WELCOME
Morning Recess

Principals’ 101
Labour: Collective Agreements

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AGENDA

2. The School Boards Collective Bargaining Act and Bill 92: Overview of Recent Legislative Changes
3. Interpretation and Application of Collective Agreements
4. Practical Advice for Positive Labour Relations
5. Questions and Answers

- *Education Act* establishes:
  - membership in the Colleges s.262 and 262.1
  - duties s.264, 264.1 and 265
  - performance appraisal Part X.1, X.2, X.3
  - legislative authority over class size s.170.1 and teaching time s.170.2
- Regulations identify:
  - school year, professional development (Regulation 304 – School Year Calendar, Professional Activity Days)
  - teacher assignments (Regulation 298 – Operation of Schools - General)
- *Labour Relations Act, 1995* ("LRA")
  - Bargaining rights, contents of collective agreements, operation of collective agreements, termination of bargaining rights, strikes and lockouts, and unfair labour practices
- *School Boards Collective Bargaining Act, 2014* (the "SBCBA")
  - governs collective bargaining for teaching and support staff in the education sector
  - creates two tiers of collective bargaining, central and local for teachers’ bargaining units

Other statutes that govern a board’s relationship with its employees include:

- Human Rights Code
- Accessibility for Ontarians with Disabilities Act
- Employment Standards Act, 2000
- Occupational Health and Safety Act
- Pay Equity Act
- Municipal Freedom of Information and Protection of Privacy Act
- Ontario College of Teachers Act
- Teaching Profession Act
2. The SBCBA: General Overview

- Management representation at central tables consists of provincial trustees’ / school board associations representing school boards, bargaining in concert with Ontario.

- Employees are represented by unions representing teachers, early childhood educators, teaching support staff, professional services staff, custodial and clerical staff.

- Central bargaining includes all financial matters and is determined by the parties.

- Ratification is required for any central agreement.

- A term of three years is applied to all school board collective agreements – but may be altered by Ontario with consultation.

- Local bargaining occurs with respect to issues not addressed at the central table.
2. Bill 92: Amendments to the SBCBA

• Amendments to the *SBCBA* passed March 23, 2017 including:
  • Allowing collective agreements to be extended
  • Giving students and parents more notice of labour disruptions
  • Ensuring all education workers’ unions participate in central bargaining

• Central agreements reached to extend the 2014-2017 collective agreements for two more years (past provincial election)
2. Summary of Changes to SBCBA:

- Continuation of Collective Agreements
- Central Bargaining Requirement
- Non-Teacher Union Requirements
- New Strike Notice Requirements
- Assistance with Local Bargaining
- School Board Required to Disclose Memorandum
- Conflicting Central and Local Terms
- Involvement of the Crown
- Mutual Agreement between Crown and employer bargaining agency
- Delegation of Powers
- Education Relations Commission

*Please refer to the Act itself for up to date “In Force” information as certain provisions are awaiting proclamation by the Lieutenant Governor before coming into force.*
2. Commentary

• Government of Ontario March 23, 2017 News Release “Ontario has strengthened its successful model for collective bargaining in the education sector by making it more flexible, transparent and consistent”

• The objective of the amendments is to support “positive labour relations”

• When viewed in their totality, the amendments provide some clarity regarding the legislative framework for collective bargaining
  • Resolution of conflicts between central and local bargaining issues

• Allowing extensions of collective agreements arguably increases flexibility

• Did not address:
  • cost and time related to bargaining
  • Identification of central and local issues
  • order of bargaining (central vs. local)
  • strike mandates and issues (central vs. local)

• Issues continue to be raised by the affected unions
3. Interpretation and Application of Collective Agreements
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• The starting point is language parties agreed to
• Subject to assertions of estoppel or ambiguity, the words of the CA must be given their plain and ordinary labour relations meaning, unless it is apparent from the CA or evidence that a different or special meaning is intended
• When interpretations diverge, the parties are left with the words of the provision
3. Interpretation and Application of Collective Agreements

**Past Practice:** Conduct of the parties with respect to the thing in dispute

**Estoppel:** Under the doctrine of estoppel, the past conduct or representations of a party may prevent it from enforcing its strict rights under the collective agreement

**Management Rights:** Management may determine workplace policies and procedures not otherwise bargained or legislated
3. Interpretation and Application of Collective Agreements: Disputes

- Broad range of subject matter that could be the subject of a dispute: discipline, accommodation, job postings, inter-personal issues, etc.,
- Unionized employees are entitled to representation during a disciplinary meeting but it may be advisable to have representative present for other kinds of meetings
- Review the grievance procedure – ensure procedural requirements including timelines are being met
3. Interpretation and Application of Collective Agreements: Disputes

**Central Grievance Process**

- Central matters may be grieved locally
- A “grievance” – defined as any difference relating to the interpretation, application, administration or alleged violation or arbitrability of an item concerning any central term of a collective agreement
- Central Dispute Committee
- Requirements of a grievance
- Referral to the Committee
- Voluntary mediation
- Selection of Arbitrator
3. Interpretation and Application of Collective Agreements: Disputes

General principles for dealing with a dispute:
• Define the problem
• Be objective
• Get the facts
• Analyze the situation
• Communicate the decision
• Understand the Union’s position
• Be aware of technicalities
4. Practical Advice

• Provide employees with their entitlement under the law, the collective agreement and management policies
• Apply the provisions of the law, the collective agreement and policies in a consistent and reasonable manner
• Don’t let personalities colour your judgment
4. Practical Advice

• Consider
• Consult
• Communicate
• Document
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