Commentary

ILO’s CFA Calls for Full and Fair Consultation with Unions after Ontario’s Unilateral Austerity Measures Adversely Affect Collective Bargaining

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Introduction

In 2012, the Ontario provincial government enacted the Putting Students First Act, 2012 (PSFA), and imposed austerity bargaining terms on five unions in its education sector. In early 2013, the unions launched a constitutional challenge against the legislation before the Ontario Superior Court of Justice. At the same time, they also initiated a complaint with the ILO’s Committee on Freedom of Association (CFA), alleging that the PSFA breached ILO Convention No. 87. In April 2016, the Ontario Superior Court issued a comprehensive judgment, upholding most of the unions’ claims. The CFA ruling, delivered in March 2017, relied extensively on the evidentiary findings and reasoning of the Ontario Court. Accordingly, an analysis of the CFA decision starts with the Ontario Superior Court ruling.

1 S.O. 2012, chap. 11.
3 Ontario Public Service Employees Union v Ontario (Attorney General), 2016 ONSC 2197.
In Canada, a federal state *par excellence*, labor relations lie primarily within the constitutional jurisdiction of the provinces: approximately 90 percent of the Canadian labor force is governed by provincial labor laws. This includes education, which has been a constitutional responsibility of the provinces since Confederation in 1867.

In the aftermath of the 2008 global financial crisis, and in the face of declining public revenues, federal and provincial governments in Canada embarked upon significant deficit spending to sustain the economy. By 2012, Canadian governments had turned to budget balancing. Ontario—Canada’s largest province by area and population—had accumulated a deficit of CA $35 billion by 2012, making it the world’s largest subnational borrower in absolute terms. That year, the provincial government was due to enter province-wide collective bargaining with its various education-sector unions, representing teachers and school board support workers.

At the individual bargaining tables for each education-sector union, the Ontario government proposed austerity bargaining terms: two-year collective agreement renewals with no pay increases, a significant reduction in sick leave benefits, cutbacks in pension plan benefits, and the freezing of salary grid advancement. Despite repeated union requests, Ontario did not provide them with the cost-saving targets each union would have to meet to satisfy the government’s fiscal objectives. The unions objected both to the government’s bargaining demands, and to the dictated bargaining process.

When the Ontario government could not reach an agreement with five of the unions, the Ontario legislature enacted the PSFA in September 2012. The government subsequently used its enhanced powers under the PSFA to effectively impose the government’s bargaining objectives, as well as abrogating, for this round of bargaining, the unions’ right to strike. In response, the unions initiated the constitutional litigation against the PSFA, and launched the complaint with the ILO’s CFA.

In late January 2013, the Ontario government repealed the PSFA. However, the collective agreements imposed upon the education-sector unions by the legislation remained in place.

**Analysis**

*The Ontario Superior Court of Justice Ruling*

Over the past two decades, labor law in Canada has entered a brave new world of substantive constitutional protection, with the Canadian courts providing...