NEWFOUNDLAND & LABRADOR employers' COUNCIL

November 13th, 2009

IMPOSITION OF FIRST COLLECTIVE AGREEMENTS

First Agreement Legislation

The Newfoundland and Labrador Employers' Council believes that there should be no change to the current legislation surrounding Section 81 of the Labour Relations Act -- the imposition of first collective agreements. In addition, applications for the imposition of a first collective agreement should continue to be directed to the Minister who then makes a referral to the Labour Relations Board.

Rationale

Legislation providing more latitude to impose a first collective agreement on an employer that could not otherwise be obtained by bargaining would constitute a significant alteration in the union-management balance of power. Labour legislation in Canada is deeply rooted in the principle of voluntarism of "free collective bargaining". First agreement legislation is inconsistent with this premise.

Apart from first agreement legislation, there are no provisions in labour legislation across Canada that guarantees that certification will lead to the successful conclusion of a collective agreement. The statutory requirement to bargain in good faith does not prohibit the parties from engaging in "hard bargaining" and first collective agreement provisions must not become a mechanism for unions to achieve concessions from the employer that they are unable to achieve via the usual mechanisms of conciliation and economic sanctions.

Current practice requires the Labour Relations Board, in settling terms and conditions of a first collective agreement, to have regard to the extent which the parties have, or have not bargained in good faith. Our Board has traditionally required evidence of bad faith bargaining and/or the commission of an unfair labour practice as a precondition for imposing a first collective agreement. This threshold exists to protect the voluntarism of "free collective bargaining". Unlike grievance arbitration, which simply provides for a mechanism to hold the parties to the terms of their agreement, first agreement legislation is a form of "interest arbitration" which empowers a third party to dictate the terms of the party's agreement. It is essential that first agreement legislation remain a process which is used in extraordinary circumstances and not as a standard response to a breakdown in collective bargaining. To reduce or eliminate this threshold as it currently exists in our legislation would be detrimental to the interest of employers and increase the likelihood that a first collective agreement is imposed as a standard response to a breakdown in bargaining.

To expand the grounds upon which first agreements could be imposed would be to create the "thin edge of the wedge" for third party interference in free collective bargaining.

Application to the LRB vs. the Minister

Although not a major issue of concern for employers, the Newfoundland and Labrador Employers' Council does not see any benefit to changing to whom the application must be made. The involvement of the Labour

Relations Board is implicit in the process as it stands. There is nothing to be gained from a change from the Minister to the Labour Relations Board.

Note:

If the issue of First Collective Agreements is discussed again during the on-going process of reviewing the Labour Relations Legislation in the province, the current practices of the Labour Relations Board with regard to the imposition of First Collective Agreements needs to be codified in the legislation.