Brief

OECTA Submission to the Standing Committee on the Legislative Assembly

Bill 122, *The School Boards Collective Bargaining Act, 2013*

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February 2014

www.oecta.on.ca

ONTARIO ENGLISH
Catholic
Teachers
ASSOCIATION

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The Ontario English Catholic Teachers' Association (OECTA) represents 45,000 women and men who have chosen teaching careers in the Catholic schools in Ontario. These teachers are found in the elementary panel from junior kindergarten to Grade eight, in the secondary panel from Grade nine through Grade twelve, and occasional teachers in both panels, in publicly funded schools.

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1. INTRODUCTION

1.01 The Ontario English Catholic Teachers' Association (OECTA) welcomes the opportunity to present issues that are of importance to OECTA's 45,000 members as the Standing Committee on the Legislative Assembly review and consider amendments to *Bill 122, the School Boards Collective Bargaining Act, 2013*.

1.02 Collective bargaining between teachers and school boards has changed considerably since the 1970's. The *School Boards and Teachers Collective Negotiations Act, 1975,* first granted teachers the legal right to strike and it governed bargaining between teachers and school boards for the next twenty-two years. The *Education Quality Improvement Act, 1997* (Bill 160), fundamentally changed this arrangement by imposing a more centralized system of collective bargaining. School boards lost the right to tax local ratepayers and education funding was put under total control of the provincial government, creating significant challenges to local bargaining.

1.03 Since 2004, Provincial Discussion Tables (PDTs) were informally established by the government to deal with many of the financial aspects of teacher collective bargaining. Over the subsequent three rounds of bargaining, some unions succeeded in negotiating provincial framework agreements on some issues, while others did not. Participation was always voluntary at the PDTs and no legislation was ever brought forward to formalize the roles of the parties or to establish a legal framework under which discussions took place.

1.04 The failure of the PDT process to deal effectively with the 2012 round of negotiations caused the current government to signal to education stakeholders that it would move to establish a more formalized negotiation process prior to the commencement of the next round of collective bargaining. Extensive consultations between the government and education stakeholders took place between June and October of 2013.

1.05 OECTA raised a number of concerns during that consultation process and is pleased to see that a number of them have been addressed in the proposed legislation. However, upon review of the Bill, OECTA has several recommendations that we believe would: provide much needed balance between the rights and obligations of employees, employers and the government; and

that would result in significant savings of taxpayer dollars by eliminating significant and unnecessary legal expenditures for school boards.

2. ROLE AND OBLIGATIONS OF THE CROWN

2.01 Under certain provisions of the proposed legislation (ss.28(1) and 32(1)), the Crown is bound to bargain with the parties in good faith and to make every reasonable effort to agree upon matters to be included in the scope of central bargaining and upon central terms. Of concern is the fact that the Bill does not expressly state that the Crown is prohibited from committing unfair labour practices prohibited by the *Ontario Labour Relations Act* (OLRA). Among these are:

- s.70 (employers not to interfere with unions);
- s.72 (employers not to interfere with employees' rights);
- s.73 (employers not to interfere with bargaining rights); and
- s.76 (intimidation or coercion re: membership in a union).

2.02 Although the Bill is clear that the employment relationship is with the school board and not the Crown or employer bargaining agency, OECTA believes it is important to ensure that the Crown's duty to bargain in good faith, both on the scope of central bargaining and on central terms, is enforceable under this Act and the OLRA. To that end, OECTA is proposing an amendment that would ensure that the Crown's bargaining duty is enforceable as an unfair labour practice.

OECTA Recommendation

That s.4(2)be amended as follows:
However, the *Labour Relations Act*, 1995, applies to the Crown only to the extent necessary to enable the Crown to exercise the Crown's rights and privileges and to fulfill its duties under this Act. For all other purposes, subsection 4(2) of that Act governs the application of that Act to the Crown.

3. POWERS OF THE MINISTER

3.01 Scope of Bargaining

As the Bill now reads, the Minister can unilaterally decide what matters are central. However, if obligated to bargaining fairly under the OLRA, or a full party at the table, there would be recourse to challenge the decision of the Minister if it could be established that the decision was made in bad faith.

3.02 Under the proposed legislation (s.24.(1)) an item can only be a central table issue if the Minister agrees. OECTA believes that in order to permit the transfer of a matter from central bargaining to local bargaining after the parties initially agreed that it would be a central issue, s.27 should be amended.

OECTA Recommendation

That s.27 be amended as follows:
If a matter is not within the scope of central bargaining at a particular central table <u>or if the parties and the Crown have agreed to transfer a matter to local bargaining,</u> it is within the scope of local bargaining.

3.03 Collective Agreement

There are two subsections of the Bill that in effect, give the Crown a veto over a collective agreement negotiated between the parties.

3.04 Subsection 38.(1)(a) requires that a memorandum of settlement of central terms be approved by the Crown. Subsection 38.(3) provides that a collective agreement containing central and local terms will not come into effect until the central terms have been approved by the Crown.

3.05 It is OECTA's position that the Crown should not have this veto power where the parties are satisfied with the product of the collective bargaining process.

OECTA Recommendation

That subsections 38.(1)(a) and 38.(3) be deleted from the Bill.

3.06 Section 40.(2) of the Bill provides the Minister with the power to use regulatory powers to establish the term of collective agreements. Defining the term of a collective agreement is a critical aspect of the collective bargaining process and is a provision which should be negotiated between the parties - not one dictated by government regulation.

OECTA Recommendation

That subsection 40.(2) be amended to read:
The term of operation of the collective agreement shall be negotiated by the parties in central bargaining and shall be for a term of two years, three years or four years.

3.07 Interpretation of Central Terms

Subsection 42.(3) of the Bill states that: "An employer bargaining agency cannot by agreement settle a difference regarding the interpretation of a central term unless it has the prior consent of the Crown to the agreement." OECTA believes that Crown consent should not be required for the settlement of a central grievance except as provided for in subsection 24.(2).

3.08 OECTA proposes that s.42.(3) be amended in a manner that would allow the Crown to retain its jurisdiction over matters in dispute that are of provincial importance, while allowing the employer bargaining agency to enter into settlements regarding the of interpretation of other central terms.

OECTA Recommendation

That s.42.(3) be amended as follows:
An employer bargaining agency requires the prior consent of the Crown to settle a difference regarding the interpretation of a central term only where

- **(a) the settlement could result in a significant impact on the implementation of provincial education policy in the opinion of the Minister, or**
- **(b) the settlement could result in a significant impact on expenditure for one or more school boards, in the opinion of the Minister.**

4. ARBITRATION AND GRIEVANCE RELATED ISSUES

4.01 The factors introduced in s.37 are those applicable for health care sector employees, firefighters and others. The factors an arbitrator considers also currently exist as they are here in the *School Boards and Teachers Collective Negotiations Act,* which is referenced in 277.10 of the *Education Act*. However, that section is deleted with this Act.

4.02 The proposed factors refer to the employer's ability to pay, economic situation, reduction of services and hiring and retention problems. Should amendments not result in the deletion of s.37 of the proposed legislation, it is critical to provide some balance to a heavily employer weighted set of criteria. That could be achieved by amending the Bill to include an additional factor, one that is contained within the *Federal Public Service Labour Relations Act*.

OECTA Recommendation

That s.37 be amended by the addition of a new s.37.(6) as follows:
The need to establish compensation and other terms and conditions of employment that are fair and reasonable in relation to the qualifications required, the work performed, the responsibility assumed and the nature of the service rendered.

4.03 Currently, s.42.(1) of the proposed legislation provides for the grievance arbitration of disputes relating to the central terms of a collective agreement. However, the only remedy available under this section is declaration. A declaration, while a clear finding, does not ensure that the finding is enforceable. OECTA recommends that the provision also include that a direction may be obtained. It is only through a direction that a local board must comply with the declaration made by the arbitrator.

4.04 If an arbitrator is ruling on a central issue, it is essential that whatever decision the arbitrator makes is binding on the parties. Failure to ensure that the declaration of the arbitrator is consistently applied in all school boards defeats the purpose of centrally bargaining an item. If the parties at the central table agreed that an item would be included in all collective agreements, there should be no circumstances that would preclude implementing that provision in all cases, save where the parties have agreed to a variance to that term.

4.05 Without a requirement that all school boards and teacher bargaining units apply central terms consistently, local boards and bargaining units could find themselves expending significant human and financial resources grieving and arbitrating the same issue over and over. While unions use their members' dues to fund grievances and arbitration, school boards rely on taxpayer dollars from the administration funding line of the education funding formula to pay legal costs.

4.06 While some may assume that once an arbitrator issues a declaration on a centrally bargained item, compliance with the declaration would follow, it is OECTA's experience that some school boards would continue to challenge such a decision, which is hardly a wise use of taxpayer dollars. In cases where a declaration and/or direction is issued, the arbitrator or arbitration board should remain seized of jurisdiction in order to resolve any difficulties regarding the implementation of the declaration and/or direction.

4.07 Ensuring that the arbitrator or arbitration board that made a declaration and/or direction in a particular central issue grievance remains seized would provide for consistency of application of the term in question. Monies that some school boards may be inclined to spend on re-arbitrating the same grievances in multiple jurisdictions, after a declaration has been made, would be far better spent in the classroom to support student achievement.

OECTA Recommendation

That s.42(1) be amended as follows:
Sections 48 and 49 of the *Labour Relations Act*, 1995, apply, with necessary modifications, to the parties at a central table for the sole purpose of obtaining a declaration <u>and a direction</u> that settles a difference regarding the interpretation of the central terms of a collective agreement. <u>In the event that a declaration and/or direction is awarded, the arbitrator or arbitration board shall remain seized of jurisdiction in order to resolve any difficulties in respect of the implementation of the declaration and/or direction.</u>

5. MISCELLANEOUS

5.01 OECTA believes that there are two other areas of concern that should be amended in order to avoid confusion and provide greater clarity about the interpretation and application of these sections of the Bill.

5.02 Section 12. (1) states that: "Collective bargaining for a collective agreement between a school board and a bargaining agent may include both central bargaining and local bargaining." The problem with this subsection is that it implies that a school board may be involved in central bargaining. This is confusing in that section 13.(1) provides that the parties to central bargaining are the employer bargaining agency and the employee bargaining agency.

OECTA Recommendation

That s.12.(1) be deleted.

5.03 Another aspect of the proposed legislation that should be clarified is section 40.(1), which currently states:

5.04 40.(1) A collective agreement between a school board and a bargaining agent that is entered into on or after the day on which this section comes into force shall provide for a term of operation that is specified by regulation and shall have a commencement date of September 1 of the year in which the previous collective agreement expired.

5.05 This section fails to recognize that there are various local practices and customs across Ontario which dictate that some school boards have a commencement date prior to September 1.

OECTA Recommendation

That s. 40.(1) be amended as follows:
A collective agreement between a school board and a bargaining agent that is entered into on or after the day on which this section comes into force shall provide for a term of operation that is specified by regulation and shall have a commencement date of September 1 of the year in which the previous collective agreement expired, unless the school

board has had an alternative commencement date to September 1, in which case the commencement date will be the alternative date of the year in which the previous collective agreement expired.

5.06 OECTA supports suggested amendment(s) from the Association des enseignantes et des enseignants franco-ontariens (AEFO) that provide for an exception, through an order in council, to allow a central table with two employer bargaining agencies in the French language education sector. Additionally, OECTA is supportive of amendment(s) proposed by the Elementary Teachers' Federation of Ontario (ETFO) relative to removing the requirement for a minimum number of bargaining units, in order to be designated as an employee bargaining agency for central issues.

6. CONCLUSION

6.01 Bill 122 if passed, will fundamentally change the collective bargaining process for teachers and others who work in the publicly funded education sector. It is imperative that the legislation governing the negotiating process be balanced, fair and clear so that the collective bargaining discussions are meaningful and are afforded every opportunity to succeed. The legislation must also make provision for a reasonable and efficient resolution process when there are disputes about the interpretation of centrally negotiated matters. This will ensure that scarce education resources are not wasted fighting unnecessary grievances and arbitration cases in the future.

6.02 We urge the committee to adopt the recommendations proposed by OECTA that would strengthen and improve *the School Boards Collective Bargaining Act, 2013*, when clause by clause consideration of the Bill takes place.

7. RECOMMENDATIONS

7.01 That s.4(2)be amended as follows:

However, the *Labour Relations Act*, 1995, applies to the Crown only to the extent necessary to enable the Crown to exercise the Crown's rights and privileges and to fulfill its duties under this Act. For all other purposes, subsection 4(2) of that Act governs the application of that Act to the Crown.

7.02 That s.27 be amended as follows:

If a matter is not within the scope of central bargaining at a particular central table or if the parties and the Crown have agreed to transfer a matter to local bargaining, it is within the scope of local bargaining.

7.03 That subsections 38.(1)(a) and 38.(3) be deleted from the Bill.

7.04 That subsection 40.(2) be amended to read:

The term of operation of the collective agreement shall be negotiated by the parties in central bargaining and shall be for a term of two years, three years or four years.

7.05 That s.42.(3) be amended as follows:

An employer bargaining agency requires the prior consent of the Crown to settle a difference regarding the interpretation of a central term only where,

(a) the settlement could result in a significant impact on the implementation of provincial education policy in the opinion of the Minister, or

(b) the settlement could result in a significant impact on expenditure for one or more school boards, in the opinion of the Minister.

7.06 That s.37 be amended by the addition of a new s.37.(6) as follows:

The need to establish compensation and other terms and conditions of employment that are fair and reasonable in relation to the qualifications required, the work performed, the responsibility assumed and the nature of the service rendered.

7.07 That s.42(1) be amended as follows:

Sections 48 and 49 of the *Labour Relations Act*, 1995, apply, with necessary modifications, to the parties at a central table for the sole purpose of obtaining a declaration and a direction that settles a difference regarding the interpretation of the central terms of a collective agreement. In the event that a declaration and/or direction is awarded, the arbitrator or arbitration board shall remain seized of jurisdiction in order to resolve any difficulties in respect of the implementation of the declaration and/or direction.

7.08 That s.12.(1) be deleted.

7.09 That s. 40.(1) be amended as follows:

A collective agreement between a school board and a bargaining agent that is entered into on or after the day on which this section comes into force shall provide for a term of operation that is specified by regulation and shall have a commencement date of September 1 of the year in which the previous collective agreement expired, unless the school board has had an alternative commencement date to September 1, in which case the commencement date will be the alternative date of the year in which the previous collective agreement expired.