



November, 2011

Nova Scotia Federation of Labour, CLC

Labour Management Review Committee
C/O Labour and Advanced Education
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NSFL Response to Discussion Paper-First Contract Settlement

Greetings:

We would like to thank the Labour Management Review Committee (LMRC) for sponsoring the study day and group discussion on this topic six weeks ago on September 23rd and for providing the opportunity to respond to the discussion paper on First Contract Arbitration (FCA).

From the comments and views heard at the study day and in the media, it is very clear there are a variety of views and opinions on this matter. But having said this, it is still very informative and beneficial to hear the opinions and points of view from various stakeholders - it gives one a much broader perspective on this issue.

Unlike other views and opinions being heard; we are very pleased and supportive of the creation of the LMRC last fall with the passage of Bill 100. The intent to form a stakeholder body and process to review legislative and related matters with the goal of enhancing relationships between workers and employers and to improve the overall labour relations and reputation of the province is commendable and a positive step towards the intended goal.

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This is a unique opportunity to deal with issues or matters important to the stakeholders and although it may be viewed as not being perfect, it is a far cry from the process and consultation opportunities we have had in the past.

On that note we wish to again thank the LMRC for the opportunities for consultation on FCA; although some may bemoan the 'shortness' of notice and related matters; it should be remembered although it might be a bit of a tight schedule; stakeholders are involved.

In the past, stakeholders or at least those who represent workers, were left totally out of the process until legislation was introduced, being told 'that's what law amendments is for'. Bill 100 corrected this by establishing the LMRC and review process.

On behalf of our 70,000 members of the Nova Scotia Federation of Labour, we very much appreciate this opportunity to offer our comments on amendments to the Trade Union Act with regard to First Contract Arbitration.

The *Trade Union Act* is based on certain principles which embody a consensus on labour relations which has been accepted in all Canadian jurisdictions for the past 60 years.

The discussion regarding First Contract Arbitration has already been deemed "unnecessary and draconian legislation" by employer organizations. These organizations desperately want to secure the right to undermine the decisions of workers to join a union by blocking efforts of new union members to obtain a first collective agreement for as long as possible.

It is clear that this approach by employers groups is meant to categorize labour relations as trite, compared to the economy, taxation, productivity, our GDP etc...

Do the various business organizations truly believe using outdated and counter-productive labour relations techniques during the first set of negotiations will drastically improve the economy of Nova Scotia?

Whenever there are discussions about modernizing any labour relations legislation, the following wrong-headed logic is dragged out:

-that it is only for the benefit of unions, not the workers and

-an intelligent and positive labour relations environment is somehow bad for business.

- why do we need the change?

We clearly dispute or challenge the view that there is no need to discuss this matter as part of the overall goal of building and improving Labour Relations in the province; an open mind will clearly see we do have a record and history of difficult and protracted first contract negotiations, some of which have resulted in strikes.

Some of these strikes achieved national notoriety, while others resonated throughout the province. All of these incidents of excessively long bargaining sessions and strikes have left a bitter taste in the mouths of the affected stakeholders, sometimes taking years to build the trust that had been so undermined or destroyed.

Some of these situations have had and continue to have a devastating effect on our economy, profitability of employers, productivity of employees and overall work environments.

But if you do not represent an organized workplace or workers; you likely have no concept of how devastating an impact this can have on workplace relations.

We are among those who believe progressive thinkers are wise to review, discuss and possibly improve on such matters, before we are actually confronted with a situation;

where we run around asking how do we resolve this dispute; sometimes even seeking government intervention – knowing the potential of what may befall us; the wise person builds a dyke before the flood.

We believe the Labour Management Review Committee should recommend to the Minister of Labour and Advanced Education that the *Trade Union Act* be amended to provide an option for the arbitration of a first collective agreement after a trade union has been certified and the bargaining process has been exhausted.

The Government and fair-minded employers need to once and for all deal with the same old opponents of good labour relations by implementing the First Contract Arbitration Legislation in spite of the pronouncement of doom and gloom.

In every successful democracy, decent labour relations exist, ensuring mutual respect between employers and employees and better productivity and economic growth.

We can look to the United States for studies done on unionization and productivity as similar studies are few and far between in Canada.

In June of 2007, Ross Eisenbray published a study called “Strong Unions, Strong Productivity” for the Economic Policy Institute.

There is a common myth that unions hurt productivity, supposedly because they impose work rules that make their employers less efficient. The evidence from industrial relations studies does not support this myth. A broad study of the economics literature found “a positive association [of unions on productivity] is established for the United States in general and for U.S. manufacturing” in particular (Doucouliagos and Laroche 2003, 1).¹

First contract arbitration will promote labour peace by supporting the conclusion of collective agreements in the particularly difficult circumstances of negotiating a first collective agreement after a union has been certified.

Most Canadian labour legislation; covering over 80% of the nation's workforce, provides for the resolution of a first collective agreement by binding arbitration.

These provisions have been remarkably durable over changes in governments in the labour jurisdictions which have enacted first contract arbitration. First contract arbitration has become a settled and even mundane part of the labour relations environment in this country.

Many models of this legislation as outlined in the discussion paper have strengths, but we would likely pick the Manitoba model, as it allows a union or employer to apply for a first collective agreement after a reasonable but not lengthy period of bargaining. It has been very successful in encouraging voluntary collective agreements and on the rare occasions where it is used, it has generated collective agreements very similar to those which are voluntarily reached.

Given the relatively similar populations and resources of Manitoba and Nova Scotia and the recognized success of the Manitoba model, that model is likely the most appropriate for first contract arbitration in Nova Scotia.

The best thing for Nova Scotia is to go through the principles of all the models and pick the ones that work best for us and create the Nova Scotia model.

The principles are reflected in the preamble to the Nova Scotia *Trade Union Act* recognizes the commitment of the Province to the promotion of common well being through the encouragement of free collective bargaining and the constructive settlement of disputes. It recognizes a long held consensus that freedom of association and free collective bargaining are the basis of effective labour relations for the determination of good working conditions and sound labour management relations.

The most significant problem resulting from the difficulty in reaching first collective agreements in Nova Scotia is the length of time taken to bargain those agreements. It is

unusual to conclude a first agreement within 12 months of certification. The long delay creates serious frustration among bargaining unit employees creating unrest which in turn makes it more difficult to conclude the first agreement and which undermines the development of a successful collective bargaining relationship between labour and management.

First contract arbitration legislation creates an incentive for parties to reach agreement without resorting to work stoppages or arbitration. There is no evidence to suggest the parties involved in the negotiation of the first collective agreement rely on arbitrations to settle their differences. First contract arbitration is rarely used and the potential of first contract arbitration generates voluntary settlements.

This combined with higher productivity and economic growth flies in the face of the logic often offered by employer groups, as outlined in a recent Opinion piece in the Halifax Herald on November 3rd ***N.S. should focus on real problems — like the economy in which a group of employer groups said that “FCA is contrary to free collective bargaining — the very process that helps build the mutual respect, understanding and relationships critical to reaching that first agreement”***

We disagree. Recent research also concludes that when first contract arbitration is used it results in wage increases and other terms of employment that are nearly identical to those reached through voluntary collective bargaining.

Nevertheless the introduction of first contract arbitration legislation reduces the number of work stoppages associated with the negotiation of first collective agreements by a substantially significant amount.

But we can agree with one comment in the November 3rd opinion piece by the employer groups:

“Now is the time to focus on fostering economic stability and improving productivity and overall competitiveness, and to take measures that strengthen business optimism.”

We could not agree more. Passing First Contract Arbitration Legislation will help us reach that goal.

Yours truly,

A handwritten signature in black ink that reads "Rick Clarke". The signature is written in a cursive, flowing style.

RICK CLARKE, President

RC/jw/CAW Local 4005

Notes

1. Doucouliagos, Christos, and Patrice Laroche. "What do unions do to productivity? A meta-analysis." *Industrial Relations*. Vol. 42, No. 4 (2003). Cited in Shaiken, Harley, "Unions, the Economy, and Employee Free Choice," *Economic Policy Institute* (2007).