

Source: Labor Relations Week: All Issues > 2009 > 07/02/2009 > Studies & Surveys > Arbitration: First-Contract Arbitration Could Help Parties Focus on Bargaining, EPI Says

23 LRW 1074

*Arbitration*

**First-Contract Arbitration Could Help Parties Focus on Bargaining, EPI Says**

The ability of a union or employer negotiating a first collective bargaining contract to request arbitration if a deal is not reached within a certain time frame, a legal mechanism currently in place in Canada and included in a controversial provision of the proposed Employee Free Choice Act (H.R. 1409, S. 560), could help parties focus on negotiation and finalize collective bargaining agreements more quickly, according to a report issued June 25 by the Economic Policy Institute.

In a short paper, *First-Contract Arbitration Facts: The Canadian Experience*, EPI authors Patrick Eagan-Van Meter and Ross Eisenbrey outlined provisions of Canada's labor laws that allow parties to request arbitration if a first contract cannot be reached after employees decide to be represented by a union, and argued that similar provisions would be helpful toward settling contracts in the United States.

"Canada is ... our biggest trading partner, and many U.S. corporations operate profitably there," the authors wrote. "So Canada's use of arbitration to resolve negotiations of a first contract in a newly unionized workplace can teach us a lot about how the process could work in the United States."

According to the authors, first-contract arbitration (FCA) is intended "to encourage good faith collective bargaining between a newly formed union and the employer," by allowing either party to request binding arbitration when the two parties cannot resolve a first collective bargaining agreement.

First-contract arbitration is one of the most contentious provisions of the Employee Free Choice Act, a controversial bill aimed at making it easier for workers to form unions. Under EFCA, Eagan-Van Meter and Eisenbrey said, either the union or the employer would be able to request mediation by the Federal Mediation and Conciliation Service if, after 90 days of bargaining, a first contract could not be reached. If FMCS were unable to resolve the dispute, it would then be referred to binding arbitration.

The authors said that with an FCA provision in place, employers and workers "would focus on actually negotiating instead of stalling or filing unfair labor practice charges." In Canada, where such provisions are "widespread," recent studies have found that FCA provisions reduced work stoppages by at least 50 percent, and that stoppages were

shorter in duration when they did occur.

### **Imposed Contracts 'Unlikely.'**

Responding to criticism lobbed by opponents of EFCA, including business groups such as the U.S. Chamber of Commerce, the authors said that when arbitration was requested in Canada, an "imposed contract" was still very unlikely, with likelihood "hovering around 5 percent," and never exceeding 8 percent, the authors said.

"Fears that unions will simply put off bargaining in hopes that an arbitrator will impose a favorable contract are not borne out by the facts," the EPI report said. "In most cases the prospect of a third party making contract decisions give both parties the incentive to reach an agreement on their own."

There are four different types of FCA provisions currently in use in the different Canadian provinces, the authors said, ranging from one that closely resembles the arbitration provisions of EFCA to another by which parties must first apply for arbitration through the Minister of Labor and demonstrate evidence of bargaining in bad faith or that bargaining had reached an impasse.

The authors said that FCA provisions in EFCA are necessary because recently, "most employees who have formed new unions have been unable to bargain first contracts with their employers in a timely way, and many never obtain a contract." They cited a study that found that between 1999 and 2004, only 38 percent of unions that were certified as representing bargaining units by the National Labor Relations Board were able to obtain a first contract within a year of certification.

Representatives of the U.S. Chamber of Commerce were not immediately available to comment on EPI's paper.

Previously, opponents of EFCA had used Canadian data in an analysis arguing that the proposed law would not only increase union membership, but could also lead to increased unemployment (42 DLR A-8, 3/6/09).

EPI's report is available at <http://www.epi.org/page/-/pdf/ib256.pdf>.