

**AN APPRECIATION OF THE
COLLECTIVE BARGAINING ENVIRONMENT
IN THE
ALBERTA PUBLIC EDUCATION SECTOR**

Prepared for

The College of Alberta School Superintendents

January 2012

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In 1941 Alberta teachers were the first in Canada to be granted legislated collective bargaining rights. Between 1950 and 1990 their salaries increased by over 400%, with the largest percentage of these increases coming prior to 1975. There were as many school divisions as there were municipalities, and negotiations were often conducted over a cup of coffee between a trustee and a teacher. One-year terms were the norm. In the nineties, during years of recession, the bargaining environment changed as local taxation was supplemented, then replaced, by provincial grants. Money was tight, relationships were strained, and frustration increased. In 1995, 141 school divisions were amalgamated into 60 (now 62). The casual, one-on-one talks died out as trustees did not know most of the teachers in these larger divisions and had been stripped of the authority to tax for the funds to increase teachers' pay or to address other demands.

To strengthen their ability to demand salary increases and improved working conditions the Alberta Teachers' Association (ATA) made its case to represent local teachers. Many jurisdictions eagerly received this support and with 62 school divisions the ATA was able to provide bargaining resources to all locals. The teacher surveys undertaken to establish local bargaining objectives came to look different from one another in little but font selection. On the employer side, local autonomy survived the transition from local taxation to provincial grants. While professional negotiation services were offered by the trustees' association, many boards continued well into the nineties sending trustees into bargaining to face the ATA's trained professionals. Boards engaged their own professional negotiators as issues became more numerous and more complex, and increasingly more confrontational talks were prolonged over weeks and months. One-year agreements were often replaced by two and occasionally three-year terms.

The 'local' bargaining model, also used in Ontario and Manitoba, was followed in Alberta until 2007. Quebec, PEI and New Brunswick have long had provincial bargaining. Nova Scotia, BC and Saskatchewan have two-tiered systems, with salary and other major monetary issues being done provincially and working conditions determined at local tables. However, the process is now provincially dominated in BC and in Nova Scotia and there is little done at the local tables. The provincial government in Ontario got involved in salary negotiations about a year before Alberta's. Now Manitoba stands alone. Not coincidentally, there is local taxation there. It remains to be seen if either Alberta or Ontario will ever return to true local bargaining. Neither has legislated the provincial component.

In all Canadian jurisdictions, bargaining has an incredible impact on the delivery of educational services as salaries comprise more than 75% of the cost of education. Superintendents are therefore well advised to be familiar with, if not involved in, negotiations,

particularly teacher negotiations. Alberta has come a long way from its early days in bargaining. The informal process of earlier times has been replaced by a very complex one, with many roles, both at the bargaining table and behind the scenes. Trustees, usually at the bargaining table, are responsible for a hands-on form of governance. Senior education and human resources executives play the central roles in creating the labour relations dynamics in their administration of terms and conditions of work. The secretary-treasurer and payroll staff also have direct roles in administration of benefits and in preparation of the research required to negotiate the agreements. The superintendent is the central figure in all this, as the Board's CEO, with responsibilities to advise the board and lead staff through the negotiation process.

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Creating and Sustaining a Positive Bargaining Environment

Optimally, the superintendent tries to develop and maintain a positive context for the bargaining process, with the goal of producing successful settlements based on transparency, trust and respect, thereby enhancing working relationships. Some superintendents may not be comfortable around collective agreement negotiations due to negative experience, lack of experience, or poor advice. Clearing away such impediments increases opportunities for success. The challenges of collective bargaining will be further minimized by ongoing collegial relations with teachers and a positive focus on administration of teachers' working conditions. Through its executive, the division/district becomes a fair and benevolent employer and an open communicator, and this credibility can greatly impact the bargaining process. This is not to say that difficult positions will not have to be taken in defense of educational priorities and administrative flexibility.

One way to improve prospects for bargaining success is building on the good working relationship already established with the ATA local executive. The EPC (Economic Policy Committee) Chair is on the executive. The EPC Chair is the key representative for your local on its negotiation committee and usually the most influential member of the committee. Collegiality between senior staff and the EPC Chair is strengthened via the interaction with the local executive in addressing educational matters. If relations with the local are not positive ways to enhance them might be considered, things like working breakfast meetings between the division senior administrators and the ATA local executive. This relationship facilitates progress in many areas of operation and is optimally addressed well before notice to bargain is served.

The teachers' bargaining committee is composed of the EPC members who may be among a division's best teachers. They might share a pre-eminent regard for progressive teaching and learning and will have inherently reasonable positions on costly proposals. Their role in the negotiation process however, requires them to place interests of teachers ahead of,

and often in opposition to, interests of students when they 'demand' that the division dedicate resources to teacher economic welfare rather than in the classroom or on educational priorities. Even when the EPC is populated or dominated by teachers' with the collective agenda who cannot get beyond the mantra of ATA public relations, the employer always takes the high road. The superintendent looks for opportunities to single out EPC teachers during the school year for casual discussions of mutual professional interest.

Key Message – What the superintendent does, and encourages others to do, in the name of educational best practices will have positive impact on collective bargaining.

Bargaining Variations

Three bargaining models are used in the Alberta public education sector: a few boards are dedicated to the Carver Model; a few others use Interest-Based Bargaining (IBB); however, most boards use the traditional bargaining model.

- **Traditional bargaining** features opening proposals in the form of specific language or 'issues' simply labeled as 'to be discussed', in any combination of these forms. One spokesperson on each committee presents and rebuts proposals on behalf of the committee. The committee is usually composed of trustees, senior administrators involved in administration of terms and conditions of employment, and often a labour relations specialist. A well disciplined committee has distinct advantages over a less disciplined one. Clear and precise arguments, focused on objective issues are more convincing than rambling, subjective, and emotionally charged ones. This may seem too obvious to state, however, the history of bargaining is strewn with examples of ineffective and frustrated exercises. *Without Prejudice* presentations are the norm in traditional bargaining. This means that the party making such a proposal is doing so on a tentative basis, to encourage dialogue, consensus, and mutual flexibility. If the proposal does not generate these results, the party reserves the right to withdraw or modify the document. Most confidential bargaining presentations are 'packaged', which means including proposals of both parties, with positions of each, making concessions and proposing that concessions be made on the opposite side. Often, there are issues addressed in a package in which no movement is proposed, however each successive package is expected to vary progressively in flexibility as they are exchanged back and forth. They are presented on a 'without prejudice' basis until all issues in a given 'package' are resolved, and tentatively agreed to, preferably 'signed off' by the parties. This serves to keep both parties focused on mutual benefits of the process.
- **Interest-Based Bargaining (IBB)** is a very distinct departure from traditional bargaining. There is no designated spokesperson, although it is often advisable to have a seasoned negotiator co-ordinating IBB activities on behalf of trustees and staff members on the committee. No formal proposals are exchanged at the outset of talks. Often with the assistance of a neutral facilitator, the parties take turns presenting their interests which can or may be impacted by the terms of the collective agreement. Some interests are common for the parties, but from different perspectives, with different outcomes sought. Everyone in an IBB process is expected to verbally participate in the daily proceedings. Only after interests are exhaustively discussed in a joint problem-solving mode are language alternatives (jointly) composed. Each language proposal is then subjected to the 'thumbs up/thumbs down' vote around the table. It is unusual for language developed in this way to go 'thumbs down'.

- **The Carver Model** as applied to collective bargaining is the negotiation format wherein the employer interest is entirely represented at the bargaining table by Board employees (and usually, a professional spokesperson). Trustees delegate bargaining to this group, and direct/govern the process from behind the scenes, in caucus. It is a variation on the traditional bargaining model only in the composition of the committee that actually represents constituents at the bargaining table.

The superintendent may decide to participate in bargaining committee caucus/strategy sessions, which occur prior to and intermittently during the round of bargaining, or he/she may opt not to participate in them, but only when he/she has full confidence that the committee is qualified, experienced, and will provide timely briefing in advance of key decisions. Rarely does the superintendent appear at the bargaining table. The superintendent's role will largely be predicated on (a) bargaining history in the division/district, (b) skill sets and experience of staff, (c) current 'issues' of contract administration, and (d) experience, capabilities, and expectations of trustees. There is a tactical advantage for the superintendent being one step removed from the process, as it gives the impression that, as the educational leader, he/she has the best interests of students and teachers at heart. Often at the bargaining table, the ATA committee will have trouble seeing those sitting opposite them in that light. Also, if the superintendent's appearance is required, it will be as the educational leader, speaking as an expert on an educational priority, not as 'an employer representative'; a fine point perhaps, but an important one.

Key message: While not sitting at the bargaining table in any of the Alberta models, the superintendent has an important, guiding role.

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Staff Roles

The superintendent plays the key role in ensuring that division/district bargaining interests are effectively staffed. On the financial side, the secretary-treasurer is most effectively assigned to lead and co-ordinate research and proposal costing as required by the bargaining team and need not sit at the bargaining table unless he/she is a key player in day-to-day administration of terms and conditions of work. The superintendent and the bargaining committee must be able to know the \$-value of each union/association proposal and have the ability to convert it immediately into %-of-total compensation. On the education side, if a deputy superintendent is the senior administrator in charge of day-to-day HR admin for teachers, that person would be at the table, or, at minimum, in all caucus meetings and available for ad hoc consultation during table sessions.

Regarding finances, many bargaining proposals received from the ATA or another labour organization in bargaining are unsustainable in the current funding model. Granting such proposals would compromise the ability to continue other essential programs. In advance of bargaining, the ATA EPC requests, receives, and analyzes, with the assistance of a representative of ATA Teacher Welfare assigned to the round of bargaining, the division's most recent audited financial statement. During negotiations it is not uncommon for the ATA committee to propose that the division use its reserves to fund a new ATA proposal. ATA proposals are ongoing in succeeding years. Once they are in the agreement they are extremely difficult to remove. Reserves, once spent, are gone. Funding for proposals leveraged against reserves become unfunded liabilities in year two and on. Reasonable people, on both sides of the table, presented with sound economic analysis will come to this conclusion in time. It is crucial for the superintendent to ensure that support services for bargaining are in place and readily accessible.

Research under the responsibility of the secretary-treasurer:

(a) Preliminary requirements:

- a. Number of employees.
- b. Total payroll.
- c. Average salary rate.
- d. Determine cost of benefits (Group Life, Extended Disability, Extended Health Care, Dental, Vision, Alberta Health, Employment Insurance, Canada Pension Plan).

- e. Gather base data and determine cost of allowances (principal, vice-principal, etc).
- f. Determine cost of professional development.
- g. Determine pupil/teacher ratio & range of class sizes.
- h. Determine average hours of instruction and range of hours of instruction.
- i. Identify method of determining average sick leave other leaves taken.

(b) Interim requirements:

- a. Costing union proposals; eg. ATA PD proposal
- b. Policies and admin practices
- c. Admin investigation and response to concerns during the talks

(c) Closing requirements:

- a. Total compensation analysis – the cost of each agreed agreement change described in terms of percentage of total teacher compensation, salary plus employer share of benefits.

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Professional Services

An important role for the superintendent is guiding and assisting trustees in the development of bargaining principles that are based on the division's educational mandate and its three-year educational plan. Few divisions/districts have anyone on staff who can effectively counter-balance the trained representative of ATA Teacher Welfare assigned to work with the local EPC at the bargaining table. Therefore, one of the most important ways that the superintendent provides support to the board is by ensuring that they have the services of a qualified labour relations consultant. In most instances, it is the consultant who is assigned the role of the board's chief spokesperson. In some sectors, lawyers do this work. Here in the AB Education sector, it is mostly done by ASBA Labour Relations Services staff. The labour professional will be involved in the strategic planning, but with the superintendent emphasizing that the division's educational goals and its relationship with its teachers before, during and after negotiations are guiding factors in the bargaining process. Consideration may be given to bargaining trends and issues in other divisions/districts but should not be allowed to co-opt or skew the bargaining process. Following are some principles to use when developing and protecting these interests prior to and during collective bargaining:

REVIEW MISSION STATEMENT - How collective bargaining can contribute to its achievement

REVIEW EDUCATIONAL PRIORITIES - How collective bargaining is may be used to support the Three-Year Educational Plan.

GUIDING PRINCIPLES FOR BARGAINING

- Fiscal Responsibility (affordable and sustainable)
- Stability & Predictability (Long Term CA)
- Level of Programs & Services Provided for Students (Cannot diminish programs for students)
- Fairness & Balance in Bargaining (give and take at bargaining table, improvements for both)
- Equity - Fairness to all employees (compensation) and being responsible employers
- Settlements must stay at or below grant levels
- Flexibility (recognize local circumstances & individual needs)
- Simplify terms of the agreement where they are awkward and prone to misinterpretation
- Maintain & Enhance Student Learning Opportunities
- Retain Management Rights
- Both parties feel listened to & heard

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Caucus and Strategy

For a superintendent new to the role, participation in the employer caucus of ATA bargaining is an invaluable experience. Collective bargaining is a complex combination of communications, psychology, chess-type strategy, and exacting, legalistic word-smithing. Bargaining tactics and strategies are activities in which superintendents need not always be directly involved, but it is advantageous to be familiar with them. Caucus meetings are held by the bargaining committee in preparation for bargaining, and during each negotiation session of the parties, between exchanges of proposals. It is in caucus where the teamwork of bargaining flourishes. This is where participants get a detailed sense of the workings of specific elements of the agreement, as language is constructed, deconstructed, analyzed, and evaluated. Bargaining proposals address and impact administrative, financial, and educational issues. They may come initially in the form of specific language, or of 'interests - to be discussed'. Specific language is tabled at the outset when an issue is well understood by the parties and only a finite range of solutions would address concerns. Other proposals are identified by subject and agreement article number and title, with no preconceived language attached, when the party making the proposal seeks the input and collaboration of the other party in finding a broader, perhaps more creative solution. Many issues that find their way into negotiations are best resolved without change to the agreement, in information-sharing and administrative changes.

It is advantageous to categorize and prioritize both parties' opening proposals immediately following the opening exchange. A proposal may be non-monetary, minor monetary, or major monetary in nature, and it is efficient to address them in that order, in like groupings, or packages, containing proposals of both parties whenever possible. Once non-monetary proposals are signed off, the parties move into minor monetary areas, and so on. Proposals from both parties should also be rated as to their importance. Sometimes non-monetary or minor monetary proposals are more important to the sponsoring party than some aspects of salary and benefits, and the sooner a sense of that is developed, the more effective the process will be.

Communications and Protocol

At the first meeting of the bargaining committees, several procedural matters must be addressed and agreed upon: scheduling and logistics, confidentiality of process, joint communiqués, and civility. The superintendent is well advised to have gone through these issues with the employer bargaining committee in advance to establish acceptable standards in these areas, for it will fall to the superintendent to address concerns of parents and the public if bargaining takes a turn for the worse. These are matters to be decided at the outset of bargaining; if they are left for later, hard feelings may have developed and they may be impossible to address:

- Meeting site – most AB school divisions regularly meet at the board office for purposes of efficiency and cost; however, if bargaining becomes fractious, a fall-back location may have to be found. There have been some situations which have developed, such as following a strike vote or lock-out poll, when the board office is not acceptable to the ATA committee.
- Notice required to schedule or cancel a meeting – Optimally, notice to schedule or cancel is provided at one meeting and agreed then. In exceptional circumstances between meetings, scheduling amendments must have a minimum acceptable time; 72 hours is not uncommon.
- Meal breaks – length and location - Whenever the parties go out for a meal in the midst of talks, for a break, it is refreshing but time-consuming. If time is of the essence, catering is often brought in. The parties may agree to take turns paying for meals. This should be agreed at the outset of the talks, to save time and improve efficiency. When talks get sticky, this minor matter can be an annoyance.
- Public pronouncements on the status of bargaining – These should be rare events, and whenever possible, jointly scripted. Each party has the obligation to provide some detail on status of bargaining, even on unresolved matters, to its respective constituents. However, such information is not appropriate for public consumption. It leads to anxiety and strained working conditions in schools and does nothing to improve prospects for settlement.
- Civility – The parties must agree to focus on issues, not personal opinions or subjective assessments based on personal experiences. Often these are hard to avoid if a bargaining committee member has a stake in a proposal, based on a personal experience. It important discuss this at the outset, considering negative comments and outbursts that may occur later, in ways that are solution-focused and based on preliminary agreement, to avoid humiliation and embarrassment later.

Preparing for any and all eventualities

The superintendent has primary responsibility to ensure that critical services are not interrupted because if bargaining becomes problematic the superintendent will have to lead in the development of emergency plans. One such eventuality is breakdown of talks and the taking of a union strike vote or an employer/board lock-out poll. There are critical times in the school year, such as January, and Diploma exams, that must be considered. Bargaining can impact such services even without the legal taking of a strike vote. Teachers may be counselled at any time during negotiations to withdraw certain services to draw attention to their bargaining demands. This is known as ‘work to rule’, and it can be more disruptive than a legal strike. In a situation where work to rule is invoked after the strike vote contemplated in ALRC Div. 13, below, a school board may consider locking its teachers out to avoid disruptions of services, particularly at critical times of the year. Note: There are Strike/Lock-out Plan models available for your consideration.

Summaries of the passages in the Alberta Labour Relations Code that describe the process and its eventualities are included here for reference; also provided are definitions of terms associated with difficulties in the bargaining process.

Legislation - The Alberta Labour Relations Code (ALRC)

Division 10 – Collective Bargaining

- Sec. 59 – notice to commence bargaining: “not less than 60 days and not more than 120 days preceding expiry of the term of the collective agreement...” *If notice is not served within this period, the previous agreement is automatically extend for one year. The same notice period kicks in the following year.*{Div. 21, sec. 130}
- What does the SSD agreement say on this?
- Sec. 60 – parties must meet within 30 days once notice is served unless mutually agreed to extend; and shall exchange proposals within 15 days of initial meeting

Division 11 – Mediation and Enhanced Bargaining

- Sec. 64 – either party may request to the Director of Mediation Services to have the services of a mediator, **as soon as notice to bargain is served.**
- Sec. 65 – the mediator remains attached to the negotiations until the contract is ratified by the parties. He may: (1) encourage and assist the parties to find terms of settlement; (2) recommend terms for settlement to the parties; or (3) “write out”. Once the mediator has

written out (date the letter is received by the Minister of Labour), there commences a 14-day 'cooling off period', following which....

Division 13 – Strikes and Lockouts

- The employer is eligible to conduct a lockout poll, or
- The union is eligible to conduct a strike vote

Division 12 – Votes on Proposals

- Sec. 68 – either party may request that the other party conduct a supervised vote on the mediator's recommendations
- Sec. 69 – either party may request that the other party conduct a supervised vote on the other party's last offer

Division 15 – Voluntary Interest Arbitration

- Sec. 93 – the parties may agree in writing to submit their unresolved issues for resolution to a one or three member arbitration board
- Sec. 95 – the award of the board is binding

Division 16 – Compulsory Interest Arbitration

- Sec. 97 – either party may apply to the Minister for a CIA board. Minister always appoints a mediator first, if one is not already in place
- Sec. 98 – the award is binding
- Sec. 100 – The CIA board may use the 'combined' method, or the 'final offer selection' method of developing its award

Division 17 – Disputes Inquiry Board

- Sec. 106 – the one or three- person DIB **recommends** terms of settlement to the Minister.

Division 21 – Effect of a Collective Agreement

- Sec. 130 – Bridging: an agreement is always deemed to be in place unless (a) a new agreement replaces it, (b) a bargaining agent is de-certified, or (c) a strike or lock-out commences

Definitions:

- **Bargaining in Bad Faith (BinBF)** – the most basic context for this 'bad practice' is in the concept of time. The AB Labour Code (see Sec. 7, below) provides timelines for notice to bargaining and response to notice. This is at the outset of the process; but, if at any time during the process, one party does not make reasonable to set and keep dates for bargaining sessions, the other party may file a complaint of BinBF with the Labour Board, which will result in an order to meet within specified timelines. Also, should a negotiation committee table successive proposals that are the same as or more regressive than preceding ones, this may result in a charge of bargaining in bad faith.
- **Receding Horizons Bargaining (RHB)** – Opening bargaining positions must always be respected. If you table a proposal, you cannot remove it from contention except by agreement of the other party. Similarly, you cannot remove endorsement of an opposing proposal, once it has been made in writing, without agreement of the other party, even if it is not 'signed off', unless it is presented 'without prejudice', contingent

upon some related concession by the other party, or in a package including other linked proposals/issues. These tactics constitute RHB and can result in Labour Board BiBF charges.

- **Negotiating in the Press** – not necessarily BiBF, but not a good idea either: EGs (1) One party responds to an inquiry from the media providing details of unresolved, inherently confidential , bargaining issues/proposals; (2) One party publicly characterizes the bargaining tactics of the other party in a negative context.

Expectations for the immediate future

In the early months of 2012, the outcome of this second round of Tripartite Discussions among the ATA, the ASBA, and Alberta Education is awaited. There might be a repeat of the 2007 round, there might be a slight variation on the 2007 experience, or there could be a breakdown of talks altogether. The most recent information states that talks are ongoing. The ATA has successfully kept professional development, assignable time, and instructional time in play. The ASBA continues to promote 'sustainable funding' as an essential component of any agreement.

2007

- Government funded the multi-million-dollar deficit which had resulted from the ATRF failing to impose make-up premiums on teachers following federal tax reg. changes in the mid-eighties (as nearly all other public Canadian pension plans had done by the late-nineties!).
- ATA receives a five-year formula salary settlement, without any factor to provide teacher contribution to the pension finding.
- Government undertakes to fund the formula settlement, and (temporarily) reneges ... twice.
- Boards receive reduced funding for all other budget accounts to enable the government to fund the teachers' salary formula, resulting in reduced numbers of teaching positions, larger class sizes, reduced professional development funding, and lower wage settlements to other board employees.
- Boards are given a 45-day window to negotiate local terms, with the provincially imposed salary formula, or face imposed binding arbitration.

A variation on 2007

- Some salary funding security
- Some funding equity for other budget lines, other employees
- A larger 'window'

These are the positive possibilities in a variation. The major negative ones are imposition of assignable and instructional time in divisions/districts where there are none now, without factoring demographic disparities.

Break-down of Tri-partite Discussions

- Return to local bargaining
- The potential for another co-ordinated/regional bargaining initiative

- The previous regional bargaining initiative seemed to lack a relationship-centred mandate, or consideration for life-beyond-bargaining for division staff and teachers.

Regardless of the outcome of Tripartite talks superintendents and trustees will soon encounter negotiations with teachers. It is time to prepare for action, to become familiar with the bargaining terrain, and to assume this leadership role. By making only slight adjustments to educational relationships a residual advantage in the bargaining process can be achieved. Knowledge of the bargaining process is useful for the direction of services in support of bargaining and in making input in caucus and to trustees in other contexts. Understanding and managing the relationship with a labour relations consultant is critical in promoting the division's educational mandate and in respecting and nurturing its working relationships. Understanding the process also helps in establishing a complete bargaining strategy and in reacting to adversity in timely effective ways.