

ONTARIO PUBLIC SERVICE EMPLOYEES UNION

TO: Faculty
FROM: Ted Montgomery, President, OPSEU Local 560, CAAT (A) Negotiating Team Chair
DATE April 3, 2008
RE: **Workload Task Force | Return-to-Work Grievances | Pilot Projects | The Whitaker Report**

Workload Task Force

At last, I can report that a chair for the Task Force has been selected. It is Mr. Wes Rayner, an Ontario Arbitrator. OPSEU and the Council each originally submitted a candidate to Arbitrator William Kaplan to select, as was set out in his award and the Letter of Understanding. The colleges first submitted the name of an individual who is currently the president of a college in New Jersey and who had previously held university administrative and legal counsel posts in Ontario. The Union then submitted the name of a person who is currently engaged in a study of university faculty workloads across Canada for the CAUT as an officer of that organization. He was previously the representative of the American Association of University Teachers on their standing committee on Community Colleges.

Mr. Kaplan wrote on Feb 4th:

While both XX and YY are clearly distinguished individuals, I cannot, in fairness, choose either one because, in my view, the choice of a CAUT employee to be head of this study would not be acceptable to the Colleges, while the choice of a full-time university president with a long background in university management, would not be acceptable to the union. The Taskforce requires a chair who is independent of both management and union interests and who would reasonably been seen as such by the parties and the community. In these circumstances, I simply cannot choose as between the two individuals who have been proposed.

Mr. Kaplan arranged a conference call for February 25th to discuss how to proceed.

In the interim, on behalf of the union, I contacted the Council representative to discuss a way of proceeding that might find more likelihood of success. We agreed to each submit a list of names from which Mr. Kaplan could make a choice, and that we would discuss those names first to see if we might find a mutually acceptable candidate. We were not able to find such a candidate but did submit names to Mr. Kaplan. This time, he has selected and the parties have now contacted Mr. Rayner to ascertain the next steps for the Task Force.

OPSEU will appoint an individual with a very strong research background as our nominee to the Task Force.

There is little more to add at this point. We are ready to proceed. The work of the previous workload Task Force will, of course, be available to the revised Task Force.

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Return-to-Work Grievances

The colleges have delayed resolution of these grievances by raising various preliminary objections. Those familiar with the grievance process won't be surprised by this. These matters have been heard over the course of 2007 at a series of hearings in Toronto. There are about 1200 claims for compensation.

The colleges' original objection was that **all** of the claims were improperly filed. That objection was dismissed by the board which has been struck specifically to hear these claims. The board is chaired by Mr. Owen Shime. The union nominee is Mr. Jim Hayes. The management nominee is Ms Ann Burke.

The colleges next amended their position, reframing the further objections as "clarifications." Essentially, the colleges sought to have the Board narrow the claims to only those where the faculty member was claiming that the weekly or the annual teaching contact hour limits had been exceeded. The Board wanted to hear some evidence from grievors before addressing that matter. The union proceeded with a limited number of grievors (seven) over four days of hearings in the fall and winter, to establish both the variety as well as the legitimacy of the claims. The Board advised that it was satisfied that it had enough evidence to proceed to the parties' arguments regarding the colleges' desire to greatly narrow the scope of the board's jurisdiction.

In a nutshell, the colleges are claiming that all faculty work – other than assigned teaching contact hours – is movable and that weekly limits are "notional." Accordingly, they argue that even if a teacher works 80 or 120 hours a week for the rest of the term, post-strike, that does not merit any payment for completing the courses. The union takes the position that the colleges reduced salary by the 3 weeks of strike, so they have to expect 3 weeks less work. To the extent that they require a full year's work – the semester completion strategies – the colleges have to pay for any such make-up work. Also, any additional work generated by having to amend courses or take on added duties is compensable. This was the model used by arbitrators in previous post-strike circumstances. The colleges are this time attempting to get the full year's work - or as close to it as they can - but not compensate faculty for making up work lost. The union has said faculty were quite prepared to make up the work, but are entitled to be paid for that work.

The Return-to-Work Protocol was signed by the parties as part of the strike settlement in March 2006. The language of that protocol was adopted at management's suggestion from the language drafted by the arbitrator, Martin Teplitsky, following the 1989 strike. Now, management is asserting in these hearings that the same basic language means something very different than it did in 1989.

If the colleges' view were to be upheld by the Board, the colleges would be able, in the future, to lock out employees for whatever period they felt appropriate, not pay them for that period, and then demand that the full year's work had to be completed once the lockout was over.

The hearing to present arguments on these so-called clarifications was held on March 20th. Our evidence went in very well based on the testimony of our excellent witnesses. We are in a good position, and the delaying tactics of the colleges, the preference to litigate rather than deal with the substantive claims, is frustrating to all of us. I am sure this must be annoying to the members with outstanding claims. The union is doing its best to move this process along as expeditiously as we can.

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Pilot Projects

There are 20 pilot projects now running, with about 60 faculty involved. That is less than 1% of the faculty eligible to take part across the province. There are pilot projects at seven colleges. No reports from participants or managers have been received as yet. No pilots may run for more than 12 months. Pilots using the departmental model - as 16 of the 20 projects do - also must run for no less than 12 months.

During negotiations in 2005 and 2006, the colleges asserted that management had an absolute necessity for more flexible workload assignment mechanisms and that many faculty members were eager to accept and endorse such changes. The level of involvement in the projects is probably the most significant fact, regardless of what further information these few projects might provide.

Daniel Bouchard, a bargaining team member from College Boreal, has replaced Peter McKeracher, who was leading for the union side on the Pilot Project Steering Committee. We will begin receiving reports this spring. The Leger Corporation has been engaged to survey the employees and students involved. Costs for this service are paid for by the Council.

The Whitaker Report

The Whitaker Report correctly notes that part-time and sessional workers in the colleges should not be barred from organizing. That's good. However, on matters of even greater interest and importance to the existing academic bargaining unit, the report is seriously flawed. The Report's perspective on the college system is frequently out-of-date and out-of-touch with the facts. The recommendations rely very heavily on the observations and opinions of the Gandz Report, a study done more than 20 years ago. Gandz did study the college system, but much has changed in twenty years. The Whitaker Report, on the other hand, is not based on a study or research into the bargaining relationship other than in the most cursory and superficial way. This is not to criticize Mr. Whitaker or his staff. They were seriously – and I would argue ultimately fatally – under-resourced. Mr. Whitaker asked for and received briefs from interested parties. But the submission of opinion briefs from interested parties is just that, opinions, wish lists, agendas. The College Student Association asked for a complete ban on strikes. The Colleges asked for the unilateral right to create and designate new job classifications. OPSEU too promoted its positions, its agenda. All of this leads to balancing - or efforts to balance - competing interests. It does not lead, in the way that research would, to recommendations based on data rather than opinion.

Taken as a body, Mr. Whitaker's recommendations are shaped so as to have the structure of college negotiations more closely resemble the common practices of negotiations governed by the Ontario Labour Relations Act. Indeed, it is clear that this was an objective of the Report – to remove those features of the Colleges Collective Bargaining Act which distinguish it from other bargaining regimes. Why? Ostensibly, and the Report so argues, this will force the parties to bargain more productively to achieve settlements. The pressure to reach these settlements, according to the Whitaker Report is the threat of the “damage” that could be done by a strike or a lockout.

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Let's look at some of the data. There have been four strikes in the college system since its inception in 1967 - three by faculty and one by support staff. In over 40 years of negotiations with both bargaining units, that's three work stoppages only. [There was a one-day protest walkout in the mid 1970's]

Of those academic strikes: one was ended by back-to-work legislation, 1984; a second ended with the notice of impending back-to-work legislation, 1989; and the third by the agreement of the parties to put all remaining differences to binding arbitration, 2006. No strike lasted as long as four weeks, and the students in every case were able to complete their courses of study. There have been fourteen academic and as many support staff agreements, the overwhelming majority of which were settled by the parties without a work stoppage, work-to-rule, or disruption of any sort.

Using this as an objective measure, and by any reasonable labour standards, this is not a system that is broken. Indeed, both parties have demonstrated an ability to use the existing collective bargaining act successfully. The Whitaker Report recommendations, if implemented, would make collective bargaining far less, rather than more harmonious, satisfactory, or productive.

In traditional industrial, and even service-sector negotiations, Mr. Whitaker's general observation is quite right. The threat of damage to the corporation's bottom line when products are no longer being churned out can strongly influence the corporation to settle. Similarly, the damage of lost wages can certainly influence the union members' actions. However, in the college sector, while there is some damage done by a strike or lockout to the colleges and some to the faculty, the much greater damage potential is to neither of those parties. It is to the students.

It is for that very reason that a strike or lockout in the colleges is a matter that quickly finds itself on the government agenda. It is not the pressure on the employer of lost profits or the pressure on employees of lost wages that brings an end to a strike in the colleges. It is the pressure on both of them and on the government of damage to the students' year of study. That is the irrefutable reality.

The Whitaker recommendations do not take the government out of the bargaining. They, in fact, increase the likelihood of eventual government intervention.

Here is one example. The current Act requires that any strike or any lockout, whether academic or support staff, has to be province-wide. Every college is out. All students are affected. The likelihood that the government would allow an entire cohort of college students to lose a full year is unrealistically remote. This was why the provincial government ordered faculty back-to-work in 1984. And, just as it was in 1984, any future back-to-work legislation would be an unwelcome intervention that leaves both parties dissatisfied and causes problems to fester. And, significantly, the threat of such legislation in 1989 ended the strike that year. In 2006, there was an ever-increasing involvement of the government and of the Ontario Labour Relations Board in advancing a resolution. Back-to-work legislation was not necessary and the students did not lose their year.

The Report recommends changing the "one-out-all-out" provision and to allow lockouts or strikes at some colleges rather than system-wide. The Report asserts that the union should have the ability to engage in rotating strikes. The union certainly did not ask for that ability. However, the possibility of lockouts at one or some colleges is a feature that might well be attractive to management. It would

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decrease the potential damage to all students but greatly increase the potential for damage to those at the particular college that is struck or locked out. In other bargaining regimes, this has been a tool used to try to divide and eventually break the union. It would reduce the pressure on the government to end a strike or lockout simply because fewer constituents would be calling for such action. What would happen is that fewer students would have their year disrupted and have to engage in “semester completion strategies.” But some students, those at the colleges where classes are halted, would be far more likely to lose that year of study, as there would be less pressure on the government to intervene with the parties. The college could tolerate the damage of say a three-month rather than a three-week strike. The employees could tolerate it too as the union would be able to pour far more financial and support resources into a much smaller strike or lockout. But the students could not tolerate the damage of a three-month strike. It would cost them twelve months or perhaps their entire post-secondary career.

The Report acknowledges and supports the value and importance of centralized bargaining if there is to be a college system, yet the Report undermines that bargaining by recommending the removal of the “one-out-all-out” requirement. [Section 59 (2)] This removal would have the effect of differentiating the experience and thereby the value of college education in Ontario among the various colleges. We do not need increased competition for students and for teachers. If the provincial government truly wants a seamless college system, it will not implement this recommendation.

A further feature of removing Section 59(2) would be that some faculty could continue to work and be paid during a strike or lockout which cannot happen under the existing provisions – another aspect of “one-out-all-out.” On the surface, opposing this, as the union does, might seem like just trying to make any strike stronger and more effective. It does have that effect but that is not the most important aspect. Setting aside the deep workplace bitterness and animosities that often result from situations where some faculty would work and others not, consider the impact on students. Some courses would continue while others would cease. This is not like a factory where the production line just runs slower, with fewer workers, or a service industry where the service is not as efficient or wait times increase. The college system is unique because of the teaching/learning structure. You cannot jam classes together. Many courses are inter-related. Subject area teaching expertise in most courses is not so broad-based as in a secondary or elementary school. Imagine the chaos when classes resume. And remember that the workload provisions would still apply to the teachers who had not been in class. Imagine the environment for students with some classes perhaps continuing while most are cancelled. It is a recipe for disaster. In some courses, where safety concerns are an issue, that disaster could be tragic.

The Whitaker Report recommends deleting the College Relations Commission (CRC) from the Act. That body has the responsibility to advise the government when the students’ academic year is in jeopardy as the result of a strike or lockout. [Section 56 (1) (h)]. Deleting such a responsibility does not make a settlement of negotiations more likely. It only has an impact on students. It only leaves the government with less information upon which to make an informed decision. It does not remove the prospect of back-to-work legislation. It may or may not keep the students out longer, depending on the mood of the government. Killing the CRC and removing this function certainly would not influence the parties at the table to be any more inclined to make a deal that one or both is not satisfied with.

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The Report also encourages the government to amend the Act allowing the term of any Collective Agreement to be any period the parties may want. Contrarily, the Education Act which governs all secondary and elementary school negotiations, in Section 277.11-1(b), requires that all contracts must begin on September 1 and end one or more full years from that date.

Currently, when a collective agreement expires, the terms and conditions of that agreement continue until the union and the colleges agree to a renewal or to a revised collective agreement. The Whitaker Report recommends that when a collective agreement expires, the employer be entitled to unilaterally impose whatever terms and conditions of employment they chose. Putting these two proposals together, the colleges would be able to bargain for a contract that ends in December, then unilaterally change working terms of employment for the January term. Faculty members would be invited to return but under new terms and conditions. Not to return would be insubordination and grounds for dismissal. The only way the faculty would have to stop this practice would be to go on strike. That requires the contract rejection and strike votes, which take time. Effectively, the Report's recommendations would place the timing of any work stoppage in the hands of the employer not the faculty. The position taken by the colleges in the recent return-to-work arbitrations was this. They can not pay faculty during a strike or lockout but can demand that the lost work must be completed nevertheless without any compensation for it. Thus, the Report proposals which at first blush may appear innocuous become most very disturbing.

You can see how this would do damage alright – damage to the entire college system.

A cookie-cutter approach is not the right way to update the Colleges Collective Bargaining Act. There are bargaining realities that are unique to the Ontario College system. There is a bargaining history that ought not to be ignored, misunderstood, or misrepresented. In this, an “if-it-ain't-broke-don't-fix-it” approach is not just a cliché but the prudent course of action. There is much wrong with the colleges. The bargaining regime is the least of the problems.

The first steps of the part-time organizing drive will be over this spring sometime. OPSEU will be vigorously opposing any plans the government might have to amend the Colleges Collective Bargaining Act by implementing the recommendations of the Whitaker Report, with respect to changing the bargaining regulations and procedures for the existing bargaining units. I encourage each of you to read the Report which can be found at: <http://www.edu.gov.on.ca/ccba/CollegesReportFeb08.pdf>.

Respectfully,



Ted Montgomery,

CAAT Academic 2006 Negotiating Team Chair