LEGISLATIVE ASSEMBLY OF MANITOBA
THE STANDING COMMITTEE ON INDUSTRIAL RELATIONS
Thursday, 25 June, 1987

TIME - 8:00 p.m.

LOCATION - Winnipeg, Manitoba

CHAIRMAN - Mr. H. Smith (Ellice)

ATTENDANCE - 11 - QUORUM - 6

Members of the committee present:

Hon. Messrs. Cowan, Doer, Mackling

Messrs. Ashton, Connery, Dolin, Kovnats, McCrae, Mrs. Oleson, Messrs. Santos, Smith (Ellice)

APPEARING: Mr. Ron Wally, Manitoba Association of Health Care Professionals

Mr. Robert Ages, Machinists, Local 484

Mr. Daniel Quesnel, Private Citizen

Mr. Frank Goldspink, The Communist Party

Mr. Bill Gardner, Winnipeg Chamber of Commerce

Mr. Kam Gajdosik, The Construction Labour Relations Association of Manitoba

Mr. Howard Raper, National Representative, Communications and Electrical Workers of Canada

MATTERS UNDER DISCUSSION:

Bill No. 32 - The Retail Businesses Holiday Closing Act; Loi sur les jours fériés dans le commerce de détail

Bill No. 61 - An Act to amend The Labour Relations Act; Loi modifiant la Loi sur les relations du Travail.

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MR. CHAIRMAN: I would like to call the meeting to order of the Industrial Relations Committee. I should point out that we are slightly delayed because some of the members were not present.

BILL NO. 61 - THE LABOUR RELATIONS ACT

MR. CHAIRMAN: The first speaker that we have is Mr. Ron Wally, Manitoba Association of Health Care Professionals.

Mr. Wally.

MR. R. WALLY: Thank you very kindly.

First of all, the Manitoba Association of Health Care Professionals, formerly known as the Manitoba Paramedical Association, is an independent labour organization affiliated with the Canadian Federation of Labour and the Manitoba Provincial Council of Labour. The views expressed in the brief that I'm about to present to you are the views of the association and not necessarily the views of the Manitoba Provincial Council of Labour.

The association represents approximately 1,100 technical and professional workers covered by 33 Labour Board Certificates and employed at 22 different health care facilities across Manitoba.

Included in our membership are the following groups of employees: Laboratory Technologists and Technicians, Radiology Technologists, Electromyograph Technologists, Electrocardiograph Technologists and Technicians, Electroencephalograph Technologists, Nuclear Medicine Technologists, Design Machinists, Radiation Protection Officers, Mould Room Technicians, Dosimetrists, Operating Room Technicians, Nuclear Electronics Technologists, Radiotherapy Technologists, Radiopharmacy Technologists, Pharmacy Technicians, Physiotherapists, Occupational Therapists, and Respiratory Therapists.

The association is in agreement that the Province of Manitoba has enjoyed a period of positive labour relations environment. The association is also aware that much of the credit is due to the government's efforts to update, upgrade and enhance The Labour Relations Act through the amendments made in 1985. The association was not opposed to those amendments and applauded the government for making those amendments. Those amendments appeared to be based on a solid foundation of extensive consultation with affected parties, with deliberate and cautious examination of other jurisdictions across Canada, and with careful consideration of the consequences of the proposed changes.

Bill 61 appears to be simply a hasty reintroduction of a proposed piece of legislation last considered in 1984. Whereas the labour law amendments of 1985 worked towards encouraging the collective bargaining process, the contents of Bill 61 appear to, in essence, damage the collective bargaining process by encouraging parties to consider an alternative resolution process before collective bagaining actually occurs.

MAHCP strongly opposes final offer selection as proposed in Bill 61 as an alternative to collective bargaining and as a binding disputes resolution mechanism. The association strongly believes in free collective bargaining and in the potential use of strike or lockout as the best possible lever to use in labour-management contract disputes. Final offer selection, as proposed, provides a mechanism for interference in the collective bargaining process and thereby erodes the association members' rights to withdraw their services.

In the health care field, negotiations seldom begin in earnest within the 60- to 30-day period prior to the expiry date of collective agreements. Most health care facility negotiations, in fact, await the results of the

government's negotiations with its own workers prior to establishing bargaining responses.

The proposed legislation would permit the management negotiator to stop negotiations in their embryonic stages, ignore the union's negotiating committee and force a vote on process, i.e., whether or not to go to FOS, rather than vote on issues, i.e., wages, benefits and working conditions. This vote would take place prior to the full examination of the respective union-management negotiation positions. In effect, this could permit an employer to avoid having a negotiation process on collective bargaining issues.

Currently, by the act, all employees covered by a Manitoba Labour Board Certificate are entitled to vote on a strike vote. Bill 61 makes it unclear as to who has a right to vote on the process - members of the association, non-members of the association working in the area, casual employees within the area, but not part of the bargaining unit, etc.

The proposed legislation makes it unclear as to what criteria the board may use to determine who is included in the vote. And I make reference to section 82.1(9)(b) and 82.1(10), which suggests that the board may include strikebreakers in the vote, which is a principle that is contrary to the present practice today.

Although it is acknowledged that the perpetrators of this proposed legislation would - in the likelihood of a disagreement on the choice of a selector - appoint an objective selector, it would not necessarily bind successive governments to the same objectivity. He who controls the appointment of the selectors has a fair chance of influencing the final offer selected. The ability of selecting one's favorite selector is simply too tempting.

The notion of having to choose one final package over another suggests a winner and a loser. The collective bargaining process, even if a strike or a lockout is involved, requires a mutually acceptable agreement on each and every issue. As such, both parties can be winners. In the health care field, given the dramatic intensity of the work, it is necessary for both parties to work together at the conclusion of the bargaining process. A mutually worked out agreement enables that process to occur. Final offer selection has the strong possibility of preventing the improvement of working relationships between workers and management.

Few, if any, of the selectors would have a full familiarity with the parties to the dispute. A selector might, for the sake of a higher wage offer made by management, feel compelled to select management's package even though it may contain provisions which might reduce the hard-won rights of workers to job security, income protection, pension rights and the like.

In the health care field, the ability to pay is determined by the government. Few, if any, of the facilities are in a surplus position. As such, by the act, the selector would be inclined to select the lowest wage offer or even a roll-back offer.

Often, given the difficult monetary situation of hospitals and governments in general, certain benefits will be negotiated in an innovative manner to compensate for the lack of wage offers. Since these benefits and conditions may not be standard, they are subject to deletion or revision as per the guidelines in the proposed legislation. In fact, the selector may inadvertently assist a non-cooperative management in removing previously hard-earned benefits and conditions affecting groups such as women and minorities.

Since our association is predominately composed of women who are engaged in professions having few adherents; i.e., the total number of EMG Technologists in Manitoba is one, there are only 25 Nuclear Medicine Technologists in the entire province, and there are only 13 EEG Technologists in the province. This is an issue of great concern to us.

Our membership has fought long and hard through strikes and extensive and protracted bargaining to secure rights such as technological change, paid maternity leave, education leave, job reclassification and selection. A Russian roulette approach such as final offer selection could put much of these gains in jeopardy. Managements and governments could engage in a situation where lower wages and poorer working conditions would have to be traded off in order to retain items such as paid maternity leave and job selection criteria.

By the act, a selector, even an objective one, would be compelled to deny the final package of a union that contained a proposal for, say, a day care centre or a request for portability of benefits.

MAHCP, as an association of professional and technical workers, is extremely cognizant of the consequences of taking strike action. The association, like other members of the Manitoba Council of Health Care Unions, has agreed to the provision of essential services for the protection of life and limb during a strike. As such, the perceived need to limit the right to strike of workers in the public sector is greatly reduced. The need to introduce an alternative substitute for health care is therefore unnecessary.

The association is concerned about the actual items that would be proposed for final offer. What in fact determines management's position for final offer? Can management ignore the items previously agreed to in negotiations? Are all bets off? The act appears unclear in this regard.

In conclusion, the MAHCP urges that Bill 61 be withdrawn completely. It is our contention that there is nothing to preclude final offer selection from being an option to contract negotiations. Such options might be written into collective agreements where such might be appropriate. The MAHCP suggests that further tampering with the collective bargaining process by government cease unless there are some compelling reasons to do so, and only after all affected parties have had an opportunity to consult and propose potential options and remedies designed to meet the problems at hand.

I thank you.

MR. CHAIRMAN: Are there any questions of Mr. Wally? Thank you, Mr. Wally.

Mr. Robert Ages, Machinists Local 484.- (Interjection)- Okay, fine.

Mr. Daniel Quesnel, private citizen.

MR. D. QUESNEL: Good evening.

I am also representing the Canadian Manufacturers Association tonight as I am their chairman of Industrial

Relations. I have six copies. I am not as eloquent a speaker as some, so you'll have to excuse me if I blunder through this.

This is a very serious piece of social legislation. It may be disguised as labour legislation; in effect, however, it is legislation that restricts present rights and freedoms of our free collective bargaining process. These restrictions of freedoms and rights are social concerns not labour relation ones. I'm sure all the flaws with respect to this legislation from a labour relations' perspective will be brought forward to the government. In addition to the social concerns that we have with this bill, I will present four labour relations' concerns.

Final offer selection is a restriction of freedoms and rights. In the present format, Bill 61 removes traditional freedoms and rights of all the parties to the collective agreement and puts them in the hands of a government chosen and appointed selector. In other words, this individual now is charged with the responsibility to determine the economic future of the employees and the employer. This selector, appointed by the government, who has no knowledge of, or vested interest in, the organization concerned now must choose between alternatives that could lose jobs and bankrupt the company.

It is interesting to note that some in the organized labour movement had been hoodwinked into believing that this pleasant sounding phrase, "final offer selection," is in their membership's best interest. This is obviously not the case because it removes the bargaining agent's right to represent the employee group and puts the responsibility in the hands of a government appointed and chosen selector.

Now what of the employees? They are the ones who have chosen through a vote for final offer selection, and they are forced to accept the collective agreement chosen by this government, chosen by an appointed selector, even if it's not the one that they have put forward. It seems evident that this government wants to be able to influence the economic as well as the political destiny of the people of Manitoba.

Does this government realize this is social legislation disguised as labour legislation? It's a step towards control of individual freedoms and rights. If it is allowed to become law, it will signal to the government that other freedoms and rights can be legislated away.

I am personally frightened as to what freedom or right would be next on the government's list. Political apathy among the public and pressures from special interest groups such as those placed on the government by the Manitoba Food and Commercial Workers have led this government to put forward flawed and abusive legislation.

That this government would not realize it is removing freedoms and rights in an inappropriate manner is frightening in and of itself. As a citizen of this province, I still have my right and my freedom to express my opinion. I'm not sure for how long.

Four labour relations' flaws in this bill are easy to pick out, but I've chosen ones that I think are important to the manufacturing sector and to me as an individual:

(1) When the Minister first called us to his office to give us a briefing session, he said he wanted to be innovative. The concept of final offer selection has been around for at least two decades that I am aware of. It has been tried by the parties to the collective bargaining process with limited success. For the most part, it has been discarded by the parties as a less-than-effective method of dispute resolution. Having it forced on the parties by this legislation is akin to a roll of the dice to determine the collective agreement. The onus to negotiate in good faith is lost with this piece of legislation.

(2) The bill sets up the situation where there is one big winner and one big loser without any short-term economic loss to either. The Minister is naive to think that final offer selection in the form that he has presented it is a positive piece of legislation for the workers. Jobs will be lost and workers will lose rights for which they have fought hard. Perhaps this is what he wants. With this legislation, some companies who have unreasonable unions will make significant gains as their offer is selected. Employers who choose to be unreasonable with reasonable unions will end up going bankrupt, and jobs will be lost. Either situation will not help the economy of this province, but in each scenario the government will be blamed and everyone will lose. The argument, of course, will be the selector made the wrong choice.

(3) This legislation opens the door for tampering with the free collective bargaining process by agents of the government. Forced positions, however unreasonable or practical, will be put on workers and companies alike. The selector will comand the microeconomic environment of firms and labour markets in this province. The free collective bargaining process and the free market systems will be in jeopardy.

I ask: Is this the direction in which the government wishes to move the economic base of this province and the people of Manitoba; i.e., state control of the economy?

(4) The sunset clause is a real concern. The Minister is hedging his bet. He has not enough confidence in this legislation so he needs a way out. When it proves, as it will, to be bad legislation, it will just expire. In the meanwhile, how many jobs will be lost? How many workers will suffer? How many business will go bankrupt? It's anyone's guess. This just speaks to the lack of consultation this government exhibits when putting forward legislation.

In summary, I believe that Bill 61 is a test of the strength of the people of Manitoba by this government. Does the government know that if it is successful in putting this bill into legislation, other basic freedoms could become fair game? It will become apparent to the government that legislation can be passed even with opposition by the labour groups such as CUPE, CAIMAW, MONA and some others even here tonight, and from business groups such as the Chambers of Commerce of Manitoba and Winnipeg, the Mining Association, the Manufacturing Association, which I represent, etc. As long as the public can be compromised by nice-sounding words, they will give up their freedoms. They trust the government.

Maybe the next bill will be private communications restraint. These are nice friendly sounding words. Perhaps then I'll lose my freedom of speech and the right to make my opinion known. If we do not make our concerns known to the government, and press you to heed the growing opposition to this bill, I feel certain that only special interest groups and government appointees will benefit from the incumbent government.

My final remarks are that the Canadian Manufacturers' Association are opposed to this legislation and we wish the Minister to withdraw it. Those are my personal sentiments as well.

Thank you.

MR. CHAIRMAN: We have someone wanting to ask a question, Mr. Quesnel.

Mr. McCrae.

MR. J. McCRAE: Mr. Quesnel, I noted with interest your comments regarding the sunset clause being a real concern. You stated that perhaps the Minister is not so sure about this, but he wants to go ahead anyway.

The fact that there is a five-year clause here, I will put forward a scenario and ask you to consider that. The scenario I put forward is that five years from now the appointees will be by a Progressive Conservative Government. Is there any reason for you to think, as a representative of the CMA or as a private individual, that this kind of power in the hand of any government, be it NDP or P.C., is a proper kind of power?

MR. D. QUESNEL: The power that the Minister is putting into the hands of the selector is improper for any government, whether it be P.C., Liberal or NDP, or any other one that wishes to be elected to this province.

MR. CHAIRMAN: Mr. Kovnats.

MR. A. KOVNATS: Mr. Quesnel, I have listened to many presentations. Yours is one of many, and I would think that you are a representative of management.

Whereas I hear management supporting the rights of labour, and I've heard many of the presentations where labour is supporting the rights of management, do you believe that this bill will take away from the rights of labour, particularly, the right to withdraw services, the right to strike and the right to collective bargaining? Is it your purpose to see that fairness is for both management and labour, and that this bill should be withdrawn?

MR. D. QUESNEL: The bill should be withdrawn, Mr. Kovnats. The qualities in the current legislation assist the parties to bargain collectively with a couple of exceptions which I will not go into here.

This one will not assist anyone - labour, management or the employees of companies in this province, or the province or other institutions - to come to agreement on collective issues. This is a forced method of settling disputes and it is flawed.

MR. CHAIRMAN: Are there any further questions?

Thank you very much, Mr. Quesnel.

MR. D. QUESNEL: Thank you.

MR. CHAIRMAN: I'd like to call then Mr. Lorne Robson, representing the Communist Party. Okay, Mr. Ages then, if he's ready now.

MR. R. AGES: Thank you.

My name is Robert Ages. I'm with IEM, Local 44. I'm also a member of the executive of the Winnipeg Labour Council, but emphasize I'm not speaking on behalf of the Labour Council tonight, but of my local.

We would like to thank the committee for the opportunity to present this brief. We hope it will assist you in your deliberations. Our local represents machinists working for the CNR in the Transcona Main Shops.

Although we are under federal jurisdiction, we believe it appropriate to discuss and take a position in this legislation for three reasons. First, because changes in labour law historically have had a spill-over effect being introduced in one jurisdiction, but after a shorter or longer period gaining acceptance in others. Secondly, because despite being under federal jurisdiction, we are Manitobans and participants in the labour movement of Manitoba. The concept that an injury to one is an injury to all is central to trade unionism and we are of the opinion that this bill would be injurious to workers of Manitoba. And thirdly, because our experience with government intervention can perhaps be a source of lessons for those under provincial jurisdiction in Manitoba.

Within the constraints of the Canada Labour Code, railway workers have the right to strike. Nevertheless, since at least 1907, with the passage of The Industrial Disputes and Investigations Act, we have been the subject of intense government interest and intervention. In strict wage terms, this may have appeared to be beneficial in the short term. As railway shopcraft workers, we're at the top of the list, but from the post-war years to the present, we have declined below 40th place.

More serious from the point of view of this committee is the effect on labour relations on the railway. The cumulative effect has been a sense of powerlessness and futility among the membership during negotiations, a serious crisis of confidence between the union leadership and the rank and file, and a morale problem so serious that a special report was commissioned by both the railways and unions in the late Seventies to investigate this problem.

This issue is important because any new method or approach must be analyzed from a cost-benefit perspective. There are no doubt arguments for advantages for final offer selection: for business and government, less time and, therefore, money lost to strikes; for unions, a partial guarantee that bargaining units will not be lost through unsuccessful strikes. Although a strike, especially a lengthy and costly one, is the least desirable outcome of the free collective bargaining process, the cure offered by final offer selection is worse than the disease.

While federal legislation does not contain provisions for FOS, we are subject to non-binding arbitration through the Canada Labour Code and to binding arbitration by special legislation. While in Bill 61, provision is made for union memberships to reject FOS, its very suductiveness in terms of specific situations and the support for it in certain large unions mean that it may very well find extensive application.

For these reasons, it is realistic to view this legislation as a massive intervention by the government in the collective bargaining process far beyond the present practice and to draw analogies with the very much less than ideal results of government intervention at the federal level.

It has been stated by others and certainly borne out by our experience on the railway that the imposition of settlements by third parties is harmful to labour relations in the broadest sense. The Anderson report referred to previously speaks of a malaise among shopcraft workers. The committee might find it useful to study this report and make other inquiries into the effect of low morale on productivity before approving such a blind leap into the dark as this legislation proposes.

Aside from this warning about government intervention in collective bargaining, we have specific concerns about final offer selection as a form of arbitration. Studies have shown that FOS works best when the number of isues in dispute is small and of a quantifiable nature. If the model works as promised and the final offers are not too far apart, then the continued viability of the bargaining unit is not at stake. But a perusal of a selection of collective agreements will show that a majority of the clauses are essentially non-monetary. Many of the items deal with the relationship between the employer and the employees and their bargaining agent. These issues are not easily quantified and their deletion or absence from a collective agreement could place the continued existence of the union in question. Defence of these clauses cannot be left to what has been called a roll of the dice or the Russian roulette model of arbitration.

This leads us to examine the question of total package FOS, which is what is proposed in Bill 61. Faced with a mix of monetary and non-monetary, quantitative and qualitative issues, how is a selector to decide which offer is more fair and reasonable? This task is difficult enough when dealing with one issue such as wages when arguments concerning historical comparisons, productivity, cost of living, corporate economic viability, changes in skills and technologies, pay equity and perhaps many others may all reasonably be put forward by the two sides.

Now combine this myriad of possible appropriate arguments with a number of issues in contention and you would give King Solomon a migraine headache. Yet this is what the government is proposing. Even with the sophisticated system of criteria and rating system, reaching an objective definition of fairness is probably beyond the capacity of an expertly programmed modern super computer, let alone any single human being.

But the legislation purports to promise workers that if they opt for final offer selection, the fairest and most reasonable offer will be accepted. If governments were subject to honesty in advertising laws, Al Mackling would have the Better Business Bureau and the Consumers' Association all over his case.

Another fundamental flaw in the concept of FOS is that regardless of whether the two final offers are close or far apart, the process invariably defines a winner and a loser. It appears to be implicit in the arguments of the supporters of this concept that being akin to flipping a coin, the winners and losers will even out in the long term.

But some experiences such as that at the University of Alberta indicate that a better analogy is shooting craps with loaded dice. Where this proves to be the case, the only result will be resentment toward the employer and perhaps, as well, towards the union. Regardless of the long-term results in real terms, union negotiators - and for that matter, corporate labour relations people - will be judged on their win-loss record before selectors.

Even winning may not be good enough since there can always be the presumption that if the offer was judged, as is, as more reasonable, then perhaps a little more could have been added in and still come out on top. In any case, the unavoidable pointing of fingers, assessing of blame, can only be injurious to all facets of labour relations' process.

Defenders of Bill 61 in both the government and the Manitoba Federation of Labour claim that the legislation in no way abrogates the democratic rights of the union membership, since by secret ballot they can reject FOS. In doing so, they neglect or fail to understand a central element of rank-and-file participation in the collective bargaining process.

Bargaining priorities are set by the membership in most unions. Tentative agreements must be ratified by the membership, giving the clearest indication of what they are prepared to trade away and what they are determined to stand firm on. Where in final offer selection, either in general or as enunciated in Bill 61, is this democratic process enshrined or even permitted?

Even if a union chose to submit its proposed final offer to membership ratification, it would be a patently artificial exercise. It has been noted by practitioners of final offer selection that it is not a game for amateurs. Preparing a final offer is a process, essentially, of trying to second-guess the selector. It depends on knowledge of precedence, experience with or shared information on the specific selector, the ability to marshall facts and arguments in a form acceptable and useful in arbitration procedures.

There is certainly no room in this process for the wishes, needs and desires of ordinary workers, but there's plenty of room for lawyers and academics with all the delays and financial costs this implies.

This emphasis on democracy is not based solely on idealism although we make no apology for a commitment to democracy within the trade union movement and society as a whole. It also flows from very practical considerations. Unions and specific bargaining units are not homogeneous. They encompass different age groups, different skill levels, sometimes varied occupations, varied ratios of men and women, and different races and nationalities.

It is useful, sometimes absolutely crucial, for a union to emphasize demands relating to a specific group, even - or perhaps especially - a minority. Whether such an emphasis will appear reasonable to a selector is, to say the least, debatable.

It is surprising that a government which supports the rights of women and minorities, that has declared its intention of combating systemic discrimination, would initiate a legislative proposal that has such detrimental potential for disadvantaged groups. Indeed, it is more than surprising; it is disgraceful.

I now want to deal with some concerns with specific elements of the bill. This is not to suggest that any amendments would make it acceptable. Firstly, as I hope I have made clear, we are fundamentally opposed to the concept of final offer selection; and, secondly, anything that is amended out can be easily amended back in by a future government.

The amendment to The Labour Relations Act, section 17, may appear to be a routine change necessary to

give force and effect to Bill 61 as a whole. However, given the strong opposition of a number of important unions, this change creates serious implications that the government should consider carefully.

This section declares it to be an unfair labour practice to refuse to hold a vote on final offer selection if a request is made by the employer. The unions opposing Bill 61 have stated not only that they believe the legislation to be bad law, but that it is contrary to their most fundamental principles as trade unions. With this depth of opposition, it is likely, in fact almost certain, that one or more unions will concertedly defy the legislation.

Up to this point, the debate has been academic. If Bill 61 is not withdrawn, the debate may well move before the Labour Board and into the courts. No doubt, the government is counting on the scenario that as soon as the bill is proclaimed the political heat will die down. In fact, it may just mark the beginning of the real battle.

We are also concerned about the criteria outlined in section 82.3(8). Specifically, section (d) leaves the selector open to influence by threats of plant closure by the employer. In free collective bargaining, union negotiators can judge whether the employer is bluffing or not. A selector who does not know the employer's history, has never sat across a negotiating table from them, has no way of making a reasonable evaluation of such threats.

Section 82.5(3) gives the selector the power to set the duration of the agreement and its effective date. In many industries, the relative strength of the parties may vary depending on seasonal factors or due to the concurrence of agreements in related plants. For this reason, expiry dates and duration of agreements are sometimes among the most contentious issues. We would ask the government why, if they believe in the efficacy of final offer selection, they have removed these issues from the primary selection process?

We would like to draw the attention of the government to sections 82.1(3), 82.2(2)(4)(5)(6), and 82.3(7). All these sections allow for, indeed create, delays in the process. It is this government that brought in expedited arbitration because the normal process often took so long. Justice delayed is justice denied. Yet FOS, as defined in Bill 61, will draw from the same pool of arbitrators to engage in an even more cumbersome procedure. Our experience under federal legislation is that the delays, the not knowing what is happening, the separation of the process from the rank and file is precisely what is so demoralizing and demobilizing about government intervention in collective bargaining.

Finally, we would like to emphasize the danger of section 82.1(6) which gives the employer access to the results of the vote. As has been stated in other presentations, this gives the employer a snapshot of the strength and determination of the union membership before the expiry of the collective agreement or in the midst of a strike. A hundred years ago, companies had to hire Pinkerton detectives to get such information. The NDP Government, albeit unwittingly perhaps, is, with this legislation, performing the same function.

In conclusion, we believe that Bill 61 is a real threat to free collective bargaining in this province. A recent Supreme Court decision found that there is no defence in the Charter for the right to strike. The preservation of this right is in the hands of Parliament and the individual Legislatures. Ultimately, the defence of free collective bargaining is political and depends on the philosophical commitment of not only unions, but politicians and the general public. The approach, the attitude, the concepts underlying Bill 61 undermine that defence.

Free collective bargaining is under attack in Canada. Federal and provincial wage controls, the 6/5 program, laws limiting and circumscribing the right to strike for public sector workers are matters of record, not speculation. Supporters of final offer selection are potentially disarming themselves, and working people in general, if and when we face this crisis in Manitoba.

For all these reasons, we urge this committee to recommend withdrawal of Bill 61.

Thank you for your time and consideration.

MR. CHAIRMAN: Mrs. Oleson.

MRS. C. OLESON: Mr. Chairman, to the presenter, Mr. Ages.

It's a common feeling that agreements that have been hammered out between management and a union, once the final agreement is arrived at, whether or not the parties agree with everything that was decided upon. The agreement belongs to both of them. There is a feeling that this is our agreement.

With this type of settling of a dispute, will that same feeling prevail?

MR. R. AGES: No, I don't believe so, and that relates to the problem of morale I spoke to before. Even when a union is forced to settle for less than what they wanted, in the final analysis, they made a choice between that and going on strike, and they were prepared to settle for it rather than strike, which they have a right to do.

If it was totally unacceptable, they would go in and fight and do whatever was needed to improve it. When it's put forward by a third party, you get this sense of futility, this sense of alienation and problems in morale, which I mentioned.

Before you go passing this bill, you should talk to the railways or the unions, get a hold of the Anderson Report - I can't quote it; it's three or four years since I read it - and see the depth of problems it creates. If the idea of this bill is to improve productivity and decrease lost time, then you have to look at those kinds of factors of the day in, day out, what happens when workers are mad, pissed off, feel alienated from the system. You might get some interesting facts and figures.

MR. J. McCRAE: Just flowing from what you've said, Mr. Ages, would it be fair to suggest that the number of unfair labour practice charges and the number of grievances filed would increase substantially as a result of an agreement forced on the parties?

MR. R. AGES: There are a number of factors involved in that. It depends. Unions only file grievances when the companies violate the collective agreement. If the collective agreement is essentially gutted by a bad decision, there'll be nothing to grieve and you'd have a lot less, but if you do have bad labour relations, there is a tendency to come to loggerheads.

A lot of things on the railway in the past were settled by verbal agreements between the committees and the management. Now, where things have changed, we're getting a much tougher situation. As you may have heard, we're into concession bargaining. The resentment, if anything, has increased. We're finding it's just not the case. There are many more arbitrations, many more meeting after meeting and coming to loggerheads. So, certainly, when morale and relationships are bad, you're going to get more problems.

MR. J. McCRAE: My question more or less flows from the suggestion that there will be winners and losers. I mean that's going to be the fact. But I'm just suggesting that some of those losers might be sore losers and then they'd be on the employer's side, in which case the employer's - what should I call it - sentimental attachment or emotional attachment to that collective agreement will be somewhat lacking and perhaps his good faith in carrying out the terms of the agreement won't be there. That may lead, very well, to grievances against the employer for not following the terms of the agreement. The same argument could go the other way if the loser happens to be the union.

MR. R. AGES: I think that's a good point. With all the talk about the relative power of unions and management, the fact is, on the shop floor, management has the power. With the arbitration procedures we have, we do not have the right to strike during the terms of a collective agreement. The management, in fact, can do anything they please and you have to carry it out and then grieve. That is the philosophy of labour relations. So if they're not happy for whatever reason, and they want to violate the agreement, whatever, they will do it and they can do it and the only recourse workers have is to file grievance after grievance, and as we all know, it can be a very delayed process.

MR. J. McCRAE: Well, I also understand grievances lead to delay, but also expense.

The other point is on a little lighter side, sir. You pointed out that if governments were subject to honesty in advertising laws, Al Mackling would have the Better Business Bureau and the Consumers' Association all over his case. I just remind you that the Minister of Labour is also the Minister of Consumer and Corporate Affairs so that we're not likely to get those kind of laws.

MR. CHAIRMAN: Thank you very much, Mr. Ages.

Mr. Lorne Robson, the Communist Party. I gather Mr. Robson is not here.

MR. F. GOLDSPINK: Mr. Chairman, my name is Frank Goldspink. I'm the Manitoba provincial organizer for the Communist Party. Mr. Robson is unable to be with us tonight and he asked me to come in his place and make a few brief remarks regarding this legislation.

MR. CHAIRMAN: Can you proceed, Mr. Goldspink.

MR. F. GOLDSPINK: Thank you.

Mr. Chairperson, members of the committee, the Communist Party is appearing before this committee to call for a withdrawal of Bill 61, final offer selection legislation, and to urge the provincial government to introduce in its place anti-scab legislation.

Final offer selection is an anti-union and anti-labour bill. It is a form of binding arbitration which would undermine the collective bargaining process, limit the effectiveness of unions to represent their memberships and would be a step towards the loss of the right to strike. We note that this is being done in an atmosphere which is already more and more hostile to average Canadians.

The large corporations and their spokespersons like the Chambers of Commerce and the Manufacturers Association, these same corporations and Tory governments across this country are and have been orchestrating an all-out assault on the wages, working conditions and living standards of working people. That attack is what is responsible for the confrontations taking place in Canada today, including in Manitoba. We say that the Westfair and letter carriers' disputes are just two of the more recent examples. Suffice to say that the living standards of Canadian working people have been dropping steadily since 1976 as a result of the economic crisis and the assault on the trade unions and working people.

In the past two years, since the debate on final offer selection-type legislation has been renewed in Manitoba, there have been legislative events in other parts of Canada which have been part of this all-out assault and which point up very clearly the dangers to working people and organized labour of bringing in such laws as final offer selection.

In British Columbia, the provincial government has introduced Bills 19 and 20 which are totally undemocratic and which strip trade unions of their hard won rights. Similar labour law changes have been proposed by the Alberta Government. Final offer selection and measures of its type are a step in the same direction because they will act not to protect labour rights but to weaken them, making it easier for rights to be taken away completely.

The wish of the Labour Minister and the Manitoba Government for labour peace and for a positive labour climate cannot be fulfilled with FOS legislation. The imposition of this legislation will tend to produce, as all arbitration schemes have been shown to produce, less effective collective bargaining, not better bargaining.

For working people, arbitration brings lower wage settlements, lower living standards and poorer working conditions. All of this is to the benefit of the employers and certainly is no guarantee of labour peace. In fact, the long-term result of arbitration brings unrest and confrontation.

Regarding the approach that's taken in Bill 61 itself, one of the fundamental principles Canadian working people have fought for and established in law is the right of the trade union to represent its members without interference from the employer. That principle will be breached if Bill 61 becomes law, permitting an employer to request a vote of the membership over the head of the union. Breaching such principles is a dangerous precedent for labour relations in this province.

The real alternative to final offer selection is anti-scab legislation. Westfair workers and the letter carriers were forced out on strike because the employers

planned long in advance to train and use scabs. The employers had no intention of bargaining seriously.

Violence at the post office and postal stations is caused by scabs crashing legal orderly picket lines assisted by the police. If there was anti-scab legislation in Manitoba, there would be no strike at Westfair, nor would there be a perceived need for final offer selection legislation.

Because the balance is now tipped in favour of the employers, both through the legal system and by today's economic crisis with its devastating hardships for working people, the employers are able to recruit scabs from among those desperate for jobs. With the employers able to take advantage of this situation of desperate people, it is no wonder the confrontations result on picket lines.

In addition, the employers have a free hand to use coercion against strikers - this includes the use of police - and how ironic it is that the police, part of whose salaries are paid for by the taxes of those on strike, are out there on the picket line being part and parcel of stealing jobs from people who are mainly there to try and save those jobs, as we can see from the Westfair strike and the demands of the union and the workers there.

If the government wants to protect workers and protect trade union rights and protect jobs, it must withdraw final offer selection and bring in anti-scab legislation. The right to free collective bargaining will then be respected indeed.

This is submitted by Lorne Robson, Manitoba Provincial Leader, Communist Party of Canada.

Thank you.

MR. CHAIRMAN: Are there any questions?

Thank you very much, Mr. Goldspink.

Next we have Mr. Bill Gardner representing the Winnipeg Chamber of Commerce. Mr. Gardner.

Do you have a copy of your presentation, Mr. Gardner? It would be helpful.

MR. B. GARDNER: It's all in my head, Mr. Chairman. I apologize.

MR. CHAIRMAN: Proceed.

MR. B. GARDNER: I can get you something at a later date.

MR. CHAIRMAN: No, no, it's okay. We'll have it recorded already and transcribed by the time . . . Proceed.

MR. B. GARDNER: And I'll be as interested to see it as you will.

Mr. Chairman, members of the committee, I'm here representing the Winnipeg Chamber of Commerce.

I'm more than struck by the irony of the fact that as a labour lawyer practising on behalf of management, I'm here to talk against the passage of this legislation. I should be thanking my lucky stars. If this legislation is passed, it will be my pension plan and the pension plan of those like me who practise in this area, because we're still occupied up to our necks trying to sort out all of the changes that came in with Bill 22. This legislation would keep us gainfully - or some would say ungainfully - employed well into the 21st Century.

But I'm here to speak against this legislation not only in accordance with the wishes of the group that I represent, but also personally, because in 11 years of practising in this area, I've always preferred to shake hands and get a deal than get involved in a fight even if you win. In 11 years of practising, I have always managed at least to reach agreement in committee.

The only strike that ever occurred with respect to negotiations that I was involved in from the outset was one where we reached agreement in committee not once, but twice. There was an undercurrent in the background that made it impossible for the negotiating committee to get anything ratified. We eventually settled that strike after two weeks. It wasn't enough. The company was not able to continue, and I have always remembered that. It has stayed with me and I take it into each set of negotiations that I get involved with.

In looking back at that case, I can see that final offer selection would have spelled the doom of the company one way or the other, because if the union's position had been accepted by the final offer selector, it would have been too much for the company to handle financially and they would have folded. If the company's position had been accepted by the selector and imposed on the employees, the continuing resentment occasioned by that would have found its way onto the plant floor and into the production figures, and the company would have folded that way too. The only possible chance for that company was to reach a compromise settlement which was done, unfortunately, too late.

I think of a couple of other examples that I've been involved in recently. The Minister's aware of one of them. A strike occurred and I got involved at that point. Now, if final offer selection had been available, one or the other side might have tried for it. If the union had tried for it, it might have been accepted. Of course, if management had tried for it - no one's kidding themselves - that wouldn't have got anywhere. But again, you might have found yourself before a selector with exactly the same results. If the union's position had been accepted, it would have been too much of a financial burden, the company would have folded. If the company's version had been accepted, the employees would not have returned to work with anything close to the commitment to make something succeed that you have when you reach your own deal. Again, because that company needs increased productivity to get back into the black, that wouldn't have been forthcoming. The company would have failed. As it is, we've got a deal in that one and we have every prospect that operation is going to continue in Manitoba, to provide jobs for Manitobans, income flowing into Manitoba through export sales, and financial and logistical support for a small community that needs it.

There is no alternative for self-determination, Mr. Chairman. There is no substitute for a deal that the parties reach by themselves and shake hands on, something that tempts the parties away from the requirement to make their own deal because neither of them want a strike or a lockout because with or without replacement workers, a strike or a lockout hurts everybody. That's what impels the parties to reach their

own deal. Once you've shaken hands and once you've put your signature beside that of your opposite number, you're both committed to make it work. You've entered into this particular deal, you've both had a part of it, you've both, perhaps, got something out of the final issues. There's a commitment which will not be present with final offer selection.

What astonishes me, Mr. Chairman, is why we're all here anyway. By the Minister's own comments, and I quote from the covering letter that went out when this bill was introduced, "Manitoba has a proud record of labour relations legislation which has resulted in this province now enjoying one of the best labour relations environments in Canada. As a matter of fact, the most recent statistics show that out of all the provinces, Manitoba has the second best record in respect to the fewest days lost due to work stoppages." Out of respect to the Minister, and in fairness, I'll add the next sentence: "That record, while one in which we should all take some pride, can always be improved upon."

I'm in favour of taking a good situation and improving it. What I can't understand is why we are headed at such a break-neck pace toward something that the vast majority of the labour relations community is telling the Minister in this committee won't work.

Mr. Chairman, the best labour law is one that the members of the labour relations community, by which I mean employers and the representatives of employees, can all agree on. The worst is one that they all disagree on. That makes Bill 61 close to the worst piece of legislation or proposed legislation to come down the pipe because almost everybody in the labour relations community is against it, by which I mean 100 percent of businesses and a substantial percentage of the labour representatives.

Given that the experience in Manitoba with final offer selection which has been mixed, at best - the University of Manitoba had it with the Faculty Association; my understanding is they dropped it - Westfair had it with the MFCW; it got dropped - why is it that we're taking a labour situation in Manitoba which, by all accounts, and the Minister himself would agree, is a good one and causing all this dissention and disruption?

I noted, because I was here on Tuesday night, the very able presentation by the representative for CUPE and his point that this legislation has divided the union movement. As a representative of management, I don't think that's a particularly good idea to divide the union movement. I wouldn't want to see the business community divided. I would rather see everyone united as has been working on a more or less ad hoc basis over the last few years in a relatively harmonious situation where, by and large, Manitobans do very well in reaching collective agreements. This legislation is going to go 180 degrees in the opposite direction.

What I don't understand, if the Minister wishes to embark upon an experiment, to try something out, which is at least suggested by the sunset clause, then why is it not introduced, at least at first, in a more limited way? Why not, like pay equity, start with the public sector, see how it works and, depending on the results, take a look at spreading it to Crown agencies, and so forth?

If that doesn't seem like a good idea, why not, like the very successful experiment in grievance mediation, put in something where it can work by mutual agreement and let the government provide financial incentives as they did with respect to grievance mediation? If the parties want to go for final offer selection, fine, the government will pick up the selector's costs, or a third of the costs, or something like that; something to encourage the parties, if they're looking, both of them, for something else that might induce them to give it a try. Why on this whole scale, at breakneck pace, introduce legislation and why introduce it in a way that is so inherently unfair?

Now I'm not going to belabour the point that this is a choice that is open to unions and not open to management. You've heard that, and heard that, and heard that. I can understand the rationale behind not taking away the employee's right to say the contract has expired, we want to strike, we want that right.

What I can't for the life of me understand, Mr. Chairman, is why the rights of employers are considered to be any less worthwhile? If that's true, if that's what this government feels, what sort of a message is that sending to employers, both here and in other provinces?

Apart from the fact that it's so inherently unfair, it's going to be - as I mentioned - 180 degrees counterproductive. It's not going to reduce conflict; it will increase conflict, because one side or another is going to have the agreement shoved down their throat. One side or another is going to go into the next year, or however many years it may be, with a chip on their shoulder.

You've heard that from management representatives, you've heard that from labour representatives, and it's human nature. It's not going to reduce strikes; it may well tend to encourage them because of the 60-day safety valve. You can go to your membership and say look, let's try it out, let's give a strike a try. If it doesn't work in 60 days, we can bring everything back under control, and then at least you've got the same chances that you would have if you tossed a coin. That reduces the very important and very necessary disinclination to take strike action. Of course, you need both a disinclination to take strike action on the one side and a disinclination to lock out or accept a strike on the other side. At the moment, and its demonstrable from the record in Manitoba, that is in a position of relative equalibrium.

I've heard speaker after speaker get up and talk about so-called anti-scab legislation, and I can't pass up the opportunity to make some comments on that.

First of all, the ability to use temporary replacements is not a panacea. Canadian Rogers Western Ltd. used temporary replacements . . .- (inaudible) - know that; they still went out of business. Canada Post has used temporary replacements; that hasn't stopped the mail from being disrupted; that hasn't stopped the vast majority of the business community from ceasing to use the mails and using the courier services. Mr. Megarry (phonetic), who I admire as a tactician, I suggest doesn't need the assistance of so-called anti-scab legislation. He's doing very nicely on his own, thank you very much.

And in the final analysis, that strike will probably get settled as others are, when both sides realize that it's costing them too much to keep going and they're going to have to compromise, they're going to have to come up with something that they can both live with, and that's how labour relations works, ladies and gentlemen.

If you take that aspect out of the equation, it will stop working.

So-called anti-scab legislation, you know, isn't so much anti-business as it's anti-small business. It's not so much anti-large, multijurisdictional, multiplant operations because they're not concerned if their branch plant in Manitoba shuts down. They can shift their production and shift their orders and run things somewhere else. So-called anti-scab legislation will get the small to medium sized, born and bred in Manitoba employer . . .

MR. J. MALOWAY: Point of order, Mr. Chairman.

Could he stick to the contents of the bill?

MR. CHAIRMAN: Well, can I explain? The fact is we've allowed other people to speak on other matters related to labour so I've allowed a little leeway. I've only spoken up when it got down to where it was former battles in the House rather than the matter being before us.

Proceed, Mr. Gardner.

MR. B. GARDNER: What so-called anti-scab legislation does is it gets the small to medium sized, single location, centered in Manitoba, born and bred in Manitoba type of operation more than it does the bigger guys. What it does is it puts those people essentially at the mercy of the union. Now if the union happens to be the Steelworkers or CAIMAW or someone else who has a record of behaving responsibly, it may be okay. But I still don't think that you can run a system, any sort of a system, where one side is at the mercy of the other and dependent more or less entirely upon their goodwill. That's not a way to run a system.

So if you want to favour the big guys, if you really do want to end up as a branch plant economy, then so-called anti-scab legislation is absolutely the way to go. On the other hand, if you want Manitoba businesses to be run as much as possible by Manitobans, if you want the decisions to be made in Manitoba, if you want the young, bright, energetic people who are prepared to work 20-hour days, seven days a week, to build something, to do it here instead of Ontario, or Alberta, or Saskatchewan, or North Dakota, then you'd better not stack the deck so entirely against them that it becomes pointless to even consider this province.

It's been suggested that this legislation will promote settlement because the parties are allowed to continue bargaining even during the seemingly endless rounds of hearings that get held in accordance with its provisions. I suggest to you, Mr. Chairman, that it won't do that, it will do the opposite. It will short circuit bargaining. It will short circuit bargaining firstly because the first window is between 60 and 30 days prior to the expiration of the contract. That's when the serious bargaining really starts to happen. If one side or another triggers FOS, regardless of the outcome, you are taking their energies, which need to be spent at the bargaining table, and you're diverting it off into preparation for the hearing, No. 1; and, No. 2, preparation for the vote - fighting about the constituency, fighting about who gets to say what to the bargaining unit.

None of that, Mr. Chairman, I suggest, is going to get you one step closer to reaching a mutual agreement. The representatives of labour who have spoken against this bill have pointed out their disagreement, their very strong disagreement, to the aspect of this legislation which at least suggests that employers, in attempting to trigger FOS, will interfere with the administration of the union, will go over their heads to the bargaining unit, will attempt to divide the bargaining unit or win the bargaining unit away from the certified representative.

Mr. Chairman, the vast majority of employers represented by the Winnipeg Chamber of Commerce do not want to interfere with the union's representation of their members. Those who find that amusing probably wish that it wasn't so. The majority of employers would like their right to self-determination and they would much rather get along with the certified representative, and they're well aware of the extent to which bargaining agents like employers to butt out when it comes to bargaining, and deal with the union committee.

This legislation gives employers no choice, Mr. Chairman. You've got to go to the people who have the power of decision. If you want it, where are you going to go? You can't go to your Board of Directors; they can't decide. You can't go to the chairman of the Labour Board; he can't decide. You can't go to the Minister of Labour; he can't decide. The only people who can decide are the bargaining units. Inevitably, someone who wants FOS maybe, as Mr. Stevens said on Tuesday, in an effort to save face, is going to have to get in somehow and try to persuade the members of the bargaining unit that it's a good idea. And that's a bad idea; that's a very bad idea, because the bargaining agent is not going to be amused, and who would blame them?

So what's going to happen? You're going to have the union and the company at each other's throats when what they're supposed to be doing is settling the stupid agreement. This is the sort of atmosphere that's supposed to be conducive to getting an agreement? That doesn't make sense, Mr. Chairman; that doesn't make sense at all.

I'm glad that I had the opportunity to hear Mr. Stevens speak last Tuesday, so eloquently, because he cleared a number of things up for me. The first major question that I had is why the Steelworkers, who I admire, would be in support of this legislation. Mr. Stevens cleared that up for me because I couldn't believe that the Steelworkers would ever use it. They've barely used conciliation in this province, Mr. Chairman. They've never used first contract. Now Mr. Stevens cleared that up for me. He indicated that the Steelworkers wouldn't look at it, which I believe. I accept that. That's exactly as I understand the Steelworkers to be. And he said - and you can only admire his motives because they're obviously selfless - that he's concerned about the smaller unions, the ones who don't have the bargaining power that the Steelworkers have.

But I have sat here tonight, Mr. Chairman, and on Tuesday night, and seen a large number of the "smaller unions" stand up and say that they're against this legislation. Who's for it? How many people are really for this legislation? And if such a small - I won't say small - if a minority of the combined labour relations community are against it and if the overall labour climate is good and if you can see the writing on the wall - and if you can't see the writing on the wall, you ought to have heard it from any number of people that stood

up here tonight and two nights ago - this is going to lead to disputes. You'd better get ready to hire two or three more vice-chairmen on the Labour Board to handle the unfair labour practice complaints because they're coming if this legislation is passed. That'll be my next pension plan.

Mr. Stevens had a number of other interesting things to say. He said the situation is terrible in B.C., that it's doom and gloom in B.C. Employers in Manitoba can understand that and can sympathize with union members from B.C. because they know exactly how they feel.

The litany of one-sided labour legislation since 1981 goes on and on, and as fast as the unions' rights have been eroded in B.C., they've been eroded from the other side in Manitoba. They've been in a free fall, Mr. Chairman, since 1981. And, you know, you just can't go on forever like that. You can't keep on passing one-sided legislation using the convenient stratagem of redefining every couple of years where the balance between labour and management lies, because one day you will test the vitality and the resources of Manitoba employers too much, and one day you're going to turn around and you will find that there isn't that much left and everyone is going to lose.

Now employers, I know, if you go back far enough - and I listened to Mr. Green - have been guilty of crying wolf, and a lot of what gets said now and in the last few years gets discarded with the convenient little move of they're just crying wolf again: they said the same thing in '72; they said the same thing in '76. But you will recall in the parable of the little boy who cried wolf that the wolf did appear, and in this case, when the wolf appears everybody's going to lose.

You know, it's sort of like acid rain. It's difficult to see, it's hard to trace; the effects are unclear until they become irreversible. Mr. Chairman, I suggest that when that happens to entrepreneurs in Manitoba, everyone in Manitoba is going to lose.

This legislation, I suggest, is an ill-conceived experiment with the people of Manitoba as the guinea pigs, and it should not be allowed to pass.

Thank you.

MR. CHAIRMAN: Thank you, Mr. Gardner.

Are there any questions?

Mr. Dolin.

MR. B. GARDNER: Mr. Dolin, how are you doing?

MR. M. DOLIN: Fine, thank you, Mr. Gardner. How are you? I haven't seen you since'83.

MR. B. GARDNER: '84 - about this time, 1984.

MR. M. DOLIN: Right.

I had a sense of déjà vu about your comments. Is one of things, if I'm clear, you're saying, we have good labour relations; we don't need this legislation? You're saying it interferes with collective bargaining. You're saying it creates an antagonistic environment, it frightens away investment, it's anti-business, it's pro-labour and shifts the balance, it's ill-conceived - I think that's a quote from'84, as a matter of fact - and what's the hurry? I heard those same remarks from you in 1984 about first contract legislation.

I'm wondering how the Chamber's position on this differs from first contract, and if you would have any comments on how first contract is working?

MR. B. GARDNER: I think first contract is as ill-conceived now as it used to be. I have managed to avoid its clutches so far. The one thing that I note about first contract, Mr. Dolin, is that bad as it was, the employer at least had his own choice with first contract. It seems that that little error has been corrected in Bill 61.

The thing about first contract, as pointed out at the time, is that it happens once. It takes your rights away, absolutely - yes, indeed - but only once. Only for the first contract. It gets you off to a bad start - yes, it does. It prevents agreements being reached that might otherwise have been reached. If the parties had been left alone and if one side hadn't been left with an easy way out, does that. It may cause more failed collective bargaining relationships then it saves.

In the final analysis, it was limited in the way that this legislation is not. An employer in Manitoba - if Bill 61 is passed - faces the prospect of never being able to negotiate his or her own agreement. FOS can go on and on and on and, conceivably, each time the dice gets rolled - remembering Mr. Green's illusion to the ones with the spots rubbed off but the individual who owned the dice could remember which ones they were - you could keep losing. Where is your remedy then? Maybe Mr. Dolin's going to suggest it.

MR. M. DOLIN: Well, I would suggest that perhaps the hyperbole and the scenario of doom and gloom you painted in'84 did not occur. I would also suggest to you that maybe it won't occur again, but I think what we're trying to do is see if we can create a better climate. You said labour relations were wonderful then; you're saying again they're wonderful now . . .

MR. CHAIRMAN: Mr. Dolin, do you have a question?

MR. M. DOLIN: Yes. I am wondering whether Mr. Gardner would consider whether or not the labour relation climate now is as awful as he said it would be in'84. He just said at the beginning of his remarks that labour relations are good, why do we need it.

Have you had some rethoughts on your'84 comments and the Chamber's position then?

MR. B. GARDNER: No, Mr. Dolin, in answer to your question, I think that the situation has deterioriated. I think we've lost some businesses that we might not otherwise have lost, either by failures or by moves out of the jurisdiction.- (Interjection)- Well, you know, that's the interesting thing, isn't it, Mr. Dolin? People are afraid of reprisals. The ones who aren't afraid to speak up get dismissed as kooks.

Yes, I think that we've suffered some losses from Bill 22, and I think we'll suffer some more.

MR. M. DOLIN: Well, that's your opinion.

MR. CHAIRMAN: Any further questions.

Mr. McCrae.

MR. J. McCRAE: Mr. Gardner - I take it that's Bill Gardner, Jr.?

MR. B. GARDNER: It is.

MR. J. McCRAE: Are you one and the same Bill Gardner, Jr., who was appointed to the Labour Board on February 11 of this year?

MR. B. GARDNER: I am given to understand I was. I wasn't informed at the time.

MR. J. McCRAE: And the same Bill Gardner, Jr., whose appointment was cancelled on March 4 of this year?

MR. B. GARDNER: Again, that's my information.

MR. J. McCRAE: The reason I ask the question, Mr. Gardner, has to do with something I'm not sure you covered in your comments, and I wish you would, and that has to do with the list of persons maintained by the board for that purpose. I mentioned your appointment and withdrawal of appointment for a specific purpose, and it's to demonstrate a certain capriciousness on the part of the Minister who made the appointment and cancelled it, and also the motives of this government when it makes its appointments.

I ask you to comment on what it means to have these final offer selections made by people whose names are on a list of persons maintained by the board as opposed to some other type of list?

MR. B. GARDNER: That's an obvious concern and I alluded to that indirectly when I suggested that employers might find not only that they were being taken to FOS each and every time, but also that they were losing.

There are a number of inherent problems with the use of a third party to settle interest disputes, and people who come from Ontario will tell you that the use of compulsory arbitration in the health care area essentially has eliminated the possibility of the parties getting their own deal.

The selector has no real way of knowing what the ultimate essentials are to each side. He or she has no real way of weighing what is fundamentally important. There's only ever been one way to test that, and that is through the willingness to take or accept a strike or to impose a lockout. That is the only way to test whether something is really important. The selector doesn't know. The selector has to guess.

The selector, even if he or she is perfectly impartial, and perfectly wise, may be faced with an impossible situation the way the selector was faced in '78 or'79 - I forget exactly when it was - when the University of Manitoba and the Faculty Association went to final offer selection and they both had ridiculous offers. Neither of them, notwithstanding that the selector begged them to either back off or let him choose pieces, neither would back down. So you ended up with an absolute Catch-22. One way or another, it was going to be a bad decision.

That's the problem with final offer selection because both of them, either choice, is probably going to be a bad one. If you add into the equation a bias in either direction, I mean, you know, since we're not living in Alberta, we know that the government is going to eventually change, and what I don't understand about the people who support this - governments change in Canada and people who support this legislation, as Mr. Green said on Tuesday, don't understand that it can be used against them.

It's just as bad, frankly, if you have selectors who are biased in favour of the employer as it is if they're biased in favour of labour because it doesn't, in the final analysis, really matter. The enterprise is going to be hurt, perhaps irreparably, if one side or the other feels that they're getting screwed. That is inevitable even if the selector is impartial. There is an obvious concern if the selectors are simply picked from a list.

MR. J. McCRAE: The other reason I bring it up is the fact that FOS has been tried as recently as a year ago by agreement, and you referred to it, I believe, in your comments, by Westfair and by the MFCW; and a year ago this Minister was asked to name a selector in a dispute between Westfair and the MFCW. And who did he name? He named Mr. Robert Mayer, a Thompson lawyer who is a good friend of many of the MFCW officials, a man who had no selector experience, a member of the New Democratic Party on the executive for years, a man who owns and wears two jackets bearing the name and logo of the MFCW. That was the Minister's choice of a selector in that case.

So I asked the question for very good and sound reasons. I have a very big concern about what happens when we appoint people in such a manner and that's why I also referred to your own appointment. I can only guess why the Minister decided to revoke your appointment.

Let's suppose that you're stuck with this bill and the workers of this province are stuck with this bill, would there be a better way to choose a selector?

MR. B. GARDNER: There's only one way to choose a selector and that's by mutual agreement. It's no different dealing with a selector or dealing with the chairman of an arbitration board, be it rights or interest arbitration.

There are two ways to have mutual agreement. One is to have the parties choose, which is obviously best, and the other is to have the parties ask someone who picks from a list all, and I emphasize all, of the incumbents whereof have been mutually agreed to by representatives of employers and representatives of labour. Given that ideal situation, you're still doomed with final offer selection because one side or the other is going to lose and they're going to know it and they're going to feel it and they're going to get it back.

MR. J. McCRAE: One of the sections here deals with the criteria to be used by the selector in making his or her decision. There are a number of things the selector can take into account, including the employer's ability to pay.

Now I don't know how much of your experience has been with negotiations and with labour relations in the public sector, but how would ability to pay enter the equation when we're dealing with public sector employers?

MR. B. GARDNER: That is a magnificent question because, of course, the ability to pay is essentially infinite.

If I were a selector, I'd have a big problem trying to figure that one out, because you can look at figures, and in making a selection where you're talking about a private enterprise that has to at least break even, there's obviously no way that you can disregard ability to pay because you are obviously not doing the employees a favour if you kill the company. But what you would do in the private sector, in my considered opinion, is that it beats the daylight out of me.

MR. J. McCRAE: Public sector, you mean.

MR. B. GARDNER: In the public sector, sorry.

MR. J. McCRAE: Well, I'm sorry you couldn't be more help, but I didn't really expect you could either. When we run half-billion dollar deficits in Manitoba, for instance, I guess the sky's the limit in the eyes of the selector.

MR. B. GARDNER: In the eyes of some selectors, yes. You know, you can get a situation like the selector was faced with in the University of Manitoba Faculty Association situation where he had two equally ridiculous offers and he ended up giving the Faculty Association a 35 percent raise, which he readily said this is nuts, but you're not giving me a choice.

MR. J. McCRAE: A little while ago, you and Mr. Dolin discussed the good labour relations record in this province, Mr. Gardner. You also had a discussion with Mr. Dolin about the first contract legislation of this province which has resulted in, of the 26 applications being made, the decertification of seven unions.

But aside from that, there have been other developments in labour law in Manitoba - successor rights legislation and certain changes to the certification and decertification procedures - so I'm just asking you, to what would you attribute the good labour relations record of this province? Is it the labour law, or . . .

MR. B. GARDNER: There's obviously a number of unions, and the Steelworkers come to mind, CAIMAW comes to mind, who go on as if the legislation didn't exist. Of course, if you do that, I mean you could pass a law that says that labour, whenever they feel like it, can take the employer out and shoot them; and if the unions, out of good will, forbore to do so, then you could operate quite harmoniously. Of course, you would have employers who were interested in getting along, and maybe unions who were magnanimous, you know, you could keep going.

The fact is that the majority of employers and the majority of unions in this province would rather get along than fight and they would rather get a deal than not.

The problem with this legislation is that it puts obstacles in the way of maintaining harmonious relations. It keeps throwing things into the path that the parties can trip up on, and of course, eventually some of them are going to.

So there's a certain amount of continuing good will and the system has worked to a somewhat declining extent despite the legislation, but that is not necessarily going to go on forever.

MR. J. McCRAE: One final point, Mr. Gardner, and that deals with something that is of concern to me. Everyone knows - it's no secret - there's a labour dispute going on in the food industry in this province right now. This bill has come along in the midst of that dispute.

As a labour industrial relations lawyer, you would understand the preparations that go into getting ready for contract negotiations at the expiry of a contract.

What would be the effect on either side of imposing FOS or changing the rules in the middle of the game as the government attempts to be doing with Bill 61? What would be the effect on the parties to any dispute in that situation?

MR. B. GARDNER: In any dispute which almost, by definition, is a difficult situation is going to be made more difficult if the rules get changed halfway there.

I'm not close to the Westfair situation, but it would be my view, expressed generically, that given that situation, you may be holding up a settlement if one side thinks that they're going to be able to hang on and then get out of it through FOS If FOS wasn't available, you could well have a settlement to that dispute a lot sooner.

MR. CHAIRMAN: Mr. Doer.

HON. G. DOER: Yes, I would just like to ask a couple of questions.

I noticed in 1984 when the White Paper first was developed that Mr. Wright, who was a hands-on businessman, was very positive towards the legislation. I notice there are some employers that feel this could help the labour relations environment. Am I not correct?

MR. B. GARDNER: Yes, I think that there would be some groups that would be interested in pursuing or taking a look at FOS by mutual agreement.

FOS, by mutual agreement, eliminates a lot of the inherent problems. It eliminates the necessity to go to the bargaining unit and be seen, perhaps quite justly, by the unions as interfering in their territory. It eliminates at least the initial conflict with one side being perceived to be shoving something down the other side's throat. It has the advantage to the loser who is at least able to say, well, heck, you know, I didn't have to agree to this and I did, so I lost. There's a lot of problems that you take away if you plug in mutual agreement.

HON. G. DOER: You mentioned that there's been a litany of one-sided labour laws since 1981. I notice that 1980 had a peak and we've gone down since then in terms of times lost due to strikes and lockouts.

Do you think that there's any relevance to those statistics? Is your opinion based on fact or just merely a perception that you would have?

MR. B. GARDNER: Well, I think that I picked 1981 as the starting point because that's when first contract legislation came into being. It seems to me, Mr. Doer - and I know your background and you're obviously a very able and very experienced labour negotiator - it seems to me that when you approach labour legislation, you should approach it in the same way that you approach a bargaining table, not on the basis that you

are going to get all your own way 100 percent of the time, but on the basis that you're going to go in there and you're going to have certain priorities and the other side's going to have certain priorities and there'll be some hard bargaining and some hard compromises and in the end everybody walks away saying, well, I got a little bit and I had to give a little bit, but that's part of the game. It seems to me that that's the way to deal with labour legislation. That was done for many years very successfully in Ontario. There was almost a twinning concept, that if something went in that labour wanted, something else went in that business wanted.

In direct answer to your question, I think that the record of strikes and lockouts was due primarily to the fact that the vast majority of the labour relations community was unaffected by sweeping new legislation until 1984. Then you had a very good period of time in the early Eighties where there hadn't been much change in labour legislation for a number of years. Such changes there was focused in on a narrow part of the community and hit them only for a brief period of time, after which all the old, estblished, understood rules came into play. That's one of the main things that I would attribute the good record to.

HON. G. DOER: I also recall in 1984-85 or in that period - I haven't got my files - that there was again predictions, in fact, even ads taken out in the papers by the Chamber and other groups - there was a black cloud over Manitoba, etc., etc., and dire consequences were predicted. In 1985 and 1986, if I recall again the facts as opposed to the rhetoric, indicate that Manitoba has the lowest per capita days lost to strike and lockout. I believe in 1985, if I recall correctly, the greatest days lost was a lockout at Versatile. We had the lowest per capita days lost per strike and lockout than any other province except save PEI.

Do you think your predictions were correct three years later or were they off?

MR. B. GARDNER: Well, it's easy to play with statistics. I could answer that question by saying that it was interesting mere days following the passing of the bill, two of the longest and toughest strikes in the meat packing industry commenced and continued.

You know, this isn't much different from Mr. Dolin's question. I think that there is a large measure of good will between representatives of labour which, when you were in that business included yourself and employers so that they've managed to function despite legislation. I think we have suffered losses. I think that there have been problems that were unnecessary and I think that this legislation is going to create some very serious losses in particular because it's so wide-reaching, it goes across the entire spectrum.

Bill 22, as bad as it was in many cases, and it wasn't all bad, it was just mostly bad and first contract had a narrow focus. There were lots of employers who could go without even being affected potentially by the legislation. Now, that's different in this case.

HON. G. DOER: There were some comments made about the Labour Board, and you provided some advice to the members opposite in dealing with the preferred methodology of a selector being chosen, mutual consent, and then from a list if the two parties couldn't agree.

It's my perception that the credibility of the Labour Board, with the individual who was appointed as chair - in fact, it was the advice I received from a lawyer who was giving me legal advice five or six years ago - it was a better format and has provided a more unbiased type of Labour Board than the former system of a more political appointment. In other words, a career person in labour relations as a chair of the Labour Board has provided a more unbiased environment - and I was advised to agree with that kind of strategy rather than past, and I'm not mentioning any individual, but past practices of a more partisan appointment. Wouldn't you agree with that?

MR. B. GARDNER: No, I wouldn't agree with that, Mr. Doer. I suppose it depends on how things work out. You can obviously get lucky and end up with someone who happens to be impartial but, to me, the true test of impartiality in labour relations is if both sides find you acceptable. There is no substitute, in my opinion, whenever you're thinking of a third-party person to do anything, for mutual agreement and mutual acceptability.

HON. G. DOER: I thought there was a lot more acceptability in 1982 from both sides.

The last point I'd like to make, you referenced the University of Manitoba in 1979. I wonder if you would care to comment on the situation in 1985 where the offers were zero and two, and the selector, although the legislation isn't analogous, chose one of the two proposals. Do you see that as a fair way of resolving that dispute, notwithstanding your disagreement of the legislative format?

MR. B. GARDNER: If the parties want to agree to go to the final offer selection route, I don't think there are very many people on either side of this table, or on either side of the fence, who would deny them the right to do that.

The example that you cite is inherently one that is going to work out better and obviously final offer selection works better if it only deals with money. As you, in fairness, concede, the situation is not all that analogous to this legislation.

HON. G. DOER: I won't ask any more questions.

MR. CHAIRMAN: Mr. Mackling has a question. I've tried to kick him a few times, but he insists on asking a question.

Mr. Mackling.

HON. A. MACKLING: Mr. Gardner, I'm not going to ask you a very complex question. I think it's one that perhaps you can answer with a "yes" or "no" answer, but I leave that to you.

Mr. Gardner, there has been concern evidenced about who the selectors might be. While that system hasn't been chosen yet, I have indicated that in all probability, like the list of arbitrators that the board has maintained, the Manitoba Labour Board has maintained, they could be those persons who otherwise, from time to time,

are called upon to be appointed by the Labour Board from an arbitration panel that the Labour Board has.

My question to you is, from your experience and knowledge, would you say that those people who have been appointed by the Labour Board, composed of both management and business and labour unions, have agreed to a list of arbitrators, would you say that those people are reasonable and fair-minded? Yes or no?

MR. B. GARDNER: In the context, Mr. Minister, it's essentially irrelevant because the problem with final offer selection is that you can be as reasonable as you like and as fair-minded as you like, and you're doomed, because of all the things that I've been at such pains to explain, one side or another is going to lose.

HON. A. MACKLING: Thank you. I have heard your answer, Mr. Gardner.

MR. CHAIRMAN: Thank you. Are there any questions? Mr. Santos.

MR. C. SANTOS: . . . one side or the other would lose. Is it not the law of life that even if it's laissez faire, or competition in business, or competition in politics, competition anywhere, that someone has to win and someone has to lose? What's wrong with that?

MR. B. GARDNER: That's the very nice thing about the way labour relations works. There is competition, yes. There is an adversary relationship, yes. What that system, which has existed essentially since World War II without major change, has done is it gets to a situation where both sides win. Management ends up with something that they can live with; the union ends up with something that their members can accept. Since their members find it acceptable, it's a little bit easier to get motivated in the workplace. Since the manager finds that he's agreed to it, so he had better try to make it work, and that if he puts his mind to it and works with the union instead of against him, by George, it does.

The essence of the labour relations system that we've had since World War II is that both sides win.

MR. C. SANTOS: The only way that I can see that both sides can win is when it is a cooperative system, but in our society, everywhere there is competition for excellence, there will always be someone who is winning.- (Interjection)-

MR. CHAIRMAN: Just a minute, please. Could we have order here?

Do you have a question?

MR. C. SANTOS: I'd like to ask the next question.

The difficult thing in an industrial relations dispute is when there is a deadlock and no one will move forward or backward. In such a case, the only weapon that can settle it is the ultimate economic weapon, strike or lockout.

In such a case, everybody will suffer because there will be no productivity. Society will suffer. The public - or not the public - but the industrial district will suffer.

In final offer selection, there is one bit or glim of light, and that is the finality that there will be no lockout. In other words, there will be a settlement. Is that not an advantage?

MR. B. GARDNER: No. It's a very definite disadvantage because strikes and lockouts, by and large, end up with settlements and what you find, and what I, in my experience find, when you do get a settlement, particularly if it's been done without major economic harm to one side or the other, is that the air has been cleared, steam has been let off, each side has something that they can take back and say, well, it wasn't totally for nothing, and they both go back into the workplace with a renewed determination to make things work because they've seen what happens when they're out on the picket lines and they don't much like it. They would rather avoid it in the future.

The problem with final offer selection is that one side walks back a total winner and the other side walks back a total loser. That inherently is bad, and, inherently, it's just as bad for the winner as it is for the loser.

That's all, Mr. Chairman.

MR. CHAIRMAN: Thank you very much, Mr. Gardner.

MR. B. GARDNER: Thank you, Mr. Chairman.

MR. CHAIRMAN: Our next person making a presentation is Mr. Kam Gajdosik.

I have difficulty pronouncing the name. You could change your name to Jones or Smith, it would be a lot easier.

Could you please proceed?

MR. K. GAJDOSIK: Thank you, Mr. Chairman. The name is pronounced Gajdosik.

I appear here this evening on behalf of the Construction Labour Relations Association of Manitoba. We have a brief which we will be presenting here and it's a brief in every sense of that word - it is brief.

It's divided into four parts. We have an introductory section. We address Bill 61 in terms of how it has impact on labour relations in general in Manitoba. Now, we address the issues of how it specifically would address the construction industry and then we have a brief conclusion.

The Construction Labour Relations Association of Manitoba is an organization comprised of employers who - incidentally, I have copies of the brief here, if you wish to distribute them to the committee members.

MR. CHAIRMAN: Yes, the Clerk will pick them up in a few minutes when she gets back, or you can service the Clerk for this moment only.

A MEMBER: But you won't get paid extra.

MR. K. GAJDOSIK: Maybe we won't be so brief after all.

MR. CHAIRMAN: Proceed.

MR. K. GAJDOSIK: The Construction Labour Relations Association of Manitoba is an organization comprised

of employers who operate within the construction industry and who have an established bargaining relationship with one or more of the 13 building trade unions with whom we bargain.

Our mandate, as is reflected within the name of our association, is to provide our member firms with all necessary labour relations services which may emanate from any of the 19 collective agreements which we negotiate with those construction unions.

Our attendance here today should not be construed as being representative of all construction employers who have a bargaining relationship with a building trade union. Membership in our association is voluntary. Therefore, there exist construction firms who, while not having membership in our association, do have a bargain relationship with one or more of the construction unions and are currently parties to collective agreements with them. Consequently, this presentation is representative of the views of the member firms of our association only.

Our association having undertaken and completed a thorough review of Bill 61, wishes to register its opposition to it. We cannot support an amendment which violates the basic principle of fair play by allowing a party to remove another party from participating in the decision-making process.

Furthermore, it has the potential of denying the continuation of rights which other sections of The Labour Relations Act bestow upon the parties to collective bargaining. This proposed amendment, Bill 61, by conferring upon the employees in a labour dispute, not once, but twice, the unilateral right to determine settlement procedures for the dispute, rocks the very foundation on which labour management relations have been developed in the industrial community. Bill 61 removes the balance which is required to exist between the parties in order that a resolution palatable to both sides may result.

The need for balance in collective bargaining is not a recently discovered ingredient. It has been enshrined in labour statutes for years. Presumably, the framers of that legislation recognized that in order for the collective bargaining system to work equitably, there needed to exist a balance between the parties. To ensure that these balances could not be denied to one party by another party, they became guaranteed by legislation. A review of Manitoba's current Labour Relations Act, which is regarded with envy by some elements in other provincial jurisdictions, reveals numerous balances between labour and management. We submit that their existence underlines the need. Some of these examples are:

Section 5(1) gives every employee the right to be a member of a union;

Section 5(2) gives every employer the right to be the member of an employer's organization;

Section 7 prevents an employer from engaging in discriminatory hiring or employment practices;

Section 8 prevents a union from engaging in discriminatory membership requirement practices;

Section 10(1) allows an employer, during a legal strike or lockout, to operate his enterprise with a replacement workforce;

Section 11(1) allows a striking employee to recover his employment at the conclusion of a strike or a lockout;

Section 14.1 bars an employer from penalizing an employee who participated in a lawful strike;

Section 15 bars a union from penalizing a member who refused to participate in an unlawful strike;

Section 51(a) permits a union to require an employer to commence collective bargaining;

Section 51(b) permits an employer to require a union to commence collective bargaining;

Section 72(a) prevents a union from causing a strike while a collective agreement is in effect; and,

Section 72(b) prevents an employer from causing a lockout while a collective agreement is in effect.

The balances contained in our Labour Relations Act were developed to ensure that the positions of the parties to a bargaining relationship would be at all times subject to the same privileges or restrictions at every stage of collective bargaining as well as during the interim period between collective bargaining. Our association does not disagree with this concept. It makes labour relations sense that both parties to a bargaining relationship be required to abide by the same set of rules and that those rules be applied as strictly upon one party as they are applied upon the other party. Unfortunately, Bill 61 does not make labour relations sense.

Historically, when collective bargaining has reached an impasse, the dispute is generally resolved by the imposition of economic sanctions, that is a strike and/or a lockout occurs. Rest assured, labour relations practitioners on both the union side and management side are not neophytes to the collective bargaining arena. When impasse occurs they know what the next stage is and what the implications are. They choose their destiny.

(Mr. Deputy Chairman, M. Dolin, in the Chair.)

Settlement of a dispute by a process other than strike or lockout action has always been available to the parties. The public record shows, however, that the parties rarely opt for some form of arbitration or selection process. Does this not demonstrate that these optional settlement procedures are not acceptable to one or both parties to a dispute? If the parties cannot come to a mutual agreement on an alternate settlement procedure, is it justifiable to impose the will of one party upon another party, thereby disturbing the labour relations equilibrium between the parties?

We view Bill 61 as distasteful due to:

(a) at a very late stage in the collective bargaining process it allows a third party to be injected into the process; namely the employees;

(b) the decision can only be made by one party; again the employees with the employer and the union participating as bystanders.

The Labour Relations Act is very clear as to who can participate in collective bargaining. Collective bargaining can only occur between an employer, or an employer's organization, and a union who, as the legal bargaining agent, has acquired that right either by certification issued by the Manitoba Labour Board or through a voluntarily recognition by an employer.

Nowhere in the act is a provision where an employer is permitted to bargain collectively with his employees.

The fact is that if he did, he would be committing an unfair labour practice.

Consequently, we fail to see the rationale whereby the statute requires bargaining to be done solely between the employer and the union, yet legislatively permitted settlement procedures, namely strike or lockout, can be repealed by the very employees who are barred from the collective bargaining process.

To compel those parties who are legally required to carry out the duties of collective bargaining to accept the verdict of a party barred from the bargaining as to a resolution process without the joint consent of the bargaining entities defies logic.

With respect to the construction industry, the imposition of collective agreements through a final offer selection process as detailed in Bill 61 could plunge the construction industry into a chaotic dilemma which even the wisdom of a Solomon could not unravel.

The construction industry is not an industry where collective bargaining is solely conducted between an employer, an individual employer, and an individual trade union. It occurs in some situations, but the norm is to have negotiations conducted through an association such as ours. In addition, there is more than one union which has acquired collective bargaining responsibilities for construction employees.

As mentioned earlier, our association bargains 19 of these collective agreements, with 13 separate and distinct bargaining agents. There are many construction firms inside and outside of our association who are party to several of these collective agreements at the same time.

Our association is structured on a trade division basis with each member firm being assigned to as many trade divisions as he has bargaining relationships with any given number of trade unions.

For example, if a member is an employer of plumbers, electricians and sheet metal workers, he would be assigned to the three corresponding trade divisions within our association and ultimately would become party to the corresponding common collective agreement negotiated by those trade divisions.

The key word here is "common." The construction industry is a highly competitive and labour intensive industry. Due to the obvious competitive disparity that a unionized firm is encumbered with when it must meet the competition of a non-unionized firm, it behooves the trade division and the corresponding trade union to negotiate common agreements containing common terms and conditions of employment.

The rationale behind this is that firms who are not members of our association, but who have a bargaining relationship with that same trade union, will then become signatory to the common collective agreement on an independent basis.

Perhaps of even greater importance for the need to arrive at common industry agreements, rests within another provincial statute, this being The Construction Industry Wages Act. This act requires the publication of wage schedules, which prescribe the standard wage rate and hours of work for the industry. The schedule, which is commonly known as the Greater Winnipeg Schedule, generally reflects the negotiated wage rates and regular hours of work. Bill 61 has the potential of upsetting this equalization between the unionized and the non-unionized sector, or bringing the final offer selection process into disrepute.

Now I give you an example here. Picture this scenario:

Negotiations for a renewal collective agreement are under way between our association's trade divisions and a trade union. There are 10 member firms in the trade division.

Negotiations reach an impasse, and the union exercises its right to strike. It's the intention of the union to achieve a common agreement simultaneously with all 10 contractors.

The 10 employers, on the other hand, individually, as they are required to do by Bill 61, petition the Manitoba Labour Board to order the union to conduct a vote of the employees to determine if the employees of each employer will opt for final offer selection. The vote is ordered and 10 separate votes, each independent of the other, as is required by Bill 61, are taken.

Nine of the employee groups reject the final offer selection process and continue their strike. The remaining one employee group votes in favour of final offer selection and their strike is terminated.

The selector chooses the employer's offer which provides for a new hourly wage rate of $10 per hour. The union and the remaining nine employees ultimately settle upon an $11 per hour wage rate.

Now, which wage rate gets published in the new Greater Winnipeg Schedule?

If the $10 rate becomes the schedule rate, the equalization between the unionized and the non-unionized sector has been eliminated. Presumably, the $11 rate would become the legal minimum due to its predominance, and at that point, the selector's decision with respect to the $10 hourly rate becomes meaningless and consequently your final offer selection process is now in disrepute.

(Mr. Chairman in the Chair.)

Common collective agreements have the been the norm in the construction industry for decades. Their need is recognized by both labour and management representatives in the construction community. In addition to wage rates and hours of work, these agreements contain numerous other provisions where the need for commonality is paramount, to assist in meeting the need to remain competitive. Items such as travel costs, room and board, trust fund contributions, vacation pay and others must be preserved at common levels within at least each trade group. To submit such items for settlement on an individual employer by employer basis to anyone other than the prime parties to the bargaining holds the potential for disparity to result in the cost levels of those benefits, thereby creating chaos in the entire construction industry.

Our association prides itself on the harmonious union-management relationships which currently exist in our industry. This situation did not occur by accident. The building trades unions and our association have jointly developed this harmony over a number of years, and both sides are continuing their efforts, virtually on a daily basis, to maintain this state of affairs.

Numerous sources from across our entire nation, such as individual contractors, employer associations, trade

unions, government officials, investors or developers, communicate to us that they regard labour-management relations in the unionized sector of Manitoba's construction industry to be second to none. This is not to say that we do not have our differences. Those we do encounter from time to time; however, through common effort, we generally develop a formula for a solution. Considering that our association bargains 19 collective agreements with 13 local unions, yet it has been approximately 10 years since a grievance was required to be settled by a board of arbitration, must stand as a symbol of the sincerity practised in labour-management relationships in the industry.

There may be imperfections in the current system which our industry has structured for conducting its collective bargaining, but Bill 61 is not the cure. Many of the problems in our industry cannot be solved by amendments to some labour statute. Since it is our view that our current collective bargaining structures and the settlement procedures currently available in The Labour Relations Act would not be enhanced by the provisions of Bill 61, perhaps it is advisable to heed the adage: "If it ain't broke - don't fix it."

In conclusion, Mr. Chairman, to be respected, a labour relations system must resolve disputes effectively and in a manner mutually acceptable to the parties involved. Collective agreements negotiated directly between the parties are preferable to settlements imposed by an alternative process not having the endorsement of the parties to the collective bargaining. In the absence of the parties' approval, imposition of a third party settlement violates the voluntarism essential to the collective bargaining process, diminishes the commitment of one or both sides to uphold the spirit and letter of the agreement and utlimately holds the potential to impair the labour-management relationship.

Bill 61 is, in our view, patently unfair. It is inconsistent with the fundamental principles on which sound labour relations are created. We submit that bargaining relationships in Manitoba could suffer irreparable damage should Bill 61 be enacted into legislation. In view of this concern, we strongly recommend that Bill 61 be withdrawn, and withdrawn in its entirety.

It has been statistically proven that Manitoba enjoys the second-best overall labour relations climate in the nation. We ask: Can there be anything seriously wrong with a labour relations system which has brought us this far?

Thank you.

MR. CHAIRMAN: Are there any questions?

Mr. McCrae.

MR. J. McCRAE: Sir, is there any way this bill, in your opinion, could be amended to make it acceptable?

MR. K. GAJDOSIK: Absolutely not.

MR. CHAIRMAN: Any further questions? Thank you very much, Mr. Gajdosik.

Our next person making presentation is Mr. Howard Raper, and am I glad to see him. He's the last one making a presentation before our committee.

MR. H. RAPER: Copies of my brief are here.

Mr. Chairman, I'm here representing the Communications and Electrical Workers of Canada, although I would like to make a small comment at the end on my own behalf as a private citizen.

MR. CHAIRMAN: Proceed.

MR. H. RAPER: We come before you representing some 40,000 workers employed in the communications and electrical manufacturing industry in Canada. We have approximately 2,000 members in the Province of Manitoba who are employed at the Manitoba Telephone System.

We believe the best possible manner to settle a collective agreement is through the time honoured tradition of collective bargaining. It is our opinion that settlements imposed through third party intervention are often not satisfactory to either party. We do, however, realize that this process might be the only option to settle some disputes, in particular, in the private sector.

We are proposing an amendment to this legislation which we believe will be more acceptable to those concerned. We suggest that there be a preliminary trigger mechanism introduced to the process which must be operated to enable this section of the act. If this preliminary step is not taken, then the provisions of Bill 61 would not be available to the parties involved in negotiations. Negotiators who believe that the final officer selection process may be required to achieve a settlement would simply agree beforehand to enable this section of The Labour Relations Act, and it would be available to them. If the negotiators cannot agree on this question, then the members of the bargaining unit should decide the question.

For example, with our proposed amendment in place, the employer groups and unions who have both declared that they are not interested in using the final offer selection process would not be obliged to trigger it and could therefore ignore this portion of the act. Any employer groups or unions who agree this process might be beneficial would simply reach agreement to trigger the enabling process and then would have it available to them. Of course, if the parties are not in agreement on the question, then the members of the bargaining unit would make this decision.

We recognize that many union negotiators and some negotiators acting on behalf of employers see the final offer selection process as a protection against unreasonable demands being forced upon them by the other side. We also recognize that some employers and unions have developed a more mature relationship in which such protection is unnecessary, and indeed if used, may cause a deterioration of that relationship. We believe our proposed amendment to Bill 61 would recognize the needs in all these situations.

We want to thank the committee for the time you've taken to hear our concerns, and hope you will give our proposal serious consideration.

I'd like to make a personal comment and it's on the subject of the supposed split in the labour movement on this issue. I'd like to remind you that labour is united, and our goal is to have all workers protected by collective agreements and to achieve industrial democracy in the workplace. Our only difference of opinion is as to how we achieve those goals.

Before I came here tonight, I was at the picket line at Westfair and I saw trade unionists that I recognized from many different unions. Almost all the unions that have come - in fact, as far as I know, all the unions that have come before you and have had different opinions on Bill 61, they were all together on that issue. They stand united and will stand united.

MR. J. McCRAE: Sir, the proposed amendment that you put forward, I'd just like to ask if you don't believe that mechanism could be there and could be used without legislation. In other words, as your brief says, that there would be simply an agreement beforehand to enable this section of The Labour Relations Act, but final offer selection has been done before by agreement beforehand of the parties, and I just wonder if I'm missing something here. I know later on it says that the members of the bargaining unit should decide the question.

Is that the part that you're saying wouldn't be part of the agreement beforehand and would be part of the legislation?

MR. H. RAPER: Well, the legislation would simply spell out that they could reach agreement on either to accept final offer selection as a possibility in the future or reject it as a possibility in the future.

MR. J. McCRAE: But I think that's the point I was making, sir. Could we not do it that way anyway, without any legislation at all?

MR. H. RAPER: That could be done ahead of time; however, you still require the legislation in case one of the parties disagrees.

MR. J. McCRAE: Here I would have to seek the advice of the experts on such a thing.

Would the breaching of such an agreement beforehand, which I assume would be part of the previous collective agreement, not be an offence against The Labour Act and could the board not then order that this process be entered into in the scenario you're talking about?

MR. H. RAPER: I don't quite understand your question. What I'm saying is that if the two parties can agree either one way or the other, then there's no problem. But if the parties cannot agree, then the decision has to be made by the members of the bargaining unit.

MR. J. McCRAE: I'm still wondering, Mr. Chairman, if that would require legislation, which you've been suggesting.

MR. H. RAPER: I believe it would.

MR. CHAIRMAN: No further questions? Thank you very much, Mr. Raper.

We're going to be dealing with Bill 32 first. What does the committee wish? Would you like to go clause by clause, page by page, or . . .

HON. A. MACKLING: There is an amendment that I've . . .

MR. J. McCRAE: Mr. Chairman, the usual hour for closing down these committees, as I understand it, is 10:30, is that not correct? -(Interjection)- I realize that. That's why I'm asking the question, because we didn't do it on Tuesday.

HON. J. COWAN: There really is no usual hour for closing down committees when discussing bills such as this, and it ranges from early in the evening that the committee completes its business till quite late in the evening if the committee doesn't complete its business. I think the practice has been the same with respect to whatever party is in government at a particular time that the committee attempts to complete its business before rising. On some occasions, it cannot do that for one reason or another, and it rises without having completed business; on other occasions, it's 10:00 p.m.

I would suggest that we attempt to complete our business and see where that takes us, as is the normal practice.

MR. J. McCRAE: It's a good thing, Mr. Chairman, we have some more experienced members around here.

MR. CHAIRMAN: Yes, it is.

Mr. Kovnats.

MR. A. KOVNATS: Mr. Chairman, I agree with the Government House Leader that you do attempt to complete the business, but I would suggest that after receiving the briefs that there should be some time to digest the briefs and possibly have discussions with other members of the political parties of which you belong so that we can present the best decision as we go through clause by clause.

I would suggest, at this point, that we be given the time to digest the briefs that have been presented in the last two days so that we can do an honourable and presentable job on presenting to the House for Third Reading the briefs after we have had a chance to digest them.

HON. A. MACKLING: Mr. Chairman, and colleagues, we have two bills before us, Bill 32 and Bill 61. You will recall that with Bill 32, there was a very limited amount of presentation, I think, because there had been enactment of this legislation - largely in the form it's in now - earlier. There was considerable agreement, bipartisan agreement, in respect to the terms of the bill. I would like to deal with that bill first, clause by clause.

I've given Mr. McCrae a copy of the amendments that are very straightforward, and I'd like to deal with that. That bill, as you'll recall, there's an undertaking that that bill would be dealt with hopefully before the end of June, because the existing amendments that we've put through in Feburary expire on June 30. So there is some time urgency. I'd like to give that bill preference, then we'll see how we make out with Bill 61.

MR. A. KOVNATS: The only other point that I would make is that these presentations that have been made tonight, Mr. Chairman, all of them, a lot of effort has

gone into them. I think that the government would have to have a chance to digest it, in the view, and possibly the hope, that there might be some amendments come forward and possibly even withdrawal of Bill 61.

HON. J. COWAN: I believe the Minister provided us with a reasonable course of action - that is, to deal with the first bill where there is some time consideration that has to be taken into account to see how long that takes us - and having completed that bill, to at least start the review on the second bill, complete it if we can. If the hour drags on and it appears as if it's too late to complete the bill, then we'll have to take a different course of action; but at least complete the one so that it can go back into the House in a timely fashion so as to have it, in effect, by the time it's required to be in effect.

MR. A. KOVNATS: Mr. Chairman, just one last word. I'm prepared to proceed with it, but the only thing is that these presentations were made and I think rather than make a sham of the presentation that the government should at least allow some time to digest the presentations so that if they're going to listen to the presentations, not just give lip service to them, that we go to the next meeting.

MR. CHAIRMAN: Mr. Connery.

MR. E. CONNERY: Mr. Chairman, we had all the presentations to Bill 32, and I think we can reasonably proceed with Bill 32. There's a reason to proceed with Bill 32, because on June 30 the old bill lapses and we need to have the legislation in place. Bill 61, we haven't had a chance to digest. So I would suggest that if we would deal with Bill 32, and then rise after that, I would be in favour of being expeditious and moving through Bill 32.

HON. J. COWAN: Mr. Chairman, certainly no objection to completing our review of Bill 32, so we can bring it back to the House, taking a look at that time as to what the time is and how we feel about proceeding. I just want to make the point though, so that there will be no misunderstanding about the purpose of the standing committee representations from the public and the usual procedures of this committee, it has been a long established practice that while the committee does hear presentations, if time allows, it does go clause by clause through the bill and at the same meeting. It has never in the past, to my knowledge, been suggested that was a reflection upon the presentations that were made on that particular evening or a reflection on the intent of the sincerity of the government. I think that should be clear, if we do decide to proceed with Bill 61, we're doing so out of normal practice. It has been a long established practice; it seems to work well.- (Interjection)-

MR. CHAIRMAN: Okay.

The Minister, to introduce it.

BILL NO. 32 - THE RETAIL BUSINESSES HOLIDAY CLOSING ACT

HON. A. MACKLING: Yes, on Bill 32, colleagues, if you have the bill before you and I've asked the Clerk to distribute copies of the amendments. I had given a copy of the amendments to Mr. McCrae earlier. I'll call upon Mr. Ashton, one of my colleagues, to move the amendments.

The first amendment that deals with the definition of "municipality" to include a local government district. The purpose of the amendments, and there are two amendments that refer to municipalities, is to provide, as you'll see, an exemption for vacation resort areas. Those amendments to the definition of "municipality" reflect on that. Then an amendment to section 4(3) that ensures against the use of independent contractors or any other persons working on the premises to add to the restricted number. That's the rationale for those amendments that we think deals with the problem of contract employees including security guards or any other person being employed in the store.

The final major amendment deals with vacation resort areas. It's considered advisable that there be some flexibility in the act provided to municipalities where there is a substantial tourist-vacation importance that they be enabled to allow the use of retail stores exempt from the act in those areas.

With those introductory remarks, I'd like to proceed, Mr. Chairperson, with section 1 and then call upon Mr. Ashton to move the amendment to the section as indicated.

MR. CHAIRMAN: Section 1.

Mr. Ashton.- (Interjection)- He put his hand up to be recognized. I'm calling Mr. Ashton.

Would you please proceed, Mr. Ashton?

MR. S. ASHTON: Thank you for recognizing me, Mr. Chairperson.

I move,

> THAT the definition of "municipality" as set out in section 1 of Bill 32 be struck out and the following definition be substituted therefor:
> "municipality" includes a local government district. ("municipalité")

MR. CHAIRMAN: Pass? (Agreed)

MR. S. ASHTON: And the French version as printed? (Agreed)

> IL EST PROPOSÉ QUE la définition de "municipalité" figurant à l'article 1 du projet de loi 32 soit supprimée et remplacée par ce qui suit:
> "municipalité" Sont assimilés à une municipalité les districts d'administration locale. ("municipality")

MR. J. McCRAE: A question on that of the Minister for clarification.

The previous definition included "a city, town, village . . . "including the City of Winnipeg. The proposed definition is that in addition to the previous definition, or is it to replace it? Because it seems to strike out everything and then just, municipality includes only a local government district. Are we forgetting about the City of Winnipeg and the towns and villages? Maybe the Minister can explain that.

HON. A. MACKLING: My understanding is that the interpretation act does provide for all of those

corporations to be included under the definition of "municipality," so that takes care of it.

MR. CHAIRMAN: Pass? (Agreed)
Mr. Ashton.

MR. S. ASHTON: The next amendment is in regard to section 4.

MR. CHAIRMAN: Mr. Scott, do you have a question?

MR. S. ASHTON: Perhaps we should pass sections 2 and 3, and then . . .

MR. CHAIRMAN: Section 1, as amended—pass; section 2—pass; section 3—pass.
Section 4 - Mr. McCrae.

MR. J. McCRAE: We have an amendment to section 4, similar to one that I see as proposed by the Minister.

HON. A. MACKLING: Well, Mr. Ashton was going to move the amendment.

MR. J. McCRAE: He had to get the floor to do that.

HON. A. MACKLING: He was signalling for the floor.

MR. J. McCRAE: I got the floor.

MR. CHAIRMAN: Mr. Minister, the fact is Mr. McCrae did put his hand up to get recognized.
Proceed, Mr. McCrae.

MR. J. McCRAE: Thank you.
Mr. Chairman, I move, seconded by the Honourable Member for Gladstone,

THAT Bill 32 be amended by adding immediately after subsection 4(2) the following subsection:

Determination of persons employed.

4(3) To determine the number of persons employed for the sale of goods or services for the purposes of clause (1)(d), all persons involved in the operation of the retail business establishment, including independent contractors and security personnel, shall be counted.

Mr. Chairman, we also move the French translation of that:

IL EST PROPOSÉ QUE le Projet de loi 32 soit modifié par l'insertion, aprés le paragraphe 4(2), de ce qui suit:

Détermination du nombre de personnes employées.

4(3) Afin de déterminer le nombre de personnes qui vendent des marchandises ou fournissent des services en vertu de l'alinéa (1)d), il faut compter les pesonnes qui prennent part à l'exploitation de l'établissement de commerce de détail, y compris les entrepreneurs indépendents et le personnel chargé de la sécurité.

MR. CHAIRMAN: Mr. Mackling.

HON. A. MACKLING: I would like to speak to the motion, Mr. Chairperson.

As I had indicated earlier, I supplied Mr. McCrae with a copy of the proposed amendment which we have crafted in detail and with a concern to ensure that the language is broad enough to encompass all of the concerns that we'd heard just immediately prior to the conclusion of Second Reading in the House. There had been a concern in connection with security guards.

At one stage, when we had crafted the bill, I was assured that the provisions in the bill as now before us were sufficient to cover all persons. Then later it was confirmed that no, security guards would not be covered, and that's why we have provided for a definition which we think will certainly provide effectively with those concerns and, with respect, is a much better amendment than that proposed by Mr. McCrae.

Therefore, I recommend that we dispose of the amendment proposed by the Honourable Member from Brandon West and then we'll get on with the amendment that I had prepared.

MR. J. McCRAE: The Minister's motion nowhere uses the words "security guard" and ours does. It seems to me that having been drafted in the proper way, there's not a thing wrong with our amendment and it achieves the same thing as the Minister's. And after all, Mr. Chairman, he should remember that it was our leader who raised the matter of seeing to it that this loophole was closed. All things being equal, I see no reason why the committee shouldn't accept our amendment.

MR. E. CONNERY: In both amendments I don't see where there's an exception for, say, refrigeration people or that says that they're excluded from that number. What if you have a mechanical breakdown in that particular plant? Is that going to say the numbers then preclude that they can go in there to do some maintenance?

MR. J. McCRAE: The amendment refers to all persons employed for the sale of goods or services. I think that should cover, directly or indirectly, the operation and it includes security personnel, which was a big concern. But "all persons" would cover it.

MR. CHAIRMAN: Any further discussion?
All those in favour of the amendment say, aye; all those opposed say, nay. It's been defeated. In my opinion it's been defeated.
Mr. Ashton.

MR. S. ASHTON: Yes, I'd like to move my amendment now.

I move

THAT section 4 of Bill 32 be amended by adding immediately after subsection (2) the following subsection:

Determination of persons employed.

4(3) For the purposes of clause (1)(d) or subsection (2), the following shall be deemed to be employed for the sale of goods or services on a holiday:

(a) all persons, including independent contractors, working in the retail business establishment, and

(b) all persons, including independent contractors, who, although not working in the retail business establishment, are performing duties which are directly or indirectly related to the operation of the retail business establishment;

at any time goods or services are sold or offered for sale therein whether or not they are paid by the owner of the retail business establishment;

And the French version as printed:

IL EST PROPOSÉ QUE l'article 4 du projet de loi 32 soit modifié par l'insertion, aprés le paragraphe (2), de ce qui suit:

Détermination du nombre de personnes employées.

4(3) Pour l'application de l'alinéa (1)d) ou du paragraphe (2), les personnes qui suivent sont réputées vendre des marchandises ou fournir des services un jour férlé:

a) toutes les personnes, y compris les entrepreneurs indépendents, qui travaillent dans l'établissement de commerce de détail,

b) toutes les personnes, y compris les entrepreneurs indépendents, qui, même si elles ne travaillent pas dans l'établissement de commerce de détail, exercent des fonctions qui sont directement ou indirectement liées à son exploitation,

à un moment où des marchandises y sont vendues ou mises en vente ou des services fournis ou offerts peu importe que le propriétaire de l'établissement de commerce de détail les paie ou non.

MR. CHAIRMAN: Pass.
Mr. Ashton.

MR. S. ASHTON: I move . . .

MR. CHAIRMAN: Section 4, as amended.
Oh, sorry, Mr. McCrae.

MR. J. McCRAE: I want to speak to the motion, Mr. Chairman.

Would the Minister just tell me what it is about this amendment that is better than the last amendment . . .

MR. CHAIRMAN: That's out of order.

MR. J. McCRAE: . . . than the one the members of the New Democratic Party voted down?

MR. CHAIRMAN: That's out of order. It's not in order to . . .

MR. J. McCRAE: Is this there something wrong with the drafting of our amendment, or what is it? What makes this amendment so much better?

MR. CHAIRMAN: Well, look it, we could get into big discussions. We've already gone part way, you know, I see . . .

HON. A. MACKLING: No, no, let me answer.

MR. CHAIRMAN: Well, the Minister can answer if he wishes.

MR. J. McCRAE: On a point of order, Mr. Chairman.

MR. CHAIRMAN: Yes, on a point of order.

MR. J. McCRAE: With all due respect, Mr. Chairman, this stage is for a sober look at the legislation before us. I don't quite understand your attitude, Mr. Chairman. Perhaps you could explain why it is that you would attempt to keep me from speaking to these matters?

MR. CHAIRMAN: I am not attempting to keep you from speaking to these matters. I have shown every leeway towards recognizing you when you've put up your hand. I have no objection, whatsoever, to you taking part. I am completely honourable and above all the squaller of disputes we have before us. Mr. Minister could you please deal with the . . .

MR. J. McCRAE: Mr. Chairman, in order . . .

HON. A. MACKLING: Can I answer your question now?

MR. CHAIRMAN: This Minister is wanting to - do you want me to proceed?

MR. J. McCRAE: On the same point, I would just say that in order to promote the feeling among the members of the committee that the Chair is taking the position you've just outlined, may I, with all respect, and in an attempt to be helpful, request that you allow us to speak when we put up our hands, rather than trying to prevent us from speaking?

MR. CHAIRMAN: I wouldn't want to hurt you in the slightest. Proceed, if you want to say anything further.

HON. A. MACKLING: Do you want me to answer now?

MR. CHAIRMAN: The Minister would like to answer your question, so let's have the answer.

MR. J. McCRAE: Carry on.

A MEMBER: Pass.

HON. A. MACKLING: Mr. Chairperson, I would like to answer the honourable member. If the honourable member would look at the amendment that we have just passed, you'll find language there which is broader and more inclusive than the language contained in the amendment that the honourable member moved.

If you look at the last part of the second subclause (b), the words which are directly or indirectly related to the operation of the retail business establishment are much broader and much more inclusive than - and those words are not found in his proposed amendment.

Again, in the last part, the final three sentences of the amendment which we passed, provide for a much broader inclusion which indicates that they're covered, whether or not those services are paid for by the owner

of the - whether or not they are paid for by the owner of the retail business establishment. That is to prevent an independent corporation actually providing those services. That language clearly makes it broader and more effective in the opinion of the department.

MR. CHAIRMAN: Pass.
Mr. McCrae.

MR. J. McCRAE: Mr. Chairman, it's just that in a lot of the legislation that comes before us from this government - and the one that springs to my mind is The Business Practices Act - I think that's the one that's almost impossible to figure out what that act says.

As the members of the media who are here will attest, and as my experience as a Hansard reporter will attest, why use a whole lot of words when a few will do exactly the same job, only better.

MR. CHAIRMAN: Pass? (Agreed)

MR. C. SANTOS: Section 4, as amended—pass.

MR. CHAIRMAN: Mr. Ashton.

MR. S. Ashton: Section 5—pass.

MR. CHAIRMAN: Section 5—pass.
Section 6(1)—pass.
Section 6 - Mr. Ashton.

MR. S. ASHTON: I'm taking no chances this time. I move

THAT section 6 of Bill 32 be amended by adding immediately after subsection (2) the following subsection:

Exemption for vacation resort area.
6(3) Where, in the opinion of the Lieutenant-Governor-in-Council it is essential for the maintenance or development of a tourist industry, the Lieutenant-Governor-in-Council may, by regulation, designate a municipality as a vacation resort area and a municipality that is so designated may, by by-law, exempt any class of retail business establishment from the application of section 2 in respect of the sale of such goods or services and subject to such conditions as may be specified in the by-law.

I also move the French version as printed:

IL EST PROPOSÉ QUE l'article 6 du projet de loi 32 soit modifié par l'insertion, aprés le paragraphe (2), de ce qui suit:

Exemption relatives aux lieux de villégiature.
6(3) Le lieutenant-gouverneur en conseil peut, par réglement, désigner une municipalité à titre de lieux de villéglature lorsqu'il est d'avis que cela est essential à l'industrie touristique. Toute municipalité ainsi désignée peut, par arrêté, exempter une catégorie quelconque d'établissement de commerce de détail de l'application de l'article 2 à l'égard de la vente des marchandises ou de la fourniture des services et sous réserve des conditions précisés dans l'arrêté.

MR. E. CONNERY: I guess I will say something complimentary. It's got to be one of the first times since I've been in this Legislature that this government has done something that's in the interest of tourism. As you know, our tourism is in desperate straits. So I will compliment the Minister for having recognized that, that we are in trouble in tourism, in spite of what the Minister says. I think it's a reasonable exemption.

MR. J. McCRAE: Mr. Chairman, I, too, appreciate the intent of this amendment, but I'm just a little nervous about it, and I would ask the Minister to clarify whether this is - the way the proposed clause is worded, it appears that the Lieutenant-Government-in-Council may designate municipalities as vacation resort areas.

Does the Minister have in mind any criteria for deciding just what is a vacation resort area, and is this the best way, by leaving it to the whim or to the wish of the Lieutenant-Governor-in-Council to decide which vacation resort area should qualify as a vacation resort area, and so on?

HON. A. MACKLING: Well, Mr. Chairperson, colleagues will appreciate that municipalities do have a very close working relationship with government. While they are corporate creatures of the province, they are respected at separate - arm's length to government. Where they indicate that they believe it is in the interest of their area to have a resort facility, assisted by way of an exemption from the act, I think that the record of the Provincial Government is that it will respond to the needs of the municipality, if they record it and they are prepared to pass a by-law in accordance with the section.

You might say, well, it still leaves the discretion with the Lieutenant-Governor-in-Council. That is so, but I don't believe any government, of whatever stripe, is going to not recognize a legitimate concern of a municipality if they are prepared to pass the necessary by-law.

MR. CHAIRMAN: Section 6, as amended—pass.
Mr. Ashton.

MR. S. ASHTON: Section 7, pass.

MR. CHAIRMAN: Section 7—pass; section 8—pass.
Section 9 - Mr. Ashton.

MR. S. ASHTON: I have an amendment

THAT section 9 of Bill 32 be amended by:
(a) re-lettering clause (c) as clause (d);
(b) by striking out the word "and" at the end of clause (b); and
(c) by adding after clause (b), the following clause:
(c) designating municipalities as vacation resort areas; and.

MR. CHAIRMAN: Pass?

MR. S. ASHTON: Pardon me, the French version - the French immersion version:

IL EST PROPOSÉ QUE l'article 9 du projet de loi 32 soit modifié par:
a) substitution, à la désignation d'alinéa c), de la désignation d);
b) suppression, dans la version anglaise, du mot "and" à la fin de l'alinéa b);
c) insertion, aprés l'alinéa b), de ce qui suit:
c) désigner des municipalités à titre de lieux de villéglature;

MR. CHAIRMAN: 9, as amended—pass; 10—pass; 11—pass; 12—pass; Title—pass; Preamble—pass.
Bill as a whole—pass.
Bill be reported.
What is the will of the committee?

BILL NO. 61 - THE LABOUR RELATIONS ACT

HON. J. COWAN: Would you please call Bill 61 for a brief explanation, then I think we can have committee rise.

MR. CHAIRMAN: Bill 61 then, for a brief explanation. The Minister, Mr. Cowan?

HON. A. MACKLING: Well, I think we've had a relatively long night and I think observations have been made that members want to have time to read the briefs and so on. Then we can deal with this bill at another sitting of the committee. I think the House Leader will confirm, maybe he can confirm tonight or shortly, when we can sit again to deal with it.

HON. J. COWAN: I'd just like to get some feedback from the committee. Seeing as how we've heard the public presentations, would it be acceptable to the committee if we, if possible, held this meeting in the morning sometime next week to go over the clause by clause? If so, then I can arrange that, without trying to set a specific date right now, with the Opposition House Leader. But if that would suffice for committee members, then we could initiate that discussion.

MR. A. KOVNATS: If that's acceptable, I think it was with specific cooperation that I made the remarks that I did before.

HON. J. COWAN: Yes. We appreciate the cooperative effort. It's clearly understood then that we have heard the public representations on the bill. We are now embarking upon the clause by clause and in that case we can do it in the morning as well as the evening if that's an opportunity for us.

MR. J. McCRAE: Is there anything formalized here in the sense that should someone else come forward and wish to make a presentation, will they be precluded from doing that?

HON. J. COWAN: It's usual practice. The members opposite are shaking their heads in agreement. I believe, that -(Interjection)- Oh, I'm sorry. They're not shaking their heads in agreement just yet. Perhaps they will be when I make the explanation.

It's usual practice that once we have heard the public representations and there has been a call for any other individuals to determine if they wish to make public presentations, and that call has gone unheeded and we have in fact dealt with all the public presentations, that we then proceed clause by clause. I believe we have completed that part of the standing committee's work and I would not want to hold out an invitation for more public presentations just for the precedent that that would create, if not the difficulties with this particular bill.

MR. J. McCRAE: But by the same token, I take it that it would still be a matter for the committee to decide, should someone come forward.

HON. J. COWAN: The committee can make the decision at any time but I guess what I'm concerned about is individuals coming to this meeting, expecting to be heard, when it is not the normal practice that they would be heard and then feeling slighted by the committee when it was not the intention of the committee to slight them.

I think it should be clear that we have heard the public presentations. That opportunity is done with. We are now dealing with clause by clause. We will have to deal with any specific circumstances as they arise.

MR. J. McCRAE: One more point, Mr. Chairman, on this bill. It is good that we adjourn tonight because the Minister also will, no doubt, want to reflect on the position of the government on Bill 61. I understand also, through unnamed NDP sources, that there is a committee in place looking into this bill. I see the Minister of Urban Affairs is shaking his head in the negative, so that I take it what we have is one further piece of innacurate reporting by the Winnipeg Free Press.

A MEMBER: You heard it here first.

MR. J. McCRAE: In any event, by putting this over to next week, the Minister will have time to search his soul, do the right thing, and withdraw the bill.

HON. A. MACKLING: I've tried to search yours, Jimmy, but I couldn't find it. I shouldn't say that.

MR. CHAIRMAN: Committee rise.

COMMITTEE ROSE AT: 11:06 p.m.