Stephen Kimber

Howling at the moon

On Dec. 14, 2011, Sobeys announced it was swallowing whole every one of Shell Canada's 250 service stations east of Ontario.

No big deal. The day before, Empire, which controls the Canadian super-sized supermarket chain, had reported a quarterly profit of $78.1 million. Sobeys had the cash to buy whatever it wanted. Buying Shell's stations offered the company "an exciting opportunity" to expand its own already expanding retail gas bar-convenience store network. Fair enough.

What was most interesting about the deal, however, was what was unsaid. Twenty-three of the service stations were in Nova Scotia.

Nova Scotia?

Five days before, the Nova Scotia legislature had passed "totally unnecessary" legislation Sobeys that declared would "do serious damage" to the province's business investment climate. During a rare appearance before the legislature's law amendments committee, the company hinted ominously that if the government passed its proposed business-busting bill, it would . . . well, "affect" how Sobeys (Nova Scotia's largest retail employer) did business in its native province.

Take that, Darrell Dexter!

What had the NDP government done to wrap Sobeys' knickers in a knot?

Why did Nova Scotia business wail "wolf" over first-contract arbitration?

The legislation, known as Bill 102, provides for something called first-contract arbitration. It's specifically tailored for those rare situations when newly unionized workers and their employers can't reach a first contract themselves — perhaps because the employer refuses to negotiate, or the union demands the moon, or the company and workers simply aren't used to bargaining collectively. If the two sides can't settle their differences in a reasonable time, an arbitrator can impose a one-time contract.

Such legislation is commonplace. The first first-contract arbitration law in Canada was passed in British Columbia in 1974. "Employer-unfriendly" B.C., of course, is where Sobeys spent $260 million to buy up a rival supermarket chain in 2007. And Quebec — where most of Sobeys new Shell stations are located — has had such legislation since 1978.

Today, six provinces and the federal government all have some form of first-contract arbitration. Eighty per cent of Canadian workers, including the 15 per cent of Nova Scotians employed in federally regulated enterprises, are covered.

Those laws haven't, as its Chicken-Little critics contend, encouraged workers to recklessly embrace evil unions. Canada's unionization rate has been declining in every province for decades.

The law is rarely used. In Manitoba (the province on which Nova Scotia's legislation is based), there were just six applications for first-contract arbitration from 42 newly unionized workplaces in 2009-10. Only two of those resulted in imposed contracts.

In fact, studies show the mere existence of legislation increases the chances of a negotiated contract and reduces work stoppages by a "statistically significant" 65 per cent. Not a bad outcome, surely.

And it isn't just unhappy unions that apply. In British Columbia, fully one-third of arbitration applications come from employers.

So . . . why did Nova Scotia businesses wail "wolf" over first-contract arbitration?

"Fundamentally, every employer needs to be in the position of determining wages, benefits and working conditions," the Nova Scotia Employers' Roundtable says. A consortium of 21 of the province's most powerful non-union employers (including Sobeys, Michelin, Irving, Nova Scotia Power, Wal-Mart Canada, Killam Properties and Oxford Frozen Foods), it wrote a lecturing letter to Nova Scotia Premier Darrell Dexter last Fall insisting that companies alone "ultimately have the right to say 'no' if it in good faith considers that doing otherwise would adversely impact its interests." (They apparently haven't read Section 2(d) of Canada's Charter of Rights and Freedoms, which includes collective bargaining rights, but that's another story.)

Businesses want governments to butt out of their business — except when they don't. Then they want governments to do their bidding.

In Nova Scotia, for example, where employers have traditionally wielded unfettered control over their workplaces, powerful, and powerfully anti-union companies like Michelin have been able to bully governments on several occasions to rewrite provincial labour laws to make it impossible for the company's workers to organize, let alone bargain for a first contract. Those laws are still on the books.

First-contract legislation is now law. Will companies like Sobeys stop investing because of it? Will the union hordes descend? Will the sky fall? Stay tuned, but don't hold your breath. | ABM