Submission to the Standing Committee on the Legislative Assembly

Response to Bill 122, the School Boards Collective Bargaining Act, 2013

February 2014

Elementary Teachers' Federation of Ontario

The Elementary Teachers' Federation of Ontario (ETFO) is pleased to participate in the review of Bill 122, the *School Boards Collective Bargaining Act, 2013*. By bringing a formal, legal framework to the process of provincial education sector bargaining, the bill represents an important step forward from the lack of clear rules and responsibilities that characterized the three rounds of informal provincial discussions between the government and education unions that occurred between 2005 and 2013 through the Provincial Discussion Table process.

Given the current structure of education finance in Ontario, a legal framework for provincial bargaining in the sector is a practical necessity. When the provincial government removed school boards' authority to raise revenue through local taxation in 1997, school boards' ability to negotiate directly with their employee unions was dramatically affected. Without any control over education finance, school boards were no longer able to respond to bargaining items that involved increased expenditure.

It is important, however, to protect and preserve the ability of school boards and their employees to negotiate directly on specific local issues, determined through mutual agreement. ETFO applauds the provincial government for including local bargaining and the right to strike at both the provincial and locals level in Bill 122.

Collective bargaining is by its very nature an adversarial process. For provincial bargaining in Ontario's education sector to work and be effective, the legislation must be balanced and fair and perceived as such by all parties involved in the process. This submission identifies amendments designed to ensure that the proposed provincial bargaining framework is indeed balanced and fair and works in the best interest of public education in the province.

Definition of "Minister"

The definition of "minister" in Subsection 2(1) would allow the government to appoint, for example, the Minister of Finance to exercise all ministerial authority under the Act. It is ETFO's understanding that the intent of the legislation is to designate, as is most appropriate, the Minister of Education as the responsible authority. This intent should be clarified in the bill.

Recommendation:

1. That the definition of "Minister" in Subsection 2(1) be amended to specify the Minister of Education.

Status of the government as a "party" to negotiations

The government says that Bill 122 establishes "tripartite" bargaining, but the Crown is not defined as "a party" in the bill. Only the employer bargaining agents and the employee bargaining agents are identified as "parties". In sections 3(4), 13(2), 28(1), and 32(1), for example, the legislation refers to "the parties and the Crown". The government has given itself very broad powers to participate in all aspects of the process, including conciliation, mediation, approving a referral to arbitration, and authorizing lockouts. To clarify the role of government and to support the concept of tripartism, the relevant sections in the bill should be amended to include the government or "the Crown" in the definition of "a party". It should be noted that making the government a party to the negotiations would apply to its role at the central table and not extend to the local collective agreements reached between school boards and their employee unions. It is in everyone's best interest that the legislation clearly stipulates the obligation of all three "parties" – the government, the employee bargaining agents, and the employer bargaining agents—to be bound by the duty to bargain in good faith and by the other unfair labour practice provisions under the *Labour Relations Act*.

Recommendation:

2. That "the Crown" be defined as one of the "parties" in the central table bargaining process and that the relevant sections of the bill be amended accordingly.

Threshold re central table bargaining for non-teacher bargaining units

Subsection 23(2) provides that the Minister *may*, by regulation, establish one or more central tables for "other employees" i.e. non-teacher employees. ETFO believes that non-teacher bargaining units should have the same rights to a central table as teacher bargaining units if they meet the threshold set forth in the legislation. The bill should be amended to establish a statutory requirement for a central table for non-teacher bargaining units.

Recommendation:

3. That the bill be amended to provide a statutory requirement for central tables for non-teacher bargaining units in the same manner as provided for teacher bargaining units.

Scope of Bargaining and Term of Collective Agreement

Bill 122 proposes to assign unusual and extraordinary authority to the government in terms of the central bargaining process. Under Subsection 24(2), the Minister can determine what matters will be discussed at the central table. Section 28 proposes to give the Crown broad powers regarding negotiating what will be dealt with at the central table and remedies regarding disputes related to the scope of the central table items.The scope of central bargaining should be determined either by agreement of the parties or defined narrowly in the legislation and related to such matters as compensation, matters affecting compensation, class size etc. while allowing the parties the ability to agree on additional central table items.

Subsection 40(2) gives the Crown the ability to dictate the term of the collective agreement as either two, three, or four years. And, through Subsection 41(1), the Minister has the authority to provide consent to a revision of central table items even if both the employer and employee

agents have agreed to the list. Such overarching powers contravene the concept of free collective bargaining and the relevant sections should be deleted from the bill.

Recommendations:

4. That Subsection 24(1) be amended to provide that the scope of bargaining at a central table be defined as either what is agreed upon by the parties or, more narrowly, as compensation, matters directly affecting compensation, class size or other matters as agreed upon by the parties.

5. That Subsections 24(2), 40(2), and 41(1) be deleted.

6. That Section 28 be deleted.

Dispute Resolution

There is no process proposed for addressing disputes regarding whether a matter should be dealt with at the central or local table. Once the bargaining process begins, it is important to avoid protracted discussions related to which matters will be dealt with at either the central or local table.

Recommendation:

7. That the bill be amended to include provision for an expedited process for resolving disputes related to whether a particular matter should be negotiated at the central or local table.

Notice to Bargain

Subsection 31(5) gives the Minister the authority to establish a notice to bargain period of up to 270 days, considerably beyond the current period specified in the *Labour Relations Act*. The potential duration of the notice to bargain period could lead to very protracted bargaining. Subsection 31(5) should be deleted so that the decision to extend the bargaining period would be left to the parties to determine. An alternative would be to amend the legislation to require the parties to be bound by the notice period set forth in the *Labour Relations Act*. Under those provisions, either party may deliver a notice to bargain within the last 90 days of the operation of the collective agreement.

Recommendation:

8. That Subsection 31(5) be deleted.

Notice of Alteration of Terms and Conditions

Subsections 34(4) and (5) require a five-day notice period before the employee agency may initiate strike action and an employer agency may initiate a lock out of employees. The legislation does not provide a notice period for alterations of the terms and conditions of employment. This could mean, therefore, that changes to the terms and conditions might be imposed without notice and at a time when the union may not be in a position to respond by engaging in a legal strike. The five-day notice period should also apply to changes in the terms and conditions.

Recommendation:

9. That Section 34 be amended to stipulate that the five-day notice period applies to changes in the terms and conditions of employment.

Arbitration criteria

Section 37 sets forth a list of five criteria to govern the decisions of arbitrators in situations where items from central table bargaining are referred to interest arbitration. The list provided is drawn from bargaining legislation governing the provincial health sector where there is a broad mix of public and private employers. The notion of public-private sector comparisons does not easily transfer to the education sector. There are relatively very few private elementary and secondary schools in Ontario and they aren't included in the Grants Students Need, the funding that supports public schools.

The arbitration criteria should be removed or, at the very least, balanced with the addition of criteria included in the federal *Public Sector Labour Relations Act* that reads: "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."

Recommendation:

10. That the list of arbitration criteria set forth in Section 37 be deleted or the section be amended by adding criteria that outlines the responsibility to establish compensation that fairly reflects the qualifications required, the work performed, the responsibility assumed, and the nature of the work performed.

Ratification of the Central Agreement and Strike Votes

Section 38 outlines the process for ratification of the collective agreement at both the central and local levels. The process for ratification should be clarified to more clearly outline the authority of the employee bargaining agency to determine its internal ratification process for central agreements. The mechanisms for obtaining strike votes must also be clarified.

Subsection 38(3) states that an agreement shall not come into effect until it has been ratified by the parties at the central table and approved by the Crown. Reference to the Crown's approval should be removed from this section. If the bill is amended to define the Crown as "a party", the reference would be redundant. If that is not the case, the Crown should not have a role in approving an agreement that has been freely negotiated by the employer and employee agencies at the central table.

Recommendations:

11. That Section 38 be amended to clarify that the employee bargaining agency has the authority to determine the method of ratification for central agreements and to clarify the mechanisms for obtaining a strike vote.

12. That Subsection 38(3) be amended by deleting "and approved by the Crown".

Central grievance process

The grievance process outlined in Subsection 42(1) establishes that there would only be a "declaration" to settle a disagreement regarding the interpretation of a central table item available at the central grievance process. A local school board could therefor ignore the "declaration" and another grievance would have to be filed. This process would lead to duplicate arbitrations and increase the cost for everyone through the requirement to “re-litigate”. This would result in a considerable waste of time and resources. The legislation should be amended to empower the arbitrator to provide a “direction” that would oblige school boards to implement the decision. Specifically, a remedy ordered by a central table arbitrator should be binding on any party to the central agreement at issue and the arbitrator would remain seized to ensure that an appropriate remedy applies.

Recommendation:

13. That subsection 42(1) be amended to enable the arbitrator assigned to settle a disagreement regarding the interpretation of a central table item to give a direction that would apply to school boards party to the central agreement. Any remedy ordered by a central table arbitrator should be binding on any party to the central agreement and the arbitrator should remain seized to ensure that an appropriate remedy applies.

In the process of moving to a formalized provincial bargaining regime, there are other matters the legislation should address to avoid protracted problems related to variance among existing collective agreements regarding grievance procedures. To ensure that collective agreements have uniform protection, ETFO recommends that all agreements be deemed to contain specific common language.

Recommendation:

14. That a new subsection be added to Section 42 that reads:

> *Where a difference arises between the employer and employee bargaining agencies relating to the interpretation, application or administration of a central term of an agreement, including any question as to whether a matter is arbitrable, or where an allegation is made that this agreement has been violated, either of the parties notify the other party in writing of its desire to submit the difference or allegation to arbitration. The parties shall within 15 days attempt to agree on a single arbitrator to hear and determine*

the matter or, should they be unable to do so, the appointment shall be made by the Minister of Labour for Ontario upon the request of either party. The arbitration board shall hear and determine the difference or allegation and shall issue a decision and the decision is final and binding upon the parties and upon any employee or employer affected by it.

Subsection 42(1) states that Sections 48 and 49 of the *Labour Relations Act* will apply to the grievance arbitration for central table items. Section 48 of the Act provides a comprehensive process to govern arbitrations. Section 49 speaks to the ability of the Minister to appoint a specific single arbitrator to expedite the arbitration request. Since it is unclear how an expedited arbitration process would work in relation to the proposed provincial bargaining process, ETFO recommends deleting reference to Section 49.

Recommendation:

15. That Subsection 42(1) be amended by deleting reference to Section 49 of the *Labour Relations Act*.

Subsections 42(2) and (3) make reference to the authority of the Crown to participate in the proceedings related to the central table grievance arbitration process, including having the power to provide consent to the settlement. Regardless of whether the Crown is or is not a party to the negotiations, it cannot be a separate party to the grievance/arbitration process.

Recommendation:

16. That subsections 42(2) and (3) be deleted.

Local Arbitration of Central Terms

Subsection 42(4) proposes that where an arbitrator makes an award regarding a central table item, the award would extend beyond the employer and employees associated with the arbitration request to include all parties "to every collective agreement that includes those central terms." It proposes to have central arbitrations apply broadly to all agreements. The section should be amended to ensure that in situations where there is a central arbitration on a

central item, the arbitration settlement applies only to the parties to the central agreement being arbitrated. A settlement on a central term should not prevail over a local agreement.

Recommendations:

17. That Subsection 42 (4) be amended to clarify that in situations where there is a central arbitration on a central item, the arbitration settlement apply only to the parties to the central agreement being arbitrated.

18. That Subsection 42(4) be amended by deleting the final sentence: "Such a settlement prevails over the settlement (by agreement or arbitration) of a difference between the parties to the collective agreement that includes those central terms."

19. That it be clarified that all the provisions of Section 42 are subject to subsection 42(5).

CONCLUSION

Bill 122, the *School Boards Collective Bargaining Act, 2013* is an important legislative initiative that responds to the practical necessity of providing a legal framework for provincial bargaining in the education sector, a framework that also allows for the continuation of local bargaining between school boards and their employees. To ensure that the future provincial bargaining regime is fair and balanced, ETFO urges the Standing Committee on the Legislative Assembly to adopt the amendments proposed in this submission.

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SUMMARY OF RECOMMENDATIONS

The following list of amendments, if accepted, will require a number of consequential amendments to Bill 122 that are not detailed herein:

1. That the definition of "Minister" in Subsection 2(1) be amended to limit the definition to the Minister of Education.

2. That "the Crown" be defined as one of the "parties" in the central table bargaining process and that the relevant sections of the bill be amended accordingly.

3. That the bill be amended to provide a statutory requirement for central tables for non-teacher bargaining units in the same manner as provided for teacher bargaining units.

4. That Subsection 24(1) be amended to provide that the scope of bargaining at a central table be defined as either what is agreed upon by the parties or, more narrowly, as compensation, matters directly affecting compensation, class size or other matters as agreed upon by the parties.

5. That Subsections 24(2), 40(2), and 41(1) be deleted.

6. That Section 28 be deleted.

7. That the bill be amended to include provision for an expedited process for resolving disputes related to whether a particular matter should be negotiated at the central or local table.

8. That Subsection 31(5) be deleted.

9. That Section 34 be amended to stipulate that the five-day notice period applies to changes in the terms and conditions of employment.

10. That the list of arbitration criteria set forth in Section 37 be deleted or that the section be amended by adding criteria that outlines the responsibility to establish compensation that fairly reflects the qualifications required, the work performed, the responsibility assumed, and the nature of the work performed.

11. That Section 38 be amended to clarify that the employee bargaining agency has the authority to determine the method of ratification for central agreements and to clarify the mechanisms for obtaining a strike vote.

12. That Subsection 38 (3) be amended by deleting "and approved by the Crown".

13. That subsection 42(1) be amended to enable the arbitrator assigned to settle a disagreement regarding the interpretation of a central table item to give a direction that would apply to school boards party to the central agreement. Any remedy ordered by a central table arbitrator should be binding on any party to the central agreement and the arbitrator should remain seized to ensure that an appropriate remedy applies.

14. That a new subsection be added to Section 42 that reads:

> *Where a difference arises between the employer and employee bargaining agencies relating to the interpretation, application or administration of a central term of an agreement, including any question as to whether a matter is arbitrable, or where an allegation is made that this agreement has been violated, either of the parties notify the other party in writing of its desire to submit the difference or allegation to arbitration. The parties shall within 15 days attempt to agree on a single arbitrator to hear and determine the matter or, should they be unable to do so, the appointment shall be made by the Minister of Labour for Ontario upon the request of either party. The arbitration board shall hear and determine the difference or allegation and shall issue a decision and the decision is final and binding upon the parties and upon any employee or employer affected by it.*

15. That Subsection 42(1) be amended by deleting reference to Section 49 of the *Labour Relations Act*.

16. That Subsections 42(2) and (3) be deleted.

17. That Subsection 42 (4) be amended to clarify that in situations where there is a central arbitration on a central item, the arbitration settlement apply only to the parties to the central agreement being arbitrated.

18. That Subsection 42(4) be amended by deleting the final sentence: “Such a settlement prevails over the settlement (by agreement or arbitration) of a difference between the parties to the collective agreement that includes those central terms.”

19. That it be clarified that all the provisions of Section 42 are subject to subsection 42(5).