

Chapter 2

Section 2.01

Government Payments to Education-Sector Unions

Follow-Up on *May 2016 Special Report*

RECOMMENDATION STATUS OVERVIEW						
	# of Actions Recommended	Status of Actions Recommended				
		Fully Implemented	In Process of Being Implemented	Little or No Progress	Will Not Be Implemented	No Longer Applicable
Recommendation 1	1	1				
Recommendation 2	1	1				
Recommendation 3	1	1				
Recommendation 4	1			1		
Recommendation 5	1	1				
Recommendation 6	3	1.5		1.5		
Total	8	5.5	0	2.5	0	0
%	100	69	0	31	0	0

Overall Conclusion

As of June 6, 2018, the Ministry of Education (Ministry) had fully implemented 69% of the actions we recommended in our *2016 Special Report*, and had made little or no progress on the remaining 31% of our recommended actions.

Since our audit in 2016, the Ministry has reiterated its position that it would not fund education-sector unions' bargaining costs in the future. The Ministry made only one payment for bargaining

costs, \$1 million to the Ontario English Catholic Teachers' Association in August 2017, which was negotiated during the 2014/15 round of central bargaining. The Ministry also made amendments to the *School Boards Collective Bargaining Act, 2014*, to improve future rounds of negotiations based on feedback from school board trustees' associations and education-sector unions.

There were some areas where the Ministry made little or no progress in implementing our recommended actions. For example, the Ministry had not performed an assessment of how professional development in the education sector could

be best delivered. In addition, the Ministry had not yet amended the method of providing funding to school board trustees' associations. The Ministry continues to provide much of the funding to school board trustees' associations indirectly through school boards using the Grants for Student Needs. These funds are not clearly disclosed in Volume 3 of the Public Accounts of Ontario as being received by the trustees' associations. We continue to believe that funding for trustees' associations should be transparent and disclosed in Volume 3.

In addition, the Ministry put in place reporting requirements for the funds it provides school board trustees' associations through the Grants for Student Needs. However, it incorporated these requirements into existing transfer payment agreements. We believe this is not the correct accountability mechanism to ensure funds provided through the Grants for Student Needs are spent for the purposes intended, since the Grants for Student Needs are established annually by regulation and are not covered by a transfer payment agreement. During our follow-up, the Ministry told us that it expects to review the accountability mechanism it has in place for trustees' associations.

The status of actions taken on each of our recommendations is included in this report.

Background

Between April 2014 and December 2015, the Ministry of Education (Ministry) and central employer bargaining agencies undertook a “central-bargaining process” with nine education-sector unions. The purpose of these negotiations was to reach agreements with the unions on central-bargaining issues. In October 2015, the media reported that the Ministry committed to pay three teachers' unions a total of \$2.5 million to offset their bargaining costs.

Two weeks after the first media reports appeared, the Standing Committee on Public

Accounts (Committee) requested that we review the bargaining costs paid to education-sector unions since 2008. The Committee requested that our work include answering questions about where the money for the payments came from, what the payments were intended to fund, and whether other jurisdictions engaged in the same practice of paying bargaining units for negotiations. We added 10 other questions to these three, and our Special Report was structured around the answers to these 13 questions.

The Province introduced central bargaining, in addition to local collective bargaining, in 2004. The main topics of negotiations in central bargaining were salaries and other financial matters. In the next two rounds of central bargaining (in 2008/09 and 2012), the central-bargaining tier evolved further, but in all three rounds, participation by unions, school boards and school trustees' associations was voluntary.

Before negotiations began in 2008 and 2012, the Ministry told all education-sector unions that it would reimburse them for central-bargaining costs to encourage them to participate. The Ministry signed transfer-payment agreements with the unions stating the maximum amount the Ministry would reimburse them and the types of expenses that would be eligible. The agreements required that unions submit monthly expense statements signed off by the CEO and CFO attesting that the expenses were eligible for reimbursement.

There was no advance commitment by the Ministry to pay for bargaining costs in the 2014/15 round of negotiations, in which, under the *School Boards Collective Bargaining Act, 2014*, union participation was mandatory. The Ministry told the Canadian Union of Public Employees (CUPE) in January 2015 that it “is not paying any of the costs that have been or will be incurred by any of the unions during bargaining.”

The Ministry then later negotiated separate agreements with the Ontario Secondary School Teachers' Federation (OSSTF) in August 2015 (to pay \$1 million), the Ontario English Catholic

Teachers' Association (OECTA) in August 2015 (to pay \$1 million) and l'Association des enseignantes et des enseignants franco-ontariens (AEFO) in September 2015 (to pay \$500,000). There were initially no accountability provisions (that is, the unions would not have to provide receipts or expense statements to receive the money).

In a letter dated November 12, 2015, a week after the Committee passed its motion requesting us to perform the audit, the Ministry informed the unions that they would have to provide an expense report signed off by an authorized union representative and audited by an independent accounting firm.

Among the findings included in our May 2016 *Government Payments to Education-Sector Unions* special report:

- It is understandable that concerns were raised in principle about the Ministry's 2014/15 commitments/payments to unions for bargaining costs. These arrangements initially lacked accountability and the controls usually associated with government funding. It was only after the Ministry made the arrangements and was heavily criticized by the media and members of the Legislature that the Ministry required the unions to provide support for the costs to be claimed.
- The Ministry's rationale for reimbursing the unions' bargaining costs was that it would advance negotiations. Two teachers' unions told us that negotiations might have stalled without the agreement to pay bargaining costs. The Ministry also recognized that the 2014/15 round of bargaining was longer than in previous years and likely contributed to additional costs for all parties involved.
- The total bargaining costs committed or paid up to March 31, 2016, to unions from the 2008/09, 2012, and 2014/15 central-bargaining rounds was \$3.796 million.
- We found very little evidence of other Canadian governments paying education-sector unions for bargaining costs. As well, the Ontario government has typically not made payments to other large public-sector unions for bargaining costs.
- Both the *Education Act* and the *School Boards Collective Bargaining Act, 2014* define school boards, not the Ministry of Education, as the legal employers of school board employees. Not being the legal employer, the Ministry is not subject to the *Labour Relations Act, 1995* for collective bargaining. The *Labour Relations Act, 1995* has been interpreted to potentially prohibit payments to a union by an employer or employers' organization, or a person acting on behalf of an employer or an employers' organization, if the payments undermine the independence of the union for the purposes of the Act. Even if the Ministry was defined as the employer and was subject to the *Labour Relations Act, 1995*, given the amount of bargaining costs committed/paid relative to the financial resources of the unions, it is unlikely that the payments would legally be viewed as undermining the independence of the unions.
- Although the Ministry initiated central bargaining in 2004, no policy or legislated framework was put in place for this process until April 2014, with the passage of the *School Board Collective Bargaining Act, 2014*. In the absence of a legislated framework, union participation in central bargaining in 2008/09 and 2012 was voluntary, and the Ministry encouraged this participation by offering to reimburse union bargaining costs. Those offers in 2008 and 2012 may very well have created an expectation that continued reimbursement of bargaining costs would be possible in future rounds of negotiations.
- From 2000/01 to 2015/16, the Ministry made other payments, totalling \$80.5 million, to education-sector unions in Ontario and the Ontario Teachers' Federation (the Ontario Teachers' Federation, which is governed by the AEFO, the Elementary Teachers'

Federation of Ontario [ETFO], the OECTA and the OSSTF, advocates for the teaching profession and publicly funded education, but is not involved in collective bargaining). Of the \$80.5 million, \$22 million was disbursed in 2006 as unconditional grants with no accountability or control provisions. The Ministry generally put in some accountability mechanisms for the remaining payment amounts. In addition, in 2008/09, the Ministry flowed \$6.8 million in funding to school boards to provide to the AEFO to use for teacher professional development. This \$6.8 million is outside of the \$80.5 million in direct payments from the Ministry to unions.

- Between 2008/09 and 2014/15, the Ministry also provided about \$14.7 million of funding to school board trustees' associations to build their capacity and participate in central-bargaining negotiations. The Ministry provided these funds both directly under transfer payment agreements and indirectly through grants to school boards. The *School Boards Collective Bargaining Act, 2014* significantly expanded the associations' mandate to join with the Ministry in co-managing the employer side of bargaining. The Ministry needs to improve the transparency and accountability of this funding by providing it directly to school board trustees' associations versus transferring it through school boards. Transferring the funding through the school boards exempts the payments from being clearly disclosed as funding for the associations in Volume 3 of the Public Accounts of Ontario, and exempts associations from the requirements of the *Public Sector Salary Disclosure Act, 1996*.

We made six recommendations, consisting of eight actions needed for improvement, and received commitments from the Ministry that it would take action to address them.

Status of Actions Taken on Recommendations

We conducted assurance follow-up work between April 1, 2018, and June 6, 2018, and obtained written representation from the Ministry of Education on October 31, 2018, that it has provided us with a complete update of the status of the recommendations we made in the original audit two years ago.

No Policy Framework or Legislation in Place for Central Bargaining Prior to the *School Boards Collective Bargaining Act, 2014*

Recommendation 1

When launching a major provincial initiative that impacts external stakeholders, the Ministry of Education should ensure that a transparent policy and legislative framework is in place before the major initiative is launched.

Status: Fully implemented.

Details

In May 2016, the Ministry issued a policy that established a Provincial Committee on Ministry Initiatives (“the committee”) to provide advice to the Ministry on new or existing Ministry initiatives relating to improving student achievement and well-being. The committee includes representation from external stakeholders such as education-sector unions, principals' associations, Directors of Education associations, and school board trustees' associations.

Although not noted in the policy document, the Ministry told us that this committee would also deal with initiatives relating to labour-negotiation processes. On March 27, 2017, the Ontario government passed the *School Boards Collective Bargaining Amendment Act, 2017*, which made amendments to the *School Boards Collective Bargaining Act, 2014*.

For details on the amendments see the details to

Recommendation 2.

Unions' Rationale for Negotiating 2014/15 Payments was the Length and Inefficiency of the Central-Bargaining Process

Recommendation 2

To improve the efficiency and effectiveness of two-tier education-sector bargaining in Ontario, the Ministry of Education should complete its review of the 2014/15 central-bargaining process and the School Boards Collective Bargaining Act, 2014, and implement needed changes.

Status: Fully implemented.

Details

At the time of our audit, the Ministry of Education, with the help of a facilitator from the Ministry of Labour, was consulting with unions and school board trustees' associations to identify ways of improving the central-bargaining process. From March 2016 to February 2017, the Ministry met with education-sector unions and school board trustees' associations on four separate occasions to obtain feedback on how the Act and the central-bargaining process could be improved for future rounds of negotiations.

On March 27, 2017, the Ontario government passed the *School Boards Collective Bargaining Amendment Act, 2017*, which made amendments to the *School Boards Collective Bargaining Act, 2014*. All amendments were effective by May 4, 2018. Some of the significant amendments were:

- requiring mandatory participation in central bargaining by all education-sector unions (at the time of our audit, participation was only mandatory for teachers' unions);
- allowing the Crown, or the applicable employer bargaining agent, to receive updates on the status and progress of local bargaining, and for the Crown or employer bargaining agent to assist with local negotiations, upon request;
- allowing the extension of collective agreements by two, three, four or five years;

- allowing central bargaining parties and the Crown to file an application with the Ontario Labour Relations Board for determination on whether there are conflicts or inconsistencies between central and local terms within a collective agreement; and
- ensuring parents and students are informed in advance of a labour disruption by requiring an additional five days' notice for a strike or lock-out (under certain circumstances) beyond the existing five days' notice already covered by the Act. For example, a 10-day notice is required when there is a complete withdrawal of instruction or services in one or more schools of a board, or if one or more schools of a board is to be closed.

The amendments did not explicitly address the length of time to decide on which issues should be negotiated centrally versus locally. This concern might be minimal in the next round of negotiations given the Ontario Labour Relations Board already decided on many central bargaining issues in the last round of negotiations. The amendments also did not address concerns regarding the logistics of bargaining, such as scheduling and the location of negotiations, or who was responsible for covering the costs of central bargaining. However, the Ministry does not expect to fund bargaining costs for education-sector unions in future rounds, as explained below in the details to **Recommendation 3**.

Public Perception Concerns Naturally Arose with the Ministry/Crown Paying Unions for Bargaining Costs

Recommendation 3

In order to avoid future perception concerns about the Ministry of Education's funding of education-sector unions' bargaining costs to advance negotiations, the Ministry should consider ceasing this practice.

Status: Fully implemented.

Details

At the time of our audit in 2016, the Ministry told us that the 2014/15 bargaining process required more time and resources from all parties involved because it was the first round of bargaining under the framework of the new Act. This should not be the case in future rounds. Therefore, the Ministry did not expect to fund bargaining costs for education-sector unions in future rounds.

At the time of our follow-up, the Ministry again indicated that it would not fund unions' bargaining costs in the future. Since our audit, the Ministry has made only one payment for bargaining costs (\$1 million to the Ontario English Catholic Teachers' Association on August 10, 2017), which was negotiated during the 2014/15 round of central bargaining and gave rise to the special audit.

Ministry Has Made Payments to Education-Sector Unions Since 2000 for Purposes Other Than Central Bargaining

Recommendation 4

Working with school boards, the Ministry of Education should, in an open and transparent manner, regularly assess how professional development in the education sector can best be delivered and align the funding according to the results of this assessment, ensuring accountability mechanisms are in place.

Status: Little or no progress.

Details

In our 2016 *Special Report*, we reported that the Ministry paid education-sector unions to provide professional development to teachers. At the time, the Ministry told us it provided professional development funding to unions to encourage them to “take greater ownership of Ministry priorities.” From the unions' point of view, the professional development they provide is more relevant and effective than that provided by school boards, because it is the teachers themselves who deliver it. From the school board trustees' association

point of view, school boards are responsible for, and accountable to the government for, student achievement. The school boards therefore must align their professional development and training to meet Ministry objectives for education.

At the time of our 2016 report, the Ministry told us that it was reviewing the expertise within the education sector and assessing the most appropriate bodies to deliver each type of professional development. However, at the time of our follow-up, the Ministry had not performed an assessment that illustrated how professional development in the education sector could be best delivered. The Ministry reiterated its position that providing funding to a union to deliver training on a Ministry priority creates greater ownership of the Ministry priority.

The Ministry continues to fund unions to deliver training and professional development. From April 1, 2016 to May 18, 2018, the Ministry paid the Ontario Teachers' Federation and teachers' unions \$13.1 million for training and professional development. Most of this funding was provided to the Ontario Teachers' Federation, similar to the time of our audit. The Ontario Teachers' Federation is governed by the four teachers' unions in the province, advocates for the teaching profession and publicly funded education, but is not involved in collective bargaining.

Recommendation 5

The Ministry of Education should assess the merits of providing funding to education-sector unions for purposes other than professional development outside of the collective bargaining process.

Status: Fully implemented.

Details

According to the Ministry, it does not intend to fund unions for purposes other than professional development outside of the collective bargaining process. From April 1, 2016, to May 18, 2018, the Ministry paid unions \$72,400 outside of the collective bargaining process, primarily for travel and

hospitality expenses for stakeholder consultations, working groups, and advisory committee meetings relating to the implementation of Ministry policies and initiatives.

Ministry Provides Funding for Central-Bargaining Costs of School Board Trustees' Associations, But Accountability and Transparency Needs Improvement

Recommendation 6

The Ministry of Education should:

- *amend the method of providing funding, outlined in O. Reg. 206/15 of the School Boards Collective Bargaining Act, 2014, for the transparent disclosure of payments to school board trustees' associations in Volume 3 of the Public Accounts of Ontario and ensure that the associations are subject to the Public Sector Salary Disclosure Act, 1996;*

Status: Little or no progress regarding method of providing funds to school board trustees' associations (0.5).

Fully implemented regarding having school board trustees' associations be subject to the *Public Salary Disclosure Act, 1996* (0.5).

Details

The Ministry continues to provide funding to school board trustees' associations both directly through transfer payment agreements and indirectly through school boards via the Grants for Student Needs. Based on our review of Ministry documents, both sources of funding are essentially for the same purpose. Both are provided because of statutory obligations under the *School Boards Collective Bargaining Act, 2014*, which designates the trustees' associations as the central employer bargaining agents. We believe funding for the same purpose should be provided through the same funding mechanism.

Volume 3 of the Public Accounts of Ontario discloses all recipients of government transfer payments of at least \$120,000 in a fiscal year. In 2016/17, the four school board trustees' associations received a total of \$6.2 million in provincial funding. However, only \$1.6 million, which was paid to them directly by the Ministry through transfer payment agreements, was disclosed in Volume 3 as being received by the trustees' associations. The remaining \$4.6 million, which was flowed to them by the Ministry through the school boards, was identified in Volume 3 as being received by school boards instead of the trustees' associations. The Ministry's reasoning for funding trustees' associations through the Grants for Student Needs is that it reinforces the accountability relationship between the associations and the school boards. We continue to believe that funding trustees' associations should be transparent and disclosed in Volume 3, regardless of how the funding is flowed to the associations.

However, at the time of our follow-up, the Ministry informed us that it was expecting to begin a review of the way it provides funding to trustees' associations. The review is expected to assess the accountability relationship between the individual employers and their central employer bargaining representatives. It is also expected to look at the principles of transparency and accountability, and ensuring appropriate control mechanisms are in place.

In 2016, we also reported that the Ministry's method of funding trustees' associations through school boards means that associations do not have to disclose the salaries of their employees who would otherwise be subject to the *Public Sector Salary Disclosure Act, 1996*. This Act requires that not-for-profit organizations (such as school board trustees' associations) that receive at least \$1 million in funding from the government must publicly disclose the names and salary amounts of employees earning more than \$100,000. On March 27, 2017, the *Public Sector Salary Disclosure Act, 1996* was amended to specifically make trustees' associations subject to salary disclosure requirements. We

noted that three of the four trustees' associations disclosed the names and salary amounts of employees earning more than \$100,000 for 2017. We were informed that due to an oversight, the fourth association did not disclose.

- *put in place accountability and control mechanisms to ensure funds provided are used for the purposes intended;*

Status: Little or no progress.

Details

At the time of our 2016 audit, trustees' associations were only required to report back on how funding provided directly by the Ministry through transfer payment agreements was spent. The regulation, which provides Ministry funding to trustees' associations through school boards (via the Grants for Student Needs), did not include a requirement that the associations report back on how the funding was spent or provide supporting documentation for expenses.

Since our audit, the Ministry has amended transfer payment agreements to require that associations also report on how they spent funding provided through school boards. Associations are now required to provide an audited financial expense statement to verify how they spent funds provided through both the Grants for Student Needs and transfer payment agreements, according to the following expense categories: staffing, operating, professional services, and travel.

In our opinion, putting accountability mechanisms in place through transfer payment agreements

is not the best way to ensure accountability of how Grants for Student Needs funds are spent.

As mentioned, the Ministry plans to review the accountability mechanism in place for trustees' associations in its upcoming review of how best to fund them.

- *ensure that the eligibility periods in transfer-payment agreements do not unnecessarily overlap.*

Status: Fully Implemented.

Details

In our 2016 *Special Report*, we reported that for 2014/15 central bargaining, each trustees' association received payments under four different transfer-payment agreements for labour-relation activities. The four agreements were all for the same general purpose, and the periods for eligible expenses overlapped. For example, eligible expenses incurred during the month of December 2014 and the month of August 2015 could be reimbursed under three different agreements. None of the agreements expressly prohibited an association from claiming the same expense more than once under different agreements.

Starting in the 2016/17 school year, the Ministry eliminated the practice of entering into multiple transfer-payment agreements with overlapping eligibility periods and now only disburses funds under one agreement annually with each trustees' association for the costs associated with labour-relation activities.