Federation of Labour and correspondingly of the Manitoba Federation of Labour, the Canadian Labour Congress came out with qualified support for the proposed federal legislation:

> The CLC prefers to limit government intervention into collective bargaining matters to a strict minimum .... However, the experience of past many years has convinced us that there is a class of employers which tend systematically to avoid any collective bargaining and thus to conclude a first agreement which would set a pattern .... Legislation similar to that proposed ... already exists, for instance, in British Columbia ... and has proved useful.[205]

However, Shirley Carr made clear that the trade union movement retained some sense of reservation; "I think it should be on the record that the Canadian trade union movement is opposed to compulsory arbitration, and there are some of us who still feel that the imposition of first agreement is, in fact, a form of compulsory arbitration."[206] Despite this, Carr admitted that the CLC had surveyed its membership across the country and found that the feeling in this instance (in view of the fact that there had been so much difficulty organizing radio and television stations and banking institutions) was in favour of first contract arbitration.

Although the trade union movement seemed to be giving grudging approval to first contract arbitration, by far the preferred position was to argue for legislative enactment of the Rand formula union security clause. Following the Fleck strike, Robert White, UAW Director for Canada and International Vice-President, submitted a brief to the Ontario government calling not for first contract arbitration, but for legislated union security.[207] White explains this position by contending that in almost all difficult first contract

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[205] *Id.* Issue No. 8, March 9, 1978 at 8A:19. The CSN also approved of the proposed remedy, stating that it believed first contract arbitration was necessary to break certain employers' resistance towards union certification; resistance that was obvious not only in the course of certification procedures but also during negotiations. (Issue No. 10, March 15, 1978 at 10A:25.)

[206] *Id.* Issue No. 8, March 9, 1978 at 8:40.

[207] The relevant portions of the brief, a copy of which was obtained from Robert White, read as follows:

November 7, 1978

UNION SECURITY: UAW STATEMENT TO ONTARIO GOVERNMENT

1945: UAW workers in Windsor strike the Ford Motor Company for 100 days and eventually win the precedent-setting "Rand Formula".

1968: UAW workers in Wallaceburg are forced to strike N. American Plastics for 23 months. The key issue of the Rand Formula was not won at that time but the struggle continued and we were finally successful in gaining union security in 1977.

1974: UAW workers in Longueuil, Quebec strike United Aircraft for 20 months and again the Rand Formula is the center of the bitter confrontation. As a result of this strike, Quebec legislates the Rand Formula into all collective agreements.

1978: UAW workers in Centralia strike Fleck Manufacturing for 162 days and the combination of the courage of the women and the solidarity of supporters inside and outside of our union leads to winning the Rand Formula.

strikes the fundamental issue was union security and union recognition.[208] If the union security issue were resolved by legislation, in the majority of first contract cases the economic issues could probably be resolved. There would be no need for first contract arbitration. White's reluctance to countenance first contract arbitration seems to rest on the fear that it is the "thin edge of the wedge." The majority of the trade union movement is opposed to compulsory arbitration and sees first contract arbitration as a form of compulsory arbitration. However, White concedes that in some small, anti-union enterprises first contract arbitration can prove useful. "Although the majority of the trade unionists oppose compulsory arbitration of any form, those who are on their backs after six months of a strike for a first agreement would probably go for first contract arbitration."[209] Recognizing that first contract arbitration is of "some benefit," he cautions that the trade union movement does not see it as a "cure-all."[210]

There are a number of problems apparent with the trade union preference of Rand formula union security legislation over first contract arbitration. As a practical matter, resolving the union security issue will no more remove all employer antipathy to unions than will mandatory secret ballot certification votes. Although union security legislation might have solved the Fleck dispute, none of the British Columbia first contract cases centred on union security. Furthermore, automatic Rand formula union security might in fact prove counter-productive in some cases. Some employers harbour deep ideological hostility to all forms of union security. In the face of legislated union security the only way such employers could ensure there were no union security provisions in their plants would be to prevent the signing of any collective agreement. Thus this legislation might aggravate some labour disputes, causing some employers to become more intransigent than ever. Solv-

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THE FLECK STRIKE IS NOW OVER. THE FLECK FIGHT IS NOT.

August 17, 1978

The Honourable William G. Davis, Q.C., Premier of Ontario

I am writing this letter shortly after my return from Centralia, Ontario where, as you are no doubt aware, a settlement has been achieved in that long and bitter Fleck strike. . . .

Never again in Ontario should workers have to do what Fleck workers did—strike for a Rand Formula check-off. Never again in Ontario should massive use of police be used to support an employer trying to break a strike and deny the workers their right to have a union.

It is time for action by your government on this issue. The compulsory dues check-off should be automatic by legislation, once a union is certified by the Ontario Labour Relations Board.

I suggest to you such legislation would do a great deal to avoid a repeat of the "Fleck" strike.

Yours truly,

Robert White.

[208] Interview with Robert White, Canadian Director of the UAW, December 19, 1978.

[209] *Id.*

[210] *Id.*

ing the union security problem by statute clearly would not obviate the first contract problem.[211]

With the passage of time the unions' public stance on first contract arbitration has undergone some revision. The Ontario Federation of Labour set up a special committee to examine growing union complaints of employer unfair labour practices against a background of a number of bitter strikes. Based on the research of this committee, the OFL made a submission to the Ontario government requesting: 1) the outlawing of strikebreaking, 2) automatic Rand formula union security to be granted with certification, and 3) arbitration of first contracts when parties failed to reach agreement, similar to legislation in British Columbia and Quebec.[212] In November of 1979 the OFL convention adopted a resolution urging the government to enact legislation that would ensure that unions were able to reach a first agreement.[213] Despite this recent "mellowing" in the union attitude towards first contract arbitration, it is still clear that the labour movement perceives other steps, such as the elimination of strikebreaking and compulsory Rand formula union security, to be better solutions to the problem of bad faith bargaining in the first contract setting.[214]

Before leaving this discussion, it is important to reflect upon the general attitudes of labour and management to first contract arbitration. It is quite clear that neither labour nor management was the leading lobbyist for the adoption of the first contract remedy. The remedy was conceived of, enacted and developed by government and academic labour neutrals. Management and labour have taken positions opposed to compulsory arbitration based on what they perceive to be their basic institutional interests. Both fear first contract arbitration as the "thin edge of the wedge." The question obviously arises as to the validity of enacting and enforcing a labour law remedy for which neither labour nor management has expressed an unequivocal desire. The answer is perhaps best summed up by the Operating Engineers' business

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[211] Furthermore, the legislative enactment of union security provisions raises a number of other issues that must be addressed (much in the way the call for mandatory secret ballot certification votes does). These are not to be discussed here.

[212] *Toronto Globe & Mail,* October 31, 1979.

[213] *Id.* November 30, 1979.

[214] Subsequent to the writing of this article, the Ontario Progressive Conservative Government enacted an amendment to *The Labour Relations Act* to provide for automatic dues checkoff in the form of the Rand Formula. (*An Act to Amend the Labour Relations Act,* S.O. 1980, c. 34).

Labour Minister Robert Elgie stated that his government was responding to the OFL's Brief and to the presure of several first contract strikes where the main issue was union security. (*Toronto Globe & Mail,* June 5, 1980). Even at this early point in time, one can argue that a statutory union security provision is not the panacea for acrimonious first contract labour disputes. The very day that the new legislation became law in Ontario on June 17, 1980, an employer who had been refusing to sign a first agreement, ostensibly because of union insistence on a dues check-off provision, withdrew all its earlier monetary proposals that had been accepted by the union. (Fotomat Canada Ltd., *Toronto Globe & Mail,* July 4, 1980). Clearly the employer's main desire was to avoid a collective agreement. The opposition to a union security provision was merely the technique used to frustrate an agreement. Once the statutory amendment eliminated this as a bargaining issue the employer simply focussed its opposition elsewhere.

agent who blurted out in an unguarded moment that while the labour movement might be opposed to compulsory arbitration of any sort, "every so often we have to think of the workers."[215] Hedged about with various restrictions and carefully designed so as to affect collective bargaining as minimally as possible, the remedy of first contract arbitration is supportable in a way that compulsory arbitration in general is not.

VI. THE QUEBEC EXPERIENCE

In the fall of 1977, hearings were held before the Quebec Commission Permanents des Relations de Travail, to consider amendments to Quebec labour legislation. The Quebec Minister of Labour, Pierre-Marc Johnson, recommended at that time that a form of first contract arbitration be adopted. His reasoning was based largely on the successful experiences that the Labour Relations Board of British Columbia had with this remedy. Johnson claimed that his Ministry was concerned, as a practical matter, with approximately 23-29 cases a year where a strike or lockout had occurred over a refusal of the employer to recognize the trade union.[216] More specifically, Johnson mentioned his concern with such labour disputes when their duration was lengthy, and when the employer attempted to continue to operate with "scab" labour. He proposed that first contract arbitration, based upon the experience in British Columbia, would act to end the work stoppage, possibly encourage a trial marriage given certain conditions and would serve as a deterrent to employers who might otherwise bargain in bad faith as part of a ploy to refuse recognition to the union.[217]

The legislation enacted was quite similar to the British Columbia legislation. The remedy was limited to first contracts. Where there was failure to conclude an agreement, either party was authorized to apply to the Minister of Labour, who had the discretion to submit the dispute to a council of arbitration. It should be noted that this latter provision shows some departure from its British Columbia counterpart, in that an *ad hoc* council of arbitration was given jurisdiction, rather than the Labour Court which administered the other provisions of the *Quebec Labour Code*.[218] The powers of the council of arbitration were outlined in section 81d of the Code: "According to the behaviour of the parties as regards section 41 (duty to bargain in good faith), the the council of arbitration may decide that it must determine the content of the first collective agreement." An additional departure from the British Columbia remedy authorized the council to impose a contract binding for a period of "not less than one year nor more than two years."[219]

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[215] *Supra* note 24.

[216] *Les debats de l'Assemblée Nationale*, November 23, 1977 at B-8042-3.

[217] *Le Journal des Debats*, December 16, 1977 at B-9955-60.

[218] The *Quebec Labour Code*, R.S.O. 1964, c. 14.

[219] The *Quebec Labour Code*, provides in s. 81a-81h as follows:
Sec. 81a. Where a first collective agreement is negotiated for the group of employees contemplated by the certification, a party may apply to the Minister to submit the dispute to a council of arbitration after the intervention of the conciliator has not been successful. . . .

The indications are that this first contract remedy is receiving a form of application that differs qualitatively from the experience of other Canadian jurisdictions. In the short period of time from the end of January, 1978 (when the legislation became effective) to July 20, 1978, the Minister received 83 requests for first contract arbitration. Even allowing for an initial flurry of applications from parties uncertain as to how the legislation would be interpreted, as occurred in British Columbia at the outset, the number of applications here seems extraordinarily high. As of July 31, 1979, final decisions had been rendered in only eight cases. Two other interim decisions had been rendered, both on the question of whether or not a first contract should be imposed. Of these small number of decisions, in six cases the council of arbitration had decided to impose a first agreement. In comparison with British Columbia experience, it would seem that this ratio indicates a high percentage of imposed contracts.

A. *Cases Following British Columbia Jurisprudence*

A closer examination illustrates a definite lack of uniformity in reasoning among these decisions. Several of the decisions appear to follow closely along the lines of the reasoning set forth by the British Columbia Board. The case of *Concorde Ford Sales Ltée* et *L'Union des Vendeurs d'automobiles et employés auxiliaires*,[220] January 12, 1979, involved the first decision reached upon an application for a first agreement. The council of arbitration concluded that an agreement should be imposed, noting that the parties were unable to reach a settlement on their own. In addition, based upon the behavior of the employer, the council concluded that it had no intention, from

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Sec. 81c. The minister may, upon receipt of the application, entrust a council of arbitration with endeavouring to settle the dispute.

Sec. 81d. According to the behaviour of the parties as regards section 41, the council of arbitration may decide that it must determine the content of the first collective agreement. It shall then inform the parties and the Minister of its decision.

Sec. 81e. If a strike or lock-out is in progress at that time, it must end from the time when the council of arbitration informs the parties that it has deemed it necessary to determine the content of the collective agreement to settle the dispute.

From such time, the conditions of employment applicable to the employees comprised in the bargaining unit shall be those the maintenance of which is provided for in section 47.

Sec. 81f. To determine the content of the first collective agreement, the council of arbitration may take into account, *inter alia,* the conditions of employment prevailing in similar undertakings or in similar circumstances.

Sec. 81g. At any time, the parties may agree upon one of the matters of the dispute. The agreement shall be recorded in the arbitration award, which shall not amend it.

Sec. 81h. The arbitration award shall bind the parties for a period of not less than one year nor more than two years. The parties may, however, agree to amend its contents, in whole or in part.

[220] None of the decisions of the councils of arbitration under this section have been reported. As a consequence of this, this article only refers to the decisions by name and date. Copies of these decisions can be obtained from the Ministère du Travail et de la Main-d'oeuvre, Direction générale de la recherche, 425, St.-Amable, 4e étage, Québec, Québec, G1R 4Z1.

the date of the certification, of signing an agreement with the union. The employer's attitude was described as demonstrating "serious negligence" and "total disinterest."[221] As a result of this evidence of bad faith, the council exercised its jurisdiction to impose an agreement.

In the case of *Leon's Furniture Ltd.* et *Union des employés de commerce, section locale 502*, October 31, 1978, the majority of the council refused to impose a contract. The council stated that the criterion to be considered was the behavior of the parties as regards section 41, (the duty to bargain in good faith section). Before the council undertook this task, however, the parties were asked if they consented to have the council determine the contents of a first collective agreement. The employer had objected. The decision then made reference to the case law of British Columbia, emphasizing that the British Columbia legislation had provided the model for the Quebec provision. However, the council noted that the British Columbia legislation authorized the Board to impose a contract "if the Board consider[ed] it advisable."[222] The council distinguished the Quebec provision from this very general discretionary power, noting that its own legislation provided that the council's decision was to be exercised "according to the behavior of the parties with respect to s. 41."[223] Nevertheless, the council concluded that, taking into account the differences between the Quebec and British Columbia legislation, the council should draw its inspiration from the British Columbia jurisprudence concerning the application of its section 70 first contract remedy. The council concluded that the purpose of the first agreement remedy was to encourage free collective bargaining.

The council compared the instant case with the *Vancouver Island Publishing Co.* case,[224] where the British Columbia Board had refused to impose a contract because the union had made no serious attempt to bargain in good faith with the employer. The council stated that while the negotiations were deadlocked, this deadlock was not caused by any lack of diligence on the part of the employer. The council noted that if the deadlock had been caused by dilatory manoeuvers on the part of the employer conducted to sabotage the process of free collective bargaining between the parties, it would not have hesitated to impose a contract. Instead, the deadlock came about because the union had lost the support of its membership through a lack of diligence on its part. The union's erosion of bargaining power was not related to illegal acts on the part of the employer designed to intimidate or coerce employees from exercising their rights to bargain collectively. There had been no refusal on the part of the employer to recognize the union. Instead of trying to improve its level of support among its membership, the union had come to the council asking for a first agreement. This was precisely the type of case, the council concluded, in which a first contract should not be imposed.

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[221] *Concorde Ford Sales Ltée* et *L'Union des Vendeurs d'automobiles et employés auxiliaires*, January 12, 1979 at 8.

[222] *Leon's Furniture Ltd.* et *Union des employés de commerce, section locale 502*, October 31, 1978 at 5.

[223] *Id.*

[224] *Vancouver Island Publishing Co.* [1976], 2 Can. L.R.B.R. 225.

In the case of *Produits de Métal Diamond Ltée* et *Association Internationale des Travailleurs du Métal en Feuilles, section locale 116*, February 9, 1979, the council of arbitration adopted the reasoning found in *Leon's Furniture Ltd.*, but found that reasoning inapplicable on the particular facts of the case. The council stated that it was true, as indicated in *Leon's Furniture*, that as with the British Columbia jurisprudence, the remedy of first contract arbitration was designed to promote collective bargaining, not to act as a substitute for it. In the instant case, the council determined that the deadlock in bargaining was initially attributable to a lack of diligence on the part of the union. In part, this was based on the employees' flagging support for the union. Although there had been no flagrant refusal to bargain on the part of the employer, the council felt itself unable to conclude that the employer intended to pursue negotiations with diligence either. A number of dissident employees had approached the employer directly, offering to leave the union if this would accelerate the settlement of higher salaries. The employer swiftly concluded salary raises in the order of 11-24 percent with these employees. The council stated that the employer was put in the situation where it could no longer negotiate with the union, since the union's demise was necessary for it to honour the undertakings made to the employees. At the same time, the employer had placed the employees in the position that they would have to leave the union in order to take advantage of the raises. Concluding that it was true that the employer was not the guardian of the integrity or survival of the union, the council also stated that the employer must not contribute by unlawful acts to its demise. The council concluded that the necessary factors were present to authorize the imposition of a first contract, but then decided not to impose one at this stage. Instead, the council announced that it would proceed by mediation, in view of the great progress made in negotiations before they had been unfortunately interrupted. It was stated that the hope was that the dispute would be settled in this manner. The council thus suspended any decision to impose a contract at this time.

B. *Cases Differing from the Approach of the British Columbia Board*

A number of cases where first contracts were imposed differed quite markedly from the type of reasoning employed in British Columbia. The case of *Les Métallurgistes Unis d'Amérique Local 8702* et *Canada Dry Ltd.*, April 27, 1979, provides an interesting example. The council of arbitration was designated to hear the dispute following a union request to the Minister of Labour. During negotiations the company's last offer had been accepted by the union negotiating committee, but subsequently rejected by the union membership. A strike had ensued for four and one-half months, which was marred with illegal acts. The membership apparently wished to achieve parity with the employer's competitors, whose employees had been unionized for a long time. The council stated that it would be impossible for this union to try to catch up in a single round of bargaining. Both parties told the council of their desire to end the work stoppage and to see a first contract imposed. Stating that the parties were incapable of settling their differences, and noting that they had made a point of calling upon a third party to decide in their place, the council decided to intervene to determine the contents of the

first agreement. This would appear to be a definite departure from the sort of analysis developed in British Columbia. Rather than examining the nature of the bargaining process and the tactics of the parties, the council seemed to be content to impose a contract because the parties were incapable of doing so themselves, and because they wished a contract imposed. This allows for a clear shirking of negotiating responsibility on the part of the parties, and indicates an unfortunate new line of reasoning.

The case of *L'UQAM* et *Le Syndicat des Charges de Cours de L'UQAM*, April 26, 1979, illustrates another departure from the line of reasoning developed in British Columbia, one which may create some problems in the future. The majority of the council in this case determined that the decision to impose a first contract was of a judicial or quasi-judicial nature. Citing Pigeon's *Rédaction et Interprétation des lois*,[225] the council noted that the word "peut" was imperative when it was attributed to judicial or quasi-judicial jurisdiction.[226] The first contract section used the word "peut" in section 81d ("the council of arbitration *may* decide that it must determine the contents of a first collective agreement . . . .").[227] As a result, once there was a preponderance of evidence of lack of diligence or good faith bargaining on either side, the council *must* decide to determine the contents of a first agreement. In this particular case, the union had stalled negotiations, claiming that it had to consult with another union, the Syndicat des Professeurs de l'Université de Québec à Montréal. The council determined that the union was insisting that a third party be included in the negotiations. Noting that collective bargaining was essentially a bilateral process, the council concluded that the union was not making reasonable efforts to arrive at a settlement, and was therefore culpable of lack of diligence. When the union continued to show bad faith throughout the mediation step before the council, a contract was imposed. This decision constitutes an unfortunate precedent in the application of first contract arbitration. Automatic application of the remedy whenever the evidence indicates bad faith bargaining is too heavy-handed an approach. It may serve to frustrate true efforts on the part of some parties to conclude an agreement through negotiation, and it will encourage applicants to abandon the bargaining table for arbitration.

There are some other indications that the arbitration remedy is being applied increasingly frequently in Quebec, without adequate attention to the goals of the remedy and the particular nature of the disputes at hand. The case of *Le Syndicat des employés du C.E.C. (CSN) ou ses successeurs, ayant son siège social au 1001*, et *Le Centre Educatif et Culturel Inc.*, July 28, 1978, provides an excellent example. The council noted that the dispute had resulted in an extensive work stoppage of 21 months duration, a "difficult" strike. Concluding that it would be illusory to believe the parties could arrive at a settlement, and reciting the legislative language of "according to the

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[225] *L'UQAM* et *Le Syndicat des Charges de Cours de L'UQAM*, April 26, 1979 at 3.

[226] *Id.*

[227] *Supra* note 219.

behavior of the parties as regards s. 41,[228] the council decided to impose a first contract. No further analysis was provided.

In three of the cases, *Société d'Electrolyse et de Chimie Alcan Ltée* et *Syndicat des Policiers de l'Aluminium de la Mauricie*, February 22, 1979, and *Aarkash Chair Co. of Canada Ltd.* et *L'Union Internationale des Rembourreurs de L'Amérique du Nord*, January 15, 1979, and *City Buick Pontiac (Montreal) Ltd.* et *L'Union des Vendeurs d'Automobiles et employés auxiliaires, local 1974*, January 12, 1979, no analysis of any kind was given concerning the decision to impose a first contract. Contracts were simply imposed in all three cases. Jurisprudence of this nature will do much to encourage increased applications for first contract arbitration, which will ultimately affect the quality of collective bargaining negotiations.

All these initial decisions give some cause for concern. Whether they are related to the unusually high number of applications is yet unclear. How the majority of the applications now pending decision will be treated remains uncertain. The situation is, however, serious enough to have caused Marc Lapointe, Q.C., Chairman of the Canada Labour Relations Board, to state: "In my view, the Quebec Code has squarely instituted compulsory arbitration of first collective agreements."[229] Lapointe's point of view is that first contracts are being imposed in Quebec far too often, resulting in a serious distortion of collective bargaining. The Quebec experience may indicate that without careful application, the first contract arbitration remedy becomes a danger to the collective bargaining process. This is not to suggest that the remedy is not a necessary and useful one—it is merely to indicate that its application must be carried out with great caution.

VII. CONCLUSION

This analysis has culminated in the conclusion that first contract arbitration is a useful tool and an effective remedy in the face of some deadlocked first contract negotiations. The deficiencies of traditional remedies in a first contract situation—a cease and desist order, directions to bargain, criminal prosecution and fines—are apparent. More innovative approaches such as "make whole" orders of compensation to employees and trade unions are effective in some situations. However, there are cases where first contract arbitration is clearly the most appropriate remedy. Apart from the success of the remedy in putting an end to the bitter dispute and furnishing a general deterrence function in the labour relations community at large, there are some cases where first contract arbitration has the potential to establish a foothold for the trade union and to promote successful collective bargaining in the future. The narrow application of first contract arbitration and the restrictions with which the remedy is contained minimize the disruption to the collective bargaining system that is often caused by compulsory arbitration.

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[228] *Le Syndicat des employés du C.E.C. (CSN) ou ses successeurs, ayant son siège social au 1001* et *Le Centre Educatif et Culturel Inc.*, July 28, 1978 at 1.

[229] Letter from Marc Lapointe, Q.C., Chairman of the Canada Labour Relations Board, to the author, dated June 4, 1979.

To return to the focus of this case study, it is interesting to query whether first contract arbitration would have functioned as an effective dispute resolution mechanism in the context of the Fleck strike. One can speculate as to what the course of the Fleck strike might have been if it had occurred in British Columbia. Would either party have applied for first contract arbitration? Given that the British Columbia Board's typical first contract arbitration award included a union shop clause, the Fleck management would have been unlikely to seek an end to the impasse through Board intervention. The UAW, however, despite its professed hostility to compulsory arbitration, would likely have applied for first contract arbitration. Robert White's comment that despite ideological opposition to compulsory arbitration in any form, "those who are on their backs after six months of a strike for a first agreement would probably go for first contract arbitration," is revealing.[230]

How would the British Columbia Board have dealt with a UAW application for first contract arbitration in the Fleck strike? The case bears a striking resemblance to the *London Drugs* case[231] where a first contract was imposed. The employer in both cases had little prior experience with collective bargaining. There was a definite anti-union attitude exhibited by key management figures. Deliberate attempts by Fleck managers to intimidate the employees from exercising rights protected by labour legislation would have been categorized as unfair labour practices by the British Columbia Board, just as they had been by the Ontario Labour Board. Company officials in both cases had urged employees to bargain directly with management rather than through a union. In summary, a pattern of abusive employer conduct had created the bargaining impasse. It is likely that the British Columbia Board would have decided to impose a contract in the Fleck case. Certainly the *Kidd Brothers*[232] reasoning is not applicable. There the Board recognized that since union support had been so effectively destroyed there was little point in imposing a contract, and instead compensation was awarded to the union. All of the conditions existed here to make the "trial marriage" function of the remedy possible. The unit was fairly sizeable, 146 employees. There was a strong and organized core of union supporters still within the unit, approximately 80 employees. There was a distinct hope that with the imposition of a contract collective bargaining could put down roots that would enable it to survive. It is interesting to speculate whether the British Columbia Board would have needed to impose a contract in the Fleck case, or whether the mediation-arbitration techniques would have served to settle the case before the Board was required to rule on the situation. Recognizing the inevitability of the union security provision, Fleck management might have conceded this point and the parties might have resolved the impasse before Board arbitration was required.

If one assumes that a first contract would have been imposed had first contract arbitration been available in Ontario at the time of the Fleck strike, would it have been a preferable result? One obvious advantage would have

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[230] *Supra* note 24.

[231] *Supra* note 33.

[232] *Supra* note 11.

been an immediate end to the acrimonious and financially disastrous strike. The overwhelming governmental costs would have been avoided and the violent episodes on the picket lines would have ceased. The potential for the "trial marriage" goal, as discussed above, was high. The general deterrence function should also be considered. It might have been that, confronted with the first contract arbitration remedy, the Fleck management would have felt compelled to bargain in good faith. Perhaps the impasse would never have occurred.

The obvious conclusion is that first contract arbitration should be enacted in Ontario (and other jurisdictions). That such legislation has not been adopted yet is attributable to a number of factors. The Ontario government is Progressive Conservative, rather than NDP, Liberal, or Parti Québécois. Although these other parties have all been responsible for the enactment of first contract arbitration in some jurisdiction, the Conservatives have yet to pass such legislation. Second, neither management nor labour appears to be pressing seriously for first contract arbitration. Management, not surprisingly, remains opposed and argues instead for the enactment of secret ballot votes on certification. The Ontario Federation of Labour after the Fleck strike lobbied the Ontario government for the enactment of union security legislation rather than first contract arbitration. Recent OFL requests that first contract arbitration be adopted appear to have been made as an afterthought, and this request is clearly of secondary concern, falling far behind requests for the elimination of strikebreaking and compulsory Rand formula union security. Despite this picture, it is to be hoped that the Ontario government will recognize the value of the first contract arbitration remedy and adopt it in spite of the reluctance of the parties to endorse it.

Fleck management has expressed the hope that the enactment of first contract arbitration in Ontario will not come about because of the Fleck strike.[233] To the contrary, the Fleck strike provides the paradigm example of the pressing need for such legislation. With hindsight, it can be seen that first contract arbitration might have prevented the Fleck strike completely. At the very least, it would have put a speedy end to the bargaining impasse and work stoppage. The Fleck lesson should be put to good use. First contract arbitration possesses the potential to halt similar labour-management confrontations in the future.

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[233] Interview with James Fleck, Harvard Business School, Cambridge, Massachusetts, November 9, 1978.