



CHAPTER 10

Collective Bargaining

School boards and unions share a commitment to public education and work together towards positive labour relations. As employers, school boards engage in the process of collective bargaining with the unions representing the employees of the school board to achieve a collective agreement.

Collective Bargaining with Unionized Staff

The *School Boards Collective Bargaining Act (SBCBA)* became law in 2014 and was amended in 2017. It serves to formalize a collective bargaining process that

has over a period of nearly a decade evolved into a two-tier structure – a central tier and a local tier. Please see SBCBA: Process Map on opposite page.

Employer Bargaining Agencies

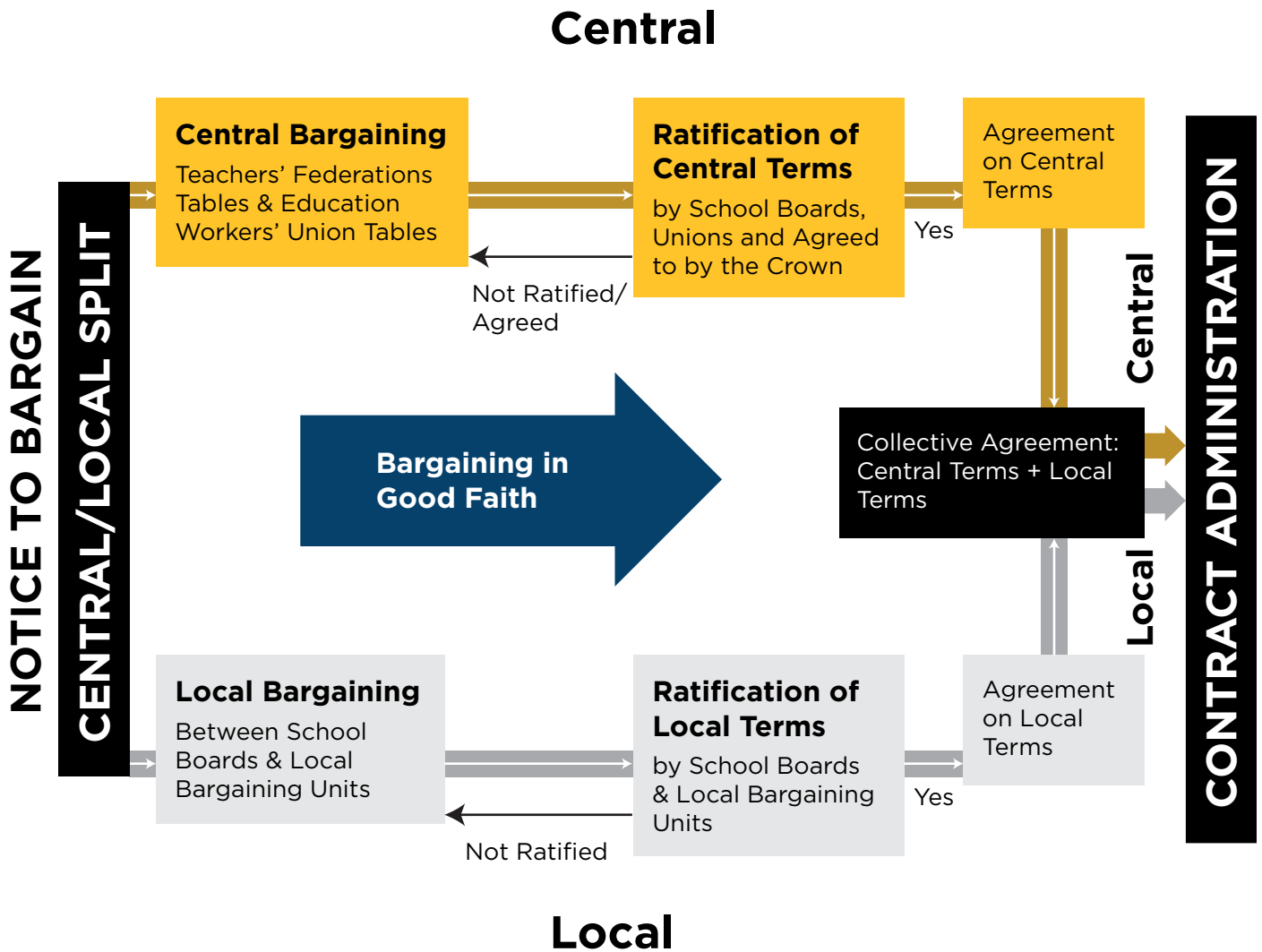
The SBCBA designates each of the four school board/trustees' associations as the statutory employer bargaining agency for their respective school boards at the central tables. This school board representation at a central table is:

- Association des conseils scolaires des écoles publiques de l'Ontario

(ACÉPO), representing the French-language public boards

- Association franco-ontarienne des conseils scolaires catholiques (AFOCSC), representing the French-language Catholic boards
- Ontario Catholic School Trustees' Association (OCSTA), representing English-language Catholic boards
- Ontario Public School Boards' Association (OPSBA), representing English-language public boards.

SBCBA: Process Map



Under the SBCBA:

Local bargaining may occur at the same time as, or after, central bargaining.

A collective agreement is only completed once both central and local agreements are ratified.

Provided by the Ontario Ministry of Education, Education Labour Relations Office

Employee Bargaining Agencies

The SBCBA has further designated through amendment that all unionized/federated employees would participate in central bargaining. For teachers these groups are:

- Association des enseignantes et des

- enseignants franco-ontariens (AEFO)
- Elementary Teachers' Federation of Ontario (ETFO), which represents teachers in English public elementary schools
- Ontario English Catholic Teachers' Association (OECTA), which represents teachers in English-language

- Catholic elementary and secondary schools
 - Ontario Secondary School Teachers' Federation (OSSTF), which represents teachers in English-language public secondary schools.
- The establishment of bargaining tables for education workers is more complex because a job



classification might be differently unionized in various boards. For example, the Canadian Union of Public Employees (CUPE) may represent educational assistants in some boards while OSSTF represents them in others. Additionally a single union may have members in school boards in more than one sector. As a result, the *Act* directs that the employers' designated bargaining agencies form a Council of Trustees' Association (CTA) to collectively bargain at central tables. The Central Bargaining Tables established in 2014 to bargain and through the extension agreements to 2019 are described to the right.

Central Bargaining Tables for 2014-2017 and 2017-2019

Employee Groups	Council of Trustees' Associations and the Crown
Canadian Union of Public Employees (CUPE)	ACEPO, AFOCSC, OCSTA, OPSBA
Ontario Secondary School Teachers' Federation Education Workers (OSSTF)	ACEPO, AFOCSC, OCSTA, OPSBA
Elementary Teachers' Federation of Ontario Education Workers (ETFO)	OCSTA, OPSBA
Education Workers Alliance of Ontario (EWAO): <ul style="list-style-type: none"> Association des enseignantes et des enseignants franco-ontariens et sa section (AEFO) Association of Professional Student Services Personnel (APSSP) Dufferin-Peel Educational Resource Workers' Association Educational Assistants Association Halton District Educational Assistants' Association Service Employees International Union / Union internationale des employées et des employés de service Unite Here 	AFOCSC, OCSTA, OPSBA
Ontario Council of Education Workers (OCEW): <ul style="list-style-type: none"> COPE Ontario & Locals 103, 429, 454, 527, 529 Educational Resource Facilitators of Peel Essex and Kent Counties Skilled Trades Council Labourers' International Union of North America Local 837 Maintenance and Construction Skilled Trades Council Ontario Public Service Employees Union 	OCSTA, OPSBA

With the amendment of the SBCBA mandating all unionized employees be represented in central bargaining, these tables will be redefined in 2019. The Minister of Education has a role in establishing the composition of bargaining tables inside the requirement of the *Act*.

Terms and Conditions for Non Union Employees

Not all employee groups in a school board are unionized and in fact some job classifications are deemed to be excluded from unionizing. Classifications deemed ineligible are excluded because of their role with their school board or because of the type of information to which they have access. They include:

- Supervisory officers, including the director of education
- Principals and vice-principals
- Some executive/administrative assistants
- Most management staff in non-academic areas
- Some human resources staff who have responsibility for aspects of collective bargaining
- Some financial services and information technology staff.

For these employees, employment terms and conditions may be addressed in personal service contracts, group agreements, or other terms and conditions set by the board and complying with statute and regulation, usually following discussions with the affected staff.

While not included under the SBCBA, the Ministry of Education has committed to a similar two-tier process of good faith discussions with employer representatives and the principals and vice-principal associations namely; Association des directions et directions adjointes des écoles franco-ontariennes (ADFO), The Catholic Principals' Council of Ontario (CPCO), and Ontario Principals' Council (OPC). To facilitate discussion a Provincial Discussion Table is established when consideration is being given to changing the terms and conditions of employment for principals and vice-principals.

Legislation Impacting Collective Bargaining

Several statutes and regulations define a board's relationship with its employees, and their conditions of employment including the following:

- *Education Act*

- *School Boards Collective Bargaining Act, 2014, amended 2017*
- *Ontario Labour Relations Act, 1995*
- *Employment Standards Act, 2000*
- *Occupational Health and Safety Act*
- *Pay Equity Act*
- *Municipal Freedom of Information and Protection of Privacy Act*
- Ontario Human Rights Code

Statutes and regulations govern the operation of elementary and secondary schools, including the school year calendar, class size, and instructional time.

Regulations and statutes take precedence over collective agreements.

The Role of the Bargaining Agents

Employee Bargaining Agency

Trade unions are legally obliged to represent their members in matters relating to the collective agreement. These obligations include negotiating the terms and conditions of employment on behalf of their members and representing their members' rights under the collective agreement.



Teacher federations and education worker unions also provide other services to their members such as professional development.

Employer Bargaining Agency

- Develops a central bargaining mandate based on the concerns of the local school boards
- Represents the interests of school boards during bargaining at a particular central table
- Bargains in good faith upon the matters to be included within the scope of central bargaining at the central table
- Co-operates in good faith with the Crown in preparing for and

conducting central bargaining

- Conducts a ratification vote on the memorandum of settlement of central terms
- Conducts, if required, a vote on the lockout of employees in respect of central bargaining.

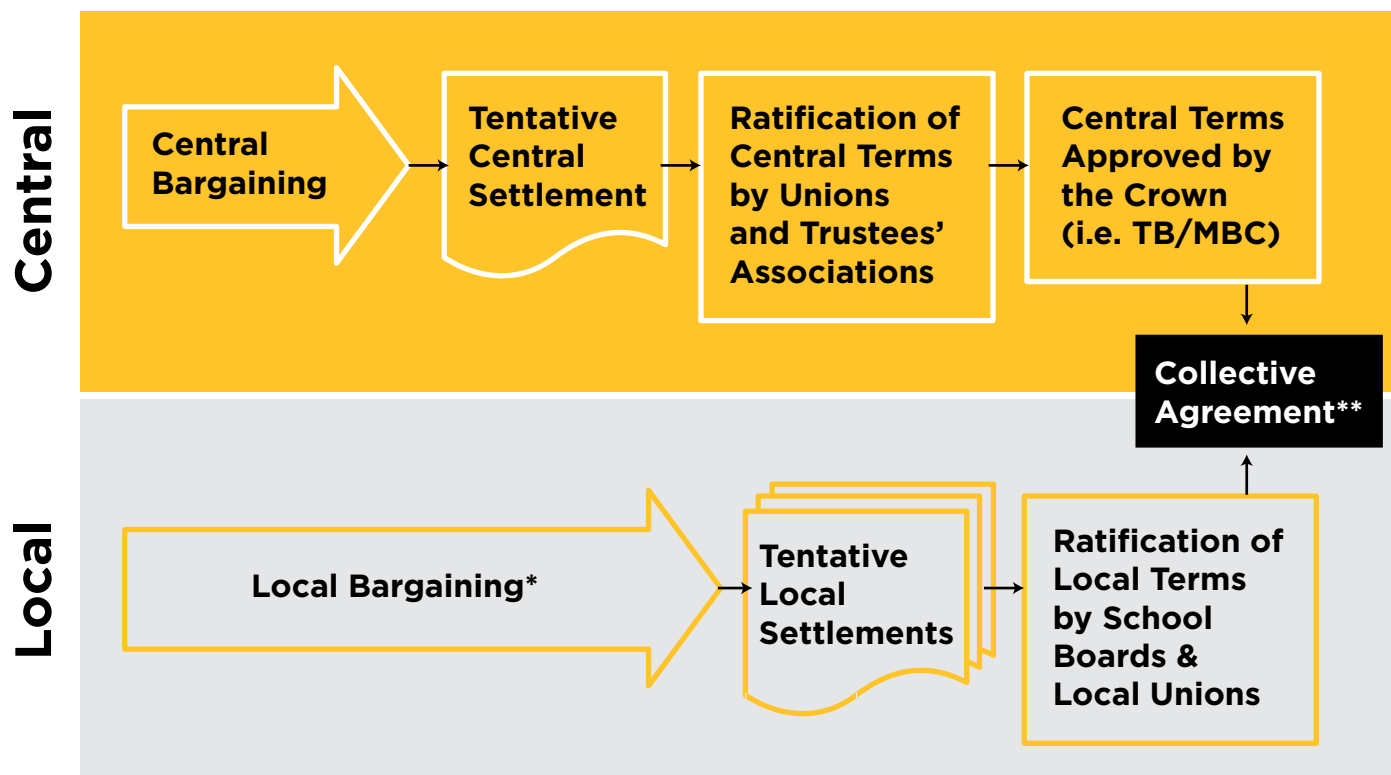
Boards of Trustees of Local School Boards

- Bring the concerns of the local school board to the attention of the employer bargaining agency for the purposes of developing a central mandate
- Approve/modify the local bargaining mandate
- Ratify settlements of locally negotiated terms and conditions of the Board's agreements

- Authorize lockouts at the local tier
- Pay any fees required by the Minister of Education to a school board/trustees' association that represents the school board as the employer bargaining agency.

As the designated employer bargaining agencies for their respective school boards at the central tables, school board/trustees' associations play a critical role in the collective bargaining process. Subject to the appropriate ratification process, school board/trustees' associations have the authority to bind the school boards in their respective systems to centrally negotiated terms and conditions of employment, which then become part of the local collective agreement, once local issues are also settled and ratified. School board/trustees' associations are also required to establish their own policies and procedures to fulfil their statutory duties and responsibilities, including conducting votes to ratify centrally negotiated agreements.

School Boards Collective Bargaining Act: Ratification Pathway



Under the SBCBA:

*Local bargaining may occur in concert with central bargaining or sequentially.

**A collective agreement is only completed once both central and local agreements are ratified.

Provided by the Ontario Ministry of Education, Education Labour Relations Office

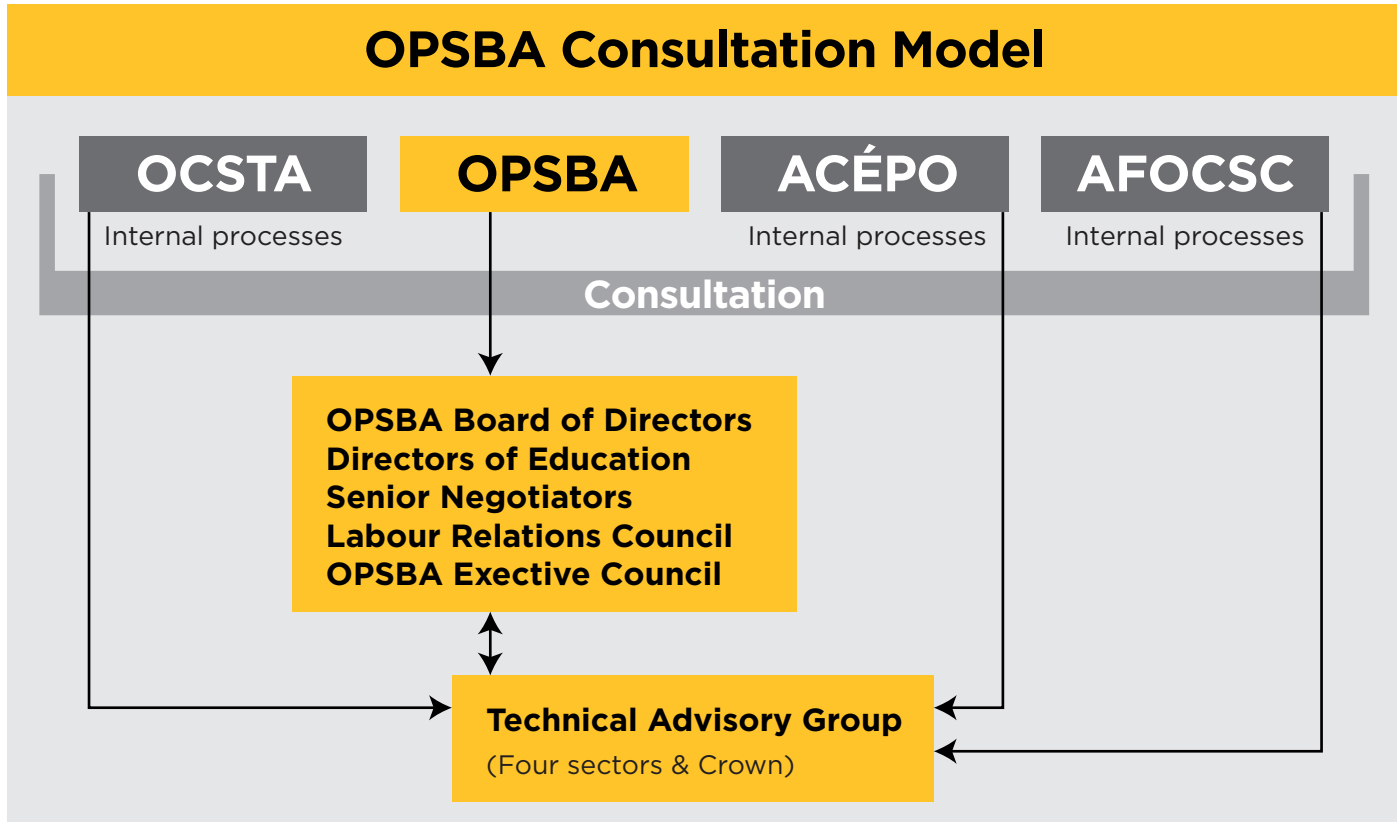
Negotiating a Collective Agreement

Each school board will have a single separate legally binding collective agreement with each of its unionized employee groups that will include the terms negotiated at central tables and any locally negotiated terms. There is no final collective agreement until there is a ratification of both central terms and of local terms.

Preparation for Collective Bargaining

In order for the employer bargaining agents to identify the proposed matters to be centrally bargained and bargaining positions, each school board/trustees' association will consult with consideration for student achievement and well-being, equity and inclusion, fiscal sustainability and comparable settlements.

OPSBA Consultation Model



In establishing matters to be bargained centrally, the parties engage in the sharing of their respective lists of these matters and reach agreement.

If agreement cannot be reached, the Ontario Labour Relations Board (if requested) will render a decision based on the following factors for deciding whether a matter is within the scope of central bargaining:

- The extent to which the matter could result in a significant impact on the implementation of provincial education policy.
- The extent to which the matter could result in a significant impact on

expenditures for one or more school boards.

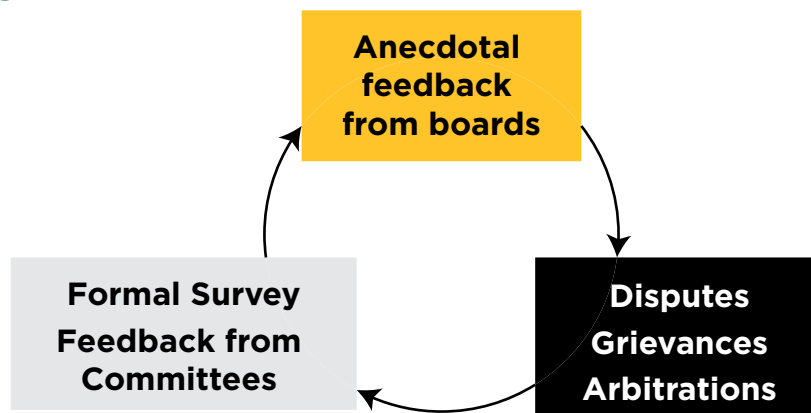
- Whether the matter raises common issues between the parties to the collective agreements that can more appropriately be addressed in central bargaining than in local bargaining.
- Such other factors as the Board considers relevant in the circumstances.

Anything that has not been deemed a 'Central Item' is available for local bargaining.

Data Gathering

Data is gathered regarding interpretation of the current collective agreement. The figure to the right illustrates the various sources of data. All school board labour relations and human resources practitioners have access through their school board/trustees' associations to a web-based provincial portal which offers a variety of information and data on labour relations issues. The portal is maintained by the Ontario Education Services Corporation (OESC). School boards/trustees' associations also provide professional development sessions for negotiators.

Data Gathering Sources



Following notice to bargain, the parties meet to begin the process of negotiating the collective agreement. At the central tier these negotiations include the Crown. When notice to bargain centrally is given it is deemed that local notice has also been given to the corresponding local parties.

Most collective agreements are settled without conflict.

Should negotiations break down, unions and federations have the right to strike and the employer has the right to lock out their employees and, under certain conditions, to impose new terms and conditions of employment. A strike includes any action or activity undertaken collectively with the intent to stop or limit the normal operation of the board, including regular classroom programs. The following are considered strike actions: withdrawing services; working

to rule; and curtailing the performance of the duties of employee. The right to strike and lock out exists at both the central and local levels, for the two tiers of bargaining. The initiation of the following steps does not preclude continuing to work toward the settlement of a collective agreement.

The following must occur before unions/federations can strike or an employer may lock them out:

- One party has served the other with notice of intent to bargain
- The collective agreement has expired



- There has been conciliation conducted by a conciliation officer appointed by the Ministry of Labour
- A strike has been supported by a majority of the employees voting in a strike vote
- One or both parties have provided five calendar days' notice for any strike or lockout activity.

A bargaining party does not necessarily exercise sanctions just because it is in a legal position to do so, but only if it deems that the action is necessary to achieve a settlement. However, a school board may alter conditions of employment after the release of a "no-board report." There are limitations on what can be changed. A proposed change must be raised with the union and changes generally involve imposition of positions previously introduced by the board at the bargaining table.

Should a strike occur, the government could choose to enact back to work legislation if the Education Relations Commission advises that the school year is in jeopardy.

Even though a strike or lockout may be ongoing, the parties remain under a duty to seek a negotiated settlement and to bargain in good faith.

Mediation and Arbitration

While mediation services are often initiated by the Ministry of Labour if a strike or lockout occurs or is likely to occur, both parties may jointly agree to the appointment of a mediator in an attempt to resolve outstanding issues at any time.

Arbitration is an alternative to the negotiation/sanction process. At any time during the bargaining process the parties may jointly agree to refer all matters remaining in dispute to final and binding arbitration.

Binding arbitration carries both risks and advantages and should only be requested after consultation with legal counsel and/or other professionals experienced in such proceedings. Binding arbitration is often included in "back to work" legislation.

Contract Administration

The SBCBA includes provisions for a central grievance arbitration process that contemplates the continuation of local grievance and arbitration provisions. This means that arbitration and settlements can continue to be used to resolve disputes at the local level involving both central and local terms. The Designated Employer and Employee Bargaining Agencies will have access to

final and binding arbitration or settlement to resolve differences about any central terms of a collective agreement. For central grievances, the parties are school board/trustees' associations and provincial unions. The Crown is not a party to central grievances, but will have the right to participate in arbitrations and its agreement is required for a settlement.