974 - 1979, inclusive, of the percentage of new bargaining units without a first agreement after eighteen months. A decrease in these numbers may indicate operation of a deterrent. Because of the potential influence of a number of other factors on the time to achieve an agreement other measures were required. The second, existence of cases which were SETTLED, may in itself be taken as indicative of the deterrent effect. Under the guidance of the Board, and with the possibility of a Section 70 agreement being imposed, the parties in these cases reached a voluntary accord which they may not have achieved otherwise. A finding of established bargaining relationships between these parties would further lend support to the deterrent effect of the legislation.

A third method used to assess the deterrent effect of the legislation is to examine and compare the outcomes in several widely publicized organizing disputes which have occurred since the adoption of the legislation to those occurring prior to its adoption. Alternatively, the absence of such disputes may also indicate the deterrent effect.

DATA COLLECTION

Once the data measures are defined, a method(s) must be selected for gathering the data. The choice of method in this study was influenced by the availability of published documents of the Board which detail the decisions for many, but not all cases; the confidentiality of the data in the non-published records of the Board; the sensitive nature of the topic, and the resources available for data collection.

In thirteen instances the Board published detailed decisions on the Section 70 applications. These contain information on the backgrounds of the respective cases, the criteria related to the merits of the applications and the rationale for the decisions of the Board. In a further four instances the Board issued letter decisions which contain less background. In the SETTLED and WITHDRAWN cases where there are no published or letter decisions this information is not readily available. It can be obtained either directly from the parties, or from the records and unpublished information in the Board files. Because of the confidentiality of these files direct access to the data was not possible. It could be obtained only through a questionnaire completed by staff of the Board.

Due to constraints on resources for data gathering, the high quality of information retained on file by the Board, and the reluctance of several employers to consent to interviews, the questionnaire method was favoured over the interview approach. The substantial published information on many of the cases was utilized to develop a draft questionnaire. This draft was pre-tested using the information contained in the thirteen published decisions and revised to clarify data requirements and to incorporate marginal notes made in the process of completing the draft questionnaire. The revised questionnaire was then completed by a second

individual using the same cases. This step was important to remove any remaining ambiguities in the questions. After further minor revisions the final version of the questionnaire was forwarded to the Board for completion. A copy of the questionnaire is found in Appendix 2.

While the questionnaire method of gathering data is desirable due to its unobtrusive nature and its relatively low requirements in terms of resources for data collection, it has one major drawback. Although care was taken in designing the questionnaire and in selecting items for inclusion, the development of a questionnaire requires a pre-focusing of attention on selected variables to the possible exclusion of others which may be relevant. To minimize the impact of this pre-focusing, and to add depth to the study, data from questionnaires was supplemented by interviews with one union and one employer involved in the cases. The union was selected to maximize the potential for additional information, therefore, the representative interviewed was from a union involved in multiple applications. The employer was selected on the basis of willingness to discuss the subject and to solicit the views of an employer involved in an application which was in a category other than GRANTED. Letters of introduction were forwarded to the selected interviewees which identified the researcher and the purpose of the study, and assured the interviewee of anonymity and confidentiality of the information exchanged in the interview. An unstructured format was chosen for the interviews and open-ended questions utilized to provide the interviewee with maximum flexibility to discuss what he perceived as important issues and events.

The data on contract provisions was extracted from the respective collective agreements on file in the offices of the Board and the Ministry of Labour. A total of seventeen agreements were examined.

Table 6 summarizes the sources of data collected by these methods.

TABLE 6

SOURCES OF DATA

Published Information		
- no. of Section 70 decisions	....	13
- no. of related Board decisions	....	24
- no. of collective agreements	....	17
Unpublished Information		
- no. of letter decisions	....	2 (representing 4 cases)
Questionnaires	....	30
Interviews		
- no. of cases	....	10
- no. of unions	....	1
- no. of employers	....	1

SUMMARY

The definitions of data measures contained in this chapter enable presentation of the earlier discussion concerning employer reaction to unionization, the consequences of employer influence and the relative power positions of the parties to be restated in the form of two propositions.

Proposition 1

> Cases in the GRANTED category will demonstrate a lower rate of success in establishing collective bargaining relationships than those in the SETTLED or DENIED categories. This will be indicated by relatively fewer second and third agreements in the GRANTED category than in the other categories.

The establishment of a collective bargaining relationship is dependent to a large degree upon the willingness of the parties, particularly the employer, to accept the procedure of collective bargaining as legitimate. This acceptance is usually indicated through the parties reaching a voluntary accommodation through the give and take of collective bargaining.

By definition, Section 70 applications which are GRANTED involve an unwillingness to accept collective bargaining as a legitimate procedure. By contrast this non-acceptance is not found in the cases which were DENIED. In the cases which were SETTLED the parties have demonstrated, usually after considerable involvement of the Board, some degree of voluntarism. Otherwise the application would ultimately have been resolved via the Board's adjudication.

A qualifying statement is necessary in regards to this proposition. Use of the SETTLED category as demonstrating voluntarism and therefore acceptance of unionization assumes that the behaviour of the employer reflects his attitude concerning unionization. To the extent that this

is not true and the employer was on his 'best' behaviour during certification and/or while the Section 70 application was pending, and is really biding time until out from under the spotlight of the Board, the validity of the proposition will be difficult to assess.

Proposition 2

> Where the employer demonstrates continued and determined opposition to recognition of the union and collective bargaining, the employer's influence will ultimately result in termination of the bargaining relationship.

This would be indicated by a higher proportion of decertifications in cases where the employer continued to commit unfair labour practices and commit other violations of the Code after certification than in the cases where this did not occur. To the extent that the union is able to exert significant countervailing power, through its actions or through legislation, the impact of the employer's influence will be moderated.

In many of the cases the outcomes will be influenced by the operation of both the employer's attitudes towards unionization, and whether or not this attitude changes, and by the relative power balance between the parties. It may, therefore, be difficult to assess the two propositions. For example, an application may be GRANTED indicating that the employer is opposed to unionization. We would therefore expect, according to Proposition 1, that achievement of a second collective agreement upon expiry of the Section 70 first agreement would be unlikely. If, however, during the term of that agreement the union is able to demonstrate its usefulness by successfully challenging a dismissal via the grievance procedure, the support of the membership could be consolidated and the countervailing power of the union could be sufficient to withstand a lengthy strike in order to achieve a second agreement. It is

clearly going to be difficult to draw generalizable conclusions in these cases or to predict the outcomes. What is important is to demonstrate how the opposing forces operate in the cases to lead to the differing outcomes.

FOOTNOTES TO CHAPTER IV

1. In one case the application is still before the Board. Appendix 1 contains a brief summary of these recent cases.

2. P. Weiler, Reconcilable Differences: New Directions in Canadian Labour Law (Toronto: Carswell Co. Ltd. 1980) p. 53.

3. Labour Relations Board of British Columbia, Annual Reports 1974-1979, Table 3.

4. Labour Relations Board of British Columbia, Annual Report, 1975, p. 39.

5. London Drugs, L.R.B.B.C. Decision #30/1974.

6. G. Bain, Certifications, First Agreements and Decertifications: An Analytical Framework (Ottawa: Labour Canada, 1981).

7. Ibid. Bain discusses the influence of the nature of the bargaining unit, the behaviour of the employer and government action upon the propensity to remain unionized.

8. London Drugs, L.R.B.B.C. Decision #30/1974, p. 13.

9. Section 71(a), Labour Code of British Columbia (1979).

10. Section (6), Labour Code of British Columbia (1979).

11. Section (63), Labour Code of British Columbia (1979).

12. Sections (93) and (74), Labour Code of British Columbia (1979).

13. Weiler, Reconcilable Differences, pp. 74-79.

14. Ministry of Labour - British Columbia, Negotiated Working Conditions, 1980, (Victoria: Program Services, 1980).

15. London Drugs, L.R.B.B.C. Decision #30/1974.

16. I. Chafetz, "Decertification: The British Columbia Experience", p. 40.

17. B.C. Federation of Labour, Summary of Proceedings: 21st Annual Convention (Vancouver: B.C. Federation of Labour, 1976).

18. Ministry of Labour - British Columbia, B.C. Labour Directory 1980 (Victoria: Research and Planning Branch, 1980).

19. R. Steers and L. Porter, Motivation and Work Behaviour (Toronto: McGran-Hill Book Company, 1975).

CHAPTER V

CHARACTERISTICS OF SECTION 70 APPLICATIONS

INTRODUCTION

This chapter describes the general characteristics of employers, unions and bargaining units involved in Section 70 applications. These general characteristics are compared to the scenario described in the London Drugs case.[1] To provide a sense of perspective some of the general characteristics are also compared to those of new certifications granted over the same time period.

Similarities and differences in the characteristics among three of the four categories (DENIED, GRANTED and SETTLED) are also discussed to establish the framework for comparing the outcomes of the cases in the respective categories. Comparisons are not made to the characteristics of cases in the WITHDRAWN category because there are only two cases in this category.

Employers involved in Section 70 applications are grouped by standard industrial classification, skill level of employees and involvement in multiple applications. The unions and bargaining units are described in terms of the type of local, affiliation of the unit, size of bargaining unit and involvement in multiple applications. For comparison to the general context of certifications, the industrial classification of the employer and the size of the bargaining unit are examined.

CHARACTERISTICS OF EMPLOYERS

It was anticipated that the employers involved in Section 70 applications would tend to employ unskilled labour and would be predominantly from the trade and manufacturing sectors.

(1) Industrial Classification of Employers

Table 7(a) shows the industrial classification of the employers. As expected, the service sector had the largest number of cases. Eight of the fourteen employers in the service industry were involved in either the hotel or restaurant business. This is clearly the dominant type of business represented in Section 70 cases. The manufacturing sector had nine cases, compared to five in the trade sector.

There were no applications for Section 70 in the construction sector, although this sector represents approximately eleven percent of the unionized workforce.[2] The absence of Section 70 applications in the construction industry can be explained by the prevalence of industry-wide contracts among the various unions and employers. In most construction certifications, once the unit is certified the standard collective agreement is applied to the unit with little or no requirement for negotiations and with little requirement for the union to establish its bargaining authority.

The percent of Section 70 cases in the service sector is slightly larger than would be indicated by the percentage of the unionized workforce in that industrial classification. The service sector represents forty-seven percent of the cases and only forty-two percent of the unionized workforce.[3]

The service sector also accounts for slightly more than its share of cases when compared to the percentage of new certifications in the various industrial classifications (Table 8). The service sector represents forty-one percent of new certifications and accounts for forty-seven percent of the

employers involved in Section 70 cases.

The distribution of Section 70 employers among the other industrial classifications corresponds to the proportions they represent in new certifications. As there were no applications from the construction industry, the certifications from this sector were deleted from the totals before the percentages were calculated.

As new certifications are a measure of organizing activity, we can conclude that, with the exception of the service sector, Section 70 applications can be expected to occur in proportion to the organizing activity in that industrial classification. Applications from the service sector will occur at a slightly higher rate than is indicated by the level of organizing activity in that sector.

(2) Skill Level

Sixty percent of the employers involved in Section 70 applications employed unskilled labour (Table 7(b)). Approximately one-half of these unskilled workers were employed in the hotel or restaurant business. As unskilled employees traditionally have a lower bargaining power, due primarily to the ease with which they can be replaced, this distribution was to be expected.

Six of the employers in the semi-skilled/skilled category had employees belonging to craft unions. These unions traditionally have a high degree of bargaining power. The involvement of craft unions in Section 70 applications was not anticipated given the low skill level depicted in scenario outlined in the London Drugs case.[4]

(3) Involvement in Multiple Applications

Of the twenty-eight employers, only one was involved in more than one application. This employer was involved in three separate applications, representing ten percent of the cases.

TABLE 7

CHARACTERISTICS OF EMPLOYERS

(a) Employers by industrial classification

MANUFACTURING	TRADE	SERVICE	OTHER
M & H Machinery	London Drugs	Victro Registry	Chevron
Parta Industries	McCoy Bros.	Sandman Inns - Kelowna - Revelstoke - Cranbrook	Metro Bus Pickup
Vancouver Island Publishing	Kidd Bros. Produce		
Bond Bros. Sawmill	Dayton Tires	Dominion Directory	
Granview Industries	Adanac Lumber	Century Plaza	
Burroughs Business Machines		Medieval Inns - Victoria	
Kelowna Daily Courier		Kootenay Hotel	
Dominion Chain		Childrens' Rehabilitation Association	
Armorlite Industries		Cannery Restaurant	
		Mexicana Motor Inn	
		Marpole Cleaners	
		United Food Service	
		Cypress Disposal	
NO. OF APPLICATIONS = 9	5	14	2
PERCENT OF TOTAL =(30%)	(17%)	(47%)	(7%)

TABLE 7 (cont'd)

(b) Employers by skill level of employees

UNSKILLED	SEMI-SKILLED/SKILLED
London Drugs	M & H Machinery
Victro Registry	McCoy Bros.
Sandman Inns	Parta Industries
- Kelowna	Vancouver Island Publishing
- Revelstoke	Bond Bros. Sawmill
- Cranbrook	Grandview Industries
Dominion Directory	Burroughs Business Machines
Century Plaza Hotel	Kelowna Daily Courier
Medieval Inns - Victoria	Childrens' Rehabilitation Association
Kidd Bros. Produce	Chevron
Kootenay Hotel	Dominion Chain
Dayton Tires	Armorlite Industries
Adanac Lumber	
Cannery Restaurant	
Mexicana Motor Inn	
Marpole Cleaners	
United Food Services	
Metro Bus Pickup	
Cypress Disposal	
NO. OF APPLICATIONS = 18	12
PERCENT OF TOTAL (60%)	(40%)

(c) Employers involved in multiple applications

	NO. OF EMPLOYERS (%)	PERCENT OF APPLICATIONS (%)
One Application	27 (96%)	27 (90%)
Two Applications ...	0	0
Three Applications..	1 (4%)	3 (10%)

TABLE 8

INDUSTRIAL CLASSIFICATION OF EMPLOYERS
INVOLVED IN CERTIFICATIONS 1974-1979

SIC	CERTIFICATIONS NO.	PERCENTAGE
Manufacturing	713	(33%)
Trade	371	(17%)
Service	903	(42%)
Other	175	(8%)
TOTAL	2162*	(100%)

*excluding Construction

Source: Ministry of Labour, B.C. Labour Directory, 1980.

When company characteristics were analysed in terms of whether or not the applications were GRANTED or DENIED, some differences were identified (Table 9). Although the manufacturing industry accounted for thirty percent of the applications, it accounted for only eighteen percent of the applications which were GRANTED and for fifty percent of those which were DENIED. Similarly the trade sector, representing seventeen percent of the applications, accounted for thirty-three percent of those which were DENIED. At the other extreme, the service sector, representing forty-seven percent of the cases, accounted for sixty-four percent of the cases which were GRANTED.

The unskilled category represented a higher proportion of applications which were GRANTED than their frequency in the sample would indicate; seventy-three percent of applications which were GRANTED, versus sixty percent of all applications.

In summary, employers involved in Section 70 cases are most likely to be in the service sector, followed by the manufacturing sector. They employ predominantly unskilled labour although more employers than anticipated employed semi-skilled or skilled labour. The characteristics of employers in cases which were GRANTED correspond more closely to the general scenario than do the characteristics of employers in the SETTLED or DENIED categories. This was not surprising. The general scenario described the type of unions and employers who would most likely find themselves with an imposed first agreement.

TABLE 9

CHARACTERISTICS OF EMPLOYERS BY DISPOSITION OF APPLICATION

(a) Disposition versus industrial classification

	SIC				
Category	Manufacturing	Trade	Service	Other	Total
no. granted (%)	2(18%)	2(18%)	7(64%)	0(0%)	11
no. denied (%)	3(50%)	2(33%)	1(17%)	0(0%)	6
no. settled (%)	3(27%)	1(9%)	5(45%)	2(18%)	11
no. withdrawn(%)	1(50%)	0(0%)	1(50%)	0(0%)	2
Total	9(30%)	5(17%)	14(47%)	2(7%)	30

(b) Disposition versus skill level

Category	Unskilled	Semi-skilled/ skilled	Total
no. granted (%)	8(73%)	3(27%)	11
no. denied (%)	3(50%)	3(50%)	6
no. settled (%)	6(55%)	5(45%)	11
no. withdrawn(%)	1(50%)	1(50%)	2
Total	18(60%)	12(40%)	30

CHARACTERISTICS OF UNIONS AND BARGAINING UNITS

In chapter four it was anticipated that the bargaining units involved in Section 70 applications, particularly those which were GRANTED, would be relatively small. It was also stated that Section 70 applications would come primarily from industrial and miscellaneous unions.

Because of the B.C. Federation of Labour's opposition to Section 70, we would expect relatively few applications from unions affiliated with the Federation.

(1) Types of Union

Industrial unions, led by the Hotel Employees' Union, had the highest degree of involvement in Section 70 applications, followed closely by miscellaneous unions. Craft unions, representing highly skilled employees, were involved in only twenty percent of the applications (Table 10). This distribution was as anticipated except for the involvement of craft unions in the Section 70 applications. These unions normally have a fairly high degree of bargaining power. Instead of being easily replaced if they go on strike, members of unions such as the Operating Engineers or IBEW are more likely to close down an entire operation when they withdraw their services.

(2) Affiliation of Unions

Although it is impossible to state whether or not the stance taken by the B.C. Federation of Labour had the effect of reducing the number of Section 70 applications, the high number of B.C. Federation affiliates in the sample could be taken as an indication that this did not occur. Of the thirty applications, twenty-three or seventy-seven percent involved B.C. Federation affiliates. All of these twenty-three units were also affiliates of the CLC and all but one were affiliates of the AFL/CIO. There were seven applications made by independent (non-affiliated) unions.

(3) Involvement in Multiple Applications

The characteristics of the unions and bargaining units involved in Section 70 applications were influenced by the number of unions involved in multiple applications. The Hotel Employees' Union accounted for nine applications, or thirty percent of the total. The Teamsters accounted for six applications, while five unions were involved in two applications each. The remaining five unions were involved in only one application each. Two unions therefore account for fifty percent of all Section 70 applications.

The Hotel Employees' Union organizes on an industrial basis in an industry which is not highly unionized. This union appears to have built Section 70 into its organizing strategy. The hotel and restaurant industry is a difficult one to organize. There is high turnover among both the employers and the employees and the majority of the employees are unskilled. In these circumstances if the union is also faced with an intransigent employer this strategy is likely necessary.

TABLE 10

CHARACTERISTICS OF UNIONS AND UNITS

(a) Type of Union

Craft	Industrial	Miscellaneous
Operating Engineers Local 115 (2 applications)	Hotel Employees' Union Local 40 (9 applications)	Teamsters Local 351 (5 applications)
ITU Local 226 (2 applications)	Federation of Telephone Workers of B.C. Clerical Division	Teamsters Local 31
IBEW Local 213	IWA Local 1-423	Service Employees International Local 244 (2 applications)
Health Sciences Assocation	IWA Local 1-424	RWDSU Local 580
	USW Local 2952	Machinists (Automotive Lodge) No. 1857
	USW Local 2655	
NO. OF APPLICATIONS = 6	14	10
PERCENT OF TOTAL = (20%)	(47%)	(33%)

TABLE 10 (cont'd)

(b) Affiliation of Union

	Independent	B.C. Fed.	Total
No. of applications	7	23	30
Percent of total	23%	77%	100%

Source: Ministry of Labour, B.C. Labour Directory, 1980.

(c) Unions involved in multiple applications

	No. of Units (%)	No. of Applications (%)
One Application	5(42%)	5(17%)
Two Applications	5(42%)	10(33%)
Six Applications	1(8%)	6(20%)
Nine Applications	1(8%)	9(30%)
Total	12(100%)	30(100%)

(d) Size of Units

No. Of Members	No. Of Units	Percentage Of Total Units
00-10	10	33%
11-20	5	17%
21-30	5	17%
31-40	5	17%
41-50	2	7%
51-60	1	3%
61-70	1	3%
71-80	0	0%
81-90	1	3%
Total	30	100%

Average No. 25
Median class 11-20
Range 3-85

Source: Labour Relations Board files.

(4) Size of Bargaining Units

It was anticipated that the bargaining units involved in Section 70 applications would be relatively small. This was not the case. While one-third of the applications involved units between one to ten employees, the average unit size of twenty-five employees is larger than the average size unit certified in any of the years 1974 through 1979, inclusive. The median class of the Section 70 applications, eleven to twenty employees, is also higher than the median class of new certifications over the same time period. The comparison of medians discounts the influence of the three relatively large units with over fifty members and is therefore a reliable indicator of relative size.

The characteristics of unions and bargaining units involved in Section 70 applications vary somewhat according to the disposition of the applications. The median class for applications which were GRANTED exceeds the median for each of the other categories and for the population. It would appear, contrary to the typical scenario in London Drugs,[5] that the smallest bargaining units have not been the ones most likely to have a Section 70 application GRANTED.

When comparing type of union and disposition of the application (Table 12), it is observed that the distribution of craft unions among the GRANTED, DENIED and SETTLED categories corresponds to the proportion craft units represent in the sample. Industrial unions have a relatively high representation in the DENIED and SETTLED categories. In part, this can be explained by the influence of the Hotel Employees' Union which has had five of its nine applications granted.[6] Miscellaneous units, on the other hand, have a relatively low represention in the GRANTED category and a relatively high representation in the DENIED category.

TABLE 11

SIZE OF UNITS CERTIFIED
1974-1979

Year	Average size	Median Class
1974	61*	0-10
1975	20	0-10
1976	13	0-10
1977	15	0-10
1978	13	0-10
1979	16	0-10

*The average size unit is unusually large due to the inclusion of approximately 35,000 Provincial Government employees in three bargaining units.

Source: Labour Relations Board of British Columbia, Annual Reports, 1974 - 1979.

TABLE 12

CHARACTERISTICS OF UNIONS/UNITS BY DISPOSITION OF APPLICATION

(a)

Unit size No. of members	C A T E G O R Y No. granted	No. denied	No. settled	No. withdrawn	total
0-10	2	3	5	0	10
11-20	2	1	1	1	5
21-30	2	1	1	1	5
31-40	3	0	2	0	5
41-50	1	0	1	0	2
51-60	1	0	0	0	1
61-70	0	0	1	0	1
71-80	0	1	0	0	1
Average	27	23	23	19	25
Median class	21-30	0-10	11-20	na	11-20
Range	7-58	5-85	3-70	15-23	3-85

(b) Type of union

	craft	industrial	miscellaneous	total
No. granted (%)	2(18%)	7(64%)	2(18%)	11
No. denied (%)	1(17%)	2(33%)	3(50%)	6
No. settled (%)	3(27%)	4(36%)	4(36%)	11
No. withdrawn (%)	0(0%)	1(50%)	1(50%)	2
Totals	6(20%)	14(47%)	10(33%)	30

SUMMARY

The employers involved in Section 70 cases tend to be from the manufacturing and service industries, and with the exception of the service industry, are represented in direct relationship to the general level of organizing activity in the respective industrial sectors. The employers tend to employ unskilled labour and are not normally involved in more than one Section 70 application.

The bargaining units are slightly larger than those for new certifications and bargaining agents are likely to be affiliated to the B.C. Federation of Labour.

The unions in Section 70 applications are predominantly industrial and miscellaneous locals although a surprising number of applications involved craft unions.

The most significant feature of unions in Section 70 applications is their strong tendency to be involved in multiple applications with different employers. This may indicate that, based on their experience with Section 70, they view the remedy of an imposed first agreement positively as a viable alternative when all other attempts to conclude a first agreement are frustrated. On the other hand, the Hotel Employees' Union and the Teamsters may view a Section 70 agreement as the lesser of two evils, and as the only alternative to eventual loss of the bargaining certificate.

On the whole, with the notable exception of unit size, the characteristics of the unions/units and employers involved in Section 70 applications are quite comparable to those described in the general scenario in the London Drugs decision.[7]

Treatment of Withdrawn Applications

Before concluding this chapter, it is necessary to briefly discuss the two applications classified as WITHDRAWN. One application was made

while an appeal of the certification was being made to the Supreme Court of British Columbia and finally to the Court of Appeals. As a result of the Court of Appeals' decision the Certification for the employees of Cypress Disposal was quashed[8], hence the application for Section 70 was withdrawn. In the second instance, Armorlite Industries, the application was withdrawn as the company involved ceased operations in British Columbia. As the business was not sold or transferred, no successor status was involved. These two WITHDRAWN applications will not be discussed in further chapters. The remaining sample has therefore been reduced to twenty-eight cases.

One further modification to the sample is required before examining the cases and their outcomes in more detail. In the Kidd Brothers' case[9] the application for Section 70 was DENIED although the Board stated in its decision that the circumstances indicated the case was an appropriate one for imposition of a first contract. In explaining the denial of this application the Board reasoned that the purpose behind the Section 70 provisions was to restore to the union some of the support among bargaining unit members which the actions of the employer had destroyed. The Board determined that in Kidd Brothers' this would not be the likely result if they were to impose the first agreement. It would rather penalize those now employed in the unit. As Section 70 is intended to be remedial and not punitive, an alternative remedy of a makewhole order was imposed.[10]

For the purpose of this research it would seem more appropriate, therefore, to include this case in the GRANTED category, as all of the circumstances and consequently the outcomes will be more closely allied with this category of cases. Of the twenty-eight cases therefore, the breakdown by disposition of the applications will be considered as follows: GRANTED = 12, DENIED = 5, SETTLED = 11.

FOOTNOTES TO CHAPTER V

1. London Drugs, L.R.B.B.C. Decision #30/1974, p.4.

2. Ministry of Labour - British Columbia, B.C. Labour Directory, 1980 (Victoria: Research and Planning, 1980) p.10.

3. Ibid.

4. London Drugs, L.R.B.B.C. Decision #30/1974, p.4.

5. Ibid.

6. One of the applications made by the Hotel Employees' Union was DENIED; the remaining three were SETTLED.

7. London Drugs, L.R.B.B.C. Decision #30/1974, p.4.

8. The Supreme Court of British Columbia dismissed the employer's appeal of the certification on December 3, 1973. The employer appealed in the Court of Appeals. This second appeal was allowed on October 21, 1974. This information was provided from Board files.

9. Kidd Brothers' Produce, L.R.B.B.C. Decision #53/1976.

10. Ibid.

CHAPTER VI

EMPLOYER REACTIONS, UNION SUPPORT AND NEGOTIATIONS

INTRODUCTION

This chapter presents the data on employer reactions, union support and negotiations for first collective agreements. The data describe the extent to which the employers actively resisted the unionization of their respective employees. They also describe the impact these actions had upon the viability of the bargaining unit and the unions' ability to negotiate first collective agreements.

EMPLOYER REACTIONS

Data were gathered regarding appeals against the certification, unfair labour practices, violations of the requirement to bargain in good faith, and other violations of the labour code to describe the employers' reactions to the organization of the respective bargaining units. Examples of behaviour in each of these areas are used to measure the degree of the employers' acceptance or non-acceptance of unionization. By definition, in the cases where the Section 70 application was GRANTED, the employers' reactions can be described as representative of a high degree of non-acceptance of the unions as legitimate representatives of the employees. At the other end of the continuum, in the cases which were DENIED or SETTLED, although the employers may have adopted hard and inflexible bargaining stances, their reactions would demonstrate a greater degree of acceptance. The questions answered in this section are: (1) To what extent do the reactions of the employers differ among the GRANTED, DENIED and SETTLED categories; (2) Do the initial negative reactions of the employers persist once certification has been achieved?

Unfair Labour Practices

A brief mention should be made that there were no orders issued in the cases with respect to unfair labour practices committed by unions. On the other hand, there were a total of seventeen such orders issued against the employers involved in Section 70 applications. For two reasons this is likely an understatement of the actual number of unfair labour practices committed by the employers. First of all, only approximately twelve percent of complaints related to unfair labour practices are concluded with a formal order. Approximately forty percent of these complaints are settled by the Board without the requirement to issue an order.[1] Secondly, one order frequently involves multiple violations of the code. The actual number of violations involved in these seventeen orders is not known but, based upon a review of the published decisions, it is estimated that there are on average two to three violations per case. This results in an estimated number of violations between thirty-four and fifty-one.

The seventeen orders represent approximately fourteen percent of the unfair labour practice orders issued by the Board over the six-year time frame of the study. On the other hand, these twenty-eight cases represent less than one percent of the certifications applied for over the same time period.[2] In relative terms the incidence of unfair labour practices committed by this group of employers is high.

Table 13 shows the distribution of the unfair labour practices among the three categories and according to whether or not the related orders were issued prior to or subsequent to the certification of the bargaining unit. The cases where the Section 70 application was GRANTED have a disproportionate number of unfair labour practices when compared to the

other two categories. While these cases account for forty-three percent of the sample they represent seventy-one percent of the unfair labour practices.

According to the London Drugs scenario summarized in chapter two, in the GRANTED category we would expect to find indications in the employers' behaviour of a continued campaign to defeat the union. Support for this is found in the continuation, and in the increased frequency, of unfair labour practices after the certification has been achieved. An example best serves to illustrate this point.

In its lengthy decision concerning the Kidd Brothers' case the Board summarized the behaviour of the employer as follows:

> When this conduct is examined in its totality a picture emerges of an employer who was prepared to go to almost any lengths to undermine and destroy the Union's support among its employees, the support upon which the Union's authority and efforts at the bargaining table depended.[3]

The unfair labour practices committed by the employer in this case began prior to the certification of the Teamsters with the dismissal of two employees because of their support for the union. The Board ruled that the dismissals violated Section 3 of the code and, in December 1974, ordered that the two employees be reinstated with compensation for lost wages.[4] As of June 16, 1975 the employer had not complied with the order for reinstatement. The Board's order was filed with the Supreme Court of British Columbia and on July 25, 1975 the employer was found to be contempt. On July 29 one of the employees reported for work in accordance with the Court order; he worked that day and was again dismissed on July 30. The second employee was no longer interested in returning.

In this case the bargaining unit had five members, one of whom was a relative of the owner. It is impossible to overstate the impact that these two dismissals and their eventual outcomes had on the support for the union among the remaining employees.

Subsequent to the certification of the Teamsters the employer continued to resist the union and attempted to coerce the remaining employees into withdrawing their union membership. The employer insisted on attending a union meeting held to conduct a strike vote; threatened and reprimanded two employees for associating with one of the dismissed employees and, finally, visited one of these employees at home, convincing him to resign from the union. The sole remaining union member withdrew her membership several days later. In addition the employer implemented a unilateral wage increase during negotiations, while at the same time refusing to discuss wages and other union demands at the bargaining table. The employer testified during the Board hearings on the Section 70 application that he did not want to deal with a union, nor did he want to conclude a collective agreement.[5]

The behaviour of the employer in Kidd Brothers', while somewhat more extreme than that of employers in many of the other cases, is representative of the conduct of employers in the cases which were GRANTED.

Appeals Against Certification by Employers

One of the legitimate avenues open to an employer to challenge the union's presence is to appeal the certification. While the reasons for which an appeal may be granted are narrow, this provides early indication of the employer's reaction. Reference to Table 14 indicates that of the eleven appeals made by employers, seven were filed by employers in the GRANTED category. These seven appeals represent sixty-four percent of the appeals while the employers in this category represent only forty-three percent of the sample. In four cases more than one appeal was made.

In several instances the employers coupled their appeals with delays in meeting with the unions to commence collective bargaining. The

rationale they employed was that they were not required to meet with the union until the appeal process was exhausted. In their decisions upholding the certifications, the Board's response to these delays was to remind the employers of their duty to meet with the unions and commence bargaining.

In answer to the questions posed at the start of this section, the reactions of the employers differ between the three categories. The behaviours of the employers in the GRANTED category demonstrate a greater degree of non-acceptance of union representation than the behaviour of the employers in the other two categories. Secondly, in the cases in the GRANTED category, this initial negative reaction continues past certification. To a lesser extent this can also be said of the cases in the SETTLED category.

The degree of the employers' negative reactions is most clearly shown in Table 15 which includes other violations of the code in addition to unfair labour practices and appeals against certification. Of a total of thirty-three incidents of behaviour indicating non-acceptance, twenty-three or seventy percent are accounted for by the twelve employers in the GRANTED category.

TABLE 13

FREQUENCY OF UNFAIR LABOUR PRACTICES

No. of U.L.P.'s	C A T E G O R Y granted	denied	settled	total
No. before certification	4	1	2	7
No. after certification	8	0	2	10
Total ...	12	1	4	17

TABLE 14

FREQUENCY OF APPEALS AGAINST CERTIFICATION

No. of Appeals	C A T E G O R Y granted	denied	settled	total
No. of cases with 1 appeal	5	1	1	7
No. of cases with more than 1 appeal	2	1	1	4
Total ...	7	2	2	11

TABLE 15

DEGREE OF EMPLOYER OPPOSITION
(Including Other Violations of the Code)

No. of Incidents	C A T E G O R Y granted	denied	settled	total
No. of U.L.P. before certification	4	1	2	7
No. of U.L.P. after certification	8	0	2	10
No. of appeals of certification	7	2	2	11
No. of violations of Section 6	2	0	0	2
No. of other violations	2	1	0	3
Total ...	23	4	6	33

UNION SUPPORT

Data were gathered related to the degree of union support present at the time of the application for certification and related to subsequent indicates of changes in this level of support. The questions answered in this section are: (1) Do any or all of the cases involve marginal levels of union support; (2) does the degree of support for the union differ among the three categories of cases; and (3) are there indications of significant changes in the levels of support subsequent to certification?

Level of Union Support

The questionnaire provided two methods for measuring the level of support for the union; support indicated by the number and percentage of employees in the unit voting in favour of certification, and, support as indicated by union membership cards when the application for certification was made. A catchall was also provided for "other" indications. In all but two cases, the operational measure was union membership cards. There were no representation votes held with respect to the twenty-eight applications for certification. In one instance the certification was granted in 1964 and there was no record available to indicate the level of support at that time. In the remaining case, the certification was granted in accordance with Section 8(4)(e) of the Code[6] as the level of support could not be determined because of employer influence.

Comparison of the average and median for each category to that for the sample shows little relative difference in the level of union support (Table 16). The support is slightly lower in the GRANTED cases than in the other categories.

Comparable information is not available for all certifications issued over the 1974-1979 time period so the relative level of support in the

cases cannot be compared to that for the general population.

A second way to assess the levels of support in the cases is to identify the number of employees in each case who would have to change their minds about the benefits of unionization in order to reduce the level of support to the point where majority support for the union no longer exists. When this occurs the union is in danger of losing its certificate since an application for decertification could be successful.

Table 17 provides significant insight into the levels of support in the cases. In sixty-seven percent of the cases, only one or two employees would have to change their minds to erode the majority support; in fifty-two percent of the cases one employee is sufficient. If this is used as the definition of marginal support, clearly the majority of the Section 70 applications involve situations where support for the union is marginal.

The distribution of units having marginal support varies slightly from the distribution of the population among the categories. It is the SETTLED category not the GRANTED one, however, that has a relatively higher incidence of marginal support. While the SETTLED cases represent thirty-seven percent of the sample, they represent forty-four percent of the cases having marginal support. The GRANTED cases, representing forty-three percent of the sample, account for only one-third of the marginal support cases.

TABLE 16

LEVEL OF UNION SUPPORT

	No. of Cases in Each Category			
	granted	denied	settled	total
50-55%	4	2	3	9(33%)
56-60%	4	-	-	4(15%)
61-65%	2	-	-	2(7%)
66-70%	1	-	2	3(11%)
71-75%	-	1	2	3(11%)
76-80%	1	2	1	4(15%)
81-85%	-	-	-	-
86-100%	-	-	2	2(7%)
Total ..	12	5	10	*27(100%)
Average..	60%	67%	69%	65%
Median ..	56-60	71-75	66-75	61-65

*Data were not available on one case.

TABLE 17

MARGINALITY OF SUPPORT

	No. of Cases in Each Category			
	granted	denied	settled	total
change by 1 employee	6	3	5	14(52%)
change by 2 employees	0	1	3	4(15%)
change by more than 2 employees	6	1	2	10(37%)
Total ..	12	5	10	*27(100%)

*Data were not available on one case.

Changes in Union Support

The prevalence of marginal union support combined with employer opposition in over half of the cases should result in a relatively high incidence of demonstrated changes in union support. Support for another union, turnover, application for decertification and "other" were the items used to assess changes in the degree of support for the union. Table 18 summarizes the information. There were nineteen separate incidents which demonstrated a decline in the level of support for the union. As one case involved two separate incidents, a decline in support was found in eighteen or sixty-four percent of the cases. This corresponds closely to the percentage of cases involving marginal union support and is slightly higher than the incidence of employer opposition. The latter can possibly be explained by the underestimation of the occurrance of unfair labour practices discussed earlier.

(1) Applications for Decertification

The most startling evidence of changes in union support is found in the fifteen applications which were made for decertification of the respective unions. In London Drugs, Medieval Inns, Dominion Directory, McCoy Bros., Century Plaza and Bond Bros. cases[7], the decertification applications were spearheaded by one or more dissident employees who did not wish to be represented by the union. Review of these published decisions leads to the conclusion that these decertification applications were sponsored by employees who, although included in the bargaining unit, were clearly more closely allied with the interests and attitudes of the employers. In some instances these employees occupied favoured positions and were given preferential treatment by the employers with respect to task assignments, shift work, and other working conditions.

In several of these cases the initial idea for decertification came from the employer who actively sought to influence its outcome. One of the clearest examples of this is found in Dominion Directory[8]. In this case one employee was used by the employer to convey a promise of a significant wage increase if the employees would sign the application for decertification. In a second instance, McCoy Bros.[9], the employer's support for the decertification was combined with support for the formation, and certification, of a rival employees' association. The employee association was found be employer-dominated and therefore did not fall within the Code's definition of Trade Union.[10]

(2) Turnover

It was anticipated that due to the employers' control of the hiring process and, to a lesser but still considerable extent, terminations, turnover would be a significant variable contributing to reductions in the level of support for the unions. While the questionnaire identified turnover as significant in only one case, review of the published decisions indicated that it played a role in at least five cases.[11] In these cases the turnover was usually accompanied by applications for decertification and it is likely that in completing the questionnaire the latter reason, being more easily identified, was reported.

In Dayton Tire[12] the certified bargaining unit had seven employees, four of which supported the union. Three of these employees were subsequently laid off, leaving the union with only one member. In this case there was no allegation or evidence that the layoffs constituted an unfair labour practice.

In Medieval Inns[13] there were originally twenty employees in the bargaining unit; a bare majority of these employees were members in good standing at the time of certification. At the time of the Section 70

application, the bargaining unit had twenty-six employees, however, only five of these employees were in the bargaining unit at the time of certification, and there was only one of the original union members still employed. In this instance four dismissals were ruled to be unfair labour practices and the employees were offered reinstatement. The employer utilized time and possibly selective recruiting practices to alter the composition of the bargaining unit.

When examining changes in union support among the three categories, the most significant finding is that all of the cases in the GRANTED category demonstrated examples of reductions in the level of support. The incidence was considerably lower in the DENIED and SETTLED categories. To the extent that the changes in union support in the GRANTED cases took place after the Section 70 application was decided, and consequently after the first agreement was in place, the ideas of the union consolidating its support and the employees realizing the benefits of unionization during the term of the first agreement are not valid. The measure of this, decertifications after expiry of the first agreement is discussed later.

In answer to the questions asked at the beginning of this section, the majority of Section 70 applications (sixty-seven percent) involved marginal support for the union. The level of support varies only slightly among the three categories of cases. There were indications of reductions in the level of union support in sixty-four percent of the cases and this was most pronounced in the cases in the GRANTED category where every case demonstrated evidence of a reduction in the level of support for the union among bargaining unit members. There were fifteen applications for decertification in the twenty-eight cases.

TABLE 18

CHANGES IN UNION SUPPORT

	C A T E G O R Y			
	granted	denied	settled	total
Support for another union/ employees' association	1	1	0	2
Application for decertification	10	1	4	15
Turnover	-	1	-	1
Other	1	-	0	1
Total ..	12	3	4	19
Percent of cases in category	100%	40%*	36%	64%

*This represents only two cases as in one case there were two examples indicating changes in union support.

NEGOTIATIONS

The nature of the negotiations between the parties was examined to describe some of the difficulties faced by the union and employees in concluding a first agreement. This review included whether or not the parties exchanged proposals, delays in arranging the first meeting, involvement of a mediator, and violations of Section 6[14], the requirement to bargain in good faith. The good faith requirement was viewed as particularly important due to the reference made to it in Section 71.[15].

Negotiations for these first agreements commenced in similar ways. The unions involved served notice to bargain and at the first meeting provided the employers with a set of demands for the terms and conditions to be contained in the first agreement. In the majority of cases the employer responded at some point with counter proposals on some or all issues.

Delays in the First Meeting

Information on the dates for the first meeting between the parties was unavailable in ten cases. The Labour Code contains a provision requiring the parties to meet within ten days after notice to bargain has been served.[16] Using this as a starting point, Table 19 summarizes the time between provision of notice and the date of the first meeting for the remaining cases. In all but three of these cases the ten-day time limit was not met. In eight cases the first meeting did not occur within thirty days after notice to bargain was served. The average length of time between serving of notice and the first meeting is the greatest in the cases in the GRANTED category.

Although the questionnaire did not specifically inquire into responsibility for delays in meetings, the information in the published

cases, and the fact that notice was always given by the unions involved, points to the delays being the responsibility of the employers. In some instances this appears to have been a bargaining tactic used to frustrate the unions.

A detailed review of the Century Plaza decision[17] provides the most dramatic example of an employer's use of delays to circumvent the union's attempt to bargain collectively. In Century Plaza the union served notice to commence bargaining on July 23, 1974. The employer replied that the certification was being appealed and made no reference to setting a date to meet with the union. The first meeting did not take place until January 28, 1975, more than six months after the original notice was served. This meeting occurred only after repeated attempts by the union to arrange suitable dates and times to meet, after three reminders from the Board of the employer's duty to bargain and finally after a formal Board order was issued and filed with the Supreme Court of British Columbia.

A less extreme example is found in McCoy Bros.[18] The union served notice on April 15, 1975 and the first meeting occurred September 8, 1975. In this instance the employer maintained that a busy schedule and his failure to receive the union's proposals (forwarded several months prior to the September meeting) prevented an earlier meeting. The Board interpreted the employer's conduct as "attributable to a deliberate decision...to decline under any circumstances to enter into a collective agreement with Local 115 or, at the very least, to postpone the entering into of such an agreement as long as possible."[19]

Violations of Section 6

The employers' reluctance to conclude a first agreement was not generally manifested in orders issued for failure to bargain in good faith. In the twenty-eight cases there were only four allegations that the employer was failing to bargain in good faith. Two of these allegations resulted in formal orders issued against the employers. This finding appears low considering the reactions of the employers to unionization and the specific reference to Section 6 in the first agreement provisions, for the Board to consider the extent to which the parties have bargained in good faith.[20] However, the Board has only issued a total of six such orders over the 1974-1979 time period. Failure to bargain in good faith is a difficult allegation to prove and the Board does not consider it a precondition to the granting of a Section 70 application.[21] As in the area of unfair labour practices, the Board does not issue orders in the majority of Section 6 complaints, preferring to settle them between the parties prior to the issuance of a formal order.

Involvement of Mediators

Mediators, requested by one of the parties, were involved at some point in the negotiations in all but four of the cases. They were, however, notably unsuccessful in assisting the parties to conclude a first agreement. The mediators may have reduced the number of items in dispute between the parties but in every case the unions applied for Section 70 after the mediators had reported out of the dispute.

WORK STOPPAGES

Incidence of Strikes and Lockouts

There was a total of nine workstoppages in the twenty-eight cases in the sample, eight strikes and one lockout. The incidence of strikes corresponded closely with the distribution of the sample among the three categories. When the one lockout is included, the SETTLED category has a marginally disproportionate share of work stoppages. (Table 20). This could indicate support for the idea that this category represents situations where negotiations for the first agreements were relatively difficult, but not necessarily because of anti-union motivation on the part of the employer.

The three strikes in the GRANTED cateogry could be interpreted as relatively numerous given the marginality of union support, the relatively low skill levels of the employees and the tenuous nature of the newly-issued certification when the unit is faced with an employer determined to defeat the certification. Under these circumstances it is highly unlikely that a strike would be successfuly, it is more likely to be used as a last and somewhat desperate measure or in an attempt to attract favourable publicity to the dispute.

Duration of Work Stoppages

It is often said that unions win short strikes and the employers with long ones. It is during the long strike that the union is most likely to lose the active support of the members as they are required by financial circumstances to seek alternative employment or as they tire of walking the picket line. Based upon this statement and the duration of the nine work stoppages, the unions involved definitely came out on the losing side.

Excluding one case, the work stoppages commenced, on average, within three months of the unions serving notice and within four months of the dates of certification. The average duration of the work stoppages was two hundred and fifty-six calendar days - over eight months. The average duration of the strikes in the GRANTED category was slightly greater than that for the SETTLED category. It is significant, however, that the strikes in the former category could have lasted much longer. These three strikes did not conclude until after the Section 70 application and the Board's intervention.

Impact of Work Stoppages

The employer continued operations in five of the nine cases involving work stoppages for all, or part, of the duration of the work stoppage. In one instance the employer stated in a written brief to the Board that the profitability of his business actually improved during the strike. Two of three employers in both the GRANTED and SETTLED categories continued operations and the one employer in the DENIED category continued operations.

The source of labour utilized by these five employers is outlined in Table 22. Notable is the relatively low incidence of the use of bargaining unit members. One would have expected the "fifth column" to be at work during a work stoppage, this did not occur however in many cases.

In summary it would appear that the strike was not a useful tool for these unions to use in concluding a first agreement, particularly when the union was confronted with determined resistance from the employer.

TABLE 19

ELAPSED TIME FROM NOTICE TO BARGAIN
TO CONCLUSION OF WORK STOPPAGE

Date of Notice to Bargain	Date of First Meeting	Start of Work Stoppage	Conclusion of Work Stoppage
July 19, 1973	Aug. 1, 1973	Sept. 16, 1973	April 24, 1974*
June 20, 1973	June 26, 1973	July 24, 1973	Aug. 24, 1974*
July 26, 1974	Jan. 28, 1975	June 17, 1975	Oct. 7, 1975*
-	June 7, 1973	Aug. 27, 1973	April 21, 1974*
-	-	Sept. 23, 1976	April 1, 1977*
Jan. 23, 1975	Jan. 30, 1975	May 27, 1975	Jan. 19, 1976*
Feb. 7, 1975	April 16, 1975	May 17, 1975	June 12, 1975
May 24, 1974	June 24, 1974	July 30, 1974	Feb. 7, 1975*
Aug. 1973	Aug. 1973	Dec. 18, 1973	May 15, 1974*
April 30, 1975	Sept. 8, 1975	-	-
Dec. 3, 1974	Jan. 17, 1975	-	-
April 30, 1973	July 23, 1973	-	-
Aug. 14, 1974	Sept. 22, 1974	(no work stoppages occurred	
March 7, 1975	April 14, 1975	in these cases)	
Sept. 12, 1974	Oct. 1, 1974	-	-
Dec. 18, 1973	Feb. 27, 1974	-	-
Aug. 10, 1973	Aug. 17, 1973	-	-
July 23, 1974	Aug. 2, 1974	-	-
June 4, 1974	Aug. 7, 1974	-	-
Oct. 26, 1973	Nov. 29, 1973	-	-
Jan. 30, 1975	Feb 14, 1975	-	-

*In these cases the conclusion of the work stoppage coincided with either the Board's decision on the Section 70 application, or with the settlement of the application.

Dates of either notice to bargain or first meeting were unavailable for ten cases.

TABLE 20

INCIDENCE OF WORK STOPPAGES

	No. of strikes	No. of lockouts	Percentage of category
granted	3	0	25%
denied	1	0	20%
settled	4	1	45%
Total ..	8	1	32%

TABLE 21

DURATION OF WORK STOPPAGES

No. of days	No. of cases in each category granted	denied	settled	total
1-50	-	-	-	-
51-100	-	-	-	-
101-150	1	-	1	2
151-200	-	-	1	1
201-250	1	-	3	4
251-300	-	-	-	-
301-350	-	-	-	-
351-400	1	-	-	1
>400	-	1	-	1
Total	3	1	5	9
Average for cases	249	450	220	256

TABLE 22

SOURCE OF LABOUR DURING WORK STOPPAGES

Non-Bargaining Unit Employees	.....	3
Bargaining Unit Members	.....	1
Employees hired as Replacements	.....	0
Other	.....	1

SUMMARY

In cases which were GRANTED, the employers demonstrated their opposition to unionization by committing unfair labour practices and by appealing the certifications. The opposition of these employers did not cease once their appeals were denied. On the contrary, it increased. The high number of applications for decertification of the unions in these cases demonstrates the detrimental effect that the employers' actions had upon support for the unions.

The actions of the employers in the SETTLED and GRANTED cases did not reflect a high degree of opposition to unionization.

In all cases, negotiations for first collective agreements were difficult and protracted; the employers appeared to deliberately delay the negotiations. Board rulings of failure to bargain in good faith did not, however, have a significant role in the cases.

FOOTNOTES TO CHAPTER VI

1. Labour Relations Board of British Columbia, Annual Report, 1980 Tables 2 and 4.
2. Labour Relations Board of British Columbia, Annual Report, 1974-1979, Table 4.
3. Kidd Brothers' Produce, L.R.B.B.C. Decision #53/1976.
4. Kidd Brothers' Produce, L.R.B.B.C. Decision #3/1975.
5. Kidd Brothers' Produce, L.R.B.B.C. Decision #53/1976.
6. Section 8(4)(e), Labour Code of British Columbia (1979).
7. L.R.B.B.C., Decisions #122/1974, #149/1974, #155/1974, #68/1975, #63/1976 and #9/1977.
8. Dominion Directory, L.R.B.B.C., Decision #63/1976.
9. McCoy Bros., L.R.B.B.C., Decision #9/1977.
10. Ibid.
11. L.R.B.B.C., Decisions #101/1974, #105/1974, #122/1974, #68/1975 and #32/1976.
12. Dayton Tire, L.R.B.B.C., Decision #101/1974.
13. Medieval Inns, L.R.B.B.C., Decision #122/1974.
14. Section 6, Labour Code of British Columbia (1979).
15. Section 71(a), Labour Code of British Columbia (1979).
16. Section 63, Labour Code of British Columbia (1979).
17. Century Plaza, L.R.B.B.C., Decision #68/1975.
18. McCoy Bros., L.R.B.B.C., Decision #9/1977.
19. Ibid.
20. Sections 6 and 71(a), Labour Code of British Columbia (1979).
21. London Drugs, L.R.B.B.C., Decision #30/1974.

CHAPTER VII - RESULTS

INTRODUCTION

This chapter describes the results of the research. Firstly, the outcomes of the cases are presented, i.e., what happened after the applications were GRANTED, DENIED or SETTLED? In the next chapter these outcomes are discussed in detail and related to the propositions stated in chapter four. Secondly, specific provisions in the various first collective agreements are reviewed. The chapter concludes with a summary of the jurisprudence developed by the Board in applying the Section 70 provisions to these cases.

OUTCOMES

The outcomes of the cases are first of all presented in terms of the number of first, second and subsequent agreements achieved by the parties. As the process of collective bargaining becomes more established with each agreement negotiated between the parties, the number of second and third agreements is a useful measure of the durability of the collective bargaining relationships. For the cases in the GRANTED category, negotiation of a second agreement, independent of the Board's intervention is comparable to the first agreements negotiated in other categories.

The outcomes are also presented in terms of the present status of the certification in each case. This is a second method used to assess the durability of the collective bargaining relationships.

First Agreements

Table 23 outlines the number of first agreements achieved by the sample as a whole and by the respective categories. In the twenty-eight

cases, there were four instances where a first agreement was not achieved. Eleven first agreements were arbitrated by the Board, and thirteen negotiated by the unions and employers involved in the cases which were DENIED or SETTLED.

In the DENIED category there were two instances where first agreements were not achieved. On the whole, the unions in the SETTLED category were successful in concluding first agreements, there being only one instance where a first agreement was not reached. The one instance in the GRANTED category where a first agreement was not concluded is the Kidd Brothers' case.[1]

Second and Subsequent Agreements

Of the twenty-four cases where first agreements were achieved, second agreements were achieved in fifteen instances, and more than two agreements were achieved in six instances. Six of the nine cases where only a first agreement was achieved were in the GRANTED category. When the one-year agreement arbitrated by the Board expired, the parties were able to conclude a second agreement in only five of these cases. A third agreement was achieved in only one GRANTED case. In a second GRANTED case the third agreement was under negotiation at the time the data were gathered and the Board as of the end of 1981 did not record a third agreement. This case is therefore treated as having two agreements, not three. These data are summarized in Table 26. As of December 31, 1981 three of the eleven bargaining units in the GRANTED category were covered by existing collective agreements. An agreement was under negotiation in a fourth case.

The SETTLED category clearly shows the highest frequency of what could be considered to be relatively established bargaining relationships.

In four of the eleven cases two agreements have been negotiated between the parties, and in another four cases, more than two agreements have been negotiated.

TABLE 23

NUMBER OF FIRST AGREEMENTS

Category	No. of Cases	No. of agreements
granted	12	11*
denied	5	3
settled	11	10
Total	28	24

*In one of the cases included in this category the application was actually denied. No agreement was concluded in this case.

TABLE 24

TOTAL NUMBER OF AGREEMENTS

	No. of cases	Percent of Total
No agreement ..	4	14*
First agreement only ..	9	32
First and second agreement ..	9	32
More than two agreements ..	6	21
Total ..	28	99%

*This includes two cases for which there is no record of an agreement being concluded between the parties.

Status of the Certification

The status of the certifications was defined as decertification, dormant certification or active certification. Table 25 presents the data regarding the present status of the certifications and Table 26 presents a combined picture of the number of agreements and the status of each certification.

In nine cases the unions involved were subsequently decertified. In one additional case, not counted as a decertification, the union was decertified and subsequently recertified. Six of the nine decertifications were in the GRANTED category; five of these correspond with those cases in which the only agreement achieved was that imposed by the Board and the sixth is represented by the Kidd Brothers' case.[2] There was one decertification in the DENIED category and the remaining two were in the SETTLED category.

The five cases where the status was defined as dormant are those where there either has been no collective agreement and the union has not been decertified (two cases) or where the collective agreement expired more than twelve months ago, a strike or lockout is not in progress and the union still retains its certification (three cases).

The active certifications are those where collective agreements are in effect or currently under negotiation. As of December 1981, there are eleven cases, thirty-nine percent of the sample, where the certification is active. Four of these cases are in the GRANTED category, two in the DENIED category and the remaining five in the SETTLED category.

When examining the status of certifications it is again the SETTLED category that demonstrated the highest degree of durability in the collective bargaining relationship.

Although the indications are positive, i.e. the parties have concluded a second agreement, it is too early to determine the durability of three of the four active certifications in the GRANTED category. The Hotel Employees' Union and Sandman Inns at three locations have just recently concluded the second agreements following an eight-month strike, a hot cargo declaration and provincial boycott of all of the employer's locations directed by the B.C. Federation of Labour. The union still faces resistance from the employer, but has been able to retain support in the bargaining unit.

The certifications allocated to the category of "other" include two instances where the employer suspended operations and one case where the employer is in receivership.

In summary the outcomes indicate that the "trial marriages" established by the Board in the GRANTED cases did not establish enduring collective bargaining relationships in the majority of cases. Such a relationship has been established in McCoy Bros., and it may take root in the three Sandman Inn cases.

In contrast, a relatively higher proportion of enduring collective bargaining relationships has been established in the SETTLED cases.

TABLE 25

STATUS OF CERTIFICATIONS

	No. of Cases	Percent of Total
Decertifications ..	9	32
Dormant certifications ..	5	18
Active certifications ..	11	39
Other ..	3	11
Total ..	28	100

TABLE 26

COMBINED OUTCOMES BY CATEGORY

Category	Employer	# of Agreements	Status of Certification
DENIED	Bond Brothers	0	decertification
	Dayton Tires	0	dormant
	Vancouver Island Publishing	1	other
	Kootenay Hotel	2	active
	Grandview Industries	>2	active
GRANTED	Kidd Brothers	0	decertification
	London Drugs	1	decertification
	Victro Registry	1	decertification
	M & H Machinery	1	decertification
	Dominion Directory	1	decertification
	Parta Industries	1	decertification
	Sandman Inn - Kelowna	2	active
	- Revelstoke	2	active
	- Cranbrook	2	active
	McCoy Bros.	2	active
	Medieval Inns	>2	other
	Century Plaza	1	dormant
SETTLED	Metro Bus Pick Up	0	dormant
	Adanac Lumber	1	decertification
	Burroughs Business Machines	1	dormant
	Dominion Chain	2	decertification
	United Food	2	dormant
	Cannery Restaurant	2	active
	Mexicana Motor Inn	2	other
	Kelowna Courier	>2	active
	Childrens' Rehabilitation Association	>2	active
	Marpole Cleaners	>2	active
	Chevron	>2	active

PROVISIONS IN FIRST AGREEMENTS

A total of seventeen first agreements were reviewed. First agreements were not concluded in four cases and the remaining seven agreements were not available as copies had not been filed with either the Ministry of Labour or the Board.

In the London Drugs case the Board outlined the guidelines which would be used to formulate the provisions of an agreement imposed under Section 70.[3] Section 71 also provides some general guidance, directing the Board to consider the terms and conditions of employment negotiated through collective bargaining for comparable employees performing the same or similar work in similar circumstances.[4] Section 70 would not provide major breakthroughs in contract provisions, but the Board recognized that they had to be sufficiently attractive to employees so they would think twice about applying for decertification. The Board would attempt to achieve the critical balance necessary in any form of interest arbitration, namely something the parties could live with, but would attempt to do this under the difficult situation where one party, the employer, was determined that no solution which involved union representation would be suitable.

In all the Section 70 applications which were GRANTED the Board relied on Mediation/Arbitration to arrive at the provisions of the first agreement. Generally the Board's approach was to advise the parties that the application was going to be granted, direct them to commence bargaining in good faith under the guidance of a Board member, and then arbitrate the items which remained outstanding after a specififed period of time.

The provisions felt to be most important in these first agreements were those dealing with union security, job security and wages. A detailed comparison of the wage provisions is beyond the scope of the present study. Representative provisions of the other two areas are discussed in the following sections.

Union Security Clauses

The Union security provisions are particularly important because of their role in assisting the union in maintaining or extending membership, in collecting dues, providing access to employees at work, etc. In an environment where the employer controls the hiring process, if there are no requirements concerning the union membership of new employees, a small bargaining unit may find its majority membership undermined quickly through turnover. To the extent that continued employment is tied to union membership, however, the union has a lever over the employees by which to a certain extent it can influence their behaviour. This is particularly important during strikes.

The Board's understanding of the importance of union membership is reflected by the inclusion of a modified union shop in the majority of GRANTED cases, and by a union shop in two situations. The unions involved would not have been able to secure these relatively beneficial membership provisions independently of the Board's intervention.

In a modified union shop present employees who are not union members are allowed to refrain from joining the union, but all new employees are required to join within a specified time period. This "grandfathering" of present non-members is one example of the balance and acceptability sought by the Board in agreements imposed under Section 70. It is highly unlikely that dissident non-members would accept a provision which required their membership. Instead of demonstrating a benefit from unionization, to these

employees, a requirement such as this would achieve the opposite effect.

All of the agreements imposed under Section 70 contained a provision for compulsory check-off of union dues.[5] An example related to payment of dues illustrates the point made above concerning the reluctance of non-members to accept the provisions of the collective agreement. In one case these individuals refused to sign authorizations for check-offs as required in the collective agreement. They continued to refuse to do so even after the Board ordered it and the union eventually took the issue to small debts court.

All of the agreements also contained a general statement recognizing the union as the representative of the employees and the majority of these agreements contained specific provisions recognizing the rights of shop stewards. Eight of the Section 70 agreements contained a provision allowing the union representative access to the premises for the purposes of conducting union business. In all instances, however, this access was restricted, most frequently requiring that the union representative seek authorization from the employer upon his arrival. They also stated that such approval could not be unreasonably withheld.

The number of agreements reviewed in the other categories was too small to permit comparison to those imposed under Section 70. Generally the provisions concerning union security are similar. The union membership provisions are slightly more varied.

In summary the Board appeared to follow its guidelines and pay close attention to the realities of the cases with respect to the union security provisions.

A few somewhat unusual provisions reflect some of the unique

circumstances of these cases. The most significant of these was the provision found in five agreements that the wage rates specified in the agreement were minimums and did not prohibit payment of higher rates at the discretion of the employer. A clause such as this is difficult for a union with marginal support to contest, however, it leaves a high degree of discretion with the employer to pay more favourable rates in order to reinforce anti-union/pro-management sentiments. In one instance there was a provision, this time favourable to the union, stating that the employer was required to offer employment to those employed on the date of the certification prior to hiring other employees. This clause would be particularly important where during a lengthy strike, union members had found alternative employment or in situations where pro-union employees had resigned because of pressure from the employer.

The final rather unusual provision specified that the union would not deny membership to any present employee. This provision was contained in five of the Section 70 agreements. Its importance can easily be identified in the two cases involving union shop membership provisions. Unless the employees, who perhaps opposed the union, were able to become members, their continued employment would be in jeopardy. In the other three instances it may be that this clause was intended to provide specific direction to the unions regarding their duty to fairly represent <u>all employees</u> in the bargaining unit.

TABLE 27

UNION SECURITY CLAUSES

Provision	No. in each Category granted	denied	settled
Union Membership:			
- closed shop	-	-	2
- union shop	2	1	-
- modified union shop	6	-	-
- rand formula	1	-	-
- other	-	-	1
- no provision	-	-	1
Dues Check-Off:*			
- voluntary	-	-	1
- compulsory, all employees members	2	1	2
- compulsory, not all members	7	-	-
- compulsory, membership not specified	-	-	1
Right to Refuse to Cross Picket Lines, etc:			
- no provision	3	1	2
- right to refuse to cross picket line	6	-	2
- right to refuse to handle hot cargo	-	-	-
- other	-	-	-
Union Access to Premises:			
- no provision	1	-	1
- access with some restrictions	8	1	2
- unlimited access	-	-	1
- other	-	-	-

*In 1979, an amendment to the Code made it an unfair labour practice for an employer to refuse to agree to a dues check-off for all employees in the unit. Section 3(3)(e), Labour Code of British Columbia (1979).

Job Security Provisions

One of the ultimate benefits of unionization to the employees involved is increased job security. The grievance and arbitration provisions are perhaps the most effective guarantees of job security, providing an avenue for challenging suspensions, dismissals, the order of layoffs and other decisions made by management. As all collective agreements in British Columbia are required to contain grievance and arbitration procedures, these provisions were not reviewed. Although not included in this research strategy, it would probably be informative to examine the frequency and type of grievances and arbitrations (if any) occurring during the first agreements. This would provide additional insight concerning the behaviours of the parties during the term of that agreement.

The job security provisions analysed are presented in Table 28. Seven of the Section 70 agreements contain restrictions on contracting out; the majority of these agreements also recognize the role of seniority in determining the order of layoff. Seniority does not have as predominant of a role in determining promotions, however, five of the agreements contained no related provision. Four of the Section 70 agreements contain a provision placing some restriction upon the use of part-time workers and/or trainees. The job security provisions appear to be fairly standard.

A final comment in this section on provisions in first agreements is necessary regarding the role played by Union demands for standard contracts in negotiations for first agreements. Standard agreements are utilized on a regular basis by four of the unions involved in the Section 70 applications, representing a possible sixteen of the twenty-eight cases. In one of the earlier decisions on a Section 70 application the Board cites the demand for a standard agreement as a

potential stumbling block to the conclusion of a first agreement. When interviewed, a representative of one of the unions involved stated that in the Section 70 type of situation, this demand would be modified, a sub-standard agreement for a one-year duration being preferable to no agreement or to a Section 70 agreement arbitrated by the Board. It is therefore likely that the demand for a standard agreement was not a predominant feature in these negotiations. It may have played somewhat of a role in the cases which were DENIED or SETTLED, but the extent is not known.

TABLE 28

JOB SECURITY CLAUSES

Provision	No. in each Category granted	denied	settled
Contracting Out:			
- no provision	2	1	2
- restricted in some fashion	3	-	1
- prohibited entirely	4	-	1
Seniority Determining Promotion:			
- no provision	5	-	1
- governs where qualifications are sufficient	3	-	-
- governs where qualifications are equal	1	1	2
- taken into account with other factors	-	-	-
- other	-	-	1
Seniority Determining Layoff:			
- no provision	-	-	-
- straight seniority	2	-	-
- governs where qualifications are sufficient	4	-	2
- governs where qualifications are equal	1	1	1
- taken into account with other factors	2	-	-
- other	-	-	1
Limitation on Part-Time Workers, Trainees, etc:			
- no provision	5	-	2
- provision	4	1	2

JURISPRUDENCE

In applying the Section 70 provisions to the twenty-eight applications for imposition of a first agreement the Board has developed jurisprudence in the following areas: (1) criteria for granting Section 70 applications; (2) processing of an application for decertification when a Section 70 agreement is still in effect; and, (3) the limits imposed on the term of the agreement by Section 72.[6] This jurisprudence provides guidelines for predicting the manner in which the Board will deal with future applications and it provides a reference for use by Labour Relations Boards in other Canadian jurisdictions. The jurisprudence in each of these three areas concludes the presentation of results of the research.

Criteria

In determining whether or not it is appropriate to grant a Section 70 application and impose a first agreement the Board has consistently examined the "entire pattern of conduct"[7] of the parties involved in the application. The conduct which will result in the imposition of a first collective agreement is that which "demonstrates a successful attempt to frustrate the collective bargaining process and ultimately, the union certification."[8] When interpreting the actions of the employers the Board has sought to identify the presence of an anti-union motivation. If this motivation has been present, and if it has had the impact of undermining the position of the union, the Board will normally grant the application. The actions which will most clearly result in the imposition of a Section 70 agreement are repeated unfair labour practices.

Section 71(a) directs the Board to consider the extent to which the parties have bargained in good faith in determining whether or not to grant the Section 70 application.[9] While the Board has considered the extent of good faith bargaining in its decisions, they have not placed a heavy reliance upon it. In the London Drugs decision the Board stated that "where there is a breakdown of collective bargaining due to bad faith bargaining of one party...a first agreement will normally be imposed if other requirements of the section are satisfied.[10] In the same decision the Board said that the absence of a finding of failure to bargain in good faith would not be a bar to imposition of a first collective agreement.

As indicated by the data, the Board rarely made a specific ruling in the cases with respect to the good faith bargaining requirement. In applying Section 71(a)[11] the Board is interpreting the bargaining behaviour of the parties in light of all of the circumstances of the cases.

The Board has also described when a Section 70 application will be denied. In the Grandview Industries case[12] the Board stated that the existence of a bargaining impasse and/or a lengthy strike are not criteria which will justify the imposition of a Section 70 agreement. Neither is the public interest character of the dispute a determining factor.

In Vancouver Island Publishing the Board discussed its interpretation of a situation where the employer committed one or two unfair labour practices but the pattern of conduct did not appear to indicate the employer was motivated by anti-union sentiments. "It is not enough in a Section 70 application for the applicant to demonstrate that an employer or union did 'something' (even an unfair labour practice) that is inconsistent with enlightened bargaining."[13] An unsophisticated employer, unaware of the

obligations under the Code will not have a Section 70 agreement imposed because of earlier unfair labour practices if subsequently they have attempted to bargain in good faith with the union. Again the Board examined the entire history of the dispute.

The Board does not in all cases feel compelled to make their award based upon the above criteria alone. In two cases, when the histories of the relationships would have indicated that imposition of a Section 70 agreement would have been the predictable outcome, the Board chose other avenues to resolve the disputes. These avenues were consistent, in their opinion, with the wider industrial relations realities of the disputes.

One case, Kidd Brothers' Produce has already been mentioned. In this case the Board realized that collective bargaining would not be facilitated by imposition of a Section 70 agreement. The Board elected instead to issue a make whole order.[14]

In the second case, McCoy Bros., the Board stopped one step short of granting the application.[15] In this case, an employees' association, formed by employees opposed to the unions' certification, interfered with the union's attempts to negotiate a first agreement. The association was actively supported by the employer and was able to convince the majority of employees to file an application for decertification. The Board determined that "the employees have not lost sight of their earlier goal of collective representation and that the erosion of Local 115's support, caused by employer misconduct, will be corrected by the removal of the assocation as a factor."[16] The Board decided to remain seized of the application, hoping that with the removal of the assocation the parties would be able to settle the dispute. They were not able to do this, however, and the Section 70 application was subsequently granted.

Applications for Decertification

In two cases, London Drugs and Dominion Directory,[17] the Board was required to deal with applications from the employees for decertification made when the Section 70 agreements were still in effect. In both cases the applications were timely and were apparently supported by a majority of the employees. Under Section 52[18] the Board is given the discretionary power to grant a decertification application. In both of these cases the Board exercised its discretion and denied the applications. In Dominion Directory the Board stated that there was no absolute right to decertification:

> Where the statutory requirements regarding timing and majority are concerned, the Board must exercise its judgement in light of all the relevant circumstances of the case. It is incumbent upon the Board to satisfy itself that the employer had no part in encouraging among the employees a belief that decertification is the answer to their feelings and frustrations.[19]

If the Board cannot satisfy itself of the employer's non-involvement the application for decertification will be denied. In Section 70 cases which have been granted it is obvious that, because of the employer's past behaviour, the Board is going to have considerable difficulty in resolving doubt concerning the employer's non-involvement.

Term of the Section 70 Agreement

Section 70[20] specifies that an agreement imposed under the Section 70 provisions is for a one-year duration. In the London Drugs case the Board had to consider the application of Section 72 related to the continuation clause in the Section 70 agreement. Previous reference was made to the Board's ruling in this that the one-year limit specified in Section 72 overruled the continuation clause.[21]

SUMMARY

In summary the Board has taken a flexible, industrial relations, as opposed to legalistic, approach in determining whether or not to grant Section 70 applications and in dealing with disputes arising during the terms of the Section 70 agreements. This approach is one which the Board feels will best achieve the overall objectives of the Code and the more specific objectives of the Section 70 provisions.

FOOTNOTES TO CHAPTER VII

1. Kidd Brothers' Produce, L.R.B.B.C., Decision #3/1975.
2. Ibid.
3. London Drugs, L.R.B.B.C., Decision #30/1974.
4. Section 71, Labour Code of British Columbia (1979).
5. Provisions for compulsory check-off of dues are now provided in the Code. Section 3(3)(e), Labour Code of British Columbia (1979).
6. Section 72, Labour Code of British Columbia (1979).
7. London Drugs, L.R.B.B.C., Decision #30/1974 and Vancouver Island Publishing, L.R.B.B.C., Decision #36/1976.
8. Vancouver Island Publishing, L.R.B.B.C., Decision #36/1976.
9. Section 71(a), Labour Code of British Columbia (1979).
10. London Drugs, L.R.B.B.C., Decision #30/1974.
11. Section 71(a), Labour Code of British Columbia (1979).
12. Grandview Industries, L.R.B.B.C., Decision #30/1974.
13. Vancouver Island Publishing, L.R.B.B.C., Decision #32/1976.
14. Kidd Brothers' Produce, L.R.B.B.C., Decision #3/1975.
15. McCoy Bros., L.R.B.B.C., Decision #9/1977.
16. Ibid.
17. London Drugs, L.R.B.B.C., Decision #30/1974 and Dominion Directory, L.R.B.B.C., Decision #63/1976.
18. Section 52, Labour Code of British Columbia (1979).
19. Dominion Directory, L.R.B.B.C., Decision #63/1974.
20. Section 72, Labour Code of British Columbia (1979).
21. London Drugs, L.R.B.B.C., Decision #30/1974.

CHAPTER VIII - DISCUSSION

INTRODUCTION

During the 1974-1979 time period the Board dealt with a total of twenty-eight applications for imposition of a first collective agreement. The Board, through its interventions, was able to achieve voluntary settlements in eleven of these disputes; formal orders were issued in the remaining seventeen cases.

As of December 31, 1981, eleven of the twenty-eight cases had certifications which were active. In addition to the eleven agreements imposed by the Board in the cases which were GRANTED, the parties had voluntarily concluded at least thirty collective agreements.

Considering the circumstances under which these parties found themselves before the Board, to what extent can it be said that these outcomes indicate that the application of the Section 70 provisions has been effective? Have the provisions had differing degrees of success in each of the respective categories, GRANTED, SETTLED, and DENIED? To assess the effectiveness of the legislation the outcomes are discussed in more detail and the objectives of the legislation are re-examined.

OUTCOMES

Propensity to Remain Unionized

As mentioned in chapter four, Bain identified several factors which were likely to influence the propensity of employees to remain unionized.[1] Three of the factors he discusses are the nature of the bargaining unit, the level of support for the union and the attitude of the employer.

Although Bain does not predict what the relationship is between each factor and the propensity to remain unionized he identifies the need to examine the relationships in more depth and, ultimately, to test them empirically.

(1) Nature of the Bargaining Unit

The sample size of this research precludes making any generalized conclusions and the results do not shed any light upon the relationship between bargaining unit size and propensity to remain unionized. As indicated in Table 29 the average bargaining unit size for active certifications was twenty-six employees while the average for units which were decertified was twenty-five employees.

Examination of the skill level of bargaining unit employees and the propensity to remain unionized is also inconclusive: half of the cases which led to decertification involve unskilled labour, but so do half of those which have active certifications.

It is likely that other factors such as employer attitudes and behaviours are more important determinants of the propensity to remain unionized or that the factors are so inter-related that empirical analysis is required to describe the relationships among the variables.

(2) Support for the Union

Another characteristic identified by Bain is the level of employee support for the union among bargaining unit members. Intuitively one would expect that the higher the level of support within the bargaining unit at the time of certification, the greater would be the propensity for the union to remain certified. Bain, however, cautions against this over simplification as the level of union support is likely to be determined by virtually all of the other variables discussed in his paper.[2]

Also, as this study has demonstrated, the level of support for the union is not static. It is a dynamic variable which can change in the post-certification period. When the unions had marginal support at the time of certification, small reductions in the level of support were shown to have a dramatic impact on the majority status of the unions.

The results of this research shed light on another aspect of employee support for the union. In chapter six, there were six cases identified in which applications for decertification were spearheaded by dissident groups of employees. It is significant that none of the bargaining units in these cases were able to survive this internal challenge, particularly when the challenge was actively supported by the employer.

(3) Employer Attitudes and Behaviours

In discussing employer attitudes and behaviours Bain states that there is a "considerable body of evidence from many countries which suggests that union growth is likely to be retarded the more willing and able employers are to resist union demands for recognition and bargaining rights."[3] He goes on to state that employer resistance will reduce the propensity to remain unionized even when the unions have achieved certification.

Chafetz also highlighted the important role played by the employers' attitudes and behaviours in his study of decertification.[4] He discussed this role in terms of the employers' ability to significantly increase the costs of union membership, thereby influencing the employees' cost/benefit evaluation of continuing to support the union.

The results of this research support the conclusions of Bain and Chafetz. In the ten cases where the employers continued to resist the union by committing unfair labour practices after certification, there are only four active certifications.

In three of these certifications (the Sandman Inns[5]) the employers' behaviour, and presumably its impact upon the employees, was countered by concerted action on a province-wide basis co-ordinated by the British Columbia Federation of Labour. The economic leverage gained over the employer by the provincial boycott and hot cargo declaration was likely more instrumental in assisting the union conclude the second agreements than any change of heart of the employer as a result of the imposition of a Section 70 first agreement.

TABLE 29

OUTCOMES VERSUS BARGAINING UNIT SIZE AND SKILL LEVEL

OUTCOME	NO. OF EMPLOYEES IN BARGAINING UNIT	SKILL LEVEL
DECERTIFICATIONS:	11	unskilled
	7	unskilled
	8	semi-skilled/skilled
	29	unskilled
	37	semi-skilled/skilled
	25	unskilled
	85	skilled
	9	unskilled
	35	semi-skilled/skilled
Average No.	27	
ACTIVE CERTIFICATIONS:	46	unskilled
	36	unskilled
	26	unskilled
	39	semi-skilled/skilled
	6	unskilled
	13	semi-skilled/skilled
	33	semi-skilled/skilled
	7	semi-skilled/skilled
	70	unskilled
	7	semi-skilled/skilled
	3	semi-skilled/skilled
Average No.	26	

Postscript: Century Plaza Hotel

A brief review of the eventual outcome in the Century Plaza case allows one to fully appreciate the extent to which an employer will continue to oppose the recognition of the certified union.

The union's application for imposition of a first collective agreement was GRANTED by the Board on October 7, 1975. The Section 70 agreement had a one-year term concluding November 30, 1976. Two years later the parties had not concluded negotiations for a second agreement and the union made application to the Board, alleging that the employer had failed to implement the compulsory check-off of union dues and the provisions establishing a modified union shop and a union hiring hall which were contained in the agreement imposed by the Board.

The employer used a variety of tactics to delay and frustrate the hearings on the union complaints and failed to produce evidence as ordered by the Board. The Board eventually determined that the employer had failed to fully implement these provisions of the Section 70 agreement and issued a make whole order which was intended to compensate the Union for the efforts it had made in attempting to enforce the provisions of the agreement.[6] The amount of money which the Board ordered the employer to pay to the union, slightly in excess of $80,000, provided adequate monetary compensation to the union. It did not, however, remedy the damage done to the bargaining unit from over four years of opposition by the employer. Although the union has not been decertified, a second agreement was not concluded as of December 31, 1981. A core group of employees, influenced by the actions of the employer,continue to oppose the union.

Support for the Propositions

In the summary of chapter four two propositions were made concerning the likely outcomes of the cases. The propositions stated the following:

Proposition 1

Cases in the GRANTED category will demonstrate a lower rate of success in establishing collective bargaining relationships than those in the SETTLED or DENIED categories. This will be indicated by relatively fewer second and third agreements in the GRANTED category than in the other categories.

Proposition 2

Where the employer demonstrates continued and determined opposition to recognition of the union and collective bargaining, the employer's influence will ultimately result in termination of the bargaining relationship.

Support for the second proposition was provided earlier in this chapter. As stated above, in the ten cases which demonstrated continued employer opposition there are only four active certifications. Five, or fifty percent, of these certifications have been terminated and the sixth is dormant. In the eighteen cases where there was not continued opposition from the employer there were only four decertifications, representing twenty-two percent of these cases.

It can be concluded that the continued opposition of the employer has had a direct impact on the termination of bargaining rights of the employees in the study.

To assess Proposition 1, it is necessary to summarize the number of second and third agreements achieved in each of the respective categories. It is also useful to summarize the status of the certifications by category. Table 30 contains this information.

(1) Numbers of Second and Third Agreements

Proposition 1 is partially supported by the results. There are relatively fewer instances where second and third collective agreements were negotiated in the GRANTED category than in the SETTLED category; forty-two percent versus seventy-three percent, respectively. The greater degree of success in negotiating agreements experienced by the SETTLED

cases is explained by the parties' previous success in resolving the initial Section 70 disputes and by the absence in these cases of continued employer resistance to recognition of the union.

Contrary to Proposition 1, however, the cases in the DENIED category did not demonstrate a relatively larger number of second and third collective agreements than cases in the GRANTED category. The small number of cases in the DENIED category make it impossible, however, to draw any conclusions from this.

(2) Status of Certification

Although the SETTLED cases demonstrated the greatest degree of success in negotiating collective agreements, they demonstrated only a marginally higher rate of success in establishing collective bargaining relationships when the status of the certifications is reviewed. By this yardstick the SETTLED cases established collective bargaining relationships in forty-five percent of the cases, versus thirty-three percent for the GRANTED cases and forty percent for the DENIED cases.

(3) Number of Agreements and Status of Certification

A yardstick which combines demonstrated success in negotiations with an active certification is the most stringent measure which could be utilized to assess the parties' success in establishing collective bargaining relationships. Table 30(c) shows that the success rates using the combined yardstick are the same as those which result from examining the status of the certification.

In all instances success rates are less than fifty percent and there are marginal differences in the success rates among the three categories.

The accuracy of Proposition 1 depends, therefore, on the yardstick utilized to indicate the extent to which collective bargaining relationships have been established. The yardstick contained in the Proposition, success

in negotiating second and third agreements, supports the Proposition. The yardstick of retaining an active certification indicates only marginal support for the Proposition.

TABLE 30

SUCCESS RATES IN ESTABLISHING COLLECTIVE BARGAINING RELATIONSHIPS

(a) by success in negotiating agreements

Category	(a) No. of cases with second agreements	(b) No. of cases with third agreements	(a) + (b) percent of total cases
DENIED	1	1	40%
GRANTED	4	1	42%
SETTLED	4	4	73%

(b) by success in retaining an active certification

Category	No. of cases with active certification	success rate (Percent of total cases)
DENIED	2	40%
GRANTED	4	33%
SETTLED	5	45%

(c) combined yardstick

Category	No. of cases with active certification and two or three agreements	success rate (Percent of total cases)
DENIED	2	40%
GRANTED	4	33%
SETTLED	5	45%

EFFECTIVENESS

To examine the effectiveness of the Section 70 provisions it is necessary to review the objectives which the provisions were intended to accomplish. As stated in chapter three these objectives were: (1) to establish a first agreement where it likely would not otherwise have been achieved; (2) to deprive the offending parties of the fruits of their illegal conduct thereby acting as a deterrent to other employers; (3) to remedy the damage done by the employer; and (4) to foster an enduring collective bargaining relationship.

Establishing First Agreements

In the eleven cases where the application was GRANTED a first collective agreement was established. From the details contained in the published decisions for these cases and from the data presented above it is reasonable to conclude that these first agreements would not have been achieved in the absence of the Board's intervention. For example, in the Century Plaza and Vancouver Island Publishing cases[7] the employers were prepared to go to any lengths to avoid signing a collective agreement.

First agreements were achieved in fifty percent of the cases in the DENIED category. If this category is taken to represent cases where the Board did not intervene, and if it is assumed that the same percentage would apply in the GRANTED cases in the absence of the Board's intervention, it can be concluded that the Section 70 provisions resulted in the establishment of a minimum of five or six first agreements which otherwise would not have been achieved.

Assessment of this objective must also include the number of first agreements established in the SETTLED cases. Commenting on the relatively few number of agreements imposed by the Board, the Chairman stated that

> the Board does not automatically impose a first agreement on the parties, even where a persuasive application is made. Instead,

> it makes a determined effort to secure a voluntary settlement of the agreement. The objective of Section 70 is to foster an enduring collective bargaining relationship. In the Board's view, a solution agreed to by both parties is a much better foundation for such a relationship than an order imposed by the Board.[8]

In the SETTLED cases the Section 70 procedures give the Board the leverage and the entrée into the disputes that they would not otherwise have, thereby creating an opportunity for them to utilize intensive mediation efforts. In ten of the eleven cases in the SETTLED category these efforts contributed to the achievement of first agreements.

It is concluded that the Section 70 provisions are effective in establishing first collective agreements.

Depriving the Parties of the "Fruits" of Illegal Conduct

The outcomes of the GRANTED cases are relevant to determine the extent to which employers were deprived of the "fruits" of their illegal conduct Examination of the outcomes in these cases indicates that the Section 70 provisions have not been effective in accomplishing this objective. Without Section 70, the "fruits" that the employers would have received from their illegal opposition to recognizing the unions would have been an absence of collective agreements and likely decertification of the unions.

The results of the research show that in five of the eleven cases where the Section 70 application was GRANTED the unions were decertified shortly after expiry of the Section 70 agreements. In a sixth case there is no second agreement and the certification is dormant.

In the majority of GRANTED cases the imposition of Section 70 agreements did not deny the employers the "fruits" of their illegal conduct The receipt of these "fruits" was merely delayed for one year until the agreement imposed under Section 70 had expired.

Section 70 as a Remedy and a Deterrent

The third objective of the Section 70 provisions is to remedy the damage done by the employer who has opposed the exercise of collective bargaining rights which follow from certification. Because the employers are aware that the damage will be remedied, the legislation anticipated that the Section 70 provisions would act as a deterrent and prevent this opposition.

In the GRANTED cases the knowledge that a collective agreement would likely be imposed did not deter the employers from illegally opposing recognition of the unions. The employers in some instances even continued their opposition after the Section 70 contract was imposed. From their point of view, what more was there to lose?

Imposition of first agreements in these cases did not remedy the damage done by the employers as the agreements did not restore the support for the union destroyed by the continued opposition of the employer.

Commenting upon the Section 70 provisions as a deterrent, a previous Board Chairman stated that:

> The true test of the efficacy of the remedies will not lie in the number of times the Board actually imposed the remedy; rather it consists in the number of occasions when the presence of the section in the statute makes its use unnecessary.[9]

The outcomes of the SETTLED cases are relevant. The employers in these cases, intially opposed to the certification of the unions, were aware that a Section 70 agreement could be imposed. With this knowledge, and with intensive mediation by the Board during its investigation, the parties were able to achieve voluntary resolutions of the respective disputes. The eleven cases in the SETTLED category resulted in ten first agreements, eight second agreements and three or more agreements in two cases. The SETTLED cases had only two decertifications, compared to six in the GRANTED cases.

The Section 70 provisions were able to effectively remedy the initial difficulties faced by the parties in concluding first agreements in the SETTLED cases. It appears that the remedy has a relatively lasting effect in these cases.

The Section 70 provisions gave the Board an entrée (which did not previously exist) into these disputes and provided the Board with an opportunity to mediate the disputes and with an alternative in case mediation failed. In this way the provisions effectively acted as a deterrent in the SETTLED cases.

Fostering Enduring Collective Bargaining Relationships

Do the Section 70 provisions foster enduring collective bargaining relationships? Using the combined yardstick to measure success, and using the forty percent success rate in the DENIED cases as the standard of comparison, it appears that the provisions are marginally effective in establishing enduring bargaining relationships in the SETTLED cases (forty-five percent success) and are not effective in the GRANTED cases (thirty-three percent success).

This may, however, be an overly stringent measure by which to assess the effectiveness of the Section 70 provisions. Commenting on his personal evaluation of the provisions, Jim MacIntyre stated:

> Given the circumstances surrounding the cases which come as Section 70 applications, it is surprising if any of them are successful. The majority are not but this should not be taken as an indication that the provisions are not enjoying a relatively modest degree of success.[10]

Applying a more liberal, and realistic standard, the results of the study support the conclusion that the Section 70 provisions are, in fact, enjoying modest success. The provisions are accomplishing their objectives most effectively in the cases which are SETTLED and are demonstrating minor successes in the cases which are GRANTED.

ASSUMPTIONS OF THE SECTION 70 PROVISIONS

Chapter three identified the assumptions regarding employees, unions and employers inherent in the Section 70 provisions.

Review of these assumptions in light of the research findings provides insight concerning the relatively modest success of the Section 70 provisions.

Assumptions Regarding the Employer

One of the basic assumptions behind the Section 70 provisions is that employers are in a unique position to influence employees' decisions concerning union membership and union support. The research findings in the areas of the frequency of unfair labour practices and employer supported decertifications petitions support this assumption.

The findings also indicate that the employers' efforts to dissuade their employees from supporting the unions do not end once the union is certified. In the GRANTED cases an increase in these efforts was found, indicated by twice the number of unfair labour practices in the post-certification stage compared to the pre-certification stage.

A total of seventeen orders were issued by the Board related to unfair labour practices. Thirteen of these orders required that the employer reinstate employees, with full back pay, who had been dismissed because of union activity. The detrimental effect that these dismissals had on the bargaining units, in spite of the reinstatements and accompanying cease and desist orders was shown in the high number of decertification applications.

The relatively low number of unfair labour practices in the DENIED cases indicated that the employers in these situations did not seek to influence bargaining unit members concerning their union activities.

A second assumption underlying the Section 70 provisions is that the employer's opposition to the union will be dispelled by the "trial marriage" imposed during the life of the Section 70 agreement. The research has demonstrated that this does not happen, most likely because the employer's opposition has an ideological basis. Most of the employers in the GRANTED cases were fundamentally opposed to unions and collective bargaining. Rather than altering these attitudes, it appears that in cases such as Century Plaza[11] the experience during the "trial marriage" intensifies the anti-union attitude of the employer.

The Board itself has identified the fallacy of this assumption. In Kidd Brothers' Produce where the circumstances certainly made it an appropriate case for imposition of a Section 70 agreement, the Board, in explaining the decision not to impose an agreement, stated that "In the circumstances before us, the realization of meaningful collective bargaining is but an empty hope."[12] It was clear that no form of remedy was going to change the anti-union attitude of this employer. Similarly in the M & H Machinery case the Board indicated that they were "not especially hopeful that first contract arbitration will produce any radical change of heart on the part of the employer."[13]

In its first decision on an application to impose a first agreement the Canadian Labour Relations Board also rejected the "trial marriage" concept initially forwarded by the British Columbia Board, replacing it with the analogy of a transplant operation.[14] The transplanted organ is foreign to the body and, therefore, susceptible to rejection. Similarly an imposed first collective agreement is also subject to rejection, indicated by the failure to renew the first agreement upon its expiry. The attitudes of these employers make collective bargaining a "foreign body." The rigid nature of their attitudes contributes to the likelihood of rejection.

The final assumption made concerning the employer was that the rational employer would view the alternative to imposition of a first agreement as a lesser of two evils and would accordingly sit down, negotiate and conclude a voluntary agreement with the union. The employers would settle their disputes rather than face the prospects of a Section 70 agreement. This may explain the behaviour of the employers in the SETTLED cases; it obviously does not apply to the employers in the cases which were GRANTED. In many of these cases the employers were prepared to go to any lengths and incur any related costs to be rid of the union.

Assumptions Regarding the Union

The remedial nature of the Section 70 provisions assumes that during the life of the Section 70 agreement in the GRANTED cases the union will make a concerted effort to consolidate its support in the bargaining unit. This would be accomplished by retaining the support of existing members and by convincing new employees and non-members of the benefits of unionization. In theory the union membership provisions and the improved wages and other provisions of the Section 70 agreements should assist them in this effort. The results have shown that when faced with an employer who continues to actively oppose the union's presence and when confronted with a dissident group of employees in the bargaining unit, this is a most difficult task. The task is made almost impossible in the cases where the support for the union was marginal to start with. In these cases the unions were unable to maintain their majority status.

The Section 70 provisions also assume that whereas the employer will seek to avoid the imposition of a Section 70 agreement, the union will view a Section 70 agreement as preferable to no agreement. There are reasons to indicate that this assumption may be incorrect. In the first instance, Section 70 represents a form of interest arbitration and

unions in British Columbia are fundamentally opposed to interest arbitration. Secondly, a union which applies for a Section 70 agreement is admitting that they are not in a strong enough bargaining position to be able to conclude an agreement. Is this the kind of admission they wish to make, or is it preferable to attempt to achieve any agreement possible, but achieve it independent of a third party intervention?[15] These factors may partially explain the low incidence of Section 70 applications for the years 1976-1979. The arbitration of an agreement under Section 70 makes the provisions operate as a deterrent from the union's perspective.

Assumptions Regarding the Employees

The Section 70 provisions assume that when a first agreement is imposed by the Board the employees will view the improvements in wages, benefits and working conditions positively and will attribute these improvements to the presence of the union. This concrete demonstration of the benefits of collective bargaining should positively effect the employees' cost/benefit evaluation of their support for the union. The results of the research show that this does not occur in the majority of the GRANTED cases. The employer's continued opposition influences the cost side of this equation, as does peer pressure from the dissident employees within the bargaining unit. Furthermore, as was the situation in the Dominion Directory case[16], the employer may promise higher benefits once the union is decertified.

On balance it appears that the assumptions behind the Section 70 provisions were extremely optimistic. Most significantly they underestimated the tenacity of the employers' opposition to unionization and collective bargaining and did not take into account the potential role played by those employees who did not initially support the union certification.

FURTHER COMMENTS ON THE ROLE OF SECTION 70 AS A DETERRENT

One of the stated objectives of the Section 70 provisions is to deter employers from taking courses of actions designed to defeat the efforts of the certified union to conclude a first agreement. In chapter four, three methods to assess the effectiveness of the provisions in achieving this objective were identified. The first of these, the existence of cases in the SETTLED category was discussed above. The second of these methods addresses the issue on a much broader basis.

New Certifications Without First Agreements

The Board compiles statistics for all new certifications related to the period of time to achieve a first contract.[17] The Board's statistics of the percent of bargaining units without a contract eighteen months after certification is an indication of the number of disputes that could potentially end up as Section 70 applications. A decrease in this percentage from 1974 to 1979 could be taken as an indication that there were fewer such disputes and consequently that the Section 70 provisions were operating as a deterrent on a broad scale.

Examination of these statistics, however, is inconclusive (Table 31). Nine percent of the bargaining units certified in the first half of 1974 were without a contract after eighteen months. The number for the first half of 1979 was almost fifteen percent. There was not, however, a steady increase in the percentage, nor was there a pattern to the figures. In three time periods the figure was less than eleven percent while in three others it was greater than fifteen percent. A high of seventeen and one-half percent was achieved for certifications issued in the second half of 1977.

It is concluded that too many factors influence these figures to make them useful as a measure of the deterrent effect of the Section 70 provisions.

TABLE 31

PERCENT OF BARGAINING UNITS WITHOUT
FIRST AGREEMENTS EIGHTEEN MONTHS AFTER CERTIFICATION

Time Period	Percent of Bargaining Units Without First Agreement Eighteen Months After Certification
First half of 1974	9.0%
Second half of 1974	10.6%
First half of 1975	13.0%
Second half of 1975	11.2%
First half of 1976	10.1%
Second half of 1976	15.3%
First half of 1977	12.3%
Second half of 1977	19.5%
First half of 1978	10.6%
Second half of 1978	17.5%
First half of 1979	14.8%

Source: Labour Relations Board of British Columbia, Annual Reports, 1978 and 1980.

Absence of Publicized Disputes

The third measure used to indicate whether or not the Section 70 provisions acted as a deterrent on a broad scale is the relative absence of widely publicized disputes such as Sandringham Hospital. Some of the GRANTED cases, notably London Drugs, Kidd Brothers' and Sandman Inns[18], received a fair share of publicity, but it was not on a scale comparable to Sandringham Hospital. Has there been a relative decline in the number of such disputes since the introduction of the Section 70 provisions, or, alternatively, have the publicized disputes since that time been successfully resolved?

In early 1981, the Provincial Government released a study of work stoppages which took place during 1980.[19] The study reported thirteen work stoppages where the issue was negotiation of a first collective agreement. By year end, all but four of these disputes had been resolved. Since that time, first agreements were achieved in three of the remaining four disputes. Although the strike has terminated in the fourth dispute involving the Muckamuck Restaurant[20] the bargaining unit remains without a first agreement. This is a typical Section 70 dispute where the employer and a dissident group of employees are actively opposed to collective bargaining and has been dragging on for several years.

In the Muckamuck dispute the Board concluded that the employer had "engaged in conduct designed to undermine and defeat the union's efforts to represent the employees, thereby contributing to the failure of collective bargaining and to the length and character of the strike."[21] The Board determined that a remedial order of some type was appropriate, but first wanted to resolve an application for certification from the group of employees presently working at the restaurant.

In one of the other disputes, involving the Delta Optimist, the Board became involved at a relatively early stage. The union commenced organizing in late September 1979 and was certified October 19, 1979. In a decision dated April 30, 1980[22] the Board found the employer had committed several unfair labour practices and issued an extensive remedial order which apparently was successful in resolving the dispute. With the assistance of the Board in a mediating capacity, the parties were able to conclude a first collective agreement.

It appears that Section 70 type disputes are occurring at the rate of one or two per year and have been doing so since 1976. This is compared to the relatively high number of disputes in 1974 and 1975, seventeen and nine cases respectively.

It is concluded that the provisions have a positive impact on reducing the excesses of employers in the actions they take to oppose collective bargaining and recognition of the certified trade unions.

ALTERNATIVES

The above discussion concluded that the Section 70 provisions are experiencing a moderate degree of success in acting as a deterrent and in assisting in the establishment of collective bargaining relationships in the SETTLED cases.

The discussion also highlighted, particularly with respect to the outcomes in the GRANTED cases, that the Section 70 provisions have not been effective when the employer is willing to go to any lengths to oppose the union and when the employer is conveniently assisted in this opposition by a dissident group of employees (most likely unduly influenced by the employer in contravention of the Code). Under these circumstances the employer and

the dissident employees wait out the one-year duration of the Section 70 agreement, a relatively short time period given the history of these disputes, and apply for decertification upon expiry of that agreement.

Are there any alternatives to Section 70 which would alter the outcomes in the GRANTED cases, or do they represent a small but persistent irritant in the labour relations scene?

Remedial Orders

In fashioning the remedy in the Delta Optimist[23] the Board may have taken a step in the right direction. In this case rather than issue a cease and desist order, allow the dispute to possibly escalate and likely impose a Section 70 agreement at a later date, the Board addressed the problem of erosion of support for the union head on.

In its order[24] the Board directed the employer to cease violating Section 3 of the Code and ordered the employer to reimburse a dismissed employee for wages lost as a result of the dismissal. The Board required that the employer distribute a copy of its decision to each employee and that the employer refrain from altering wages or working conditions for thirty days. Furthermore the Board required that the employer convene a meeting of all employees at the work site, on work time and with pay for employees who attended, and allow the union to meet with the employees in the absence of the employer for at least one hour. They also required the employer to provide access to the lunchroom to a union representative each day for a period of thirty days to speak to employees and ordered the employer to pay the wages of that union representative for thirty days. The Board remain seized of the complaint in order to resolve any dispute concerning implementation of the order.

In justifying the scope of the remedial order the Board determined that the employer had "elected a strategy of protracted litigation in the hope of defeating the Union's efforts to represent the Optimist's employees... it is clear that the unsettled hiatus in this infant collective relationship has served to erode the Union's support among the employees."[25]

The remedy in this case was specifically designed to redress the erosion of support for the union caused by the employer's actions. The Board's hope was to provide "a period of calm and employment security within which the employees may, despite the previous unfair labour practices, begin to exercise their newly acquired collective bargaining rights with a sense of confidence."[26] The Board also felt it appropriate to "facilitate the efforts the union will be required to undertake to recover from the effects of the unfair labour practices."[27]

The key to the success of this remedial order was its early application to the results of the employer's opposition to union representation and collective bargaining. The Section 70 provisions address the symptom only, absence of a first agreement, while this order sought consciously to give the union the opportunity to restore its support among the bargaining unit members. A recommendation of this study is that the Board utilize their existing powers to fashion unique remedies such as that in the Delta Optimist case, apply these as early as possible in the dispute and hold Section 70 in reserve if it is required at a later date.

Make Whole Orders

A second alternative was applied in Kidd Brothers' Produce and ultimately in Century Plaza.[28] In these cases the Board issued make whole orders. The make whole orders were utilized as a last resort and are appropriate "only when the illegal conduct of the employer has completely

thwarted the organizing efforts of the union, depriving it of statutory rights to represent and bargain on behalf of the employees."[29] A make whole order in effect recognizes that the union cannot be successful in its efforts to represent the bargaining unit employees and is obviously not an effective remedy where the purpose is to foster an enduring collective bargaining relationship. While the make whole order is not a remedy for the employees who have been deprived of their right to collective bargaining, it does to an extent provide a remedy to the union for its wasted organizational time and effort and, may serve as a deterrent to other employers.

Legislative Protection Regarding Dismissals

It has been suggested that extension of due process in dismissals to unorganized employees may be an alternative way of ensuring that one of the most important benefits and rights provided to unionized employees is not denied because of anti-union behaviour of employers.[30] This approach applies a rather sweeping remedy to a very specific and infrequent problem.

A more specific, and preferable, version of this alternative has been introduced to the Manitoba Labour Relations Act which contains a provision requiring the employer to provide a code of employment for newly organized employees under certain conditions.[31] The code of employment must contain provisions for grievance and arbitration procedures which would provide employees with a means to challenge dismissals. In this alternative, the remedy is specific to employees who have already exercised their choice for union representation. The effectiveness of this alternative in resolving first agreement disputes could be assessed in the Manitoba jurisdiction.

Extension of the Duration of a Section 70 Agreement

It could be argued that extending the term of a Section 70 agreement would provide a longer period of relative stability during which the union would be able to "regroup" and demonstrate its usefulness. The Quebec Labour Code has taken this approach and contains a provision for arbitration of first collective agreements which provides for a binding award of not less than one year and not more than two years.[32]

Review of the eleven GRANTED cases has, however, shown that this would not likely provide the union with an effective method of rebuilding support. On the contrary, the employer and dissident groups of employees would become more entrenched in their opposition to the union. The decertifications would likely be postponed for another year.

SUMMARY

Of the alternatives suggested, the first has the highest potential for resolving the disputes where Section 70 has been ineffective. In these situations where the employers' anti-union attitudes are strong the Board can utilize its existing powers to fashion remedies to counter the effects of the employers' actions early in the disputes. Applied early, these remedies would likely be more effective in providing the unions with the opportunity to reduce the polarization of the employees in the bargaining unit into pro-union and anti-union groups. Second only to the extreme entrenchment of the employers in these cases, and often combined with it, this polarization has been one of the major obstacles to establishing enduring collective bargaining relationships in the cases studied.

FOOTNOTES TO CHAPTER VIII

1. G. Bain, Certifications, First Agreements and Decertifications: An Analytical Framework (Ottawa: Labour Canada, 1981).

2. Bain, Certifications, First Agreements and Decertifications, p. 10.

3. Ibid, p. 17.

4. I. Chafetz, "Decertification: The British Columbia Experience", p. 68.

5. Sandman Inns, L.R.B.B.C., Decision #L110/1979.

6. Century Plaza Hotel, L.R.B.B.C. Decision #32/1979.

7. Century Plaza Hotel, L.R.B.B.C. Decision #32/1979. Vancouver Island Publishing, L.R.B.B.C. Decision #36/1976.

8. Labour Relations Board of British Columbia, Annual Report, 1978.

9. P. Weiler, from the text of an address presented to the Industrial Management Association of British Columbia, February 1975, p. 11.

10. From remarks made by J. MacIntyre, previous Vice-Chairman of the Board, in a Labour Law seminar at the University of British Columbia.

11. Century Plaza Hotel, L.R.B.B.C. Decision #68/1975.

12. Kidd Brothers' Produce, L.R.B.B.C. Decision #53/1976.

13. M & H Machinery and Iron Works, L.R.B.B.C. Decision #114/1974.

14. CJMS Radio Montreal (Quebec) Limited v CLRB Syndicat general de la Radio CJMS (CNTU) et al. (1978) CLLC 14, 163 (Federal Court Trial Division).

15. In a confidential interview, a union representative indicated that they would prefer a sub-standard agreement to one imposed under Section 70.

16. Dominion Directory, L.R.B.B.C. Decision #65/1975.

17. Labour Relations Board of British Columbia, Annual Report, 1980.

18. London Drugs, L.R.B.B.C. Decision #30/1974; Kidd Brothers' Produce, L.R.B.B.C. Decision #53/1976; Sandman Inns, L.R.B.B.C. Decision #L110/1979.

19. Ministry of Labour - British Columbia, Labour Research Bulletin, V.9 #1 (January 1981).

20. Muckamuck Restaurant, L.R.B.B.C. Decision #27/1981.

21. Ibid.

22. Delta Optimist, L.R.B.B.C. Decision #26/1980.

23. Ibid.

24. Ibid.

25. Ibid, p.35.

26. Ibid, p.45.

27. Ibid, p.46.

28. Kidd Brothers' Produce, L.R.B.B.C. Decision #53/1976 and Century Plaza Hotel, L.R.B.B.C. Decision #32/1979.

29. Delta Optimist, L.R.B.B.C. Decision #26/1980.

30. J. Stieber, "The Case for Protection of Unorganized Employees Against Unjust Discharge" in IRRA Proceedings of the Thirty-Second Annual Meeting, ed. B. Dennis (New York: Industrial Relations Research Association, 1980).

31. Section 75(1), Manitoba Labour Relations Act (1976).

32. Section 81, Quebec Labour Code (1980).

CHAPTER IX - CONCLUSIONS

The purpose of this chapter is to summarize the effectiveness of the Section 70 provisions and to highlight the implications for policy of the problems which remain unresolved by Section 70. The chapter concludes by suggesting several areas for further research.

EFFECTIVENESS

Ultimately, evaluation of the effectiveness of the Section 70 provisions rests in the answers to two questions:

Question 1

Has the application of the Section 70 provisions altered the likely outcomes in the twenty-eight cases which were studied?

Question 2

Has the existence of the Section 70 provisions prevented other employers from attempting to circumvent the collective bargaining process subsequent to the certification of trade unions?

The first question addresses the remedial nature of the provisions; the second, their impact as a deterrent.

In the cases which were GRANTED, the Section 70 provisions were not remarkably successful in altering the long-run outcomes. Only four of the eleven original certifications were active as of December 31, 1981. On the whole, the employees in these cases had little or no experience with collective bargaining. The employers ultimately succeeded in their opposition to recognition of the certified trade unions.

This research has shown that two factors contributed to the failure of Section 70 in altering the outcomes of these cases. First of all, the

employers did not relent in their opposition to the unions. They continued this opposition until the unions were decertified. Secondly, the employers were able to effectively capitalize upon the opposition of minority groups of employees in the respective bargaining units. These dissident employees became increasingly polarized as time progressed and, with the support of the employer, increased in numbers until they were in positions of majority.

In the cases which were SETTLED, the Section 70 provisions have been moderately successful. Although only five of the original eleven certifications are still active, the employees in these cases have had the opportunity to experience collective bargaining. The employers and unions in these cases have voluntarily negotiated at least eighteen collective agreements.

In many of the SETTLED cases the employers opposed the unions in the early stages of the relationship. The crucial difference between these cases and those which were GRANTED is that this opposition ceased when the Board became involved via the Section 70 applications. The important conclusion is that the Section 70 provisions gave the Board an entrée into the disputes. They were then able to assist the parties in concluding first agreements by using mediation. The likely outcomes of the cases were altered in all except one instance where a first agreement was not concluded.

On a broad scale, Question 2 must be answered in the affirmative. Although a specific cause/effect relationship cannot be demonstrated, the research has shown that first agreement disputes of the magnitude of Sandringham Hospital or Shoppers Drug Mart have been virtually eliminated from the labour relations scene in British Columbia. The conclusion drawn is that the existence of the Section 70 provisions contributed to this situation.

POLICY IMPLICATIONS

In addition to Section 70, the existing Code provides the Board with two tools which can be utilized to increase chances for survival of collective bargaining in situations where the employer demonstrates opposition.

The first is through remedial orders, such as that in the Delta Optimist case, which are specifically designed to provide the union with the opportunity to counter the interference of the employer. The key to the success of these remedial orders lies in their flexibility and in their application very early in the dispute, before the employees have become polarized into opposing pro-union and anti-union groups.

If the remedial order is not effective in assisting the union to rebuild its support, it is unlikely that the union will be able to effectively represent the bargaining unit employees. In these cases, where it is the actions of the employer that have destroyed any support the union once had, the Board can make use of make whole orders to compensate the union for the violation of its statutory rights to represent the employees. These orders have a double-barrelled effect. From the unions' perspective, they remedy the loss of resources spent in the attempt to organize the employees. From the employers' perspective, they are likely to be viewed as a penalty and therefore may operate as a deterrent to other employers.

There is, however, a danger with increased use of make whole orders. To the extent that they become predictable, an employer may build them into the cost of running a non-union shop. The order then becomes a fine or a licensing fee which the employer must pay to buy out of the Code.

In summary the conclusions from the research do not support the need for legislative changes to the Code. The Board has considerable scope in

their general powers which may be utilized more effectively to resolve first agreement disputes.

Collective bargaining depends to a large extent upon relative equality of bargaining power between the parties. The research outlined several factors which combined to place the unions in positions of low power. The majority of the certifications showed marginal support for the unions; the employees were predominantly unskilled; and, the existence of the unions was challenged by the employer. Legislation cannot change the attitudes of these employers. The Section 70 provisions, remedial orders and make whole orders can, however, offset the impact of the employers' actions to a certain extent.

If the interference of the employers was removed from these cases, it is doubtful whether many of the unions would have been able to marshall enough power to impose effective economic sanctions upon the employers. It is not the policy of the Code to support the weaker party in a collective bargaining relationship. It may be that many of these bargaining units could not be organized under any circumstances. The employees have to look to labour standards legislation for a minimum level of protection.

SUGGESTIONS FOR FURTHER RESEARCH

There are two obvious directions for further research on the achievement of first agreements. The first is to repeat the research in the other Canadian jurisdictions which have provisions either patterned on the Section 70 provisions or similar to them. Comparison of the types of cases in these jurisdictions, the outcomes of the cases and the manner in which the respective jurisdictions applied their provisions would provide a perspective to the strengths and weaknesses of the British Columbia provisions for arbitration of first agreements.

The second direction for further research is to conduct studies of new certifications and first agreements in Canadian jurisdictions which do not have provisions for first agreement arbitration. These studies would potentially identify differences in the numbers and severity of first agreement disputes in these jurisdictions compared to jurisdictions with remedial provisions similar to Sections 70 - 72.

BIBLIOGRAPHY

Books, Articles and Government Publications

Arthurs, H. "The Dullest Bill: Reflections on the Labour Code of British Columbia," University of British Columbia Law Review, 1974, Vol. 9, #2.

Backhouse, C. "The Fleck Strike: A Case Study in the Need for First Agreement Arbitration," Osgoode Hall Law Journal, 1980, Vol. 18, #4.

Bain, G. Certifications, First Agreements and Decertifications: An Analytical Framework. Ottawa: Labour Canada, 1981.

British Columbia Federation of Labour, Summary of Proceedings: Twenty-First Annual Convention. Vancouver: B.C. Federation of Labour, 1976.

Carrothers, A.W.R. Collective Bargaining Law in Canada. Toronto: Butterworths, 1965.

Carter, D. The Expansion of Labour Board Remedies: A New Approach to Industrial Conflict. Kingston: Queens Industrial Relations Centre, 1976.

Carter, D. and Woon, J. "Union Recognition in Ontario." Ottawa: Labour Canada, 1980.

Chafetz, I. "Decertifications: The British Columbia Experience." Master's thesis, University of British Columbia, 1977.

Charron, T. "The Certification Process and First Collective Agreement Negotiation in Nova Scotia." Ottawa: Labour Canada, 1980.

Dunlop, J. Industrial Relations Systems. New York: Henry Holt & Company, 1958.

Fanning, J. "Reforming the NLRA." In IRRA Proceedings of the Thirtieth Annual Meeting, edited by B. Dennis, New York, 1977.

Goldberg, S., Getman, J. and Herman, J. Union Representation Elections: Law and Reality. New York: Russell Sage Foundation, 1976.

Keylock, A. "A Study of Achieving First Agreements in British Columbia in 1978 and 1979." Ottawa, Labour Canada, 1980.

Labour Relations Board of British Columbia, Annual Reports. Vancouver: Labour Relations Board, 1974-1980.

Ministry of Labour - British Columbia. B.C. Labour Directory, 1980. Victoria: Research and Planning, 1980.

Ministry of Labour - British Columbia. Negotiated Working Conditions, 1980. Victoria: Program Services, 1980.

Muthuchidambaram, S. "Settlement of First Collective Agreement: An Examination of the Canada Labour Code Amendment," Relations Industrielles, 1980, Vol. 35, #3, pp. 387-409.

Olson, M. The Logic of Collective Action. Cambridge: Harvard University Press, 1965.

Piliotis, V. "The Impact of the Required Level of Employee Support on Securing Union Certification." Toronto: Ontario Ministry of Labour, Research Branch, 1975.

Prosten, R. "The Longest Season: Union Organizing in the Last Decade, a/k/a/ How Come One Team Has to Play with Its Shoelaces Tied Together? In IRRA Proceedings of the Thirty-First Annual Meeting, edited by B. Dennis. Chicago: 1978.

Raskin, A. "Management Comes out Swinging." In IRRA Proceedings of the Thirty-First Annual Meeting, edited by B. Dennis, Chicago: 1978.

Rees, A. The Economics of Work and Pay. New York: Harper & Row, 1979.

Ross, P. The Government as a Source of Union Power. Providence: Brown University Press, 1965.

Runkel, P. and McGrath, J. Research on Human Behaviour. New York: Holt, Rinehart and Winston, 1972.

St. Antoine, T. "Proposed Labour Reform: 'Brave New World' or 'Looking Backward'?" In IRRA Proceedings of the Thirtieth Annual Meeting, edited by B. Dennis. New York: IRRA, 1977.

Schlossberg, S. and Sherman, F. Organizing and the Law. Washington: Bureau of National Affairs, 1971.

Slichter, S. The Challenge of Industrial Relations: Trade Unions, Management and the Public Interest. New York: Cornell University Press, 1947.

Stapleton, C. "Achievement of First Agreements from Newfoundland Labour Relations Board Certifications." Ottawa: Labour Canada, 1980.

Steers, R. and Porter, L. Motivation and Work Behaviour. Toronto: McGraw-Hill, 1975.

Stieber, J. "The Case for Protection of Unorganized Employees Against Unjust Discharge." In IRRA Proceedings of the Thirty-Second Annual Meeting, edited by B. Dennis. Atlanta: IRRA, 1979.

Thompson, M. and Moore, L. "Managerial Attitudes Toward Industrial Relations: A U.S. - Canadian Comparison." Relations Industrielles, 1975, Vol. 30, #3.

Turgeon, E. "1978/79 Applications for Certification and the Resultant Collective Agreements." Ottawa: Labour Canada, 1980.

Vancouver Board of Trade. Clerical Salary Survey. Vancouver: Board of Trade, 1981.

Watts, R. "The Adequacy of British Columbia Labour Legislation Governing Post-Certification, Pre-Agreement Collective Bargaining," University of British Columbia Law Review, 1970, Vol. 5, #2, pp. 251-279.

Weiler, P. Notes to an Address made to the Industrial Relations Management Association of British Columbia. Harrison Hot Springs, February 27, 1975.

Weiler, P. Reconcilable Differences: New Directions in Canadian Labour Law. Toronto: Carswell Co. Ltd., 1980.

Woods, H.D. Report on the Task Force on Labour Relations. Ottawa: Information Canada, 1969.

Wright, J. "Certification of Unions and First Time Agreements in Alberta, 1978-79." Ottawa: Labour Canada, 1980.

Law Cases

CJMS Radio Montreal (Quebec) Limited v CLRB. (1978) CLLC 14, 163 (Federal Court Trial Division).

Canada Labour Relations Board, Reasons for Decision: Syndicat des employés de commerce et de bureau du Comté Lapointe (CNTU) 675-6, 675-7, 675-11; Syndicat des commis-comptables d'Alma, Inc. (CNTU) 675-9, 675-10; Syndicat des employés de commerce de Baie (CNTU) 675-8; and Royal Bank of Canada.

Labour Relations Board of British Columbia, Reported Cases: Decisions #2/1974, 19/1974, 30/1974, 37/1974, 57/1974, 74/1974, 101/1974, 105/1974, 114/1974, 122/1974, 149/1974, 155/1974, 163/1974, 164/1974, 3/1975, 21/1975, 23/1975, 30/1975, 32/1975, 47/1975, 49/1975, 50/1975, 65/1975, 68/1975, 80/1975, 83/1975, 32/1976, 53/1976, 63/1976, 9/1977, 25/1978, 38/1978, 59/1978, 70/1978, 32/1979, 63/1979, 71/1979, 88/1979, L110/1979, 16/1980, 20/1980, 26/1980, 46/1980 L26/1980, L55/1980, L76/1980, L99/1980, 27/1981, L117/1981.

APPENDIX 1

Applications for Section 70 - 1980 and 1981

1. Medical Associate Clinic and Hotel Employees' Union, Local 40, Nelson. L.R.B.B.C. Decision L76/80, May 23, 1980 (GRANTED)

The circumstances of this application were quite different from those of the cases included in the research. There were no unfair labour practices and, initially, it appeared that the employer was not opposed to recognition of the union. In March 1979 the union and employer made a joint application for non-binding arbitration of the first agreement by an Industrial Inquiry Commission. Tentative agreement was achieved on all issues except union security. The Commission's report recommended a union security provision identical to the employer's proposal and, while the union membership ratified the recommendation, the employer refused to do so.

In November the employer advised the union they were still considering the matter but made no attempt to meet and discuss it with the union. The Section 70 application was submitted early in 1980 and was granted. The Board concluded that the employer would not have ratified any report of the Industrial Inquiry Commission and that the employer did not intend to conclude a collective agreement.

In ruling that the application would be granted the Board gave the parties one last opportunity to conclude an agreement with their assistance. The parties were unable to conclude an agreement and one was imposed by the Board.

In June, 1981, the employees applied for cancellation of the certification. A vote was held and the union was decertified.

2. Kuehne and Nagel International Ltd. and the Office and Technical Employees' Union, Local 15. No Decision (WITHDRAWN)

The background of this case indicates that the employer was initially opposed to unionization.* On December 8, 1977 the union applied for certification. On the same date the employer dismissed two employees for reasons found to be unfair labour practice. The union was finally certified under Section 43(3) of the Code on January 19, 1979. The ballots cast in the certification vote were destroyed without being counted. In May, 1979 the Board upheld their original decision to certify the union.

In June 1980 the employees applied for cancellation of the certification. The union advised the Board they did not object to this application and that they would not pursue the Section 70 application. The union was decertified September 24, 1980.

*The background for this case is contained in L.R.B.B.C. Decisions #L47/99 and 9/79.

3. Northwest Weightloss Clinic and B.C. Nurses
No Decision (SETTLED)

The B.C. Nurses were certified to represent the employees at eight clinics in 1980.* The parties commenced negotiations for a first agreement but reached a deadlock in March of 1981. Strike action followed. In April the Board ruled that the employer had committed an unfair labour practice, violating Sections 3(3)c and 5 of the Code. Five months into the strike the employer was still operating, having replaced the striking nurses with licensed practical nurses. The union filed a complaint with the Board that the employer had failed to bargain in good faith, but the complaint was dismissed on August 27, 1981.

*The background for this case is contained in L.R.B.B.C. Decision #54/81.

Meanwhile, on August 18, 1981 the Minister of Labour directed the Board to inquire whether or not a first agreement should be imposed under Section 70. The Board was able to settle the application. A first agreement was concluded by the parties in January of 1982 and is still in effect.

4. Armstrong Hotel and the Hotel Employees' Union, Local 40.
No Decision (APPLICATION OUTSTANDING)

This application pursuant to Section 70 was received by the Board in December 1981 and has not been dealt with as of April 1st, 1982. The Board did however process an application from the employees to cancel the certification. The application was denied in March 1982.

APPENDIX 2

QUESTIONNAIRE

EMPLOYER: DATE OF DECISION: _____

APPLICATION: denied _____

UNION: granted _____

settled _____

Date Application Made to Minister: _____

I. CERTIFICATION

# of employees in unit at the time of application: ____

On what basis was the certification granted:

representation vote: ____

membership cards: ____

other, please explain: ____

_____

_____

_____

Date of Application for Certification: _____

Date of Certification: _____

Did the employer appeal the Board's decision: Yes___ No___

If yes, how many times _____

On what basis: _____

_____

_____

_____

How many employees indicated support for the union at the time of application for certification, as determined by:

No. voting for the union in the representation vote _____

No. of members in good standing _____

Were there subsequent indications of significant changes in this support:

Yes: _____ No: _____

If yes, what were they:

support for another union ____

application for decertification ____

turnover of staff ____

other ____

(please provide details): _____

_____

_____

II. NEGOTIATIONS

Date of notice to bargain: _____ Notice delivered by:

Date of first meeting: _____ Union _____

Number of meetings: _____ Employer _____

Did the Union submit a package of proposals _____

Did the employer provide counter-proposals _____

Was a mediator appointed ____ if yes, on what date: _____

To what extent did the parties achieve agreement on items prior to the application under Section 70.

_____

_____

_____

Was there a violation of S(6): By the employer _____

By the union _____

No violation _____

Violation alleged but no ruling _____

If there was a S(6) violation, please provide details:

_____

_____

_____

_____

_____

III. WORK STOPPAGE

Did a legal strike occur: _____ if yes, duration: from _____

to _____

Did a legal lockout occur: _____ if yes, duration: from _____

to _____

(For cases involving a strike)

Did the employer continue operation _____

if yes, what was the source of labour:

non-bargaining unit members _____

members of the bargaining unit _____

employees hired to replace those on strike _____

other _____

IV. UNFAIR LABOUR PRACTICES (as ruled by the Board)

Did the Employer commit unfair labour practice(s) prior to certification: _____

If yes, what sections of the Code were violated: _____

_____

Specifics of violation:

_____

_____

_____

_____

Did the Employer commit unfair labour practice(s) after the certification was granted: _____

If yes, what sections of the Code were violated: _____

_____

Specifics of violation:

_____

_____

_____

_____

Were any unfair labour practice(s) committed by the Union: _____

If yes, what sections of the Code were violated: _____

_____

Specifics of violation:

_____

_____

_____

_____

Did the case involve violations of other sections of the Code which were not unfair labour practices, or did it involve any violations of Board and/or court orders: _____

If yes, please explain:

_____

_____

_____

_____

V. OUTCOMES

A) In cases where the application for S(70) was denied:

____ no agreement concluded to date
____ 1st agreement concluded, duration _____
____ 2nd agreement concluded, duration _____
____ subsequent agreements concluded
____ Union decertified, if yes, date _____
____ other, please explain _____
_____
_____

B) In cases where the application for S(70) was granted:

____ no 2nd agreement concluded to date
____ 2nd agreement concluded, duration _____
____ subsequent agreements concluded _____
____ Union decertified, if yes, date _____
____ other, please explain _____
_____
_____

C) In cases where the application for S(70) was settled:

____ no agreement concluded to date
____ 1st agreement concluded, duration _____
____ 2nd agreement concluded, duration _____
____ subsequent agreements concluded _____
____ Union decertified, if yes, date _____
____ other, please explain _____
_____
_____

D) In cases where a first agreement was imposed, what process did the Board utilize to settle the terms and conditions of the agreement?

____ Arbitration
____ Mediation/Arbitration
____ Final Offer Selection
____ Other