Submission to the Standing Committee on General Government

Re: Bill 92, School Boards Collective Bargaining Amendment Act, 2017

March 8, 2017

Elementary Teachers' Federation of Ontario

The Elementary Teachers' Federation of Ontario (ETFO) welcomes the opportunity to participate in the hearings to review Bill 92, the *School Boards Collective Bargaining Amendment Act, 2017*. ETFO represents 78,000 elementary public school teachers and education professionals across the province who bargain centrally and locally under the provisions of the *School Boards Collective Bargaining Act.* ETFO is the largest teacher federation in Canada.

Ontario has experienced one round of bargaining under the 2014 law that established two-tiered bargaining for the education sector. The fact that, since 1997, school boards no longer have access to local tax revenue and are solely dependent on the provincial government for funding made central bargaining a necessity. Central negotiations, with the government at the table, was the only option for negotiating changes to collective agreements with a significant cost attached. While ETFO recognized the inevitability of provincial bargaining, it fought hard during the drafting of the *School Boards Collective Bargaining Act* (the Act) to protect local bargaining and ensure the process was meaningful and respected the important issues that local bargaining units negotiate with their respective school boards. Some of our concerns with Bill 92 relate to its potential impact on the bargaining rights of the local bargaining units we represent.

Governments are not required to consult with stakeholders when they draft legislation. ETFO appreciated the invitation to participate in the stakeholder consultations prior to the first reading of Bill 92. The Federation was cautiously optimistic that the process would provide the opportunity to improve the legislation based on our members' experience with the first round of bargaining under the new central framework. During the consultations,

ETFO raised concerns related to the role of the Crown as a full party at the central table; the timelines for commencing the central bargaining process; the appropriate sequencing of bargaining; and the need to clarify the effective date of a collective agreement in cases where there is an ongoing arbitration. Bill 92 fails to address these issues.

ETFO came away from the consultations, frustrated that the process had not provided a more genuine give-and-take among the parties and the interests represented. If the Legislature adopts Bill 92 without specific amendments, the province will have missed the opportunity to learn from the previous experience and to foster greater confidence in the bargaining regime on the part of education unions and their members.

Role of the Crown and Employer Bargaining Agency in Local Bargaining

Section 4 adds new subsection 14.1 (1) to the Act. Clause 14.1 (1) (a) provides the opportunity for the Crown to assist either party or both parties to local bargaining, upon request. ETFO opposes any intervention by the Crown in local bargaining. Local bargaining should be meaningful to the local and its circumstances and be conducted directly with the school board or its representative. This new section is an infringement on local bargaining.

Clause 14.1 (1) (b) provides that the employer bargaining agency – the provincial school board association – may assist if the school board requests it. ETFO believes that neither the Crown nor the employer bargaining agencies should be able to participate in local meetings, conciliation etc. without the consent of the local parties.

Apart from this, ETFO does not believe it should take any position with respect to the way in which employer bargaining agencies provide assistance and advice to their constituents.

Recommendation:

1. That Section 4 of the bill be amended by adding a new clause:

> 14.1 (c) notwithstanding the forgoing, the Crown and an employer bargaining agency may not participate in bargaining meetings, mediation or conciliation proceedings unless both local parties consent.

Mutual consent between the Crown and Employer Bargaining Agency

Subsection 15 (2) of the Act requires the Crown to give consent for an employer bargaining agency to seek determinations from an arbitrator or board of arbitration; issue a lock-out order; or exercise other specific rights and privileges under the *Labour Relations Act*. Section 5 of the bill proposes to amend subsection 15 (2) of the Act to require mutual agreement between the Crown and employer bargaining agency. ETFO is concerned this amendment will present problems for when there is not an agreement between the employer bargaining agency and the Crown and thereby create unnecessary potential conflicts that could interfere with the orderly progress of bargaining.

Recommendation:

2. That subsection 5 (1) of the bill (amending subsection 5 (2) of the Act) be deleted.

Requirement of Non-teacher Employees to be represented by Bargaining Agencies

Section 9 of the bill adds new Section 18.1, which sets forth the guidelines for assigning employee bargaining agencies for non-teacher bargaining units. For these smaller education unions representing non-teacher employees, ETFO believes that each union should be able to determine their participation in central table negotiations.

Changing Employee Bargaining Agency

Section 20 of the Act assigns, or "designates," specific non-teacher employee bargaining units to specific employee bargaining agencies. Section 9 of Bill 92 adds new Section 20.1, which requires the Minister to continue the designation of local bargaining units to specific employee bargaining agencies at each round of bargaining, unless a specific union that is member of a council of unions constituting an employee bargaining agency advises the Minister it wishes to withdraw from the council for the next round of bargaining. ETFO agrees that the designations of bargaining units to an employee bargaining agency should continue without requiring renewal at each round of bargaining and is pleased to see this concern, raised during the consultations, addressed.

While ETFO has no objection to a procedure whereby stranded units may be assigned to employee bargaining agencies by the Ontario Labour Relations Board (OLRB), this should only be permitted with the consent of the employee bargaining agency, since no employee bargaining agency should be required to assume the obligation to represent bargaining units where it is unwilling to do so.

Recommendation:

3. That Section 9 of the bill be amended by adding new clause:

> 20 (10) (c) notwithstanding the forgoing an order shall not require an employee bargaining agency to represent a bargaining unit where it does not consent to do so.

Bargaining a First Collective Agreement

Section 15 of the bill amends Section 33 of the Act, which sets forth the guidelines for negotiating a first contract. It provides that, in situations where a bargaining agent is negotiating a first local agreement, that agreement will be deemed to include the central items negotiated by the employee bargaining agency for the collective agreement the new bargaining unit becomes a party to. ETFO supports the principle of this amendment.

Notice before Lock-Out

Section 16 of the bill amends provisions in the Act governing the consent required for school boards to implement a lock-out of employees during the bargaining process. Section 16 proposes amendments to subsection 34 (5) of the Act, which currently requires the Crown to agree when a school board implements a lock-out. The amendment replaces “unless the Crown consents” with “unless the employer bargaining agency and Crown have agreed to the lock-out.” ETFO believes the amendment language will present problems for when there is not an agreement between the employer bargaining agency and the Crown. The current language should remain, which provides the Crown with the authority to exercise its judgement.

Recommendation:

4. That the amendment to subsection 34 (5) of the Act under Section 16 of the bill be deleted.

Additional Notice regarding Full Withdrawal of Services

Under the current education sector bargaining regime, a union must give five days' notice when it is set to begin any form of workplace action covered under the definition of "strike action." Typically, ETFO strike action begins with educators withdrawing from performing administrative duties outside of their classroom instruction. Escalation of withdrawal of services only happens when no progress is taking place at the bargaining table and escalation usually happens gradually.

Section 16 of the bill proposes a new subsection 34 (7) that proposes to require local or central employee bargaining agencies to give an additional five days' notice if the strike action escalates to full withdrawal. ETFO strongly opposes this amendment.

ETFO has fully complied with its statutory obligation to provide the initial notice of five days and has always acted responsibly in advising of any change in the nature of its legal strike activity. We are unaware of any significant problems that have occurred in the conduct of strikes by ETFO that would warrant any change to the existing statutory provision, which is already more onerous than any requirement for other trade unions governed by the *Labour Relations Act.* Once in a legal strike position, ETFO should be able to develop and implement changes in its activity without being bound by an additional specific notice period. Given modern systems of communication and given the responsible method that teachers unions have always employed, there is no question

that parents will have adequate advance notice of any job action affecting students. The proposed requirement to provide the additional notice would undoubtedly result in unnecessary confusion in the community and potential protracted disputes and litigation over whether the additional notice is required.

Recommendation:

5. That new subsection 34 (7) proposed in Section 16 be deleted.

Collective Agreement Term of Operation

The Act gives the Minister the regulatory authority to specify the term of a collective agreement negotiated under the provisions of the Act. Current language provides that the Minister may issue a regulation specifying a term of two, three or four years. The amendment to subsection 41 (2) set forth in Section 19 of the bill would authorize the Minister to also specify a term of five years. ETFO believes the term of the collective agreement should be subject to negotiation by the parties to the agreement. It doesn't support the Minister's current authority to set the term; the proposed amendment to subsection 41 (2) only makes the Minister's authority more unacceptable.

Recommendation:

6. That the amendment to subsection 41 (2) proposed in Section 19 of the bill be deleted.

Continuation of Collective Agreements

Section 20 of the bill adds new Section 41.1 that sets out the provision for continuing or extending the term of collective agreements. ETFO recently participated in negotiations to extend our collective agreements beyond the expiry date of August 31, 2017. The new

section retroactively recognizes that negotiation process and proposes guidelines to govern future potential contract extensions. As stated above, ETFO believes that the length of regular collective agreements should not be prescribed, but rather left to the bargaining parties to determine. Furthermore, any negotiated extension should be limited to two years.

ETFO believes that, to the extent possible, local bargaining should be maintained, notwithstanding any agreement to continue central terms. As a result, the Act should specifically provide that unless the parties agree otherwise, an agreement to continue central terms shall not interfere with the right of local parties to negotiate in respect of local terms and should provide for a full range of bargaining and dispute resolution options.

ETFO believes that the length of regular collective agreements should not be prescribed but should be left to the bargaining parties to determine.

Recommendation:

7. That new clause 41.1 (1) be amended by deleting “three, four or five years” at the end of the clause.

Conflicts and Inconsistencies between Local and Central Terms

Sections 23 and 24 of the bill address the issue of when there are conflicts or inconsistencies between local and central terms of the collective agreement. Section 24 repeals Section 46, which provides that when there is such a conflict, the central term prevails. Section 23 provides new Section 45.1, replacing Section 46. The amendment sets forth a process for applying to the OLRB to determine the issue when there is a

conflict between local and central terms. ETFO fails to understand the need for this new section. The Act provides that, in the event of such a conflict, the central terms prevail. Any dispute can be addressed through the central grievance procedure. The Act also provides a mechanism to address any potential conflicts during the course of bargaining.

Recommendation:

8. That Section 23 be deleted.

Continuation of the Education Relations Commission

Section 25 of the bill amends Section 50 of the Act to continue the role of the Education Relations Commission (ERC) under the Act. ETFO has no objection to the amendments, but it is our position that there should be an obligation to consult with employee and employer bargaining agencies with respect to appointments to the ERC.

Recommendation:

9. That Section 25 of the bill be amended to amend subsection 50 (2) of the Act by adding the following sentence:

   Prior to any appointment, the Minister shall consult with all employer and employee bargaining agencies governed by this Act in respect of the appointments.

OTHER MATTERS NOT ADDRESSED BY BILL 92

Central Bargaining Process – Negotiating Central

ETFO is disappointed the bill fails to make provision to extend the period for determining central table items. As proposed during the Ministry consultations, ETFO suggests that the central bargaining process commence before the expiry of the collective agreements to allow sufficient time for the parties to agree on central items or have the issues

determined so that bargaining is not delayed. This change would ultimately contribute to the ability to negotiate collective agreements in a timely fashion.

Recommendation:

10. That subsection 28 (1) be amended to read:

> That the parties at the central table and the Crown shall meet 180 days prior to the first day upon which notice to bargain could be given under Section 59 of the Labour Relations Act ,1995 or within such further period as they may agree upon, and they shall bargain in good faith and make every reasonable effort to agree upon the matters to be included in the scope of central bargaining at the central table.

Role of the Crown

Currently the employer bargaining agency – in our case, the Ontario Public School Boards' Association (OPSBA) and the Council of Trustees' Association (CTA) – is a party and the Crown is a "participant" at the central table. The Act should be amended so that the Crown – the sole funder of the education system – is a full party at the central table with all of the obligations party status imposes. In the first round of bargaining under the Act, the "management team" approach carried out by the Crown was problematic as OPSBA and the CTA, at their respective bargaining tables, were permitted to take the lead with the Crown as a mere "consultant." There were mixed and often contradictory messages coming from the two parties of the "management team." As the funder of the education system, the Crown should be the central party on the management side of the negotiations table. This change would require a number of amendments to the Act and consequential amendments to the *Labour Relations Act*.

Effective Date of Collective Agreement

During the last round of bargaining, ETFO experienced a conflict with respect to OPSBA's interpretation under Section 39 of Bill 122 as to when the collective agreement comes into effect if there is an ongoing arbitration. Bill 92 should be amended to clarify that the terms and conditions of the items agreed upon locally and centrally come into effect upon ratification of both agreements, pending conclusion of any arbitration. This would assist in removing any ambiguity.

CONCLUSION

It is not often that statutes governing collective bargaining are opened up for review and amendment. It is important that the Legislature take advantage of Bill 92 to ensure the learning experiences from the first round of bargaining under the *School Boards Collective Bargaining Act, 2014* are fairly reflected in the amendments to the Act. ETFO urges the Standing Committee on General Government to consider carefully the issues brought forward in this submission.

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RECOMMENDATIONS

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2. That subsection 5 (1) of the bill (amending subsection 5 (2) of the Act) be deleted.

3. That Section 9 of the bill be amended by adding a new clause:

   20 (10) (c) notwithstanding the forgoing, an order shall not require an employee bargaining agency to represent a bargaining unit where it does not consent to do so.

4. That the amendment to subsection 34 (5) of the Act under Section 16 of the bill be deleted.

5. That new subsection 34 (7) proposed in Section 16 be deleted.

6. That the amendment to subsection 41 (2) proposed in Section 19 of the bill be deleted.

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8. That Section 23 be deleted

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