

TRUSTEE CONFERENCE REPORT

Date Submitted: August 9, 2016

Name of Conference: Ed'n Labour Relations & HR Symposium

Sponsoring Organization: OPSBA

Theme (If any): _____

Conference Dates: April 1, 2016

Location: Sheraton Centre, Toronto

Workshops/Seminars/Presentations/Keynote Speeches Attended:
(Include a brief Summary)

PETER SIMPSON - IMPACT OF FIRST COLLECTIVE AGREEMENTS UNDER SBCBA ON LABOUR RELATIONS

Assistant DM for Labour Relations Solutions Division

Impact of labour relations is up to you

The goal now is to get ready for the next round and to do better than this time

He will talk about the unpleasantness of Central Bargaining

His relationship with OPSBA was professional and collegial

Labour relations refers to relationship with respect to dispute resolution behaviours for Peter

Practice of labour relations not the theory that matters

What matter is how we approach disputes

Collective bargaining should not be such a big deal - it distorts the outcome

Collective bargaining should be about maintenance

It is approached appropriately when it looks at what is not working

System is built that people will recognize and deal with that which is not working as usually there is common concerns

The political theatre has a serious and negative impact on collective bargaining

This was his first exposure to this sector

He found this a very disturbing experience - it was awful

Never be okay with how awful this thing was and he will never lose sight of this

The toll that was taken on personal and professional relationships was unfathomable

He got out of Toronto for 5 days in six months only because his mother died

We need to drive it back to what collective bargaining really is

We need to decide collectively that we will not do that again - we need to go back to collective bargaining as it was meant to be

How was OPSBA prepared to go through this

Could OPSBA have been organized differently

Where are the things that we can try to influence to try to get a course change?

How do you deal with this partial strike business?

Significant turnover in many of the federations

This is a problem because fewer people were involved in the previous bargaining because they didn't experience the challenges of the last round

1) It would be ideal if all parties knew what was coming

Not helpful to have a shock and awe moment as a brief hits the table

Deemphasize and deescalate - have conversations that happen prior to next round so there is not the shock

Ideal is that it is reciprocal but if not should still have the conversations

Here's what we think is not working and here's what we think should be addressed

2) Don't negotiate negotiations, just do it

Labour managements discussions should be held ongoing - not just for negotiations

Where is bargaining going to happen? HOW is it going to work with respect to sequencing

There was a way in which central bargaining sounded like a good idea but when it happened, it fell apart with - why me, why now, why us first, why cancel

Talk to OSSTF and ETFO together

Be clear about some ground rules in a conversation up front about things like are we going to work weekends or not - work the ground rules out in advance

Don't appear to negotiate negotiations

This conversation ought to be easy to have

Might be useful to have a retreat like experience to talk about local/central split

What would it be like if only salary; everything and something in between as three options of what might happen at the central table

Some have determined that issues were not discussed at the central table so they have decided that the local tables will be an event

Some continue to drag on based on resentment of what happened or did not happen at the central table Where we draw the line is not a given.

Some presume that central table is there to keep things out of the hands of local bargaining

This time around allow more meet on the bones for local bargaining

No one is allowed to say strip at the local table

Imagining different approaches might be an interesting way to engage them next time around

3) Different ways to imagine ways in which different roles could be played by the Ministry

We can always do things better. Sometimes, just by doing something differently can make it better Don't do it at the Sheraton

Don't do it in the same hotel

Stage relationship with Government differently

Can't do it the same way again

Don't assume that what we did is going to happen again

Reimagine what is might be like with the partners

Labour - Management Discussion at high level - who would be involved??

One way is to come in with a plan and tell them what the plan is

One is to come in with a plan and tell them, here are things we are talking about

Here are things that we thought were less than ideal - have you given any thought as to what you thought did not work

People were blown away by the animosity that came about at the beginning of the process

State up front what needs to be done - walk through what the process will be

Things were exaggerated at central table

Communications "these were good jobs before we started bargaining and they will be better jobs after"

Plan 3 rounds ahead as you move forward

Come in with as few things as possible. Not whether things will be accepted but under what terms?

CUPE had real bargaining by taking things apart and putting them back together again

Don't let the process become gaming - better to open an article and move the parts around

Sequencing between central and local can create challenges - there are still contracts not settled with the local tables.

How can we do this differently next time around

Have a response ready when someone takes the slow leak approach to "negotiating"

The unions were disappointed in the process but they also have a culture of disappointment, however, they were sincerely disappointed in the process this time.

We need to have a discussion with the province to talk about what is regulatory and what is bargain able

Great discussion to have to think about the next three bargaining rounds

Having strikes allows you to call the question - it makes fish or cut bait time happen

Partial strikes create morale problems among many others

Need to find a way to make a partial strikes as big a deal as a full strike

Arbitration - Something Old, Something New - Michael Hines & Amanda Lawrence

Talk about arbitration cases, some human rights cases

Three components to presentation

Constitutional law that is ongoing - Bill 115 challenge (putting students first)

Rest will be cases that Amanda will discuss

Freedom of association

Largely in labour context for 20 years has been ignored based on SCC cases

In 2001, the door opened a crack in Dunmore to support the association of migrant workers

That part of the act was struck down to all migrant workers to unionize

In 2008, the 1987 decision was reversed - the decisions were historically inaccurate

Right to associate became a part of the Charter

Allowed meaningful collective bargaining

In 2012, a "template" was reached with OECTA on major terms

Other unions were "encouraged" to duplicate this

Further discussions in July and August but no takers

All collective agreements were subject to MOE approval

Successful efforts at reaching deals were limited

On Dec. 31, CUPE and Ontario agreed to a template, deadline for CUPE deals was extended

On Jan. 2, 2013 Regulations were passed on sick leave

Deals across the education sector were imposed

PSFA was repealed

Change in leadership

Charter challenge was commenced

Mid 2013 MOUs were reached with OSSTF, CUPE and ETFO, setting templates for boards to voluntarily accept

June 19, 2013 MOE passed Reg 184/13

Oct. 10, 2013

Charter Cases - Freedom of Association Jan & Feb 2015 SCC released a new 2015 Trilogy

Explore various faces of right to associate MP Assn. On v Canada

Bad facts make bad law - RCMP only one in Canada that could not have their own Union

Bargaining reps were designated through statutorily established process

Meaningful collective bargaining demands a degree of choice and independence

Sask. Fed of Labour v Saskatchewan Right to strike an indispensable component of meaningful collective bargaining

OSSTF v Ontario Argued for 7 days in December 2015

Five unions argued BC health services - contracts invaded

Imposition of OECTA as de facto bargaining agent

Restrictions on ability to strike

Consultations were a bad faith sham never having any meaningful opportunity to dialogue on success

Implications for school board dispute resolution for Ps and VPs

desired restrictions on SBCBA rights to strike

possible challenges to teacher federation "statutory monopolies

ability of govt. to limit or force association for support staff unions

challenges to common statutorily prescribed working conditions

Privilege and In Camera - collective agreement impact on the In Camera discussion of termination of an employee

Standards for Harassment Investigation Section 5 of Code imposes a duty to investigate

standard for investigation is reasonableness, not correctness or perfection

Employers must: be aware of issues of discrimination

respond seriously to complaints of discrimination

resolve complaints of discrimination

entitled to know the outcome

Bluewater DSB & Association of Bluewater Administrators (Knopf, July 15, 2015) Ps & VPs were excluded from teacher bargaining units in 1997, leading to formation of OPC

agreements on terms and conditions have been established between boards and OPC pursuant to Ministry direction

Principals dismissed without assertion of cause based on "common law" principles

ABA grieves, asserts no dismissal can occur without cause

agreement stated "administrators will not be disciplined, demoted or have their employment terminated without just and sufficient cause

board argued that "specific performance" is an extraordinary remedy and that the implied common law ability of an employer to dismiss

Privilege and In Camera Deliberations

SHEILA MACKINNON - CONDUCTING HUMAN RIGHTS INVESTIGATIONS

As you are investigating, you may find other issues that arrive with respect to that particular person

Need to know who, how, what, why, when
Must have clear policy with respect to Human Rights Investigations
Important for investigator to have a road map to go about how you will approach the investigation
Make parties clear on how you are going to go about this
You need to start with the complainant - not the respondent
Once you have the complaint - share with the respondent
Try to get a witness list from them
Next meet with respondent and put out details and get their side of the story - then see if they have witnesses - talk to their witnesses
Once the respondent and the witnesses have been talked with go back to the complainant
You may have to redo your complaint
Once all of your questions have been asked (tape the interviews so you don't miss anything)
Lawyer wants to pay attention to you and wants it to be accurate
If no tape, take the same note taker with you for all interviews
Explain the process to all before you move onto the next step
All must have the same explanation
All must be involved in full disclosure - all documents that might be relevant to investigation
All parties must know about possible outcomes for the respondent
If you are doing more than fact finding - going to determination - need to let everyone else know
Need to discuss confidentiality
Cannot truly guarantee that it will all be confidential as some of your information may have to be disclosed
However, they must know that they cannot talk about what is going on
Always be aware of bias and/or conflict of interest or perception of conflict of interest
Someone who was secretly having an affair with the complainant - did not disclose and went ahead with an investigation
With a trustee code of conduct - you must also disclose - if there is a perceived conflict of interest, you need to recuse yourself from the process
Investigator provides an executive summary - protects the witnesses
Do you give draft before you give final report? Make sure that you have a clear policy
In most cases, no legal obligation for employee to have their own legal counsel present
Some situations, it may make sense to get the best responses from the people
It could be a spouse for support
Must understand what the other person's role is very specifically
Must make a guideline that the person cannot answer any questions - is there for moral support only
How do you determine the reliability and credibility of a witness
It takes years of experience
Credibility is the willingness to speak the truth
Rare that someone is lying - they are just mistaken in the truth
Sometimes people come to believe something different
Existence of corroborative information
How do you assess the credibility of a witness?
One consideration is did the witness truly have the chance to hear or see the situation
Did they have the chance to observe all or only part
Where they distracted
What was witness capacity to understand
You may have someone who has a bias with respect to the respondent
What was witness state of mind at time they observed something
What a witness says versus what hard evidence you have
What is their demeanour
Burden of proof - both complainant and respondent are equally credible. How do you determine if it happened or not

Decision on a balance of probability? Does one party tip it? Party who has a burden on the issue - balance is tipped in their favour

Panel Discussion about Central Bargaining

Reps from each of the School Board associations
There were 9 tables
OECTA first central list was 30 items long
OSSTF - if not compensation - it should go to local table
ETFO - thought they should create first a local list and then a central list - send local list to local
274 was a big priority and stayed at the central table
Hiring, etc did revert to the local table
Longer you talk about central/local split - feels like you are already bargaining

How could we contain whipsawing? In fact, you can't ever avoid - it does put whipsawing into a real time issue

12 French language boards started when they were created for 12 collective agreements into one put them in a better position 20 years later - 11 boards had the same data in the same format

AFOCSC have the thickest collective agreement

Council of trustees saw the engagement and focus on student learning

Council of trustee associations made sense

CUPE spokesperson was different than anything she has done. - there were in excess of 40 people in the back room

CUPE also had lots of people in their back room. Was also challenging to build consensus

Challenge is that there is no singular leader in the back room

All four sectors understand the language and will stand behind the language

ETFO not as interested in their education workers - they had a little unit of 13,000 members

Because the same people are bargaining for the Ed workers (both OPSBA and ETFO)

Needs to be changed up as it is no longer ETFO - it is ETFO Ed workers

Biggest piece of learning - two things - first table you settle something then it just becomes the floor and the second thing is to remember that it is about relationships - be forthright with union

Mold the process to work better

Define what is on the central level

Clarify in advance what the ground rules are and what the expectations are

Clarify partial strike and a work to rule

Be aware that you can have two strikes in the same bargaining and try to prevent from happening

How CTA team works together