



Ontario School Board Co-ordinating Committee • Comité de Coordination des Conseils Scolaires de l'Ontario

PUTTING STUDENTS FIRST ACT, 2012

Introduction

The *Putting Students First Act, 2012* is a blatant attempt to impose the agreement that was reached between the Ministry of Education and the Ontario English Catholic Teachers' Association (OECTA) on CUPE members across the province. While the legislation pretends to permit us to bargain and reach our own agreements, don't be fooled. Rather, at every turn the fix is in to ensure that the only possible outcome is the OECTA deal – or worse – with no right of appeal.

The legislation contains provisions specifically designed to ensure that the only outcome possible is a collective agreement with the same terms that were negotiated by a teachers' union – OECTA. No matter how inappropriate these terms would be for CUPE members, the legislation gives exclusive power to the Minister of Education and Cabinet to ensure that the OECTA deal applies to CUPE members. Even if we are able to negotiate a different result with a school board, Cabinet will have the power to overturn that agreement and impose the OECTA deal. And it gets worse. If we are able to negotiate additional compensation for members, the legislation contains a specific provision saying that members can be forced to pay the money back. All of this will apply for at least two years – and Cabinet has the authority to extend it for a third year.

There are also powers granted under the Act that take away the right to strike or lockout and seeks to shield the actions of Government from any review by the courts, the Labour Board or boards of arbitration.

In CUPE's opinion this legislation represents an unprecedented intrusion by the Ministry of Education into the collective bargaining arena that, as a matter of law, requires the participation of CUPE Locals and School Boards. A clear example of this is that the legislation specifically invites unions to make deals with the Ministry of Education as opposed to our employers!

It is CUPE's position that this Act clearly interferes in the collective bargaining process set out under the *Labour Relations Act*, and is also a direct violation of our rights to freedom of association under the *Charter of Rights and Freedoms* as recognized by the Supreme Court of Canada.

We encourage you to take a stand to defend education workers' basic rights. Take action and send a letter to your MPP by visiting messageyourmpp.ca. The louder our

voices are heard by decision makers across the province the stronger our message will be. To find out what else you can do please visit cupe.on.ca/supportededucation.

An overview of the OECTA deal is provided for your reference at the end of this document.

The details of the legislation are as follows:

- For all collective agreements expiring August 31, 2012, there will be a two year "restraint period" commencing September 1, 2012 (this can be extended by regulation to three years).
- Unions will have until August 31, 2012 to negotiate a Memorandum of Understanding with the Ministry of Education that is "substantially similar" (but not identical) to the deal made by OECTA – if they do this, school boards will be mandated to reach collective agreements to comply with that union's deal.
- If a union does not reach such a deal with the Ministry of Education by August 31, 2012, then as of September 1, 2012 school boards will be required to negotiate a collective agreement with the union that is "substantively identical" to the OECTA deal.
- As of September 1, 2012, whether or not a new collective agreement has yet been reached, no terms and conditions of employment can be applied, agreed to, or implemented by a union and school board that are inconsistent with the OECTA deal. In other words, even though normally all terms and conditions in the old collective agreement are "frozen" during bargaining, now any terms that are inconsistent with the OECTA deal will be overridden.
- If the union and school board do apply, agree to or implement terms and conditions of employment that are inconsistent with the OECTA deal, Cabinet can make orders imposing new terms and conditions of employment on the union and employer retroactive to September 1, 2012.
- If a school board has made any payments to employees on or after September 1, 2012 that are inconsistent with the OECTA deal, the Cabinet can order the employee to reimburse the Board for the payments. Section 13 of the *Employment Standards Act* that would normally prohibit an employer from making deductions from an employee's paycheque would not apply.
- Unions and school boards will have until December 31, 2012 to reach and ratify a two-year collective agreement that complies with the OECTA deal.

- If a union and school board ratify a collective agreement prior to December 31, 2012, the school board must immediately send a copy of the collective agreement to the Minister of Education who will have up to three months to review the agreement to see if it complies with the Act.
- If the Minister advises Cabinet that the collective agreement reached by the union and school board does not comply with the Act, Cabinet can make orders modifying the collective agreement to comply with the Act, or can order the parties to go back and negotiate another collective agreement (in which case Cabinet can also order that there will be no right to strike or lockout during the second round of negotiations).
- If the parties don't reach a collective agreement by December 31, 2012, or if at any time prior to December 31, 2012 the Minister is of the view that a union and school board will not be able to settle an agreement, Cabinet can issue orders imposing a collective agreement on the parties, taking away the right to strike or lockout, or imposing an alternative dispute resolution process. All this can be done without any consultation with the unions or school boards. If there is any consultation, Cabinet can decide what the consultation process will be.
- If Cabinet imposes a collective agreement by Regulation, it does not have to comply with the Act – i.e. the terms and conditions imposed could be worse than the OECTA deal.
- The Minister or Cabinet can determine when a collective agreement will come into operation, regardless of the start date decided by the parties.
- The *Education Act* will be amended to provide Cabinet the power to make regulations to govern systems of sick leave, including the power to terminate sick leave credit plans and to limit the amount of gratuity paid out for sick leave credits already accumulated.
- The Minister can make a complaint to the Labour Relations Board regarding any alleged violation of this Act by unions or school boards.
- The Act purports to shield the Act from review or appeal by any court, and to limit the Labour Board and boards of arbitration from considering whether the Act, regulations or orders made under the Act violate the Constitution or the Human Rights Code.

Overview of the OECTA deal

The following is a clear language summary of the Memorandum of Understanding reached between OECTA and the government last July 5, 2012.

Term:

OECTA has agreed to a two year term beginning September 1, 2012 and ending August 31, 2014.

Wages:

There would be no wage increase for the two years.

Retirement Gratuity:

OECTA has very few collective agreements with Retirement Gratuities. They have agreed that for those members who do, the sick leave banked in a retirement gratuity plan would be frozen and paid out at the time of retirement at the rate pay as of August 31, 2012. In addition, OECTA has agreed to eliminate all accumulated days which are not part of a retirement gratuity plan, effective September 1, 2012.

Sick leave:

OECTA has negotiated a new sick leave plan on behalf of their members which will start on September 1, 2012.

OECTA's new sick leave plan is as follows:

Ten (10) days per year at 100% of regular salary for reason of illness for both full and part-time members. There is no carry-over of sick leave from year to year.

If a collective agreement had the ability to use sick leave for other purposes, these days would remain available to OECTA members covered by those Collective Agreements and be capped at the current allotment or 5 days, whichever is less. Examples would be moving days, days to care for a family member who is ill etc.). These days cannot be used to augment sick days nor can they accumulate.

If more than 10 days are required for illness, the remaining days would be paid at 66.67% of regular salary.

However, if an Employee is away for 5 consecutive days over the 10 days or if they are away more than the 10 days due to a medical condition which is recurring or chronic then they may qualify for 90% reimbursement for those additional days. A third party adjudicator would determine whether the Employee would qualify for the 90% reimbursement.

Unless an Employee chooses not to, he/she will pay pension contributions to the TPP on the unpaid portion of the sick leave as well as the paid portion. So the OECTA member

will continue making pension contributions as if they were being paid 100% of their income even while receiving two thirds of their income...

In most cases, the 120 days will carry Employees to LTD...where it does not, additional days will be added until January 1, 2013 when OECTA takes over their LTD plan.

The OECTA deal was not agreed to by the Catholic Trustees Association and yet it compels the Employer to cover the costs of the 3rd party adjudication as well as any medical documentation required by the third-party adjudicator.

Where Collective Agreements currently provide for WSIB top up, Boards will maintain the same level of top up without deduction from sick leave.

An Employee who gives birth, shall receive 100% of their salary for a 6 week period without deduction from sick leave. (CUPE members can already use up to six weeks of banked sick leave for this purpose, as determined through an arbitration award)

Occasional Teachers working in Long Term Occasional assignments will continue to have access to sick leave based on the length of the Long Term assignment.

Benefit Plans:

Benefit plans will remain status quo for the duration of the contract. (If the Ontario Dental Association rate is two years behind the current ODA rate, a two year lag will be maintained).

OECTA has agreed to a committee to discuss a provincial benefits plan over the next two years. (CUPE participated on such a committee through our last PDT to with no results)

Benefits after Retirement:

It appears that OECTA has bargained that any new retiree IN THE EDUCATION SECTOR will lose access to Employer paid benefits after September 1, 2013.

Any employee retiring after September 2013 will be placed in a segregated pool with other retirees and have to pay the premiums set to cover the expenses for those in the pool. (In Boards where this has been implemented previously, CUPE retirees have found the premium rate unaffordable and so have not been able to maintain Board benefits).

Unpaid Leave Days:

OECTA has agreed to 3 unpaid leave days in the 2013- 2014 school year. This represents a 1.5% reduction in pay during the second year of the Collective Agreement.

Professional Development:

OECTA has agreed to amend the Grant for Student Needs (GSN) to reduce the amount of money available for professional development for elementary teachers for the period of the collective agreement.

Secondary Programming Expansion:

OECTA has agreed to amend the GSN to suspend money available for secondary programming expansion. Any existing Collective Agreement language related to this would be suspended for the duration of the contract.

Salary Grids:

Movement on the Salary grid will take place on the 97th day of each school year rather than the 1st day of each school year. This will delay movement on the grid from September until February.

OECTA has agreed to meet over the course of the Collective Agreement to discuss the sustainability of the grid beyond 2014.

Use of Diagnostic Assessment Tools (this is of concern especially to our professional staff):

Teachers shall be provided with a list of pre-approved assessment tools. Teachers will determine which tool is to be used and how often the tool is to be used with a particular student.

Hiring Processes for Occasional Teachers:

OECTA has negotiated seniority-based placement for occasional teachers into long term supply positions providing the Teacher has the qualifications for the position.

OECTA has also negotiated seniority-based short listing for occasional teachers to be interviewed for permanent vacancies.

PDT Enforcement Mechanism:

Any disputes arising from the Memorandum of Understanding will be referred to a pre-determined list of Arbitrators for resolution. Arbitrators will need to be available to hear disputes within 20 days (likely after regular business hours). Decision of arbitrator is final. Government can be called as a witness.

Local Bargaining:

OECTA has agreed to a deadline of December 31, 2012 for an end to local bargaining.

Only items mutually agreed to by the Association and the School Board can be changed through local bargaining. Nothing in the Memorandum can be amended in local bargaining.

Anything not amended remains status quo, including letters of understanding and minutes of settlement etc.

No strikes, lockouts, or application for conciliation during the period of local bargaining.

OECTA members will not have the opportunity to vote on the Memorandum of Settlement before it is implemented.

Me Too Clause:

If anyone bargains a financial package better than what OECTA has, they will get it too.

Access to Information:

Once a year, OECTA will receive sick leave data pertinent to their members both in terms of individual usage and consolidated data.

The OECTA deal simply does not work for school support staff.