



ONTARIO PUBLIC
SCHOOL BOARDS'
ASSOCIATION

Leading Education's Advocates

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OPSBA Submission to the Standing Committee on the Legislative Assembly

Re: Bill 122, *School Boards Collective Bargaining Act, 2013*

Good Afternoon.

I am Michael Barrett, President of the Ontario Public School Boards' Association. I'm joined by Penny Mustin, Director of Labour Relations and Wayne McNally, Director of Finance.

We thank you for this opportunity to address the Standing Committee on the Legislative Assembly.

School boards are united in a common purpose. We want to maximize the opportunities for success for each and every student. We believe teachers and support staff deeply influence a positive and productive learning environment for students. And they are supported in their roles through the peace and stability engendered by successfully negotiated collective agreements.

A fundamental role of school boards is to be responsive at the local level to the expectations of parents of school-age children and youth. Parents in Ontario expect school boards to protect the quality of education in the classroom. They also expect school boards to protect the future of the education system by making decisions that are focused squarely on what is in the best interests of all students and the learning environment.

Today we want to talk about specific provisions in Bill 122, *School Boards Collective Bargaining Act, 2013*. There are some provisions that we clearly support and others that we believe require deeper consideration. What we have to say reflects input from all our member public school boards across the province.

This legislation is the result of months of consultation with the education sector and its stakeholders. OPSBA has been a key contributor to these consultations and advocated strenuously for an effective leading role for school boards in future negotiations.

A priority of our Association has been to secure a legislated, fair structure and process for effective provincial bargaining. Our goal in this regard is to bring stability to the entire education sector. The introduction of the Bill is the first step in seeing this become a reality and we are encouraged that this legislation identifies OPSBA as a designated bargaining agent.

We would like to touch on aspects of the Bill that we believe need to be clarified and strengthened in the interests of a fair structure for all parties to the process.

1. Section 15 – Requirement for Crown Consent

One of OPSBA's key objectives is to build a fair process for meaningful local bargaining. The fact that each of Ontario's public school boards has structures, programs, services and local initiatives that respond to community needs and demographics means that they are simply too different from one another to eliminate the ability to address local issues in fair and significant ways.

Bill 122 appears to accept this position and support the continued existence of meaningful local bargaining. Indeed, we would go so far as to say that the evident intention of the Bill is, once the scope of central bargaining has been determined, to influence local bargaining as little as possible, to allow local bargaining and any associated processes to move forward independently of central bargaining.

In terms of imposing local sanctions, teacher federations and unions are subject to no new restrictions on their options apart from being required to give five days warning of their intentions. Nothing in Bill 122 regulates a range of strike options from which a federation or union local may choose.

It can be argued that this is not true for local school boards. Absent Bill 122, a local board would, under strike/lockout circumstances, have the option of altering terms and conditions of employment, including wages. This could include the reduction of wages in cases where services had been reduced beyond the extent of a simple work to rule.

Clause 15(2)3 suggests that under Bill 122, local boards cannot alter wages or other employment terms, even in response to local strike action, because that would affect a "central term".

If, as appears to be the case, federation and union locals retain under Bill 122 the full spectrum of responses to a strike/lockout situation in respect of local issues, local boards must retain the ability to alter terms and conditions in response to local strike action pending the ultimate resolution of wage rate proposals through the bargaining process. Failure to do so will result in a statutorily created imbalance in bargaining power, with resulting distortions in collective agreements that may well have significant detrimental effects on student achievement and student safety.

OPPSBA therefore recommends the following be added as subsection 15(2a):

Nothing in this Act restricts the right of a school board or school authority to reduce compensation in the circumstances described in clause 86 (1) (a) of that Act, where it is otherwise permitted to do so by law.

2. Shared Responsibility of School Boards and the Crown

When Bill 122 was introduced in the Legislature on October 22, 2013, Minister Sandals made the following statements:

“Management representation at central tables would be made up of both the government and the provincial trustee associations. Employees, of course, would continue to be represented by their provincial unions or federations....The province would work with the trustee associations to set the bargaining mandate for the management side at the central tables....”

These statements address a fundamental weakness in the school board bargaining process that has hampered its effectiveness since 1998 – the separation of student interests, represented by school boards, from the funding that is required to realize those interests.

School boards are given the direct responsibility under the *Education Act* for the promotion of student achievement and well-being and the delivery of effective and appropriate education programs. The government funds the education system. The separation of fiscal control in the bargaining process from the pedagogical and managerial responsibilities of school boards has made it difficult to achieve necessary changes to collective agreements in past years.

Viewed in an optimistic light, Bill 122 will create a model whereby the significant common interests of school boards can be effectively addressed, while maintaining the autonomy of local school boards over critical local issues and the ultimate implementation of collective agreements.

OPSBA recognizes the significance of the Minister's statement. However, OPSBA believes that, in two respects, the language of the Bill must be modified in order to put in place a system that will allow the Crown and School Board Associations to fulfill their shared responsibilities for the interests of students and other system stakeholders.

i. Section 16 – Duty to Co-operate

The new bargaining structure *necessarily* requires that the relationship that will exist between the Crown and School Board Associations will be qualitatively different from the relationship the Crown will have with unions and federations. School Board Associations will partner with representatives of the Crown to arrive at priorities and strategies. The Minister's statement envisages that the province would work with the School Board Associations to set and pursue the bargaining mandate for the management side at the central tables.

The Crown and the School Board Associations will then bargain across the table with the involved federation or council of unions. The Crown's role vis-à-vis School Board Associations as opposed to federations or councils of unions will be fundamentally different.

OPSBA respectfully submits that the language of the Bill does not capture this distinction in a way that will avoid misinterpretation and possible litigation.

OPSBA recommends that the language in 16(2) be modified to read:

An employer bargaining agency and the Crown shall co-operate in good faith in preparing for and conducting central bargaining.

ii. Section 32 – Obligation to bargain, central and local bargaining

For similar reasons, subsection 32(1) should be clarified so as to reflect the qualitatively different partnership that must exist between the Crown and School Board Associations as compared to the bargaining relationship that will exist between the Crown and unions and federations.

OPSBA therefore again recommends that the language of subsection 32(1) be amended to read:

The Crown and the involved employer bargaining agency at a central table shall meet with the involved employee bargaining agency within 15 days after the scope of the central bargaining has been determined or within such further period as they agree upon and the Crown and the involved employer bargaining agency shall bargain with the involved employee bargaining agency in good faith and make every reasonable effort to agree upon central terms.

3. Section 22 – Substitution if employer bargaining agency unable etc., to act

OPSBA's members are expected to and should advocate resolutely for the best interests of students, just as a provincial teachers' federation is expected to advocate resolutely for the interests of its members.

Section 22 which provides for replacement of School Board Associations as bargaining agents by the Minister, places our associations in a very challenging position and negatively affects the co-operative approach advanced in Bill 122 and that must be pursued if the proposed collective bargaining structure is to live up to its promise.

We observe that the Bill does not provide for the replacement of a teachers' federation where that federation, in the Minister's opinion, is for whatever reason unable or unwilling to exercise its rights and/or perform its duties under the Bill.

Our understanding would be that a School Board Association that is exercising and discharging, in good faith, the rights and duties of its specified boards, as it is obliged to do under clause 17(b), could not be replaced under section 22. We believe, respectfully, that this view would be shared by the current Minister. However, this understanding should be clearly reflected in the Bill to ensure a fair process for the exercise of the section 22 power.

With this in mind, and recognizing the significance of a decision under section 22, we recommend that there be objectively demonstrable reasonable grounds for the formation of Minister's opinion. OPSBA also submits that the Minister should, at the very least, be required to consult with and determine the positions of the specified boards represented by an impugned School Board Association regarding such a step.

In view of the foregoing considerations, OPSBA recommends the addition of the following subsection 22(2a), which reads:

The Minister shall not exercise the powers established in Subsections (1) or (2)
(a) without reasonable grounds; and
(b) without first consulting with the specified boards that are represented by the School Boards Association

We would ask the Standing Committee to amend the proposed legislation as we have suggested.

Thank you for considering this input.

Sincerely,



Michael Barrett
President of the Ontario Public School Boards' Association

(check against delivery)

The Ontario Public School Boards' Association (OPSBA) represents public district school boards and public school authorities across Ontario. Together our members serve the educational needs of almost 70% of Ontario's elementary and secondary students. The Association advocates on behalf of the best interests and needs of the public school system in Ontario. OPSBA believes that the role of public education is to provide universally accessible education opportunities for all students regardless of their ethnic, racial or cultural backgrounds, social or economic status, individual exceptionality, or religious affiliation.