IAPR POLICY BRIEF

FIRST CONTRACT ARBITRATION: ALBERTA REQUIRES AN AMENDMENT TO THE LABOUR CODE

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Policy Brief No. 06002
January, 2006

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Calgary, Alberta
Canada

http://www.iapr.ca

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First contract arbitration: Alberta Requires an Amendment to the Labour Code

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News coverage of the recent Lakeside Packers labour dispute in Brooks Alberta highlighted the emotionally-charged nature of strikes. "It doesn't have to be this way," urged Alberta's unions in a public relations effort aimed at persuading Albertans to lobby their MLAs for first contract arbitration. The unions are correct. In most other Canadian provinces, an arbitrator would have been appointed to help craft Lakeside's first collective agreement. Only Alberta, New Brunswick and Nova Scotia leave it to the striking parties to settle their differences.

Contrary to what we see in the media, almost all collective agreements are concluded without strikes or lockouts. Of 1,300 negotiations in Alberta in the last year, only three resulted in a strike or lockout. But the most fragile period in which an intractable dispute might occur is when the workforce has just unionized and is trying to achieve a first agreement. This was the case in Brooks, as well as for Calgary Herald workers (1999-2000) and Edmonton's Shaw Conference Centre (2002).

Why are first contract negotiations more difficult than subsequent negotiations? The parties in newly-organized worksites may be embittered, inexperienced or have unrealistic expectations. Sometimes the employer balks at being unionized and refuses to bargain in good faith, or forces a strike and drags out the negotiations hoping workers

will tire of the union. Newly-unionized employees may have unrealistic expectations and the union may not be able to deliver on its organizing promises. The union may be trying to build solidarity through taking a militant position, but then have trouble settling things down. Opposing negotiators may find it tough to talk to each other while simultaneously overseeing turbulent strike settings. Most strike situations involve a world of hurt.

Arbitration is nothing new. It is one labour relations' oldest and most developed forms of conflict resolution. A cadre of experienced, acceptable labour arbitrators are available. They are well-known to the parties and are trusted to be neutral. About 15 Alberta arbitrators, as well as a few dozen from other provinces, have the necessary qualifications for first contract situations. Union and management representatives prepare extensive briefs and provide evidence to arbitrators during hearings at which both parties attend. Every effort is made by arbitrators and by those who support the arbitration system to keep politics out of the process. After hearing evidence, the arbitrator customizes a collective agreement which is binding for a year or two, allowing union and management to get used to each other and normalize a longer-term relationship for the good of the workplace.

In truth, first contract arbitration would happen once in a blue moon. It is reserved for the unusually intractable disputes, often only after unfair labour practices have been committed or picket line violence has broken out. It is not available for repeat bargaining rounds, regardless of how poisonous the union-management relationship has become. It would not have helped settle the vicious 1986 Gainers strike. Also, first contract arbitration only applies to groups of workers and employers where the right to strike exists. In some places where there is no right to strike, e.g., in essential services

such as police, firefighters and some health care workers, arbitration always is available if the parties cannot settle an agreement by themselves.

First contract arbitration – even when it is ordered --- rarely results in the arbitrator imposing a collective agreement. Instead, after the arbitrator commences work, but before a binding decision is issued, the parties reach agreement on their own. This actually is a very healthy outcome. It means that union, management, and workers, finally have resolved their outstanding issues without relying on outsiders. But the threat of a first contract being imposed by an arbitrator definitely helps bring the parties to their senses.

First contract arbitration should be in our Labour Code. It would add a touch more stability to our labour relations and would be a useful back-pocket remedy for our nastiest disputes.

Published as an editorial in the *Calgary Journal*, December 7, 2005, page 10.