Labour Update Part II:
Responding to a Work to Rule Campaign

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Agenda

1. Statutory Overview
2. What does “Work to Rule” really mean?
3. Case law guidance
4. Key Takeaways for Employers
Statutory Overview
School Boards Collective Bargaining Act, 2014

- Act establishes teachers bargaining units for boards and defines the bargaining agent for each such unit
- Act involves two tiers of bargaining:
  - Central bargaining involving an employer bargaining agency and employee bargaining agency (participation of the Crown at the table)
  - Local bargaining involving the school board and the agent for the local bargaining unit
School Boards Collective Bargaining Act, 2014

- Section 35 (1) defines “strike” in relation to a teachers’ bargaining unit
- includes any action or activity by teachers in combination or in concert or in accordance with a common understanding that is designed or may reasonably be expected to have the effect of curtailing, restricting, limiting or interfering with,

  (a) the normal activities of a school board or its employees,
  (b) the operation or functioning of one or more of a school board’s schools or of one or more of the programs in one or more schools of a school board, or
  (c) the performance of the duties of teachers set out in the Education Act or the regulations under it,

- including any withdrawal of services or work to rule by teachers acting in combination or in concert or with a common understanding.
School Boards Collective Bargaining Act, 2014

• Section 34(3) imposes requirement for notice before a strike

(3) No employee shall strike in respect of central bargaining unless, at least five days before the strike begins, the employee bargaining agency for the employee gives written notice of the strike to the employer bargaining agency at the central table and to the Crown, indicating the date on which the strike will begin.
**Education Act**

- Section 19 (2), In case of strike by members of a teachers’ bargaining unit or a lockout of those members, the board may close one or more schools if it is of the opinion that,

  (a) the safety of pupils may be endangered during the strike or lockout;
  (b) the school building or the equipment or supplies in the building may not be adequately protected during the strike or lockout; or
  (c) the strike or lockout will substantially interfere with the operation of the school.

- Section 19 (4) “strike” and “lock-out” for this section have the same meaning as the *Labour Relations Act*
Labour Relations Act

• Unfair Labour Practice provisions of the LRA govern relations among unions (teacher and non-teacher) and school boards

• OLRB has authority to issue declarations of unlawful strike and direct parties involved to cease and desist from unlawful acts

• “strike” includes a cessation of work, a refusal to work or to continue to work by employees in combination or in concert or in accordance with a common understanding, or a slow-down or other concerted activity on the part of employees designed to restrict or limit output
Labour Relations Act

• Section 81: No trade union or council of trade unions shall call or authorize or threaten to call or authorize an unlawful strike and no officer, official or agent of a trade union or council of trade unions shall counsel, procure, support or encourage an unlawful strike or threaten an unlawful strike.

• Section 83(1): No person shall do any act if the person knows or ought to know that, as a probable and reasonable consequence of the act, another person or persons will engage in an unlawful strike or an unlawful lock-out.
Work to Rule
Legal Strike / Lock-out

Three conditions precedent to engaging in a lawful labour disruption:

1. The Collective Agreement expired
2. A Strike Vote authorizing such action occurred
   • often done for negotiating leverage only
3. 17 days have passed since the “No Board Report” has been issued
Legal Strike / Lock-out

• Union Duty? OSSTF Constitution:

  • 2.2.2.2 It shall be the duty of every Member that, where a strike occurs in accordance with the results of a membership ballot, the Member, unless forbidden by law, shall join in such sanctions as have been decided upon.
Work to Rule – Illegal Strike?

• Concerted collective activity which interferes with normal, long-standing activities and operations

• Collective withdrawal of services; and

• Imposing a barrier to services, i.e., Union issuing “Pink letters” from Union which causes interference in schools or Board programs
OSSTF/FEESO

ONTARIO SECONDARY SCHOOL TEACHERS’ FEDERATION
60 Mobile Drive, Toronto, Ontario, M4A 2P3

INFORMATION BULLETIN TO THE MEMBERS OF
THE ONTARIO SECONDARY SCHOOL TEACHERS’ FEDERATION

RAINY RIVER DISTRICT SCHOOL BOARD

Re: All Teaching Positions
[Full or Part-time for Day School and Continuing Education]

1. A disagreement has arisen between members of the Teachers’ Bargaining Unit of OSSTF in the Rainy River District School Board, District 5B and the above named District School Board, over negotiation of the Collective Agreement. Representatives of the OSSTF have been negotiating with the above named District School Board but have been unable to settle the disagreement in a manner satisfactory to the teachers of the above District or the Provincial Executive.

2. Consequently, as of this date, OSSTF is advising its members outside of the District 5B, Rainy River Teachers’ Bargaining Unit not to apply for or accept any teaching position or position of added responsibility in the regular day school programs with the above named District School Board, or in any alternative program of education offering credit courses (excluding adult day schools).

3. Until the disagreement is settled and this Information Bulletin is removed, any member of the OSSTF outside of the District 5B, Rainy River Teachers’ Bargaining Unit who applies for or accepts a teaching position or position of added responsibility with the above named District School Board, or who accepts a position to fill a vacancy which occurs while this Information Bulletin is in force, will be subject to discipline procedures as set out in the OSSTF Bylaws 6 and 7.

[Signatures]

President

General Secretary
Teacher Duties...

• Reference point for work to rule is normal duties of a teacher as set out in s. 264 of the Education Act and s. 20 of Reg. 298: Operation of Schools – General

• generally to perform all duties assigned in accordance with the Act and regulations, including:

  • teach, encourage learning, inculcate respect, follow a timetable, participate in professional activity, notify school of absences, refer to textbooks, maintain healthy environment, prepare teaching plans and submit to the principal, complete report cards, cooperate with EQAO testing, participate in parent meetings, and perform graduation related duties
What is a Work to Rule Campaign?

- No specific definition beyond section 35 of *Education Act*
- Examples:
  - Withdrawing from extracurricular activities
  - Refusal to complete report card comments
  - Refusal to conduct parent-teacher interviews
  - Wearing union buttons or caps
  - Refusal to fill in for absent teachers
  - Leaving school doors unlocked
  - Refusal to attend staff meetings

June 13, 2019
What is a Work to Rule Campaign?

• Examples:
  • Refusal to take on additional duties during regularly scheduled prep time
  • Refusal to respond to e-mail or phone communication from administrators
  • Refusal to update classroom websites, blogs or newsletters
  • Refusal to participate in field trips
  • Mass sick leave claims
What is a Work to Rule Campaign?

• Examples:
  • Refusal to cross another union’s picket line

• OSSTF Constitution:
  • 2.2.2.7 Unless a union-to-union agreement has been made or forbidden by law, it shall be the duty of every Member not to cross picket lines while on educational field trips.

• s. 85: No trade union shall suspend, expel or penalize in any way a member because the member has refused to engage in or to continue to engage in a strike that is unlawful under this Act [Labour Relations Act].
Response to Illegal Activity

- Notice to Union
  - Must correspond with Union Executive to caution them and insist on proactive measures on their part
  - They often deny responsibility and/or knowledge

- OLRB Unlawful Strike Application
  - *Education Act*
  - *Labour Relations Act*

- File a Management Grievance for relief
- Discipline employees for insubordination

June 13, 2019
Case Law Guidance
Trillium Lakelands District School Board and ETFO

- ETFO advised members not to participate in voluntary/extra-curricular activities outside the 300 minute instructional day
- Trillium Lakelands and Upper Canada school boards commenced unfair labour practice complaint at the OLRB alleging an unlawful strike
Trillium Lakelands District School Board and ETFO

- OLRB held that an organized withdrawal from participation in extracurricular activities fell within the definition of “strike” under the Education Act.
- Actions unlawful as the teachers had been encouraged as a group to withdraw their participation in extracurricular activities in order to pressure the employer.
- That extracurricular activities were unpaid was irrelevant.
- OLRB held that teachers prohibited from engaging in concerted collective activity which interferes with the normal, long-standing activities of the school boards.
Ministry of Education v ETFO and Sam Hammond

• ETFO announced intention to have its members engage in a “day of protest” or “political protest” on a regular school day

• The ETFO president, Sam Hammond, indicated that the action would involve the full withdrawal of services by ETFO members on a province-wide basis

• OLRB held that a “political strike” during the term of a collective agreement is still an unlawful strike
Scarborough Board of Education v OSSTF

• Unfair Labour Practice complaint to the OLRB
• Teachers resigned on masse from positions to which they had been appointed and which they had accepted to staff the summer school program in response to a “pink letter”
• “Pink letter” stipulated that any OSSTF members who apply for or accept employment for summer positions shall not receive support from the Federation
• OLRB held that the refusal constituted an unlawful strike as it was taken in concert and was intended to interfere with the operation of the Board’s summer programs
Toronto District School Board v OSSTF

- Unfair Labour Practice complaint to the OLRB
- Board altered management model with removal of Department Heads and creation of Curriculum Leader and Asst. Curriculum Leader positions
- In response, the OSSTF calls upon its members to boycott process by refraining from applying for any of the new positions
- Insufficient number of teachers applied and others withdrew applications
- OLRB finds the call to boycott new process constitutes an unlawful strike – Intention to interfere with functioning of School Board’s school programs
Hamilton-Wentworth District School Board and ETFO

- Unfair labour practice brought by the ETFO
- In the week prior to a strike vote, elementary teachers began wearing a union button while at work which read: “FAIR DEAL or NO DEAL”
- School Board issued a notice to Principals requiring they prohibit teachers from wearing the button on school property
- OLRB allowed the complaint finding that the ban served no necessary managerial or operational purpose, and no evidence that discussions arising from student questions were handled inappropriately
Kawartha Pine Ridge District School Board and ETFO

• Grievance regarding the Principal’s removal of materials from the union bulletin board
• Principal unilaterally and without consultation with the union removed materials from the union bulletin board and subsequently posted his own notice
• Arbitrator held that the union bulletin board was presumptively for use by the union
• Any residual supervisory function could not be exercised without meaningful consultation with the union
• Grievance allowed – Principal’s conduct held to be inappropriate
Key Takeaways
Awareness, Planning and Responsiveness

1. Monitor Union Communications
   - Active listening / reporting
   - Assess and understand planned tactics

2. Monitor and Document Activities
   - Vacation / leave requests
   - Sick day usage
   - Pink/Green Letters
   - Refusals by teachers to perform tasks (maintain a record of teacher duties as it relates to your Board)

3. Notify / Caution / Avoid Condonation
   - Notify Union executive of unlawful activity
   - Caution employee on refusal, follow up with discipline
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