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 ignore 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
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
Meaning ful 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
Principia dismissed without assertion of cause based on "common law" principles
ABA grievances, assets 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 that 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 forth right 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