

September 18, 2023 - No. 51

Bargaining Impasse in Ontario K-12 Education
Teachers Discuss Union Proposal to Use
Voluntary Binding Arbitration



OSSTF holds one-day strike, January 8, 2020 as part of rotating strikes by teachers unions in defence of their rights and public education.

- **Message to Members from Secondary School Teachers' Toronto Bargaining Unit**
- **Message from Former President of Hamilton Secondary School Teachers' Bargaining Unit on How the Union Was Formed and How Teachers Won the Right to Strike**
- **Information and Views on Ontario Secondary School Teachers Federation Proposal**
– *Empower Yourself Now* –

More Views

- **Arbitration and the Right to Strike**
– *Enver Villamizar* –
- **The Urgent Need Is to Stop Paying the Rich and for Investments in Education**
– *An Elementary Teacher* –

- **The Right to Strike Is a Legal Mechanism That Can Hold the Government in Check**

– *A Retired Teacher* –

- **Secrecy Is a Big Problem**

– *A High School Teacher* –

- **Arbitrators**

– *An Educational Assistant* –

Bargaining Impasse in Ontario K-12 Education

Teachers Discuss Union Proposal to Use Voluntary Binding Arbitration

Discussion has begun on the agreement between the Ontario Secondary School Teachers' Federation (OSSTF) provincial executive, endorsed by a majority of the district presidents and chief negotiators, and the Ford government in Ontario to resolve the government-imposed impasse in bargaining through voluntary binding interest arbitration (VBIA). Voting on the proposal is open for all members of OSSTF who are employed by school boards. The OSSTF said it will be a one member one vote process with no separate voting for teachers and support staff. The threshold for passage of the vote is not currently known.

On September 7 a province-wide town hall meeting was hosted by OSSTF's provincial executive to present their rationale for what they are proposing and to hear questions from members. More than 2,000 members logged on to participate despite it being the first week of school when most teachers and education workers are in the midst of all it takes to get classes up and running and relating to new students. More virtual and in-person town hall meetings continue to be held by the provincial executive during the month of September. On September 12, the Ontario Education Workers United held a virtual forum entitled "The Dangers of Binding Interest Arbitration" in which a former OSSTF local president and past provincial president spoke about their concerns over the proposal. Various Facebook groups have also been established for discussion by all those concerned. That so many are participating in the discussion provincially and in their own workplaces shows members want to know what the arguments are so that they can have informed discussion with their colleagues and cast an informed vote. This is a good sign as whatever way the vote goes, the open discussion to sort out a way forward is what will permit all teachers and education workers irrespective of the unions they are members of to determine what will favour them, their working conditions and students' learning conditions.



Message to Members from Secondary School Teachers' Toronto Bargaining Unit

On September 7, prior to the Ontario Secondary School Teachers' Federation (OSSTF) provincial town hall meeting on the idea of giving up the right to strike in this round of negotiations and going to voluntary binding interest arbitration, the executive of OSSTF District 12 representing high school teachers in Toronto public schools issued a statement:

After thorough and fulsome discussion, your local Toronto Teacher Bargaining Unit Executive

unanimously passed the following motion:

"Be It Resolved That the TTBU Executive opposes the voluntary binding arbitration pathway pursued by OSSTF/FEESO."

We have concerns about pursuing voluntary binding arbitration.

First and foremost, we have concerns about the impact on local bargaining.

We have concerns about voluntarily entering into a binding arbitration process that eliminates our right to strike or take other job actions such as selective withdrawal of services. The ability to strike or withdraw services is one of the cornerstones of the labour movement and has been hard fought over the years. To voluntarily give up that right has the potential to set a dangerous precedent for education workers and the entire labour movement.



It is also important to note the difference between mandatory arbitration and voluntarily entering into binding arbitration before other options to reach a deal have been attempted. In recognition of the fact that essential workers are unable to take job actions, arbitrators have traditionally awarded gains to those workers. This is not necessarily the case where workers voluntarily enter into the process.

Members are being asked to vote on this pathway with limited information about the details of what a final agreement will look like, unlike a ratification vote where they would have clarity on agreed wages, benefits, workload, etc. Through this pathway proposed by OSSTF/FEESO, Members will be unable to vote on the final agreement. In essence, Members are being asked to vote on an agreement before it is finalized.

Pursuing this pathway represents the most significant departure from OSSTF/FEESO collective bargaining orthodoxy ever undertaken by our union. We are concerned that this might have a serious impact on solidarity, on our capacity to organize our Members, and on building collective actions going forward.

After careful consideration, and much discussion, the Toronto Teachers' Bargaining Unit Executive decided unanimously that we cannot support this pathway, and that this needed to be communicated to Members prior to the commencement of voting. Our aim is not to direct Members how to vote, but to share our concerns so they can make their own informed decisions. To that end, we encourage you to attend the Town Halls that will be held over the coming weeks, including an OSSTF Toronto specific Town Hall on September 20, 2023 at 7:00 pm.

*In solidarity,
OSSTF Toronto Teachers' Bargaining Unit Executive*



Message from Former President of Hamilton Secondary School Teachers' Bargaining Unit on How the Union Was Formed and How Teachers Won the Right to Strike



Teachers rally December 19, 1973 against legislation which would outlaw mass resignations and impose compulsory arbitration on teachers.

The following history of the Ontario Secondary School Teachers' Federation's (OSSTF) fight for the right to strike is provided by Dr. Chantal Mancini, Former President of OSSTF Hamilton Teachers' Bargaining Unit. It was posted on Twitter in the context of the current discussion over OSSTF's proposal to enter voluntary binding interest arbitration. Dr. Mancini writes:

On December 30, 1919, 62 high school teachers and principals held a secret meeting in Toronto and formed OSSTF, the second teachers' federation to form in Ontario. It was a time of increased worker militancy in Canada.

One of the first aims of early province-wide teacher organizations was to secure better salaries and working conditions. Teacher associations had formed before, but they ignored the material interests of their members, who faced poverty wages and precarious work.

OSSTF's early leaders clung to the idea that 'professionalism' would see employers reward them with better pay & more say in their working conditions. They set their sights on a proposal of mandatory federation membership for teachers, hoping this would further their cause.

In 1944 the *Teaching Profession Act* made public and Catholic teachers members of the Ontario Teachers' Federation, comprised of five affiliates, including OSSTF. It did not grant teachers the right to strike. Boards could just ignore teachers' demands – and they did.

In 1947, OSSTF began to issue 'pink letters' warning members not to apply to intransigent school boards. Teachers also began to resign *en masse*, unsupported by provincial OSSTF. In 1950, the

government enacted the *Ontario Labour Relations Act*, but it excluded teachers.

Still, in February 1950 a *Globe & Mail* headline read: "Ontario Teachers Shun Unionism, President Says." It was T. W. Mayor, of OSSTF. He said the "road leading to professionalism" was "in the best interests of education and the public." Similar messaging appeared well into the 60s.

Teachers remained frustrated by their inability to have issues addressed. In 1969, OSSTF began to support mass resignations. The Conservatives commissioned a report that declared the right to strike to be unprofessional for teachers and recommended binding arbitration instead.

By 1970, some OSSTF teachers began to push for bargaining rights. Media reports point to internal tensions. On December 10, 1973, the Conservatives introduced bills that imposed compulsory arbitration on teachers. Any hope that they would gain the right to strike would be lost.

Eight days later, 90,000 Ontario teachers walked off the job. 30,000 marched to Queen's Park. It was the culmination of labour unrest fuelled by rising inflation, increasing class sizes, cuts to education spending, and federal wage caps for public sector workers (sound familiar?)

The government capitulated and agreed to establish a legal bargaining process for teachers. In July 1975, the government enacted Bill 100, the *School Boards and Teachers Collective Negotiations Act* – finally granting teachers the right to strike that they had fought for.

Today, on Labour Day, I ask my OSSTF colleagues, both teachers & support staff, to consider our union's history of struggle. Members ARE the union, and our history demonstrates it has been members who have led the way at critical junctures.

Our right to strike has been an essential cornerstone of a strong public education system in Ontario. Our predecessors knew that 50 years ago as they hit the streets. We must protect this right vigorously so that it remains for generations to come.



Mass demonstrations of teachers take place against cuts to and restructuring of education imposed by the Harris government in Bill 160 in 1997.



Information and Views on Ontario Secondary School Teachers Federation Proposal

– Empower Yourself Now –

The pathway being proposed by OSSTF and the Ford government includes both entering into voluntary binding interest arbitration (VBIA) and a remedy for its violation of OSSTF members' rights with Bill 124. In return for OSSTF agreeing to enter into VBIA, the government has agreed to pay back wages for the wage restraint it imposed through Bill 124 using its majority in the Legislature. Bill 124, *Protecting a Sustainable Public Sector for Future Generations Act*, imposed wage restraints on public sector workers. It was struck down in November 2022 when the Ontario Superior Court of Justice ruled that it unduly infringed on workers' rights as recognized by the *Canadian Charter of Rights and Freedoms*. The government is appealing that ruling and meanwhile, the wage restraints remain in effect, causing serious harm to health care and education sectors of the economy.

Bill 124 became law in 2019, limiting public sector compensation to a one per cent raise per year over a three-year period. This is after workers and professionals in health care and education had suffered four years of wage freezes in each year from 2012-15. The four Ontario teachers' unions have been trying to get the Ontario government to negotiate new contracts which remedy the situation they have been trying to work and live with since the severe cutbacks have taken their toll on them and on the entire system of public health care and education. They have been working without a contract since August 2022 under the old conditions despite the ruling of the Ontario Superior Court and the current high cost of living.



The remedy proposed should the OSSTF go into VBIA would be retroactive wage increases for the three years teachers and education workers were subject to restraint from 2019 to 2022. For the years 2019 and 2020 there would be awards of 0.75 per cent for each of those years and for 2021 when inflation increased substantially, an award in the range of 1.5 per cent to 3.5 per cent would be decided through arbitration. In "exchange," OSSTF members employed by school boards would give up any further claims for a remedy for Bill 124 which is currently the subject of the government appeal of the Court's ruling. Note that the remedy would not apply to OSSTF members who are not employed by school boards who would continue to be affected by the provisions of Bill 124 and whether or not it is upheld by the court of appeal.

The remedy for Bill 124 for teachers and education workers the government has agreed to is part of what is called "the pathway to a settlement" OSSTF members are being asked to vote on, and will only apply if the VBIA process is agreed to. Thus, while the government continues to argue in court that its violation of rights in Bill 124 was justified, it has agreed to provide OSSTF members with a remedy for violating their rights if it gets the union to give up its right to strike in this round of negotiations. The OSSTF provincial executive argues that the government is doing this because it is in a weak position due to the corruption of the Housing Ministry over the Greenbelt Scandal.

While the government is using the courts to rule in favour of its continued violation of rights, the OSSTF points out that its acceptance of OSSTF's proposal for VBIA is based on its weakness due

to the housing scandal. It is something unique to the current circumstances which should be seized upon, the union says. It says the union re-tabled its proposal for the VBIA now after having had it rejected by the government in the past and it says it was surprised the government agreed to the process "minus any poison pills it had demanded previously" and also that it agreed to have William Kaplan as the chair of a tripartite arbitration board. Kaplan's appointment was considered key by the Union as after Bill 124 was found by the Ontario Superior Court to have violated workers' rights, he ruled on a recent case of VBIA which the union says awarded hospital nurses, who are deemed essential workers without the legal right to strike, significant pay raises based on inflation and the crisis in retention of staff.

The union leadership emphasizes this is a one time option in the here and now based on the current circumstances of the government's need to overcome its scandal. The union feels the process will also force school boards to engage in "good faith bargaining" given that they would hope to negotiate a resolution to differences with teachers and education workers rather than have them decided by an outside arbitrator. Plus there is a "wage re-opener" provision as part of the deal.

This means that if, after the arbitration award another union achieves a better agreement for their members, thanks to the wage re-opener clause, the OSSTF would be able to ask the arbitration board to reconsider their award in light of another union's gains. This, the union argues, is "win-win." It says it is not a "me-too" clause which refers to something the McGuinty Liberal government used in the past to get the Ontario English Catholic Teachers' Association (OECTA) to approve a deal which harmed the interests of other education unions. It said that what others obtained after them, they would get too. The terms of the contract agreed to with OECTA's executive at the time of the "me-too" clause was later imposed on the other education unions through legislation using Bill 115. When the Ontario Superior Court eventually ruled the government had violated education workers' rights and ordered the government to negotiate a remedy with the unions, OECTA was able to benefit from that as well as a result of the "me-too" clause. This mechanism to encourage unions to break ranks with others in the sector on the promise that they would still benefit after the fact has been widely criticized by teachers and education workers as something that foments divisions among the unions and their members. They say it should be rejected in favour of working together.



Education workers stand united in one-day rotating strikes against Ford government's education cuts, January 21, 2020.

OSSTF's argument today is that the wage re-opener provision that would be included in an arbitrated settlement is not the same as the one OECTA had. This is based on the fact it would not take effect automatically but would have to be decided by an arbitrator. What is the same is that the government is getting one union to go off on its own with the promise that if it does it will still benefit if others fight and make advances. The fact that it divides the unions and their members and

deprives them of the right to strike is ignored despite the fact that it is the significance of this that teachers and education workers have to address.

The other provisions of the VBIA proposal only emphasize this further. When it comes to central bargaining between the government and OSSTF, the proposal for VBIA provides for any issues not resolved through negotiations by October 27, 2023 – i.e. anything either side wants an arbitration board to decide – to go to binding arbitration for a final decision. In fact there would be two arbitration processes for central bargaining – one for teachers and one for all other OSSTF members in the K-12 education system who are lumped together for bargaining purposes as support staff.

As for local bargaining, the process provides for an "expedited arbitration process" involving a single arbitrator for both the teacher and support staff tables rather than a three-person board for each. There will be a deadline of March 28, 2024 for local deals to be reached by the union and local Boards of Education through negotiations. Any agreed-to contract provisions can go forward to be implemented while all outstanding matters will go to VBIA. Bargaining units can combine their positions if they have common issues so as to have a single arbitration process for local negotiations. Decisions by the arbitrator would have to be rendered within 45 days of the completion of the hearing. All arbitration at the local level would need to be complete by December 31, 2025.

Given that settling local issues could conceivably involve several or even many school districts needing an arbitrator during the same time frame, and that local unions often have problems scheduling an arbitrator to hear grievances in a timely manner, and given that arbitrators preferred by unions are typically in high demand, what prospects teachers and education workers can expect in VBIA is not good. When it comes to hearing grievances, unions are often told that the earliest dates these arbitrators can give them are months away, with this problem carrying on as new dates are needed to continue the process of gathering facts, hearing both parties' arguments and examining the evidence. It is not uncommon for it to take well over a year if not more for grievances to be heard, then more time for a decision to be rendered.

Without control over the VBIA process, it looks like an endless nightmare would lie ahead for negotiating teams while members are in the dark in more ways than one.

Keep in mind that the teachers and most education workers have been without a contract since August 2022 and under three years of mandated one per cent wage increases before that, following wage freezes in four years prior. Most importantly, the government does not negotiate. It dictates that it is its way or the highway.

If the argument about the government's current weakness holds water, many are asking why the demand for the government to negotiate in good faith immediately, backed up by the decision to exercise the right to strike if they so decide, is not the teachers' best defence. It is not the teachers and education workers who are causing the disruptions to the school year but the cutbacks in education funding, privatization of education and government refusal to recognize their rights. It is the government which is engaged in anti-social activity and teachers and education workers are determined to hold them to account.

In deciding how to vote on the proposal for VBIA, the basic issue is whether this will hold the government to account or merely disempower the teachers and education workers and embroil them in an endless process where they do not have the right to strike while they continue to suffer the anarchy in the schools which goes hand in hand with violence of all kinds – rights which are violated, mental well-being which is violated, their dignity which is violated and even an increase in physical violence in the schools due to untenable conditions as well as the government's refusal to uphold norms and standards as it is duty-bound to do.

As for how the negotiations with the arbitrator would take place: both sides would present arguments and evidence to the arbitration board, or in the case of local bargaining, to the single arbitrator. Arbitrators supposedly try to replicate free collective bargaining and impose terms which they believe would have been achieved through collective bargaining. In this light, it can be expected that "breakthrough proposals" which go beyond what already exists in terms of collective agreements in the area are unlikely as arbitrators are reluctant to establish new precedents. The union's answer to this is that in tracking recent decisions, arbitrators are more and more considering inflation and recruitment and retention issues in their awards. In other words, the union is saying the odds are good for getting substantial pay increases given inflation and the retention crisis in schools for support staff and teachers.

As for the arguments being made that, by agreeing to this, OSSTF would be opening the door for the government to declare teachers and education workers an essential service, the union says there is no legal basis for this as teachers and education workers' strikes do not threaten the health and safety of the public. Often cited is the recent ruling of the Ontario court in the case of Toronto transit workers. That ruling overturned the government's attempt to declare transit workers essential. That ruling is said to set a "high bar."

Such arguments are disempowering because they do not present the teachers and education workers' fight in defence of the rights of all as the decisive factor in determining the outcome of any issue. To speculate on one argument versus another to justify a pragmatic move to have VBIA does not mobilize the teachers to use their own voice or think things through for themselves on terms they themselves set or enable them to put the full weight of their numbers and organization behind their demands.

Addressing concerns that the union is giving up the right to strike and that this could lead to it being legally removed in the future, the union leadership says it will always protect the right to strike but that the majority Ford government has no respect for labour and would not hesitate to

use any tool at its disposal if the union went on strike. The Ford government would smear the union and its members and blame them for it. In other words, despite the government agreeing to this process, the union considers that the government wants a strike as it would act as a distraction from the public relations disaster it faces over the housing scandal. The leadership of OSSTF thinks there is a great deal of concern about further disruptions to learning given all the disruptions the government has caused, especially in its handling of the pandemic.

This is a defensive, apologetic position which does not take into account all that can be done to mobilize the strength of the union's members behind their just cause, as well as the strength of public opinion in favour of respecting the work teachers and education workers do and the demand to increase investments in public education. It also attempts to put teachers and education workers' faith in an arbitration system instead of their own power to change the situation. The more governments cater to narrow private interests, pay the rich and use billions of public funds for armaments, the more the public can see that increasing funding for education and health care is not a problem of lack of money. It is a matter of governments which are corrupt because narrow private interests have taken over decision-making on government spending in their favour. Why does the union not discuss how to engage in tactics which establish a vantage point which favours teachers, education workers, parents, students and the future of public education and society? There is plenty



of experience in the last 10 years alone that shows that when teachers and education workers take up their own cause, they are able to make advances and hold their heads high.



Saying a strike will favour the government which will unleash a huge propaganda machine against teachers and education workers begs the question of why the use of public funds for such a propaganda offensive is not opposed. Such opposition would further expose government corruption as concerns the private interests it is serving in the field of education as well. It is not just the Housing Minister who should resign over charges of corruption. To this day the former Premier of Ontario Mike Harris who did a lot to privatize health care while in office, launching a vicious anti-social offensive, is making huge profits as the head of private senior's homes which current government's continue to provide with public funding to

guarantee the private profits. It is doing the same in the education sector. Bringing all this to the light of day is what the government is trying to avert by eliminating the right to strike with either the carrot or the stick.

By speaking out in defence of the rights of all, teachers and education workers are quite capable of taking the decisions which do not marginalize them, silence them and criminalize them. On the contrary, experience has shown that the public will rise in their defence. Whatever tactics are used, they must serve to empower teachers and education workers because they are the custodians of a healthy new generation and must be supported. It is society's duty which governments are duty-bound to uphold.



More Views

Arbitration and the Right to Strike

– Enver Villamizar –

If voluntary binding interest arbitration (VBIA) is agreed to by the Ontario Secondary School Teachers' Federation (OSSTF) members, it would mean that they would no longer have the legal right to strike in any way shape or form from that point on until the next contract expires. This also means that even prior to any ruling by the arbitrator teachers and education workers represented by OSSTF will not be in any legal position to act when the government continues on its path of making unilateral changes to existing structures and arrangements using its majority in the Legislature to act with impunity.



This itself is what the government really wants so that it can carry on doing as it pleases at a time when it is seen to be more corrupt and self-serving than ever. The government is fine with an

arbitrator deciding all matters of importance in the education system because arbitrators are not likely to make breakthrough decisions on funding education in Ontario or on working conditions and will mainly focus on matters related to pay. The government can accommodate such decisions so long as it can carry on restructuring education and putting its aim to provide skilled labour for narrow private interests in first place. The government has no program to strengthen the public domain. Its aims are favoured by getting one union to agree, to then pressure others to also join so that they do not have to go the route of imposing terms using legislation -- something which blew up in their faces with CUPE-OSBCU.

In addition, the government's anti-social interests are also favoured if it can claim that this new mechanism of using VBIA before exhausting all aspects of collective bargaining, including strike action, is something that benefits the youth and society in general. These arrangements will be presented as a mechanism to resolve labour disputes and those who do not accept it will be labelled as uncompromising and disruptive.

Experience shows that the government's PR schemes fall apart when workers refuse to accept the limitations it tries to impose on their thinking and actions. This lesson from the experience of fighting Bill 28 and its complete withdrawal is important in considering what to do at the present time.



The Urgent Need Is to Stop Paying the Rich and for Investments in Education

– An Elementary Teacher –

One of the significant matters raised with the proposal to go directly to voluntary binding interest arbitration is that it avoids addressing the need for increased investments in education to address the serious crisis in the system. This crisis was exacerbated during the pandemic but, more broadly, is because of government's anti-social offensive which is privatizing education and starving the public system.



Going to this form of arbitration means that some of the most significant matters related to students' learning conditions are swept under the rug. This includes the need for actual caps on class sizes versus averages which can be manipulated, or significant investments in special education to meet the needs of youth who face learning difficulties or social problems as a result of the breakdown of the social fabric. It is unlikely interest arbitrators will take these issues up despite the fact that they are uppermost on the minds of teachers and education workers as well as parents and

students themselves.

Wages which permit education workers especially to live stable lives are also important. It is a matter of upholding the dignity of labour so that they can do their jobs to the best of their abilities without having to work multiple jobs and live pay cheque to pay cheque. Investments in education are required to improve conditions and meet the needs of the youth for a bright future.

The mass mobilization of the people to demand a new direction for the economy is vital to stopping the anti-social offensive. Having arbitrators settle contracts without the mobilization of the working people themselves, including the public, eliminates the important role of the people without whose input they remain on the receiving end of what others who are not their peers decide for them.

Following the pandemic there is a general consciousness, of parents especially, that the conditions in the schools are not adequate and that investments are required. This consciousness favours proving public education with the investments and resources it requires.



The Right to Strike Is a Legal Mechanism That Can Hold the Government in Check

– A Retired Teacher –



Teachers and education workers are everywhere in action outside the PC convention in Niagara Falls, February 22, 2020, opposing cuts to and restructuring of education.

Up until an agreement is reached with the government for a new contract in K-12 education, the prospect of strike action by teachers and education workers who are in every community across the province can hold the government in check if it tries to make unilateral changes to the system, which it has been doing since it was first elected. If a process of interest arbitration is entered into, once it is approved, there is no legal means to oppose the government's arbitrary moves with a strike or the coordinated withdrawal of extracurricular activities or other administrative sanctions, for example. Instead, any coordinated action would constitute strike action, despite no contract being in place, meaning that the legal mechanism to say *No!* is now gone. Given the government's penchant for ruling by decree, it is dangerous to give this up before an agreement has been entered into that is acceptable, as it gives this government a free hand in many respects. This is something to consider.



Secrecy Is a Big Problem

– A High School Teacher –

If this process of voluntary binding arbitration is accepted, everything will be even more secret than it already is and we will not know what is being done in our name. We already don't know what the union is putting forward so that we can make our own arguments to our friends and families. With arbitration, we are just left with whatever an arbitrator decides. Someone who knows nothing really

of our conditions and doesn't have to live under them. They are not our peers.



Arbitrators

– An Educational Assistant –

A lot is being said about arbitrators and how they are neutral and will affirm the rights of education workers given the government's refusal to negotiate. The Canadian Arbitration Association says that arbitrators' fees in Canada range from \$250 to \$800 per hour, plus applicable taxes depending on the arbitrator and the location of the arbitration. Can we really believe that someone being paid that amount by the state is going to appreciate the conditions of education workers making less than \$40,000 per year? Or the conditions of working-class families and single parents who cannot afford private education to address the problems in the schools? These arbitrators are going to make a killing through this process as will the lawyers for the unions and the government, all of which the public purse is used to pay for. It will no doubt add up to many millions of dollars itself. Meanwhile we as education workers will have to beg for some scraps in hopes of just staying above the poverty line.



Website: www.cpcml.ca Email: editor@cpcml.ca