THE MEDIATIVE ROLE OF THE
LABOUR RELATIONS BOARD OF
BRITISH COLUMBIA IN DISPUTES
INVOLVING ILLEGAL WORK STOPPAGES

by

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ABSTRACT

The Labour Code of B.C. embodies a policy to promote collective bargaining by reducing legalism and emphasizing voluntarism and mutual accommodation. The Labour Relations Board's approach to illegal work stoppages supports this policy by encouraging settlements with informal mediation rather than proceeding to a formal hearing and adjudication. The Board's approach is based on understanding labour disputes as symptoms of underlying conflict between parties in a collective bargaining relationship. This is a significant departure from the traditional remedies used by the courts for enforcing statutory provisions concerning illegal work stoppages.

The purpose of this thesis was to assess the Board's performance in handling illegal work stoppages. Thirty-one management representatives and twenty-eight union representatives who experienced the Board's approach were interviewed. Their perceptions were used to assess the Board's performance.

The Board's approach is a successful alternative to the courts and supports the intent of the Labour Code. The majority of management representatives indicated, however, that the Board's approach works to the advantage of unions because it attempts to mediate too often rather than issue an order. They felt unions sometimes manipulate the Board's procedures to obtain concessions during illegal work stoppage. Therefore, the Board needs to exercise more discretion as
when to mediate and when to convene formal hearings.

The Board responds speedily enough to complaints, successfully determines underlying causes in disputes and its mediating role is not impeded by partisanship of Boardmembers.
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INTRODUCTION

The Labour Code of British Columbia\(^1\) is at the forefront in a movement of Canadian labour legislation towards providing wider jurisdiction and greater remedial power to labour relations boards.\(^2\) An important feature of the Code is the provision for exclusive jurisdiction of the Labour Relations Board over strikes, lockouts and picketing.\(^3\) In exercising its jurisdiction, the Board's approach to complaints of illegal work stoppages is to encourage a voluntary settlement of the dispute rather than proceeding to a formal hearing and adjudication. This approach often places the Board in a mediative role. The Board's mediative role is facilitated by procedures designed to encourage voluntary accommodation between the parties in a collective bargaining relationship.

The Board's policy and procedures for dealing with illegal work stoppages are based on recognizing illegal work stoppages as symptoms of underlying conflict between the parties. This is a significant departure from the traditional approach by the courts for enforcing compliance with statutory provisions concerning illegal work stoppages. The courts relied on remedies such as injunctions, damages and prosecution for criminal contempt which ignored the underlying causes behind industrial disputes.

Although the Board has been operating for more than eight years, information about the success of its policy and procedures is scarce. The purpose of this thesis is to assess the Board's mediative role in disputes involving illegal work stoppages.
The perceptions of management and union representatives who have experienced the Board's efforts to mediate in these disputes provide a useful measure of the Board's mediative role. The parties' perceptions are their assessments of the effectiveness and usefulness of the Board's approach. The interactive nature of industrial relations and unique characteristics of each different bargaining relationship make individual assessments appropriate indicators of the Board's performance. Since judicial involvement in labour disputes has been a source of intense antagonism among labour and management, government and the courts throughout British Columbia's history, the parties' perceptions are valuable for assessing the Board's approach as an alternative to the traditional remedies used by the courts.

Therefore, the research objective for this thesis was to collect, analyze and report perceptions of parties who have experienced the Board's mediative role in disputes involving illegal work stoppages. These perceptions were collected from personal interviews. The interviews were guided by a set of prepared research questions. Responses were analyzed and recorded immediately after each interview.

The thesis is divided into six chapters. The first chapter contains a background of previous labour legislation and court involvement in labour disputes in B.C. This background is necessary for interpreting perceptions of the present Board's approach. The second chapter presents the philosophy and characteristics of the Board which provided the theoretical basis for the research questions. The third chapter gives the research questions with rationale and expected interview responses. The fourth, fifth and sixth chap-
ters cover the research methodology, results and conclusions respectively.
Notes


²D.D. Carter, The Expansion of Labour Board Remedies: A New Approach to Industrial Conflict, Industrial Relations Centre, Queen's University, 1976.

³The Labour Code, Part V.
CHAPTER I

PREVIOUS LABOUR LEGISLATION AND COURT INVOLVEMENT IN INDUSTRIAL DISPUTES IN BRITISH COLUMBIA

The perceptions of labour and management towards the present Labour Relations Board's approach to illegal work stoppages must be interpreted with reference to previous labour legislation in B.C. Labour legislation and court involvement in industrial disputes have been sources of deep-seated hostilities among labour and management, government and the courts. The hostilities are rooted in the early development of the province when the goals of entrepreneurs in an unstable frontier economy conflicted with militant workers, especially in the mining industry. After World War II, new legislation was implemented in B.C. which was influenced by the U.S. National Labor Relations (Wagner) Act. The new legislation elevated the legal status of unions and collective agreements. The courts became more involved in industrial disputes and the frequency of injunctions increased.

The perceptions of labour and management towards the Board's approach inevitably reflect comparisons with previous legislation and court involvement in industrial disputes. This chapter summarizes previous legislation with emphasis on court involvement and the use of injunctions in illegal work stoppages.
Labour Legislation in British Columbia

1907-1946

Early labour legislation in B.C. contributed to hostilities in the industrial relations climate mainly because of compulsory conciliation procedures that delayed the use of economic sanctions and failed to provide for union recognition. There are many examples of employers responding to economic sanctions with strikebreakers which resulted in intimidation or violence and subsequent involvement of the military or police and the courts. The result was labour concluded that government was controlled by large-scale entrepreneurs.

The federal Industrial Disputes Investigation (IDI) Act of 1907 was the model for labour legislation in B.C. for over thirty years. Woods described the approach embodied in the IDI Act as "normative" because it provided for Conciliation Boards to make recommendations for resolving disputes based on norms established elsewhere. Section 5 of the IDI Act provided that either party in the dispute could apply to the Minister of Labour for the appointment of a Board of Conciliation. Section 63 made it unlawful for any employer to declare or cause a lockout, or for any employee to go on strike, over a dispute while that dispute was referred under the Act to a Conciliation Board.

Selekman indicated miners and railroad employees were opposed to the Act, but the "labor movement as a whole seems to
have been definitely in favor of it." Carrothers reported that unions criticized the Act because it hindered them in taking economic sanctions at the "most propitious time", because employers were not accepting the recommendations of conciliators and because there was evidence of partisanship on the conciliation boards. The unions were also critical that employers extended and exploited the procedural delays which caused the "cooling off" period to be a "hotting up" period.

Carrothers said the basic weakness in the Act was

... it gave no protection to unions from actions of employers calculated to discourage employees from organizing; nor did it impose on the employer any obligation to recognize or bargain with a union representing his employees.

The Act’s impact in the area of union security on the outlook of the labour movement is explained by Phillips in relation to a dispute over the "open shop" issue in B.C.’s mining industry. In 1907, Mackenzie King, then federal Deputy Minister of Labour, acted as conciliator in the dispute and effected a settlement which satisfied the employers' demands for an "open shop" policy. Phillips said:

... the dispute started the lasting opposition of the western miners, both coal and metal, against the IDI Act. It developed into an antagonism that was frequently reinforced in subsequent years because of the apparent anti-union bias of the investigation chairman appointed under the act, and because the delays provided by the legislation allowed for the importation of strikebreakers.

While the Snider case established provincial jurisdiction over labour relations in 1925, B.C. retained the IDI Act though enabling legislation until 1937 when the Industrial
Conciliation and Arbitration Act was passed. This statute had similarities to the Wagner Act and provided for compulsory collective bargaining combined with the compulsory conciliation procedures carried over from the IDI Act. The Industrial Conciliation and Arbitration Act of 1937 did not make provisions for union representation or the establishment of a Labour Relations Board. Thus, although the later act did represent an important change in policy, it did not contain fundamental provisions for implementing the change.

A more complete adoption of principles of the Wagner Act appeared in Canada with the wartime legislation introduced by Privy Council Order 1003 (P.C. 1003) in 1944. The order provided the general framework for regulation of labour-management relations, including provisions for union certification and the establishment of the Wartime Labour Relations Board. After the war, the provinces resumed their jurisdiction over industrial relations and most jurisdictions followed the example of P.C. 1003 by passing similar legislation in the late 1940's and early 1950's.

Labour Legislation in British Columbia

British Columbia was one of the first provinces to legislate Wagner-type labour policy with provisions for union certification. B.C. retained the emphasis on preventing work stoppages with statutory delays, and strikes and lockouts were prohibited during the term of a collective agreement. Union-management relations became
more legalistic. A high incidence of wildcat strikes and increased use of injunctions appeared in the fifties.\textsuperscript{14} Some very punitive legislation was passed which generally intensified hostilities in the industrial relations climate.

**Industrial Conciliation and Arbitration Act, 1947**

The Industrial Conciliation and Arbitration (ICA) Act was passed in 1947 and provided protection for rights of workers to organize free from employer interference and for compulsory bargaining between employers and certified unions. A Labour Relations Board was created to administer the provisions of the statute concerning union certification, determination of bargaining units and whether the parties had entered a collective agreement.\textsuperscript{15}

The approach to dispute resolution for "interest"\textsuperscript{16} disputes under the ICA Act remained normative\textsuperscript{17} and relied on compulsory delays for conciliation as compared to the voluntaristic, accommodative style of American labour legislation. The procedures for compulsory conciliation were more involved than under the 1907 Industrial Disputes Investigation Act and, in addition, the ICA Act provided for government supervised strike votes.\textsuperscript{16} The provision required that, if a conciliator's recommendations were rejected, strikes and lockouts were illegal until a government supervised strike vote occurred.

Anton reported that government supervised strike votes under the ICA Act were in response to "an outbreak of strikes,
both legal and illegal, that followed World War II."¹⁹ These strikes allegedly were caused by Communist-dominated leaders and unions. Members of the public, members of the legislature and employers' associations agitated for changes in legislation which would restrict the activities of organized labour. Supervised strike votes was one of several proposals, which also included pulsory filing of financial statement by unions, penalties for illegal strikes, union registration as corporate bodies, prohibition of both compulsory union membership and check off dues to "restrict the monopoly power of trade unions."²⁰ Predictably, trade unions in B.C. reacted strongly to the proposals. Anton reported labour's views as follows:

The trade unions realized the probable effect of the proposed changes. In a consolidated brief to the legislature they stated their criticisms: they particularly objected to the imposition of a supervised strike vote before a strike could legally be called and to the setting of penalties for illegal strikes. They threatened to ignore the bill if became law and asserted that the Act would cause the number of strikes to increase... the purpose of the Act was to render organized labour powerless... the government was being unrealistic to expect trade unions to accept compulsory supervision of strike votes when such a provision was "the most vicious system ever introduced in Canada."²¹

Supervised strike votes did become part of the ICA Act.

The ICA Act and post-war labour legislation in other Canadian jurisdictions also differed from the American approach with compulsory provisions for regulating disputes over contract inter-
pretation or "rights" disputes. The Canadian emphasis on avoiding work stoppages manifested in most post-war labour legislation with provisions prohibiting strikes and lockouts during the term of a collective agreement. In contrast, the Wagner Act and subsequent legislation contain no such provision. The general practice in the U.S. has been that the parties negotiate a no-strike clause. In exchange for giving up the strike sanction, unions demanded that rights disputes be submitted to grievance machinery terminating with arbitration. Arbitration clauses became the quid pro quo for no-strike clauses in collective agreements. In Canada, most statutes contain provisions requiring the parties to use arbitration for disputes arising during the term of a collective agreement. The ICA Act specified that collective agreements include provisions for settling these disputes peacefully "by arbitration or otherwise". However, it was generally understood that arbitration was the means contemplated by the provision. Thus, the basic difference between Canadian policy, reflected in the ICA Act, and American policy for settling disputes arising during the term of a collective agreement was that Canadian statutes impose strike prohibition and arbitration, and in the United States the parties are free to negotiate these provisions in their collective agreement.

Enforcement of the statutory provisions concerning illegal work stoppages under the ICA Act was in the jurisdiction of the courts. The courts applied punitive remedies such as fines prescribed by the statute, injunctions and damage awards. To outline the evolution of the courts' involvement in illegal work
stoppages under the ICA Act and most subsequent labour legislation in B.C. until the present Labour Code, three matters need to be considered: the status of trade unions as legal entities, work stoppages as a breach of the statute and work stoppages as a breach of the collective agreement.

Legal status of trade unions

The legal status of trade unions was greatly enhanced by legislation providing for compulsory collective bargaining between employers and trade unions which are certified bargaining agents. Curtis said the following:

Canadian collective bargaining statutes add to the status of unions by establishing their right to act as bargaining agents for employees, with authority to make collective agreements on their behalf. The statutes add to the status of unions when they define their duties and responsibilities and make them answerable for the offenses they commit...

It is clear that the new collective bargaining statutes have conferred new and important rights and powers on unions that greatly increase their ability to carry out their programmes and make their influence felt in the business community. It is a short step from that finding to the conclusion that the new importance and power of unions requires that they assume a new and wider responsibility for their actions, in particular that they be held liable for their wrongful acts.

The issue became whether unions are legal entities which could be held liable in a court of law. Previous to statutes making collective bargaining compulsory, it was unlikely that trade unions would be held liable for breach of a collective agreement. After the enactment of the ICA Act, B.C. Courts soon provided judgments which firmly established unions were legal entities and could be sued. Two of the earliest judgments, in
particular, became leading legal authorities in Canada. In Re Patterson and Nanaimo Dry Cleaning and Laundry Workers Union Local No. it was established in 1947 that trade unions are legal entities separate from their members. Then in Vancouver Machinery Depot Limited et al. v. United Steelworkers of America et al. in 1948 it was held that the union was a legal entity against which action could be brought for damages resulting from a breach of provisions in the statute concerning strike vote procedures.

Work stoppages as a breach of the statute

The judgment in the Vancouver Machinery case suggested that a union could be held liable for damages for a breach of the statute. The liability of unions to pay damages under the law of tort for breaches of labour relations statutes became a controversial legal issue throughout the nineteen fifties. The Thieren case under the B.C. Trade Unions Act of 1959 confirmed that unions could be sued for damages for breaches of the statute. The tortious liability issue has been analysed in depth by Arthurs and Christie and will be briefly mentioned again later in this chapter.

The ICA Act contained provisions which made employers and unions liable for fines as penalties for causing illegal strikes or lockouts. Basically, the Act provided that an aggrieved party could complain to the Minister of Labour to obtain "consent to prosecution." Then upon "summary conviction" a court would impose a fine, in the case of a trade union, "not exceeding one
hundred and twenty-five dollars for each day that the strike existed.\textsuperscript{35}

**Work stoppages as a breach of the collective agreement**

The introduction of compulsory collective bargaining statutes like the ICA Act also increased the legal status of collective agreement. Curtis explains:

The statutes... add to the status of collective agreements when they declare them binding on all concerned, on the union, on the employees and on the employer, and when they require that the parties to collective agreements upon procedures for the final and binding settlement of disputes that arise between them involving the interpretation, application, administration, or alleged violation of their agreements,...\textsuperscript{36}

The legal issue became whether a collective agreement is enforceable in the courts in the same manner as a legal contract under common law. As with the status of unions as legal entities described earlier, B.C. courts were at the forefront in establishing legal authorities which imposed liability for breach of a collective agreement.\textsuperscript{37} The courts were open to unions and employers for enforcement of their agreements. Thus, employers would follow the well-developed procedures and go to the courts to recover damages as a result of a strike while an agreement was in effect. Indeed, Curtis said, "In B.C. the parties are much more disposed than in other provinces to go to the courts with their differences."

The ICA Act represented a great step forward to the B.C. labour movement in regards to union recognition. Yet, involvement of the courts in regulating strikes and picketing under the ICA Act did not enhance the
labour movement's views of either the courts or the government. Labour's perceptions of the legal regulation of industrial disputes were described by Phillips as follows:

Trade unions for purposes of implementing the ICA Act were legal entities. A series of suits for damages against unions followed. This proliferation of court actions and judgments against the unions for illegal strikes was a revelation to labour which was not used to government involvement in what previously had concerned the unions only. The legislative regulation of strikes also opened the door to increased use of injunctions, which greatly compromised the right to picket and to strike. 38

The use of injunctions in labour disputes became a critical issue affecting management-union relations in British Columbia throughout the fifties and sixties. Criticisms of injunctions were an important influence on the approach to illegal work stoppages built into the Labour Code of British Columbia in 1973.

Criticisms tend to be similar which have evolved from the use of injunctions in both the Canadian experience and the American experience before the Norris La Guardia Act, 39 which banned the labour injunction. Four major criticisms are reviewed below:

1. Ex parte injunctions were sometimes granted by the courts perfunctorily, with insufficient evidence and based on complainants' affidavits which were often exaggerated and inaccurate.

To avoid "irreparable harm" to the complainant, in some cases there may have been urgency in preparation of necessary documents for the injunction, appearance by counsel before the judge, etc. One criticism was that injunctive orders were issued as a matter of routine in the same form as applied for by the employer-complainant.
Carrothers reported that fifty-one out of sixty-three *ex parte* injunctions issued in British Columbia from 1946 to 1955 were granted in the same form they were applied for, perhaps implying perfunctory treatment by judges. However, he also reported in a survey of forty-two solicitors, those acting for employers indicated overwhelmingly the view that the circumstances warranted an *ex parte* injunction in the form it was obtained, whereas the solicitors acting for unions expressed nearly as strong a view to the contrary. Obviously, firm conclusions whether injunctions were handled perfunctorily or judges invariably perceived disputes in management's terms under the law as it existed could only be obtained from a case by case analysis.

It was also criticized that *ex parte* injunctions were issued without sufficient evidence and on allegations of fact contained in affidavits which were exaggerated or inaccurate. Frankfurter and Greene emphasized the importance of factfinding in labour disputes as follows:

> Judicial error is too costly to either side of a labour dispute to permit perfunctory determination of the crucial issues; even in the first instance, it must be searching. The necessity of finding the facts quickly from sources vague, embittered and partisan, coloured at the start by the passionate intensities of a labour controversy, calls at best for rare judicial qualities. It becomes an impossible assignment when judges rely solely upon the complaint and the affidavits of interested or professional witnesses, untested by the safeguards of common law trials--personal appearance of witnesses, confrontation and cross-examination.

It is clear that injunctions issued based on affidavit evidence on "information and belief" that favoured the plaintiff's case would not do much for the credibility of the courts.
from the perception of the enjoined party.

2. **Injunctions aroused resentment and antagonism that often lead to active violence.**

   A common criticism of injunctions was they caused resentment and antagonism amongst striking employees. Witte attributed the resentment to the perception that an injunction against labour brands it, in the eyes of the public, as a wrongdoer.\(^45\)

   Whether the cause for resentment was the social stigma of being restrained by a court order or economic realities and emotional intensity plus other factors that affected specific disputes, there seemed to be general recognition that injunctions contributed to ill will in labour disputes. However, evidence is not conclusive that injunctions led to violence. Carrothers reported that the view was expressed "overwhelmingly" in a survey of solicitors that injunctions did not have the effect of aggravating the commission of unlawful acts.\(^46\)

3. **Injunctions in labour disputes have caused the judiciary to be suspect in the eyes of labour.**

   Although in most cases judges were probably bound to grant injunctions by legal procedures specified for injunctions, labour's resentment was "most bitter" against them and they were blamed personally for their actions.\(^47\) One B.C. labour leader expressed that even if judges had the opportunity to treat labour disputes in a more appropriate manner, "their background and legalistic training makes many of them ill-equipped to adjudicate labour-management relations."\(^48\) The implication is that labour perceived judges were not impartial in adjudicating between disputants, one from their own social class and one from another
social class.49

4. The choice before the court in deciding to issue an injunction may not be between irreparable damage to one side and compensable damage to the other, because the harm caused to the union by the deprivation of an economic weapon may by its nature be incalculable in terms of bargaining power.

This criticism hinges on recognition that disputes giving rise to most labour injunctions were not by nature legal, but conflicts between parties in a collective bargaining relationship. Frankfurter and Greene remarked on this problem with injunctions as follows:

Where the plaintiff on the surface presents a meritorious case, he should not be exposed to the peril of irreparable damage before the court can make available to its slower, though much more scrutinizing, processes of fact-finding. This form of relief presents no difficulty when the temporary suspension of defendant's activities results in no very great damage to him, at least no damage that cannot be adequately compensated by money... In labour cases, however, complicating factors enter. The injunction cannot preserve the so-called status quo; the situation does not remain in equilibrium awaiting judgment upon full knowledge. The suspension of activities affects only the strikers... Improvident denial of the injunction may be irreparable to the complainant; improvident issue of the injunction may be irreparable to the defendant. For this situation, the ordinary mechanics of the provisional injunction proceedings are plainly inadequate.50

The above quotation focuses on another aspect of the impact of injunctions in a labour dispute; namely, the impact on the relative bargaining power of the parties. In Carrother's survey, half of the unions' solicitors and about two-thirds of the employers' solicitors indicated that the result of an injunction was the strengthening of the employer's bargaining position.51
The effect of an injunction may have been to break the strike by restraining the activities of the union while leaving the employer free to carry on his business. Thus, an injunction curtailed the union's only effective weapon in economic conflict.

The court acted in a sense as a strikebreaker by prejudging the dispute and subsequently terminating a strike on terms less favourable to the union than might otherwise be obtained. Carrothers points out, however, that the courts were obliged to render a decision upon receiving proper application for an injunction. If the application for an injunction was to stop a work stoppage that was unlawful, the court was obliged to uphold the employer's rights under law. This supports the argument that an employer is protected by statute with "two years of labour peace" once a collective agreement is concluded. The latter argument is difficult to challenge in a case where an employer is wrongfully subjected to a strike by an irresponsible union. Unfortunately, the law did not provide adequately for a case in which an employer with "unclean hands" obtained an injunction.

Labour Relations Act, 1954

The ICA Act was succeeded in 1954 by the Labour Relations Act. The new statute resembled the ICA Act with some important changes in the regulation of strikes and lockouts which increased the involvement of the courts and the minister.

Before describing specific provisions, it is useful to describe very briefly the passing of the Labour Relations Act in a political context. The Act was the first labour legislation of
the Social Credit government elected in 1952 and headed by Premier W.A.C. Bennett. The Social Credit party narrowly defeated the Cooperative Commonwealth Federation (CCF), predecessor to the New Democratic Party (NDP), and has remained in power in B.C. for twenty-five of the last twenty-nine years.\textsuperscript{54} The CCF and the labour movement vigorously opposed the Act and saw it "as a deliberate and open attempt to undermine union strength."\textsuperscript{55} Matkin, formerly B.C. Deputy Minister of Labour, said the relationship that evolved between the Social Credit government and labour "had a pernicious side" and many trade unionists "believed the government of British Columbia was the enemy of labour."\textsuperscript{56} Thus, the Act was an example of labour legislation which appeared during the fifties and sixties which contributed to intense hostilities between the Social Credit government and B.C. labour.

The Act carried over the normative approach with conciliation officers and conciliation boards. It included compulsory delays on economic sanctions during conciliation and until strike votes were conducted. In addition, a forty-eight hour notice was required for strikes and lockouts\textsuperscript{57} and union officers were made liable for assenting to offenses committed under the Act.\textsuperscript{58}

Fines were specified as penalties for offenses under the Act, plus some particularly punitive measures against unions were provided for illegal strikes. The relevant sections are given below:

\textsuperscript{54}(3) In any case where there is or has been a strike or lockout, the Minister may refer the matter to a Judge of the Supreme Court for an adjudication as to the legality or illegality of the strike or lockout, and as to whether an employer or employers' organization is or was
involved in the lockout, and as to whether a trade-union is or was involved in the strike or the employees belonging to or represented by a trade-union are participating or have participated in the strike.

55 Where a Judge certifies to the Minister that a strike is or was illegal, and that a trade union is or was involved in the strike, or that employees belonging to or represented by the trade-union are participating or have participated in the strike, the Judge may declare that:-

a) The existing collective agreement made by the trade-union shall be null and void; and

b) The written assignment of wages made to an employer in favour of such trade union under section 9 shall be null and void; and

c) The certification of the trade-union shall be null and void;

or may make any one of the said declarations.

To say the least, the above provisions were antagonistic to labour. The position of the Minister of Labour is worth noting. He was given the discretion when or when not to activate the provisions. Noel Hall, who was instrumental in drafting the present Labour Code, gave the following remarks concerning Section 54(3) Labour Relations Act:

There was no mention in the legislation as to what the parties were to do after such an adjudication, but the chaos created for both labour and management in such a circumstance is obvious. As I recall, that provision was only used once - the Judge told the Minister of Labour not to use his court as a vehicle for trying to pressure labour and management to settle a wildcat strike, and the provision was quietly dropped from the statute. 59

The Judge in the above quotation awarded what could have been bitter turmoil. The fact remains that the Act contained some extremely punitive provisions and the provincial government, represented by the Minister, was at the helm in directing the courts to give penalties which were serious threats to the security of unions.

The punitive measures for illegal strikes under the Labour
Relations Act were part of a response to the frequency of wildcat strikes occurring from 1949 to 1959 inclusive. Indeed, it is reported that there was a "prevalence" of illegal wildcat strikes in the vital lumber and construction industries.

The incidence of wildcats also contributed to the extensive use of injunctions throughout the fifties. Although the majority of court injunctions were to enjoin acts associated with picketing, there were important examples where these remedies were applied in cases involving illegal strikes.

One case particularly demonstrates the use of the injunction and portrays the effect of this remedy on labour relations throughout the fifties. In Poje v. A.G.-B.C. International Woodworkers of America Local 1-80 called a strike in violation of provisions for government supervised strike votes.

A picket line was set up blocking the loading of the employer's lumber onto a ship in Nanaimo harbour. The employer obtained an ex parte injunction which was defied with "thinly veiled hostility." Although the parties settled their differences the next day, the matters came before the Chief Justice of the Supreme Court who expressed the view that "the injunction is not a mere weapon in collective bargaining" and that the defiance of the injunction "was no longer a matter between the parties." Subsequently, Poje, the union business agent, and fourteen others were found guilty of gross contempt of court. Poje was sentenced to six months in prison and fined $3,000; the others were fined $300 each.

The Poje case provided fuel for active lobbying by labour against injunctions, especially the ex parte type. Ex parte in-
junctions had been used increasingly since the war and union leaders wanted a requirement that both parties be present before an injunction was granted. The lobbyists were unsuccessful regarding injunctions and in their opposition, at the same time, to the Labour Relations Act. The common interest concerning injunctions and the Act among different labour factions resulted in unification of organized labour in the province against the government.

**Trade Unions Act, 1959**

If B.C. unions were disadvantaged by legislation in the early fifties, the Trade Unions Act of 1959 must have further aggravated their perceptions of injunctions and the role of courts in labour disputes.

Carrothers highlighted the three main subjects of the Act: picketing and boycotting, liability in damages and the ex parte injunction. Generally, section 3(1) specified that picketing and boycotting were acceptable only in support of strikes which were not illegal under the Labour Relations Act. Section 3(2) effectively prohibited sympathy strikes, secondary picketing, "unfair lists" and "information lines" to inform those who see pickets that an employer is operating without a collective agreement, and, presumably, with sub-standard terms of employment. The restrictive provisions of the Act concerning picketing are reported to have been viewed with antipathy by the B.C. labour movement as another example of Social Credit legislation directed against labour.

The provisions of the Act concerning liability in damages
emphasized the involvement of the courts and punitive remedies in illegal work stoppages. Section 4(1) established that breaches of the Labour Relations Act and section 3 of the Act itself cause employers and unions to be "liable in damages to anyone injured thereby." Section 7 declared unions (and employers' organizations) to be legal entities for such suits and for prosecutions under the Labour Relations Act.

Carrothers indicated the provisions in the Act concerning liability in damages just made explicit what had become the trend in case law. Some of the more important cases were mentioned briefly earlier in this chapter. 73

There was another dimension of union liability that appeared in association with the Act. This dimension revolved around the issue of whether unions, in addition to the possibility of being liable for breach of a statute, could be sued generally in contract and tort under common law. 74 In the Thieren case, 75 it was decided by the Supreme Court of Canada in 1960 that a Vancouver local of the Teamsters was liable to be sued for illegal interference with the right to trade. Thieren was the owner of a small trucking company which employed several drivers. His drivers belonged to a bargaining unit represented by the Teamsters on a particular construction job. The union demanded that Thieren, who drove one of his own trucks, also join and, when he refused, the union threatened to picket the whole construction project. As a result Thieren was not given any more work and he sued for damages.

The Thieren case is useful to focus on a pattern in B.C.
of increasing court involvement in industrial disputes. It is interesting, however, that the Thieren case was considered the leading Canadian case on tortious liability in circumstances involving industrial disputes and trade unions. Yet Carrothers suggested that the judgment in the Thieren case "appears to impose a greater responsibility on unions than that declared by sections 4 and 7 of the Trade-unions Act." 76

Section 6 of the Act regulated granting of ex parte injunctions. The section read as follows:

6(1) Notwithstanding the provisions of this or any other Act, no injunction before trial shall be granted ex parte by a Court to enjoin a trade-union or other person in respect to a strike or lockout that is not illegal under the Labour Relations Act, except

(a) to safeguard public order; or
(b) to prevent substantial or irreparable injury to property.

(2) An injunction granted ex parte under subsection (1) shall not be for a period longer than four clear days.

Section 6 placed limitations on the granting of ex parte injunctions. Clearly, though, the section leaves open access to this remedy for strikes and other acts which are offences under the Labour Relations Act. The labour movement campaigned actively against injunctions in the sixties and in 1967 the B.C. Federation of Labour hosted a conference in which labour and management expressed their perceptions of injunctions in industrial disputes. R.C. Haynes, then secretary-treasurer of the Federation, made the following statement at the conference:

When the judge is asked to make a decision on granting an injunction, he is actually being asked to decide victory or defeat on issues of social import on the terms of legal procedures and outdated precedents. Bear in mind that, on the present procedures and
affecting the issuance of injunctions, the judge is asked to do this without the help of witnesses, painstaking examination of evidence and cross-examination, but on affidavits often found later to be faulty and unreliable.

A management perspective was given at the conference by D.A.A. Lanskail from Forest Industrial Relations, the employers' association for the important logging and sawmilling industries. Lanskail said:

... we should review the all too frequent case of illegal--wildcat-- strikes during the term of a collective agreement... about the only compensation an employer derives from a labour agreement is the prospect of stability throughout its term. Wildcat strikes during its term in an improper effort to extort concessions that the Union is not entitled to, utterly destroys the stability intended by agreement... the injunctive remedy is sometimes appropriate for an aggrieved employer and it tends to contain or reduce the problem of wildcat strikes.

Lanskail's statement focused on a fundamental issue with injunctions in labour disputes. Employers had legal rights that protected them from labour instability for the term of a collective agreement. Justice is clear in a case when an injunction stops a wildcat strike that a Union instigated to win concessions outside of regular collective bargaining. On the other hand, it seems unjust when an injunction disarms employees who experience unfairness from the employer. Grievance procedures, unfortunately, may not always have been a viable, expeditious avenue for resolving a dispute. The problem with procedures for injunctions was they did not permit adequate flexibility to deal justly in labour disputes.

Mediation Commission Act, 1968

The Mediation Commission Act (MCA) established the Medi-
ation Commission, an administrative tribunal instituted "to dis-
pense binding decisions in disputes judged by the cabinet to be
contrary to the 'public interest'." Thus, despite its name,
the Mediation Commission represented a compulsory, normative
approach to industrial disputes.

The MCA empowered a mediation officer to decide "which
party shall bear the burden-of-proof of any fact or matter in
dispute." The Commission, after hearing a dispute, would hand
down a decision stating "fair and reasonable" terms with reasons
supporting the decision.

Hall anticipated problems with the MCA and indicated that
it would be successful in practice depending upon "the wisdom of the com-
mission and the goodwill of labour and management." Unfortunately,
the Commission did not become known for its wisdom and
labour was far from being benevolent towards the Commission or
the MCA. Tsong reported labour and management perceptions of the
MCA as follows:

Labour fought long and hard against Bill 33
\(\text{Mediation Commission Act}\). Almost every major
labour leader in British Columbia spoke out
against it... They organized protest demonstrations,
created a "Beat Bill 33" fund, and engaged in an
active campaign against the Bill. There were a
few labour leaders who supported the Bill, but
their voice was the voice of the minority. This
was not the first time that labour had fought
against new labour legislation... Like all previous
labour legislation introduced by the Social Credit
government, Bill 33 was a partisan bill. The Bill
was by a vote of 22-28, with all the NDP's and
Liberals of the opposition against the party in
power... Employers were overwhelmingly in favour of
the Bill. Not a single employer's voice was raised
against it.

The general institutional character of the Commission
also must have accounted for some of labour's ill will towards the MCA. According to Matkin:

The MCA required that the procedures by the new Commission were to be exercised with court-like formality...

That the government intended the labour court (the Commission) to follow a strictly judicial procedure was demonstrated by its first appointment of a chairman for the Commission. He was a Supreme Court Judge with little or no experience as an arbitrator or as a mediator of labour disputes. What he brought to the job was the status of a judge, rather than the skills of an expert in the field.84

The problems experienced by the Mediation Commission help explain why it was succeeded by a board composed of members experienced in industrial relations and labour law and which emphasized voluntary accommodation for dispute resolution. Perhaps due to the Chairman's lack of experience, many of his decisions were seen as unusual and were especially unpopular with labour. These decisions affected the Commission's credibility and, eventually, caused many unions to boycott its services by opting for ad hoc arbitration.85

In the area of strikes and picketing, the Commission emphasized compulsion and punitive remedies. The MCA retained the type of punitive measures already familiar from the Labour Relations Act for work stoppages during the term of a collective agreement and in violation of other statutory provisions. The major difference was that where an otherwise lawful work stoppage evolving from negotiations was declared in the public interest, an order was issued compelling workers to return to work. The law relied on court penalties, mainly fines, to ensure compliance. Injunctions and contempt of court charges could be imposed for disobeying the Commission's orders.
The failure of the MCA contributed to the defeat of the Social Credit Government at the polls. The NDP came into power in 1972 and the MCA Act was repealed soon after.

The condition of industrial relations in B.C. in the early seventies had reached a state where significant changes in public policy were necessary as relations between labour and government had deteriorated badly. During the time of the Mediation Commission, Hall suggested the "collective bargaining process was in a shocking state of disrepair...the system can only be put in order by a wholesale rethinking of the institutions involved...".

The Mediation Commission represented the earlier Social Credit government's attempt to reorganize the system based on compulsory arbitration. The Commission's lack of success and the change in the governing party to the New Democratic Party made 1973 a likely time to reshape public policy for industrial relations in the province. Given the association between the NDP and the labour movement, it could be surmised that the Labour Code embodies a partisan plan to tip the balance of power in labour-management relations in favour of unions. But when the Code was debated in the legislature, it was labelled "the dullest bill" for compared to previous labour legislation in B.C., it was accepted with little opposition as "a real honest attempt to solve problems."

This chapter summarized labour legislation in B.C. previous to the present Labour Code. The previous legislation was typically normative with compulsory delays on economic sanctions. Especially
after World War II, legislation pertaining to illegal work stoppages was punitive and the courts became more involved in labour disputes. The legislation contributed to hostilities and polarization between labour, management and government. It was apparent that by 1973 a dramatic change was needed for labour policy in B.C.
Notes, Chapter I


3 National Labor Relations Act, 1935.


5 Ibid.

6 H.D. Woods, Patterns of Industrial Dispute Settlement in Five Canadian Industries (Montreal, McGill Industrial Relations Centre, 1958) Part I. Woods describes two approaches which are reflected in Canadian labour policy for dealing with government intervention in industrial disputes. The "normative" approach places responsibility on a third party to judge the merits of the respective positions and make a decision, binding or unbinding, regarding what they should do. The decision is made based on some set of standards or norms, for example, wage settlements in related industries, cost of living increases, etc. The "accommodative" approach seeks to help the parties reach a mutually determined agreement. The intervener attempts to get the parties to settle on any terms regardless of his evaluation of what is right or fair.


8 Benjamin M. Selekman, Postponing Strikes (New York, Russell Sage Foundation, 1927), Chapter II.


10 Ibid.

11 Phillips, p. 47.

12 Toronto Electric Commissioners v. Snider (1925) A.C. 396.


Industrial Conciliation and Arbitration Act, R.S.B.C. 1947, c. 44, s. 58.

Woods, Patterns, pp. 12-21. Woods classifies industrial disputes into negotiation (interest) and application or administration (rights) categories.

See footnote 6.


Anton, p. 216.

Ibid.

Ibid., p. 217.

B.L. Adell, The Legal Status of Collective Agreements in England, the United States and Canada (Kingston: Industrial Relations Centre, Queen's University, 1970): 96


Curtis, p. 84 and Adell, p. 170.

Curtis, p. 84.

Ibid., Chapter II.


29 [1948] 1 D.L.R. 114 (B.C.)


32I.M. Christie, The Liability of Strikers in the Law of Tort (Kingston, Queen's University, 1967): Chapters III, IV and V.

33ICA Act, s. 35.

34ICA Act, s. 42.

35Ibid., s. 35.

36Curtis, p. 79.

37Ibid., pp. 84-85 and Carrothers, Collective Bargaining Law, pp. 332-333. In Seaboard Owners v. Cross et al. (1949) 3 D.L.R. 709, the court described a collective agreement as a "legal contract". In Machinists et al. v. Victoria Machinery Depot Company et al. (1953) 3 D.L.R. 414, the court enforced a jurisdictional claim contained in a collective agreement against an employer and another union. In Hume and Lumble Limited v. Local 213, International Brotherhood of Electrical Workers et al. (1954) 12 W.W.R. (N.S.) 321. Also, in G.H. Wheaton Limited v. Local 1598, United Brotherhood of Carpenters and Joiners and Local 2415, File Drivers, Bridge, Dock and Wharf Builders et al., the company succeeded in obtaining damages from the two unions due to a walkout over jurisdiction.

38Phillips, p. 146.


40"A judicial proceeding, order, injunction, etc., is said to be ex parte when it is taken or granted at the instance and for the benefit of one party only, and without notice to, or contestation by, any person adversely interested." (Black's Law Dictionary, 5 th ed. (St. Paul: West Publishing Co., 1979), p. 517.

41Labour Injunction, p. 193.

42Ibid., p. 195.

43Frankfurter and Greene, p. 201.

44Carrothers, Labour Injunction, p. 197.


46Labour Injunction, p. 205.
It is worthwhile to note that Carrothers also reported half of the employers' solicitors indicated that injunctions "restored the employer to a bargaining position of which he had been wrongfully deprived."

Section 50(b).

Section 61.


See Carrothers, Labour Injunction, Chapter 2 for an analysis of the Poje Case.
68 Ibid.
69 R.S.B.C., 1959, c. 90.
71 Carrothers, "B.C. Trade Unions Act", p. 298.
72 Phillips, p. 156.
73 See footnote 33.
74 See Arthurs, "Tort Liability" and Christie, The Liability of Strikers, pp. 170-173.
75 See footnote 33.
76 Carrothers, "B.C. Trade Unions Act", p. 325.
78 "Injunctions" in Ibid.
79 Matkin, p. 84.
80 Section 18.
81 Section 15.
84 Matkin, p. 84.
85 Ibid., pp. 86-90 and Tsong, pp. 760-761.
86 Ibid., p. 92.
87 "Contemporary Public Policy", p. 19.
CHAPTER II

PHILOSOPHY AND CHARACTERISTICS OF THE LABOUR CODE AND THE LABOUR RELATIONS BOARD

The Labour Relations Board's approach to illegal strikes is part of an overall scheme for labour policy emphasizing voluntarism and mutual accommodation. Matkin summed up the direction of the Labour Code as follows:

The basic approach of the new law was to reduce legalism in the response to labour-management controversies, follow a policy of non-compulsion, and to rely on mediative devices to protect the public interest.¹

For industrial disputes involving illegal work stoppages, the philosophy behind the Code manifested in a shift from enforcing compliance with punitive measures administered by the courts to an approach stressing voluntary mediation facilitated by an administrative tribunal. The Board's approach is based on recognizing illegal work stoppages as symptoms of underlying industrial relations problems instead of merely unlawful acts isolated from the dynamics in a collective bargaining relationship.² The new approach required the Board to be equipped with some innovative institutional features to support and encourage mediation and to correct for shortcomings of the courts in dealing with industrial disputes.

This chapter has three parts. The first part will present briefly the thrust of the Code as an expression of public
policy. This will be useful to place the Board's approach to illegal work stoppages in context with the general intent of the statute. The second part offers an explanation of the reasoning for the use of voluntary mediation in illegal work stoppages. The third part explains the characteristics of the Board's structure that facilitate its mediative approach.

The Labour Code

The Labour Code is a response to problems which have evolved from the general pattern of previous labour legislation in B.C. The pattern of previous labour legislation in B.C. as described in Chapter I has been to use legal compulsions to reduce the areas of industrial conflict left to free collective bargaining and to substitute various adjudicative institutions for the strike.

Criticisms of the previous pattern of labour legislation collectively suggest legal compulsions encumbered the collective bargaining system with unnecessary delays. Adjudicative or normative intervention effectively reduced the areas left to the parties for self-determination of the rules of the work place.

The Code embodies an effort to free up and facilitate
the collective bargaining process by integrating all areas of industrial disputes under a central policy emphasizing voluntary accommodation. The certification process includes attempts by the Board to mediate in occasional recognition disputes where an employer has actively resisted union representation. Multi-stage compulsory conciliation procedures were abandoned in favour of a one-stage voluntary mediation service, although the Code does set out steps for collective bargaining. Strikes are not restricted after a relatively short period provided for mediation. The traditional prohibition on strikes during the term of a collective agreement is retained, but the parties are encouraged to use various provisions, including mediation of grievance disputes by industrial relations officers employed by the Ministry of Labour. This is an effort to alleviate pressure on the formal grievance arbitration process. For work stoppages in violation of the statute, the subject of this thesis, the Board attempts to resolve the disputes with informal mediation rather than proceeding to a formal hearing and adjudication.

The above description of the Code's provisions demonstrates the general direction of the statute towards voluntarism and accommodation. Actually, the innovative thrust of the policy reflected in the Code is composed as much of changes in the process of administering the policy as it is with substantive changes in the law. The third part of this chapter will highlight significant features of the administration of the Code. It should be clear, though, that the intent of the Code is to
remove legalism so the parties can resolve conflict and establish terms and conditions for work in an atmosphere conducive to collective bargaining. The mediative role of the Board in disputes involving illegal work stoppages is one manifestation of the general intent underlying the Code.

**Reasoning for the Board's Approach to Illegal Work Stoppages**

The Board's use of voluntary mediation to resolve illegal work stoppages is partly founded on understanding the collective bargaining relationship as an ongoing interaction between the parties. A useful analogy for illustrating the continuous nature of the collective bargaining relationship is to compare the parties to a family. The certification process is clearly comparable to marriage and the subsequent day to day interchanges between the parties make varying degrees of conflict inevitable in both institutions.

In the same way that it would be insufficient to consider a family dispute separately from the pattern of relations between the marriage partners, the continuous nature of the collective bargaining relationship makes it difficult to isolate a wildcat strike or other forms of illegal job actions from the dynamics of relations between the parties and the particular circumstances leading up to the work stoppage. The latter perspective is the primary distinction between the Board's approach and the courts' involvement in illegal work stoppages. A major
criticism of the courts was that they were constrained to dealing with illegal strikes strictly according to the "rule of law." Judges were compelled to make either/or decisions based solely on whether work stoppages were unlawful. The problem with the courts' approach was that it failed to take into account that often illegal work stoppages are symptoms of underlying tensions between the parties and that rarely are the hands of either side entirely clean.\(^1\) Weiler explained this as follows:

Labour disputes within an ongoing collective bargaining relationship..., are rarely black and white, with one side totally in the right and the other totally in the wrong. To deal with a dispute as though it were "black and white" might give the winner of the case a short-term victory, but one which is rarely helpful even to that party in the long run. And the further difficulty is that after awhile, even a victory is only a paper victory. It is very easy... to read the statute, see that a strike during the term of the collective agreement is illegal, and then write an order saying that the strike must end immediately. It is a lot harder to enforce that order against an adamant trade union.\(^2\)

The underlined sentence in Weiler's statement directs attention to another inherent deficiency of court involvement in labour disputes which relates back to the nature of the collective bargaining relationship. This deficiency indicates there is no guarantee of compliance with an adjudicative order. Non-compliance was evident from the courts' experience under the Labour Relations Act\(^3\) in the unfortunate experience of the Mediation Commission,\(^4\) and in the dramatic defiance of the present Board's orders in the 1976 Alcan strike.\(^5\) Non-compliance with a legal order is an overt sign of serious tensions between the parties or, perhaps, one party believes it is right in the dispute and
the legal order is wrong. Regardless, if non-compliance resulted in criminal prosecution, tensions between the parties were no doubt intensified. As Weiler said, "Putting union leaders in jail poisons the relationship between the employees and the employer, and often confirms the alienation of the employees from the legal system."¹⁸

Defiance of legal orders and criminal prosecutions are the extreme cases. Punitive remedies, such as injunctions, fines and damages, in less serious cases probably had a similar impact. If the problem causing a dispute was not solved, employees who were penalized may respond with slow-downs, manipulation of the hiring hall, even sabotage of sensitive production lines. The point is that the courts' involvement was a deteriorating influence on relations between the parties. The impact of punitive remedies applied to one area of conflict, illegal strikes and picketing, must have overlapped into other areas of involvement between the parties. Plainly, it would be an impediment to conduct bargaining under the shadow of smouldering hostilities caused by court action. Thus, treating illegal work stoppages purely as legal events ignored the ongoing nature of the collective bargaining relationship.

The above description of the courts' shortcomings in dealing with illegal work stoppages helps to focus on the reasoning for the Board's use of voluntary mediation. The Board's approach revolves largely around understanding inherent advantages with mediation as a mode of intervention in industrial disputes. Weiler explained that mediation is the best type of government inter-
vention to encourage the parties to develop a relationship conducive to formulating their own rules for regulating continuous interaction and conflict. To quote Weiler:

"The assumption is in a collective bargaining relation, the best means of settling the inevitable human conflict is the give and take of compromise and accommodation, not the issuing of legal edicts. The union and the employer who are parties to the immediate proceeding will have to live together long after the case is over. Our objective is to provide the optimum basis for settlement of the controversy so that it does not continue to simmer perhaps to recur in a different guise later on."

The advantage of mediation implicit in Weiler's statement is that the parties who are mutually dependent find it much easier to "live together" under rules they agreed on after mutual compromise. It follows that the task for third party intervention is to facilitate and encourage the parties to perceive one another in a light sufficiently favourable for making concessions leading to a settlement. The capacity to reorient perceptions of each other is what Harvard Professor Lon Fuller described as "the control quality of mediation." To quote Fuller:

"... the central quality of mediation is its capacity to reorient the parties toward each other, not by imposing rules on them, but by helping them achieve a new and shared perception of their relationship, a perception that will redirect their attitudes and dispositions toward one another."

"This quality of mediation becomes most visible proper function of the mediator turns out to be, not that of inducing the parties to accept formal rules for the governance of their future relations, but that of helping them to free themselves from the encumbrances or rules and of accepting, instead, a relationship of mutual respect, trust and understanding that will enable them to meet shared contingencies without the aid of formal prescriptions laid down in advance."

Thus, the advantage of mediation is that it attempts to help the parties find workable solutions to problems causing
industrial disputes by restoring communication and breaking down hardened positions. Most desirable results are achieved when the process instills a rapport between the parties conducive to problem-solving. Ideally, both parties make compromises and each party comes away with a feeling of winning. Clearly, if this approach is successful, the results are more constructive than punitive remedies imposed by the courts.

The Board's emphasis on informal, mediation does not imply that policy represented in the Code condones illegal work stoppages. The sections of the Code are quite explicit prohibiting strikes during the term of the collective agreement, and before compliance with procedures for strike votes and notice. Moreover, the Board has more remedial powers to make adjudicative orders than any other labour board in Canada. These remedial powers will be discussed later in this chapter.

The Board's mediative approach to illegal work stoppages is based on understanding the ongoing nature of the collective bargaining relationship. From this perspective, encouraging mutual accommodation between the parties in an effort to find solutions to underlying problems in the disputes is more constructive than treating them purely as unlawful acts and enforcing the rule of law with punitive remedies. The Board's approach to illegal work stoppages supports the general intent of the Code to promote and facilitate conditions favourable for collective bargaining.
Characteristics of the Labour Relations Board

The Code's pervasive emphasis on voluntary accommodation required some innovative institutional arrangements for implementing and administering the new policy. The Labour Relations Board was structured to facilitate voluntary mediation "in a setting where the parties feel as comfortable as their lawyers in trying to find an overall solution which both sides can live with." For disputes involving illegal work stoppages, this resulted in a move away from the formal and legalistic complexion of court proceedings to a more informal, nonlegalistic process designed to reduce adversary roles and encourage compromise. The Board's experience is that it is able to achieve voluntary settlements in about two-thirds of the cases involving illegal work stoppages. The Board's significant discretionary powers enable it to adjudicate and make formal orders in cases where a voluntary settlement is not achievable or appropriate.

Characteristics of the Board's structure are perhaps the major innovations supporting its mediative role in illegal work stoppages. These characteristics reflect the commitment of the Code to an overall policy of voluntary accommodation and an effort to correct the shortcomings of the courts. Weiler provided a useful framework for analysis of the Board's structure along three dimensions: jurisdiction, composition and procedures. These dimensions will be used to present characteristics of the Board's structure which facilitate its role in dealing with illegal work stoppages.

Jurisdiction

The Board has exclusive jurisdiction to hear and deter-
mine applications or complaints and to make orders under the provisions of the Code. The Code explicitly provides the Board with jurisdiction over strikes and picketing as follows:

... the board has and shall exercise exclusive jurisdiction in respect of...
(c) any application for the regulation, restraint, or prohibition of any person or group of persons from
  i) ceasing or refusing to perform work or to remain in a relationship of employment; or
  ii) picketing, striking, or locking out; or
  iii) communicating information or opinion in a labour dispute by speech, writing, or any other means.26

The Code also restricts the jurisdiction of the courts in labour relations matters, except in cases where violations of criminal or tort law have occurred causing physical damage to a person or property.27

The Board's exclusive jurisdiction places it at the forefront in a trend across Canada of expanding jurisdiction and remedial powers of labour boards.28 This trend has been attributed largely to recommendations made by the Woods Task Force in the late sixties.29 However, the concept of labour boards having wider jurisdiction and greater remedial authority is included in writings by Logan, Christie and in the Rand Report.30

Several reasons are persuasive for placing strikes and picketing under the jurisdiction of the Board.31 First, the Board's exclusive jurisdiction centralizes responsibility for labour policy. Traditionally, responsibilities were fragmented with certification allocated to labour boards, administration of the collective agreement to arbitration boards, and strikes and picketing to the courts. In recognition of the continuous nature
of the collective bargaining relationship it is desirable to have policy administered and developed in a more complete manner. The rationale for the Board's comprehensive jurisdiction was a desire for more cohesive, integrated policy for areas under the Code, including strikes and picketing. Clearly, the emphasis on voluntary accommodation intended by the Code would not have been possible if jurisdiction over labour relations areas had remained fragmented.

A second reason for including illegal work stoppages under the Board's jurisdiction is the experience members of the Board develop in handling such disputes. To quote Weiler:

Illegal work stoppages are the kind of tense situation which require a fine touch and a delicate judgment. It is only natural to assume that the members of the Board, who are embraced in these cases all the time, will better sense the proper response at the proper moment.32

Not only should the Board members acquire familiarity in handling the disputes, but it is also suggested they become acquainted with the personalities involved, thus enabling them to anticipate responses.33 The experience of Board members clearly contrasts with that of judges who handled a range of matters and perhaps only deal with labour disputes sporadically.

Another reason is the Board's general jurisdiction permits it to make decisions which protect the interests of both unions and management. Whereas previously, courts usually issued ex parte injunctions on behalf of employers, and labour boards awarded certification to unions, the Board deals with illegal work stoppages and certifications. This must contribute to the Board's authority and the acceptability of its policies. As Hall remarked, "... there is no way either party
can avoid making its peace with the Board in a responsible way, at least not over the long haul." In B.C., where the law had become a fragile instrument for controlling industrial disputes, this seems an important reason for transferring jurisdiction to the Board.

With exclusive jurisdiction over labour relations matters, it follows the Board would be equipped with greater remedial powers for dealing with industrial disputes. The remedies available to the Board give it flexibility for meeting the circumstances of particular cases and augment the Board's capabilities to achieve voluntary settlements. Section 28 of the Code has been described as "the broadest statement of remedial authority in Canada." The section empowers the Board to issue cease and desist orders against parties acting in violation of a provision of the Code. The section also enables the Board to make affirmative orders directing a party to do anything for the purpose of complying with a provision of the statute. Another important provision in the remedy gives the Board discretion to refuse to issue an order where it considers the conduct of the applicant to be improper. The effect of the remedy on the Board's mediative role will become more apparent in the description of the Board's procedures later in the chapter. Basically, the remedial powers provided by section 28 create an element of uncertainty about the results of a complaint which may encourage the parties to make compromises rather than pursuing a formal order.

Composition

The Board is based on the tripartite model. Presently,
there are a chairman and five vice-chairmen, six members representing employers and six members representing employees. The composition of the Board helps to facilitate its mediative role in several ways. The role of the chairman has particular significance in view of the traditionally poor relations between government and labour in B.C. Under previous legislation, the Chairman was Deputy Minister of Labour and, therefore, the old Labour Relations Board was not viewed as independent of government. The roles of the chairman and the deputy minister were distinct in nature, a major difference being the Chairman's adjudicative authority. In regards to the old Board, Hall said: When you appeared before the Board, you had no way of knowing which "hat" the Chairman was wearing - and in fairness to the Chairman, he would have to be schizophrenic to keep the two roles separated in his mind.

The position of Chairman of the present Board has been separated and made independent. This would seem a necessary step to bolster acceptability of the Board's efforts to promote voluntary mediation in a province where government had not been viewed favourably by one side or the other.

Since the members are selected mainly because of their expertise and stature in the industrial relations community, an important advantage is their familiarity with the mediation process. The industrial relations experience they bring to the Board should have avoided the credibility problems that affected the earlier Mediation Commission.

Another advantage is the parties find themselves in a relatively informal setting. Complaints regarding illegal work
stoppages are typically dealt with by members and staff who are not lawyers. This reflects the Board's commitment to maintain a less legalistic identity and moves away from the formal, judicial aura of a court.

It is worthwhile to note the tripartite model has been criticized for fear of members' partisanship adversely affecting the impartiality of labour boards. The Wood's Task Force anticipated this problem particularly where a board is empowered with significant discretionary powers. The Task Force recommended a public member model supported by an advisory group composed of persons with expertise in industrial relations. However, Weiler observed a definite lack of "idealistic posturing" among the B.C. Board members. Indeed, he remarked the Board "demonstrated that tenured judges have no monopoly on impartial disposition of emotion-laden legal disputes."

Procedures

Procedures for handling individual cases are probably the most important feature of the Board's structure for handling illegal work stoppages. The procedures are designed with the purpose of encouraging voluntary settlements without having to resort to formal adjudication. The Board's approach for disposing of individual complaints has removed the main causes of dissatisfaction with court procedures for injunctions. Previously, applications for injunctions were heard by a judge who typically had no special background or experience in labour relations. The application was made by the complainant's lawyer and this together with evidence gathered on short notice by the opposing counsel -- unless the application
was *ex parte* in which case the defendant's evidence would not be heard -- would be the basis for the judge to determine whether the work stoppage was in violation of the law. He would grant or withhold an order accordingly. From the perspective of policy embodied in the present *Code*, the basic flaw with the court's procedure was the work stoppage was treated strictly as a legal event isolated from the causes for the dispute. The Board's procedures hinge on a perception of illegal work stoppages as a symptom of ailments in the collective bargaining relationship and that the legal system as much as possible should grapple with the concerns of both parties in the interests of "curing" those ailments.

From the regulations outlining the Board's procedures, the Board appears to proceed in a manner resembling the courts. For example, if an employer has a complaint concerning a strike while a collective agreement is in force, before pre-strike voting or before the 72 hour strike notice required under the *Code*, an application for a hearing is made to the Board with the nature of the dispute in the form of a sworn statutory declaration. This is served on the defendants and designates a date and a time at which the complainant will appear for a hearing.

The Board's response to the complaint, however, is very different than the courts. But before outlining specific stages and options in the Board's procedures, it is important to note that a significant, but indeterminate, number of complaints concerning illegal work stoppages and other matters are made to the Board without strictly following the regulations. Weiler gave the following example:

It is not uncommon for the Board to receive a phone
call telling us about the problem of a strike or a
picket line, and for us to dispatch an officer
immediately to the scene, who resolves the dispute
satisfactorily and ends the work stoppage: long
before the employer could consult a lawyer, a com-
plaint be filled and served, and an order issued...

A telephone call could also result in an informal hearing
at the Board without formal processing of a complaint. If one
of the special industrial relations officers (IRO) assigned to
the Board from the Department of Labour has a good rapport with
the parties in a collective bargaining relationship through prior
dealings, the Board convenes an informal hearing. In other cases,
telephone conversations between the parties and the Board's reg-
istrar may reveal a simple solution or recognition that one party
is clearly in the wrong, resulting in a return to work and with-
drawal of the complaint. The point is the Board's efforts to
achieve voluntary settlements are not constrained by rigid, formal
procedures.

The Board exercises a large degree of control in chan-
nelling disputes into a particular procedure. As soon as a com-
plaint is received, it is reviewed and evaluated with participa-
tion by industrial relations officers or members of the Board who
may have some experience with the situation. The parties or their
counsel may be contacted to obtain further details. Depending on
the circumstances, the complaint may proceed to one of several
possibilities: further investigation and possible mediation by an
industrial relations officer; an informal, mediative hearing with the
registrar (who is a vice-chairman), a vice-chairman, a board mem-
ber, a legal assistant, or most frequently a special industrial
relations officer; or, a formal, adjudicative hearing before a
The informal hearing is the mainstay for the Board's mediative role; however, attempts to mediate a settlement may continue into the formal hearing. These stages are not necessarily preclusive or successive, but it is useful and generally accurate to see the process beginning with the IRO's investigation and ending with a formal hearing.

Complaints concerning illegal work stoppages are rarely mediated by a regional IRO during an investigation. Yet, this investigation has some direct benefits to the Board's mediative role and overcomes one of the major deficiencies in court procedures for injunctions. A major benefit is the speed which the Board is able to respond to a complaint. The nature of B.C.'s economy, with resource-based industries with operations in rural areas, means that illegal work stoppages occur away from the Board's offices in Vancouver. The Board uses the IRO's who can be sent immediately to the scene of the work stoppage and report back by phone giving a description of circumstances in the dispute, thus enabling the Board to make an informed decision about how to proceed with the complaint. The IRO's investigation is clearly an improvement over court injunction procedures when a judge made decisions based on information gathered on short notice and mainly from the side of the complainant.

The informal hearings allow for a private airing of views by both parties without fear of reprisal by the opposition, or one's union, and without the intimidation in a typical legal setting. The primary objective of the informal hearing is to en-
courage the parties towards a settlement of the dispute, ideally, so it does not continue to smoulder and perhaps rekindle future conflict. The entire lay-out of the Board seems directed at optimizing the effect of these informal hearings. The Board itself is located in what could be perceived as a "neutral" part of the city, away from the business towers in the city centre and away from any concentration of union headquarters. The general setting and decorum at the Board seem suitable for government offices concerned with some administrative function more than a judicial body. During the hearings, the parties typically are led into meeting rooms deliberately lacking the formal aura of a courtroom or legal chamber.

The lay-out of the Board is obviously intended to provide a setting for encouraging the parties to relax from adversary roles that characterized the traditional judicial process. It should not be construed from the informal atmosphere that the Board's mediatve efforts rely on passive persuasion for getting the parties to soften intransigent positions. At this point, Arthurs' statement summing up the philosophy of the Code is useful for implying the character of the Board's informal hearings:

... it is evident the architects of the Code intended not so much to provide "cures" as to urge, cajole, even coerce, the parties, in their own interest and in the public interest, to exercise self-restraint and to practice mutual accommodation.50

Arthurs' summary especially applies in informal hearings where the Board can be assertive with its authority in prompting the parties towards compromises. In the case of an illegal strike, the union may be goaded by suggesting the issuance of a cease and
desist order. With an employer-complainant, a vital facet encouraging compromise is the work stoppage may continue during the mediative process. The Board has discretion to determine if and when to assemble a panel and schedule a formal, adjudicative hearing. Thus, the employer may be experiencing the economic impact of the work stoppage while the Board is attempting to mediate a settlement.

Delaying a formal hearing while attempts are made to mediate a settlement is a possible flaw with the Board's procedures. It is reasonable to expect that an employer may not be eager to participate during the Board's attempts to mediate while his operations are shut down due to an illegal strike. In a sense, the employer's legal rights are not being strictly upheld. He finds himself coerced into attending informal hearings because the Board will not immediately convene a formal hearing and issue an order against the work stoppage. Meanwhile, economic pressures from the work stoppage may cause him to make concessions he would not have made otherwise. In a dispute where the employer has "clean hands", the informal hearings can provide an unfair advantage to the union.

Clearly, the onus is on the Board to use maximum discretion in channelling disputes into different procedures. The Board has a delicate role to uphold the statutory provisions against illegal strikes and, concurrently, administer labour policy that emphasizes informal mediation even during illegal strikes. The Board's success depends on how well it handles this somewhat paradoxical role in the eyes of employers and unions.
When a voluntary settlement is not achievable or appropriate, disputes proceed to a formal hearing by a panel of the Board. These hearings are quasi-judicial in nature in that evidence is given under oath and is subject to cross-examination, argument from counsel and the issuing of a binding decision supplemented with written reasons. If either party wishes reconsideration of the decision by a different panel of the Board, they must apply within fifteen days. The Board has discretion to convene formal hearings on short notice.

The formal hearings are adjudicative, but in several ways they are an integral part of the Board's mediative approach. One way is the Board's practice to continue efforts to mediate a settlement during a formal hearing. Another way is the Board's adjudicative powers may provide an incentive for the parties to compromise because of apprehension over a decision made by a third party. This is supported with the variety of alternatives, or "legal resources" as Weiler called them, available to the Board for applying different kinds of orders. The alternatives produce uncertainty about exactly what the Board will do, thus enhancing the possibilities for a voluntary settlement. Some of these alternatives are as follows:

(1) For an illegal and clearly unwarranted strike, a cease and desist or other appropriate order under section 28 would be issued.

(2) For a work stoppage evolving from employee dissatisfaction with an ineffective and backlogged grievance procedure, the Board can make different orders under section 97, including immediate submittance of a grievance to a specified stage in the grievance procedure.
(3) In granting an order, the Board may impose certain conditions binding on either of the parties under section 29.

(4) The Board may recommend to the Minister the appointment of a special officer with unique authority under part VII of the Code.

The above provisions are a clear move away from the punitive measures used by the courts. Even in the issuance of formal orders, the Board is afforded measures which are designed to alleviate tensions in the collective bargaining relationship as opposed to the antagonistic effect of court remedies.

Nevertheless, the Board is also provided with authority to give consent to sue for monetary damages as a consequence of an illegal work stoppage or picket. The courts retain jurisdiction for awarding and fixing the amount of damages.

The Board's efforts to mediate settlements and the different alternatives available for making orders possibly alleviate the negative impact of cease and desist orders in disputes where these orders are necessary. Weiler explained the experience with orders issued under the Board's format is they "are obeyed in spirit as well as their letter." A strike against Alcan in Kitimat in 1976 was an important exception, since employees did not comply with the Board's orders to cease and desist from conducting an illegal strike. Alcan approached the Board on several occasions seeking a decision which would permit discipline of the employees involved in the strike.

The facts of case are complex, but the basic problem which confronted the Board was to maintain the credibility of its orders and, at the same time, to avoid imposing punitive remedies which were neither constructive for improving employer-employee relations
at Alcan, nor "judicious" in light of all the facts in the case. The Board's decision was to require union leaders each to make payments of $500 to the company over an extended period of time. This was intended to serve as a "reminder" that the Board's orders cannot be openly flouted. The payments may seem to contradict a previous statement about the Board's lack of authority to award for damages. One Board member, in fact, dissented from the decision on the basis that the Board exceeded its jurisdiction as defined in the Code.

The Alcan case is a reference for some important points on the Board's mediative role. First, the Board is no panacea for the problem of illegal work stoppages. All disputes cannot be settled with mediation, and binding orders do not guarantee compliance. The second point, on the other hand, is that the general remedies, afforded to the Board largely by section 28 (although the Alcan decision was based on section 27), are sufficient so defiance of the Board's orders is not a frivolous action. This supports the suggestion that the Board's remedial power provides an incentive to make accommodations during the mediation stage of the complaint process. Finally, the Alcan decision demonstrates that even when facts in a dispute call for adjudicative orders and punitive remedies, the Board proceeds within the same general framework of policy as in cases resolved through informal, voluntary mediation. This framework revolves around applying the most effective intervention for meeting the circumstances in the dispute and, in the interests of the public and the parties, promoting conditions between the parties conducive for collective bargaining. Obviously, a serious situation
like the Alcan strike will leave some permeating hostilities between the parties. But the Board's solution seems more constructive for the long term bargaining relationship than the imposition of graver penalties imposed by the Courts.

The Board's exclusive jurisdiction centralizes responsibility for administration of labour policy resulting in a more cohesive and integrated effort to handle areas under the Code, including strikes and picketing. The composition of the Board forms a hybrid of legal and industrial relations expertise bringing credibility, familiarity and consistency to the mediatative process. The Board's procedures overcome inherent deficiencies in the judicial process for handling industrial disputes and facilitate mediation by emphasizing informality, flexibility and investigation. The procedures are reinforced with significant adjudicative and remedial powers.

Chapter Summary

The Board's mediative role in disputes involving illegal work stoppages is part of a general plan to promote free collective bargaining by reducing the extent of compulsory, normative or adjudicative intervention and encouraging voluntary mediation for dispute resolution. The plan is based on seeing accommodative problem-solving as the best means for resolving industrial disputes, largely due to the ongoing nature of the collective bargaining relationship. The courts ignored the nature of relations between management and labour by treating illegal work stoppages as legal events isolated from causes behind the disputes. Punitive remedies were antagonistic and perhaps were counterproductive.
to the collective bargaining process. The Board's approach addresses illegal work stoppages as manifestations of underlying tensions between the bargaining parties.

The Board is structured to facilitate mediation with exclusive jurisdiction and broad discretionary and remedial powers. The Board's composition combines legal and industrial relations expertise to establish credibility and familiarity with the mediatative process. The Board's procedures are flexible and informal to avoid the judicial atmosphere of the courts, and to encourage relaxing of hardened positions and compromise.
Notes; Chapter II


2 Ibid., p. 93.


6 Mediation in the certification process is not evident in provisions for employee representation in the Code (Part I). According to Paul Weiler, in his address to the Industrial Relations Management Association of B.C., Harrison Hot Springs, B.C., 27th February 1975, the proportion of certification cases involving employee interference is less than fifteen percent. In these cases, the Board will "make a determined effort to secure voluntary settlement of such disputes."

7 The Code, sections 69, 80, 81. See Arthurs, "The Dullest
Bill," pp. 291-294 for an analysis of collective bargaining provi-
sions in the Code.

8 The Code, section 69(3).

9 Labour Relations Board of B.C. "Statement of Policy,  
Section 96 of the Labour Code", Canadian Labour Relations Board  
Report 17 (1976); Paul C. Weiler, "Avoiding the Arbitrator: Some  
New Alternatives to the Conventional Grievance Procedure", Arbitra-
tion - 1977 Proceedings of the Thirtieth Annual Meeting National 
Academy of Arbitrators eds. B.D. Dennis and G.G. Somers (Wash-

10 See Appendix A for the relevant sections of the Code.

11 Arthurs makes this point in "The Dullest Bill", see p. 281.

12 Paul C. Weiler, "The Administrative Tribunal: A View  

13 This point is taken mainly from and address by Paul  
Weiler to the Industrial Relations Management Association of  

14 Ibid.

15 Carrothers, Labour Injunction, Chap. II.

16 Matkin, p. 80-92.

17 Alcan Smelters and Chemicals Ltd. and Canadian Associa-
tion of Smelter and Allied Workers, Local No. 1, B.C. 44/76.

18 Paul C. Weiler, "The Virtues of Federalism in Canadian  
Labour Law" McGill University Twenty-Fifth Annual Conference, In-
dustrial Relations Centre, 1977 (Montreal, Quebec: 1977), p. 70.


20 Lon Fuller, "Mediation: Its Forms and Functions",  

21 See Appendix A.

22 Section 28. See D.D. Carter, The Expansion of Labour  
Board Remedies: A New Approach to Conflict (Kingston, Industrial  
Relations Centre, Queen's University, 1976).


24 Labour Relations Board of B.C., Annual Reports, 1974-1978.

25 Weiler, "Administrative Tribunal".
Section 31.

Weiler briefly distinguishes the courts' jurisdiction in labour relations matters in an address to the Industrial Relations Management Association. See note 14.

28 Carter.

29 Woods Report, p. 207.


31 These reasons are mainly derived from Weiler's article, "Administrative Tribunal".


33 Ibid.


35 Carter, p. 2.

36 See Appendix A.

37 The Code, section 12.


41 Matkin, p. 86-90 and Tsong, pp. 760-761.

42 Weiler, "Administrative Tribunal", p. 199.


46 Weiler, "Virtues of Federalism", p. 68.

47 Section 13 of the Code defines a panel as follows:

"(a) the chairman or a vice-chairman; or
(b) the chairman and two or more vice-chairman; or
(c) the chairman, or a vice-chairman, and members, and one member representative of employers; or
(d) the chairman, or a vice-chairman, and members, equal in number, representative of employers and employees respectively."
Weiler, "Administrative Tribunal", p. 204. It should be noted that the IRO's working in regional offices have responsibilities encompassing the entire range of employment-related matters in the province, e.g. minimum wage standards, human rights, etc. Their role is more varied than that of the special officers assigned to the Board in Vancouver who deal primarily with matters under the Labour Code.

49 Ibid., p. 11.
51 See note 19.
52 Section 32.
53 "Virtues of Federalism", p. 69.
CHAPTER III

RESEARCH QUESTIONS

This chapter develops five research questions about aspects of the Labour Relations Board's approach to disputes involving illegal work stoppages. The questions provide the structure to examine the parties' perceptions toward the Board in handling illegal work stoppages. Each question is followed by rationale drawn from the background in the preceding two chapters which covered previous labour legislation, and underlying philosophy and characteristics of the Board.

The Board's success relies greatly on recognition that the approach embodies a fair and expeditious method for handling disputes involving illegal work stoppages. If the Board's approach is not perceived as fair and expeditious, then it is possible for the parties to undermine the Board by boycotting or withholding serious participation in voluntary, informal mediation. The dynamic nature of industrial relations and unique characteristics of specific disputes and collective bargaining relationships make perceptions of individuals involved in disputes appropriate measures of the Board's performance. Also, B.C.'s history of antagonism between labour and management and government over court involvement in industrial disputes make the parties' perceptions valuable for assessing the Board's approach as an alternative to the traditional remedies used by the courts.
1. **Does the Board Channel Disputes Involving Illegal Work Stoppages into Appropriate Procedures?**

An important feature of the Board's approach is flexibility in handling complaints. After an initial evaluation of a complaint by Board members or staff who might be familiar with the situation, an industrial relations officer may be assigned to investigate and possibly mediate a settlement, an informal mediation hearing could be convened; or the complaint could advance to a formal, adjudicative hearing. Although the process tends to start with an investigation and conclude with a formal hearing, the sequence is flexible.

The Board has to exercise discretion in channelling disputes to appropriate procedures. For the Code to achieve the intent of those who drafted it, the parties must perceive that complaints are handled appropriately in relation to circumstances in particular disputes.

It must be pointed out, however, that the parties' respective objectives may conflict with the Board's objectives for selecting certain procedures for processing a complaint. For example, an employer may apply to the Board for a cease and desist order against an illegal job action without ever intending to make compromises in an informal hearing. As another example, a union might appear at the Board, as a result of an illegal strike, with intentions of gaining concessions from an employer in an informal hearing it could not gain any other way. It is important that the Board's procedures are generally perceived as fair and appropriate, despite specific objectives one party may have in a particular dispute.
Employers - Appropriateness of the Board's Procedures

Compared to previous legislation with its ex parte injunctions, employers could be expected to perceive the Board's procedures for informal mediation as inappropriate in disputes involving illegal work stoppages. They would tend to see a delay to a cease and desist order, while the Board conducts an informal hearing, as a denial of their legal rights and an unfair advantage to the union. The employers may be undergoing significant economic pressure from the work stoppage while informal mediation is being conducted by the Board. They find themselves encouraged or even coerced by delay of a formal order into making concessions and no possibility of receiving compensation for their losses. They might also retain ideas about "irreparable harm" and compensable damages from the earlier pattern of court involvement in industrial disputes and question why their rights under law are not enforced.

Another reason why employers could perceive the Board's procedures as inappropriate is they believe they are right in the dispute and have been injured by the work stoppage. The Board may attempt to mediate in an informal hearing where the employer believes there are no substantive issues to resolve, but that the union is manipulating the Board. This situation could possibly result from the Board having insufficient knowledge about a dispute.

Other employers might perceive the Board's procedures as appropriate in disputes where informal mediation resulted in a
settlement and their costs from the work stoppage and concessions to the union are insignificant relative to the value placed on settling a dispute without a formal, legal order. These employers may or may not have applied to the Board for the only purpose of obtaining an order. For example, they may have applied or requested the Board's involvement as a facesaving device or to use the Board as a mediator in a jurisdictional dispute between two unions that resulted in an illegal strike. They may also perceive informal mediation as a better method of dispute resolution than a formal order from the perspective of long term relations with their employees.

Employers would likely perceive the Board's procedures are appropriate for complaints that proceed to a formal hearing. If an employer prefers to settle the dispute informally, the Board is unlikely to convene a formal hearing. This would generally be contrary to the philosophy underlying the Code. So it is improbable that an employer would find himself in a formal hearing that he thinks is inappropriate.

Unions - Appropriateness of the Board's Procedures

Regardless of what procedure or pattern of procedures the Board selects, unions are in a better position under the Board's approach than when illegal work stoppages were under the jurisdiction of the courts. The Board's procedures contain means to correct the following deficiencies of the courts' procedures which attracted criticisms from labour: the Board investigates the underlying causes in disputes; orders are never issued on ex parte allegations of facts; and, unions and employees are not
subjected to punitive common law remedies. Unions could be expected, therefore, to perceive the Board's procedures as appropriate in disputes involving illegal work stoppages.

Unions might have a preference for informal hearings. Obviously, unions stand to gain more in concessions from an employer while a strike is in progress. When a formal hearing is convened, the possibility is closer that a cease and desist order will be issued against the strike.

2. Does the Board Respond With Adequate Speed to Complaints Concerning Disputes Involving Illegal Work Stoppages?

Illegal work stoppages tend to be intense situations which necessitate speedy mechanisms for dispute resolution. Employers want immediate relief from economic pressures resulting from the job action and the union or employees are usually seeking some concession from the employer to solve a problem which they perceive is affecting the workplace. The Board's speed in responding to complaints is especially important due to the nature of major industries in B.C. with operations in outlying areas.

For the Board's approach to be successful, it is important that the parties, especially employer-complainants, perceive it as an expeditious means to resolve disputes. Sections 79 - 81 of the Labour Code clearly define work stoppages that are illegal and complainants will pursue enforcement of the law with formal orders unless the alternative method of informal mediation is recognized as fast and effective.
Employers - Speed of the Board's Response to Complaints

The availability of IRO's, the flexibility and informality in the Board's procedures for processing complaints, and the apparent readiness of Board members to go to the location of a dispute are indications that the Board is equipped to respond to complaints fast enough to satisfy employers. Therefore, employers should regard the Board's speed as adequate in responding to complaints about disputes involving illegal work stoppages.

On the other hand, employers might see the Board as speedy with informal mediation but not fast enough in convening a formal hearing and issuing an order in cases where informal mediation is unsuccessful. The Board attempts to mediate a solution in the majority of cases involving illegal work stoppages and may continue to mediate, although the employer is steadfast in his position. Thus, a formal hearing is delayed and the length of the work stoppage is extended. Of course, the Board's objective is usually to mediate a settlement and the economic pressure of the work stoppage encourages an employer to make concessions.

It is unlikely that employers would feel the Board is too fast with a formal hearing. It is to an employer's advantage for the Board to convene a formal hearing as soon as possible, especially if the work stoppage is causing significant economic pressure.

Unions - Speed of the Board's Response to Complaints

Unions could be expected to view the Board's speed as adequate in responding to employers' complaints about illegal work
stoppages. The explanation is the same for unions as it is for employers that the Board is structured to respond quickly to complaints.

Under some circumstances, unions might favour a prompt attempt at informal mediation by the Board. This would happen in cases where the employer is determined to withstand a work stoppage until the Board issues a cease and desist order. A union may be losing support because members are experiencing financial pressure or because the heat of the moment in a spontaneous wildcat has passed.

In other cases, unions might view the Board as being too fast in responding to complaints. The longer the Board takes to respond to a complaint, the greater the impact of the work stoppage on the employer. A union's leverage is limited because the work stoppage is illegal, but even a one day delay could place significant pressure on some employers. Thus, unions could view the Board's speed in responding to complaints as either adequate or too rapid.

3. **Is the Board Successful in Determining the Underlying Causes in Disputes Involving Illegal Work Stoppages?**

A fundamental part of the Board's approach is the capability to investigate and inquire about the causes underlying a dispute. A major criticism of the courts was that injunctions were issued based on evidence provided by the plaintiff that had no bearing on the causes for the dispute. The typical result was the job action terminated, but the causes for the dispute were not resolved and labour perceived that the courts worked to the advantage of employers.
The Board must be able to determine the cause of a dispute for effective mediation and, if mediation is unsuccessful, to dispose of complaints appropriately in a formal hearing. Section 28 provides the Board with broad discretionary powers to issue orders against contraventions of the Labour Code or to refuse orders if the complainant's conduct was improper in connection with the dispute. The credibility of the Board depends on judicious exercise of its powers. The unfortunate experience of the Mediation Commission is an example of the consequences of a government body charged with regulating industrial conflict is perceived as treating disputes unfairly because of inadequate knowledge or understanding of the facts affecting labour disputes.

Employers and Unions - Determining the Underlying Issues in Disputes

In contrast to the courts, which were constrained with legal procedures and lack of experience in labour disputes, the Board's procedures and composition are designed to find the causes of a dispute. Beginning with the IRO's investigation, continuing in separate and joint informal meetings with the parties and right through the formal hearings, the Board has adequate opportunity to determine the causes for a dispute. The parties undoubtedly present facts in a light favourable to their own case. The expertise of the members and staff at the Board and familiarity that comes with handling a large caseload should enable the Board to put together an objective view of underlying problems affecting a collective bargaining relationship that led to an illegal work stoppage. Employers and unions could be expected to
perceive that the Board effectively determines the underlying causes in disputes involving illegal work stoppages.

On the other hand, employers and unions could view that the Board is not successful in determining underlying causes. This could result from their experience in specific disputes. Quite possibly the Board does not always appreciate all salient factors in a dispute. It would be difficult for a Board representative involved for the first time with parties who have a long and complex bargaining history to grasp fully all the implications and nuances that occur during hearings. Personalities are also an important factor that may not be easily determined. Thus, there is substantial potential for the Board to make errors in handling disputes. The Board needs to contain errors to a level that is tolerable to the parties. Therefore, employers' and unions' views about whether the Board is successful in determining underlying causes could be bimodal.

It should be added that employers could resent the entire concept of the Board striving to determine the underlying causes in disputes that involved illegal work stoppages. The Labour Code protects employers against unlawful job actions. This protection exists regardless of the causes for a dispute. Employers could perceive that the Board's efforts to assist the parties find solutions to underlying causes actually undermines their legal rights provided by the Labour Code. The latter perception could partially be a carry over from when industrial disputes were handled by the courts. The courts were compelled to issue an injunction if a work stoppage was illegal without any consideration for
underlying causes.

4. Does the Board's Approach Work to the Advantage of One or the Other Party in the Collective Bargaining Relationship?

Over the long term, neither party should perceive that the Board's approach works to the advantage of the other party. The Board's approach is part of a general labour policy to support collective bargaining by emphasizing voluntarism and mutual accommodation. The success of this labour policy must certainly depend on it being perceived as offering a fair way to resolve conflict. Past experience in British Columbia indicated the serious impact on the province's industrial relations climate that labour legislation can have which is viewed by one of the parties as upsetting the balance of power necessary to support a collective bargaining system.

The parties' perceptions of whether the Board's approach to illegal work stoppages is advantageous to one party over another must be interpreted cautiously. Collective bargaining, by nature, works under the pressure of economic power the parties can exert over each other. The parties will inevitably be inclined to give impressions which maximize self-interest in collective bargaining. Thus, their perceptions must be interpreted beyond how the Board's involvement affected the outcome of specific disputes to how their perceptions collectively provide a reading on the success of the Board's approach as an equitable means for regulating conflict over the long term.
Employers would probably maintain the traditional perspective that an employer "buys peace" for the term of the collective agreement with concessions made in collective bargaining and they should not be obliged to make additional concessions under the pressure of a work stoppage that is illegal. Thus, employers could be expected to view that the Board's approach works to the advantage of unions.

British Columbia's long history of legalism and punitive remedies in industrial disputes undoubtedly established expectations among employers for immediate relief from an illegal work stoppage through the courts. The perceptions of these employers towards the Board's approach will reflect their expectations for an order against the job action. They would perceive the Board's efforts to mediate as an unjust delay before an order is issued.

On the other hand, employers might perceive that the Board's approach does not necessarily favour one side over the other. They might compare the long and short term costs incurred when the Courts handled illegal work stoppages and decide the Board's approach is better for long term relations with their employees. They would focus less on the economic impact of the work stoppage and its illegality and place more emphasis on the Board's approach as an effective means to resolve disputes for long term relations with their employees.

It is unlikely that employers would feel the Board's approach works to their advantage. Most employers could be expected
to focus on the short term economic impact of an illegal work
stoppage rather than any benefit from a mediated settlement to
long term relations with a union and employees. From the latter
perspective, it would be difficult for employers to have the view
that the Board's efforts to mediate work to their advantage.

Unions - Board's Approach
Work to the Advantage of One
Party or the Other

Unions' criticisms of the courts were mainly based on the
fact that injunctions deprived them of their only source of lever­
age against employers. The courts were obliged to issue injunc­
tions on the basis of whether a work stoppage was unlawful without
attention to the reasons for conflict between the parties that led
to the strike. Thus, employers could obtain immediate relief from
an economic sanction without addressing themselves to issues brought
forth by unions in relation to a work stoppage.

By delaying a cease and desist order against an illegal
work stoppage until hearing each
party's case, the Board establishes a setting for the parties to
deal with the issues resulting in a work stoppage. In some cases
an order must be issued promptly, when the Board's exercises its
discretion and determines a union's conduct is improper. Under
most circumstances though, employers must deal with the issues or
experience the short term economic impact of the work stoppage
until the Board convenes a formal hearing and issues an order.
From the union's perspective, the Board's approach is an immense
improvement over the treatment of illegal work stoppages in the
courts. Therefore, it's most likely unions would perceive that the Board's approach does not work to the advantage of one party or the other. Rather unions are expected to see the Board's approach as establishing a necessary balance of power between the parties in a collective bargaining relationship. Unions might, however, conclude that the Board's approach favours them more than employers. The time provided in the Board's procedures for investigation and informal mediation would be advantageous to a union dealing with a particularly vulnerable employer. The Board has ample discretionary powers, of course, to deal with any party that is abusing its procedures. Nevertheless, it's conceivable that a union could derive advantages from the Board's procedures. Unions, therefore, could perceive that the Board's approach doesn't work to the advantage of either party or that it works more to their advantage than employers.

It is less likely that unions would perceive the Board's approach works to the advantage of employers. From a historical perspective of previous labour legislation and in view of provisions against illegal work stoppages in the present Labour Code, the Board's approach allows a more balanced relationship between unions and employers. As long as work stoppages are illegal during the term of a collective agreement, unions cannot enjoy the same power relative to employers as they would during legal strikes. Nevertheless, the Board's approach elevates a union's position during an illegal job action just by providing a limited opportunity for negotiations during informal hearings.
5. Does the Tripartite Composition of the Board Inhibit the Mediative Process Because of the Partisanship of the Board Members?

For the Board to be successful with voluntary mediation, the parties must trust the Board members or staff and be confident that partisanship is not influencing the Board's efforts in persuading the parties towards compromise. Clearly, if mediation is going to achieve a reorientation of the parties towards one another that is conducive to accommodation, the mediator's neutrality has to be above suspicion.

Impartiality of the Board is also important from a historical perspective. Government intervention and court involvement in disputes involving illegal work stoppage have contributed to a polarization between the labour movement, government and the legal system. The present Board has the delicate task of changing the historical pattern in B.C. by building an image of impartiality. Both unions and employers must perceive that partisanship does not affect the Board's mediation process.

Employers and Unions - Board's Composition Inhibit Mediative Process Because of Partisanship

Neither employers nor unions would likely perceive that the mediative process is inhibited by partisanship of the members.

The voluntarism inherent in the Board's approach allows the parties to withdraw serious participation in mediation if they sense a lack of impartiality on the part of the Board's mediator. This should control the impulses of Board members with either management or union backgrounds. The success of the Board's approach, over the
long term, relies on credibility and judicious discretion exercised by the members, especially the vice-chairmen and the chairman.

The composition of the Board itself is another check on partisanship that could affect the mediation process. Since the fact that the Board is composed of management and union representatives, it must establish a balance between members with different backgrounds. Certainly if a Board member with a trade union background came to be perceived by employers as allowing personal bias to affect his role as a mediator in disputes involving illegal work stoppages, the management members of the Board could exert pressures within the Board itself to correct an imbalance.

Although the parties would likely not view the mediative process generally to be affected by partisanship, there may be individual cases in which one of the parties felt that a representative of the Board allowed biases to interfere in a dispute. This could result from a relationship between one of the parties and a Board representative that existed before the dispute. It could result from personality clashes or other factors connected with dynamics in a dispute.

The members of Board are selected because of their expertise and stature in the industrial relations community. Providing the members are committed to the Board's approach, it seems unlikely that they would allow partisanship to interfere in informal mediation. The Board members are, in most cases, active in leading roles in industrial relations outside their activities with the Board. They are the best critics of the Board's approach and if the members themselves find serious faults, e.g. partisanship in mediation,
they would be most influential in causing adjustments to the Board's composition or any other aspect affecting the approach to illegal work stoppages.

Chapter Summary.

This chapter develops propositions about what the perceptions of employers and unions are likely to hold regarding the Board's approach to disputes involving illegal work stoppages. The analysis suggests perceptions in relation to five aspects of the Board's approach: 1) appropriateness of procedures; 2) speed in responding to complaints; 3) determining underlying causes in disputes; 4) advantage to one party or the other and 5) whether the Board's composition inhibits mediation because of partisanship. These five aspects were expressed in questions which provide the structure for gathering data to report the parties' perceptions of the Board's approach in this thesis.
CHAPTER IV

METHODOLOGY

This chapter presents the methodology used to collect, analyze and report perceptions of management and union representatives who have first-hand experience of the Labour Relations Board of B.C.'s approach to disputes involving illegal work stoppages. The methodology is presented in four parts: population, sample, data analysis and data collection.

Population

A list provided by the Board indicated that 282 applications for a Board hearing or order concerning disputes involving illegal work stoppages were submitted from August, 1974 to December, 1978. The applications pertained to violations under the Labour Code of B.C. for strikes or lockouts during the term of a collective agreement, or strikes or lockouts without required strike voting and notice. Two hundred-two of the applications on the Board's list were formal. Formal applications are submitted in compliance with requirements for documentation and procedures set out in the Labour Code of B.C. Regulations.

Eighty applications were informal. Informal applications pertain to disputes in which the Board was involved without receiving documentation and going through procedures specified in the Regulations. The Board attempts to treat
disputes involving illegal work stoppages as expeditiously as possible and often handles complaints over the telephone or brings the parties together informally to discuss and mediate a dispute. The Board did not record informal applications until 1976. Even though records have been kept after that time, the number of cases recorded is probably not accurate for practical reasons. Obviously, disputes handled over the telephone are not always recorded. It was indicated when the list of applications was provided by the Board that officers, members and staff did not report every dispute in which they were involved, especially if the dispute was settled informally. The number of informal applications recorded is, therefore, a conservative indication of the number of disputes the Board dealt with informally.

Sample

The list of 282 applications supplied by the Board was in chronological order. Initially, thirty cases were selected by taking every ninth application in sequence to provide thirty management and thirty representatives for interviews. However, some adjustment to this sample became necessary. Specific information identifying parties involved in many informal applications was not available or adequate. One management representative refused to be interviewed without offering an explanation. A union representative involved in a different dispute refused an interview because his union has a policy against interviews for academic projects. Also, it was not always possible to co-ordinate the author's trips to different parts of the province with some of the parties' schedules. As a result,
parties were selected from the Board's list to "fill in" wherever necessary. Selections were made with attention to maintaining a representative sample of parties from different industries, different geographic locations and other variables important to the data analysis.6

Thirty-five management representatives and 28 union representatives were interviewed.7 The management interviewees represented organizations which were involved in 35 per cent of the disputes behind all formal and informal applications regarding illegal work stoppages submitted to the Board from 1974 to 1978.8

The union interviewees represented local, regional or provincial labour organizations that were involved in 55 per cent of the disputes behind all formal and informal applications regarding illegal work stoppages submitted to the Board from 1974 1978.9

Thirty-seven specific disputes were discussed in detail during the interviews. Interviews focused on the disputes connected with applications selected from the Board's list. Thirty of the specific disputes discussed in interviews involved formal applications and 7 of the disputes involved informal applications.10

Data Analysis

The purpose of this thesis is to provide a measure of the Board's performance in handling disputes involving illegal work stoppages based on the perceptions of parties who have experienced the Board's approach. The research questions presented in the previous chapter provided a structure to report the parties' views of the Board's approach. Two sets of data were col-
lected in relation to the research questions. One set are yes/no responses from the parties regarding the research questions. The parties' responses are grouped into management and union categories. The set are descriptive categories for interpreting and reporting significant patterns in the parties' responses to the research questions. These categories were determined primarily from speculation about patterns that might be evident in the parties' responses to the research questions. The following six descriptive categories were chosen:

(1) Industry

The industry category could demonstrate interesting and significant patterns. Capital intensive versus labour intensive industries may be the basis for differences in perceptions about the Board's performance. An employer whose business requires heavy investments for a plant and machinery would likely be more vulnerable to economic pressure from a work stoppage while the Board attempts to mediate a dispute. Thus, he might be less favourably disposed to delays resulting from the Board's approach. As another example, in an industry where long and complex bargaining relationships are the norm, union or management may feel that the Board did not successfully determine the underlying causes in a dispute involving a long standing negotiating issue.

The definitions of industries used in this thesis were developed by the British Columbia Department of Labour. The industries are separated into four categories: manufacturing, construction, trade and service, and other industries. Manufacturing has five subcategories: food and beverage, forest
products, metals (refining and fabrication), machinery, and miscellaneous. Trade and service has four subcategories: trade, education and health, municipal, and miscellaneous. Other industries has three subcategories: mining, transportation, and communication and other utilities.

(2) Geographic Location

B.C.'s major industries tend to have operations in rural or semi-rural locations away from Vancouver. An obvious pattern which could develop is that parties in less accessible areas believe that the Board does not respond quickly enough to complaints.

The province was segmented into five geographical areas to categorize interviewees: lower mainland, east, coast/mainland, island and north. Lower mainland includes the Greater Vancouver Regional District, the Fraser Valley as far east as Hope and south to the United States border. East includes the area east of Hope to the Alberta border, north to Williams Lake and south to the United States border. Coast/mainland includes the coast north of Horseshoe Bay up to and including Powell River. Island refers to Vancouver Island. North includes all of B.C. north of Williams Lake.

(3) Frequency of Involvement with the LRB Concerning Illegal Work Stoppages

The category is the frequency which organizations represented by management and union interviewees appeared on the list supplied by the Labour Relations Board of applications or complaints concerning illegal work stoppages.

It would be especially interesting to discover a relation-
ship between the parties' views on whether the Board's approach works to the advantage of one or the other party and frequency of involvement. The Board's emphasis on informal mediation is based on recognizing the ongoing nature of a relationship employers and unions involved in collective bargaining. If the Board's approach serves to alleviate tensions over the long term in a bargaining relationship, then it is reasonable to expect that the more frequent a party is involved with the Board the more favorably the party will perceive the Board's approach.

(4) The Labour Relations Board's Procedures in Specific Disputes

The Board often channels applications into procedures for either attempting to mediate a settlement or adjudicating a dispute. One of the research questions for this thesis is whether the Board channels disputes into appropriate procedures. The parties' opinions of the Board's procedures in specific disputes discussed in interviews may vary depending on whether the dispute was handled in an informal or formal hearing or a combination. For example, an employer who was involved in disputes that only went to an informal hearing might have a less favourable view than an employer in a dispute that proceeded to a formal hearing. The former employer may feel that his right to a formal hearing was not fulfilled.

Procedures for specific disputes discussed in interviews were separated into the following categories.

(a) Informal Hearing Only

The Board receives a formal or informal application and
the parties are brought together. The chairman, a vice-chairman, a member, a special industrial relations officer assigned to the Board from the Department of Labour, or a member of the Board's legal staff will meet with the parties and mediate a settlement. Under some circumstances, two Board members, one with a management background and one with a union background, will meet with the parties.

Informal hearings may occur at the Board or at some other neutral location that is convenient. Board representatives often conduct hearings at the location of a dispute in an outlying area. Informal applications or complaints handled over the telephone by the Board are categorized as informal hearings. The outcome of an informal hearing will be either a settlement of the dispute, a withdrawal of the application or the application will proceed to a formal hearing.

(b) Informal and Formal Hearing

Applications proceed from informal hearings to formal hearings when the Board is unable or deems it inappropriate to mediate. Formal hearings require formal applications as specified in the Regulations and a panel of the Board as specified in the Labour Code. A panel has the power and the authority of the Board.

The outcome of a formal hearing can be a settlement of the dispute, withdrawal of the application, a Board order or rejection of an application.

(5) Employers' Objectives for Application to the Board

Employers' perceptions of the Board's approach could be
affected by their objectives by submitting complaints in specific disputes. For example, an employer may have submitted a complaint only to obtain an order with no intention of participating in mediation hearings. Obviously, if the Board doesn't make an order, the outcome of a complaint could be contrary to the employer's objective and he may perceive the Board didn't handle the dispute appropriately or the Board's procedures work to the advantage of the other party.

Employer's objectives for applying to the Board in specific disputes discussed in interviews were separated into two categories: 1) to obtain a Board order and 2) to obtain mediation. The first category refers to cases in which the employer applied to the Board solely for the purpose of obtaining a cease and desist order against an illegal work stoppage. The second category refers to cases in which the employer applied to seek the Board's assistance in resolving a dispute.

(6) Outcomes of Specific Disputes

Parties' perceptions would likely be affected by the outcomes in specific disputes in which they were involved. Employer representatives who expected the Board to issue an order against a work stoppage might have unfavourable feelings of the Board's approach if they ended up making a settlement. Union representatives who expected the Board to encourage a settlement might have unfavourable perceptions if an order was issued. Outcomes of applications were grouped into the following three categories: 1) order issued, 2) settled 3) rejected. "Order Issued" refers to applications that resulted in adjudication and an order made by the Board under some provision of the Labour Code. "Settled"
refers to applications that resulted in a settlement, referral of the dispute back to the parties for further negotiation or arbitration (but not ordered), withdrawal of the application, or the dispute ended after a declaratory opinion was expressed by the Board. "Rejected" refers to applications that were rejected by the Board because the complaint was without merit.

Data Collection

Open-ended interviews were used to collect the data. Perceptions of the parties are by nature somewhat subjective making a face-to-face opportunity desirable for interpreting the parties responses to questions. Also, the subject matter of illegal work stoppages is sensitive and the parties would likely be unwilling to commit themselves with written responses. Thus, a questionnaire would have been less effective.

The major reasons for using open-ended interviews are their latitude and flexibility. Labour disputes involving illegal work stoppages tend to be intense. An open discussion allows the interviewees to refer freely to the interactions that occurred between the parties and the Board, thus allowing them to recall better the circumstances underlying their perceptions of the Board's role.

Another advantage from the latitude and flexibility of open-ended interviews is that responses to the research questions could be elicited indirectly. It was expected that the interviews would be unsuccessful if the research questions were put forth directly to the parties. If questions were addressed explicitly
to the interviewees, the responses might elicit bias in support of the interviewee's political perspectives. Indeed, one researcher doing a study on the earlier Mediation Commission Act avoided personal interviews because he anticipated the interviewees' responses would be biased by political motives. However, responses to research questions for this thesis were obtained indirectly during the course of discussions about the Board's role in specific disputes. This was intended to avoid politicking during the interviews.

One important disadvantage of open-ended interviews is what is known as the "reactive effect." Interviewees may respond with answers affected by the role that they perceive is expected from themselves by the interviewer, or by some other reaction to the interviewer or the physical setting for the interview.

Interviewees were first contacted by telephone. Letters were then sent that explained the subject matter for the interview, and the purpose as research for a master's thesis. Confidentiality was guaranteed and it was indicated that copies of the thesis would be made available for costs of duplicating.

Whenever available, decisions published by the Board regarding disputes involving illegal work stoppages that pertained to the parties were read prior to interviews.

Interviews began with an explanation of how names were obtained. Confidentiality was reassured. Initial questions were usually "open" to encourage the interviewee to discuss fully the facts about a dispute. Responses were recorded longhand
during the interviews.

The interviews were conducted in the summer and fall of 1979.

Chapter Summary

The Board provided a list of 282 formal and informal applications regarding disputes involving illegal work stoppages which were submitted from 1974 to 1978. A sample was selected from the Board's list.

Thirty-one management representatives and 28 union representatives were interviewed. There are two categories of interview data. One category consists of yes/no responses by the parties to the research questions. The other category consists of descriptive data for interpreting and reporting the parties' responses. Open-ended interviews were used to collect the data.
Notes, Chapter IV

1 The Labour Relations Board of B.C. Annual Reports 1974-1978 indicate that 274 applications for a Board order or opinion pertaining to alleged illegal strikes or lockouts were disposed of from 1974 to 1978. The list provided by the Board for this thesis contained 8 additional applications or complaints. The difference may be due to certain applications being counted for the Board's reports under a classification other than alleged illegal work stoppages. This is possible because many applications are submitted pertaining to violations under more than one section of the Labour Code.

2 See Appendix A for the relevant sections of the Labour Code.

3 Table 7 in Appendix shows formal applications concerning illegal work stoppages, 1974-1978, by year and industry.

4 Labour Code of British Columbia Regulations, B.C. Reg. 522/73, Order-in-Council 4267, sections 35-44. See Appendix B.

5 Table 8 in Appendix C shows informal applications concerning illegal work stoppages, 1976-1978, by year and industry.

6 Tables 7-10 in Appendix C group population data in categories used for data analyses and Tables 11-14 in Appendix D group sample data in the same categories. The categories are defined later in this chapter. Tables 15-17 in Appendix E provide comparisons between the population and the sample.

7 Table 11 in Appendix D.

8 Table 13 in Appendix D.

9 Ibid.

10 Table 12 in Appendix D.


12 See Appendix B.

13 Section 13 of the Labour Code.

14 Section 90 of the Labour Code.

15 Section 28(4) of the Labour Code.


CHAPTER V

MANAGEMENT AND UNION PERCEPTIONS
OF THE LABOUR RELATIONS BOARD'S
APPROACH TO DISPUTES INVOLVING
ILLEGAL WORK STOPPAGES

This chapter describes the perceptions of thirty-one employer or management representatives and twenty-eight union representatives towards the Board's approach to illegal work stoppages.

The parties' perceptions are reported as responses to the five research questions presented in Chapter III. The parties' responses to the research questions are followed by analysis of the reasons for their views given during the interviews.

1. Does the Board Channel Disputes Involving Illegal Work Stoppages into Appropriate Procedures?

<table>
<thead>
<tr>
<th></th>
<th>Yes</th>
<th>No</th>
</tr>
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<tbody>
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<td>Employers</td>
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<td>19</td>
</tr>
<tr>
<td>Unions</td>
<td>27</td>
<td>1</td>
</tr>
</tbody>
</table>

Employers - Appropriateness of the Board's Procedures

Less than half of the management representatives (38.7%) perceive the Board's procedures were appropriate in specific disputes. Most of those who perceived the Board's procedures were appropriate were satisfied that their disputes were settled and saw value in avoiding a legal order imposed on their employees. These management representatives tended not to emphasize economic costs
from the work stoppages.

Over half of the management representatives perceived that the Board's procedures were inappropriate. Most of them felt that informal hearings delayed their right to a formal hearing and a cease and desist order. They emphasized economic costs from the work stoppages and criticized the Board for attempting to achieve settlements at any cost. Some felt the unions should have financial responsibility for illegal job actions.

Twelve (39%) of the employers or management representatives stated that the Board channels disputes into appropriate procedures. Table 1 on page 96 shows employers' perceptions of whether the Board channels disputes into appropriate procedures by type of procedures in specific disputes discussed in interviews. Nine of the management representatives who thought the Board channels disputes into appropriate procedures were involved in disputes that were settled in informal hearings.

These nine management representatives felt the Board's procedures were appropriate for reasons that were suggested in Chapter III. Namely, an informal settlement was preferable from the perspective of relations with their unions and employees compared to obtaining a cease and desist order in a formal hearing with the Board. Clearly, the costs of compromises that were made in informal hearings were less significant to these employers than costs from lost production while waiting for a formal hearing, or costs in terms of poorer relations with unions and employees that could have resulted from an order back to work without addressing
### TABLE 1

**EMPLOYERS' PERCEPTIONS OF WHETHER THE BOARD CHANNELS DISPUTES INTO APPROPRIATE PROCEDURES BY TYPE OF PROCEDURES IN SPECIFIC DISPUTES DISCUSSED IN INTERVIEWS**

<table>
<thead>
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<th></th>
<th>Yes</th>
<th>No</th>
</tr>
</thead>
<tbody>
<tr>
<td>Informal Hearing Only</td>
<td>9</td>
<td>12</td>
</tr>
<tr>
<td>Informal and formal Hearing</td>
<td>3</td>
<td>7</td>
</tr>
</tbody>
</table>

### TABLE 2

**EMPLOYERS' PERCEPTIONS OF WHETHER THE BOARD CHANNELS DISPUTES INTO APPROPRIATE PROCEDURES BY EMPLOYERS' OBJECTIVES FOR COMPLAINTS IN SPECIFIC DISPUTES**

<table>
<thead>
<tr>
<th>Objective:</th>
<th>Yes</th>
<th>No</th>
</tr>
</thead>
<tbody>
<tr>
<td>To Obtain Mediation</td>
<td>3</td>
<td>-</td>
</tr>
<tr>
<td>To Obtain Order</td>
<td>9</td>
<td>19</td>
</tr>
</tbody>
</table>

causes for the dispute.

A useful insight for interpreting the parties' perceptions of the Board's procedures is whether a complainant's objective for applying to the Board was to obtain assistance in resolving a dispute or to obtain an order. Obviously, in the former situation the complainant would perceive an informal hearing as appropriate. In the latter case, the complainant would be less likely to see
an informal hearing as appropriate unless there were definite advantages for settling rather than obtaining an order.

Table 2 on page 96 shows employers' perceptions of whether the Board channels disputes into appropriate procedures by their objectives for submitting complaints in the first place. Three of the nine management representatives who perceived the Board's procedures were appropriate had been involved in disputes where informal applications were submitted to the Board with the intent of obtaining the Board's intervention as a mediator. One of these employers was a manufacturer in the food and beverage industry who explained the union was bitter after a lengthy legal strike and was reacting against a backlog of grievances. The employer was not making headway resolving the grievances "due to the union's hatred for the company". The employer wanted to avoid intensifying the union's animosity with a cease and desist order. The parties met informally with a representative from the Board and within 48 hours most of the grievances were either resolved or referred to arbitration. The employer said the Board's intervention worked as a face saver for both parties to make concessions and that neither party came out feeling as though they lost.

The other two management representatives applied to the Board to obtain mediation because of illegal walk outs over jurisdictional disputes between construction unions. One representative explained:

It's much easier to work in that atmosphere...allows you to build up credibility with the unions. The unions almost always settle quickly.

It should be noted, however, that the same interviewee from the
construction industry indicated that his perception of the Board's informal approach would be different in a grievance or rights dispute.

There were six management representatives who made formal applications to the Board with the objective of obtaining an order, but were satisfied with a settlement reached in an informal hearing. Two of the disputes in this group occurred in outlying areas where mediating teams from the Board consisting of a vice-chairman and one or two members assisted the parties in reaching an agreement and left an unsigned order in case the union's members did not return to work. An unsigned order appeases the employer and can serve as a face saving device for union leaders to take back to their membership. It also demonstrates the flexibility in the Board's procedures for handling disputes involving illegal work stoppages. One of these disputes was at an interior sawmill and the other was a large mine. The interviewee from the sawmill indicated the formal application was a signal to a militant maintenance crew that the company would not make concessions under pressure from an illegal strike. Although the union produced a "laundry list" during the informal hearing and the company did make a few concessions over safety issues, he said the unsigned order achieved the objective of providing a signal to the maintenance crew.

The other four management representatives whose objectives were to obtain orders from the Board indicated that it was preferable to end the dispute by reaching a settlement. An interesting
case involved an employer with about twenty employees who applied for an order against an illegal strike vote. After a flare up with the employer, a union representative took a vote with a show of hands. The Board telephoned the union representative and the result was the employees agreed to return to work until a proper strike vote was conducted. The employer admitted that there was a personality conflict between himself and the union representative and he said he was glad that a legal order against his employees was avoided.

Two of the other disputes provide good examples of management representatives who thought the Board's procedures were appropriate. In one dispute a foundry operator sought an order because his foundry workers walked out over grievances concerning seniority and job postings. The employer admitted that the problems had been building ever since there had been a company merger. He said, "If we had got an order, it probably would not have been obeyed. The dispute was handled promptly, that is the main thing." The parties agreed in an informal hearing to refer the grievances to expedited arbitration. The other dispute was at a large construction site where a group of workers walked out demanding removal of a relief foreman. The management representative said it was known the relief foreman had problems getting along with the crew. An application was made to the Board and the parties settled with the relief foreman being replaced and sent on vacation. The interviewee said he didn't care if he had to acquiesce. He said, "Everyone knew the foreman was having problems. It turned out better for the man and for the workers to get him out of that situation."
There were three management representatives who perceived the Board's procedures were appropriate in disputes that were disposed of with an order or ruling by the Board. The Board issued cease and desist orders in two of these disputes. In both cases, the interviewees, who represented employers in the mining and wood products industries, indicated that earlier attempts to resolve the disputes with the Board's help resulted in employees returning to work for short periods and then walking off the job again. When the work stoppages recurred the Board promptly convened formal hearings and orders were issued. The third dispute was settled after a formal hearing when the Board issued a declaratory opinion.

Nineteen (61%) employers or management representatives perceived that the Board did not channel disputes into appropriate procedures. Table 1 on page 96 shows that twelve of the management representatives were involved in disputes discussed in interviews that were settled in informal hearings. Table 2 shows that all of these management representatives appeared to the Board with the objective of obtaining an order. The perceptions collected from these interviewees are fairly uniform and consistent with suggestions that were in Chapter III. They perceived that the Board's attempts to mediate a settlement as "rubber hosing" or "arm twisting" to coerce them into making concessions while they are experiencing economic pressure from the work stoppage. They felt the Board's attempts to mediate in cases where it's "clear-cut" that the employer is "right" are inappropriate and unions
should be made accountable for financial losses incurred during illegal work stoppages.

A dispute that occurred in the wood products industry provides an appropriate example. The maintenance crew in a large mill walked out because a member of the union executive was suspended. The employer applied for a cease and desist order and the Board brought the parties together in an informal hearing. The interviewee explained that the Board withheld a formal hearing and the parties settled by arranging for the employee's grievance against the suspension to go to expedited arbitration. The Board did inform the union that an order would be forthcoming if its members did not return to work. The plant lost one day's production. The interviewee made the following comments:

I find it difficult to accept the Board's policy to try to mediate all disputes. We were in the right, clearly so. Why should we have to sit there? After that case, unless we can obtain an order we don't go to the Board.

In total, three of the management representatives in this group stated plainly that their employers would not participate again in informal hearings. However, only one indicated that he would like to see the courts resume jurisdiction over illegal work stoppages and return of the *ex parte* injunction. This group's dissatisfaction with informal hearings was because they perceived the Board tried to achieve settlements at any cost, rather than total condemnation of the Board's approach. From this perspective, the problem is with the Board's discretion in channelling disputes with certain procedures. A senior management representative in the wood products industry explained as follows:
The Board has to be able to tell one or the other party that he is just plain wrong. If we're right in the dispute and we go to the Board, we want a cease and desist order. The Board's discretionary power takes great maturity to administer effectively.

Right now the informal hearings provide a great opportunity for the unions to see what they can get. What do they have to lose? The trade unions in this province do not have financial responsibility. Wildcats cost them nothing.

By and large, the informals are good things. Purely comparing with the old way, the present system is better. It avoids ruling by legal order.

Several important points concerning the management representative's perceptions are reflected in the above quotation. First, it is clear that it was not being suggested that the Board abandon informal hearings in disputes involving illegal strikes. The message from management is that the Board must discern better when informal hearings are appropriate. Second, one must wonder exactly what is meant by being "right". Right in a technical sense that the union is acting unlawfully recalls the same sense of righteousness that prevailed in the days of injunctions. This contradicts the latter part of the quotation that suggests the Board's approach is an improvement over the "old way". It appears that the interviewee meant the employer is "right" in disputes where the union is taking advantage of the Board's approach to gain concessions. Third, the reference to "financial responsibility" reflects a perceived need for punitive measures to be available in disputes involving illegal work stoppages. Four other management representatives in this group expressed similar opinions.

There were seven out of the nineteen management representatives who thought the Board's procedures were inappropriate.
and who were involved in disputes which proceeded to formal hearings. All of these employers submitted applications with the objective of obtaining an order.

Only one of these disputes actually resulted in an order being issued. In that case the Board issued orders to both the union and the employer. The dispute was over an arbitration award that the employer was appealing and had not implemented. Employees walked off the job because their employer had not implemented the award. After informal and formal hearings which happened within two days, the Board ordered the employees back-to-work and ordered the employer to implement the award pending the outcome of the appeal. The management representatives in this case perceived that the Board's procedures were inappropriate because the Board did not just issue an order on the basis that the job action was illegal. He thought it was incorrect that the Board ordered implementation of the arbitration award. He added, however, that the employees may not have complied with a cease and desist order unless the award was implemented.

Out of the six remaining management representatives in this group, two were involved in disputes where the employers' applications were rejected and four were settled. One of the latter resulted in a declaratory opinion by the Board.

The perceptions of these six management representatives were consistent with those who were involved in disputes that were settled in informal hearings. They felt that the Board should not have delayed formal hearings with attempts to mediate in informal hearings. A management representative from one of
the largest employers in British Columbia stated, "If we're going to make concessions, we'd do it without the Board." Three of the management representatives in this group said their employers would not participate in informal hearings at the Board. One of these interviewees who was particularly critical of informal hearings said:

The informal hearings are a turkey dance we go through, because we have to get to a formal hearing.

Another management representative from a large employer explained that it's better to cooperate with the Board over the long term. An interviewee who owned and managed a small manufacturing company with about twenty-five employees ended up reaching a settlement during a formal hearing. He admitted dourly:

I had to judge economic costs of holding out. If I could have afforded the costs, I would not have given in.

His employees walked off the job as part of an organizing campaign at a separate operation where the employer owned a minority interest. He applied with his lawyer for a cease and desist order. The parties met in an informal hearing; however, the employer said he was unwilling to make compromises. The Board convened a formal hearing about a week later. The employer said, "The pressure was on us to bend. We couldn't afford to be shut down." He indicated that the Board's efforts to mediate denied him his rights since he had a contract with the union and the walk-out was illegal.

Economic costs stand out as a common denominator between the
perceptions of the management representatives who thought the Board's procedures were appropriate and the perceptions of those who thought the Board's procedures were inappropriate. This supports Chamberlain's well-known theory about collective bargaining that an employer whose costs of disagreement, i.e. costs of bearing out a strike, are greater than costs of agreement, i.e. costs of making concessions, would be more likely to perceive the Board's procedures were appropriate.

There are too many variables affecting employers' costs to conclude from this research that employers' perceptions of the Board's procedures depend on costs incurred during a work stoppage. An indication, however, is the employer's type of industry. One would expect capital intensive, continuous operation industries would suffer greater economic pressure from a work stoppage than a more labour intensive or service industry. Table 3 shows the employers' perceptions of the Board's procedures by industry. It is noteworthy that five out of six management representatives from the wood products industry who thought the Board's procedures were inappropriate were either working exclusively in the pulp and paper segment of the industry or they held corporate positions with responsibilities in all segments. All four management representatives in the food and beverage manufacturing industry were involved in disputes that shut down large plants, two of which operate continuously. Three thought the Board's procedures were inappropriate. On
the other hand, three out of four management representatives from the construction industry thought the Board's procedures were appropriate. The latter industry tends to be less capital intensive and employers rarely establish long term relations with their employees. Numerous variables other than industry group need to be considered before conclusions can be drawn. Bargaining structure, product market, contract commitments are just a few that affect an employer's costs. Nevertheless, evidence suggests that employers who suffer greater economic damage from an illegal work stoppage would likely perceive the Board's emphasis on informal hearings as less appropriate.

Unions - Appropriateness of the Board's Procedures

Twenty-seven out of the twenty-eight union representatives that were interviewed perceived the Board channels disputes involving illegal work stoppages into appropriate procedures. Twenty-two of these union representatives were involved in disputes that were settled in informal hearings. Six were involved in disputes disposed of in formal hearings. Two of the disputes that went to formals resulted with orders being issued, two resulted with employers' applications being rejected and two were settled during a formal hearing, one of which resulted in a declaratory opinion by the Board.

The union representatives who thought the Board's procedures were appropriate generally expressed perceptions that were anticipated in Chapter III. Regardless of whether their disputes were settled in an informal hearing or proceeded to a formal hearing,
TABLE 3

EMPLOYERS' PERCEPTIONS OF WHETHER THE BOARD CHANNELS DISPUTES INTO APPROPRIATE PROCEDURES BY INDUSTRY

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the union representatives emphasized that the Board's procedures provided an opportunity for each party to tell his side of the dispute and, thus, expose the underlying causes for the work stoppage. One union representative thought the Board's procedures were particularly appropriate in a dispute that erupted after a build-up of hostilities between the employer and the chairman of the union
plant committee. He explained that the company and the union were "at each other's throats." He said there was a young crew at the plant and members of the union plan committee were "too enthusiastic." Absenteeism was a problem and the company was attempting to resolve the problem with suspensions and other "heavy discipline."

The plant chairman had been discharged and his case went to arbitration. The parties settled during the arbitration hearing and part of the settlement was the plant chairman's reinstatement. Several months later the plant chairman was discharged again in connection with a walk-out over shift manning.

The company made a formal application to the Board for a cease and desist order against the walk-out. The union representative said the employees would not return to work until the plant chairman was reinstated. The company refused to reinstate him and demanded an order from the Board.

A representative from the Board met informally with the parties together and then separately. The union convinced the Board representative that a cease and desist order was not justified because of the problems that had been recurring between the parties. The union also said that it was uncertain whether the employees would obey an order to return to work.

The parties accepted a recommendation from the Board representative that the plant chairman be reinstated, but that he would forfeit his union position. They also agreed that a special joint committee would address a backlog of problems. The union representative that was interviewed felt this was a fair solution and that an order wouldn't have solved anything.
The union representative's perceptions in the above case were typical of other union representatives who were involved in cases that were settled in informal hearings. Basically, they were of the opinion the informal hearings provide an opportunity for the parties to deal with problems that lead to illegal work stoppages. They indicated that the informal hearings give the unions bargaining leverage in the short term, but the threat of a cease and desist order keeps their position flexible and thus encourages compromises.

The two union representatives who were involved in disputes that proceeded to formal hearings and resulted in orders being issued expressed perceptions that were similar to those who were involved in informal hearings. They both felt the Board's procedures were appropriate even though orders were issued. In one case, the Board issued a cease and desist order to the employees and an order to implement conditions imposed by an arbitration award to the employer. The union representative indicated that this was probably the "best way to go under the circumstances." The other union representative said he disagreed with the Board's decision to issue an order, but that "everyone knew where they stood" after the hearings.

The subject of the employees' unlawful position during the Board's proceedings evolved naturally during the interviews. The union representatives generally indicated that the Board's procedures are designed for solving problems rather than creating them. This perspective was implicit in criticisms of the courts' involvement in illegal work stoppages that injunctions did not
address underlying causes behind labour disputes and they removed the only source of leverage that labour has against employers, i.e. the strike. The union representatives indicated that the Board's procedures do facilitate getting causes for the dispute out in the open to help resolve the dispute and the fact that the work stoppage is illegal is secondary to long-term relations between the parties. Three union representatives emphasized that the Board's procedures expose employers with "unclean hands" who want the law to end a work stoppage which they provoked themselves. One labour leader stated succinctly, "The Board protects bad employers against themselves."

The union representatives perceived that the less legalistic nature of the Board's procedures is appropriate for disputes involving illegal work stoppages. In a dispute over an illegal strike vote that was conducted spontaneously after a flare-up between the employer and a local union leader, the Board achieved a settlement during a telephone call. The union representative who was interviewed indicated the Board's approach was the best way to handle the dispute. He said if the Board had waited for a formal application and brought the parties to Vancouver, etc., "All that paper-pushing and letter writing would have made a mountain out of a molehill."

It became obvious during the interviews that the union representatives preferred informal hearings. Once the dispute proceeded to a formal hearing the possibility of an order increased and employers were less likely to make concessions to reach a settlement. Indeed, one union representative admitted his lawyer
advised him to "push for an informal hearing" after the employer applied for a cease and desist order. The advantages to unions from informal hearings will be described later in this chapter.

One union representative out of the twenty-eight that were interviewed said the Board's procedures were inappropriate. The particular dispute occurred in an isolated mining community over discharge of an employee for horseplay. The employee had been disciplined previously for falling asleep while operating a large truck. He was also involved in an incident that resulted in a supervisor being reprimanded for directing a large truck into a collision with a smaller truck. The union felt his discharge occurred in part because the supervisor wanted vindication for his reprimand. The union representative felt the discharge was too severe because the employee lived in a company house and he would have been forced to move his family to another location.

An illegal strike resulted that shut down the mine. The employer applied to the Board and a Board representative held hearings at the mine town. A cease and desist order was issued against the work stoppage, but the employer also agreed to reduce the employee's discipline to a suspension. The union representative felt the order was unnecessary and that the dispute could have been settled informally. He did not, however, seem to be condemning the Board's approach, rather he was dissatisfied with procedures in the particular case.

In summary, all but one of the twenty-eight union representatives perceived that the Board channels disputes involving
illegal work stoppages. These union representatives emphasized that the Board’s procedures address causes behind disputes and the Board’s move away from legalism in its proceedings is more appropriate for resolving problems between the parties.

2. **Does the Board Respond With Adequate Speed to Complaints Concerning Disputes Involving Illegal Work Stoppages?**

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Employers - Speed of the Board’s Response to Complaints

Twenty-eight of the thirty-one management representatives perceived that the Board responds with adequate speed. Generally, they felt the Board acts promptly after receiving a complaint or an application to the time that either a Board representative arrives at the location of a work stoppage, or until an informal hearing is concerned if the parties meet at the Board.

For disputes that occur in outlying areas, a Board representative is typically at the location in less than twenty-four hours. Table 4 shows the employers’ perceptions of whether the Board responds with adequate speed by geographic location.

Several examples are helpful to describe the parties’ perceptions. A management representative from the wood products industry in eastern B.C. was particularly impressed by the Board’s promptness. He described a case in which a maintenance crew walked out early one afternoon and the mill shut down the next day due to equipment failure. The employer applied to the Board for a
cease and desist order and a Board representative flew in from
Vancouver the same day. Informal and formal hearings were con­
ducted until late the same evening when the dispute was resolved.

TABLE 4

EMPLOYERS' PERCEPTIONS OF
WHETHER THE BOARD RESPONDS
WITH ADEQUATE SPEED TO COMPLAINTS
CONCERNING DISPUTES INVOLVING
ILLEGAL WORK STOPPAGES BY
GEOGRAPHIC LOCATION

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In another dispute over a demotion that occurred at a
remote mine, about half the workforce walked out at 12:00 noon
on a Friday. The employer applied to the Board that Friday after­
noon and Saturday morning a panel from the Board consisting of a
vice-chairman and two Board members met with the parties at a nearby
town. The hearings resulted in a cease and desist order against
the work stoppage. In a lower mainland dispute, an employer applied
to the Board on the morning of a walk-out. Informal hearings were held
at 11:00 A.M. and 1:00 P.M. A formal hearing was convened at
5:00 P.M. and resulted in Board orders to both parties.

Three of the management representatives thought the Board
does not respond with adequate speed. One of these was a lower mainland
dispute "over a classic grievance concerning seniority," according
to the management representative. The employer submitted a formal application to the Board before noon on the day of the walk-out. They were informed by the Board that no one was available for a hearing that day. The Board called the next day and invited the parties to an informal hearing where the dispute was settled. The management representative said the dispute ultimately went to arbitration and the union lost.

In another case, an employer in the wood products industry applied for an order against an overtime ban. The employer's application was made on a Saturday roughly the same time that an industry-wide vote was to be taken on a bargaining proposal made by the industry employers' association. The parties met the next Monday in an informal hearing at the Board. It was clear from correspondence between the Board and the parties that the Board was reluctant to impede the progress of industry bargaining by placing the parties in a legal atmosphere, even though the Board recognized the overtime ban was an illegal job action.

Another management representative from the transportation industry applied to the Board for an order against his employees who refused to cross a picket line set up by employees on legal strike against another employer. The management representative said his company applied to the Board and waited about a week for an informal hearing. He said the Board was "draggin' its heels" to give time for the other employer and union to reach an agreement.

Some comments seem necessary regarding the three cases in which the management representatives felt the Board did not
respond with adequate speed. In the first example, the Board delayed an informal hearing for a day, presumably because of a full schedule. It was not determined from the interviews whether other factors affected the delay. The other two examples both indicate the Board was slow in responding because of collective bargaining activity related to the illegal work stoppages, not because of constraints due to scheduling, etc. In other words, the Board chose to be slow processing a complaint to avoid interfering and possibly impeding in a bargaining situation. The parties' perceptions must be interpreted in context with the Board's role to carry out the intent of the Labour Code. The general policy underlying the Code is to promote collective bargaining by encouraging compromise and reducing legalism that was characteristic of previous legislation. It is consistent with the Board's approach in administering the Code to use its discretion in handling complaints and processing applications. Under some circumstances, the Board may be more concerned with facilitating bargaining than strictly satisfying a complainant's right for a hearing. This may be unsettling from a legal perspective, but it reflects the character of the Labour Code.

It was suggested in Chapter III that some employers would see the Board as speedy in responding with informal hearings, but not fast enough in convening a formal hearing and issuing an order when informal mediation is unsuccessful. Out of the ten management representatives who were involved in disputes that proceeded to formal hearings, four said a formal hearing was not convened speedily enough. Six were satisfied with the Board's speed in convening a formal hearing.

The management representatives' perceptions varied accord-
ing to circumstances in different disputes. The four who felt formal hearings weren't convened fast enough were all involved in disputes that ended in a settlement. Three said that the Board also did not respond fast enough with informal hearings. Out of the six who perceived formal hearings were held quickly enough, two ended in the employers' applications being rejected; three ended in orders being issued; one ended in a settlement. Only one management representative felt the formal hearing was fast enough, and the informal hearing wasn't. The other five felt the Board responded fast enough with both informal and formal hearings.

Unions - Speed of the Board's Response to Complaints

Twenty-seven of the twenty-eight union representatives perceived that the Board responded with adequate speed to employers' applications to the Board. It was expected that unions would perceive the Board's speed as adequate since the slower the Board responded the greater the impact of the work stoppage on the employer. However, none of the union representatives indicated that they would have preferred that the Board responded more slowly. It became evident that the unions tended to want the Board's intervention as rapidly as the employers. Once the Board was involved, the unions could usually expect to be in a negotiating position in an informal hearing. The advantage to the unions comes after the Board is attempting to mediate a settlement and a formal hearing is being delayed.

The one union representative who thought the Board did not respond fast enough expressed perceptions that were consistent
with the other union representatives. The dispute involved a small construction contractor operating in a remote part of the province. He had signed a letter of understanding with the union. The union alleged he was not complying with certain parts of the agreement concerning payment of wages. The workers walked-off the job and the employer applied to the Board. According to the union representative, the contractor was not in a hurry to complete the job because the party for whom the work was being done had not been paying the contractor for work as scheduled. The parties did not meet in an informal hearing until seventeen days after the employer applied for an order. The union representative could not say why it took so long, but he felt the Board should have convened a hearing sooner. The workers did not receive wages owing to them from the time of the walk-out until shortly after an informal hearing was held and a settlement was reached. The union representative said the workers would probably not have had to wait for their wages if a hearing had been held sooner.

Seven of the union representatives expressed noteworthy perceptions that were not expected. These union representatives emphasized that the Board is usually prompt in responding to employers' complaints about illegal work stoppages, but tends to be very slow in responding to unions' complaints about employers' unfair labour practices during organizing campaigns. One union organizer said the Board may take three to four months to respond to a union's complaint.

Nearly all of the management and union representatives that were interviewed indicated that regional industrial relations
officers (IRO's) from the Department of Labour have an insignificant part in dealing with disputes involving illegal work stoppages. Only two management representatives, one from Vancouver Island and one from southeastern British Columbia, indicated that local IRO's did initial factfinding and reported back to the Board in disputes discussed in interviews. Thus, the regional IRO's apparently have not been an important resource in assisting the Board to respond speedily to disputes in outlying areas.

3. **Is the Board Successful in Determining the Underlying Causes in Disputes Involving Illegal Work Stoppages?**

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<tr>
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Employers - Determining the Underlying Causes in Disputes

Twenty-nine out of the thirty-one management representatives perceived that the Board was successful in determining underlying causes. Their perceptions were fairly uniform in emphasizing the importance of informal hearings for giving Board representatives an opportunity to investigate causes. They also emphasized the value of the experience and familiarity that most Board representatives have in dealing with disputes involving illegal work stoppages.

One Board representative with a trade union background who handled disputes in a principal industry in the province was commended by two different management representatives and one union representative. The parties felt the Board representative was
able to assist the parties in resolving disputes because of his understanding of the industry and familiarity with the parties themselves. It was evident from the parties' perceptions that the Board representative has built up credibility and trust with the parties that assisted him to get at underlying causes in disputes.

Another team of two Board representatives, one from management and one from labour, were also particularly successful in discovering causes for disputes in informal hearings. The Board representative with a management background would meet with the company and his counterpart from labour would meet with the union. A management representative described the team as "very effective" at identifying problems.

Five of the management representatives said that the Board adeptly identified causes behind disputes, but, regardless of who was right or wrong tried to achieve settlements at any cost to the employer. A management representative from the wood products industry stated, "The Board wants to get at underlying causes too much. Some cases are clear-cut." Another said, "The Board doesn't know when to stop looking for issues." Four of these management representatives were involved in disputes that were settled in informal hearings and one was involved in a dispute where the employer's application was rejected. It is consistent that four of these management representatives had also indicated the Board's procedures, i.e. informal hearings, were inappropriate.

Two management representatives felt the Board was not successful in determining underlying causes. One management representative was involved in a grievance dispute over seniority
that eventually went to arbitration and the union lost. The representative felt the Board did not understand the situation and said the Board's efforts to mediate were inappropriate. The other representative indicated the Board representative involved was less experienced than most other people from the Board and he was not familiar with the issues affecting the dispute. The Board representative was "helpful", however, and the parties reached an agreement.

Both of the employers who perceived the Board was not successful were involved in lower mainland disputes. The specific disputes discussed in interviews with both these employers were settled in informal hearings. There was no conclusive evidence from interview data, however, that geographic location or outcome of a specific dispute were significant factors connected with employers' perceptions whether the Board is successful in determining underlying causes.

**Unions - Determining the Underlying Causes in Disputes**

All twenty-eight union representatives who were interviewed agreed that the Board as successful in determining underlying causes in disputes involving illegal work stoppages.

Comments from union respondents indicated they were quite satisfied not only with the Board's capability in determining underlying causes, but with the effect on resolving a dispute that is achieved by the Board's efforts to get underlying causes out in the open.

It is noteworthy that none of the employer or the union interviewees emphasized regional industrial relations officers
as having a significant part in determining underlying causes in specific disputes discussed in interviews. Generally, Board representatives did fact finding during informal stages of processing a complaint.

4. Does the Board's Approach Work to the Advantage of One or the Other Party in the Collective Bargaining Relationship?

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Employers - Board's Approach Work to the Advantage of One Party Over the Other

Twenty-four out of the thirty-one management representatives perceived the Board's approach works to the advantage of unions.

Six of these management representatives made specific comments that were consistent with expected employer perceptions described in Chapter III. Their perceptions reflected earlier labour policy when illegal work stoppages were handled by courts and employers could obtain immediate relief from an illegal work stoppage with injunctions. They said unions are required by law to obey statutory provisions against illegal strikes and employers are entitled to have their legal rights enforced. They felt the Board's approach infringes on their rights by delaying an order. One management representative stated succinctly:

All employers get out of collective bargaining is a contract for two years of peace. Why shouldn't unions be penalized for violating the sanctity of the collective agreement?

Three other management representatives in the same group stated that employers should be compensated for damages incurred from an illegal strike. They said the Board should be more willing
to give an employer consent to sue for damages after an order is issued against a union. A management representative who spoke vehemently against the Board's approach remarked, "Even in cases where we were right and the Board issued an order, we're out of pocket and the union has lost nothing. The union has to be made financially responsible."

There were eighteen other management representatives who perceived the Board's approach works to the advantage of unions. The management representatives in this group did not stress legal rights or damages in the traditional sense of court involvement in industrial disputes. They were more concerned that the Board placed too much emphasis on attempting to mediate a settlement in disputes where mediation wasn't appropriate. They felt unions were using informal hearings to win concessions outside of regular negotiations.

A dispute involving a large employer in the food and beverage industry provides a useful example. The dispute was over a long standing issue in the industry about which workers in the same union would receive a higher wage rate for certain work. The work was historically performed by workers in two job classifications in separate lines of progression. The employer suggested to the union that the issue be referred to arbitration. An illegal work stoppage erupted at one of the employer's plants and soon spread throughout his operations in B.C. An application was made to the Board for a cease and desist order and an informal hearing was convened almost immediately. The employer felt strongly against making any concessions regarding the issue, especially when the union was conducting an illegal work stoppage. However, a valuable shipment
of highly perishable goods was due the day of the informal hearing. The Board was aware of the shipment but did not convene a formal hearing. The employer said he could not afford to lose the shipment and he capitulated to the union's position concerning the disputed work to get employees back on the job.

Certainly the questions arose as to what sparked the job action and whether the shipment was truly as critical as the employer said. Nevertheless, the employer was convinced that the union used the Board to win concessions. He made the following comments concerning the Board's role:

We will not go to an informal hearing with that union again. If we had gone to arbitration and lost, okay, we took our lumps. But we shouldn't have lost the way we did with a gun to our head...The Board wants a settlement at any cost. The union used the Board to get concessions and got off scot-free.

Another management representative in the same group as the one quoted above said, "I feel unequivically that unions know the Board's procedures and use them to the fullest extent. Any union knows they can shut us down for as long as the informal process takes, one and a half days to a week." Three other management representatives in the same group specifically mentioned periods of one to three days that an illegal work stoppage could continue while the Board attempts to mediate a settlement.

Management representatives in this group were resentful of some of the Board's tactics in informal mediation. They described the Board's tactics as backroom "rubber hosing" and "arm twisting". They spoke mostly about the Board delaying formal hearings. However, one interviewee complained that a Board representative told him he "really needed to settle this one". The Board
representative said further, "You have to appear before us again. You cooperate with us and we will cooperate with you."

Four management representatives suggested the Board attempts to mediate at any cost because it fears that its orders would not be obeyed. One interviewee claimed the Board asked the union in a dispute whether workers would obey an order. The union replied no and the Board did not issue an order.

Despite the somewhat negative perceptions reported from the eighteen management representatives in the above group, they did not seem opposed in general to the Board's approach. Rather they perceived the Board's approach worked to the advantage of unions because the Board tried to mediate in nearly every dispute. Employers were pressured into making concessions in disputes in which they felt they were right. They perceived unions have nothing to lose from carrying on an illegal work stoppage while the Board attempts to mediate. From their perspective, the Board needs to be more prepared to issue orders and less determined to achieve settlements in every case.

Seven out of the thirty-one management representatives perceived the Board's approach does not work to the advantage of either party. The management representatives in this group emphasized the Board's approach provides a constructive way to resolve disputes. A senior representative from the construction industry said the Board has been exceptionally beneficial to his industry. He said, "It's much easier to work in that atmosphere. It allows you to build up credibility with unions."

A management representative at a large mine explained that
his company always prefers to settle a dispute informally "without using the law as a club." He said the Board's approach helps to resolve disputes without intensifying hostilities which is better over the long term for relations with the union and employees. Another interviewee from this group was involved in a dispute with inexperienced union leaders who "hated and totally mistrusted" the company. A Board representative managed to establish a rapport with both parties and he helped them resolve a number of grievances that had caused conflict for some time. The interviewee explained that the Board educated the union leaders during the mediative process about basic contract interpretation. Compromises were made on both sides that would not have occurred before and both sides came away feeling as though they had won.

The management representatives in this group did not stress economic costs from illegal work stoppages, nor did they suggest that unions are using the Board's approach to obtain concessions outside of regular collective bargaining. Two out of the seven interviewees in the group specifically said the Board's approach does not favour unions, because employers have the option to hold out for a formal hearing when the Board is attempting informal mediation. It is possible that these management representatives have not experienced disputes involving the Board in which economic pressures were too great to bear even for one or two days. Thus, their perceptions might be based on comparatively ideal circumstances when informal hearings did not create economic pressures.

Type of industry is a possible indicator of a relationship between economic costs of illegal work stoppages and the perceptions of management representatives towards the Board's approach. An
### TABLE 5
EMPLOYERS' PERCEPTIONS OF WHETHER THE BOARD'S APPROACH WORKS TO THE ADVANTAGE OF UNIONS BY INDUSTRY

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employer in a capital intensive or continuous process industry would, presumably, suffer greater economic damage from an illegal work stoppage than an employer in an industry which requires less investment in a plant and/or equipment. Table 5 above shows the management representatives' perceptions of whether the Board's approach works to the advantage of unions by industry. The perceptions of management representatives in the wood products industry...
best support the notion that employers in capital intensive industries would be more likely to perceive the Board's approach works to the advantage of unions. Four of the 8 management representatives in this industry were involved in the capital intensive pulp and paper sector. They were definite in their perceptions that the Board's approach works to the advantage of unions. One of the other management representatives who perceived the Board's approach works to the advantage of unions was a corporate officer with responsibilities in logging, sawmills, and pulp and paper. The remaining management representative with the same perception was at an interior sawmill. The single representative from the wood products industry who perceived the Board's approach does not work to the advantage of unions was a corporate officer with labour relations responsibilities in all sections of the industry.

The perceptions of management representatives from other industry categories are not conclusive that employers in capital intensive industries are more likely to view the Board's approach as working to the advantage of unions. In the food and beverage industry, for example, a personnel manager at a brewery felt the Board's approach does not work to the advantage of unions. However, there weren't enough interviewees in each industry for an adequate sampling. Also, many different factors might affect employers' damages from an illegal work stoppage other than costs associated with a plant and equipment. Customer dissatisfaction, loss of market share and spoiled goods are just a few.

Another variable that might have significant bearing on employers' perceptions of whether the Board's approach works to the
advantage of unions is the number of times an employer has experienced the Board's approach. Table 6 below shows employers' perceptions in relation to number of complaints submitted to the Board concerning illegal strikes.

**TABLE 6**

| EMPLOYERS' PERCEPTIONS OF WHETHER THE BOARD'S APPROACH WORKS TO THE ADVANTAGE OF UNIONS IN RELATION TO NUMBER OF COMPLAINTS SUBMITTED TO THE BOARD CONCERNING ILLEGAL STRIKES, 1974-1978 |
|--------------------------------------------------|------------------|
| **Yes** | **No** |
| 0 - 5 | 22 | 5 |
| 6 - 10 | 1 | 1 |
| 11+ | 1 | 1 |

The data in Table 6 are not conclusive because few of the employers have submitted more than five complaints. There were few comments during interviews from which it could be construed that employers find the Board's approach more or less appealing after more frequent involvement.

Unions - Board's Approach
Work to the Advantage of One Party Over the Other

Twenty-four out of twenty-eight union representatives perceived the Board's approach doesn't work to the advantage of either party. They emphasized that the Board's approach maintains a balance, because employers cannot obtain an order against an illegal strike until the union has had an opportunity to make its side known during the informal process.

Most of the union representatives in this group made comments about advantages from the Board's approach for long term relations
between management and unions. They emphasized that informal mediation allows issues behind a dispute to surface and avoids bitterness created by legal orders. A provincial union officer gave a good example of a dispute in the metal industry. Two operations merged and there was a backlog of grievances over seniority and job postings. The union claimed the employer was trying to pick and choose people who bid on posted jobs on the basis of skill and ability, and he was ignoring seniority provisions in the collective agreement. A wildcat strike occurred and the employer applied to the Board for a cease and desist order. The Board delayed the order and conducted informal hearings which resulted in changes to the provisions for seniority in the contract. The union representative said an injunction would have been a "superficial solution" and "probably would not have been obeyed". He also admitted that the union "in a sense used" the Board's procedures, but he felt the outcome worked out for the best for both sides.

Seven of the union representatives admitted that informal hearings do provide access to negotiations during the term of a collective agreement. One union representative said he understands how some employers feel the Board's approach favours unions, but he said, "You have to look at it over the long term." One of the interviewees in this group was an in-house lawyer for a large union. He candidly explained that he "pushes for an informal" in disputes involving illegal work stoppages.

Four union representatives stated the Board's approach favours unions. A senior union officer in a construction union said it's usually possible to shut down an employer for one day for an informal and up to three days if you "play your cards right".
A lawyer who represented a different construction union in a dispute over irregular pay practices explained that unions "aren't ignorant" of how to take advantage of the Board's procedures. In the dispute over pay practices, informal hearings lasted about a week and a half. He said the Board's approach worked to the union's advantage; however, he added that there was no way the workers in the dispute were going to return to work until the matter was resolved. The short term nature of employer-employee relationships in the construction industry could affect the perceptions from the two interviewees just mentioned above. One of the other union representatives in this group was also in the construction industry.

5. Does the Tripartite Composition of the Board Inhibit the Mediative Process Because of Partisanship of the Board Members?

<table>
<thead>
<tr>
<th></th>
<th>Yes</th>
<th>No</th>
</tr>
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<tbody>
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</tr>
<tr>
<td>Unions</td>
<td>0</td>
<td>28</td>
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</table>

Employers - Board's Composition Inhibit Mediative Process Because of Partisanship

Twenty-seven out of the thirty-one management representatives perceived that partisanship does not inhibit the Board's mediative process. The perceptions of management representatives in this group generally came across very clearly in interviews. They felt the members of the Board from both management and union backgrounds were knowledgeable and professional. These qualities overshadowed any tendencies of the Board members to let partisanship affect their roles in handling disputes involving illegal work stoppages.
In a dispute mentioned before at a large mine in the eastern part of the province, workers walked off the job over a discharge. A team of two Board members arrived from Vancouver the next morning. One of the Board members came from a management background and the other came from a union background. The Board members met separately with the parties and held meetings with the parties together. The management representative said the Board members were able to obtain the parties' confidence because it was obvious they were knowledgeable and because they seemed to work so well together. The dispute resulted in a settlement.

Three management representatives from a major B.C. industry independently praised a Board member from a union background. The Board member became extremely knowledgeable about labour relations in the industry. The management representatives respected the Board member because he would give his opinion straightforwardly to either party if he thought the party was wrong in a dispute. A very senior management representative in the industry actually wrote a commendation about the Board member to the Chairman of the Board.

A management representative from the health industry made a somewhat paradoxical statement about partisanship on the part of Board members. He said it's naive to think there wouldn't be any partisanship, but that most of the Board members are too professional to let it interfere while they are handling disputes. He also said that he thinks it's unlikely any Board members would do anything that would undermine the Board's approach.

Four out of the twenty-seven management representatives perceived that partisanship on the part of some Board members from
unions does inhibit the mediative process. Their perceptions were based mainly on relations with certain representatives at the Board. One of these interviewees was an owner/manager of a manufacturing business with about thirty employees. He was particularly critical that he was compelled to make a settlement in a dispute involving an illegal work stoppage because of economic pressure he experienced while the Board delayed a formal order. He knew the Board representative who handled the case from the Board representative's earlier activities in the union. He said as soon as he realized who was handling the dispute he felt he wouldn't get fair treatment and he requested that a different Board representative take over the case.

Another interviewee in the group expressed similar perceptions as the management representative in the above example. This interviewee was also an owner/manager with a manufacturing business. He submitted a complaint against an illegal work stoppage. A part-time Board representative who was initially involved in the dispute was a provincial level officer in a union that conducted a raid at the interviewee's operations against the union that was conducting the illegal work stoppage. The employer felt strongly that the union officer would be biased in the dispute and a vice-chairman eventually took over the case.

It's noteworthy that in both of the above cases, the management representatives perceived that partisanship was a problem with certain individuals they knew from experiences not connected with the Board. In both cases, the Board representatives who ended up actually handling the cases came from union back-
grounds, but neither interviewee perceived any problems with partisanship. Thus, selection of Board representatives for individual disputes seems to be more of a problem than partisanship.

The other two management representatives in the group felt that partisanship on the part of Board representatives with union backgrounds was a significant factor in why a cease and desist order was delayed while informal, mediative hearings were conducted. One management representative said, "The Board saw the union side much more readily than ours. To us, the case was clearcut and we should have got an order."

Unions - Board's Composition
Inhibit Mediative Process
Because of Partisanship

None of the twenty-eight union officials perceived that the Board's mediative role is inhibited because of partisanship of its members. Like the majority of management representatives, the union representatives' responses in interviews pertaining to partisanship were quite clear and certain. Generally, they perceived that management and union representatives handle disputes objectively and are able to relate to both sides. One union representative said "the behind the scenes stuff is most important" for the Board's approach. He explained that Board members, management or union, have to obtain the confidence of both parties in a dispute.

A senior union representative in the forest industry commended a Board member who was a labour lawyer for employers. There was a dispute over discharge of a union plant chairman. The respondent said there was a long build up of
frustrations between management and the union. The plant chairman was discharged after a confrontation with a foreman. During meetings with the Board member, some inconsistencies were apparent in testimony by management. Also, the union alleged the foreman had manhandled some employees. The Board member recognized that perhaps the employer's hands were not clean in the dispute. The dispute was settled and the plant chairman was reinstated.

Another union representative was involved in a dispute handled by a team of two Board representatives, one from management and one from a union background. He felt the management representative was "always biased" against the union. However, he said this didn't inhibit the team's efforts to mediate. He explained the two Board members had a very good working relationship and their biases "just weren't a problem".

One union representative did not perceive that the Board's mediative process was inhibited by management partisanship, but he felt "strongly against" having a certain union representative as a Board member. The interviewee and the union Board member were officers in two unions that were frequently raiding against one another. The interviewee emphasized that the Board member had access to information which put his union at a disadvantage. He said he had complained to the Board about this particular member.

Chapter Summary

This chapter presented management and union perceptions of the Board's approach to disputes involving illegal work stoppages. Most management representatives felt that the Board does not channel disputes into appropriate procedures. The majority of the management representatives who said the Board's procedures
were not appropriate were involved in specific disputes that were settled in informal hearings. All of these management representatives said an application was made to the Board to obtain a cease and desist order, not to obtain mediation. The majority of the union representatives thought the Board does channel disputes into appropriate procedures.

Virtually all of the management and union representatives said the Board responds to complaints with adequate speed and successfully determines underlying causes in disputes. Parties located in outlying areas of the province were satisfied with the Board's speed.

Most management representatives felt the Board's approach works to the advantage of unions. The industry may be a significant variable affecting their perceptions. Employers in capital intensive or continuous process industries seem to view the Board's approach less favourably than employers in labour intensive industries. A larger sample, however, would be necessary to obtain conclusive evidence. Most union representatives perceived the Board's approach doesn't work to the advantage of either party.

The majority of management and union representatives felt the Board's mediative process is not inhibited by partisanship of Board members.
Notes, Chapter V

CHAPTER VI
CONCLUSION

This chapter offers conclusions from management and union perceptions about the Labour Relations Board's approach to disputes involving illegal work stoppages. The chapter also contains suggestions for further research.

The Labor Code embodies an effective policy for illegal work stoppages. In exercising its jurisdiction over illegal strikes, the Board appears to be achieving the intent of the Code to promote collective bargaining by reducing legalism and encouraging mutual accommodation.

The Board is particularly successful in responding to complaints with adequate speed, determining underlying causes in disputes and with lack of partisanship which might inhibit mediation.

The Board's speed in responding to complaints reflects flexibility and willingness of people working at the Board to depart on short notice to the location of a dispute. This is important because of the nature of disputes involving wildcat strikes. Employers may be incurring substantial production losses while workers may be reacting to an issue aggravating them in the workplace.

The Board's success at determining underlying causes is attributed to informality and flexibility of its procedures and to the Board representatives who handle disputes. Their skill
and credibility are vital to the Board's approach. It's noteworthy that regional Industrial Relations Officers working for the Department of Labour do not have an important role in dealing with disputes involving illegal work stoppages. The regional IRO's do not have the stature and credibility needed for a significant part in disputes that are often high profile and extremely intense.

The Board's success at determining underlying causes in disputes is an important improvement over the courts where disputes were handled on the basis of only the complainant's evidence. Also, since the Board is able to determine underlying causes successfully, then it should be equipped to use appropriate procedures for individual disputes.

The tripartite composition of the Board does not inhibit the mediative process because of partisanship. Indeed, the expertise of Board members are major assets to the Board's approach. Management and union representatives' perceptions of the Board's composition are also important from a historical perspective. Organized labour in British Columbia has traditionally seen the courts and government as favouring employers. Despite a few criticisms of individual Board members, the members and staff of the present Labour Relations Board have an aura of impartiality. Although the research for this thesis applied primarily to the Board's involvement in illegal work stoppages, it is reasonable to expect the Board's impartial image extends to other areas of activity.

The Board is less successful at channeling disputes into
appropriate procedures. Mediation in informal hearings is used too much, to the extent unions can take advantage and unfairly obtain concessions by exerting economic pressure on employers with illegal strikes. Unions can count on time spent in informal mediation before the Board will convene a formal hearing and the risk of an order increases. An illegal strike for a day or two can put enough pressure on some employers so they must capitulate in a dispute.

From a public policy viewpoint, the short term costs to employers from illegal work stoppages may be a necessary consequence from the emphasis on accommodation which underlies the Board's approach. Employers will probably always complain about costs more than labour.

Few of the management representatives who were interviewed, however, said the courts' methods were better. They generally viewed the Board's approach as an improvement, but they think the Board should use more discretion about when to pursue informal mediation and when to issue orders.

It should be emphasized that on the basis of this research an administrative adjustment is needed in the Board's procedures, not changes in the Code or in the Board's jurisdiction. Members, panels and officers of the Board must exercise utmost discretion to know when to attempt to mediate a dispute, or convene a formal hearing.

The challenge for the Board is to determine when a party is manipulating its procedures to gain an advantage for bargaining and to be prepared to deal with that party appropriately. The
number of cases in which manipulation is attempted is probably a minority in relation to the Board's entire caseload. Nevertheless, the Board cannot afford its procedures giving a bargaining advantage to either employers or unions. Unions generally indicated that the Board's approach doesn't work to the advantage of either party. They felt the Board's approach provides a fair means for resolving problems which is better for long term relations with employers. Their perceptions are significant considering the B.C. labour movement has always viewed government and the courts with antagonism in relation to policy for illegal strikes. At least from the perspective of the labour movement, the Board's approach has the potential to alleviate antagonism that has always been characteristic of labour relations in B.C.

Nevertheless, the Board must pay attention to management perceptions of informal hearings. The Board's approach cannot be seen as consistently unfair without risking that employers will withdraw serious participation. Indeed, a minority of employers, some in major industries, already have policies against meaningful participation when the Board attempts to mediate in informal hearings.

The parties interviewed in this research were involved in disputes that happened during the first five years of the Board's existence. Thus, perhaps the Board was experimenting and learning while handling disputes that were discussed in interviews. A significant question is whether the Board has learned from experience and has adjusted to any imbalances that appeared during its first few years. The Board has the capability to adjust itself since
it is composed of members from the industrial relations community who would hear about dissatisfaction.

Specific questions that warrant further research are whether employers still feel the Board attempts to mediate too often and whether they feel the Board's approach still works to the advantage of unions.

A true measure, however, of the Board's mediative role in handling illegal work stoppages will take a long time to obtain. The intent of the Board's approach as an integral part of current labour policy in British Columbia is to facilitate free collective bargaining by reducing legalism and encouraging accommodation. Given the history of labour relations in the province, it would be unwise to expect any government agency or institution could achieve this in a short period of time.
APPENDIX A

SECTIONS OF THE LABOUR CODE CONCERNING ILLEGAL WORK STOPPAGES
SECTIONS OF THE LABOUR CODE
CONCERNING ILLEGAL WORK STOPPAGES

Hearing of Complaint

28. (1) Where, upon the application or complaint of any interested person under section 8, 96, this section, or any other provision of this Act or the regulations, or on its own motion, the board is satisfied that an employer, trade-union, or any other person has contravened a provision of this Act, a collective agreement, or the regulations, the board may, in its discretion,

(a) make an order directing an employer, trade-union, or any other person to do any thing for the purpose of complying with this Act, a collective agreement, or the regulations, or to refrain from doing any act, thing, or omission in contravention of this Act, a collective agreement, or the regulations; or

(b) make an order directing an employer, trade-union, or any other person to rectify any contravention of this Act or the regulations; or

(c) refuse to make an order, notwithstanding a contravention of this Act, a collective agreement, or the regulations, where the board is of the opinion that it is just and equitable to do so, in view of the improper conduct of the employer, trade-union, or other person making the application or complaint; or

(d) except in relation to conduct regulated by Part V, make an order determining and fixing the monetary value of any injury or losses suffered by an employer, trade-union, or any other person as a result of a contravention of this Act, a collective agreement, or the regulations, and directing an employer, trade-union, or any other person to pay to that employer, trade-union, or other person the amount of the monetary value fixed and determined by the board; or

(e) make an order directing an employer to reinstate an employee discharged under circumstances constituting a contravention of this Act, a collective agreement, or the regulations; or

(f) make such other order or proceed in such other manner under this Act, consistent with section 27, as the board considers appropriate in all the circumstances.

(2) Where a request is made to the board to exercise its discretion under section 85, 86, or any other provision conferring upon the board a discretion to prohibit, restrict, confine, regulate, control, direct, or require the performance of any act or thing, the board may exercise its discretion and make such order, impose such conditions, or proceed in such other manner as it considers to be in furtherance of the purposes and objects set forth in section 27.
(3) Where, at any time before or during a proceeding, the board or a person appointed by the board is able to effect a settlement of all or part of the differences between the parties to the proceeding on terms not contrary to this Act, a collective agreement, or the regulations, the board may issue a consent order setting forth the terms of settlement agreed to by the parties, and that consent order shall have the same force and effect as an order under subsection (1).

(4) Where, in the opinion of the board, an application or complaint is without merit, it may reject the application or complaint at any time.
Strikes, Lockouts, and Picketing

79. (1) No employee bound by a collective agreement, whether entered into before or after the coming into force of this Act, shall strike during the term of the collective agreement, and no person shall declare or purport to authorize a strike of those employees during that term.

(2) No employer bound by a collective agreement, whether entered into before or after the coming into force of this Act, shall, during the term of the collective agreement, lock out any employee bound by the collective agreement.

80. A trade-union shall not declare or authorize a strike and no employee shall strike, and the employer shall not declare or cause a lockout, until

(a) the trade-union and the employer, or representatives authorized by them in that behalf, have bargained collectively with respect to the dispute which is the cause or occasion of the strike or lockout and failed to conclude a collective agreement; and

(b) in the case of a trade-union, or an employee in the unit affected, either

(i) the provisions of section 81 have been compiled with; or

(ii) the employer has given notice, pursuant to clause (b) of section 82, that he is going to lock out his employees; or

(c) in the case of an employer, either

(i) the provisions of section 82 has been complied with; or

(ii) the trade-union has given notice, pursuant to clause (b) of subsection (2) of section 81, that the employees are going to strike,

and, unless the provisions of this section are satisfied, the strike or the lockout, as the case may be, is illegal.

81. (1) No person shall declare or authorize a strike, and no employee shall strike, until after a vote has been taken by secret ballot and in accordance with the regulations, of the employees in the unit affected as to whether to strike or not to strike, and the majority of those employees who vote have voted in favour of a strike.

(2) Where, upon the application of a person directly affected by a strike vote or an impending strike, or on its own behalf, the board is satisfied that a vote has not been held in accordance with subsection (1) or the regulations, the board may make an order declaring that the vote is of no force or effect and directing that, if another vote is conducted, it shall be taken upon such terms as it considers necessary or advisable.

(3) Except as otherwise agreed in writing between the employer or employers' organization authorized by the employer and the trade-
union representing the unit affected, where the vote is in favour of a strike,

(a) no person shall declare or authorize a strike, and no employee shall strike, except during the three months immediately following the date on which the vote was taken; and

(b) no employee shall strike until the employer has been given written notice by the trade-union that the employees are going to strike and seventy-two hours, or such longer period as may be directed under section 82A, have elapsed from the time such notice was given and, where a mediation officer has been appointed under section 69, until the trade-union has been advised by the minister that the mediation officer has made his report to the minister.

82. (1) Where more than one employer is engaged in the same dispute with their employees, no person shall declare or authorize a lockout, and no employer shall lock out his employees, until after a vote has been taken by secret ballot and in accordance with the regulations, of all employers as to whether to lock out or not to lock out and a majority of those employers who vote have voted in favour of a lockout.

(2) Where, upon the application of a person directly affected by a lockout vote or an impending lockout, or on its own behalf, the board is satisfied that a vote has not been held in accordance with subsection (1) or the regulations, the board may make an order declaring that the vote is of no force or effect and directing that, if another vote is conducted, it shall be taken upon such terms as the board considers necessary or advisable.

(3) Except as otherwise agreed in writing between the employer or employers' organization authorized by the employer and the trade-union representing the unit affected,

(a) where a vote is taken under subsection (1) and the vote is in favour of a lockout, no person shall declare or authorize a lockout and no employer shall lock out his employees except during the 3 months immediately following the date on which the vote was taken; and

(b) no employer shall lock out his employees until the trade-union has been given written notice by the employer that the employer is going to lock out his employees and seventy-two hours, or such longer period as may be directed under section 82A, have elapsed from the time such notice was given and, where a mediation officer has been appointed under section 69, until the employer has been advised by the minister that the mediation officer has made his report to the minister.
APPENDIX B

LABOUR CODE REGULATIONS CONCERNING
APPLICATIONS TO THE LABOUR RELATIONS BOARD
FOR A HEARING
LABOUR CODE REGULATIONS CONCERNING
APPLICATIONS TO THE LABOUR RELATIONS BOARD
FOR A HEARING

Complaints Respecting Violation of the Code
and Regulations (Sec. 28)

35. A complaint laid under section 28 of the Code shall be in
writing and shall set out therein the order which is sought from
the Board and an outline of what is intended to be proven.

36. Within five days of receipt of a copy of the complaint
under regulations 34 and 35, any party other than the party against
whom the complaint is made, if he wishes to intervene, shall file
a notice of his intervention which shall include a statement of his
interest in the matter and any facts on which he intends to rely.

37. (1) A complaint under section 28 of the Code that a provision
of Part V or section 4 (2) of the Code has been contravened shall
(a) state the name of the complainant, the party (or parties)
who it is alleged has contravened section 4 (2) or Part V
of the Code, and any other interested party, and, where
known, their addresses and telephone numbers;
(b) include a statutory declaration of the complainant, or an
officer, official or agent thereof, detailing the material
facts upon which the complainant relies;
(c) state the specific order the complainant requests and the
provisions of the Code or other law upon which the com­
plainant bases its complaint;
(d) state the date and time, at least one clear day after the
copy of the complaint has been delivered to the party or
parties against whom the complaint is made and any other
interested party, at which the complainant wishes to appear
before the Board to apply for the order it seeks; and
(e) where a hearing is requested earlier than is provided in
(d), state that an expedited hearing of the complaint is
requested and the reasons it is requested, which shall
specify the nature of any harm anticipated or resulting
from the violations complained of.

(2) Where several persons are individually parties to a com-
plaint and they are distinguishable as a group with common interests,
they may be named as a group and the group will be one party to the
complaint. If all or some of the persons in the group are represented
by a trade union, an organization of trade unions, or an employers'
organization, the trade union, organization of trade unions, or em-
ployers' organization may be named in the complaint as the agent for
those persons it represents. If all or some of the persons in the
group are not represented by a trade union, organization of trade
unions, or an employers' organization, three of the persons not
represented by a trade union, organization of trade unions, or employers' organization may be named in the complaint as representatives of these persons.

(3) On or before the day before the hearing, the complainant shall verify to the Board that a copy of the complaint and any accompanying document has been delivered to the party or parties against whom the complaint is made and any other interested party.

38. (1) A hearing of the complaint and application for an order shall be held at the Board's Vancouver offices and at the date and time at which the complainant gave notice under Regulation 37(1). (d) unless, upon the request of any party or upon the Board's own motion, the Board designates another date, time, or location or the Board notifies the parties that formal hearing of the complaint and application will be postponed pending investigation or attempted resolution of the dispute by the Board.

(2) When the Board designates a date, time, or location other than the time, date, and location of which the complainant has given notice, the Board shall notify all parties. The notice shall be in writing when convenient but the Board may notify any party by telephone, telegraph, or any other means of communication. For purposes of notice under this subsection, notice to a trade union or employers' organization is deemed to be notice to its members and the persons for whom it has authority to act as bargaining agent.

39. (1) Any party proposing to contest a complaint under section 28 of the Code that a provision of Part V or section 4(2) of the Code has been contravened shall, before the day of any hearing into the complaint, deliver its reply to the office of the Board and a copy to the complainant and any other interested party.

(2) A reply shall state the nature of a contesting party's case, the material facts upon which it relies, and the provisions of the Code or other law upon which it bases its reply.

40. (1) To satisfy the requirements for delivery under Regulations 37 and 39, the Board and the party or parties or their agents must be in actual possession of a copy of the complaint or a reply thereto. Compliance with Regulation 17(1)(b) or filing by mail under Regulation 17(2) does not satisfy delivery for the purposes of Regulations 37 and 39.

(2) For the purposes of delivery under Regulations 37 and 39, giving a copy of a complaint or reply to an official of a trade union or its chartering or regional organization or an organization of trade unions of which it is a member shall be delivery to the trade union. Similarly giving a copy of a complaint or reply to an official of an employers' organization shall be delivery to the employers' organization. For the purposes of effecting delivery under Regulations 37 and 39, a trade union or employers' organization is an agent of its members and the persons for whom it has authority to act as bargaining agent.

(3) Where a complaint or reply is required to be delivered under Regulations 37 and 39, and a party satisfies the Board that it is unable to comply with subsection (1) of this regulation, or that compliance with subsection (1) of this regulation causes the party an undue hardship, the Board may direct that delivery may be made in another manner.

41. Unless the Board, upon application, directs otherwise, the person who has made a statutory declaration which contains the
material facts upon which a party relies shall be present to testify
at the hearing of the complaint.

42. After conducting a hearing on a complaint under section 28
of the Code alleging a contravention of a provision of Part V or
section 4 (2) of the Code, the Board may
(1) dismiss the complaint;
(2) make a declaration that there has been a violation of
section 4 (2) or any of the provisions of Part V of the
Code;
(3) find a violation of section 4 (2) or any of the provisions
of Part V of the Code and order any party to do anything
for the purposes of complying with the Code or refrain
from doing anything in contravention of the Code;
(4) make an order binding on the parties named in the order until
such time as the Board makes further investigation into the
complaint or holds further hearings and decides whether, and
upon what conditions and undertakings, if any, it will make
a permanent order;
(5) upon the written request of any party, in the appropriate
circumstances, proceed under either section 96 or section 97
of the Code;
(6) make a declaration that there has been a violation of section 4
(2) or any of the provisions of Part V of the Code and submit
a statement of the matter to the Minister requesting that he
appoint a special officer under section 113 of the Code;
(7) postpone making an order until the parties, in accordance with
a procedure agreed to by the parties and sanctioned by the
Board, have endeavoured to settle the matter which caused the
complained contravention; or
(8) make such other order or proceed in such other manner as, in
all the circumstances of the case, it deems appropriate.

43. The Board may, without holding a hearing, exercise the powers
set out in Regulation 42 (1), (7), and (8).

44. Where an application is made pursuant to section 112 of the
Code such application shall be made in the following form:
APPENDIX C

CHARACTERISTICS OF THE POPULATION
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<td>-</td>
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<td>1</td>
<td>4</td>
</tr>
<tr>
<td>Machinery</td>
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<td>-</td>
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<td>-</td>
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</tr>
<tr>
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<td>-</td>
<td>3</td>
<td>15</td>
</tr>
<tr>
<td>Construction</td>
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<td><strong>Other</strong></td>
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<td></td>
<td></td>
<td></td>
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<tr>
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<td>1</td>
<td>6</td>
<td>3</td>
<td>4</td>
<td>14</td>
</tr>
<tr>
<td>Transportation</td>
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<td>2</td>
<td>5</td>
<td>9</td>
<td>5</td>
<td>23</td>
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<tr>
<td>Communication and other utilities</td>
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<td>2</td>
<td>-</td>
<td>4</td>
<td>8</td>
</tr>
<tr>
<td>Total</td>
<td>8</td>
<td>40</td>
<td>38</td>
<td>42</td>
<td>74</td>
<td>202</td>
</tr>
</tbody>
</table>

Source: List of complainants under Sections 79, 80 and 81 of the Labour Code of B.C. provided by the Labour Relations Board.
## TABLE 8

**INFORMAL COMPLAINTS CONCERNING ILLEGAL WORK STOPPAGES MADE TO THE LABOUR RELATIONS BOARD OF B.C. BY INDUSTRY AND YEAR, 1976-1978**

<table>
<thead>
<tr>
<th>Industry</th>
<th>1976</th>
<th>1977</th>
<th>1978</th>
<th>Total</th>
</tr>
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<tbody>
<tr>
<td>Manufacturing</td>
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<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Food &amp; beverage</td>
<td>2</td>
<td>3</td>
<td>1</td>
<td>6</td>
</tr>
<tr>
<td>Wood products</td>
<td>4</td>
<td>5</td>
<td>1</td>
<td>10</td>
</tr>
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<td>Metals</td>
<td>-</td>
<td>3</td>
<td>-</td>
<td>3</td>
</tr>
<tr>
<td>Machinery</td>
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<td>-</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td>Miscellaneous</td>
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<td>1</td>
<td>2</td>
<td>4</td>
</tr>
<tr>
<td>Construction</td>
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<td>Trade and Service</td>
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<td>Trade</td>
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<td>1</td>
<td>-</td>
<td>2</td>
</tr>
<tr>
<td>Education and health</td>
<td>1</td>
<td>3</td>
<td>-</td>
<td>4</td>
</tr>
<tr>
<td>Municipal</td>
<td>-</td>
<td>4</td>
<td>-</td>
<td>4</td>
</tr>
<tr>
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</tr>
<tr>
<td>Other</td>
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<tr>
<td>Mining</td>
<td>1</td>
<td>3</td>
<td>1</td>
<td>5</td>
</tr>
<tr>
<td>Transportation</td>
<td>2</td>
<td>2</td>
<td>1</td>
<td>5</td>
</tr>
<tr>
<td>Communication and other utilities</td>
<td>3</td>
<td>-</td>
<td>-</td>
<td>3</td>
</tr>
<tr>
<td>Total</td>
<td>20</td>
<td>35</td>
<td>25</td>
<td>80</td>
</tr>
</tbody>
</table>

**Source:** List of complainants under Sections 79, 80 and 81 of the Labour Code of B.C. provided by the Labour Relations Board. The data in Table 2 are not complete. During the period 1976-1978 an unknown number of informal complaints were not recorded in cases that the Board influenced a settlement quickly and informally over the telephone or otherwise.
## TABLE 9

APPLICATIONS CONCERNING ILLEGAL WORK STOPPAGES MADE TO THE LABOUR RELATIONS BOARD OF BRITISH COLUMBIA BY YEAR AND OUTCOME, 1974-1978

<table>
<thead>
<tr>
<th>Year</th>
<th>Settled</th>
<th>Order Issued</th>
<th>Application Rejected</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>1974</td>
<td>6</td>
<td>2</td>
<td>-</td>
<td>8</td>
</tr>
<tr>
<td>1975</td>
<td>22</td>
<td>10</td>
<td>8</td>
<td>40</td>
</tr>
<tr>
<td>1976</td>
<td>42</td>
<td>12</td>
<td>4</td>
<td>58</td>
</tr>
<tr>
<td>1977</td>
<td>59</td>
<td>13</td>
<td>5</td>
<td>77</td>
</tr>
<tr>
<td>1978</td>
<td>72</td>
<td>21</td>
<td>6</td>
<td>99</td>
</tr>
</tbody>
</table>

Total | 201 | 58 | 23 | 282 |

Source: List of applications under Sections 79, 80 and 81 of the Labour Code of B.C. provided by the Labour Relations Board.

Note: Informal complaints were not recorded in 1974 and 1975 and, therefore, are not reflected for those two years in the above data.
### Table 10

**Applications Concerning Illegal Work Stoppages Made to the B.C. Labour Relations Board by Location and Year, 1974-1978**

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Lower Mainland</td>
<td>5</td>
<td>30</td>
<td>30</td>
<td>39</td>
<td>61</td>
<td>165</td>
</tr>
<tr>
<td>East</td>
<td>-</td>
<td>5</td>
<td>9</td>
<td>16</td>
<td>18</td>
<td>48</td>
</tr>
<tr>
<td>Coast/ Mainland</td>
<td>-</td>
<td>1</td>
<td>5</td>
<td>3</td>
<td>4</td>
<td>13</td>
</tr>
<tr>
<td>Island</td>
<td>1</td>
<td>1</td>
<td>5</td>
<td>13</td>
<td>3</td>
<td>23</td>
</tr>
<tr>
<td>North</td>
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<td>3</td>
<td>9</td>
<td>6</td>
<td>13</td>
<td>33</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>8</strong></td>
<td><strong>40</strong></td>
<td><strong>58</strong></td>
<td><strong>77</strong></td>
<td><strong>99</strong></td>
<td><strong>282</strong></td>
</tr>
</tbody>
</table>

**Source:** Lists provided by the Labour Relations Board of complainants who applied to the Board under Sections 79, 80 and 81 of the Labour Code.

**Note:** Informal applications were not recorded in 1974 and 1975 and, therefore, are not reflected in the above data.
APPENDIX D

CHARACTERISTICS OF THE SAMPLE
<table>
<thead>
<tr>
<th>Industry</th>
<th>Lower Mainland</th>
<th>East</th>
<th>Coast/Mainland</th>
<th>Island</th>
<th>North</th>
<th>Total</th>
</tr>
</thead>
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<td>Union</td>
<td>Emp'r</td>
<td>Union</td>
<td>Emp'r</td>
<td>Union</td>
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<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Food &amp; beverage</td>
<td>4</td>
<td>3</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Wood products</td>
<td>-</td>
<td>-</td>
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<td>1</td>
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<td>-</td>
<td>-</td>
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<tr>
<td>Machinery</td>
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<td>1</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
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<td>2</td>
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<td>-</td>
<td>-</td>
<td>-</td>
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<tr>
<td>Construction</td>
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<td>3</td>
<td>1</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Trade and Service</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
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<tr>
<td>Trade</td>
<td>2</td>
<td>1</td>
<td>-</td>
<td>-</td>
<td>-</td>
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</tr>
<tr>
<td>Education and health</td>
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<td>2</td>
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<td>-</td>
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<td>-</td>
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<td>-</td>
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<tr>
<td>Mining</td>
<td>-</td>
<td>-</td>
<td>2</td>
<td>2</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Transportation</td>
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<td>2</td>
<td>1</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Communication and other utilities</td>
<td>1</td>
<td>1</td>
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<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Total</td>
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<td>18</td>
<td>9</td>
<td>6</td>
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</tr>
</tbody>
</table>
### TABLE 12

**SPECIFIC DISPUTES DISCUSSED DURING INTERVIEWS**
**BY INDUSTRY, YEAR AND TYPE OF COMPLAINT**

<table>
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<tr>
<th></th>
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<th></th>
<th></th>
<th></th>
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<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
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</thead>
<tbody>
<tr>
<td>Manufacturing</td>
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<td></td>
<td></td>
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<td></td>
<td></td>
<td>Total</td>
</tr>
<tr>
<td>Food &amp; beverage</td>
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<td>1</td>
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<td>1</td>
<td></td>
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<tr>
<td>Wood products</td>
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<td></td>
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<td></td>
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</tr>
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<td></td>
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<td></td>
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<td>2</td>
</tr>
<tr>
<td>Construction</td>
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<td></td>
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<td></td>
<td>2</td>
<td></td>
<td>3</td>
</tr>
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<td>Trade and Service</td>
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<td></td>
<td></td>
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<td></td>
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</tr>
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<td></td>
<td>3</td>
</tr>
<tr>
<td>Education and health</td>
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<td></td>
<td></td>
<td></td>
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<td></td>
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<td></td>
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</tr>
<tr>
<td>Other</td>
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<td></td>
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<td></td>
<td></td>
<td></td>
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</tr>
<tr>
<td>Transportation</td>
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<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>3</td>
</tr>
<tr>
<td>Communication and other utilities</td>
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<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
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<td>1</td>
<td></td>
<td>16</td>
<td></td>
<td>30</td>
</tr>
</tbody>
</table>

Notation: Inf'l = Informal
TABLE 13
NUMBER OF COMPLAINTS BY INDUSTRY REGARDING ILLEGAL WORK STOPPAGES IN WHICH ORGANIZATIONS REPRESENTED BY MANAGEMENT AND UNION INTERVIEWEES WERE INVOLVED, 1974-1978

<table>
<thead>
<tr>
<th>Industry</th>
<th>Employer</th>
<th>Union</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Formal</td>
<td>Informal</td>
</tr>
<tr>
<td>Manufacturing</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Food &amp; beverage</td>
<td>9</td>
<td>2</td>
</tr>
<tr>
<td>Wood products</td>
<td>19</td>
<td>5</td>
</tr>
<tr>
<td>Metals</td>
<td>1</td>
<td>-</td>
</tr>
<tr>
<td>Machinery</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td>Miscellaneous</td>
<td>2</td>
<td>-</td>
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<tr>
<td>Construction</td>
<td>11</td>
<td>14</td>
</tr>
<tr>
<td>Trade and Service</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Trade</td>
<td>3</td>
<td>0</td>
</tr>
<tr>
<td>Education and Health</td>
<td>1</td>
<td>2</td>
</tr>
<tr>
<td>Municipal</td>
<td>1</td>
<td>0</td>
</tr>
<tr>
<td>Miscellaneous</td>
<td>0</td>
<td>1</td>
</tr>
<tr>
<td>Other</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Mining</td>
<td>3</td>
<td>1</td>
</tr>
<tr>
<td>Transportation</td>
<td>19</td>
<td>3</td>
</tr>
<tr>
<td>Communication and other utilities</td>
<td>*</td>
<td>*</td>
</tr>
<tr>
<td>Total</td>
<td>70</td>
<td>30</td>
</tr>
</tbody>
</table>

Source: List of complaints 1974-1978 under Sections 79, 80, 81 of the Labour Code of B.C. provided by the Labour Relations Board.

*The employer interviewee in this industry represented a firm operating in more than one industry. Rather than double count this employer was omitted in the communication industry.
### Table 14

**Outcomes of Specific Disputes Discussed in Interviews by Year, 1974-1978**

<table>
<thead>
<tr>
<th></th>
<th>Settled</th>
<th>Order Issued</th>
<th>Rejected</th>
</tr>
</thead>
<tbody>
<tr>
<td>1974</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>1975</td>
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<td>1</td>
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</tr>
<tr>
<td>1976</td>
<td>4</td>
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<td>1977</td>
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<td>-</td>
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</tr>
<tr>
<td>1978</td>
<td>16</td>
<td>2</td>
<td>-</td>
</tr>
<tr>
<td>Total</td>
<td>30</td>
<td>5</td>
<td>2</td>
</tr>
</tbody>
</table>

Note: Seven of the disputes which were settled were submitted as informal complaints to the LRB. By year these are as follows:

- 1974: 0
- 1975: 0
- 1976: 1
- 1977: 4
- 1978: 2

Source: List of complaints 1974-1978 under Sections 79, 80, 81 of the Labour Code of B.C. provided by the Labour Relations Board.
APPENDIX E

COMPARISONS BETWEEN THE POPULATION AND THE SAMPLE
### TABLE 15

**COMPARISON BY INDUSTRY OF APPLICATION MADE TO THE LRB CONCERNING ILLEGAL WORK STOPPAGES AND INTERVIEWEES**

<table>
<thead>
<tr>
<th>Industry</th>
<th>Formal and Informal Applications, 1974-1978</th>
<th>Percent of Population</th>
<th>Interviewees</th>
<th>Percent of Sample</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td>Emp'</td>
<td>Union</td>
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<tr>
<td>Manufacturing</td>
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<td>Food &amp; beverage</td>
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<td>8.5</td>
<td>4</td>
<td>3</td>
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<td>Wood Products</td>
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<td>19.1</td>
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<td>Metals</td>
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<td>Machinery</td>
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<td>1.8</td>
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<tr>
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<td>6.7</td>
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<tr>
<td>Construction</td>
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<td>24.8</td>
<td>4</td>
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<td>Trade and Service</td>
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<td>Trade</td>
<td>14</td>
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<td>Education and health</td>
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<tr>
<td>Municipal</td>
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<tr>
<td>Mining</td>
<td>19</td>
<td>6.7</td>
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<td>2</td>
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<tr>
<td>Transportation</td>
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<td>9.9</td>
<td>2</td>
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<td>Communication and other utilities</td>
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<td>3.9</td>
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<td>1</td>
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<tr>
<td>Total</td>
<td>282</td>
<td>-</td>
<td>31</td>
<td>28</td>
</tr>
<tr>
<td></td>
<td>Settled Population</td>
<td>Settled Sample</td>
<td>Order Issued Population</td>
<td>Order Issued Sample</td>
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<td>---------------</td>
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<td>1974</td>
<td>6</td>
<td>-</td>
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<td>1976</td>
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<td>59</td>
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<td>13</td>
<td>-</td>
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<td>1978</td>
<td>72</td>
<td>16</td>
<td>21</td>
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<td>30</td>
<td>58</td>
<td>5</td>
</tr>
</tbody>
</table>

Percent of total Population or Sample:

| Percent of total Population or Sample | 71.2 | 81.1 | 20.6 | 13.5 | 8.2  | 5.4 |

**TABLE 16**

**COMPARISON BY OUTCOME AND YEAR OF APPLICATIONS MADE TO THE LRB CONCERNING ILLEGAL WORK STOPPAGES AND SPECIFIC DISPUTES DISCUSSED IN INTERVIEWS**


<table>
<thead>
<tr>
<th></th>
<th>Formal and Informal Applications, 1974-1978</th>
<th>Percent of Population</th>
<th>Interviewees</th>
<th>Percent of Sample</th>
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<tbody>
<tr>
<td>Lower Mainland</td>
<td>165</td>
<td>58.5</td>
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<td>18</td>
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<td>East</td>
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<td>Coast/Mainland</td>
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<td>Island</td>
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<td>North</td>
<td>33</td>
<td>11.7</td>
<td>1</td>
<td>1</td>
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<tr>
<td><strong>Total</strong></td>
<td><strong>282</strong></td>
<td><strong>-</strong></td>
<td><strong>31</strong></td>
<td><strong>28</strong></td>
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