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The Assault on School Teacher Bargaining in Ontario
À l'assaut de la négociation collective chez les enseignants de l'Ontario
El ataque contra la negociación de los profesores de escuela en Ontario

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Résumé de l'article

Entre 1975 et 1997, la négociation chez les enseignants a été conduite sous l'égide de la loi concernant la négociation collective entre les commissions scolaires et leurs enseignants, communément appelée le « Bill 100 ». Suite à l'élection du gouvernement Harris en 1995, le secteur public, incluant l'éducation, a fait l'objet de coupures budgétaires, de restructuration et de réduction de sa taille. Cet article analyse la réforme gouvernementale du secteur public de l'éducation et fait une évaluation de son impact sur la négociation chez les enseignants. Notre message est le suivant : dans son zèle à remanier le système d'éducation, le gouvernement a jeté le bébé avec l'eau du bain ! De façon plus spécifique, il a démantelé un système innovateur et fructueux de négociation collective chez les enseignants et a entrepris un « assaut législatif » contre la négociation collective. Cela a déstabilisé le système de relations du travail et créé un climat de perpétuel conflit.

L'adoption du Bill 100 en 1975 venait formaliser les coutumes et les traditions des négociations informelles pratiquées alors depuis des décennies, incluant la perpétuation d'une structure locale et balkanisée de négociation. L'étendue de la négociation incluait virtuellement toute condition de travail pourvu qu'elle n'entrât pas en conflit avec le droit existant. Les enseignants obtenaient le droit de grève et un nombre de mesures furent établies pour la prévention et le règlement des conflits; par exemple, la commission d'enquête obligatoire, le recours obligatoire aux offres finales et le vote de grève. On mettait également sur pied un organisme administratif distinct, la Commission des relations dans l'éducation, dont le rôle consistait à surveiller les négociations avec les enseignants, à nommer des tiers neutres, à conseiller le gouvernement dans des situations où des arrêts de travail pouvaient nuire à l'éducation des élèves et à maintenir une banque de données sur les conventions collectives entre les commissions scolaires et leurs enseignants.

Quoique « l'assaut sur la négociation » chez les enseignants n'ait débuté qu'en 1997, une multitude de changements dans le secteur de l'éducation l'avait précédé. D'abord, l'allocation budgétaire prévue pour les écoles publiques avait été réduite de 400 millions de dollars pour l'année 1996 seulement et le gouvernement avait annoncé des projets de changements et d'améliorations du système scolaire. Ensuite, le gouvernement avait mandaté deux études, une pour analyser la structure des coûts de l'éducation et l'autre pour évaluer l'efficacité et l'efficience de la législation en vigueur (le Bill 100). Ces rapports ont donné le coup d'envoi à des changements législatifs majeurs au cours de l'année qui a suivi.

Les changements les plus importants et les plus contestés ont été apportés par le « Bill 160 », soit la loi de 1997 visant l'amélioration de la qualité de l'éducation. Ceci a donné lieu à un arrêt de travail de deux semaines chez les 126 000 enseignants de la province et a entraîné un congé forcé pour 2,1 millions d'élèves. Cette nouvelle loi abrogeait le Bill 100 et assujettissait les enseignants à la loi sur les relations du travail. Elle prévoyait aussi l'imposition d'une charge de travail plus lourde pour les enseignants du secondaire. D'autres changements non moins controversés accordaient au Cabinet des pouvoirs étendus pour établir la politique de l'éducation et pour contrôler les commissions scolaires et leurs dirigeants. Elle accordait aussi à la province un plus grand contrôle des dépenses en éducation et empêchait les commissions scolaires locales de se procurer des revenus par l'imposition d'une taxe sur la propriété locale.

Le Bill 160 annonçait un glissement de paradigme en matière de négociation collective. Il mettait fin à presque un quart de siècle de négociations sous l'égide du Bill 100. C'était aussi le début d'un chapitre de négociation forcée, au sein de laquelle le gouvernement intervenait de plus en plus en vue de restreindre le champ du négociable, enrayer le droit de grève et restreindre l'impartialité et l'indépendance du mécanisme d'arbitrage des différends.

La ronde de négociation de l'année 1998 a donné lieu à une montée spectaculaire des litiges sur la charge de travail et le refus des enseignants de se porter volontaires pour des activités parascolaires. À la fin, la tentative du gouvernement d'établir une norme plus élevée et standardisée du temps d'enseignement a échoué. En juin 2000, le gouvernement dû légiférer pour imposer une charge plus élevée de travail aux enseignants. De plus, dans une tentative de réduire la marge de manoeuvre de négociation chez les syndicats d'enseignants, il menaçait de rendre obligatoires les activités parascolaires si les enseignants refusaient d'y participer. Les syndicats d'enseignants ont alors évité la confrontation en acceptant l'accroissement de la charge de travail mais ils ont maintenu leur refus de participer aux activités parascolaires. S'ensuivit une guerre d'usure jusqu'au moment où le gouvernement décida d'abandonner la ligne dure en mai 2001, ce qui traçait la voie vers une réduction de la charge de travail des enseignants.

L'assaut sur la négociation collective des enseignants semble traduire un éventail de facteurs. Pour une chose, la négociation collective apparaissait comme un obstacle à une réforme de l'éducation. D'autres facteurs, de nature idéologique (la politisation des politiques du travail et l'hostilité du gouvernement face aux syndicats), de nature opportuniste (le fait d'humilier les enseignants pouvait se traduire par des gains électoraux), de nature personnelle (l'antipathie du Premier ministre à l'égard des syndicats d'enseignants), ont façonné l'approche gouvernementale dans le domaine. Le gouvernement Harris a apparemment fait preuve d'un manque de compréhension et d'appréciation des relations du travail dans le secteur public. Ceci s'est traduit dans ses tentatives à courte vue pour restreindre le champ de la négociation collective par la législation; dans son échec à reconnaître que le contrôle centralisé des dépenses et d'autres sujets en éducation ne cadraient pas avec les structures locales de négociation, et, également, dans ses attaques à l'intégrité de l'arbitrage des différends.

En conclusion, la poursuite de la stratégie de réduction des coûts de la part du gouvernement Harris et le mépris de ce dernier à l'endroit des syndicats d'enseignants ont abouti au retrait d'une législation hautement stable et fructueuse. À la place, on retrouve une série de mesures cavalières dans une tentative de contrôle du processus de négociation et de ses résultats. Ces efforts ont sous-évalué la persistance de la négociation collective et, en bout de ligne, se sont avérés vains. De plus, et d'une manière plus importante, les tentatives pour discréditer la négociation collective ont entraîné une escalade drastique des conflits aussi bien à la table des négociations que sur les lieux de travail. Il sera intéressant de voir l'impact qu'auront le récent compromis sur la charge de travail des enseignants et la démission du Premier ministre Harris sur les perspectives d'une négociation stable chez les enseignants.

The Assault on School Teacher Bargaining in Ontario

JOSEPH B. ROSE

Between 1975 and 1997, school teacher bargaining was conducted under the School Boards and Teachers Collective Negotiations Act (Bill 100). By most accounts, the teacher bargaining law was successful in promoting bilateral settlements with minimal strike activity. Following its election in 1995, the Harris government reduced public expenditures and introduced educational reforms. In doing so, it repealed Bill 100 and passed laws restricting teacher bargaining. These measures ranged from imposing restrictions on the scope of negotiable issues to attempts to make "voluntary" extracurricular activities mandatory. This study finds that the government's blunt and heavy-handed efforts to control collective bargaining processes and outcomes, not only proved futile, but led to an increase in work stoppages and protracted guerilla warfare at the school board level.

> They were determined, not to reform the system, but to dismantle and recreate it, which made Snobelen's off the cuff musings about the need to "invent a crisis" in education so silly. In education the Tories were the crisis.
>
> (Ibbitson 1997: 222)

Following the 1995 provincial election, the Harris government began implementing *The Common Sense Revolution* (Ontario PC 1994), which included massive spending cuts, major reductions in personal income taxes, and restructuring and downsizing the public sector. As suggested by the

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above quotation, Education Minister Snobelen and his Cabinet colleagues "were convinced that Ontario's education system was rotten and regarded transforming education as a mission as important as cutting taxes and slaying the deficit" (Ibbitson 1997: 222). The main argument of this article is that in its zeal to overhaul the education system, the government threw out the baby with the bath water. Specifically, it dismantled an innovative and successful system of school teacher bargaining and mounted a legislative assault on the institution of collective bargaining. This destabilized labour relations and created a climate of perpetual conflict.

These developments mirrored an international trend in public sector restructuring stimulated by broadly similar economic and political pressures (Rose, Chaison and de la Garza 2000). Globalization, competitive pressures and the rise of neo-conservative governments have curtailed the welfare state and increased the emphasis on market-based solutions to economic and social policies. The budgetary crises faced by governments in the 1990s led to reductions in public spending, retrenchment and attempts to reinvent government. Similarly, educational reform reflected common concerns—recognition of the link between education attainment and competitiveness, dissatisfaction with the education system, and the imperative of cost-containment. In Ontario, the educational agenda began taking shape in the early 1980s as successive governments explored ways of exerting greater control over funding, governance and curriculum.[1] Consequently, it was left to the Harris government to implement reforms based on what it saw as excessive spending and scholastic mediocrity.

Despite the presence of similar environmental pressures, it is significant that the magnitude, pace, form and manner in which restructuring decisions are made varies across nations and across Canadian jurisdictions (Rose, Chaison and de la Garza 2000). As well, the impact of restructuring on collective bargaining often depends on whether governments pursue strategies based on adversarial hard bargaining, cooperation or legislative fiat (Swimmer 2000). Similarly, the nature of educational reforms and the manner in which they are implemented have had significantly different effects on teacher collective bargaining. It is noteworthy that the neo-conservative Klein government in Alberta introduced broadly similar education reforms without undermining the collective bargaining system (Olson 2001).

The article is divided into five sections. The first section describes the key features of School Boards and Teachers Collective Negotiations Act passed in 1975 (hereinafter referred to as Bill 100). This is followed by a review of two studies undertaken by the Harris government that contributed

1. For an excellent discussion of the Ontario school system between 1950 and 1998, see Gidney (1999).

to the introduction of education reforms, repeal of Bill 100 and transfer of teacher bargaining to the Labour Relations Act. Given criticisms of the teacher bargaining system, the third section assesses the efficacy of Bill 100. In the fourth section, we examine the impact of the legislative changes introduced by the Harris government on the 1998 and 2000 bargaining rounds. In the final section, we assess the logic of legislative intervention and its implications for collective bargaining.

THE EMERGENCE OF SCHOOL TEACHER BARGAINING

In 1975, Ontario adopted a collective bargaining statute exclusively for teachers.[2] In many respects, Bill 100 formalized the customs and traditions of the informal negotiations practiced for decades, including continuation of the local and balkanized structure of bargaining. The balkanized nature of negotiations reflected the province's school system which was divided into public and Catholic, and English- and French-speaking school boards, and the existence of five teacher federations organized according to gender, language, religion and level of education (Thomason 1995).[3] The essential features of Bill 100 can be summarized in terms of four broad categories.

Bargaining Structure and Scope of Bargaining. Bill 100 statutorily recognized teacher unions and included principals and vice-principals in teacher bargaining units.[4] However, they were required to remain on the job in the event of a work stoppage or the closing of a school. The locus of bargaining was the local school board,[5] with separate negotiations being conducted by branch affiliates for elementary and secondary teachers. The law allowed the provincial bodies to take over negotiations (Downie 1992).

2. A majority of provinces have separate legislation for teacher bargaining (Swimmer and Thompson 1995). In terms of the acquisition of bargaining rights, bargaining structure, the scope of bargainable issues and the right to strike, Bill 100 was in the mainstream of teacher bargaining laws.

3. The five teachers' unions were: the Federation of Women Teachers' Association (FWTA); the Ontario Public School Teachers' Federation (OPSTF), formerly the Ontario Public Men School Teachers' Association; the Ontario English Catholic Teachers' Association (OECTA), the Ontario Secondary School Teachers' Federation (OSSTF), and the l'Association des enseignantes franco-ontarians (AEFO). In 1998, the FWTA and the OPSTF merged to form the Elementary Teachers' Federation of Ontario (ETFO), the largest teachers' union in the province (Steed 1998).

4. The practice of including principals and vice-principals in bargaining units varies across Canadian jurisdictions.

5. Toronto was an exception. The five boards representing the surrounding boroughs had negotiated jointly as the Metropolitan Toronto School Board since 1967.

Bill 100 broadened the scope of bargaining beyond compensation issues. This recognized the important interrelationship of compensation and other issues (e.g., class sizes and pupil-teacher ratios). It was also recognized that limiting the scope of bargaining would either be impossible in the long-run or result in conflict (Downie 1992).

The Education Relations Commission. Collective bargaining was conducted under the aegis of the Education Relations Commission (ERC). Its duties included: (1) monitoring teacher-board negotiations; (2) appointing third-party neutrals (e.g., factfinders and mediators): (3) conducting and supervising last-offer and strike votes; (4) advising the government whether work stoppages jeopardize students' education; and (5) maintaining a comprehensive data bank on teacher-board collective agreements (Downie 1992).

The Negotiating Process. Bill 100 granted teachers the right to strike and built in safeguards for the prevention and settlement of labour disputes, including factfinding and mediation. Except when the parties reached a voluntary agreement or jointly agreed to submit their differences to voluntary arbitration or final-offer selection, factfinding was compulsory and a prerequisite for a legal work stoppage. Other safeguards included the requirement for last-offer and strike votes prior to initiating economic sanctions (Downie 1992).

Jeopardy. As an independent agency comprised of labour experts, the ERC's role was to insulate and protect collective bargaining from political interference, i.e., "act as a buffer between the government and the collective bargaining process" (Downie 1992: 198). Specifically, it was responsible for determining whether a work stoppage placed the students' education in jeopardy and assessing the prospects for a negotiated settlement. An advisement that jeopardy existed and a prognosis that the impasse was unresolvable was considered a precondition for back-to-work legislation. The ERC possessed wide discretion to settle labour disputes. This included using its considerable powers of persuasion to recommend further negotiations with the assistance of a mediator or to encourage the parties to proceed to voluntary arbitration.

BEFORE THE ASSAULT

Although the assault on teacher bargaining did not begin in earnest until 1997, several changes to the education sector preceded it. First, funding for public schools was slashed by $400 million in 1996 alone and the government announced plans to overhaul and improve the education system. Second, the government commissioned two studies, one to examine education cost structures and the other to assess the effectiveness and

efficiency of Bill 100. These reports served as the basis for major legislative changes the following year.

Education Cost Study

The impetus for educational change, including repeal of Bill 100, had more to do with cutting education costs than deficiencies in the labour relations framework. Concerns about education costs were reflected in a report prepared for the Ministry of Education in August, 1996. Relying on Statistics Canada data, the study found the estimated education cost per student in Ontario was higher than the weighted average of the nine other provinces in 1995–96 (Lawton, Ryall and Menzies 1996). This contrasted with 1981–82 when the Ontario cost per student was lower than the weighted average of the nine other provinces. The rise in Ontario education costs was attributed to two factors: the student/educator ratio and teacher salaries. Ontario's student/educator ratio declined from 16.37 in 1981–82 to 15.06 in 1995–96 (in the process, the province's ratio went from being higher to lower than the weighted average of the nine other provinces). Further, salary comparisons at the minimum and maximum end-rates grid salaries for teachers with five years of post secondary education in 1993–94 revealed:

> [...] at the maximum experience level, Ontario ($63,353) exceeded the weighted average salary of the remaining nine provinces ($51,126) by 23.9%. At the minimum experience level, Ontario ($36,880) exceeded the weighted average of the remaining nine provinces ($33,229) by 11.0%. Overall, [...] Ontario teacher salary grids were 15.2% higher than comparable grids of the nine other provinces (Lawton, Ryall and Menzies 1996: 3).

It added that in contrast to the nine other provinces, Ontario teacher salaries had increased in real terms.

While the appropriateness of comparing Ontario costs and salaries with a weighted average (incorporating many smaller provinces) is not without limitations, there is no question that Ontario education costs rose in absolute and relative terms. Moreover, considering education represents the second largest provincial expenditure following health care, and teacher salaries are a major component of education budgets, it follows that any serious attempt by government to control spending would likely focus on teacher salaries and staffing levels.

Review of Bill 100

In August, 1996, the Minister of Education also commissioned a study of Bill 100 by Leon Paroian, a lawyer (hereinafter called the Paroian Review) (Paroian 1996). The review process was brief (two months) and

the final report was short (17 pages) and failed to provide a meaningful analysis of the labour relations issues that were the subject of the inquiry. Indeed, rather than providing a reflective and comprehensive search for a consensus on improving labour relations, the report was a vehicle for advancing the government's goal of reducing costs and exerting greater control over education.

There were three major recommendations pertaining to collective bargaining.[6] First, Bill 100 should be repealed and teacher bargaining should be placed under the aegis of the Labour Relations Act (hereinafter LRA). This reflected the belief that factfinding was ineffective (and conciliation and mediation under the LRA were superior for resolving bargaining impasses), the Ontario Labour Relations Board could better facilitate consolidation of bargaining agents and bargaining units, and the need to minimize inefficiencies with separate administrative agencies performing the same or similar functions. While factfinding may have had some shortcomings, the report failed to demonstrate how conciliation and mediation were more effective. Even assuming they were more effective, the dispute resolution function could have been transferred to the LRA without repealing Bill 100. There is precedent for this in health care where matters such as certification, conciliation and the legality of work stoppages are covered by the LRA and interest arbitration is governed by the Hospital Labour Disputes Arbitration Act. Moreover, the the OLRB already had jurisdiction to determine the legal status of work stoppages involving teachers and school boards.

Second, the right to strike should be rescinded and replaced with binding interest arbitration. This recommendation not only reflected the author's personal intolerance of strikes, which he described as "hostage taking" requiring a "ransom to be paid", but downplayed statistical evidence showing teacher strikes were infrequent. The report recommended arbitration as a substitute for strikes, despite research evidence that arbitration imparts a modest upward bias on wage outcomes (Currie and McConnel 1991). Both school board and teacher officials rejected the introduction of compulsory arbitration. Consequently, the report, albeit reluctantly, made an alternative recommendation that teachers would be subject to the strike definition in the LRA and would not be entitled to pay when they engaged in work-to-rule campaigns.

Third, the report recommended restricting the scope of collective bargaining and enhancing the management rights of school boards. The report not only perceived professionalism and collective bargaining as incompatible, but expressed a strong preference for the pre-Bill 100

6. Other recommendations included broadening the geographic scope of bargaining and removing principals and vice-principals from teacher bargaining units.

negotiation era, i.e., when talks were restricted to salaries and protection against arbitrary dismissal, and school boards had the unfettered right to determine staffing and class size. The report concluded the open-ended scope of bargaining had had an adverse impact on education and unless management rights were restored, it would not be possible to adequately safeguard the "public interest in a quality education" system (Paroian 1996: 11). Accordingly, the report recommended that management rights and responsibilities for school boards should be enshrined in statute as non-negotiable issues. While the report clearly identified the benefits of restricting bargaining—cost savings and board control over educational programs—no attempt was made to weigh these factors against the potential labour relations costs or consequences.

Legislative Changes

These reports paved the way for education reforms. Bill 104, the Fewer School Boards Act, 1997, reduced the number of school boards from 129 to 72 through amalgamations that were effective as of January 1, 1998. This reform was broadly consistent with a national pattern of consolidating school boards. In addition, it cut administrative overhead by reducing the number of school board trustees and created the Education Improvement Commission (EIC) to oversee a new system of educational governance in the transitional period for amalgamating school boards. This was part of a broader strategy to devote a larger share of education spending on classroom instruction and improve student performance.

In September, 1997, the most significant and contentious reforms were introduced in Bill 160, the Education Quality Improvement Act, 1997. It led to a two-week protest by the province's 126,000 teachers and idled 2.1 million students.[7] The protest did not significantly alter the legislation, but it did expose the government's true agenda, which was to reduce spending and eliminate teacher positions. Although this was initially denied, Premier Harris subsequently admitted its target was to cut an additional $600 million in "waste" out of the education system (Mackie and Lewington 1997).

Bill 160 embraced several recommendations made in the Paroian Review. First, Bill 100 was repealed and teacher bargaining was placed under the LRA effective January 1, 1998. (The ERC was retained, although its responsibility was limited to advising on the need for back-to-work legislation.) Second, principals and vice-principals were removed from teacher bargaining units.[8] Third, significant restrictions were placed on the

7. Although this was a political dispute, the 1.26 million person days lost ranks as Ontario's fifth largest labour dispute in the post-WW II period.

8. This was not part of the original draft legislation. It was added in response to the what the government perceived as the support principals and vice-principals gave to the teachers' protest of Bill 160.

scope of negotiable issues. Prominent issues such as class size and instructional time were made statutory terms of employment, with average class size capped at 25 students in elementary schools and 22 students in secondary schools and instructional time established at 1300 minutes per week for elementary teachers (no change) and 1250 minutes per week for secondary teachers (a 125 minute increase).[9] The increase in instructional time for secondary teachers was achieved by a corresponding reduction in their preparation time. This change reflected the government's belief that Ontario secondary teachers had more preparation time than their counterparts in other provinces, a view staunchly rejected by teachers' unions, and its desire to require teachers to spend more time with students in the classroom.

No less controversial were changes that gave the provincial government greater control over education reform and funding. These measures not only seemed to run counter to neo-conservative principles, but they "appeared to contradict the Tories' commitment to keeping government small and close to the people" (Ibbitson 1997: 239). Specifically, Bill 160 granted the Cabinet sweeping powers to establish education policy and regulate school boards and their officials. In an attempt to equalize funding, the province assumed greater control over education expenditures and local school boards were precluded from generating revenue from local property taxes.[10] A new funding model was introduced to provide more funding for classroom instruction and less for administrative and non-classroom expenditures. The new funding formula was predicated on the legislative changes increasing instructional time and capping class size, i.e., the level of funding assumed higher teacher workloads.

Bill 160 signalled a paradigm shift in the collective bargaining framework. It brought to an end nearly a quarter of a century teacher bargaining under Bill 100. It also represented the beginning of a chapter in constrained bargaining under the auspices of the LRA.

ASSESSING THE EFFICACY OF BILL 100

Before turning to the new bargaining regime for teachers, it is useful to consider the performance of teacher bargaining under Bill 100. The Ministry of Education study on education costs, while instructive, does

9. In addition, the number of professional development days was capped at four per year and the government took over from school boards the authority to determine the number of instructional and examination days, holidays, and the length of the school day and the school year.

10. Many school boards raised property taxes in 1996 to offset provincial funding cuts.

not provide a direct or complete assessment of the impact of collective bargaining. The Paroian Review, despite its mandate, offered little in the way of a systematic evaluation of the efficacy of Bill 100. In order to assess the effectiveness of a piece of collective bargaining legislation, it is useful to consider both collective bargaining outcomes and the system's capacity to produce bilateral settlements without work stoppages. Our analysis considers these two measures. First, we compare negotiated increases in base wage rates for teachers with the private sector, the public sector and other education employees (non-teachers). Ideally such a comparison should begin in 1975, when Bill 100 came into effect. Unfortunately, comparable data are only available starting in 1982.[11] These data are also limited to changes in base wage rates and, as such, do not disclose changes in salary grid structure, or changes in average wage rates associated with adjustments based on service. To supplement the analysis, we compare average teacher salaries at the minimum and maximum end-rates grid salaries for Ontario and the other provinces between 1975 and 1997 (the operation of Bill 100). This comparison considers whether collectively bargained salary increases for Ontario teachers were in line with teachers elsewhere. It should be observed that in addition to teachers, Ontario workers are the highest wage earners in Canada. Accordingly, we consider whether Ontario teacher salaries parallel improvements for wage earners generally.

It should be observed that although a great deal of controversy surrounded teacher workloads in Ontario, inter-provincial comparisons are complicated by the lack of historical and comparable data and the complexity of the issue. Suffice it to say, collective agreement provisions covering pupil-teacher ratios, class size, instructional time and preparation time have become increasingly prevalent in Ontario and elsewhere (Thomason 1995; Canadian Teachers' Federation 1998a). However, owing to the inter-related nature of these issues, variations in collective agreement coverage and measurement issues, it is difficult to directly compare workload outcomes across jurisdictions.[12] Moreover, research findings are mixed as to whether collective bargaining has an independent effect on teacher workloads (Downie 1992).

11. Prior to 1982, statistical information compiled by the ERC and the Ontario Ministry of Labour were stored in different systems. These systems have not been merged.

12. For example, class size may be defined as an average, maxima, or may vary by type of class and some class size guidelines may be more flexible than others. A minimum amount of preparation time may be expressed in minutes, as a percentage of instructional time and may include a number of professional development days in the calculation. In some cases, there is no minimum guarantee and, in others, the amount of time is to be agreed upon between the teacher and the principal (Canadian Teachers' Federation 1998a).

Finally, we consider settlement rates under collective bargaining (i.e., the proportion of settlements achieved without proceeding to the final impasse stage). Although settlement data for teachers were dismissed in the Paroian Review, the capacity of the parties to achieve voluntary settlements without labour disputes and/or excessive reliance on interest arbitration is an important measure of the effectiveness of a bargaining statute. Indeed, this measure takes on added significance since Bill 100 gave teachers the right to strike.

Negotiated Base Wage Rates

A comparison of cumulative wage changes in Ontario is presented in Table 1 using a wage index (1981 = 100) for different sectors. These figures reflect average annual negotiated changes in base wages from major collective agreements (200 or more employees). By 1997, the wage index for the overall public sector (179.5) exceeded the private sector index (169.2). However, the wage index for teachers (179.1) was below the public sector index and considerably lower than the education index excluding teachers (191.7). Indeed, 1982 was the only year that base wage increases for teachers exceeded other education employees. These results indicate that teacher settlements were in line with overall public sector settlements and substantially lower than negotiated by other education employees.

TABLE 1

Cumulative Percent Wage Increase: Private and Public Sectors, Teachers and Other Education Employees, 1981–1997 (1981 = 100)

Sector	*Cumulative % Wage Increase*
Private sector	169.2
Public sector	179.5
School teachers	179.1
Other education employees	191.7

Source: Calculations based on a special data request from the Office of Collective Bargaining Information, Ontario Ministry of Labour. The calculations involved setting 1981 equal to 100 and cumulating the average annual base wage increase. Settlements cover collective agreements of 200 or more employees.

Minimum and Maximum Teacher Salaries

There is no dispute that minimum and maximum end-rate grid salaries in Ontario tend to be higher than the weighted average for the nine other

provinces. Another way of looking at teacher salaries is to compare salary increases under Bill 100 with increases in teacher salaries elsewhere.

Table 2 presents salary rankings for teachers with at least five years post-secondary education for 1974 and 1997. Representative salary grid information is provided for the minimum and maximum end-rate salaries in 14 jurisdictions, including city salary grids where there are no provincially negotiated salary grids. In the case of Ontario, four salary grids were utilized (Canadian Teachers' Federation 1989, 1998b). The figures indicate that maximum end-rate teacher salaries in Ontario were ranked the highest in Canada in both 1975 and 1997. Minimum end-rate salaries were more variable with Ontario ranked in the middle to low range in 1974 and closer to the top end, but below Vancouver in 1997 (and in one case below Manitoba). Using a salary index (1974 = 100), the 1997 Ontario teacher salary indices ranked the highest at the minimum end-rate and among the highest at the maximum end-rate (ranking 1st, 3rd, 4th and 7th).

TABLE 2

Teacher Salary Rankings and Indices: Minimum and Maximum End-Rates, 1974 and 1997

	1974		*1997*		*Salary Index (1974 = 100)*	
Jurisdiction	*Min*	*Max*	*Min*	*Max*	*Min*	*Max*
Newfoundland	4	12	7	12	332.9 (10)	349.7 (6)
PEI	14	14	14	14	357.3 (7)	357.2 (5)
Nova Scotia	9	11	13	13	308.2 (13)	309.3 (13)
New Brunswick	13	13	11	10	368.8 (6)	368.7 (2)
Quebec	1	6	10	11	300.9 (14)	281.8 (14)
Ontario:						
Carleton Elem.	11	2	3T	2T	425.0 (1)	367.0 (3)
Carleton Sec.	7	1	3T	2T	386.0 (4)	336.8 (7)
London Sec.	12	3T	6	4	390.0 (3)	361.7 (4)
Toronto Elem.	10	3T	2	1	405.5 (2)	370.0 (1)
Winnipeg	3	9	5	8	341.5 (8)	334.4 (9)
Saskatchewan	8	10	12	9	323.4 (12)	320.7 (12)
Calgary	6	8	9	7	332.9 (11)	331.4 (11)
Edmonton	5	7	8	6	337.6 (9)	334.1 (10)
Vancouver	2	5	1	5	375.3 (5)	334.6 (8)

Source: Canadian Teachers Federation (1989, 1998b). The salary index involved setting 1974 equal to 100.

The relative improvement in Ontario teacher salaries is attributable to two factors. First, the onset on collective bargaining is often associated

with large wage increases, especially where catch-up can be justified. In the period preceding Bill 100, Ontario teacher salary increases lagged increases for teachers elsewhere, especially at the minimum end-rate (Canadian Teachers' Federation 1998b). Conversely, immediately following passage of Bill 100, Ontario teacher salary increases exceeded most other jurisdictions, with the biggest gains at the minimum end-rate. Second, the relative position of Ontario teacher salaries also made gains in the late 1980s when the province's GDP grew faster than the GDP of the G-7 countries, including Japan.

Average Weekly Earnings

Another way of looking at Ontario teacher salaries is to consider whether their relative position showed greater improvement than the relative position of Ontario workers generally. Historical data on the industrial composite of average weekly earnings were based on surveys of large firms. In the period 1975 to 1982, Ontario ranked third nationally, behind British Columbia and Alberta. In 1982, average weekly earnings in Ontario were $285.57 or almost 15 percent lower than British Columbia. Beginning in 1983, average weekly earnings were based on a more comprehensive survey. In 1983, Ontario ranked fourth nationally and average weekly earnings were 11 percent below British Columbia and 1.6 percent below the Canadian average (see Table 3). By 1997, Ontario was ranked first and enjoyed a 4 percent premium over British Columbia and 6.8 percent premium over the national average. In other words, average weekly wages in Ontario improved by more than 15 percent and 8 percent relative to British Columbia and the Canadian average, respectively. Using an index of average weekly earnings (1983 = 100), the 1997 index was 169.7 for Ontario, 156.3 for Canada and ranged from 143.7 to 149.1 for the other nine provinces. These figures clearly show that average weekly earnings in Ontario rose much faster than the rest of the country. They also suggest that the improvement in the relative position of Ontario teacher salaries was consistent with the improvement in the relative position of Ontario wage earners.

Settlement Rates

Table 4 presents collective bargaining data for 1982 to 1997 on settlement stages in Ontario for bargaining units of 200 or more employees. The figures reveal that settlement behaviour under Bill 100 differs from other bargaining regimes in several respects. Firstly, for teachers, very few negotiations proceed to the final stage of bargaining. The overall dispute rate (percentage of settlements resulting from work stoppages and

TABLE 3

Average Weekly Earnings for Ontario, British Columbia and Canada, 1983–1997

Year	*Ontario*	*B.C.*	*Canada*	*Ontario/B.C.*	*Ontario/Canada*
1983	$376.57	$418.50	$382.76	.900	.984
1984	395.72	426.90	398.66	.927	.993
1985	414.47	438.59	412.75	.945	.996
1986	433.35	440.43	425.16	.984	1.018
1987	453.80	454.22	441.23	.999	1.028
1988	477.70	464.44	460.67	1.029	1.037
1989	505.11	494.93	484.23	1.021	1.043
1990	526.81	512.04	506.24	1.029	1.041
1991	553.92	531.80	529.48	1.042	1.046
1992	576.85	545.89	547.98	1.057	1.057
1993	589.55	558.18	557.94	1.056	1.057
1994	604.79	577.92	568.27	1.046	1.064
1995	610.29	594.69	573.75	1.026	1.064
1996	625.71	607.54	586.06	1.030	1.068
1997	638.97	614.17	598.26	1.040	1.068

Source: Statistics Canada, Employment, Earnings and Hours, December, 1998, Catalog no. 72–002-XPB.

TABLE 4

Collective Bargaining Settlements and Settlement Rates by Settlement Stage, 1982–1997

Settlement Stage	*Private Sector*	*Public Sector*	*School Teachers*	*Other Education*
	(n = 3,247)	*(n = 4,801)*	*(n = 1,460)*	*(n = 778)*
Direct bargaining	32.8%	39.8%	59.6%	44.6%
Non-binding procedures*	56.3%	28.9%	26.2%	37.1%
Arbitration	0.1%	13.9%	0.4%	0.5%
Strike	10.7%	3.4%	2.2%	4.1%
Legislation and other**	0.1%	14.0%	11.6%	13.6%

Source: Calculations based on a special data request from the Office of Collective Bargaining Information, Ontario Ministry of Labour. Settlements cover collective agreements with of 200 or more employees.

* This category combines settlements at the conciliation, post-conciliation, mediation, post-mediation, factfinding and post-factfinding stages.

** Includes wage restraint laws, back-to-work legislation, extension of collective agreements achieved under legislative provisions and through negotiations.

arbitration) was 2.6 percent. This was lower than the rates for other education employees (4.6 percent), the private sector (10.8 percent) and the public sector (17.3 percent). The teacher strike rate of 2.2 percent is also lower than the other groups. The low strike rate, which is consistent with findings for earlier years, has been attributed to the ERC's role in monitoring negotiations and assembling a quality data bank to assist the parties and third-party neutrals (Downie 1984; Swimmer 1985). It is particularly noteworthy that the teacher strike rate compares favourably with the overall rate for the public sector where many groups do not have the right to strike. Second, in contrast to other groups, a much larger share of teacher settlements (59.6 percent) are achieved at the direct bargaining stage. For other sectors, direct bargaining accounted for between 32.8 percent and 44.6 percent of total settlements. As a result, there is less third party intervention in teacher bargaining than in other sectors.

On balance, these data reflect positively on the efficacy of Bill 100. The evidence indicates negotiated increases in base wages were slightly below the average for public sector employees and considerably lower than non-teachers. Although average Ontario teacher salaries rank at or near the top nationally, the improvement in teacher salaries reflects the economic buoyancy of the province and is consistent with the improved relative position of Ontario wage earners generally. Teacher bargaining has also resulted in a higher proportion of direct bargaining settlements and lower dispute rates than other sectors. Thus, whatever reservations may have existed about teacher strikes, Bill 100 provided a framework for stable labour relations.

THE ASSAULT ON SCHOOL TEACHER BARGAINING

As noted earlier, the assault on school teacher bargaining commenced in earnest with the passage of Bill 160. The 1998 and 2000 bargaining rounds were marked by further legal restrictions on collective bargaining and intensified conflict.

The 1998 Bargaining Round

Bill 160 stipulated that notice to bargain be given on January 1, 1998 and that all renewal collective agreements would be for a two-year term (September 1, 1998 to August 31, 2000). The key bargaining issue was workload. Whereas teacher unions recognized instructional time would have to increase, they staunchly opposed any increase in the number of classes (and students) to be taught. School boards, on the other hand, felt the funding and other constraints of Bill 160 necessitated an increase in

the normal teaching load of 6 classes to 6.67 classes (out of eight class periods annually). There were no settlements as the start of the school year approached and strikes commenced at three school boards in August. With the lack of progress in negotiations and the expiry of collective agreements on August 31st, a number of school boards unilaterally imposed higher workloads.[13] This led to strikes, lockouts and work-to-rule campaigns (e.g., refusals to teach extra classes and participate in extra-curricular and other activities). Although settlements at several public school boards maintained the status quo on teaching load (i.e., six out of eight classes), workload proved to be an intractable issue especially at Catholic school boards.[14]

In response to mounting public pressure, but without an advisement from the ERC, the provincial government passed Bill 62, the Back to School Act, 1998, ending labour disputes at eight school boards and referred all outstanding issues to mediation-arbitration.[15] It is worth noting that the government had previously enacted other legislation to restrict interest arbitration for public employees by making ability to pay a statutory criterion and by appointing retired judges as arbitrators rather than selecting mutually acceptable arbitrators from the roster maintained by the Minister of Labour.[16] The new law introduced the severest constraints on arbitrators to date. They included: (1) requiring arbitrators to consider the new definition of instructional time; (2) preventing arbitrators from making any alterations to academic scheduling, e.g., the length of instructional periods and the school day; (3) stipulating that awards cannot result in a school board budget deficit; and (4) requiring arbitrators to demonstrate how

13. This was achieved by assigning some teachers to teach four classes in the first semester. To achieve an overall teaching load of 6.67 classes, two-thirds of the teaching complement would be assigned to teach seven out of eight classes in a school year.

14. This partly reflected the province-wide strategy of refusing to teach additional classes adopted by the Ontario English Catholic Teachers Association. For a detailed analysis of the 1998 bargaining round, see Rose (2000).

15. One day later, Bill 63, the Instructional Time: Minimum Standards Act, 1998 was passed. It defined instructional time narrowly to include instruction in classes, courses and programs. This was an attempt to ensure that instructional time was spent with students in the classroom rather than on activities such as supervision and mentoring. At the same time, the law grandfathered collective agreements that preceded its passage and did not conform to the definition of instructional time. The government seemed to acknowledge it would not be able to achieve its goal of higher workloads at all school boards in this bargaining round. Its failure to establish a water-tight definition of instructional time and its tacit acceptance of the earlier collective agreements led to similar arrangements in other settlements.

16. Health care unions successfully challenged the appointment of retired judges. In a recent decision (known as the "Retired Judges" case), the Ontario Court of Appeal prohibited the provincial government from appointing retired judges as interest arbitrators (*Lancaster's Labour Arbitration News* 2000).

school boards could meet any rise in compensation resulting from their awards. Additionally, if the parties failed to agree on a mediator-arbitrator, the Minister of Labour would appoint one. In all such instances, a retired judge was appointed. Initially, the new law produced a partial calm. Teachers returned to work and assumed the new and heavier teaching loads imposed by school boards, but declined to perform extra-curricular and other activities.

The legislation provided a 90-day timetable for mediation-arbitration. The restrictive arbitration process failed to stimulate voluntary settlements. There was only one voluntary settlement and surprisingly it maintained the six class-teaching load, an outcome consistent with the settlement pattern established outside the realm of arbitration. The remaining seven school boards proceeded to arbitration and in each case their position on workload was awarded. Although not all of the awards contained reasons for decision, the arbitrators acknowledged the statutory criteria were intrusive and restricted their discretion. In effect, "the arbitration process seemed to start and end with appraising the parties' costing models to determine whether a budget deficit was probable" and, as a result, was highly predictable (Rose 2000: 283). Comparability, long recognized as the most important criterion in the arbitral jurisprudence, proved inconsequential.

Whereas school boards succeeded in achieving higher teaching loads, the arbitration awards failed to quell conflict. On the contrary, in the wake of these awards board-teacher relations deteriorated and a guerilla war ensued over teacher refusals to volunteer for extra-curricular activities.[17] Other forms of conflict included grievance arbitration and Ontario Labour Relations Board hearings in regard to teacher refusals to perform duties, "dressing down" protests and informational campaigns to discourage job candidates from accepting employment at school boards (Rose 2000). This led to protests by parents and eventually forced the trustees at the seven school boards to propose a six class-teaching load for the following school year (1999–2000).[18]

The legacy of the back-to-work legislation is that it produced more harm than good. On the one hand, it did achieve several government objectives: it ended labour disputes, reopened schools, and produced awards requiring teachers to spend more time in the classroom. On the other hand, the imposition of a constrained arbitration process failed to dampen teacher militancy, resolve board-teacher tensions, or establish a new workload standard.

17. For example, there was a 25 percent drop in sports participation rates between school years 1997–98 and 1998–99 (Grossman 1999).

18. The reduced teaching load was restored with the exception of the Durham public and Catholic boards where the teachers rejected the board offers.

> Rather than resolving all outstanding issues between teachers and boards, the conflict escalated as teacher-board relations and labour relations generally deteriorated. Parents, upset with the fallout, could not understand why their boards were so adamant about higher teaching loads when surrounding boards had maintained the status quo. As pressures mounted, trustees succumbed reversing their direction ... [and] restoring teaching loads of six out of eight classes for the 1999–2000 school year (Rose 2000: 287).

In addition, it was it was not entirely clear how these school boards were able to accommodate a six class teaching load a few months after informing arbitrators that they could not afford to do so without creating a budget deficit.

The overall effect of Bill 160 on the 1998 bargaining round is reflected in settlement stage data. It will recalled that for the period 1982–1997, 59.6 percent of teacher settlements were achieved at the direct bargaining stage and the strike rate was 2.2 percent. In marked contrast, settlement figures for 1998 and 1999 reveal settlements at the direct bargaining stage dropped to 40.2 percent. In addition, the strike rate climbed to 23.8 percent. It is noteworthy that nearly as many teacher work stoppages were reported in 1998 and 1999 as in the 1982–1997 period (i.e., 29 and 32, respectively). The dramatic change in settlement patterns was unique to teacher bargaining. Settlement patterns in 1998 and 1999 for the public and private sectors, and for education employees other than teachers, were broadly similar to the 1982–1997 period. There was an upturn in the public sector strike rate in 1998 and 1999, but this was primarily due to teacher disputes. As a percentage of public sector work stoppages, teacher disputes rose from 19.4 percent (1982–1997) to 67.4 percent (1998–1999).

Despite all the turmoil, the 1998 bargaining round failed to resolve two major issues. First, the government never achieved its objective on the workload issue. This result largely reflected the government's reluctance to unequivocally establish a uniform and higher standard. Since a provincial election was expected in 1999, the government wanted to avoid a major confrontation with teacher unions similar to the protest over Bill 160. Second, the issue of pay increases never figured prominently in negotiations even though teacher salaries had not increased appreciably since the early 1990s. The expectation was that continuing funding restraints and unresolved pay and workload issues would loom large in the next round of bargaining.

The 2000 Bargaining Round

Less than three months before the expiry of the 1998–2000 collective agreements, the government addressed the workload issue by enacting Bill 74, the Education Accountability Act 2000. Bill 74 closed the loophole in

the definition of instructional time and effectively increased teacher workloads to the equivalent of 6.67 classes per school year.[19] As well, it allowed principals to override collective agreement provisions regarding instructional workload and staffing. The most controversial feature of Bill 74 was its prescription for regulating extracurricular activities. In an attempt to reduce the bargaining leverage of teacher unions, voluntary extracurricular activities were to be made mandatory. Any group refusal or cessation of such activities would be deemed a strike. School principals were given the responsibility for the planning and assignment of such duties. That responsibility included the right to make assignments during the school year for any time during the day, seven days a week, with no specified hours maximum, and to perform them anywhere. The law also precluded bargaining over extracurricular activities and stipulated that assignment plans developed by principals could override conflicting collective agreement provisions. Although this section of the law was not proclaimed, the government announced it would do so if teachers refused to participate in extracurricular activities as a bargaining tactic. Finally, the law reduced the aggregate average class size for secondary schools from 22 to 21 students. In sum, these measures not only further exacerbated government-teacher union relations, but made the prospects for what was expected to be a difficult bargaining round look even more difficult.

Additionally, and in contrast to previous years, it was anticipated that pay increases would loom large in negotiations. For one thing, Bill 74 increased teacher workloads without any commensurate increase in salary. In addition, economic and budgetary restraints, including the Social Contract Act, limited teacher pay gains throughout most of the 1990s. Given a strong provincial economy, teachers were seeking catch-up. At the same time, the government position was that public sector wage settlements should not exceed two percent.[20] It was widely anticipated that reconciling the demand for restraint and the claim for catch-up would be a formidable challenge in negotiations.

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19. The net effect was to add a half-course (rather than two-thirds of a course) to the teaching load of secondary teachers. Having failed to achieve a 6.67 teaching load in the prior bargaining round, it was expected teachers would be required to teach 6.67 classes. However, months earlier, the amended regulations were not so onerous. They required them to teach the equivalent of 6.67 classes, consisting of 6.5 classes and .17 for student guidance (known as the Teacher Adviser Program or TAP). By doing so, it was hoped this might forestall another major confrontation by allowing teacher unions "to claim at least a partial victory in limiting the increased workload" (Ibbitson 2000: A8).

20. In February, 2000, the government issued a directive that it would not provide additional funding to employers in the broader public sector if they agreed to wage settlements exceeding two percent. This figure reflected the settlement the government reached with its employees (Brennan 2000).

The prospect of labour unrest over government policies loomed large as the start of the 2000–2001 school year approached. However, the teachers' unions opted to comply with the law rather than defy it. As was the case in the prior bargaining round, the focal point was secondary school teachers. The OSSTF, recognizing it was bound by the new and higher workloads, attempted to negotiate renewal agreements that conformed to the requirements of Bill 74 without resorting to work stoppages. Most OSSTF collective agreements provided for a 6.67 workload, consisting of 6.5 classes and .17 TAP. In effect, the OSSTF pursued an alternative strategy to pressure the government when it announced that higher workloads would reduce the time teachers were available for extracurricular activities (Mackie 2000b). In effect, it was left to individual teachers to decide whether they would voluntarily participate such activities.

Estimates reveal that about 75 percent of the students in public schools (and one-third of the students in Catholic schools) did not receive extracurricular activities in school year 2000–2001 (Mackie 2001). By keeping schools open and free of strikes, the teacher unions were defying the government's threat to proclaim that section of Bill 74 pertaining to extracurricular activities.[21] In all likelihood, the government's rationale for not acting in the face of teacher resistance was the same as not proclaiming that section of the law in the first place: the government's "get tough" approach may have sounded good in theory, but it probably was unenforceable in practice. Further, the government did not relish the thought of another all-out battle with the teachers, particularly since the schools were open and it might be difficult to persuade the public of the logic of making "voluntary" extracurricular activities mandatory.

Despite claims to the contrary, the lack of extracurricular activities, notably at the secondary school level, plagued the government throughout the school year. The struggle over this issue produced two notable developments. First, in December, 2000, the Liberals proposed an "Education Peace Plan" to restore goodwill and positive learning conditions in schools. The Plan called for a compromise to accommodate greater classroom time by teachers and the restoration of extracurricular activities. Specifically, it called for restoring the standard workload of 1250 minutes per week by extending the school day and the instructional time of each class (Ontario

21. There was a significant drop in the strike rate in this bargaining round to 2.7 percent (January, 2000-April, 2001). There was one notable strike involving elementary school teachers at the Hamilton-Wentworth Public School Board. After the Education Relations Commission concluded the students' school year was in jeopardy, the government passed back-to-work legislation that provided for mediation-arbitration (Mackie 2000a). The law imposed similar constraints on arbitration to those found in the back-to-work legislation passed in the 1998 bargaining round.

Liberal Party 2000). Not surprisingly, the teachers reacted positively to the plan and the government did not.

Second, in February, the Minister of Education established an advisory group to explore ways to restore extracurricular activities. The report recommended a compromise on the issue based on numerous factors, including recognition that: (1) extracurricular activities must be voluntary and the government should repeal the unproclaimed sections of Bill 74 pertaining to them; (2) more time needs to be freed up to allow teachers to participate in these activities; (3) participation in extracurricular activities should form part of the teacher's prescribed workload; and (4) implementation will necessitate additional funding (Report of the Minister's Advisory Group 2001). The government initially ignored the report and subsequently rejected its recommendations. Clearly, the recommendations were incompatible with the government's hard-line position.

Finally, in May the government caved-in on the issue. It announced that it would broaden the definition of instructional time to include such duties as providing remedial help to students and on-calls (i.e., filling-in for sick colleagues). The government also reversed direction by announcing an increase in average class size by one student to 22 in secondary schools. In addition, school boards were to receive $50 million in additional funding (Josey and Mallan 2001). As a result, teachers will teach fewer classes (Urquhart 2001a).[22]

There are several possible explanations why the government relented. First, a recent Tory poll indicated the government's position was tenuous. The polling data "showed that 58 percent of Ontario voters were not happy with the condition of the province's education system" (Mackie 2001: A9). Second, a consensus had emerged among many groups—parents, students, teachers, trustees, newspaper columnists and editorialists, and even the government's hand-picked task force—in favour of a compromise solution. Put simply, the Tories had lost the public relations battle and, in the process, isolated themselves. The remaining question is why it took the government so long to compromise, particularly since the same tradeoff was available a year earlier. The simplest and perhaps best explanation appears to be the government's steadfast refusal to back away from its hard-line approach toward teacher unions (Urquhart 2001b).

In addition, the 2000 bargaining round produced wage settlements in excess of the government's pay guideline. For example, most OSSTF settlements provided for salary increases in the 3 to 4 percent range for one year. In some cases, the settlements were higher (e.g., secondary

22. The new teaching load will average 6.25 classes over the system. However, this is a flexible guideline and most teachers will revert to six classes.

teachers at the province's largest school board, Toronto, received an 8 percent settlement over two years).

DISCUSSION AND CONCLUSIONS

The assault on school teacher bargaining raises a number of important issues. The first concerns the rationale or motivation for the Harris government's approach. While it is difficult to pinpoint the basis for its actions, a major part of the explanation is rooted in the thrust of the Common Sense Revolution, with its emphasis on reducing spending (education being the province's second largest expenditure). As well, concern about educational standards and the need for reform were widely acknowledged before the Tories came to power. The Tories were strongly committed to educational reform, establishing measurable performance standards and achieving greater cost effectiveness. Collective bargaining was simply seen as an impediment to reform and consequently the Harris government demonstrated a willingness to dismantle the system of bargaining to achieve its reforms. As has often been the case with public sector restructuring initiatives in Canada, the government pursued a legislative approach. The expectation was this would produce fast and reliable results, and would be accepted by the public at large (Swimmer 2000).

These factors, while important, do not offer a complete explanation of the government's motives. Other factors—ideological, opportunistic and personal—likely contributed to the government's approach. For one thing, it is difficult to disassociate the legislative action from the broader and decidedly anti-union sentiment that has characterized the Harris government since 1995 (Burkett 1998; Yates 2000). The hostility toward unions and industrial relations institutions represents a major departure from past Tory governments that favoured a pragmatic approach to labour policy based on compromise and consensus. In addition, bashing school teachers was perceived as politically prudent, particularly given public concerns about the quality and cost of public education, and the misplaced perception that teachers were overpaid and under-worked. This strategy had a short shelf life considering the government's compromise on instructional time. Indeed, a May, 2001 poll conducted by the government revealed public satisfaction with public education fell to 37 percent from 46 percent the year before. As well, 83 percent of those surveyed felt the Tories should end their hostility with teachers (Brennan 2001).

Additionally, and in marked contrast to Premier Klein in Alberta, it has been suggested the Harris government's approach was also vindictive. This stems from several factors ranging from the Premier's prior experience as a school teacher and school board trustee (Ibbitson 1997) to the

effort by teachers' unions to defeat Tory candidates in the 1999 provincial election (Urquhart 2000). The Premier has also shown himself to be stubborn and confrontational in dealing with money matters and those opposing government policies (e.g., ranging from the negotiations to compensate the Dionne sisters to the 1996 strike with Crown employees). Finally, the government may have had a hidden agenda to undermine public education and promote charter schools and a voucher system. The proposal to introduce tax credits to parents who send their children to private schools in the 2001 budget did little to allay the latter concern (Rushowy and Mallan 2001).

A second issue involves the Harris government's lack of understanding or appreciation of public sector labour relations. This can be illustrated in three ways. First, efforts to restrict the scope of bargainable subjects are often short-sighted and ineffective. Acting on the recommendations of the Paroian Review, the government restricted the scope of bargaining on the basis of management control and cost, but failed to consider the labour relations ramifications of doing so. The history of public sector bargaining suggests that restricting the scope of bargainable issues often intensifies labour-management conflict. In an earlier and comprehensive review of Bill 100, the Matthews Commission (Ontario 1980: 64) decided to retain the wide scope of bargaining and observed: "To restrict the scope of bargaining by legislation could result in these complaints being suppressed, only to lie smoldering beneath the surface, ready to erupt in the form of a bitter strike at some future date over a surrogate issue that is negotiable." In addition, legal demarcations do not always bar negotiations over excluded issues. According to Swan (1983: 21–22), "if a matter is sufficiently central to either party..., it will be the subject of bargaining, regardless of statutory restrictions, and often with some considerable damage to the relationship." This has been illustrated on many occasions covering many issues, e.g., technological change in the Canadian postal system and wages for U.S. air traffic controllers. Even when excluded issues are frozen out of talks, it has led to protracted delays in negotiations and employer challenges to employee priority issues, including job security (Hebdon 1995). Finally, attempts to restrict the scope of bargaining are often associated with labour disputes. The Harris government's attempt to increase classroom instruction and make extracurricular activities mandatory were the source of intense conflict.

Second, the centralized control established over funding, subjects of bargaining and education policy is out of sync with local bargaining structures. Despite school board amalgamation, the locus of collective bargaining remains local and diffused. Having been stripped of funding and other powers, school boards remain the employer bargaining agent, but their bargaining autonomy is constrained. Not only is the government the

figurative "ghost at the bargaining table," but the school boards have been forced into the unenviable role of having to implement government policies and at the same time negotiate with teacher unions fiercely opposed to the new agenda.

Although the government has considered province-wide bargaining for teachers, it has been reluctant to assume the political risks.[23] To begin with, it would likely require a confrontation with teacher unions since they would perceive it as an attempt to fundamentally alter the balance of power in teacher bargaining. Further, although the introduction of province-wide bargaining would be compatible with the government's centralized control over funding and educational matters, it would likely increase the government's involvement in and responsibility for negotiations. Choice of bargaining structures typically involves a trade off: centralization offers more budgetary control, but is associated with greater visibility and political accountability, whereas decentralized bargaining is often less visible, involves minimal accountability and features less control over budgets (Swimmer and Thompson 1995). The government has steered clear of a centralized bargaining model and its requirement of greater political accountability. Instead, it has pursued a strategy based on centralized control over education, but no direct involvement in negotiations, leaving responsibility for bargaining in the hands of local school boards. Although the government sought to minimize its visibility and political accountability, the experience of the last two bargaining rounds indicates this strategy has not been successful.

Third, the Harris government also adopted a blunt approach to the right to strike and interest arbitration. Although teacher unions retain the right to strike, that right is more fragile today than in the past. In addition to the threat posed by Bill 74 (i.e., to make voluntary extracurricular activities mandatory), the government has deviated from the history of constrained intervention in school teacher disputes. In the 1998 bargaining round, the government passed back-to-work legislation covering eight school boards even though there was no jeopardy advisement from the ERC. Although it acted on a jeopardy advisement in the 2000 bargaining round, the ERC's decision was controversial and appeared to be unprecedented. It not only represented the quickest advisement in the history of school teacher bargaining, but there were concerns it would have a chilling effect on the right to strike.[24]

23. In June, the government appeared to take a step in that direction when it introduced the Stability and Excellence in Education Act 2001. It calls for all teacher collective agreements to expire on August 31, 2004 and requires renewal agreements to last for three years (Ibbitson 2001).

24. The advisement was issued on the 16th day of the dispute. The earliest previous advisement came after 26 school days were lost (Bongers 2000).

Equally troubling has been the attack on the integrity of the interest arbitration and the transparent attempt to control arbitration outcomes. The impartiality and independence of the interest arbitration has been undermined by various features of back-to-work legislation, including the adoption of highly constrained decision criteria for settling disputes and the appointment of retired judges as arbitrators. As demonstrated in the 1998 bargaining round, the arbitration awards failed to resolve interest group conflict. As a result, the constrained arbitration process resulted in high transaction costs and failed to produce durable results. In addition, there is no evidence the government learned anything from this experience. Even in the wake of the "Retired Judges" case, the legislative attack on interest arbitration continues.[25]

In conclusion, the Harris government's pursuit of a cost reduction strategy and its disdain for teacher unions resulted in the repeal of a highly successful and stable teacher bargaining law. In its place, it relied on a series of blunt measures in an attempt to control collective bargaining processes and outcomes. These efforts underestimated the resilience of collective bargaining and, in the end, proved futile. Further, and more importantly, attempts to undermine collective bargaining led to a sharp escalation of conflict at both the collective bargaining level and at the workplace level. It will be interesting to see what impact the government's recent compromise on teacher workloads and the resignation of Premier Harris will have on the prospects for stable school teacher bargaining.

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25. The government passed the Back to School Act (Toronto and Windsor), 2001 to end disputes involving non-teaching staff at two school boards. The arbitration procedure specified in the law, includes provisions allowing the Minister to appoint a person: (1) with no prior experience as an arbitrator; (2) who has not previously been recognized or is currently recognized as mutually acceptable to both unions and employers; and (3) who is not a member "of a class of persons which has been or is recognized as comprising individuals who are mutually acceptable" to both the parties. In May, similar provisions were adopted in the Ambulance Services Collective Bargaining Act, 2001, which makes ambulance services an essential service and provides for arbitration to settle disputes.

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RÉSUMÉ

À l'assaut de la négociation collective chez les enseignants de l'Ontario

Entre 1975 et 1997, la négociation chez les enseignants a été conduite sous l'égide de la loi concernant la négociation collective entre les commissions scolaires et leurs enseignants, communément appelée le « Bill 100 ». Suite à l'élection du gouvernement Harris en 1995, le secteur public, incluant l'éducation, a fait l'objet de coupures budgétaires, de restructuration et de réduction de sa taille. Cet article analyse la réforme gouvernementale du secteur public de l'éducation et fait une évaluation de son impact sur la négociation chez les enseignants. Notre message est le suivant : dans son zèle à remanier le système d'éducation, le gouvernement a jeté le bébé avec l'eau du bain ! De façon plus spécifique, il a démantelé un système innovateur et fructueux de négociation collective chez les enseignants et a entrepris un « assaut législatif » contre la négociation collective. Cela a déstabilisé le système de relations du travail et créé un climat de perpétuel conflit.

L'adoption du Bill 100 en 1975 venait formaliser les coutumes et les traditions des négociations informelles pratiquées alors depuis des décennies, incluant la perpétuation d'une structure locale et balkanisée de négociation. L'étendue de la négociation incluait virtuellement toute condition de travail pourvu qu'elle n'entrât pas en conflit avec le droit existant. Les enseignants obtenaient le droit de grève et un nombre de mesures furent établies pour la prévention et le règlement des conflits; par exemple, la commission d'enquête obligatoire, le recours obligatoire aux offres finales et le vote de grève. On mettait également sur pied un organisme administratif distinct, la Commission des relations dans l'éducation, dont le rôle consistait à surveiller les négociations avec les enseignants, à nommer des tiers neutres, à conseiller le gouvernement dans des situations où des arrêts de travail pouvaient nuire à l'éducation des élèves et à maintenir une banque de données sur les conventions collectives entre les commissions scolaires et leurs enseignants.

Quoique « l'assaut sur la négociation » chez les enseignants n'ait débuté qu'en 1997, une multitude de changements dans le secteur de l'éducation l'avait précédé. D'abord, l'allocation budgétaire prévue pour les écoles publiques avait été réduite de 400 millions de dollars pour l'année 1996 seulement et le gouvernement avait annoncé des projets de changements et d'améliorations du système scolaire. Ensuite, le gouvernement avait mandaté deux études, une pour analyser la structure des coûts de l'éducation et l'autre pour évaluer l'efficacité et l'efficience de la législation en vigueur (le Bill 100). Ces rapports ont donné le coup d'envoi à des changements législatifs majeurs au cours de l'année qui a suivi.

Les changements les plus importants et les plus contestés ont été apportés par le « Bill 160 », soit la loi de 1997 visant l'amélioration de la qualité de l'éducation. Ceci a donné lieu à un arrêt de travail de deux semaines chez les 126 000 enseignants de la province et a entraîné un congé forcé pour 2,1 millions d'élèves. Cette nouvelle loi abrogeait le Bill 100 et assujettissait les enseignants à la loi sur les relations du travail. Elle prévoyait aussi l'imposition d'une charge de travail plus lourde pour les enseignants du secondaire. D'autres changements non moins controversés accordaient au Cabinet des pouvoirs étendus pour établir la politique de l'éducation et pour contrôler les commissions scolaires et leurs dirigeants. Elle accordait aussi à la province un plus grand contrôle des dépenses en éducation et empêchait les commissions scolaires locales de se procurer des revenus par l'imposition d'une taxe sur la propriété locale.

Le Bill 160 annonçait un glissement de paradigme en matière de négociation collective. Il mettait fin à presque un quart de siècle de négociations sous l'égide du Bill 100. C'était aussi le début d'un chapitre de négociation forcée, au sein de laquelle le gouvernement intervenait de plus en plus en vue de restreindre le champ du négociable, enrayer le droit de grève et restreindre l'impartialité et l'indépendance du mécanisme d'arbitrage des différends.

La ronde de négociation de l'année 1998 a donné lieu à une montée spectaculaire des litiges sur la charge de travail et le refus des enseignants de se porter volontaires pour des activités parascolaires. À la fin, la tentative du gouvernement d'établir une norme plus élevée et standardisée du temps d'enseignement a échoué. En juin 2000, le gouvernement dû légiférer pour imposer une charge plus élevée de travail aux enseignants. De plus, dans une tentative de réduire la marge de manœuvre de négociation chez les syndicats d'enseignants, il menaçait de rendre obligatoires les activités parascolaires si les enseignants refusaient d'y participer. Les syndicats d'enseignants ont alors évité la confrontation en acceptant l'accroissement de la charge de travail mais ils ont maintenu leur refus de participer aux activités parascolaires. S'ensuivit une guerre d'usure jusqu'au moment

où le gouvernement décida d'abandonner la ligne dure en mai 2001, ce qui traçait la voie vers une réduction de la charge de travail des enseignants.

L'assaut sur la négociation collective des enseignants semble traduire un éventail de facteurs. Pour une chose, la négociation collective apparaissait comme un obstacle à une réforme de l'éducation. D'autres facteurs, de nature idéologique (la politisation des politiques du travail et l'hostilité du gouvernement face aux syndicats), de nature opportuniste (le fait d'humilier les enseignants pouvait se traduire par des gains électoraux), de nature personnelle (l'antipathie du Premier ministre à l'égard des syndicats d'enseignants), ont façonné l'approche gouvernementale dans le domaine. Le gouvernement Harris a apparemment fait preuve d'un manque de compréhension et d'appréciation des relations du travail dans le secteur public. Ceci s'est traduit dans ses tentatives à courte vue pour restreindre le champ de la négociation collective par la législation; dans son échec à reconnaître que le contrôle centralisé des dépenses et d'autres sujets en éducation ne cadraient pas avec les structures locales de négociation, et, également, dans ses attaques à l'intégrité de l'arbitrage des différends.

En conclusion, la poursuite de la stratégie de réduction des coûts de la part du gouvernement Harris et le mépris de ce dernier à l'endroit des syndicats d'enseignants ont abouti au retrait d'une législation hautement stable et fructueuse. À la place, on retrouve une série de mesures cavalières dans une tentative de contrôle du processus de négociation et de ses résultats. Ces efforts ont sous-évalué la persistance de la négociation collective et, en bout de ligne, se sont avérés vains. De plus, et d'une manière plus importante, les tentatives pour discréditer la négociation collective ont entraîné une escalade drastique des conflits aussi bien à la table des négociations que sur les lieux de travail. Il sera intéressant de voir l'impact qu'auront le récent compromis sur la charge de travail des enseignants et la démission du Premier ministre Harris sur les perspectives d'une négociation stable chez les enseignants.