



Upcoming dates:

June 8th, 10th, and 23rd –
Hearing dates at OLRB

November 23rd, 2015 –
Charter challenge (with
other unions) on Bill 115

June 8, 2015

Update on recent legal developments in the education sector

Where CUPE is

On June 8th, 10th, and 23rd, we will be before the Ontario Labour Relations Board (OLRB), in a hearing to determine what may be bargained centrally. Anything not determined to be central is open for local bargaining. We cannot apply for conciliation until this determination is made by the OLRB.

OLRB ruling on illegality of OSSTF strikes

Background: In April 2014, as you know, the Ontario government passed the School Boards Collective Bargaining Act, which governs the way collective bargaining will be structured in the education sector. The Act mandates collective bargaining for teachers at central and local tables.

The Act establishes a process where central issues are determined by the parties. If there is no agreement, then the OLRB will make a decision on what should be negotiated centrally, any other issue would be open to negotiate locally. Nothing in the Act says one bargaining table has to start or finish before the other, but does say that a settlement is reached when a memorandum has been ratified centrally and locally.

OSSTF and OPSBA reached an agreement on what should be negotiated centrally and locally and commenced negotiations at both central and local tables.

The Act establishes a distinction between local and central strikes, and each process must separately pursue its strike mandate, file for conciliation and request a no-board report before a strike can happen.

Three local OSSTF bargaining units did just that. OSSTF locals in Durham, Rainbow District, and Peel sought and received local

strike mandates, and no-board reports. They then commenced strike action on April 20, 2015 in Durham, April 27, 2015 at the Rainbow board and on May 4th in Peel.

On May 12th, the Durham, Peel and Rainbow Boards filed an application with the OLRB alleging the strikes were unlawful. Hearing dates were held on May 14th, 15th, 19th, 20th and 21st, and the chair ruled on May 26th, 2015.

OLRB Decision: Bernard Fishbein, chair of the OLRB, ultimately decided that the strikes were unlawful. He ruled that local strikes must be about local issues, and central strikes must be about central issues. After hearing evidence, the chair determined that the local strikes in Durham, Rainbow and Peel were about central issues. The chair found that messaging on picket signs and communications to members were mainly related to issues at the central table, and that it is illegal to strike locally on these issues. Although there might have been legitimate local issues that the local unions were striking over, Chair Fishbein felt there was enough evidence to rule the strikes were primarily over central issues, and ruled this to be illegal.

Remedy: After ruling the strikes to be unlawful, the chair addressed what remedy should be ordered. Chair Fishbein wrote:

“I direct that these strikes cease for two (2) weeks from the date of the decision. After this two week moratorium has elapsed, the local strike may continue. This moratorium will give OSSTF an opportunity to “purify” or “cleanse” the local strikes of portions that are in respect of central bargaining to continue and clarify those purely local issues that cannot be resolved and are still in dispute.”

Simply put, OSSTF has to go back and make it clear that these local bargaining units are in fact on strike over local issues. If OSSTF does this, they will be allowed to continue the strike from two weeks after the decision was issued.

OSSTF Challenges OLRB Decision: On May 29, 2015, OSSTF advised the OLRB they feel the recent ruling on unlawful local strikes raises Charter of Rights issues, and they will be challenging it. OSSTF’s letter to the OLRB also states this decision will have implications on other parties currently in negotiations under the Act, and anticipates other unions and federations will seek intervenor status. CUPE will certainly seek intervenor status when a hearing is scheduled.

Back-to-work legislation (“Protecting the School Year Act, 2015”)

The Ontario government passed a bill in the legislature that ended the three local OSSTF strikes at the Durham, Rainbow and Peel boards. The “Protecting the School Year Act” is narrow in scope, as it only identifies these three boards.

The bill as passed mandated the three local strikes to end, and said that failure to cease the strikes will result in a fine of \$2,000.00 a day for individual members, and \$25,000.00 a day to OSSTF.

This Act was introduced by the government after they received information from the Education Relations Commission, who advised the Minister of Education that the school year could be in jeopardy at these boards if classes did not resume soon.

The Act provides a dispute resolution to resolve outstanding issues. All matters at the respective local tables will be referred to interest arbitration.

Interest arbitration allows for each party to present arguments on their outstanding issues, and a board of arbitration will determine what they believe to be a fair settlement. A board of arbitration consists of three members: a representative from the employer, a representative from the union, (referred to as nominees), and these nominees will pick a third member – an arbitrator who will chair the board. If the nominees cannot agree to a chair, one will be picked by the Minister of Labour. We believe the Minister has a bias in these proceedings. The bill states nominees must be selected within five days of the Act becoming law, 10 days by mutual agreement.

The back-to-work bill also prohibits OSSTF members at these three boards from striking centrally for the remainder of the 2014/2015 school year. It does not prohibit them from striking centrally in the 2015/2016 school year.

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