

The Case for Arbitration in Labor Law Reform

Labor law reform must help create a level playing field that gives workers and employers incentives to reach an agreement on contracts. Arbitration will help break through the status quo, eliminating unfair delays and conflicts that too often occur during contract negotiations. The Employee Free Choice Act establishes strong rules and fair umpires that help workers and employers come to agreement, involving the process of arbitration as a last resort.

Arbitration Is Needed to Ensure that Workers and Companies Come Together to Agree on a Contract in a Reasonable Period of Time

One year after a successful union election, workers in 52 percent of workplaces still do not have a contract.

According to Cornell University researcher Kate Bronfenbrenner, 52 percent of workplaces had no collective bargaining agreement one year after a successful election. Two years after an election, 37 percent of workers' unions were still without a contract.¹

Arbitration Will Give Both Companies and Workers the Ability to Request a Mediator to Help Ensure a Contract is Reached

Arbitration works to encourage the voluntary settlement of contracts. Experience in the public sector shows that only a small minority of negotiations, in most cases well under 10 percent, end up requiring arbitration. In half of the states and the District of Columbia, public sector employees have the right to resolve collective bargaining conflicts through arbitration, and yet the vast majority of these contracts are still settled voluntarily rather than through arbitration.²

Arbitration is widely available, yet rarely used in Canada. Arbitration is a method of last resort for the issues that employers and workers' unions are unable to resolve on their own. 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 percent of the workforce. During the years those laws were in place, the rate that newly-organized worksites reached first contracts through arbitration ranged from .3 percent to 8 percent.³

Arbitrators Do Not Impose Unfair Terms in Contracts

Arbitration does not result in higher wage increases than contracts negotiated voluntarily. Data from Canada show there is little difference in wage increases between arbitrated contracts and those negotiated voluntarily. In Ontario, the average annual wage increase was three percent for arbitrated contracts and 2.6 percent for negotiated contracts in the private sector. In Quebec, the average annual wage increase for both arbitrated and negotiated private sector contracts was 2.1 percent, and in Newfoundland the increase was 2.9 percent for both arbitrated and negotiated contracts in the public and private sectors. Finally, for private sector employers covered under the federal jurisdiction, the average annual wage increase for arbitrated agreements was 2.4 percent, while the negotiated wage increases averaged 2.2 percent.⁴

Many Businesses that Oppose the Employee Free Choice Act Support Using Arbitration when it Works to Their Advantage

More than a dozen business groups praised arbitration as efficient and effective. In May 2008, more than a dozen business trade groups wrote a letter to Congress stating, "Arbitration is an efficient, effective, and less expensive means of resolving disputes for consumers, employers, investors, employees and franchisees, in addition to the many businesses that use the same system to resolve business disputes."

Businesses that oppose the Employee Free Choice Act include binding arbitration in their consumer agreements. Many businesses that oppose labor law reform, including Home Depot, Wal-Mart, Lowe's, and Bank of America, have binding arbitration clauses in their credit card terms and other consumer agreements.⁶

1. Kate Bronfenbrenner, "No Holds Barred: The Intensification of Employer Opposition to Organizing," May 2009. 2. American Rights at Work, "Low Rates of Arbitration Use in the Public Sector," 2009. 3. Susan Johnson, "First Contract Arbitration: Effects on Bargaining and Work Stoppages," Paper presented at the Labor and Employment Relations Association, Jan. 2008. 4. American Rights at Work, "Union Contract Arbitration in the U.S. and Canada: How Arbitration Encourages Contract Settlement." 5. *The New York Times*, 10/6/08. 6. Wal-Mart Credit Card Terms and Conditions, Home Depot Extended Service Plan, Lowe's Project Card, Bank of America Credit Card Terms and Conditions.