LEGISLATIVE ASSEMBLY OF MANITOBA

THE STANDING COMMITTEE ON INDUSTRIAL RELATIONS

Thursday, 2 July, 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, Dolin, Kovnats, McCrae, Mercier, Santos, Smith (Ellice), Mrs. Oleson

APPEARING: Mr. Miles Pepper, Legislative Counsel

MATTERS UNDER DISCUSSION:

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: The Industrial Relations Committee, come to order. I'd like to call upon the Minister. We're going to be dealing with Bill 61 and the Minister has a few comments.

HON. A. MACKLING: Yes, I'd like to indicate that there are an extensive number of amendments. They look even greater in amount than they need to be. I understand that part of the reason is that, rather than just delete one word here and add one word there, the whole clause is deleted and a new clause is substituted.

Miles Pepper, who is here, will assist in giving the necessary detailed explanation where required in respect to all of the numerous amendments. One of the reasons, of course, for these amendments is that they are drafted. Some of it could be called stylistic, but there were serious drafting errors in the original bill. So that is a significant part of the reason for the extensive number of amendments.

I want to indicate also that there's one section that, while I won't be moving an amendment, I do want to confirm that the bill provides for this legislation to come in force on a date fixed by proclamation. I am advising that the date will not be earlier than and will likely be January 1, 1988.

As I had indicated in the House, there will be some preparations necessary before the legislation would be effective in any event, and it wasn't contemplated this legislation would be available within a matter of weeks or a relatively short time of passage. We consider that, in order to end any speculation on that, we would confirm that the date would be January 1, 1988.

So with those few brief words of explanation, I think we can proceed. There's a question, Mr. Chairman.

MR. CHAIRMAN: Mr. Mercier.

MR. G. MERCIER: Just a question, the Minister referred to the reason for the significant substantial number of amendments as being a major drafting error. I think, by saying that, he places Legislative Counsel in a position of disrepute. I wonder if he could clarify whether that is really a matter of error in instructions or error on the part of Legislative Counsel.

HON. A. MACKLING: Well, I guess you could say it's both, because there's misunderstanding on the part of Legislative Counsel as to what the thrust was to be. If you wanted to ask Mr. Pepper, he's here, if you want any elaboration on that.

MR. G. MERCIER: I wouldn't want to place him in that position.

MR. CHAIRMAN: Mr. McCrae.

MR. J. McCRAE: Mr. Chairman, the Minister referred to significant preparations that would be required to make this legislation operable. Could the Minister tell us what preparations he's talking about?

HON. A. MACKLING: Well, I don't know why I used significant. There would be a time needed to ensure what is necessary if the system is ready to go. We would want to have sufficient time for the Labour Board to understand its role in this new mechanism of the dispute resolution.

In addition to that, we would want to ensure that the Labour Board had developed a panel of selectors, and those selectors will have had sufficient opportunity to have perhaps a seminar or whatever to acquaint themselves with the act, with the requirements under the act, that a selector will follow.

All of that takes lead time and we never anticipated that it wouldn't take some lead time to develop, particularly when in the summer months a lot of the people who will be on a selector's panel will, in all probability, be a significant number if not most or all of those who are impanelled on an arbitration panel that the Labour Board has. This is summer months, a difficult time to get all of those people together for a seminar, and I would think it'll be likely in the fall some time when seminars could be held, dealing with the selector's role under the act.

MR. J. McCRAE: The Minister referred to the development of this panel and I agree with the Minister. When we know the history of this Minister and his selection of people to serve as selectors and when we look at this Minister's record earlier this year of appointing members even to the Manitoba Labour Board, I think it is a wise move to give yourself some time to find the proper people for this job.

But the Minister said that it was never anticipated that this legislation should take effect immediately. Why is it the Minister didn't tell us that sooner?

HON. A. MACKLING: Well, you know, I don't think that it's necessary that I immediately negate out all of the misconceptions the honourable member makes about legislation.

You read into the actions of government and this Minister things that are not there at all, and I don't think it's incumbent upon me to correct you every time you make a mistake, Mr. McCrae.

MR. J. McCRAE: Mr. Chairman, I'm sure if I were Minister of Labour proposing legislation of this type and it was in the news media early on in the process that this was a bail-out Bernie bill, if I were Minister of Labour, I would move very quickly to dispel any talk like that. I wonder why the Minister took so long.

HON. A. MACKLING: Well, I don't think it was incumbent upon me to dispel that rumouring, Mr. Chairman.

MR. CHAIRMAN: Mr. Dolin.

MR. M. DOLIN: I wonder if we could get on with dealing with the bill, and I'm wondering whether or not we should be dealing clause by clause or page by page. Is there any particular . . .

MR. CHAIRMAN: Clause by clause?

MR. J. McCRAE: Mr. Chairman, we can get on with dealing with the bill whenever the Minister and I are finished our preliminary discussion. I don't see why the Member for Kildonan has to be involved once more. His involvement in the present labour dispute is well-known, and I don't think we need to hear anymore from him on the matter.

MR. M. DOLIN: I would suggest that the member perhaps maybe this afternoon learned a little manners from the Speaker. Perhaps he should continue to take that lesson to heart and be a little more polite and a little more parliamentary, and perhaps we should get on with the business we're here for.

MR. A. KOVNATS: Wait a minute, wait a minute. I didn't come to this meeting to be criticized or have any of my associates criticized, Mr. Chairman.

MR. M. DOLIN: Well, you know yourself, he started it.

MR. A. KOVNATS: No, I don't think so. I think that . . .

MR. CHAIRMAN: Could we have order here? Order.

Let's forget everything that occurred before today. Let's just start, okay? Let's try to get through nicely.

Mr. McCrae.

MR. J. McCRAE: Mr. Chairman, you, of all people would be happy to forget what went on before. The Member for Kildonan reminds me that I should have learned something from having served my sentence and done my time today. Mr. Chairman, you yourself could stand to learn something from this whole process too where, in one instance, you withdraw comments made inside the House and then repeat them to the media afterwards, so that the Honourable Member for Kildonan doesn't need to give me any lectures on what I've learned today.

HON. A. MACKLING: Colleagues, I think it is time that we addressed the bill. There are amendments, as I've indicated, and I will ask Mr. Dolin when we arrive at each section where there is an amendment to move the amendments on my behalf, so we can proceed if its - wait till I get Mr. McCrae's attention.- (Interjection)- Hey Abe, did you get me in the picture?

MR. A. KOVNATS: I have you in the picture somewhere, for posterity.

HON. A. MACKLING: Okay, that's good, because I didn't want to be left out. Hey, Jim, can we proceed?

MR. J. McCRAE: Sure.

HON. A. MACKLING: We could go clause by clause.

MR. CHAIRMAN: Proceed then. Preamble.

HON. A. MACKLING: No, there's no preamble.

MR. CHAIRMAN: Subsection 17(1.1)—pass?

HON. A. MACKLING: All right, subsection 17(1.1)—pass. Section by section, section 1—pass.

MR. CHAIRMAN: Section 2 -(Interjection)- Pardon me?

HON. A. MACKLING: Section 2, yes, is the rest of the bill, so you move the motion the first . . .

MR. M. DOLIN: Did we pass 17(1.1)?

MR. CHAIRMAN: We are at where you're moving the motion, the amendment.

MR. M. DOLIN: I move,

THAT subsections 82.1(1) to 82.1(6) be struck out and the following substituted therefor:

Final offer selection.

82.1(1) Where there is a collective agreement in force, either party may apply in writing to the board for a vote to determine whether a dispute shall be resolved by the process of final offer selection, if the application is made not more than 60 days before the expiry of the collective agreement and not less than 30 days before the expiry of the term of, or preceding the termination of, a collective agreement.

Final offer selection during strike or lockout.

82.1(2) Where the term of a collective agreement has expired and a strike or a lockout has continued for more than 59 days, the employer or the union may at any time after the 59th and before the 71st day of the strike or the lockout apply in writing to the board for a vote to determine whether the dispute shall be resolved by the process of final offer selection.

Hearing on application.

82.1(3) Upon receipt of an application under subsection (1) or (2), the board shall forthwith hold a hearing to determine whether the requirements for an application under subsection (1) or (2) have been met.

Board to order vote on final offer selection.
82.1(4) Where the board is satisfied that the requirements of subsection (1) or (2) have been met, the board shall

(a) order a vote in accordance with subsection (6); and
(b) determine, pursuant to subsections (9) and (10), the employees in the unit affected by the dispute.

Waiver of hearing.
82.1(5) Where the parties so request, the board may waive the holding of a hearing under subsection (3) and, if it does so, the board shall

(a) order a vote in accordance with subsection (6); and
(b) determine, pursuant to subsections (9) and (10), the employees in the unit affected by the dispute.

Holding of vote.
82.1(6) Within 14 days after the board has made an order under subsection (4) or (5), the union shall hold a vote by secret ballot of the employees in the unit affected by the dispute to resolve the following question:

"Do you wish to use the final offer section process?" (Yes or No).

Result of vote.
82.1(6.1) Forthwith after a vote is held under subsection (6), the union shall advise the board and the employer of the result of the vote.

MR. J. McCRAE: We'll take it as printed, Mr. Chairman.

HON. A. MACKLING: Take it as printed?

MR. M. DOLIN: And the French? I would move final offer selection 82.1(1) to 82.1(6.1).

IL EST PROPOSÉ QUE les paragraphes 82.1(1) à 82.1(6) soient supprimés et remplacés par ce qui suit:

Arbitrage des propositions finales
82.1(1) Lorsqu'une convention collective est en vigueur, l'une ou l'autre des parties peut demander par écrit à la Commission la tenue d'un vote afin de déterminer si un différend doit être réglé par arbitrage des propositions finales, si la demande est faite pas plus de 60 jours avant l'expiration de la convention collective et pas moins de 30 jours avant son expiration ou sa résiliation.

Arbitrage des propositions finales en cas de gréve
82.1(2) Lorsqu'une convention collective a expiré et qu'une gréve ou qu'un lock-out s'est poursuivi pendant plus de 59 jours, l'employeur ou le syndicat peut, à tout moment aprés le 59e mais avant le 71e jour de gréve ou de lock-out, demander par écrit à la Commission la tenue d'un vote afin de déterminer si le différend doit être réglé par arbitrage des propositions finales.

Audience
82.1(3) Dés qu'elle reçoit la demande visée au paragraphe (1) ou (2), la Commission tient une audience afin de déterminer si les exigences relatives à la demande visée au paragraphe (1) ou (2) ont été remplies.

Tenue d'un vote ordonnée par la Commission
82.1(4) Lorsqu'elle est convaincue que les exigences du paragraphe (1) ou (2) ont été remplies, la Commission:

a) ordonne la tenue d'un vote en conformité avec la paragraphe (6);
b) détermine, conformément aux paragraphes (9) et (10), quels sont les employés compris dans l'unité qui sont touchés par le différent.

Renonciation à l'audience
82.1(5) À la demande des parties, la Commission peut renoncer à la tenue de l'audience visée au paragraphe (3), auquel cas:

a) elle ordonne la tenue d'un vote en conformité avec la paragraphe (6);
b) elle détermine, conformément aux paragraphes (9) et (10), quels sont les employés compris dans l'unité qui sont touchés par le différend.

Tenue du vote
82.1(6) Au plus tard 14 jours aprés que la Commission ait rendu l'ordonnance visée au paragraphe (4) ou (5), le syndicat tient un vote au scrutin secret parmi les employés compris dans l'unité que le différend touche afin de trancher la question suivante:

"Désirez-vous avoir recours à l'arbitrage des propositions finales?" (Oui ou Non)

Résultat du vote
82.1(6.1) Dés la fin du vote visé au paragraphe (6), le syndicat avise la Commission et l'employeur du résultat.

MR. CHAIRMAN: All those in favour - pass? No sorry, a question.

MR. J. McCRAE: Mr. Chairman, what I had intended to propose was an amendment to the amended clause 82.1(2), which deals with the point raised by the Minister at the beginning this evening, where the Minister has said that he would not be having this bill proclaimed until no earlier than January 1, 1988, and I wonder if the Minister has any intentions respecting, I guess it's clause 4 of this bill, commencement of the act at the end; if he has any intention of making any changes to that clause to give effect to the comments that he made earlier about when this bill would be proclaimed.

Otherwise, if I had a commitment from the Minister either that he would be making a change in that or whether he would reconfirm his commitment at the beginning, then I could dispense with my amendment altogether.

HON. A. MACKLING: Well, I discussed that with colleagues to determine whether or not we wanted to actually provide for a formal amendment to the act, whether that was necessary or whether it would be sufficient to make an unequivocal statement as Minister responsible for the legislation that the bill would not be proclaimed prior to January 1, 1988, likely to be effective on January 1, 1988.

We're of the view that it wouldn't be necessary to actually fix the date in here. It may be that we would want to have it somewhat later than January 1, 1988. So, you know, it amounts to the same thing. It's on the record and I'm committing myself.

MR. J. McCRAE: Mr. Chairman, we accept the Minister's undertaking in this regard and we'll dispense with our amendment.

MR. CHAIRMAN: As amended—pass. Okay, Mr. Dolin.

MR. M. DOLIN: 82.1(7) and 82.1(8), pass.

MR. CHAIRMAN: Okay, pass. 82.1(8)—pass.

MR. M. DOLIN: 82.1(9) I would move, as amended, with French,

THAT subsection 82.1(9) to 82.1(13) be struck out and the following substituted therefor:

Vote during strike or lockout.
82.1(9) For the purposes of a vote under subsection (6), the employees in the unit affected by the dispute are the employees

(a) who were in the unit and on the employer's payroll at the time of the application or the strike or lockout began; and
(b) who, in the opinion of the board, have a continuing interest in the outcome of the dispute;

and includes or excludes, as the case may be, any persons included or excluded pursuant to subsection (10).

IL EST PROPOSÉ QUE les paragraphes 82.1(9) à 82.1(13) soient supprimés et remplacés par ce qui suit:

Vote pendant la grève ou le lock-out
82.1(9) Aux fins de la tenue du vote visé au paragraphe (6), sont compris dans l'unité touchée par le différend les employés qui:

a) d'une part, faisaient partie de l'unité et étaient inscrits sur la feuille de paye de l'employeur au moment de la demande ou au début de la grève ou du lock-out;
b) d'autre part, selon la Commission, ont un intérêt continu dans l'issue du différend.

Sont incluses ou exclues, selon le cas, les personnes incluses ou exclues en conformité avec le paragraphe (10).

MR. CHAIRMAN: Okay. Pass.

MR. M. DOLIN: 82.1(10), I would move, as amended, with French.

Variation in number.
82.1(10) Where, in the opinion of the board, there is reason to include persons in or exclude persons from the bargaining unit affected by the strike, the board may do so.

Modification du nombre
82.1(10) La Commission peut inclure ou exclure des personnes de l'unité de négociation touchée par la grève si, à son avis, il existe des raisons valables de le faire.

MR. CHAIRMAN: Okay, pass.

MR. M. DOLIN: 82.1(11), move, as amended.

Acceptance of final offer selection.
82.1(11) Where, under subsection (6), the employees in the unit vote in favour of resolving a dispute by the process of final offer selection, and

(a) if a strike or lockout is in progress at the time of the vote, the employees shall forthwith terminate the strike or the employer shall forthwith terminate the lockout and the employer shall reinstate the employees in the unit on the same terms and conditions as existed under the collective agreement the term of which has expired pending the resolution of the dispute between the parties by the process of final offer selection or otherwise in accordance with this Act; or
(b) if no strike or lockout is in progress at the time of the vote
  (i) the union shall not declare or authorize a strike of the employees,
  (ii) the employer shall not declare or cause a lockout of the employees; and
  (iii) no employee in the unit shall strike, pending the resolution of the dispute between the parties by the process of final offer selection or otherwise in accordance with this Act.

MR. CHAIRMAN: Pass.

MR. M. DOLIN: With French.
Acceptation de l'arbitrage des propositions finales
82.1(11) Lorsque, en application du paragraphe (6), les employés compris dans l'unité votent en faveur du règlement d'un différend par arbitrage des propositions finales et:

a) qu'une grève ou qu'un lock-out est en cours au moment du vote, cette grève ou ce lock-out doit cesser sans délai et l'employeur doit réintégrer les employés compris dans l'unité conformément aux termes et conditions qui existaient en vertu de la convention collective qui a expiré jusqu'à ce que le différend entre les parties ait été réglé par arbitrage des propositions finales ou autrement en conformité avec la présente loi;
b) qu'aucune grève ni qu'aucun lock-out n'est en cours au moment du vote:
  (i) le syndicat ne peut déclarer ni autoriser une grève des employés,
  (ii) l'employeur ne peut déclarer ni provoquer un lock-out des employés,
  (iii) aucun employé compris dans l'unité ne peut faire la grève,
  jusqu'à ce que le différend entre les parties ait été réglé par arbitrage des propositions finales ou autrement en conformité avec la présente loi.

MR. J. McCRAE: Mr. Chairman, I should just point out for the record that Legislative Counsel and staff of the Department of Labour were kind enough to give me a briefing today as to all these amendments, and this

is why we would be agreeing to dispensing with reading every word of them.

HON. A. MACKLING: We appreciate that.

MR. J. McCRAE: I've been through them very carefully today.

HON. A. MACKLING: Well, let's proceed.

MR. J. McCRAE: Mr. Chairman, it might be wise to move them in total but then to allow for a brief discussion on some of the specific clauses. It might be the best way.

MR. CHAIRMAN: Very well, that's agreeable.

MR. M. DOLIN: I will move then the amendments and the French translation thereof, as circulated.

THAT subsections 82.2(1) to (3) be struck out and the following substituted therefor:

Appoint of selector agreed upon.
82.2(1) The board shall attempt to have the parties agree on the choice of a selector within seven days of a vote under subsection 82.1(6) and, where the parties agree on the choice, the board shall forthwith appoint the selector agreed upon.

Appointment of selector where no agreement.
82.2(2) Where the parties do not agree upon the appointment of a selector within seven days of a vote under subsection 82.1(6), the board shall appoint a selector from a list of persons maintained by the board for that purpose.

Replacement of selector.
82.2(3) Where a selector appointed by the board dies, resigns, becomes ill or is unable from any other cause to fulfill the duties of a selector, the board may appoint another selector in accordance with subsection (1) or (2).

IL EST PROPOSÉ QUE les paragraphes 82.2(1) à (3) soient supprimés et remplacés par ce qui suit:

Entente quant à l'arbitre des propositions finales
82.2(1) La Commission tente d'amener les parties à s'entendre sur le choix d'un arbitre des propositions finales dans les sept jours qui suivent la tenue du vote visé au paragraphe 82.1(6). Lorsque les parties s'entendent sur le choix d'un arbitre des propositions finales, la Commission nomme la personne à propos de laquelle elles se sont entendues.

Nomination en l'absence d'entente entre les parties
82.2(2) Lorsque les parties ne s'entendent pas sur le choix d'un arbitre des propositions finales dans les sept jours qui suivent la tenue du vote visé au paragraphe 82.1(6), la Commission nomme un arbitre des propositions finales parmi les personnes dont le nom figure sur une liste qu'elle tient à cette fin.

Remplacement
82.2(3) En cas de décés, de démission, de maladie ou d'empêchement pour toute autre cause de l'arbitre des propositions finales nommée par la Commission, celle-ci peut nommer un autre arbitre des propositions finales en conformité avec le paragraphe (1) ou (2).

THAT subsections 82.2(6) to (8) be struck out and the following substituted therefor:

Submission of final offers.
82.2(6) On the date fixed by the selector under clause (4)(a), each party shall submit to the selector in writing two copies of

(a) its final offer on all terms and conditions of the proposed collective agreement that are in dispute between the parties;
(b) where the party desires, material in support of its final offer; and
(c) a list of all the terms and conditions agreed upon by the parties prior to the date fixed under clause (4)(a).

Final offer may not be changed.
82.2(7) Except as provided in subsection 82.6(1), neither party to a dispute may change its final offer referred to in clause (6)(a) in any material respect after submitting it to the selector.

Exchange of documents.
82.2(8) After receiving the documents and material referred to in section (7), the selector shall send or deliver a copy of each party's documents and material to the other party.

IL EST PROPOSÉ QUE les paragraphes 82.2(6) à (8) solent supprimés et remplacés par ce qui suit:

Présentation des propositions finales
82.2(6) À la date que l'arbitre des propositions finales a fixée en application de l'alinéa (4)a), chacune des parties lui présente par écrit deux copies:

a) de sa composition finale sur tous les termes et conditions du projet de convention collective qui font l'objet d'un différend entre les parties;
b) des documents qui appuient sa proposition finale, si la partie le désire;
c) d'une liste de tous les termes et conditions sur lesquels les parties se sont entendues avant la date fixée en application de l'alinéa (4)(a).

Changements importants interdits
82.2(7) Sauf dans la mesure prévue au paragraphe 82.6(1), aucune des parties à un différend ne peut apporter de changement important à sa proposition finale aprés que celle-ci ait été présentée à l'arbitre des propositions finales en application de l'alinéa (6)a).

Échange de documents
82.2(8) Aprés avoir reçu les documents visés au paragraphe (7), l'arbitre des propositions finales en envoie ou en remet une copie à l'autre partie.

THAT subsections 82.3(1) to (3) be struck out and the following substituted therefor:

Selection hearing.
82.3(1) The selector shall, on the date fixed by the selector under clause 82.2(5)(b), hold a hearing in order to provide each party, or its representatives, with the opportunity to submit evidence and arguments in support of the final offer submitted by the party under subsection 82.2(6)

Waiving of hearing.

82.3(2) Where the parties so request, the selector may waive the holding of a hearing under this section and may proceed to make a decision in accordance with subsection (4).

Adjournment of hearing.
82.3(2.1) The selector may adjourn a hearing under this section from time to time, if in the opinion of the selector, the parties will be able to resolve the issues in dispute by negotiation.

Procedures at hearing.
82.3(3) The selector may establish the procedures for the conduct of a hearing under this section.

Hearings in camera.
82.3(3) A hearing under this section shall be held in camera.

IL EST PROPOSÉ QUE les paragraphes 82.3(1) à (3) soient supprimés et remplacés par ce qui suit:

Audience
82.3(1) L'arbitre tient, à la date fixée en application de l'alinéa 82.2(5)b), une audience en vue de fournir à chaque partie ou à ses représentants une occasion de présenter des preuves et des arguments à l'appui de la proposition finale qu'elle a présentée en application du paragraphe 82.2(6).

Renonciation à l'audience
82.3(2) À la demande des parties, l'arbitre des propositions finales peut renoncer à la tenue de l'audience visée au présent article et peut rendre une décision en conformité avec le paragraphe (4).

Adjournement de l'audience
82.3(2.1) L'arbitre des propositions finales peut ajourner l'audience visée au présent article si, à son avis, les parties parviendront à régler les questions qui font l'objet d'un différend par négociation.

Procédures à l'audience
82.3(3) L'arbitre des propositions finales peut établir les procédures relatives à la tenue de l'audience visée au présent article.

Audiences à huis clos
82.3(3.1) L'audience visée au présent article se déroule à huis clos.

THAT clause 82.3(4)(a) be struck out and the following substituted therefor:

(a) select the whole of the final offer of either the union or the employer with respect to the terms and conditions of the proposed collective agreement which are still in dispute; and.

IL EST PROPOSÉ QUE l'alinéa 82.3(4)a) soit supprimé et remplacé par ce qui suit:

a) choisit la totalité de la proposition finale du syndicat ou de l'employeur relativement aux termes et conditions du projet de convention collective qui font toujours l'objet d'un différend.

THAT clause 82.3(8)(f) be struck out and the following substituted therefor:

(f) such other matters as in the discretion of the selector will assist the selector in deciding whether a collective agreement between the parties which is fair and reasonable in the circumstances is more likely to result from the final offer of the union, or the final offer of the employer.

IL EST PROPOSÉ QUE l'alinéa 82.3(8)f) soit supprimé et remplacé par ce qui suit:

f) les autres questions qui, à la discrétion de l'arbitre des propositions finales, l'alderont à décider si une convention collective entre les parties qui soit juste et raisonnable dans les circonstances résultera plus probablement de la proposition finale du syndicat ou de celle de l'employeur.

THAT Bill 61 be amended by adding thereto the following section immediately following section 82.3:

Section 95 of Act applies.
82.3.1(1) Section 95 applies with such modifications as the circumstances require to a hearing under subsection 82.3(1).

Powers of selector.
82.3.1(2) A selector has all the powers, privileges and rights of a commissioner appointed under Part V of The Manitoba Evidence Act.

Evidence.
82.3.1(3) A selector may receive and accept such evidence on oath or affirmation or otherwise as the selector deems proper whether the evidence is admissible in evidence in a court of law or not.

Secrecy of information.
82.3.1(4) Information obtained from documents or things produced to a selector shall not be made public.

Offence.
82.3.1(5) A person served with a summons pursuant to the powers of the selector under subsection (2) who fails to appear and give evidence on oath or affirmation or otherwise or to produce documents and things as required by the summons is guilty of an offence punishable on summary conviction.

Witness fees.
82.3.1(6) Every person, except a witness summoned at the request of a party, who is summoned by a selector and who duly attends as a witness, is entitled to an allowance for expenses determined in accordance with the scale for the time being in force with respect to witnesses in civil suits in the Court of Queen's Bench.

IL EST PROPOSÉ QUE le project de loi 61 soit modifié par l'insertion, aprés l'article 82.3, de ce qui suit:

Application de l'article 95
82.3.1(1) L'article 95 s'applique avec les adaptations de circonstance à l'audience visée au paragraphe 82.3(1).

Pouvoirs de l'arbitre des propositions finales
82.3.1(2) L'arbitre des propositions finales est investi des pouvoirs, des priviléges et des droits conférés à un commissaire nommé en vertu de la partie V de la Loi sur la preuve au Manitoba.

Preuve

82.3.1(3) L'arbitre des propositions finales peut recevoir et admettre les témoignages, faits notamment sous serment ou aprés une affirmation solennelle, qu'il juge appropriés, que ces témoignages solent admissibles ou non devant un tribunal judiciaire.

Caractére confidentiel des renseignements
82.3.1(4) Les renseignements tirés des documents et des choses produits devant l'arbitre des propositions finales ne peuvent être rendus publics.

Infraction
82.3.1(5) Commet une infraction punissable par voie de déclaration sommaire de culpabilité la personne qui, assignée en vertu des pouvoirs prévus au paragraphe (2), omet de comparaître et de témoigner sous serment ou aprés avoir fait une affirmation solennelle, ou de produire les documents et les choses mentionnés dans l'assignation.

Indemnités des témoins
82.3.1(6) La personne assignée à comparaître par l'arbitre des propositions finales et qui comparaît réguliérement a droit, sauf s'il s'agit d'un témoin assigné à la demande d'une des parties, à une indemnité pour ses frais calculée suivant le tarif en vigueur pour les témoins en matiére civile devant la Cour du Banc de la Reine.

THAT section 82.4 be struck out and the following substituted therefor:

Costs of selector.
82.4(1) The parties shall equally bear the fees and expenses of the selector and any allowance for expenses of witnesses summoned by the selector.

Costs.
82.4(2) Each party is responsible for the costs of preparing for, and presenting, its case at the hearing referred to in subsection 82.3(1), including the fees of its witnesses.

IL EST PROPOSÉ QUE l'article 82.4 soit supprimé et remplacé par ce qui suit:

Frais de l'arbitre des propositions finales
82.4(1) Les parties supportent également les honoraires et les frais de l'arbitre des propositions finales ainsi que les indemnités des témoins qu'il assigne.

Frais
82.4(2) Chacune des parties est responsable des frais rattachés à la préparation et à la présentation de son dossier à l'audience mentionnée au paragraphe 82.3(1), y compris les indemnités de ses témoins.

THAT subsection 82.5(3) be amended
(a) by deleting the word "may" in the second line thereof and substituting the word "shall"; and
(b) by deleting the word "valid" in the fourth line thereof.

IL EST PROPOSÉ QUE le paragraphe 82.5(3) soit modifié:
a) par la suppression des mots "peut décider" et leur remplacement par le mot "décide";
b) par la suppression du mot "valide" et son remplacement par les mots "en vigueur."

THAT clauses 82.6(1)(1) and (b) be struck out and the following subsection substituted therefor:
(a) if, prior to expiration of 48 hours following the conclusion of a hearing under subsection 82.3(1), or the waiving of a hearing under subsection 82.3(2), the union and the employer reach agreement on some of the terms and conditions of the proposed collective agreement which are in dispute between them, they shall notify the selector forthwith as to the terms and conditions on which agreement has been reached and the selector shall not consider the final offer of either party with respect to those terms and conditions in making a decision under subsection 82.3(4); and
(b) if, prior to the decision of the selector under subsection 82.3(4), the union and the employer reach agreement on all of the terms and conditions of the proposed collective agreement which are in dispute between them, they shall forthwith notify the selector thereof and the appointment of the selector thereupon terminates and the terms and conditions of the collective agreement between the parties shall be those negotiated through the process of collective bargaining.

IL EST PROPOSÉ QUE les alinéas 82.6(1)a) et b) soient supprimés et remplacés par ce qui suit:
a) dans les 48 heures qui suivent la conclusion de l'audience visée au paragraphe 82.3(1) ou la renonciation visée au paragraphe 82.3(2), le syndicat et l'employeur parviennent à s'entendre sur certains des termes et conditions du projet de convention collective qui font l'objet d'un différend entre eux, ils avisent immédiatement l'arbitre des propositions finales quant aux termes et conditions sur lesquels ils se sont entendus et celui-ci ne peut prendre en considération la proposition finale des parties relativement à ces termes et conditions en rendant la décision mentionée au paragraphe 82.3(4)
b) avant la décision mentionnée au paragraphe 82.3(4), le syndicat et l'employeur parviennent à s'entendre sur tous les termes et conditions du projet de convention collective qui font l'objet d'un différend entre eux, ils avisent immédiatement l'arbitre des propositions finales de leur entente; sur quoi, la nomination de celui-ci prend fin et les termes et conditions de la convention collective qui lie les parties sont ceux qui ont été négociés au cours de la négociation collective.

THAT the Bill be further amended by adding thereto the following subsection immediately after subsection 82.6(1):

Deemed Ratification.
82.6(1.1) Where the union and the employer reach agreement on some or all of the terms and conditions of a proposed collective agreement and notify the selector pursuant to clause 82.6(1)(a) or (b), the agreed terms for the purposes of subsection 82.6(1) and the agreed terms submitted to the selector pursuant to

subsection 82.2(6) are deemed to have been ratified by the employees in the unit.

IL EST PROPOSÉ QUE le project de loi soit en outre modifié par l'insertion, aprés le paragraphe 82.6(1), de ce qui suit:

Ratification réputée
82.6(1.1) Lorsque le syndicat et l'employeur parviennent à s'entendre sur tout ou partie des termes et conditions d'un project de convention collective et avisent l'arbitre des propositions finales conformément à l'alinéa 82.6(1)a) ou b), les termes convenus pour l'application du paragraphe 82.6(1) ainsi que les termes convenus et présentés à !'arbitre des propositions finales conformément à l'alinéa 82.2(6) sont réputés avoir été ratifiés par les employés compris dans l'unité;.

THAT the Bill be further amended by striking out clause 82.7(1)(b) and substituting the following:

(b) deemed under subsection 82.6(1.1) to have been ratified by the employees.

IL EST PROPOSÉ QUE le projet de loi soit en outre modifié par la suppression de l'alinéa 82.7(1)b) et son remplacement par ce qui suit:

b) réputés avoir été ratifiés par les employés en vertu du paragraphe 82.6(1.1);.

THAT subsection 82.7(2) be struck out and the following subsection substituted therefor:

Amendment of agreement.
82.7(2) A collective agreement containing the terms and conditions referred to in subsection (1) may be amended by the parties thereto by subsequent agreement in writing but no such agreement may reduce the term of the agreement determined pursuant to subsection 82.5(3).

IL EST PROPOSÉ QUE le paragraphe 82.7(2) soit supprimé et remplacé par ce qui suit:

Modification de la convention
82.7(2) La convention collective qui contient les termes et conditions mentionnés au paragraphe (1) peut être modifiée par les parties par convention écrite subséquente. Toutefois, une telle modification ne peut réduire la durée de la convention déterminée conformément au paragraphe 82.5(3).

MR. CHAIRMAN: Okay, pass.

HON. A. MACKLING: And that's section 2 then, section 2—pass, as amended?

MR. CHAIRMAN: Yes.

HON. A. MACKLING: Then section 3—pass, as amended.

MR. M. DOLIN: Pass, as amended.

HON. A. MACKLING: And section 4.

MR. M. DOLIN: Section 4—pass, as amended.

HON. A. MACKLING: Pass, as amended.

MR. M. DOLIN: Section 5—pass, as amended.

HON. A. MACKLING: Section 5—pass, as amended.

MR. M. DOLIN: Section 6—pass, as amended.

HON. A. MACKLING: Section 6—pass, as amended.

MR. M. DOLIN: Section 7, as amended.

HON. A. MACKLING: Section 7, as amended? No, no, there's no section 7. There's section 1 and section 2 and section 3 and section 4, and that's it. Right, Miles? No, forget that. It's section 2 of the bill, as amended. The amendments deal with section 2.

MR. M. DOLIN: Section 3, as amended. Section 4, as amended.

HON. A. MACKLING: No, section 3 isn't amended. Section 3 and section 4. Okay? Pass.

Now we can have a general discussion on the Title.

MR. CHAIRMAN: Title—pass. Preamble?

MR. M. DOLIN: There is no preamble.

Okay, general discussion?

MR. G. MERCIER: I would like to ask the Minister a couple of questions here. The new section 82.1(10) reads, "Where, in the opinion of the board, there is reason to include persons in or exclude persons from the bargaining unit affected by the strike, the board may do so."

The previous section read, "Where in the opinion of the board there are compelling reasons to expand or reduce the voting constituency . . . the board may expand or reduce . . ."

The first one was vague enough, this is even more vague. The reasons don't even have to be compelling any more. Actually even if they were compelling, I still don't understand what kind of a legislative guideline that produces.

HON. A. MACKLING: Perhaps Mr. Pepper can join us at the table because some of this does involve a decision as to appropriateness of words that are subject to interpretation.

One of the amendments deletes the words "voting constituency," because that's an awkward expression. Then one has to determine what the voting constituency is and then the amendment, as the Honourable Member for St. Norbert has pointed out, drops the expression "compelling reason." Compelling is an adjective that again would have to be weighed and determined, so it makes it much more concise and doesn't load the section with a lot of words that are problematical of interpretation.

What it does provides in respect to . . .

MR. CHAIRMAN: A brief is being passed around, which was submitted the other day.

HON. A. MACKLING: What it does provides for is a determination where there may be workers who have,

subsequent to the strike or the lockout, found permanent employment elsewhere. Although, by law, ordinarily they would be considered to be still part of the bargaining unit, if they had no intention of returning to their place of employment, it would be inappropriate for them to be included in the voting body. It's to provide the board with that kind of flexibility that the subsection is there.

MR. G. MERCIER: Mr. Chairman, I appreciate what the Minister just said but, the way this section is worded, the board has flexibility to do whatever it wants to do and implement whatever bias it may have. If the Minister's concern is strictly about employees who may no longer be returning, then why don't we just specifically say that?

HON. A. MACKLING: It's not strictly that. Perhaps Miles, do you want to review the . . .

MR. M. PEPPER: -(inaudible)-

HON. A. MACKLING: Yes, I've indicated that one, but weren't there some others as well? Isn't this essentially the same wording that is used in respect to other provisions of the act where a vote has been taken? In respect to a strike vote, for example? Well, maybe is there a parallel?

This subsection follows directly 82.1(9) which spells out again the circumstances in respect to the vote. If you read them together, you see the basis on which the board provides for the variation.

MR. G. MERCIER: But there's no principle annunciated in that subsection (10) as to on what basis the board would exclude or include persons. Can they do it on the basis of their haircut or . . .

HON. A. MACKLING: Subsection (b) provides that, "who, in the opinion of the board, have a continuing interest in the outcome of the dispute." If they are no longer interested in returning to the place of employment, they have no continuity of interest.

As I say, the two subsections have to be read together.- (Interjection)- Yes, there is a reference at the bottom of 82.1(9) to subsection (10).

MR. G. MERCIER: On what basis would you expand the number of persons in the bargaining unit?

HON. A. MACKLING: While I'm waiting to provide that answer, let me indicate that there may be a concern on the part of some as to whether or not people have a continuing interest in returning to the job site. Some workers take part-time jobs and yet even, though they have jobs, they want to go back to their place of employment and the board would confirm their continuing interest, and therefore their eligibility to vote.

Where the board finds that they have found permanent employment and no longer have any interest, they would be excluded. Now you're asking about expansion . . .

MR. M. PEPPER: The problem in subsection (9) is you have to meet both the requirements of (a) and (b) to be included in the voting. Subsection (10) allows you, if you were in the unit, but you found employment elsewhere and you might be thought to no longer have a continuing interest in the outcome of the dispute to be included in the vote, because you may wish to come back to work.

MR. G. MERCIER: On another matter, 82.2(2), "the board shall appoint a selector from a list of persons maintained by the board for that purpose." How will that list of selectors be developed?

HON. A. MACKLING: Where the parties have not agreed upon a selector, they will look to the Labour Board and the Labour Board will develop a list of selectors, as they have currently developed a list of arbitrators.

What the Labour Board has done in respect to the development of the list of arbitrators is refer to both management representation and labour representation, and ask them for names of people whom they would recommend to be suitable arbitrators. Within the labour relations field, both management and labour have a pretty thorough knowledge of those people who have experience in the field and appear to be suitable persons to be recommended. A list is being developed. I don't know how long that list has been in existence. Perhaps staff could confirm that. Any idea how long that -(Interjection)-

The list of arbitrators has been in existence for two or three years, with the Labour Board.

MR. G. MERCIER: What role will the Minister or his department play in developing that list?

HON. A. MACKLING: No direct role. If any, it will be the Labour Board.

MR. G. MERCIER: Any indirect role?

HON. A. MACKLING: Well, I don't contemplate any indirect role, other than I suppose if somebody writes to me. I'm not saying the honourable member would write to me, but someone would write to me and say, I would like to be considered on an arbitration panel list. I would forward such a name to the Labour Board certainly, if someone had an interest. I have no comment on individuals.

MR. G. MERCIER: Is the Minister saying then that the appointment of a selector or people who are on the list of selectors would have to be approved by both labour and management? There would have to be a consensus from both sides?

HON. A. MACKLING: I think the mechanism now is that a Labour Board panel or the Labour Board at a panelled meeting review lists of names and confirm who's on the panel.

The exact mechanism, I haven't checked on, but I'm satisfied that the Labour Board representative of both parties have addressed the matter and confirmed those people.

MR. G. MERCIER: I wonder if the Minister can give a commitment that people who are on the list of

selectors will not go on the list unless they're approved by both labour and management sides of the Labour Board; that no person would be appointed a selector when he or she is only approved by one side, either labour or management.

HON. A. MACKLING: Well, I don't know if that is going to create any difficulties. The present act provides for consultation and the section is 105, subsection 2, and I'll read it: ". . . after such consultation with representatives of employers and employees as it considers necessary, the Board . . . "- and first the Board, that's the Labour Board - ". . . may establish and maintain a list of persons who have in its opinion qualities and experience which make them suitable persons to act as arbitrators or chairpersons of arbitration boards, indicating their willingness to so act and the board may make the list available to parties to collective bargaining disputes."

That's the kind of mechanism I see being employed again.

MR. G. MERCIER: Mr. Chairman, we're dealing with a piece of legislation where a union can force management to go through this process of final offer selection.

Surely if there should be some assurance that the people who would then make the final decision, namely the selector, would be persons who have been at least jointly approved by both labour and management, and not just by labour. Obviously that selector will have a great deal of power, and surely the least that the employer can expect when he's forced into final offer selection when they may not want it is the person who's going to make the decision is someone on whom there's a consensus from management and labour, and will not be a person who may just be approved by the labour side.

HON. A. MACKLING: Well, the member is concerned about the composition of the panels, and I'm sure that the board is going to address that question. The board, in all likelihood, as I can understand how the board would function on this, will have a meeting or meetings, at which time they will discuss the appropriateness of given names that have come forward from the consultations with both sides of the labour relations equation, management and the labour side, and the board will confirm persons on that list.

When the board confirms, that will be indicative of both labour and management consideration of those people, because the board is equally made up of labour and management, with the exception of the chairperson. The chairperson, from time to time I guess, does have to make the decision if there's a split between a three-person panel of the board but, most frequently, it's unanimous on the operations of the board. But I don't think we'd need to put a strait-jacket on the exact mechanics; those people will be approved by the board.

MR. CHAIRMAN: Anything further?

Mr. McCrae.

MR. J. McCRAE: I'd like to ask the Minister a question I put to one of the presenters at the last meeting of this committee, and that has to do with clause 82.3(8)(e) in the bill, and I don't think it's been amended.

HON. A. MACKLING: On what page, Jim?

MR. J. McCRAE: On page 8 of the bill as it was originally, about the middle of the page: "(e) where, in the opinion of the selector, the employer has provided sufficient information in respect thereof, the employer's ability to pay;" that would be one of the criteria that the selector takes into account.

I'll put the question to the Minister that I put to Mr. Gardner earlier on, and that has to do with public sector employers. What criteria would the selector use to judge the ability to pay of a public sector employer?

HON. A. MACKLING: These factors are factors that the selectors will look at, and it's not intended or expected in every instance the selector will be in a position to look at every one of the factors in every case.

In respect to the public sector, it is very unlikely, as the honourable member indicates, that this would be a factor they'd look at. In the private sector, it is not generally likely that there will be enough in-depth information provided to be the basis of decision-making on the part of the selector.

It may be, in some instances, where there is a very difficult labour/management dispute that management may argue that any increase or the specific increase that's being asked for by labour would jeopardize the viability of the operation. If that argument is to be given any weight by the selector, the management may say, to confirm that, here is information that should satisfy you as to the strength of the argument we're making. And where management is prepared to give sufficient supporting information to that argument, then the selector could give greater weight to it and that's a factor. But in public disputes, it is not likely that would be a factor and I don't think it would be argued by the public sector, except on a more general basis; that is, the other factors of general economic conditions, and so on.

You see, these factors are not exclusive. As the honourable member will note, a section of clause (f), it says, "such other matters." In a public dispute, it could well be that a government body would argue inability to raise revenue, not that they haven't got the capacity to pay because that argument may not be acceptable, but the difficulty that the government body would have in providing additional revenue with which to pay.

MR. J. McCRAE: Well, Mr. Chairman, the Minister talks about the inability of a public sector employer to raise the revenue to cover a demand made by a bargaining agent for, let's say, this year a 6 percent increase, which would be a little above the average, I would think.

Inability to raise revenue just doesn't happen when we have taxing authority at the various levels of government, so to say that it wouldn't be argued, I don't think that makes sense. Any responsible taxing authority dealing with its employees and taking a matter before a selector would, without a doubt, be arguing not necessarily the ability but the propriety of raising

taxes among local taxpayers or school ratepayers, for example, to pay a settlement. I can't accept the Minister's argument that matter would not be argued.

Surely any responsible politician, whose servants or employees are doing the negotiating on their behalf, would instruct such a negotiator to raise such issues with the selector.

HON. A. MACKLING: I really don't want to engage in speculative research, if you could call it that, looking at ways in which these factors may or may not be significant to the selector. They're there as optional factors that a given selector is going to look at in the appropriate circumstances.

I just gave you an example of where a government may argue that it's difficult, in their circumstances, to provide for the kind of additional revenue that may be required. I, quite frankly, think of instances where you may have a local government district, you may have a municipal government and times are very difficult municipal tax-wise, and they may argue that they just can't pass on that kind of a mill rate increase to the taxpayers. But I'm merely speculating as to a time when these factors might be taken into consideration.

MR. J. McCRAE: Well, obviously, Mr. Chairman, there are a number of parts of this legislation that I think are bad and the Minister isn't surprised at that, so some of these things we could argue all night long, but we won't.

Another issue is raised on page 9 of the amendments, the proposed section 82.3.1(3). Mr. Chairman, the decision of the selector will be final, yet the selector can come to his decision on the basis of evidence, which he or she deems proper, whether the evidence is admissible in a court of law or not.

So the selector can decide to accept hearsay evidence or evidence that wouldn't even be relevant, but can decide, nonetheless, to hear that evidence; can make his decision based on that, which is final, which doesn't require any ratification. There's nowhere to whom either side can go to appeal a decision by a selector, a decision which could very well be made on the basis of irrelevant or hearsay evidence.

I think this is a very weak point in this legislation, among many other weak ones. Would the Minister comment on that?

HON. A. MACKLING: Well, the honourable member may have legitimate concerns about the language of this section. I'm advised that arbitrators commonly have this kind of flexibility, and it is to prevent the unnecessary intrusion or involvement of the courts in interpreting the decision-making of a selector.

Remember that the selector does not develop a compromise solution. He takes either one of the two final offers that have been placed before he or she. It's to provide the flexibility of the evidence, taking and hearing, that the wording is there.

MR. J. McCRAE: Dealing with page 13 of the Minister's amendments, the "Deemed Ratification" section, this section appears to allow for a situation where the workers have voted for the process of final offer selection, then the bargaining agent and the employer can get together - as the Minister encourages from start to finish in this whole process - so they can get together, after that vote has been held by the workers, and resolve all outstanding differences, terms and conditions of a collective agreement. At that point, I take it, that agreement is referred to the selector or to the board for - I don't know - approval, I guess you'd call it. In any event there's no ratification required by the workers after the matter has been negotiated.

So what we have is the workers have voted for final offer selection, but that's not what they got. They got a negotiated settlement, which need not be brought back to them. Does the Minister have any comment on that scenario?

HON. A. MACKLING: This form of dispute resolution, while not the same as arbitration, in order for it to function, does have a number of the like provisions of arbitration.

If the bargaining unit had voted for arbitration, then historically when the arbitration hearing has been concluded and the arbiter's made his decision, it is binding on the bargaining unit.

So in this instance, when the bargaining unit approves a final offer selection, then those items that had been earlier agreed upon are deemed to have been ratified and any agreement - and the workers agree - that may be reached by the negotiators and management will be binding on them. It's analagous to that kind of commitment that the workers have to give when they go an arbitration route.

MR. J. McCRAE: Is there any requirement, Mr. Chairman, that the workers be made to understand or be informed that, after they have voted for final offer selection, that need not necessarily be the route that will be taken in the final analysis?

What I'm wondering is: Will the workers who vote on final offer selection, what is there to make them understand that this may be the result, what we see in this particular section?

HON. A. MACKLING: Well, as with every other area of innovation, I think it will be necessary for both our department and of course the Labour Board to make it clear to the parties and the workers in the bargaining unit what the process involves and how the decisions made by parties will affect them.

There will be the necessity to provide for a communication to the workers in respect to the process.

MR. J. McCRAE: On the matter of the conducting of the vote, I don't just have that matter, that section in front of me right now, but is there any mechanism outlined in The Labour Act for how the vote should be taken?

It's my understanding that the vote doesn't have to be the majority of the employees in the bargaining unit, just the majority of the employees voting. So is there any mechanism to let every employee in the unit know that there's a vote coming and when it is and where it is, so that everyone will have equal opportunity to exercise their right in that situation?

Mr. Chairman, I think Legislative Counsel has pointed out to me the section of The Labour Act which deals with that.

HON. A. MACKLING: Yes, I was just looking at it now. Yes, there's a reasonable notice provision, 81.3 says: ". . . the bargaining agent shall give the employees in the unit a reasonable notice of a strike vote and a reasonable opportunity to cast a ballot and strike vote." So that puts the requirement on them to provide reasonable notice.

MR. J. McCRAE: Mr. Chairman, dealing with the concept that one side in a dispute has a veto when it comes to referring matters to a selector and the other side does not, can the Minister tell us once again just what it is that's fair about such a situation?

HON. A. MACKLING: Well, let me indicate that I think that every fair-minded person believes that both management and the union want to see an agreement consummated.

There may be differences of opinion as to the length of an agreement, certainly in respect to terms in an agreement, but both parties want to see agreement and they want to resolve their dispute amicably.

This mechanism, of course, is just a mechanism that the parties can look to as an alternative to the existing mechanisms that are provided for in labour law and in the act.

In the ordinary course of collective bargaining, any agreement that union and management or the employer - I should use the term employer rather than management - the union bargaining group and the employer, any agreement they arrive at is not binding on the workers unless the workers have approved of it, and that's the ordinary course. And it is not uncommon for workers to have told the bargaining team or bargaining agent to go back to the bargaining table, that they're not satisfied.

It is not also uncommon for a bargaining agent to indicate to workers that the management offers aren't acceptable and they believe that the workers should give the bargaining team, the bargaining agent, a mandate for a strike. From time to time, workers can disagree and not give a strike mandate.

The point I'm making, it is ultimately in any equation the workers who determine whether or not they're prepared to work for the terms of the contract that an employer has offered, and of course that's the case whether there are workers who are not organized.

If an employer says to a worker, this is what I'm prepared to pay you, the worker either agrees to accept that pay and work or disagrees. There may be no formality of a written contract or there may be formality of a written contract. But the employee or employees, in every instance, approve or disapprove of that arrangement.

Now what is involved here is approval of a mechanism which will be binding - sure it will be binding on management, but it will be binding on employees that, once they make this decision, then they are bound by the result. There's no further ratification necessary, they are bound.

So I don't think that it's inconsistent with the terms or the circumstances of worker approval that the workers in this instance have to approve before the mechanism can be put into place and operated on.

MR. J. McCRAE: Mr. Chairman, just before we wrap this up, unless my colleagues have further questions, I would like to point out that a presentation did arrive just as we were getting together here this evening, a presentation from the Manitoba Fashion Institute Incorporated.

I haven't been able to read the whole presentation through as thoroughly as I would like, but I would like to adopt some comments in this presentation as my own just as we wind this stage of the passage of this bill down, and I'll read from page 2 of the Manitoba Fashion Institute presentation.

"When such a bill comes to the committee stage, critics of the bill will present arguments on a clause-by-clause basis. They will inform the committee why they object to certain clauses, why other clauses could be improved by amendments, and why other clauses seem reasonable and fair.

"However, the entire concept of this bill is so misguided and so lacking in rationale and fairness that even the group who are perceived to be the beneficiaries are in violent disagreement among themselves as to the desirability of this type of legislation.

"There is certainly no doubt that not one firm in the private sector perceives this bill as benefitting anyone or containing any redeeming features which might balance its potential for disruption."

I'll stop there, Mr. Chairman, and adopt those words as my own. I agree wholeheartedly. In view of the briefing I had earlier today, there was no need to deal with the technical aspects of the amendments tonight. But as I have said, there's really not much point of we, in the Opposition, going through clause-by-clause and attempting to amend every single clause in a bill that is bad ab initio.

The bill is bad law. It's bad labour relations law. I hope it never sees the light of day. But I couldn't help but repeat those thoughts put down on paper by the Manitoba Fashion Institute, because those words explain as much as anything why there was no need for us to go through in any great detail, clause-by-clause, in a bill that we are totally opposed to right from the beginning.

MR. M. DOLIN: Is the member finished? Well, I would move the bill be reported with corrections and the punctuation errors as pointed out by the Legislative Counsel.

There are some errors and commas amd whatnot which have been pointed out.

HON. A. MACKLING: Is an apostrophe missing?

MR. CHAIRMAN: Could you hold that?

Mr. Mercier.

MR. G. MERCIER: Mr. Chairman, I want to ask the Minister a question, and it seems to me that a good Labour Minister will only proceed on matters on which there's at least a general consensus between labour and management, in order to produce and maintain healthy labour relations in our province.

I wonder - and I ask the Minister - what justification does he have in proceeding with this bill when it is totally opposed by management? I've not heard anyone from management sector anywhere say anything good about this legislation and, in addition to that, we have

heard from the list of persons making representations from CUPE, from the University of Manitoba, from the Nurses' Association, the Confederation of Canadian Unions, the machinists, the International Ladies Garment Workers Union, and so many others totally opposed to this legislation.

How can the Minister and the government - and perhaps the Cabinet is forcing the Minister to go ahead with this bill, I don't know - but how can the government - and that maybe being the case, I'll put the onus on the government. How can the government be asking this Legislature to pass this bill in the face of this overwhelming opposition to it? How can the public interest be served by passing a bill like this in such a delicate field which is not acceptable, not just on one side but certainly to one side and a significant number of people on the other side?

HON. A. MACKLING: Well, I would just like to indicate that government has a responsibility, not only to respond to the public interest as the public identifies to it, but also to respond to the greater public interest by looking at innovative ways in which the public interest can be served; by developing alternative dispute resolution mechanisms - this is one - by showing leadership in providing for a dispute resolution mechanism which, I think, is eminently acceptable.

Now the fact that you have groups who disagree or have serious reservations does not trouble me personally or does not trouble my government. We realize and accept, as a fact of life, that there always will be people who are very nervous and concerned about change. It's a matter of public record - it's not a matter of speculation - that every time any government, certainly any time NDP governments in this province embark on change to The Labour Relations Act, there was no support for those initiatives from the management sector. There was a universality of criticism, concerns that this would undermine the economic well-being of Manitoba. Those dark clouds did not occur, it did not rain devastation on Manitoba.

The honourable member recalls representation from the Winnipeg Chamber of Commerce before this committee some evenings ago, where not once, but twice, there was an articulate confirmation that the labour relations climate of this province was good. Those statements were made despite the fact that, up until fairly recently, the organization for which that representer represents had been consistently indicating that our labour relations climate was a bad one in Manitoba.

Now I think that we are consistent. We are consistent with our concern in order to have a good labour relations climate, in order to have a good viable economy where people have jobs, where we have initiative, there have to be good working relationships. There have to be safe workplaces. There have to be workplaces where workers feel that their rights are recognized, and that is why we have been very resolute in our concerns that workers' rights to collectively bargain be protected and enhanced, and that we fashion labour relations through our labour acts in a manner to ensure that labour has the opportunity, workers have the opportunity to have a harmonious workplace and that their rights are provided for in our labour legislation.

We are concerned as a modern government, seeing the social and economic trauma that strike and lockout bring, not to provide for the elimination or the frustration of the rights in respect to strike, and we recognize the legitimate concern of workers and their organizations who say they're concerned about their right to strike. This legislation does not take away that right. But what it does do for the workers is provide an alternative mechanism where the workers deem it is in their interests and they believe that, rather than strike, they would want to see an attempt made utilizing an alternative dispute mechanism, which this final offer selection will provide.

That's the rationale for the development of this legislation, and I'm convinced that it's good legislation.

MR. G. MERCIER: Mr. Chairman, the Minister refers to this as being an innovative concept. Where it is being used in Manitoba so far, as I understand it, it has been rejected at the University of Manitoba and with Westfair Foods where it was part of their agreement.

A few days ago, the Winnipeg Free Press carried an article on the number of jurisdictions in the United States where this whole concept has been rejected. Can the Minister indicate a jurisdiction where the concept has been accepted?

HON. A. MACKLING: The concept which we are bringing forward does not find an exact parallel anywhere else, inasmuch as we are not taking away the alternative right to strike. The workers can refuse a final offer selection and retain their strike option.

It's not that they are locked in, irrevocably, to a system that prevents their right to strike. Most of the applications of final offer selection have not provided for alternative mechanisms for the workers to choose from. Where final offer selection has been used, there has been a mixed assessment. There are some who believe that it has worked exceptionally well. There are some who you speak to at the University of Manitoba who believe it worked very wel; others disagree.

One thing that appears clear is that this form of alternative dispute mechanism, unlike interest arbitration, forces the parties to continue to try and fashion their own agreement. In other words, it enhances rather than detracts from collective bargaining, yet provides a greater inducement for the parties to come to their own agreement, narrowing the differences that exist between them. It is necessary that they do that. Otherwise, the choice that a selector makes would certainly be for the most reasonable proposal and it induces the parties to fashion reasonable offers.

Now, we believe that is a very positive feature to this dispute resolution mechanism.

MR. G. MERCIER: So, Mr. Chairman, just to sum up, the Minister's and the government's innovative concept, which is totally rejected by management and rejected by a significant segment of labour, has never been tried anywhere else.

HON. A. MACKLING: I don't believe the model that we are providing has been tried by anyone else, because this does provide, as I've said, for no removal of the alternative remedy of strike. It does provide for

mechanisms again to ensure a reduction, an opportunity to reduce the issues that remain outstanding, as the member will recall, the provisions of the selector not just having a hearing and making a decision. There are time sequences provided in the legislation, all of which are there to engender a focus on collective bargaining and the parties coming to a resolution of their dispute themselves.

MR. J. McCRAE: Mr. Chairman, just before we finish, once again, the Minister has referred to the labour relations climate of this province, and it's true that a number of the presenters, on both the labour and on the management side, came before our committee and echoed the Minister's words that we do enjoy a good labour relations climate in Manitoba.

The Minister and his colleagues often like to take the credit for that good relations climate. The fact is such has been the case in this province traditionally, and it has a lot more to do with the inherent reasonable nature of Manitobans on both the labour side and on the management side over many, many years than it has to do, for instance, with first contract legislation.

In the case of first contract legislation, of 26 applications made in this province for first contracts, seven have resulted in the decertification of the bargaining agent. Successor rights is another one. The Government of Manitoba itself can't live with its own law when it comes to successor rights. When it came time to unload Flyer Industries, this government couldn't even live with its own successor rights legislation and allowed the collective agreement in that situation to be changed.

We know from the experience at the Spring Hill Hog Plant, from the experience at the Sooter Photo Company in Winnipeg, we know that the certification provisions of the legislation are defective. So the members of this government can take little credit for a good labour relations climate in this province, but should thank their lucky stars that Manitobans are far more reasonable than they are.

HON. A. MACKLING: Well I really couldn't accept the honourable members's synopsis of the rationale for what objective opinion has indicated to be a very good labour relations climate in Manitoba.

It's a good climate because we've had NDP Governments in this province who have risked the displeasure of the "nay sayers" and the "doom sayers," and have enacted legislation which has provided for fair collective bargaining, fair certification of bargaining units.

MR. J. McCRAE: Hogwash.

HON. A. MACKLING: The member uses the word "hogwash" and, of course, he's been associating his concerns with a hog plant, so maybe he welcomes the use of that word, but the fact is that our certification processes are fair and reasonable. In respect to our first contract legislation, we don't know how many times we've successfully concluded agreements simply because the legislation was there.

It's my expectation that there will be agreements arrived at simply because the parties were prepared to consider final offer selection.- (Interjection)- No, when the parties realized that the workers are prepared to accept final offer selection, I think that will be another factor to provide for a basis for collective bargaining.

I could go on at length, but I disagree that our successor legislation works a hardship. Our successor legislation finds its parallel in other jurisdictions everywhere. The successor legislation, which the Honourable Leader of the Opposition complained about vociferously in the Legislature, was the exact legislation when he was in government, maintained on the books, and which was the subject of interpretation by the courts, the same legislation which he attacked.

So I believe that the honourable member has a point of view in respect to our labour relations. I disagree with it. I believe that objective people will say that the legislation which we passed in 1972, the major legislation we passed in 1984, has worked and worked well in the interests of the public and that is what we're here for. We believe this legislation will work well in the interests of the public.

MR. M. DOLIN: I move Bill 61 be reported, as amended, with punctuation errors as corrected.

MR. CHAIRMAN: It has been moved that Bill 61 be reported as amended with punctuation errors corrected—pass.

All those in favour, aye; opposed, nay.- (Interjection)-

A COUNTED VOTE was taken, the result being as follows:

CLERK OF COMMITTEES, Ms. S. Clive: Yeas, 5; Nays, 4.

MR. CHAIRMAN: Carried.

Bill be reported.

Committee rise.

COMMITTEE ROSE AT: 9:25 p.m.