

INSIGHT 21

October 2011

Ontario Secondary School Teachers' Federation - District 21 Teachers

district21.ca

Let us not take thought for our separate interests, but let us help one another.



The 40th Ontario general election was held on October 6, 2011 to elect members of the 40th Legislative Assembly of Ontario. The Ontario Liberal Party will form a minority government, with the Progressive Conservative Party of Ontario (PC Party) serving as the Official Opposition and the Ontario New Democratic Party (NDP) serving as a third party. The election saw a record low voter turnout of 49.2%. Seats won: Liberals 53, Progressive Conservatives 37, New Democrats 17.

OCCASIONAL TEACHERS AND PREGNANCY/PARENTAL LEAVES?

Chantal Mancini

With the current trend of declining enrolment, we are aware that our Occasional members are facing a longer period of time as Occasional Teachers before they achieve a permanent position. This has resulted in a greater number of these members deciding to start families while they are employed as Occasional Teachers. It is essential that Occasional members are aware of their legislative and contractual rights in this regard.

- Occasional teachers, like other employees, are entitled to the same pregnancy/parental leave as outlined by legislation. This includes 17 weeks of pregnancy leave, and 35 weeks of parental leave.

- In order to qualify for Employment Insurance benefits, occasional teachers, like all other workers, need to have worked 600 hours in the 52 week period prior to their leave. Each teaching day worked, or of paid sick leave, counts as 7 hours. OTs will need 86 days to qualify. Remember that hours worked at other jobs outside of teaching count too, but

an OT will have to request a Record of Employment from each employer.

- There are no provisions in the Occasional teacher contract for EI top-up.

- LTOs who know that they will require a pregnancy/parental leave during the school year should be cautious about collecting EI during the period prior to the leave (including summer.) This could affect an EI claim for maternity benefits.

- An LTO who takes a pregnancy/parental leave is entitled to return to the contract position they took a leave from if it still exists. (For example, if an LTO has signed a contract for one semester, they are entitled to return to that job during that semester. However, once the contract has ended, they will have to reapply for any future jobs.)

- Any OT who will be taking a pregnancy/parental leave, or is currently on such a leave, is eligible to apply and interview for any upcoming long-term positions and/or permanent positions, even if not returning to that position until part way through. It is advantageous to a member to... **(cont'd p.3)**

CONTRACTUALLY SPEAKING

Trevor Powell

For any employee that started on or after September 1, 1999 you are eligible for a gratuity, if you have served 20 years in the employment of the Board (see article 10.10) and have sick days in your bank (check the employee web portal to see the number of accumulated sick days). Should you meet that requirement, you will be entitled to an amount equal to one half the number of sick days standing in your sick bank at the time of retirement multiplied by the Teacher's per diem rate of salary up to a maximum of one-half year's earnings. The per diem rate shall be calculated by dividing the Teacher's annual earnings based on their annual full-time equivalency at time of retirement by the number of instructional days in the school year (see article 10.12).

So for a member that was retiring this school year that started with the Hamilton Board, had over 20 years service, had over 206 sick days in their bank, was at category 4 maximum; their gratuity would be calculated as follows: Category 4 maximum for this year is \$94,647.00. There are 194 instructional school days in the year. $\$94,647.00 / 194 = \487.87 per diem rate. One half of your sick days for this member would be 103 days $\times \$487.87 = \$50,250.61$. Since you cannot get more than a maximum of one-half year's earnings, the actual amount that the member would get would be \$47,323.50 ($\$94,647.00 / 2$). Should another member wish to retire this school year that is also at category 4 maximum, but only has 100 sick days in their bank; you would calculate their gratuity as follows: 50 sick days (1/2 of sick days standing in your bank) $\times \$487.87$ (per diem rate) = \$24,393.50 for gratuity payment.

Here is where it gets a little more complicated. If you started before September 1, 1999, then you would be eligible for a gratuity under the Collective Agreement language of the Board that you were employed with at the time, as it was prior to the amalgamation of the Hamilton Board of Education and the Wentworth Board of Education. For those that started in the Hamilton Board your gratuity eligibility is as follows: You must have 20 years of service or you must have reached the age of 60. If you have either of those you would calculate your gratuity, the same as was above. Should a member only have for example, 18 years of service and be 59 years of age, they would not

be eligible for any gratuity. (See Appendix D for language on eligibility – page 37 of our Collective Agreement).

If you started in the Wentworth County Board your gratuity eligibility is as follows: the member must be eligible for a pension under the terms of the Teachers' Pension Act, have reached the age of fifty-five (55) or achieved the 90 factor and must have acquired ten (10) years of approved teaching experience within schools in the jurisdiction of The Wentworth County Board of Education. You would also be eligible under the Wentworth County Board should you be forced to retire for reasons of ill health, but had ten years of service. If you met the requirements you would calculate your gratuity, as mentioned above. (See Appendix D for language on eligibility – page 37 of our Collective Agreement).

Board Denies Gratuity for Teacher with 26 Years Service

Late this summer I received a call from a member that was retiring and had just received notice that they were not eligible for gratuity. This member started in Wentworth County Board of Education, prior to amalgamation of the Hamilton and Wentworth Boards. I was stunned to find that the Board would refuse to give an employee a gratuity that had 26 years of service, based solely on her not having reached the age of 55 and starting with the Wentworth County Board, rather than the Hamilton Board. The Board's position was that this teacher had not met all the requirements as listed under Appendix D of the Collective Agreement Article 17.01 (a).

The Board stated that this teacher was required to meet 4 different criteria as a former employee of Wentworth County to be eligible for a gratuity including the following: eligible for a pension, be 55 years of age, have a 90 factor (age + years of service equal 90 or more), and must have acquired at least 10 years of service. This member was eligible for a pension under the terms of the Teachers' Pension Act and had 26 years of service, but did not meet the 90 factor or 55 years of age (the member was 50 years of age).

We disagreed and filed a grievance that has now been forwarded on to arbitration. Our position is that the Board was reading the language incorrectly. The language very specifically uses the word "or" when it states, "must be eligible for a pension under

the terms of the Teachers' Pension Act, have reached the age of fifty-five (55) or achieved the 90 factor and must have acquired ten (10) years of approved teaching experience within schools in the jurisdiction of The Wentworth County Board of Education".

It is our opinion that the person must be eligible for a pension OR must have reached the age of 55 OR must have a 90 factor. Beyond having 1 of those 3 things, a member must have at least 10 years of service. Under our reading of the Collective Agreement, this member has met the requirements to be eligible for a pension.

So how does an arbitrator decide, when the employer and employee (or bargaining unit grieving on behalf of an employee) have a difference of opinion on what contract language means? They look at many things. The arbitrator can look at bargaining notes taken back in 1998-1999 during negotiations to understand what the "spirit" or "intent" of the language was at the time. The arbitrator may also listen to testimony from people at the negotiating table at the time as to what they believed the language meant. The arbitrator will also use "past practise" to determine how both sides interrupted the language since it was used.

We believe we have evidence that will be beneficial to our side at arbitration. Members of the negotiating team of our bargaining unit have very clearly stated that the intent of this language was to ensure that at the time of amalgamation, no one was disadvantaged as a Wentworth County teacher that had under 20 years of service and that was expecting a gratuity. They added that the intent was never to discriminate against someone that had the years of service, but had not reached 55 years of age. I was happy to find that former Teacher Bargaining Unit President John Byers who was a former Wentworth County teacher added that he himself had not reached 55 years of age when he received his gratuity. When I spoke with another former Teacher Bargaining Unit President Norm Uhrig and former Teacher Unit Chief Negotiator Carl Chopp on Labour Day, both gave me the names of other members from Wentworth County that had not reached 55 years of age and yet had received a gratuity.

Finally, the best proof for reading the Collective Agreement our way and also

cont. on page 4

THE EDUCATION OF A CAMPAIGN

Anthony Marco

From the day after Labour Day until October 6th, I was holding two jobs: that of your Vice-President and also the NDP candidate for Niagara West-Glanbrook. I committed to running in the election because I care about the future of this province and, especially, public education.

The bargaining units of OSSTF District 21 have been incredibly supportive during this campaign. Even on those days where I had to be at a 9am radio debate in St. Catharines to another where I met with the United Steel Workers Area Council in Niagara Falls.

Even on days where I couldn't be in the office early, I often drove from the OSSTF office to my campaign office at 5:30pm, only to keep on with the campaign work afterwards until 9 or 10pm.

Many of you probably were probably besieged by my lowlights of the campaign where I was smeared with one to three year old, out-of-context quotes from my hundreds of hours of online

podcast episodes by the Provincial Liberal Party. For those that have known me for years, thanks for your supportive thoughts and words during that time. For those who only know me as a name or the big guy who stands up occasionally at the AGM, I'd like to assuage any concerns about my character or credibility by simply asking you to talk to teachers who know me.

There were many highlights as well: being able to speak at the OPSEU Rally to force Mohawk College to return to the bargaining table and resolve their strike, getting the endorsement of the Hamilton, Niagara, and Oakville labour councils, meeting incredibly kind and supportive people at local fairs and farmers' markets, and being able to work with a small, dedicated team who had my back all the way.

I have an incredible respect for the work you're all doing and I thank your Branch Reps for helping me carry a positive message about the importance of the public sector and public educa-

tion throughout the campaign.

I believe in sharing the knowledge of my experiences and, if available, am willing to come out to speak to any Civics classes upon request and availability. My delivery will not be partisan, but more of a personal reflection on the journey I took through the challenges of campaigning.

As a final note, during September SmearGate, many reporters asked me if I'd stop podcasting after this was over. I love communications; podcasting has become the key hobby in my life. I cannot see ever giving it up, but I can also attest to how easily things can be spun out of context. I will continue to be ironic, satiric, and try to provoke ideas using the spoken word.

I may not be getting ready to take a seat at Queen's Park, but I am ready to proceed forward protecting and advancing the cause of public education for all of us.

Thanks for your support throughout a tumultuous few months.

Important Dates - November 1 – Deadline for Voluntary Timetable Reductions for Semester 2 of the next year. Fill out forms and return it to Darlene Steele in Human Resources. **November 1** – Deadline for expansion requests up to full-time for semester 2. Send email to Scott Sincerbox scott.sincerbox@hwdsb.on.ca and c.c. Brenda Maxwell brendamaxwell@hwdsb.on.ca and Trevor Powell osstf21cn@quickcllc.net. Teachers must request expansion every semester by the deadline to be considered for expansion. **November 30** – Last day for Voluntary Transfer Declarations for Semester 2 of the next year. Fill out a form and return to Darlene Steele in Human Resources.

OTs PREGNANCY AND PARENTAL LEAVES cont'd (from p.1) ...have an entitlement to permanent lines when they go on a pregnancy/parental leave.

The Board has indicated that Principals are required to choose the best candidate for positions, and should not discriminate based on pregnancy/family status. We acknowledge that this discrimination is very difficult to prove, however, if a member believes that they did not achieve a position based on the fact that they are pregnant or will be taking a parental leave, they are urged to contact our office.

OSSTF Conferences and Workshops

Teachers should be aware that there is still money available this year to assist with the cost of attending conferences and workshops offered by OSSTF. Requests for reimbursement should be directed to Chantal Mancini at osstf21pres@quickcllc.net. These requests are considered by Teacher Executive and are on a first-come, first-serve basis.

Reminder—Leaves that Extend a Holiday Period

The Board has advised us that they will deny unpaid leaves for members who use them to extend holiday periods, except for compassionate reasons. Members who wish to request these leaves on compassionate grounds are advised to submit the request to the Board well in advance of booking travel. Members are reminded that as per the collective agreement, we can use up to two personal leave days per year. However, they cannot about a holiday.

Federation Representation

As outlined by the Collective Agreement, members 'shall be accompanied by a representative of the Bargaining unit at any meeting which may lead to discipline'. As such, 'fact-finding' meetings shall have union representation, as

should any meetings which follow an unsatisfactory rating on a Teacher Performance Appraisal. Teachers are strongly urged to check with their Branch President or the District Office if they are unsure of the purpose of a meeting with administration to which they have been called.

Is there a Letter of Discipline in your file?

If you have received a letter of discipline in your file, you have the right to request that it be removed once 18 months have passed, and there has been no further discipline imposed. Please contact our office for assistance in such a matter.

Teachers Transporting Students in Their Vehicles

In general, OSSTF does not advise members to transport students. The reasons for this are twofold: liability, and professional risk. Teachers need to be aware that they could be held liable in the event that there is an accident. As such, if teachers do occasionally transport students, they are strongly advised to purchase more than the minimum liability coverage offered by their auto insurance company. Teachers also need to be aware that if they are driving a family vehicle owned by their partner the owner will incur liability that may arise in the event that there is an accident.

There is also a level of professional risk involved if a teacher places themselves in a situation where they are alone with a student. Such a situation could open the door for accusations of misconduct. Such accusations can have devastating effects on the professional and personal lives of teachers. As such, teachers are advised to avoid all situations where they are alone with a student.

If members require further information or clarification, they are urged to call the District 21 Office.



Chantal leads teachers through some difficult scenarios at Branch President training. The case studies ranged from contract violations to health and safety issues through to the disciplining of members. Unfortunately, these are just some of the issues our time release officers deal with on a daily basis.

cont. from page 2 ...the proverbial "nail in the coffin" for the Board was the discovery of a letter signed by senior Board management in the year 2000. This signed letter recognized that those wishing to take commuted value on their pension or delay receiving pension, would still be eligible for receiving a gratuity within 17 years of the then mandatory retirement age of 65 (in other words teachers could receive a gratuity as early as 48 years of age). This proved that even the Board's intent at the time was to not discriminate against a teacher when receiving their gratuity based on their age. And yet, to my surprise, we still do not have a settlement with the Board. I do expect that at some point the Board will put settle and give this member their will lose at an arbitration based on "past practice". I also believe that the next time this happens to a member that is not 55 years of age who started their teaching profession in Wentworth County; we will be going to arbitration. I believe that the Board is going to put us on notice that going forward their position will be that if you are not 55 years old and started in Wentworth County, you are not eligible for a gratuity. Since they have given notice, they would not

automatically lose at arbitration based on Estoppel. In other words, even if the Board's reading of the Collective Agreement was correct(which we do not believe), they would lose at an arbitration since the Board did not previously act on its understanding of the Collect

Agreement and would therefore be estopped from asserting a violation. By awarding a settlement to us/the member this time and then serving notice for future teachers, the Board prevents an arbitrator from automatically ruling against them in future instances where

members are not 55 years of age.

For members that began in Wentworth County that have over 10 years of service or even over 20 years of service and are pension eligible, but have not reached 55 years of age, they should be aware that receiving a gratuity will not be automatic. We do not agree with our Board and their position and find it distasteful that they would discriminate based solely on one's age, particularly for a member that has given 26 years of service. Nevertheless, it has happened and future retirees that began their careers in Wentworth County should be aware that you could be denied a gratuity, even when you have the same age and years of service, as a teacher that started in the Hamilton Board. We will most certainly grieve on behalf of members that are denied their gratuity in these situations, but there is no guarantee as to how an arbitrator will rule.

OSSTF District 21 Teachers' Bargaining Unit

Financial Planning for "Soon-to-be Retirees"

Thursday, November 3rd
4pm, District 21 Office
1423 Upper Ottawa St., Unit 2

Light dinner provided.

Presentation by Educators' Financial

Call 905-574-8285 to reserve your spot.

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Layout by Anthony Marco, printed at JH French, 293 Mary Street North, Hamilton, Ontario