First Session - Thirty-Seventh Legislature

of the

Legislative Assembly of Manitoba

Standing Committee

on

Industrial Relations

Chairperson
Mr. Daryl Reid
Constituency of Transcona

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MANITOBA LEGISLATIVE ASSEMBLY
Thirty-Seventh Legislature

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LEGISLATIVE ASSEMBLY OF MANITOBA

THE STANDING COMMITTEE ON INDUSTRIAL RELATIONS

Wednesday, August 16, 2000

TIME – 3 p.m.

LOCATION – Winnipeg, Manitoba

CHAIRPERSON – Mr. Daryl Reid (Transcona)

VICE-CHAIRPERSON – Mr. Scott Smith (Brandon West)

ATTENDANCE - 11 – QUORUM - 6

Members of the Committee present:

Hon. Ms. Barrett, Hon. Mr. Lemieux, Hon. Ms. Mihychuk

Mr. Aglugub, Ms. Korzeniowski, Messrs. Loewen, Penner (Emerson), Reid, Schuler, Smith, Mrs. Smith

APPEARING:

Mr. Larry Maguire, MLA for Arthur-Virden
Hon. Jon Gerrard, MLA for River Heights
Mr. Darren Praznik, MLA for Lac du Bonnet
Mr. Leonard Derkach, MLA for Russell

MATTERS UNDER DISCUSSION:

Bill 18–The Labour Relations Amendment Act

Bill 44–The Labour Relations Amendment Act (2)

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Mr. Chairperson: Good afternoon, ladies and gentlemen. Will the Standing Committee on Industrial Relations please come to order. This afternoon the Committee will proceed with clause-by-clause consideration of the following bills: Bill 18, The Labour Relations Amendment Act; and Bill 44, The Labour Relations Amendment Act (2).

Does the Committee wish to indicate how late it is willing to sit this afternoon? Is it the will of the Committee to continue until a further point in time at which we will give further consideration?

If it is the will of the Committee, we will continue until the Committee indicates otherwise. *[Agreed]*

Does the Committee wish to proceed with the consideration of these bills? *[Agreed]*

How does the Committee wish to proceed with these bills, in which order?

Mr. Ron Schuler (Springfield): I would recommend we would begin with Bill 18 and then move on to Bill 44.

Some Honourable Members: Agreed.

Mr. Chairperson: It has been agreed that the Committee proceed first with Bill 18.

Bill 18–The Labour Relations Amendment Act

Mr. Chairperson: We will now proceed with clause-by-clause consideration of Bill 18. Does the Minister responsible for Bill 18 have an opening statement?

Hon. Becky Barrett (Minister of Labour): Yes, I do. A brief opening statement.

I am pleased that we are here doing the clause by clause on Bill 18, which is the first of the two amendments to The Labour Relations Act. Just a brief reminder for people: Currently The Labour Relations Act stipulates that where an employer sells, leases, transfers, or otherwise

disposes of a business or a part of the business, the person acquiring the business, otherwise known as the successor employer, also acquires the rights and obligations of the predecessor employer or the seller, including any obligations and rights under a collective agreement that was applicable to the seller and the employees of the seller of the business. These rights and obligations are clear in situations where both the seller and the buyer are under provincial labour jurisdiction and existing certifications and collective agreements were granted or negotiated under Manitoba law.

* (15:40)

We are not dealing with those issues here. We do have a situation which is less clear, and that is a case where the predecessor employer or the seller is under federal labour jurisdiction and that successor employer or buyer is under Manitoba jurisdiction, and as a result it has generally been necessary to apply to the Manitoba Labour Board to clarify the situation and have necessary determinations made. The Board has broad general powers to make determinations in these matters, and may determine if a collection agreement is in full force, and which parties are bound by the agreement.

The intent of the proposed amendment is to make it clear and explicit that a successor employer or a buyer who is under provincial labour jurisdiction, that buyer will acquire the rights and obligations under any collective agreement that was applicable to the predecessor employer, i.e. the seller, who was under federal labour jurisdiction. The amendment would eliminate the uncertainties as to the status of collective agreements. The proposal was reviewed by the Labour Management Review Committee. The Committee unanimously agreed to the provision with some minor changes. Again, as I stated in my opening remarks in the Legislature, I would like to thank the LMRC for their advice in this proposal.

I did want to briefly address concerns that have been raised by presenters in the public hearings on Bill 18, particularly those people involved in the short-line railroad industry and say, as I begin, that the initiating instance for this amendment was not the short-line railroad situation, but the sale of parts of the Weston Shops, which had been under federal jurisdiction, to an employer who would be then under provincial jurisdiction. It was a loophole that is very unusual. That kind of exchange has not been very prominent in the past. So that is the genesis of the legislation.

The concerns that were raised in the public hearings, and actually before the public hearings, from individuals who are currently operating or looking to operate a short-line railroad, we took very seriously. I have done some investigating and had my staff investigate the concerns that were raised by the short-line railroad interests. I would like to state that, at this point, our legal opinion is that there are precedents where a transfer has occurred that the owners and the affected unions have worked out new arrangements on their own in respect to the different economic circumstances that will apply in a short-line rail operation. Such arrangements are possible with Bill 18 in place.

I believe one of the unions that spoke in the public hearings acknowledged that everyone recognizes that when you sell off a portion of thousands and thousands of kilometres of railroad that has gone through many jurisdictions to a short-line rail operator, the nature of the beast changes substantially. Unions have recognized this and are prepared to negotiate, with the new owners, those concerns and those changes in job descriptions, et cetera. Bill 18 will allow for that to continue to happen.

We were advised that the Labour Board does have quite wide powers to inquire and to determine the appropriateness of bargaining units where there is a transfer of ownership. So that the Labour Board has the authority to make determinations following an application if there is a change of jurisdiction to assess whether or not there has been a sale of a business. If there has not been the sale of a business, then my understanding is that successor rights would not apply because, as I mentioned to the Member for Springfield (Mr. Schuler) in Estimates, the Labour Board has the responsibility to determine if the entity that will be in existence after the sale is similar enough to the entity that was in existence prior to the sale, that it can be seen as a

succession. If it is determined that it is not similar enough to be a succession then successor rights as outlined in Bill 18 would not apply.

In short, Mr. Chair, we have legal opinions that state the concerns that have been raised by short-line operators and people who are interested potentially in becoming short-line operators can be addressed by Bill 18 and that this will not prohibit or inhibit the establishment of short-line rail facilities in the province of Manitoba.

Mr. Chairperson: We thank the Minister for the opening statement. Does the critic from the Official Opposition have an opening statement?

Mr. Ron Schuler (Springfield): Yes, we do have an opening statement. During Estimates I did approach the subject with the Minister. We indicated that we had some concerns. Then when we went into the committee hearings we spoke to the presenters, listened to them and then we had a chance to question them. One of the things that we made very clear is that these tend to be found in rural areas, and rural areas are a strong area of growth for our province. Certainly we do not want to see them affected in one way or another.

The short lines are basically lines that the two major railroads in Canada have decided are not financially viable, they are not feasible economically and thus are looking at either selling them off or abandoning them. Certainly what we would like to see is that they are sold to entrepreneurs, to individuals who see running a 240-kilometre track or 80-kilometre track, whatever the case may be, that the line still stays in existence.

One of the things that was said to us during the presentation is that not just do the short lines have to maintain their own track at no expense, what they do is they actually have very strong economic spinoffs. That is something that we see as being very positive to the province and certainly to the rural areas.

What I did not hear the Minister talking about–to jump ahead a little bit–is if she was planning any amendments to Bill 18. Certainly during the presentations there were some recommendations, one of them being that it applied to businesses of 10 employees or more, successor rights would apply.

I listened with great interest when the Minister clarified something that she had said during Estimates. During Estimates basically she had conceded that what she felt the Bill was looking at was short lines. Now she is saying they are actually looking at more of the Weston Shops is what the Bill is geared toward and not really the short lines. To simplify the concern we have, what we do not wish to see is a section of track being sold and a union comes with it, because then comes the question if you amalgamate your union, which union, which bargaining unit. One of the things that was brought to our attention during the presentations was you could in theory with very few employees have multiple unions. That creates a problem, because again you do not have the same kind of bargaining staff. You are going up against very professional and large unions. It is an onus on a small business. We do not want this to be seen as being against small business.

* (15:50)

If I understand from the Minister correctly, and I think this is what she put on the record, the Labour Board has the authority to assess if it was a sale of a business. If not, if it was just a transfer, I take it, then, of just real estate, successor rights would not move with that transaction, that unless you buy something like a Weston Shop, like you have a unionized shop, it would just be a strict transfer of real estate. Again, what we want to do is make sure that the Bill is very clear in what it says, it lays out very clearly that afterwards there are not going to be questions.

One of the presenters was the CANDO Contracting. I think all of us were most impressed by some of the things that were said. They mentioned four solutions. I would wonder, from the Minister, are there going to be any amendments? Is she going to incorporate some of the things that were brought forward into Bill 18? We will leave it at that and certainly when we move into the Bill itself we will have more comments to make.

Mr. Chairperson: We thank the Member for the statement.

Hon. MaryAnn Mihychuk (Minister of Industry, Trade and Mines): Mr. Chairman, I just want to put on the record a few brief comments on the Bill. Bill 18 deals with successor rights. Some concerns were raised by the short-line industry. I just wanted to indicate from my perspective as Minister of Industry, Trade and Mines, the short lines have provided options that would not have been available to Manitobans, have been economically successful, and we see some rather exciting opportunities.

If you look at northern railways, Churchill is seeing a rebirth. OmniTRAX has made a difference. That is very good for the North, and in the south we see a number of short lines providing opportunities for Manitobans. I just want to make it clear that Manitoba's record with short lines has been positive and the government hopes to enhance or stimulate those opportunities, not hamper them. I am quite confident that the concerns raised by presenters can be addressed. It is always important to look at every possible angle with legislation. I feel confident that indeed this bill will not hamper or inhibit short-line development in Manitoba, which is what we want to ensure happens.

Mr. Chairperson: During the consideration of a bill, the preamble and the title are postponed until all other clauses have been considered in their proper order. Shall clause 1 pass?

Ms. Barrett: Yes, if I may, I am taking this opportunity actually to respond to the issues that were raised by the Member for Springfield in his opening comments, if that is acceptable to the committee.

I believe there were four areas, but if I missed some I am sure we have another opportunity to discuss it. We are not contemplating any amendments to Bill 18, because it is, as I have stated, our legal opinion that it does not inhibit the ability of short-line railroads. The Labour Board will have the authority to deal with the short-line railroads and the specific and unique challenges that are faced by short-line railroads in this context. The issue of short-line railroads versus Weston, was several months ago, and I may have inadvertently actually left the impression with members opposite that this was at the instigation of the short-line railroad issue. I apologize if I did that, but the reality is that the issue that brought this loophole to our attention was the potential sale of the portion of the Weston Shops, which was under federal jurisdiction, to another agent which would then bring the Weston Shops under provincial jurisdiction. That is the issue that raised this flag for us.

The short-line issue actually, as I recall–my memory may be faulty here–I know it was raised in Estimates by the Member for Springfield. Whether it was raised before that, I do not know. The instigating factor was the Weston sale, not the short-line rail sale.

The issues, one of which was multiple unions and how you go from a 10 000-kilometre rail line to a 250-kilometre or a 25-kilometre rail line–it is an exaggeration, but never mind. As I stated in my opening remarks, the Labour Board has the power to make those determinations. It can make a determination if a collective agreement is in full force and effect and also in the case of, as referenced by the Member, multiple unions, which parties are bound by the agreement. So would it be one union or another union? That is in the purview of the Labour Board, and they would be able to make that determination.

The definition of "business," which appears to me to be the critical definition here, if it is seen as a business it then would be under successor rights. If it is not seen as a business, it would not be under successor rights. There are test criteria, case law and across-Canada criteria that the Labour Board uses in determining what is a business. So an application is made, the Labour Board has a great deal of case law and jurisdictional information across Canada to fall back on as the determination of what is a business. So it is not just, oh, well, today we will call it one and tomorrow we will not.

In answer to a potential question of the Member's, I do not have the answer to what the definition of "business" is. I can say that the legal opinion that we undertook to gain, after the Member raised the concerns and others raised

the concerns about this, states that the Labour Board does have the ability, the expertise and the authority to make those determinations to ensure that the new reality, if you will, is reflected at the end of the day and that this should not inhibit the ability of short-line railroads to come into the province.

Mr. Schuler: We do not seem to quite have everything sorted out yet. Are we not still just on opening statements? *[interjection]* We are just dealing with opening statements under clause 1. Okay, that is fair enough. Then if I may, just for some more clarification, could the Minister tell the Committee: Is she planning to introduce any amendments to Bill 18?

Ms. Barrett: No, actually, that was the first statement I made when I started my clarification on clause 1. We are not planning any amendments to Bill 18.

Mr. Schuler: This is the first time I have ever done this particular committee. I was wondering if other members of the Committee could be given an opportunity, and then I would like to ask some questions again afterwards, if that would be agreeable.

Mr. Chairperson: Thank you.

* (16:00)

Mr. John Loewen (Fort Whyte): This is also my first session, but I am beginning to learn that certainly what appears to be very innocuous legislation can have some very far-reaching and I think sometimes damaging effects that may be are not even understood when bills are passed. In this situation, particularly with this bill, I am disturbed by it, this whole issue of successor rights. I appreciate that the Minister and her government, in a well-intentioned way, is bringing in a bill that they think is going to help to protect workers. We certainly heard that from the union members who were here in support of this bill.

In my history in business, I can reflect on a number of situations where if this type of legislation had been in place referring to successor rights it would have had exactly the opposite effect. It would have possibly ended up in some employees suffering severe harm. I can think of two situations when in the private sector we bought businesses. In both cases, these were businesses that we bought from governments. They were businesses that governments should have never got into. They were businesses that, after being in, governments realized that and realized that they were losing a lot of money. Both businesses fell under the jurisdiction of the unions, which applied to those governments. Both businesses were basically in bad shape and would have had to be wound up, and employees would have had to have been let go, and they would have been without jobs.

Over their 25 years in business, we never had anybody attempt to unionize our business. I think that reflects a fact that the employees were satisfied in the workplace. They enjoyed a good wage, a good work environment, and we were pleased with their ability to co-operate with management.

In these two particular cases, we were looking at situations where we were going to be taking on, in one case about 60 employees and in another case about 30 employees, and we were melding those employees into a workforce that in the first case was over 500 and the second case was close to 1000. I can assure you that if at the time of those acquisitions we would have felt that with the acquisition we would have got the union, the acquisition would not have gone ahead, and not because we were afraid of the union or did not want to deal with unions but because we would not have taken a situation where we would have forced on our employees, who by choice were working in a non-union environment, to then move into a union environment.

As it happens, in both cases, we ended up proceeding with the acquisition. The employees came along, moved out of a union environment, into a non-union environment, I think, in much of a similar fashion that Mr. Peters had told us during his presentation, moved into an environment where they had profit sharing, where they had the opportunity to expand their horizons, maybe, and see a little more opportunity for growth. As a result of that, both of those businesses turned the corner, became successful, and the workers enjoyed a

tremendous amount of success. In more than one case, employees that were brought into our organization as a result of an acquisition in fact flourished, some I think beyond their wildest dreams in our organization, and reached high levels of management, to their credit. I am not saying that these employees would not have been successful if we had not bought the other company, but if we had not there would have been a lot more uncertainty in their life and certainly a lot more strife.

I come at this from two directions. One, it certainly would not be the intent of this legislation to put employees at risk by having companies not follow through with an acquisition because, for a whole variety of reasons, they did not want to end up with the successor rights of the union, and I think that is fair ball, certainly, as it is fair if somebody did an acquisition, employees came along and were de-unionized and decided that they wanted to get unionized again, it would be within their right to go through the process and form a union in their new business. We were willing to take that risk, under the belief that once they were operating within our structure they would see, as the rest of the employees saw, that there really was no benefit to having a union.

Again, what this bill does is it tilts the scale. It makes it more difficult for businesses to look at investment. There are ways around it. You can look at asset purchases, in which case you go in and you buy the assets, but once again, when you buy the assets, the employees do not have any assurance that they are coming along. You are going in and buying assets. In reality, you need the employees but maybe you do not need all of them. I guess my experience has been that wherever possible, what you want to do when you are buying a business is ensure that you deal with all the employees that come along with any business you acquire in a fair and reasonable manner, in fact, even the ones that maybe you do not think you want to carry through with. Certainly, in both of these cases, there was senior management that we did not think was capable, and they received severance packages and went on with their life. The business turned around and became very successful.

In the worst case, what are we doing here to Mr. Peters who is in a very similar circumstance to what our family was in a number of years ago where we were starting a small business, had a few employees, realized the value of those employees, offered those employees the best wages that the business could support, offered them the best benefits that the business could support, offered them profit sharing. In Mr. Peters' case also, they are coming out of a union environment into a non-union environment. As he has indicated to us, they are thriving. I do not think anyone has gone back to ask the employees of Mr. Peters' operation how they would feel if they would have had to remain in the union. I do not think that is fair to them.

In any event, hopefully Mr. Peters' business will continue to flourish. One day, 20 years from now, he will have a thousand employees and be looking at lots of opportunities for acquisition, and hopefully there will be lots of opportunities within Manitoba. But once again, if he looks at other jurisdictions where either there are not successor rights or there are situations as was brought forward such in the case of B.C., where there are exemptions that allow business just to go ahead with their plans for expansion without having to go through a complicated process of dealing with unions. As in any case, it is human nature. The businessman, the union worker will follow the path of least resistance that affords them the best opportunity to gain a return on investment. That is not contrary to the interests of employees.

I think it is unfortunate that we are sitting here with a bill that, with all the best intentions from the Minister and the Government in their rush to satisfy the union leaders who seem to be calling the shots, we really need to step back and take a look at whether these leaders are actually speaking for the people or speaking in their own self-interest, because as much as they stand and accuse business of being self-serving, I think one has to look at the self-serving motivations behind some of the presentations we have seen from the union leaders in this type of environment.

I just want to put on the record and make the Minister aware that there are some, and there will be some difficulties with this type of successor rights legislation which we may not hear of directly, because what will happen is

businesses that we have heard from, and certainly Mr. Peters is one of them, they will look to make investments in other parts of the country, in other jurisdictions where the regulations are not so strident but offers them the flexibility to proceed with building their business in the fashion they chose, which allows them to offer people who want to make the choice to come and work for them a rewarding, pleasant and safe work environment. I do not think it serves the people of Manitoba other than possibly those narrow-minded union leaders looking out for their own self-interest to pass this legislation. So, on that basis, I will be voting against Bill 18.

* (16:10)

Mr. Jack Penner (Emerson): Just to put a few words on the record in regard to the short-line railways, the importance of maintaining a transportation system in this province and the lack of that recognition by our Minister of Highways in reducing the capital funding by $10 million this year in his Highways' budget and the effect this kind of legislation, in fact, could have to the short-line industry and the transportation system that much of rural Manitoba depends on. These short liners are operators that only enhance the viability of small communities. They are a service to a service industry. Their ability to operate in a regional capacity is much greater than the large railways, CN and CP, could. I think one has to give credit to an investor that would want to buy, for instance, the Churchill line, as the Minister of Industry and Trade (Ms. Mihychuk) has so eloquently stated, has enhanced the viability of not only the Port of Churchill but in fact almost guaranteed the existence of the community of Churchill. If you remove the rail line to Churchill, there is very little reason why the community itself should exist, and so the viability of the short-line operator is extremely important.

It does add an economic base to many communities in rural Manitoba. I only raised Churchill because that is one of the key pivotal ones because much of our grain is transported out of western Canada, Saskatchewan, northern Manitoba, and central Manitoba in through Churchill. Many of our speciality crops are now being seen as viable using Churchill as a viable option for transportation to export especially to the European market.

Adding any kind of disincentive to investors looking at Manitoba as an opportunity for investment, such as the Southern Manitoba Railway company did a year or two ago in buying the Morris-Hartney line and operating it now–and there are a few others that could be operated as short-line railways. We know that. The existence of those communities on those rail lines and the grain-handling facilities on those rail lines is extremely important to rural Manitoba.

One can only look beyond the railway aspect and look at many of the small industries, especially in rural Manitoba, because many of those small industries are now operated under federal law because they are federally inspected facilities, grain handling facilities and/or seed processing plants, and a few of them in the city of Winnipeg but many of them exist in rural Manitoba. If they were to change hands, would the same rules apply, and would the certification process be the same for them as it is now under federal law?

There is a significant difference there that occurs, as the Minister knows. I think one needs to really take a good hard look at what the total implication is of this small little act, this small little amendment to the ability to encourage investors to further invest in this province in value added, and one knows what kinds of ideas and thinking are out there if one only goes to visit with those people, moves outside the Perimeter and talks to potential investors, and we know what kind of significant increase in the export market we have had out of this province over the last five to ten years. This will not create an economic climate or a climate for further investment. This will create another question mark as to why should we, why should we not look elsewhere for opportunity to invest. It is virtually as cheap to export raw products out of this province into another jurisdiction as it is to export finished products. Why should we then jeopardize an industry and subject it to rules and laws that might not apply in other jurisdictions?

I only need to look six miles south of where I live, certainly a totally different environment in

that jurisdiction. So why should an investor that is currently looking at my town make an investment with the kind of labour legislation that we are contemplating in this province when in fact they just need to move twelve miles south of where they currently are and not be subjected to the kind of new, intrusive labour legislation that is being invoked by this government.

So I say to the Minister: Be very, very careful, because the tremendous growth curve that you have seen in the last ten years can very easily turn the other way if industries and/or potential investors do not see this as a very bright climate to invest in. It need only be a bill such as this that could discourage a significant further investment in this province, and indeed then you would immediately start seeing the downturn.

I will give the Minister an indication of how little it takes sometimes. When the Minister of Agriculture (Ms. Wowchuk) introduced her livestock review process in rural Manitoba just a few short months ago, it virtually brought to a halt the construction of the livestock facility industry. In my constituency alone, I think I can point right now at six large barn or building complexes that have been brought to a halt. They said they will not proceed until they are aware of exactly what the Minister intends or what this government intends or what they intend with their legislation or what the review report will bring and what the Minister then indicates her actions are going to be.

That is how delicate the balance is between positively thinking about investing and/or negatively thinking about not investing. So that is a huge industry. There is a huge potential for expansion in that industry. Yet this kind of legislation and the other labour legislation that we are discussing can impede that kind of development to the point where we will come to an entire standstill. I say to the Minister, be very, very careful, because you might well cause a significant downturn in the economy which will cause you a very serious financial retribution. That could happen three years from now.

Mr. Larry Maguire (Arthur-Virden): I only want to take a few moments to put a few remarks on the record in regard to Bill 18 as well. In regard to the succession part of Bill 18, it has been brought up by our Honourable Member for Springfield (Mr. Schuler), the critic for Labour, that one of the presenters on this on Monday evening, I believe, was the President of CANDO Contracting, Mr. Peters, from Brandon. It is my understanding that he brought forward a presentation that called for a number of points on how to improve this kind of legislation, this bill, and that an exemption of a certain size of companies perhaps might be one of the ways of dealing with the successor rights issue in this particular situation.

So I am going to refer to short-line railroads, as my honourable colleague from Emerson has just done. I just want to point out that in southwest Manitoba there have been attempts at short-line railroads to be established and that it has not been easy for those farmers in that area or businesses in those areas to proceed with some of those at this time because of a number of other issues dealing around those on the national transportation scene. Certainly the addition of this kind of legislation will not make it any easier for those kinds of small, short-line railroads to be established and the movement of product in western Canada in the future. We are specifically concerned here with the whole province of Manitoba, not just southwest Manitoba. I caution the Minister in regard to putting any further burden on small businesses, be they groups of farmers or others, who are trying to put forward sound business plans to deal with the removal of grain and other products from these regions in the future, because as we diversify and get into more processed products, or more niche markets in pulse crops or oilseeds and others, there may be further need to move in this regard in the future.

* (16:20)

I just want to say that there are many lines left because of the regional railroad status of amalgamations or abandonments that have taken place in western Canada over the last number of years. There could be many opportunities for these kinds of lines in the future. I am only cautioning the Minister here today, Mr. Chairman, that we should look at everything we can do to encourage viable business plans, not subsidization of these projects, but viable

business plans as to a means of the movement of product and the allowance of these kinds of transportation mechanisms to be done in the future.I cannot understand why they have not considered looking at a certain number of employees as being an exemption in this kind of successor rights' legislation. Thank you very much.

Mr. Schuler: I would like to thank my colleagues for the comments they have made, and to the Minister, clearly you have heard that we have a lot of concerns. We believe that there were presentations that were made in good faith under the impression that they were going to have some consideration. We are disappointed that we see none of them reflected in amendments to the Bill, and the Minister has indicated that she wishes to see the Bill go through as it is. We believe it is far too broad in scope. It is not defined clearly what is meant in many areas, and that it throws a net far too broad.

We would have liked to have seen where transfers of businesses affecting six or eight employees or more would be exempt because again, if the Minister is true to her word, we are not talking about short-line railways. We are not talking about a piece of real estate. What we are talking about is if you get into the Weston Shops, which we understand, if you are buying a manufacturing business, you are buying a repair shop, you are buying whatever it is, and you have employees that have a bargaining unit, we see that, but the fact that you are buying an engine with some railway track, we do not see where that would be of benefit to the short line to transfer all kinds of unions onto a business that, as it was pointed out to us, is marginal at best.

I do not think these are break-the-bank kinds of businesses. I do not think they will ever go into competition with the banks. These are marginal businesses. It is a real entrepreneurial spirit. Frankly, I think it is long overdue. The short lines are a great competition, but they have pointed out to us that they are not competing against other railways. They are, in fact, competing against the trucking industry.

There are all kinds of points and these were put together by–CANDO had put some forward, as did the Railway Association of Canada, and thus we will not be able to support Bill 18. Unfortunately, with a few amendments, we could have seen our way through it, but as it stands right now we will not be able to support Bill 18.

Ms. Barrett: Yes, excuse me. I do not want to let something that the Member said go unresponded to, because from what I heard he misinterpreted what I said in an earlier answer. What I said was that the genesis of Bill 18 was the potential sale of the portion of the Weston Shops to Progress, a company from Florida. The trigger, if you will, for the bill was not the short-line rail issue, but the Weston Shops issue. However, short-line railroad situations could come under Bill 18, and the Labour Board then will decide, as I said, if it is in the definition a business or not. I thought I heard the Member just now say that short lines were not involved, and if I misinterpreted I am sorry, but I wanted to make sure we were as clear as we can be today on what we are both saying.

Mr. Schuler: In committee, the Minister had indicated that Bill 18 was a response to the short lines. She came here this morning–for me everything feels like this morning–this afternoon and indicated that really we were looking at the Weston Shops, but it does cover the short lines on top of that. We do not believe that it lays it out clear enough what is and is not covered on the short line. If the target was the Weston Shops, maybe it should have been more specific. If it was not suppose to be a mill stone hanging around the short lines, we would have loved to have seen an amendment that said those with a transaction of six employees and under would be exempt. There would be a way to clearly lay out, and not just transfer all of this to the Labour Board without much direction. That is our concern. We feel that this is, again, one of these wide-open, throw the net out as far as you can and see what you drag in. We are just not comfortable with it. I appreciate the fact that she had clarified that for us this morning. We still disagree on the Bill.

Mr. Chairperson: Clause 1–pass. Shall clause 2 pass?

Mr. Schuler: I will make this very brief. Considering that we do not believe this bill and this particular clause. It is far too broad in its scope, and we cannot support it. We will not be supporting this clause.

Mr. Chairperson: Shall clause 2 pass?

Some Honourable Members: No.

Some Honourable Members: Pass.

Voice Vote

Mr. Chairperson: All those in favour of passing clause 2, indicate by saying yea.

Some Honourable Members: Yea.

Mr. Chairperson: All those opposed, please indicate by saying nay.

Some Honourable Members: Nay.

Mr. Chairperson: In my opinion, the Yeas have it.

Formal Vote

Mr. Schuler: We would like to call for a recorded vote.

Mr. Chairperson: A recorded vote has been requested.

A COUNT-OUT VOTE was taken, the result being as follows: Yeas 6, Nays 3.

Mr. Chairperson: The motion is accordingly passed.

* * *

Mr. Schuler: Just for the record, Mr. Chairman, one of our members could not be here for the vote as she is tied up in another part of the Legislature, just for the record.

Mr. Chairperson: Just if I could add a word of caution. I do not think it is necessary for us to indicate the presence or absence of any member of the Committee or the House, just for your information, but I do appreciate you have brought that to our attention.

Clause 3–pass; preamble–pass; title–pass. Shall the Bill be reported?

Some Honourable Members: No.

Some Honourable Members: Yes.

Voice Vote

Mr. Chairperson: All those in favour of the Bill being reported, please indicate by saying yea.

Some Honourable Members: Yea.

Mr. Chairperson: All those opposed to the Bill being reported, please indicated by saying nay.

Some Honourable Members: Nay.

Mr. Chairperson: In my opinion, the Yeas have it.

* (16:30)

Formal Vote

Mr. Schuler: Mr. Chairman, I would like to ask for a recorded vote.

Mr. Chairperson: A recorded vote has been requested.

A COUNT-OUT VOTE was taken, the result being as follows: Yeas 5, Nays 3.

Mr. Chairperson: The motion is accordingly passed. The Bill shall be reported.

That concludes consideration of Bill 18.

Bill 44-The Labour Relations Amendment Act (2)

Mr. Chairperson: We will now proceed to clause-by-clause consideration of Bill 44.

Does the Minister responsible for Bill 44 have an opening statement?

Hon. Becky Barrett (Minister of Labour): Mr. Chair, yes, I have a very brief opening statement. I think we have had a very intense, articulate, animated number of weeks on the elements of Bill 44, every single element of Bill 44. On this side of the House, we would like very much to get into the clause-by-clause process. So I am going to end my opening remarks with that brief statement.

Mr. Chairperson: We thank the Minister for an opening statement. Does the critic for the Official Opposition have an opening statement?

Mr. Ron Schuler (Springfield): Mr. Chairman, I seem to be speaking to this bill continuously for days now. We have very grave and serious concerns about Bill 44. We have sat through an awful lot of presentations. We have not indicated our pleasure by any stretch of the imagination to the way that this was presented. Just for the sake of the Committee, this has been a very compressed, a very difficult process. The Bill has been before the House for about six weeks. It was introduced in the dog days of summer.

Our No. 1 concern is we do not believe that it was given ample time for the public, for those affected by Bill 44 to come forward and to make their case, to look at the Bill. In fact, most of the presentations and the presenters indicated to this committee that, though they are presenting, they either had to cancel holidays, they just got back from holidays, they had very limited time to do a proper and thorough look at Bill 44. That would be our first concern about Bill 44. There was not enough time given.

Number two, the concern has to be the process. We are very concerned with the way that this government and the Minister dealt with the Labour Management Review Committee. During Estimates, the Minister and I spent a lot of time. I was actually quite pleased to be able to get a better understanding of the way the Labour Management Review Committee operated. The way it worked, in reality, is shocking compared to the theory that the Minister provided for me during Estimates. The twain shall not meet between those two, Mr. Chair. There were various elements, and the Minister started on all elements, and it started to sound like all elephants after a while. We never quite knew what she was talking about at the end, but all elements went, and then we found out from the Labour Management Review Committee that all elements did not come.

We heard that this was supposed to be the unifier bill. This was going to be the Bill of all bills to bring both groups together, and we found out that right at LMRC the divisive nature of the Bill. It split labour and management at the LMRC. It did not even make it out of committee, and already we had polarization of our communities.

Mr. Chairperson: Information to the members of the Committee. It is not necessary for the Committee to rise at this point. What is the will of the committee?

Mr. Scott Smith (Brandon West): I know it is unusual speaking from this side; however, I wonder if we would consider just leave if the vote is going to be right away, that we would go to vote, and if not, we would continue with committee until the vote is called.

Mr. Jack Penner (Emerson): I wonder whether you would want to briefly recess for five minutes and confer with the House leaders to see how long the vote will be. If it is an hour, then we come back here and continue, and if it is within a few minutes, then you can come back here, report, and we will leave.

Mr. Chairperson: Is it the will of the Committee to recess for a few moments to determine how long it will be till the vote? *[Agreed]* Then the Committee will recess for a few moments, and we will reconvene shortly.

The Committee recessed at 4:36 p.m.

The Committee resumed at 5:34 p.m.

Mr. Chairperson: Will the Standing Committee on Industrial Relations please come to order. Before this committee recessed, the Member for Springfield, Mr. Schuler, was making his opening comments on Bill 44. I would like to give Mr. Schuler the opportunity to continue his comments.

Mr. Schuler: I put on the record that we certainly had concerns about–can I have a copy of Hansard of what I said?

Mr. Chairperson: Start from the beginning.

Mr. Schuler: I certainly appreciate this opportunity again to jump into this one. The process did give us a lot of concern. We have mentioned this to the Minister on numerous occasions that we felt the process was flawed.

One of the concerns I have and I know certainly we will disagree on this one is that the LMRC and the Minister very, very concisely and clearly explained to me that it is a negotiation process that takes place. You have two sides represented. There are issues that are laid in front of them and to some degree there is horse trading that goes on. One side will agree to give a little bit here if the other side agrees to give a little bit there. I guess the concern that we have is, when all was said and done, another element then came forward and it was put forward by the labour caucus to look at another element.

I think the business caucus felt that they were sandbagged on this particular issue. In fact, Mr. Wightman even sent a letter to the Minister indicating that. We feel right from the outset not just was the timing a problem but so was the process. I stated earlier that the six weeks of a bill of this magnitude–and we do have a new government, we have a party that has been out of power for some time and it is finding its feet and figuring out where it wants to go with its direction.

A bill this serious, the magnitude of Bill 44, I think if you would have listened clearly to messages that were coming through on the presentations in the last couple of days, as we found when we were sitting on Bill 42, there is a very clear message. If you cut off a lot of the rhetoric and you sort of look at a cross-section of it, there is a clear message that comes through. The same thing happened on Bill 44. I think you will find that on both sides presenters were saying that this was too rushed.

I do not think it is fair for the Minister to say that there was unanimous consent or that there was much consensus on the side of labour. As you work your way through the presentations, they had a lot of concerns. Some felt it did not go far enough in any of it. Some felt that there were some sections that did not go far enough. Some raised concerns about different issues.

I guess my question is: Why would some of these things not have come up through the LMRC? We are looking at the time factor. The LMRC was given a very short time line to even discuss the elements that were before them, never mind the elements that did not make it before them. Whether it was a time factor at LMRC, whether it was the time factor of the six weeks that was available for the public to actually look at this bill, I would suggest to the Minister, as a new minister, as a new government, it probably was not the most prudent thing to put through such a serious bill, to try to do it so quickly and to move it into politics.

I can understand from a strategic point of view why the Government would have tried this. I think they were under the impression the Opposition was going to be in the middle of a leadership selection process and would have a focus more directed on other things. I think they were counting on it being perhaps a warmer summer than they in fact had anticipated and people would be more interested in holidays. I do not think the Government and the Minister saw the kind of opposition coming at them that eventually did come at them. Minister, I believe this, as a rookie MLA if you please, that there was not enough time given to a serious piece of legislation like this. If it had been introduced perhaps two months ago then people would have been given the opportunity. Again, why in the middle of the summer? I would suggest the process and the time are two of the things that raise alarm bells right off the bat.

* (17:40)

When you get into the various issues, I am not going to spend a lot of time dealing with the three main issues that have been raised because I understand there are amendments that are going to be forthcoming, and when we get to the clause by clause certainly that is when we are going to want to deal with those particular ones. There is

no reason now to go into them; they are going to be changing anyway.

Actually, I have not seen the five areas that are going to be changed yet. That having been said, there are other areas in here. I would venture to guess, and nobody on LMRC told me this, so I am not speaking on behalf of the LMRC, but I think that if the business caucus would have known that they were going to be sandbagged at the end of the process the way they were, and I speak just from what I think not that somebody told me this, I think there is a feeling of betrayal there, that there is probably a good chance they would not have agreed to some of the things that were agreed to in the horse trading process if they had known what was going to happen at the end.

As we go through this, I have to suggest to the Committee that we will not be supporting this legislation. We will not be supporting any element. Let me be very clear, to quote the Minister, neither will we be supporting any elephant in the clause. No element of this we find is acceptable because we do not believe that this bill is a fair reflection of what the process can produce. We do not believe that this is a good reflection, if the proper time had been given, of what could have been produced. There was a quote in the media from one of the presenters who said that, and I do not have the exact words at hand, this is a very undignified way of making public policy. There was a comment made that bread making takes more precision and there is more care taken when you bake bread than it seems to be when you make legislation. I mean this has been a rather haphazard approach to it.

Again, Madam Minister, you and I spent a lot of time in Estimates. I know, given the opportunity to go back through Estimates, there are probably a lot of questions I would not have asked having the knowledge I have now. There are probably a lot of questions I would have loved to have asked. In fact, I told somebody the other day what I would not give for 20 more hours of Estimates. My questions would be a lot different.

During Estimates you explained a lot about how the Department works, how the LMRC works, how you deal with labour and management. Madam Minister, we will disagree on this I am sure, but I do not believe that you used the Department, that you used the LMRC, for its most beneficial, for its most positive. What came out of that, Madam Minister, is not the kinds of things that you explained to me in committee. I do not think it was a prudent and wise use.

Minister, just on a personal level, I think you are a good minister. I think you are a very strong minister, but you fell down when it came to Bill 44. I do not think this is reflective of what either business or labour really is looking for and to take the shrillness out of the debate and, you know, we have done all the Question Periods. We do not have to bring those in here. Our preference would be that this bill would be allowed to go through the process, rightfully go through the process, to go through full consultation. That would be our preference.

Here we are going to sit again on a late night dealing with amendments. Nobody will have had a chance to be consulted on the amendments. We have not really had proper time to reflect on what it is that you are actually trying to do. Minister, again, there is more precision taken in baking bread than has been put into Bill 44. Without shrillness, without getting into the politics of it, I really believe that this is not in the best interest of the province. I will not go into the particulars. We will do that when we do clause by clause. I am going to allow some of my colleagues, and I might have a few comments to make at the end of this.

Minister, just the time factor and the process alone as Labour critic of the Progressive Conservative Party, we will not be able to support Bill 44. We are certainly interested in looking at the amendments. We are going to be very interested in seeing them, but you cannot expect us at the 11th hour to be jumping at all kinds of amendments when the consultation process is not there. You talked during Estimates about consultation, how it is important for the Department of Labour to talk to both sides. Neither side has seen them. You gave us the amendments now, and we agreed that nobody but us would see them. So, until this point in time, nobody knows what those amendments

say. We do not know what the ramifications are. This has not had the vetting process.

Minister, again, I would appeal to you. You understand your department. I think you have been around this Legislature that you understand the Department and the LMRC and what it is that we are trying to do here. I would request that Bill 44 would be either hoisted or withdrawn or given the opportunity–we do not have a senate here in Manitoba anymore–just a sober second reflection, just that second thought that the Bill would be put through is a necessary part of this bill and, unfortunately, it is not something that we are going to see, so I would like to thank the Committee for this opportunity.

Mr. Chairperson: We thank the Member for Springfield for his opening comments.

Mr. John Loewen (Fort Whyte): I appreciate the opportunity to put some comments, no surprise, I, like my colleague from Springfield, will be unable to find anything that I can support in Bill 44, including the amendments as I have seen them identified in the news release issued by the Minister today. I want to go into a little detail on some of the clauses because I do not want to spend a whole lot of time on the clause by clause. I think probably most of us in this committee that have been through it from the start have pretty much reached our limit in terms of what more we can say, or what new issues we can put on the record.

The Minister has made it perfectly clear that she is not willing to take the advice of a good number of individuals who took the time to come here and ask the Minister to at least withdraw the three clauses which have been the most contentious, so I do not believe at this point there is any point in trying to ask her to do that. She has made it clear on the record what she intends to do. She has the majority to do it and will certainly push ahead and have to live with the consequences. I am deeply disappointed with the process and, particularly, with the outcome of process which has created, I think, a deep division between the labour movement and the business community, and I think it is a division that did not have to be there.

We heard from a number of participants on both sides of the equation who spoke eloquently and quite glowingly about the positive ramifications of the economic summit that took place earlier in this government's mandate. Personally, I believe that those types of consultations are always productive. You may not always reach consensus, you may not always agree, but at least you have a better understanding at the end of the process as to where those who have different views than you are coming from and exactly what arguments they can put forward to support their case, and we have not seen this here. You know, some people could argue that there are a number of issues that were reached consensus on by the LMRC, and I will not dispute that.

* (17:50)

Again, I think that that process has been tainted by the fact that not all of the issues were laid on the table in a fair and even way at the start. If you are looking for a process that is going to end up in consensus, that is going to have people doing some negotiating and, you know, consensus is not always saying I agree with that wholeheartedly. What consensus is, is everybody in the room saying I can live with it, I am not going to stand up and exercise a right to say that it is totally unworkable. We do not have that here because what we have here are issues where the LMRC reached consensus only to find out later that there were other issues on the table that they did not have the time to fully review, which, in hindsight, would have changed some of their positions–and we heard that clearly at committee–with regard to the consensus they did reach during their deliberations was LMRC.

I think it is very unfair and very disrespectful to the members of LMRC, both the labour side and the management side, and, in particular, the Chair to put them in that type of position because undoubtedly it has damaged their relationship. It will damage it going into the future and they will be, I believe, somewhat jaundiced from my discussion with members of that committee and how they approach it in the future. The building of a marvellous opportunity to go forward, I think, in a reasonable fashion based on what could have been an opportunity to arrive at a true consensus. At the end of the day I

would not have expected that our LAMC would have reached a consensus on every issue. They would have sent differing opinions to the Minister, and the Minister would have had to make it a final decision. That is her prerogative. That is her responsibility. Again, my problem was with process, and I think Mr. Carr from the Manitoba Business Council was very eloquent in his arguments as to why at least the three sections that are the most contentious within this bill should be set aside for a period of time so that some more reasoned thought could go into it.

It became clear to me–it is hard to imagine being clear after 5:30 in the morning and between 60 and 70 presentations. I am not going to get into the numbers game. We can do that in other venues. But there were some issues that people were not that far apart on, particularly violence on the picket line. I believe everybody that came to this committee virtually–I should not say everybody but the far majority and certainly the senior labour representatives and the business community representatives–made it perfectly clear that neither of them supported violence by any party, whether it was an employer, an employee, scabs or anybody on the picket line.

It is unfortunate that they did not get the opportunity to sit down and go through some of the details of what they would have wanted to see there because I think if they had been given that opportunity they would have come up with something that each of them could have lived with. Clearly both sides of the argument believe that there are limits as to what is or is not acceptable. Certainly, if they would have had the opportunity to discuss these issues together, it seems clear to me that they would have come back with some consensus on where the line should be drawn in terms of violence or perceived violence or misbehaviour that can occur on a picket line. We all know emotions run high, but there are still lines that could never be crossed, and when the line that gets crossed goes against the law and is taken up in the judiciary system, it seemed clear to me that both parties believed that that was a line that should never be crossed, and if it was crossed that there should be consequences to those who crossed it.

So here we have a very contentious item. The result has been that the Minister is going to have to introduce an amendment. We have not seen the amendment. The business community has not seen the amendment. The labour leaders have not seen the amendment. Nobody knows who is going to be satisfied with the amendment, my point being that if the parties who have the most interest in this legislation had been afforded the opportunity to sit down and discuss what they would like to see, the amendment would have been a piece of cake, and they would have come up, I think, with a reasonable one. Obviously, there was a lot of distance in the other two issues, particularly the issue of the certification and whether there needs to be a vote, a secret ballot, to make clear the position.

I am not sure that there would be a consensus reached on that between the two, but certainly they would have had a clearer understanding. I think the people that stuck with it till four or five in the morning last night have a better understanding of where the other side is coming from in this argument. At some point down the future they might have been able to take the advice of Professor Godard and find a solution that was maybe outside the box, maybe something that has not been looked at by either side up to this point to ensure that employees do have full access to their rights, which is to form a union without harassment on their wishes. Again, I do not sense any fear on the business side, from the business community, with regard to allowing free and unfettered association by employees. What the business community is looking for is a fair and level playing field where they know that there has been no intimidation.

We heard some very, very heart-wrenching stories, and our hearts go out to the individuals who came to committee last night and in a very emotional way told us of the hardships that they had gone through on both sides of the equation. We heard from a number of workers who had been mistreated by the employers. We heard from some union workers who felt that they had been mistreated by their union. Those are people, those are very true stories, and we need to as legislators certainly pay heed to that. This did not change the fact that there are different viewpoints there. For every employee that has been mistreated along the way, and that should

never happen, there is an employer out there who believes they have been mistreated.

In particular, we heard from a number of the members of the United Food and Commercial Workers who feel they had been mistreated. Although I do not like to rush to judgment because I have not heard the other side of the story, and there are always two sides to the story, but emotionally they were obviously scarred by the process. I think we have to listen and we have to take note of that, but I also know of situations where that same union has used intimidation to form bargaining units. I know in particular of one situation, we have heard of it in the House, where the bargaining unit was formed by use of intimidation. It is an old story, but it does not mean that it does not still happen. The result was that that union negotiated a contract for those employees which it coerced into signing cards that in the end turned out to be for rates less than they were making at the present time. The result was that the Labour Board threw it out. So there are counterbalances at work here.

Again, I will go back to Mr. Mitchell's submission and Mr. Godard's submission where they are asking the question: What is the real issue here and how are we as a province going to forge ahead into the next century and make sure that we create the type of environment whereby we allow for some of these issues to be resolved in a fashion that maybe we do not have the answer to right now, but with some creative thought we will have the answer to? I think that is very, very important. We are moving into a new age. The computers and the information that people can avail themselves to are changing the dynamics. I think everyone will agree information is power. The more information that people have, the more power they have, and the less need they have for organizations, for governments, in some cases, for unions, for employers to give them instructions, because up until now they have not been able to avail themselves of the information necessary to make decisions. They have been reliant on other bodies to make those decisions as we continue to expand the Web and all the rest of it. The real power is going to go to the individual people. That is a good thing. That is something that all sides of the equation are going to have to look to.

* (18:00)

There are a number of issues in here, outside of the three major ones, that have drawn attention and have been noted again. We have a recommendation for the LMRC and in spite of that, I do not find myself in a position to be able to support those clauses within Bill 44, and I will not support them. I must say, just looking at the news release, that I do not believe the Minister has in any way been able to bring some resolve to the disagreements that we have seen.

I will be interested in how she is going to clarify the criminal activity, but certainly her amendments to the automatic arbitration do not appear to me to go the necessary route to make sure that it is only undertaken in a fashion that is mutually agreed to by both parties and consensual, and I think, as long as that element is missing, there will be difficulty on both sides with that. Certainly she is not addressing at all the issue of whether a secret ballot is, which I believe, the most fair and open way to allow individuals and, in this case, employees to express their true opinions. On that basis, I wanted to get those thoughts on the record.

One other issue that I want to raise, which I think I found very perplexing in this and in other committees, is just the whole process that we put people through. When I go back to my business career, we never had a union. I think one of the reasons we did not have a union is we tried to treat people in a respectful way. I do not feel the process that is set up in this legislative body is set up to treat presenters in a respectful way, and I think that is regrettable. I think we need to change that.

I am particularly disturbed by the arguments that go back and forth, well, you did it this way then, and you did this and we did that. It gets to be a "he said, she said." I think most of us learned at our mother's knee that just because all your friends jump off a bridge does not mean you do it, too. I hope we, at some point, can rise above that and set up a process that will allow

people to voice their opinion, will allow it to be done in a respectful and timely way and will allow us as legislators to take some time after that and give some true reflection on what they have had to say and some true deliberation into how these bills could be amended as a result of it.

Thank you for the time and let us get on with business.

Mr. Chairperson: Thank you, Mr. Loewen.

Mr. Jack Penner: Just to put a few brief remarks on the record, this bill, unfortunately, takes us back to the future. This bill is really very similar to legislation that was in place in many ways prior to 1996, and I think we have all heard that said on a number of occasions. Some of the significant changes in this bill, in my view, are doing away with individual people's rights.

We have seen a number of pieces of legislation introduced by this government that are really a bit surprising, and people out in the communities are really only starting to discuss the true meaning of a number of the changes that are being brought about by legislation. There is a great deal of similarity in many of the bills in that respect. If you take Bill 4, The Elections Act, and what that does, and it curtails the involvement of individuals making their views known on certain issues and puts limitations on expressing views out in the public. Bill 12 deals with the same restrictive kind of legislation, even to the point where it is questionable whether a person still has rights in their own homes or whether it allows government to walk into the privacy of homes and questions the privacy of individuals and the rights of individuals to teach their children.

Bill 42, again, addresses this whole matter of rights and freedoms. Bill 44 deals with the elimination of the right to vote, and again, the right of an individual to exercise what is constitutional, in my view, and is really at the root of why Canada is and has been voted the best place to live of all the countries of the nations by the United Nations. Those freedoms, people are starting now to reflect in the general public, and comments I hear at coffee shops and the questions people are asking, what is this government up to. Quite frankly, many of these people are people who, the first month or two that Gary Doer was elected Premier, spoke very highly of Mr. Doer and his ability to speak to people and his cordiality and all those kinds of things. Yet today they are questioning whether this wolf is actually dressed in sheep's clothing.

I think that should concern this government greatly because, yes, this is a good time to introduce controversial legislation. It is the first term. If you abide by the concepts of, well, we are going to have forgotten all about this three years hence, I think some of the things that you are doing will linger, and I think this bill will linger. The effects of this bill will linger. The questions that are being asked now in the general public by the public of people like myself simply reflect the rights, the freedoms, the fundamentals, something that is very fundamental and very sacred to most of our people.

When I talked to the home schoolers that were in the gallery today–and I had a long chat with a large group of them just a week ago, and their main concern was my right as a Canadian to teach my child and to make the choices. Yet, this legislation addresses one of the fundamental issues of the right to vote in privacy, to privately express an opinion and record that opinion by a right very few countries or many countries would probably fight long and hard over, a right to that freedom. Many of our former countrymen have given their lives to protect that freedom, and today we are dealing with a simple piece of paper that will say you no longer enjoy that same principle and whether, as an individual, I have the right to a private ballot to vote whether I should or should not join an organization.

I think, Mr. Chairman, that we as legislators, no matter which party we belong to, should make one fundamental issue unchallengeable and that is that we do not, that we should not allow ourselves to be power hungry enough to draft legislation that will take away those rights and freedoms. I do not know who gave the instruction, whether it was the Minister of Labour, to write some of these sections in this act, but hopefully after hearing the business community and some of the concerns expressed by the business community, hopefully, after

hearing their very, very strong commitment to encourage the Minister to change the legislation to be more representative of the Canadian way of legislating. It needs to be heard and understood.

* (18:10)

I think that the business community was only reflecting what I hear many of the farm community now express an opinion on. They are questioning whether this is an attempt to bring their industry–which is in large part the agricultural industry or community–has in large part been exempted from The Labour Relations Act because it has always been recognized that the farm community dealing with livestock has to work seven days a week and sometimes various hours, especially when a cow is calving in a barn you sit there and become a midwife to that cow, so you do not leave the barn until the calving is complete.

When a sow is farrowing in a barn, no matter what kind of stories we hear in the city or we read, the fact of the matter is that these sows are confined, yes. The only reason they are confined, they can become very angry and very dangerous and are not immune at all to killing their whole litter. So the reason they are confined is to make sure that they will not attack and kill their own young. So somebody sits there while the sow is farrowing and makes sure that the young are removed far away enough from the sow till the sow is finished farrowing and then put them back by the sow and they start nursing.

That is reality. Having been on a beef and hog farm, having been born and raised on one, that becomes a task that can consume 24 hours a day. Many of the newer barns that I visit have kitchens, sleeping facility for the staff and so to engage those people, force them into a unionized situation and encourage them or force farmers to become part of their operations under The Labour Relations Act would be totally unworkable. I hear during the debate at the NDP annual meeting that it was the intent of that annual meeting to pass a resolution that would have basically put the NDP Government in a position where they would in fact force all farmers to be subjected to The Labour Relations Act which they are now exempted from and would make it virtually impossible to run many of these operations. It just would not work.

I am suggesting to the Minister, if it is her intent to pass Bill 44 and then move toward the removal of the exemption for agriculture, the agricultural community will be up in arms. They will mount an effort that this government has not yet experienced. I am told that not only from their organization but also from many of the individual farmers that I meet with very regularly. I say to the Minister: You would do well, in my view, to scrap this bill, have a long discussion with the industry. I would even say that most of the labour community would be very willing to sit down with you to help you draft legislation that would be much more amenable than this legislation. I would think, indeed, that the agricultural community would also welcome an in-depth discussion on how acts such as this, taking away rights and freedoms, have a major effect on everybody. So I would encourage you, Madam Minister, to seriously think about withdrawing this bill and start all over again with legislation. I think you would do yourself a favour.

Mrs. Joy Smith (Fort Garry): I would like to put just a few comments on record concerning Bill 44. I will start off by saying that withdrawing Bill 44, I believe, at this time, would be a very wise decision on the part of the Government. We heard presentations last night from labour and we heard from business. Clearly there are some points that each of the sides, for instance, when you are talking about violence on the picket line and some other aspects that can be–with more collaboration, with more talking, I am sure that The Labour Relations Amendment Act can be redefined and wordsmithed to such an extent it would be agreeable for all parties.

Right now it is totally unacceptable. It is unacceptable because it draws a wedge between labour and business. Clearly, when you see the ads in the papers, when you hear the presentations, this militant attitude, this lack of collaboration between two sides shows that the legislation is definitely flawed. The members opposite have attributed the success that they feel that they have had since being elected to government because they have so-called open-

door policies and so-called listening to the public. On August 4, on August 8, on August 10, on August 14, the Minister of Labour repeatedly said: We want to listen to the people. This is recorded in Hansard.

Having said that, I think it is time now members opposite live up to those expectations, step back from Bill 44 and meet with all the players. Clearly it is not time to ram this bill through. I do have a concern because all the bills that have been brought forward have been rammed through without collaboration, without meaningful input from the public. I would encourage the Minister of Labour and members opposite to take a serious look at Bill 44 and take a serious look at what everyone in the community is telling you. Labour is saying there are flaws in the Bill. We are hearing from businesses that are saying major flaws in the Bill. Having said that, what we need to do is step back.

What this government needs to do is withdraw the Bill and sit down with business and with labour, listen to the issues that each of the sides have, collaborate in a meaningful way, and come up with a bill that will produce strong legislation. This legislation is weak. It is a flawed piece of legislation. Clearly, in the House, the Minister can pick out phrases and pieces and bits of information to support the arguments that this bill should go through, but that is a camouflaged, veiled way of getting the real message out to the public. We are talking about the ability to have a democratic society where we have real input from committees.

I would like to put on the record that the opportunity to have meaningful input from the community was available this week until the Committee was shut down. Having said that, there were people who wanted to make presentations who were not able to. Now I am asking the Minister and this government to stop and pause.

* (18:20)

Today, in a news release, clearly business and labour are talking with each other. The news release that was put out by the business coalition stated that they were wanting to meet with labour to have some meaningful collaboration, that they wanted more time to sit down and talk together to make Bill 44 meet the needs of both labour and business. In this country and in this province we are supposed to be elected officials that listen to the people, that do not have a top-down government. We are supposed to be elected for the people by the people.

I would encourage the Minister of Labour to listen carefully to what the presenters were saying last evening. A great deal of the presenters and the news release out today from the coalition of business indicated that they needed time to sit down. It is easy to say we are open-minded, we collaborate, we listen to the people, but actions speak louder than words. It is regrettable that the legislation that is put through so far has been rammed through. Bill 42 was rammed through, Bill 12 was rammed through, and now we are looking at Bill 44 along with some other bills that were rammed through, and it is time for this very important bill to come under very careful scrutiny by all the shareholders in business and in labour. I would ask this minister to be very mindful of this.

Mr. Vice-Chairperson in the Chair

Having said that, I am hoping that members opposite and the Minister of Labour can carefully take the time to look at this and allow labour and business the time it takes to meet, collaborate and help assist in building a strong piece of labour legislation that will stand the test of time, and instead of driving a wedge through business and labour we will have a piece of legislation that will shore up the business and the labour aspect. Thank you.

Hon. Jon Gerrard (River Heights): Just very briefly, Mr. Vice-Chairperson, I think this bill has been through the ringer over the last few days in the Committee hearings, given that the hearings went until 5:30 this morning, that the time for consideration of many of the thoughtful comments is clearly inadequate.

Given the very substantive eleventh-hour proposal this morning from Rob Hilliard and the Manitoba Federation of Labour and the positive response from the business coalition, clearly the Minister would be well advised to withdraw the

Bill and provide an opportunity for careful consideration by both labour and business. Rob Hilliard indicated in his presentation and his press release that he would like to be able to present this next month to the annual meeting of the Manitoba Federation of Labour, and clearly such an approach would provide that opportunity to business and labour to come to an agreement and for it to go in a more responsible fashion than the approach that the Minister has taken. Thank you.

Mr. Vice-Chairperson: During the consideration of the Bill, the preamble and the title are postponed until all other clauses have been considered in their proper order. If there is agreement from the Committee, the Chair will call clauses in blocks that conform to pages, with the understanding that we will stop at any particular clause or clauses where members may have comments, questions or amendments that they propose. Is that agreed? *[Agreed]*

Ms. Barrett: Mr. Chair, I believe that if you canvass the Committee, you will find that there is agreement that instead of going clause by clause in order we would go clause by clause with five exceptions which, if there is agreement, I can read into the record. These are clauses that the Government will be amending. I have had discussions with members of the official opposition and we would like to put before the Committee a slightly different order of clause by clause.

I would like to ask for concurrence of the Committee that we will deal with clause by clause of the Bill, with the exceptions of the following sections: sections 3, 6, 10, 23 and 27, and that those clauses would be dealt with upon the completion of the clause by clause of the rest of the legislation. We will deal with those sections in order at the end. I am just wondering if there is agreement.

Mr. Vice-Chairperson: What is the will of the Committee? *[Agreed]*

Moving to the clauses, clauses 1 and 2–pass. Shall clauses 4 and 5 pass?

Some Honourable Members: Pass.

Some Honourable Members: No.

Mr. Schuler: Mr. Chairman, I am sorry. I thought you had said does clause 1 pass, and you actually said clauses 1 and 2. Just for the record, the Opposition does disagree with them passing. I did not hear 1 and 2.

Mr. Vice-Chairperson: Just a reminder–thank you for your comment–that we had initially said that we would do the clauses in blocks, so blocks 1 and 2, which we agreed. Shall clauses 4 and 5 pass?

Some Honourable Members: Pass.

Some Honourable Members: No.

Mr. Schuler: On division.

Mr. Vice-Chairperson: Clauses 4 and 5–pass on division. Shall clauses 7, 8 and 9 pass?

Some Honourable Members: Pass.

Some Honourable Members: No.

Mr. Schuler: On division.

Mr. Vice-Chairperson: Clauses 7, 8 and 9–pass on division. Shall clauses 11, 12, 13, 14(1), 14(2), 15 and 16 pass?

Some Honourable Members: Pass.

Some Honourable Members: No.

Mr. Schuler: On division.

Mr. Vice-Chairperson: Clauses 11, 12, 13, 14(1), 14(2), 15 and 16–pass on division. Shall clauses 17, 18, 19, 20, 21 and 22 pass?

Some Honourable Members: Pass.

Some Honourable Members: No.

Mr. Schuler: On division.

* (18:30)

Mr. Vice-Chairperson: Clauses 17, 18, 19, 20, 21 and 22–pass on division. Shall clauses 24, 25(1), 25(2) pass?

Some Honourable Members: Yes.

Some Honourable Members: No.

Mr. Schuler: On division.

Mr. Vice-Chairperson: Clauses 24, 25(1), 25(2)–pass on division.

Shall clause 26 pass?

Some Honourable Members: Yes.

Some Honourable Members: No.

Mr. Schuler: On division.

Mr. Vice-Chairperson: Clause 26–pass on division.

Shall clauses 28 and 29(1) pass?

Some Honourable Members: Yes.

Some Honourable Members: No.

Mr. Schuler: On division.

Mr. Vice-Chairperson: Clauses 28 and 29(1)–pass on division.

Shall clauses 29(2), 30, 31 and 32 pass?

Some Honourable Members: Pass.

Some Honourable Members: No.

Mr. Schuler: On division.

Mr. Vice-Chairperson: Clauses 29(2), 30, 31 and 32–pass on division.

Shall clause 3 pass?

Some Honourable Members: Pass.

Some Honourable Members: No.

Ms. Barrett: I am wondering, before we deal with the rest of the clause by clause of the Bill 44, if it would be acceptable to the Committee to take a break until 7:30 p.m.

Mr. Schuler: Agreed.

Mr. Vice-Chairperson: Is it the will of the Committee to recess? *[Agreed]*

The Committee recessed at 6:33 p.m.

The Committee resumed at 7:34 p.m.

Mr. Chairperson in the Chair

Mr. Chairperson: Will the Standing Committee on Industrial Relations please come to order. Prior to the recess of this committee, we had been dealing with Bill 44 clause by clause. A number of clauses had been passed on division and presently we are in consideration of an additional clause. Shall clause 3 pass?

Some Honourable Members: No.

Ms. Barrett: I move

THAT section 3 of the Bill be replaced by the following:

3 Subsection 12(2) is amended by striking out everything after "employee" *and substituting* "was because of conduct of the employee that was related to the strike or lockout and resulted in a conviction for an offence under the *Criminal Code* (Canada) and, in the opinion of the board, would be just cause for dismissal of the employee even in the context of a strike or lockout."

[French version]

Il est proposé que l'article 3 du projet de loi soit remplacé par ce qui suit:

3 Le paragraphe 12(2) est modifié par substitution, au passage qui suit "dans ses fonctions", de "du fait que ce dernier s'est conduit d'une façon qui se rapportait à la grève ou au lock-out, qui a entraîné une déclaration de

culpabilité pour infraction au *Code criminel* (Canada) et qui, de l'avis de la Commission, constitue un motif valable de renvoi, même dans le contexte d'une grève ou d'un lock-out".

Motion presented.

Mr. Chairperson: The motion is in order, and the motion has been moved with respect to both the English and French text. Is the Committee ready for the question?

Ms. Barrett: I would like to take a moment and I hope it will just be a moment to explain this change in the amendment. There was concern raised about the original amendment in Bill 44 which would require that the Labour Board reinstate a worker after virtually any kind of behaviour on a picket line.

This amendment to Bill 44–I will apologize if I am not as clear, and if there are questions, please ask me them afterwards–states in effect that again, as we have stated before, there is a presumption of innocence in the sense that employees are deemed to be able to go back to work. That is the one principle that we want to recognize. We also wanted to recognize and acknowledge that there could be incidents that happened on the picket line that should be opened to not having the individual reinstated.

This amendment says, in effect, that if the back-to-work protocol which is addressed in the section before this one which is not being changed, if they cannot come to an agreement on reinstatement of one or more individuals because of the situation of a person being charged with an offence under the Criminal Code which could be something that could range from kicking the tires of a car as it went by, which is a Criminal Code offence, to assault with a baseball bat hitting over the head theoretically to murder. So there is a wide range of Criminal Code offences.

What this amendment says is that an employer can appeal to the Labour Board to not reinstate an employee. The Labour Board will look at the nature of the offence and can make a determination to say because the conviction will happen at a certain degree of time after the normal reinstatement would take place, the Labour Board can say this was an offence such as kicking the tires of a car, so we are going to order the reinstatement until the disposition of the Criminal Code offence has taken place.

On the other hand, the Labour Board could take a look at the offence and say no. This was a serious enough offence that, in the opinion of the Board, if convicted would be just cause for dismissal and rule that in the interim the employee would not be reinstated. So what we are doing is we are saying there is an interim time here before the disposition of the Criminal Code offence, and the Labour Board will then be able to say in the interim the employee should be reinstated or in the interim the employee should not be reinstated. So it is a recognition that there is a range of activities that could be Criminal Code offences, and give the Labour Board the authority to determine what would be the degree of the severity of the offence and should it be reinstatable until the disposition or not reinstatable until the disposition.

* (19:40)

Mr. Chairperson: Is the Committee ready for the question?

An Honourable Member: No.

Mr. Darren Praznik (Lac du Bonnet): First of all, I appreciate the Minister's explanation of this particular provision. The way in which we got into all of this in the first place was under the old provision that the Minister has referenced on many occasions, that the Labour Board did not have sufficient authority to be able to, where we had a severe act of vandalism or of violence and a conviction under the Criminal Code, to be able to deny that person access to their job, that they had done something so serious that no employer should be able to expect to take them back. Under the provision that the Minister of Labour spoke many hours about in the House or many occasions about that in the House about the old system, it was found to be wanting. I think she has now recognized that from her comments. She has come, in my view, a long way from the early days of this debate, at least recognizing there was a problem.

Now, I think what I am hearing, and I heard so many of the presenters and we have heard

many on both sides, is there is a recognition by reasonable people that there is a range of Criminal Code convictions that can take place, and at one end the relatively minor event that could happen in the heat of a strike or lockout situation that could still result in a Criminal Code conviction should not be sufficient to warrant loss of a job. There are probably some businesspeople who would not agree with that, think they should not be allowed in. There are many who think that is reasonable.

On the other side of that continuum, you have those who recognize that a serious offence, the Trailmobile incident, which brought all of this to public attention was where several employees in the course of a strike or lockout did severe damage to their place of employment. They broke in and they trashed the place. It was done all before a television camera, so the evidence was clear. I think the public reaction was that this was so fundamentally wrong. There was an expectation that those employees who were involved in that trashing of that workplace should not have been reinstated.

Now, I have heard many in the business community who certainly agree with that: They should not be reinstated. I have heard some in the labour community agree that that is certainly the case. What has concerned me is some of the labour presenters have said that there is a double jeopardy issue here, that if a person did do that and served a jail time or a major fine, et cetera, that losing their job would be more than the penalty. But what we are talking about here is relationships in the workplace, that the act was so severe that it has ruined the working relationship, that no reasonable employer should be expected to take that person back and work with them when they have caused injury to other people, significant injury to other people, or have caused great cost and damage to the workplace or what have you.

So we know there is a continuum, and we know that, I think, the vast majority of reasonable, fair-minded people recognize that not all Criminal Code convictions should result in a loss of the job, whereas there are certainly some which should not result in reinstatement into the workplace. We recognize that that is very hard to define and that there has to be, obviously, some body that is going to make that decision around some rules.

I have to say that the Minister from just a few weeks ago saying in the House that we should go back to the old way, that there were no problems with it, has now come to the point where she recognized that there was a problem under the old way. So she has recognized the argument that we have made for weeks now, and I appreciate that movement on her part. However, here is the difficulty with the amendment that she has come up with. The people who have to live with this on a daily basis around the wording–and I can see where she is coming from about this wording, and the concern for us here is the term "even in the context of a strike or lockout." Well, there will be many versions as to what is normal or acceptable behaviour in a strike or lockout. We can all point to instances of great damage, of threat, of violent acts, that in some cases have been termed by some to be regular, normal acts on a strike or a walkout situation, which I think the majority of the public and fair-minded people would say was not appropriate.

So our concern with accepting this amendment, although we appreciate that the Minister has now abandoned her original position, has recognized the arguments that we made initially for amending the Act when we were in government, is now coming up with, almost at the last minute, a wording that could have a very profound effect on this section. Now, in listening to presenters in labour and management, looking at the work of the labour-management review process, we are under the belief that the parties who have to work with this on a regular basis are likely, if the Minister is to–and I am a former Minister of Labour. I know how labour-management review works. You can put a problem as a Labour minister to that committee and you could say here are the parameters around which I, as minister, and this government are prepared to accept and take to the Legislature. Now within those parameters, why do you not sit down and see if you can find the wording and the rules that you would like us to take it under?

We think that this is an ideal opportunity for the Minister to go back to the Labour

Management Review Committee with this section and to say: Listen, we think that this is what is acceptable to the Legislature, the parameters around what this section should be. Why do we not give you three months or six months to come up with a wording that will be within those parameters and is workable and liveable for you who will be governed by this every day. You know, that is what the Labour Management Review Committee is for, and I think if this government had used the Labour Management Review process properly, this particular issue today would not be an issue. In fact, if the Minister had recognized why the law was changed in the first place–maybe she thought the wording we had put was somewhat restrictive or strong, and that is her right–she could have said, listen, this is what we want in principle, come up with the wording, and at least given them ample opportunity to do that. I think quite frankly the speed with which these amendments came forward, the atmosphere that was created, did not give the Labour Management Review Committee an opportunity to do it.

We appreciate where the Minister is coming from, but we think, given the importance of this clause, that we cannot support this amendment. We think the right place for this to be determined, or at least to be given a chance to determine this section, is with the Labour Management Review Committee. We would suggest that the Minister withdraw this clause. We will be voting against this amendment and this clause. We think it should come out of the Bill.

We think the Minister should give a short time frame to Labour Management Review to go and work within the parameters, and I think we agree on those parameters, to come up with a wording, that both sides at least should have the opportunity to come up with a workable wording. The difficulty with what the Minister is suggesting we pass today, something that has hurriedly been put together, that has not been canvassed, I think, through the players who have to work with it every day, is this line that the test has to be a Criminal Code conviction that would be just cause for dismissal even in the context of a strike or lockout. That is so broad, and there are so many views as to what would be acceptable or not. We believe to be effective it requires more definition.

* (19:50)

We cannot support this amendment. We at least now see the Minister moving to our position about why this needed to be changed in the first place. She should do what she should have done months ago and take this particular provision and go back to Labour Management Review, give them the parameters, on which I think we agree or have general agreement, and ask them to come up, in a short order, with the wording. Do you know, if she did that, the Minister would be able to bring this back in the fall session, if we should have one, of the Legislature, and if this was an amendment to the Bill she wanted to make, I am sure it is one that would be dealt with speedily by the Legislature? In fact, my experience has been that if the Labour Management Review Committee agreed to a wording within these parameters and this minister brought in a bill, if we should have a November session, which is in the prerogative of the Government, if they brought it in and that minister could say this was supported by Labour Management Review, both sides have come to an agreement on this wording, I bet you that bill would go through the Legislature very quickly and the Minister would have it in The Labour Relations Act before the end of this calendar year.

This is not a delay. I think this is a way of getting good, effective labour legislation. I know others may want to comment on it from our side, but I believe it is our view that we will be opposing this amendment, we will be opposing this clause, we will be voting against this in the Bill. We would hope that the Minister would take that next step to recognize that the right place to draft this wording is Labour Management Review, proceed to take it there on a speedy basis, give them the parameters, give them a tight time frame and come back. Give them a chance to do their job, and should they be successful, come back to the Legislature in November with an agreed-upon clause that does what the Minister wants rather than this speedy job to try to solve a problem to get a bill through today without the kind of concurrence in an area

which is just ripe for reaching agreement and using the Legislative Review Committee.

Ms. Barrett: I appreciate the comments from the Member for Lac du Bonnet. At the very beginning I thought, oh, we are down a community of interest slope here when the Member talked about discretion being given to the Labour Board in recognizing that there is a continuum, and there is a continuum in two areas, as I believe I am paraphrasing what the Member said, which I believe is accurate as well. There is a continuum in the range of an activity that comes under the Criminal Code, and there is a continuum of a range of activities that take place on the picket line which range from the type of activity that reasonable people could say is a matter of the heightened emotions of a picket line and that are reflective of that, to the very serious destruction of personal property, destruction of property, physical violence, et cetera. We agree on those things. I believe in the context of this discussion that "reasonable people" in the legislation is identified as the Labour Board. The Labour Board, in this context, acts as the view of reasonable people because it is a panel made up of representatives of management, representatives of labour and a chair, so this is *in loco* of reasonable people, this labour board entity.

We are agreeing on that kind of thing. That is a long way that we have come in agreement. The concern that I have and the problem that I have, and the reason we will not be supporting the Member's suggestion on returning it to the LMRC is that the LMRC was charged with looking at this particular section of what was then Bill 26. While the content of the deliberations is confidential, I can say that there was basic disagreement over the phrase that the Member very rightly points out is different between what was in Bill 26 and what is in this amendment which is "even in the context of a strike or lockout." Management's position was you should be able to dismiss for activity which would be an offence within the context of a strike or lockout or outside the context of a strike or lockout. Labour's position was very diametrically opposed, which says there is a unique kind of behaviour potential difference in picket line activity.

The Labour Management Review Committee was unable in their deliberations to come up with an agreement on that, and, frankly, the Labour Management Review Committee basically said, the two sides, basically labour said that they strongly felt that the wording should go back to prior to the Bill 26 provision, which was the motion or the element that was in Bill 44, that is, that there would be no discretion, that you would be reinstated.

The management's position was that the current wording, the Bill 26 wording is justifying, so while I really do appreciate it, and I do not mean to go on talking too long, but I do appreciate the fact that we are on the same wave length in the context of this situation, which I think is very admirable because this is a difficult, difficult issue. I know the Member, who was not only a former Labour minister but a lawyer as well, can well appreciate the complexities of this.

I am afraid we will not be able to support the suggestion that goes back to LMRC because LMRC has been in their deliberations diametrically opposed. I do not see that there is any way that they could come to an agreement. Secondly, we believe that this particular amendment balances that, recognizes the continuum of Criminal Code activities, recognizes the continuum of picket line activities and gives the role of reasonable people to discretion to the Labour Board.

Mr. Praznik: Mr. Chair, I give the Minister credit for being a new Minister of Labour and her first experience with the Labour Management Review Committee, but I can tell her the fact that at Labour Management Review the issue was raised and agreement was not reached does not mean that it cannot now be reached given what has gone on.

As Minister of Labour, there were occasions when I had issues which I knew where the parameters were of what we were looking at accomplishing.

I was very up front with the Labour Management Review Committee. I said we are looking at doing something in these parameters. I would like your best advice within these

parameters. That does not mean that the side had to accept the parameters, but within them they could give advice. So I sometimes had recommendations that were saying, Mr. Minister, we may not agree with where you are going, but if you are going to go there, that is where we would like it to be. This makes it liveable and workable for us, if that is where you are going, talking administratively.

So I think this is an excellent opportunity, if this minister were to use the next few months, as we have suggested, to defeat this clause in the Bill, send it back to Labour Management Review, who it appears now, after the course and the way the Government has handled this, is not a functional body now. This is an opportunity to rebuild a relationship that she and her government have damaged very significantly. This is a way of sending this back and saying here are the parameters. The legislative committee discussed this and there appears to be a view that these are the parameters around which we think this clause should be. So business, if you think it should have no discretion, we are not accepting that, and labour, if you think there should be no discretion, it is automatic, we are rejecting that. So we are rejecting both your positions, but we are saying the answer is in the middle and we are going to give you the chance to develop the wording that is workable. We do not ask you to accept our parameters, but this is where we want the advice.

You know, my experience has been, in those cases, the Labour Management Review Committee was very good at doing that. I sometimes had advice coming back with both sides saying we are not happy for whatever reason with where you are going, but if you are going to go that way this is the best way to do it. This Legislative Assembly, this committee is indicating that there are some parameters that we appreciate. Why not use this as an opportunity to give Labour Management Review a short-order period to work, to do what they were intended to do within those parameters to get back and build some improved relationship there? I am not going to go on much longer. I just say to the Minister this is a golden opportunity to rebuild relationships at LMRC, Labour Management Review Committee, to give labour and management a chance to develop a workable wording for both of them within the context of those parameters.

Consequently, we will oppose this amendment. We will oppose this clause because we think this is a matter that should go back with those parameters to LMRC to do what they should have been doing months ago.

* (20:00)

Mr. Schuler: I will keep my comments brief because I did have the opportunity to put an opening statement on the record. Minister, as I mentioned in my opening statement, we felt that there was a time problem and that the process was flawed. With the amendment, I must say that it is probably this wording that should have gone to the LMRC in the first place. I do not think it is again the wording that we have as much of a problem with as the opportunity for labour and management to have had a look at it, for them to have worked it through.

My colleague the Member for Lac du Bonnet (Mr. Praznik) said this is good opportunity for the Minister to rebuild her relationship with LMRC, which from what I sense, and I said I do not have first-hand knowledge, there seems to be some problem with it. The Minister put on the record that the wording is just fine, thank you. We are not critiquing you, Minister, on the wording. Again, we have said we did not want this to become a shrill debate. If we disagree with you, we are going to disagree with you and that is going to be the case. It is not that we disagree with the wording.

Again, this is probably what should have gone in the first place, but to give an opportunity to the LMRC to have a look at this, for labour and management to go through this, Minister, would do a lot to rebuild the relationship that is in very, very poor shape as we see it today. I mean, let us not play semantics. We have all seen the ads that are running, we have heard the ads that are running and maybe this would be an area that they could come together on.

I think, unless there are other members on our side who wish to make some comments, that

would conclude my comments and we would be prepared to proceed to move onto the next one.

Mr. Chairperson: Is the Committee ready for the question?

Some Honourable Members: Question.

Mr. Chairperson: The question before the Committee is as follows: Moved by the Honourable Ms. Barrett

THAT section 3 of the Bill–

An Honourable Member: Dispense.

Mr. Chairperson: Dispense.

THAT section 3 of the Bill be replaced by the following:

3 Subsection 12(2) is amended by striking out everything after "employee" and substituting "was because of conduct of the employee that was related to the strike or lockout and resulted in a conviction for an offence under the *Criminal Code* (Canada) and, in the opinion of the board, would be just cause for dismissal of the employee even in the context of a strike or lockout."

[French version]

Il est proposé que l'article 3 du projet de loi soit remplacé par ce qui suit:

3 Le paragraphe 12(2) est modifié par substitution, au passage qui suit "dans ses fonctions", de "du fait que ce dernier s'est conduit d'une façon qui se rapportait à la grève ou au lock-out, qui a entraîné une déclaration de culpabilité pour infraction au *Code criminel* (Canada) et qui, de l'avis de la Commission, constitue un motif valable de renvoi, même dans le contexte d'une grève ou d'un lock-out".

Is it the pleasure of the Committee to adopt the amendment?

Some Honourable Members: Yes.

Some Honourable Members: No.

Mr. Schuler: Recorded vote, please.

Mr. Chairperson: Perhaps you can give us a moment and we will see if we get to that point.

Voice Vote

Mr. Schuler: Yeas and Nays.

Mr. Chairperson: All those members in favour of the amendment, please indicate by saying yea.

Some Honourable Members: Yea.

Mr. Chairperson: All those opposed to the amendment, please indicate by saying nay.

Some Honourable Members: Nay.

Mr. Chairperson: In my opinion, the Yeas have it.

Formal Vote

Mr. Schuler: A recorded vote, please.

Mr. Chairperson: A recorded vote has been called.

Point of Order

Mr. Praznik: Just a point of order, Mr. Chair, for clarification.

Mr. Chairperson: Yes, Mr. Praznik.

Mr. Praznik: I know, because this committee could sit for some time, there may be some changes, but you might just want to go through the list of the members of the Committee who are the voting members.

Mr. Chairperson: Yes, we can do that.

To deal with the point of order first, the Honourable Mr. Praznik does not have a point of order, but for the information of the Committee members I will reference the voting members of this committee: Mr. Aglugub; the Honourable Ms. Barrett; Ms. Korzeniowski; the Honourable Mr. Lemieux; the Honourable Ms. Mihychuk; the Chairperson of the Committee, myself; and Mr. Smith, Brandon West.

For the Opposition, it is Mr. Loewen; Mr. Penner, Emerson; Mr. Schuler; and Mrs. Smith, Fort Garry.

* * *

Mr. Chairperson: A recorded vote has been requested.

A COUNT-OUT VOTE was taken, the result being as follows: Yeas 6, Nays 4.

Mr. Chairperson: The amendment is accordingly passed.

* * *

Mr. Chairperson: Shall clause 3 as amended pass?

Some Honourable Members: Yes.

Some Honourable Members: No.

Voice Vote

Mr. Chairperson: All those in favour of clause 3 passing, as amended, please signify by saying yea.

Some Honourable Members: Yea.

Mr. Chairperson: All those opposed to the amended clause 3 passing, signify by saying nay.

Some Honourable Members: Nay.

Mr. Chairperson: In my opinion, the Yeas have it.

Formal Vote

Mr. Schuler: I would request a recorded vote, please.

Mr. Chairperson: A recorded vote has been requested.

A COUNT-OUT VOTE was taken, the result being as follows: Yeas 6, Nays 4.

Mr. Chairperson: Clause 3 as amended is accordingly passed.

* * *

Mr. Chairperson: Shall clauses 6(1) and 6(2) pass?

Ms. Barrett: I move

THAT the proposed subsection 40(1), as set out in subsection 6(1) of the Bill, be amended by striking out everything before item 1 and substituting the following:

Certification, representation vote, or dismissal
40(1) Subject to this Part, when the board receives an application for certification and is satisfied that the employees were not subject to intimidation, fraud, coercion or threat and that their wishes for union representation were expressed freely as required by section 45, the board shall do the following when it receives an application for certification:

[French translation]

Il est proposé que le paragraphe (40(1), énoncé au paragraphe 6(1) du projet de loi, soit amendé par substitution, au passage qui précède le point 1, de ce qui suit:

Accréditation, vote de représentation ou rejet
40(1) Sous réserve des autres dispositions de la présente partie, si elle reçoit une demande d'accreditation et qu'elle soit convaincue que les employés n'ont pas été la cible d'intimidation, de fraude, de coercition ou de manaces et qu'on leur a permis d'exprimer librement leur désir de représentation par un syndicat conformément à l'article 45, la Commission:

Mr. Chairperson: Is the Committee ready for the question?

Mr. Praznik: Some of our members may also want to speak to this particular amendment. This is a very interesting history with this change because we heard so many presenters out of the labour side who talked about issues of intimidation. We had many employers come and talk about their experiences with intimidation and coercion. We have had employees over the course of my years as Minister of Labour make comments to me and others about, during the

course of certification drives, being intimidated, some by fellow employees, some by union officials who were overexuberant in pushing the cause, some by employers who did not want a union.

I think one thing we have heard from labour, it is interesting. If you look at the advertisements that the labour movement have been doing in support of Bill 44, they are saying that they want to do away with intimidation of people choosing their right to belong to a union. Well, I will tell you, members on this side of the House agree that ultimately people in the workplace have a right to choose whether or not they want to be part of a collective bargaining situation and which union they want to represent them. Let us not forget, sometimes there could be two organizing drives going on at the same time, two or three different unions. So it is not just a question of do you want a union or not, but it is also the question of which union you may want to choose from.

So the underlying problem that the Government has raised is the need to prevent intimidation. Well, you know, history has proven time and time again that the best way to prevent intimidation in someone exercising a choice is to let them do it in the privacy of a ballot box. That is what history has taught us. You know, the Minister of Labour was right when she made her quote from my comments in 1991 when I, as Minister of Labour, did not amend that section of the Act. But I will tell you, my experience as Minister of Labour in the years after I amended the act was how many times after a certification process that we had employers coming in wanting to meet with my colleagues or me saying, well, you know, my employees were intimidated and this, that and the other thing, or sometimes you had employees who came in and said I did not really want the union, et cetera, or sometimes you had unions complaining about intimidation.

* (20:10)

The best way to deal with the problem that the Government has recognized is a problem or said is a problem is to give those people a secret ballot vote, because it removes all issue of intimidation, unless you are telling me somebody was bribed to vote a particular way. Even then if they were, nobody is going to know if they got value for their bribe. That is why a hundred years ago, probably one of the most significant moves in the democratic institutions of the British Commonwealth, the then-British Empire, next to the expansion of the franchise, was the doing away with the declaratory voting system.

For members who are not familiar with the history of our democracy in voting in British jurisdictions and in the United States, up until the 1870s, people who had the right to vote did so by going in a public square, raising their hand and declaring the choice, which was subject to intimidation, which was subject to a whole host of possibilities of fraud and influence, et cetera. So, having said that, what was the answer? Give people a democratic secret ballot vote. Give people the right to make their choice away from any thoughts of intimidation.

So the problem that the Government is attempting to deal with, they are dealing with it by throwing the situation right back into where intimidation can be rampant, signing a card, which is an act you do in front of another person that becomes public to all, to the Labour Board, to everyone else, that people know that is the choice you made, or if you do not want to do it, if you do not want to make that choice, you can be pushed into it, peer pressure, et cetera. It is not a true declaration of your choice because you sign a membership card. It is not at all. The best way is that secret ballot.

So I became of the view by 1995-96 that it was the way to go for all of those votes. Do you know what I will tell you, for the labour movement I cannot understand their opposition to it other than they are afraid that a vote means a little more work, a little less chance perhaps to intimidate some reluctant employees. I do not understand, if they were true democrats, why they would oppose it, because then they would know they had the legitimate support of those members, and the employer would know that they had a legitimate decision by their employees to be unionized. You know, it would allow the world to get on with collective bargaining, with the issues of intimidation gone. So what the Government now is opening up is

not a way of eliminating intimidation. The Government is opening up again that issue of intimidation to come forward every time there is an automatic certification.

Now, there is another part of this issue that the Government again does not seem to recognize with this amendment or with the general thrust that is taking this bill. Let us leave the employer right out of the scenario for a few minutes. Assume the employer for a moment has no role to play in the decision whether employees should be part of the unionization process or not. Let us take that out. Let us not even make that an issue for a moment. I ask members opposite, do they not think that every employee in that workplace has a right to participate in the process, the debate among their fellow employees as to whether or not they want to be unionized or which union they want to represent them?

Do you realize, Mr. Chair, that members opposite are now returning to a process where a percentage of the employees in a workplace can be denied any participation whatsoever in the internal debate among employees as to whether or not they want a union or which union they would like? You know why that happens, if members opposite had thought this through? It happens because now all Mr. Christophe at UFCW needs to do is have 65 percent sign cards. If there are 10 or 20 or 30 percent of those members that he does not believe may support that union or may not support his union, or may not be co-operative in the process, or may have some hard questions to be asked, all Mr. Christophe or any other type of organizer now has to do, thanks to members of the New Democratic Party and this Minister of Labour (Ms. Barrett), is to just ignore that 10, 20, 25, 30, 35 percent of those workers, never talk to them, never even let them know that a unionizing drive is going on, and they are cut out of that process. One day they wake up to find out that 65 percent of people signed a card and they are now part of a bargaining unit.

They may have even wanted to be unionized but maybe a different union, but they have been ignored from that process thanks to members opposite. The great beauty of a vote and great beauty of a compulsory vote is, once those 40, 50, 55 percent of employees have signed cards and an application for certification is made, every employee of that potential bargaining unit is now notified that an application has been made, and those employees have the ability to get together and talk about it and debate it and discuss it. Then, I would suggest not a long period of time, because one does not want to see outside influence, they can go and, in the privacy of a polling booth, they can make their choice.

So you know what members opposite are now doing? They are depriving working Manitobans, men and women who are employed in this province, of the right to fully participate in the debate in their workplace about whether or not they want a union or which union they would like to represent them. I appeal to members opposite who have done some work in the labour movement, who have been parts of their unions, who have represented their fellow employees, do they think it is fair that any one employee be cut out of the process on that decision-making, just because they may ask tough questions, because they may not like this particular union, because they may offer a different opinion? Members opposite are now making a choice to cut out of that process hundreds of working men and women who I believe should have the right to discuss this with their fellow employees and make a choice. If this is the NDP view of democracy, it is unbelievable.

Members opposite have brought to this Legislature a piece of legislation now to encourage fair debate and discussion, to limit who can contribute to campaigns, to keep outside influences away from Manitobans, men and women debating the merits of issues and candidates in making a decision. They are bringing in amendments to The Elections Act that will ensure that candidates can access the residences of Manitobans to be able to take their point of view to the door of our citizens to have good public debate, one would hope, and make an informed choice.

Yet, on the other hand, they are now denying the right of at least 35 percent, potentially, of the workers in any worksite from having any participation in the debate with their fellow employees about whether or not they should be unionized or what union they should

join. They are cutting them out of the franchise because they are taking away their right as a minority to even participate in a debate, know there is a debate going on and perhaps influence their fellow employees. Is the labour movement so scared of what it has to offer working men and women that it is prepared to cut out of that debate 35 percent of the workers in any workplace because that is what you are doing?

The beauty of a guaranteed vote is that every worker gets notified and can debate and discuss what they want to do with their fellow employees. Are you so afraid in the labour movement that some of those workers might have such powerful arguments that they may sway some of that 65 percent who sign cards to another point of view? Is that what you are afraid of? Is that what Bernard Christophe and UFCW is afraid of? You are so afraid that that might happen that you are prepared to disenfranchise thousands of Manitobans from participating in a debate about whether or not they should belong to a union or which union they should belong to, and you call yourself a democratic party. This is shameful.

The amendment that your minister brings now is to put some words in this provision that says, well, they will get an automatic vote if you can demonstrate there was intimidation, fraud, coercion or threat in that process. Well, you know what? We sat here in committee, many of my colleagues, and listened to many presenters talking about threats and coercion by employers. Well, in The Labour Act today there are provisions that prevent that. So if that kind of protection that you are now proposing with this amendment is so great, why can you not rely on it with respect to employers where it already occurs in The Labour Relations Act?

The truth of the matter is you know and I know it is very hard to prove. It is very hard to prove. Take a group of new Canadians, landed immigrants, working in a workplace whose first language is not English who are happy to have a job or working in it, and any authority figure who is tough and loud who walks in and tells them what to do, whether it is an employer or a union organizer or a fellow employee, can influence that vote.

* (20:20)

Does that give them a chance to have reasonable discussion and exercise their choice in a secret ballot? What are you afraid of? That is really what we cannot understand. That is what the business community cannot understand. That is what the people of Manitoba, the general public, cannot understand. That is why this issue, of all the pieces of this bill, has found such distaste on the part of thousands of Manitobans, many of whom voted for you in the last election, because they cannot understand why in the year 2000 a party with the word "democratic" in its name, why it would take away the right to a secret ballot. You use the argument that we want to prevent intimidation. Well, if that is your argument, let us all have an election where you just sign a card–65 percent you win the seat.

That is ludicrous. You know, what is most troubling about it is in doing this today you are taking away the right of up to 35 percent of workers in any workplace where there is automatic certification of knowing that there is a drive going on, of participating in the discussion with their employees and participating in the choice. You are allowing those unions who are afraid to talk to people who might disagree with them or might ask tough questions of that union, you are supporting that kind of thuggery to keep those people from participating in the decision that they want to make.

You call yourself democratic. Some of you purport to represent the most vulnerable in our society or most susceptible to influence and intimidation. You are taking away from them the best tool they have to express their true will and intent, the secret ballot. That is what you are doing. You are proud of yourself. I will tell you, if I was a leader in the labour movement, if I worked in the labour movement today, I would hope that I would have enough confidence in the service that I could provide the people that I wanted to work for, that I had enough confidence in what I could do for them that a secret ballot would never worry me, because you know what, it would just mean I was legitimate. I could say to the world I was legitimate. If I worked in the labour movement today, I would not hide behind this kind of garbage that many in the labour movement are doing. They no way

compare to the great leaders of the labour movement of a few decades ago. They pale in comparison, and the New Democrats of today pale in comparison to the New Democrats who first served in this Legislature.

Ms. Barrett: The purpose of this amendment is to reference the elements of section 45 that refer to the need for employees to be not intimidated or coerced in the certification process by either management or the union. So I present this amendment for your voting.

Mr. Chairperson: Is the Committee ready for the question?

An Honourable Member: Question.

Mr. Chairperson: The question before the Committee is as follows: Moved by the Honourable Ms. Barrett

THAT the proposed subsection 40(1), as set out in subsection 6(1) of the Bill, be amended by striking out everything before item 1 and substituting the following:

An Honourable Member: Dispense.

Mr. Chairperson: Dispense.

Certification, representation vote, or dismissal
40(1) Subject to this Part, when the board receives an application for certification and is satisfied that the employees were not subject to intimidation, fraud, coercion or threat and that their wishes for union representation were expressed freely as required by section 45, the board shall do the following when it receives an application for certification:

[French translation]

Il est proposé que le paragraphe (40(1), énoncé au paragraphe 6(1) du projet de loi, soit amendé par substitution, au passage qui précède le point 1, de ce qui suit:

Accréditation, vote de représentation ou rejet
40(1) Sous réserve des autres dispositions de la présente partie, si elle reçoit une demande d'accreditation et qu'elle soit convaincue que les employés n'ont pas été la cible d'intimidation, de fraude, de coercition ou de manaces et qu'on leur a permis d'exprimer librement leur désir de représentation par un syndicat conformément à l'article 45, la Commission:

The motion has been moved with respect to both the English and the French text. The motion is in order.

Is it the pleasure of the Committee to adopt the amendment?

Some Honourable Members: No.

Some Honourable Members: Yes.

Voice Vote

Mr. Chairperson: All those in favour of adopting the amendment, please signify by saying yea.

Some Honourable Members: Yea.

Mr. Chairperson: All those opposed, please signify by saying nay.

Some Honourable Members: Nay.

Mr. Chairperson: In my opinion, the Yeas have it.

Formal Vote

Mr. Schuler: Recorded vote, please.

Mr. Chairperson: A recorded vote has been requested.

***A COUNT-OUT VOTE** was taken, the result being as follows: Yeas 6, Nays 3.*

Mr. Chairperson: The amendment is accordingly passed.

* * *

Mr. Chairperson: Shall clause 6(1), as amended, pass?

Some Honourable Members: Yes.

Some Honourable Members: No.

Voice Vote

Mr. Chairperson: All those in favour of clause 6(1) as amended, please signify by saying yea.

Some Honourable Members: Yea.

Mr. Chairperson: All those opposed to clause 6(1) as amended, please signify by saying nay.

Some Honourable Members: Nay.

Mr. Chairperson: Thank you for the indulgence of committee members. I am getting tired here obviously. It is my opinion the Yeas have it.

Formal Vote

Mr. Schuler: Recorded vote, please.

Mr. Chairperson: A recorded vote has been requested.

*A **COUNT-OUT VOTE** was taken, the results being as follows: Yeas 6, Nays 3.*

Mr. Praznik: On a point of order, Mr. Chair.

Mr. Chairperson: One second, please, sir. The clause is accordingly passed.

Point of Order

Mr. Praznik: Yes, Mr. Chair, it may not be a point of order, but I think I would like to have it recorded on the record that the fourth Conservative vote, the Member for Emerson, Mr. Jack Penner, because we are sitting the House and Committee concurrently tonight, Mr. Penner is now, I understand, speaking or about to speak in the House–he will be returning shortly–but had he been here he would have voted against this amendment with his fellow Conservative members.

Mr. Chairperson: It is not a point of order, but thank you very much, Mr. Praznik, for raising the information for the committee members.

* * *

Mr. Chairperson: Shall clause 6(2) pass?

Some Honourable Members: Yes.

Some Honourable Members: No.

Voice Vote

Mr. Chairperson: All those in favour of clause 6(2), please signify by saying yea.

Some Honourable Members: Yea.

Mr. Chairperson: All those opposed to clause 6(2), please say nay.

Some Honourable Members: Nay.

Mr. Chairperson: In my opinion, the Yeas have it. Clause 6(2) is accordingly passed.

Mr. Schuler: On division.

Mr. Chairperson: Let the record show that clause 6(2) passed on division.

* * *

Mr. Chairperson: Shall clauses 10(1), (2), (3), (4) and (5) pass?

Ms. Barrett: I move

THAT the proposed clause 69(1)(b), as set out in subsection 10(1) of the Bill, be struck out and the following substituted:

(b) in the case of the construction industry, of the members of the union in the craft unit;

[French version]

Il est proposé que le paragraphe 10(1) du projet de loi soit amendé par substitution, au passage qui suit "ou,", *de* "dans le cas de l'industrie de la construction, parmi ceux des membres du syndicat qui font partie de l'unité artisanale afin de déterminer s'ils".

Mr. Praznik: Before I make any comments to this I would ask if the Minister perhaps could give us an explanation as to the section in the amendment. In looking over her amendments when she provided them to us we had some concern as to what she was attempting to

accomplish. So if she could give us what the original section was attempting to accomplish and what this particular amendment changes from her original proposals, then I would have some comments.

Ms. Barrett: Yes, this is the section that was sent over to the Labour Management Review Committee that dealt with the requirement of who was eligible to vote to accept or reject a collective agreement. The question was: Shall it be all the members of the bargaining unit or shall it be all the members of the union? There was not consensus from LMRC on the larger question, but there was consensus on a smaller portion of that question, which dealt with the construction industry. So the agreement was reached between labour and management that for the construction industry only, the ratification vote should be of union members. So that is the genesis of this amendment.

* (20:30)

Mr. Chairperson: If I can interrupt the proceedings of the Committee for a moment before I move to Mr. Praznik, I have been advised that I inadvertently forgot to mention during the passing of clause 6(1) as amended. I forgot to indicate the word "amended," if it is the will of the Committee to let the record reflect that clause 6(1) as amended would pass on a counted vote.

Mr. Praznik: Mr. Chair, what is the consequence of our not agreeing? I would like to know what the consequences are of us not agreeing.

Mr. Chairperson: Well, it is my understanding that we would have to go back over the vote procedure again and that if you wish to repeat that, Mr. Praznik, we could go through that process again.

Mr. Praznik: I take it there is a remedy to this defect. I am asking for the advice of the Clerk that should we not agree does that mean that this clause is not adequately passed and there is no remedy.

Mr. Chairperson: I have been advised, Mr. Praznik, that it would be necessary for us to repeat the process of the vote that we have just gone through and that it would be a matter of a few moments for the Committee to have that consideration again.

Mr. Praznik: In that case, Mr. Chair, we are prepared to give our agreement to allow that to be rectified.

Mr. Chairperson: Thank you, Mr. Praznik, for allowing the correction of the record. It was an error and an oversight on my part to include the word "amended".

The Committee then will proceed with the discussion with respect to clause 10. Mr. Praznik, I believe you had your hand up. You have the floor.

Mr. Praznik: Yes, Mr. Chair, we are prepared to see this included in the Bill, although we do not support the Bill, but we shall not be voting against this. I do just want to make a comment that the construction industry is probably one of the most unique in this province in that it has very special considerations. One has to ask some serious questions about is that still required and justified? I know that getting into that debate, at this time or any other time, is most difficult for any minister of Labour so my empathy and sympathy is with the Minister on this very small area. We shall not vote against this.

Ms. Barrett: Yes, in my comparatively brief tenure as Minister of Labour, I could not agree more with the former minister of Labour about the ball of wax that this whole area encompasses, and thank him for his empathy.

Mr. Chairperson: It has been moved by the Honourable Ms. Barrett

THAT the proposed clause 69(1)(b), as set out in subsection 10(1) of the Bill, be struck out and the following substituted:

(b) in the case of the construction industry, of the members of the union in the craft unit;

[French version]

Il est proposé que le paragraphe 10(1) du projet de loi soit amendé par substitution, au passage

qui suit "ou,", *de* "dans le cas de l'industrie de la construction, parmi ceux des membres du syndicat qui font partie de l'unité artisanale afin de déterminer s'ils".

The motion has been moved with respect to both the English and French texts. The motion is in order.

Amendment–pass; clause 10(1) as amended–pass; clauses 10(2), 10(3), 10(4) and 10(5)–pass.

Shall clause 23 pass?

Some Honourable Members: Pass.

Some Honourable Members: No.

* (20:40)

Ms. Barrett: Yes, I have a long amendment to read, so I beg the indulgence of the Committee while I read this amendment. I move

THAT section 23 of the Bill be replaced with the following:

23 The following is added after section 87:

SETTLEMENT OF SUBSEQUENT AGREEMENTS

Dispute about subsequent agreements
87.1(1) Where a collective agreement has expired and a strike or lockout has commenced, the employer or the bargaining agent for a unit may apply in writing to the board to settle the provisions of a collective agreement if

(a) at least 60 days have elapsed since the strike or lockout commenced;

(b) the parties have attempted to conclude a new collective agreement with the assistance of a conciliation officer or mediator for at least 30 days during the period of the strike or lockout; and

(c) the parties have not concluded a new collective agreement.

Notice
87.1(2) The board shall promptly notify the parties when it receives an application.

Board to determine if good faith bargaining
87.1(3) On receiving an application, the board shall inquire into negotiations between the parties and determine

(a) whether or not they are bargaining in good faith in accordance with subsection 63(1); and

(b) whether or not they are likely to conclude a collective agreement within 30 days if they continue bargaining.

Discretion of board
87.1(4) The board may delay making a determination under subsection (3) until it is satisfied that the party making the application has bargained sufficiently and seriously with respect to those provisions of the collective agreement that are in dispute between the parties.

No settlement if good faith bargaining and agreement is likely
87.2(1) If the board finds under subsection 87.1(3) that the parties are bargaining in good faith and are likely to conclude a collective agreement within 30 days if they continue bargaining, it shall decline to settle the provisions of a collective agreement between them and notify them of that fact. The board may, however, appoint a board representative, or request the minister to appoint a conciliation officer, to confer with the parties to assist them in settling the provisions of a collective agreement.

New application if no agreement within further 30 days
87.2(2) If 30 days have elapsed since notice was given under subsection (1) and the parties have failed to conclude a collective agreement, either party may make a new application to the board under subsection 87.1(1).

Settlement
87.3(1) If the board finds under subsection 87.1(3) that a party is not bargaining in good faith, or that the parties are bargaining in good

faith but are unlikely to conclude a collective agreement within 30 days if they continue bargaining.

(a) the employees shall immediately terminate the strike, or the employer shall immediately terminate the lockout

(b) the employer shall reinstate the employees as provided for in subsection 87(5); and

(c) the provisions of a collective agreement between the parties shall be settled

(i) by an arbitrator, if the parties serve a notice of their wish for arbitration under subsection (2), or

(ii) by the board within 90 days of its finding, in any other case.

Arbitration
87.3(2) Within 10 days after a finding by the board that a party is not bargaining in good faith, or that the parties are bargaining in good faith but are unlikely to conclude a collective agreement through further bargaining, the employer and the bargaining agent may serve a notice on the board stating that they wish to have the collective agreement settled by arbitration. The notice must name a person who has agreed to act as arbitrator.

Arbitrator to settle collective agreement
87.3(3) The arbitrator shall settle the provisions of the collective agreement within 60 days after notice is served on the board under subsection (2).

Arbitration provisions of this Act apply
87.3(4) The provisions of this Act respecting arbitration apply, with necessary modifications, to an arbitrator acting under this section.

Term of collective agreement
87.3(5) A collective agreement settled by an arbitrator or the board under this section is effective for a period of one year following the expiry date of the previous collective agreement, or for any longer period the parties agree to.

Collective agreement binding
87.3(6) A collective agreement settled under this section is binding on the parties and on the employees in the unit as though it were a collective agreement voluntarily entered into between the parties, but the parties may nevertheless amend its provisions by a subsequent written agreement.

Subsections 87(6) and (8) apply
87.3(7) Subsections 87(6) and (8) apply, with necessary changes, to the settlement of a collective agreement under this section.

Review
87.4 The minister shall request the Manitoba Labour Management Review Committee to review the operation of sections 87.1 to 87.3 at least once in each 24-month period after those sections come into force and provide a report to the minister setting out their findings. The minister shall table the report in the Legislative Assembly as soon as possible after receiving it.

[French version]

Il est proposé que l'article 23 du projet de loi soit remplacé par ce qui suit :

23 Il est ajouté, après l'article 87, ce qui suit :

CONVENTIONS SUBSÉQUENTES

Différend concernant les conventions subséquentes
87.1(1) Si une convention collective est expirée et si une grève ou un lock-out a débuté, l'employeur ou l'agent négociateur d'une unité peut demander par écrit à la Commission de déterminer le contenu d'une nouvelle convention collective pour autant que soient réunies les conditions suivantes :

a) une période d'au moins 60 jours s'est écoulée depuis le début de la grève ou du lock-out;

b) les parties ont tenté de conclure une nouvelle convention collective avec l'aide d'un conciliateur ou d'un médiateur pendant au moins 30 jours au cours de la période de la grève ou du lock-out;

c) les parties n'ont pas conclu une nouvelle convention collective.

Avis
87.1(2) La Commission avise rapidement les parties lorsqu'elle reçoit une demande.

Bonne foi des parties
87.1(3) Dès réception d'une demande, la Commission s'enquiert des négociations entre les parties et détermine :

a) si elles négocient de bonne foi, en conformité avec le paragraphe 63(1);

b) si elles peuvent vraisemblablement en arriver à conclure une convention collective dans un délai de 30 jours si elles continuent à négocier.

Pouvoir discrétionnaire de la Commission
87.1(4) La Commission peut remettre sa détermination en vertu du paragraphe (3) jusqu'à ce qu'elle soit convaincue que la partie qui a présenté la demande ait négocié assez longtemps et sérieusement en ce qui concerne les dispositions de la convention collective faisant l'objet du différend entre les parties.

Non-intervention de la Commission
87.2(1) Si, en vertu du paragraphe 87.1(3), elle constate que les parties négocient de bonne foi et qu'elles peuvent vraisemblablement en arriver à conclure une convention collective dans un délai de 30 jours si elles continuent à négocier, la Commission s'interdit de déterminer le contenu de la convention collective entre elles et les en informe. Elle peut toutefois se nommer un représentant, ou demander au ministre de nommer un conciliateur qui conseillera les parties et les aidera à déterminer le contenu de la convention collective.

Nouvelle demande en cas d'échec des négociations
87.2(2) Si 30 jours se sont écoulés depuis la remise de l'avis que prévoit le paragraphe (1) et que les parties ne soient toujours pas parvenues à conclure une convention collective, l'une ou l'autre des parties peut faire une nouvelle demande à la Commission en vertu du paragraphe 87.1(1).

Détermination du contenu en l'absence de bonne foi
87.3(1) Si, en vertu du paragraphe 87.1(3), la Commission constate que l'une des parties ne négocie pas de bonne foi ou que les parties négocient de bonne foi mais qu'elles ne peuvent vraisemblablement en arriver à conclure une convention collective dans un délai de 30 jours si elles continuent à négocier :

a) les employés mettent immédiatement fin à la grève ou l'employeur met immédiatement fin au lock-out;

b) l'employeur rétablit les employés dans leur poste conformément au paragraphe 87(5);

c) le contenu de la convention collective entre les parties est déterminé :

(i) par un arbitre, si les parties signifient leur désir de recourir à l'arbitrage en vertu du paragraphe (2),

(ii) par la Commission, dans les 90 jours qui suivent sa constatation dans tous les autres cas.

Arbitrage
87.3(2) Dans les dix jours qui suivent la constatation par la Commission qu'une partie ne négocie pas de bonne foi ou que les parties négocient de bonne foi mais qu'elles ne peuvent vraisemblablement en arriver à conclure une convention collective dans un délai de 30 jours si elles continuent à négocier, l'employeur et l'agent négociateur peuvent signifier à la Commission un avis indiquant qu'ils souhaitent que le contenu de la convention collective soit déterminé par arbitrage. L'avis fait état du nom d'une personne qui a consenti à agir à titre d'arbitre.

Rôle de l'arbitre
87.3(3) L'arbitre détermine le contenu de la convention collective dans les 60 jours qui suivent la signification de l'avis que mentionne le paragraphe (2).

Application des dispositions relatives à l'arbitrage
87.3(4) Les dispositions de la présente loi s'appliquent, avec les adaptations nécessaires, à l'arbitre qui agit en vertu du présent article.

Durée de la convention collective
87.3(5) La convention collective dont le contenu est déterminé par un arbitre ou par la

Commission en vertu du présent article est en vigueur pendant une période d'un an à compter de la date d'expiration de la convention collective antérieure ou pendant toute période plus longue dont conviennent les parties.

Force exécutoire de la convention
87.3(6) La convention collective dont le contenu est déterminé en vertu du présent article lie les parties ainsi que les employés compris dans l'unité comme s'il s'agissait d'une convention collective conclue volontairement. Toutefois, les parties peuvent toujours en modifier les clauses par entente écrite.

Application des paragraphes 87(6) et (8)
87.3(7) Les paragraphes 87(6) et (8) s'appliquent, avec les adaptations nécessaires, à la détermination du contenu d'une convention collective en vertu du présent article.

Révision
87.4 Le ministre demande au Comité d'étude des relations syndicales-patronales de passer en revue au moins une fois tous les deux ans l'application des articles 87.1 à 87.3 après leur entrée en vigueur et de lui faire rapport de ses conclusions. Il dépose le rapport à l'Assemblée législative dès que possible après l'avoir reçu.

Motion presented.

Mr. Chairperson: The motion has been moved with respect to both the English and French text. The motion is in order.

Is the Committee ready for the question?

Mr. Praznik: Mr. Chair, before I make my remarks, I would ask if the Minister could give us her explanation in layman's terms, for the purposes of the record, of how her new alternative to free collective bargaining scheme will work.

Ms. Barrett: I am assuming, for clarification, before I start my remarks, that the Member is not asking for the changes in the amendments but the actual process as it is envisaged in its entirety in Bill 44.

Mr. Praznik: I think what is most important for those who will be reading this record some day, particularly if this ever winds up in a court of law, and for all of us at this committee–you know, one is a great believer that processes should be relatively simple so that they are easily understandable by those who are using them. I am just asking the Minister if she could now not just talk about the changes but tell us how the scheme will work as this alternative to free collective bargaining. What are the triggers? When they click in, what are the results, et cetera? If she could walk us through the process, it would be most helpful I am sure to members of her own party who do not seem to understand very often what these are about.

Ms. Barrett: Mr. Chair, actually, before I respond to the Member's request, and I am more than happy to do so, we put together a schematic, a flowchart, if you will, and I am prepared to share that with the members as I go through it. I think it will assist in attempting to clarify this provision which, I will admit, is perhaps a little more complex than some others. I will attempt to be as brief as possible and try and be as succinct as possible.

This provision comes into play, No. 1, only after there has been in effect for a minimum of 60 days a strike or a lockout. Secondly, within that 60-day period the parties have bargained with the assistance of a conciliation officer or mediator for 30 days during the strike or lockout, and this is designed to address the concerns of people who raised, during the discussion of Bill 44, the idea that either unions could simply decide to walk the picket lines for 60 days in order to trigger this alternative dispute mechanism, or an employer could simply decide to lock out employees for those 60 days in order to simply trigger the mechanism. We listened to concerns in that regard and have made the amendment in this bill that the parties have to bargain for 30 days inside that strike or lockout. They have to actually be attempting to reach a settlement. If those two factors apply, either party, either management or labour, or workers, may apply to the Labour Board to settle the agreement.

Then, once that application is made, the Labour Board will notify both parties that the application has been made. Then the Labour Board inquires into the negotiations, takes a look

at the situation, and answers these questions if they are bargaining in good faith, if they have done the conciliation or mediation for 30 days and if that is in good faith, and, secondly, whether or not the Board feels they are likely to come to an agreement within 30 additional days if they continue bargaining. The Board has a determination to make there. The Board, parenthetically, and this is where–for the purposes of the people who have the schematic, the dotted lines there at the side–at this point the Board can decide that it needs more time to conclude this determination. Let us leave that aside for the moment. The Board takes a look at the process that is underway, and to answer these questions, and if the Board finds that either party has negotiated in bad faith or that the parties in good faith are unlikely to conclude an agreement within an additional 30 days, the Board will then say: Let us put the alternate dispute resolution mechanism into place, and at that point the Board has said: You guys cannot do it on your own, and we are going to put you back into the workforce. The strike or the lockout will end at that point.

Then, after the Labour Board has decided they cannot do it on their own, the two parties can say: Yes, we recognize this, but what we would really like is we would like to go to arbitration. There is a process in The Labour Relations Act for arbitration.

If the two parties cannot agree to go to arbitration or if they do not want to go to arbitration, then the Board will settle the agreement on its own within 90 days of its finding that there is no ability for them to do it on their own. So, if they go to arbitration, they have 60 days to settle it. If they go to this other dispute resolution that the Labour Board takes charge of, they have 90 days.

During that 90 days, the Labour Board will work with both sides to attempt to come up with an agreement negotiated with the assistance of the Labour Board of the outstanding issues that are before the Board. If, and only if at the end of that time, the process has been unsuccessful and the two sides cannot freely collectively bargain the outstanding issues with the assistance of the Labour Board, then at the end of that 90 days the Labour Board will impose a finding on the issues that are still outstanding. That is one side.

* (20:50)

The Board is taking a look, an application has been made, the Board is taking a look in trying to determine what the status of the negotiation process. The Board could find that while the strike has gone on for 60 days and one side wants to go to the alternate dispute mechanism and get back to work, the Board could decide no, no, no. You guys have been bargaining. You are in conciliation. Carry it on for another 30 days, up to another 30 days and then the strike or lockout continues and they continue to negotiate.

If the Board decides they should continue to negotiate while still on strike or lockout, the Board can assist them in that by conciliation or mediation within the Board's processes. At that point, at the end of 30 days, hopefully they will have negotiated a settlement. If they have not either side can make application again to the Labour Board.

I know this must be very confusing for people particularly in the audience who do not have the schematic, but I think what the bottom line is when you cut to the chase, what people really need to know, I think not the specifics of it but the couple of things they need to know about this mechanism is that it is not automatic binding arbitration. This process is designed to encourage both sides to continue to negotiate, to continue to try and find a negotiated settlement.

It is only at the end of a very long and arduous process that has had the assistance of the Labour Board throughout that the Labour Board may be forced to put in place some elements of the settlement. We expect that this will happen very seldom if the experience with first-contract legislation is in any indication. I am prepared to have as part of the record the schematic that I have provided so that it can be put into Hansard as well.

I will end my discourse there and see if there are any further questions.

Mr. Praznik: Mr. Chair, the hubbub of the Committee tells us that what will encourage people to bargain is if they have one look at this convoluted process they will run to the negotiation table so quick, because I will tell you, where we have gone from the simple process of go ye and bargain, it is your business, we have become so convoluted that it is just absolutely amazing here.

I have one more technical question before I make my remarks. We are not sure if the Minister of Industry fully understands this so we would like her perhaps to put it again.

Mr. Chair, I just want to understand what the Minister is proposing. When I read this it tells me that under this law, if a party wanted to get the arbitration and they were the party, they would act in bad faith, that they could apply for this process and they would argue, well, we were in bad faith, we want the arbitration. Upon reading this, it says there is nothing in here that says that the party who has committed the bad faith is precluded from asking for the arbitration, which would seem like a natural provision, that you cannot do the bad faith and then ask for the arbitration.

When I read this and I read the Act, it stuck out to me that there is no prohibition on the party committing the bad faith from having the right to have arbitration, that the party who has been the victim of the bad faith says I still do not want arbitration, you could still have it because the party requesting it was the party that committed the bad faith.

I do not see in her wording. Now that may be what the Labour Board decides, but the fact is I would have thought if she had put some time and thought and effort into this process, she would have included that prohibition within the law. Knowing Mr. Nikkel, I am sure it was suggested.

Ms. Barrett: First I know the comment was made facetiously at the conclusion of my lengthy discourse, turgid though it is, that good heavens this is designed to get people–if people knew what this was all about, they would throw up their hands and say let us collectively bargain. Not to be facile or facetious or flip about it, but frankly that is what we want.

An Honourable Member: Confuse people?

Ms. Barrett: No. We do not want to confuse people. We want the parties to know that it is not going to be simple, and I think everyone around this table agreed it will not be simple. The really frightening thing, committee members, is that I think I understand the process. Specifically, in answer to the Member's–

An Honourable Member: I am sure you do, Madam Minister.

Ms. Barrett: Mr. Praznik, specifically in answer to your very good question, and, please, I am going to refer to the schematic again, the dotted line box over here on the right, the Board can decide that the process cannot go forward because the party that makes the application has not bargained seriously.

If the union, for example, makes the application, the Labour Board looks not only at the whole process but they pay particular attention to the union or the management if the management is making the application to assure itself that the party making the application has bargained in good faith so they are not just using this as a vehicle to get into an arbitration process.

Mr. Praznik: Mr. Chair, could the Minister please point out to me which of the sections includes that provision rather than the schematic because the schematic is not what we are passing? If she could just point out the appropriate line for me.

Ms. Barrett: Yes, Discretion of board is the heading, 87.1(4).

Mr. Leonard Derkach (Russell): Mr. Chair, my math is not too good tonight. Maybe it has something to do with last night, but could the Minister tell me how many days we are looking at from the first box in her schematic to the last box in the schematic?

Ms. Barrett: It is more than one potential number, but, yes, actually it is a very good

question. No matter which part of the flowchart you go, you start with 60 days. So it is 60 days strike or lockout. Then there can be an additional 30 days the Board says you can collectively bargain. One side can be that 30 days, so it is 60 plus 30. At the end of that 90 days, if they have not reached an agreement, the Board says: You can go back and apply now for the alternate dispute resolution mechanism because this side of the schematic does not have the workers going back to work. The Board says: You guys have another 30 days to work it out on your own; the strike continues. So that part of it is 90 days, up to 90 days. If they settle in the meantime, fine, but that is potentially 90 days while the strike or lockout continues.

The next line is the 60 days; whether strike or lockout, they make application.

An Honourable Member: Did you say 60?

* (21:00)

Ms. Barrett: Mr. Chair, 60 days for everything. That is the trigger; you cannot do it.

Then, if the Board decides that they have done everything they can do and we are going to put it into some other form, the arbitration process can be an additional 70 days, an additional 70 days for arbitration, so that is 130 days potentially there in that one, in that alternate, in that view, in that particular part; but, of that 130, 70 is while people are back at work.

The third one again starts with 60, but if the Board gets involved, not the arbitrator, that is up to 90 days extra, and during the last 90 days, they are back to work. So it is more or less if they go the alternate dispute mechanism; it is more or less the same amount of time, 70 to 90 days extra.

Mr. Praznik: Mr. Chair, I want to get into my remarks on this clause. Just a couple of points. We jest about how convoluted and complicated this process is. You know, just having the Minister to try to explain it and how it works tells me that this mechanism is in great difficulty to begin with. What is it an alternative to? It is an alternative to free collective bargaining. That is what this provision is about. It is old provision, the amendments; it is still the same thing: it is taking away from free collective bargaining. The Minister has diluted and diluted and diluted her proposal, but she still has today this proposal, which takes away from free collective bargaining, is so complicated most people looking at it are not going to figure out how to use it. But there in itself lies a danger that I would like to flag for the Minister.

Do you know, Mr. Chair, when the Pawley government took the balance out of our labour law in this province and imposed a severe restriction to free collective bargaining with the bringing in of final offer selection, what we noticed when we came to power and we looked at the statistics–and the Member has many of the same staff; she could go look at it herself. What we found for things like final offer selection was that very few unions used it, only a couple in particular. Surprise, surprise, one of those unions was the United Food and Commercial Workers headed by Mr. Christophe, who was one of the few labour leaders to be here the whole time, who had many of his members coming forward, et cetera.

Do you know that, when I did a little research on final offer selection, what I discovered in that process about why he was the major user of that, as he was with first-contract, is because he took what was an unknown labour-relations settlement mechanism, one that was used nowhere else in labour-relations law–well, I would even suggest he was the architect behind it in the Pawley government, as I would suggest he is the architect behind the initial proposal brought in by the Minister, and he knew it backwards and forwards. You know, when he got into negotiations, particularly with smaller employers, a smaller number of employees, he could come in with this convoluted system. He can threaten all kinds of things will happen with it, and I would suggest strong-arm people into settlements using the mechanism as some sort of a hammer.

Do you know what? The Minister of Labour is doing exactly the same thing now with this convoluted alternative to collective bargaining provision with its many steps and discretions and convoluted processes such that some will master it and use it as really an unnecessary and unfair

tool in the collective bargaining process. So we may make some jest about the convoluted nature of the amendment in this process, but I think it is a payoff to certain supporters of the New Democratic Party who like these tools and quite frankly do not want to just go about and bargain.

Manitoba Nurses' Union is a union that I have never seen look for outside schemes. They bargain, they bargain hard. I have been on the other side of the table over the years. I have to respect the Manitoba Nurses' Union for bargaining tough. They were tough adversaries in the bargaining process, and they got in grievance on behalf of their members. They bargained hard. They used their case and made their case well to the public. They took a 30-day strike to make their point and agreements to bargain. They prove what bargaining is about. They did not need to have these alternatives to free collective bargaining schemes to bolster their own position or techniques.

The United Steel Workers, I cannot recall a case in my time as Minister of Labour looking at the statistics where the United Steel Workers used final offer selection or any of these kinds of alternatives to free collective bargaining schemes. They did not use it because they did their job. They used the tools of a free collective bargaining process and they settled their grievances. Sometimes they had strikes, sometimes they were in lockouts, and they brought their matters to a conclusion and had them settled.

Now, I have to say that the Minister here has come a long way from where she started, but it is not a way that was a march towards compromise. Mr. Chair, this minister and her colleagues have marched blindly through a path in a forest trying to escape the criticisms that have surrounded this bill, looking for the easiest way to get out of a growing darkness in that forest as they have proceeded with this bill. They have looked for any kind of means possible that they could throw out and still save face with a fundamentally bad piece of legislation and get out of the darkness of the forest that they have put themselves in.

What is amazing me as a politician is they are blowing away all of the good will that they had as a new government in this field for purposes I am not even sure they fully appreciate or understand.

You know, the Minister will say, well, we have compromised on this bill. Well, let us look at exactly what this minister has done. She started off bringing in an alternative to free collective bargaining scheme. This is an alternative to free collective bargaining that she says was needed because we had some great problem.

Well, it was not great enough, Mr. Chair, to warrant being discussed at the Premier's summit. It was not large enough to warrant being included in the Throne Speech. It was not large enough to be an issue that they raised in the election, but all of a sudden it is a major problem. In fact, when you look at the amendments the Minister has made tonight, it sort of says, what did she go through all of this for?

The reality is there is no problem at all that she is trying to solve, and we come back to our premise that the real reason was to accommodate some in the labour movement like Mr. Christophe at UFCW with some schemes that could be used to assist them in their goals and efforts rather than really have free collective bargaining in our province.

But, having said that, what did they do in their first go-around with this bill? They brought in an alternative to free collective bargaining proposal that took away the right to lock out but did not take away the right to strike. That is what they did, because any party, i.e., the union, could request with the support of their members, because they gave the union members a veto, that after 60 days there is no more strike or lockout. We are going to an arbitrator. So if a union had taken a position, had dug themselves a position that they found very difficult and did not want to compromise at the table, they could say to their members we will go to an arbitrator and we, as union leaders and bargaining committees, can abrogate our responsibility to lead these and we can let someone else make the

decision so we do not really have to justify or make any decisions within our bargaining unit.

* (21:10)

The Minister did not want the same power for the employer to impose this alternative to a free collective bargaining process. Oh no, the Minister said: No, we will give employees a veto. So right then and there, exposed to all the public of Manitoba was the blatant unfairness that you were taking away the right to lockout but you were not taking away the right to strike.

Now we warned the Minister that that is what she was doing. We warned her on many occasions, and she did not quite understand that. As the momentum of the campaign against this bill grew, as New Democrat MLAs were going home to their constituencies and finding out that Manitobans were asking what were you doing here, what are you trying to do, as they saw their own decisions in this committee to shut down presenters, as the headlines grew, as they were being opposed by more and more Manitobans, they then had to retreat. Instead of just admitting, let us leave the well-established process of free collective bargaining alone, let us say to Mr. Christophe, you have done well enough at UFCW with existing labour law, go and bargain, oh no, they had to save some face.

So you know what amendment they bring tonight? They do not bring an amendment that says let us us go back to free collective bargaining, now we will even it up. We are going to take away the right to strike. Do you realize, Mr. Chair, that this will be the first time in decades that we have had a government that has been prepared to take away the right to strike? I guess the last time–well, even Howard Pawley did not do that because he gave employees a veto on losing the right to strike. He took away the right to lockout for employers, but he did not take away the right to strike.

The Minister of Labour might be looking at me and saying; well, where did this come from? Mr. Bob Desjarlais, the spouse of a Member of Parliament who represents part of my area, the Churchill federal riding, a New Democrat MP, a president of the United Steel Workers, he came here and what did he say to the Committee? You have to keep in the provision to give the employees the veto, and you know why he said that? I do not agree with Mr. Desjarlais on many things, but he understands the system. He said that because he knew to do otherwise would be taking away the right to strike. It would be limiting the right to strike. That is what members opposite are going to do with this amendment.

Now there are many who are out there who would say, well, and the businesspeople, if you want to give up the right to strike, great. I believe and members in my party, I believe, are of the view that the right to strike and the right to lockout are two very key, the most two key components of the free collective bargaining system and to diminish them without good purpose is fundamentally an error for the long-term development and operation of labour-management relations in our province. Now members opposite may have to hear this a hundred times for it to sink in because I do not think they have gotten it. I think they get led into these things, quite frankly, without thinking them through. Now just because this minister is putting such a convoluted scheme in place with her amendments that there are time periods involved at Labour Board discretion and other things, the end of this process is still the same. The state can intervene to end a strike or lockout and thereby take away without the mutual consent of the parties of their respective rights to either legally deny their labour in support of their cause or legally deny employment in support of their cause, two fundamental principles. It has amazed me that members of the New Democratic Party today just do not get it. I think that is the case, because, quite frankly, they pretend to be friends of labour. They pretend to be people who understand labour but in reality do not.

I would remind them here today that in their midst is the Member for Thompson (Mr. Ashton), whom I remember having many discussions with when we have done bills over the years on labour relations. I remember the Member for Thompson telling me when we were dealing with the repeal of first-contract, which is again another alternative to free collective bargaining that the Pawley government came in with, I said to him: Steve, what happens if we

just took away the employees' veto, so either party compels it? He looked at me, and he said: Ha, you are very, very cunning. He said: We would have to oppose that, because that would be the end of free collective bargaining. That would be the end of the right to strike–pardon me, that is what he said: End of the right to strike.

The only reason on final offer selection, the only reason why the New Democrats put in that one-sided veto was to preserve, to have their cake and eat it too. They wanted a compulsory mechanism if labour wanted it but not if labour did not. So they took away the right to lockout from employers, but they did not want to take away the right to strike from employees on final offer selection.

Steve Ashton, the Member for Thompson, knew what that was about, the current Member for Thompson. He knew what that was about. When I coyly said to him at that time, Steve–then I could call him Steve; it was privately, and I am quoting myself–what if I did that? How would you view it? He just smiled. He knew, and he said to me: Darren, you would be taking away the right to strike. We would have to oppose that.

Well, where is he now? Where are his colleagues now? What has changed from that day? The only thing that has changed is we have a government who is wandering around in a forest of attack and just so scared now that they will find anything they can throw to get out of this mess, anything at all, and that is what they are doing, Mr. Chair. That is what they are doing, any kind of amendment to say: We look like we did something. Let us get out of here; let us get out of this mess now.

Here are New Democratic Party members and an NDP minister who are prepared to take away the right to strike, the right to legally deny your labour in support of your cause just for the expediency of getting out of a political mess that if they had done their homework they probably never would have gotten into. You know, there are some defining moments in a government, and this government is starting to build up its defining moments. These are the kinds of fundamental issues of principle that will come home to haunt you, and they should.

You know, Mr. Chair, true labour leadership, true trade unionists in this province, should and likely will know how you have abandoned that principle. They may gather around members opposite for solidarity politically. They will sacrifice any principles, perhaps, just to have friends in government so they can have the largesse that goes with that, but they have sold out in that case their own principles. That is what is amazing about this, New Democratic Party members voting to take away the right to strike. This is one day that I never thought I would see in this Chamber.

Mr. Chair, I have gone through this flowchart, and do you know what is really interesting? As I have said in the House when we dealt with final offer selection, there was a gentleman, one of the presenters at one of the hearings who was a member of the Manitoba Federation of Labour, and I asked him that question about the one-sided veto and taking it away. He made the point about killing the right to strike. He also made the point that once government provides a method in free collective bargaining that could end strikes or lockouts unilaterally by one side asking for it, limiting the right to strike or lockout, a government some day–and he said not necessarily Tory, but a government with a few amendments to that–could easily do totally away with the right to strike and lockout.

I look at the Minister's amendment right now and very easily with a few simple amendments, simply reducing the window from 60 days to one day, by taking out the requirement that there be 30 days of conciliation and mediation, and by simply indicating that the Board shall write the contract or appoint an arbitrator, and by a government setting up a board of arbitrators who are its friends who will do its bidding–with those very few amendments to this provision brought in by the Minister of Labour, we will have ended the right to strike in Manitoba.

* (21:20)

I could make those arguments so beautifully, that the 60 days were too long, that we cannot lose any days, only one day to strike or lockout, that arbitration is a good way to settle it, that binding arbitration is a good way to settle it, and that we will just appoint the arbitrators. And you know what, how would members oppose it? It would be the same principles that they have advanced: We need to save the province from days lost to strikes and lockouts; binding arbitration is just wonderful. Maybe some government will do that. I would love today, just to make those commitments right here in the House, to say: Oh, the next time we are in power, we will just change this wonderful amendment. We will take changes down to one day and we will do these few little amendments and we will commit to do them now, and would the labour movement be here to support it? Not at all. They would be here to fight for their right to strike.

I say, Mr. Chair, that this amendment does nothing to improve this position. All this amendment does, quite frankly, is attempt to politically get this government out of a mess that it has created. I just want to say we will oppose this amendment. We will oppose this clause. We will oppose this bill, and we will stand for the right of free collective bargaining, the right to lockout and the right to strike because that is a position of principle. Thank you.

Mr. Chairperson: Is the Committee ready for the question?

An Honourable Member: Question.

Mr. Chairperson: The question has been called. The question before the Committee is as follows: Moved by the Honourable Ms. Barrett that section 23 of the Bill–

An Honourable Member: Dispense.

Mr. Chairperson: Dispense.

THAT section 23 of the Bill be replaced with the following:

23 The following is added after section 87:

SETTLEMENT OF SUBSEQUENT AGREEMENTS

Dispute about subsequent agreements
87.1(1) Where a collective agreement has expired and a strike or lockout has commenced, the employer or the bargaining agent for a unit may apply in writing to the board to settle the provisions of a collective agreement if

(a) at least 60 days have elapsed since the strike or lockout commenced;

(b) the parties have attempted to conclude a new collective agreement with the assistance of a conciliation officer or mediator for at least 30 days during the period of the strike or lockout; and

(c) the parties have not concluded a new collective agreement.

Notice
87.1(2) The board shall promptly notify the parties when it receives an application.

Board to determine if good faith bargaining
87.1(3) On receiving an application, the board shall inquire into negotiations between the parties and determine

(a) whether or not they are bargaining in good faith in accordance with subsection 63(1); and

(b) whether or not they are likely to conclude a collective agreement within 30 days if they continue bargaining.

Discretion of board
87.1(4) The board may delay making a determination under subsection (3) until it is satisfied that the party making the application has bargained sufficiently and seriously with respect to those provisions of the collective agreement that are in dispute between the parties.

No settlement if good faith bargaining and agreement is likely
87.2(1) If the board finds under subsection 87.1(3) that the parties are bargaining in good faith and are likely to conclude a collective agreement within 30 days if they continue

bargaining, it shall decline to settle the provisions of a collective agreement between them and notify them of that fact. The board may, however, appoint a board representative, or request the minister to appoint a conciliation officer, to confer with the parties to assist them in settling the provisions of a collective agreement.

New application if no agreement within further 30 days
87.2(2) If 30 days have elapsed since notice was given under subsection (1) and the parties have failed to conclude a collective agreement, either party may make a new application to the board under subsection 87.1(1).

Settlement
87.3(1) If the board finds under subsection 87.1(3) that a party is not bargaining in good faith, or that the parties are bargaining in good faith but are unlikely to conclude a collective agreement within 30 days if they continue bargaining,

(a) the employees shall immediately terminate the strike, or the employer shall immediately terminate the lockout;

(b) the employer shall reinstate the employees as provided for in subsection 87(5); and

(c) the provisions of a collective agreement between the parties shall be settled

(i) by an arbitrator, if the parties serve a notice of their wish for arbitration under subsection (2), or

(ii) by the board within 90 days of its finding, in any other case.

Arbitration
87.3(2) Within 10 days after a finding by the board that a party is not bargaining in good faith, or that the parties are bargaining in good faith but are unlikely to conclude a collective agreement through further bargaining, the employer and the bargaining agent may serve a notice on the board stating that they wish to have the collective agreement settled by arbitration. The notice must name a person who has agreed to act as arbitrator.

Arbitrator to settle collective agreement
87.3(3) The arbitrator shall settle the provisions of the collective agreement within 60 days after notice is served on the board under subsection (2).

Arbitration provisions of this Act apply
87.3(4) The provisions of this Act respecting arbitration apply, with necessary modifications, to an arbitrator acting under this section.

Term of collective agreement
87.3(5) A collective agreement settled by an arbitrator or the board under this section is effective for a period of one year following the expiry date of the previous collective agreement, or for any longer period the parties agree to.

Collective agreement binding
87.3(6) A collective agreement settled under this section is binding on the parties and on the employees in the unit as though it were a collective agreement voluntarily entered into between the parties, but the parties may nevertheless amend its provisions by a subsequent written agreement.

Subsections 87(6) and (8) apply
87.3(7) Subsections 87(6) and (8) apply, with necessary changes, to the settlement of a collective agreement under this section.

Review
87.4 The minister shall request the Manitoba Labour Management Review Committee to review the operation of sections 87.1 to 87.3 at least once in each 24-month period after those sections come into force and provide a report to the minister setting out their findings. The minister shall table the report in the Legislative Assembly as soon as possible after receiving it.

[French version]

Il est proposé que l'article 23 du projet de loi soit remplacé par ce qui suit :

23 Il est ajouté, après l'article 87, ce qui suit :

CONVENTIONS SUBSÉQUENTES

Différend concernant les conventions subséquentes

87.1(1) Si une convention collective est expirée et si une grève ou un lock-out a débuté, l'employeur ou l'agent négociateur d'une unité peut demander par écrit à la Commission de déterminer le contenu d'une nouvelle convention collective pour autant que soient réunies les conditions suivantes :

a) une période d'au moins 60 jours s'est écoulée depuis le début de la grève ou du lock-out;

b) les parties ont tenté de conclure une nouvelle convention collective avec l'aide d'un conciliateur ou d'un médiateur pendant au moins 30 jours au cours de la période de la grève ou du lock-out;

c) les parties n'ont pas conclu une nouvelle convention collective.

Avis
87.1(2) La Commission avise rapidement les parties lorsqu'elle reçoit une demande.

Bonne foi des parties
87.1(3) Dès réception d'une demande, la Commission s'enquiert des négociations entre les parties et détermine :

a) si elles négocient de bonne foi, en conformité avec le paragraphe 63(1);

b) si elles peuvent vraisemblablement en arriver à conclure une convention collective dans un délai de 30 jours si elles continuent à négocier.

Pouvoir discrétionnaire de la Commission
87.1(4) La Commission peut remettre sa détermination en vertu du paragraphe (3) jusqu'à ce qu'elle soit convaincue que la partie qui a présenté la demande ait négocié assez longtemps et sérieusement en ce qui concerne les dispositions de la convention collective faisant l'objet du différend entre les parties.

Non-intervention de la Commission
87.2(1) Si, en vertu du paragraphe 87.1(3), elle constate que les parties négocient de bonne foi et qu'elles peuvent vraisemblablement en arriver à conclure une convention collective dans un délai de 30 jours si elles continuent à négocier, la Commission s'interdit de déterminer le contenu de la convention collective entre elles et les en informe. Elle peut toutefois se nommer un représentant, ou demander au ministre de nommer un conciliateur qui conseillera les parties et les aidera à déterminer le contenu de la convention collective.

Nouvelle demande en cas d'échec des négociations
87.2(2) Si 30 jours se sont écoulés depuis la remise de l'avis que prévoit le paragraphe (1) et que les parties ne soient toujours pas parvenues à conclure une convention collective, l'une ou l'autre des parties peut faire une nouvelle demande à la Commission en vertu du paragraphe 87.1(1).

Détermination du contenu en l'absence de bonne foi
87.3(1) Si, en vertu du paragraphe 87.1(3), la Commission constate que l'une des parties ne négocie pas de bonne foi ou que les parties négocient de bonne foi mais qu'elles ne peuvent vraisemblablement en arriver à conclure une convention collective dans un délai de 30 jours si elles continuent à négocier :

a) les employés mettent immédiatement fin à la grève ou l'employeur met immédiatement fin au lock-out;

b) l'employeur rétablit les employés dans leur poste conformément au paragraphe 87(5);

c) le contenu de la convention collective entre les parties est déterminé :

(i) par un arbitre, si les parties signifient leur désir de recourir à l'arbitrage en vertu du paragraphe (2),

(ii) par la Commission, dans les 90 jours qui suivent sa constatation dans tous les autres cas.

Arbitrage
87.3(2) Dans les dix jours qui suivent la constatation par la Commission qu'une partie ne négocie pas de bonne foi ou que les parties négocient de bonne foi mais qu'elles ne peuvent vraisemblablement en arriver à conclure une convention collective dans un délai de 30 jours si elles continuent à négocier, l'employeur et l'agent négociateur peuvent signifier à la Commission un avis indiquant qu'ils souhaitent

que le contenu de la convention collective soit déterminé par arbitrage. L'avis fait état du nom d'une personne qui a consenti à agir à titre d'arbitre.

Rôle de l'arbitre

87.3(3) L'arbitre détermine le contenu de la convention collective dans les 60 jours qui suivent la signification de l'avis que mentionne le paragraphe (2).

Application des dispositions relatives à l'arbitrage

87.3(4) Les dispositions de la présente loi s'appliquent, avec les adaptations nécessaires, à l'arbitre qui agit en vertu du présent article.

Durée de la convention collective
87.3(5) La convention collective dont le contenu est déterminé par un arbitre ou par la Commission en vertu du présent article est en vigueur pendant une période d'un an à compter de la date d'expiration de la convention collective antérieure ou pendant toute période plus longue dont conviennent les parties.

Force exécutoire de la convention
87.3(6) La convention collective dont le contenu est déterminé en vertu du présent article lie les parties ainsi que les employés compris dans l'unité comme s'il s'agissait d'une convention collective conclue volontairement. Toutefois, les parties peuvent toujours en modifier les clauses par entente écrite.

Application des paragraphes 87(6) et (8)
87.3(7) Les paragraphes 87(6) et (8) s'appliquent, avec les adaptations nécessaires, à la détermination du contenu d'une convention collective en vertu du présent article.

Révision
87.4 Le ministre demande au Comité d'étude des relations syndicales-patronales de passer en revue au moins une fois tous les deux ans l'application des articles 87.1 à 87.3 après leur entrée en vigueur et de lui faire rapport de ses conclusions. Il dépose le rapport à l'Assemblée législative dès que possible après l'avoir reçu.

Is it the pleasure of the Committee to adopt the amendment?

Some Honourable Members: Agreed.

An Honourable Member: No.

Voice Vote

Mr. Chairperson: All those in favour of adopting the amendment, please say yea.

Some Honourable Members: Yea.

Mr. Chairperson: All those opposed to adopting the matter, please say nay.

Some Honourable Members: Nay.

Mr. Chairperson: In my opinion, the Yeas have it.

Formal Vote

Mr. Schuler: Recorded vote, please.

Mr. Chairperson: A recorded vote has been requested.

*A **COUNT-OUT VOTE** was taken, the results being as follows: Yeas 6, Nays 4.*

Mr. Chairperson: The amendment is accordingly carried.

* * *

Mr. Chairperson: Shall clause 23 as amended pass?

Some Honourable Members: Yes.

Some Honourable Members: No.

Voice Vote

Mr. Chairperson: All those in favour of clause 23 as amended passing, please signify by saying yea.

Some Honourable Members: Yea.

Mr. Chairperson: All those opposed, please say nay.

Some Honourable Members: Nay.

Mr. Chairperson: In my opinion, the Yeas have it.

Formal Vote

Mr. Schuler: Recorded vote, please.

Mr. Chairperson: A recorded vote has been requested.

*A **COUNT-OUT VOTE** was taken, the results being as follows: Yeas 6, Nays 4.*

Mr. Chairperson: Clause 23 as amended is accordingly passed.

* * *

Mr. Chairperson: Shall clause 27(1), 27(2), 27(3) and 27(4) pass?

Some Honourable Members: Yes.

Some Honourable Members: No.

Ms. Barrett: I move,

THAT the proposed subsection 130(1), as set out in subsection 27(1) of the Bill, be struck out and replaced with the following:

Referral of grievance to board
130(1) When an employee in a unit bound by a collective agreement, or the bargaining agent, initiates a grievance under the agreement, the bargaining agent may refer the grievance, including any question about its arbitrability, to the board to be dealt with in accordance with this section.

[French version]

Il est proposéque le paragraphe 130(1), énoncé au paragraphe 27(1) du projet de loi, soit remplacé par ce qui suit:

Renvoi du grief devant la Commission
130(1) Si l'agent négociateur ou un employé compris dans une unité liée par une convention collective formule un grief sous le régime de la convention, l'agent négociateur peut renvoyer le grief, y compris toute question ayant trait à son caractère arbitrable, à la Commission afin qu'il soit réglé en conformité avec le présent article.

Motion presented.

Mr. Chairperson: The motion has been moved with respect to both the English and French text. The motion is in order. Is the Committee ready for the question?

Some Honourable Members: No.

Some Honourable Members: Yes.

Ms. Barrett: This amendment allows employees expanded access to expedited arbitration to resolve grievances in a more timely manner.

Mr. Praznik: Mr. Chair, we notice that in the Minister's arguments for why she had to do away with the votes for certifications over 65 percent was that the Labour Board was just so busy. This was taking so much of their time. It was just so difficult, and yet now she wants to add to the more speedy arbitrations.

Well, Mr. Chair, there is a very significant inconsistency here. How, if the Board is so busy with these votes that that is a reason for not doing them anymore, why is this Minister now moving in all of these expedited grievances? I just want to share with her some advice of experience here, and it will be relatively short.

When I was minister of Labour, for the four and a half years I was minister of Labour, we noticed that over a period of time that there were again one or two particular unions continually sending disputes for expedited arbitration. No big surprise, one of them was United Food and Commercial Workers. What we found is again, it just became a regular tool in the process. What we found, and there is nothing wrong with that, to make speedy decisions, if it is used properly, but again we think the vast majority of unions probably do not misuse speedy arbitrations. But some just use it as a regular process. One of the things we said at that time, and Mr. Michaluk, who is here today, was part of those discussions, was that if people want to use it as a tool, maybe they should have to pay for it. It was interesting that it then got down to be used for what it was intended.

So we are not entirely sure what the Minister is trying to correct here. We find it very inconsistent that the Minister would use the argument to do away with the right to vote, with the right for employees to participate, all employees to participate, in the issue of certification or which union is going to represent them and then turn around here today and attempt in some manner to add more work to the Labour Board. With that, we are prepared to get on with the vote, and we will be opposing this particular clause.

Mr. Chairperson: Is the Committee ready for the question? The question has been called. The question before the Committee is as follows:

Moved by the Honourable Ms. Barrett.

An Honourable Member: Dispense.

Mr. Chairperson: Dispense.

THAT the proposed subsection 130(1), as set out in subsection 27(1) of the Bill, be struck out and replaced with the following:

Referral of grievance to board
130(1) When an employee in a unit bound by a collective agreement, or the bargaining agent, initiates a grievance under the agreement, the bargaining agent may refer the grievance, including any question about its arbitrability, to the board to be dealt with in accordance with this section.

[French version]

Il est proposéque le paragraphe 130(1), énoncé au paragraphe 27(1) du projet de loi, soit remplacé par ce qui suit:

Renvoi du grief devant la Commission
130(1) Si l'agent négociateur ou un employé compris dans une unité liée par une convention collective formule un grief sous le régime de la convention, l'agent négociateur peut renvoyer le grief, y compris toute question ayant trait à son caractère arbitrable, à la Commission afin qu'il soit réglé en conformité avec le présent article.

Is it the pleasure of the Committee to adopt the amendment?

Some Honourable Members: Agreed.

Some Honourable Members: No.

Voice Vote

Mr. Chairperson: All those in favour of adopting the amendment, please say yea.

Some Honourable Members: Yea.

Mr. Chairperson: All those opposed, please say nay.

Some Honourable Members: Nay.

Mr. Chairperson: In my opinion, the Yeas have it.

An Honourable Member: On division.

Mr. Chairperson: The amendment is accordingly passed on division.

* * *

Mr. Chairperson: Shall clause 27(1) as amended pass?

Some Honourable Members: Yes.

Some Honourable Members: No.

Voice Vote

Mr. Chairperson: All those in favour of clause 27(1) as amended, please say yea.

Some Honourable Members: Yea.

Mr. Chairperson: All those opposed, please say nay.

Some Honourable Members: Nay.

Mr. Chairperson: Clause 27(1) as amended is accordingly passed.

* * *

* (21:30)

Mr. Chairperson: Clause 27(2), 27(3) and 27(4)–pass; preamble–pass; title–pass. Shall the Bill as amended be reported?

Some Honourable Members: No.

Some Honourable Members: Yes.

Voice Vote

Mr. Chairperson: All those in favour of the Bill being reported as amended, please signify by saying yea.

Some Honourable Members: Yea.

Mr. Chairperson: All those opposed, please say nay.

Some Honourable Members: Nay.

Mr. Chairperson: In my opinion, the Yeas have it.

Formal Vote

Mr. Schuler: A recorded vote, please.

Mr. Chairperson: A recorded vote has been requested.

*A **COUNT-OUT VOTE** was taken, the result being as follows: Yeas 6, Nays 4.*

Mr. Chairperson: The Bill as amended shall be reported.

* * *

Ms. Barrett: If I may take just one very small moment before we conclude the business of this committee, I just wanted to say that this has been a very long, hard process for all of us that have been involved. While we have disagreed on much and we have had some interesting interchanges over the last few weeks, I did want to say that I have appreciated the support, as members of the Legislature, that I have gotten from both my colleagues, my caucus and the Opposition. I do think that the process, extended and messy as it may be, has ultimately worked again. I would just like to share my appreciation for a very interesting and challenging process.

Mr. Schuler: Mr. Chairman, this has been a very long process, and we certainly have not agreed on much, but in the end democracy must prevail. The Government clearly has the majority, and the business of government must proceed. We certainly appreciate the work of the Chairman and of all the departmental staff and the staff. We appreciate that very much, and thank you to the Committee.

Mr. Jack Penner: Just very briefly, I am not going to be quite as complimentary. This is a long, drawn-out process. This was a hard-fought bill. I think industry and the workers in the industries are going to be the ones that are going to feel the impact of the changes that the Minister is proposing to bring before the House for third reading.

I say to the Minister that I would like to make her a little wager that this bill will do more to harm what she has said to bring equity to the whole process of bargaining. I say to the Minister that we will one day come back to her and say this is what you did when the strife starts coming. It will be the workers and the labour contingent in this province that will suffer because of the changes that you are proposing.

Ms. Barrett: Very briefly, in response to the Member's comments, I respect your comments and time will tell. This is a new piece of legislation.

I would like to, as well, echo the comments of the Member for Springfield (Mr. Schuler), as regards what the staff, both of Leg. Counsel and of the Department of Labour, have done, not only through the committee hearing process and the drafting of the amendments, in particular one amendment. This bill was a very complicated piece of legislation, and they have put in really literally hundreds of extra hours doing it. Often the people who draft the legislation are not given the respect and the acknowledgment that they are due. So, in this case, I think we all owe them a debt.

Mr. Chairperson: That concludes the business before the Committee. Committee rise.

COMMITTEE ROSE AT: 9:33 p.m.