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Union Democracy and Union Renewal The CAW Public Review Board La démocratie syndicale et le regain du syndicalisme Le cas de la Commission indépendante d'appel des TCA Democracia sindical y renovación de los sindicatos El Consejo Público de Revisión del Sindicato Canadiense de Trabajadores del Automóvil

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Article abstract

Unions in the current environment are facing renewed pressures to demonstrate internal democracy and accountability. In this context, the Public Review Board (PRB) of the Canadian Auto Workers (CAW) deserves attention. The PRB is a unique institution within the Canadian labour movement: a body outside the union which has the power to make final and binding decisions on issues raised by union members. This paper considers the contribution of the PRB as a support for democratic renewal. The evolution of the PRB, from its origin in 1950s America to its current Canadian embodiment, is described. The decisions of the PRB over its two-decade history in Canada are analyzed and assessed. While recognizing the lasting influence of the narrow, procedural vision charted by the PRB early in its history, the author concludes that the CAW's PRB is an innovation that merits wider recognition.

Union Democracy and Union Renewal

The CAW Public Review Board

JONATHAN EATON

Unions in the current environment are facing renewed pressures to demonstrate internal democracy and accountability. In this context, the Public Review Board (PRB) of the Canadian Auto Workers (CAW) deserves attention. The PRB is a unique institution within the Canadian labour movement: a body outside the union which has the power to make final and binding decisions on issues raised by union members. This paper considers the contribution of the PRB as a support for democratic renewal. The evolution of the PRB, from its origin in 1950s America to its current Canadian embodiment, is described. The decisions of the PRB over its two-decade history in Canada are analyzed and assessed. While recognizing the lasting influence of the narrow, procedural vision charted by the PRB early in its history, the author concludes that the CAW's PRB is an innovation that merits wider recognition.

In the current environment, unions are facing renewed pressures to demonstrate internal democracy and accountability. To respond to the new environmental pressures created by market-oriented policies and economic restructuring, labour organizations must tap into all of their internal power resources. Union democracy represents one key element of achieving this goal. The ability to organize internally and externally is enhanced when unions are able to reinforce democratic tendencies at the local level. And by ensuring that their democratic processes are subject to a visible “rule of law,” unions can challenge the damaging perception that they are autocratic organizations run by “union bosses.”

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In this context, the Public Review Board (PRB) of the Canadian Auto Workers¹ union merits closer scrutiny. The PRB is seen as unique because it is an arm's length body outside the union which has the power to make final and binding decisions on issues raised by union members. No other union in Canada has subjected the decisions of its leadership to this type of external review. To the extent that the PRB is successful in protecting members' rights within the union, and thereby animating and reinforcing union democracy, it may provide an innovation of wider significance for the labour movement.

This paper examines the experience of public review within the CAW. It begins by discussing the importance of union democracy as a cornerstone of union renewal. The author then describes the history of the PRB, tracing its origins in the United States in the 1950s and its transmission to Canada with the birth of the CAW in 1985. The decisions of the PRB over the two decades of its existence in Canada are analyzed. This review indicates that the PRB has adopted a relatively narrow role in the democratic life of the CAW, focused largely on ensuring that due-process rights under the union's constitution are scrupulously observed. In this, albeit limited, role public review can have a positive impact on union democracy. As such, the PRB represents an innovation that deserves greater recognition and adaptation more broadly within the Canadian labour movement.

MOTIVATION

The internal affairs of Canadian unions are not highly regulated by the state, in comparison with those of the United States and the United Kingdom (Lynk, 2000; Fosh *et al.*, 1993). On the questions of union elections, union administration, internal discipline, and the freedoms of speech and dissent, Canadian labour legislation is largely silent, leaving these matters to be self-regulated by union constitutions (Lynk, 2000). At the same time, unions face a high expectation of democracy, in part because of the compulsory character of collective bargaining in jurisdictions such as Canada where unions are granted "exclusive representation" for all employees in a bargaining unit, whether the individual workers are union members or not, and in part because unions themselves insist that they are democratic organizations and claim that as a basis for their legitimacy as the voice of workers (Summers and Bellace, 1988; Strauss, 2000).

1. The full name of the union is the National Automobile, Aerospace, Transportation and General Workers' Union of Canada. It is more commonly known simply as the "CAW" and that form is used throughout this paper.

Unions' capacity to credibly campaign for greater democracy in employment is severely weakened unless they can demonstrate their own democratic credentials (Hyman, 1999; Lynk, 2000). In fact, a recent national Canadian public opinion poll found that the top reason (cited by 69 percent of non-union workers) for not wanting to join a union was that "members have no say in how the union operates" (CLC, 2003: 41). The survey's authors conclude that "fear of unions—not employers—is the most powerful obstacle in organizing" (CLC, 2003: 40).²

Michels' (1949) "Iron Law of Oligarchy" argues that democracy within labour organizations will inevitably become a casualty to leader opportunism and the negative consequences of staff professionalization and bureaucracy. While Michels' prime concern was with the political arm of labour, the socialist parties, his conclusions have been applied to all labour organizations (Muthuchidambaram, 1969). Voss and Sherman (2000) note that this thesis contains two major components. Over time, organizations tend to develop oligarchical leadership, despite formal democratic practices, because as organizations grow they rely increasingly on professional staff, and a gap grows between the leaders and the members. In turn, the goals and tactics of the organization are transformed in a conservative direction as leaders become concerned above all with organizational survival. The labour movement has been seen as exemplifying this pattern of entrenched leadership and conservative transformation (Voss and Sherman, 2000; Appelbaum and Blaine, 1975), and much of the empirical literature on union governance has been characterized as a referendum on the validity of Michels' hypothesis (Jarley, Fiorito and Delaney, 2000; Summers and Bellace, 1988).

The current challenges facing the labour movement have given new relevance to this discussion. The widely held belief that unions must embrace the so-called *organizing model* of union renewal places union democracy at the forefront of efforts to revitalize the union movement (Jarley, Fiorito and Delaney, 2000). In order to shift significant resources into organizing, it is argued that unions must reduce the staff and resources consumed by servicing. Members are left to pick up the slack, for example by handling most workplace grievances without the help of a union staff representative. The entire organization must be realigned towards the overriding objective

2. Respondents who had indicated that they would not "very likely" vote for a union were asked to indicate if each option from a list of potential reasons was a major reason, a minor reason, or not a reason that they were not likely to vote for a union. Sixty-nine percent of non-union members responding to this question indicated that "Members have no say in how the union operates" was a major (43 percent) or minor (26 percent) reason. This telephone poll of 2007 Canadians was conducted in August, 2003, by Vector Research + Development Inc. (see CLC, 2003).

of organizing new members. This change is often described in the U.S. as a shift from a “servicing” model—trying to help people by solving problems for them—to an “organizing” model—emphasizing the need for “member mobilization, collective action, and militancy” (Fletcher and Hurd, 1998).

Shifting resources to organizing requires that unions concomitantly reduce funds spent on servicing. This necessarily reduces the role of union staff in the life of members and promotes instead new levels of commitment and participation by the members themselves (Voss and Sherman, 2000; Strauss, 2000). For unions to thrive and grow in the new environment, then, it is necessary that they counter oligarchical tendencies by breaking down bureaucratization and empowering members. In this light, Lévesque and Murray (2002: 54) argue that for unions, “democracy has never been a more important power resource.”

Achieving democracy within unions requires more than just member activism. A “democratic union,” according to Stepan-Norris and Zeitlin (1996: 4), must combine three basic features:

- *a democratic constitution* (i.e., guarantees of basic civil liberties and political rights);
- *institutional opposition* (i.e., the freedom of members to criticize and debate union officials and to organize, oppose, and replace officials through freely contested elections among contending political associations, or “factions”); and
- *an active membership* (i.e., maximum participation by its members in the actual exercise of power within the union and in making the decisions that affect them) [emphasis in original].

The governance structure of the union must be built around these democratic principles. As Jarley, Fiorito and Delaney (2000: 228) note, union governance systems are structures designed to identify, legitimize, and foster member commitment to organizational goals and leaders. Maintaining legitimacy requires mechanisms for ensuring that leaders and staff act in ways consistent with the organization’s goals. Ultimately, the development of essentially democratic structures for conflict resolution within unions, allowing discontented rank-and-file members the space to assert their positions, is required to promote membership solidarity and support for the leadership (French and Giacobbe, 1990).

Typically the tribunal of last resort within a union’s internal appeal structure is the executive board or the constitutional convention. Neither of these bodies is an ideally neutral and impartial tribunal, especially when the issues involved have a background in union politics (Brooks, 1961; Oberer, 1959; Anderson, 1977; Summers and Bellace, 1988). National union officers are able to exercise effective control over these appeal procedures and

appeal decisions overwhelmingly tend to favour the union administration (Craypo, 1969).³ The leadership of the union is left to interpret the law that it executes in accordance with its own political interests and its own ideas of what is good for the organization and its membership (Oberer, 1959). The aim of voluntary impartial review by a public review board, as outlined in the remainder of this paper, is to overcome the limits of internal appeal procedures while maintaining the integrity of the organization.

ORIGINS OF THE PRB

The PRB⁴ traces its origin to the widespread publicity given to alleged union corruption by the United States Senate's McClellan Committee in the late 1950s. The McClellan Committee's hearings led to calls for government intervention and ultimately to passage of the Landrum-Griffin Act (the *Labor-Management Reporting and Disclosure Act*) in 1959.⁵ The investigations of this committee revealed extensive corruption and racketeering in a relatively small number of American unions (Klein, 1964). While the creation of the UAW PRB was not a direct response to the McClellan Committee hearings, the UAW leadership was clearly influenced by the headlines being made by this committee and the possibility that in the public mind all labour might be "indicted for the sins of a few unions" (Stieber, 1961: 4) and ultimately have to face more invasive legislated interventions on internal union affairs (Klein, 1964).

As UAW president, Walter Reuther stated when asking the union's convention delegates to create the UAW PRB: "You ought to recognize that this is the real thing, there are no ifs, ands, buts, or loopholes. . . . you ought to recognize that this gets into an area that we are either going to have to deal with voluntarily or the government will deal with it for us" (as quoted in Stieber, 1961: 5). By adopting a system of impartial public review, the UAW leadership hoped to reduce effectively the possibility of improper practices within their internal structures and, at the same time, to

3. Craypo (1969) found that in only 15 of approximately 2000 convention appeals reviewed from a 21-year period did the convention rule contrary to the position taken by the national officers. Craypo (1969: 509) suggests that a structure such as the UAW PRB provides the best institutional means of avoiding direct government control over union appeal procedures while removing internal appeals from the national convention.

4. For convenience, the Public Review Board of the United Auto Workers (UAW) is referred to in the following discussion as the "UAW PRB".

5. The Landrum-Griffin Act sought to make unions responsible and responsive to their members by laying down regulations for unions' internal conduct, modeled on American political elections (Fosh *et al.*, 1993; Summers and Bellace, 1988; Summers, 2000).

repair in some measure the tattered image of the labour movement (Klein, 1964; Klein, 1981).

This was also an era in which there was increasing concern that individual rights were threatened by the emergence of large bureaucratized organizations (Oberer, 1959; Harrington, 1960). The UAW had grown rapidly to a union with over a million members. One long-time UAW member, quoted by Harrington (1960: 51) defined the problem as follows: "In the old days, we didn't need a Public Review Board. The membership was smaller, and the leaders were closer to the rank and file. And then, there used to be factions in every local. When a man had a grievance, one side or the other would jump at the chance to take up his defense. Now the factions don't exist in a lot of locals, the union is bigger, the leaders are more distant. That is why we have a Review Board."

An amendment to the UAW constitution at the union's 1957 biennial convention created the UAW PRB as "a supreme court" for the union to deal with internal grievances (Oberer, 1959: 57). It was given the "authority and duty to make final and binding decisions" in all cases placed before it by aggrieved members or subordinate bodies of the UAW. In addition, the PRB was mandated to deal with "alleged violations of the AFL-CIO ethical practices codes, or ethical practices codes adopted by the international union" (UAW, 1957).

The constitutional amendment creating the UAW PRB included no provision for the removal of a board member from office before expiry of his or her term, underlining the independence of this body (Brooks, 1961). Aside from its funding, the UAW PRB was set up to be completely autonomous. The new board was instructed to make its own rules, hire its own staff, and set up its own offices, physically separate from the UAW (UAW, 1957). Board members set their own compensation (Stieber, 1961). Rabbi Morris Adler, the UAW PRB's first chair, asserted that: "We are subject to no authority except our own conscience" (Crellin, 1957: 7). The original seven appointees to the UAW PRB were carefully selected to represent in some measure the diversity of the union, including representatives of three major faiths (a Catholic priest, a Protestant Bishop, and a Jewish Rabbi), an African American judge, a college president, and a Canadian magistrate.⁶

The establishment of the UAW PRB was seen at the time as a momentous event by many observers of the labour movement. Brooks (1961: 64) states: "It is doubtful that any other private association of individuals of comparable size and power has ever voluntarily relinquished power of this

6. Magistrate J. Arthur Hanrahan of Windsor. Subsequent Canadian members of the UAW PRB included Professor Harry Arthurs and Professor Paul Weiler.

magnitude to another group.” Similarly, Oberer (1959: 57) writes that: “The uniqueness of such renunciation of power by an organization of the size and consequence of the UAW to a tribunal of outsiders hardly needs remark.”⁷ Stieber (1961: 3) adds that the establishment of the PRB “represents the broadest grant of authority over its internal affairs ever voluntarily given to a labor organization—or any other organization for that matter—to an outside body.”

Lichtenstein (1995), in contrast, suggests that Reuther’s primary motivation for creating the PRB was to “depoliticize” internal disputes involving members and staff with past communist affiliations. He notes (at 325) that while the PRB “proved a remarkably popular innovation, especially in liberal-labor circles, where it seemed further proof of Reuther’s democratic and progressive instincts . . . the board’s function was also that of a convenient buck-passer.” The UAW PRB’s first case dealt with the fate of eleven union staff members and local officials whose complete break with their past Communist Party associations had been questioned by Senator Barry Goldwater and other Republicans anxious to embarrass the UAW (Lichtenstein, 1995; Lauren, 1957). The UAW PRB was asked to rule on the legitimacy of the union retaining these officers and staff members. The fact that the UAW international executive board referred these cases without itself taking any action on them certainly heightened the appearance of “buck passing” (Stieber, 1961).

The PRB’s decision in this case—upholding the right of these union staffers and officials to hold office—was widely publicized (Nicholson, 1957; *The Detroit Times*, 1957; *The New York Times*, 1957; *Business Week*, 1958). It is noteworthy, however, that the Board’s decision was not based on a sweeping reaffirmation of the civil rights of members, but rather on a more narrow observation that nothing in the UAW constitution barred “former” communists from office⁸ and there was no basis to overturn the decisions of the local union appeal bodies to retain these members. The UAW PRB concluded that the executive board and the local unions had acted in accord with the UAW constitution; the Board did not concern itself with whether or not the men actually were in conflict with any code of ethics.

From the outset, the UAW PRB appears to have been primarily concerned with the question of whether appellants enjoyed all of the procedural rights to which they were entitled under the UAW constitution. In respect to substantive issues, the PRB exhibited a reluctance to superimpose its judgment upon that of the international executive board and any

7. Note that Oberer and Brooks were the first two executive directors of the UAW’s PRB.

8. Both the AFL-CIO ethical practices code and the UAW constitution at that time barred racketeers, communists and fascists from holding union office (Lauren, 1957: 31).

subordinate bodies which had earlier considered the matter (Brooks, 1961). The main impact of the UAW PRB in its early decisions was seen in forcing the union to adhere to its own procedural requirements in appeals cases. So, for example, an international executive board decision to invalidate a local union election was overturned on the basis that the executive board committee that heard the appeal had two rather than three members present (Stieber, 1961).

Two general limitations were placed on the UAW PRB's scope of review (Klein, 1964). The constitutional amendment creating the Board explicitly precluded it from reviewing the collective bargaining policy of the union. The UAW PRB was also prohibited from dealing with union decisions regarding the processing of grievances unless there was an allegation that the grievance was improperly handled because of "fraud, discrimination, or collusion with management."⁹ From the start, the UAW PRB gave a very narrow definition to the words "fraud, discrimination, or collusion," and a very broad definition to "collective bargaining policy," thus limiting its jurisdiction to hear a potentially large number of cases. The UAW PRB's tendency to apply a narrow interpretation on technical matters, such as timeliness of submissions, has been criticized as further restricting access for rank-and-file members (Krouner, 1969). Even long-time UAW PRB Executive Director David Klein (1964) acknowledges that the Board's approach to the interpretation of the union's constitution has been essentially conservative.

As noted above, the UAW PRB, as originally conceived, had a dual role: it served as both the supreme court for the union in cases appealed to it; and it had additional power to act with respect to alleged violations of any AFL-CIO or UAW ethical practices code. However, the UAW PRB never embraced the latter role as an ethical watchdog (Klein, 1964). Brooks (1961) notes that for the UAW PRB to effectively engage in policing an area as broad as that encompassed by the codes, a very large staff stretching across the US and Canada would have been required. *Business Week* noted in 1960 that: "The board has become, in the minds of its members and in its actions, strictly an appeal body—a supreme court, rather than a suspicious observer. And, says a member, 'The board is not anxious to extend its jurisdiction.'" (*Business Week*, 1960). As one (unnamed) member of the UAW PRB told *Business Week* in 1963: "Our purpose was to interpret the union's constitution and not to serve as a moral conscience" (*Business Week*, 1963: 74).

9. In 1980 this standard was amended to include the further principle that the PRB could hear claims that the processing or disposition of a grievance was "without rational basis" (Klein, 1981).

In spite of this, Klein (1964: 338) writes that the UAW PRB in its early years was “enormously successful to the Union in its public relations,” as PRB hearings were widely covered in local and national newspapers. At the same time, a concern that was identified early by Harrington (1960: 52) was that a majority of the UAW’s members were, at best, only dimly aware of the existence of the Board. Not surprisingly, consciousness of the UAW PRB was found to be much higher in locals where high profile cases had been heard. Similarly, Blaine and Zeller (1965) found that UAW PRB appellants, taken as a group, were much more likely to be politicized and active in the union than other UAW members surveyed.¹⁰ They concluded that the clientele of the UAW PRB was made up primarily of minority political or factional leaders within the union. While noting that the existence of an impartial forum to at least hear the concerns of dissident local leaders has value in the maintenance of democracy, Blaine and Zeller (1965) reiterate the criticism that the UAW PRB’s early decision to limit itself to questions of a procedural nature had handicapped it as an effective instrument of democratic processes. The impression left is that this institution emerged as much less than it might have been.

Notwithstanding these criticisms, the UAW PRB has been identified by the UAW leadership in the modern era as critical to the union’s identity. In 2001, then UAW President Stephen Yokich underscored the commitment of the UAW to the PRB when he said that the issue of retaining the PRB was the biggest obstruction in unification talks with the Machinists and Steelworkers unions: “Without the PRB, we couldn’t merge,” Yokich said (UAW, 2001). As discussed below, the evolution of the UAW PRB has cast a long shadow on its counterpart in Canada.

THE CAW PRB

At the founding convention of the CAW (initially known as the UAW Canada) in 1985, President Bob White stated that the new union’s constitution aimed to reflect the good parts of the UAW’s history while making fundamental changes in structure in select areas.¹¹ The PRB fell into the former category. As White stated (see Graham, 1985: 30), the new constitution “retains the basic democratic principles and rights of members to appeal, not only to the Executive Board, but to a Canadian public review

10. The data analyzed by Blaine and Zeller (1965) were gathered by the use of nearly identical questionnaires from a sample of 113 PRB appellants and a random sample, drawn from four locals, of 290 Central Ohio UAW members, none of whom had ever lodged an appeal to the PRB.

11. Such as the composition of the national executive board.

board, a panel of distinguished Canadians—not members of the UAW, not part of the labour movement—which will be the watchdog over our organization, to make sure that we insist on internal democracy when our members have the right to appeal.”

The new CAW constitution stated that the PRB was established “for the purpose of ensuring a continuation of high moral and ethical standards in the administrative practices of the National union and its subordinate bodies, and to further strengthen the democratic processes and appeal procedures within the Union as they affect the rights and privileges of individual members or subordinate bodies” (Article 25, Section 1 of the CAW Constitution¹²). This language is virtually identical to that found in the UAW constitutional amendments of 1957. As with the UAW PRB, the CAW PRB was designed to serve as the final body to hear appeals of claims arising under the Constitution’s internal remedy procedures.¹³ The PRB is also the exclusive appellate authority for claims of violations of the union’s Ethical Practices Codes.¹⁴

The normal route of appeal for a CAW member is first to the membership or delegate body immediately responsible (typically the local union), then to the national executive board (NEB), and finally to the PRB. Appeals are heard by a panel of three PRB members. The PRB Rules of Procedure¹⁵ require that the national union file, along with its answer to the appeal, the complete written record in the case, including all correspondence, written arguments, minutes, transcripts and exhibits submitted in connection with the local union and national union proceedings. The PRB makes its decision based on that material. Additional evidence can be presented to the members of the panel only in exceptional circumstances (Rules of Procedure, section 11).

Alan Borovoy, General Counsel of the Canadian Civil Liberties Association, was named as the PRB’s first chairperson (Graham, 1985: 30), and he continues to fill that role. The appointment of Borovoy, among Canada’s foremost experts on civil liberties, gave the PRB an immediate level of credibility. Borovoy’s views on a variety of civil liberties issues were well documented (see Borovoy, 1988). The remaining PRB members

12. Available at: www.caw.ca.

13. As with the UAW, CAW appellants can also choose to take appeals under the CAW’s constitution to the Convention Appeals Committee.

14. There are four Ethical Practice Codes: Democratic Practices; Financial Practices; Health, Welfare, and Retirement Funds; and Business and Financial Activities of Union Officials. There have not been any PRB cases so far dealing with these Ethical Practice Codes.

15. Reproduced in CAW-Canada (2003).

are impartial citizens of national stature from outside the CAW. Members serve for three-year terms between constitutional conventions. Nominees are put forward by the national CAW president and are subject to approval by the national executive board (Frost, 2000). In addition to Borovoy, the first members of the CAW PRB included a Catholic Bishop, a former Moderator of the United Church of Canada, a labour journalist, and a former Ontario Ombudsman.¹⁶

The CAW PRB is registered as a tax-exempt non-profit organization. It depends on grants from the CAW, in addition to any interest income earned from these grants. Since 1985, the CAW has provided grants totaling close to \$600,000. While the funding provided to the PRB has grown over time, it represents a minimal aspect of the CAW's overall budget.

Since its inception, the PRB has maintained a relatively low profile. The PRB has a web site (www.cawprb.ca) containing basic information describing the board and how members can access it. Interestingly, the CAW's own web site (www.caw.ca) contains almost no information on the PRB, and does not even contain a link to the PRB's site. In its second report, the PRB suggested that the union consider making "special assistance" available to those members who seek redress from the Board (CAW-Canada, 1994). This suggestion did not lead to a specific response. In addition, while the PRB's Rules of Procedure indicate that copies of decisions will be sent to "various colleges and universities, libraries, news media, private publishing services, and individual subscribers to the decisions of the PRB," this has not been the practice. The PRB, in contrast to the early experience of the UAW PRB, has never enjoyed any level of media recognition. As suggested below, the influence of the PRB on the democratic life of the CAW has been more subtle.

ANALYSIS OF PRB DECISIONS

The volume of cases heard by the PRB is not large, considering the size of the union (now comprising over 260,000 members). In its first five years of existence, the PRB heard just four appeals. In the period covered by this study, from 1985 to the end of 2004, the PRB issued decisions in a total of 47 cases. In 12 of these appeals, the PRB reversed a decision of the NEB. However, when one accounts for the substantial number of appeals dismissed due to the PRB's limited constitutional jurisdiction concerning grievances and collective bargaining policy, the rate of reversal of the NEB is about one case in three. This is likely to be significantly higher than the success rate of members appealing to the triennial constitutional convention,

16. The original members in addition to Alan Borovoy were: Bishop Adophe Proulx, Lois Wilson, Wilfred List, and Daniel G. Hill.

the only other final court of appeal within the union. Unlike the process before a constitutional convention, the appellant before the PRB is also more likely to get a full hearing of their case, and likely at less expense, given that the appellant avoids the cost of attending the convention. An oral hearing was held in 36 of the 47 cases. While the largest number of PRB hearings (22) have been held in Toronto, the Board will travel to locations closer to the appellant, and hearings have been held in Oshawa, Vancouver, London, Kitchener and Halifax. The relative informality of the process is suggested by the fact that appellants have been represented by lawyers in just four cases.

Frost (2000: 277) suggests that the PRB, “provides a check on capricious or politically motivated behavior on the part of the National Executive Board and, in particular, the National Union President.” In fact, however, very few PRB decisions have dealt with the behaviour of the CAW’s national president. As was found by Klein (1981) with respect to the UAW PRB, the largest number of PRB appeals (18, or about 38 percent of the total) have concerned complaints about the handling of grievances or collective bargaining, in spite of the PRB’s extremely limited jurisdiction in this area. Seventeen cases (36 percent) have dealt with local union elections or recalls of elected officers. And 12 appeals (26 percent) concerned charges against union members.

While the CAW has approximately 280 locals across Canada, almost one-third of PRB appeals (14) have come from just one: Local 222 representing primarily General Motors workers in Oshawa, Ontario. Local 222 is Canada’s largest private-sector union local, representing over 21,000 members (Frost, 2000), and a relatively large number of appeals accounted for by this local is not surprising. Moreover, the large number of appeals generated by members of this local supports the suggestion that the appeal process may be more readily taken up by union members in politically more sophisticated local unions (Blaine and Zeller, 1965). It also suggests that there may be a learning or familiarity effect—locals that have had experience with the PRB are more likely to use the process in the future. Even as the CAW has become increasingly diverse over the years, extending its representational reach into sectors such as rail, airlines, fisheries, hospitality, retail, and health care, the majority of PRB appeals have come from locals within the auto sector. Perhaps reflecting this tendency, just five of the 47 appeals have involved appellants who were women.

In 12 of its 47 decisions, the PRB cited precedents from the UAW PRB. The Canadian PRB has indicated that it would be reluctant to depart from the jurisprudence of its American counterpart in the absence of compelling circumstances (Case No. 19/96: 3). In a subsequent decision (Case No. 34/01: 3), the Board added: “since the CAW once lived under those rules,

obviously knew about them, and did not significantly change them, the Canadian PRB should regard those judgments at least as very persuasive.” In a broad sense, the jurisprudence of the PRB has tended to conform to the pattern set by the UAW PRB in its substantial body of case law.

The CAW PRB has no jurisdiction concerning the handling of a grievance or collective bargaining policies, unless the appellant has alleged before the NEB that the matter was improperly handled because of fraud, discrimination, or collusion with management, or that the union’s decision had no rational basis (CAW Constitution, Article 24, subparagraph 10(c)(ii)). The PRB has followed the direction of its UAW counterpart in applying this limitation strictly. In an early case (Case No. 2/88: 2) the PRB noted that while the language of the constitution suggests that the PRB should avoid substituting its judgment for that of the union, the terminology does create “*some* power” for the board to intervene. In a subsequent decision, the PRB stated that its role “is simply to ensure that the Union has behaved with integrity and rationality” (Case No. 13/95: 3). Using a phrase frequently repeated in subsequent decisions, the PRB has held that, to meet the requirement of rationality, the union must merely be “within the ball park of reasonable judgment” (Case No. 9/93: 4). In all of these decisions the PRB found that the union had not acted improperly in dropping a grievance that the grievor wanted to pursue.

In another case (Case No. 23/97), a skilled trades worker complained that, as a result of amendments to his collective agreement, he had lost ten years of seniority earned as a production worker. He alleged that the plant workers within his local had taken advantage of their numerical strength to discriminate against the skilled trades people in the unit. In responding to this complaint, the PRB stated that, as long as the decision makers in the local union avoid “gross improprieties,” the PRB must adopt a “hands off” policy. The PRB reiterated that the whole thrust of the CAW’s constitutional provision was to leave local unions free to develop their own collective bargaining policies, and to determine which interests ought to prevail in these situations. Even on the core issue of seniority, the PRB noted, there were validly competing points of view, and it was not open to the review board members to insinuate their preferences into the mix. The PRB in this case indicated that it would intervene if, for example, a local union provided that Blacks, women, Conservative Party members, or opponents of the union president were not eligible for certain jobs or to enjoy seniority, as there could be no reasonable justification to deny seniority or a job on such irrelevant grounds.¹⁷

17. The PRB has recognized that it was reasonable for the CAW to negotiate super-seniority status for a “Worker of Colour / Aboriginal representative” that was added, along with a women’s representative, to a local union’s executive board (Case No. 43/04).

The test is tough, but not impossible, for appellants to meet. In Case No. 26/99, two members of CAW Local 222 appealed against the decision of their national union representative to withdraw certain “work ownership” grievances. Their employer had brought in outside contractors to perform work normally done by its own skilled trades employees. In this case, the PRB found that the union’s withdrawal of the grievance directly contravened the CAW’s declared policy of trying to arbitrate the kind of “work ownership” issues involved. The Board could find no rational basis for the decision, and ordered the CAW to process the grievances.

Furthermore, there may be a limited scope for appellants to overturn decisions regarding grievances where it can be shown that the union’s actions fell short of due process. In Case No. 14/95, the PRB intervened in a grievance case because it found that the grievor had been given no opportunity to argue his position before the membership of his local union. “The key to due process,” the PRB noted (at 3), “is that people have a fair chance to make their case before they are effectively injured by an adverse decision.” The PRB thus remitted the case to the NEB with instructions that the appellant—and other members who could be impacted by a change in the impugned seniority rules—be given “a full and fair opportunity to make his case at the Local Union level.”

In Case No. 42/03 the PRB considered the effect of a “last chance” agreement reinstating a grievor who had been fired for unjustified absence from his plant. A condition of the settlement was that the grievor would never again seek union office while he was an employee of this company. The PRB found that this condition was unenforceable because it had not been put in writing. The Board concluded that such “precious rights” as the right to seek and hold union office could not be subject to surrender on the basis of a mere oral agreement—illustrating the PRB’s desire to reinforce internal democracy, while focusing on the narrow procedural aspects of the claim.¹⁸

Appellants have generally had little success in challenging decisions of the national union regarding local union elections and recall of local union officers. In just three of 17 such cases were NEB decisions regarding election or recall overturned. In its first decision (Case No. 1/88), the PRB held that the onus was on the individual seeking to overturn an election to demonstrate irregularities with respect to the procedure. The PRB concluded it was not prepared, on the basis of mere conjecture, to subject this local union to the “expense, inconvenience, and perhaps even ordeal,

18. The PRB also noted that, while such “last chance” agreements setting conditions on reinstatement might be permissible, a *lifetime* ban on seeking union office was incompatible with the spirit of the CAW Constitution.

of a re-election," even though a majority of the unit's members in that case had signed a petition indicating that they had, in fact, voted for the losing candidate.¹⁹

In a subsequent decision (Case No. 6/92), the PRB refined the onus facing appellants in election cases, noting that the impugning of an election should not necessarily require proof of fraud or deception. Defeated candidates cannot be expected to be "private investigators," the PRB noted. In some cases, the presence of "extremely loose" election practices may be sufficient to have the results set aside. The test for setting aside elections in such circumstances concerns "the extent to which the election irregularities were of such a nature and magnitude that they could readily facilitate and conceal a significant level of fraud and deception." The PRB further concluded that, in some situations, a sufficiently flawed process might nullify an election even if the result could not have been affected by such practices. In this case, the PRB found that practices of the local, such as holding the election without voters' lists or any adequate record of which members had voted at multiple polling stations, represented "deficiencies of a fundamental character." On this basis, a new election was ordered.²⁰

The PRB has shown a similar reluctance to interfere with membership decisions regarding the recall of local union officers. In such cases, the PRB has stated (Case No. 16/95: 3), "the overriding consideration must be to vindicate the sovereignty of the membership." In this case, the PRB declined to overturn the recall of a unit chairperson following a 160-to-9 membership recall vote against him, in spite of the fact that the allegations against the unit chairperson had never been adequately set out during the recall proceedings. "The sole issue for us to determine," the PRB stated (at 7), "is whether, right or wrong, the members are entitled to have their say. Unless overriding considerations were evident . . . the membership view must prevail."

The PRB has demonstrated a greater readiness to intervene in union decisions in the limited number of cases involving union discipline of members and officers. Half of the appeals in this category have been upheld, at least in part, by the PRB. In one of its most complex and detailed decisions to date (Case No. 15/95), for example, the PRB attempted to sort out a morass of charges and counter-charges at the then new airline local of

19. Following earlier decisions by the UAW PRB, the Board refused to give any weight to this petition signed by a majority of members *after* the election, disputing the election result. The PRB concurred with its American counterpart that such evidence was inherently unreliable.

20. The same questionable election practices at this local led the PRB to order a new election in a related case (Case No. 7/92).

the CAW. As a result, the PRB made no less than 14 orders, dismissing some charges and reinstituting others. In another recent decision (Case No. 45/04), the PRB took the unprecedented step of ordering the union to send a letter drafted by the PRB to every member of the relevant bargaining unit and to post it conspicuously in that workplace for a period of 30 days. The goal was to “vindicate the dignity” of a union member whom the PRB felt had suffered “significant unpleasantness” at the hands of a union officer and fellow members—behaviour that no other mechanism (such as charges requested by the member under the CAW constitution) could adequately redress.

Of interest is the PRB’s discussion of charges of “conduct unbecoming” filed against a member as a result of correspondence in which he alleged that the local president had “personally engineered one of [her] friends into the . . . ‘affirmative action position’”. The charges that resulted against the member stated that he “repeatedly derides the Local’s steps towards gender equity” and “he clearly objects to affirmative action initiatives.” In dismissing these charges, the PRB underlined (at 6) its commitment to promoting free speech, noting (at 8) that the integrity of democratic processes within unions can be “significantly imperiled” by charges that “effectively muzzle criticisms union members wish to make.” This case illustrates again that, while the PRB has seen its main role as insisting that due process be respected for union members under the CAW constitution, it has also attempted to animate the constitution by ensuring that the conditions for dissent and nonconformity within local unions can exist.

CONCLUSION

The point is not that we have reached some ideal democracy but that we have found and developed in the Public Review Board a reliable democratic feedback mechanism which can discover and remedy bureaucratic shortcomings in redressing the complaints of members.

UAW President Walter Reuther
(*UAW Solidarity*, 1968: 5)

The CAW’s PRB is neither more nor less than the “feedback mechanism” described by Reuther above. Commentators have suggested that the outstanding contribution of a public review body is that its mere existence provides a measure of restraint on the union hierarchy (Brooks, 1961; Oberer, 1959) and fosters an increased awareness and respect among the union leadership for the importance of due process as set forth under the union’s constitution (Stieber, 1961; Harrington, 1960). In this respect, the relatively small number of cases heard by the PRB is seen as a measure of its success, as the existence of the Board itself tends to deter improper

behaviour. The union's willingness to submit its decisions to public review is seen as increasing the stature of the union, thereby strengthening it not only structurally but also as a political and collective bargaining organization (Stieber, 1961). By giving members the opportunity to take cases to an impartial third party, public review creates the opportunity to both do justice and "impart a sense of justice having been done" (Oberer, 1959: 80).

Protections for due process may assure that the prerequisites of fairness are provided, but do not, in themselves promote the participation of members in the political life of the union (Lynk, 2000). An early review of the UAW PRB (Harrington, 1960) found that the impact of the Board depended largely on the level of democracy already existing within UAW locals: "Where the membership is apathetic, the reform has meant little. . . . Seen from the vantage point of the local, public review has not been a miraculous solution for all the problems of union democracy, but it has been a spur and a complement to those democratic tendencies that do exist." Public review acts to strengthen these democratic tendencies and to establish a "rule of law" for political struggles within the union. Public review, Harrington (1960: 64) concludes, is not a substitute for democracy but an important procedural guarantee which supports the conditions for a vibrant democracy to exist.

The PRB in Canada has followed, but not extended, this approach. The PRB has not sought a more expansive definition of its role, and, in fact, has largely embraced the somewhat narrow constitutional perspective articulated in the Board's early years. While the PRB may have inherited certain shortcomings, it can also boast a measure of success. It has provided an effective and perceptibly independent forum for addressing member concerns, particularly regarding the union's electoral and internal discipline procedures. It provides CAW members with an avenue of redress that is far more effective, from the member's point of view, than the alternative found in most union constitutions of appeal to the union's national or international convention.

The concept of public review began in the cold war era of the McClellan Committee. Today, unions face new challenges that once again have given rise to calls for measures that will enhance internal democracy. Public review alone will not address these concerns, but it does provide a tool for reinforcing the democratic tendencies that exist within unions. It is unfortunate that the creation of PRB has not been followed by any other Canadian union. The PRB has a modest profile even within the CAW's own convention documents, web site and related communications material. Given the current demands for democratic renewal within unions, broader recognition should be given to the PRB and its unique contribution to union democracy.

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RÉSUMÉ

La démocratie syndicale et le regain du syndicalisme : le cas de la Commission indépendante d'appel des TCA

Les syndicats dans le contexte actuel font face à des pressions nouvelles : on leur demande de faire preuve de plus de démocratie à l'interne et d'imputabilité. Dans ce contexte, la Commission indépendante d'appel des TCA-Canada (Syndicat national de l'automobile, de l'aérospatiale, du transport et des autres travailleurs et travailleuses du Canada) mérite qu'on s'y intéresse. Cette commission est une institution unique au sein du mouvement syndical canadien. C'est un organisme extérieur au syndicat qui a le pouvoir de décision finale et exécutoire sur des litiges soulevés par les membres. Aucun autre syndicat au Canada n'a soumis les décisions de sa direction à ce type de révision externe. Cet essai présente la contribution

de la Commission indépendante d'appel comme un appui au renouvellement démocratique.

L'article débute par une discussion de l'importance de la démocratie syndicale vue comme la pierre angulaire d'un regain syndical. La gouverne interne des syndicats au Canada n'est pas fortement réglementée par l'État. En contrepartie, les syndicats font face à des attentes élevées en termes de démocratie; en grande partie, parce qu'ils disposent de la représentation exclusive pour l'ensemble des salariés d'une unité de négociation et également parce qu'ils insistent pour être qualifiés d'organisations démocratiques et ils revendiquent cela comme un appui à leur légitimité en se présentant comme le moyen d'expression des travailleurs. La « loi d'airain de l'oligarchie » de Michels (1949) laisse entendre que la démocratie au sein des organisations syndicales fait face à une continuelle érosion, due à l'opportunisme des leaders et aux effets négatifs de la professionnalisation du personnel et de la bureaucratisation. Les défis actuels auxquels fait face le mouvement ouvrier confère une nouvelle signification à cet enjeu. Pour que les syndicats puissent fonctionner et croître dans le nouvel environnement, il est nécessaire qu'ils puissent contrer les tendances à l'oligarchie en réduisant l'ampleur de la bureaucratisation et en donnant plus de pouvoir à leurs membres. En retour, le développement de structures démocratiques de résolution de conflits au sein des syndicats, permettant à la base syndicale de faire connaître ses positions, devient une nécessité en vue de favoriser la solidarité du membership et d'offrir un appui au leadership.

L'article se poursuit en retraçant l'évolution de la Commission indépendante d'appel depuis ces origines dans l'Amérique des années 1950, une époque où le mouvement ouvrier se trouvait étroitement surveillé à cause de la corruption répandue et du gangstérisme qu'on retrouvait dans un petit nombre de syndicats américains. Le syndicat des TUA (Travailleurs unis de l'automobile), précurseur des TCA (Travailleurs canadiens de l'automobile) avait mis sur pied un système de révision publique en 1957, afin de réduire véritablement la possibilité de pratiques incorrectes au sein de leur structure interne et, en même temps, afin de refaire l'image ternie du mouvement ouvrier. Cependant, tout en accordant des pouvoirs élargis à titre de chien de garde moral du syndicat, cette commission, dès le départ, a opté pour un rôle technique en faisant observer la constitution du syndicat. L'auteur note que l'évolution de cette commission de révision chez les TUA a jeté de l'ombre sur sa contrepartie canadienne. Il décrit ensuite l'établissement et la structure de base de la Commission indépendante d'appel des TCA-Canada, suite à leur scission des TUA. Cette commission sert d'instance finale pour disposer des plaintes déposées en vertu des procédures internes de réparation de la constitution des TCA. Les caractéristiques principales de la commission consistent dans son indépendance à l'endroit du syndicat

même et dans son appel à des citoyens impartiaux d'envergure nationale, sympathiques au mouvement syndical tout en se tenant en retrait, pour agir à titre de membres du conseil.

L'auteur commente ensuite les décisions de la commission au cours des deux décennies de son histoire au Canada. La commission a rendu des décisions dans 47 cas (au cours de la période étudiée, 1985 à la fin de l'année 2004). Le taux d'annulation des décisions du bureau exécutif des TCA (environ une sur trois à l'intérieur de la juridiction de la commission) est probablement et significativement plus élevé que le taux de succès que connaissent les membres qui font appel au comité d'appel du congrès, la dernière instance d'appel au sein du syndicat. Les décisions de la commission ont été classées en trois catégories : les plaintes touchant le traitement des griefs ou la conduite des négociations (environ 36 % du total), celles concernant les élections dans les syndicats locaux et les rappels d'officiers élus (36 %), celles concernant des accusations des membres du syndicat (26 %). L'analyse détaillée de ces décisions amène à conclure que, alors que la commission voyait son rôle principal comme étant celui de s'assurer qu'un processus équitable soit respecté chez les membres assujettis à la constitution des TCA, elle a également cherché à donner vie à la constitution en s'assurant que les conditions de désaccord et de non-conformité puissent exister au sein des syndicats locaux.

L'auteur conclut que la commission représente un mécanisme démocratique fiable de rétroaction en faisant droit aux plaintes déposées par les membres d'un syndicat. Tout en reconnaissant que la Commission indépendante d'appel des TCA a grandement adopté une perspective constitutionnelle étroite au cours des premières années, il soutient que les protections procédurales fournies par la commission jouent un rôle important dans le renforcement de la démocratie syndicale. Étant donné les exigences actuelles d'un regain démocratique au sein des syndicats, la commission et sa contribution à la démocratie syndicale méritent une plus grande reconnaissance.