

## Upcoming dates:

**Leadership Meeting –**  
November 10-12, 2017

**OSBCC Conference –**  
Moved to Sunday, March 25<sup>th</sup>  
to Thursday, March 29<sup>th</sup>,  
2018. (This move enables  
local leaders to be more  
available to members at the  
time of conversion to the  
Benefits Trust)

## July 2017

### In this Update:

- Charter Challenge Update
- Benefits Trust Update
- LTD Working Group
- Provincial Health and Safety Working Group
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- Central Disputes Update

### Charter Challenge Update

#### Decision

In the spring of 2016, Judge Lederer of the Ontario Superior Court of Justice ruled that Bill 115, the *Putting Students First* Act, was unconstitutional.

He agreed with CUPE and the other unions involved in the Charter challenge that the Act interfered in our right to freedom of association under the Canadian Charter of Rights and Freedoms. In summary, it interfered in our right to freely negotiate our collective agreements and our right to strike.

#### Remedy for Violation of Charter Rights

CUPE and the Crown entered into settlement discussions to determine an appropriate remedy. As all members had their rights violated during that time, we agreed all members were entitled to damages. The overall general damages award to CUPE for its members was \$56.7 million.

The payout applies to all those covered by a CUPE school board collective agreement between September 1<sup>st</sup>, 2012 and August 31<sup>st</sup>, 2014. Those who were covered under a CUPE agreement in only one of the two years shall receive half the per person payment. The payment is estimated to be \$905.50 if one worked in both years and \$452.75 for one year.

## **Remedy Settlement Vote Results: 93.4% vote yes!**

Locals across the province held votes on the settlement, with the last vote being held on July 4<sup>th</sup>, 2017. The votes were then counted and resulted in 93.4% of the votes indicating support for the settlement.

## **Payment of Settlement**

One issue of dispute between CUPE and the Crown was left to be decided by an arbitrator. This issue was whether the monies would be paid out through a third-party administrator similar to a class action law suit (CUPE's position) or through the school boards (Crown's position).

This issue was heard by Arbitrator Mitchnick on July 6<sup>th</sup>. His decision was issued on July 12<sup>th</sup>. His decision, while clearly indicating his view that this was a damage award and therefore not subject to taxes, did not support CUPE's position, which was that the distribution of the cheques would most efficiently be handled through a third party. He decided school boards will be responsible for distributing the funds.

He went on to say, "...at the end of the day it will be for the Province, whatever it has to do to make it happen, to satisfy the Arbitrator that pay-outs have been made to all affected employees in accordance with the terms of the Memorandum of Settlement." So in essence, if a school board does not pay this out as damages, it is up to the Crown to ensure the intention of the parties to the Settlement is respected and members receive their full remedy entitlement.

## **Next Steps: Identifying those entitled to damages**

We met with representatives of the Ministry on **Friday, July 14<sup>th</sup>**, to discuss the collection of data that would be required for a due diligence review by CUPE. It is imperative that all entitled to the remedy be identified and that those who were working for more than one board during the period in question receive only one general damages payment.

The Crown will collect from school boards the necessary data for employees who were covered by a CUPE collective agreement in each of the two years from September 1<sup>st</sup>, 2012 to August 31<sup>st</sup>, 2013 and from September 1<sup>st</sup>, 2013 to August 31<sup>st</sup>, 2014.

This data will be shared with CUPE no later than **August 31<sup>st</sup>, 2017**. CUPE will complete its due diligence report no later than **September 30<sup>th</sup>, 2017**.

Disputes as to the entitlement of various individuals must be referred to Arbitrator Mitchnick by **October 31<sup>st</sup>, 2017**.

These are tight timelines but are there to ensure payment to all those entitled as soon possible. Our goal remains payment by **December 2017** or **January 2018**.

## **What can you do to facilitate the process?**

As a member, you should ensure that the employer and your local have an accurate mailing address and contact information for you.

If you know people who would be entitled to a payment but who have retired during or since the two years in question, ensure they know to update their contact information with the local and the employer.

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## **Benefits Trust Update**

We are on track to transitioning to the CUPE-Education Workers Benefits Trust by February 1<sup>st</sup>, 2018.

We are in the process of finalizing the Trust Agreement, which is the legal document that will establish the Trust.

We hope to have our website up and running by mid-August so members can find out current information related to the Trust. More information on this in our next newsletter.

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## **LTD Working Group**

*(Catherine Taggart, Nora Shaughnessy, Vern Andrus and Michel Revelin)*

The working group continues to work during the summer.

An important survey was sent to Locals and the information that comes back will help the group identify what works well and what does not work that well with the existing LTD plans.

The group continues working towards finding solutions to reduce costs of LTD premiums for all.

Dates in September and November have been set for the group to meet.

A third party is working with the group to finalize the last stages before a Request for Proposal is sent out. The goal would be to find a single insurer to provide LTD for our members.

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## **Provincial Health and Safety Working Group**

*(Don Postar, Dan Mills [recently resigned], Michele Lalonge-Davey and Chris Sutton)*

Through the work of this committee and the work of locals across the province, the government has finally identified the need to focus on the prevention of violence in the workplace as it pertains to education workers.

In August, the Ministry of Labour (MOL) will be training inspectors on issues related to violence in the workplace in the school board sector. Over the course of the 2017-18 school year, each board will be visited by these Inspectors to review all aspects of board protocols in the prevention, training and response to violent incidents and to ensure compliance with the law.

In addition, the committee is developing a tool that will be available to locals, the employer and MOL inspectors related to violence prevention; the importance of risk assessments; and how reports of violence are to be dealt with. This tool will clearly outline expectations to all staff (including principals) so they know and follow the prescribed steps when they report or receive a report of a violent incident. It is expected the tool will be ready by January.

In order to achieve that goal, members of the committee will be doing research over the course of the summer. The working group will be meeting every two weeks beginning in September and the resource subcommittee, which will be meeting at the end of August, expects to set an equally aggressive schedule.

Additionally, we are starting to see locals insisting that members, who are working directly with students who have a history of violent behavior, not only have access to Safety Plans but are involved in their development. They have been using PPM 159, *Collaborative Professionalism* as an entry point for those discussions.

We would like to thank Brother Dan Mills for his work throughout the past year and his long-term commitment to Health and Safety.

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## Restructuring Working Group

(Dave Geroux, Laurie Lucciola, Liz Harrison, Mike Galipeau, Sylvain Piche, Terri Preston, Jim Morrison)

At our last conference, the following motion was passed:

*"I move the restructuring proposal shall be referred back to the committee to revise based on feedback received from area meetings and at this conference. A special meeting will be convened to establish by-laws and a budget."*

The current structure of the OSBCC limits our collective ability to access entitlement to funding available to bargaining structures recognized under the CUPE National Constitution. As central bargaining is now mandated under the *School Board Collective Bargaining Act*, it is even more imperative that we review how we operate.

The restructuring committee has been meeting with National and Provincial officers. By the end of August, Local presidents will receive both a proposed set of by-laws and a proposed budget for locals to review and provide comment on. Please see the attached schedule for moving restructuring along.

- **By August 31<sup>st</sup>:** Draft By-laws and Budget to be sent to locals
- **September 30<sup>th</sup>:** Feedback from locals to be received
- **November 10<sup>th</sup> to 12<sup>th</sup>:** Leadership Meeting (Toronto/near the airport)

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## Central Disputes

**Probationary Employees and Sick Leave:** A number of boards were denying sick leave entitlement to probationary employees. Through the central dispute process, we have confirmed probationary employees are entitled to sick leave and the issue has been resolved with those boards.

**Protected Complement:** We have not been able to resolve the issue of how attrition is being applied in a number of boards. This issue will be going to arbitration.

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## Raising the Profile of our Work

**Career Flyers:** Career flyers have been developed to encourage young people to think about a future career as an education worker. The flyers are specific to our larger classifications and focus on the role to the particular group in the school system as well as pre-requisites for the position.

A number of boards have agreed to make the flyers available to high school students and at job fairs. They would also be good to use at community fairs, Labour Day events etc.

One local has placed the career flyer in the envelope with scholarship cheques.

### In our next update:

- How we can raise the profile of our work?
- Professional Collaboration: What does it mean to you?
- Fixing the Funding Formula

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