

10. I am generally in agreement with the facts of this case as set out in the majority decision, with the exception of paragraph 25, which states that "It is also clear that employees who marked their ballots at the ballot box table did so under the scrutiny of the union's bargaining committee..." With respect, I have formed a different conclusion on this point. In my opinion, the evidence did not establish that the Committee 'scrutinized' the voting employees, but rather that from where they were sitting, they were capable of seeing how the employees voted if they looked.

11. Based on these facts and applying the *R.C.A.* test, I am of the opinion that a reasonable employee would not have felt that her ballot have remained secret. Even if I am wrong in this regard, the procedure used was not so patently unfair or unreasonable that it merits attention. To require more would ignore the realities of collective bargaining and would force unions to operate as models of electoral proficiency. As the majority has conceded, none of the employee witnesses felt inhibited in expressing their personal choice nor did they feel uncomfortable with the voting arrangements. Rather, the testimony suggests that most of the employees did not care whether or not others knew how they voted. Also, there was no suggestion that employees could not have shielded their ballots.

12. For all of the foregoing reasons, I feel that the strike vote held by Local 112 of the National Automobile, Aerospace and Agricultural Implement Workers Union of Canada on February 6, 1994, was conducted in accordance with the provisions of subsection 74(4) of the *Labour Relations Act*, and is therefore a strike vote to which section 73.1 applies.

13. In view of my decision on the merits of the case, I would have granted the Applicant the request for reconsideration.

1406-94-M Hotel Employees Restaurant Employees Union, Local 75 ["Local 75"], Applicant v. Westbury Howard Johnson Hotel ["the Westbury"], and Hotel Employees Restaurant Employees International Union ["the Parent Union"], Responding Parties

Interference in Trade Unions - Interim Relief - Intimidation and Coercion - Remedies - Trusteeship - Unfair Labour Practice - Union Successor Status - Local 75 of Hotel employees' union purporting to disaffiliate from union - Local placed under trusteeship - Local 75 filing unfair labour practice complaint against union and named employer in connection with employer's decision to retain dues in escrow - Local 75 seeking interim order directing employer to remit dues to it - In response to Local 75's application, union filing its own unfair labour practice complaint, its own successor rights application under section 63 of the Act, and its own interim relief application - Board not persuaded that any interim order warranted at this stage - Application for interim relief dismissed

BEFORE: *R. O. MacDowell*, Alternate Chair.

APPEARANCES: *Douglas J. Wray* and *M. Church* for "the Parent Union"; *Alick Ryder* and *David Wright* for "Local 75"; *David Cot Zi* and *Brian McLean* for "the Westbury"; *Irv Kleiner* and *Loretta Merritt* for The Holiday Inn (King Street).

DECISION OF THE BOARD; August 5, 1994

I

1. This is an application for interim relief that has been filed in connection with an unfair labour practice complaint.
2. The unfair labour practice complaint and certain related proceedings are scheduled to come on for hearing before the Board in late August or early September.
3. It is anticipated that these proceedings before the Board will be disposed of relatively quickly.
4. This application for "interim relief" concerns what is to happen in the meantime.
5. The provisions of the *Labour Relations Act* ("the Act") to which reference should be made are as follows:

[Power to Grant Interim Relief]

92.1-(1) On application in a pending or intended proceeding, the Board may grant such interim orders, including interim relief, as it considers appropriate on such terms as the Board considers appropriate.

[Employer Interference]

65. *No employer or employers' organization and no person acting on behalf of an employer or an employers' organization shall participate in or interfere with the formation, selection or administration of a trade union or the representation of employees by a trade union or contribute financial or other support to a trade union, but nothing in this section shall be deemed to deprive an employer of the employer's freedom to express views so long as the employer does not use coercion, intimidation, threats, promises or undue influence.*

[emphasis added]

[Intimidation or Coercion]

71. *No person, trade union or employers' organization shall seek by intimidation or coercion to compel any person to become or refrain from becoming or to continue to be or to cease to be a member of a trade union or of an employers' organization or to refrain from exercising any other rights under this Act or from performing any obligations under this Act.*

[emphasis added]

[Locals under Trusteeship]

84.- (1) A provincial, national or international trade union that assumes supervision or control over a subordinate trade union, whereby the autonomy of such subordinate trade union, under the constitution or by-laws of the provincial, national or international trade union is suspended, shall, within sixty days after it has assumed supervision or control over the subordinate trade union, file with the Board a statement in the prescribed form, verified by the affidavit of its principal officers, setting out the terms under which supervision or control is to be exercised and it shall, upon the direction of the Board, file such additional information concerning such supervision and control as the Minister may from time to time require.

(2) Where a provincial, national or international trade union has assumed supervision or control over a subordinate trade union, such supervision or control shall not continue for more than twelve months from the date of such assumption, but such supervision or control may be continued for a further period of twelve months with the consent of the Board.

6. In order to understand what this application is about, it is necessary to sketch in some background. To make the decision easier to read, I will sometimes refer to Hotel Employees, Restaurant Employees International Union as the "Parent Union" or "HERE". Local 75 of the Hotel Employees, Restaurant Employees International Union will be referred to simply as "Local 75".

7. The officers of Local 75 will sometimes be referred to as the "Belanger group" because Jean-Guy Belanger is the President of Local 75 and speaks on behalf of the Local executive. As will be seen below, one of the problems in this case is that two contending factions - the Belanger group, and officials of the Parent Union - both claim to speak on behalf of Local 75 and its members.

II

8. Hotel Employees, Restaurant Employees International Union is a trade union with members in the United States and Canada. Like many unions, the Parent Union is subdivided into various "local unions" that are defined on a geographic basis.

9. A "local union" is both a creature and component of the parent organization. However, under the *Labour Relations Act*, a "local" is also a "trade union" in its own right, that is capable of holding and exercising the collective bargaining rights to which the Act is addressed.

10. But, of course, a trade union is a legal construct just as a corporation is. A union can only act - for example, engage in bargaining with an employer - through the efforts of the human beings who are its officers or members. And the Act says nothing about how those human agents are selected or elected. In fact, the Act says very little about internal union affairs. The internal workings of a union - including the selection of its officers, employees or agents - are governed by the union constitution.

11. Local 75 is (or was) a local subdivision of the Hotel Employees, Restaurant Employees International Union. Local 75 has 6,200 members. Local 75 is named on 87 collective agreements with 75 employers across Ontario.

12. The Westbury Hotel, in Toronto, is one of those employers. The Westbury is one of eight Toronto hotels that are bound by the same collective agreement with Local 75.

13. In recent months, differences have arisen between the officials of Local 75 and the officials of the Parent Union. The details and dimensions of that dispute are not entirely clear. It suffices to say that the controversy involves the administration of Local 75, the way in which Local 75 has been managing its affairs, and the whereabouts of some \$400,000 said to be owing to the Parent Union.

14. These matters are internal to the union. They are organizational, administrative, and "political". They are not subject to overt statutory regulation, nor do they raise an obvious public policy question, addressed by the Statute.

15. On July 12, 1994, Local 75 held its regularly-scheduled membership meeting at the Primrose Hotel in Toronto. The notice for this meeting lists its purpose as "Union business". There is nothing in the notice that would advise Local 75's 6,200 members that anything special

was going to happen at the meeting. Nor am I able to say with any certainty that notice of the meeting was posted in a timely way on the premises where the members worked, or that it was posted in such manner that it would likely come to the attention of employees who might be interested in attending the meeting.

16. There was no other written notice concerning the purpose of the July 12, 1994 meeting. There was no verbal notice or advice that anything special or important was to be dealt with. In particular, the 6,200 members of Local 75 had no advance notice that the question of withdrawal from the Parent Union would be discussed or voted on at the meeting. Nor was there any notice to the Parent Union that the issue of "disaffiliation" would be addressed on July 12, 1994.

17. Withdrawal from the Parent Union is contemplated by Article XI, Section 15 of the International Union Constitution. That provision of the HERE Constitution reads as follows:

Withdrawal of a Local Union from the International Union may not take place as long as three members of the Local object.

Withdrawal from the parent organization appears to require the almost unanimous consent of the Local membership. Any three members can veto such withdrawal.

18. The Local 75 membership meeting took place, as scheduled, on July 12, 1994. The meeting began shortly after 5:00 p.m. There were approximately 57 of the Local's 6,200 members in attendance - that is, less than 1% of the total Local membership. It does not appear that there were any members of the Local from outside the Toronto area.

19. At the meeting on July 12, 1994, the Local 75 executive submitted a resolution to withdraw from affiliation with the Parent Union. This resolution was purportedly made pursuant to Article XI, Section 15 of the International Constitution, which is set out above.

20. As I have already noted, there was no advance notice to the 6,200 members of Local 75 that this particular motion would be debated; and, in fact, there does not seem to have been much debate. There was no secret ballot vote. There was no roll-call vote. Members present were asked to vote "Yay" or "Nay", and the entire issue was dealt with in a matter of minutes. The members then went on to approve two related matters:

- (a) a motion to authorize the officers on behalf of Local 75 to open a new bank account; and
- (b) a motion to hold a special general membership meeting on August 9, 1994 "to vote on the Local's proposed new Constitution".

21. By letter dated July 13, 1994, Jean-Guy Belanger advised the General President of the Parent Union that Local 75 had withdrawn from the parent organization. Mr. Belanger relied upon Article XI, Section 15 of the International Constitution.

22. Mr. Belanger also wrote to the various employers with which Local 75 had collective bargaining relationships. Mr. Belanger advised that Local 75 had broken away from the Parent Union, and that from now on, the employers would be expected to deal exclusively with the officials of Local 75. Mr. Belanger asserted that any dues monies payable under the collective agreements should be remitted exclusively to the Belanger group at Local 75.

23. On July 15, 1994, three members of Local 75 signed a document (since transmitted to Local 75) which reads as follows:

"In accordance with Article XI, Section 15 of the Hotel Employees and Restaurant Employees International Union's Constitution, we the following members of HERE Local 75 of Toronto, Ontario, do not want our Local to withdraw from HERE International Union".

The purpose of this document was to demonstrate to the Belanger group that at least three members objected to disaffiliation, and that, therefore, withdrawal could not take place under Article XI, Section 15 of the Constitution.

24. I also have before me a number of petitions with the following preamble:

"In accordance with Article XI, Section 15 of the Hotel Employees and Restaurant Employees International Union's Constitution, we the following members of HERE, Local 75 of Toronto, Ontario do not want our Local to withdraw from HERE International Union".

Each of these documents has a space where Local 75 members can record their name, their signature, the date, their social insurance number, and their place of work.

25. Between July 15 and July 21, 1994, documents in this format were signed by a large number of Local 75 members working for various employers in Toronto and elsewhere. The number of Local 75 members who have signed such statements of opposition now greatly exceeds the 57 members who attended the July 12, 1994 membership meeting and voted in favour of withdrawal from the Parent Union.

26. On Saturday, July 16, 1994, Mr. Jerry Jones, a business representative of Local 75, advised Jim Whyte, President of HERE Local 442 (a sister Local) that the reason no one was informed in advance of the proposed withdrawal from the Parent Union was the Belanger group's fear that three members of the Local would object and that, therefore, withdrawal could not be accomplished pursuant to Article XI, Section 15. Mr. Jones further advised Mr. Whyte that Local 75 had some five million dollars at its disposal to finance the new operation.

27. By letter dated July 20, 1994, the General Secretary of the Parent Union gave notice to Local 75 of pending charges that the Local and its officers had breached the International Union Constitution, by attempting to disaffiliate without the consent of the membership.

28. By letter dated July 20, 1994, the General President of the Parent Union notified the Belanger group that he had appointed Mr. James Stamos as Trustee in accordance with the terms of the HERE Constitution. Mr. Stamos is an International Vice-President of the Parent Union with offices in Montreal.

29. On July 21, 1994, the General President of the Parent Union further notified both Mr. Stamos and Mr. Belanger, that an international auditor - Mr. David S. Perry - had been appointed to audit and investigate the financial affairs of Local 75. Mr. Stamos was to manage the affairs of the Local, while Mr. Perry pursued his inquiry. According to Mr. Stamos, there have been serious financial irregularities in the Local's affairs and, in recent years, the Local has lost a large number of members and some bargaining units.

30. Mr. Stamos has been an International Vice-President of the Parent Union for approximately twenty years. He was appointed Canadian Director in 1987. From his office in Montreal, he travels across Canada to conduct union business. He has been appointed Trustee for various locals on several occasions.

31. Mr. Stamos was Trustee for Vancouver Local 40 for about 2½ years, from September 1982 until June 1985. The Vancouver Local is about twice the size of Local 75. It has approxi-

mately 12,000 members and over 300 collective agreements. Mr. Stamos has also acted as Trustee for locals in Ontario from time to time (including the predecessor local to Local 75), and has assisted with other trusteeships, although not technically appointed as Trustee.

32. Mr. Stamos is generally familiar with the affairs of Local 75. He is a Trustee of Local 75's health and welfare plan, and a Trustee of the Local 75 pension plan. He is also involved with the Local's dental clinic. He knows the officers, staff and many other individuals involved with the day-to-day operations of Local 75, including Mr. Belanger.

33. It appears that Mr. Stamos' appointment as Trustee was properly made and confirmed under the terms of the HERE International Constitution. No one alleges otherwise.

34. On July 22, 1994, Mr. Stamos (and another individual) attended at the offices of Local 75, with a view to serving some documents and assuming control of the Local's affairs. Mr. Stamos asserted that he was entitled to manage the Local because he had been properly appointed to do so under the terms of the HERE Constitution. His efforts were resisted by Mr. Belanger, who, to date, has not conceded access to the premises, has not produced documents concerning Local 75, and has not given the auditor access to Local 75's financial records.

35. On July 25, 1994, Mr. Stamos was advised by the administrator of Local 75's trust plans (Nelson B. Crowder & Associates Inc.) that he (Stamos) had been removed as a Trustee of those plans. There was no prior notice of this intended action, nor is there any indication that there was a meeting of trustees called to consider it. Since these are jointly-trusted plans with union and employer representatives, it is not clear how Mr. Stamos' purported dismissal was effected or whether it was valid.

36. Similarly, it is not clear how, or on what basis, Local 75 could remove Paul Clifford's local union membership or Mr. Clifford's membership in the local Health and Welfare Plan. Mr. Clifford is a member of Local 75 and a contributor and beneficiary to the Welfare Plan. However, Mr. Clifford is also an organizer employed by the International Union, who advised the Parent Union of the purported separation of Local 75. It is evident that these actions were taken against Mr. Clifford because he was opposed to Local 75's withdrawal from the Parent Union. It remains to be seen whether this reprisal has any legal foundation.

37. The material does not disclose whether other employees of the Parent Union (i.e., union "civil servants" like Mr. Clifford) are prepared to follow the direction of the Trustee or the direction of the Belanger group.

38. In accordance with his powers under the Constitution, Mr. Stamos has asserted his right to manage the affairs of Local 75. Mr. Stamos has advised employers that the purported breakaway is improper, and that they should deal with him rather than Mr. Belanger. Mr. Stamos has advised that, as the Trustee duly appointed under the HERE Constitution, he is entitled to run the Local, and the Belanger group is not.

39. Among the employers receiving such advice is the Westbury Hotel. The Westbury Hotel is the only employer named in Local 75's application for interim relief; however, it is clear that it is but one of a number of employers in the same position. Each of these employers is bound by a collective agreement requiring that union dues be deducted from the wages of employees and remitted to the credit of Local 75.

40. Mr. Belanger has demanded that those union dues be sent to him and his group. Mr.

Stamos has advised employers to hold all union dues in escrow and not to pay them out pending further notice and action by the Parent Union to protect its status and secure its property.

41. In short, employers like the Westbury are "caught in the middle" between rival union factions, each of which asserts the right to represent Local 75's 6,200 members, and each of which wants to receive the dues monies from those members. Thus, even if "bargaining rights" under the *Labour Relations Act* are held exclusively by Local 75, there is a dispute between Mr. Belanger and Mr. Stamos about who can exercise those bargaining rights and receive the membership dues. To put the issue another way: even if "bargaining rights" were vested in Local 75 and remain unaffected by what has happened, there is a controversy over the property of Local 75 and money that Local 75 has received or is entitled to receive.

42. Mr. Belanger asserts that he has the right to receive these dues monies because Local 75 has disengaged from the Parent Union.

43. Mr. Stamos asserts that he has the right to receive the dues monies because Local 75 has not properly withdrawn from the Parent Union, and he has been properly appointed Trustee under the Union Constitution.

44. And, of course, while these union dues are deducted from employee wages whether they like it or not, no one has asked *them* where they want the money to be sent. Given the process adopted by the Belanger group, to date, the 6,200 members of Local 75 have largely been left on the sidelines.

45. The Westbury recognizes that it has a collective agreement with an entity entitled "The Hotel Employees, Restaurant Employees, Union, Local 75 of the Hotel Employees, Restaurant Employees International Union". The Westbury wishes to comply with the terms of that collective agreement and remit union dues in accordance with the collective agreement. But because of the dispute between union officers, the Westbury does not know who to remit those dues to.

46. If the Westbury remits those dues to Mr. Belanger, it may be subject to complaint by Mr. Stamos and his group. On the other hand, if the Westbury remitted the dues to Mr. Stamos, it would be subject to complaint by Mr. Belanger. And at the present time, the Westbury is unable to determine who has the better legal claim to the dues money or who has the better claim to represent its employees. However, the Westbury does not want to expose itself to liability by paying the money over to or dealing with the "wrong" party - that is, the party whose legal claim is ultimately rejected.

47. The Westbury has not "taken sides", nor preferred one group of union officials over another. The Westbury wants to remain neutral as between the two factions or groups of union officials. The Westbury does not want to participate in or interfere with the formation, selection or administration of a trade union, or the representation of employees by a trade union. Nor does it want to improperly contribute financial or other support to a trade union - even inadvertently. The Westbury does not wish to interfere with or impede the rights of its employees.

48. There is really no dispute that the Westbury is acting in complete good faith, in an effort to *avoid* controversy. There is no "anti-union animus" in the sense that those terms are usually used in unfair labour practice cases. Indeed, the Westbury's principal concern is to *avoid* any action which might be construed as improper or might be considered an interference with its employees' rights.

49. The Westbury is not currently engaged in collective bargaining. The Westbury currently

has no pending grievances alleging a breach of the collective agreement. In the case of the Westbury, there is no ongoing collective bargaining activity that is being prejudiced by this dispute between union officials. In the Westbury's case, there are no outstanding employee problems that will be seriously prejudiced if "put on hold" for a few weeks.

50. In response to this application for interim relief made by Local 75 (Board File 1406-94-M), the Parent Union has filed *its own* unfair labour practice complaint, its own successor rights application under section 63 of the Act, and its own request for interim relief. The Parent Union's applications name all 75 employers potentially affected by the purported breakaway of Local 75.

51. The Parent Union's applications have a broader legal base and embrace all of the employers with which Local 75 has collective bargaining relationships. In the Parent Union's submission, Local 75's limited application respecting the Westbury Hotel should not be dealt with in isolation from the Parent Union's more comprehensive application respecting the employers and employees as a whole.

52. Because the applications filed by the Parent Union involve 75 employers in various parts of Ontario, service and other processing could not be completed prior to the hearing of Local 75's "interim relief" application respecting the Westbury. Strictly speaking, therefore, the Parent Union's applications are not before me. Nor am I able to say, with certainty, whether other employers would adopt the same position as the Westbury. I do note that, as it turned out, certain other employers did become aware of the hearing in File 1406-94-M involving the Westbury, and did appear at that hearing to make representations. Like the Westbury, they wished to maintain a "neutral position" and, so far as possible, carry on business as usual.

53. At least one of those employers is currently engaged in collective bargaining and has an outstanding grievance which is on its way to arbitration. This employer (The Holiday Inn, King Street) was concerned that bargaining or grievance arbitration would be derailed by this internal union dispute; and sought the Board's assistance to preserve "business as usual". However, even in this case, as things now stand, one cannot conclude that the arbitration case will not proceed, or that bargaining will not be successfully concluded (albeit perhaps not as quickly as anticipated).

54. If either of the protagonists accommodates the other, there is no reason why these employer and employee interests cannot be protected; for, after all, *it is in the members' interest that these ongoing matters be addressed*, and regardless of who gives direction, the union still has a statutory duty to bargain in good faith, a statutory duty of fair representation, and so on. A concrete problem will not materialize unless in the next few weeks, one protagonist obstructs the other to the point that attention to employer or employee interests is not just delayed, but completely frustrated.

55. As things now stand, Local 75 has no constitution or by-laws other than those that were in place prior to the purported breakaway on July 12, 1994. The documents defining the current legal character of Local 75 as a "union" all link it directly to the HERE Constitution. For example, the Local By-Laws include these provisions:

Article 1 - Section 1 - "Name and Object"

This organization shall be known as Hotel Employees, Restaurant Employees Union, Local 75, Toronto, Ontario, Canada, and vicinity, *affiliated with Hotel Employees and Restaurant Employees International Union.*

Article II - Section I - "Membership"

Membership of this organization shall consist of an unlimited number of workers in the Hotel, Motel, Restaurant and Related Industries, *who agree to abide by the By-laws of this Local and the Constitution of the Hotel Employees and Restaurant Employees International Union, as presently in effect or as hereafter amended.*

[emphasis added]

If an organization needs a constitution to be a "union" under the Act, the only one that Local 75 has, makes it a subordinate body of HERE, and binds its members to the IHERE Constitution.

56. The officials of Local 75 (i.e., Mr. Belanger and his supporters) propose to have a special general membership meeting on August 9, 1994, where, it is said, the Local's by-laws will be amended and/or a new constitution adopted, so as to constitute Local 75 as an independent entity. There is nothing before me to confirm what the arrangements for this meeting are, what notice will be given, or how many members will attend; but as I understand it, there are no current plans for a referendum to test the members' wishes. And, as I have already noted, quite a number of Local 75 members have indicated, in writing, that they do not want to withdraw from the Parent Union.

57. With this review of the background, I turn to the main question before me: whether Local 75's application for interim relief should be granted in whole or in part; and, if so, what form such interim relief might take.

Decision

58. Section 92.1 of the Act gives the Board broad discretion "in a pending or intended proceeding" to "grant such interim orders, including interim relief, as it considers appropriate, on such terms as the Board considers appropriate". In the exercise of that discretion, the Board may consider such factors as: whether the applicant for interim relief makes out an arguable case "on the merits" of the main proceeding; the balance of convenience or harm as between the litigants in the main proceeding; the potential effect on third-party interests; the overall labour relations context; and what appears to make the most "labour relations sense" in all the circumstances.

59. Having reviewed the circumstances of this case, as a whole, I am not persuaded that any interim order is warranted, at this stage.

*

60. As I have already noted, Local 75's application for interim relief (the only one before me) is filed in conjunction with an unfair labour practice complaint. Local 75 asserts that the Westbury and the Parent Union have contravened sections 65 and 71 of the *Labour Relations Act*. Those sections have been reproduced above. However, it is not at all clear that Local 75 has made out an arguable case against either the Parent Union or the Westbury.

61. I will consider each of these parties in turn.

62. Section 65 of the Act applies to *employers* and persons acting on behalf of *employers*. The Parent Union does not fall within those parameters. It is clearly not an employer, nor, in this case, is it acting on behalf of an employer. It is difficult to see how section 65 of the Act has any application to the Parent Union.

63. Nor is section 71 obviously applicable.

64. The Parent Union has purportedly put Local 75 under trusteeship, in accordance with the terms of the HERE International Constitution. The autonomy of the Local has been suspended, and the powers formerly exercised by the Local officers are now said to be in the hands of the Trustee.

65. The administration of Local 75 is clearly being affected by what has happened, but it is important to note that the power to impose a trusteeship is a common feature of most union constitutions, and the exercise of that authority is recognized by section 84 of the *Labour Relations Act*. It is not evident that a trusteeship is per se illegal, or, in itself constitutes some form of "intimidation" or "coercion".

66. No doubt the Trustee is pressing his asserted right to manage the affairs of the Local, and to this end, he has attempted to take possession of union property, to examine the Local's financial records, and to inform employers that they should deal with the Trustee rather than Mr. Belanger and his group. However, these are the actions one would expect a trustee to take; and, on the material before me, there is no actual "intimidation" or "coercion" involved - although no doubt from Mr. Belanger's perspective, there is interference with what he may consider to be his legal prerogatives.

67. But I repeat: section 84 of the Act expressly contemplates the possibility of a "trusteeship", and does not contemplate or provide for supervision or review by this Board until a year has gone by. Until that time, the actions of the Trustee are regulated by the union Constitution, with reference, as necessary, to the ordinary civil Courts. They are matters of internal union affairs over which this Board has no original jurisdiction, and it is by no means clear that the Board is the place where they can or should be resolved.

68. Against that background, it is difficult to conclude that a trusteeship, by itself, constitutes some sort of unfair labour practice, or that the efforts of a trustee to manage the affairs of the local or conduct an accounting constitutes some arguable breach of section 71 of the Act. In the instant case, it appears to me that Mr. Stamos' appointment was properly authorized under the terms of the HERE Constitution (leaving aside for now whether Local 75 is still part of that organization or subject to either the Constitution and the supervision of the trustees), and that his actions, to date, cannot be characterized as "intimidation" or "coercion" within the meaning of section 71 of the Act.

69. I am uneasy about using discretionary powers, in a dubious case, where the Legislature has not given the Board express regulatory authority.

70. Obviously, this is not the place to make any definitive determination of the parties' rights under the HERE Constitution, or the Local union by-laws - not least because these matters are normally dealt with by the Courts, not the Board, and they may figure in the deliberations of the Board panel ultimately seized with the merits of the case. However, it is difficult to be sanguine about the way in which the officials of Local 75 have attempted to disengage from the Parent Union.

71. The decision to disaffiliate was made by a tiny minority of members, without any general notice to the membership that this step was being contemplated. The process undertaken effectively (and it seems intentionally) excluded 99% of the Local's members, who, the Local officers now say, should be bound by the result.

72. It may well be that if the Local officers had disclosed their intention in advance, the Parent Union would have mobilized membership opposition and put the Local under trusteeship.

That is what eventually happened. But the fact remains that the actions of the Local 75 officials have a very dubious constitutional foundation and do not plainly reflect the wishes of more than a handful of the Local union's members. Indeed, it is more than arguable that the actions of the Belanger group are both contrary to the Union Constitution, and lack democratic legitimacy; for if reference is made to Article XI, it is difficult to ignore the written opposition of more members than supported the breakaway in the first place. And if Local 75 has any "constitution" today regulating its affairs, it is a constitution that still links and binds it to the HERE Constitution and its processes.

73. The situation presented by this case is much more like a "palace coup" than a membership revolt; and, in the circumstances, I think the Board should be wary about using its interim discretionary powers to give statutory confirmation to that situation. There is something to be said for Mr. Wray's submission that the Belanger group should not be able to create confusion and contention, than rely on those very problems to justify interim confirmation of their position. The submission is reinforced by the fact that the Legislature has not given the Board the express authority to regulate internal union disputes of this kind. There is also something to be said for the submission that whatever the Belanger group was trying to do, the fact is the only constitution defining the organization and its members is the HERE Constitution, and the fact is, more than 3 members oppose disaffiliation.

74. Local 75's allegations against the Westbury are equally dubious; and, its arguments are also somewhat circular.

75. It is said that the Westbury is "interfering" with Local 75's representation rights, by paying dues monies into trust until the dispute between the Belanger group and the Trustee is resolved by a Court or tribunal with the authority to do so. However, it is perfectly plain that the Westbury is trying, as best it can, *not* to favour either of the protagonists, and not to interfere with the administration or internal processes of the union; moreover, if the Westbury did pay out these funds to one or other group, it is by no means clear whether, or how, they might be recovered by the person with the better claim. Not only does the employer risk entering the political fray by appearing to favour one side or the other, but it risks having to pay twice. And, of course, Mr. Belanger's assertion that the monies "should" be remitted to a bank account controlled by his group (rather than to the Trustee) depends upon an assumption that he has the better claim - something that is far from clear on the material before me and would be equally unclear to the Westbury. Indeed, the trusteeship seems regular while the breakaway is problematic, and if that situation is ultimately sustained, the money "should" be going to the Trustee.

76. It appears to me, therefore, that faced with these competing claims, the Westbury is acting prudently and properly when it pays the disputed dues monies into a separate trust account, pending a legal determination as to who is entitled to receive them.

77. I am not prepared to interfere with that determination, or direct that these dues monies be paid, in the interim, to Mr. Belanger's group. Nor am I attracted to Mr. Ryder's alternative proposal that the Board appoint *its own trustee* who, in turn, would account for and dispense funds to the Belanger group to meet their and the Local's ongoing expenses. And I am not prepared to confirm the Belanger group as the entity with the power to manage the affairs of the Local or exercise bargaining rights.

78. Insofar as the Westbury is concerned, this internal union dispute has not had any adverse impact on ongoing collective bargaining activities. No collective bargaining has been postponed, no grievances have been delayed, and so on. However, even if such problems do arise and have to be addressed, the only thing that would prevent that from happening is the dispute

between Mr. Belanger and the Trustee, and the possibility of detrimental deadlock. But there is little evidence of that yet, no evidence of it at the Westbury, and, in my view, no compelling case that, at this stage, the Board should give exclusive powers or financial benefits to the Belanger group to which they may not be entitled under either the Act or the Union Constitution. And to the extent that issues of property rights, or trust funds may be involved, those are matters which are properly pursued in the Courts which have original jurisdiction to address them. Likewise, issues concerning fiduciary responsibilities are properly pursued in the Courts.

79. I am not unmindful of the uncertainty that this internal dispute may cause for employers and employees. I can appreciate that such employers are anxious to carry on "business as usual" and do not welcome either impediments to the collective bargaining process or the prospect of political turmoil in the workplace. However, strictly speaking, none of those employers are now before me; and it is not at all obvious what the appropriate global interim solution should be - or, indeed, whether there should be any general order as opposed to one tailored to particular employer/employee problems if and when they arise over the next few weeks. These doubts about the equity and efficacy of the order sought, together with my doubts about Local 75's general position, all reinforce my reluctance to intervene, by way of interim order, in this internal union dispute.

80. This is not to say that a trustee's actions will always be immune from scrutiny simply because he has been appointed under a union constitution, appointments of that kind are permitted by the Act, and there is no general Board power to oversee internal union affairs. Quite apart from judicial review, the Board might well choose to intervene in an appropriate case, if there is an appropriate legal and policy foundation. But the instant application is not such a case.

81. The employers are not without rights or remedies should their business interests be interfered with. Nothing in the *Labour Relations Act* alters the general proposition that "work time is for work", and if union politics intrudes upon the workplace, the employer is entitled to take appropriate measures to ensure that the work gets done. Likewise, if there are particular problems that cannot be put "on hold" for a few weeks, the employer can take steps to "stay neutral", to safeguard its position (as the Westbury did), or to seek its own interim relief to "break the log jam". However, as things now stand, it appears to me that the best approach in this case is to get the litigation on the merits underway as soon as possible - with the caveat that serious problems can be addressed, as necessary, as they arise.

82. This may mean that certain collective bargaining processes will have to be suspended for the time being. But the fact is that there will not be complete certainty and stability until the legal issues between the parties are finally resolved by a Court or tribunal with the jurisdiction to do so. And it would be both unfortunate and counterproductive if litigation over "interim relief" questions were to delay the final resolution of the parties' dispute.

83. For the foregoing reasons, this application for interim relief is dismissed.

The Litigation of the Merits of the Dispute

84. The parties have agreed to certain protocols to expedite the litigation of the merits of the dispute; however, they are hereby directed to consult with the Board in respect of that matter.

85. The Registrar is directed to make additional copies of this decision so that they may be posted on employer premises should employers consider this to be advisable.