700 - 9990 Jasper Avenue,
WORLD TRADE CENTRE EDMONTON
Edmonton, Alberta Canada T5J 1P7

tel 780.426.4620 fax 780.424.7946

First contract arbitration

February 2009

Background

First contract arbitration legislation imposes mandatory arbitration on an employer and union in cases where the union becomes certified to represent employees but the parties are unable to negotiate a collective agreement.

Under the current provisions of the Alberta Labour Relations Code, employers and unions who reach an impasse in the negotiation of a first contract are not forced into arbitration – instead, either party is able to use the traditional weapons of a strike or lockout to break the impasse. Furthermore, the employees who initially chose the union to represent them are able to take steps to decertify the union on the basis that it has failed to negotiate a collective agreement.
Recently the Alberta labour movement has been lobbying the provincial government to impose first contact arbitration legislation.

Is first contract arbitration a viable and value-added process in a private sector collective bargaining regime that private sector organizations are willing to accept?

The Edmonton Chamber of Commerce position is that first contract arbitration is not a viable and value-added process that private sector organizations should accept.

Alberta has experienced unprecedented economic growth in the last several years. Much of this growth has come from businesses establishing a presence in Alberta because of government programs, legislation, and policies that truly create an "Alberta Advantage." First contract arbitration is not consistent with this Alberta Advantage.

We submit it would be viewed by management who are looking to locate in our province as a negative factor because it erodes the ability of management to make determinations on what terms of employment will allow them to be viable and competitive, and whether a strike or lockout might be a necessary step to achieve those terms.

Instead, management is left with the prospect of a third party imposing terms that might make the business uncompetitive.First contract arbitration also thwarts the right of employees to have sober second thoughts about the establishment of the bargaining relationship. For example, unions often make promises during organizing drives in order to induce employees to sign on. In many cases, employees come to understand that what has been promised differs from what is capable of being delivered. Some employees come to see the union as bringing "an us against them" culture into a work place and decide that they would prefer not to have the bargaining relationship continue. Many certifications that are gained do not result in a first collective agreement because of these factors. The imposition of first contract arbitration would not only thwart employees' rights in these circumstances, but would give the union a right that is primarily in its interest only.
The concept of first contract arbitration is contrary to one of the principles as set out in the preamble to the Labour Code, which states: "Whereas it is recognized that legislation supportive of free collective bargaining is an appropriate mechanism through which terms and conditions of employment may be established"

Both labour and management have subscribed to the position that it is far better that both have the opportunity and responsibility to work out solutions to the problems themselves. Results achieved in this way have a far higher degree of legitimacy and a far higher degree of acceptance. First contract arbitration is simply not consistent with this principle.

The Edmonton Chamber of Commerce recommends the Government of Alberta:

1. Maintain that portion of current legislation that precludes the use of first contract arbitration.