

**MAST Submission
to the Law Amendments Review Committee
Bill 72 - *The Public Schools Amendment Act (2)*
and Related Statutes**

Introduction

The Manitoba Association of School Trustees welcomes this opportunity to present to the Law Amendments Review Committee its view on changes to the collective bargaining provisions of the *Public Schools Act*, as proposed in Bill 72. In recent years, school trustees have pursued with government a number of fundamental changes to the process of collective bargaining between school boards and teacher associations. From the trustees' perspective, the cornerstone of the collective bargaining process is the continuation of bargaining at the local level. MAST welcomes the legislative direction which reaffirms the importance of collective bargaining between school boards and teachers at the school division and district level.

MAST's positions on Bill 72 have been shaped primarily through two processes. As always, the Association's policies, as determined by resolution at its annual convention, are a crucial determinant of any stance taken by the Association. Where appropriate, these policies have been forwarded annually to the Minister of Education and Training and other Ministers for consideration and possible action. These policy positions were also contained in MAST's brief to the Teacher Collective Bargaining and Compensation Review Committee this spring. We are pleased to see that some of the changes proposed in Bill 72 and other legislation before the Legislature reflect concerns the Association has recently brought before the Minister.

In light of the extent of the changes proposed by Bill 72 and other legislation, MAST augmented its formal policy positions by holding a series of special regional meetings on proposed legislative changes this September. Six meetings were held across the province in the first two weeks of September. More than 200 trustees and senior school board administrators attended these meetings, representing all but two of MAST's member boards. The proceedings of these meetings give direction to much of what follows.

Collective Bargaining - The Process (Sections 8, 9, 21, & 28)

Discussion: Bill 72 would amend the collective bargaining process as it applies to school boards and teacher associations. The two groups would be able to jointly request that the Minister of Education and Training appoint either a conciliator, or a mediator-arbitrator to assist them in their negotiations. Sixty days after the notice to begin collective bargaining has been given, *either* group may ask the Minister to appoint a mediator-arbitrator. Sections 8, 9, 21, and 23 of Bill 72 outline the provisions of the conciliation, mediation, and arbitration processes.

Trustees generally support the proposed changes to the collective bargaining process. Several of these changes are supported by resolutions passed by

school trustees in recent years. Although mediation has not been considered by a MAST convention, most school boards would seem to view its inclusion as an improvement in the collective bargaining process.

School boards do, however, have some concerns about the changes to the collective bargaining process outlined in Bill 72. One of the most wide-spread is the off-loading of conciliation costs to school boards and teacher associations, and the divergence between the *Public Schools Act* and the *Labour Relations Act* in this regard. At present, the government pays the cost of a conciliator in school board/teacher association negotiations, as it does in negotiations conducted under the *Labour Relations Act*. Amendments contained in Section 9 of Bill 72 would see these costs divided between the school board and the teacher association. We believe that the government should either continue to pay this cost directly, or provide categorical funding to enable school boards to do so.

In a similar vein, we are concerned about discrepancies between the mediation provisions of the *Labour Relations Act* and those proposed for the *Public Schools Act*. At present, mediation under the *Labour Relations Act* is paid for by the government. If changes proposed under Bill 26, the *Labour Relations Amendment Act*, are implemented, the government will still pay one-third of the cost of *Labour Relations Act* mediations. The proposed addition to the *Public Schools Act* would have school boards and teacher associations splitting the cost of mediation. We believe that the only fair and reasonable approach is that the provisions of the two acts be parallel in this regard. Our preference would be that the status quo of the current *Labour Relations Act* be maintained, and that these provisions be extended to mediation under the *Public Schools Act*. At a minimum, we would ask that if the mediation provisions of the *Labour Relations Act* are amended so that government pays one-third of the associated costs under that *Act*, these same provisions be extended to mediation under the *Public Schools Act*.

School boards are also concerned about the proposed method of appointing the mediator/arbitrator. We are concerned that the list envisioned in Section 9 would be unduly restrictive. We also believe that the Chief Justice, rather than the Minister of Labour, is the most appropriate individual to select the mediator-arbitrator.

MAST's Position:

- With the exception of the items noted below, MAST supports the proposed changes to the collective bargaining process found in the *Public Schools Act*, as outlined in Bill 72.
- Conciliation and mediation services should be made available for negotiations between school boards and teacher associations at no cost to the parties involved.
- A mutually agreed-to list of mediators/arbitrators should be established through the Collective Agreement Board. The Collective Agreement Board should establish procedures for the maintenance of such a list.
- The Chief Justice of the Province of Manitoba should select arbitrators and

mediators, using the Collective Agreement Board list, as well as other names that the Chief Justice may choose.

Ability to Pay/Requirement For Financial Information (Sections 18 and 5)

Discussion: School boards support the inclusion of ability to pay as a consideration in an arbitrator's decision, and in fact asked for this inclusion in a convention resolution in 1996. MAST requested consideration for ability to pay because school boards believed that arbitration boards assigned more weight to other bargained settlements than they did to a school board's ability to pay.

School boards also recognize that the implementation of a concept such as ability to pay poses some practical problems. Specific issues that will require further discussion and clarification include whether or not (or how much of) a school division's surplus will be taken into account when determining ability to pay, and the relationship between ability to pay and increasing local taxes (ability to pay vs. willingness to pay).

School boards are also concerned that this legislative amendment not be interpreted so as to give arbitrators authority over programming decisions. A situation could arise whereby an arbitrator decides that a school board *would* have an increased ability to pay, if that board were to reduce or modify program offerings to students. No arbitrator should have the authority to compel a school board to change its educational program or support services. We are seeking a commitment from the government that authority over the educational program will remain with the elected school board.

Many school boards have also expressed the concern that implementation of this concept will lead to increased inequities in public schools throughout the province *unless* efforts are made by the province to equalize ability to pay. We would urge the government to implement ability to pay concurrently with renewed efforts to increase equalization support for school divisions and districts throughout the province.

Most school boards agree that, for ability to pay to be a consideration in arbitration awards, teacher associations need to have access to relevant financial information. In fact, many school divisions already provide such information. However, we do have concerns about how "relevant financial information" may be defined. In particular, school boards are concerned that this not be interpreted to include the budget line for projected salary increases. The potential for confusion and conflict in this regard could be alleviated if the legislation were amended to indicate precisely what financial information boards are required to provide.

MAST's Position:

- Sections 110.2(1) and (2) should be amended so as to delete the phrase "relevant financial information", and use instead "audited financial statements and most recent approved budget."

- MAST believes that a school board's ability to pay should be one factor in an arbitrator's decision; we do not believe that his or her decision should be based "primarily" on ability to pay, as proposed in Section 129(3).
- Sections 129(3) and 129(4) should be combined into one section, and amended to read as follows:

The arbitrator shall, in respect of matters that might reasonably be expected to have financial effect on the school division or school district, base his or her decision on the school division's or school district's ability to pay, as determined by:

(a) its current revenues, including the funding received from the government and the Government of Canada, and its taxation revenue;

(b) the nature and type of services that the school division or school district may have to reduce in light of the decision or award, if the current revenues of the school division or school district are not increased;

(c) the current economic situation in Manitoba and in the school division or school district;

(d) a comparison between the terms and conditions of employment of the teachers in the school division or school district and those of comparable employees in the public and private sectors, with primary consideration given to comparable employees in the school division or school district or in the region of the province, in which the school division or school district is located;

(e) the need of the school division or school district to recruit and retain qualified teachers.

Matters Not Referred to Arbitration/Obligation To Act Fairly (Sections 15 and 22)

Discussion: Manitoba's school boards generally support the list of matters not referred to arbitration contained in Section 15 of Bill 72. However, serious concerns have been expressed about the way in which the obligation to act fairly, described in Section 22 of the proposed legislation, could affect the policies and decision-making of school boards.

The obligation for school boards to act fairly and the legislative recourse in the event they fail to comply [new *PSA* Sections 131.4(1) and 131.4(2)] are linked with matters not referable for arbitration [new *PSA* Section 126(2)]. While school boards do not oppose a fairness test, these sections of proposed legislation, read together, expose school boards to literally thousands of individual grievances. These amendments make school board practices and policy grievable under the collective agreement. Grievances not settled locally will be referred to a grievance arbitration board. No process is proposed within which the arbitrator will decide the grievance.

This would be a very different process than the fairness test described in Section 80 of the *Labour Relations Act*. In that *Act*, the process is clearly defined.

Specific collective agreement wording forms the basis upon which the arbitrator settles the grievance. The parties then take the arbitrator's decision into consideration in ensuing collective bargaining and clarify or modify the collective agreement wording.

Bill 72 proposes that arbitration boards review a school board's practice or administration of board policy to determine whether it is fair and reasonable. Arbitrator's decisions would become intrusive in the school board's setting of policy. School boards do not accept the proposition that significant issues such as class size, teacher evaluation and staffing decisions could be decided by an arbitrator. The proposed Section 131.4(2) would allow an arbitrator to usurp the right of an elected school board to decide these matters.

In those few divisions with collective agreement wording covering items contained in Section 126(2), we have further concerns that a teacher could access grievance arbitration both under the legislation and based upon specific collective agreement provisions.

MAST's Position:

- MAST supports the list of matters not referable for arbitration contained in Section 15 of Bill 72 [*PSA* Section 126(2)].
- MAST supports the obligation to act fairly contained in Section 22 of Bill 72 [*PSA* Section 131.4(1)].
- MAST is opposed to the provisions of the subsection failure to comply, contained in Section 22 of Bill 72 [*PSA* Section 131.4(2)].
- MAST supports replacing the proposed *PSA* Section 131.4(2) with the same wording as is currently contained in Section 80 of the *Labour Relations Act*.

Term of Collective Agreement/Notice Provisions/Transitional Provisions (Sections 4, 23, 32, 33, 34)

Discussion: MAST believes that there is no compelling reason for school boards to have a common collective agreement expiry date, and that school boards and teacher associations should continue to have flexibility to negotiate the term of collective agreements and notice provisions. .

There are benefits to various different models. A July 1 effective date would bring collective agreements in line with the school board's fiscal year. The budget year would correspond to the term of the agreement, as is contemplated in the proposed legislation. The existing January 1 date is the best fit for scheduling of negotiation meetings. A September 1 date is the start of a teacher's work year; for divisions which pay teacher salaries on a 12 month basis, the July and August payments are for work performed in the previous 10 month school year.

Other sections of this legislation support local decision-making based on the unique circumstances of the division or district. The term of agreement should continue to be determined locally between the school board and teacher association.

Transition Sections 33 and 34 would provide for a collective agreement of less than one year. If legislation proceeds to mandate a common expiry date for all agreements and that date is other than December 31, MAST proposes that any transition agreement should be at least 12 months in duration plus the number of months to the new expiry date. For example, if there were to be a June 30 expiry date, the transition agreement would be for eighteen months. As collective bargaining consumes considerable amounts of time and energy, it seems reasonable that the transition should be accomplished by a longer rather than shorter term collective agreement.

MAST's Position:

- MAST believes that current *Public Schools Act* provisions allowing school boards and local associations to negotiate the term of the collective agreement and notice provisions should be continued.
- Should an expiry date other than December 31 be legislated, transition agreements should be at least 12 months plus the number of months to the new expiry date.

Related Matters

New Provisions for Part 8 of the Public Schools Act Regarding Employee Vote on School Board's Final Offer

In 1984 MAST adopted a policy that prior to arbitration, the positions of the school board should go before its teachers for a vote of acceptance or rejection. That resolution read as follows.

Be It Resolved That MAST urge the Minister of Education to have legislation enacted to provide that all of the teachers within a school division or district would have the opportunity to vote upon whether to accept or reject a school board's offer prior to the application for arbitration; and

Be It Further Resolved That Mast urge the Minister of Education to have legislation enacted to provide that the school board vote upon whether to accept or reject the teacher's proposal prior to the application for arbitration.

A proposed change contained in Section 72 of Bill 26, *The Labour Relations Amendment Act*, contains a provision that would mandate a process such as the one envisioned above. There is no similar clause in Bill 72.

MAST's Position:

- MAST proposes that the *Public Schools Act* be amended so as to include a process to allow employees to vote on an employer's final offer, similar to the amendment proposed for Section 72 of the *Labour Relations Amendment Act*.

Bill 57, The Public Sector Compensation Disclosure Act

MAST has not taken a formal position on Bill 57, *The Public Sector Compensation Disclosure Act*. However, we would ask that the Legislature bear in mind the views and concerns of Manitoba's public school boards when considering this legislation.

The most frequently voiced opinion on Bill 57 is that the \$50,000 threshold is inappropriate, and that if anyone's compensation is to be disclosed, everyone's should be disclosed. Many trustees also question the wisdom of this legislation in light of its potential negative impact, particularly in small communities. They are also concerned about the increased workload this would cause, and have suggested that if such legislation is to be implemented, it should utilize an existing reporting procedure, such as T4's.

We would also like to note that, as is the case with much of the legislation currently before the Legislature, the provisions of Bill 57 may become redundant or could come into conflict with a revised *Freedom of Information Act*, which we understand will take force within the next year or so. Should all of the legislation currently before the Legislature be passed into law, school boards will be required to provide various groups and the public at large with a wide range of information, under a variety of legislative authorities. It would seem to us a simpler, more efficient and less confusing process if as many access to information issues as possible were covered under one piece of legislation. It would seem that the most logical piece of legislation for that purpose would be a revised *Freedom of Information Act*.

Conclusion

On behalf of the Manitoba Association of School Trustees, thank you once again for this opportunity to convey to you the views and concerns of Manitoba's public school trustees regarding proposed amendments to the *Public Schools Act* contained in Bill 72. These amendments have the potential to impact significantly on public education in our province. We trust that you will give due consideration to the suggestions we have offered in our presentation. We trust also that you will accept them in the spirit in which they are offered, with an eye to improving education for the more than 195,000 young people enrolled in Manitoba's public schools.