

Is Ontario Moving to Provincial Negotiation of Teaching Contracts?

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In Canada, the statutes governing public school teachers' collective bargaining are a combination of the provincial Labour Relations Act or Code and the respective provincial Education/School/Public Schools Act.¹ As education is within the provincial, not federal, domain of legal responsibility, the specifics of each act or code can vary. Consequently, when the respective acts are combined, the result has yielded some provinces with provincially negotiated teachers' contracts while others have negotiations occurring at the local level. These agreements, as with any collective agreement resulting from union and management negotiations, address a number of employment considerations, such as working conditions, salaries, benefits, leaves, layoff, recall, discipline, and dismissal.

The local structure for negotiations is what operates within the province of Ontario.² As Brown explains:

The School Boards and Teachers Collective Negotiations Act governed... collective negotiations from 1975 until the end of 1997. ... As a result of the Education Quality Improvement Act, 1997, teachers and boards [began bargaining] in accordance with the Education Act which incorporates the provisions of the Labour Relations Act, 1995. (p. 91).³

Teachers are represented by two separate teaching unions—the Ontario elementary school teaching federation (OESTF) and the Ontario secondary school teaching federation (OSSTF). Given that the province operates public and separate school systems, each system would have parallel but separate teachers' unions for its elementary and secondary school teachers. Each union negotiates independently of the other. This situation has deep roots in tradition within the province, but discussion of this tradition is beyond the scope of this commentary. Consequently, school boards, which operate both elementary and secondary schools, will have more than one collective agreement with their teachers. Of importance to this commentary is the acknowledgement of parties to the collective bargaining process. Thomas clearly outlines the situation: "The basic bargaining situation is that the representatives of the local Board of Trustees [school board] are on one side of the table and the representatives of the local Branch Affiliate [teachers' union] are on the other."⁴

Although the collective bargaining process can be a very labor-intensive and emotional process for both sides, there has been no indication that a substantial change in the process is desired. The Ministry of Education has no formal role and therefore does not normally become involved in the process. Exceptions have occurred.

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The primary exception has involved strike action by the teachers. As noted by Thomas: "A strike is widely defined and includes walkouts, slowdowns, work-to-rule campaigns and mass resignations and rotating strikes."⁵ The rationale for the intervention has rested on the claim the strike placed in jeopardy the successful completion of courses of study of affected students.⁶ The normal result of the ministerial intervention was legislation ordering the teachers back to work, but a definitive answer on whether teachers in Ontario could legally strike never existed prior to 1975.⁷ In 1975, the government of Ontario passed Bill 100. Prior to the passage of Bill 100, "teachers had... the ability to strike and exert other forms of pressure, without regulation and mandatory procedures."⁸ Bill 100 dealt with the issue of strikes by teachers by "rigorously regulat[ing] negotiation disputes through a... set of dispute settlement procedures."⁹ The teachers' unions were not silent, by any stretch of the imagination, on these government interventions in the collective bargaining process. At least, this has been past practice.

On June 2, 2005 the Ontario Ministry of Education released the following:

QUEEN'S PARK, ON, June 2 /CNW/ - The Ministry of Education released a preliminary status report this morning on the status of negotiations by school boards with the province's teachers in relation to the provincial framework. As of midnight last night, some 95 agreements had been successfully concluded, while another 18 boards and bargaining units will receive extensions for varying lengths of time suited to their circumstances. In addition, up to nine school boards and bargaining units have had their access to the provincial framework suspended.

"The school boards and teacher federations that have reached agreements are to be congratulated for some truly outstanding efforts to ensure long-term peace and stability for students," said Education Minister Gerard Kennedy.

"This is tremendous news for Ontario education. Despite the difficulties experienced at a minority of boards in finalizing their terms, a great deal of progress has been made in almost all cases."

Extensions have been made where school boards and teacher federations have agreed to continue to meet the conditions set under the provincial framework. The provincial framework is suspended in nine locales for not maintaining the agreed-upon structure, largely due to the acceleration of work-to-rule conditions by the teacher federation.

Nine bargaining units, all in the elementary public panel, are currently seen as not in keeping with the conditions of the provincial framework that was agreed to by the Ontario Public School Boards' Association (OPSBA) and the Elementary Teachers Federation of Ontario (ETFO), subject to final verification. These are:

- Algoma District School Board (DSB)
- Avon Maitland DSB
- Bluewater DSB
- Halton DSB
- Kawartha Pine Ridge DSB
- Lakehead DSB
- Limestone DSB
- Renfrew DSB
- Thames Valley DSB

“Our absolute goal remains to have all students and teachers benefit from the provincial framework,” said Kennedy. “It is vital, however, that the original conditions are upheld by all parties.”

The Ministry will now seek immediate discussions with ETFO and OPSBA to see if conditions can be met at the suspended school boards and bargaining units.

After a series of first-ever provincial dialogues on collective bargaining issues, the Ministry, ETFO and OPSBA signed a framework agreement in April. Similar dialogues subsequently took place with public secondary and Catholic teacher federations and school board associations that also shaped provincial framework policy. Final discussions are also underway to fully incorporate francophone public and francophone Catholic systems.

The provincial framework provides boards with assured funding for four years of salary increases at 2 per cent, 2 per cent, 2.5 per cent and 3 per cent, a one-time teacher development allowance for 2004-05 and funding for additional teachers that will benefit students, but also assist with teacher workload and preparation time.

The provincial framework resources are contingent upon local collective agreements that:

- Are for a four-year period (school years 2004-05 to 2007-08 inclusive);
- Include salary increases no greater than the provincial guidelines announced last spring;
- Are not conducted under sanctions by either side, i.e., no strike or significant work-to-rule or lockout;
- Deploy new teachers consistent with provincial objectives;
- Were to be reached by June 1, 2005.¹⁰

Have the parties to collective bargaining increased by one—the Ministry of Education? If so, the expansion at the negotiation table has occurred without legal consent or mutual consent of the two legitimate parties, namely, the school board and the teachers’ unions. There has been no legislation change to move the party number from two to three. Even Bill 100 kept the parties involved during the collective bargaining process to the school board and the teachers’ unions. Furthermore, the ministry has moved collective bargaining discussions to the public arena by naming nine elementary school panels that were apparently not on board, as of June 2, 2005, with the ministry’s mandate. In doing so, has the ministry introduced yet another party to the negotiation table?

The situation is alarming if not critical. Collective bargaining is governed by labor law, and the apparent interference of the process by the ministry is a serious matter. If Ontario wants to alter the parties who engage the negotiations of collective agreements, then this should be undertaken following proper legal process—but perhaps what is even more remarkable is the silence that greeted this intrusion on collective bargaining.

Endnotes

¹ See, *Statutes Governing Public School Teachers Collective Bargaining in Canada* (Government of Canada, Human Resources and Social Development Canada, 2005), <http://www.hrsdc.gc.ca>.

² See, Government of Ontario, *Labour Relations Act* (Toronto: Queen’s Printer for Ontario, 1995); Government of Ontario, *Education Act*, Part X.1 (Toronto: Queen’s Printer for Ontario, 2001); Government of Ontario, *School Boards and Teachers Collective Negotiations Act* (Toronto: Queen’s Printer for Ontario, 1975); Government of Ontario, *Education Quality Improvement Act* (Toronto: Queen’s Printer for Ontario, 1997).

³ Anthony F. Brown, *Legal Handbook for Educators* (Toronto: Thomson Canada Ltd., 2004).

⁴ Alan M. Thomas, *Teachers’ Collective Bargaining in Ontario: An Introduction* (Toronto: Ontario Institute for Studies in Education, 1976), 7.

⁵ *Ibid.*, 11.

⁶ *Ibid.*

⁷ Bryan M. Downie, *Strikes, Disputes and Policymaking* (Kingston: IRC Press, 1992), 70.

⁸ *Ibid.*

⁹ *Ibid.*, 108.

¹⁰ Ontario Ministry of Education, “Government Reports Major Progress Made on Teacher Agreements,” June 2, 2005, http://ogov.newswire.ca/ontario/GPOE/2005/06/02/c6900.html?lmatch=&lang=_e.html.