

IN THE MATTER OF: A conciliation under *The Education Act, 1995*, R.S.S. Chapter E-0.2 (“the Act”).

BETWEEN:

**THE TEACHERS’ BARGAINING COMMITTEE,
appointed by the Saskatchewan Teachers’ Federation (STF)
pursuant to section 234(1) of the Act,**

- and -

**THE GOVERNMENT-TRUSTEE BARGAINING COMMITTEE,
appointed by the Saskatchewan School Boards Association (SSBA) and the
Lieutenant Governor in Council pursuant to section 234(2) of the Act.**

REPORT OF THE CONCILIATION BOARD

The parties

Teachers’ Bargaining Committee: Randy Schmaltz, Chair and STF Executive Director; Patrick Maze, STF President; Samantha Becotte, STF Vice President; Debbie Ward, STF Executive Member; supported by STF Administrative Staff.

Government-Trustee Bargaining Committee: Don Hoium, Chair; Rick McKillop, David Spencer, Gerry Craswell and Sandra Baragar (not in attendance), Government Appointed Members; Darren McKee, Lori Kidney, Jaimie Smith-Windsor and Tim Jelinski, SSBA Appointed Members; supported by legal counsel and staff.

Establishment of the board

The board was constituted effective December 3, 2019 in response to an application by the Teachers’ Bargaining Committee, as confirmed by the Chair of the Educational Relations Board in accordance with section 253 of the Act. Janet Foord was the nominee of the Government-Trustee Bargaining Committee. Fay

Humbert was the nominee of the Teachers' Bargaining Committee. Arne Peltz, the chair, was named by agreement of the two nominees.

By agreement of the parties, a schedule was set for filing briefs and the conciliation was confirmed for January 21-25, 2020 in Saskatoon. Pursuant to section 257(6) of the Act, the parties agreed that the time for filing the board's report would be extended to not later than March 16, 2020.

Section 257(1) of the Act provides that the board shall endeavour to bring about agreement between the parties with respect to the matters in dispute. The board may determine its own procedures but must give full opportunity to both parties to present evidence and to make representations. At the opening of the conciliation hearings, the parties affirmed that there were no preliminary or procedural issues.

Overview of collective bargaining between the parties in the current round

The current collective agreement was signed October 3, 2018, subsequent to a binding interest arbitration award issued under the Act dated September 7, 2018. The collective agreement is effective from September 1, 2017 to August 31, 2019, and thereafter until revised in accordance with the Act.

In April and May 2019, steps were taken by the parties as prescribed in the Act to commence collective bargaining for a renewal agreement. New bargaining committees were appointed. The parties met on 10 occasions between May 22, 2019 and November 13, 2019. Contrary to past practice, the Teachers' Bargaining Committee released its proposal package to the media at the outset of bargaining.

In the following recital, the board is recording the positions and arguments advanced by the parties. This should not be taken as commentary by the board on the relative merits of these positions. In the final section of this report, the board presents its recommendations for settlement.

In its statement of objectives for the current round of bargaining, issued to the membership on May 4, 2019, STF explained that it would limit the number of bargaining issues in order to focus on teachers' expressed priorities. Three areas

were listed: teaching and learning conditions (class size and composition); compensation (salary and allowance increases); and substitute teacher supports (a new standard contract of employment). STF also advanced several housekeeping items for purposes of clarity.

For its part, the Government-Trustee Bargaining Committee emphasized that the parties have developed a mature bargaining relationship and bi-level framework over many years, guided by the provisions of the Act. Class size and composition, and substitute teacher contracts, are outside the list of prescribed provincial bargaining matters, and require mutual agreement to be negotiated. The teachers' concerns were heard on these issues but there was no agreement to bargain them collectively. In the Government-Trustee Bargaining Committee's view, wages and some benefits are negotiated provincially, while working conditions and other benefits remain at the local level. This respects the original legislative intent to maintain local autonomy. In particular, class size/composition is the employer's legislated responsibility and is best administered at the local level.

The Teachers' Bargaining Committee strenuously objected to the foregoing conception of collective bargaining under the Act, calling it disrespectful, unlawful and unreasonably restrictive. The teachers asserted that collective bargaining must be able to address working conditions of employees, not just compensation and benefits.

The Government-Trustee Bargaining Committee released its salary proposals to the media on September 17, 2019, simultaneously with presenting its full position to the Teachers' Bargaining Committee at the table. The package included a three-year salary offer and six proposed changes to collective agreement text (SEB forms, personnel files, medical files, notice of union leave, grievance process and out of scope personnel).

During bargaining, it was agreed that the new collective agreement should be for three years' duration (2019-2022).

Compensation

The Teachers' Bargaining Committee compensation objective was and remains the following: a three-year agreement with salary and allowances increased by 2%, 3% and 3% per year.

The rationale for this position included increased workload, significantly increased classroom complexity, teacher recruitment and retention needs, favourable labour market and fiscal trends in Saskatchewan and the impact of the 2018 arbitration award which provided zero compensation increase until a 1% adjustment effective on August 31, 2019, the last day of the two year agreement. This resulted in teachers experiencing a 3.4% loss in purchasing power in the last round.

The Teachers' Bargaining Committee also advanced a proposal to compress the salary grid by removing steps 1 and 11, and adding half increments at the 15 and 20 year service points. This would support teacher recruitment and retention. Teacher attrition is 20% in the first five years. At senior levels, the increment proposal would encourage and reward dedicated long service.

In response, the Government-Trustee Bargaining Committee took the position that compensation should be fair and reasonable, assessed by consistency with the now-established Saskatchewan public sector settlement pattern and reflective of the overall economic climate. Public employees should not subsidize the community through sub-standard wages but neither should the community protect teachers from hardships faced by all. There was no argument based on inability to pay.

There are some 17 public sector agreements spanning a five year period (roughly 2017-2022), with near universal wage increases as follows: 0-0-1%-2%-2%. This includes five Crown units that went on strike before signing new agreements. There are 13 tables still ongoing but only two large units (SUN, the nurses' union and HSAS, health professionals) are outstanding.

The Government-Trustee Bargaining Committee construes the August 31, 2019 "last-day" 1% increase awarded by the arbitration board as effectively a salary increase paid and experienced in the 2019-2020 school year, which will be year

one of the new contract. Therefore, the government side says, in reality teachers received 0-0 for the period 2017-2019, consistent with the pattern for those two years, plus 1% experienced in 2019-2020, also consistent with the pattern going forward. On this view, teachers do not require any further increase for 2019-2020 to match the 1% being paid to other public sector employees this year. Consistent with the overall provincial pattern, the three years of the new agreement should be set as at 0-2%-2%.

While year one is admittedly below the cost of living increase, overall this offer is close to meeting anticipated inflation, said the government side. It would leave teachers 4% to 5% above the Western Canadian Average (average Class IV teacher salary in BC, Alberta and Manitoba), which the Government-Trustee Bargaining Committee said has been accepted in the past by the parties as an appropriate salary comparator. Recent teacher settlements across Canada have been minimal or zero. The government side argued that by comparison, the present offer is attractive.

For 2019-2020, as an enhancement, the Government-Trustee Bargaining Committee proposed a \$1,500 off-grid payment for each full-time teacher using repurposed Health Care Plan contributions under Article 15 of the collective agreement. This would somewhat reduce the plan's significant surplus but still leave the plan well above the industry standard for reserves. As for the grid, no changes are required since local boards report no generalized recruitment and retention issues, other than northern areas and French immersion, which are special cases. Major grid changes are costly and unnecessary.

In response, the Teachers' Bargaining Committee rejected any notion of a one-time cash payment off grid, without pension accrual, and rejected the government's assessment of the plan's surplus. The teachers argued for salary above the current pattern based on increased workload, greater work intensity and growing safety challenges in the classroom. In addition, bargaining history indicates teachers have generally negotiated to keep ahead of inflation. While not denying the fact of the present public sector pattern, the Teachers' Bargaining Committee noted that in some cases there have been variations based on circumstances unique to particular tables. As for the Western Canadian Average, the parties' bargaining history shows it is merely one consideration among many.

Just as important, average weekly earnings of all employees in Saskatchewan have been rising while teacher salaries have stagnated.

Class size and composition

At the outset of bargaining, STF stated as follows in articulating its vision regarding teaching and learning conditions:

The environment in which students learn are the identical environments in which teachers carry out many of their professional responsibilities. Teachers must experience supportive working conditions that contribute to student learning, including reasonable class sizes and appropriate supports to meet the diverse needs within the class.

STF also noted its view that class size cannot be separated from class composition. When class size is considered, the degree of student diversity in the class must also be taken into account and appropriate resources allocated. Therefore, STF identified its collective bargaining objective as developing a process or methodology to ensure that classes are the appropriate size and have the appropriate resources, based on the level of need of the students. This is an important issue for teacher unions in many jurisdictions, not just Saskatchewan, but ultimately the Teachers' Bargaining Committee did not pursue hard caps or limitations on class size.

Instead, at the table, the Teachers' Bargaining Committee proposed a new Classroom Support Fund commencing in the 2020-2021 school year, with STF representation on a working committee to determine distribution terms and conditions. In an innovative and perhaps unprecedented offer, STF said it would match government funding by allowing a one-time contribution holiday on Health Care Plan payments under Article 15 of the collective agreement (2.1% of payroll). Effectively, this would mean STF directing money it owns toward the proposed Classroom Support Fund, as a means of kick-starting the initiative. However, the Teachers' Bargaining Committee indicated its need for a longer term commitment by government in exchange for STF's initial contribution. The teachers insisted that the Classroom Support Fund must be written into the collective agreement.

In terms of the Act, the Teachers' Bargaining Committee maintained that class size and composition issues are ancillary and incidental to salaries, allowances and sick leave. Under section 237(1)(a), they must be bargained as working conditions. This is a matter of universal concern to Saskatchewan teachers and the legislation must be understood in the context of evolving social and economic realities. Failure to address class size and composition will lead to unmanageable working conditions and uncontrollable workload. It is clear, in the teachers' view, that local boards do not have the resources to deal with these issues given recent changes that have eroded school board financial capacity.

On October 16, 2019, in the midst of bargaining, the Education Minister announced a stakeholder committee to review K-12 class size and composition issues, and to identify best practices as cited in research studies. The Ministry stated that the committee's work would be used to create a framework to guide decisions on appropriate class size and composition. STF criticized the committee process as a bad faith tactic designed to keep these issues off the bargaining table. STF was offered one seat on the nine member committee, but it refused to participate.

In collective bargaining, and before the conciliation board, the Government-Trustee Bargaining Committee took the position that classroom funding is an education policy issue and a government fiscal responsibility. It is not a matter for collective bargaining and does not fall within the enumerated items specified in the Act which require negotiation by the provincial parties. However, there may be new funding for class size and composition initiatives announced in the upcoming spring budget. Currently, there is \$285.5 million provided to boards under Supports for Learning. Given the number and diversity of schools and classrooms across the province, local boards are best situated to manage these issues based on local needs and resource allocation. According to the Government-Trustee Bargaining Committee, working conditions of classroom teachers have been addressed locally through the use of various amounts of preparation time in all 27 school divisions. For all these reasons, the Government-Trustee Bargaining Committee rejected the Classroom Support Fund proposal.

The Teachers' Bargaining Committee disputed that working conditions have been addressed locally as claimed by the government side, and insisted there must be language in the provincial collective agreement.

Substitute teacher contracts

On the third bargaining issue, STF stated its objective to develop a contract of employment for substitute teachers which would be appended to the provincial collective agreement.

The Teachers' Bargaining Committee observed that substitutes fill a critical role in public education and are certified, qualified teachers. Under the bi-level bargaining regime established in the Act, salaries of substitute teachers are a mandatory item to be negotiated between local boards and teacher committees, but in the teachers' view, a standard *form* of contract can and should be developed for use across the province. This proposal was presented as a no-cost item that would still have significant value to substitute teachers. The terms would not guarantee work but would confirm the fact of a contract to provide substitute services. This would allow STF to maintain a current list of substitute teachers and enable the development of programs and support for these teachers, as STF does for its other members. Currently, STF does not know who the substitute teachers are, how they got on the list and why they are taken off a list when that occurs.

Substitutes are technically only STF members during the periods they are employed. They have no sense of security or due process in regard to their employment.

In response, the Government-Trustee Bargaining Committee noted that salaries of substitute teachers are expressly reserved to negotiations between local boards and associations under the Act. As a provincial item, the Teachers' Bargaining Committee proposal would intrude into the local domain. Also, it would not be a no-cost item. Managing these contracts would be a significant administrative burden on local boards. Instead, the Government-Trustee Bargaining Committee offered to ask SSBA to convene a meeting of school divisions and STF to identify best practices. As an alternate approach, STF

suggested during bargaining that a substitute teacher contract be created by regulation under the Act. This idea was forwarded to the Ministry for review.

Efforts by the board to bring about a collective agreement

The board wishes to express its appreciation to the parties for their thorough briefs and candid discussion throughout the course of the conciliation. There were efforts on both sides to explore potential pathways to an agreement, despite the obvious fact that from the beginning, the parties were very far apart in their approach to collective bargaining as well as their substantive positions.

It was agreed that proposals and responses could be made confidentially and without prejudice during conciliation. This facilitated the process but did not ultimately result in an agreement.

The board declared an impasse on January 24, 2020.

While all three issues presented challenges, by far the most difficult issue was class size and composition. Responding to a strong grassroots teacher call for action, the Teachers' Bargaining Committee insisted on meaningful progress on this item, embedded in the collective agreement. At the same time, the Government-Trustee Bargaining Committee declined to negotiate any form of class size and composition provision in the collective agreement. The board believes there may be ways and means to bridge this gap but we were unable to bring the parties to a mutually acceptable compromise.

Recommendations of the board

Compensation

The board recommends increases to salaries and allowances as follows:

September 1, 2019: 1%

September 1, 2020: 2%

September 1, 2021: 2%

The board accepts that teacher salary and allowance increases in the current round should track the well-established pattern for Saskatchewan public sector wage settlements. The pattern exemplifies, over numerous collective bargaining tables covering varied employer and employee circumstances, a result that was accepted as reasonable, even in cases where union job action had been taken. However, there need not be absolute conformity to the pattern. Every concluded collective agreement contains unique features and arrangements.

While the Government-Trustee Bargaining Committee urged that the August 31, 2019 salary increase be construed as a 1% adjustment in the 2019-2020 year, obviating the need for the 1% pattern payment on September 1, 2019, the conciliation board disagrees. Unlike all the other cases making up the provincial public sector pattern, the teacher settlement for 2017-2019 was arbitrated, pursuant to a legal right held by teachers under the Act as it stood at the time. The arbitration board did not accept the government position on compensation but mitigated the financial impact of the award on the employer by deferring the effective date of the 1% increase to August 31, 2019. The board held as follows (at page 33):

The August 31, 2019 increase of 1.0% is intended as part of the collective agreement awarded by the board. The parties will have more information when they meet again in May 2019 to resume bargaining for another agreement and will be able to discuss at that time what adjustments, if any, should be made to salaries and allowances effective September 1, 2019 and later.

On the face of the arbitration award, therefore, the 1% was a 2018-2019 increase gained in arbitration, the enjoyment of which was delayed. The question of a 2019-2020 increase was left for the next round. At the time of the award, there was little 2017-2019 public sector data for comparison, but in hindsight, it is apparent that zero was the most frequent result. The teachers should not now be deprived of the benefit of their award by deeming the 1% increase to be something it is not.

To be sure, there is a plausible contrary line of argument regarding the 1%, but two additional considerations support our recommendation to the parties.

First, while the Government-Trustee Bargaining Committee proposed zero in 2019-2020, it also suggested a one-time “enhancement” consisting of a \$1,500 off grid payment per full-time teacher, financed by repurposing Health Care Plan contributions. This amounts to about 1.8% on an average teacher salary. While the offer was rejected, the fact that it was made indicates that government believed the pure pattern should be supplemented in some fashion to achieve a reasonable settlement with teachers.

Second, the board has taken into account the overall contract settlement terms. In this round the teachers’ package was very thin, and they prioritized class size and composition. It has not been possible to make progress on that item and the board recommends longer term steps by the parties to facilitate more effective bargaining on issues that may involve important working conditions (see below). In these circumstances, it would be appropriate for the Government-Trustee Bargaining Committee to accept the conciliation board’s compensation recommendation as a reasonable proxy for the provincial pattern.

The board has taken note of the Western Canadian Average (WCA) as a comparator. The parties agreed that WCA is a relevant factor but not a driver of the ultimate result.

The board does not accept the Teachers’ Bargaining Committee proposal to improve the salary grid at this time (compression plus half increments at 15 and 20 years). The proposal was costed by the teachers at approximately 2.5% to 3% of payroll. There was no compelling evidence of a generalized recruitment and retention problem.

Class size and composition

The board has concluded that the parties are too far apart to reach an agreement at this time addressing class size and composition concerns of the teachers. The board recommends the following:

As a practical step, the Minister of Education, SSBA and the STF leadership should meet in person within the next 4 weeks to explore potential partnerships in support of the classroom environment. There

should also be discussion of initiatives to improve the collective bargaining process going forward.

It is clear to the conciliation board that class size and composition are important issues for the education sector, for government, for local school boards, for the STF and for individual teachers. What is contentious is the role, if any, that provincial collective bargaining should play in addressing these matters.

This is more than an ordinary difference between parties at the table on a substantive labour relations issue. Here the parties do not agree on their legal obligations to bargain.

The Teachers' Bargaining Committee asserts a right to bargain class size and composition matters, ancillary and incidental to salaries and other mandatory items in section 237(1) of the Act, and also as a constitutional right under the Canadian Charter of Rights and Freedoms. The Government-Trustee bargaining Committee completely disagrees although it states it has listened to teacher concerns.

It is not the role of the conciliation board to resolve this structural dispute and we are not making any finding of a Charter violation. However, we do feel compelled to make recommendations that may assist the parties at the next and subsequent rounds of collective bargaining.

The legislative scheme for teacher bargaining dates back to the 1970's. The minister of the day said the bill he introduced would cover bargaining with regard to salaries and major working conditions. In many ways, the original scheme has served the parties well, but it has also been overtaken by developments under the Charter which have enshrined a right to collective bargaining. Ultimately, it is up to the courts to settle such questions, if asked, and the STF may be driven to seek a judicial remedy if it concludes there is no realistic hope of negotiating collective bargaining terms.

The board urges the parties to be proactive and seek an updated, mutually acceptable regime for addressing teacher working conditions in collective bargaining or otherwise. The board believes this would be preferable to a judicially imposed regime that one or both sides might find unacceptable. For

these reasons, the board has recommended that the Minister, SSBA and STF discuss these issues in a timely way, with a view to finding a process to move forward. Meanwhile, despite jurisdictional disagreements, everyone is anxious to improve classroom conditions. STF has offered funds from its health plan, at least as a start-up initiative. In the absence of agreement that these are bargainable matters, the conciliation board urges that the Minister, SSBA and STF meet in person to discuss steps that can be implemented immediately to support teachers and students in the classroom.

The relationship between government and STF has become strained in recent years and especially during the current round. Job action is an option open to STF but it carries a heavy cost, not only to teachers themselves but to students, families and communities. The conciliation board expresses the hope that respectful, substantive discussion between the Minister and the STF leadership can begin to restore the relationship.

Substitute teacher contracts

The board recommends that local school boards be required to provide STF with a list of all teachers employed as substitutes during the school year, with monthly updates. The conciliation board was divided on the format for implementing this item, as discussed below.

The content of the recommendation is as follows;

On or before September 15 of each school year, employing boards of education shall provide to STF a list of all teachers employed as substitute teachers during the school year, with necessary identifying information.

As part of the regular remittances provided to STF on a monthly basis, boards shall report all changes (additions or deletions) to the approved substitute teacher list to STF.

The initial Teachers' Bargaining Committee proposal on this topic was entitled "Substitute Teacher Supports" and as described, was intended to enable STF to develop programs and support for substitutes, as it does for its other members.

Agreement could not be reached on a standard contract of employment for substitute teachers. The conciliation board recommends the foregoing reporting requirement as a pragmatic response to the problems identified by the Teachers' Bargaining Committee.

The parties were not in agreement on the format of any such obligation that might be imposed on local boards.

Two options are available and the conciliation board majority believes that each has merit – a collective agreement article and a regulation under the Act. Once instituted, in whichever form, the legal obligation would be the same. The Teachers' Bargaining Committee proposed to embed the reporting obligation in the collective agreement, but even a regulation could be enforced by STF grievance action under the collective agreement, in a case of noncompliance.

The board majority recommends that the Government-Trustee Bargaining Committee reconsider its position and agree to a new clause in the collective agreement. However, in the alternative, the obligation could be enacted as a regulation. We understand that in principle this is acceptable to government. Formal enactment of the regulation could be made a condition precedent to execution of the new collective agreement.

Ms Foord, nominee of the Government-Trustee Bargaining Committee, dissents and states her view that the reporting obligation should be enacted by regulation.

Ms Humbert, nominee of the Teachers' Bargaining Committee, supports the recommendation for a clause in the collective agreement.

Other bargained items

The conciliation board does not recommend adoption of any additional contested items bargained by the parties.

As requested, for the record, we note that new collective agreement language was agreed by the parties for articles 3.2, 3.5.3, 3.5.4, 5.3, 7.1.1.1, 7.5.2.3 and 15.4.2 (15.4.2.1 revised and renumbered as 15.4.2).

ALL OF WHICH IS RESPECTFULLY SUBMITTED to the Chairperson of the Educational Relations Board this 10th day of February, 2020.

Arne Peltz, Chair

**Janet Foord,
Nominee of the Government-Trustee Bargaining Committee**

**Fay Humbert,
Nominee of the Teachers' Bargaining Committee**