

**LEGISLATIVE ASSEMBLY OF MANITOBA**  
**THE STANDING COMMITTEE ON INDUSTRIAL RELATIONS**

**Friday, March 2, 1990.**

**TIME — 2 p.m.**

**LOCATION — Winnipeg, Manitoba**

**CHAIRMAN — Mr. Edward Helwer (Gimli)**

**ATTENDANCE - 11 — QUORUM - 6**

*Members of the Committee present:*

Hon. Messrs. Downey, Enns, Hon. Mrs. Hammond

Messrs. Ashton, Herold Driedger, Ms. Gray, Messrs. Helwer, Plohman, Praznik, Rose, Wasylycia-Leis

\* Substituting for Mr. Herold Driedger, Mr. Paul Edwards at 4 p.m.

**WITNESSES:**

Mr. Andrew Smith, Westfair Foods Ltd.  
Mr. Patrick Joyce, Private Citizen

**APPEARING:**

Mr. Paul Edwards, MLA for St. James

**MATTERS UNDER DISCUSSION:**

Bill No. 31—The Labour Relations Amendment Act

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**Mr. Chairman:** Order, please. I call the Standing Committee on Industrial Relations to order. This afternoon the committee will resume hearing public presentations on Bill 31, The Labour Relations Amendment Act.

If there are any members who wish to check to see if they are registered to speak to the committee, the list of presenters is posted outside of the committee room. If members of the public would like to be added to the list, to give a presentation to the committee, they can contact the Clerk of the Committees, and she will see that they are added to the list.

If we have any out-of-town presenters who are unable to return for a subsequent meeting, please identify yourself to the Clerk of Committees, and she will see that your names are brought forward to the committee as soon as possible. Just prior to resuming public presentations, does the committee wish to indicate to members of the public how long the committee will be sitting this afternoon?

We have presently three presenters registered to speak. Mr. Ashton.

**Mr. Steve Ashton (Thompson):** I would suggest we go no later than 5, you know, if we are wrapped up at 4:30—

**Mr. Chairman:** Okay, I would like to call the first presenter then, Mr. Andy Smith, from Westfair Foods. Mr. Smith, do you have a written presentation? Oh, here we go. Fine, thank you.

**Mr. Andrew Smith (Westfair Foods Ltd.):** First of all, I would like to very much thank the Honourable Minister—

**Mr. Chairman:** Okay, please proceed, Mr. Smith.

\* (1405)

**Mr. Smith:** —and the Members of the committee in giving me this opportunity to make this presentation today.

My name is Andrew Smith, I am in charge of labour relations for Loblaw Companies Ltd., and as such I am responsible for overseeing the labour relations activity throughout the family of Loblaw companies. This is made up of some 36,000 unionized employees under over 120 collective agreements, both here in Canada and in the United States.

Here in the Province of Manitoba, Loblaws is represented by its subsidiary company, Kelly Douglas and Westfair Foods Ltd., which is a company I came up through starting out in Vancouver, and then I spent five years here in Winnipeg.

Westfair is a wholesaler and retailer of food and of general merchandise products, and we trade under the names of Real Canadian Superstore, Econo-Mart, Shop Easy, and also at the wholesale level under the names of Western Grocers, and Sunspun.

In our operations here in Manitoba, we employ approximately 2,000 employees, the vast majority of whom are unionized under seven collective agreements. However, by far our largest bargaining unit is our province-wide retail agreement with the MFCW Local 832, and they represent about 1,700 people in our Superstores our Econo-Marts and our Shop Easy outlets.

I would also point out that we also have similar operations. We have Real Canadian Superstores. We have a large number of conventional stores in the Provinces of Saskatchewan, Alberta and British Columbia, and all of those employees at the retail level are represented by locals of the United Food and Commercial Workers.

In our new operations, our Real Canadian Superstores, the UFCW represents those workers through voluntary recognition. In other words, those were green field sites, and the employees were brought into the union with the recognition of the company.

We have had considerable experience with FOS. We are unique in having collective agreements in

Saskatchewan, Alberta and British Columbia, which contain final offer selection provisions in lieu of strike-lockout rights. These are agreements which I personally have negotiated myself since about '81.

From '81 until '86 there was a similar provision in our Manitoba retail agreement. You will find an example of this provision in a photocopy of our '81 collective agreement covering our Manitoba Superstore operation attached as Exhibit A to this brief. It is a bit of a misstatement there. What you will find are three pages photocopied which cover the language in question. It starts with the expiration and renewal language in Section 37 and goes on to the actual final offer selection language in Section 38.

I would like to point out that the final offer provisions found in this agreement were mutually arrived at through a process of collective bargaining and represented a convergence of interests between the two parties. Basically, to give you an idea of the thinking which underlined the FOS agreement we made, it is very straightforward.

1. We sought a lengthy period of time of assured labour peace in which to build a Superstore network in Winnipeg. I think you would all understand it was a massive investment and we wanted to make that investment into as tranquil a situation as we could.

\* (1410)

2. The union recognized that if it was to reap the benefit of increased membership and enhanced job security, it was desirable to accede to Westfair's need for a peaceful labour environment in which to make this massive investment.

3. The parties both realized the wage improvements we required throughout this period, and we mutually agreed to adopt the settlements in the industry where appropriate, having emerged from a history of industry-wide bargaining.

4. Where there was a dispute as to the application of the industry agreement, the impasse would be resolved by FOS in lieu of strike-lockout.

What I am trying to indicate here is that we certainly have a lot of experience with final offer selection. We certainly do not need to have some knee-jerk reaction against methods in collective agreements to avoid strikes and lockouts. We have them in our major agreements and we are great supporters of them when they are mutually agreed to and collectively entered into. We make the statement here, neither party was in any way unilaterally forced to surrender its right to pursue its own self interest.

Now that agreement was renewed consensually in '83 and '86. In '86 we also agreed to remove FOS from the collective agreement and revert to conventional collective bargaining for '87. The '87 agreement, which now is running to 1990, includes once again an FOS provision with mediation to precede the final offer selection process.

To contrast what we have in our agreements and the experience that we have had, I looked at Bill No. 61.

The concerns I have with someone who makes his living and spends his life in the practice of industrial relations and the concluding of collective agreements is that by my lights Bill No. 61, there is no mutuality in that the union and only the union can bring it into effect. There is some reference to the employees, but strong trade unions such as we find in Manitoba, in fact the trade union movement in Canada, certainly is expressive of the wishes of the employees. In most cases, the wishes of the employees are in fact the wishes of the union.

There is no limit on the number of issues to be the subject of the selection. This is in contrast to the way that we have found it to be effective, where in fact there are a variety of references that we make in the final offer selection process which restricts the ambit of issues available to the selector. It is not exclusively used as an alternative to a work stoppage.

It seems to me that if we are going to have an intrusion into the rights of trade union members and employers to strike their own deal, the only way I can possibly see that that makes sense as a trade-off is that it guarantees there is not going to be any labour dispute at all. To have both the intrusion and the risk of a labour dispute seems to me to be a legislation which has been poorly thought out in terms of industrial relations practice.

It also cannot be invoked within 30 days of the expiry of the previous agreement. I think most negotiators will tell you that very few agreements are negotiated, or even serious negotiations really take place 30 days prior to an expiry. This really puts you in a position of having to negotiate the agreement or come to an impasse unrealistically early in the process.

Point 5, I have already covered, in that there is no strict bar on labour stoppages whatsoever if FOS is invoked. I do not understand that. It does not make sense to me. Mediation of course is not expressly made part of this process.

The bulk of experience with FOS, in North America at least, has been in the United States. There are approximately, at last count, 11 states which, in whether you not grant the right to strike to public service employees, have FOS legislation. The experience out of the American context, which I am not particularly happy in transferring holus-bolus into Canada, but certainly the literature there states quite clearly that there is felt to be a need, and in fact legislation has been updated to provide specifically for a mediative interval prior to final offer selection taking place.

\* (1415)

My major concern with Bill No. 61 has to do with my feelings, my thoughts and my experience with collective bargaining. If you will bear with me I would like to share with you some of my thoughts on the impact of FOS and collective bargaining. I would also like it to be known to you that everything I am saying here is also reflected in the literature. Should the committee desire, I could have the various excerpts and articles which I have canvassed over the last number of years which refer to some of the effects that I am referring to here.

I guess one of my concerns, in reading some of the presentations that have been made to this committee, is it focuses very much on strikes and very much on lockouts, and it seems to focus a little less on the fruitful and proper conduct of collective bargaining. My feeling is, it is not a great analogy. It seems almost as if you are trying to enhance the institution of marriage by focusing on new and innovative ways of divorce, because there is a lot to say about the analogy between marriage and a collective agreement.

Collective bargaining is a process of issue resolution in which the parties come together at the expiry of the agreement to do a number of things. They want to advance their long-term objectives, better working conditions for employees and better operating conditions for management. So when they come to the table most intelligent bargainers on the union side and on the company side are looking a long way down the road, are looking out five, 10 years in terms of objectives. They want to resolve difficulties or disputes arising from the application of the collective bargaining agreement during its term.

Within the very recent past what problems have we had? They want to resolve issues arising from external factors during the term of the collective agreement. There may have been plant closures. A new competitor may have entered the marketplace. New methods may be suggested for the workplace. All these things form part of the toss of issues that you are attempting to come to terms with across the table.

Even more importantly there is a process which takes place to reiterate either explicitly or implicitly the matrix of understandings and interpretations which exist as a halo around the cold wording of any collective agreement. This is known as past practice.

Essentially when you look at a collective agreement, it not only is a document; it also is a living representation of the ongoing relationship on the shop floor or in the retail store or warehouse. Any agreement always has with it this cloud of understandings, of ways of doing things, of ways of applying the agreement. Most things have to be renewed and recommitted to by the parties every time the agreement is renewed.

Once you have been through that process, then you have some bureaucratic functions, which are to put the agreements you have made into plain English, develop your premium structures, wage scales, benefit levels, finally canvass management as to its acceptance of the memorandum, and then have the trade union involved put the offer or the memorandum to a vote of membership for its acceptance.

So it is a long and complicated process, and it is one in which there are, under classic theory, at least two sets of objectives. There are unitary objectives where the interests of the union and the interests of the company are common, and there are adversarial objectives where their interests are diverge. They are common and they both want a healthy business and they may diverge on how much the company wishes to pay its employees for the work performed.

Generally, within the constraints of the respective mandates, both parties seek agreement. This road to

agreement is strewn with many impediments and obstacles. The collective will to reach agreement is enhanced by the aversion of both parties to the immense costs of failure, and that is the occurrence of a work stoppage. When you look at the hundreds of collective agreements that are settled in this province every year, you should never underestimate the enormous amount of work that has gone into producing these agreements. A large part of that work is done by people from the bargaining unit, from the shop floor, who are not skilled practitioners. They are people who wish simply to resolve issues of their own workplace.

\* (1420)

My concern is the commitment of both sides to this process, and my experience is proportional to the control over that process. If the context of collective bargaining is distorted by the intrusion of ill-conceived regulation, such as this legislation, there is an erosion, in my view, of the strategic, tactical, and psychological commitment to the process. People will behave differently across that table at two in the morning in the smoky hotel room if they believe they do not have to get there and get an agreement or they are going to have a strike. If they believe that they can toss off that responsibility to some third party who is going to have a crap game with it, they will do it. It is tough business; it is hard on people striking agreements in the middle of the night. If we remove, in my belief, the fear of the employer and the employee of being involved in the work stoppage, you are going to undermine that process. Again this is documented in the literature as the "narcotic" or chilling effect. I think these are somewhat melodramatic terms myself, but that is what they use.

I stress to you that this disabling effect should not be underestimated. As an experienced negotiator, I can assure you that the positions taken by both parties in the process of negotiation preceding the FOS mechanism in this legislation would be qualitatively different from the positions taken in conventional collective bargaining. Instead of working towards a true final position, reflective of the needs of both parties, a negotiator will attempt to position himself in anticipation of the vagaries of FOS. To quote from the brief of CAIMAW to the Standing Committee on Industrial Relations here in Manitoba in June 1987: "FOS introduces a crap shoot mentality into collective bargaining which will encourage both parties to move away from negotiations based on their relative strengths and gamble on a winner-take-all fling with a selector."

In any event the position selected by the selector by definition will be one rejected by the other party. Over time, you are going to have a steady accretion of one-sided outcomes which can only result in a contract which is migrating away from a "collective agreement." The collectivity begins to be undermined over time. Now in some of the comments made to this committee by various presenters there seems to be an acceptance or a thought that everything is great because we have had it for two years and nothing seems to have gone wrong.

Collective bargaining is not a process of two years. Two years is essentially the standard for one agreement

and collective bargaining. To me, if you are going to look at an effect of FOS and its deleterious effects, it is a longer-term proposition. The literature, and there is a lot of it, and there is literature and there is research coming out of the Canadian context which indicates statistically that there is adverse effect on the conduct of collective bargaining through FOS.

By way of closing, I would say that the successful conclusion of collective bargaining is made more difficult under certain economic conditions, for example recession, which we in the west up to a couple of years ago had lots of experience with. The temptation to use FOS would be greatest at the very time the parties need a collective agreement truly expressive of their mutual needs.

Recession bargaining involves generally a delicate trade-off between conflicting demands for cost reduction in terms of the employer and enhanced job security in terms of the union. The selector who chooses one or the other, as he must, is doing no one any favours. For the foregoing reasons, Westfair Foods Ltd. recommends the repeal of FOS as proposed in Bill No. 31, but also recommends there be some protection for those parties to collective agreements which have been concluded since Bill No. 61 was enacted which include reference to the statutory FOS scheme.

Thank you very much.

\* (1425)

**Mr. Ashton:** I would like to ask a number of questions. First of all, in regard to Westfair Foods, approximately how many stores do you have in Manitoba under any of the particular companies—

**Mr. Chairman:** Could you speak into the mike, please, Mr. Ashton? We cannot hear you.

**Mr. Ashton:** I am asking, Mr. Chairperson, how many stores there are in Manitoba under the—

**Mr. Smith:** Twelve.

**Mr. Ashton:** Twelve, I believe. You are talking about Loblaws in this particular case, or—

**Mr. Smith:** I am talking about stores trading under the name—

**Mr. Chairman:** Mr. Smith.

**Mr. Smith:** Are you hearing me?

**Mr. Chairman:** I wonder if we can try to keep this orderly and ask questions and I will give you an opportunity to answer them, Mr. Smith, but I have to recognize you in order to get the mikes turned on.

**Mr. Smith:** I am sorry.

**Mr. Chairman:** Okay. Mr. Ashton, do you have a question?

**Mr. Ashton:** You were saying there were 12 stores including stores that trade under the name of Shop Easy, Western Grocers, Superstores, and Econo-Mart.

**Mr. Smith:** No.

**Mr. Ashton:** What I am asking is, how many are under any of those trade names.

**Mr. Smith:** None trade under the name Western Grocers. There are 12 that trade under the names Superstore, Econo-Mart and Loblaw—excuse me, and Shop Easy.

**Mr. Ashton:** I want to take you back to the events of 1987, because we have heard from many presenters here, this committee, who went through that strike situation. I ask you first of all, how many of the Westfair stores continued to operate during that strike period?

**Mr. Smith:** I think we had all the Superstores open and I think we had five of the conventional stores open—four or five.

**Mr. Ashton:** So even though there was a strike during that period, you continued to operate the majority of stores owned by Westfair during the period of the strike?

**Mr. Smith:** Yes.

**Mr. Ashton:** In reviewing the—

**Mr. Smith:** I might point out to you, Mr. Ashton, that that operation was carried on at the expressed wishes not only of our customers, but also at the outset of the strike, some 500 of our employees.

**Mr. Ashton:** Mr. Chairperson, is it not also true that you were hiring replacement workers even prior to the beginning of the strike?

**Mr. Smith:** That is not true.

**Mr. Ashton:** I would suggest perhaps that you check with Mr. Ryzebol, because I checked the files and there are newspaper reports prior to the beginning of the strike indicating that people had been interviewed and that Westfair was in the process of hiring replacement workers even prior to the beginning of the strike. Are you suggesting Mr. Ryzebol was misleading the media at that time, or are you suggesting that the media themselves did not provide accurate reports?

**Mr. Smith:** I would suggest the latter. If you would like me to elaborate, Mr. Ashton, you may be referring to a set of advertisements we ran in the paper I believe in March and April offering a program of training to people to come into our business. We did this, but you should also know that we also did it in those centres where we did not and have not and hopefully will not have strikes. We offered the same program in the other centres, that is Edmonton, Regina, and Saskatoon.

\* (1430)

**Mr. Chairman:** Mr. Ashton, I wonder if you could keep your questioning pertaining to the brief and try not to get off—

**Mr. Ashton:** Mr. Chairperson, this is, I think, very relevant to the brief. I am trying to get the other side. I am trying to get a view of Westfair, what happened in 1987. We have had many presenters before this committee who went through the strike situation, and I think it is very relevant to the brief because one of the arguments which has been made for maintaining final offer selection is, for example, that many contracts are coming up this year, including with Westfair, and it would provide an alternative to what happened. I am trying to get a picture of what happened. I think that is particularly relevant to the committee.

Essentially, and the reason I am raising this by the way, and it is unfortunate perhaps, Mr. Ryzebol is not here. I know he had originally indicated he would be here, but I have checked the clippings. He was directly quoted at the time, and there was very little secret made by Mr. Ryzebol at the time that these people were being interviewed and this training was being provided that these people would be put into place if there was a strike situation. This was prior to the strike, by the way, it was not into the strike. You are suggesting that people were not recruited to act as potential strikebreakers?

**Mr. Smith:** What I am saying, Mr. Ashton, is that we recruit people and run recruitment programs virtually all the time, and should we need those people because of heightened levels of attrition as we anticipate every summer or use them because we have unexpected vacating of our premises by some 1,200 of our people we still attempt to hire people in anticipation of our needs. Ours is a high turnover business. We have a tremendous amount of attrition because of the nature of our work force, so we are always in the business of trying to have at any point of time a very substantial inventory of hirees.

**Mr. Ashton:** Once again, I am quoting from Mr. Ryzebol and what appeared in the media at the time. In fact, I will show you the press clipping later if you would like. At the time he made very little secret of the fact that with the strike coming up that these people would potentially be appointed as strikebreakers.

**Mr. Smith:** I am not denying that, Mr. Ashton, that there would be—people we had hired prior to the strike occurring would have enhanced job opportunities as a result of the large number of vacancies occurring. But what I am trying to indicate to you is that we run the same program everywhere whether we are anticipating a strike or not.

**Mr. Ashton:** Is it not a fact that these people were after the strike put into place to work in jobs that were the jobs of the people who were on strike at that point in time.

**Mr. Smith:** As a matter of fact, I believe that substantially fewer people were in fact offered opportunities for employment because of the very large number of people of course, some 500, who chose to continue to work.

**Mr. Ashton:** But the fact is that people were hired over and above the existing employees who chose to cross

the picket lines, and this recruiting effort, whether it was ongoing or not, I am just quoting from Mr. Ryzebol again, I am not sure, there is perhaps a communication problem within Westfair, but he made no—

**An Honourable Member:** There is none.

**Mr. Ashton:** Well, he made no bones about it, prior to the strike that people were being trained and they would be put into place if a strike occurred.

I just want to go further and ask, is that a policy of Westfair? I know there were some stores that did close down, Shop Easy in Thompson, for example, was not operational during the strike. In fact I would like to ask what your policy is during a strike situation. Obviously the majority of stores operated, some did not. What is your policy and how do you decide which stores open and which do not?

**Mr. Smith:** I think that we decided not to open the stores in some areas because there was not significant customer demand in those locations.

**Mr. Ashton:** But it is still the policy of Westfair that if there is a strike, you will continue to operate stores, you will if necessary not only encourage people to cross picket lines, but you will hire replacement workers if necessary to continue their operation.

**Mr. Smith:** That is not correct, Mr. Ashton.

**Mr. Ashton:** I want to be fair here. What is not correct? You did continue to operate the stores, you did hire replacement workers. I would like to give you the chance to elaborate on what is not correct.

**Mr. Smith:** It is not correct that we have a blanket policy to operate stores during labour disputes.

**Mr. Ashton:** But in 1987 you continued to operate most of them. You did have existing workers cross the picket lines. You did hire replacement workers to fill other positions that obviously were the jobs that would normally be the jobs of the workers who are on strike.

**Mr. Smith:** Yes.

**Mr. Ashton:** We have heard a lot of stories from the people who were involved in that strike situation, the tensions that occurred between the strikers, the people crossing the picket lines, the customers. I would like to ask you if you—it lasted 125 days, as I understand—feel that what happened during that strike was beneficial to Westfair Foods and its image in the community? I am talking about the fact that stores continued to operate. You hired replacement employees. There were a considerable number of incidents on the line.

I think people came forward and indicated that they really stem from all sides. Do you really feel that was in the best interest of the image of Westfair Foods?

**Mr. Smith:** Mr. Chairman, if I may, could I ask that I be given one question at a time? I find it difficult to

respond to sort of serial questions. But I will attempt to respond.

First of all, I think the proof of the general public's response to our conduct during that strike is the fact that our sales essentially returned to prestrike levels very rapidly at the conclusion of that strike. In terms of the image of Westfair, I do not think anyone in corporate life is going to think that participating in work stoppage is going to be an image-enhancing exercise. But the people of Manitoba, the consumers of Winnipeg certainly have voted with their feet in terms of their opinion of our conduct and our treatment of our employees during that dispute.

**Mr. Ashton:** You are suggesting though that during the strike your sales did drop. Is that correct?

**Mr. Smith:** I made no statement about sales during the strike, Mr. Ashton. I referred to sales before and after the strike. During the strike, our sales dropped precipitously.

**Mr. Ashton:** I was taking that from your point that they recovered to prestrike levels. So a significant number of people in Manitoba who would normally have shopped at Superstore or any of the other stores in the Westfair chain chose not to do so during the strike situation.

**Mr. Smith:** Well, our impression was that we would have had a much larger of people coming to shop us during the strike had the customers not been subjected to being spat on, sworn at, jostled, et cetera, which of course necessitated us to then involve the judicial system in Manitoba, at considerable expense to it and us, simply to protect the rights of Manitoba citizens to shop where they please.

**Mr. Ashton:** Are you also not aware, however, that there were many incidents involving harassment of individuals who were on legal strike by customers and by other individuals? I believe there was also an incident in which a supervisor at one of the stores shot an individual who he mistakenly thought was tampering with his car. Are you not aware that there were a significant number of incidents also affecting the strikers themselves?

**Mr. Smith:** I would have to say that the number of incidents involving picketers, because of the limited number of picketers, our estimate was that it ran usually around 100 to 120 people being cycled on four to five hour shifts throughout the day at our various stores. So there were not that many picketers except for a couple of festivals that were held. In fact there was more insulting of customers rather than insulting of picketers on an absolute basis. And as far as the incident involving the shooting, I think an examination of the facts of that shooting, tragic as it was, are perhaps more correctly dealt with in a discussion about gun laws and gun control rather than about labour relations.

**Mr. Ashton:** I do not mean to personalize discussion here, but I am just wondering, because I have asked

people in terms of bringing another perspective to this committee, have you ever been through a strike situation yourself?

**Mr. Smith:** Yes, I have.

**Mr. Ashton:** Were you in a strike situation where people took your job, in which you had to sit out and watch other people go in and take your job during the period of the strike?—in the case of Westfair it was 125-day strike. Have you ever had to go through that?

**Mr. Smith:** No, I have not.

\* (1440)

**Mr. Ashton:** The reason I am asking that is because we have talked to a lot of people who have expressed a fair amount of frustration. I have been through a strike where strikebreakers were not hired, and I could understand the frustration to a certain level. I really believe that the frustration of seeing one's jobs taken away during that period is probably the ultimate frustration in any strike situation. I want to go a bit further. How would you classify the labour relations climate at Westfair currently?

**Mr. Smith:** Well, I think Westfair has generally good labour relations. Our record, as far as involving ourselves on a voluntary basis with trade unions, is probably second to none. We voluntarily recognized the trade union for our Superstore in Regina and put 450 to 500 jobs into the Local 1400 of the UFCW of Saskatchewan. We did not have to do that; we could have run nonunion. We put something approaching 1,750 jobs into the Local 401 of the UFCW of Edmonton. We did not have to do that; we could have gone nonunion, as do the department stores. We put currently something approaching 1,500 jobs into Local 777 of the UFCW of Vancouver, and when we have finished our expansion project there, we will have put some 3,000 jobs into a local of the CFCW in Vancouver, which we did not have to do.

So our posture towards trade unions is not one of belligerence, is not one of any kind of anti-union stance. I personally believe that free trade unions and free collective bargaining is part of any democratic state that can call itself a democracy. Generally, our labour relations is not bad.

**Mr. Ashton:** I am somewhat surprised, because we have had people here who worked at Westfair. They have said that since the strike there are still people who do not talk to each other, that it has divided the employees. We have had people come here and talk about how even some of the people who crossed the picket lines have been ill-treated by Westfair subsequently. We have had people come to this committee, saying there is continuing concern about erosion of number of hours. Long-term employees who are not receiving anywhere near the type of hours they received previously were concerned their jobs were being replaced by individuals who were working for a far less period of time. Are you saying they are wrong,

or are you perhaps not picking up those same types of concerns? It is surprising that you would suggest that the labour relations climate is positive there, because everybody that we have talked to says it is very, very strained.

**Mr. Smith:** Well, I can only assume that you are talking to the wrong people, Mr. Ashton. I think one indication as to how people feel about a company and how they feel about each other is a final institution known as a Christmas party, and you might be interested to know that the Christmas party held last Christmas was the best ever, biggest turnout, best party. That is one small indicator.

Currently out of a bargaining unit of some 1700 people, we have approximately 20 grievances outstanding, which is an infinitesimal number for a bargaining unit of that many people. Our productivity levels are high. Our customer research is showing that we are gradually making some progress in our customer service perception, which means our employees are being nicer and nicer and making an effort with our customers. Objectively, factually, I can tell you that indicates signs of good health in the bargaining unit. There are always going to be individuals, there will be individuals who will carry to their grave hurt feelings, shattered hopes, stepped on toes about the 1987 strike. The vast majority have put them behind it and are working together to produce one of the finest retail vehicles I believe in western Canada.

**Mr. Ashton:** I am not sure a well-attended Christmas party would exactly rate as being an objective measure of one's labour relations climate. I just want to put it in another comparison. We have had people come to this committee from Safeway. Safeway did have a strike, 1978 I believe. It has been 12 years since there has been a strike. We have had people come here who work for Safeway indicating that there is generally a better labour relations climate than there is at Westfair.

We have had people from Westfair, and I have talked to people from Westfair by the way—I am not just talking about people at this committee. There is a Westfair owned store in my own constituency and I have talked to people from the Safeway store. We have two stores in my constituency, and you almost do not have to ask people where they work. You ask them how things are at work and what the labour relations climate is. If it is a more negative response you can usually guarantee that they work for the Westfair store, and if it is a usually more positive reaction you can guarantee they work for Safeway, particularly long-term employees.

So I would like to ask you, do you honestly believe in comparison for example to Safeway, where there has been no strike in 12 years and where people are saying that, that you have a good labour relations climate in comparison to Safeway, which is your major competitor in this province?

**Mr. Smith:** Well, Mr. Ashton, I do not know what your method of canvassing these kinds of opinions is, but generally you know if you are in the retail business and

you run a sweatshop and people do not like to work for you and they think badly of you, they do not shop you. I think if you want a good indication of what the people of Winnipeg—we employ about 1500 people here. They all have 10 or 20 friends. There are a lot of people out there who know what it is like to work for us. You stand in our parking lot on a Friday night or Saturday and you tell me what the people of Winnipeg think of our stores.

**Mr. Ashton:** Well, Mr. Chairperson, I have been telling you what many of your employees think of the labour relations climate, and they are not very pleased with it. I just wanted to ask you a bit further in terms of your employees—people have been coming to this committee saying in terms of this particular Bill that it is not just the people that walked the picket line who are saying they want final offer selection maintained. They want Bill No. 31 defeated. It is also the people that crossed the picket lines. They are saying they want the final offer selection legislation kept in place because it provides an alternative to what happened in 1987. Are you not aware of that fact as well in terms of the employees themselves? People on various different sides of the strike in 1987 are now saying they would like to see the legislation that you oppose kept in place.

**Mr. Smith:** Mr. Ashton, I am not here to do anything other than to offer my view of this legislation and attempt to share with this committee some of the experience I have had over the last 15 years in the industrial relations game.

I would say, however, that in trying to come to a conclusion about the long-term impact of some rather complex and sophisticated labour relations legislation, the first place I would go for an informed opinion would not be a meat cutter, a cashier or a grocery clerk. We are not talking about whether people want to strike or do not want to strike. No idiot wants a strike. Anybody who has been through one would like to avoid one as much as possible. That is a no-brainer. We are talking about legislation. We are talking about the framework in which business functions in this province. It is a little different.

**Mr. Ashton:** I have talked to a lot of meat cutters and a lot of cashiers, and I can tell you they have a lot more common sense sometimes than—sometimes when people feel that, they for whatever reasons can speak more to the point. They are the ones who have to go through strikes or make pretty tough decisions. I would disagree with you on that.

By the way, I have studied this as well, too, and I was puzzled by your comment in the brief when you talked about the narcotic or chilling effect. Any studies I have seen on arbitration say that is the case with arbitration, conventional arbitration, but final offer selection, according to all the literature—and I have studied this; my background, by the way, is also in terms of labour economics—is that final offer selection has the absolute opposite effect.

The statistics in Manitoba are five out of 72 cases where final offer selection has been applied for have

not been settled. Would you not perhaps wish to correct your statement in the brief that really what you are talking about is conventional arbitration, not final offer selection?

**Mr. Smith:** No, I would not.

**Mr. Ashton:** I would appreciate it perhaps if you could refer me to any literature where this is the case, and I have discussed this by the way with people, including the Member for Radisson (Mr. Patterson)—that is his background. He is the first one to indicate all the literature has indicated final offer selection brings people together.

I want to focus on something else you said too, and I do not believe it was in the brief. I believe it was an additional comment. You said one of your concerns with final offer selection was that it removed the fear of a work stoppage, and that was essential for the collective bargaining process.

Do you not feel that in some, way, shape, or form perhaps there is not some advantage in some cases to providing an alternative to the—I am not saying taking away the right to strike. Obviously the current legislation does not do that, but do you really believe that is the only way we can have effective collective bargaining is when there is a fear of a work stoppage?

**Mr. Smith:** I would say that effective collective bargaining occurs best where there is a right to strike and a right to lockout.

**Mr. Ashton:** A right to strike, a right to lockout, and a right to continue the operation of the plant on behalf of the employers during the period of the strike?

**Mr. Smith:** Yes.

**Mr. Ashton:** Obviously we would have a disagreement on that. I do not believe that provides a balanced situation. Obviously employees cannot guarantee the operation of their jobs during a strike situation and maintain the strike, but employers do have the double option.

I just want to ask you—you have a contract coming up this year, May of 1990. We have had many people come before this committee and say they would like to have that option there. One has to recognize what happens under the current legislation if one invokes final offer selection. One does, as an employee, give up the right to strike for that contract period. Negotiations continue.

\* (1450)

In most cases, as we have seen, negotiations have been successful, but would you say from whatever perspective, whether it is Westfair or your position in terms of labour relations, that you would rather not see the employees have that alternative to the right to strike in May of this year or whenever the contract negotiations are completed? Are you saying you would rather go through 1987 again potentially? I am not trying to deal with a hypothetical situation. Obviously

there may be a resolution; hopefully there is. Would you say that would be better for your company, for the community, if those employees did not have that alternative and potentially end up with a situation of either accepting the contract or going on strike?

**Mr. Smith:** As I think I indicated to you, Mr. Ashton, we have already put a mutually agreed FOS section in our agreement to look after this renewal.

**Mr. Ashton:** Mr. Chairperson, I am quite aware of the section in terms of the previous collective agreements which were attached. You know, they were previously included in the process. I want to ask you though—I mean, this is what puzzles me with final offer selection. You said you would rather have the fear of work stoppage or—in this case you said a strike or a lockout, that is why it is used in collective bargaining.

Are you suggesting that in the 72 cases in Manitoba where final offer selection has been invoked under this legislation, not in terms of the collective agreement, that that has not resulted in good collective agreements in this province?

**Mr. Smith:** I think my point was that over time it would not.

**Mr. Ashton:** I wonder if you could elaborate on that. I am not quite sure I understand why you are saying, "over time."

**Mr. Smith:** My belief is that the conduct of industrial relations within the final offer selection legislative framework would deteriorate over time.

**Mr. Ashton:** In what way would it deteriorate? As I said, we have had 72 applications under the current legislation. Only five of them have gone to the point of a final selector's decision. The vast majority of them were settled through collective bargaining anyway. The fact that there is not a chilling effect is because of the fact, as the literature shows—and I can show you the literature I am referring to; I am not trying to hide anything—it brings people together.

Are you suggesting in those cases that somehow there is going to be a deterioration in terms of collective bargaining even though they reached a collective agreement without going to the final selector stage?

**Mr. Smith:** What you are telling me is that there were 70-odd applications to FOS. What you are saying is that out of the 77 only five selections were made, so that there is a powerful disincentive to have the settlement rendered by virtue of FOS. I would say that it is not my concern about the individuals who chose not to go through with FOS; my concern is the five contracts that were renewed under FOS. My concern would be the impact over time of those contracts which are repeatedly renewed through FOS.

That is my concern. I mean those contracts where people say, I do not want to have a strike, therefore I am going to make a deal, or I do not want to go to FOS, therefore I am going to make a deal. I do not think they are a matter of much concern to me.



**Mr. Ashton:** I am somewhat puzzled, because you have talked before, your theory of labour relations is that to get a good collective agreement, you need the fear of a lockout or strike. Under those circumstances it was just traditional collective bargaining, obviously people making contract decisions based on the fear. Now you are saying in this particular instance there might be a fear of FOS that might lead people to come to what is on the surface a mutually agreed upon contract.

I am not sure I understand. You are saying there is still a problem with final offer selection even if both parties have come out with a mutually agreed settlement even though it has not gone to the selector stage?

**Mr. Smith:** Well, I am not sure that one can distinguish between the nature of collective agreements done because of fear of strike and the nature of collective agreements done because of fear of FOS. My concern is units and companies who go through the process of FOS.

**Mr. Ashton:** So you feel there is something wrong with the process itself that has people sitting down, even while the process has been opted for, and negotiating, that that is not going to result in good agreements over time?

**Mr. Smith:** I do not believe there is going to be a qualitative difference between an agreement which is negotiated because of fear of FOS and an agreement which is negotiated because of fear of a strike. What I am saying is that my concern is agreements that are created through the process of there being a final offer selection. The fact that in Manitoba we have five such examples to look at in my view tells us nothing.

**Mr. Ashton:** I am still somewhat puzzled, but I would like to move along. I noticed in your brief you quoted from a union that made presentation to the committee that had dealt with final offer selection when it was first introduced in 1987.

Are you aware that many of the unions that originally expressed concern about final offer selection have now come out in support of it? Last night we had the president of the Manitoba Council of the Canadian Federation of Labour for example who was very adamant in stating that he was opposed to final offer selection in 1987 and supports it now because it works. We have had individuals from various unions including UFCW, for example, one of the locals here in Manitoba that opposed final offer selection. Are you aware that most of the unions in Manitoba currently support final offer selection?

**Mr. Smith:** I am not aware that there has been a vote or straw tally of the presidents or the memberships of the trade unions in Manitoba. I would not be surprised to hear—it is my impression there has been a lot of changes of opinion by the trade union movement on that issue.

**Mr. Ashton:** Are you also aware that many unions expressed concerns such as the one you have outlined

in the brief and have now changed their view based on their experience in the first two years? The particular quote that you have quotes the concern that it will encourage parties to move away from negotiations based on their relative strengths and gamble on a winner-take-all thing with the selector. Many unions that we have seen here, including a number that opposed final offer selection to begin with, have said that has not been the case in practice.

**Mr. Smith:** You have had five contracts renewed through FOS. I do not know what you draw from that.

**Mr. Ashton:** We have had 72 applications and five have gone to the final selector stage. The literature that you refer to in a general sense has said that final offer selection encourages people to continue to negotiate. It has the exact opposite of the chilling effect. Based on the literature, one would have assumed that one would have ended up in this current situation, which is only five would have gone to that period of time because there was still a major incentive on both parties to negotiate. Regardless of what conclusions we draw, I am just asking if you are not aware that many unions have changed their view based on their experience over the two-year period?

**Mr. Smith:** I would still say that the experience is a total of five contracts that have been the subject actually to FOS.

**Mr. Ashton:** I am somewhat confused by your statement on page 4. You state that FOS will have a negative impact under certain economic conditions essentially and particularly in terms of recession. I believe we are headed into a recession.

I am just wondering if you can elaborate a bit. You talk about a trade off between conflicting demands for cost reduction and enhanced job security. Are you suggesting that essentially final offer selection inhibits the ability of a company for example to roll back wages because of a recession, seek other sorts of concessions in terms of reductions in either benefits or working hours, is that your concern?

**Mr. Smith:** No, my concern would be that if you are involved in a company or a bargaining unit that is being affected by recession that what you would hope to do in collective bargaining, it would seem to me, speaking hypothetically, is come up with an agreement that managed to do both things at once. In other words, reduce costs or make the business more recession proof, and at the same time perhaps provide some job security enhancement.

The nature of the FOS game, it is my belief, would tend to force the company to put forward a recession-proofing exercise, perhaps without the same concern for the job security enhancement that would otherwise be hammered out at the table.

**Mr. Ashton:** Are you aware of the particular criteria that are taken into examination in terms of final offer selection specifically in the Act?

**Mr. Smith:** Yes.

\* (1500)

**Mr. Ashton:** I am just wondering what your concern is, based on the fact that those criteria include a number of factors such as the cost of living obviously, but also the ability to pay of the company. I am just wondering what your concerns is with final offer selection when, for example, the ability to pay and the specific reference to a selector if necessary picking the most reasonable offer—what do you find so concerning from Westfair's position with the provision that to my mind and certainly in terms of the criteria in the Act would appear to be fairly balanced?

**Mr. Smith:** Which provision?

**Mr. Ashton:** The criteria of which selections are made. I can obtain the specific section in the Act and read it to you if you wish.

**Mr. Smith:** I have it here in front of me. I am just wondering which one you are referring to?

**Mr. Ashton:** I am just asking what your concern is, given the fact that the criteria for final offer selection are fairly specific in terms of providing for selectors to be able to look at a number of different factors in terms of determining decisions which include looking at the most reasonable offer, which is a general term, looking at factors such as the cost of living and the ability to pay.

**Mr. Smith:** Well, I would say as far as the cost of living, which is I think in the legislation referred to as the CPI, very often you will find that when a recession hits in fact that CPI is spiking up. There may be a downturn later but those two things often go hand in hand, especially if there has been a rapid rise in interest rates.

As far as the ability to pay goes, one of the concerns about final offer selection is finding enough people around who can act as selectors. In every jurisdiction in Canada, good arbitrators are horrendously overworked, they are hard to get, it takes you months to get them. We are now going to add another burden, or have added another burden to this process. Generally speaking arbitrators come out of the industrial relations ranks. Some of them are lawyers, professors, et cetera. I think the chances of you finding someone who knows his way around the industrial relations game, who also is a skilled financial analyst and is able to make predictions and evaluations about the economic health of the company based on whatever data is brought forward by the company and the union, I think you are just dreaming. Those people do not exist.

A lot of your comments—I grant that there certainly are people. I am coming here as a practical person who has been involved in the practical conduct of industrial relations, and I am expressing what I believe to be practical concerns. If you think you can find out there some guy who is going to be able to somehow in his mind figure out the CPI and the right to and the ability to pay some company offer, I just do not think it is going to happen. It may. There may be a new and special breed of arbitrator coming around the bend that I am not aware of, but I just do not see it happening.

**Mr. Ashton:** Your concern is more with the selectors than final offer selection in terms of what you are saying in this way. I look at the experience in Manitoba. I do not believe it has proven to be that difficult, but you are suggesting there is a new breed of selectors to make mechanisms such as final offer selection work.

**Mr. Smith:** Well, I was staying at the Sheraton. I walked up to the notice board, and lo and behold there was a name Vincent Reddy (phonetic). Mr. Reddy is a labour arbitrator. He lives in Vancouver. Why is he here in Manitoba? Because there is a shortage of skilled arbitrators and mediators in Manitoba. You have had five FOS selections.

**Mr. Ashton:** Is not part of what we are dealing with the fact that in Canada traditionally we have had a very adversarial relationship in terms of labour relations? I said this to the committee yesterday. We have the second highest per capita strike rate in the world. We have traditionally had that. It has not really budged from that, we are second only to Italy.

Do you not feel the way that we are seen in other countries holds out some possibilities in Canada as well? If we are going to be competitive for example with other countries, we need to move away from the adversarial, the complete adversarial situation you are talking about, because you yourself talked earlier about your concern. I respect that. That is your personal view and the view of Westfair, that you need the fear of a strike or a lockout to get good agreements.

Do you not believe there are some other mechanisms that perhaps could deal with that, that could provide an alternative to the right to strike, unless you just take away the right to strike? Then again there would be some who would suggest, take away the right to hire replacement workers to even the balance. It is a multidimensional argument. Would you rather see, I am not sure if my comments are having an impact in terms of taking away the right to hire strikebreakers. I did not mean to cause you that much concern. Although I can tell you quite frankly, I would love to see in legislation the same provisions they have in Quebec which would I believe balance the legislation here in Manitoba far more substantially.

We are dealing with final offer selection. Do you really believe that is the bottom line, that there has to be the fear of a strike or lockout or else everything is going to collapse on our collective bargaining situation?

**Mr. Smith:** I am a strong believer in free trade unions. I find that those countries where there are restrictions put on the rights of companies and unions to freely enter into collective agreements tend to evolve toward those kinds of countries that I would not like to live in.

I believe that, speaking for Westfair foods, speaking for myself, we do not have an adversarial position with our trade unions. The impression of Westfair, very unfortunately, is coloured by the dispute that took place here in 1987. I would point out to you, however, there was another great big dispute in the food industry in 1978-79 involving Safeway. The common thread there

is the trade union involved, not the company involved. Strikes in our company are few and far between.

We have found the UFCW at the international level, we have found the UFCW at the Canadian directors level, we have found the UFCW certainly in the locals in Ontario, in Saskatchewan, in Alberta and British Columbia to be as nice a bunch of fellows to deal with as you would want to find in the trade union movement. We had our problems here, but I do not think that the people of Manitoba are well-served by this legislation. I do not think that the notion of the adversarial tenor of labour relations is an accurate one.

We have a lot of strikes in Canada because Canadians like to stand up for what they believe in. Maybe we have a lot of strikes in Canada because we have tough union leaders who lead their people in a pro-active way to gain some of the wages and benefits they enjoy. People who work in our stores, full-time people, they make a lot of money, they make \$30,000 a year. That is not because they had weak union leadership. We pay equal types of pay as does Safeway across the West because we dealt with a tough bunch of guys in the trade union movement. We have good agreements. I do not think this is anything that someone living in western Canada should be ashamed of or think there is a problem or regulate it because it is there.

**Mr. Ashton:** You talk about free trade unions and respecting unions you deal with, but I have here an advertisement from Thursday, August 6, 1987. It is from the Superstores. My understanding was that the strike was based on a vote—the democratic process; it reflected the will of the workers involved. But I just want to quote you what your company—I am not suggesting you did this—but this is what Westfair put out. I would like to ask you a question following it.

It says, was it the employees—it is titled—who wanted it that way? Probably not. Out of 1,600 employees, over 600 crossed the picket line and came to work. Over 800 have stayed home uninvolved in this dispute. Only a small minority of approximately 150 are on the picket line. Most of them have endured financial hardship, and many will not have jobs to return to, should Superstore fail to regain its pre-strike business.

This was based on a vote of the membership. That does not appear anywhere in here. If I was to read this, an average citizen, I would say that quite frankly you were misleading the public at that time about what had happened. There was no mention of the fact there was a vote of the membership. Regardless of what the facts were or were not in this particular case, I would assume from that you had a pretty adversarial relationship. You are questioning the democratic decision of the people who decided to vote and go out on strike.

\* (1510)

How can you say that you have a good labour relations climate and you respect the unions when you put out advertisements? I realize it is during a strike and it is a heated situation, but this is under the company signature. How can you say that you really

respect the unions, when in this particular case democratic vote of the membership was being questioned by the company itself in paid advertisements in the local media?

**Mr. Smith:** Well, as you say, it was a strike. I think we had been at it then on the parking lot for what, a couple of months? I do not think that Westfair ever had to give Mr. Christophe any assistance in publicizing his point of view as far as that strike went on, or publicizing who voted for what.

When I say that we have a nonadversarial policy, I am not saying we have a nonadversarial policy for all unions at all times. We co-operate with people who seek to co-operate with us. It is interesting that Mr. Christophe has managed to get out of the Superstore agreements the worst Superstore agreement, in terms of rates of pay, and in some cases, terms and conditions of employment. What it took Mr. Christophe some three months on the parking lot to figure out, Mr. Stewart in Saskatchewan figured out in about 20 minutes and wrung out of us a higher wage settlement.

**Mr. Ashton:** I think we are getting a bit of a clearer picture. If the union, quote, co-operates, does it your way, you are suggesting they are going to get a better deal than if, in this particular case, they stood up for their rights democratically. The membership voted to go out on strike. By the way, I did not quote the rest of the advertisement, which said, was it Bernie Christophe of the MFCW?—and I will just quote it, perhaps, so you realize what was being said. I realize you did not probably draft this advertisement, but it says: Why not? Strike pay is provided through the American-based international union in Washington, D.C. Also, new members will be gained from the new business being done by Safeway Incorporated's Canadian subsidiary, which will make up for job and membership losses at Superstore.

Are you suggesting that the people who voted to go on strike, in any way, shape or form, reasonably—I mean I am just asking you to put aside, this is a couple of years ago—in any way, shape or form, voted to go on strike, because this was going to benefit Safeway and benefit their union in some other way, shape or form? Are you suggesting anything other than the fact that what I think is the obvious situation? They had a contract offer they felt was not fair. They exercised their right to strike.

**Mr. Smith:** Can you read me the ad again?

**Mr. Ashton:** I can give it to you if you want; I realize you may not have seen it. I am not trying to misquote anything. It is directly quoted, but I am looking at the situation. Perhaps it was because you were into a strike situation, but that is one of the reasons so many people have been coming to this committee saying that if there is another way, and in this case, FOS, that this is a better way. It is an alternative.

That is why I am raising these issues in this committee, because I am trying to get—I have asked strikers who have been here, I have asked people who have worked

for companies, other companies, who have been affected in strikes, their opinion. They are saying final offer selection would be a better alternative. You suggested to this committee you feel it is wrong because it takes away the fear of the right to strike and lock out, and I am pointing to what happens in a strike, how a company, which, as you said, prides itself on its public image, can put out what I feel was a pretty vicious attack. I am sure Mr. Christophe did not take it personally, although it was very personally intended, but it was a pretty vicious attack on the employees themselves.

Nowhere in that advertisement did you ever acknowledge the fact that they had taken a democratic decision, a legal decision to go on strike. I am just wondering why. I am not suggesting you put that out. I realize that is not your part of Westfair, but how could an advertisement like that be placed by a company, a large company that obviously is going to have some concern for its public image?

**Mr. Smith:** Well, I think that I do not find anything offensive in this ad myself and also, as I suppose everyone here is aware, statements that companies make about unions are subject to the labour legislation of this province and if they are thought to be interfering with the internal affairs of a union or are thought to be an unfair labour practice, then the trade union can take the employer to the Labour Relations Board. If it is thought to be in some way libelous or slanderous, then the union can take the company to court.

I will tell you that we were not taken to court over this ad, and we were not taken to the board over this ad. Our sense of it was that the employees who voted for that strike did so—it was our impression, now we may be wrong, but when 91 percent of the people, I think that was the vote, vote for strike, then you have 500 or 600 of them come to work, that tells you there is something wrong with the vote. Does it not? Does that not tell you there is something haywire somewhere? That is when we say, was it the employees—probably not. Out of 1,600 employees, over 600 cross the picket line and came back to work.

If the vote had been 91 percent, and only 9 percent came back to work, we probably would not ask the question, who wanted it that way? It was a bit of a dilemma.

**Mr. Ashton:** Are you suggesting the vote was fixed, it was not a legitimate vote? I am puzzled by your defence of the ad. Are you suggesting it was not a legitimate vote?

**Mr. Smith:** I am suggesting that its legitimacy was probably, in terms of its legal legitimacy, I am sure everything was done according to the letter of the law. As an expression of what these people wanted, I have to say, I do not think it was.

**Mr. Ashton:** Would you not think that perhaps one of the reasons people crossed the picket line is not because they did not vote for the strike or supported the strike, but the fact they were faced with a loss of

income? They were faced with the loss of their jobs. They saw people daily, people that you had hired specifically for that, and others who decided, right from the start, to cross the picket line. Do you not think that has probably more to do with it than any other factor, the economic pressures, the family pressures, the personal pressures of day in, day out seeing people cross the picket line? It is not just customers, but the people hired by your company to replace their jobs.

**Mr. Smith:** I would say no. I do not think that was the case at all. There were a lot of people who, amongst these 600, told us what they thought. They thought the thing was stupid. They thought the company's offer was fine. The reason they crossed was because they thought the union was inept. They were not going to pay with their salaries for the ineptitude of their union.

I do not think we had 600 people back in the stores within the first few days of the strike, because it took us I think two or three weeks to get all the stores open again, but certainly there were very significant numbers of people, on the order of 300 or 400 people, willing to come back to work as soon as we were open. In fact there was a lot of pressure from our employees to open more stores so they could come back to work.

This is the only strike that I have ever been involved in, not that I have been involved in that many, where this has happened. Generally, you have a strike and everybody disappears and that is it. They are outside the building. What kind of strike do you have when you have a strike and you have 300 or 400 of them phoning up wanting to come in. That is when I say, and that is one of the reasons, and perhaps in retrospect, we ran the ad, who wanted it that way. I just think that strike was not expressive of what those people wanted or maybe they were misinformed or they were not listening, but it seemed to me a little odd—the numbers.

**Mr. Ashton:** Well, I perhaps give them more credit, and it is not unusual. I have seen many situations, a strike situation, where people under the financial pressures, you know, support the strike after they have seen what can happen, will end up in a position where they feel they have no alternative but to cross the picket line themselves. I do not believe that is unusual.

By the way, I have other advertisements here. Come hell or high water we will be open; this is the real Canadian Superstore—various ads. You went on a unprecedented attempt during that period of time to provide customer discounts. I think we fairly, in some cases here, talked about what you would offer. That I thought would be a more legitimate approach, but I still cannot see your earlier statement when you came here, how SuperValu has, to use your code, a good labour relations climate. It just does not add up. Any company to my mind that puts out ads attacking the very legitimacy of the unions and the members, and I believe insulting their intelligence and their democratic right to a decision, I believe is bound to end up with difficult labour relations.

\* (1520)

I would just like to ask you, do you not really believe there has to be a better way? Do you really believe, for example—I mentioned about Safeway. I am just talking from personal experience. I know Safeway employees and I know Westfair employees. You know, you walk into a Safeway store and you actually see some people there who have some decent hours, some older people. You walk into a Superstore nowadays and it seems that all the people who have been there for any length of time are working for a fraction of the hours they did before. We have had people come to this committee say that. They worked at SuperValu and every year they end up with less and less hours. That is, by the way, going to be an issue in the bargaining, they have told us, in 1990.

Is that the way to treat people fairly? Do you not believe there is a better way? Do you not believe final offer selection provides a better chance for companies such as yours to have the kind of labour relations that, I believe you personally probably really want, but certainly has not been objectively the case with Westfair?

**Mr. Smith:** I am not sure I remember the beginning of your set of serial questions, but I would go back to this notion that we had 20 grievances outstanding. You know, the Christmas party may not indicate a lot to you, but it indicates a lot to us. I have had Christmas parties at companies where no one came, so it is an indicator. We have good productivity. Okay. Our numbers in terms of our customers service, which are numbers which plummet if you have a problem with your employees, are good. All the objective measures we have are good. We are able to hire people easily which means we have a reputation out there amongst the people who are looking for jobs. We are a decent employer. All these things are objective indications that we are a decent employer.

Now, you know, any time you have a company with 1,700 employees that went through a lengthy labour dispute, if you do not think you are going to be able to find a significant number of people who do not like Westfair and never will like Westfair, those people are out there. Those people undoubtedly will take the time to come down here and maybe express some views about it, especially if they were encouraged to, but objectively, in this city we are—we started up a Superstore program in Saskatoon with a 45,000 square foot store. We sort of figured we had something that was going to work, that was going to essentially resuscitate the fortunes at Westfair Foods, and we started in Winnipeg. We have some very strong feelings about this town. We have done well here. We have developed the way we are. We developed here in Winnipeg.

You know as well as I do, Safeway would never run ads like we do. They do not run ads like we do. No one runs ads like we do. To wring our hands over some hurt feelings of two or three years ago in the face of, in my view, objective factual evidence—the things were just fine at Westfair. What is it in aid of? Is it in aid of you and I debating FOS? It is not in aid of anything. The people, the employees of Westfair to a large extent in my view have put that strike behind them. There are

a number of people who were on that picket, who were terribly upset with our company, who have now been offered and accepted supervisory positions. They are now part of management for us. We accepted they had a right to express their point of view, their right to picket us and the right to be angry at us, but then they came back to work, worked well and are now part of the management group.

I mean, this is the real world. We are a decent company; we know what we are doing. To construe and misconstrue what Westfair is about, what are employer relations about—I mean, what is it in aid of? If you want to know about Westfair employee relations, you know, after this is over, when I am back in town, come on over. We will go through it; we will go around the stores. Let us not try and fool each other that there is some major festering sore, because there just is not.

**Mr. Ashton:** Well, I have taken the time, and I suggest perhaps you talk to some of the people in your own stores. You said yourself before, Safeway would not run ads like these. They also have not had a strike for 12 years; they are also not appearing before this committee arguing that we should take away final offer selection. I use that comparison because I also talked to people at Safeway, and they say the labour relations are fairly decent. We have had people come to this committee from Safeway, and we have had people come from Westfair saying quite the opposite. It is the same union, two different companies. Safeway is not here. You are proposing we get rid of final offer selection. I am trying to get at the root of that, because we have had plenty of people here who have been stating that is quite the case.

By the way, I have been able to track down some of the reports—the one I was talking about earlier, in terms of the hiring of strikebreakers. There is one clip I do not have, which quoted Mr. Ryzebol, but there is another clipping I have here from part of 1987 where it was made very clear by a spokesperson for the company that the people involved in this training program, he says—a regular program—that in effect a thousand would-be applicants had been obtained at that time. It was made clear that they would be placed on a priority list for hiring when workers were needed in case of the current strike. That was prior to the strike, by the way. So I just wanted to make sure I provided you with the facts on that, as I did previously, in terms of the ad.

Now, I just want to get down to the bottom line then, because you said to this committee you want final offer selection to be terminated. I take it, the recommendation of Westfair be terminated immediately. I will just perhaps ask you that so we have it fairly clear, you are suggesting that the Act should be repealed as soon as possible?

**Mr. Smith:** Yes, my view is that the Act should be repealed as soon as possible. I think there has to be some attention paid to fact there are agreements, including our own, which were cast in that, when there was final offer selection in legislation extent. I do not think it would make a lot of sense for companies which have entered into agreements, which may be affected

by the repeal of it, to have a negative impact on their labour relations, but I think that we would certainly be governed by the decision of the Legislature in the matter.

**Mr. Ashton:** So you would like to see it repealed prior to the next contract, which is coming up on May 15, I believe, in terms of Westfair?

**Mr. Smith:** I think we have already received proposals from the trade union here in Manitoba. Actually, we would want to seek advice on this matter, but I think our feeling would be—I do not think it would be the intention of the Legislature that had collective agreements been entered into, which reflected the legislative environment at the time, if that environment was to be abruptly changed, that there would be any negative fallout for parties to such agreements.

**Mr. Ashton:** Just going from that, are you suggesting that perhaps final offer selection not be repealed prior to the contract? Perhaps I misunderstood it. Are you suggesting that it might be better in Westfair's case if the repeal took—assuming there is a repeal and some of us on the committee hope there is not—but if there was a repeal, it took place after the current set of negotiations?

**Mr. Smith:** No, I think it should be repealed immediately. When a lot of legislation either lapses or is repealed, provisions are made, grandfathered or whatever, so that arrangements which have been made under one environment, that people and institutions are not harmed because there has been a change in the legislative environment.

**Mr. Ashton:** So Westfair's position to this committee is you would like the immediate repeal prior, obviously, to the current contract. You would not like to see any particular provisions in place to have a transition period. There is a similar transition period in the proposed repeal. I do not believe it would impact on your current situation. You would rather see as a company, labour relations that reflect, what you said, collective bargaining based on the fear of a strike or a lockout.

You do not want to see something such as final offer selection available as an alternative to the employees to the strike weapon. You would rather see—some of us could classify it as the law of the jungle, but I do not mean in this particular case to put any value-laden terms on it. I just want to put it to you directly. You would rather see this fear rather than final offer selection.

**Mr. Smith:** What I would like to see is that no more collective agreements be entered into under a legislative framework of FOS, but there be some attention paid to collective agreements which are currently extant and have yet to expire which may have in them, such as ours does, FOS provisions. I do not think we want to throw the baby out with the bath water here. There was a radical change in the legislative environment with the introduction of Bill 61. Some attention, in my view, should be paid to the change in the environment when you take it out. That is all.

One thing, Mr. Ashton, if I may, I have a flight at 4:30. My feeling is that I should try and get out of here by a minimum of about 15 minutes.

\* (1530)

**Mr. Ashton:** I am just concluding my questioning here.—(interjection)— Pardon me? Hold up the plane, that is right.

You have been pretty blunt. I will give you credit. You have come forward and you have expressed Westfair's position fairly clearly, the view of Westfair in terms of labour relations. I do not think you pulled any punches even in terms of the ads. I think you said that other companies may not have done it, but that is the type of thing that SuperValu does. That is their approach.

We may have a disagreement, by the way, on the condition of labour relations. I really believe, and I know you are not from Winnipeg, but I really believe that Westfair might want to look at what was said by some of the employees that came here earlier. We have had presentations from people who came here, some who were involved in the strike, but we have heard people come here and say the only thing that has brought people together at SuperValu since the strike has been final offer selection. The people who have crossed the picket lines who would not speak to people who were on the picket lines, have not spoken for two and a half years, are finally talking.

The employees in that company, your company, are saying they want final offer selection available as an option to them. We have had people come here who were on the strike who said they identified, they could understand. They did not agree with what the strikebreakers did, but they understood the situation. That is pretty well what has been happening on the other side too, that people are coming together saying that final offer selection provides an alternative.

We put it in for five years as an experiment. It is an innovative measure. We believe, some of us, that it has not been really given a chance, but I guess we have a fundamental difference in opinion on that. Your company believes that we are better off with fear, fear of a strike and lockout. Those of us who believe final offer selection has a role, and the employees themselves who went through that strike on both sides are saying they feel that we need an environment in which fear is not the only factor, an environment that reflects the rights of each party, but where there is a better way.

I wanted to give you the fullest opportunity to put your views on the record, but I really hope you will take the opportunity to talk to people here in Manitoba about their experience with final offer selection, your own employees. As I said, I really believe you will find and I—it may still not change Westfair's position. You may still feel you have an advantage without final offer selection, in terms of bargaining in a recession situation. I would hope you would take the time to talk to the people and listen to some of the presentations we heard. What a lot of people are saying is, there has got to be another way. SuperValu, Westfair should not have to go through what happened in 1987, and final offer

selection is that way. That is why, by the way, some of us have been fighting so hard for final offer selection, and so many people are here.

I appreciate your coming here, but I really would encourage you to talk to your employees and find out their experiences. I really do believe that people are looking for an alternative and especially with a contract coming up, we are hearing a lot of talk about that. I will tell you the biggest fear people have. The biggest fear they have right now is that the contract is going to be up in May of 1990 and history will repeat itself. You know, I am sure, the saying that those who forget history essentially, do not learn from history, are condemned to repeat it. People are saying, let us learn from history and let us find a better way. That is essentially what the discussion is all about. I appreciate your views, but I think we will have to agree to disagree on how we approach labour relations.

**Mr. Chairman:** Thank you. Mr. Edwards, you have a question?

**Mr. Paul Edwards (St. James):** Yes. Mr. Smith, I want to pick up on what my friend, Mr. Ashton, has been talking about. I recognize your time constraints, so I will try and be brief. But the indication from Mr. Ashton, in speaking with you, that there may indeed be a strike coming up in May. Mr. Christophe was here a couple of nights ago, and he was raising that spectre with us as well as the spectre of the effect it may have on our electoral success in an election, which is coming up this year. They were hardly veiled threats by Mr. Christophe on both of those accounts. I do not think he is known for subtlety anyway, so it did not surprise us.

Can I just ask you to clarify what you are saying about the collective agreement you have now? Are you saying that in fact you and Mr. Christophe, or Westfair and UFCW, negotiated a final offer selection provision which will be governing this contract coming up this year? If so, how many years is that provision going to be effective?

**Mr. Smith:** One renewal. When we came to the end of the road in '87, neither one of us wanted to do it again real soon. So we reinstalled or reinitiated an FOS resolution of the dispute, if there is one for this round of bargaining.

**Mr. Edwards:** So when Mr. Ashton and Mr. Christophe suggested there may be a repeat of 1987 in the upcoming negotiations, they are in fact false?

**Mr. Smith:** Yes.

**Mr. Edwards:** I hear Mr. Ashton saying no.

**An Honourable Member:** Could be, I am saying.

**Mr. Edwards:** I am asking you, Mr. Smith, to clear it because the Member for Thompson (Mr. Ashton) seems to be suggesting that we could have another strike like we had in '87. Given that you have agreed in 1987, under your collective agreement, to do final offer

selection this time—perhaps I am unclear—but that will in fact be what is used this year, will it not, the final offer selection as set out in your collective agreement, not the statute?

**Mr. Smith:** What we have in our collective agreement, we have a reference to the statute with our FOS language. We also have an undertaking from the Canadian director. So I would say that in terms—could there be a legal challenge to the FOS language in our collective agreement, should the enabling legislation be repealed—I would say there could be. Whether it would be successful or not, I do not think so.

In addition to that, we have a letter from the national director of the UFCW stating that in the event of impasse we would in fact go to a final offer selection process with mediation beforehand. What I am saying here is that I would like there to be a 100 percent certainty that we are not going to have a labour dispute this year. I think Mr. Christophe has the same feelings. That is why I say that what Westfair would like to see, and I think we speak on behalf of perhaps some unknown companies out there who have negotiated agreements similar to ours with some reference to the legislation, but let us not pull the rug out from under the feet of these agreements when the legislation is repealed. It is a legislative commonplace, I understand, to have grandfathering clauses or run-out clauses for certain types of legislation. That is what I am saying.

**Mr. Edwards:** Presumably it was that desire between yourself and Mr. Christophe not to have 1987 repeated which led to you mutually agreeing to put in some final offer provisions into your collective agreement.

**Mr. Smith:** Exactly.

**Mr. Edwards:** With respect to your speaking about the development of your company in western Canada and your coming to Winnipeg, a lot has been made by the Chamber of Commerce with respect to the disincentive this particular provision gives to investors coming into Manitoba. You represent a company that has made significant investments in this province, albeit I assume most of them prior to final offer selection coming into place. As an outside viewer on Manitoba, what are your thoughts on that spectre raised by the Chamber of Commerce?

**Mr. Smith:** I would say that people who make investments in Canada cover a wide range of financial sophistication, but they even cover an even wider range of sophistication when it comes to looking at the impact of certain types of legislation. I believe that the type of legislation that you have here which most employers see as being terribly one sided is in fact a disincentive to investment. I do not like to say that but I do believe that.

\* (1540)

**Mr. Edwards:** Just to clarify. I have now had a chance to look at the existing collective agreement I believe, yes, it goes till May 5, 1990. Just so I am perfectly

clear from your brief, you had a freestanding final offer selection agreement in place prior to the 1987 agreement. It appears from this 1987 agreement that you selected and put into the collective agreement the selector but you did refer to the Manitoba Labour Relations Act as being the guiding principle for final offer selection. Now you have also said though that you have a letter from UFCW that in the event this Act is repealed, final offer selection will still be used because it was mutually agreed to in 1987.

**Mr. Smith:** That is correct. The best prevention of a strike of course is a mutual—to avoid one at all costs. We have no interest in revisiting the parking lots of 1987.

**Mr. Edwards:** Just one more question. The New Democratic Party in many respects has hung its case on this particular dispute and your relationship with the UFCW. Of course you know that in terms of timing of this Bill, it coincided, at least when it was first introduced, with your strike starting, of the strike starting at Westfair Foods.

You made some comments about the second window, the window after a 60-day strike. Much has been made of the fact that there is no way that 60-day window, that second window, would in any way constitute an invitation to strike or be any kind of an incentive to go on strike had you missed the first window. Now you have said that in your experience, bargaining often does not start until past the first window. What are your views on that position, whether or not that second window has any effect on the likelihood of a strike?

**Mr. Smith:** Yes. I think it does. I think what would happen, if I were a trade union leader and maybe one day I will be after I do the whole thing, the other side of it—

**An Honourable Member:** Stranger things have happened.

**Mr. Smith:** Stranger things have happened. But what I would do, is I would figure this: I would say that my biggest downside risk is 60 days, because I can get out in 60 days. Okay. So all I would do is if I am going to take the people out, you know, then I take a reading on them around day 55. If everybody is solid, if I have my strike pay in line with the international, I am doing okay as far as the picket line goes, I have not picked up any injunctions, everything is working well, well, then what the hell. But I always have—at the 60-day point, I have the opportunity to bail out and push it into FOS.

**Mr. Edwards:** Surely you are not suggesting that a union leader would lightly send people out for a 60-day strike. We have heard all kinds of evidence—I do not think it needs to be repeated—that any two days of a strike can be very detrimental to workers. I will let you respond to that, but as well I would like you to consider from a company's point of view what does the effect of a 60-day strike have?

Is there some point at which the company either knuckles under or settles in for a long strike, and if

so, when in your experience does that critical point come where you either meet the demands of the union or basically say, we are in this for the long haul?

**Mr. Smith:** First of all, my remarks about the 60-day strike were really to—where the assumption or the decision to take a strike had already been made and voted on by the membership. I am certainly not inferring, I do not mean to infer that presidents of trade unions lightly take their members out on strike. Most presidents of trade unions, who go through strikes, everybody puts on about 10 years. It is no fun for anybody and I hope I did not suggest that.

As far as whether there is a magic number, there is not. I think that the point at which someone settles into a dispute, the only number I have ever heard with any kind of frequency is two weeks. Basically, if they are out for two weeks then you might be out three months. But if you are going to have the short, sharp shock of, oh, my God, we are down and the employees, oh, my God, I am out here, if that is going to have some effect, it is usually—what I have heard—that is going to manifest itself in that first couple of weeks. After that, people get used to it; people get used to anything and you are into it. I do not know if that answers your question or not.

**An Honourable Member:** Thank you.

**Mr. Chairman:** Mr. Rose, you had a question.

**Mr. Bob Rose (St. Vital):** Mr. Chairman, I have a number of questions here but being that it is Friday and we have had a long presentation here, I think I will hold them for now. I would not like to see Mr. Smith on a Friday, with all the hold up at the airport, miss his plane. I just want to thank you for coming. I appreciated your presentation.

**Mr. Chairman:** Mr. Ashton, you had one—

**Mr. Ashton:** Yes, just briefly on the final offer selection provision because as Mr. Edwards pointed out, when I provided him with information, the original clause was a free-standing clause, a current provision to reverse The Labour Relations Act. Is Westfair saying that even if the Act is repealed, the provisions of The Manitoba Labour Relations Act that regard the Government final offer selection will still be honoured in the current and upcoming contracts?

**Mr. Smith:** As I mentioned on that one I have a legal opinion saying that it will prevail. I also have a letter from the Canadian director saying it is their intention if there is impasse to go into FOS. The problem is of course is that there is a lot of things in life you take a 90 percent certainty on, but I have some plans for this summer and they do not include a strike in Winnipeg. I would very much and I think our employees, the ones that you are concerned about, would very much like there to be a 100 percent certainty.

That is why I am urging this committee and the Legislature that when the FOS is repealed, there be a provision to protect those in those agreements such



as ours from being inadvertently negated. I am certain that our employees' intention when they ratified that agreement—and it was their intention to protect themselves from the possibility of getting involved in a strike again, as it was ours. We both had that intent. We did not know the legislation was going to be repealed. It answered prayers, I guess, but at this point I think it would be wise of this Chamber to consider protection for companies such as ours which have provisions such as those.

**Mr. Ashton:** Apart from the legal side, obviously if Westfair accepts the current provisions of the Act whether they are repealed or not for the upcoming contract is not a problem. You are saying that Westfair and the upcoming negotiations will follow the current procedures in terms of The Labour Relations Act regardless of whether they are repealed or not? I mean, that is the easiest solution. If you agree to it and the union agrees to acknowledge the Act as it is, really you do not get into any legal disputes.

**Mr. Smith:** There is only one problem, and that is the legislation allows for a 60-day strike. That is one of the problems of this legislation. That agreement is attempting to avoid a strike, and the mutual intent of the parties was not to have a strike. The mutual intent of the parties in fact was to have kind of a ziplens renewal.

**Mr. Ashton:** I am just trying to get it clear though, because the section here states quite clearly that the parties agree if either party invokes final offer selection on the appointment of the selectors—you mentioned Mr. Reddy, he is one of them, and Mr. Donald Munroe—it really does not do anything in terms of final offer selection that is in the legislation. What I am trying to get quite clear is that I am sure it would be good news in terms of the employees. Is it Westfair's position that May 15, regardless of whether the Bill is in place or not, you will follow final offer selection as it currently exists in The Manitoba Labour Relations Act, whether or not it has been repealed by the Legislature, because you can do that? If you do that, I think it clears—there is not uncertainty this way.

\* (1550)

**Mr. Smith:** We are committed to renewing that agreement. In fact, Mr. Cliff Evans, the Canadian director's letter refers to the fact that we are committed, and he agrees we are committed, to renewing the agreement by a final offer selection method. Really what happened was this bloody legislation complicated our lives. I should tell you something, and that is, in my view that dispute would have resolved probably around August 12 of '87 rather than October 3 of '87 if we were not all squirming around with that legislation.

**Mr. Ashton:** I am trying to raise this so we can perhaps avoid any problems in the future. I am just asking if it is Westfair's position—and I realize you are late, but I think it would probably resolve a lot of the problems if Westfair could commit right now to say that regardless of whether the Act is repealed or not, you will follow

41.04 in the spirit rather than the letter of the law. I mean, technically you could go in there and say the law no longer exists, so 41.04 no longer applies.

**Mr. Smith:** I signed that agreement. I am committed and I reconfirmed with Mr. Evans our mutual commitment to renew this agreement without a labour dispute; no strikey.

**Mr. Ashton:** I realize that, but I am just trying to deal with the situation. What if there is an impasse? Will Westfair mutually agree, no matter if the legislation is repealed or not, to follow the current procedures if there is an impasse?

**Mr. Chairman:** I want to advise Mr. Ashton that we are not negotiating a contract here. I would advise you that if you want to speak to Mr. Smith outside of the committee room and talk about these things, that is fine, but we are talking about the legislation in Bill 31 here. We would like to keep the question to those—

**Mr. Ashton:** Mr. Chairperson, I did not raise this issue. The Member for St. James (Mr. Edwards) did. I believe the Member for St. James initially was not aware of the current provision, and as a courtesy I had given it to the Member for St. James. I just want to clarify for Members of the committee, essentially what will happen if the Act is repealed is that the final offer selection mechanism we currently have may not apply. I was just hoping and I would, quite frankly, love to legally be wrong, that there would be no potential repeat of 1987. But unless Westfair agrees and the union agrees to follow the current provisions, we could end up in a strike situation.

**Mr. Chairman:** Thank you, Mr. Ashton. We will let Mr. Smith wind up here.

**Mr. Smith:** Mr. Ashton, I will tell you, and I am speaking for Westfair and I am speaking for the labour relations function of Westfair, it is our intention to renew this collective agreement without a strike. If we do reach impasse, we are going to submit our differences to Mr. Vincent Reddy and he is going to select which of those differences are going to go which way. There is not going to be a strike in Winnipeg this year.

**Mr. Chairman:** Thank you, very much for your presentation of this afternoon.

**Mr. Smith:** It was great. Thank you.

**Mr. Chairman:** Ms. Gray, did you have a question?

## COMMITTEE CHANGE

**Ms. Avis Gray (Ellice):** Yes, Mr. Chairperson. I am wondering if, by leave of the committee, Mr. Edwards could replace Mr. Herold Driedger from Niakwa as Member of the Standing Committee on Industrial Relations, and this to be effective immediately?

**Mr. Chairman:** If there is unanimous consent, yes, we can do it. Is there unanimous consent? Agreed? Okay.

Is that for today or tomorrow or effective when? Effective immediately? Okay, it is agreed that Mr. Edwards will replace Mr. Herold Driedger. Okay. Mr. Ashton.

**Mr. Ashton:** . . . -(interjection)- on the procedure because in other committees that has not been accepted. I have no difficulties with it because normally it is the House in Session that determines the seeing of committees. But I just want to make sure that there is no concern.

**Mr. Chairman:** It can be done by unanimous consent of this committee -(interjection)- yes, it can be done, but it has to be unanimous consent. Is there unanimous consent then? No problem. Okay.

**An Honourable Member:** Who will be replaced?

**Mr. Chairman:** Mr. Herold Driedger.

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**Mr. Chairman:** Okay, I would like to call Mr. Patrick Joyce, No. 17 on your list to the stand, please. Mr. Joyce, do you have a written presentation?

**Mr. Patrick Joyce (Private Citizen):** No, I do not.

**Mr. Chairman:** Okay, please proceed then.

**Mr. Joyce:** Thank you, Mr. Chairman and Members of the committee. I would like, first of all, just to indicate that I am very pleased with this opportunity to approach this committee and indicate some of my own personal feelings as a private citizen on this matter of FOS.

I would like to assure you that I am nowhere near as eloquent as other speakers that have come forward. The only thing I can address you on is my own personal feelings on this issue of FOS. I have had an opportunity to review many different aspects of that, ranging from reading the newspaper articles surrounding this particular issue as well as perusing some of the legislation that applies.

I guess for the record so that you know where I am coming from, I think it is important to indicate to you that I very definitely oppose the actions of the Government to move toward repeal of Bill 31. I support the concept of final offer selection, and I also support that legislation that embodies that particular legislation.

I believe that the legislation itself provides an aid in the area of collective bargaining and it also brings a level of common sense to that area of collective bargaining as well. I am sure also, Mr. Chairman, that the committee has heard many private citizens as well as representatives from both the union community as well as the business community on behalf of the issue of the repeal of the final offer selection.

I would particularly raise the question as to what I find is a little bit unsure in my own mind as to why it is important to repeal that legislation. Obviously, I do not support that. I would like to think that, on behalf

of all Manitobans, those people who brought forward legislation for the protection of not only workers, but also to provide a balance in the labour relations community, that legislation was well thought out, was vetted through a number of different sources, and people had an opportunity to understand what the ramifications of implementation of that legislation would be. I think that the legislation has been in place for a short period of time, and there is some time that is attached to that particular legislation, as has been indicated here, and I believe is a record in front of the committee.

As far as labour board statistics are concerned, there has been I believe a number of applications, in the range of 72 applications, made under the FOS legislation. Of those applications, I would assume that at least 67 of those applications have been withdrawn signifying that there has been some other method of arriving at a collective agreement between those parties, hopefully by mutual agreement. In the five cases that have been quoted here that have indicated that it had to go before the selector, I am sure that in those particular cases where decisions were made by that selector, that in fact both parties by legislation and through the process have had to live with the consequences of those decisions from the selector.

\* (1600)

I have not seen anything in the newspaper or brought forward that says those people who had decisions imposed on them by the selector were unfavourable to that. I have not seen any indication that there was a great hue and cry to the politicians. I have however seen divergent philosophies come forward from politicians, and I am wondering whether or not the whole issue, rather than being a practical issue in the exercise of labour relations, has become a political football. Certain constituencies are being protected in the name of labour relations. Well, I for one do not accept that. I am a Manitoban. I am a taxpayer. I believe that the politicians should be working toward the interests of all Manitobans, not just a particular constituency, whether that be a union, whether that be the business, or that be some other area.

I believe the legislation that is put forward is there to provide a balance. It also takes away the situation whereby there is a lot of economic cost both to companies, large and small, in a work stoppage or a strike situation. It also prevents those people who are affected by those work stoppages, being the workers themselves, from finding themselves in dire financial circumstances by virtue of either a strike or a lack of a raise of pay which has presumably precipitated that strike situation.

I think that FOS is good common sense. I think, at any collective bargaining situation, certainly strike or lockout is a final weapon but somewhere in between utilizing that final weapon, there has to be some way of creating an extra tool, if you will, to try and find a way through the maze of difficulties that are precipitated through the collective bargaining process. I think FOS, or final offer selection, gives that opportunity, not just heavily handed to the union's side but at least in terms

of the outcome. The selector makes the decision on the outcome as I understand the Act.

I also believe that nobody, whether it be businesses who are affected by the legislation or the unions that are also affected by it when application is made, wants to find himself in a position where a third party who has been indicated earlier on may not have the financial expertise in their selection decision, or may not have a great deal of background as far as the labour relations atmosphere in those particular companies or unions making a decision on what is going to lead to the solution of their contract for the future. I think that in itself is the key to the final offer selection legislation, that it sits and hangs over the heads of both parties similar to the sword of Damocles, if you will, in pushing those two parties together to be reasonable at the bargaining table. I think that is the key, both parties have to be reasonable.

In any bargaining situation it is my understanding that egos become involved and sometimes people back themselves into corners, and when the only thing they have left to get themselves out of a corner is to either go on strike or be locked out, to my way of thinking, that is not a rational way of bringing a very tumultuous set of bargaining to an end. There may be a time and a place for that but not in all situations.

I think as a committee you people should give good thought to the fact that this legislation does not only protect or hamper large unions or large corporations. You are hearing from the giants in the industry, if you will, such as Westfair Foods who have just, before I have approached here, indicated that they have gone through a very difficult strike situation. I am sure there was damage on both sides of that picture but what about all of those other smaller work units where you have people who do not have the opportunity of having big business or big labour behind them.

What about those who come from smaller unions, they have smaller companies, what happens to them when they get into a situation where they are organized, they are in a collective bargaining process and that process is not working out well? Is the only option that is open to them to go out on strike for 60 days and at that point maybe apply for final offer selection and then have a selector decide what is happening? What happens to those people during that 60 days, is there not a real economic impact on them? There is the same economic impact whether you are a small union, a big union, small business, big business. No matter what you are there is an economic impact to you. Is that a smart way of resolving conflict at the bargaining table when things get thrown into the milieu, if you will, that takes that process out of sync?

I think that final offer selection tends to drive those parties closer together and says to them look, you have an opportunity to work out this process, if you do not there is somebody who is going to tell you what that settlement is going to be. Business does not want that, the working man does not want that. The working man wants to get on with doing the job but he wants a fair return for the job that he does. The business also wants a fair return in the work that they get from the employee and they also have to be cognizant of what the bottom

line is as well. But at some point somebody has to say in this bargaining atmosphere that those employees have a right to go to work, do the job that they want to do, and at the same time be able to have a fair return from doing that job. I think that, as I had indicated, this is a practical solution, and when politicians tend to jump into this I am wondering at whose interest they are jumping into this process with.

You have the working people of Manitoba out there who are saying that they need some protections. Obviously, there is labour legislation there to protect them. This is another tool, but it is not only a one-sided tool as I see it. Certainly it is only the union's side or the workers' side that gets to apply for the final offer selection, but both parties have an opportunity to benefit from it, and the benefit is through the process of which they go through this legislation. The benefit does not come forward only in what happens, how the selectors make their decision and in whose favour they make the decision.

I would suggest to you that when you look at those 72 cases that came before the Labour Board and 67 of those cases were resolved, obviously the process must have had some impact on both the company and the workers' representatives in order to force them into a situation of saying we better react reasonably, we better find some areas of compromise, because if we are not able to find those areas of compromise, then we are going to be out on the bricks. If we are out on the bricks and those people are out on strike, there is going to be an economic impact to them, and consequently there is also going to be an economic impact to the employer. To my way of thinking, in Manitoba that does not make sense; that is going to help drive business away.

I think final offer selection legislation helps to maintain a calm and uniform labour relations atmosphere in this province. I think if you take a look at it on a cross-country or a national perspective, when you look at the labour relations in this province, I think that you have to take a good look at how business has been done in this province and how Manitobans have their own made-in-Manitoba way of doing business in this province.

\* (1610)

We do not have to look to Quebec for any lessons in labour relations, we do not have to look to B.C., look to ourselves. We have seen that Manitobans when they are left with some alternatives and are given an opportunity to be creative in how they deal with not only their legislation through their politicians but with their collective bargaining, in fact they can produce solutions that are acceptable to both the workers and the companies.

I do not see and I have not heard before this committee a whole lot of businesses coming forward out of the woodwork saying that we have been harmed by final offer selection or even that they understand what final offer selection is about. I see a lot of media attention on this issue from time to time, some of it negative, some of it positive, but I wonder, unless you

have gone into that process and you have ownership of what collective bargaining is about, you do not have an intimate understanding of what final offer selection is there for.

I think one of the key factors of final offer selection is that the system itself or the legislation is set up in such a way which is brilliant, that it does not favour either party in terms of the settlement outcome. There is a third person neutral that will make that decision. Nobody wants the decision made for him, as I have said before, but in the event those parties cannot get beyond their egos, cannot get beyond a difficult situation where in fact one side or the other has painted themselves into a corner, then there is somebody there to act on behalf of both those parties to provide a solution which does not create further discomfort to both the workers and to the public of Manitoba.

I think that it also promotes quick, reasonable bargaining from both sides. I think something else in terms of the legislation that you have to look at as an aspect is—my understanding is there are two times when you can become involved in the final offer selection in terms of your application before the Labour Board. One of those times is between 60 and 30 days before a collective agreement expires. At that point in time, it may be that your experience with the employer you have had in the past number of months or years that the collective agreement has been in force, in fact the employer has been less than agreeable in the way that it conducts its labour relations. The mood may be somewhat out of sync as far as the people in the work force are concerned. As far as the attitudes, they may be polarized.

If that is the case, then that window which creates what is, as I have read in certain places, an apprehended dispute, then an application can be made that at that time, before you go into bargaining, says to the parties, look, when we go forward to bargaining, we better be reasonable, we better find a way of settling this issue without all the rancor and sabre rattling of going out on strike or we are going to lock you out.

This provides an avenue that says, that is not going to be there for you, folks. What is going to be there for you is that somebody is going to make that decision.

If in fact you get involved with the final offer selection and you go through it at the initial stage which is the 60-day to 30-day window in order to get into it before you go into collective bargaining, I think it is important to note that the issues you put before each other have an opportunity to be resolved before it goes to the selector.

It is my understanding of the legislation that at any point in time the parties still have an opportunity to resolve all the way up until such time as an impasse on a specific item—I will use the example, possibly money, which is always the bottom line—comes into play. Well, at that time, I am sure, the selector, in looking at those issues, does not have to be an expert in financial analysis in order to take a look at what the trends are, make a decision as to people's relative ability to pay. It is not an issue of compromise. He will balance his views on that, he will make a choice and both parties will live with that.

I do not see that as being fundamentally wrong. I think that as you go through the FOS legislation at a later point in time, once people have been out on that picket line for 60 days and there does not seem to be any prospect of finding a very pleasant way of trying to come back to the bargaining table, what is that doing in the Province of Manitoba to not only the public relations view of Manitobans and how they conduct business here, in fact you get into very long protracted strikes where they become very bitter?

What it does is it takes a situation where people become even further polarized, people become more set in their ways, their positions become more set in concrete, if you will, and it becomes an all-or-none type of approach.

Well, I would say to you that final offer selection allows you the opportunity for a form of face saver. Every collective bargaining process that I have read about or seen has to provide some form of face saving. People being people, there is no technological mystery to bargaining a collective agreement; it involves personalities. People sometimes paint themselves into corners. Very clearly, FOS allows people that have managed to get themselves into a corner a legitimate and a dignified way to work themselves out of that and find a way to go back to work and earn a living.

I think that would complete my presentation.

**Mr. Chairman:** Are there any questions for Mr. Joyce? Mr. Ashton.

**Mr. Ashton:** The previous presenter from Westfair Foods stated that Westfair's position essentially is that collective bargaining only really works if there is a threat of a strike or lockout. Their concern is that final offer selection presumably takes away that fear; that actually was the word, not threat. I am wondering what your opinion is in terms of the impact of final offer selection. Do you believe it detracts from collective bargaining or do you believe it promotes collective bargaining? I would like to ask you what you feel of Westfair's position.

**Mr. Joyce:** Very clearly, I believe that FOS is only necessary at a point in time where it is found to be necessary. I think that free collective bargaining, if entered into without preconceived impressions of where that bargaining is going to go, will tend to work its way through, providing the parties do not have what I would term as a preconceived agenda. In areas where people are trying to establish a certain agenda, whether that be to hold somebody to ransom or to bust the particular union or to set a statement forward, I think that FOS, or final offer selection, would in fact act as a cooling-down tool, if you will, so that reasonable heads would prevail.

**Mr. Ashton:** Another question that has been raised in this committee in terms of final offer selection has been the impact it has in terms of unions. The suggestion has been made that somehow final offer selection hurts unions. The suggestion has been made that somehow final offer selection can reduce the accountability of the union leadership to its members. I would like to

ask you for your opinion on that. Do you feel those statements are a fair criticism of final offer selection? If not, what do you believe final offer selection does in that particular circumstance?

**Mr. Joyce:** In my opinion, as a citizen again, I believe that final offer selection does not create a situation where the membership of a particular work force is removed from a process. I believe they have an opportunity to be part of that process. It is my understanding, through the legislation, that in order to apply for the process, the membership has to be involved in that by way of a vote. The majority of the people involved in that vote would cast their opinion. Based on that opinion, if it was affirmative, then an application for final offer selection would be made.

\* (1620)

In terms of my opinion as to whether or not it hampers collective bargaining, I think I have said earlier that I do not think it hampers collective bargaining. As a matter of fact, I think some of the focus of this committee, and I would hope they view it in this light, is that not all unions are big unions, not all businesses are big businesses. There is a time and a place where a tool is necessary to prevent strikes, or lockouts for that matter. I do not think those weapons should be used unmercifully, if you will. I think there has to be something in place to bring along the process of collective bargaining where people have difficulties. I hope that is the answer to your question.

**Mr. Ashton:** Thank you for answer. I would like to ask you another question, and I have asked this of many people who have come before the committee. Sometimes I am quite puzzled about the fact that there really is not the ground swell of people out there calling for the removal of final offer selection, and yet it is being pushed through now, two years into the five-year period in which it was supposed to be put into place and evaluated.

In your experience with your contacts in your workplace or in your community are you picking up many people who are supporting the Government, who are urging the Government to remove final offer selection?

**Mr. Joyce:** In my opinion as a citizen I think that there are a lot of citizens in this province who do not have a knowledge of what final offer selection is about. They do not have first-hand involvement. I would say to you in terms of the legislation, the involvement of the citizens of this province is primarily focused in the areas where workplaces are organized under a union and where businesses are in a collective bargaining atmosphere. I would say to you the people who really understand what goes on in the implementation of final offer selection are businesses or unions.

My understanding is, when I look at what has happened through final offer selection, that it has brought peace where otherwise there would not be peace in certain situations. Very definitely where a number of parties would have headed toward lockout

or strike, that has been resolved. I would ask you, is that not good for Manitoba? Is that not good for business? Is that not good for labour? I would say to you that the answer is very easy. I do not think it needs a political answer; I think it is a practical answer.

**Mr. Ashton:** What we are hoping, those of us who support the intention of final offer selection, is that this committee hearing will make people deal with the questions you are asking.

One further question I wanted to ask is the degree of contact you feel there has been in terms of final offer selection. You have indicated there really is not much of a ground swell to repeal it. Either people support it or else they are unsure of the particular details, but clearly there is not a ground swell of people saying to get rid of it. Have you been contacted? Do you believe that the Government has made any real effort to determine what people, such as yourself, feel about final offer selection before making this decision?

**Mr. Joyce:** Hopefully, to try and answer your question, I will try to go from the back to the front. Basically, I have not seen one iota of attempt from this Government to contact anybody that would be a citizen; I have seen nothing in my mail; I have seen nothing come forward as a questionnaire or survey to ask me what my opinion as a voter or a taxpayer is with respect to final offer selection. I have not seen any evidence of any attempt for a referendum on this issue; what I have seen is a political philosophy put into place. I am not sure on what that political philosophy is based.

I am somewhat disheartened by what I see, particularly with the Government of the Day, and, as we all know, Governments change from time to time. You have a Progressive Conservative Government that tries to portray to the province and the citizens in this province that in fact they are Progressive Conservative. Well, I have a little bit of a problem; I am not sure what that means because if you are being progressive, I would think that this type of legislation is indeed progressive. Not only is it progressive, it is creative, and it helps along the bargaining process. What I do see—and maybe they need to change their name—is that it is regressive in order to repeal this legislation.

I also have some difficulty in terms of where the Liberals fit in on this issue. There are many stripes of political parties in this province, but I see the Liberal Party taking a position which is in support of the Progressive Conservatives. As a matter of fact, they even sometimes appear to me to go beyond what the Progressive Conservatives are proposing. That gives me some concern from a political point of view as to which masters are the Liberal Party serving. Who are they portraying themselves to be in terms of supporting the working people who vote them into power in each of their seats whether they be a Progressive Conservative, whether they be a Liberal, or whether they be an NDP person? I think that it is important that people listen to the citizens. If something works, why fix it?

You have an opportunity as far as I am concerned, in trying to answer your question—as I understand in

the legislation, there is a sunset clause. You have five years to try it out. It seems to me that five years is not a long time in the spectrum of labour relations. As a matter of fact, it seems to me that it makes good sense. Anybody who is a legislator or who is an MLA in this House, I would think, would think that is a fair amount of time to be able to adapt to any new legislation; be able to analyze that legislation; be able to do less than biased statistics on that legislation and try to figure out whether or not something works or not.

I would say to you that in the slow period of time we have had with the legislation in place, that the ball game is not over yet or should not be over. I think to repeal this smacks of political opportunism. I think what needs to have happened is that you have a sunset clause, let it ride itself out, then determine after you have studied and all the facts are in, whether or not it works or whether it does not work.

If it does not work, do you just throw the baby out with the bath water, as the speaker from Westfair Foods had indicated, or do you try to find areas where it has created some difficulties and you try to improve that? You improve it for all Manitobans; you do not make it specifically weighted in favour of one party or the other, whether it be through politics, or whether it be through the business concern or the labour concern. I think the idea of any labour legislation that I am aware of on behalf of Manitobans is to provide a balanced view of how that legislation is interpreted and what it provides to the working community.

**Mr. Ashton:** I appreciate your coming forward to the committee and just want to thank you for your presentation. I do believe that there is a role for this committee to do exactly what you are saying, which is look at all the evidence, look at the fact that we are into a period of time. We incidentally have suggested a four-year sunset, if there is difficulty with a five-year sunset, because that at least gives it two more years. I appreciate your coming forward as a resident of this province to express your views.

**Mr. Joyce:** Thank you.

**Hon. Harry Enns (Minister of Natural Resources):** Mr. Chairman, it is Friday afternoon and we have heard a good and reasonable presentation from another presenter on this Bill, but he, like others, has suggested that for some reason or other we have allowed this—by we, I say we legislators—to become a political matter. Leaving the implication for reasons that I leave to his own is something to be not desired.

I want to suggest to Mr. Joyce that everything we do here by nature has to be political. It was a political action that brought final offer selection legislation onto the books in Manitoba. It will be political action that will either sustain it or modify it. It will be political action that will repeal it. I am just making that point with you that it is very difficult for us to do anything other than political.

You, sir, and others before you have also suggested, in making that suggestion, that it is too bad, kind of,

that this has become a political thing, that we should really be doing the thing on behalf of all Manitobans, all people. Of course, I could not agree with you more. But, sir, you know, that is what makes this job difficult sometimes, determining when in fact we are trying to do and represent all Manitobans. It is made particularly difficult when Manitobans do not agree.

While I have not heard all the presenters on this Bill, I have heard a good number of them, starting with the Federation of Labour, the current president emphatically stating organized labour's position with respect to this Bill and their opposition to it. I have heard the president of the Chamber of Commerce or a representative from the Chamber of Commerce emphatically stating that employers, large and small, are emphatically opposed to it.

Mr. Joyce, that then is our dilemma. I do not think whatever action we do, it can be said that, you know, we should not be doing this politically, but I think you can agree with that from that basis. That is what makes decisions interesting and difficult for Members from time to time. Of course the way our system works, if any Party or Government makes too many decisions from time to time that flies in the face of too many people, our system allows for them to be removed, and I have had that happen to me on several occasions.

Now, I ask you another question, would it then—you know, just having made that kind of general statement—be a guide to this committee to consider, for instance, that in the last election 70 percent of the Manitobans have voted, publicly stated they were opposed to this legislation and would withdraw it. Seventy percent of the Manitobans that voted in the election voted that way. Twenty percent of the Manitobans who voted in favour of the Party that brought in the legislation and supported the legislation voted that way. Now, what kind of a guide is that to a committee such as this that is deliberating as to the fate and future of the Bill?

\* (1630)

**Mr. Joyce:** Mr. Enns, I would be more than happy to answer from a citizen perspective again. First of all, I am not sure whether you have answered your own question or not by virtue of the statistics that you have quoted in terms of the question being put to the general public as to who would support FOS and who would not support FOS. I think that from my perspective I have indicated to you, whether you ask that question or not, it has to be based in terms of people's knowledge of what it entails and what it hopes to achieve.

I am not sure that the people out there that were asked to comment on that particular question, at that time, really knew what the implications of it were, knew what the effects of it were and what it could provide, both pro and con. I would think that this committee really should not be swayed by those statistics as far as 70 percent voting against it, to repeal it. I do not think it has a basis of legitimacy.

I think that only once something has been in place can you then test that issue and when it has been in

place for a long enough time, which I believe you have indicated, the issue becomes political. All legislation is political; the political masters have to wrestle with that, that they have an opportunity to set that legislation. No legislation is set in stone. I assume when the legislation was brought forward, that was the reason why, because it was controversial and creative, there was a five-year sunset clause put on that legislation.

Well, it seems to me only to make good common sense that you let it run its course, you analyze it, you watch it, you view it, and if there are corrections that are necessary, then you deal with it that way. I do not think that as soon as something is put in place and there is a sunset clause, that the first opportunity you come into play because you are philosophically opposed to it without examining everything that surrounds it, that you move to repeal it. To my way of thinking that does not do anything for the issue of final offer selection, it certainly does not do anything for the understanding of the masses of what is involved in this.

**Mr. Enns:** Mr. Chairman, I agree with you. I raised those statistics only because you, sir, in response to a question by Mr. Ashton, made some reference to the fact that this Government that is proposing this measure had not gone out and asked the general public, or you actually used the word—or considered a referendum on the question. I think it would be foolish because you are quite right, unless people are knowledgeable of the issue, and the people that are knowledgeable are, as you described a little while ago, people that have the experience and the background in a collective bargaining mode position in their workshops. Those employers are the ones who are knowledgeable about what we are talking about.

However, then just a final question, so we agree it is not fair to simply use these kinds of overall figures, but I think you will also agree with me that to do what most Manitobans—certainly all of us in this Chamber and I believe it is fair to say of organized labour and business, again, large or small, want to see and we had—certainly, Mr. Ashton and others have dealt with it at length, a good economy in Manitoba. We want to see good job opportunities in Manitoba; we want to see our young people working in this province, and I think you would agree that to do that needs a good and capable work force and good and wise management and employers to make that possible.

The other dilemma that the committee before says we have had organized labour tell us, very clearly and very emphatically, that this is a good and useful tool. It will help provide that kind of climate that we all want. On the other hand, we have had business and employers tell us just as emphatically, whether we agree with them or not but that it is our job to try to balance it out. I find it passing strange, in my many years of experience on sitting committees like that, to have to my knowledge not a single employer appear before us pleading the case for FOS.

I remind you that the employers—in the main you may take issue with that—are not a homogeneous group or as an organized group. The business community very often is at loggerheads within

themselves. I suspect that is also the case from time to time with organized labour, because I do recall that when FOS was introduced it did not have a particularly easy birth. There were a number of significant sectors within organized labour that opposed the Bill, but they have come together on it certainly at this point, and I acknowledge that. That has been made very plain to us by labour representation, but it bothers me.

I really should declare my own interests. Although I at one time was pleased and proud to be a United Steelworkers union member, in the last number of years my collective bargaining has been carried on mostly with 150 head of beef cattle. They usually win when they get me in a corner in the corral somewhere. It bothers me that I have heard no small or large employer come forward to this committee in opposition to the measures that the Minister of Labour (Mrs. Hammond) is proposing.

**Mr. Joyce:** I wonder if I might comment on that. Just as a comment, I think that the Honourable Mr. Enns (Minister of Natural Resources) makes some interesting observations. I think that he is quite right. I am just as disappointed as he is that big business or small business has not made representations before this committee on the issue of FOS. I think that you could read that many different ways. I think you can read it from the point of view that maybe the majority of them out there do not understand it. That maybe, just as the citizens of Manitoba, there may be the majority of them that are not affected by that in that they have not had any experience in dealing with that issue. I think that for them to comment without having some experience, with not being very deeply involved in the labour relations community, and I am sure they are in their own way, but not being deeply involved with it from an FOS perspective, how can they possibly be in a position to comment on that issue. If they are commenting, where are they? Are they in the closet somewhere whispering in the Government's ear saying that it is bad?

If it is bad, where is the evidence before this committee that says how it is bad, why it is bad and how it is affecting them? I have not seen anything in the newspapers, and I am sure I have not heard anything coming out of these hearings, from my following of these hearings, that indicates that there is a large number of businesses out there that says they are anti-final offer selection.

So if the Government is taking the position of repealing this Act where in fact -(interjection)-

**Mr. Joyce:** The Chamber of Commerce, as you said, they cannot even agree amongst themselves—some of the businesses. So if the Chamber of Commerce is speaking for them, are they speaking for all of them or are they speaking for their own agenda? Are they another pressure group, is what I ask you. Is this truly reflective of how all Manitobans, whether they be from business or the working class, is this reflective of what their feelings are? I would say to you there is no evidence before you that states that that is.

\* (1640)

I think that you do have a piece of legislation that is in place, and if there are some mistakes in it that need some tinkering, then balance them, but do not repeal what is already there which provides an opportunity for people to get themselves out of difficult situations both from a business perspective and from a working person's perspective.

**Mr. Edwards:** Mr. Joyce, with respect to your comment that people are speaking from positions which perhaps are not borne of a great technical knowledge of final offer selection, I feel I should point out to you that we have had a lot of citizens come forward unlike yourself who did not know the fine details of final offer selection and have spoken quite passionately about final offer selection without knowing that technical knowledge. I do take issue with your statement that you would have to have a detailed technical knowledge before you can speak on this.

As my friend, Mr. Enns (Minister of Natural Resources) says, we have not had an employer before this committee speaking in support of final offer selection. I think we do have to take note of that just as we take note of the people who come forward to speak in favour of keeping it.

I simply want to ask you, moving on to one of your statements that if there are problems with it then we can fix it. Can you tell us if you think final offer selection, the way it presently is, is unfair? To that extent, let me ask you specifically, would you be in favour of granting the same right to go to final offer selection to an employer as the employees have presently?

**Mr. Joyce:** Maybe to try and comment on it from back to front again in terms of your question as far as the employers having the right to apply for final offer selection, I am not sure as a citizen that I am qualified to say yes or no, that they should be given that right or not. It seems to me that you would have to examine the balance as to what effect that would have. I have to take a look at the situation. It seems to me that the business community has a lot of the marbles in their pocket. Okay. They have legislation that provides protection to them. They have the ultimate economic weapon which is to lock employees out, to determine what the level of remuneration those employees are going to receive, or the level of benefits.

I am not sure to what advantage that would be to an employer in applying for final offer selection. I am not even sure that they would want that right themselves, because I do not think businesses want somebody else telling them what in fact they are going to give somebody else. They either have pride in their own decisions or they have other agendas in mind, which may not be balanced in their view of how they treat their workers. It may be more balanced to where they see their bottom line is. I am not sure that it would be advantageous for them to necessarily have the right.

Where you have workers who do not have the same degree of economic clout or the ability to determine what in fact they are going to receive as remuneration or benefits, I think that there has to be something there in order to get a recalcitrant employer to be reasonable

when discussing issues of a collective bargaining nature. I think that this legislation provides for that.

If you were to ask me whether there are areas of the final offer selection that I feel that might be somewhat tinkered with if you will, or changed, I am sure that there are some nuances. I think that the idea of labour unrest, particularly for a 60-day period in the legislation, creates undue hardship for both the workers and for the business concern, both economically and psychologically. The longer that you are out on strike, before you have a method of finding a resolve, creates greater psychological intransigence, if you will. I think that also provides for a situation where workers, the longer they are out, tend to become more frayed in terms of their judgement. They tend to be more easily compromised, if you will.

I think that if you utilize a tool such as final offer selection, not only is the weapon or the right to strike, which I maintain, from my perspective as a citizen—should always be there for both striking on behalf of the workers or lockout on behalf of the employer. I think that is necessary, but when it reaches a certain period of time, when is enough enough.

I mean, do we want to bury the company? Do we want to bury the workers, or do we want to find a way to resolve those issues that have created that strike? I say to you that final offer selection provides that opportunity and it also provides most importantly, an opportunity for both parties to save face out of this whole issue and come out of it with some form of, not only a collective agreement that they can live with and provides a cooling-off period until they get into their next round of collective bargaining, but provides them an opportunity to regroup both with the employees and the business to try and build and foster a better relationship with each other.

**Mr. Edwards:** Following up on that point, I believe that you said it is important to maintain the right to strike as well as the right to lockout. My prior question had been whether or not you would be willing to extend the same rights in the present final offer situation to employers. You are aware that under this present scheme the right to lockout is in effect usurped. It is lost. Final offer selection can be imposed upon an employer at the will of the employees. If you take the logical next step, and if you were to give the equal treatment to the employer, then the employer would have the right in effect to usurp the right to strike as well. To that extent do you not agree that the legislation as it presently stands is certainly imbalanced in light of your comment that the right to lockout and the right to strike are essential to maintain?

**Mr. Joyce:** Well, I guess in my view, Mr. Edwards, I do not believe anything is usurped. I think what you are seeing is an additional tool that is brought into play. I do not think it takes away from the worker's right to strike, and I do not think it takes away from the employer's right to lock out. That process may already have taken place.

I think what you see happening is you see a vehicle that is brought into play that brings the sides back into



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meaningful discussion with a resolve that will be found, as opposed to a protractive strike. I guess the only thing that I can think of, once again as a citizen member, and you will have to correct me if I am wrong, a protracted strike in Manitoba, I guess the most obvious one was the Griffin Steel strike. I am not sure that has ever been resolved to today. I mean there are people who have gone on with their lives, gone on to other things, but I am sure if final offer selection had been around at that point in time where you had a hardening of attitudes and positions, maybe the imposition of a selector's decision would have brought about some labour peace and brought about a collective agreement in that situation.

**Mr. Edwards:** In fact, Mr. Joyce, we have had one final offer selection case which did involve a very bitter and lengthy labour struggle, and that was with respect to the Unicity Taxi Company. That decision by Mr. Chapman distinguishes itself in the five that we have had in Manitoba by Mr. Chapman's comments to the effect that both of the final offers were unreasonable and that the system did not really work in that case.

So I guess I have some question about the effectiveness of final offer selection in that case in which you say it is most useful, that is where there is true intransigence on the part of the employer, and there is truly a hostile relationship. We have had one example in Manitoba where that was the case going into final offer selection, and that is the one case in which final offer selection did not work, according to the arbitrator.

\* (1650)

Let me ask you with respect to the suggestion by you that small employers and small bargaining units, small unions, can be best served by final offer selection. If we are wrong, if Mr. Enns and I are wrong in assuming as I think we have to, that business, both small and large, does not want final offer selection, if there are small employers out there who truly can benefit from final offer selection, I want to point out to you that there is absolutely nothing which prevents them from negotiating final offer selection as a means of resolving their disputes. They can put that into their collective agreements.

We heard earlier in these presentations, a very articulate presentation about how it has worked at Red Deer Community College, a community college somewhere in Alberta. The parties have negotiated it into their collective agreement and have been very satisfied. Just before you, and I believe you were here and heard, we heard that Westfair, a major employer in this community, had negotiated final offer selection as a means of resolving a dispute. It seems to me that in that situation, if the parties can get together and say this is an appropriate way to settle our dispute, you will truly have something that can be advantageous in the workplace.

This legislation is fundamentally different. This legislation, as you know, is for everyone, every workplace in this province which has an organized workshop that falls within provincial jurisdiction. That is the significant difference between this legislation and

the advantages which you were telling us it can bring for both employers and employees. So I do not have a lot of concern when you suggest that there are small employers out there that we may not have heard from, because we know the unions by and large want this. If the employers do too, I can only assume they will negotiate it into their contracts.

**Mr. Joyce:** Just as a response to that, obviously you and I will have to disagree on that point. I do not share your view of the conclusion that if you have not heard from the small businessmen than they agree with your point of view. I also do not share your view that what has happened in Westfair or what has happened in Unicity Taxi is a bellwether for judging how the legislation has worked. I hear you referring with respect to the five selections in Manitoba that have taken place. You are using one example of Unicity Taxi, where, and I am not knowledgeable in any detail about that, it did not seem to be the answer to the question.

I do not think that whatever legislation you put forward anywhere in this province is going to be the answer to all parties on all issues. There will be people who will comply but they will not necessarily like and they will at times try to skirt the legislation as you well know, and try to find ways around it because they have other agendas at play. I think those that realize that there is a collective bargaining responsibility out there and need other activities and tools to bring that to a conclusion, will probably have to indicate to you that it was not a dissatisfactory way of resolving those problems. Otherwise you probably would have heard from them and when I say heard from them you may have heard from the other 67 people or companies or workers that had applied and managed to resolve their agreement. I do not know whether you have heard from them or not. I certainly have not seen any evidence that you have.

We are keying in on those five that have had foisted upon them settlements through the selector. You are using one example of one particular outfit that says that they still are not happy with that process. Given time and understanding, hopefully they will work those things out. They have that opportunity.

**Mr. Edwards:** The only reason that I key in on that one specifically, it is the one in which we have had experience which involved a very caustic hostile relationship. It is precisely that type of situation that your position is that this will best work. I am telling you that in that one situation that was like that, it did not work. That is the only reason that I isolate that one.

I feel I must respond with respect to your comment about agendas and who is supporting a Tory agenda. You have specifically spoken about the Liberal Party. I hope you will take cognizance, Mr. Joyce, of the fact that in the last year and a half it has been the New Democratic Party and not the Liberal Party that has supported the Tory Government in this province. Thank you.

**Mr. Chairman:** Mr. Joyce, did you have a response?

**Mr. Joyce:** I certainly respect Mr. Edwards' right to make those comments, because obviously, I am exercising my right as a citizen to make my comments on the politics of this province. I do not necessarily agree with everything the New Democratic Party does in terms of their legislation or the way they approach things. I am sure Jay Cowan (Churchill) can indicate very clearly to you, I have sat across the table from him when I was a councillor of the Town of Selkirk fighting the water issue. I certainly did not agree with some of the ways we were dealing with our water problems in the Province of Manitoba with respect to the Red River. I have taken issue with them no matter which political Party is in place.

As a citizen of this province, when it comes to the issue of final offer selection, I believe that your Party is fundamentally wrong in supporting the Progressive Conservatives on this matter, because you have not had an opportunity to let the sunset clause give you the data that you need in order to make an informed decision.

I think what you see here is a philosophy that is being put in place to repeal some legislation that is repugnant to some sectors, without necessarily having a background in fact or experience. I think that you, as a responsible politician, have to respect legislation that comes into place, and if it needs fixing, fix it, but not necessarily repeal for the sake of repealing because you believe that it is fundamentally wrong. I think you have to give something an experienced opportunity and that experienced opportunity is there for you, completely laid out in that legislation with the five-year sunset clause. Give it a chance, put your data together, examine that data, then make a political decision or make a representation on what your findings are on how you feel that legislation has affected both companies and working people in this province. That is what I believe you should do.

**Mr. Chairman:** Thank you very much for your presentation this afternoon, Mr. Joyce.

**Mr. Joyce:** Thank you all very much.

## COMMITTEE CHANGES

**Mr. Ashton:** I am wondering if I might make some substitutions, by leave.

**Mr. Chairman:** Does the Member for Thompson have leave, a unanimous consent, to make substitution to the committee? Okay.

**Mr. Ashton:** Thank you, I thank the committee. I move, by leave of the committee, that Mr. Storie replace Mr. Ashton; Mr. Maloway replace Ms. Wasylycia-Leis on the Standing Committee on Industrial Relations effective ten o'clock, Saturday, March 3, 1990.

I also move, by leave of the committee once again, that Mr. Cowan replace Mr. Storie -(interjection)- Sorry, leave was already given here—and Mr. Harper replace Mr. Plohman on the Standing Committee on Industrial Relations effective two o'clock p.m., Saturday, March 3, 1990.

**Mr. Chairman:** Are those changes agreed to?

**Some Honourable Members:** Agreed.

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**Mr. Chairman:** What is the will of the committee?

**Some Honourable Members:** Committee rise.

**Mr. Chairman:** Committee rise? Just a minute, before you rise, I have a little note here. What does it say here? Just prior to rising for the afternoon, I would like to remind committee Members and members of the public that the committee will also meet tomorrow morning—tomorrow at 10 a.m. and 2 p.m.

Committee rise.

**COMMITTEE ROSE AT:** 4:28 p.m.