School Board Update

Province Introduces Back-to-Work Legislation

Date: May 26, 2015

On May 25, 2015, the Ontario government introduced Bill 103, the *Protecting the School Year Act, 2015*. Bill 103 is back-to-work legislation intended to bring an end to ongoing strikes at three school boards – the Durham District School Board, the Peel District School Board and the Rainbow District School Board (collectively, the "School Boards"). In this *FTR Now*, we will review the legislation and what it might mean for ongoing negotiations and job action in the education sector.

BACKGROUND

In 2014, the Ontario government passed the *School Boards Collective Bargaining Act, 2014* ("*SBCBA*"), which introduced a new model of collective bargaining for school boards. A key feature of the new model was the creation of a two-tier bargaining structure. Central bargaining would be undertaken between designated employer and employee bargaining agencies and would apply to all school boards, while local bargaining would be undertaken between a specific school board and its local bargaining agents and would address issues not subject to central bargaining.

The *SBCBA* also contemplates that strikes and lockouts could occur with respect to both central issues (following impasse at the central bargaining tables) and local issues (following impasse at a local bargaining table).

Following a period of local bargaining, the Ontario Secondary School Teachers' Federation ("OSSTF") commenced strike action at the School Boards – the strike at the Durham DSB began on April 20th, the strike at the Rainbow DSB began on April 27th and the strike at the Peel DSB began on May 4th.

On May 12th, the School Boards brought an application before the Ontario Labour Relations Board alleging that the OSSTF and its members were engaged in an unlawful strike on the grounds that the strikes were based on central issues and not solely on local issues. That matter is continuing before the OLRB, which has yet to issue a decision.

On May 15th, the Minister of Education, the Honourable Liz Sandals, announced that the government would be seeking advice from the Education Relations Commission of Ontario to determine whether the continuation of the strikes was "placing the successful completion of courses of study by affected students in jeopardy." Following the "advisement" of the Education Relations Commission that the school year was in jeopardy, the government introduced Bill 103 to bring the strikes at the School Boards to an end.

OVERVIEW OF BILL 103

Bill 103 has a number of notable features, which can be considered in two basic groupings – measures to address the workplace disruptions and measures to resolve the outstanding local issues.

With respect to the workplace disruptions, Bill 103 will:

- bring an immediate end to all ongoing strikes by the OSSTF and its members at each of the three School Boards;
- prohibit any further strikes or lockouts in respect of local bargaining issues between the OSSTF and the School Boards;
- prohibit any strikes or lockouts at the School Boards in respect of OSSTF central bargaining issues for the duration of the 2014-2015 school year; and

- impose fines of up to $2,000 per day for an individual and up to $25,000 per day for the OSSTF or a school board if they violate the prohibitions on strikes and lockouts.

With respect to the resolution of the remaining outstanding local issues, Bill 103 establishes a binding mediation-arbitration process, which will apply separately to each of the three School Boards and their respective local bargaining agents.

Upon Bill 103 receiving Royal Assent, all outstanding issues in dispute are deemed to have been referred to a board of arbitration for final resolution. Each party (the OSSTF and each school board) will have 5 days from Royal Assent to name its nominee to its respective mediation-arbitration board, which timeline can be extended by a further 5 days on mutual agreement. The nominees will then have 10 days to appoint a chair.

Each panel is given the authority to decide all matters of procedure (with the chair having the final say if the panel is not unanimous), but the Bill guarantees that each party has the right to present evidence and make submissions. Bill 103 allows for the consolidation of any of the three mediation-arbitration processes.

If there is a dispute as to whether a particular issue (or issues) are properly the subject of central bargaining, Bill 103 requires that dispute to be resolved through the process established in section 28 of the *SBCBA*, which may involve a separate hearing before the OLRB. Any time taken to resolve these disputes will not count toward the time limits otherwise imposed on the mediation-arbitration process established by Bill 103.

The mediation-arbitration process is required to begin within 30 days of the appointment of the chair, and a decision is required to be issued within 120 days of the appointment. These timelines can be extended by mutual agreement or by the time required to resolve any disputes about central bargaining, described above.

Bill 103 also establishes the criteria to be applied by the mediation-arbitration panel (which mirror those found in section 38 of the *SBCBA*):

1. The [school board]’s ability to pay in light of its fiscal situation.

2. The extent to which services may have to be reduced, in light of the decision or award, if current funding and taxation levels are not increased.

3. The economic situation in Ontario.

4. A comparison, as between the employees and comparable employees in the public and private sectors, of the terms and conditions of employment and the nature of the work performed.

5. The [school board]’s ability to attract and retain qualified employees.

DISCUSSION

At the time of writing, the provincial NDP had indicated that they would not support Bill 103, which means that it does not have the unanimous consent required to achieve immediate passage. Nevertheless, it is anticipated that the Bill will be passed and receive Royal Assent by week’s end, with secondary students at the three School Boards returning to class perhaps by as early as Friday.

While Bill 103 will bring an end to the strikes at the School Boards, it is a limited response to a more widespread experience of labour unrest and unresolved bargaining at central and local bargaining tables alike. The government’s response to the strikes at the three School Boards suggests that a significant degree of hardship can be anticipated before the government will step in to provide a legislative solution to the problem.

If you would like to discuss how Bill 103 might affect your board, please contact Michael A. Hines at 416.864.7248, Dolores M. Barbini at 416.864.7303, or any other member of our School Board Practice Group.

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