

Union Contract Arbitration in the U.S. and Canada

How Arbitration Encourages Contract Settlement

Even when workers overcome harassment and intimidation by their companies to successfully form a union, too many are denied a first contract. A key provision of the Employee Free Choice Act will give both workers and companies the right to request an independent arbitrator if they can't settle a contract, helping stop unfair delay tactics used by corporations and ensure negotiations are completed in a fair and efficient manner.

Opponents of the bill misleadingly paint the arbitration provision as a job killer, claiming arbitrators would impose terms on companies that would cause them to go out of business. However, evidence from Canada and the U.S. public sector, where arbitration laws have long been in place, tells a different story. In fact, new research demonstrates that when arbitration is an option it is rarely used, and when contracts are reached through arbitration, the wage increases that result are nearly identical to those reached through voluntary collective bargaining.

Few Public Sector Contracts Reach Arbitration Stage in U.S.

In half of the states and the District of Columbia, public sector employees already have the right to resolve collective bargaining conflicts through an independent, third-party arbitration process. Thirty years of evidence from these laws shows that it's the possibility of arbitration, not the actual procedure, which encourages parties to settle. As MIT economist Thomas Kochan and Harvard Law professor Arnold Zack note, where arbitration is an option, **90% of contracts are settled voluntarily**.¹ On the rare occasions when an arbitrator imposes a contract on a public employer, numerous studies have shown that the **wage increases are similar** to those won through voluntary settlements.²

Arbitration Produces Similar Wage Increases to Voluntary Bargaining

First contract arbitration laws have been in place for decades in Canada. The process is available in eight of the 11 Canadian jurisdictions, and covers more than 80% of the workforce.³ Wilfrid Laurier University Professor Susan Johnson identified the average rate of first contract arbitration use during the years the process was available for each jurisdiction. As the below table indicates, the vast majority of first contracts are reached voluntarily—few are settled through the arbitration process.

Rate of First Contract Arbitration Use in Canada	
British Columbia	.005
Manitoba	.08
Newfoundland	.02
Ontario	.01
Quebec	.03
Rate = proportion of newly-certified units where some or all of the first contract is settled through the arbitration process. Source: Susan Johnson, 2008.	

New research by American Rights at Work reveals that when the arbitration process is used in Canada, it results in wage increases that are nearly identical to those reached through voluntary collective bargaining.⁴ We focused on four jurisdictions where data on arbitrated agreements was readily available: Newfoundland, Ontario, Quebec, and the federal sector.⁵ The wage comparisons below confirm that the arbitration process produces provisions that are similar to those in negotiated contracts.

In Quebec, 8,225 union contracts were negotiated in the public and private sectors since 2000, and only 124 were

settled through the arbitration process. For the 30 private sector arbitrated settlements reached between January 2006 and April 2009, the average annual wage increase was 2.1%. In the same time period, the average annual wage increase reached through a matched sample of negotiated settlements was also 2.1%.

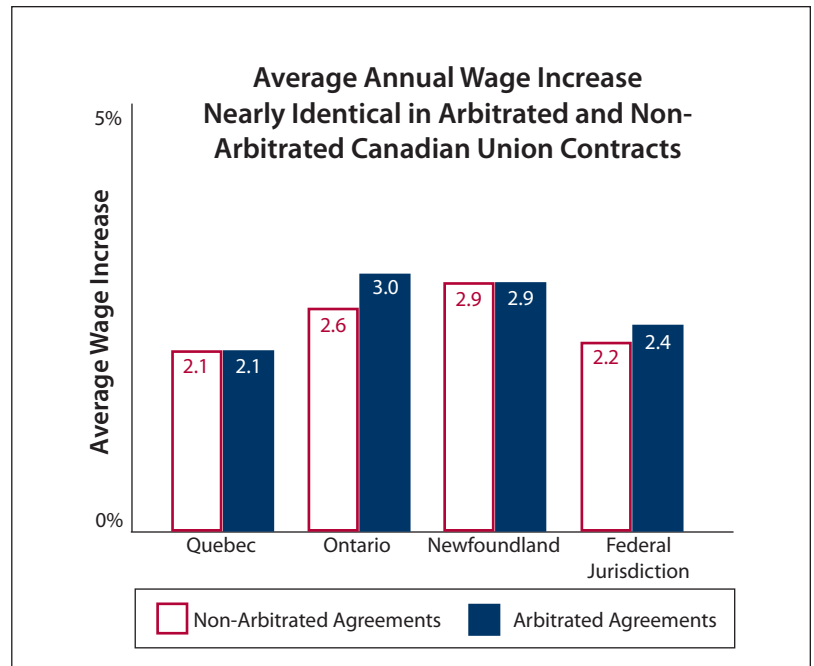
In Ontario, 24 of the 1,484 private sector contracts negotiated between January 2000 and April 2009 were settled through the arbitration process. The average annual wage increase during this period was 3.0% for all arbitrated contracts and 2.6% for all negotiated contracts.

Data from Newfoundland and the federal jurisdiction further demonstrate that the arbitration process is an unbiased system that results in wage increases that are nearly identical to those increases in voluntarily negotiated contacts. In Newfoundland, the average annual wage increase was 2.9% for both the four arbitrated contracts settled from 2005 to 2008 and for the 44 negotiated contracts reached during that period.⁶ Finally, for private sector employers covered under the federal jurisdiction, the average annual wage increase for arbitrated agreements reached between 2006 and 2009 was 2.4%, while the negotiated wage increases averaged 2.2% during that period.⁷

Though corporate special interests insist that businesses can't survive under first contract arbitration laws, many international companies have successful operations and bargain collectively with their unions, including Ford, Hershey, Boeing, General Electric, and Safeway, among others in Ontario. Also some major companies, such as Greyhound and Aramark, have been through the arbitration process under Ontario's labor law. In Quebec, major international companies like Wal-Mart, Staples, and Laidlaw settled collective bargaining agreements through the arbitration process.

U.S. and Canadian labor law adequately demonstrates that arbitration is a fair and necessary incentive to help workers and companies resolve contract disputes. Yet, because most workers in the U.S. don't have a right to arbitration, over half of workers are denied a contract by their employers a year after forming a union.⁸ It's time to level the playing field through the Employee Free Choice Act so we can have the economy work for everyone again.

For more resources on mediation, arbitration, and the Employee Free Choice Act, visit American Rights at Work: www.americanrightsatwork.org.



Notes

1. Thomas Kochan and Arnold Zack, "Negotiations, Mediation Key to First Contract Arbitration," *Roll Call*, 15 June 2009. <<http://www.rollcall.com/news/35842-1.html>>
2. Orley Ashenfelter, James Dow, Daniel Gallagher, and Dean Hyslop, "Arbitrator and Negotiator Behavior under an Appellate System," Unpublished manuscript, Aug. 1997, cited in Ashenfelter, 2001; John Thomas Delaney, "Strikes, Arbitration, and Teacher Salaries: A Behavioral Analysis," *Industrial and Labor Relations Review*, Vol. 36, No. 3: 431-46 (1983); Robert E. Doherty, "Trends in Strikes and Interest Arbitration in the Public Sector," *Labor Law Journal*, Aug. 1986; Peter Feuille, John Thomas Delaney, and Wallace Hendricks, "The impact of interest arbitration and police contracts," *Industrial Relations*, 24: 161-181 (1985); Peter Feuille and John Thomas Delaney, "Collective bargaining, interest arbitration, and police salaries," *Industrial and Labor Relations Review*, 39:228-240 (1986).
3. Susan Johnson, "First Contract Arbitration: Effects on Bargaining and Work Stoppages," Paper presented at the Labor and Employment Relations Association, Jan. 2008. Available at Laurier Center for Research and Policy: <www.lcerpa.org>
4. Data provided to American Rights at Work from the following agencies: Quebec Ministère du Travail, Ontario Ministry of Labor's Office of Collective Bargaining Information Services, Newfoundland and Labrador Labor Relations Agency, and the Saskatchewan Labor Relations Board. Analysis by Peggy Browning Fellow Keisha Williams of University of Maryland School of Law and Senior Research Associate Erin Johansson of American Rights at Work, June-July 2009, with French translation assistance by Heinrich Huber. For further questions on methodology: ejohansson@americanrightsatwork.org.
5. Saskatchewan was excluded because there was not a single contract reached through arbitration since 2000. Separate data from arbitrated and negotiated contracts was not available from British Columbia.
6. Includes public and private sector contracts. The 44 contracts were all the voluntarily negotiated contracts registered with the Newfoundland and Labrador Labor Relations Agency, not all the contracts reached during that period.
7. Data from federal jurisdiction arbitrated agreements provided to American Rights at Work from the Human Resources and Skill Development Department, Labour Department, Government of Canada, and includes all 27 arbitrated agreements reached for employers of over 100 employees. Data from negotiated agreements is for private sector employers of over 500 employees covered by the federal jurisdiction, from Human Resources and Skills Development Canada, "Average Annual Percentage Wage Adjustments By Year," website accessed 30 Oct. 2009.
8. Kate Bronfenbrenner, "No Holds Barred: The Intensification of Employer Opposition to Organizing," American Rights at Work and Economic Policy Institute, May 2009.