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Cross-Border Views on North American Workplace Laws

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By now, most employers in the United States are familiar with the Employee Free Choice Act ("EFCA"), which was introduced in Congress earlier this year and which organized labor has made its top priority in this legislative session. EFCA has two main prongs: (1) union representation through a card check instead of an election overseen by the National Labor Relations Board ("NLRB") and (2) binding first contract arbitration if the parties are unable to agree on the terms of an initial collective bargaining agreement.

EFCA's drafters clearly have taken their inspiration from Canada, where various jurisdictions have experimented with first contract arbitration and (until recently) employees in most provinces chose their bargaining representatives through card check certification. However, as discussed in this issue of True North, the Canadian experience illustrates EFCA's flaws.

The Employee Free Choice Act: Lessons from the Canadian Experience with Card Check Certification and First Contract Arbitration

In its current form, EFCA represents a radical reformation of labor relations law in the United States. Since its enactment in 1935, the National Labor Relations Act ("NLRA") has provided for secret ballot elections and requires employers and unions to negotiate in good faith, but does not require them to reach agreement on a contract. Now, card check certification and first contract arbitration have been touted as the solution to reversing the fortunes of organized labor and revitalizing the NLRA.

EFCA's drafters clearly have taken their inspiration from Canada. As will be discussed, Canada's labor laws come from the same source as those in the United States — the original 1935 NLRA, also known as the Wagner Act. Until recently, employees in most Canadian provinces chose their bargaining representatives through card check certification.[1] The employer's ability to influence the outcome was limited by the card check procedure and accompanying restrictions on communication. Canadian jurisdictions have also experimented with first contract arbitration, which allows a union that has been unable to negotiate a first collective agreement to refer unresolved issues to arbitration. Extensive remedies, ranging from the interim reinstatement of union organizers to damages, are available to enforce employer and union obligations.

The Canadian experience, however, does not support adopting EFCA. Card check certification has now been abandoned by the majority of provinces in favor of a certification vote. And first contract arbitration has not proven to be a stabilizing influence in newly established bargaining relationships. Accordingly, the Canadian experience with the key features of EFCA offers Americans a unique opportunity see how these features actually work in practice.

A Little History — The Shared Origins of US and Canadian Labor Law

The 1935 Wagner Act introduced the operating principles that have governed collective bargaining in both the United States and Canada for almost 75 years. This New Deal legislation had both a social and an economic purpose. New York Senator John Wagner, who sponsored the legislation, argued that the individual worker "dwarfed by the size of corporate enterprise … can attain freedom and dignity only by cooperating with others within his group." Senator Wagner further argued that with 60% of American families at the time earning an income barely meeting the subsistence level, the American consumer had been prevented from "draining the market of its flood of goods," a serious problem in an age of accelerating mass production.

The Wagner Act offered three solutions to these issues. The first was to confirm the principle of majority rule — if a majority of workers chose union representation (and it appears that Senator Wagner had in mind that this choice would be made through an election), the union would be confirmed as the exclusive bargaining agent for all the employees. No other person or association could speak for the employees.

Secondly, the Wagner Act imposed a bargaining obligation on both parties. Senator Wagner stressed that collective bargaining was not an "artificial procedure" but was aimed at making a collective agreement that would "stabilize conditions and promote fair working standards." To achieve this objective, employers and unions were charged with a positive duty to bargain in good faith and make reasonable efforts to conclude a collective agreement.

Freedom of contract was the third pillar of the Wagner Act. If parties did not reach an amicable settlement, economic sanctions — a strike or lockout — were the means of breaking the impasse. Senator Wagner stressed that the duty to bargain did not "… compel anyone to make a compact of any kind if no terms are arrived at that are satisfactory to him."

After World War II, in response to wartime and immediate post-war labor disputes, the United States sought to balance the Wagner Act, which contained a list of prohibited employer behavior but no corresponding list of prohibited union activities. The 1947 Taft-Hartley amendments provided for unfair labor practice charges against unions, prohibitions against secondary boycotts and allowed employers to express their views during union election campaigns.

At about the same time, each of the ten Canadian provinces were adopting legislation incorporating the basic principles of the Wagner Act. The implementation of these general principles, however, required policy choices:

- By what method would employee support for union representation be determined?
- Did the employer have any legitimate role to play in the process by which employees decide whether they want to deal with the employer through collective representation?
- What support would the statute give to ensure that collective bargaining was not an "artificial procedure" but rather one which in the ordinary course would lead to a collective agreement?

In answering these questions, Canada took a different path from the U.S. — a path that looks very much like EFCA.

The Canadian Experience with EFCA's Substantive Provisions

A. Card Check Certification in Canada

For decades, card check certification was the norm in Canada. In nine of the ten provinces and in the federal jurisdiction, support for union representation was measured by counting signed membership cards rather than ballots. Ontario's law is representative.[2]

In 1950, the *Ontario Labour Relations Act*[3] introduced card check certification as the primary method for determining the wishes of employees. A union applying for certification was required to submit signed union cards from at least 55% of employees in the proposed bargaining unit. In an attempt to ensure that the employee's choice was a deliberate one, the union was required collect $1.00 from each signatory and to attest to the validity of the signatures. Upon receipt of the application, the Board would obtain a list of the names of employees from the employer. An administrative officer of the Board would then compare the cards against the employee list. If the union's cards matched 55% or more of the employees on the list, the union would be certified as the exclusive bargaining agent.

An employer could challenge the appropriateness of the bargaining unit proposed by the union and could dispute whether certain employees belonged in the unit. However, the question of employee support was determined once and for all on the strength of the cards alone.

Employers had serious concerns about the card check system, as did many employees. Card check certification put the employer on the sidelines in the process. In a smaller unit, the employer may not have known the drive was in progress until the application was filed and by that time the die was cast. Even with knowledge of the organizing campaign, the employer's right to respond was limited.

Card check certification is by nature a system designed to minimize or eliminate the employer's influence. Advocates of card check certification maintain that an employer has no more right to participate in the selection of a bargaining representative than it has to influence the selection of an attorney to represent an employee in an employment law claim. This reasoning has had an effect in Canada that extends beyond the mechanics of the certification procedure.

A card check system assumes that employees are vulnerable because of their economic dependence and have to be protected from employer intervention during an organizing campaign. Card check allows a union to gather support in secrecy, and in Canada has been accompanied by serious restrictions on the means and content of employer communications. Messages that predict adverse consequences or promise change, criticize union objectives, and discuss the merit of union representation are all suspect. In some jurisdictions, employer misconduct can lead to certification regardless of proven employee support for the union.

At the same time, unions are largely unregulated in their efforts to sign up the workforce. While there have been instances of actual fraud in Canada where cards have been falsified,4 most unions play by the rules. The problem is that short of prohibiting physical intimidation, there are no rules to constrain union sympathizers from exerting pressure in the workplace, in the parking lot, or on the doorstep of the employee's home. While the system assumes that employer involvement readily compromises free choice, the same system tolerates the extravagant promises and forceful persuasion of the union organizer without concern about the impact on the employee.

In a card check system, there is no assurance that the employee understands the significance of signing a union card. Nor is there any guarantee that the signed card represents the employee's free choice. Peer pressure can be overwhelming. In Canada, an employee who has signed a union card has no real way to change his or her mind. Unions are not obliged to return a membership card and it is unlikely that an employee who has succumbed to peer pressure would make such a request.

Under Ontario's card check system, employees were given the opportunity to petition against an application for certification. However, the procedure required dissenting employees to file an opposing petition within ten days of the application for certification. One of the employees who circulated the petition would be required to testify at a Labour Board hearing. The petitioner would be rigorously cross-examined by the union counsel and questioned by the Board itself, in an effort to discover any employer influence that may have tainted the petition. Few employees had either the experience or the courage to mount such a challenge. Petitions against a card check campaign were rare and seldom succeeded.

In 1995, after 45 years of card check certification, the Ontario government replaced the card check system with a certification vote. In anticipation of union opposition, the new legislation imposed strict time limits on the vote, which are intended to ensure that employees are canvassed before the momentum of the organizing campaign subsides.

Under the current legislation, to trigger a vote, the applicant union must present signed cards from at least 40% of the employees in the proposed bargaining unit. The Labour Board is required to conduct a supervised vote within five business days of the receipt of the application. Exceptions are possible, but over 80% of the votes are held within 5 days and over 95% are conducted within 10 days. Any disputes concerning the appropriateness of the bargaining unit or the status of persons as employees in the bargaining unit (e.g., "employee" or "supervisor"), may result in segregation of ballots, but will not delay the conduct of the vote. Similarly, unfair labor practice allegations are dealt with after the vote has been held.

Six out of ten provinces now require an expedited certification vote, some within five, others within ten days of the application. From a U.S. perspective, the compressed time frame of the vote is startling. However, from a Canadian perspective, the expedited vote was a revolutionary improvement after decades of card check certification.

The arrival of the certification vote roughly coincided with another significant change in Canada — a number of labor relations statutes were amended to specifically recognize the right of the employer to express its views, provided the employer did so without intimidation or coercion. The combination of these two changes finally gave the Canadian employer a voice in the workplace debate about union representation.

For a U.S. employer, the risk posed by card check is as much about what this change would signify as it is about the mechanics of the certification procedure itself. Card check is a policy choice that removes the legitimacy of employer involvement. If the Canadian experience is any indication, the introduction of a card check through EFCA will lead to increasing restrictions on employer communications and actions during an organizing campaign.

What about the individual employee who is the intended beneficiary of a collective bargaining statute? It is difficult for any government to consult with individual employees about proposed labor reform. Union and employer commentary dominates the debate. However, it is worth observing that in Canada, the motivation for change was not aimed as much at adjusting the balance between union and employer influence over the certification process as it was about protecting the rights of the individual employee. The provinces that have adopted the certification vote have concluded that fairness requires that the individual employee to be given the opportunity to make his or her decision in the privacy of a voting booth rather than face to face with a union organizer. No employee appears to have complained about becoming enfranchised with the right to vote.

B. First Contract Arbitration in Canada

Senator Wagner maintained that collective bargaining was not an "artificial procedure devoted to an unknown end." The reason why employees join a union is to enjoy the benefits of a collective agreement. The question is what assistance should be given in a collective bargaining statute to realize the goal of a collective agreement. Traditionally, Canada followed the same approach as the U.S. Like the NLRA, Canadian collective bargaining statutes aim to facilitate collective bargaining by requiring the employer to recognize the union after certification, by establishing the mutual obligations to bargain in good faith, and by allowing either party to resort to economic sanctions to break a deadlock. Mediation services are available to encourage settlement. Unfair labor practice remedies can be pursued if either party defaults in its statutory duties.

Beyond this point, legislatures and labor boards in Canada have historically been reluctant to tread. The whole idea of collective bargaining is self-determination. Free collective bargaining assumes that the parties themselves are best suited to determine their priorities and decide what price they are prepared to pay to achieve them. In a system of free collective bargaining, the government's role is to ensure that parties play by the rules, but not to determine the content of their deal.

In Canada, one major exception to free collective bargaining has become part of the law. In seven of ten provinces and in the federal jurisdiction, a newly certified union can cause a first contract to be imposed by arbitration where negotiations have not yielded a settlement. First contract arbitration was first introduced in the province

of British Columbia in 1973. At the time, the British Columbia Federation of Labour vigorously opposed the change. The Federation was concerned that while first contract arbitration may favor labor, it represented the thin end of the wedge of government intervention in free collective bargaining. The union movement's concern turned out to be prophetic as the B.C. government has, over the years, attempted to roll back gains in public sector collective agreements.[7]

Ontario's first contract arbitration was enacted in response to a select number of high profile first contract strikes that degenerated into violence. There was never any intention to make first contract arbitration the routine method of settling the terms of first contracts. Indeed, there was no need to depart from established bargaining practices — at the time, unions were successfully negotiating first contracts in over 85% of certifications.[8]

The limited scope of the Ontario provision is evident in the threshold conditions for arbitration. A union can only gain access to first contract arbitration if it can demonstrate that collective bargaining has been unsuccessful because: (i) the employer has failed to recognize the bargaining authority of the union, (ii) the employer adopted uncompromising bargaining positions, or (iii) the employer has failed to make reasonable or expeditious efforts to conclude a collective agreement.[9] Under the Ontario first contract provision, free collective bargaining remains the primary means of resolving the terms of the first collective agreement. Arbitration is only available as a remedy for obstructive behaviour.

Some other provinces provide for unconditional access to arbitration. In Manitoba, for example, a union can gain access to arbitration without establishing any failure to bargain on the part of the employer. EFCA also would allow a union to proceed to arbitration if a collective agreement is not reached within a defined period, which could be as brief as 120 days following the commencement of bargaining. Access to arbitration would be permitted even where the employer has bargained fairly.

In Canada, first contract arbitration is conducted before either the provincial labor board or a private arbitrator, depending on the province. Arbitration is generally preceded by a final attempt to mediate a settlement or at least to narrow the issues referred to arbitration. The parties then put their demands before the arbitrator with evidence to support their positions. The arbitrator will ultimately impose terms in respect of any unresolved issues. Once a dispute is referred to arbitration, a strike or lockout is prohibited from commencing or continuing. Collective agreements settled through first contract arbitration have a term of one to three years under Canadian statutes.

Employers in the U.S. are rightly concerned about the effect of first contract arbitration on negotiations and about losing control over the content of collective agreements. A union focused on arbitration has little incentive to compromise before arbitration, anticipating that the arbitrator will likely "split the difference" between its demands and the employer's position. For the employer, arbitration is a risky proposition — an outsider with no knowledge of the business is given a mandate to decide what the employer will pay and what the terms and conditions of employment will be. This is a clear departure from free collective bargaining contemplated in the Wagner Act.

In Canada, many arbitrators faced with a first contract dispute have endeavored to "replicate" the terms that parties may reasonably have negotiated if left to their own devices at the bargaining table. One prominent arbitrator summarized the objective of first contract arbitration in the following terms:

> The object of the exercise is not to penalize or regard the conduct of either party. Rather, it is to establish a collective agreement on such terms as will give employees and employer alike the experience of a period of not less than two years during which they may assess for themselves the value of having terms and conditions of employment negotiated and enforced through the representative services of a trade union.
>
> In our view, first agreement boards should guard against any temptation to make overly generous awards, rich "breakthrough" provisions which are normally achieved only through years of collective bargaining.
>
> Paradoxically, first collective agreement boards should be perceived by unions as sufficiently lean to dissuade them from lightly turning to it as a substitute for bargaining and should at the same time be seen by employers as sufficiently generous to cause them to realize that it may be in their best interests to freely fashion the terms of a first collective agreement in face-to-face bargaining with the union.[10]

A second prominent Canadian arbitrator, and then Chair of the British Columbia Labour Relations Board, expressed the purpose of first contract arbitration as follows:

> We can sum up the thrust of [first contract arbitration] by saying that its objective is to promote free collective bargaining, not to substitute for it. It should only be used in cases where that particular object requires this unusual device. It is not intended as a standard response to the breakdown of bargaining even in the case of first contract negotiations.[11]

However, arbitral opinion about the role of first contract arbitration is not unanimous in Canada. Some arbitrators disagree with the principle of "replication," maintaining that the arbitration process is meaningless if consideration is given to the relative bargaining strength of the parties.[12] Such reasoning leads to unpredictable results and the possibility of agreements that bear no relationship to a bargained result.

Further, the Canadian statutes require an assessment of the quality of bargaining before access to first contract arbitration was permitted. In contrast, EFCA is particularly troublesome because it does not contemplate any threshold analysis before a union gains access to first contract arbitration. It would not allow the NLRB or any other agency to turn away a union that has not engaged in serious bargaining before seeking arbitration. EFCA also does not articulate the criteria that will govern arbitrators. American arbitrators may demonstrate the same caution that many Canadian arbitrators have exhibited in setting the terms of first collective agreements, or they may impose an agreement that bears no relationship to workplace realities.

Ten Lessons U.S. Employers Can Learn from the Canadian Experience

The Canadian experience with card check certification and first contract arbitration can be

of great advantage to Americans in evaluating potential impact of the reforms proposed in EFCA. There are obvious differences between Canada and the U.S. that may influence developments if EFCA is enacted. However, in general terms, U.S. employers can expect the following if EFCA becomes law.

1. Card check certification will minimize employer influence

By its very nature, card check certification represents a policy choice to exclude the employer from the workplace debate concerning union representation. In Canada, unions are not required to notify the employer that a card check campaign is in progress. In many cases, the employer learns about the campaign for the first time when the application for certification is filed, by which time all that remains is the counting of the cards. The employer has had no input into its employees' decision making. The principle that supports card check certification inevitably leads to other restrictions on employer conduct. U.S. employers can, for example, expect that the scope for employer communication during an organizing campaign will be constrained under a system in which the employer is seen to have no rightful role.

2. Certification activity will inevitably increase under a card check system

The card check procedure encourages organizing activity. In the final ten years under the card check system in Ontario, an average of 955 applications for certification were filed annually. The average number of applications in the first ten years following the introduction of the secret ballot vote fell to 655 per year, a drop of approximately 30%.[13] U.S. employers can expect a trend in the opposite direction if card check is adopted.

The reason for the difference is obvious. In a card check system, the union organizer controls the process by which support for certification is established. Once the required number of signed cards have been collected, the organizer's job is done. In a system based on a vote, the union must rely on the persuasiveness of its message, knowing that employees will likely hear the employer's side of the story and also knowing that every employee will decide in the privacy of the voting booth. A union that is not confident in its support will simply not file for certification.

3. Certification applications have a lower success rate when employees have an opportunity to change their minds

Unions are less successful under a certification procedure that relies on a vote. In the ten year period prior to the introduction of the secret ballot vote in Ontario, certificates were granted in approximately 68% of all applications.[14] In the ten years following the introduction of the certification vote, the unions' success rate declined to 58%.[15] It is likely that this ten point decline in the union success rate is, in large measure, due to employees being able to change their minds and express their true wishes without scrutiny.

4. The certification vote is an effective means of compensating for undue influence by either the union or the employer

Card check certification creates an opportunity for undue influence by the organizing union without any effective remedy. Under the card check system, employers will likely hear increased complaints from employees about visits at home, pressure in the parking lot, etc. However, there is really nothing the employer can do to protect or assist the employee. Card check jurisdictions require the employee to file a complaint against the union, which is entirely unrealistic. While infrequent, there are also cases of actual fraud under card check procedures. A secret ballot vote provides the ultimate remedy to the employee who has been pressured into signing a union card. The same is true for an employee who decides to reject an overly aggressive appeal from the employer.

5. The certification vote promotes employee participation in the decision about union representation

Employee participation is generally higher when certification is based on a secret ballot vote. In a card check system, the union is focused on the percentage of cards required to cross the threshold set by the legislation. For example, if the union needs 50% plus 1, the union can ignore a substantial part of the workforce in its organizing activity. In a vote based system, all employees have the right to participate and results tend to be more representative. Quite simply, the vote favors the employees' interests over the institutional interest of the union.

6. The certification vote contributes to more constructive first agreement bargaining

In Canada, the introduction of the secret ballot vote has had a positive effect on collective bargaining. In Ontario, for example, there has been a steady decrease in the number of strikes and lockouts in first agreement bargaining.[16] One reason may well be that the employer is more willing to accept the legitimacy of the union if the employer has had a reasonable opportunity to express its views and is satisfied by the results of a supervised vote that employees have freely chosen union representation.

7. The choice between card check certification and a certification vote does not appear to impact directly on union density

The removal of an employee's right to vote would be a dramatic step for the United States given its commitment to the democratic process. Nonetheless, supporters of EFCA maintain that employee wishes cannot be known through an election because of the influence that the employer will exert. Removing the right to vote is an example of the "ends" justifying the "means." Even those who advocate on behalf of organized labor must consider whether EFCA is worth the price of denying employees the right to vote.

Union density in the private sector began its decline in Canada in the mid 1970s, 20 years before many Canadian provinces transitioned from card check to voting based certification.[17] Union representation has fallen for many reasons unrelated to changes in the certification procedure (primarily because of the erosion of union strongholds in manufacturing and resource industries).

Differences in union density from province to province do not seem to be attributable to certification procedures. For example, both British Columbia and Alberta have mandatory certification votes but union density in the private and public sector in Alberta is at the level of 22.3%, while in British Columbia 31.0% of the workforce is unionized.[18] Alberta and

British Columbia are adjoining western provinces. However, differences in the political and cultural history of these two provinces, rather than the certification procedure, may well account for the less successful results of organized labor in Alberta. Politically and culturally, Alberta is somewhat akin to Texas, while British Columbia is somewhat akin to California.

The province of Newfoundland requires a vote in certification applications and 37% of its workforce is represented by trade unions.[19] In contrast, the province of Saskatchewan, which until recently operated by card check, records a union density figure of 34.8%.[20] Even with the advantage of card check certification, unions in Saskatchewan have not done as well as unions in Newfoundland. Obviously, there are many factors that are influencing the success of union organizing campaigns.

8. Unconditional access to first contract arbitration undermines collective bargaining

Access to arbitration at a predictable time has an unnerving effect on collective bargaining. Parties that are bargaining with an eye to the arbitration procedure are less likely to compromise, leaving it to the arbitrator to find the middle ground between their positions.

9. First contract arbitration does not promote stable collective bargaining relationships

Of particular interest for U.S. policy makers should be the fact that first contract arbitration does not produce stable results. Many bargaining relationships fail after the expiry of the arbitrated first collective agreement. For example, in Quebec, only 47% of first contract arbitration awards are followed by a second collective agreement, and only 24% reach a third. In Ontario and other provinces, bargaining relationships often do not mature following an arbitrated first agreement. This reality is another reason why unions do not use the procedure.

10. First contract arbitration, while widely available, is not widely used in Canada

First contract arbitration was conceived as a remedy for the extreme case in which intransigence rather than hard bargaining has lead to impasse. The fact that first contract arbitration is regarded as an exceptional remedy rather than a standard practice is reflected in a low incidence of first contract awards in Canada. Although it has been in place in Canada for over 25 years, first contract arbitration has never become a mainstream means of resolving first collective agreements. In Ontario, where the union must show a failure to bargain, unions have resorted to arbitration in less than 1% of first contract certifications.[21] Even in Manitoba, where an unresolved first contract dispute can be arbitrated without proof of any bargaining impropriety, just over 10% of first contract certifications end up in arbitration.[22] Arbitration has not been embraced as a substitute for free collective bargaining.

Conclusion

For many Americans, EFCA is unacceptable because it removes the right to vote. Still others find first contract arbitration to be a destructive encroachment on free collective bargaining. These reasons may be sufficient to reject EFCA. The Canadian experience raises additional concerns that go to the foundation of collective bargaining and should be considered.

Collective bargaining is based on the formation of effective relationships between an employer and the union representing its employees. After the excitement of the organizing campaign, the union must work with employees who are unfamiliar with union representation, but must also introduce those employees to the realities of the bargaining table. If the union bypasses first agreement negotiations, it may never acquire the confidence and support necessary to act as an effective bargaining agent. The difficulty many unions experience in attempting to renew an arbitrated first agreement is evidence of this reality.

The first round of collective bargaining also is critical to the relationship between the union and the employer. Parties who leave the first agreement bargaining table with a collective agreement often have gained a grudging respect for and understanding of each other. If the union heads off to first contract arbitration, it abandons an opportunity to develop its relationship with the employer. The union will continue to deal with an employer doubtful of the union's support and embittered by the prospect of living under terms and conditions that have been imposed through arbitration. The difficult task of building relationships essential to successful negotiations is simply postponed until the arbitrated agreement expires.

The results in Canada indicate that bargaining relationships formed through card check certification can lead to greater conflict at the first agreement bargaining table. Bargaining relationships sustained through first contract arbitration often do not mature to achieve the renewal of the arbitrated first agreement.

There are many reasons to question the wisdom of the reforms proposed in EFCA. Reviewing EFCA's key provisions through the lens of the Canadian experience leads to the conclusion that EFCA is not a panacea to cure what ails organized labor and should be viewed skeptically by employees and employers alike.

1 In Canada, there are ten provinces and a federal jurisdiction, each with authority to enact labor and employment law. Provincial law applies to approximately 90% of the workforce in businesses and services operating within a province such as manufacturing, resource industries, retail sales and health care. The federal government has jurisdiction over approximately 10% of the workforce engaged in businesses that connect the provinces or connect Canada to the international community, such as railways, airlines, telecommunications and banking.

2 Ontario is the largest jurisdiction in Canada. Its laws are generally representative of the laws of other provinces and are referenced here for the purpose of illustration.

3 R.S.O. 1950, c. 194, s. 5

4 See, for example, *Certain Employees of Purdy Chocolates Ltd. and R.C. Purdy Chocolates Ltd. v. Communications, Energy and Paperworkers Union of Canada, Local 2000,* [2001] B.C.L.R.B.D. No. 412 (QL).

5 Ontario Labour Relations Board, *Ontario Labour Relations Board Annual Report, 2007-2008, available at:* OLRB at 29.

6 U.S., *Cong. Rec.*, 74th Cong., Sess. 1 at 7571.

7 Health Services and Support - *Facilities Subsector Bargaining Assn. v. British Columbia* [2007] 2 S.C.R. 391.

8 Office of Collective Bargaining Information, Ontario Ministry of Labour.

9 Ontario Labour Relations Act, 1995, S.O. 1995, c.1, Sched. A, s. 43(2).

10 *Teamsters Local Union 419 and Crane Canada Inc.* (July 1, 1988) (M.G. Picher).

11 *Miscellaneous Workers, Wholesale and Retail Delivery Drivers and Helpers Union, Local No. 351 and London Drugs Ltd.*, [1974] B.C.L.R.B.D. No. 30 (QL). (Paul C. Weiler)

12 *Egan Visual Inc.,* [1986] O.L.R.B. Rep. Aug. 1075, and see "First Contract Arbitration in Ontario: A Glance at Some of the Issues," Labour Arbitration Year Book 1991, Vol. 1.

13 Calculated using statistics from the Ontario Labour Relations Board, *Ontario Labour Relations Board Annual Reports 1985-2006, available at:* OLRB

14 Calculated using statistics from the Ontario Labour Relations Board, *Ontario Labour Relations Board Annual Reports 1985-2006, available at:* OLRB

15 *Ibid.*

16 Ontario, Ministry of Labour, Collective Bargaining Information Services, "Work stoppages under Ontario Jurisdiction between 1990 and 2000 that were First Agreements."

17 Elmustapaha Najeem, "Croissance du mouvement syndical et caractéristiques du régime des relations de travail au Canada" (1996) *Les Document de Rechereche, available at:* Université de Québec en Outaouais

18 Statistics Canada, "Unionization" in *Perspectives on Labour and Income* (August 2007), *available here at* 3.

19 *Ibid.*

20 Saskatchewan, Legislative Assembly, Standing Committee on Human Services, *Hansard*, No. 11 (1 May 2008).

21 *Ontario Labour Relations Board Reports 1986/87 – 2007/08.*

22 *Manitoba Labour Board Annual Reports 2003/04 – 2007/08.*