LEGISLATIVE ASSEMBLY OF MANITOBA
THE STANDING COMMITTEE ON INDUSTRIAL RELATIONS
Thursday, February 22, 1990

TIME — 8 p.m.

LOCATION — Winnipeg, Manitoba

CHAIRMAN — Mr. Parker Burrell (Swan River)

ATTENDANCE - 9 — QUORUM - 6

Members of the Committee present:

Hon. Mrs. Hammond, Hon. Messrs. Enns, Driedger (Emerson), Ducharme

Messrs. Ashton, Burrell, Ms. Gray, Messrs. Harapiak, Patterson

WITNESSES:

Mr. Grant Mitchell, Private Citizen

Mr. Ross Martin, Brandon and District Labour Council

Mr. Peter Olfert, Manitoba Government Employees' Association

Mr. David Newman, Manitoba Chamber of Commerce

Mr. Frank Goldspink, Manitoba Communist Party

Mr. Bill Gardner Jr., Winnipeg Chamber of Commerce

APPEARING:

Mr. Kevin Lamoureux (Member for Inkster)

MATTERS UNDER DISCUSSION:

Bill No. 31 — The Labour Relations Amendment Act

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Clerk of Committees (Ms. Patricia Chaychuk-Fitzpatrick): Will the Standing Committee on Industrial Relations please come to order? I have before me the resignation of the Chairperson; therefore this evening we must elect a new Chairperson for the Standing Committee on Industrial Relations. Are there any nominations for the position?

Mr. Allan Patterson (Radisson): I move the Member for Swan River, Mr. Burrell.

Madam Clerk: Mr. Burrell has been nominated. Are there any further nominations? If not, Mr. Burrell you are elected Chairperson.

Mr. Chairman: The Standing Committee on Industrial Relations will, this evening, resume public presentations to Bill No. 31. Prior to hearing witnesses this evening, did the committee wish to set a time for adjournment, so that the public presenters will know how late we will be sitting this evening? Well, it is to the will of the committee, but what they want to do is so the people waiting to speak—what is the will of the committee? Mr. Ashton.

Mr. Steve Ashton (Thompson): I am not sure we want to set an exact time because it is obvious there are people who cannot be back again or people who are halfway through their presentation. We would certainly want to hear them out, but I would hope that we would adjourn prior to midnight, so that we are not keeping people waiting here too long.

An Honourable Member: Let us look again at eleven o'clock.

Mr. Chairman: Well, fine, we can play it by ear, if that is the will of the committee, that is fine.

We shall now resume public presentations to Bill No. 31. The first presenter that we will hear from this evening is Mr. Grant Mitchell. I would like to remind members of the public that if they want to know if they are registered to speak to the Bill, or if they want to know what number they are on the list of presenters, the list of presenters is posted outside the committee room. If there are any members of the public who are not on the list and wish to give a presentation to the committee, they can talk to the Clerk of Committees, and she will see that they are included on the list. Mr. Grant Mitchell.- (interjection)- Mr. Ashton.

Mr. Ashton: At this morning's committee meeting the chairman asked if there was anybody from out of town who had time concerns. I was just wondering, I am not suggesting we not hear Mr. Mitchell now, but perhaps if you could make that announcement again, so that anybody who is from out of town or else has other time constraints to prevent them from coming back, can get on the list tonight and make their presentation tonight.

* (2005)

Mr. Chairman: We already have some names from out-of-town presenters and we will certainly accommodate them. Mr. Grant Mitchell.

Mr. Grant Mitchell (Private Citizen): Mr. Chairman, Madam Minister and Honourable Members, I appreciate the opportunity to address you tonight. I should first announce that the Jets are leading 2-0 early in the second period, 3-0, Mr. Newman informs me. I welcome the opportunity to speak on Bill No. 31 and on the subject of interest arbitration altogether. I have prepared a brief which I hope has been circulated to the Members. As indicated, I am a labour lawyer here in the city with Taylor, McCaffrey, Chapman, Sigurdson law firm and I am a sessional lecturer—have been for the last seven

years—at the Faculty of Law at the University of Manitoba, but I would like to warn you that the views that I express tonight are entirely my own and should not be attributed to my firm, my clients, or to the Faculty of Law.

The brief that I have prepared essentially sets out some positions and principles and also some anecdotes of experience with the legislation. I am not proposing any magic moves that are going to solve everyone's problems, but I think it might be useful to put some history and some context on the legislation and to give some indication of some experience with it.

The Bill was brought in, perhaps coincidentally, the day after the Westfair Foods strike began in 1987. It was right in the middle of a consultative process between labour and management groups within the community who were attempting to put forward some proposals and suggestions as to how a final offer selection or interest arbitration Bill might be framed.

That process was just suddenly cut off and the legislation was introduced at that point in time. The division within the Federation of Labour became immediately and acutely evident after the Bill was introduced. Many unions filed briefs in opposition to the Bill, but employers in the province seemed to be united against it.

The factors that I have set out in the brief in terms of why people seem to oppose it and why others favoured it, I have highlighted a few in point form.

The unions who were opposed, their first principle was they believed that whether the employees would or would not choose a process in collective bargaining is normally left up to the union to control. The idea of having this process that their employer could make an application for was almost like legislating an unfair labour practice, that an employer could get access to the employees in this fashion if only on the process and not the substance of the negotiations.

The second major complaint among the unions was that what they really wanted was anti-scab legislation, that is that an employer could not continue to operate during a strike or lockout and that this was a poor substitute for that kind of legislation.

The employers had a number of complaints. I am saying on page 1 that these complaints were primarily from their point of view, that the process was slanted heavily in favour of the union, that FOS would be a protection for weak unions. If a union did not have enough support to sustain its position during a strike then it would give a union an opportunity to protect its own position even against a move by another union to take them over, because it would give them the security of a new contract.

Thirdly, providing for an employee vote on the use of the process—and I am sure you are all appreciative that that is the process—effectively gave the union a veto on the use of the process.

The time limits or "windows" that were established for the use of the legislation worked against the interests of collective bargaining. The first window expired 30 days before the expiry of the collective agreement. Rarely does bargaining even begin at that point. So what happened was that when applications were brought within that time frame bargaining had not even begun, and the Labour Board found itself throwing out final offer selection applications, because there was not yet a dispute between the parties. They had not even exchanged proposals when, 30 days before the agreement, expiry had come. So that window was obviously inappropriate.

* (2010)

The other window—which I will speak about in a moment—60 days into a strike, was probably equally ill-advised and created another problem, and that was you had to have a work stoppage of 60 days before you would had further access to the process. It also became kind of a fall-back or reduced risk position for the union in the event of an unsuccessful strike. So rather than reducing strikes with the 60-day window it would reduce the risk in calling a strike and therefore would encourage strikes. You cannot tell from the statistics that occurred in the last three years whether in fact there have been more strikes as a result of final offer selection.

The whole principle of the strike-lockout remedy in collective bargaining is that it is such a dire result for both sides that each side will expose its true position rather than take a strike or lockout to occur. What this legislation does is, you do not have to expose your true position. You can just take your chances in the arbitration process instead of exposing your true position. What happens, and the history if you study the literature concerning interest arbitration, is that where parties have access to interest arbitration they tend to do the opposite, not to disclose their real position but to protect it and give themselves something to give away during the litigation process. So that was another criticism.

The concern also was that the same Government that had introduced the legislation would be the one appointing the selectors and that therefore there would be an imbalance or partiality in the process. The criteria for selection which are set out in the legislation in Section 94.3(8) were heavily weighted in favour of the union, at least from the point of view of employers. The introduction of FOS would in many circumstances create or aggravate an imbalance in bargaining power rather than correct it. So those are the type of criticisms that employers had for the legislation.

The unions that opposed the legislation and employers who opposed it agreed on some points. There was not a problem with work stoppages in Manitoba. Statistically, comparative with the rest of Canada, Manitoba enjoyed very good labour relations, very few work stoppages, and why were you going to tinker with something that was not broken? Second, and everyone who was opposed to this uniformly raised this objection, it unduly interfered with the process of free collective bargaining. I will get into some of the principles involved there a little later.

Without identified need, FOS would offend the principle that the best and most effective agreement

is one made and ratified by the parties themselves rather than one imposed upon them. It is another principle of something that is missing from FOS. The agreement that the employees end up with, and if you want to look at it from the point of view of the employees, is one that they never ratify. The union puts forward the position. The normal process of collective bargaining is, there can be no agreement without ratification by the employees. They have to approve it. They have to live with it so they should have to approve it. Under final offer selection, they do not approve it. They never get a chance to ratify it. The selector makes a choice, and they are stuck. There is no process even for a ratification of the union's position in final offer selection. That is left up to the union.

Certainly, the usual complaint about legal processes as opposed to marketplace involvement, it would add cost, technicality and delay to the bargaining process. I almost hesitate to say that since it runs counter to my ability to make a living, but in fact those are probably legitimate complaints about any form of interest arbitration.

Collective bargaining issues were too important to be gambled away in a process which, with its "all to one side or all to the other" approach, resembled flipping a coin. Conventional interest arbitration, the arbitrator has the right to choose what he or she thinks is the fair agreement. This process, you just choose the one you dislike the least, as came out in the Unicity Taxi case as an example. A collective agreement which could be imposed upon the employees in a bargaining unit which would never have to be ratified or agreed to, I have mentioned that point already, and a complaint that this joint consultative process ought to have been concluded before FOS became law.

Now I would like to talk about some of the things that were considered to be positive about FOS. Those who favour the introduction of the legislation said that anything that would substitute for strikes would be an improvement. There is much to be said for that position.

FOS, as opposed to conventional interest arbitration, would be so risky that if used by either party it would compel the party to expose its true or ultimate position just the way a strike or lockout remedy does, so that it would be an arbitration process which would simulate the effect of the strike/lockout remedy.

* (2015)

The use of coercive comparisons, that is, under the criteria for deciding whose proposal you have to select, the selector is guided to look at what similar employers are offering in the marketplace. That has a kind of equitable effect of bringing everyone who does similar types of work to a similar level, and there seems to be some virtue in that.

Making the first window so early in the process would get the bargaining under way faster. Instead of waiting, say, we have been without a contract for eight months or whatever it is, try to get the bargaining resolved before the agreement expires. That seemed to be a positive step from those who viewed it that way. Having a window, again, 60 days after a strike or lockout would give the parties a chance to resolve a dispute which seemed to be destined to remain unresolved maybe forever, to get them out of entrenched positions and to resolve the impasse and to prevent the adverse consequences of a poorly chosen strike from being so dire to employees and to unions.

FOS had been tried successfully in some other jurisdictions, and I should qualify that by saying that where it has been successful it has usually been limited to monetary issues or to issue-by-issue selection as opposed to whole package selection, as we have. There had been some positive experience with it.

Finally, it was said in support of it that this was simply an alternative method. Parties were not bound to use it, but if they chose to use it, it was an alternative to the conventional means.

On page 3 I have set out some of the political history of the introduction of the Bill and where it went. I skip over that and go to—a third of the way down the page—what the experience with FOS has been. Here I would like to get into a few anecdotes of some experience I am aware of that has occurred under the legislation.

First of all, I think it is self-evident to anyone who is familiar with what has happened that the same unions which supported the enactment of FOS have been the principal users. There are many unions which have never used it.

Second, although it is provided under the legislation that either union or employer can apply for FOS, in fact there has only been one employer who applied for FOS. Maybe this was the test of whether having an employee vote was truly a democracy of a choice by the employees or whether it was really the union dictating the result.

In this particular case, when the employer did apply for FOS, and a bargaining unit of over 100 employees, it was nearly unanimously rejected by the employees on the recommendation of the union. Several months later, 60 days into a strike, when the strike was not going well, the union applied for FOS with the same employees who had nearly unanimously voted against FOS. They unanimously voted in favour of FOS. Is it the employees who are making the decision? Is it the union? Does that indicate—well, it indicates whatever you interpret it to indicate, I suppose.

Third, there were a number of situations, and I was involved in some of them, where unions and employers, with very willing readiness, bargained clauses into their collective agreements which prohibited the use by either of them of FOS. I have just given you one example there. There were a number of those where the parties put a clause in their agreement that says, each side agrees that it will never use the legislated FOS, to indicate how they felt about it.

Fourth, some unions and employers bargained clauses into their collective agreements which, without totally rejecting the FOS process, modified a process. They chose their own FOS that would fit into the legislated scheme but would suit their own particular purpose—tailor-made for their own needs. One of the examples ironically was the Manitoba Food and

Commercial Workers and Westfair Foods, who seemed to have prompted the introduction of the legislation to begin with.

The next item is the matter I have raised before, that where applications were made before the bargaining process had really begun, the Labour Board found itself dismissing those applications because there was at that time no dispute between the parties. So the first window became totally ineffective, because there had been no bargaining more than 30 days before the expiry of the agreement. The Unicity Taxi case is the next one I mentioned. It was a case where the arbitrator said in the strongest possible terms that the position brought by the union was terrible, but the position brought by the employer was even worse. Though he disagreed totally with both positions, having to make a selection, he found himself bound to accept the position of the union, because he said it was slightly less terrible than the one brought by the employer. It does not sound like a very good way to produce a collective agreement on that example.

* (2020)

A positive experience, I would say, is the next one, and this relates to the same dispute that involved the initial rejection and then adoption of FOS and the only one that occurred after a 60-day strike. When Fison's Western and the UFCW Local 111 finally did get to final offer selection, the selector took it upon himself instead of simply saying, what is your position, what is your position, why, why, and making a choice, he said, well, let us talk about this, let us mediate this dispute. What about this? Could you live with that? By the time he had finished mediating for a couple of days, he took two parties, one of whom was seeking greater labour costs and the other one was seeking much lesser costs, he actually brought them together to a consensual agreement within the space of a few days. I think it shows the advantage of incorporating mediation into any sort of interest arbitration process that a Legislature might adopt.

I have some statistics at the bottom. I am sure you are going to be inundated with statistics. Out of all the contracts revised or renewed since January 1,'88, when the legislation came in, by August of 1989 only 59 had been referred to the Manitoba Labour Board for final offer selection. Of those, only five had actually ended in the selection being imposed and almost as many, four, had been dismissed.

At the top of page 4, I have quoted some comments of Martin Freedman, who sat as a selector in the Dominion Stores and MFCW case. I think he is a very well respected arbitrator, and I think an experienced interest arbitrator. I think one whose comments bear consideration. I quote from his award in that case: "Interest arbitrations are difficult processes for all concerned. It is almost always the case that the parties to the process would prefer to have their collective agreement decided by themselves rather than by the intervention, whether statutorily imposed or otherwise, of a third party. The process of collective bargaining and labour relations is obviously more satisfactory in circumstances where the parties engage in the give and take of bargaining and ultimately reach a compromise which they are both able to accept."

The principle that, if parties have made their bargain they are committed to make it work. If somebody else has imposed it on them, they will find ways to show that it does not work.

". . . the final offer selection process creates even more of an artificial framework than does the ordinary interest arbitration process." These are the words of someone who is gaining from the process, I suppose one might say.

"While trying to simulate collective bargaining results, I am required to accept one position entirely, and reject the other, which rarely is the result of actual bargaining."

My last anecdote here is that, since FOS came in, Manitoba has continued to enjoy the relatively low instance of work stoppages, which it experienced prior to FOS and only one of all of the applications was filed 60 days into a strike and that again was the Fison's matter.

Now I have drawn some of my own conclusions, and I say everyone will draw his own conclusions from this experience that we have had since January of 1988. I raised some questions in (a), the object was to reduce strikes. The results were inconclusive, but if this were truly the object, why have the 60-day window at all? Why decrease risk involved in going on strike? If you are going to choose this process, then choose it before you go on strike. Once you have gone on strike, do not have a fall-back, or else you are inevitably going to have strikes you would not otherwise have. It is risk which makes the strike-lockout remedy effective in getting parties to settle. Why not allow the employer to invoke FOS during the strike without an employee vote? That is, if you are going to allow a fall-back, should not both sides have the right to go to arbitration instead of having the strike run its course. Under the present scheme, if the employees and the union are losing a strike they can go back to work and take arbitration. If they are winning the strike, they can veto arbitration. One could hardly describe this as a level playing field.

The results so far, out of the five selections, the employers have won two and the unions have won three. Whether anybody can draw any conclusions from that, I would say probably not. It may simply be a reflection of the quality of positions advanced, or maybe a sample of five cases is simply too small to make any conclusions from it.

* (2025)

Are the agreements that are being settled working and if they are, by whose measure? How are we to know whether they would work better or worse if the parties had been forced to bargain? Is meaningful bargaining even taking place under FOS, because the usual criticism of interest arbitration is that when you are going to go, you know you are going to end up in arbitration, such as the teachers. Teachers cannot go on strike, so they know they are going to end up, if they do not agree, in arbitration. They tend to hide

their true positions rather than disclose them, which has the chilling effect, is there meaningful bargaining taking place? One wonders, when some of these applications have been filed before there was any dispute.

On the other hand, the voluntary settlement of 44 agreements out of 59 referred to FOS suggests that most parties continue to bargain even after the process is invoked. From the point of view of industrial democracy, FOS is clearly a dismal failure. The statutory right of employees affected to ratify the agreements under which they must work is removed. All they get is to approve the process and not the content, which is contrary to the ratification provisions of the legislation.

Labour relations has already, and with good reason, in most cases removed the individual employee from the decision-making process in many areas. I have set them out on page 5. There is a large list of areas where the employee used to be able to speak, to have his own voice heard; he has been removed from the process. There may be very good reasons for that, but there should be good reasons for continuing to do that, or exacerbating that situation. And here is another example where the individual employee loses his voice.

These examples can all be justified, I say, as necessary limitations on the independent role of the employee with the employer. The infringements on individual and employee rights do, however, create their own tensions and ought not to be extended unless demonstrably justified. An informed and involved group of employees is more likely to enjoy harmonious relations with its employer than one which simply works under a regime framed by a union or an employer and selected by a third party.

The issue that is at the bottom of page 5 is one which is maybe more of academic interest than of practical concern to most people, but when you have final offer selection where language in the collective agreement can be determined by the selector rather than just numbers or dollars, then you have the problem of, what do those words mean? One party brings forward its language, this is what we want to have in the agreement; the other side says no, the clause should read this way. Now the selector chooses one clause or the other.

How are you going to interpret what the real meaning of that is? The usual process is to try to determine the mutual intent of the parties when they agree on language. How are you going to interpret a clause that was chosen by a third party? Are you going to choose what the party that was successful in getting it accepted thought it meant? Do you get what the selector thought, and if so, how do you find out? It creates a problem of interpretation in terms of the administration of the collective agreements, which I do not think has really been grappled with yet, but it may emerge as time goes on.

It appears now, I say on page 6, that the political will is to abolish statutory FOS. Those parties who felt it was a valuable mechanism, those who think that FOS has worked successfully, employers and union, will presumably negotiate it into their collective agreements. It will be interesting to track these developments and to see what modifications to the statutory process are developed. Those who have already devised their own alternative, as some of the parties have, should presumably be permitted to try such methodology out even after the repeal of the legislation.

The current draft of the repeal Bill does not address such situations and may require amendment to do justice in this respect. What I am saying here is that if the parties have drafted their own method of interest arbitration as an alternative to the statutory scheme, there should be something in the Bill which says that that scheme survives the repeal of the Bill. They have concluded their deal on the basis of the legislation as it was, and there should be something in the Bill that preserves the contract that was made between those kinds of parties. I say it would be ironic if the repeal of the Bill again had the effect of undoing a bargain made in good faith by collective bargaining parties.

* (2030)

So I offer the following recommendations for the future in the event the Government of the Day considers imposing final offer selection or some other method of resolving interest disputes between unions and employers. First, consider closely the literature on the adverse impact that interest arbitration has had on the bargaining process and consult fully with the labour relations community before implementing such a procedure.

Secondly, preserve to employees in any such scheme the right to approve or reject their terms and conditions of employment, as is currently provided in the ratification sections of The Labour Relations Act.

Thirdly, build mediation into any such scheme as an integral part, in order to achieve the purpose stated by selector Freedman as set out above, of achieving consensual agreements wherever practicable.

Fourthly, do not put interest arbitrators in the position of having to adopt as their reward, positions with which they are unable to agree, that is, preserve the arbitrator's right to compromise.

Fifthly, do not give one party, either party, the employer or the union, the exclusive right to opt out of a work stoppage. Make any arbitration scheme an alternative to a work stoppage, not a fallback. Otherwise the scheme makes a strike or lockout more and not less attractive as an option.

Finally, make the time window for application to interest arbitration some time after bargaining has had a chance to work. It is almost inconceivable that this would be prior to the expiry of the collective agreement, based on current practices.

Thank you for giving me the chance to speak to you this evening. I hope I have not taken too much of your time. If anybody has any questions, I would be pleased to answer them.

Mr. Chairman: Are there any questions? Mr. Ashton.

Mr. Ashton: I wanted to ask a question on your comments in terms of the 60-day window. On page 4

of the brief you say that the 60-day window, and I quote, "decreases the risk involved in going on strike." You further elaborate what you mean by risk here.

I am just wondering, looking at the experience with final offer selection, you indicated that only one application was filed 60 days into a strike. Actually, there have been two others where there has been an application made so there are about three, to be fair in that sense. The strike involving USWA, Local 8144, and the Unicity Taxi dispute.

I am just wondering, with your concern about the 60-day window, given there have only been three situations, given the fact that 1989, last year, there was not a single case where there was any application into a strike, but there were only seven strikes to begin with in Manitoba, none of which had involved FOS at any stage in the discussions.

Would you not say that the evidence tends to suggest that the 60-day window has not in fact led to the kind of concerns that were expressed at the time, the kind of concerns you talked about in practice? In other words, having the 60-day window has not increased the number of strikes because of any increase in the risk as borne out by the experience of 1988-89?

Mr. Mitchell: With respect—

Mr. Chairman: Mr. Mitchell, would you wait until you are recognized so I can get you on the Hansard? Mr. Ashton, we cannot hear you here; you should pull your mike up a little closer. Order for the rest of you there. We can hardly hear the exchange here. Mr. Mitchell.

Mr. Mitchell: With respect, Mr. Ashton, I would say that the experience of the two years would be difficult to make any generalization from. I think it is just a fundamental principle that if the reason why the strike lockout remedy is effective is because it is so cataclysmic. It is so risky. It is so dangerous to either party to sustain that kind of a risk. If you say, well, it is not as risky as it was, you can go on strike. If the strike is not all that successful, you can come back and get arbitration instead. I would say, well, if we did not have that option, I probably would not recommend a strike.

But here is a situation where we can go on strike, and if that works, great. If it does not work, we still get arbitration. We can control whether we get arbitration. Without trying to make too much out of the statistics, I think just a logical approach would lead you to the conclusion that strikes are likely to occur that would not otherwise occur, because the risk is reduced.

Mr. Ashton: The statistics do not show that, but I just want to perhaps put it in a more direct situation. I do not mean to personalize this discussion. I do not know if you ever had to make that decision by having to vote to go on strike. I have. I have twice, and I tell you it was not an easy decision when I voted in both particular cases. I was single at the time. I did not have a family to support which I do now. I can tell you, it was not an easy decision, and if I had been put in the situation of someone coming to me and saying: do not worry, you will only be on strike for 60 days. I would have said to them: only, be on strike for 60 days! At the time that was enough to wipe out whatever savings I had. In fact in the 1981 strike, in which I was involved, I had the fortune actually to be elected to this Legislature, so I did not have to sit for three months, which everybody else in the bargaining unit did.

I am just asking you, since the statistics do not bear out the argument, do you really seriously believe that someone would go on strike for 60 days to obtain the option of final offer selection given all the risks that are still involved with a 60-day loss of wages, the potential loss of one's savings, the potential loss of one's house, even? Do you seriously believe that is the case, logically? Do you believe anyone would take that risk? If you do believe that, I just really wonder why it has not happened in the two years of experience here in Manitoba.

Mr. Mitchell: I guess I would just repeat that I do not agree that the statistics prove anything. It is impossible to say, on the basis of a handful of situations, what parties would have done otherwise. In answer to your own personal experience, I have been involved as a member of a bargaining unit, although there was not a strike decision. It seems to me that it is not a question of whether or not a person will or will not lose his house in 60 days, it is a question of whether a person is making a decision because he is committed to it, because he believes it is the only fair alternative, because the position being put forward by the other party is so unacceptable, or whether a party is saying, for 60 days, we can sustain ourselves based on our strike fund, we can survive, we can continue as long as we know that after 60 days we can still go to arbitration. Why go to arbitration now? Maybe we can soften up the employer and get something better in the meantime, and if they do not soften, then we will get our selector appointed after 60 days and we will get it that way.

The whole principle, the reason we have had strike-lockout remedy for the last 80 years I suppose used frequently anyway, or 70 years since the 1919 strike, the reason why it has been an effective process is because people have rather settled than take that chance. If you make it less of a chance to take, then I say to you, sir, it is illogical to think there would not be more strikes.

Mr. Ashton: I do not want to discuss or debate it in academic terms, but I am just asking you to put yourself in the situation of somebody facing a strike vote. I faced that incidentally in the strikes in Thompson. Inco has never hired strikebreakers. In many areas, many fields, particularly in the service sector, it is standard, one ends up with strikebreakers being hired. So one faces the problem to begin with that you may be on strike and the company may still be operating.

I am just saying, given the level of risk that is involved, do you not think it is reasonable, and we are talking about people here, not in abstract terms, that there is still plenty enough of a risk involved? In fact, I will ask a further question as a follow-up to that, and that is,

do you not think, and you mention in terms of the Fison's situation, would it have been better if the employees there would have still been out on the picket line, past the 60-day window? They might still be on the picket line, for all we know, in terms of what has happened.

I mention that because in the case of the Inco strike in Thompson in 1981, which I have personal experience with, that strike went three months. There have been strikes in Sudbury with the same company and the same union that have gone nine and 10 months. The one thing that people have said to me, and they said it in the case of Thompson, one of the most difficult things sometimes, when you are on strike, is for both sides to get back to the bargaining table and even begin the process of getting a resolution.

* (2040)

Now I ask even in that situation, do you not think that having some way of doing that, having the 60-day period is preferable to the three-month, or the nine-month situation, or do you believe in the name of the type of principles you are talking about in the paper, and I respect that. I am not trying to say anything in terms of your views. I respect your views on this matter, but are you saying, for example, in the Fison's strike, it would have been better if that strike had continued, rather than in this particular case having that 60-day window, or in the case of the Unicity Taxi, another one that was mentioned, or in the one involving Leaf Rapids Local Steelworkers, should go to final offer selection, but was resolved in a matter of days.

Mr. Mitchell: To use Fison's as an example, the first thing I would say is that if you had final offer selection on the books, I think it would have been better for everybody. I think Mr. McMeel, who is here and experienced it, would say the same. In retrospect it would have been better for everybody if the final offer selection process had been the same as the first contract process, which gives either side the right to refer the matter to arbitration without a work stoppage. The very fact of the application puts an end to a work stoppage. In that case, Fison's would have come to the same result, presumably, without any work stoppage, without any risk of loss of a home, without having any of the ugly incidents that took place out in eastern Manitoba when that happened.

Secondly, I say that if there were no 60-day window the chance that there would have been a strike at all if there had been no FOS, the chance that there would have been a strike at all is much less, because those people who go to the strike vote meeting and have to make a decision between going on strike and making a settlement would not have in their minds the chance that they have a fallback position. They would make a final decision based on the proposal and the risk of a strike that might never end.

Mr. Ashton: It seems we are going to have a continuing disagreement on that. I, as I said, having been through it, and know a lot of people who have been through a lot more than I have. I do not think this decision is every made lightly.

I just want to deal with another point. I do give you credit to the extent of having put in some of the arguments on both sides of the issues. I think that is fairly positive, but in reading through, the indications that have been given in terms of final offer selection, the views that have been expressed in terms of why there should be final offer selection, I had difficulty even from your own arguments of seeing the arguments that you had rejected out of hand. Even on the 60-day window, for example, and others, you said the statistics are not clear. The experience has not been clear enough.

I just put this question. This law was brought in with the sunset clause to begin with recognizing that it is new and innovative at this level. It is not a new process. Obviously it has been used in other North American jurisdictions and other contracts, but what I am suggesting is, one of our arguments, one of our concerns in the New Democratic Party is that an effort is being made now to dismantle that force, not based on the evidence, in fact there has been no research done by the Department of Labour into what has happened, no one has taken the time to talk to people that have been involved with final offer selection.

Our suggestion is, given one of our major points, Mr. Chairperson— -(interjection)- if I might continue—is that we feel the evidence is position, but some evidence is clearly not definitive. We can discuss back and forth the interpretation of what happened last year with only seven strikes, the lowest incidence of lost days in 17 years, whether that is related to FOS. I would certainly argue it is not, no evidence that FOS has harmed the situation.

I am just wondering, do you really believe that the evidence is conclusive on final offer selection? You, yourself, have talked about some examples you have seen, and I respect that, you have a direct role, you are dealing with it on a day-to-day basis, it is a field that you are knowledgeable of. Has there been any clear evidence that many of the fears that were expressed have taken place, because when I read through some of the arguments that were used against final offer selection at the time, there is no statistical evidence, there is no empirical evidence, no evidence at all in terms of any of the contracts that that has been the case. I am just wondering what your comments are in terms of how conclusive the record is in terms of final offer selection.

Mr. Mitchell: In fact, I share some of your feelings about the statistics, Mr. Ashton. I think it is difficult to say at this point. I do not think that the statistics tell us anything about it. I think we have to rely on our own intuitions about it, to say whether it is a good or bad thing. I am not even sure that another two and a half years from now we are going to have any clearer idea from statistics whether it is a good or bad thing. That is something that is going to be much of a matter of perspective.

I guess from our own point of view I might say that on balance I come to bury FOS not to praise it. I think it has some things that are praiseworthy about it. I do not think it is totally a negative piece of legislation.

Mr. Chairman: Thank you. Mr. Ashton.

Mr. Ashton: I have just one final question. I appreciate your candor on that. We have been saying one of our concerns has been the fact that this legislation has proceeded, and I mentioned it earlier, without any real study, without any contact with people in the labour relations field, without any real contact with the 72 bargaining units that were involved. As I said, our caucus took the time to call people in some of the bargaining units. In fact, the Member for Churchill (Mr. Cowan) personally got involved, developed a survey, and it was a very quick survey.

The interesting thing is that no one had asked the people who have been involved. I know you made some recommendations in terms of final offer selection or other type of interest arbitration in the future, but I am wondering if you would agree that perhaps regardless of which view one has of final offer selection, it would be logical if one is dealing either with this Bill or further such Bills in the future to at least talk to the people who are involved. We may have our differences of opinion even at that point, but at least we presumably have a better data base. I am wondering if you feel that might be added to your list of suggestions in terms of what the Government should be doing.

Mr. Mitchell: Well, I guess at a couple of places in my brief I have said that I felt that the consultation that had been begun by your Government should have been concluded before the legislation was rushed in as I know it was. I would say, yes, there should be consultation. It should not be limited to members of bargaining units, it should involve the entire community, management and labour. I think that process was under way and I am still not exactly clear as to why it was aborted at the time.

I guess if I was going to give any sort of endorsement to final offer selection as an experiment, it would be subject to the recommendations in the last page of my brief, which I think would be improvements, maybe most importantly of all the mediation element, because I think that is a very positive factor in labour-management relations generally, and also the principle of giving the employees a chance to say yes or no to what they end up with.

Mr. Chairman: Are there any more questions? Mr. Patterson.

Mr. Patterson: Thank you, Mr. Chairperson, not so much questions, I just would like to echo the comments of the Member for Thompson (Mr. Ashton) in that you have given a good balanced representation, Mr. Mitchell, and I commend you on it. I think your final conclusions are creative and well worthwhile.

You have touched on what I have felt have been a couple of the main problems with FOS, first and I guess foremost that it was pushed through before the Labour-Management Review Committee had had opportunities to fully study and consult on it and come up with some recommendation on the matter.

Again I think final offer lends itself best to monetary items, but if the whole, all clauses are going to be thrown into it, it certainly is not a good process in that the selector has to choose one package or another. I certainly think with other than monetary causes in FOS the selector should at least have the option of choosing clause-by-clause. Again I would like to thank you for your presentation. It has been very useful.

Mr. Chairman: Are there any other questions? Thank you very much, Mr. Mitchell. I have just been informed that we have two presenters with out-of-town commitments, Mr. Ross Martin and Mr. Peter Olfert. Did the committee wish to hear from these gentlemen next? I do not know all the details here. Okay, then we will—

Mr. David Newman (Manitoba Chamber of Commerce): Mr. Chairman, if I may, I was hear for two and one-half hours this morning and I certainly hope that I can get on this evening so that I can share what I have prepared to share. I was third on the list and have been there for many months.

Mr. Chairman: Yes, it is up to the committee. Al Patterson, please.

Mr. Patterson: Mr. Chairperson, I certainly agree that Mr. Newman should be very definitely heard this evening because he was promised, after Mr. Mitchell it was committed that he would be the next presenter this morning.

* (2050)

Mr. Ashton: I am sure we as a committee can assure Mr. Newman that we will be dealing with his presentation tonight. In fact, I would recommend we deal with the two out-of-town presentations and then go to Mr. Newman. I do not know if Mr. Ryzebol is here, but perhaps if we could ask him if he would not mind going after Mr. Newman. I raise this because it is nine o'clock now. I know in the case of Mr. Martin, who is from Brandon, it is a good two-and-one-half hour drive back to Brandon. I would not want to delay it unnecessarily.

An Honourable Member: Find out how long his presentation is. How long is it?

Mr. Chairman: The length of the presentation is probably no problem. It would be the length of the questioning, so we are going on good will tonight. We will certainly let you have free reign, but if we keep this in mind it might—Okay, could we hear from Mr. Ross Martin and then followed by Peter Olfert and then Mr. Newman? How would that be? Mr. Ross Martin.

Mr. Ross Martin (Brandon and District Labour Council): Mr. Chairperson, I would like to thank the Standing Committee on Industrial Relations for allowing me to come forward. It is kind of mean weather in Brandon with a lot of cars off the road and I do appreciate this so I can get back tonight.

Mr. Chairman, Honourable Members, I am not planning to deal a great deal with statistics. I am sure you will get them all. In fact you should already have those, and I have got them here if you do not have

them. I did not put them in my brief. I tried to keep my brief fairly short.

What I am dealing with mainly in my brief is the political process and the reasons for it. That is the part that bothers me most about this whole process in that we are cutting off this right in the middle, prior to the 1993 review date.

Mr. Chairperson, I am the President of the Brandon District Labour Council. The Brandon District Labour Council represents approximately 4,000 workers in western Manitoba, with the majority in and around the City of Brandon. It is regretful that we find ourselves here before you today to speak against Bill No. 31, an Act to repeal final offer selection.

Bill No. 31 has only one purpose. That is to deny workers of this province another peaceful avenue to settle disputes with their employer.

The Conservative minority Government, propped up by the Liberal Opposition, both propped up by business interests, have once again decided that the welfare of workers and the public is secondary to the interests of business. It is evident to us that the Conservative-Liberal Party prefers strikes and lockouts rather than negotiated settlements. It is apparent to us that the Conservative-Liberal Party prefers violence on the picket lines rather than meaningful negotiations at the bargaining table.

How can this Party argue differently when the statistics from this very Government shows that 85 percent of the cases finalized by the Manitoba Labour Board were selected by the two parties prior to a selector decision? How can the Conservative-Liberal Party say that final offer selection does not work when only five cases that resulted in selector decisions were split three for the union and two for the employer? The success of this legislation is not how many times it is enacted and followed through to the selector decision but rather how many times a negotiated settlement was reached between the two parties prior to a selector decision. This important point seems to be lost on this unholy alliance of Conservative, Liberal and business interests.

Perhaps the point is not lost. Perhaps this alliance will make up any excuse whether true or not to impose Bill No. 31 on the citizens of Manitoba. Is this an election debt to business supporters? While this is conjecture, it certainly does fit the scenario. How else can you explain Bill No. 31? Why else would the Government of Conservatives and Liberals be so insistent on the repeal of final offer selection? It is certainly not because they have the workers' interests at heart. It is certainly not because they have the public interest at heart. It is certainly not because the legislation is not working. All the facts show that it is.

Therefore, why is it so critical to repeal final offer selection after just two years? Is it because the legislation is working? Is it because the Conservative-Liberal business interests feel that they can more easily break unions without this legislation? Is it because the Conservative-Liberal Party does not want to represent the interests of working men and women but only the wealthy business interests?

The reasons put forward by the Conservative-Liberal Party in support of Bill No. 31 are very shallow and deceiving. When final offer selection was first introduced, the Conservatives were totally opposed to this legislation although they could not come up with one honest reason why. We would suggest that the same is true today for the Conservative-Liberal Party.

The Brandon and District Labour Council urges this Legislature Law Amendments Committee to recommend to the Government that Bill No. 31 be withdrawn and that the legislation be reviewed in 1993 as contained in the legislation. Thank you.

Mr. Chairman: Mr. Lamoureux, Kevin.

An Honourable Member: I am taking it first as the critic.

Mr. Chairman: No, he beat you, Al. He was ahead of you.- (interjection)- okay, if you want to give him seniority. Mr. Patterson.

Mr. Patterson: Thank you, Mr. Chairperson, and my honourable friend, the Member for Inkster.

I have no questions, Mr. Martin, but I just want to get something on the record. I take very serious issue with the statements you have made about the Liberal Party. You are welcome to your own views, but I am here to state that I, personally, in the Liberal Party am not out against the interest of the working people of Manitoba or of Canada. So let that very clearly be on the record. To be against this particular piece of legislation does not imply that in any, way, shape or form.

I might point out that final offer arbitration arose largely from the public sector. In the United States, in most of the Civil Services, the right to strike is not there, and, therefore, arbitration has been used, mandatory arbitration. Due to the chilling effect of interest arbitration, other methods were sought to make it more effective, so the final offer scheme came about and has been used considerably in most types of jurisdictions. It does not exist in any other jurisdictions in Canada and in the private sector, and to be for the repeal of this particular Bill does not necessarily follow that a party or an individual or any organization is against the interests of the workers or is out to break unions so I just want to make that very, very clear. Thank you.

Mr. Chairman: Thank you. Are there any other questions? Mr. Lamoureux.

Mr. Kevin Lamoureux (Inkster): Mr. Chairperson, the Member for Radisson (Mr. Patterson) I think has put it quite well. I have sat on many different committees since being elected, and I must say I am very surprised and shocked. When I came to this committee I was hoping that when Bill 31 came before a committee that we would be hearing arguments from the public to the degree in which why this particular legislation should be changed, amended or withdrawn.

The amount of information that was given through this presentation, I would have anticipated from the

third Party in this Chamber. I feel bad for those that this particular Mr. Martin represents. I think he is doing an injustice. The Liberal Party does represent the worker just as much as the third Party in this Chamber. Thank you, Mr. Chairperson.

Mr. Ashton: Mr. Chairperson, I am amazed at the Liberals. They have said they are voting with the Conservatives on this which I believe is against the interests of working people in this province. They have the nerve to criticize Mr. Martin for pointing that alliance out. I would say that the Liberals who came into this committee are the ones that have a lot of apologizing to do, not Mr. Martin. I would hope they would have the courtesy to ask him questions rather than in trying to engage in a one-sided debate.

I would point out, Mr. Chairperson, too that the Liberal Party has only put up two speakers on this Bill thus far, so they are good at debating with Mr. Martin in this committee when only one person is speaking, but they seem to have some difficulty in the Legislature. I digress; I still have some hope for the Liberals that maybe they will come to their senses and vote against the Conservatives on this Bill. We shall see.

I do want to ask Mr. Martin a question and ask him very, very specifically. One of the arguments used by the Liberal Party in terms of their support for this Bill which would repeal final offer selection, is that they feel that final offer selection has not been in the interests of the labour movement. They have tried to suggest that somehow the unions are suffering because of final offer selection. I will not get into the detail of the arguments. We discussed some of those this morning.

I would just like to ask you in your opinion, in your role here tonight representing the Brandon District Labour Council, what is the view of people in the labour movement in Brandon? Do they agree with the Liberals that final offer selection is not in the interests of the labour movement? What is their position?

* (2100)

Mr. Martin: The Brandon District Labour Council disagrees with the Liberals. I must apologize if they are shocked, but it was not my doing that caused them to vote the way they are. The people in Brandon feel that there are benefits to final offer selection. Speakers who say that workers demand the right to stay on strike forever and ever, I am afraid are sadly mistaken. No one likes to go out on strike and neither do workers in any plants that I have talked to.

In addition, we believe that final offer selection gets the two parties together to negotiate a settlement. I am sorry I pointed it out in the brief once, and I do not want to keep on going over it since some people seem so dissatisfied with it, but I explained that the success of the legislation is not how many times it was enacted and followed through to the selector decision, but rather how many times a negotiated settlement was reached between the two parties prior to a selector decision. That is the point.

The point is to get the two parties together, not to separate them. This is an avenue that helps that process. Rather than going through the problems of a strike or a lockout, why can we not have some process that tries to get the employer and the workers together so they can reach an agreement, one that they can live with? It is not too difficult to understand.

One of the problems I really have is, and the previous presenter mentioned it about the statistics, we have only been in it for a couple of years. What is wrong with letting it go through until 1993 so we do have the stats on it, so we can see whether or not it is really working? I agree that you cannot do it overnight. You do not have enough stats. You put it in one day and say we do not have the stats today. Why not five years? Why not let it run its course? It has been working up to now. Why not leave it alone?

Mr. Chairman: Mr. Patterson, do you have a question for the presenter?

Mr. Patterson: Thank you, not a specific question, Mr. Chairperson—

Mr. Chairman: We pretty well have to stick to questions. We are getting off on—

Mr. Patterson: I want to clarify the record—

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Mr. Ashton: On a point of order, Mr. Chairperson, I am sure as a committee we can allow the Liberals to make statements if they wish. I have no objections - (interjection)- or the Conservatives. I am looking forward to a genuine debate on this.

In the entire time this Bill has been before the Legislature—for the information of Mr. Martin who I am sure must be wondering what the heck is going on here—we have had one Conservative speaker, two Liberals speak and all 12 New Democrats put their position on the Order Papers.

I am quite willing to allow the Liberals to start debating this, or the Conservatives—

Mr. Chairman: Order, order.

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Mr. Chairman: Mr. Patterson. The Chair recognizes Mr. Patterson.

Mr. Patterson: Thank you, Mr. Chairperson. I might mention that any time I might take is going to be an infinitesimal percentage of that taken by the third Party and the Members opposite.

I just want to make the record clear that in my previous comments I was in no way castigating Mr. Martin or his position. I was just pointing out that I take issue with the comments he is making about the Liberal Party being out to break unions and not having the interest of workers at heart.

Whenever legislation comes up, Mr. Chairperson, we have this committee, and indeed everybody in this

Chamber is looking at a balance in the interest of all Manitoba. Neither employers nor employees are going to get everything they think they would like. Just the fact that they do not get it at some particular time is unreasonable to draw some conclusion or inference that the Party is against the interests of labour and is out to break unions. Thank you, Mr. Chairperson.

Mr. Ashton: Mr. Chairperson, once again I hope the Liberals will change their minds and maybe put some substance to their words. I do take their intent seriously—

Mr. Chairman: Mr. Ashton, do you have a question for the presenter?

Mr. Ashton: Mr. Chairperson, I am just doing what Mr. Patterson was doing. I am saying to the Liberals directly that I hope they will, with their votes on this Bill, vote with the working people of Manitoba. I wanted to get back to questioning Mr. Martin very briefly, because I realize you have to go to Brandon.

There have been suggestions made earlier tonight that somehow final offer selection—I am not trying to pick on one presenter, but this has been raised as a argument consistently, and by both the Liberals and Conservatives, that the 60-day window reduces the risk of a strike and therefore the people are going to—I assume the analogy is—have their cake and eat it too, vote for a strike, go out for 60 days and then come back in on final offer selection.

I know there have been a number of strikes in Brandon recently. I am wondering if you can indicate, from your perspective out in Brandon, if you believe that has ever been the case or is ever likely to be the case, that people will vote to go on strike, to sit out for two months with no wages, only strike pay, so they can take advantage of final offer selection which under the existing legislation they can take advantage of prior to the work stoppage.

Mr. Martin: Well, Mr. Chairperson, I have really heard of nothing so silly in my life. I cannot remember anybody saying, geez, let us go out and have a strike so I can stay out on strike for 60 days and collect strike pay. I really wonder who we are talking about here and I want to join that union if their strike pay is that great, because I am telling you my strike pay is not going to cover very much.

I really object to the premise that is behind all this, that workers do not have enough intelligence to make up their mind whether to go out on strike or not and that somebody has to tell them that they have to go out or they do not have to go out. That is the most ridiculous thing. Workers have enough brains to make their own decision. If they are going to go out on strike and they are going to vote on it through a democratic process, and I hope nobody has any objection around the table about that, because it is democratic, then I believe they have the right. That is the chance they take. If it sits out for 60 days then that is the time they are out, and that is a long time when you are out on strike. I know one person at least around this table that has been out on strike, I do not know about the rest, but try staying out for 60 days and you will find out it is not a ball of roses or anything; it is terrible. So I would suggest that there is no basis whatsoever for that statement that they want to go out for 60 days; it is asinine; it is ridiculous.

Mr. Ashton: I just want to indicate that the Member for The Pas (Mr. Harapiak) was on a nine-month strike, so he has been there. I have just one final question. We are dealing with final offer selection of course, a matter before us, a Bill that would repeal it in its entirety. I take it from your brief that your basic message, more to the Liberals and Conservatives on the committee, but to this committee generally, is that final offer selection should be given a chance. You are suggesting that we look at the experience over the next period of years and then assess it at that point and not kill it now before it has had a chance.

* (2110)

Mr. Martin: That is directly our position. Do not touch it, do not screw it up, it is working right now. Let it go for the five years; it does have a sunset clause in 1993. Review it at that time when you have more information about it. You will have a much better idea of how it is working and then at that time perhaps you can make adjustments if necessary. To kill it now really boggles my mind and that is why I think there are other reasons why it is being killed now. I stand by those conjectures, and they are conjectures. I am not saying that there is a lot of proof, although I am sure that I could get some proof. I tried to make this brief fairly short and get right to the point. The point is, we would like to see this legislation left as is until it runs its course.

Mr. Chairman: Thank you. Are there any further questions? Thank you very much, Mr. Martin.

Mr. Martin: Thank you, Mr. Chairperson.

Mr. Chairman: We will now hear from Peter Olfert.

Mr. Peter Olfert (Manitoba Government Employees' Association): Thank you, Mr. Chairperson, Members of the Legislative Assembly. I would like to thank the committee for an opportunity to come and present a brief on the issue of final offer selection.

The Manitoba Government Employees' Association represents some 24,000 Manitobans covered by over 100 collective agreements. Our members are employed in a number of widely diverse occupations. Just under half of our members live and work in the City of Winnipeg with approximately 54 percent living and working in rural Manitoba and northern parts of the province.

The Manitoba Government Employees' Association strongly opposes Bill No. 31 and supports the retention of final offer selection as a working alternative to strikes and lockouts and as a sound means of promoting good faith bargaining in the collective bargaining area.

We support final offer selection for a number of specific reasons. We believe it supports and aids the

collective bargaining process. We believe it is a valuable contributor to a healthy and stable labour relations climate. We believe it is an acceptable alternative to strikes and lockouts.

In short, Mr. Chairperson, final offer selection is good for the people of Manitoba, for workers, for business, for consumers and for investors. I believe any object analysis of the record will show that final offer selection is working. At worst, I would say that nothing has happened in this area other than an election promise that would in any way support not allowing the legislation to run through its legislative review. There is no objective reason to stop the trial period. In fact, I believe quite the opposite is true.

The goals of any labour relations legislation must be to help facilitate collective bargaining, arrive at fair settlements and avoid strikes and lockouts while protecting the fundamental rights of workers, management and the community.

FOS has, according to objective statistics and analysis, proven to be a valuable tool in achieving each of these goals.

FOS has first and foremost proven to be a means of facilitating good faith bargaining.

According to the Government's own statistics 85 percent of applications have been resolved at the bargaining table. No selector was necessary. No contract was imposed. Perhaps most importantly, no strike or lockout occurred.

FOS has been a fair way to resolve differences. Both sides, as a result of the process, are forced to be more reasonable in their offers. Because of this the process favours neither workers nor management but is fair and balanced. This is evident by the fact that of the 5 cases that have gone to a selector, three decisions have favoured the employees and two decisions have favoured the employer.

As a means of facilitating good faith bargaining and arriving at a fair settlement final offer selection is working.

As a means of avoiding strikes and lockouts there can be no question but that it is working.

Never in the history of this province have unions and employers, and I emphasize employers, had the right or the means to go directly to employees and say we can settle this without a strike, and we can settle this without a lockout and we can settle this in a way that will be fair.

FOS is an incredible tool for unions. It is an incredible tool for employers and final offer selection is a right I believe employees should have. FOS does reduce the need for strikes and lockouts. FOS is a working alternative to work stoppages. By the Government's own statistics, the Province of Manitoba has the fewest work days lost to strikes and lockouts of any province in Canada.

Final offer selection is working. Final offer selection is proving to do what it was intended to do.

I remember the debate that occurred when Final Offer Selection was first proposed as an amendment to the Manitoba Labour Relations Act.

I remember the fears and threats from those that opposed it.

FOS was a dramatically new idea and people had a right to be concerned. I understand that. I shared some of those concerns. What I do not understand and what is disappointing is that despite the fact FOS has objectively proven successful there are still those using the same threats and promoting the same fears.

What is particularly outrageous is that some Members of this Assembly want to ignore the facts and for no reason other than an ill-conceived election promise to the Chamber of Commerce to take away this right before its trial has even run its course.

Let us look at some of the fears and threats expressed in 1987 and still being promoted today by the Chamber of Commerce and some Liberal and Conservative Members of this House. FOS will encourage strikes. The critics of FOS say that workers involved in a contract dispute will not bargain seriously, choosing instead to go on strike for 60 days knowing that at the end of that period they can apply for final offer selection. This is a ridiculous argument that ignores the financial, moral and family obligations of working people.

Workers do not go on strike because they want to. Workers do not play games with their jobs and their families' security. FOS does not cause strikes. FOS gives workers a much needed option. With FOS they have a shot at a fair contract without putting their families' homes at risk. They have a shot at a fair contract without explaining to their kids why there will be no Christmas or birthday presents this year. They have a shot at a fair contract without putting their jobs and their families' future on the line. They have a choice. It does not mean they are going to get what they want, but it does mean they have a shot at a fair deal without going on strike or being locked out.

What does that hurt? Does it hurt the community? Does it hurt the worker? Does it hurt the employer who wants to avoid a strike or a lockout bargaining in good faith? FOS hurts none of these people. FOS hurts only the employers who for whatever reason want their employees on strike or locked out, employers who have been able in the past to use this threat of a lockout or a forced strike to keep wages and benefits unnecessarily low or to keep their workers from even joining a union.

When people say FOS gives unions an advantage what they are really saying is that FOS goes a long way to take the weapon of fear away from the employers. That is not an advantage to unions. That is fairness for working people and for their families.

What of the critics that argued FOS would tilt the collective bargaining balance heavily in favour of the workers? They too have been proven wrong. According to Statistics Canada, wage increases in Manitoba since 1986 lag well behind the national average and the cost of living.

FOS will lead to longer strikes. Again there is not evidence to support this. In fact the evidence is quite the contrary. FOS has stopped strikes. It has stopped them from starting, and it has stopped some from

dragging on endlessly. FOS offers a fair, non-violent, face-saving way out of entrenched, sometimes unresolvable disputes, disputes that can ruin companies, destroy families and kill communities.

Why anyone who says they believe in harmonious labour relations, that they believe in alternatives to strikes and lockouts, that they believe in fairness and in a sound economic environment would advocate removing this option to strikes and lockouts before it has even completed its trial period, I do not understand.

There are those, the Leader of the Liberal Party (Mrs. Carstairs), in particular, who say that one of the reasons they oppose FOS is that labour is divided on the issue. That is nonsense. Over two-thirds of the MFL members supported FOS when it was first introduced. The overwhelming majority of labour groups were and are behind FOS.

What is perhaps more relevant is that not only do these same groups continue to support FOS, but many of the initial opponents are now in full support of FOS or are opposed to the repeal of FOS. The building trades, the Canadian Federation of Labour, the auto workers, the communication workers and the Canadian Union of Public Employees, to name a few, are joining us to ask that FOS not be repealed.

* (2120)

To the Members of this committee and in particular to the Liberal Members, I can tell you labour is united in opposition to Bill 31.

The MGEA and its 24,000 members strongly urge all members of the Legislature to vote against Bill 31. We do so as trade unionists, as consumers, as voters and as citizens of Manitoba. The MGEA believes sound alternatives to strikes, lockouts and legislation that encourages good faith bargaining are good for our province.

Mr. Chairman: Thank you. Are there any questions? Mr. Ashton.

Mr. Ashton: Mr. Chairperson, in your brief you dealt with one of the arguments that has been made in terms of final offer selection, that the labour movement is not fully behind the fight to stop this Bill, Bill 31, by pointing out to committee the many unions that supported FOS right from the beginning, or have now joined the fight to stop its repeal.

One other thing that has been suggested, and has been suggested by both the Liberals and Conservatives is, almost they do concede—and I have yet to hear them publicly say it—that unions have changed their mind. The Liberal Labour Critic (Mr. Edwards), for example, said that he believes final offer selection weakens unions. It is a direct quote: I believe—this is him speaking—that final offer selection weakens unions. It is to the point where even if unions themselves in support of FOS are opposed to this Bill, somehow there is some concern that it weakens unions. You represent a union that has 24,000 members. Do you feel in any way, shape or form that final offer selection has weakened your union since it was introduced and proclaimed just over two years ago?

Mr. Olfert: To answer that, no, it has not. Our feeling is that it has not weakened us. Our perception of what has happened since this legislation has been on the books is that it has not weakened any other unions in this province.

To answer your other question, the Manitoba Government Employees' Association was one of the first unions to take a position in favour of the legislation when it was first proposed. Our convention has adopted that. It is convention policy that we do support final offer selection as an option in the bargaining process.

Mr. Ashton: When is the contract, the MGEA contract up, the next contract?

Mr. Olfert: Our collective agreement expires in September of this year.

Mr. Ashton: Perhaps I might ask this question, and this time it is not going to be perhaps as hypothetical as previous presenters I have asked. Will you be going to your membership, if final offer selection is still in place, and recommending they go on strike for 60 days so that they can take advantage of this 60-day window of final offer selection?

I am asking that because I have put it in hypothetical terms. I am wondering if you would even seriously ever consider recommending your membership go on strike for 60 days so that they could take advantage of this 60-day window that people have been so concerned about?

Mr. Olfert: I mentioned on page 7 on my brief that I think that sort of an argument is quite ridiculous, to think that people are going to go out on strike and wait for the FOS window to appear 60 days into a strike. I think that it ignores the financial, moral and family obligations of working people, that people cannot afford to be out on strike for those kinds of durations just in the hope that they can tag onto that 60-day window. Then of course you are into a situation where your position may not be selected ultimately in the end. Absolutely not; I would not go recommending that to our members.

Mr. Ashton: Another objection to final offer selection has been that—this is a quote again from the Liberal Labour Critic—it erodes the fundamental accountability of the union leadership to their members, because they can end up being not ultimately responsible for negotiating a contract. We have had final offer selection for more than two years. Do you believe in any way, shape or form that it has eroded your accountability to your members in any way, shape or form in the two years it has been in place in Manitoba?

Mr. Olfert: Absolutely not.

Mr. Ashton: Another suggestion has been—these are direct quotes again—that it disrupts the workplace. "It creates unrest in the workplace and will continue to do so." Have you, with your members, had final offer selection, which has been in place for two years, in any way, shape or form, create any unrest in the workplace that you are aware of?

Perhaps I will broaden the question. In any other unions in Manitoba, has it created unrest in the workplace in the two years it has been in place?

Mr. Olfert: I can only speak of our own situation. Our union has not gone the FOS route since it has been legislated. However, we feel strongly that it would be an option for us if we got into those kinds of situations. I do not believe that what you are talking about I can respond to in terms of other unions, in terms of the morale in the workplace.

Mr. Ashton: In other words, within MGEA, nothing of the sort has occurred. None of the fears. I was at the committee. I remember well when the Bill was introduced. There were some fears, and there were some legitimate concerns. What I am trying to deal with is both the fears and legitimate concerns. This fear that was expressed, and this is, by the way, on September of 1989, this is a recent argument that has been put forward, in this case by the Liberals, although I do believe the Conservatives have made the same suggestion. You do not believe that it has created this kind of difficulty within the membership of which you are the president.

Mr. Olfert: Not within our membership. No.

Mr. Ashton: Just one final question. I do believe it is in your brief, but I just want to make sure it was clear. You are suggesting to Members of this committee that existing legislation in terms of final offer selection be continued until the sunset clause takes place, in this case, 1993. You are suggesting essentially, I understand it, that the position of the Manitoba Government Employees' Association is that it should at least be given that opportunity before it would automatically lapse from the Order Paper. You are saying basically to give it a chance.

Mr. Olfert: Yes, that is our position. We think that it has only been in legislation for two years. There are some statistics to date, but our position is that the sunset clause is there and that it should be reviewed after the five-year period.

Mr. Chairman: Thank you. Are there any more questions? Thank you very much, Mr. Olfert, for your presentation. We will now hear next from Mr. David Newman. Mr. Newman.

Mr. Newman: Mr. Chairman, Members of the Committee, I am appearing here as President of the Manitoba Chamber of Commerce, speaking on their behalf this evening.

The support of the repeal of final offer selection was a decision made at the last annual meeting in May in Portage la Prairie, so I am carrying out the mandate of the membership. I do happen to have a considerable amount of personal experience as a person involved in the labour relations field in excess of 20 years. I have had a considerable amount of involvement in the process of collective bargaining and also with respect to final offer selection since its initiation in February of 1988.

* (2130)

Just by way of preliminary comment, I have found this to be an extraordinary time in our history, and I have heard a considerable amount of emotion from behind me and a considerable amount of emotion expressed at the Table about an issue. The extraordinary nature of what is happening here and through this process is that the union movement appears to be, through its vocal leadership, expressing a wish to have strikes replaced by an alternative. I think that it is a very interesting situation. Certainly something that is contrary to what I thought was the philosophy of the union movement which fought so long and hard for the right to strike. They seem to treat it as something to be feared, something that hurts very badly, something that is not heroic any more, something where heroism grew out of the sacrifices made by families as they took on something that was based on principle, and they fought for those rights through the collective bargaining process.

(Ms. Avis Gray, Acting Chairman, in the Chair)

I find that an interesting point in their history, and I am not quite sure why in Manitoba this perspective is being expressed contrary to anywhere else in North America. It is a very interesting thing, and I do not have the answers to it, but it causes me somewhat a bit of disturbance.

I am going to try and take this out of the realm of emotion, because this issue does provoke strong feelings. Unfortunately, I think, to a certain extent, those feelings, negative feelings, are being encouraged by our Members of the Legislature who are proponents of this and are defending it. It is a piece of legislation that was put into effect in a real hurry. It was something that was not given a broad amount of support. It was never supported by the business community. In fact, when it was first suggested, going back to 1984—actually the White Paper came out in'83—there was no support for this, and there has not been throughout that period of time. That was conveyed, yet in a hurry they went ahead with it. That is very disturbing.

Now they appear to be suggesting that thought should be given to revoking something that never had thought given to it in the first place and is not accepted by the business community. I have heard attacks on the business community generally, almost as if business is bad, almost as if profits are bad. Those are an essential part of our community, regardless of your philosophy. Jobs depend on it. Jobs depend on profits; jobs depend on an effective private sector business. In fact, an effective public sector, as we all know, depends on effective private sector business.

If we take that emotion out, and we realize that we are in a community, we are all in it together, and we are looking at a technique which has been put forward and is rejected by the business community generally, we should—if there is a wish to replace the strike mechanism, if there is a fear of the strike mechanism, if there is not a willingness to invoke that in the heroic way it has been in the past, then, sure, after this is repealed, let us come together and let us work out alternatives. You know the way you do that, you work

them out at the bargaining table. In fact, some unions and employers have. The police did it with the city; the teachers have done it with school divisions. It is not something that is foreign to us. Winnipeg Association of Public Service Officers did it with the city. If someone wants to custom tailor a solution other than strikes by mutual agreement, the collective bargaining encourages that, lends itself to that. That is the way the world goes round. If you can make a more successful job security program, and if you are getting better benefits that way, from the employee perspective, then do it. If you can persuade the employer that it is to the employer's benefit as well, the employer will do it. Now into the paper.

Introduction

In May of 1984 the NDP Government approved the concept of automatic access mandatory final offer selection, which for convenience I will refer to as "forced FOS," in a White Paper. The concept was implemented in The Labour Relations Act by the same Government effective February 1, 1988. This forced FOS is unique in North America. It is likewise inconsistent with the rationale of free collective bargaining.

What Is Forced FOS Manitoba Style?

If a party negotiating a renewal collective agreement wants to remove the possibility of a strike or lockout he simply applies to the Labour Board and then must win a secret ballot of employees in the bargaining unit supporting this method. For obvious reasons, a union is more likely to apply and win the support than an employer.

That application must be made between 30 and 60 days before the collective agreement expires. The process may also be used to end a strike or lockout after it has lasted for 60 days. A secret ballot vote supporting forced FOS accompanied by an application within three days after that 60 days will end the work stoppage and substitute forced FOS. Once again for obvious reasons it is unlikely that an employer would win support of employees to end a strike called by the union.

* (2140)

The board has no right to refuse an application that is timely and approved by secret ballot vote.

The process involves the appointment of a single "selector," which I will call "the tribunal," agreed to by the parties, or failing agreement, from a list of individuals kept by the Board. A tribunal appointed from this list may not be approved of by either party. The role of the Tribunal is to choose the final offer of the union or the final offer of the employer. No "cherry picking" is allowed. The Tribunal cannot revise either position—he must choose one or the other.

The rationale is that the threat of the Tribunal rejecting an unreasonable offer and choosing the more reasonable offer of the other party will cause both parties to moderate demands and achieve an agreement voluntarily.

This threat implicit in forced FOS is a substitute for the threat of the economic sanctions, the strike or the lockout.

Values and Theory Offended by Forced FOS

A question of "values" and "theory" is whether forced FOS is an acceptable supplementary method—I emphasize the word "supplementary"—of inducing voluntary collective agreements.

In our opinion it is not. It supports the concept of forced relationships and third party authorship of terms of that relationship without agreement between the parties to the relationship. This concept and this situation is unacceptable in a free and democratic society and violates the fundamental principle which is the very essence of free collective bargaining, namely, the freedom not to agree, the freedom not to be bound by terms not agreed to by an exercise of free will.

Years ago, this sort of forced relationship concept was called slavery. If you put it in domestic terms, we often use an analogy of domestic relations for the collective bargaining relationships. How would one feel if one were a wife or a husband and knew that some third party unknown to both of them was going to impose a relationship equivalent to marriage on them? How would one like that? But more than that, what this does, this does more than impose that relationship. This imposes the terms of the relationship as well. I mean, when I heard female voices and male voices heckling this sort of situation of a forced agreement—and it is not an agreement at all, it is an order—we apply it to real life and real relationships. It is offensive. We, in Manitoba do not buy that, I say.

Forced FOS applies to all collective bargaining situations in Manitoba after a first collective agreement. It can result in one party in effect dictating unilaterally the wages, terms and conditions of employment he wants on the other, not only without any agreement, but without any compromise.

To illustrate, consider the following situation. In the opinion of the tribunal, one term on technological change is appropriate and 14 other terms including wages are inappropriate in the union's final offer. The tribunal feels strongly that the employer's new reorganization plan, requiring new technological change provisions and several other new provisions is too dramatic a change for him to approve, yet he might agree with the 14 other employer positions respecting the 14 other union demands. The tribunal chooses the union final offer resulting in 14 unacceptable provisions being imposed and a reorganization being frustrated.

Imposed terms pursuant to forced FOS is a crude substitute for voluntary agreement. It is so crude and risky that the threat will not either induce the employer to enter into inappropriate agreements to avoid the risk of an even worse result through forced FOS, or result in the tribunal imposing the terms authored by the other party and rejected during bargaining. What chance is there to use an economic sanction effectively if there is an arbitrary time limit restricting its use? Imposing a 60-day limit is to, in some circumstances, emasculate the sanction so that it is ineffective.

(Mr. Chairman in the Chair)

The use of forced FOS to end a lockout or strike is of no advantage to the employer given the union control

over its members and the fact that only employees vote to decide whether to invoke forced FOS. The employer has no equivalent opportunity to invoke it if he wishes. It is one thing to use FOS by mutual consent in anticipation of certain circumstances as an agreed method of dispute resolution. It is quite another to use forced FOS unilaterally in known circumstances as a substitute method of dispute resolution after the collective bargaining method and work stoppage sanctions, whether threatened only or used, have not achieved the bargaining objective. FOS by mutual consent is acceptable and consistent with free collective bargaining. Forced FOS is the antithesis of free collective bargaining.

The creation of automatic access mandatory first contract was the thin edge of the wedge. That method simply postponed realistic bargaining until the renewal agreement stage. Forced FOS postpones realistic bargaining forever in every collective bargaining relationship in Manitoba. Collective bargaining will succeed in spite of it, not because of it. When all the camouflage is stripped away, forced FOS can be seen as another threat to the capacity of management to make appropriate decisions sensitive to and respectful of market conditions. To maximize that capacity and minimize interference with their decisions, employers will agree to demands they would otherwise reject and avoid changes they would otherwise demand, or worst of all, the tribunal chooses the union terms which have been rejected by the employer as inappropriate.These consequences are not beneficial to the Manitoba economy or its people.

In our opinion, forced FOS is affecting adversely more or less every collective bargaining situation in Manitoba whether simply a latent threat, actually invoked, or both invoked and resulting in a selection. In our opinion such a constraint on and deterrent to bold and innovative employer decision making, is not beneficial to Manitobans, especially at this time. There is no evidence submitted of any real need for forced FOS.

What is the need for forced FOS in Manitoba? In our submission no case has been made to justify this far-reaching intrusion into and undermining of effective collective bargaining in Manitoba, let alone anywhere else in Canada. The purported purpose of this law is to encourage collective bargaining. Its supporters argue that it is a pressure or creative threat which causes employers to make a deal rather than risk the tribunal imposing a worse one. This threat replaces the potential strike or lockout as the means of inducing the parties to be reasonable.

The generally accepted rationale justifying the availability of those economic sanctions is that they will cause the parties to respect the realities of the marketplace and the prices for labour dictated by supply and demand. If others are willing to work for the wages offered then this suggests those wages offered are reasonable. If those replacements do not do so, do as effective a job as those replaced or at higher cost, then the employer should be getting the message that perhaps the wages and terms offered should be improved.

As harsh a method as this may be to determine what is an appropriate collective agreement, the question is does experience justify forced FOS being added as a supplementary method. It is easy to list any number of examples of the hardships associated with a strike or lockout and argue that society has spared them because of this law. This raises two issues. How often do strikes or lockouts occur in Manitoba in the absence of forced FOS? Even more important than that question is what price do Manitobans pay for this law?

The first question can be answered relatively easily. Statistics reveal that absent this law only a very small percentage of collective agreements involve a strike or lockout. It is arguable that this percentage would reduce even further, because Manitoba law has since 1972 increased the number of provisions which discourage employers from becoming involved in a strike or lockout situation.

The second question is more complex. In our opinion the following are some of the hardships of this law to Manitobans:

1. The expenses of the Department of Labour in administering this law all paid by the taxpayers.
2. The costs, risks and consequences to the parties and those dependent on them such as shareholders, creditors, customers and employees of litigating under this law. These parties have recently included rural municipalities and other public sector employers.
3. The expense to the parties of the settlement imposed by a tribunal as compared to what they would have settled for themselves.
4. The consequences of potential businesses choosing not to do business in Manitoba because they do not want to give up control over their Manitoba labour costs to a tribunal.
5. The consequences of unions not bargaining realistically and rather relying on a tribunal to bail them out and give them more than they would have achieved through collective bargaining.
6. The consequences of union organizers inflating expectations by guaranteeing prospective members a collective agreement. We heard Mr. Peter Olfert say now they can guarantee a fair agreement, whatever that means. This discourages making the necessary compromises to achieve a collective agreement. Consequently achieving a voluntary collective agreement under this law is more difficult than it used to be.
7. The consequences of the parties knowing that an application for forced FOS will prevent a strike or lockout. This law effectively removes those sanctions as creative tensions in the collective bargaining process. Unions especially have no pressure to settle or agree to anything innovative. This

leads to inappropriate contracts being agreed to or imposed at the expense of the business and all dependent on its success.

8. The consequences of negotiating corrections to an inappropriate forced final offer selection during bargaining for a new collective agreement.

9. The extra difficulties and expense of administering, interpreting and arbitrating terms of a collective agreement never agreed to but imposed by a tribunal.

10. The consequences of unions developing the habit of relying on tribunals to achieve "collective agreements" for them. It is submitted that repeated tribunal involvement, instead of collective agreements, will be a predictable result of this reliance. I submit the evidence is clear. If you take mandatory first contract it inevitably leads to final offer selection; that is why we have final offer selection. You get dependent on it. Having achieved an imposed contract without earning it through the crucible of real collective bargaining, is a union and the bargaining unit likely to be ready to achieve the next renewal agreement voluntarily?

11. The consequences of employers agreeing to terms which are not appropriate simply to avoid the risks and expenses of the process under this law.

12. The consequences of the union or employer blaming the board for imposed terms, rather than being accountable and responsible for all terms in the collective agreement.

In our view it is essential to an effective collective bargaining process that the parties be accountable. They should not be encouraged by the law to abdicate responsibility for their actions and decisions by simply passing them on to another. If this law means that responsibility can be avoided on request then the law should be changed.

No justification for FOS based on purported anticipated need:

If forced FOS is just a crude method designed to preserve the status quo and guarantee unions more control over business management decisions, and more power to resist adjustments affecting workers required by market pressures, it has no place in the globally competitive and dynamic 1990s. It is another impediment to successful and profitable business in Manitoba for the benefit of all Manitobans. It jeopardizes jobs.

It is respectfully submitted that the present Manitoba Government, with the support of the Liberals, should not hesitate to repeal this harmful and unacceptable law in the public interest.

Thank you very much for your attention, Mr. Chairman, Members of the Committee.

Mr. Chairman: Thank you, Mr. Newman. Are there any questions? Mr. Ashton.

Mr. Ashton: I just wanted to indicate that one of the objects that is listed in the paper of the Manitoba Chamber of Commerce is the progress development of Manitoba communities. It states that in order to make them better places in which to work—

Mr. Chairman: Mr. Ashton, we cannot hear you, would you pull your mike up, please.

* (2150)

Mr. Ashton: Yes, Mr. Chairperson. I was just reading the objects of the Chamber of Commerce which were to promote the development of Manitoba communities in order to make them better places in which to live and work. I realize we have a difference on this issue, but I just want to assure you, and I am sure I am speaking not just for myself, but many people in Manitoba, when we want to fight to maintain this Bill it is because we believe it makes Manitoba a better place in which to live and work.

I find your comments to be interesting in terms of strikes, but I think you misread what people are saying. No one is saying that there is anything necessarily wrong in going on strike. What they are saying is that they should not have to, in every circumstance, have to go on strike. They should not have to go on strike, for example, to maintain any ability to have a collective agreement because that is what many strikes are for. I am sure you are aware of that. A dispute is not over the terms of a collective agreement, but whether a union can be formed, whether the people in the workplace have the right to organize.

So when we are talking about the right to strike I think it is only fair to put it on the record, because I know I have made comments on that, that we believe that the right to strike is important, but that there should be alternatives as well, and that is why we have supported final offer selection.

I wanted to ask you some questions on your brief to get some idea of what we are looking at in terms of the Chamber of Commerce's position. I note, perhaps it is positive, that you have not used that term, that I remember from other committee meetings, that having final offer selection was somehow going to be a dark cloud over Manitoba. I sat here as a committee Member, I believe the first term of the Pawley Government, and that was used as an argument at the time why we should not have first contract legislation. It was also one of the basic themes of why we should not have final offer selection when it was introduced in 1987.

I want to deal with the suggestion that somehow improvements in The Labour Relations Act have been a dark cloud over Manitoba. I could go back to 1972 by the way. I find it interesting that you mention in your brief the year 1972. I assume that was because that was the year in which the series of major changes to The Labour Relations Act were introduced by the then Schreyer Government. I find it interesting that you state since 1972, since those changes were brought in—and the quote here is, "increase the number of provisions which discourage employers from becoming involved in a strike or lockout situation." At the time the same

arguments were used. It was a dark cloud. I believe the Chamber of Commerce opposed the changes in 1972, and you can correct me if I am wrong on that. You, yourself, have said that since 1972 there has been a decreased number of strikes and lockouts because of provisions which discourage employers from—

An Honourable Member: On a point of order.

Mr. Chairman: Who is on the point of order? Mr. Enns.

Hon. Harry Enns (Minister of Natural Resources): I hold the Member for Thompson in high esteem. He knows that, but on this 120th plus day of this Legislature at ten o'clock, I do remind the Honourable Member that the purpose of engaging discussion with a presenter is to ask questions, to clarify his presentations that would help Members of the committee. I have listened to the Honourable Member now recite some history. We are now in 1972. I remind him it is now 1990. Could we perhaps, Mr. Chairman, proceed with questioning the presenter?

Mr. Chairman: A dispute over the facts is not a point of order, although I will remind Mr. Ashton that we are to be asking questions, not making statements. Thank you, Mr. Ashton.

Mr. Ashton: My apologies for referring to 1972. It was on page 8 of the brief. I apologize for quoting from the brief as part of the premise to my question, and that is: in the final page of the brief, I do see some wording here that perhaps brings back some of the spirit, the intent of the arguments that were used by the Chamber of Commerce previously, the dark cloud, by suggesting that—

Mr. Chairman: Mr. Ashton, do we have a question in here somewhere?

Mr. Ashton: Yes, I do. I am asking— -(interjection)- Read the brief, and I am just pointing -(interjection)- Well, I was asked to—

Mr. Chairman: Would other committee Members quit badgering Mr. Ashton, and we will get on with this.

Mr. Ashton: Thank you, Mr. Chairperson. I was asking what the changes you are talking about, the adjustments—and this is a direct quote. What are the adjustments you talk about affecting workers required by market pressures? In the globally competitive and dynamic 1990s, you say that final offer selection is impediment to that. Is that by any chance free trade? Are you suggesting that we should now get rid of final offer selection because it works against this globally competitive and dynamic 1990s, the market pressure that free trade has presumably brought to Manitoba?

Mr. Newman: In response to your first portion of your leading questions, I will answer the last one last. The first one was you say that forced FOS is designed to protect organizing. If that is so, I do not understand how any single one of the applications leading to an imposed selection was designed to protect organizing. I do not understand that at all. You might be talking about mandatory first contract, and that is entirely a different thing. That is not before us today, but I just do not understand that. I do not think that is accurate or relevant.

With respect to the dark cloud over Manitoba which was a headline—and we all know what people can do in creating headlines—and probably that was descriptive of the perception of a period of 20 years in Manitoba where labour legislation has not been designed in any way to serve private sector business interests in this province. It indeed is a handicap that we face in this province as a result. This forced FOS goes a step which is patently too far, and that leads to the next part of this, I guess a bit of sleet, or hail, or something from a dark cloud. What we are talking about you say, is a simplistic concept, you treat free trade. Free trade is simply a symptom of a much larger marketplace reality we have in the world, and different countries are making different adjustments.

The Free Trade Agreement is an example of one step to make that adjustment between our countries. Some people think it is wrong. Some people think it is right. I am not going to enter into that debate even though I think it is positive for Manitoba, and I wish people like you would examine it intelligently and look at it and say, we have to bite the bullet intelligently in Manitoba. We have to work hard if we are going to survive as an effective provincial entity. I wish you were to take that sort of approach, Mr. Ashton. I noted throughout this event that you sort of chuckle and chortle every time someone raises a serious view contrary to what you believe based on your life's experience as an active union person in Thompson, Manitoba. This is a serious issue. We are dealing with an issue here which is going to have an impact on all Manitobans.

We believe as a Chamber of Commerce, and you do not have to agree to this, we are not going to impose any agreement on you, we are not going impose any terms on you, we do not think that this is beneficial for Manitoba. We say emphatically, speaking for the business community, it is not beneficial to business, it is harmful to business. I suggest to you that what is harmful to business is not going to be helpful to people who depend on jobs in this province.

* (2200)

Mr. Ashton: Well, we disagree obviously on free trade. When you talk about biting the bullet I believe a lot of Manitoba workers have bitten the bullet, and more will bite the bullet in the future. That is another issue and I respect that.

In terms by the way of my comments on people attaining the right to organize, that was in reference to your comments in regard to strikes primarily. You are correct, we are not dealing with first contract legislation, although I do know your position on that. You also do oppose first contract legislation which was put in also because of the fact that in many situations people are fighting for the right to organize. I want to deal with the question, the quote, the dark cloud was

from an advertisement that had been taken out. I assume that was part of the tax that had been put forward at the time. If it was not I look forward to your retracting that because I thought it was rather, to use your terms, emotional, rather overreactive.

I just want to ask you if you agree, given your concerns about the business environment, our labour climate here in Manitoba, with the following statement that Manitoba has a skilled and stable work force, and I quote, "A reliable, productive work force, plus consistently good labour management relations have given Manitoba one of North America's best labour reputations. You think that is an accurate statement of what is happening in Manitoba with the changes in 1972 to The Labour Relations Act, which I know the Chamber of Commerce opposed, the changes in the early 1980s, the change in 1987 for final offer selection or do you believe that in fact it is the opposite, we do not have a good labour reputation?

Mr. Newman: With no attempt to underestimate the role the lawmakers in this province play, I believe that the laws like forced FOS, and forced FOS in particular, is an impediment. What has been achieved, and is set out in whatever you read from, has been done in spite of this sort of law which has been thrust upon us without a whole bunch of thought and without acceptance by a major player in this province, namely, the business community.

I think, and the business community here would support it without hesitation, that we do have an excellent work force; we do have excellent motivated management in this province relative to other jurisdictions in this country. We are also dedicated, in most cases, to improving the lot of Manitobans.

If law makers would leave this issue more in the hands of the parties to resolve, I would submit to you that they would be a lot better off, and we would get better solutions to the sorts of problems which this legislation may be in some instances, in the eyes of some people, trying to address. It does not, I submit; it is an impediment, it does not contribute to what is there that has been done because of the quality of the people and their commitment to the province, not in any way because of the law.

Mr. Ashton: The document I am quoting from, by the way for your information, Mr. Newman, is a document called The Manitoba Advantage, that was issued by the Honourable Jim Ernst, Minister of Industry, Trade and Tourism and was published in a number of business publications. I know this one was published in a business publication that reaches western Canada.

I raise this because I remember the concerns that were expressed. I remember the dark cloud. I remember the concerns that were expressed in terms of final offer selection, and while I was not in this Legislature, obviously in 1972, I have heard people say that much the same kind of concern was expressed, that if you bring in this labour legislation, we are not going to get new businesses opening. It is going to be a dark cloud; it is going to prevent jobs.

Yet in each and every case, even tonight I hear you saying, well, things are working despite the legislation. Now from what I am hearing, being able to live up to the dire predictions of a few years ago and the suggestions that somehow we will be having major problems in Manitoba in terms of labour reputations.

In fact, as I said, the Minister responsible for Industry, Trade and Tourism (Mr. Ernst) says we have one of North America's best labour reputations. I really ask you, perhaps in this context, just to focus in on something that is very relevant to this Bill, what we are asking for is final offer selection be given a chance; it is on a sunset clause.

Are you suggesting that if final offer selection stays in place, since it clearly has not affected our labour reputation—even you have said that we have a good labour reputation—do you see this having dire consequences? Is there going to be a dark cloud if once again we have this type of legislation in Manitoba? Is that what you are suggesting tonight, the dark cloud that we did not see after 1972 or after 1983 or 1987—

Mr. Chairman: Mr. Ashton, you could not be arguing with the presenter, could you? Is there a question in there somewhere?

Mr. Ashton: Yes, I was asking, is it the position of the Chamber of Commerce that even though we have not seen really that dark cloud, the dire predictions, that if we do not pass this Bill, if we allow this Bill to stay in place, final offer selection, for three more years, that finally the dark cloud will appear in Manitoba and all these statements, all the facts that show we have a good labour reputation will no longer be the case. Is that the position of the Chamber?

Mr. Newman: I think we have grey skies in Manitoba, and we have had them for a long time. If someone who is an author of an advertisement or a writer of a headline, whatever it was—I do not know who paid for it—but if that was the description of it, we do have clouds, and they are storm clouds. If we do not come to grips with them, we have a problem in this province. I will tell you, they are coming to grips with them in Minnesota, they are coming to grips with them in North Dakota, in Alberta, in B.C. and Ontario, in Quebec.

You talk about, yes, we do have wonderful people here, and I can tell you, I see in this room some of the finest union negotiators in the province, and I count them as friends, and I count them as excellent professionals in terms of negotiating collective agreements. I think we need more professionalism in negotiating collective agreements. We need some of these people in this room to get rid of that law so that they can do a better job without that being in the way because that makes life more difficult for them, it makes life more difficult for management. It makes life more difficult for management, it makes life more difficult for unions, it makes it more difficult to achieve collective agreements in this province. That is perceived, Mr. Ashton, around the world—that law is perceived as bad law for business in Manitoba. Manitoba is getting that reputation because of the sorts of laws that were put in which caused to be called the grey cloud in Manitoba. We have a grey cloud in Manitoba. This is

the greyest portion of it right now. It is perceived around the world as being a place which is anti-business because of legislation like that.

Mr. Chairman: I think you have competition, Mr. Ashton. Mr. Ashton.

Mr. Ashton: Mr. Chairperson, I am pleased to see that Mr. Newman now is only opposed to the final offer selection because of his concern for the union members and the union negotiators. It is an interesting twist, it has been an interesting discussion back and forth.

Mr. Newman: They know, Mr. Ashton, they have beaten the hell out of me at the bargaining table many times, but we have always achieved collective agreements which make good sense and happen to work well.

Mr. Ashton: I hope that continues and that is one of the reasons that we want to see final offer selection continue to be in place.

I want to deal with it once again, this whole suggestion that we have anti-business legislation. In your own statement, you said that one of the impacts of legislation going back to 1972, the cumulative impacts, this is why, I apologize to the Members of the committee before for having read this—since 1972, and this includes final offer selection, so I am not just dealing with history—it has increased the number of provisions which discourage employers from becoming involved in a strike or lockout situation.

Are you suggesting that is negative for Manitoba? Are you suggesting that we should return to the pre-1987 days or the pre-1983 days or even the pre-1972 days because a logical conclusion of what you are saying, as I understand it, and the Chamber's position throughout this period is we would be better off with strikes and lockouts.

I am sorry to juxtapose what you are saying, but in terms of the way I read that, is that what you are implying, that we would be better off with the situation that existed prior to 1972 in which there were no more strikes and lockouts?

Mr. Newman: All we are addressing is pre-February 1988. It was then that final offer selection came in. It is that which we are addressing. It is that which is the biggest problem. It is that which must be addressed, we submit; it must be and should be repealed.

Mr. Ashton: Perhaps I misunderstood it then, so essentially the Chamber of Commerce accepted the changes brought in 1972 and in 1983 and'84 and that really the main concern in Manitoba is just final offer selection?

Mr. Newman: The answer is, there is no question, the main concern right now is final offer selection. There are other problems which we have gone on the record of dealing with in the past, and we have not secured any commitment or agreement from the Liberals or the Conservatives or anybody that there will be any other changes from that. We did get a commitment from the Liberals and the Conservatives in speeches that were made publicly with respect to FOS.

* (2210)

Mr. Ashton: Regardless of commitments that have been made and obviously we are dealing with a minority Government situation where it is more difficult to implement it. Are you saying that you still oppose other provisions, not just final offer selection, that is still the position of the Chamber of Commerce?

Mr. Newman: Our position is on the record. We have made it very clear that we not only oppose final offer selection, we also oppose mandatory access first contract which is the same concept but a narrower use. This is more pervasive and more harmful than that law. As a result, it is No. 1 on our priority list for improvements to the legislation. We believe that rather than dealing with matters through legislation like this, that these matters should be better addressed by enhanced conciliation, mediation, training of professionals in collective bargaining, so we can develop more people who are capable of achieving a wonderful creation called a collective agreement through effective, intelligent, courageous negotiating. I submit there is no need for this. It is an impediment.

Mr. Ashton: I appreciate you for stating the Chamber of Commerce's position clearly. Obviously we have a disagreement on that. One more question, though, and I am reading from the brief again on point 6, where you indicate your concern that union organizers can inflate expectations by guaranteeing prospective members a collective agreement.

One of the reasons for first contract legislation was because many workers could not obtain a collective agreement. They were faced with a situation of being denied that, of having to go on strike, in many cases companies having the right to hire replacement employees. There has been the concern expressed earlier today in terms of final offer selection that that raised a continuation of it.

Are you suggesting, and I do not mean to misread the comments, but are you suggesting that there is some problem with union organizers being able to say to people that you can become organized, you can have a collective agreement? No one is saying what the form of that collective agreement is.- (inaudible)-have objection to people having the right to organize and being allowed the opportunity to have a—

Mr. Chairman: Mr. Ashton, the question has been put. Mr. Newman.

Mr. Newman: Mr. Chairman, I will just deal with a specific part of your question, which I think you intended to put to me, and that is whether or not inflating expectations in that manner is right or wrong in my view.

First of all, if the expectation is that this will guarantee a "collective agreement," it is simply not true because it is technically using some stretched language and

deeming called the collective agreement. If you have a tribunal imposed document which is an order, it is misleading. It is not an agreement at all. It does not contain the finest and most valued features of things called agreements, namely, mutual consent. What you have is simply an order, a dictated set of terms by a third party accountable to nobody. That is what you have.

In terms of inflating expectations, if, as Mr. Olfert said this evening speaking for 24,000 members of the Manitoba Government Employees' Association, he could guarantee a fair agreement, my gosh, I wonder what the expectations are of 24,000 people if he is saying that sort of thing, and he says that because of FOS. If that is the sort of thing that is going around, I say that is reason enough to get rid of it and get rid of it in a hurry.

Mr. Ashton: I am just wondering if, Mr. Newman, you have looked into the Act and the factors that are considered in making a decision. There are a whole series of factors that are listed, terms and conditions of the existing previous collective agreements, terms and conditions of employment, changes in the cost of living, information in regard to the continuity and stability of employment, information on the employer's ability to pay. There is further listing. This is in the statute again which allows the selector to look at a fair and reasonable decision.

I am just wondering what you say as being so unfair. Mr. Olfert made some comments earlier. He is not here obviously to defend it, but from my understanding of the brief, he is suggesting that with FOS and with first contract and the whole fabric of labour legislation in Manitoba, there is a greater opportunity for people to organize. With final offer selection, the one thing it does, if it goes all the way to the selector, which in most cases they do not do, is it results in what is a fair and reasonable decision. Do you believe that is not the case?

Mr. Newman: Mr. Chairman, Mr. Olfert also said FOS is an incredible tool for unions. In answer to your question directly, if you and I, Mr. Ashton, based on the approach you are taking to this issue and the approach I am taking to this issue, were to try and decide what was fair and reasonable, I think we would have a great deal of difficulty. Those are subjective terms. So how is this nameless, faceless tribunal selector going to decide what is "fair and reasonable"? How is that person going to play God and help people like you and I who have our different opinions? Is he going to tell us what is fair and reasonable? When he does, are you going to agree it is fair and reasonable if he supports my position, Mr. Ashton? That is the difficulty.

We are asking people to do a job which we should be doing ourselves by reaching agreement and struggling to reach agreement and not giving up until you reach an agreement. We are abdicating that responsibility because of that law and giving it up to someone else and say, you, let us just put a —Manitoba Government Employees' Association does not make a deal with the province because they do not think the offer is fair, so they invoke the final offer selection process, and a selector is going to come in and tell taxpayers in Manitoba what is the fair and reasonable one to select. I wonder if he did not select the union position, whether they would think that was fair and reasonable. Experience would say when Manitoba Government Employees' Association was exposed to interest arbitration in the past, they did not like decisions which were not in their favour. They would scream and cry until they would remove that sort of process. So as long as the decisions are favourable, it is fair and reasonable. If they are not, it is unfair and unreasonable, or the guy is stupid, the guy should be fired, the process should be done away with.

Mr. Ashton: I do not know if I want to get into the analogies too far -(interjection)-. We have an agreement on this Bill. I think the logic of what I am suggesting is that instead of doing it as sometimes has to be the case, as ends up being the case when there are no alternatives of settling, as some Members of the Legislature, by the way, on occasions to settle their debates have suggested, that is to "step outside" and settle the debate that started in the Legislature through, shall we suggest, more direct forms -(interjection)- Well, the Minister of Natural Resources (Mr. Enns) said we should do that more often. I believe that is the analogy we are dealing with here, that final offer selection gives another way out that, who knows, you and I might be able to come to some agreement on something with somebody taking our offers and getting us to come closer together.

I could continue the questioning quite extensively. I just want to assure Mr. Newman, as I said before, we support the Chamber's objectives as outlined in your brief of making Manitoba communities better places in which to live and work. We have a different way of doing it. We feel that final offer selection is in that best interest. That really is the bottom line. I guess we will agree to disagree. I appreciate your comments tonight.

* (2220)

Mr. Chairman: Thank you, Mr. Ashton. Now, are there any more questions? Mr. Patterson.

Mr. Patterson: I just want to clarify something, please, Mr. Newman. On page 7, the paragraph at the top. To me this statement implies that if there is a work stoppage there will be scabs used. Would you not agree that when a work stoppage occurs that there is a more or less a psychological contract there that both sides should be hurting and that it is one thing for the employer to maybe try to keep operating to some extent through the use of exempt staff, but other than that, it is not practical to shut down as many enlightened employers, such as Mr. Ashton mentioned with Inco at Thompson, which would shut down so that both sides are hurting and will therefore come to some agreement in due course.

My question is it is mentioned here of replacements as though that is, more or less what is going to happen whenever there is a work stoppage?

Mr. Newman: I do not understand the question, but I will try and tackle it.

A Manitoba law dealing with replacement workers goes further than most jurisdictions, and certainly I am speaking North America as well as Canada and that provides quite serious restrictions on the use of strike replacements. They are there only as a temporary situation.

Yes, in practice most employers use that as a last resort sort of situation. If, knowing full well that the union movement feels very strongly about other people being brought in, albeit even temporarily to do that situation, and it has to be an important issue for that to happen, that is then the nature of the process.

In some industries like the health care industries, as you know, there is an agreement identifying essential services and so forth so that by agreement between unions and management in the enlightened bargained mutual agreement way, they have worked out ways and means of ensuring standards of care in the events of work stoppages. Those are the sorts of enlightened solutions I am talking about.

In terms of the weapon of strike and lockout which is a tension; its strength is that it is real, and it is available, and it is possible. That is what makes parties reasonable. We also must not lose sight in Manitoba that 90 percent of the businesses here employ less than 50 employees. I mean that is what we are dealing with. We are not dealing with even big business generally speaking. We are talking about small, small business.

Earlier, for example, the sort of message communicated was that it was little unions and big business. We are talking about big unions really for the most part and little business. I mean that is the reality. The big business for the most part is organized in this province. Certainly the public sector is broadly organized.

The wonderful thing about the union movement is its ability to come together and act in a solid way. If someone is being offensively picked on by an employer large or small, they gather round, and they collect, and they use their efforts and sometimes very responsible heroic ways, and they bring about results. Sometimes if it is a small union they ally with another one, sometimes they merge. I have been through that on both sides, quite frankly.

Mr. Patterson: Thank you.

Mr. Chairman: I want to thank you very much Mr. Newman.

Mr. Newman: Thank you.

Mr. Chairman: Mr. David Ryzebol has indicated that he will be attending next week, so we will now move on to the next presenter on the list, Mr. Frank Goldspink. Now is it the will of the committee to look at the hour and ascertain how many more presenters we want to—

Mr. Ashton: I would suggest we go a little bit longer and perhaps come up with some arrangement after 11 whereby we will agree to a certain time . . . .

Mr. Chairman: Okay, then is it the will of the committee to take a look at the time after we are finished with this presenter? Agreed.

Mr. Frank Goldspink (Manitoba Communist Party): My name is Frank Goldspink, and I am here representing the Manitoba Communist Party. You have a brief written presentation before you, and my remarks touching the highlights will be even briefer. They will be in the reverse order, but they will be characteristically blunt.

The Communist Party says that the essence of the issue before this committee is that the Liberal and the Conservative Parties in Manitoba have a definite agenda of which the Bill before you is only the first step, and that agenda is to gut Manitoba labour law as part of overall neo-Conservative policies, right-wing policies tied to the U.S.-Canada trade deal and the level playing field.

This approach is a small part but is nevertheless definitely identifiable as a part of forcing North American integration on Canada for the benefit of the transnational corporations, largely U.S.-based. Their prescription for their own survival is to impoverish all the rest of us and take away our civil and human rights at a time when they need to be strengthened. For example, there is no way that anyone can say that labour relations in Canada and Manitoba is a level playing field. The Communist Party's prescription to Manitobans is to tell the Conservative and Liberal Parties loud and clear, hands off all labour legislation, drop your agenda, drop your support for the transnational corporations.

Now, in the likely event that our analysis of the outlook of the parties represented on this committee is wrong, then we have to say that we are very critical, extremely critical that a process on such a matter as this, which is not the top priority, given the developments in our economy and our politics in Canada in the past two years, is not the top priority and that this process has been just left to drag out. We are most severely critical of those that we believe know the best, know better and know how to determine the priorities for working people in Manitoba.

We are saying that forces should be joined now to prevent further damage from being caused by the transnational corporations being in control of our economy and by the federal Conservatives going full tilt to carry out the transnational corporation agenda. We only have to witness the GST and the latest federal budget.

In any case, Manitoba is left to fend for itself. The Communist Party feels, and we have always felt this in our approach to how working people should fight back, that the best defence is a counter-offensive, that we believe that the priority now for labour legislation in Manitoba should be decisive measures like plant closure legislation. This committee, I believe, would only have to speak to the workers at Varta Industries, to the management at Varta Industries, to the teachers who teach the children of the workers at Varta Industries, to the clerks who wait on those workers in the stores, to ask them what they think the priority for Manitoba labour laws should be right now.

We would like to also say that it is a very heavy mark against the Government here that the Minister involved was part of keeping the Varta closure secret rather

than taking steps to prevent it and taking steps to rally Manitobans to determine how we deal with such situations in the future.

Given the aims of the transnational corporations, measures like plant closure legislation are vital to the stability of the Manitoba economy. That means it is vital not just as labour law but also to all the important players in the Manitoba economy, excluding only the transnational corporations. If we are going to achieve the ability in Manitoba to have a solid stable economy, to have a democratic life in this province, we are going to need to yank the rug out from under big business. Plant closure legislation is what we feel is the first decisive step to doing that.

Given that our appeal here is likely to fall on some deaf ears, the Communist Party would appeal very strongly to those in the various Parties, individuals in some Parties and perhaps a whole group in another Party, to initiate the fight right now for plant closure legislation with a wide community mobilization, a mobilization that would be even stronger and wider than what has been done to date and would force the Government and the Liberal Party to drop their agenda and would allow us to get on with fighting the federal Conservatives who are basically trying to dump Manitoba down the drain. Thank you.

Mr. Chairman: Are there any questions? Thank you, Mr. Goldspink. Mr. Green is out of town, so the next will be Mr. Bill Gardner—Mr. Bill Gardner, Jr. I am sorry.

* (2230)

Mr. Bill Gardner, Jr. (Winnipeg Chamber of Commerce): That is all right, I will not hold it against you, Mr. Chairperson.

Mr. Chairman: Have you a written presentation, sir?

Mr. Gardner: It is all in my head.

Mr. Chairman: Okay.

Mr. Gardner: In standing here before you tonight, I cannot help but reminisce back, Mr. Chairperson, at the times that I have been here before.

I am grateful to Mr. Ashton for having given me my opening to my presentation to you tonight, when he was questioning Mr. Newman about the cumulative effects of the labour legislation on the business environment in Manitoba.

I well remember the dark cloud over Manitoba ad that was taken out. It was taken out in 1984 to be precise as a result of the massive changes to The Labour Relations Act that came in under what was then known as Bill 22. I think the point that Mr. Ashton was trying to make was that the dark cloud over Manitoba concept was a bit of hyperbole and I would agree with him there.

I remember being questioned when I appeared before this committee on Bill 22 and had asked to point out the specific dire effects that I was predicting. Unfortunately for us and unfortunately for the province that I love, some of those predictions are starting to come true. We can see some of it, and I do not want to suggest that this report is unendingly bad, but we can see some of the effects in the Price Waterhouse Report that was published just a couple of weeks ago.

I would not purport to suggest to you that the labour relations legislation is entirely the cause of some of the unfavourable effects that report documents. I would not purport to suggest to you that final offer selection in particular is entirely to blame. I do suggest that the labour relations legislation is a substantial part of what is happening in a cumulative way to the business environment in Manitoba.

The best analogy that I can think of is to the global environment. What we have been doing over the years is imperceptible at first, but it grows and eventually of course you start to see the effects. Now we are at a point where scientists are predicting that we only have a 10-year window left before we do irreparable damage to our global environment.

My proposition to you tonight is that you can draw an analogy to what is happening to the business environment here. The effects cumulatively of the labour relations legislation are imperceptible initially and you cannot point to a particular provision that has a cataclysmic effect on its own.

What is happening is that there is a perception both within and outside Manitoba's borders that the labour legislation in Manitoba is hostile to the entrepreneurial effort. The proof of that, I suggest, is no longer conjecture. It has been documented in the Price Waterhouse Report.

One of the paradoxical things about final offer selection is that its proponents suggest that it is there to support collective agreement. It is there to support collective bargaining. I am certainly happy to hear as many people who have spoken speaking in favour of the concept of collective bargaining, but I suggest to you that you do not promote free collective bargaining by taking it away. You do not foster good faith bargaining by making it irrelevant. That is like saying you support democracy by taking away the vote. It just does not make sense. They are mutually exclusive concepts, Mr. Chairperson.

Surely in 1990 we do not have to look for examples of the futility of trying to run a system, be it an economic system or a political system, by one side imposing its will on another. Surely that is the sort of thinking that has made Eastern Europe the economic cripple that it is today. It just does not work.

What does work is consent and agreement and compromise. The best labour legislation, I propose to you, is legislation that adopts those spirits and fosters them. Our labour legislation started with one of the all-time great compromises, the compulsory arbitration clause in return for the no strike clause. That sort of legislation has stood the test of time and spread throughout jurisdictions in North America, because it is based on consent and it is based on compromise. That is the best part of free collective bargaining.

Surely we can take a message from the fact which I suggest to you, Mr. Chairperson, that Ontario, Alberta and Quebec have lost more time to strikes in the health care industry in the last few years than has Manitoba. In Manitoba health care workers have the right to strike. In Ontario, Alberta and Quebec they do not. Strikes are illegal in the health care industry in those jurisdictions, and yet there are more strikes there. What does that suggest about an attempt to impose something on one or the other side of the collective bargaining process?

I am not talking merely theoretically. I have now been involved in negotiating collective agreements for what is beginning to seem to me to be quite a distressingly long time, some 14 years since 1976. In the years I have been negotiating collective bargaining, Mr. Chairperson, I have never failed to at least reach agreement in committee, except in one sector. In that sector I have never been able to get an agreement. That is when I was involved negotiating in the health care sector in Ontario where, instead of the right to strike, there was compulsive interest arbitration. What happened was you could never get down to serious bargaining because people were posturing, manoeuvering and manipulating the process, getting set for the trip to the arbitrator.

The problem with an imposed collective agreement, be it imposed by an interest arbitration or final offer selection, is that the reasonableness of the result, with all due respect to Mr. Ashton, is irrelevant. It is beside the point. What is important is that it is not of the parties' own making. You make a terrible mistake if you look at the effect of final offer selection ending when the collective agreement, quote, because of course it is not an agreement, is imposed and goes into effect. The effects are only starting because the public can close their newspapers and go, well, fine, that is great, somebody has a contract, it will last for a few years and everything is wonderful.

* (2240)

Of course, if you are inside the process it is just starting. The problem with an imposed contract, if it is not the parties' product, if it is not the product of a consensual process, then nobody has a stake in making it work. It is not our fault, it is not our responsibility. Someone has imposed it on us, maybe someone imposed something that we did not like or maybe it was the other side's package that got picked. So we have no stake in it. Why should we work or make an effort to make it a success? Let us just look at what advantages we can gain. Let us look at ways that we can frustrate what we see as the other side's ill-gotten gains. That is the way to poison a relationship, Mr. Chairperson, not the way to build it.

As I have said, I have always managed in a free atmosphere to reach an agreement, but I have to admit to you that I cannot count the times, Mr. Chairperson, that I have wondered, 10 minutes before we actually had a deal, whether we were going to get a deal at all. It is at times like that when I can remember feeling frustrated and defeated and ready to get up and walk away. The only thing that kept me at the table and I suspect in many cases the only thing that kept my opposite number at the table was the feeling that we really were not allowed to fail, that we had to reach an agreement because the alternative was one that we did not want to contemplate. Neither of us wanted a strike. That is what keeps us at the table. Final offer selection and mechanisms like it are what tend to make you get up from the table and say, who needs this, why do I have to make this effort, I will get up and leave.

I will give you an example. I am sorry that the representative from the MGEA has left because it refers to his union. He is dead wrong when he says that his union has never applied for final offer selection because I have the papers on my desk. It involves the unit of the MGEA that is certified with the Communities Economic Development Fund.

What is happening to them is exactly what was predicted when we were talking about final offer selection initially. When you combine that with first contract legislation you have the potential to go through the whole spectrum of a collective bargaining relationship without ever getting a chance to negotiate your own contract. That is exactly what is being played out between the MGEA and the CEDF at the moment. They had a first agreement imposed upon them by the Manitoba Labour Board. That agreement runs out in a couple of weeks. They had a couple of bargaining sessions but then it came time to make a decision because the first window was about to close. For whatever reason, perhaps because they did not want to risk continuing with the collective bargaining process, the MGEA applied for final offer selection. I have just received word that is going ahead. It has completely short-circuited the bargaining process. There have been no more meetings between them.

I just had an analysis done of the parties' respective monetary positions. They are less than a percentage point apart, Mr. Chairperson. In my years of collective bargaining that looks to me like a cinch to settle. Yet they have resorted to final offer selection. Now, I do not know what is going to happen, but I suggest they have started off down the wrong road. If they do end up negotiating their own collective agreement, it will be in spite of final offer selection, not because of it.

Mr. Chairperson, in the final analysis, the best barometer of the validity of final offer selection or the lack thereof I suggest is in the underwhelming response that this legislation has had in other jurisdictions. It has been on the books. It was passed back in 1987. No other jurisdiction in Canada, no other jurisdiction in North America—to my knowledge no jurisdiction in Europe—other than Manitoba has chosen to adopt it. Surely that suggests something to us.

We are badly out of sync. You cannot sit here in Manitoba and say we are the only ones marching in step. What it does to us is it makes us stick out like a sore thumb in the business community. As someone who periodically gets requests from outside the province from people who are looking at places where they might want to invest or they might want to locate, words fail me when I try to describe to you the reaction that I get when it comes time to explain to them that we

have got legislation in Manitoba like final offer selection.-(interjection)-

Yes, that is right, Mr. Chairperson. I tell the truth.-(interjection)- The very sad problem is that it is not a laughing matter at all, because investment decisions get made on the basis of perceptions, and the perception that is out there at the moment is that there is labour legislation in this province that does not exist elsewhere and that does not appear to do anything except form an obstacle between the parties reaching their own collective agreement. If there was any validity at all to final offer selection, I suggest that the proof in the pudding would be to see who else has chosen to adopt it. No one else has chosen to adopt it.

Frankly, Mr. Chairperson, in closing, the suggestion that I have heard from both sides of this podium that, ah, come on, you know, it only has another three years to run, is just wild. It is like building the dam first and saying, well, now let us do an environmental assessment. If there is a lot of damage, we will take it down in five years. That is getting it all wrong. You do that first, and only after you are satisfied that you understand the effects and can prove that the effects are benign do you go ahead and put in the structure, be it a legislative one or one of concrete; not the other way around.

I thank you at this very late hour for your attention.

Mr. Chairman: I thank you. Are there any questions?

Mr. Ashton: Thank you, Mr. Chairperson. I just want to read again, and you are saying you have been in the position of talking to possible investors. The Government of Manitoba, the Conservative Government of Manitoba, has said that we have a reliable and productive work force plus consistently good labour management relations. This has given Manitoba one of North America's best labour reputations. Really, in all fairness, apart from our obvious disagreement in final offer selection, is that not really the message that the Winnipeg and Manitoba Chambers of Commerce should be taking out.

I hear talk about perception, but I have yet to hear any good argument to suggest that this is not the case in Manitoba. In fact, our statistics show it. We have the lowest record of work stoppages due to strikes in 17 years in Manitoba in 1989 with final offer selection. We have the second lowest level of work stoppages in Canada. Only P.E.I. has further work stoppages than Manitoba.

Is that not really the message you should be taking out of it, apart from our disagreement on final offer selection, because I find some difficulty in seeing why the Chambers of Commerce, and I appreciate the fact you did not agree with the, you called the hyperbole, the dark cloud scenario although you did see some problems, is that not the message? Is that not really what is happening in Manitoba, what the Minister of Industry, Trade and Technology (Mr. Ernst) said, that we have one of North America's best labour relations climate?

* (2250)

Mr. Gardner: That is why I am here tonight, Mr. Ashton, giving the message to you. I am hopeful that as a result of these committee hearings, the message that I take touting Manitoba is going to be much strengthened, because I can assure you that there will be a very positive message indeed, really far out of proportion to the actual difference that it makes in the labour relations legislation if final offer selection is repealed. That will very much improve my chances of convincing people when I try, and I do always try, to convince them that Manitoba is an attractive place to locate.

I have to admit, Mr. Chairperson, that I sometimes feel like Barry Shenkarow talking about the upper deck of his arena. He knows that those seats need to be improved. Yet, if he says that they are as steep as they are, he is going to have a hard time filling them, and he has to fill them until he gets a new arena. It is quite a dilemma, and you would solve it or go a long way to solving it, Mr. Ashton, if you would get rid of final offer selection for us.

Mr. Ashton: Well, it is interesting. On the one hand, we have heard consistently, I mentioned it before in questioning to Mr. Newman, and virtually every time we bring in something in terms of labour relations legislation going back to 1972, or 1983, or 1987, whether in fact as the Manitoba Chamber of Commerce's brief indicated it has reduced the number of strikes and lockouts, the legislation that we have been introducing gradually in Manitoba.

We hear the same argument that this is going to create perceptions and anti-business climate; it is going to discourage investment. Where do we draw the line? You want FOS terminated. Do you want to see further rollbacks in terms of labour legislation? For example first contract, which I know the Chamber of Commerce opposed, do you want to see us roll back to 1972, to the changes that were brought in in 1972—

Mr. Chairman: Mr. Gardner. Mr. Ashton the question has been put.

Mr. Gardner: Mr. Ashton, one of the fundamental disagreements that you and I have is to the effect that the labour legislation has had, plus or minus, on the strikes or lockouts. I would submit to you that it is individuals bargaining in good faith, in an environment which is as much as possible free of outside interference, who are the ones that are to be given the credit for a record. I suggest to Mr. Ashton, that has been consistently amongst the nation's best for years and years and years, long before his Party came in and started giving us a blizzard of one-sided labour legislation.

If you want to know where I think that you should be going, in terms of labour legislation, I will tell you. You should vet labour legislation through the Labour Management Review Committee, and you should let the formulation of labour legislation follow the model of collective bargaining, compromise, balance and something that both sides can take away and say, we have given something and we got something. That is how to do it.

Mr. Ashton: Actually, your disagreement is not really with me, it is with Mr. Newman, because in his brief he said that Manitoba law since 1972 has increased a number of provisions which discourage employers from becoming involved in a strike or lockout situation. By the way, I agree with that statement. It is probably the first time, I suppose, I have agreed with Mr. Newman on anything, but your disagreement is not only with myself but Mr. Newman.

My question though is, you talked about the Labour Management Review Committee and compromises. Let us be straightforward on this. The labour movement does not have everything you would like in terms of labour legislation in Manitoba. There are a lot of people who would like anti-scab legislation, and we have that in place in Quebec; improved plant closure legislation. We have a Bill on the Order Paper which would improve it. Many people in the labour would like to see that as well.

So I am a bit confused in terms of where you want to draw that line. You talk about compromise. Is it not a fact of putting our current legislation as a compromise at the best of times between what the labour movement would want, what the business community would want—and I realize the business community does not have everything it wants—and what the public of Manitoba wants as well, which is obviously one of the major considerations we should have as a Legislature?

Mr. Gardner: I will tell you again, Mr. Ashton, the labour legislation that has come in since 1981, I would suggest is about 98 percent—no, that is not fair—it is about 70 percent what labour wants. It is about 5 percent what management wants, and the next 25 percent is essentially housekeeping. That is not the way to do it.

Just to finish, there are certain elements in the business community who from time to time talk about how nice it would be to have so-called right to work legislation. People like myself and a lot of other people, the majority in the Chamber, have worked hard to convince them successfully that is a bad idea. It is not right to impose the will of either side into legislation. Right to work I would oppose as bitterly as I would oppose anti-scab legislation. Both of them are destructive of the environment. I have worked very hard in the Chamber for years to develop a properly co-operative compromising point of view towards labour legislation. You do not get it by imposing one side's view on the other.

Mr. Ashton: You talked about 1981, but would you not feel it is a fair statement that over the years in terms of what percentage, if you want to use those terms, that both labour and business . . . yet? But one of the arguments that has been put forward particularly by the labour movement is that until changes brought in 1972 and further changes in 1983 they have had a very small percentage of the items they feel are important to assure a fairness for working people.

So you talked about 1981. What about the situation prior to 1981? I mean, there is still no anti-scab legislation in the province. We still have limited plant closure legislation. A number of items are clearly items that the labour movement has been fighting for for many years. Do you not feel that also should be taken into account?

Mr. Gardner: Mr. Ashton, I think you are continuing to miss the point. The way to put in labour legislation is to follow the model that was originally designed. The best example that I can give is the one I gave earlier, compulsory arbitration clause in return for the no strike clause. It is not a matter of one side getting its dance card filled and the other side not getting its dance card filled. I mean, that is not the way you do it.

What you should do with labour legislation, if you want to create a positive environment, is that you let the Labour Management Review Committee come forward with consensual, balanced, compromised positions which can then be adopted into legislation, where both sides feel that there is some mutual advantage to suggesting something.

You keep bringing up plant closure legislation, Mr. Ashton. The plant closure legislation in Manitoba is in many ways the most favourable to workers in the nation. The problem is that you cannot keep businesses in, like you cannot keep people in, like you cannot keep money in. Again that is what Eastern Europe tried; it has been proved it just does not work.

Mr. Ashton: Actually the best plant closure legislation in Canada is in Ontario. It was brought in during a minority Government situation, with a Conservative minority Government, under pressure from the New Democratic Party so I am not talking about Eastern Europe in terms of plant closure legislation.

Mr. Gardner: Well, I would dispute with you on that Mr. Ashton. I would suggest that ours is better.

Mr. Ashton: Well, ours may be better in some provisions, but in terms of. . . .

Mr. Chairman: You fellows are getting away from me now, just slow her up, slow her up here. Mr. Ashton.

* (2300)

Mr. Ashton: I was just saying that in terms of severance pay, for example, we have no legislated severance pay in Manitoba which is in place in Ontario, but I just want to talk about the tradeoffs because, once again, on both sides there are suggestions often that things are out of balance. I just want to look at, you mentioned one balanced situation, compulsory arbitration for giving up the right to strike.

I just want to put it to you this way. Currently if you have a strike you are out for 60 days maximum under FOS. I mean, we have heard the suggestion that people would go out deliberately to take FOS, but if there is a lockout you can also see, and we saw it very recently with the Westfair strike, where they started hiring replacement workers even before the strike took place. So I am just wondering, in terms of your tradeoffs, whether you feel that those are not legitimate arguments. I mean, you said you were vehemently

opposed to anti-scab legislation, but what is the balance when you can have replacement workers take over in the case of a lockout, and in the case of a strike situation workers cannot operate the plant and keep their jobs.

Mr. Gardner: Mr. Ashton the primary problem with anti-scab legislation is that it impacts most severely on the businesses that, as near as I can understand from what I hear from the New Democratic Party, that party most wishes to preserve, i.e. indigenous, small, Manitoba-owned and operated businesses. Those are the operations for which anti-scab legislation would be an arrow in the heart.

Anti-scab legislation does not particularly impact on multiplant, multiprovince, multinational operations because if you have 10 plants spread throughout the provinces and one goes down, you have all sorts of options which you can basically utilize to weather the strike. If you are an Inco sitting on a huge stockpile of nickel, as they were in Sudbury back in the late '70s, they can shut down for 10 months and their bottom line is not hurt at all. The problem with anti-scab legislation is that it hurts Manitoba small business, basically the one plant family-owned operation. As near as I can understand from Mr. Ashton's Party that is what he is most interested in trying to promote. That is what is wrong with the anti-scab legislation.

Mr. Ashton: Finally, and obviously we are going to continue to have to agree to disagree in terms of that. You made the statement that you are not concerned about the reasonableness in terms of final offer selection, you concede that essentially that is not important, presumably the experience has shown that the final solutions are fairly reasonable. You concern was really in terms of—this is a direct quote—"that the decisions would not be of the parties making." You made some other suggestion that essentially it imposes one situation on another. I am raising this because one of the concerns originally expressed in 1987 will be somehow the final offer selection process itself would be inherently biased and would not result in reasonable solutions. I just want to make sure that quote, which I took down directly, represents the Chamber of Commerce position. Your real objection is not so much the bottom line decisions, they could still be reasonable under the process, but essentially the decisions are the making of the parties, and I assume that is also one of the main arguments against first contract legislation.

Mr. Gardner: You are correct, Mr. Ashton, that the important point is that whatever comes down is not of the parties own making and is not conducive to a healthy relationship. Whether or not the result is fair, I suggest is essentially random. It is a matter of chance. Final offer selection is a very poor vehicle for testing the true importance of a particular position advanced by a particular party. The only really true test of how important something is to a union or an employer is whether they are prepared to strike or take a strike in order to have it. If it is a real gut issue then that will be the situation.

If it is not, you will be tempted to compromise it, rather than to strike. You could walk into a selector and make a convincing argument for just about anything. You may even believe it, but final offer selection is not going to test whether it is really important. As a result, what you get may not have anything to do with what is really important to the parties. Even if it happens to be your package that the selector picks, it may not—and in fact I suggest it is quite random whether it does or not benefit you. It is just not a good vehicle for testing what really matters.

Mr. Chairman: Mr. Ashton.

Mr. Ashton: I concluded my questioning, Mr. Chairperson.

Mr. Chairman: Are there any more questions?

Mr. Gardner: I thought you were just getting warmed up.

Mr. Chairman: Thank you, Mr. Gardner.

Mr. Gardner: Thank you, Mr. Chairperson. I really appreciate the degree of attention that has been shown by this committee after all the hours that you have put in.

Mr. Chairman: The hour being after 11, what is the will of the committee? -(interjection)- We have some dissension here.

An Honourable Member: Not much.

Mr. Chairman: Quite a bit. Is it the will of the committee to rise?

An Honourable Member: No, let us go through.

Mr. Chairman: Let us agree on something tonight, unanimously.

Mr. Ashton: Mr. Chairperson, I think we are to the point I think, people I know have to go to work tomorrow, and I do not want to keep people here unless maybe there is one other person who had to make a presentation tonight. Maybe we should check if people can come back, but otherwise I would suggest it is fairly late, that we adjourn.

Mr. Chairman: Is it the will of the committee to rise? -(interjection)- I would like to remind you that we have a meeting tomorrow at two o'clock; and Saturday at 10 a.m. and 2 p.m.; Monday, February 26, at 10 a.m.; and Tuesday, February 27, at 10 a.m. and 8 p.m.; and Wednesday, February 28, at 8 p.m.; and Thursday, March 1, at 10 a.m. and 8 p.m.; and Friday, March 2, at 2 p.m.; and Saturday, March 3, at 10 p.m. and 2 p.m. So is it the will of the committee to rise?

An Honourable Member: Oh, is it.

Mr. Chairman: Yes, it is. Committee rise.

COMMITTEE ROSE AT: 11:09 p.m.