



Why Alberta's classrooms crowded?
Calgary Separate Teachers

**TEACHERS ON THE MARCH:
THE 2002 STRIKE**

Calgary Separate Teachers

Why are Alberta's classrooms so crowded?

It's

It's About Priorities

Why are Alberta's classrooms so crowded?

Northland Teachers

TEACHERS

IT'S THE (CLASS) SIZE THAT COUNTS

RALPH... our CHILDREN deserve...
the... in funding for Education!

Children Deserve the Best!

KIDS NEED FUNDING

Northern Lights Teachers



The Alberta Teachers' Association

© Copyright 2014

Unauthorized use or duplication without prior approval is strictly prohibited.

ISBN 978-1-927074-18-3

The Alberta Teachers' Association

11010 142 Street NW, Edmonton AB T5N 2R1

Telephone 780-447-9400 or 1-800-232-7208

www.teachers.ab.ca

TEACHERS ON THE MARCH: THE 2002 STRIKE



The Alberta
Teachers' Association

© Copyright 2014

Unauthorized use or duplication without prior approval is strictly prohibited.

ISBN 978-1-927074-18-3

The Alberta Teachers' Association

11010 142 Street NW, Edmonton AB T5N 2R1

Telephone 780-447-9400 or 1-800-232-7208

www.teachers.ab.ca

CHAPTER 1	
SETTING THE SCENE	4
<i>The Klein Revolution and the Assault on Teachers</i>	4
<i>Public Education and Its Funding: Shoring Up the Base</i>	4
<i>Bargaining in the '90s: Six Years of Slogging</i>	8
<i>Conclusion</i>	12
CHAPTER 2	
THE LEAD-UP TO THE DUST-UP	13
<i>The Fall of 2000: Bargaining as Usual</i>	13
<i>Funding: The Frustration Continues</i>	13
<i>Internal Affairs</i>	14
<i>The Election of 2001</i>	15
<i>The Other Settlements</i>	16
<i>The Premier's Dinner</i>	17
<i>The Provincial Budget</i>	18
<i>The Association Responds</i>	19
<i>The Plan</i>	21
<i>The Resolutions</i>	25
<i>Teachers Wrote</i>	26
<i>Focus on ARA</i>	31
<i>The President's Letter</i>	31
<i>The Backgrounder</i>	32
<i>The Minister's Position</i>	34
<i>ARA 2001</i>	36
<i>The President's Address</i>	37
<i>Two Emergent Resolutions</i>	39
<i>The Assembly on the Steps</i>	42
<i>Media Coverage</i>	44
<i>End of the Beginning</i>	45
CHAPTER 3	
COORDINATED BARGAINING	46
<i>Planning Strategy</i>	46
<i>Preparations and Public Relations</i>	47
<i>Strikes on the Horizon</i>	51
<i>The Pension Gambit</i>	55
<i>The Timing of the Strikes</i>	56
<i>The Players</i>	57

<i>Planning</i>	60
<i>The Media</i>	60
<i>The Strikes</i>	63
<i>Back to Work, or Not</i>	63
<i>The Challenge</i>	64
<i>The Decision</i>	65
<i>Organized Labour and the Association</i>	68
<i>The ASBA</i>	68
<i>The Premier and the President</i>	69
<i>Bill 12, Education Services Settlement Act</i>	71
<i>The Media: Losing the PR Battle</i>	76
<i>Reacting to the ESSA</i>	78
<i>Negotiating the ESSA</i>	83
<i>The ESSA Interpreted</i>	84
<i>Public Perceptions</i>	85
<i>Teacher Perceptions</i>	86

CHAPTER 4

ARBITRATION

88

<i>Organizing the Arbitration Process</i>	88
<i>The Preliminaries</i>	89
<i>The Association Brief of General Argument</i>	90
<i>The ASBA Brief</i>	95
<i>The Six Test Cases</i>	97
<i>Ongoing Negotiations</i>	98
<i>The Awards</i>	98
<i>Reasons by the Chair</i>	99
<i>Responding to the Awards</i>	100
<i>Winners and Losers</i>	100
<i>In the End</i>	101

FOREWORD

On February 4, 2002, the largest teacher strike in the history of Alberta commenced. It didn't just happen. It followed years of chronic underfunding of public education by the Klein government. Alberta's Minister of Learning, Lyle Oberg, did not undertake any efforts to make this different. Teachers did not feel respected and were increasingly denied the opportunity to do their best work. Student learning conditions (and teachers' conditions of professional practice) continued to erode. Finally, the teachers of Alberta had had enough.

None of this could have happened without the exceptional leadership of ATA President Larry Booi and the Association's Executive Secretary Dr Charles Hyman, truly remarkable efforts by staff and a high level of unity among Provincial Executive Council, local teacher leaders and rank and file members. As described in this monograph, much happened before, during and after. There were substantial efforts to achieve the conditions of professional practice required by teachers in the period leading up to the strike. The strike itself placed enormous strain on government and the profession. And the Klein government's handling of the aftermath—the passage of the *Education Services Settlement Act*—did nothing to make things better. Tensions continued to run very high, as teachers withdrew their voluntary services and government MLAs were chastised for their treatment of teachers.

The arbitration award dealt with the collective agreements, and the resolution of the strikes provided for a commission to study the education system, especially matters relating to classroom conditions. The report of Alberta's Commission on Learning, released in October 2003, included some positive recommendations that were implemented by government, including class size guidelines that served to improve classroom conditions for Alberta teachers. Although there has been significant erosion from these guidelines in the past few years, the achievement of improved classroom conditions was also an important aftermath of the 2002 strike.

I want to acknowledge the outstanding work of long time Association staff member Winston Nettleton, who took on the task of writing this monograph. Winston served as a Teacher Welfare staff officer for two decades, including service as Coordinator, Teacher Welfare, prior to his retirement before the 2002 strike. I also want to acknowledge the work of Shelley Svidal, Administrative Officer, Government, who edited the monograph.

The publication of this monograph is a reminder of the importance of leadership, unity and collective action in the pursuit of the legitimate goals of the teaching profession.

Gordon R Thomas
Executive Secretary
August 2014

CHAPTER 1

SETTING THE SCENE*The Klein Revolution and the Assault on Teachers*

The Klein era began with funding cuts, slashed salaries, job reductions and vicious verbal attacks on teachers by members of their government and its right-wing cheerleaders. The government cut funding to school boards in the spring of 1994 and announced that all public-sector workers were requested to play their part in rescuing provincial finances by taking a 5 per cent wage cut, or else. By that September, teachers' collective agreements reflected the new political reality, almost without exception, through a 5 per cent reduction in the salary grid.

The Alberta Teachers' Association (ATA) quickly came to the conclusion that, while teachers were targeted, the target was not just teachers. Public education itself was under attack, and its defence required absolute priority. A strong public education system was synonymous with good salaries and conditions of practice for teachers.

Education funding changed. School boards were deprived of the last of their power to impose a levy on the local property and industrial tax base. Grants would now essentially be allocated on a per-student basis. The new grant

system, together with the amalgamation of school jurisdictions, created a certain rough equality on the input side of the education finance equation. The differences in output demands were, for the most part, simply ignored.

The amalgamation of school jurisdictions, largely a rural phenomenon, required the Association to restructure the affected locals and bargaining units and amalgamate their collective agreements. The Association set as its bargaining priority for all units restoration of teachers' salaries at the earliest possible date. Given the tenor of the times and the minimal grant increases being projected by the government, the Association concluded that it was unlikely improvements in conditions of practice could be negotiated in the short run.

Accordingly, the Association sought to defend and strengthen public education and to pursue increased funding by political means, while bargaining, for the most part, focused narrowly on salary and benefit issues.

Public Education and Its Funding: Shoring Up the Base

The attack on education funding was part of a broader attack on the very concept of public education, and the Association embedded its demands for increased funding in a "Support Public Education" campaign. It proceeded on the premise that broad public support provided the best, perhaps the only, way to ensure the proper funding and indeed the survival of education as a public enterprise.

At its heart, the "Support Public Education" campaign was a publicity campaign intended to rally the support of Albertans for public

education. The campaign used all the normal tools of public persuasion and argument, including some tools one might not have expected. For example, the tenuous validity of international comparisons, so loved by the right-wing critics, did not preclude use of those results to promote public education. The Association noted that the results of the Third International Mathematics and Science Study, conducted in 1995, placed “Alberta’s Grade 4 students among the world’s best.” According to President Bauni Mackay, “These test results carry a big punch and opponents of our public education system should take note the next time they criticize teachers and education in this province.”¹ A measure of the success of the political actions taken can be seen in the public opinion polls conducted over the period, which show a solid and increasing level of support for public education.

The public campaign complemented traditional lobbying tactics, with table officers pleading the Association’s case in face-to-face meetings with the minister of education and local presidents undertaking similar actions with MLAs.

Another hallmark of this period was the effort made by numerous groups to make common cause in the campaign to support public education. The Association played a key role in this. In particular, it exerted considerable effort to make common cause with the

Alberta School Boards Association (ASBA), and this effort frequently gained a public face. For example, the Association publicly complimented the ASBA when it called for increased funding in 1997: “The Alberta School Boards Association has performed a real service for public education by adding its voice to the symphony of those calling for increased attention to the education of students with special needs.”² By 1999, this strategy had produced some significant results, with the government increasingly isolated from the other major players in the education field. This was evidenced through at least one major funding issue. Minister of Education Gary Mar had proposed a School Performance Incentive Program, under which school boards would receive incentive funding for meeting performance measures set by the government. The Alberta Home and School Councils’ Association (AHSCA), the ASBA, the ATA and the College of Alberta School Superintendents (CASS) joined forces to propose an alternative program. AHSCA President Christine Ayling, given status as spokesperson, stated, “As provincial partners, we’ve been working ... to propose a program that will contribute to improved student learning.”³ Lois Byers, president of the ASBA, also weighed in on the subject of cooperation on the funding issue, saying, “Rather than just saying ‘no’ to this program, we’ve chosen instead to work with the AHSCA, ATA and CASS to offer an alternative.”⁴ The government’s acceptance of

¹ Alberta Teachers’ Association, “Of course, Alberta’s students are tops—ATA,” news release, June 12, 1997.

² Alberta Teachers’ Association, “ATA welcomes special-education report, urges government to act on recommendations,” news release, October 17, 1997.

³ Alberta Home and School Councils’ Association, Alberta School Boards Association, Alberta Teachers’ Association and College of Alberta School Superintendents, “School improvement, not incentives, say education partner organizations,” news release, May 12, 1999.

⁴ Alberta Home and School Councils’ Association, Alberta School Boards Association, Alberta Teachers’ Association and College of Alberta School Superintendents, “School improvement, not incentives, say education partner organizations,” news release, May 12, 1999.

the alternative program was a vindication of this cooperative approach.

Set within public education, the plight of teachers was similar to that of other employees. From the outset, public-sector labour groups made common cause, and when Safeway workers went on strike in 1997, the Association identified with another sector of the public, drawing a parallel between their plight and that of teachers. As Mackay explained, “The Safeway strike is a parallel to many collective bargaining concerns being expressed by teachers across the province. Three years ago, in order to help their company out of a difficult



financial situation, Safeway workers agreed to a rollback in wages. Now that the company is profitable again, those same workers feel that they deserve to be compensated by having

their wages returned. This situation is one with which many teachers empathize.”⁵

Mackay was quick to commend the government for any sign of positive ideas, stating that Minister of Education Gary Mar “has proven he is a minister for education as well as a minister of education by recommending his government pump up to \$500 million into the public education system.”⁶ Approval was expressed for government actions whenever possible. In a January 9, 1998, Association news release, Mackay “lauded the extra funding for special-needs students, teachers’ aides and English-as-a-second-language enhancement.”⁷ The organization’s public statements were often couched in the government-speak of the day, referring to increased funding as *reinvestment in education*.

In the six years following the setbacks of 1994, progress on funding was hard won and often proved illusory. The same January 9, 1998, news release exhibited the organization’s increasing frustration with the tactics of the government: “Alberta teachers are giving Premier Ralph Klein and Education Minister Gary Mar an A+ for their ability to make the government’s \$137 million reinvestment in education sound like \$380 million.”⁸

Throughout the period, collective bargaining brought unrelenting publicity to and pressure on education funding. Publications of the day are replete with Association comment

⁵ Alberta Teachers’ Association, “Teachers asked to honor Safeway picket lines,” news release, April 17, 1997.

⁶ Alberta Teachers’ Association, “ATA welcomes word of reinvestment in education,” news release, November 21, 1997.

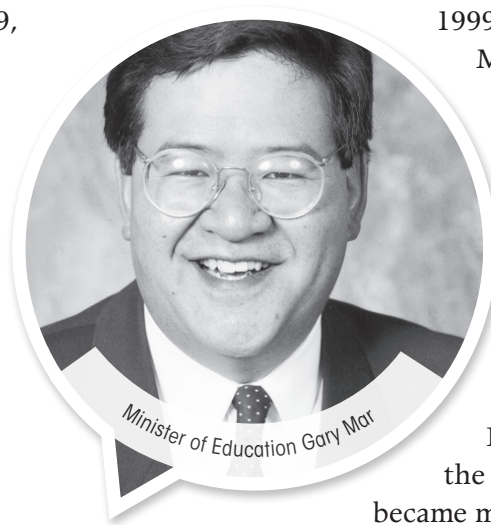
⁷ Alberta Teachers’ Association, “Education reinvestment announcement a disappointment, says ATA,” news release, January 9, 1998.

⁸ Alberta Teachers’ Association, “Education reinvestment announcement a disappointment, says ATA,” news release, January 9, 1998.

on the subject. In April 1999, Mackay noted that, by announcing a disputes inquiry board to avert a strike, Mar “is relieved of answering questions about the real problem— inadequate education funding.”⁹ Locals, too, clearly identified the problem. Speaking on the same dispute, Kurt Moench, president of Calgary Public Teachers Local, stated, “All of Calgary knows there is no uncertainty regarding the facts: Calgary schools are drastically underfunded.”¹⁰

The Association had concluded that improvements in education funding resulting in improved conditions of practice were not likely to be achieved by means of traditional collective bargaining, notwithstanding the pressure being exerted through that means. Indeed, almost without exception, the government’s statements and actions made it clear that it would be satisfied with exactly the opposite result, namely, that whatever salary increases teachers would realize would come at the expense of fewer teachers and more students per classroom.

While the interrelatedness of the issues was recognized, the Association continued to pursue them separately. Responding to the funding announcement for the 1998/99,



1999/2000 and 2000/01 school years, Mackay commented, “Teachers will still be forced to choose between learning conditions and their families’ financial health.”¹¹ In 2001, the reversal of that policy constituted one of the fundamental decisions made by the Association.

Increasingly frustrated by the paucity of progress, teachers became more militant. In 1997, the Annual Representative Assembly directed the Association to become more openly assertive and to involve more teachers in the battle for better funding, passing a resolution sanctioning a teachers’ rally on October 4, the eve of World Teachers’ Day. Aware that such a gathering had the potential to dissolve into chaos, descend into abuse and confrontation, or simply fizzle from a lack of interest by its members, the Association proceeded cautiously to organize its first-ever provincewide rally. Mindful of its reputation and aware that its members were becoming increasingly frustrated with the government, the Association was at pains to ensure that the rally was seen as proeducation and not overtly antigovernment, or at least to ensure that it did not descend into abusive behaviour. Scarves proclaimed “Get the Message,” the ambiguous theme of the rally. The message to be sent was that teachers were displeased with what was happening to public education. That

⁹ Alberta Teachers’ Association, “Alberta teachers see government intervention in Calgary Public teachers dispute as bailing out the minister of education,” news release, April 23, 1999.

¹⁰ Alberta Teachers’ Association, “Teachers demand explanation of government actions,” news release, April 26, 1999.

¹¹ Alberta Teachers’ Association, “Education reinvestment announcement a disappointment, says ATA,” news release, January 9, 1998.

message, while clearly aimed at government MLAs, was also intended for Albertans in general. The event would take place at the Alberta legislature because, in Mackay's words, "it belongs to all Albertans. It is the perfect place in which to encourage public support for public education."¹² The event was meticulously organized: public transit was arranged; police, teacher marshals and transit officials provided crowd and traffic control; and speeches were carefully planned and monitored. Teachers turned out in droves, exceeding everyone's expectations. The government may not have reacted, but clearly teachers had begun to stir.

When a new Association president arrived on the scene in July 1999, the funding issue remained, and within weeks, Larry Booi was focused on it and the government's continued evasion of this fundamental issue. The occasion was the release of the government's response to the recommendations of the Funding Framework Review Committee. The committee's report was the end result of an illusory bit of window dressing that deliberately did not include an examination of any of the basic issues in education



funding. Booi stated, "More than anything else, through its omissions, the report points to the pressing need to directly confront the larger issues, in order to deal with the very real problems in our classrooms that are caused by needless, chronic underfunding in a province with a billion-dollar surplus."¹³ Perhaps no one knew at the time exactly how much things at the Association had just changed. The issues were indeed about to be confronted. A base of public support had been built, teachers were no longer feeling cowed and the leadership of the Association was prepared to force the issue.

Bargaining in the '90s: Six Years of Slogging

In the period immediately following the rollbacks, there were two bargaining priorities: the amalgamation of collective agreements in the rural areas and the restoration of salaries provincewide.

Bargaining strategy was based on the premise that restoring salaries to their pre-cutback levels would be a top priority for teachers. This resulted in a focus on traditional monetary issues at the bargaining table while the funding issue and, by default for the most part, issues related to staffing levels were pursued through political

¹² Alberta Teachers' Association, "Mackay announces details of Provincial Teachers' Rally," news release, October 2, 1997.

¹³ Alberta Teachers' Association, "Funding review response fails to deal with main issues," news release, July 23, 1999.

channels. This was also seen as realistic in the oppressive antilabour atmosphere of the day.

Bargaining in the rural areas was complicated by the amalgamation process and its fallout. Loss of taxing powers meant that rich school boards lost while poor boards gained, at least in a relative sense. The Association, recognizing the opportunity presented by amalgamation, did not oppose it, much to the surprise of the ASBA, which, perhaps still blinkered by its past misunderstanding of Association opposition to the now-defunct school authorities associations (where school boards could band together to form bargaining cartels), had anticipated opposition and not a pragmatic approach to the new governance regime with its larger and arguably stronger boards. The Association recognized that, unlike the cobbled-together school authorities associations, this change transferred real governing authority, what there was left of it, to the amalgamated school jurisdictions. Although rural teachers were forced to forgo their long-treasured local identities and forge new structures, loyalties and agreements, they were at least able to eke out small improvements over a period of several years. Thus, the amalgamations and more equal funding permitted those predominately rural bargaining units to make gains while the urban ones marked time. An additional factor, largely unremarkable at the time but that was to have implications when the Association moved to coordinate bargaining in 2001, was the assignment of a representative of the bargaining agent to each of the amalgamated jurisdictions. A carry-over from the old school authorities associations and necessitated by the legal implications of the amalgamation process, the assignments resulted in the direct involvement of Teacher Welfare staff in the negotiation of a majority of Association

agreements on a routine basis for the first time ever. Association staff and negotiating subcommittees became familiar with each other to an unprecedented degree.

Conditions in the large urban school jurisdictions were particularly difficult. With higher average levels of education and more teaching experience, big-city teachers were more expensive. They were provided with more special assistance than was the case in other jurisdictions. Now, their employers could no longer rely on the local tax base to support those costs. Traditionally, urban jurisdictions had higher salaries than rural jurisdictions. Big-city teachers not only found their salaries stagnating at the reduced level but also had to sit on the sidelines and watch while their long-held differential over rural teachers disappeared. Indeed, when benefit plan premiums and salaries were rolled together into something the Association took to calling *total compensation*, the large urban jurisdictions fell to near bottom in the compensation rankings. Thus was created one more irritant for urban teachers.

The funding problems were further accentuated in the urban school jurisdictions by the demands of the public. Those boards no longer had the tax base to pay the teacher costs associated with the higher levels of service their populations had traditionally demanded. For example, it was widely acknowledged that the urban centres were magnets for people who required the very expensive special education or English as a second language services.

Association negotiators made it clear that the problem lay with the funding authority, thus striking the somewhat awkward line of putting school boards under pressure to provide the best possible salaries while clarifying that the real villain was not at the table. As Winston

Nettleton, representative of the bargaining agent, stated, “It is unfortunate that politicians chose to gloss over the problems by implying that the difficulties in negotiating this year are different in Calgary from elsewhere in the province. This is simply not true. All jurisdictions are having the same problems with lack of adequate funding to carry out their mandate.”¹⁴

With the restoration of the 5 per cent cut from salaries, the priority for teachers, huge pressures were put on the spending priorities of employers. Nowhere was this more evident than in Calgary Public. Professing support for teachers’ goal of salary restoration, that board sought to finance a restored salary grid by means of a reduced teaching force and, to do so, took aim at what was to become the bogeyman of bargaining in that school jurisdiction for almost a full decade, the pupil–teacher ratio clause. In Calgary Public, uniquely, the salary–classroom conditions connection had to be faced directly at the bargaining table. In September 1997, Calgary Public teachers made the first of a series of decisions on this matter, rejecting a recommendation from a mediator who proposed that the restoration of salaries be paid for by means of increases to the pupil–teacher ratio. Unexpectedly, he recommended that the increases in the ratio not be time limited. Teachers rejected the recommendation, with Moench, president of the local, summing up the issue: “Teachers are not willing to accept the restoration of their salaries on the backs of kids!”¹⁵

Of course, at no time did the government “give back” the 5 per cent it had pressured teachers into giving up. Teachers had been able to scabble and claw their own way back to prerollback salary levels, but beyond a few pious words, they could see no evidence that the government that had demanded their help was prepared to help in the recovery. It could intervene in the collective bargaining process to drive down salaries; it apparently could not bring itself to intervene to restore them. It was no doubt naive, but many teachers were deeply offended by what they saw as essentially unfair treatment by the government. When the government finally did intervene directly, once again it was too little, too late and done in such a way as to exacerbate the problem rather than solve it.

The government dabbled around the edges of the collective bargaining scene throughout the period in question. From an early date, it was clear that the government had identified teachers’ conditions of practice as one of the problems. If only teachers would increase their instructional hours and/or the number of students taught, their demands for restoration of their salaries could be met with minimal extra funds from government coffers. Nowhere was this more evident than in the government’s handling of Calgary Public, which represented a particularly thorny problem. Situated in the Tory bastion, the school jurisdiction was huge (one of the largest in Canada) and expensive (it had long had the tax base for the kind of system its public demanded) and had a militant teacher body with a passionate commitment to its hours-of-work clause and its pupil–

¹⁴ Alberta Teachers’ Association, “This is a Calgary dispute!” news release, September 19, 1997.

¹⁵ Alberta Teachers’ Association, “Calgary public teachers reject mediator’s report,” news release, September 15, 1997.

teacher ratio clause, the only one in Alberta. Finally, the jurisdiction had what few other jurisdictions had—an elected board with a decidedly liberal tilt and the temerity to presume that a body elected in its own right was entitled to publicly take issue with the government in the one-party state that was Alberta in the 1990s. “The release by the minister of education of an ‘examination of research’ into reduced class size and pupil–teacher ratios ... has little to do with the issue of class size and everything to do with interference in the Calgary public teachers’ dispute,” said Mackay in May 1999. She went on to say, “This document is an attempt to create uncertainty over the class size issue where, according to the research, doubt does not exist. ... This document not only interferes directly in the collective bargaining process, but also in the deliberations of the Disputes Inquiry Board. Rather than address the real issue behind the dispute, education funding, this government has chosen to cloud the issue further.”¹⁶

When the report of the disputes inquiry board provided for continuation of the pupil–teacher ratio clause, Mar abandoned any semblance of neutrality in bargaining and made it clear that he was prepared for fewer teachers with larger classes to be the price

paid for increased teacher salaries. He was quoted by the Association as having stated that “a prudent board would not accept” the recommendations.¹⁷



From the beginning of the Klein revolution, the number of public-sector employees had been an issue. Job loss was the order of the day throughout the entire public sector. Initially, the government stated that school boards were to reduce the salary line in their budgets by 5 per cent. The reduction could come from lower salaries, fewer teachers or both.

In the end, many boards took the 5 per cent salary reduction and reduced staff anyway. The Association’s collective bargaining guidelines stated that all agreements to reduce salaries were to be accompanied by a restoration date and a guarantee of no loss of jobs, but this was not achieved. Indeed, for those with long memories, it would resurface in the bitterness over the Medicine Hat Public memorandum in 2001. In 1994, Medicine Hat Public teachers had set the trend by accepting minus 5 per cent without any restoration date and with no collective agreement guarantees of staffing levels. Nonetheless, the issue of teacher numbers was on the table from the beginning, and there was no doubt in the minds of many teachers that a major reason for accepting salary cuts was to protect the jobs of their most vulnerable colleagues. It should

¹⁶ Alberta Teachers’ Association, “Government ‘examination of research’ interference in Calgary public teachers’ dispute,” news release, May 6, 1999.

¹⁷ Alberta Teachers’ Association, “Education minister interferes in bargaining process,” news release, May 19, 1999.

be noted in passing that, while the direct link between salaries and jobs was not made in the 1994 collective agreements, it was firmly established in the minds of teachers and was an important source of teacher solidarity in the postcutback years. Calgary Public was at the forefront on this issue from the very beginning. Experiencing difficulty getting its teachers to agree to the salary reduction, the Calgary Public board decided to play hardball and issued letters to more than 250 of its teachers stating that their temporary contracts would not be renewed. When teachers accepted a reduction in salaries, the letters were withdrawn. The issue of teacher numbers was at the centre of both the 1997 and the 1999 disputes in Calgary, and it could not have come as a surprise to the Association when the government, with a little prodding from the ASBA, subsequently used the *Education Services Settlement Act*, brought in following the 2002 strikes, to strip conditions of practice clauses from collective agreements.

Conclusion

By the time a new Association president was elected in the spring of 1999, there had been significant changes in the milieu in which the organization was operating. Public opinion was demonstrably supportive of public education. The province was racking up record surpluses, even claiming to be debt free. Labour was finally making gains. While it would be a mistake to ascribe a positive attitude toward teacher bargaining, the oppressive antilabour atmosphere of the early Klein years had lost its edge. Strike action had been minimal. Softer options, such as work-to-rule, had received considerable publicity. Other public-sector workers had received substantial increases, and the government was flush with money. Public opinion in 1999 was vastly different from that in 1994. The Association's bargaining strategy and its public posture had no doubt played a part in the changes and had positioned the organization to take advantage of them. By the spring of 2000, with the economy booming and no progress in sight on the funding front, teachers were becoming increasingly restive and ready to take action. Circumstances had changed. Association leadership had changed. Teachers' attitudes had changed. All that was required was a catalyst. The government was not long in providing it.

CHAPTER 2

THE LEAD-UP TO THE DUST-UP*The Fall of 2000:
Bargaining as Usual*

In the fall of 2000, the teacher collective bargaining scene was, to all appearances, unexceptional. Almost half the teachers in the province had agreements. No unit was in a position to strike, although one had authorized the taking of a strike vote and eight units were either at the representative of the bargaining agent level or in mediation. The 2001/02 collective bargaining guidelines, developed late that fall and submitted to Provincial Executive Council in January 2001, set the usual kinds of objectives. In the case of salary, requests for increases in the range of 6 per cent were deemed defensible. There were rumblings from a few bargaining units to the effect that they wanted to make double-digit initial proposals. None of this was exceptional, revealing no hint of the storm to come. The guidelines did contain one qualifier that would prove prescient. The Association was aware that the health care sector was bargaining, and the guidelines contained a note that compensation settlements in that sector and for other high-profile groups could create increased expectations on the part of teachers. No one knew it at the

time, but the wild card had been flagged. As late as February 2001 at the annual Teacher Welfare Area Conference where the guidelines were reviewed, there was a general sense that, while action was required of the units, they had yet to settle on what action. There was a restlessness, but it was as yet unfocused: it had not as yet coalesced.

It was clear to many teacher leaders that the only way forward would involve a fight with the government. How that might develop was another matter. The hard core of teacher dissatisfaction remained, of course. Many harboured a deep resentment for the cuts imposed on them; for the increased deductions and diminished pensions; for the increased workload; for the jobs lost notwithstanding the promise that salary cuts would prevent such; and, most of all, for the failure of the government to honour what many teachers saw as a social contract. (Some had actually believed that the government would intervene to restore the 5 per cent cut as soon as it was financially able.) There was an undercurrent of unrest, a sense that a more militant stance might emerge, but the movement had yet to gather momentum, and while there was talk, particularly in the large urban locals, of directing action against the government, the bargaining structure through which that could be done had not yet been conceptualized. The Association had a very activist president, Larry Booi, who had an intimate sense of the currents running through his membership, but in the fall of 2000 and winter of 2001, there was no defining issue.

*Funding: The Frustration
Continues*

The first year of Booi's tenure saw him express disappointment at the government's failure

to fund education properly, but initially it also saw him express support for some of the initiatives taken by Lyle Oberg: “We are encouraged that ... Learning Minister Lyle Oberg appears to be concerned about class size. ... His suggestion to use the Alberta Initiative for School Improvement as a testing ground for class size reductions and the fact that he has given Edmonton Public Schools \$500,000 to reduce class size in ten targeted schools are further proof of his concern about large class sizes.”¹⁸

Unfortunately, those steps, rather than being harbingers of serious initiatives to address the problems in education, turned out to be the initiatives. Apparently, Oberg believed that flexibility was what school boards needed. Booi had a different take on it, and his response was blunt: “Cash-strapped school boards already have flexibility. What they need are the resources.”¹⁹ By April, when the new budget came down, the atmosphere would change from one of cautious optimism to one of pessimism and even hostility. “This budget is a deliberate provocation and a prescription for labor strife,” Booi said. “Alberta’s teachers have tried hard to work with this government but we see little effort on its part to work

with teachers to address legitimate education concerns.”²⁰

Internal Affairs



The shift by the Association to a more aggressive stance was gradual. Imbued with the righteousness of their position, many teachers clung to the belief that the government would see the fairness of that position and make an effort to address it. It took an activist president, plus the slow, dawning realization by the mass of teachers that the government had absolutely no intention of recognizing the legitimacy of their needs, to create the milieu in which an incident could spark an uprising. Without an assertive teacher body, nothing was going to happen. When this conclusion seeped into the collective that is the teacher population, attitudes hardened and teachers came to accept the need for confrontation. The elected bodies of the Association reflected the membership. Attitudes on Provincial Executive Council ran the full gamut from appeasers to aggressors and every permutation thereof.

18 Alberta Teachers’ Association, “Official Opposition class size survey confirms need for government action,” news release, February 16, 2000.

19 Alberta Teachers’ Association, “Government misses the point on class sizes: Resources are the problem,” news release, March 29, 2001.

20 Alberta Teachers’ Association, “Alberta teachers want education concerns addressed: Will plan provincial action,” news release, April 27, 2001.

The Election of 2001

A provincial election was scheduled for the spring of 2001. During the campaign, the Association focused on the financing of education. Oversight responsibility was assigned to the Coordinating Committee on Critical Concerns. At its November meeting, the committee focused on the anticipated election and identified short-term strategies it hoped would convince the government to put more money into education. Those short-term strategies were pursued during the election campaign. The committee was not overly optimistic that the election campaign would resolve the long-standing funding problem, but it knew participation in the election was necessary even if, in the end, it served only as a building block for future action. Longer-term strategies should wait until after the election because, in the opinion of the committee, there were too many variables possible as a result of the election. This was probably a reflection of the committee's hope for a change in the composition of the legislature. There was little realistic chance of the Tories losing the election, but there was, after all, an oft-repeated anticipation that the Tory hold on power might well be somewhat shaken. Such an outcome might convince the government to rethink its position on education funding.

The options were to narrow dramatically once the dust settled over the polls. Booi's statements to the committee suggest that, while he supported the political activism, he was openly frustrated that a government that was recording multibillion dollar surpluses was still not putting sufficient money into education, and he remained unconvinced that

the election would provide the resolution to the problem. The Association's message had not been effective previously, and the government had no intention of providing enough money for education. Booi "advocated a short-term strategy of 'give them hell' and a change in long-term strategy," suggesting "that the committee recommend to Council that, immediately after the election, Council and executive staff engage in discussion of a broad-based strategy."²¹ The Association's assertive stance on education funding was consistent with what it gleaned from the polls. A then current opinion poll indicated that fully 90 per cent of Albertans supported more funding for public education, a far cry from where public attitudes had been in 1994. The public thought that education had been consistently underfunded by the Tories. The Association's message may have resonated with the public, but it translated into neither seats nor promises for more funding. On March 12, 2001, the Tories were returned with an increased majority. The Association's short-term political strategy had produced no discernible results in the election. However, it was still possible that its funding campaign, consistent as it was with public attitudes, would produce results in the upcoming budget. And so the election over, a brief hiatus ensued. It was with a sense of anticipation, but also for some a sense of uneasiness, that teachers awaited the budget. Many remained hopeful. The budget would put an end to that.

Individual teachers are encouraged to be, and many are, active in partisan politics, but the Association has long held that, as an organization, it must be issue centred and nonpartisan. While an increase in opposition

21 Coordinating Committee on Critical Concerns, Notes, November 17, 2000.

seats or even a change in government might have served the Association's interests well, its campaign was consistent with its long-standing nonpartisan position. The campaign could be called "determinedly nonpartisan." Naturally, the Tories might well see it differently, an obvious risk when an organization publicly advocates for a change in government priorities. Many government MLAs seemed incapable of seeing it for what it was: a campaign by an organization whose self-interest and the public interest, as the Association understood it, would both be advanced by improved funding for education. It is a measure of the paucity of Alberta democracy that the wisdom of participating in an election in this manner is still debated by teachers and indeed within Council chambers.

By the time the Coordinating Committee on Critical Concerns met on March 19, a lot of water had flowed under the bridge. The election had come and gone. The Tories were back stronger than ever. There were settlements with doctors and nurses and rumours of a new budget. The committee added "funding issues" to its agenda. Booi argued the changed situation meant that an immediate approach to the government was imperative. He proposed that he, as president, approach the minister proposing a 22 per cent increase in funding over two years for teachers' compensation, plus enough for a 10 per cent reduction in class size. In the end, the committee agreed that the government had to be approached—and quickly. The budget was an opportunity to press for better funding, and in the event the budget did not live up to expectations, putting the Association's case on record was a precondition for more assertive

action in the future. Booi was authorized to seek substantial increases in the amount of money available for both salaries and class size reductions. The committee was aware that the membership of the Association was becoming increasingly restive and that only a significant increase in funding would meet members' demands and save teachers from the very difficult times they could see looming ahead. One bargaining unit was opening at 18 per cent, and there were now rumours of others developing requests in the 18 to 22 per cent range. Strikes in the fall of 2001 were becoming a real possibility.

The Other Settlements

One of the key drivers in the dispute that developed between teachers and the government was other public-sector labour settlements. The first of these was announced on January 27, 2001, during the run-up to the election. The government and the Alberta Medical Association signed an agreement that injected almost \$400 million into the health care sector, raising doctors' salaries by 22 per cent, on average, over two years. The Association knew immediately that the ground had shifted. The goals of the Association had to be revised upward. Booi predicted that "the deal will have a ripple effect on other groups negotiating with the government. 'The doctors' settlement has dramatically changed the landscape in public sector collective bargaining. ... It's as if a switch has been thrown. I've never seen one single factor have such an effect on expectations.'"²² He observed that there was rapidly mounting frustration on

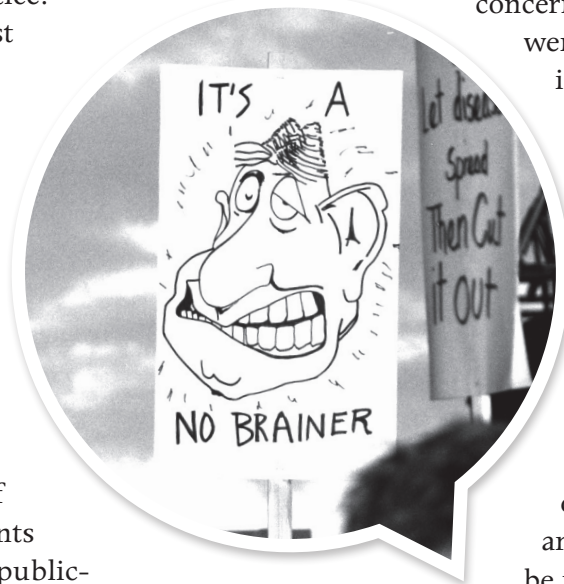
²² "Landmark deal reached between doctors and government," *ATA News*, February 27, 2001.

the part of teachers, who could see no excuse why the government would fail to provide them with reasonable compensation, together with better conditions of practice.

On March 2, 2001, just before the election, the mediator in the United Nurses of Alberta dispute issued his recommended terms of settlement, and while the terms were not released publicly, the Association was aware that the deal included substantial improvements in both monetary matters and conditions of practice.

On March 16, 2001, just after the election, the terms became public. Alberta's nurses had settled with the government for increases of between 17 and 22 per cent. In addition to being the best-paid nurses in Canada, Alberta's nurses would enjoy improved conditions of practice. Booi's comments became more pointed: public-sector bargaining had changed.

"Teachers rightfully expect improvements in compensation that reflect increases in the health care sector. ... They also expect that the concerns of teachers and parents regarding class room conditions will be addressed."²³ Of course, one other thing had changed in the meantime: on March 12, the Tories had won a landslide victory at the polls.



The Premier's Dinner

Association representatives have not been among the party faithful who attend premiers' dinners. The 2001 dinner was therefore unique. Executive Secretary Charles Hyman was in the audience on April 5 when Premier Ralph Klein noted that large settlements had been reached with the health care sector, making Alberta nurses and doctors some of the highest paid in Canada. He stated proudly that his government had responded to the legitimate

concerns of doctors and nurses and went on to say that "the same is true on the education side.

Alberta's teachers were part of the solution a few years ago, and we'll make sure that they are fairly compensated and given as good a work environment as possible so that they know how much they are appreciated."²⁴ Teachers had

been good citizens, helping out when called on in 1994, and now they could expect to be rewarded. Klein went on to state that he could work with the

Association. The *Edmonton Journal* picked up on the statement, and its report showed that it understood the implications. Teachers heard too and, perhaps naively, believed that their turn had come. Less than three weeks later, they knew better. Had they known the disrespect with which his ministers treated the premier's pronouncements, they might have been less naive. When confronted with Klein's statement after the budget was introduced, one

²³ J Harvey, "Alberta's nurses vote in favour of new contract," *ATA News*, March 27, 2001.

²⁴ L Booi, "Dear colleagues ...," *ATA News*, May 8, 2001.

of the ministers brushed it off, saying, “Well, you know Ralph; you have to forgive him—he just says things.” The government failed to appreciate just how deeply the resentment and hurt ran in teachers. When the slim hope engendered by the premier’s statement was extinguished by the budget, that resentment finally boiled to the surface, and for the Association leadership, business as usual was no longer an option even had it been desired. Hyman would later comment that he had not seen such anger among teachers since the labour turmoil of the 1970s.

The Provincial Budget

Teachers had very high hopes for the budget, especially after Klein’s statement. Those hopes “were completely dashed with the release of the budget on April 24, 2001.”²⁵ Prior to the election, the government had projected the grant increases to school boards at 3 per cent for each of the following two years. This would normally translate into 6 per cent or slightly more for teachers’ salaries. The new budget increased the instructional grant to 3.5 per cent for the first year and announced for the first time ever an allocation specifically for teachers’ salaries. Once again, the government had decided to intervene in the bargaining process, but teachers did not see this intervention as a “restoration” of the money taken from them by the earlier intervention. In addition to the instructional grant increase, the government would allocate 4 per cent in the first year and 2 per cent in the second year specifically for teachers’ salaries. It claimed to be earmarking enough money to make Alberta teachers the best paid in the country. Teachers could add

the numbers, and as far as salaries went, the old three plus three and the new four plus two both looked a lot like 6 per cent. Teachers failed to discern any real difference, and if appreciation could be quantified and reflected in numbers, it appeared to them that the government appreciated teachers a good deal less than nurses or doctors. The real difference, however, was in the cynical trap laid by the government. Health care workers had won top salaries and improved conditions of practice. Teachers were being told to choose. They could accept less than top salaries and see slightly improved classroom conditions, or they could take everything the bargaining process could give them using the general grant increase for salaries as they had always done. Of course, the result would be no improvements in the classroom, with teachers carrying the blame for it. They declined both options.

The budget was to be accompanied by an advertising campaign to convince the public that indeed the four and two was more than fair to teachers and would make them the highest paid in Canada. Oberg gave the Association a courtesy call to advise it of the campaign and provided every indication of believing his own rhetoric. The Association made its opposition to the plan and the advertising campaign clear from the outset.

It is intriguing to speculate on the reasons behind Oberg’s direct intervention in teacher collective bargaining. The source of the plan appears to have been the Department of Learning, not Finance. Experienced cabinet colleagues had apparently warned against Oberg’s four and two plan. There were those who saw it as an attempt to discredit

²⁵ L Booi, “Dear colleagues ...,” *ATA News*, May 8, 2001.

his cabinet colleague Gary Mar, who was responsible for the health care settlements, in order to gain advantage in the widely anticipated leadership race. The cynical observed that, for a long time, teachers had protested loudly but had taken no action and could be relied on to continue to do so loudly but ineffectively: a nuisance perhaps but not a threat. Others saw it as payback for Association activism in the political sphere. Perhaps it was nothing more than timing. Buying labour peace was no longer the political priority it had been during the election.

The Association Responds

All the pieces were now in play. Growing anger among teachers, large settlements in the health care sector, more promises by the government and now a budget, presented in a cavalier fashion and seen by teachers as interfering, inadequate and manipulative. It triggered an immediate Association response. President Larry Booi and Executive Secretary Charles Hyman had known for some time that the only way forward on funding was likely to involve confronting the government, and they must have known instinctively when they saw the budget that the Association now had no choice but to do so. Teachers would demand it. They had been told that it was their turn. That had to mean something in the order of the 22 per cent doctors had negotiated or the 17 to 22 per cent nurses had negotiated, plus improvements in classroom conditions. When teachers

realized what the government had in mind for them, seven long years of frustration boiled to the surface. If the strictures of the government's four and two proposal were ignored, teachers could legitimately have expected to receive their portion of the general grants, that is to say, 3.5 per cent in the first year. Assuming another 3.5 per cent grant increase in the second year, it was legitimate to expect increases of 3.5 plus 4 plus 3.5 plus 2 per cent, amounting to slightly more than 13 per cent over the two-year period. One can fairly confidently predict that bargaining as usual, while ignoring the government's position, would have produced results in this range. There were, however, several problems with bargaining as usual. It meant defying the government's position, not in itself a particular concern but something that would create a significant public relations problem for teachers because it would represent a betrayal of the parent support groups with which the Association had made common cause in the long-running funding dispute. With teacher anger running high and with many school boards that would happily and indeed vehemently toe the government line, confrontation and strikes were almost

inevitable. There was the potential for these strikes to be long and very hard fought. Some units would fail to discover the backbone required. Some employers had previously shown that they were prepared to pressure teachers into agreements by threatening the jobs of the most vulnerable. Some boards would be genuinely unable to meet monetary demands at this



level even had they wanted to make a deal with their teachers. Certainly few, if any, could meet teachers' demands and also address the other pressing problems in their systems: there was simply not enough money. So the government's budget would force teachers to choose between their salaries and their conditions of practice. If they were to negotiate the kind of increases other public-sector workers had negotiated, there would be no improvements in classroom conditions. Finally, there were just too many teachers, including most of their leaders, who did not believe that business as usual would bring the breakthrough they so ardently desired. The government would once again have shifted the blame to "weak-kneed school boards" and "greedy teachers," and the underfunding would continue. Booi, for one, would have none of it.

It may be useful to digress at this point on the matter of classroom conditions and their relevance to the issue of tensions within the Association. As noted above, classroom conditions were at the core of the dispute between the government and the Association. They were also at the core of the tensions within the Association. They help to explain the "local business-as-usual approach" and the "provincial coordinated approach" to the issues of the day and the events that arose from that dichotomy. Problems related to classroom conditions are more of an issue in the large urban school jurisdictions for the simple reason that there are more of them. The extra requirements of students with special needs, large immigrant populations, failed families, etcetera—and the list is a long one—are all intensified in the urban jurisdictions. Smaller

jurisdictions certainly have social conditions that create classroom problems, but these are more concentrated in the two major cities. The constant stress of contingencies in the large urban jurisdictions must be addressed but cannot be controlled. In addition, there are structural differences. In small jurisdictions, the actors brought to the table from both the district office and the Association can be, and often are, the same, regardless of the venue. It is no accident that the two Association locals that broke ranks and settled for agreements that did not address classroom conditions, contrary to the position of the Association, were small urban jurisdictions.



The Association shortly decided that it would proceed with a muscular plan of labour action, together with the symbolism of another rally at the legislature and an ongoing public relations program. Labour action was the new element. The Association had tried political activism, direct talks with the minister, organization of public groups, a rally at the legislature, cooperation with the government on such programs as the Alberta

Initiative for School Improvement, and numerous public relations activities, all with decidedly mixed results. It was time to up the ante. The public relations campaign would apply political pressure; the rally would be an immediate and visible declaration of intent, for teachers a symbolic link with and an echo of the 1997 rally on the legislature grounds; and the labour action would, in due course, provide the muscle required. The plan would be taken to the Annual Representative Assembly (ARA). The 1997 ARA had pushed Council and then president Bauni Mackay into a rally. In

contrast, the 2001 ARA was led from the front. The first rally at the legislature had sought to send a message to the public and, through it, to the politicians. The second time the Association went to the legislature, the message to the public was continued, but the message to the politicians was more pointed and direct, and far from being an end in itself, was only the first step on the way to more serious action. Booi had spent the rollback years listening assiduously to teachers and believed that they were ready to be mobilized into overt action. Collective bargaining would provide the vehicle, and Booi would lead. This president had a vision of where he had to go, but it was an article of faith with him that he had to take the people with him.



The Plan

Time was short. The budget announcement was made on April 24. ARA is held on the Victoria Day weekend. In 2001, that was May 19 to 21, and plans for ARA were already essentially complete. Opinion regarding the appropriate response ranged from bargaining as usual but ignoring the 6 per cent cap to immediate provincewide labour action. The Association had less than a month to settle on collective bargaining as the appropriate means through which to challenge the government, to reject numerous alternative actions, to completely revise its bargaining strategy and to prepare to convince ARA of the wisdom of its plan. The

level of ARA involvement was unique. This plan was created in Barnett House. It would be policy driven and politically led by Booi and Council. This would inevitably offend some of those individuals and bodies involved in bargaining and committed to the traditional structures and processes.

Initially, the Coordinating Committee on Critical Concerns (CCCC) assumed responsibility for devising a plan. This committee had been created for exactly the type of situation in which the Association now found itself. A point might be made here about the influence of the committee and the role it played during this crucial period in the Association's history. The committee was created in 1997 and assigned responsibility for identifying and coordinating Association planning and action on critical issues related to public relations and political involvement. It arose out of a belief that the Association needed a small, well-informed and powerful committee that could wield internal political power and do so with dispatch. Accordingly, it included table officers and three committee chairs (Strategic Planning, Political Involvement and Public Education) and received advice from executive staff, typically the coordinators of the affected program areas. At this point, it was arguably the Association's most powerful committee, notwithstanding the fact that it was relatively new and stood outside the formal power structure. It had a mandate to act in emergencies.

Provincial Executive Council (PEC) debated the initial plan and referred it to the committee to finalize based on five points in the Council motion. It also authorized expenditure for a "demonstration at Legislature during ARA ... CCCC to develop plan for ARA action at

Legislature based on PEC motion.”²⁶ This Council motion also contained the initial version of the actions that would, in time, become the four-point plan. The notes of the meeting reveal that at least some people had yet to fully grasp the implications of the proposed actions: “Some frustrations over the PEC exercise were expressed. Whether the ultimate goal of the exercise had been to come up with specific political actions or to coordinate the bargaining process had never been determined.”²⁷ It was not a case of either-or. Coordinated bargaining was a political action, set in the context of other political actions and implemented in pursuit of both political and bargaining objectives. Considerable discussion ensued on one element of the action plan, that of study sessions. Staff advised that immediate action in the form of study sessions to be held throughout the province prior to the end of June 2001 would be illegal, costly, divisive and unnecessarily risky. The study sessions proposal was rejected by the Coordinating Committee on Critical Concerns, which subsequently prepared and brought forward a more detailed plan proposing action on the remaining four fronts: coordinated collective bargaining, political action, a public relations campaign and enhanced communications with the membership. A representative of the bargaining agent would be assigned to each of the targeted units in order to coordinate bargaining. Employing the term *coordinated bargaining* was deliberate. The Association needed a strategy that could put escalating pressure on the government and enhance solidarity while not offending bargaining

units’ independence as a call for provincial bargaining might have done. Coordinated bargaining was seen as a middle-of-the-road approach.

The next day, the broad outline of the plan was faxed to Council members for distribution to local presidents and ARA delegates. The action plan presented to ARA would include four components:

1. Coordinated collective bargaining
2. Political action
3. Public relations campaign
4. Enhanced communications with members

Council would propose a resolution urging the government to allocate substantial additional funding to school boards. This would become resolution 212A. Council was also provided with a confidential copy of the more detailed action plan that would serve as the basis for resolution 213A. Fine tuning occurred between this memo and the resolution approved by Council on May 18 for immediate submission to ARA. One change of considerable significance was made in the coordinated bargaining portion of the plan. A memo from Hyman to Council referred to an “immediate request of all bargaining units to not enter into any memorandum of agreement that fails to meet the criteria established for a double-digit settlement.”²⁸ In the resolution presented to ARA, that became “immediate request of all bargaining units not to enter into any memorandum of agreement that fails to meet criteria established by Provincial Executive Council after the emergent provincial

²⁶ Alberta Teachers’ Association, Action Sheet from Provincial Executive Council Meeting of 2001 05 07–08, May 9, 2001.

²⁷ Coordinating Committee on Critical Concerns, Notes, May 9, 2001.

²⁸ Charles Hyman to Provincial Executive Council, memorandum, May 10, 2001.

meeting of bargaining unit representatives on Saturday, 2001 06 09.”²⁹ This set the stage for concordance between the objectives in the funding resolution and the objectives of coordinated collective bargaining. It also inserted Council into the ongoing decision making in collective bargaining, broadened the dispute to include salary roll-ups and conditions of practice, and made necessary the review committee.

Over several decades, there had been a steady increase in the number of units utilizing the services of the bargaining agent. In the 1970s, the Association had made a conscious decision to appoint a representative of the bargaining agent (RBA) to each of the regional school authorities associations from the outset. The associations had since fallen apart, but many of the school boards in them had subsequently been swept up in the amalgamation process where once again the Association had made a decision to appoint RBAs from the outset. One serendipitous consequence of those decisions now became apparent. Many units were comfortable with hands-on leadership from Barnett House and with the idea of coordinated bargaining. Likewise, the large urban locals had resorted to RBAs with increasing frequency in recent times. Indeed, in the case of Edmonton Public, the Edmonton Public board had, as early as the mid-1980s,

simply refused to bargain at the local level, and RBAs had been continually involved for more than 15 years. The acceptability of the idea of coordinating bargaining, with its effect on local autonomy, can be explained in part by that recently increased use of RBAs in the larger units and through the amalgamation process.

The Association was well aware that it was embarking on unprecedented action—action running counter to years of collective opinion regarding local versus provincial bargaining. Significant internal opposition was anticipated, and indeed immediately apparent, from some in leadership positions. Fortunately for the plan, local versus provincial

leadership was pretty much a nonissue for the average teacher, and support from the grassroots would shortly become overwhelming.

Since the restructuring of school board financing in the early 1990s whereby all board revenues came from the provincial government, more and more teachers had begun to question the utility of continuing to negotiate with boards that no longer had the ability to raise taxes in their own

right. Constant effort was, however, needed in order to ensure member solidarity. The plan was submitted to ARA; there was constant communication with the members; local presidents were constantly exhorted to consult with members; and teachers had to be reassured that the Association was trying to resolve the problem, not just create a



²⁹ Alberta Teachers' Association, Minutes of the 84th Annual Representative Assembly, 76.

confrontation with the government.³⁰ Finally, the Association designed a structure to police the results of the bargaining process. If the process of coordinated bargaining meant anything, it had to involve results that met the provisions laid out by ARA. In order to ensure an appropriate level of compliance, a politically based criteria committee was proposed. Its responsibility was to vet all memoranda of agreement and to ensure that they met the conditions set out by ARA. In particular, the committee would look for improvements in conditions of practice, a requirement that, while broad enough to encompass any number of possible provisions, would, as always, prove very difficult to negotiate with boards.

During the process of developing the coordinated bargaining plan, there had been pressure for other more immediate and overt actions to influence the government. Numerous ideas for immediate action were floated, culminating in several proposals being raised at ARA. There can be little doubt that had a comprehensive plan not gone forward to ARA, it would have devised its own. Association staff and subsequently the Coordinating Committee on Critical Concerns considered and rejected other forms of pressure tactics as Earl Hjelter, coordinator of Teacher Welfare, subsequently reported to ARA. ARA had a spirited discussion on the same matter.

The plan represented a seismic shift in Association strategy. The legally prescribed role of the collective bargaining process is to produce collective agreements. Now a labour relations tool was to be overtly employed to achieve both a political and a labour

relations objective. Collective bargaining, a process engaged in by school boards and the Association, would be used to pressure a third party, the government. This violated deeply held convictions by some experienced negotiators who would find it difficult to engage in this process instead of bargaining as usual. Political action would be continued, indeed intensified, and the public relations campaign would be expanded, but now, for the first time, they were to be combined with and essentially driven by collective bargaining. The plan was crucially dependent on an unprecedented degree of coordination in bargaining, which hopefully would create sufficient pressure on the government to modify its funding position. At least some Association leaders were well aware of the serious nature of their decisions: "If bargaining does not achieve desired results, coordination of job action would be a consideration."³¹ A strike by nearly 30,000 teachers had just become a real possibility. The plan was a step well beyond any of the activities pursued by the Association during the cutback years.

The plan was now ready to take beyond the committee stage and into the testing ground of ARA. Council planned for special issues sessions at ARA. Special sessions provide the flexibility to handle those situations in which ARA departs from its normal policy-legislating role into direct involvement in current actions. The plan, together with a background paper, was to be presented to ARA, which would be given the opportunity to fully explore the issues surrounding the plan prior to entering into formal debate.

³⁰ Larry Booi to Local Presidents, memorandum, May 11, 2001.

³¹ Larry Booi to Local Presidents, memorandum, May 11, 2001.

The Resolutions

The Association plan was contained in two resolutions to be considered by ARA. The first resolution, subsequently identified as resolution 212A, read as follows:

BE IT RESOLVED, that the Annual Representative Assembly urge the Government of Alberta to allocate substantial additional increases in funding to school boards to enable them to

- a. establish classroom conditions that allow teachers to meet the learning needs of all children,
- b. negotiate teacher salary increases that reflect the value of the contribution made by the profession,
- c. attract and retain qualified members of the teaching profession.³²

The second, subsequently identified as resolution 213A, contained the planned actions:

BE IT RESOLVED, that the Annual Representative Assembly approve in principle an action plan to be designed and implemented by Provincial Executive Council with costs charged to the Special Emergency Fund, and with the following four components:

A. Provincially Coordinated Local Collective Bargaining

Possible Actions:

1. Immediate request of all bargaining units not to enter into any memorandum of agreement that fails to meet criteria established by Provincial Executive Council

after the emergent provincial meeting of bargaining unit representatives on Saturday, 2001 06 09.

2. Identification by the Association through its Teacher Welfare staff of those bargaining units with the highest likelihood of achieving the above objective.
3. Units with best prospects move through the bargaining process expeditiously; others mark time.
4. Assignment of representatives of the bargaining agent to all units to assure maximum coordination of bargaining and potential job action.
5. Emergent provincial meeting of bargaining unit representatives on Saturday, 2001 06 09, in Edmonton.

B. A Program of Systematic and Escalating Political Action on the Basis of Individual/School/Local/Provincial Level Activities

Possible Actions:

1. Use of local MLA contacts and local Association leadership.
 - a) Visit MLA constituency offices to establish an open line of communication (a guide to visiting MLAs and background information on current goals and issues will be provided).
 - b) Provide feedback on visits directly to the provincial Association.
 - c) Help with local information sessions, the organization of MLA letter writing and phone campaigns, and other initiatives.
2. Offer of collaborative involvement of school boards, where possible.

³² Alberta Teachers' Association, Minutes of the 84th Annual Representative Assembly, 73–74.

- a) Exploration of joint action with the Alberta School Boards Association by ATA.
 - b) Local executives to arrange meetings with trustees to discuss collaborative action to increase government funding of public education.
 - c) Enlisting the support of school councils to engage in letter writing, phone campaigns and other actions.
3. Develop collaborative actions with parent groups.
 4. Information sessions coordinated across the province.
 - a) Provincial Association to organize sessions for school representatives.
 5. Varying forms of MLA persuasion.
 - a) Fax/phone and visitation campaign coordinated by local political involvement chairs and local Association leadership.
 6. Develop suggested additional activities for individuals, schools and locals.

C. A Concerted Public Relations Campaign

Possible Actions:

1. Focus on fostering increased public support for teachers and willingness to invest in public education.
 - a) Open letter to Albertans in newspapers outlining teacher commitments for the remainder of the school year and asking for public pressure on MLAs and government through phone calls or letters to MLAs.

- b) Place ads in newspapers to deliver key ATA messages.
 - c) Develop a flyer for distribution by locals to community audiences.
 - d) Use billboards to deliver key ATA messages.
 - e) Use provincewide radio spots to deliver key ATA messages.
 - f) Make use of as much free television and radio opportunities as possible, particularly for interviews with the provincial president.
 - g) Use the ATA website to support the campaign messages.
 - h) Continue polling to monitor support for public education and teachers.
 - i) Develop packages to help local presidents take advantage of media opportunities in their areas.
2. Identify audiences and best medium to deliver messages.

D. Enhanced Communication with Members

Possible Action:

1. Exploration and use of more effective means of reaching members about this campaign.³³

Teachers Wrote

In order to appreciate the Association's coordinated bargaining plan, one must examine the context in which it was developed, in other words, the mood of the membership. The budget triggered a flood of comments from teachers, reactions that both guided and

³³ Alberta Teachers' Association, Minutes of the 84th Annual Representative Assembly, 76–78.

reassured Association decision makers. This was deliberately encouraged by a president who knew that if real change was to happen, it would take massive and deep commitment from teachers to make it happen. Immediately following the budget announcement, Booi requested all teachers to respond to his opinion: government intervention was provocative and required a determined and effective provincial response. Letters from teachers poured in and consistently presented three issues: money, conditions of practice and retention of teachers. A sampling of comments from those letters assists in understanding the issues as seen by teachers, illustrates their mood and provides a context within which the actions of the decision makers can be assessed.

The need for more money, a lot more money, was a constant theme:

Our pay scale is appalling for the work we do.

I believe that it is essential to restore the pay that our profession deserves.

A higher pay scale, of course, but many letters were more nuanced than that, and the rationales for an increase speak eloquently of the conditions in which those teachers found themselves. It was not just money but also the effects on their families, the unpalatable choices they were being forced to make. Traditionally, it was not unreasonable for a teacher to expect that a single teaching salary would support a family in something like

average, middle-class conditions. It would not be a luxurious lifestyle, but it ought to be possible. Not so, according to one Edmonton teacher, notwithstanding the fact that he was at the top of the grid:

With two pre-school-aged children, my wife and I decided that it would be best for her to be a stay-at-home mom. We knew it would be a struggle to pay the bills. ... What we didn't plan on was sinking, each month, further into debt. ... Please fight for enough of an increase that I can begin to put a bit away for our future.

I am a recent graduate of the University of Alberta. ... It is a privilege and honour to be counted amongst the many within this profession. ... None of us is drawn to the profession for the money, and I doubt that if we were given a wage which reflected the work we do that it would motivate us to teach better. But I believe it would motivate more of us to stay.

Here we are introduced to another of the important themes: the retention of young teachers. The dilemma of unacceptable choices permeates many of the letters from teachers, and the solution contemplated was not always more money because the problems went deeper than pay and all too frequently the solution being contemplated by young teachers was to leave. Young teachers expressed deep disillusionment and illustrated the issue of retention in poignant testimony. Time and again, the cry was for some relief from the conditions experienced in the day-to-day classroom:



Signs at the legislature

I am writing this letter to express my concerns with respect to my career and the teaching profession in general. I am a fourth year teacher. ... During my first year, I expected to and did work up to 80 hours a week. ... This year, I am again working upwards to 80 hours per week. ... I once believed that if you worked hard for the first two years, the hours would diminish, thereby giving you more time for a life outside of work. However I see many excellent teachers who literally dedicate their lives to teaching. ... The options for females like me are to keep teaching and never have a family, or to have a family and find another, more reasonable career.

The distraction of excessive extra duties ... takes away from the quality of my classroom teaching and chips away at any chance of having a balanced personal life. Something must suffer and it can't be my family.

Asked what was happening, young teachers with less than five years of experience wrote,

Well it's very simple. There are a multitude of reasons for leaving, and so many opportunities for those of us who do. ... Your teaching degree is worth more if you are not teaching! ... Five of my friends and colleagues will leave the profession this year. They are so talented and needed right where they are, but they deserve better.

I am currently in my second year of teaching. ... Over the past year I have found myself questioning my choice of profession, not due to lack of enjoyment of teaching, but rather due to a very heavy workload and less than adequate compensation. ... I also do not have any opposition to

hard work however I do expect to be compensated appropriately.

Personally, I have not yet decided on my future as a teacher. Despite being overworked and underpaid, I love my job. It would be difficult to leave. But I don't know how much longer I can operate under these pressures—and I am not alone.

In speaking with many colleagues, I have become somewhat disillusioned with the high rate of attrition amongst those with less than five years experience. It seems even those who enter the profession with the highest expectations have no intention of becoming, as one acquaintance put it, "lifers."

I am one of those teachers who have stayed, and will do so for two more years at the most. ... Many of my friends and associates have already left or are in the process of leaving.

Others would stay but made desperate plans in order to survive:

I have come to the conclusion that I cannot do this job to my own satisfaction with the time allowed. ... I am hoping that this year we will get a really big raise. ... I am hoping that with a large enough raise, I can stop teaching full time. I chose teaching to be part of my life. For more than 5 years teaching has consumed my life and it is time to take it back for the marriage I want to stay in, for the children that I would like to raise, and for the students that I would like to empower and inspire.

Interestingly, the demands for disproportionate pay increases for young teachers came not only

from those who would directly benefit from them but also from older teachers whose own self-interest ran contrary to disproportionate increases for the young. They feared for the future of their profession. A teacher with 21 years of teaching experience wrote,

My fear is that the lack of a salary commensurate with the difficult job of teaching will deter a quality candidate from entering into the field of education. As well, a number of young outstanding teachers will surely leave the job knowing they would be better compensated for their services in a different job.

Compensation at the low end of the grid is not getting the job done! ... We cannot expect the retention of new teachers during the induction phase of their careers if we do not address the compensation package offered to them.

Another identified recruitment and teacher shortages as another aspect of the problem:

Thirty-two years ago I entered the teaching profession as a high school math teacher. ... A major company offered me a job but since my first love was teaching and the salary was comparable, I chose the profession I was trained for and ultimately made it into a lifelong career. If I was starting over again today with comparable degrees, I doubt I could make the same decision.

We must attract good young people to enter into Education by motivating them with a salary that is competitive with other jobs that a person can get with the same education.

Recruitment and retention of science and math teachers were a particular concern:

I am concerned for the future of science education in the province of Alberta. ... The number of chemistry, physics and math teachers leaving the profession or retiring far exceeds the number of new graduates each year. Students in the Faculty of Science at the University have been encouraged to transfer to the Faculty of Education ... these students do not want to make the transfer. They quote low salaries as the reason for not transferring. With their current education they can find higher paying jobs with less overtime hours elsewhere.

The concerns, however, ran deeper than self-protection. Experienced teachers saw things happening to the profession that made them fear for the future. They could see the deeply damaging results of the government's actions on their younger colleagues. In the midst of a labour dispute, it was union members, and not employers or the government, who would raise concerns for the future of the profession and its effect on education:

New colleagues entering the profession soon realize all the work expected of them for the rate of pay received and they are disgruntled and looking elsewhere for careers. ... Something is terribly wrong when people who enjoy kids find the job too demanding for the amount of pay received.

The other settlements were on their minds:

In particular, I am worried about the relative decline of working conditions

and salaries of Alberta's teachers vis-à-vis other "helping" vocations, most notably nurses, doctors, police officers and firemen.

The solutions seemed obvious to teachers:

The school board and the government can do a number of things to demonstrate that they hear us. They can pay us more, cut back on teaching assignments, reduce and cap class sizes ... and promote and elevate the status of the teaching profession.

The government would argue that it had provided adequate money and that, if there were problems, they lay in school board allocation decisions. Teachers had no doubt about where the responsibility lay. There were a few complaints directed toward employers, but most teachers were clear about who the real villain was. Years of frustration over stagnant pay and worsening conditions of practice were now being laid at the feet of the government:

During the first twenty years of my teaching career I felt like a valuable member of our community. ... Then the right-wing economics of the Klein government significantly changed the quality of my life. The change came at a time that my children were entering secondary and postsecondary education. In order to provide my children the opportunity to attend university and to not download the costs on them I have had to take on a major financial commitment at a time that teachers salaries are falling way behind a modest standard of living.

This led a number of the writers to make the jump from local to provincewide action, thus helping to set the scene for the coordinated bargaining proposal:

We need strong and determined action. ... This needs to be a province wide action to have any meaningful message.

The government's ploy to shift the onus to teachers and their employing boards didn't wash either:

A large salary increase would be terrific, but I do not want it at the expense of the quality of education I can provide in my classroom, and more importantly, the quality of education my children get in their classroom. I want to be sure that class sizes will not get any bigger. ... The money for our salary increase will come out of our classrooms. That is the real problem we should be addressing. ... Yes the real issue is that education is underfunded.

Underneath it all ran a current of resentment over the years of mistreatment, culminating in the raising of hope following Klein's statement and the crushing disappointment of the budget:

In my discussions with our young colleagues there seems to be a feeling of resentment that stems from a feeling that as teachers they are not being valued by society.

Teachers were making it clear that they were ready for action and left no doubt that they expected their Association to initiate that action:

We are ready to work to rule, strike or follow the ATA's lead in whatever they deem to be effective action.

Or at least most were. There were, of course, dissenters:

I am *not* going on strike this fall, nor at any other time that I can foresee. I *do not* support the ATA's position in this matter, and I intend to be vocal in my local regarding this matter.

Focus on ARA

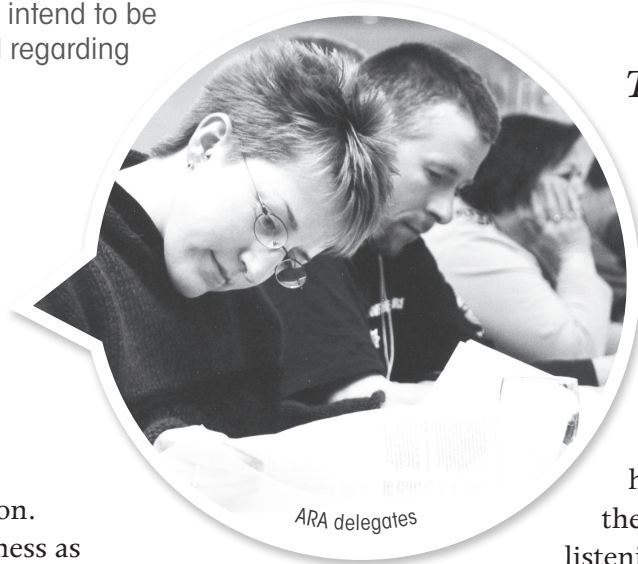
Going into ARA, several crucial decisions had been made.

The Association was going to react, and it was ARA that would set the direction.

It would not be business as usual: "Teachers will spend time addressing possible actions in response to the government's refusal to budget sufficient education resources."³⁴ A motion criticizing the government would be presented, as would an action plan. A special session would be devoted to discussing the options and debating the plan. Another special session, this one on the steps of the legislature, would be held to pass the motion criticizing the government's budget. In 1997, the assembly at the legislature was the action. Four years later, it was a symbol and a warning of the action to come.

ARA is always important to the Association. In 2001, it was pivotal. ARA and only ARA could legitimize Council's unprecedented plan

of action and provide the impetus required to launch it. Once ARA had approved the plan, a confrontation was pretty much inevitable. Booi's May 8 letter to members began the campaign.



ARA delegates

The President's Letter

Booi's letter, published on the front page of the May 8 *ATA News*, addressed the key points, preparing both the representatives and the members at large. It had the potential to inform the public and, if it were listening, the government itself.

The opening sentence took direct aim at the government. Its budget had "serious implications for the teaching profession."³⁵ Its actions had instigated the crisis: the government had raised salaries for doctors and nurses, it had addressed issues of conditions of practice and recruitment and retention in health care, and of course, Klein had made a promise. "Hopes raised by these actions and statements were completely dashed with the release of the budget on April 24, 2001," Booi wrote.³⁶ The government had addressed issues in health care and had promised to do the same in education. Just as important, it had the resources to do so. Now instead of real solutions, it offered more illusions and distortions.

³⁴ Alberta Teachers' Association, "Alberta teachers to use annual meeting to determine provincial course of action," news release, May 14, 2001.

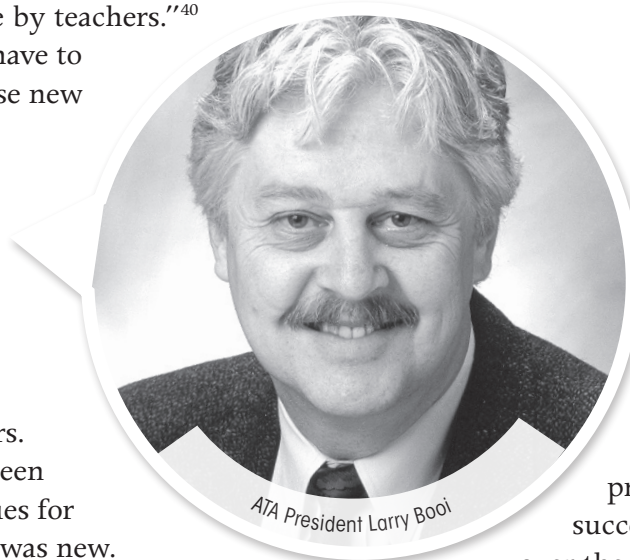
³⁵ L Booi, "Dear colleagues ... ," *ATA News*, May 8, 2001.

³⁶ L Booi, "Dear colleagues ... ," *ATA News*, May 8, 2001.

The letter went on to charge that the government had interfered in collective bargaining by earmarking 4 per cent and 2 per cent for salaries and then had “launched an aggressive public relations campaign based on the incorrect assertion that Alberta teachers will have the highest salaries in the country as a result of this budget.”³⁷ Booi’s public statements were equally pointed. The May 10 *Edmonton Journal* quoted him as saying, “We will be directing political action on the people who control the purse strings, and that is the provincial government.”³⁸ The headline on the backgrounder to the letter summed up the feelings of members: “Teachers’ hopes betrayed by budget.”³⁹ This government interference also provided the rationale for a substantial departure from the Association’s long-held and much-cherished mythology surrounding local bargaining: “The government’s provocative intervention both invites and requires a provincial response by teachers.”⁴⁰

Bargaining would have to change to meet these new circumstances.

Three broadly defined issues were identified: salaries, conditions of practice, and recruitment and retention of teachers. The first two had been key bargaining issues for decades. The third was new.



The letter sought support from all teachers, making it clear that the proposed action would not be something remote, something at the “provincial level.” It would affect them personally. Teachers should not believe that their involvement was optional. It was being sought and would be expected. The letter invited teachers to tell their ARA delegates what they would support while making it clear that teachers would be expected to follow once ARA had exercised its leadership responsibilities in the Association’s democratic process. Most teachers have become familiar with the highly regulated, lockstep procedure followed by the Association in its collective bargaining decision making. It is a very democratic process, but in the end, nonparticipation is not an option. One of the advantages of the plan as presented was that it built on this well-trod path and body of common knowledge held by teachers.

The Backgrounder

For teachers who wanted to be better informed, the letter was followed by a backgrounder that provided more detail and addressed several new points. It attacked the deceptions and illusions practised by the government in successive grant announcements over the cutback years: “Budget 2001

³⁷ L Booi, “Dear colleagues ...,” *ATA News*, May 8, 2001.

³⁸ J Holubitsky, “Alta. teachers to bring demands to legislature: Rally May 20 to focus on concerns over salary, class size,” *Edmonton Journal*, May 10, 2001.

³⁹ “Teachers’ hopes betrayed by budget,” *ATA News*, May 8, 2001.

⁴⁰ L Booi, “Dear colleagues ...,” *ATA News*, May 8, 2001.

news was old news.”⁴¹ The backgrounder pointed out that, as far as salaries were concerned, the 4 per cent and 2 per cent increases were in reality no different than the 3 per cent and 3 per cent increases previously announced in the per-student grants. Teachers had, over the preceding years, consistently taken their portion of the per-student grants in salary increases, and there was no reason to suspect that things would have been any different over this two-year period. The backgrounder took the position that the new money available for in-classroom use was one-half of 1 per cent.

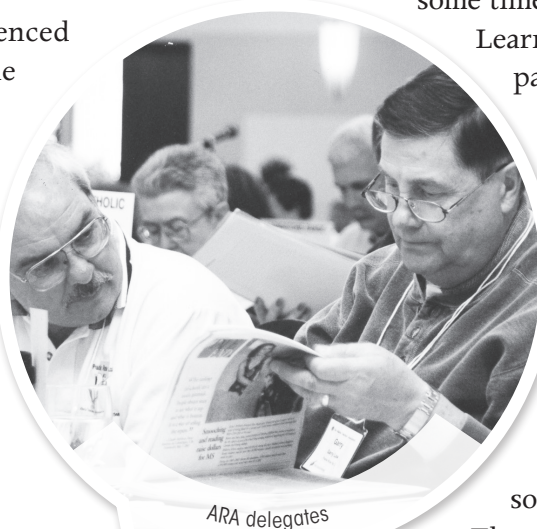
The government had commenced a campaign claiming that the 6 per cent over two years would make Alberta teachers the best paid, on average, in Canada. This claim was refuted. These were the opening shots in what proved to be a very tenacious argument. It survived in one form or another right through the arbitration hearings, at which it was touted by the Alberta School Boards Association (ASBA). In this first round on the issue, the backgrounder pointed out that the government had committed several elementary statistical errors in its comparison. Specifically, it compared salaries across time periods as if they were in the same time period. Even though more recent figures were available, the government chose to use outdated figures, figures that made a substantial difference, particularly with the crucial Ontario

comparisons. Thus, Ontario data for 2000 was compared with projected Alberta data for 2002/03. In addition, the government simply got the figures wrong for current Ontario settlements, which were considerably in excess of what was being reported by the government. As would later become evident when the arbitration board wrestled with the same problem, it is very difficult to perform an appropriate comparison between Ontario grid structures and those of Alberta. If the government understood these shortcomings, it hid it well. Its attempt to use averages obscured the issue even further. Given that it had been

some time since the Department of

Learning had demonstrated any particular expertise in the area of teacher salary rates, it was perhaps not surprising that these numbers were so ill advised. The fact that the identical argument using the same numbers subsequently showed up in ASBA arguments in front of the arbitration board suggests a common source for the numbers.

The government had already intervened to limit salary increases through its budget and was to further demonstrate its tilt toward the ASBA in the consultations preceding Bill 12. There had been a time when the department would have checked with the Association prior to using partisan figures. There had been a time when the Association would have expected it. That was no longer the case, and the government’s public posture was the worse for it. There was no longer even the semblance of the



ARA delegates

⁴¹ “Teachers’ hopes betrayed by budget,” *ATA News*, May 8, 2001.

impartiality that had once been expected of the department.

Salary comparators are one way of assessing adequacy, and nurses' salaries have been one comparator for teachers. For some time, starting salaries for teachers had tended to be at or slightly below those of nurses whereas teacher maximums had been somewhat higher. Nurses' salaries had recently been raised to the point where, by the end of the 4 and 2 per cent increases, teachers, even at maximum, would be paid less than nurses at maximum. Teachers would not even be able to console themselves with the fact that their final salaries were higher than those of nurses. If compensation was a race, teachers were clearly not winning it.

The backgrounder mentioned in passing several other issues bound to anger teachers. It noted that, while funding was being grudgingly increased for the public system, there were substantial funding increases available for private schools. It pointed out that Alberta teachers paid the highest pension contribution rates in the country. Finally, it warned that the recruitment and retention issue needed to be rethought. People who traditionally would have gone into teaching now had many alternative opportunities. Education would have to pay more and provide better conditions of practice if it was to continue to attract people into the profession. Teachers were retiring as soon as they became eligible for their pension. Conditions of practice would have to be improved in order to retain teachers, especially those new to the profession.

Finally, the backgrounder warned teachers not to expect an easy victory, noting that a government that had felt motivated to address health care problems that had peaked just before the election might not feel as motivated to resolve educational issues peaking just after it had won a new and stronger mandate. The warning proved prophetic.

The Minister's Position

Contact between Booi and Oberg was frequent. Booi made it a point to meet with Oberg prior to ARA, and on May 11, reported on their meeting of the previous day. Booi wrote to local presidents, "My meeting with the Minister of Learning was very civil, but resulted in no change in our situation. The minister stated clearly that the amount in the budget for education was sufficient and would not change. I stated teachers' strong opposition to this position and stressed there would be action that will be determined by the Annual Representative Assembly."⁴² "I think he understands the teachers' position and we understand the government's position, but it's quite clear there is a wide gulf there and there is no easy solution."⁴³ In Booi's view, ARA had a choice to make: it could acquiesce or it could fight.

Oberg made it clear that he was not moving on the four and two, but he continued to undercut the negotiating position of boards when he reiterated the flexibility of the government's position on the 3.5 per cent, saying, "If school boards negotiate higher settlements, the money would have to come from the 3.5-per-cent

⁴² Larry Booi to Local Presidents, memorandum, May 11, 2001.

⁴³ Larry Booi to Local Presidents, memorandum, May 11, 2001.

increases added to districts' per student general grants."⁴⁴ Assuming that the per-student grants remained at 3.5 per cent for the second of the two years, it would not have been unreasonable to expect salary increases in the order of 13 per cent over the two years. Oberg's handling of the general grant increase of 3.5 per cent is intriguing. Teachers' salaries are paid for out of the general grants. Therefore, teacher salary increases are essentially paid for out of general grant increases. Oberg was making it clear to the public that the general grant increases could be used to boost teachers' salaries beyond the earmarked 6 per cent. At the time, it may have appeared as though he had shifted his position and was, in effect, providing boards with increased flexibility. However, Association officials were all clear in their recollection. Oberg had, from the very beginning, made it clear to them that the general grants could be used for salary increases. It was not a case of his modifying his position to make agreement easier. So if he always intended to make the general grants available for salary increases, why bother to announce separate grants in the first place?

It appears that this was the classic government tactic of attempting to shift the onus to school boards and the Association to deflect

responsibility for any failure to improve classroom conditions. It was a cynical move. Teachers could simply have taken the money and run, and indeed, some did. The move attacked the core of the Association's position, namely, that proper remuneration of teachers should not come at the cost of conditions of practice, and Booi wasn't buying it. During the cutback years, he had been passionately involved in and committed to Association projects, commencing with *Trying to Teach*. The politically potent stories and analysis served to highlight the state of public education and the plight of teachers, to solidify public support, to raise the consciousness of teachers and to provide the Association with direction. It was at this point that the "soft" political work on funding and classroom conditions rejoined the "hard" collective bargaining track on salaries. Tempting as it was to settle once again the monetary issues, there were bigger and more fundamental issues at stake, and regardless of whether they could be satisfactorily resolved, they were at least going to be raised.

The move had one other major significance. It removed one of the employer's excuses for adhering to the government's wage guideline, adding to the pressure on recalcitrant employers and permitting employers who truly wanted to settle a way to do so. This latter group would prove influential when the arbitration board commenced its work.



ARA delegate

⁴⁴ J Holubitsky, "Alta. teachers to bring demands to legislature: Rally May 20 to focus on concerns over salary, class size," *Edmonton Journal*, May 10, 2001.

ARA 2001

Oberg declined to attend. ARA had been held on the long weekend in May for the better part of a decade, but he had another commitment, and a colleague was sent in his stead. This was probably just as well. It would have taken considerable courage to do otherwise, and there was little likelihood that he might positively affect the progress of events.

Michele Mulder, vice-president of the ASBA, spoke. Her organization regretted the government's decision to envelope teacher compensation because it would stifle the creativity of school boards and remove their flexibility to respond. Just why this might be was not clear. The interference was more apparent than real. The real difference between the previous three and three and the current four and two was essentially one of timing. Arguably, earmarking some funds for teachers' salaries and leaving other funds in the general per-student grants left more, not less, flexibility for boards. In any event, Oberg had already stated that boards could ignore his guidelines. The symbolic difference was another matter. Mulder might well regret that situation since one of the few remaining important tasks for boards had now been subjected to government interference in a major way. Not that this was the first time the government had interfered in collective bargaining. In 1994, the government had made it clear that boards were expected to negotiate reductions in the salary lines of their budgets. If the ASBA made any objections to that earlier interference, the minutes of the 1994 ARA do not record them. Boards, ineffective in the battle for

increased education funding, were about to be ground between an aggressive Association and an obdurate government. The Association initiative threatened to make an anachronism of boards and their organization, and when the strikes finally did occur in the winter of 2002, Mulder, now president of the ASBA, would campaign vigorously for a regime in which local boards had autonomy and flexibility and local teachers were unfettered by a provincially mandated set of criteria. In the recent past and for the foreseeable future, history was headed in the opposite direction. Relations between the Association and the ASBA had been open and cordial in the recent past, and Booi had reason to hope that this would continue. In his address to ARA, he tried to enlist at least the tacit support of the ASBA when he said, "The government's actions had set teachers against school boards, which had been forced to choose between salaries and classroom conditions."⁴⁵ He indicated that, "because the root of the problem was the government's control of resources, the Association would not engage in a fight with trustees or school board offices."⁴⁶ This would be difficult to accomplish when the weapon he intended to use was the strike weapon, which is, by necessity of the *Labour Relations Code*, exercised on the employing boards. With a few notable exceptions, the political deftness and level of statesmanship required to negotiate that minefield were well beyond the capabilities of most boards and their provincial organization. There would, of course, be exceptions. The major urban boards, for the most part, would stand aside from the dispute even when they were bearing the brunt of the strikes. There was little love lost between those boards and Oberg. Mulder

⁴⁵ Alberta Teachers' Association, Minutes of the 84th Annual Representative Assembly, 3.

⁴⁶ Alberta Teachers' Association, Minutes of the 84th Annual Representative Assembly, 3.

also “predicted that, in light of the current challenges and opportunities in education, communication among education partners would be increasingly important.”⁴⁷ Booi would later find her organization to be sadly lacking in that area.

Planning for a labour battle did not mean that the Association ignored the broader fight in which it had been heavily engaged for years. The Public Education Award was presented to two parent groups for their advocacy on behalf of public education. “Both groups had worked tirelessly to promote increased funding for public education.”⁴⁸ In his address, Booi stated, “although the actions that teachers need to take will be difficult, the Association had worked very hard during the past decade to foster support for public education”⁴⁹ and stressed that, “if things were to change, Albertans who value public education must pressure the government to invest in education.”⁵⁰ This acknowledged the debt owed to prior Association actions and reminded delegates that they must position their labour dispute firmly in the centre of the public relations battle for public education.

The President's Address

Booi's address to ARA dealt with one issue: the upcoming battle with the government. Had there been any doubt about his intentions when he began, there was none when he

finished. The Association had been challenged. It was up to ARA to pick up the gauntlet. He labelled the provincial government's recent budget “an unprecedented and provocative intervention into local collective bargaining.”⁵¹ It “presented a serious challenge to the Assembly.”⁵²

Moving the dispute with the government to the provincial level required some deft footwork on Booi's part. He had to overcome the view, strongly held by many local leaders, that bargaining was a local matter. The action plan had been carefully crafted to propose provincially coordinated bargaining rather than provincial bargaining. Booi was at some pains to explain why provincial action was required and why local action would not suffice. He reiterated his contention that the government “had shifted the dispute to a provincial level. As a result, teachers had no choice but to take action at the provincial level.”⁵³ Booi was well aware of the internal Association political difficulties associated with carrying out a provincially focused bargaining campaign.

Teachers are not shy about questioning the wisdom of the actions taken by their own organization, not infrequently blaming its behaviour for crises such as these. Booi sought to defuse this opposition, speculating on five possible explanations for the government's stance. He speculated that the government might be annoyed by the opening positions

⁴⁷ Alberta Teachers' Association, Minutes of the 84th Annual Representative Assembly, 2.

⁴⁸ Alberta Teachers' Association, Minutes of the 84th Annual Representative Assembly, 2.

⁴⁹ Alberta Teachers' Association, Minutes of the 84th Annual Representative Assembly, 5.

⁵⁰ Alberta Teachers' Association, Minutes of the 84th Annual Representative Assembly, 4–5.

⁵¹ Alberta Teachers' Association, Minutes of the 84th Annual Representative Assembly, 3.

⁵² Alberta Teachers' Association, Minutes of the 84th Annual Representative Assembly, 3.

⁵³ Alberta Teachers' Association, Minutes of the 84th Annual Representative Assembly, 3–4.

taken by some teachers' locals. Some locals talked of seeking salary increases of 30 per cent. However, doctors had opened at 35 per cent and nurses at 50 per cent, and if the government had taken offence, it had not prevented an agreement. In response to the charge that perhaps the Association had not been sufficiently cooperative with the government, Booi pointed out several major education initiatives and improvements on which they had cooperated. It had been nine years since the last teachers' strike. Teachers had accepted a wage cut to help the province. The Association's role in the election might have been an irritant. He was less conciliatory in regard to this, the third of his reasons. The Association's stand on health care and education funding in the last election had been a legitimate exercise in democratic debate, and he had no apologies to make for it. Teachers who just wanted to keep their heads down would receive no support from this president. Then there was the possibility that the government was setting up the Association in order to break the organization. A spate of strikes might well prove problematic for the Association, which was very aware that there were those in government who would welcome an opportunity to legislate fundamental changes to the existing collective bargaining regime for Alberta teachers. Just in case any teacher should underestimate the level of the possible conflict, Booi warned that everything was on the line and that if the Association, as it existed, was to be destroyed, it would be replaced by a more militant organization. Finally, the budget might be just an opening position, and the government might negotiate up from there. Clearly, this was the most optimistic explanation and the one most delegates no doubt wanted to believe.

Interestingly, one of the local resolutions provided an opportunity to promote the coordinated bargaining plan by attacking what it was not. Resolution 88 proposed provincial bargaining for the future. At ARA, Booi took the opportunity afforded by the resolution to express his support for the traditional bargaining structure and thus to reiterate the distinction between provincial bargaining and provincially coordinated local bargaining as proposed in the action plan. He summed up this halfway approach by telling teachers that he did not think they had exhausted the possibilities of local bargaining in itself, let alone those of some kind of coordinated approach.

The government's media campaign claimed that Alberta teachers' salaries would be the highest in Canada. Booi labelled that campaign "aggressive ... incorrect and misleading"⁵⁴ and called on the government to change direction. Failing that, teachers had the strength to bring about the changes required. Or did they? There had not been a teachers' strike since 1992. There had been some suggestions that the government believed teachers no longer had the stomach for a real confrontation. If so, it underestimated its opponent. More likely, its arrogance was such that it did not particularly worry about a confrontation with a labour group.

Prior to ARA, some of those opposed to the plan, convinced as they were by their own ability to sway the delegates, expressed their belief that the plan would fail to receive the blessing of ARA. They were relying on that body's often-exercised right to refuse provincial Association officials tools that would, in the view of local representatives,

⁵⁴ Alberta Teachers' Association, Minutes of the 84th Annual Representative Assembly, 3.

unnecessarily centralize power. They were also clearly out of touch with the mood of most teachers and had yet to deal with the fact that the battle would be fought in an arena of which this president was clearly the master.

Two Emergent Resolutions

The afternoon of the first day, ARA moved into closed session, and Booi assumed the chair. Two members of Council moved to suspend the rules of ARA to place on the order paper the resolution urging the government to allocate substantial additional increases in funding. ARA complied. The resolution, now labelled 212A, was moved, debated and passed in principle.

Debate on this resolution never rose above the trivial. It centered on whether the language ought to be stronger or weaker. *Urge* was not strong enough. It ought to be replaced with *insist* or possibly with *demand*. *Urge* was too strong. It ought to be replaced with *request*. If there was any disagreement with the three goals set by the resolution, it remained unexpressed. The speeches suggest that delegates approached the resolution as a public relations issue. At no point did ARA address the other result of the resolution, namely, that it would constitute the Association's negotiating position. In effect, ARA was setting the Association's negotiating position, albeit in very global terms, for the upcoming round of coordinated bargaining. The minutes record no discussion about the significance of this step or the three goals as bargaining objectives. The body debated and then passed resolution 212A in principle. It was now ready for the Assembly on the steps of the legislature.

Having passed resolution 212A, ARA proceeded to the action plan. Once again,

Council members moved suspension of the rules, ARA complied and the order paper was amended to provide for immediate consideration of resolution 213A. The copy of the resolution distributed to ARA was accompanied by a background document on the action proposed. Prior to commencing debate, ARA held an information session. This relatively uncommon step provided representatives with an opportunity to explore the complexities of the proposal without the strictures of formal debate and to tap the expertise of Association staff. Hyman set the context for the plan. The government had, by earmarking funds for teachers' salaries, fundamentally changed the rules. The Association had to decide whether it would accept those restrictions or actively challenge them. Vice-President John Waterhouse described the Association challenge as presented in the action plan. He made reference to the four elements of the plan with specific emphasis on coordinated bargaining.

Unlike its companion resolution, resolution 213A received a great deal of attention from ARA. In order for the course of action to receive the approval of ARA, not only did the action need to be acceptable, but it also had to be preferred over other possible alternatives. Accordingly, it was necessary to demonstrate that the Association had considered alternative courses of action and to provide reasons for preferring the recommended plan. Hjelter was called upon to describe the other collective actions that had been considered. Delegates were informed that a number of alternatives to strike had been reviewed and found wanting. They were presented with the pros and cons of wildcat strikes, mass resignations, work-to-rule, one-day walkouts, "sick-outs," provincial bargaining and even the "do nothing" option, all of which had been considered and for

various reasons rejected. One of the crucial considerations in selecting the proper option was identification of the opponent. Teachers' battle was with the government, and the option chosen had to be one that would put pressure on that government. Coordinated bargaining was put forward as the method whereby the Association could do that. The subsequent question-and-answer section of the discussion on resolution 213A reveals a good deal about the issues and the mood of teachers. Association staff handled questions on the projected cost of the action, a provincewide strike in the fall, a ban on the marking of diploma and achievement exams, the emergent meeting of bargaining unit representatives, a class action suit, work-to-rule, the legality of coordinated bargaining, the staffing implications of coordinated bargaining, the political action and public relations parts of the plan, use of the Association's power to sign agreements, the collective bargaining guidelines, the financing of strike action, possible cooperation with school boards, the options available to locals with pre-existing settlements, assignment of representatives of the bargaining agent to all disputes and the holding of another mass rally at the legislature. Clearly, the issue had caught the attention of delegates.

ARA thoroughly discussed the plan, extended its sitting, declined to adjourn or recess, and moved on to debate the resolution. The mood



was supportive of the motion from the outset. There were attempts to modify the actions, but they came as some form of escalation or as attempts to advance the timing. There were amendments designed to commence some sort of job action earlier. The idea of one-day study sessions arose again, as did withdrawal of services to the Department of Learning. Speakers opposed those ideas on the basis of their illegality, their cost in fines, their unequal impact on bargaining units and their potential to create divisiveness among teachers. Such tactics would put members at risk, were not supported by the membership and had been considered and rejected by Council. Balanced against

those tactics was the proposed plan, which built on the present system. It was not said, probably because it did not need to be said, that teachers were familiar and comfortable with the steps under the collective bargaining regime. They would be treading a road that many of them had been down before and would understand the role they had to play. Comparisons were drawn with Alberta nurses and job actions they had taken, a comparison that went both ways. During subsequent debate on a resolution proposing that teachers refuse to mark achievement tests and diploma exams, Booi expressed sympathy with those delegates who were apparently eager to get on with the fight for better funding, but he re-emphasized the need for the battle to be joined on a common, provincewide basis. In fact, this particular action was held back and used later in the conflict. Booi understood the proposal for action now was prompted by a legitimate frustration about wanting to

do something now. However, he warned that short-term action, though providing immediate gratification, could undermine the efforts of the longer-term plan. He warned against engaging in any activity that was potentially divisive or of questionable legality or that might undermine public support and “suggested that, rather than approving the motion, delegates emphasize to their locals the importance of implementing a big, province-wide action plan that would affect the government.”⁵⁵ His stance was consistent throughout. On the steps of the legislature, he assured the public that students’ education would not be interrupted before the end of June but that teachers would not give similar assurances for the fall. In the end, ARA opted for the single massive demonstration of strength using legal and essentially familiar processes over the largely symbolic scattergun approach of study sessions and work-to-rule.

While the action plan represented a significant departure from previous actions, it also built on the work done by the Association over the preceding decade. Vice-President Janet Laddish, speaking to resolution 212A, acknowledged as much: “Support for teachers was evident in media reports, in opinion polls and in comments from parents. The proposal was designed to build on the Association’s accomplishments, including the public education campaign of the last few years, the extensive work in the area of teacher professional growth, the *Vision and Agenda for Education* and the information campaign that the Association undertook during the recent provincial election.”⁵⁶

It was pointed out to ARA that the plan contained a number of actions within the four elements and that the actual steps taken would be selected from within those approved in the resolution. It was also clear that, unless something significant were to change, the actions of coordinated bargaining and a mass withdrawal of services were the keystone of the plan and would be going forward.

One of the most delicate aspects of the plan was the coordination of groups that had, until this time, operated with a fair amount of independence because there was inevitably a reduction in independence implied in the coordination idea. Some locals were used to working with a representative of the bargaining agent; some had very little experience. Some committees were amenable to advice from a representative of the bargaining agent, and some were less so. This showed up in the ARA debate in the form of an amendment that would have removed “Assignment of representatives of the bargaining agent to all units to assure maximum coordination of bargaining and potential job action.”⁵⁷ Coordination was crucial to the plan, and vital aspects of that coordination were to be provided by executive staff in Teacher Welfare, particularly at the tactical level. ARA rejected the amendment.

Resolution 213A passed. Motions for other and more immediate actions were defeated or withdrawn. The die was cast.

⁵⁵ Alberta Teachers’ Association, Minutes of the 84th Annual Representative Assembly, 83.

⁵⁶ Alberta Teachers’ Association, Minutes of the 84th Annual Representative Assembly, 73–74.

⁵⁷ Alberta Teachers’ Association, Minutes of the 84th Annual Representative Assembly, 79.

The Assembly on the Steps

Before going home to explain their decisions to teachers, delegates had a bit of theatre to perform on the steps of the legislature. At its May meeting, Council had authorized an expenditure for a demonstration at the legislature during ARA and directed the Coordinating Committee on Critical Concerns to “develop plan for ARA action at Legislature based on PEC motion”⁵⁸ The idea was to convene a special session of the 2001 ARA on the steps of the legislature. Booi informed delegates “that the Assembly had gathered on the steps of the Alberta Legislature in part to demonstrate its respect for the democratic nature of society and the role of the Members of the Legislative Assembly (MLAs) in making decisions affecting professional practice. ... The Assembly was delivering to Alberta’s elected representatives the message that they had failed to deal effectively with some critical issues in education.”⁵⁹ “Teachers will spend time addressing possible actions in response to the government’s refusal to budget sufficient education resources.”⁶⁰ The session was to consider resolution 212A, the Council-proposed resolution directed specifically at the government on the funding issue.

The Assembly on the steps was conceived of as part of the ongoing political campaign. In that sense, it provided a bridge between the old campaign and the new one. The October 1997 rally had emboldened teachers, a number of whom saw it as a symbol of their opposition to the government. The current rally was a visible

sign that the Association was going to act and good theatre for members who needed evidence that their organization was stepping up the pressure on the government, and it would to some degree mollify those representatives who were being thwarted in their efforts to promote immediate action. The Association needed to make a statement, to send a direct message to the government, to make it clear that the organization had set a new course. Finally, it needed, if only in the broadest of terms, to stake out its position in a very public manner.

On Sunday, May 20 at 4 PM, some 500 representatives of the Alberta Teachers’ Association gathered on the steps of the Alberta legislature in a historic meeting to take direct aim at the government. This assembly was small compared to the first one in 1997, but nothing was left to chance. The Association sought and received the approval and cooperation of security services at the legislature. Arrangements were made with Edmonton Transit for a convoy of buses to transport ARA participants from the Westin Hotel to the legislature grounds. Fifteen City of Edmonton buses provided transportation for the delegates and invited guests. Staff provided instructions on procedures and organized the departure from the Assembly hall. Representatives of the media were invited to attend in Booi’s bus, to which access was restricted. The buses were marshalled on Jasper Avenue and advanced in order to the hotel. Staff placed a supply of placards on each bus in readiness for the delegates and then supervised their loading according to a predetermined

⁵⁸ Alberta Teachers’ Association, Action Sheet from Provincial Executive Council Meeting of 2001 05 07–08, May 9, 2001.

⁵⁹ Alberta Teachers’ Association, Minutes of the 84th Annual Representative Assembly, 17.

⁶⁰ Alberta Teachers’ Association, “Alberta teachers to use annual meeting to determine provincial course of action,” news release, May 14, 2001.

order. The Edmonton Police Service provided constables and cruisers. One police cruiser in front of the convoy and one behind, together with several others stationed on Jasper Avenue and 107 Street, provided for a nonstop trip to the legislature. En route to the meeting, special voting cards were distributed to the voting members. Buses unloaded and delegates proceeded on foot through the grounds to the assembly area, following a walking route shown on a map supplied and with executive staff acting as marshals. Sound stage and video support were arranged and available to the Assembly upon arrival.

The actual Assembly was as meticulously structured as the logistics. ARA reconvened on the steps of the legislature and addressed the previously “approved in principle” motion. Booi opened the session with a speech directed at the government. The government bore full responsibility for funding education and for picking a fight with the Association. It was now explicit that it was the government that was to get the message. Speakers were preselected, not for any political positions they might hold but for their ability to articulate the frustrations of their colleagues and, where possible, for their youth to represent the future of the profession. They were invited to talk for two minutes on their experience in the classroom, to express the anger of teachers and to explain why they deserved a significant salary increase. The 5 per cent cut still rankled. One “soon-to-be-retired teacher from Calgary Public noted teachers took salary cuts when it was deemed necessary and received nothing in return. ‘Despite the fact that I worked harder and longer hours for my students, my salary

was cut back. A fact from which I will not recover for the rest of my days as my pension will forever reflect the great sacrifice I helped make to put Alberta’s fiscal house in order.’”⁶¹

The delegates waved signs displaying the message, “4+2 = Nothing New,” conveying teachers’ attitude that the government funding represented neither the long-sought funding breakthrough nor delivery on Klein’s salary promise. Other signs illustrated the unfairness felt by many teachers: “It’s About Fairness.” It is doubtful that many outside the profession have any real idea just how deeply teachers feel on the issue of fairness, but it was a very significant aspect of their dissatisfaction. Later, the Association would characterize the teacher representatives as “energetic.” The motion was voted on and carried unanimously. In closing, Booi delivered three messages on behalf of ARA. First, the government needed to increase funding. The second was both a reassurance and an ultimatum: parents and the public were assured that there would be no disruption of school in the remaining weeks of the current school year, but there were no promises for the school year to begin in September, which might well see large-scale withdrawal of services. The third message was to supporters of public education. Booi made it clear that this fight was not just a fight for teachers: “Teachers have delivered their messages. It is now time for Alberta’s citizens to instruct their representatives to avoid this needless conflict and make the necessary investments in public education.”⁶² Once again, the signs proclaimed “Get the Message,” but the message was now much more pointed, and there was no longer any obfuscation over the intended

⁶¹ “Teachers convene on Legislature steps to send message to government,” *ARA News*, May 20, 2001.

⁶² “Teachers convene on Legislature steps to send message to government,” *ARA News*, May 20, 2001.

recipient. This second rally at the legislature no longer just sought to deliver the message to the public; it assumed the support of the public and asked that the public take action. The Assembly on the steps ended with rousing words from Booi, encouraging everyone, teachers or not, to demonstrate to the government their support for public education: “We believe that you need to turn up the volume, turn up the heat and increase the pressure. ... You need to get more active, get more allies and get more angry!”⁶³ Placards were waved; the session adjourned; and representatives boarded the buses, deposited their placards and rode back to the Westin.

Media Coverage

The media was a key consideration in the campaign. It is fair to say that the Association received good coverage and, in general, a fair hearing in the media. Reporting on the events of the May long weekend was typical. The *Edmonton Journal* headlined its coverage with “Alta. teachers call for strike in the fall.”⁶⁴ “The ATA will try to co-ordinate a provincewide strike that would exclude only nine divisions, which already have contracts.”⁶⁵ This overstated the plan, but the actual number was close enough that the smaller number was to go

unnoticed by the press. ARA, it was noted, had discussed and rejected work-to-rule in favour of a strike. Booi was quoted as having said that “a strike, while we want to avoid it, is the only effective weapon we have.”⁶⁶ The media quoted Art Bauer, president of Woodland Rivers Local, who summed up the reason action was finally to be taken. In these simple words, one hears seven years of frustration with broken promises and the conclusion that now is the time: “We have been led to believe the government would address these issues and they didn’t.”⁶⁷

The *Edmonton Sun* was less subtle with its “Ready to walk” headline.⁶⁸ It quoted Booi as promising a massive withdrawal of services in the fall of 2001. This would give the government the summer to think it over and come up with more money. It would also, as the *Sun* pointed out, give the Association the opportunity to get the vast majority of its bargaining units to the same stage in negotiations so that job action could take place across the province. Therein lay one of the major problems for the Association: it sought to work through the traditional dispersed system, which required both buy-in from the locals and a tremendous amount of work to coordinate the effort. It was attempting to utilize a dispersed bargaining structure to put pressure on the provincial government.

⁶³ “Teachers convene on Legislature steps to send message to government,” *ARA News*, May 20, 2001.

⁶⁴ S Hagan, “Alta. teachers call for strike in the fall: 450 angry delegates gather at legislature to protest budget,” *Edmonton Journal*, May 21, 2001.

⁶⁵ S Hagan, “Alta. teachers call for strike in the fall: 450 angry delegates gather at legislature to protest budget,” *Edmonton Journal*, May 21, 2001.

⁶⁶ S Hagan, “Alta. teachers call for strike in the fall: 450 angry delegates gather at legislature to protest budget,” *Edmonton Journal*, May 21, 2001.

⁶⁷ S Hagan, “Alta. teachers call for strike in the fall: 450 angry delegates gather at legislature to protest budget,” *Edmonton Journal*, May 21, 2001.

⁶⁸ D Palmer, “Ready to walk: Teachers ‘angry and they’re going to act,’” *Edmonton Sun*, May 21, 2001.

End of the Beginning

Booi used his closing remarks to acknowledge the sense of solidarity he had experienced at ARA and to remind delegates that the Association was entering a critical period and that teachers would get not what they deserved but what they fought for. He made it clear to delegates that they were in for a fight: “We are in for a tough time. We are not leading any children’s crusade. ... We’re taking on a tough government that knows how to be rough.”⁶⁹ Delegates could not legitimately claim to have been misled about the potential problems they faced. It had been made clear that they were embarking on a confrontational path. Booi reiterated that message in closing ARA: “The next few months would be very difficult. ... Collective bargaining would be very tough in the upcoming months.”⁷⁰

ARA delegates had a special responsibility to communicate their decisions to the teachers they represented, and bargaining units were requested to refrain from settling until the plan began to unfold. This was always going to be a source of weakness in the Association plan. The people who make decisions on behalf of all teachers at ARA are frequently not the same people who represent local teachers at the bargaining table. Nor are the decisions typically of the same order. ARA is a representative system, and in broad terms, its decisions tend toward the strategic. Bargaining decisions are an example of direct democracy, with decisions tending toward the tactical. The results are not necessarily identical. Those differences had been accommodated in the dispersed decision-making model of teacher collective bargaining. In coordinated bargaining, they were central to the process.

⁶⁹ “Where are we now? Where are we going?” *ATA News*, June 5, 2001.

⁷⁰ Alberta Teachers’ Association, Minutes of the 84th Annual Representative Assembly, 23.

CHAPTER 3

**COORDINATED
BARGAINING***Planning Strategy*

The 2001 Annual Representative Assembly (ARA) set the direction. Coordinated bargaining was the centrepiece of the action plan. Moving that portion of the plan forward to the implementation stage was the responsibility of Association negotiators, and from a practical point of view, they had until the middle of June, less than a month, to do so. President Larry Booi announced that “he was inviting representatives of the bargaining units to a special meeting at Barnett House on June 9 to develop strategy for the kind of contract settlement that would be acceptable to teachers and to draft plans to achieve satisfactory settlements.”⁷¹ The meeting was convened with all 60 bargaining units represented. This group would have realized much better than ARA delegates the monumental size of the task involved in coordinating bargaining for up to 55 units, the task for which they were now responsible. Certainly, Teacher Welfare staff was aware. Representatives of the bargaining agent (RBAs) were assigned to all units not settled for the 2001/02 year. Effectively, 55 units were

divided among five RBAs. Executive Secretary Charles Hyman had told ARA that each RBA could be expected to handle up to five units, but beyond that, temporary staff would have to be engaged. For the next six months, staff would try to carry twice that number of units. All school boards were notified that bargaining for the upcoming year would be conducted at the RBA level.

The strategy, while charting unexplored ground and requiring a great deal of coordination, was straightforward enough. As many units as were interested and available would proceed through the bargaining process to arrive, on some as-yet-to-be-determined common date(s), at the stage where they could legally withdraw their services. Any that could achieve a satisfactory settlement would do so. *Satisfactory settlement* would be defined as one that met the objectives as set by ARA resolution 213A and as interpreted by the provincial committee.

That second task facing the June 9 meeting, defining the kind of settlement satisfactory to teachers, would prove more difficult. ARA had always set policy directions for collective bargaining. The crux of the present plan was that it sought to add ARA control over both bargaining strategy and short-term objectives. ARA pronouncements on bargaining goals over the decades were widely popular with teachers and generally accepted by local bargainers, at least as long-term goals. Traditionally, the Association’s structure had permitted negotiators to pursue such goals over numerous rounds of bargaining, viewing them as not generally achievable in the short term. For 2001/02, ARA had set immediate objectives,

⁷¹ “Where are we now? Where are we going?” *ATA News*, June 5, 2001.

albeit in vague terms, and the new structure permitted far less local discretion. The Association's collective bargaining guidelines had always been influential but not prescriptive. Not infrequently, RBAs had pulled together loose coalitions of like-minded locals to set directions and strategy. These were, however, a long way from what was required now. What was required now was a set of firm objectives, a standard against which success would be measured, a structure for applying the measurement and a process for enforcing decisions. The actors were not familiar with any of those requirements.



2001, the Association had at least gotten the attention of Minister of Learning Lyle Oberg. The *ATA News* printed his response to the article on funding together with Editor-in-Chief Donna Swiniarski's refutation of his position.⁷³ The exchange did not reveal any progress toward a meeting of the minds on funding or salaries.

In June, the government had settled with the Alberta Union of Provincial Employees. The settlement, reported as 16 per cent over two years, did nothing to abate the fires in education. Then, in September, the fourth of the influential public-sector remuneration deals was announced. Having settled health care in time for the election and with the Alberta Union of Provincial Employees shortly thereafter, the recently re-elected MLAs now took care of themselves. They made themselves recipients of major increases in compensation, and teachers took notice. Booi commented, "If the government's finances have allowed for a 13 percent increase in MLA salaries, as well as a very lucrative 'exit' package, how can they say that they can't afford to make the necessary investments in public education?"⁷⁴ As far as teachers were concerned, this truly was rubbing salt in their wounds.

Preparations and Public Relations

In terms of overt action, a hiatus followed ARA. However, the *ATA News* records ongoing Association activity on the public relations front. The *News* carried articles from individual teachers about the state of the profession, their conditions of practice and, of course, their remuneration. There was an article on funding that made it clear the Association rejected all of the government's contentions.⁷² The Association kept the issue simmering while the bargaining process readjusted and began to work. By October

In August, the media campaign "Ask the Alberta Government" kicked off. The campaign posed three questions: "Why are Alberta's

⁷² "Education is our future. Right?" *ATA News*, August 28, 2001.

⁷³ L Oberg, "Letter to *The ATA News* from Dr. Lyle Oberg, Minister of Learning, September 9, 2001," and Donna Swiniarski, "*The ATA News* responds to Dr. Oberg," *ATA News*, October 9, 2001.

⁷⁴ S Svidal, "Government delivers mixed fiscal message," *ATA News*, Sept 11, 2001.

classrooms underfunded?”, “Why is Alberta facing a teacher shortage?” and “Why are Alberta’s teachers undervalued?”⁷⁵ The Association produced another president’s letter to teachers outlining the political campaign. The letter reiterated the Association’s position, re-emphasized the fact that the money was available and reminded teachers that coordinating bargaining was a response to government action. Booi noted that the media campaign had produced billboards and radio ads and one million fact cards that he was asking teachers to deliver to households in their communities during the last week of September. The fact cards provided information on the three key questions that formed the focus of the media campaign. Booi thanked teachers who had contacted their MLAs, contacts the MLAs had reported as effective. He encouraged redoubling this effort, preferably through face-to-face meetings but by whatever means of communication was available. Teachers were requested to

- contact their MLAs,
- inform their school community about the issues,
- distribute the information cards,
- attend collective bargaining meetings,
- promote the issues in the October 15 school board elections and
- stay informed and involved.

On October 5, in celebration of World Teachers’ Day, representatives of the Edmonton-area locals gathered on the steps of the legislature to draw public attention to the problems facing Alberta’s public education system.

In September 2001, Minister of Finance Pat Nelson announced that the province was ahead of schedule in paying down its debt. It wasn’t that the government couldn’t afford to fund education better but simply that it had other priorities. An Alberta government official was reportedly canvassing jurisdictions in Canada where teachers did not have the right to strike. Thus, the government’s mind appears to have been focused on changing the rules for bargaining rather than making the existing rules work.

On the planning front, the Coordinating Committee on Critical Concerns was active. It had two meetings prior to Christmas at which it discussed developments and proposed directions for the Association. Contacts between the Association and the Alberta School Boards Association (ASBA) continued—fruitlessly. In October, the Association was invited to a meeting with the ASBA executive to discuss possible solutions to the financial and bargaining impasse. A month later, Michele Mulder, president of the ASBA, could not remember what had been decided at the meeting and had taken no action. The naive among teachers might still have hoped for school board assistance on funding for their schools. The more cynical believed that boards, having had their collective bargaining power usurped, would act as the willing agents of the government and would attack teachers. For the most part, the cynics proved to be closer to the mark.

The meetings exhibited the usual casting about in all directions and searching for solutions exhibited by a group of people under stress.

⁷⁵ Alberta Teachers’ Association, “Ask the Alberta Government”—Alberta teachers launch media campaign,” news release, August 27, 2001.

Participants reviewed a series of problems and potential solutions. Most of the problems stemmed from the need to speculate about and plan based on the great unknown: How would the government respond to a strike by a large number of teachers?

The Coordinating Committee on Critical Concerns now began to seriously put its mind to the question of how to handle the job action. A number of people were enamoured of the idea that they would take teachers out in waves of seven to eight bargaining units each. The idea of escalating job action was popular among Association decision makers but was eventually abandoned because it was judged too difficult to orchestrate and treated teacher groups differentially and because the Association recognized that there probably would be only one wave followed by government intervention. This would be particularly true if the first wave included the two big public units. Planning then focused on reaching agreement on a common strike date. As late as the October meeting of Provincial Executive Council, there was pressure for a January 1 date. Subsequently, the January date was abandoned as both unworkable and inadvisable, unworkable because most units could not be ready that soon and inadvisable because diploma exams would be threatened.

Another very significant issue concerned planning for action that might be taken in the event that the strikes occurred and the government intervened, presumably under emergency provisions. The committee discussed a wide range of options and in the end concluded that teachers were unlikely to defy a back-to-work order but would support

a work-to-rule campaign. It recommended that the Association respond to a government back-to-work order by

- a. instituting an immediate work-to-rule among the locals ordered back,
- b. calling an emergent representative assembly to consider a recommendation to move to provincial bargaining and other issues, and
- c. advising locals which are bargaining to pursue work-to-rule following a strike vote.⁷⁶

The committee also specifically noted that it had not yet fully explored all the actions the government might take, nor had it identified other possible responses.

The committee anticipated an Emergency Representative Assembly (ERA) to endorse any poststrike action proposed by Council and also because, by that time, the Association might need money and only an ERA could make the required special levy. Not included, because it was assumed, was the Association plan to challenge any back-to-work order in the courts as it had done on previous occasions when the government had exercised its emergency powers.

Not every local would follow the course set by ARA. Cloaked in the rhetoric of local autonomy and alleging promises previously made, some leaders and their teachers betrayed the solidarity and democratic decision-making processes. Medicine Hat Public finally had its memorandum of agreement. Unfortunately, it failed to meet the conditions set by ARA. Specifically, it failed to address the issue of improved classroom conditions. Indeed, the

⁷⁶ Coordinating Committee on Critical Concerns, Notes, December 12, 2001.

initial memorandum was, according to one of the trustees, rejected by the board because it would cost three and a half teaching jobs.⁷⁷ Nonetheless, the local pressed on. The unit had for some time preferred to rely on its good relationship with the employer to safeguard classroom conditions. While that apparently sufficed for Medicine Hat Public teachers, it was no solution at all for the vast majority of teachers in the province. The memorandum and the way in which it had come about engendered controversy and bitterness on both sides within the Association. The local representative had known and was participating in preparation of the plans that would put the memorandum offside but proceeded anyway. The local had been persuaded to await the outcome of ARA prior to proceeding with the memorandum and then found itself in direct contravention of the decisions made by that body. Others still resented the local's refusal to insist on inclusion of conditions of practice safeguards and other provisos in its collective agreement, as recommended by the Association, when it became the first local to agree to the rollback of salaries in 1994. The memorandum was rejected by the watchdog committee (the Committee on ARA Action Plan Coordinated Collective Bargaining) because it failed to provide for any improvements in classroom conditions. At its November 29, 2001, meeting, Council formally censured the district representative of the South East district for his role in the Medicine Hat Public settlement. He was censured for undermining both the ARA action plan and the solidarity of the Association. The penny had finally dropped in the dispute between local rights and ARA directions.

In November, the Association held another meeting of representatives of the bargaining units. The enthusiasm for action was almost universal. Everyone wanted in. The Association had originally thought it needed 10 to 15 bargaining units, including Edmonton Public and Calgary Public, in order to have the required impact on the government. Now, the problem was not whether teachers had the stomach for a strike but rather how to limit the numbers so as to make the strike manageable.

As previously noted, there was considerable discussion of strike dates. On December 13, Table Officers Committee forwarded a recommendation to Council:

That the date for a coordinated withdrawal of services be determined by

- a. a recommendation by Teacher Welfare staff to Provincial Executive Council, and
- b. a further recommendation by Provincial Executive Council to strike committees.⁷⁸

This process, it was noted, would maintain the long-standing practice of consultation with strike committees and representatives of the bargaining agent when setting a date for withdrawal of services. At the November meeting of Council, the issue of a strike date was formally addressed. Council decided to set a single date and recommend that units attempt to meet it. The representatives of the bargaining agent knew that the January 1 date could not be met even had it been deemed advisable. Their advice, and Booi's recommendation, was to set the strike date for shortly after the conclusion of diploma

⁷⁷ F Kramer, "Salary dispute has two sides," letter to the editor, *Medicine Hat News*, October 26, 2001.

⁷⁸ Charles Hyman to Provincial Executive Council, memorandum, December 13, 2001.

exams in late January. In the end, the date was set for February 4. Realistically, Council knew that not all units could be ready to strike on that day. Indeed, the Calgary Public unit was consciously held back, knowing that its impact in the heart of Tory Calgary would be substantial and, it was calculated, would be greatest if delayed until a substantial number of teachers were already on strike. In a sense, the Association had a wave-like strike process after all.

Strikes on the Horizon

By late fall, the bargaining scene had begun to heat up, and the first of the coordinated units was moving up to the plate. Strike votes were taken in Edmonton Public on November 29, Elk Island Public on December 17, Black Gold on December 19 and Livingstone Range on December 19. In early January, the pace quickened. Battle River voted on January 8, GrandeYellowhead on January 9, Chinook's Edge and Rocky View on January 10 and Holy Spirit on January 11. Seven more votes were scheduled for the following week. Typically, the results were in excess of 90 per cent in favour of striking. For a number of reasons, Association strike votes are seldom in doubt, but the

final tallies in those votes exceeded even the high numbers normally anticipated. Heading into a major confrontation, teachers in those units were solidly behind their leaders. Some trustees would accuse the Association of fomenting the strikes. The strike votes suggest that either a lot of teachers were easily led or a lot of teachers had decided that this thing had to be done and they were ready to do it. The coordination of the disputes was not hidden. The *ATA News* carried the announcement of the successful Edmonton Public vote: "They will wait for other bargaining units to approve strike action before leaving their classrooms. It is likely that teachers in many jurisdictions will be in a position to take simultaneous strike action and that school closures may affect a large portion of the province."⁷⁹ As teachers moved toward strikes with their employers, they continued to insist that the real villain was the government. Comments by Stephen Lindop, president of Greater Black Gold Teachers' Local, were illustrative, making it explicit that the government, not the local board, was to blame for the impasse: "Black Gold Regional Division, like most of the province's school jurisdictions, is simply not provided with adequate funding resources by the provincial government."⁸⁰ This nonaccusatory attitude would stand that local in good stead a few weeks later when its board became one of the first to make a very real effort to settle,



⁷⁹ "Elk Island teachers authorize strike vote," *ATA News*, January 1, 2002.

⁸⁰ Alberta Teachers' Association, "Black Gold Regional Division teachers approve strike vote," news release, December 12, 2001.

notwithstanding the hurdles it faced. The messaging from Karen Beaton, president of Edmonton Public Teachers Local, was similar. “‘We’re not prepared to take money out of the classrooms,’ she said. ‘We need money in our salaries for our own families, we also need it for future teachers, but we are not willing to raise class sizes to get it.’”⁸¹

By December 2001, things had proceeded to the point where the immediate future was relatively clear. Barring a last-minute change of heart by the government, the new year was going to see a wave of strikes across the province. At the December meeting of the Coordinating Committee on Critical Concerns, Earl Hjelter, coordinator of Teacher Welfare, reported that 18 to 24 bargaining units would be in a position to take action soon, including all three of the big urban units that were in negotiations. (Edmonton Separate had a pre-existing contract and was not in negotiations.) On the positive side, teacher support was solid, and bargaining was being coordinated on an across-the-province basis. However, on the government front, all indications were negative. Not only would there absolutely not be an offer from the government prior to strike action, but also all indications were that the government’s response to Association action would be harsh. Whether individual members had fully internalized the risks,

the leadership of the Association, and that included all of the most powerful political actors in the organization, was fully aware that the upcoming action could jeopardize the structure, indeed the survival, of the Alberta Teachers’ Association.

By winter, the media was reporting regularly on the escalating dispute. The *ATA News* of January 1, 2002, carried a sampling of the editorial pieces. Some were supportive: “‘So, it’s time the government gave teachers the much deserved raise they not only want but need.’”⁸² Others were not: “‘If our teachers were genuinely underpaid, then the Alberta public would have a role to play in pressuring the government to provide what the union is asking. That’s not the case.’”⁸³ Others were less supportive but analyzed the reasons for the conflict: “‘Hey, we don’t condone the ATA demanding one-year, 19 percent raises. But we do understand why they think they’re getting the screws put to them by the Alberta Tories.’”⁸⁴ Even the Canadian Taxpayers Federation, while not bothering to analyze the issues, at least knew where to lay the blame: “‘Unfortunately for Alberta taxpayers the government lost its moral authority to bargain effectively when MLAs gave themselves a 10 percent after-inflation pay increase, and fattened their severance pay.’”⁸⁵ Meanwhile, the old shibboleths resurfaced as some opinion

⁸¹ J Holubitsky, “Teachers gear up for strike strategy: Vote on mandate for action against public board could come Nov. 20,” *Edmonton Journal*, October 28, 2001.

⁸² T Mielke, “Teachers deserve adequate funding,” editorial, *Sylvan Lake News*, November 28, 2001, quoted in “News Views,” *ATA News*, January 1, 2002.

⁸³ S Ruttan, “Teachers shouldn’t expect it all: They aren’t underpaid, and 19-per-cent wage hike a dream,” *Edmonton Journal*, December 8, 2001, quoted in “News Views,” *ATA News*, January 1, 2002.

⁸⁴ M Jenkinson, “ATA strikes out,” editorial, *Edmonton Sun*, December 1, 2001, quoted in “News Views,” *ATA News*, January 1, 2002.

⁸⁵ J Carpay, “Albertans deserve accountability,” *Red Deer Advocate*, December 1, 2001, quoted in “News Views,” *ATA News*, January 1, 2002.

writers took the opportunity to reiterate their favourite harangues: “‘Except at the same time the ATA is playing the self interest factor like all good trade unions do during contract talks, ATA president Larry Booi is trying to confuse the issue and maintain that there’s a quality-of-education debate involved as well.’”⁸⁶ This columnist’s solution was to split the Association into a professional association and a union. Just how this was relevant to, or would have changed, the current dispute was not articulated. After all, exactly the same teachers would have had exactly the same issues. Comments to Oberg became pointed. When he dismissed the results of a fundraising survey, pointing out that government funding was inadequate and parents had to raise money, one paper commented, “‘Maybe he was really, really busy while his kids were going to school, and he never showed up at a hot dog sale.’”⁸⁷ Nor did Premier Ralph Klein’s role in all of this pass without comment. One columnist laid the blame directly on him for raising teachers’ expectations and then dashing them.⁸⁸ Even federal MP Deborah Gray weighed in:

In my province of Alberta, the cutbacks that went on in the early ‘90s in the health field and in the education field were just staggering ... the medical profession has been brought back up now ... and been given some extra ... but the teaching profession hasn’t, and I think that the Ralph Klein government needs to do with the teachers and

the education system what he did with the medical profession, to say, let’s get these back up again, these people took their cuts and did it fairly willingly ... I think that bargaining in good faith would be really wise.⁸⁹

If truth is the first casualty of conflict, then information is a vital weapon. The Association made a huge effort to get information to both teachers and the public and through teachers to the public. Thirty thousand committed, articulate people should be a force to be reckoned with if they can be motivated to put their skills to work in disseminating information to their neighbours. *Public Education in Alberta: Questions and Answers*, an Association paper produced in January 2002, illustrates this process. The paper consisted of four pages of densely packed typewritten material, not the sort of material designed for quick review such as one would expect to find in a newspaper article. Rather, it was background information for teachers and for teachers to use in an attempt to answer questions from parents and the general public. This particular backgrounder provided information on 16 questions, including the following:

- How did we get to this point?
- What do teachers want?
- Is class size a problem for all schools?
- What can I do?⁹⁰

⁸⁶ N Waugh, “Splitting the ATA is the only solution,” *Edmonton Sun*, December 4, 2001, quoted in “News Views,” *ATA News*, January 1, 2002.

⁸⁷ “Fund-raising has become the norm: Oberg’s dismissal of survey shows ignorance of today’s reality,” editorial, *Grande Prairie Daily Herald–Tribune*, December 4, 2001, quoted in “News Views,” *ATA News*, January 1, 2002.

⁸⁸ L Corbella, “Dr. No dashes Dr. Feelgood’s promises,” *Calgary Sun*, December 6, 2001, quoted in “News Views,” *ATA News*, January 1, 2002.

⁸⁹ D Gray, “At the end,” *CBC Newsworld*, November 23, 2001, quoted in “Tale End,” *ATA News*, January 1, 2002.

⁹⁰ Alberta Teachers’ Association, *Public Education in Alberta: Questions and Answers*, nd.

A review of two questions and answers provides a sense of the information put out by the Association:

How do Alberta's class sizes compare to those in other provinces?

The Association cited information from the British Columbia Ministry of Education for the 1999/2000 school year, which stated that Alberta's student-to-educator ratio was the highest in the country at 18.43, followed by New Brunswick at 16.78, and was 12 per cent above the interprovincial average. The paper went on to note that this ratio consistently underestimated actual class size, which, according to Department of Learning statistics, was at or in excess of 25 students in 41 per cent of Alberta's elementary classrooms. Furthermore, 71 per cent of those classrooms included, on average, 4.1 students with identified special needs.⁹¹

Hasn't the government provided large increases in education spending? Can the province really afford to spend more?

A bar graph of spending on basic learning did, after a dip in the mid-1990s, show increased government spending. However, it also showed that, when the effects of inflation and increased enrolment were included, spending was in fact lower than it had been in 1992/93. The paper then went on to point out that Alberta ranked fifth in Canada in per-student expenditures, despite having the wealth to do much more.⁹²

The *ATA News*, a regular source of background information, ran numerous articles addressing

the theme of solidarity, reminding teachers that its role would be to "report on the progress of the plan, highlight local initiatives and provide teachers with information they can use when discussing the issues with their MLAs and members of the public."⁹³ The front page of the January 1, 2002, *ATA News* carried a piece by a teacher who had recently voted yes for a strike vote. "What I need to remind you of is that you are still very much part of the process. We cannot afford to let the energy flag or lose the drive or start to show any weakness," she said.⁹⁴

The government had its own media campaign, spearheaded by Oberg. Stung by the Association's challenge of the accuracy of its data, the government commissioned a review of its education investment, salary, quality of education and student achievement statistics by a management consulting firm, the results of which were released on February 1 under the title "Independent firm reviews teacher and classroom data."⁹⁵ The validation added little to the quality of information available. For example, it validated interprovincial teacher salary data based on different time periods, in effect validating a comparison of future Alberta figures with past interprovincial data and thus serving to prop up the government argument that a 6 per cent increase would make Alberta teachers the highest paid in Canada. It validated government figures on investment in education from 1992/93 to 2000/01 but made no reference to the effects of increased enrolment or inflation. Accordingly, the review added very little to the quality

⁹¹ Alberta Teachers' Association, *Public Education in Alberta: Questions and Answers*, nd.

⁹² Alberta Teachers' Association, *Public Education in Alberta: Questions and Answers*, nd.

⁹³ "Teachers take action," *ATA News*, January 1, 2002.

⁹⁴ K Shevy, "Why I voted yes," *ATA News*, January 1, 2002.

⁹⁵ Government of Alberta, "Independent firm reviews teacher and classroom data," news release, February 1, 2002.

of the debate on the statistics. Oberg's media release used the report that validated the accuracy of his figures to confirm the accuracy of his conclusions, for example, that funding was sufficient. The validated data included expenditures from 1992 to 2001, but Oberg based his conclusion on figures from 1995/96, thus using the lowest funding figure and ignoring three years of enrolment increases, as well as completely ignoring the effects of inflation. Oberg continued to insist that "this dispute is between local boards and their local ATA."⁹⁶ The government absolved itself of responsibility and suggested that locals ignore the Association and settle. As Oberg said, "There is enough money to make Alberta teachers the best paid on average in the country."⁹⁷ As early as September, he had said in an interview that there was about 11.5 per cent available for teachers, with the additional money beyond the four and two coming from the per-student grant as it had always done.⁹⁸ In other words, the government had provided enough money for education. Oberg pointed out that "the province also offered to enhance our support of the teachers' pension plan."⁹⁹ The government purported to have gone the extra mile in seeking a solution. Oberg took this position consistently throughout the dispute.

The Pension Gambit

In the tension of looming labour action, people are highly alert for any opening that may provide a solution and prevent a strike. The

pension gambit was one of those openings and, like many such ideas, was mostly smoke and mirrors. The notion of using the pension plan as a bargaining chip to sidestep the funding dispute stirred interest because it was a solution the government could implement without reference to the collective bargaining system: the funding could be over and above the already committed education funding, and it would begin to address a sensitive issue for teachers. The notion was initially raised by Oberg at a meeting in October. Naturally, some people were interested. Association officials were not. They believed from the outset that it was a red herring and dismissed it as such. The proposal was contingent on there being no strikes, something the Association could not guarantee even had it wanted to. In addition, Oberg made it clear that this was not a proposal but simply an idea he was floating and one subject to cabinet approval. Indeed, there was no evidence of his having had any discussions with his cabinet colleagues, something that Association believed would have accompanied any serious offer. Essentially, the Association would have to back down from its position, and then Oberg would do something, maybe, if he could. Accordingly, the government was unable to base much of anything on the idea. In early January, Oberg went on a radio show and was quoted in the *Calgary Herald* as having stated that, in an attempt to resolve the labour dispute, he had offered to have the government pay the teachers' portion of contributions to the unfunded liability of their pension plan, thus providing greater take-home pay without a further salary increase. Booi remembered

⁹⁶ Government of Alberta, "Independent firm reviews teacher and classroom data," news release, February 1, 2002.

⁹⁷ Government of Alberta, "Independent firm reviews teacher and classroom data," news release, February 1, 2002.

⁹⁸ Interview with Lyle Oberg, CBC, September 10, 2001.

⁹⁹ Government of Alberta, "Independent firm reviews teacher and classroom data," news release, February 1, 2002.

the facts differently and hastened to provide that information to teachers before the gambit gained traction. He recalled the meeting on October 17 when Oberg had discussed pensions and had indicated that, if there were no strikes, he would be willing to take up the idea of the pension payments with his colleagues. He had stressed that this was not an offer because he had not yet discussed the matter with any of the government's decision-making bodies. There was no evidence that either cabinet or Treasury Board had been approached. The Association had been asked to promise something it could not deliver—no strikes—in exchange for a promise to try to get approval for an additional 3 per cent that, when added to the 6 per cent, was still inadequate and did not address the issue of classroom conditions. On January 30, Oberg tried again, this time in writing: "I would like to reiterate the offer made ... October 17, 2001, and January 8, 2002. ... I indicated that the government could look at assuming the teachers' portion of the unfunded pension liability. ... As I have not received a response on this offer, the government has not explored any further details of addressing this huge liability."¹⁰⁰

Just days away from the biggest labour dispute in Alberta's history, the Association believed that any real offer would have been in writing, on behalf of the government and in considerable detail. Any serious attempt to resolve the dispute would have proposed some solution to the classroom conditions issue. New Democrat Opposition Leader Raj Pannu "described Learning Minister Lyle Oberg's 'offer' ... as a political ploy [and] noted that Oberg has publicly admitted that he doesn't have Treasury Board approval to fund the

3 per cent pension offer, and that without such approval, the money would have to [be] taken from other education programs."¹⁰¹ Later, in the midst of the strikes, Deputy Minister of Learning Maria David-Evans would confirm that the cost of the offer was \$54 million and that the money would have come from the existing budget. What programming changes might have been required was never discussed in detail. Since the department's budget would have been devastated by a loss of this size, the money would have had to have come from the very grants that were, as far as teachers were concerned, already creating intolerable classroom conditions. True to his word, Oberg withdrew his offer when the strikes commenced on February 4, still insisting that there was enough money available for school boards and that no further funding would be provided. The pension gambit was important for several reasons. It showed the pressure was having an effect, and it would turn up again when negotiations commenced on the *Education Services Settlement Act* (ESSA). For now, it had been just another distraction.

The Timing of the Strikes

In January 2002, Council set the recommended strike deadline as February 4 while permitting individual units to set their own date in the event they could not be ready that early. The February 4 date was no accident. This action would leave diploma exams uninterrupted. Striking is an emotional experience for participants. Frustrated and angry, many simply want to hit back at their employer. There are always those teachers who want to

¹⁰⁰ Lyle Oberg to Larry Booi, January 30, 2002.

¹⁰¹ New Democrat Opposition, "Pension 'offer' as phony as a \$3 bill," news release, February 1, 2002.



At the rally

inflict maximum damage by means of their strike action, to strike out in their anger. Those in leadership are required to use the strike as a tool, to be more calculating in its application and to consider how to maintain public support. The Association resisted pressure to commence the strikes before the sitting of the diploma exams. The locals would decide if they were going to participate in the strikes. The Association would decide when that participation would take effect. This was provincially coordinated local bargaining in practice.

On January 14, Booi called a news conference to advise the media of decisions regarding the timing and organization of provincially coordinated strike action.

This did not prevent meetings between Booi and Oberg. They met later that month, but once again without resolution.

By the end of January 2002,

it was clear that a last-minute reprieve was unlikely, and the Association made final preparations for a wave of strikes. On January 26, local representatives and provincial leaders met to finalize plans for job action. Fourteen units representing 12,732 teachers had met the requirements and were poised to strike on 72 hours' notice. A further nine units and 3,224 teachers were in a position to conduct a strike vote before February 4, following which they would be in a position to serve notice. On February 1, the Association announced that 19 units representing 14,548 teachers were set to strike effective February 4. The remaining 29 units with open agreements, including Calgary Public, were at various stages in negotiations. Just two days later, Calgary Public announced its intention to take a strike vote on February 12. Strikes involving almost 21,000 teachers were now imminent. The meeting reviewed strike procedures and communication strategies, both internal and external. Teachers at the meeting were upbeat and determined.



Lyle Oberg



Larry Booi

The Players

Personalities play a key role in any human exchange.

This dispute featured two particularly powerful personalities, Oberg and Booi.

The key players on the Association side knew they were taking a calculated risk and might even be betting the organization itself. In the aftermath of the ESSA, one can see this concern surface in the concrete terms of the memorandum to interpret that act. The Association was prepared to take

the risk. A vengeful government might well take retribution. Tory MLAs had expressed their contempt and intense dislike for the Association. In the end, Association leaders concluded that, while perhaps they were putting the Association on the line, if the Association could not be put on line to defend teachers then it had no purpose.

As for Oberg, he and his party had just won re-election, he was ambitious and he was not afraid of teachers. He appears to have believed that, in the end, teachers would accept the four and two, particularly if the more militant among them could squeeze a little more out of the general grants. If they did not, well there was no real shortage of them to be had. One incident that occurred in November 2001 may serve both to illustrate how Oberg conducted himself and to provide some explanation of why the government media campaign was less successful than one might have expected. The *Lethbridge Herald* reported on a young teacher who had just been presented the Edwin Parr award at the ASBA convention and who had jokingly told Oberg that he loved teaching so much he would do it for free. Shortly thereafter, in a conversation with Don Massey, the Liberals' learning critic, the minister used the teacher's comment as justification for stating that teachers didn't need a raise. The *Herald* saw it this way:

That's not only misrepresentation of the spirit of [Jared] Heidinger's comment, it's downright bizarre. One can assume Oberg, a medical doctor, is intelligent enough to know Heidinger was kidding (especially since Heidinger told him directly not to take it to heart) so he must have either

deliberately co-opted the statement for his own agenda or meant it as a joke himself.

In either case, Oberg's actions were in breathtakingly bad taste. Heidinger was merely expressing his love for his profession and his students. By making it sound as if Heidinger is so wealthy he doesn't need his teacher's salary, Oberg showed contempt for the entire teaching profession and the public as well.

And it's one of a string of thoughtless comments from Oberg this week as tensions mount between the province and teachers. ... On Thursday, he suggested students would have to go to school at night and on weekends to catch up after a teachers strike. He neglected to mention who would teach them during those after-hours classes.

On Friday, Oberg acknowledged there aren't enough text books for every student in Alberta's schools. His solution was to put the textbooks online. ... Apparently the minister figures every student in Alberta has a computer with Internet access at home. ...

We can only hope these are examples of simple thoughtlessness on Oberg's part and not contempt, as they appear to be.¹⁰²

The relationship between Oberg and Booi, which had begun with the Association's commending Oberg for his role in defusing a funding problem, was beginning to show signs of wear under the tension of the moment.

¹⁰² "Oberg's talk thoughtless," editorial, *Lethbridge Herald*, November 24, 2001.

A January 30, 2002, letter from Oberg, copied to school board chairs and government members, expressed concern that strikes might occur before “all routes of negotiation are exhausted *at the local bargaining table*” (emphasis added), reiterated the pension “*offer*” (emphasis added) and expressed concern about the “Association’s negative campaign,” noting that Oberg was “increasingly apprehensive that there will be long-term, negative impacts ... to ... the learning system as a whole.”¹⁰³ Booi’s reply had an edge to it that was not present in earlier correspondence. First, Oberg had insisted that the pension proposal was not an offer and that it was confidential. Then MLAs raised it with teachers, and Oberg told the media it was an offer to which he had not received a reply. Booi pointed out that Oberg had said that he trusted “that this information has been shared with teachers when, in fact, you requested me to restrict communication of your ‘offer’ to the Association’s provincial executive.”¹⁰⁴

As to there having been no response, there had in fact been three, all of which said that addressing the pension issue could be an important element in a solution but that settlements could not be arrived at without additional resources for boards. Booi was particularly distressed over the negative effects accusation:

This strike is the result of the chronic underfunding of Alberta’s public education system, the lack of respect shown by you and your government to teachers, your failure to address

or even to accept the real concerns of teachers and your failure to collaborate with Alberta’s teaching profession in seeking solutions to legitimate problems. You have exacerbated difficulties by inserting teacher salary increases as a line item in school board budgets and your aggressive public relations campaign which denies that there are problems.¹⁰⁵

The Association had worked hard to cooperate with the government, including initiatives in regionalization, school-based budgeting and school councils, among others. There had been no strikes for 10 years. Oberg chose to pretend that Alberta’s teachers were the highest paid on average among the provinces.

In fact, you know—and your officials have confirmed—that salaries of Alberta’s teachers are not the highest and a cursory glance at current salaries in Ontario proves it. ... Alberta’s teachers have expressed over and over again the reality of their classroom experiences: too many students to provide the individual attention students need and too little support for students with special needs. Instead of responding to these concerns and working with the teaching profession to resolve these serious issues, you have denied that they exist.¹⁰⁶

The strong leadership provided by the ASBA in the period leading up to the conflict was by now utterly dissipated. Caught between the Association and the government, the

¹⁰³ Lyle Oberg to Larry Booi, January 30, 2002.

¹⁰⁴ Larry Booi to Lyle Oberg, February 4, 2002.

¹⁰⁵ Larry Booi to Lyle Oberg, February 4, 2002.

¹⁰⁶ Larry Booi to Lyle Oberg, February 4, 2002.

ASBA and most of its member boards were unable to distance themselves from the conflict and instead attempted to retain some last vestiges of their authority to negotiate collective agreements and, just as importantly, to dictate conditions of practice. In the view of the Association, school boards and their organization had abandoned their defence of learning conditions for students in order to preserve the last pathetic remnants of their power over their employees. They would accept underfunding and would acquiesce; nay, they would encourage government heavy-handedness if only they could pay for any arbitrated settlement through dilution of the services provided by teachers. The ASBA stance was in sharp contrast to that of the Public School Boards' Association of Alberta, all of whose members were also ASBA members. They were under the same pressure as other ASBA members but chose to continue to advocate loudly for better funding. Clearly, influence within ASBA lay somewhere other than with the populous urban boards that represented the majority of parents in the province.

Planning

The Association had engaged in strategic planning for some years (revamped in the early 1990s). At that time, the process shifted from trying to put forward a plan for several years into the future to trying to foster strategic thinking among its leaders. That change would prove vital in the struggle against the government. Typically, scenarios and draft plans were prepared and available for use, but they were always subject to adjustments. The strike plan was typical. As initially conceived, there would have been successive waves of units on strike. Further consideration

concluded that, if the government intervened to terminate the first wave, the Association would presumably pick up all outstanding disputes. In fact, Bill 12 did precisely that. In addition, teachers decided they were going to take action, and the notion of being delayed or left out was not to their liking. They were going to strike, and being constrained by some wave action was not in their plans. The plan for waves of strikes was quietly abandoned, and more than 20,000 teachers moved toward strike deadlines.

The Media

Public relations is a significant component of any public-sector labour dispute. The Association was well aware that it had an obligation to tell teachers' story and, to the extent possible, counter that of their opponents. Any labour action that deprives children of their education is bound to draw criticism, but Booi was absolutely convinced that, if the reasons for the dispute were clear to the public, they would in large part accept the actions being taken by teachers. Of necessity, the route to the public lay to a large degree through the media, and cooperation with it was crucial. The Association waged a relentless public relations campaign. The intensity of the campaign made it quantitatively different from any other in which the organization had been involved. Media relations belonged to Booi. He immersed himself in it and was master of the field. In the fall kickoff to the campaign between August 27 and 29, he conducted 29 media interviews. His eloquence was evident from the start:

You don't pay teachers to be nice or to feel sorry for them. It is in the public interest to lure good people into the classroom and to keep them. You don't

have smaller classes to make teachers feel good. It's to give your kids a better education.¹⁰⁷

The people of Alberta deserve answers. They deserve to know why, in the face of a looming teacher shortage, the province still refuses to adequately compensate teachers. ... They deserve to know why they must stage bake-sales and casinos in order to provide students with textbooks and computers.¹⁰⁸

There was no such thing as being unavailable for comment. If the media needed news on the weekend, Booi would provide it. If a television station wanted him on the late-night show and again on the early-morning show, he would oblige. And teachers noticed. From the beginning of the dispute, the president was in constant contact with his members, whether by phone, letter or e-mail, and a lot of the communication involved comment on his representation of them in the public media. In a hostile environment, faced by an omnipotent and media-savvy government, the Association held its own in the public relations battle.

The polling firm employed by the Association had advised it that the public's attitude toward a campaign such as this would be based on whether it perceived the campaign as fair and reasonable. The Association took the advice to heart and pursued a strategy of focusing not on conditions of practice or even on learning conditions but on concrete "classroom conditions." There was to be no denial of and no apology for pursuing teachers' self-interest

but rather a constant repetition of the fact that pursuit of teachers' self-interest was consistent with improved classroom conditions, which were in the public interest.

The Association had taken steps to ensure that it was in tune with public perceptions. On February 6, just days into the first of the strikes, it released the results of a survey it had commissioned showing that 90 per cent of Albertans believed that small classes were important in kindergarten to Grade 3; more than 60 per cent thought that, in their experience, class sizes were too large; and 70 per cent thought that the Alberta government was not spending enough on education. Perhaps this kind of public consensus would have an effect on the representatives of the people.

Even the right-wing talk shows were not avoided. When a host sought a victim, Booi would attend and ensure that, in the end, it was his message that went out. The shows' strengths were their stridency and focus on one or two simple ideas. Their weakness was a lack of factual backup for their ideas. Once the polemics were over, the balance of the interview could be spent on Association-supplied facts and information.

By the end of the first week of the strikes, the media blitz was at full flood. For an uninvolved party, the government spent a lot of time in the media. The Association campaign targeted it directly, trying to keep the labour dispute squarely focused not on individual employers and teachers' salaries but on the government

¹⁰⁷ R Bell, "Cheque mate: Klein has grand master status in provincial spending game," *Calgary Sun*, August 29, 2001.

¹⁰⁸ Alberta Teachers' Association, "'Ask the Alberta Government'—Alberta teachers launch media campaign," news release, August 27, 2001.

and the funding of education. An ad released on February 10 is illustrative:

Funding for Alberta schools is controlled by our provincial politicians. Why isn't the government working with teachers and school boards to:

- Improve classroom conditions for students and teachers?
- Provide fair and equitable salary settlements?
- Recruit and retain the teachers that Alberta needs?

Only the provincial government has the means to make this happen. The government must be part of the solution.¹⁰⁹

The ad was accompanied by a two-page summary outlining the issues and the efforts made by the Association to address them: "The current teachers' strike ... represents the culmination of 10 years of mounting frustration over growing problems in education."¹¹⁰ During those 10 years, there had not been a single strike while the Association tried every other way it could think of to have its concerns addressed. It had authored a nationally recognized report called *Trying to Teach*, which outlined a growing list of concerns about classroom conditions. It had spent substantial sums of teachers' money to promote investment in public education through advertising campaigns. It had held rallies, lobbied MLAs, worked in coalitions, used elections and hand-delivered over one million flyers to households, all to no avail. The government had added salaries to the list of concerns when it gave

wage increases in the 14 to 22 per cent range to other public-sector groups and insisted that, if teachers wanted settlements in that range, the unacceptable classroom conditions would continue, exacerbating the newest problem: "Younger teachers are walking away from the profession in alarming numbers and older teachers are leaving as soon as they are able to retire. ... We believe that the short-term pain of a strike is preferable to the continued erosion of public education and our profession."¹¹¹

Notwithstanding the fact that teachers were striking their employers, the Association continued to emphasize that its fight was really with the government:

It is important to recognize that our inability to achieve agreements with school boards is in general not the fault of trustees, who can only make use of the inadequate funds given to them by the provincial government. The root of the problem rests with provincial underfunding, and the solution can only come from additional government funding to school boards to allow them to address the problems.

Instead of addressing these concerns, the government denies that problems exist, suggests that it has given enough money to school boards, and claims that it cannot afford to invest more money in public education.

The reality is that current spending on education is still 5.4 percent behind 1992/93 levels when enrolment growth and inflation are taken into account. But the real evidence of

¹⁰⁹ Donna Swiniarski to All Staff, memorandum with attachments, February 8, 2002.

¹¹⁰ Donna Swiniarski to All Staff, memorandum with attachments, February 8, 2002.

¹¹¹ Donna Swiniarski to All Staff, memorandum with attachments, February 8, 2002.

underfunding is in the lived experience of students, teachers and parents, in schools held together by fund-raising and extraordinary efforts by staff, families and communities.¹¹²

The Strikes

Normally, a strike can be analyzed as a discrete event with its own cast of characters, its own ebb and flow, and its own issues and ultimate conclusions. Each of these strikes also can and perhaps ought to be so analyzed, but their individual stories are overshadowed by their commonalities and the overarching story of coordinated bargaining.

Back to Work, or Not

Under section 112 of the *Labour Relations Code*, cabinet has the power to intervene in a dispute if an emergency is found to exist. The government had intervened in several previous teachers' strikes, so the Association was aware from the outset that intervention in these strikes was a very real possibility. Accordingly, four days into the first strikes and citing rumours in the media, the Association wrote Minister of Human Resources and Employment Clint Dunford, stating that it would view such intervention as an infringement on teachers' fundamental rights and insisting that the Association be consulted in the event the government was to contemplate intervention. The Association requested the opportunity to meet with Dunford to discuss his "findings" and to have its submissions included in his report to cabinet. When the time came for

intervention, the Association was not involved.

During the strikes, negotiations continued, and in several locales, serious proposals for settlement were discussed. For example, some employers that had accumulated surpluses they could tap were prepared to do so, however reluctantly, to solve the immediate crisis. Upon becoming aware of these local efforts to negotiate agreements, something the government had consistently insisted on was the responsibility of school boards and teachers. David-Evans now took it upon herself to offer boards advice that could only exacerbate the problem, prevent agreements and prolong the strikes. She advised them that accumulated surpluses were one-time funds and should not be used for ongoing expenses, that is to say, the costs of employing teachers. This had the effect of discouraging reluctant boards and shoring up the position of those that were predisposed to refuse in any event. If the objective was to reach agreements, more detrimental advice is hard to imagine.

In an editorial in the *Calgary Herald*, nominally about the Medicine Hat Public settlement, Don Braid had written that the Tories were nervous about a back-to-work order because they knew the Association would appeal such an order and might just win. The worst possible outcome would be for the government to order teachers back and then lose in court. He predicted that "the teachers' response to being forced back to work will be swift and blunt. They will work-to-rule where it's legally possible, drag their heels where it isn't and refuse to do any task that involves the government. ... With or without court orders, this dispute is a long way from over."¹¹³

¹¹² Donna Swiniarski to All Staff, memorandum with attachments, February 8, 2002.

¹¹³ D Braid, "Teachers in Hat break union ranks," *Calgary Herald*, February 16, 2002.

On February 19, Oberg and Dunford stated that no emergency existed. That same day, Calgary Public went on strike, followed the next day by Canadian Rockies. On February 21, order in council 77/2002 declared an emergency and ordered teachers back to work. Apparently, Calgary Public was one strike too many. Effective immediately, all further job action in the 22 named school jurisdictions was illegal, and Dunford “put in place a dispute resolution process ... fair to all concerned.”¹¹⁴ A one-person Teachers’ Dispute Resolution Tribunal was named, and his terms of reference were set. If one accepted the legitimacy of the intervention and ultimately resolution by arbitration, the arrangements contained significant elements of fairness. The Association filed a request for judicial review in the Court of Queen’s Bench. The right to strike had to be defended. As Booi put it, “no other instrument has succeeded in capturing the government’s attention and focusing that attention on the decade-long deterioration of public education in Alberta.”¹¹⁵ That same day, the stakeholders received communication from the Department of Learning outlining the government’s rationale for intervening: it was acting in the best interests of students, on whom the strikes were visiting unreasonable hardships. The government issued orders to end the strikes but made no effort to address their underlying causes. The speech from the throne, read in the legislative assembly on February 26, made no mention of any of the education issues that had been front-page news for the last six months.

On Friday, February 22, the Association advised teachers to comply with the order and to continue with current voluntary commitments but to accept no new commitments. Council would meet shortly to consider the issue of withdrawal of voluntary services, following which more comprehensive advice would be provided. The Association suspended virtually all services to the Department of Learning. Teachers, whether on strike or not, were requested “to refrain from participating in any activity having to do with the Ministry of Learning. In specific terms, this means no committee attendance, no acceptance of secondment arrangements, no marking of diploma examinations or achievement tests and no participation in field testing activities.”¹¹⁶ Meanwhile, efforts would be made to bring about as many settlements as possible in the three weeks allotted under the order, with the proviso that they meet the criteria set by ARA.

The Challenge

The government had been down this road before. Several teachers’ strikes had been ended through cabinet back-to-work orders. The *Labour Relations Code* allows the lieutenant governor in council to issue back-to-work orders in cases of a public emergency when this causes or is likely to cause unreasonable hardship to persons who are not parties to the dispute. Specifically, an order can be issued

¹¹⁴ Alberta Human Resources and Employment, “A Statement from the Minister of Human Resources and Employment on procedures to end the teachers’ strikes,” February 21, 2002.

¹¹⁵ Alberta Teachers’ Association, “Alberta teachers respond to back-to-work order,” news release, February 21, 2002.

¹¹⁶ Charles Hyman to Local Presidents and School Representatives, memorandum, February 22, 2002.

112 (1) If in the opinion of the Lieutenant Governor in Council an emergency arising out of a dispute exists or may occur in such circumstances that

...

(b) unreasonable hardship is being caused or is likely to be caused to persons who are not parties to the dispute.¹¹⁷

The code allows consultation:

112 (2) Before an order is made ... the Minister may give the parties to the dispute an opportunity to meet with the Minister and the Minister may report the Minister's findings ... to the Lieutenant Governor in Council.¹¹⁸

The power provided in the legislation is broad, and Association challenges to previous orders had failed. Government lawyers had every reason to believe they would prevail again, every reason to appear confident as they presented their case. The Association challenged the order on three grounds:

- A lack of procedural fairness—the government failed to consult the Association before issuing the order.
- The government failed to take relevant factors into account because it had not considered each dispute separately.
- Prior to issuing a back-to-work order, the government was required to establish that there was an emergency that was causing or was likely to cause unreasonable hardship. This it had failed to do.

The government argued that the decision of the lieutenant governor in council was not subject to review by the courts and that, even if it were, the standard of review would require an error of egregious proportions. The court was not allowed to substitute its opinion for that of the lieutenant governor in council. It claimed that the lieutenant governor in council had sufficient information to be aware of the circumstances in each school jurisdiction. Finally, the lieutenant governor in council was within its jurisdiction to find that an unreasonable hardship was likely to be caused even if an actual unreasonable hardship had not yet been suffered.

The Decision

The court gave short shrift to the Association's argument over failure to consult. The government's conduct might appear unfair, but section 112(2) was permissive, not mandatory. In any event, the case would be decided on the second and third challenges, so further pursuit of the failure to consult was unnecessary.

On the second argument, that the lieutenant governor in council had failed to consider each dispute separately and had therefore failed to take relevant factors into account, the court agreed with the Association. The term *dispute* is defined in the *Labour Relations Code* as a difference arising in the negotiating of a collective agreement. The court found that the government was required to consider each dispute separately and that failure to do so was a fatal jurisdictional error, rendering the order

¹¹⁷ *Labour Relations Code, Revised Statutes of Alberta 2000*, c L-1, s 112.

¹¹⁸ *Labour Relations Code, Revised Statutes of Alberta 2000*, c L-1, s 112.

ultra vires. There were 22 disputes, each with its own particular circumstances. The degree of unreasonable hardship had to be assessed on an individual bargaining unit basis. The lieutenant governor in council was required to find emergency or unreasonable hardship in each of the 22 disputes. The finding that there was no emergency for 17 days for some disputes but an emergency for another after only 24 hours was irreconcilable. The Department of Learning provided information that addressed hardship in general but was insufficient to permit the lieutenant governor in council to assess each school jurisdiction separately. There was no foundation for the assumption that an emergency in one jurisdiction automatically provided evidence of an emergency in any other jurisdiction. Furthermore, a potential future hardship in one jurisdiction could not be inferred from a current hardship in another jurisdiction, at the very least because the pressure of a strike might result in agreement in one jurisdiction while it did not in another.

Both parties filed evidence and provided expert witnesses to support their arguments that students were or were not suffering unduly. Because the court made its decision on other bases, it decided that it did not need to address this expert information.

On the third argument, the Association contended that an emergency causing unreasonable hardship had not been found by the lieutenant governor in council. The court declined to decide whether there had been unreasonable hardship in the case of some of the units where strikes commenced on February 4 but stated that it was inconceivable the cabinet could reasonably be of the opinion that there was an emergency in the two units where strikes

had just commenced and that, before it could order teachers back to work, it had to meet this condition. The legislation permits an order in cases where an emergency is prospective in nature, that is, is likely to cause an unreasonable hardship. According to the court, this provision should be construed in a manner consistent with the other two forms of emergency in section 112, relating to serious issues of imminent danger to property, health or safety. There would have to be a degree of imminence or inevitability involved. Finally, the court noted that all strikes create hardship. Indeed, that is their purpose. Accordingly, it is not enough to find hardship. One must find the hardship to be unreasonable, and after one or two days of strike, it could not be said with any sense of reality that the hardship was unreasonable.

Central to the government's case was the argument that the lieutenant governor in council's decision was not subject to review by the courts and that, even if it were, the standard of review required would be very high. The *Labour Relations Code* permits an order when the lieutenant governor in council is of the opinion that an emergency exists, and considerable deference is to be shown to lieutenant governor-in-council decisions. The court reviewed relevant law on several points but in the end determined that, in order to form an opinion, the lieutenant governor in council had to rely on relevant factors and not rely on irrelevant factors, this being a matter of fact on which the court had jurisdiction to rule.

Teachers had won an important legal victory. But they had lost something too. The February 21 letter from Dunford serving notice of the emergency had stated that "the Teachers' Dispute Resolution Tribunal is

required to make its award dealing with each item in dispute.”¹¹⁹

What, if anything, this might have meant for negotiating classroom conditions clauses in collective agreements will never be known, and obviously, the awards would have had to struggle with the existing funding conditions. In any event, the government would not make this mistake a second time.

Chief Justice Allan Wachowich determined that the government must show an emergency. He concluded that it had not and overturned the back-to-work order. With the stroke of a pen, 20,000 teachers were back in a legal strike position, and people feared the schools would be closed once again. But the purpose of a strike is to achieve an agreement. The Association had regained the strike weapon. The government could legislate. The Association had prepared four scenarios, four possible outcomes of the court challenge, and had roughed out what its response would be in each of those scenarios. One of the potential outcomes, full victory in the court, was now the reality, and the Association’s reaction was immediate. In a news release dated that same day, Booi advised that he was approaching Klein to find a solution that would satisfy all parties and that he was asking “all teachers to remain with their students in their classrooms in order to allow these next steps to proceed.”¹²⁰ There would be no immediate resumption of the strikes. Alberta Justice was



so informed by a letter faxed to its office within hours of the court decision.

The objective was to find a way to reach an agreement that would be a win for all three parties. The Association made a commitment to refrain from resuming the strikes, noting that, under the circumstances, back-to-work legislation would be both redundant and unjustified, and proposed a meeting with Klein and Dunford, the purpose of which would be to resolve matters on an expedited basis. The Association preferred reaching a negotiated settlement with the government and school boards but would, if necessary, work from the dispute-resolution model provided in the back-to-work order. The Association thought that the arbitration process contained significant elements of fairness. Klein responded immediately. He would not negotiate an end to the dispute but would be pleased to meet to discuss some options to bring the dispute to an end. The weekend would be used for preparation, and the meeting could proceed early the following week. The government still declined to accept direct responsibility for the crisis but appeared to be prepared to broker a process whereby those traditional opponents, boards and the Association, could resolve the disputes.

The previously scheduled meeting of Association local presidents and bargaining unit representatives went ahead on March 2. There were two items on the agenda: work-to-rule and the back-to-work order.

¹¹⁹ Clint Dunford to Larry Booi, February 21, 2002.

¹²⁰ Alberta Teachers’ Association, “Teachers overturn government back-to-work orders,” news release, March 1, 2002.

Organized Labour and the Association

The Association has not been a member of the Alberta Federation of Labour (AFL). Notwithstanding the fact that the organizations' approaches differ on several important matters, there was general agreement on the issues behind the strikes of 2002. The AFL was quick off the mark when the Alberta Court of Appeal overturned the government's back-to-work order. Noting that teachers could now resume their strikes if they so chose, the AFL took the opportunity to defend the importance of the right to strike and the social good that arose from it. It noted that, after years of lobbying, it was clear that only through exercising their right to strike were teachers able to bring the lack of funding into the public view, and it went on to advocate that the government accept the responsibility for providing adequate funding for schools.

The ASBA

For the ASBA, March 1 had been a day of surprises. It had been busily preparing for the arbitrations imposed by the back-to-work order, carefully shoring up the negotiating positions of its member boards to ensure that no new, unsuitable offers were placed on the table in the intervening three weeks. It was thankful that the Association would hold off any resumption of the strikes but was concerned about the meeting arranged between Booi and Klein and insisted that it be involved. In the ASBA's opinion, the possibility of a resumption of the strikes on 72 hours' notice was unsatisfactory and ridiculous. Bold and public action was called for. Accordingly, it circulated a proposal to its member boards. Based on the conclusion that local bargaining

was unlikely to resolve the current impasse, all 22 disputes would be referred to an arbitrator, but only for salary matters. The arbitrator would not be permitted to rule on retention of teachers or classroom conditions issues. The issue of class size and funding would be looked at by an education commission. Meanwhile, the government would commit to fully funding any settlements in excess of 6 per cent and would recommit to the pension offer but would not take the money from the existing education budget. The Association would refrain from strikes and the boards from lockouts during the arbitration process. In short, it was the best of all possible worlds from the ASBA's perspective. Trustees rejected the proposal.

The order ending the strikes had been well received by the ASBA, but it presented a challenge. Dunford had encouraged the parties to negotiate agreements in the three-week window provided in the order, but arbitrators have a long history of imposing settlements based on other negotiated agreements, and the ASBA had to prevent any precedent-setting agreements, whether among the 22 school jurisdictions or otherwise, agreements that might be used by the arbitrator to make awards for the remainder. In particular, it told boards to avoid agreements that included double-digit salary increases or conditions of practice. If boards voluntarily arrived at a settlement including those items, their credibility would be gone. Indeed, boards were warned that even offers, however modest, would be used against them by the arbitrator. Thus, no additional dollars were to be put out there. Boards were to demand that the Association unconditionally remove conditions of practice issues, or the boards would not talk about the other things. Not volunteering to achieve a settlement had one other advantage. The ASBA advised that higher settlements imposed by a third party

would give them a huge voice in lobbying the government for more funds, whereas voluntarily offering such an agreement would prevent them from doing so. Boards could not put double-digit increases and conditions of practice on the table and then go back to the government for more money. Therefore, boards should stonewall negotiations for the next three weeks and prepare for arbitration. Not surprisingly, the prospects for negotiated settlements were not promising.

There had, of course, been settlements in the period leading up to the strikes, and there would be more during the period prior to the arbitrated decisions. These settlements, as one might expect, tended to be controversial precisely because they had the potential to be influential. The Medicine Hat Public and later the St Albert Protestant Separate settlements were rejected by the Association's criteria committee not only for inadequate compensation but also, more important, because neither contained any reference to improving classroom conditions. On the other hand, February 4 had seen the committee approve the Black Gold settlement because it met all three of the Association's criteria. The Black Gold board had committed to try to reduce all class sizes, with an emphasis on getting kindergarten to Grade 3 class sizes down to 17 to 1. That same day in Red Deer, the Catholic board and the Association had signed a letter of understanding recognizing the importance of class size and action taken to reduce pupil-teacher ratio and committing the board to maintaining or further reducing it. The next day, the Red Deer Public board and the Association signed a similar agreement. The classroom conditions improvements were examples of what was possible when both parties recognized a common goal and when the employer was prepared to

make a commitment through the bargaining process rather than insist these were strictly nonnegotiable matters. The requirement that agreements include conditions of practice, that much maligned "interference" by ARA, did not preclude agreements when people put their minds to it. Two Catholic boards, Elk Island and Fort McMurray, were also in the midst of negotiations and arrived at memoranda of agreement, which, by March 14, were ratified agreements. One day later, Prairie Land followed suit.

The Premier and the President

The meeting was set for Monday, March 4. Klein insisted that it be private, that is to say, he and Booi would meet alone. When the meeting commenced, Klein had his executive assistant in attendance. Booi presented the Association's position. The Association would submit the 22 agreements to an arbitration process but expected a fair process and one that would address all items in dispute, together with adequate funding for the settlements. It sought the commissioning of an independent study to deal with the root causes of the conflict, namely, the issues of funding and classroom conditions. Following the meeting with Klein, Booi met with Oberg and Dunford. Booi returned from those meetings reporting his impression: they had been positive, and he felt confident that they had a framework to resolve the fundamental concerns of teachers. Klein, too, appeared optimistic. However, his caucus and the employers had yet to be heard from.

Two days later, a phone call from Klein's executive assistant gave Booi the first signs that things had started to unravel. He was asked to confirm the Association's agreement

to an arbitration process that would exclude conditions of practice. He objected vehemently. The ASBA also met Klein and the two ministers and emerged grateful that they had listened carefully to school boards' views. The ASBA had requested that the government "build fences" around the arbitration process. By this, the ASBA meant that the process should focus exclusively on teachers' salaries, consider what boards could afford and not deal with conditions of practice. It also expressed a concern for a return to local bargaining, giving boards flexibility, autonomy (including some measure of local taxation) and freedom from outside interference (code words for the Association). Media reports indicated not only that ASBA concerns had been heard, as was the case for the Association, but also that they would be addressed in the legislation.



Premier Ralph Klein

Individual school boards also intervened. The Calgary Board of Education (CBE) had, like the Edmonton Public board, pursued its own course of action in this round of labour relations, formally dissociating itself from the ASBA bargaining strategy from the outset. It, too, had been vociferous in its complaints about inadequate funding and, not surprising given its huge tax base, in a demand for renewed local access to that base. However, it wanted to help frame the arbitrator's work and requested that the government put in place an arbitration system that was unique to each board: "The CBE has specific interests

and unique circumstances that would need to be considered in an arbitration process. For example, our Pupil Teacher Ratio provision is unique in that other boards do not have this provision in their collective agreements."¹²¹ Whether it was this request the government chose to accept as the green light to legislate removal of this clause or whether it simply pursued its own, often-expressed hatred of that clause is unknown. Certainly, CBE officials would later protest to their teachers that the legislated removal of the clause was never their intent. However, an organization with as sophisticated a labour relations department as the CBE had at that time must have known that such an outcome was a not unlikely result of such a request to this particular government.

On March 7, both the Association and the ASBA issued news releases in response to the government's announcement that it would be introducing legislation to put in place a binding arbitration process. The Association was pleased to hear that the government was moving in this direction and stated that it was important that all items in dispute, namely, salaries, classroom conditions, and recruitment and retention of teachers, be placed before the arbitrator. The ASBA asked that the arbitrator rule exclusively on teachers' salaries, that he consider what they could afford and that the awards cover two years. The government stated that it had listened to valuable input

¹²¹ Calgary Board of Education to Ralph Klein, March 6, 2002.

from several sources that would be reflected as much as possible in the legislation. It further stated that the goal of the legislation would be to ensure teachers stayed on the job with a fair contract. A long-term review of broader education issues was also announced.

At this point, there was reason for the Association to still be at least cautiously optimistic. However, vindictiveness and punishment were the order of the day; negotiating was not. The Association had had the temerity to challenge the government and win. Now it would get what it deserved. The issue of funding would not be faced. School boards would accept the inevitable salary increases as long as they were permitted the flexibility to pay for them by reducing the numbers of teachers and by requiring those remaining to work longer hours, in other words, by worsening classroom conditions for their students. Apparently, these would constitute “good management decisions in the best interests of students.”¹²²

Four days later, the government introduced Bill 12, *Education Services Settlement Act*. On February 27, Klein had been asked if he were planning any punitive action against the Association. He had answered no.¹²³ On March 11, his government introduced one of the most punitive pieces of legislation ever seen in Alberta.

Bill 12, Education Services Settlement Act

The bill, read for the first time on Monday, March 11, was forced through second reading on March 12 and third reading on March 13 and was assented to and became law on Thursday, March 14, 2002. The preamble to the bill announced an examination of the learning system, which then provided the rationale for excluding conditions of practice from the arbitration process and presumably was the justification for removing previously agreed-to conditions of practice clauses from agreements. It went on to create an arbitration process to apply to all teachers whose contracts had expired on August 31, 2001;¹²⁴ to forbid the arbitrator from including conditions of practice clauses in his awards; to require the arbitrator to be satisfied that his awards would not create a deficit for school boards; to set the termination date for all the agreements at August 31, 2003; to make it virtually impossible to challenge the arbitration process or awards in court; to allow government employees to refuse to provide the panel with documents that might prove embarrassing; to remove the right to strike or lockout; to require teachers to resume the duties of their employment without slowdown or diminution; to broaden the term *strike* to include two or more teachers acting together to refuse to perform assigned responsibilities, not just to compel their employer, for any reason; to require the Association to inform teachers of their obligations under the act; and to impose

¹²² Alberta School Boards Association, “If it’s arbitration ‘build fences’ around it, ASBA President advises Premier Klein,” news release, March 7, 2002.

¹²³ *Alberta Hansard* (27 February 2002), 13.

¹²⁴ The *Education Services Settlement Act* caught all outstanding agreements, not just those of the 22 bargaining units that had been on strike.

severe penalties for noncompliance. At third reading, Oberg argued that his bill would ensure children were back in the classroom and that a period of stability would ensue. The arbitration process would lead to binding contracts, and perhaps the review would lead to a better system. Oberg expressed hope that everyone would now be able to move on together in a spirit of cooperation and stated that it gave him great pleasure to move third reading of Bill 12. He had the support, he was pleased to note, of the ASBA. That organization announced its satisfaction that the government had listened to it. It had good reason to be pleased. The only thing it didn't get was a government commitment to pay; indeed, the ASBA's news release made no mention that it had even asked, but in any event, flexibility and good management practices would no doubt suffice to resolve any problems caused by higher salaries. The ASBA even managed to appropriate for itself the authority to appoint one of the members of the arbitration panel, a right that, under previous law, was the exclusive right of the individual boards who were members of the organization.

Booi turned up the rhetoric a notch or two at an Association news conference on March 11. He approached the news conference angry and frustrated:

The Alberta government has betrayed the province's teachers. ... Teachers offered a positive solution to the crisis facing public education. We did not seek any guarantees or set any preconditions. All we asked for was a fair, open and independent arbitration process based on the

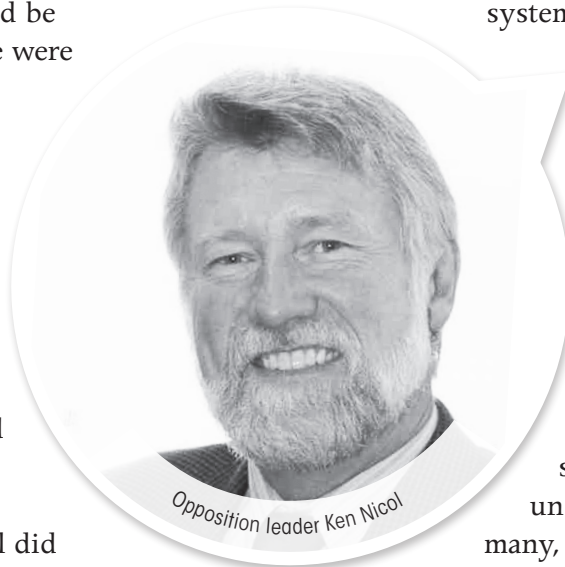
model established by the government in the February 21 back-to-work orders. Instead, the government has colluded with the Alberta School Boards' Association to bring forward Bill 12. ... This government has made a terrible decision, and we all shall have to live with the consequences.¹²⁵

Meanwhile, in the legislature, 12 former teachers sat obediently on the government benches while it fell to a former school trustee, Don Massey, to oppose this bludgeoning of teachers' rights. The former teachers absented themselves, sat on their hands or spoke in favour of the bill. Of those who attended, all but the two who abstained voted in favour. Massey found Oberg's behaviour at the centre of the problems in education. There was a serious disconnect between what the minister said and what the minister did. He preached cooperation and practised unilateralism. He espoused stability and sowed disruption. Oberg's assumption that contracts arrived at by whatever means would bring stability was blatantly unsupportable because a biased process would produce biased results. The bill assumed that local bargaining was ineffective and school boards ineffectual and incompetent and that therefore the government had to step in and virtually take over bargaining. The bill assumed that teachers had become the enemy and had to be punished and that their concerns about classrooms could be washed away. That was blatantly unfair and blatantly untrue. Whose interests were served by the ESSA? Were government interests being served? The government might think so today, but Massey suspected it might have to rethink that in the future. He believed that the government would

¹²⁵ Alberta Teachers' Association, "Teachers outraged by tainted 'arbitration' process and contract stripping," news release, March 12, 2002.

find that, contrary to its current opinion, it would come to regret the bill. Were teachers' interests being served? On the contrary, they felt betrayed and outraged. Were the interests of parents being served? Perhaps in the short run, but in the longer term poisoned relationships could hardly make for parent-friendly schools. Perhaps children's interests were being served? Again, Massey thought not. None of the child-related improvements, such as class size, was dealt with in the legislation. He conceded that some trustees might well be happy with the way in which this legislation resolved their current dilemma, but it represented a further erosion of their autonomy and destroyed local bargaining. In summary, the government had done what it wanted to teachers, but the loss of goodwill it would suffer would be immeasurable. There were no winners.

Mary O'Neill, MLA for St Albert, who claimed teaching as her former occupation, found comfort in the preamble to the bill, which promised an examination of the learning system; declared that the bill did not actually remove the right to strike; believed that the government had found a way whereby the parties would "agree" to the outcomes of the arbitration; and declared that the bill did not in any way strip away basic rights of teachers, and after all, none of it was permanent (the bill made no provision for reinserting the conditions of practice clauses it stripped out of agreements).



Ken Nicol, leader of the official opposition, blamed the impasse on a government funding system that pre-empted a lot of the flexibility that had, in the past, been available to negotiators in crafting settlements. Pay packages had to meet provincially set limits, and the legislation separated pay from conditions of practice—two issues that had to be dealt with as a package. When Nicol reported that teachers had called his office to say they wanted out of teaching and a university student had called to say he was changing his courses so he would not have to be a teacher, Nicol was accused of fear-mongering and making the profession of teaching sound like a terrible profession. Recognition of a teacher's worth involved more than just pay, and the labour relations system had to deal with that, together with classroom conditions and teaching conditions.

In retrospect, one of the most interesting aspects of the entire ESSA debacle was the outpouring of public opposition to the legislation. In a province not generally considered sympathetic to strikers and in which teachers' strikes and work-to-rule undoubtedly caused hardship for many, the extent of public backlash to the ESSA was to prove remarkable. It began immediately. Kevin Taft, MLA for Edmonton-Riverview, noted the public reaction to the bill in which he presaged the uproar that was to come. His phone and e-mail systems had been extremely busy and continued a pattern he had observed earlier: the calls supporting teachers far outweighed those opposing them. Public opinion to a remarkable extent had stayed

with teachers.¹²⁶ The print media reflected similar opinions. They wrote of swirling anger and infuriated educators and predicted a bleak classroom life with a downward effect on children's school experience if teachers stuck strictly to the narrow definition of their jobs, and were derisive of the government's labour relations abilities. Editorials had begun to exhibit the largely negative response the media would transmit over the coming weeks. Pannu noted one editorial that referred to the ramming through of dictatorial legislation.

Pannu called the bill coercive and violent, with Tory members praising and bludgeoning teachers all in the same breath. Bill 12 systematically stripped away teachers' rights and set the province on the road to a bitter and prolonged dispute that, just a week previously, it had been on the verge of avoiding. Teachers were being punished for speaking out on behalf of their students, and far from protecting the well-being of students, the bill both ignored and threatened them. How, Pannu asked, was it in the best interests of students to have teachers refusing to mark diploma and other exams as a result of this bill? The bill made a travesty of arbitration. One of the parties, the government, got to pick the arbitrator. The bill removed previously bargained rights and sought to impose the government's wage restrictions. It was nothing short of the destruction of the principles of collective bargaining in a free and open society. Of all the speakers, he dwelt most strongly on the union issues.

Rob Lougheed, MLA for Clover Bar–Fort Saskatchewan, was pleased that the bill provided for a commission. He spoke at length

of his days as a teacher and his pleasure that students were back in class because three weeks of strike were pretty well the limit for students in diploma classes. He spoke to the funding issue, reporting that, when he had suggested a 30 per cent increase in property taxes, his constituents seemed to lose their enthusiasm for increased education funding. He was able to conclude that most people were not in favour of tax increases. He seemed to imply that the approximately \$6,000 spent per student amounted to \$6,000 per person in Alberta. He thought that the study might ascertain the legitimacy of a lot of claims, such as the false, flawed and completely misleading stories about fundraising in schools. He dismissed the statement that Alberta's funding was among the lowest in North America because one had to convert to American dollars. The government's health care reforms were receiving favourable attention. He had been skeptical of the claim that government funding for salaries could make Alberta settlements the highest in Canada, but when he looked at Medicine Hat Public figures, they were comparable with Ontario figures. (In effect, this contradicted the government's claim that 6 per cent would make Alberta teachers the highest paid in Canada because the Medicine Hat Public settlement was considerably in excess of government guidelines.) He wondered how much of a school's resources ought to be spent on graduation exercises. Contrary to a recent letter to the editor stating that teachers were guardians of the child's future, he believed that parents were. He was concerned about schools competing for students by offering poorly subscribed classes to raise the school's profile. He found it discouraging that there

¹²⁶ *Alberta Hansard* (13 March 2002), 326.

was an attitude that girls did not do science. The kindest thing that could be said about his speech was that perhaps he confused a speech about the wisdom of a review panel with a presentation to the panel. As for the assault on teachers' rights and the tainted arbitration process, both subjects on which he might have been expected to have an opinion, he made no mention of them.

And so the battle was over. Teachers were back at work and would stay there. Under the law, the Association was not able to advise its members to refrain from performing their responsibilities. The ASBA had its fences built so that the issues most dear to the hearts of teachers would not be dealt with. Classroom conditions issues would presumably be discussed some time by some committee. The no-deficit provisions of the act would essentially make the government's grant numbers the upper limit for any award. All the issues remaining would be settled by an arbitrator, and he would be hand-picked to give the right results. The government had shifted the problems to the school boards and was off the hook. The problem was over. Quiet would once again reign over the schools of the Foothills province.

One of the miscalculations made by employers and the government in this affair was the demonizing of the Association. It was commonplace for employer spokespersons to blame "outside influences," code words for the Association, for their failed negotiations. If only these influences could be eliminated, settlements would be achievable. LeRoy Johnson, MLA for Wetaskiwin–Camrose, expressed the same attitude during the debate

on Bill 12. He had made a comment about outstanding teachers and outstanding leaders that, upon being questioned, he clarified, saying, "I was referring to the leadership in terms of our teachers. I was not referring to the Alberta Teachers' Association. I was referring to the leadership of this government."¹²⁷

Teachers were being led and only powerful leadership could have taken them where they had gone, but it was a destination they chose and a path they were prepared to travel. They were pursuing bargaining objectives set provincially, but these had been set by their democratically elected representatives and were buried deep in the heart of nearly every teacher. As for coordinating bargaining to confront the government, many teachers had known ever since school boards had lost their power to levy taxes that somehow the bargaining structure had to adapt to address the new funding reality. Attacking the Association leadership was fair game in a contest such as this. As a strategy, blaming someone other than teachers was useful in that it separated teachers from their organization and allowed criticism of teachers collectively while praising them individually. Unfortunately, many of those espousing this line of thinking appear to have actually believed their own rhetoric. This failure led to the assumption that, if one could only prevent the Association from organizing opposition, that opposition would wither and die. As the work-to-rule campaign would shortly show, individual teachers making individual decisions were plenty strong enough, even hampered by the draconian ESSA. In the end, someone recognized that the only way to end the conflict with teachers was to negotiate with the Association.

¹²⁷ *Alberta Hansard* (13 March 2002), 338.

The Media: Losing the PR Battle

The Klein government had a well-earned reputation for being among the most public relations-savvy governments anywhere. Time and again in the lead-up to and during the strikes and the back-to-work order, the government was clearly struggling. If the earlier periods were difficult for the government, the ESSA was an unmitigated disaster. The most cursory review of the public response to this act shows almost universal disapproval. It was labelled a betrayal, unjust, mean spirited and undemocratic. It was widely panned as detrimental to labour relations:

Are our teachers paid too much? Or too little?

We'll never really know, at least not for a while. That's because government legislation aside from killing any good faith that was left, has now skewed the marketplace.¹²⁸

The arbitration system was not balanced: "The rules imposed by the province for the arbitration of a settlement in the teachers' labor dispute are incredibly limiting and they will call into question any decision an arbitrator makes."¹²⁹ Forcing all remaining disputes to arbitration had a chilling effect on negotiations: "Horizon's board and teachers, who have a pretty decent history of working together and finding solutions that best fit their communities, won't be able to find much common ground under the ESSA. That's

a shame, but not a horribly unpredictable one."¹³⁰ Teachers were valued members of their communities, and they were being missed: "Faced with a government that can ban what it wants in the way of labour action, and was gleefully availing itself of the opportunity, teachers started doing only what they are paid for. A lot of things are going by the board."¹³¹

Criticism of the government ought not to be interpreted as support for the Association. Some, of course, did support teachers, particularly on the funding and the classroom conditions issues, but a lot of the criticism simply criticized the whole way the government had handled the dispute and especially the ESSA: "Albertans are fair minded and they're certainly not stupid. They never bought into the big lie that the government had to suspend collective bargaining and impose what it had decreed to be a fair offer, in order to end the strike and save the school year."¹³²

The plight of students received considerable attention:

Unfortunately, the wheels of the teacher dispute have not stopped turning. Teachers have been ordered back to work and they have done so. But, no one can be ordered to volunteer. And so teachers have withdrawn their voluntary services in order to make a point.

¹²⁸ D Husdal, "Numbed by all the numbers," *Taber Times*, March 27, 2002.

¹²⁹ *Mayerthorpe Freelancer*, "What did Bill 12 really accomplish?" *Grande Cache Mountaineer*, April 2, 2002.

¹³⁰ "Legislation hurt quest for a deal," editorial, *Vauxhall Advance*, April 4, 2002.

¹³¹ D Haas, "Ralph is bombing his own," *St Albert Gazette*, April 13, 2002.

¹³² I Gray, "Common sense prevails," *Red Deer Advocate*, April 24, 2002.

It makes sense.

But the students who suddenly find themselves without these activities remain confused and a little angry. They are not really sure who they should be angry at and they don't profess to understand the whole story. They only know the activities they were used to enjoying are no longer there.¹³³

Across the province, students protested by phone, by letter and in person: "It was democracy in action. ... When students organized and walked out of their classes ... they were demonstrating their dissatisfaction with the muddled teachers situation."¹³⁴

Students also found more direct ways to attack politicians perceived to have done less than they might have for education:

Representatives of the city's three high schools have all told [MLA Guy] Boutilier he's not welcome when the students walk down the aisle to receive their diplomas later this spring.

The reason?

The students are upset with the provincial government's decision to pass Bill 12.¹³⁵

Some pundits wondered if teachers were encouraging or at least ignoring the student protests, or alternatively, what moral right teachers had to punish students for leaving school to protest. Caught between

accusations of hypocrisy on the one hand or unprofessionalism on the other hand, some schools found inventive educational solutions:

We were encouraged by the actions of one school principal in southern Alberta after his students left the classroom without permission. In that instance, despite being warned by teachers not to leave school without parental consent, several students walked out of school to join a demonstration. Upon their return the following day, the students were assigned homework that required them to answer a series of questions in essay form. There were no right or wrong answers. It essentially asked the students what they protested, who the protest was directed towards, whether it was effective, what others thought of the action and whether it was the correct action to take. Our hope is that those students learned from the experience, which is of course the primary role of schools, to teach students and aid them in their daily lives.¹³⁶

Not that the Association escaped criticism. One critic suggested that the union be dissolved, all the teachers fired and those who truly wanted to teach rehired at what was already one of the highest salaries in the country. Students wrote to complain that, having worked so hard to become the best they could at a sport, they now found that sport taken away from them. Teachers were accused of blackmail and pettiness.

¹³³ T Mielke, "Students speak out," editorial, *Sylvan Lake News*, April 17, 2002.

¹³⁴ *40 Mile County Commentator/Cypress Courier*, "Government should pay attention to protests," *Vauxhall Advance*, April 4, 2002.

¹³⁵ "MLA pays the price," editorial, *Fort McMurray Today*, April 12, 2002.

¹³⁶ *Red Deer Express*, April 14, 2002.

In the midst of this, Oberg ignited another funding controversy. School fundraising had been a serious bone of contention since the cutbacks, but now the minister confronted the issue aggressively. He responded to complaints that schools had to fundraise for basics by announcing plans for regulations to prevent it: "Oberg's dilemma is if he admits parents are fundraising for essentials he's admitting the system is underfunded, which is what teachers and trustees have said all along."¹³⁷ Opinion varied on how necessary the fundraising was, but there was no disagreement on the wisdom of trying to legislate it out of existence: "If Oberg wants parents and schools to stop fundraising for basics, the answer's simple. He can pay for them. Otherwise, he should count himself lucky so many loving parents and generous donors are willing to do his job for him."¹³⁸

Reacting to the ESSA

When Oberg proposed the ESSA, he obviously thought it would put an end to the dispute. It did not, although this was not immediately apparent to everyone. It took the rest of the week to roll out the Association response. The delay looked like cowardice to some observers. One news reporter commented that it appeared as though the Association had "folded." Some teachers thought so too, and they were not reticent about expressing their displeasure. It was a tough week for Booi as phone calls and e-mails from angry teachers flooded his office. But the Association had not folded. It was digging in for the long haul. It was preparing

a multipronged response that would consist of a court challenge of the ESSA, termination of all remaining teacher-provided services to the Department of Learning, a new publicity campaign and withdrawal by all teachers of all voluntary services provided to students except those required for their health and safety. One of the problems to be overcome was the need to carefully define what was and was not permissible under the law. The ESSA expressly prohibited any slowdown or diminution in the performance of the duties of employment, thus eliminating work-to-rule as a legal option. The Association believed that voluntary duties were, by definition, not duties of employment. Teachers could, if they so chose, stop volunteering.

Work on the court challenge commenced immediately, as did the part of the response that pertained to the government. On March 18, all remaining services provided by teachers to the Department of Learning were terminated. There was an edge to this withdrawal that had not been present in the earlier version. Teachers were now asked to stop marking achievement tests and diploma exams, as well as preparing items for them. Secondments to and contracts with the department were to be neither applied for nor accepted, and department officials were to be removed from all Association committees, executive bodies and boards. All speaking engagements by department officials were cancelled. All school publicity opportunities for MLAs and department officials were to be shunned. In short, apart from communications directly related to the instruction of students

¹³⁷ "Basic needs: Parental fundraising helps schools, spares the taxpayer," *Calgary Herald*, April 17, 2002.

¹³⁸ P Simons, "Fundraising for school basics may be undesirable, but it's reality," *Edmonton Journal*, April 17, 2002.

or their health and safety, there was to be zero cooperation with the department. The balance of the response took a bit longer to roll out because it involved every teacher in the province, and the Association would not proceed without consulting its local leaders.

A meeting of local presidents and bargaining unit representatives was called for Saturday, March 18, at which time the details of the action plan for teachers were laid out. Henceforth, no voluntary activities would be provided by any teacher in the province. Some teachers had agitated for use of this type of action instead of or prior to a strike. The action plan had been prepared, but the Association had elected strikes and held the voluntary activities plan in reserve. Thus, with minor updating, a withdrawal of voluntary services plan was available for implementation in response to the government's draconian legislation. Support for this action was rock-solid among teachers, and having test driven the withdrawal of voluntary services in Calgary Public four years earlier, the Association was confident such action would be sustainable and effective. A sharp and intense but clean conflict affecting two-thirds of the students in the province had just become a grinding, guerrilla-like battle affecting every student in the province, a conflict that wore on the system every day all across the province. Teachers dug in for a long battle, and a government that had arrogantly dictated peace found itself deeper in conflict than ever. The plan was to continue some of the actions until expiry of the legislation in August 2003 and others until the next election, expected some three years later. The government must have realized almost

immediately that, contrary to its expectations, it was into a very long, very messy and very costly battle. It had lost the public relations battle on Bill 12 even before it became law, a process that took less than 72 hours. The government had ended a full withdrawal of services by 20,000 teachers and now faced the partial withdrawal of services by 30,000 teachers in all parts of the province. Adding insult to injury, the "accountability" programs in which the department took so much pride were essentially inoperative.

Teachers expected advice from their Association. The ESSA required that the Association advise teachers of their obligations under the act. The advice provided to local leaders commenced with a warning that the "*Education Services Settlement Act* creates new ground rules for Association officials authorized to provide advice to members regarding their employment. The Association has considered the impact of the Act very carefully in consultation with its solicitors."¹³⁹ Advice, it was noted, was limited by the ESSA in the case of the 47 units caught by the act. The Association was entitled to advise teachers of their rights and obligations but was no longer entitled to advise them how to act. Decisions on action had to be made as individuals. Teachers in the named school jurisdictions were warned that, if they met in groups of two or more to plan or take action contrary to the legislation, they were liable for fines of up to \$1,000 each. The Association advised that "Section 18 of the *School Act* establishes the responsibilities of a teacher while providing instruction or supervision."¹⁴⁰ Teachers did not have any legal responsibility

¹³⁹ Alberta Teachers' Association, *Education Services Settlement Act: Advice to Members*, March 14, 2002.

¹⁴⁰ Alberta Teachers' Association, *Education Services Settlement Act: Advice to Members*, March 14, 2002.

to volunteer for or participate in volunteer activities outside of these core statutory responsibilities. Association officials could provide advice regarding whether or not an activity fell within the core responsibilities. The document then proceeded to pose and answer questions the Association anticipated would be in the minds of teachers. A sampling of the questions and answers serves to illustrate the advice provided:

Is a teacher required to call a substitute or day-to-day teacher before being allowed to leave?

Sick leave and some other leaves of absence are collective agreement rights that cannot be denied. There is no obligation in law for a teacher to call his/her own replacement. Any order to do so is not lawful when the leave concerned is a collective agreement right.

Can I be required to attend meetings with parents, IPP meetings, etc, out of school hours?

Within reason, meetings can be arranged and you can be compensated in some manner (ie, pay or time in lieu) for the requirement to attend outside of hours. No compensation can be requested for meetings during school hours or in the brief time before or after school hours.

Can teachers be required to do activities that enrich classroom instruction?

Yes. Teachers may be directed to provide enrichment activities within school hours as part of the responsibilities set out in section 18 of the *School Act*.

Can such enrichment activities extend beyond school hours?

Teachers who are asked to work beyond school hours are entitled to compensation for that time as pay or time in lieu.¹⁴¹

Refusal by teachers to perform voluntary services is particularly difficult on principals. Principals would be expected by employers and central office management to pressure their staffs to perform as many activities as possible. In recognition of that, the Association provided advice tailored to these people in the middle. They reminded principals that the ESSA did not change the principal–teacher relationship: “the requirement to uphold the integrity of the instructional program is still the paramount responsibility of the principal.”¹⁴² The *School Act*, collective agreements and the *Guide to Education* still defined the duties of teachers and principals, making direct instructional activities contractual matters and extracurricular activities voluntary unless the collective agreement said otherwise. Principals could rely on their Association for confidential advice if they were being pressured to take actions with which they felt uncomfortable. Once again, some specific scenarios were described and responses provided.

Finally, the Association provided the representatives with the latest edition of the *ATA News* dedicated to a clause-by-clause analysis of the ESSA and a powerful letter by a defiant president who sought to rally teachers for the fight ahead. The legislation was completely biased and appalling. Teachers faced an arrogant government unencumbered

¹⁴¹ Alberta Teachers’ Association, *Education Services Settlement Act: Advice to Members*, March 14, 2002.

¹⁴² Alberta Teachers’ Association, *Education Services Settlement Act: Advice to Principals*, March 14, 2002.

by principles of fair play or justice. The process was not arbitration; it was the legislated imposition of contracts, a smashing of teachers' rights. Teachers had been betrayed and their rights smashed in a punitive and vindictive manner. Klein's suggestion that Booi and teachers had asked for this legislation was both ludicrous and incredible. The ASBA had sabotaged both local negotiations and the arbitration process. Teachers were angry, frustrated, inflamed and furious but not intimidated and would be relying on their own strength and solidarity in the fight ahead.¹⁴³

The government would learn that, while it might bludgeon teachers' rights it would not cow them, and that despite legislation that limited the Association's ability to give advice to its members, the Association would not be silenced. A dramatic gesture was called for. It was made that same afternoon on the steps of the legislature where a defiant president accompanied by three local presidents declared that they were

acting "in combination and in concert" to request that teachers exercise their individual right to withdraw all voluntary services to the full extent that they are allowed to do so under law and their collective agreements. If anyone believes that this action violates the law, we are right here at the legislature. ...

Teachers no longer have any illusions about being treated fairly or in good faith, but we are determined to do what is necessary to bring about the changes needed by our profession and our schools.¹⁴⁴

It certainly sounded as though the president of the Association was defying the law. He went unchallenged. Either the advice was within the law, or the government decided that, regardless of legalities, a battle on this issue was a losing proposition. The government must have been feeling some heat because it now made a point of protesting publicly that the ESSA did not restrict the right of teachers to assemble or talk to their colleagues. Dunford asked that all the parties give the arbitration process time to bring resolution to the issues. It was almost as though he had missed the fact that classroom conditions were the issue for many teachers and that he had expressly forbidden the arbitrator to deal with them. Meanwhile, the arbitration process was in motion. The Association, acting under protest and without prejudice to its rights to challenge the act, selected its nominee and filed the required status report.

The government had taken some hits and it had taken them from where it really mattered, from within its own party. The legislation had reportedly been prepared before the back-to-work order and was rolled out now even though the problem had morphed. It was widely criticized for being over the top. It simply went too far. It was one thing to order a few strikers back to work, but a gratuitous bludgeoning offended people's sense of fair play. One school board put the outrage eloquently:

Our Board has serious concerns about the recent *Education Services Settlement Act*. Royal assent of this Act has resulted in serious breakdown of Board-Teacher relationships

¹⁴³ L. Booi, "Dear colleagues," *ATA News*, March 15, 2002.

¹⁴⁴ "Teachers Respond to Bill 12: Announcement by Larry Booi at the Legislature," March 18, 2002.

that far exceeds anything that was experienced during our recent strike. ... When our Board advocated for Arbitration, we were advocating for one of the alternatives that were already drafted in other legislation. We now feel the government used our expressions of concern to justify the advancement of a slanted arbitration process. ... This action is heavy-handed, unnecessary, and its harsh terms are such that we are unable to support it.¹⁴⁵

Bishop Fred Henry had weighed in with a pastoral letter that was strongly critical of the ESSA. The legislation failed miserably to reflect the church's teachings. It was biased from the outset, and it was going to take a herculean effort to revive teacher morale. Besides, government lawyers now had experience in losing in court, and perhaps they felt their chances were pretty good they would lose again. A second round of losses would be humiliating. Perhaps they found an Ontario case instructive. The Ontario Court of Appeal had quashed an arbitration process in that province because the provincial government, which had a substantial interest in the arbitrations, also appointed the arbitrator. The court process takes time: two to three years would not have been surprising in a case such as this. One might have concluded that time was on the government's side, and under normal circumstances, this would have been the case. On balance, it was probably true now. But circumstances were not normal. The Association was dug in for a long fight, and the tide of public opinion was not running in

the government's favour. Time might be on its side, but meanwhile, there was a price being paid. An early indication of pressure on the government had come in Oberg's and Dunford's news release of March 14, which contained a curious statement. It stated that, while strikes were of course disallowed, "The Act does not place restrictions on other job actions or impede teachers' rights."¹⁴⁶

The withdrawal of voluntary services exceeded Association expectations, with the impact on the Department of Learning being particularly marked. The ESSA and the government response to the withdrawal sent the message that this government would legislate slavery if it could. The tasks not being performed by teachers were appreciated by students and parents and widely, though not universally, accepted as voluntary. People might not like the withdrawal of those services by teachers, but they held the government at least equally to blame for the situation. Parents, students and even school trustees called the government. Withdrawal of extracurricular services had reached critical mass. Nowhere in the province remained unaffected. Indeed, the effects spread to places where people had thought themselves immune, places where they had reached collective agreements with their teachers. They felt, and rightly so, that they, their teachers and their representatives had done everything they could to avoid the labour dispute that was playing out in the rest of the province. The calls were clear. They wanted an end to it. Meanwhile, at the Department of Learning, the suspension of services to the government was being taken very personally.

¹⁴⁵ Grande Prairie and District Catholic Schools to Lyle Oberg, March 27, 2002.

¹⁴⁶ Government of Alberta, "Education Services Settlement Act sets arbitration process in motion," news release, March 14, 2002.

Perhaps the department had thought itself isolated from, or somehow above, the fray, its services too important to be affected by a labour dispute. Perhaps it had not internalized the Association message: this was a labour dispute, but the real battle was between teachers and the government. In any event, the department, unlike most of the school boards, took the withdrawal of services as if it were a personal attack. The Association would later call the department's response "vindictive." The idea that teachers would stop marking the government's exams was unthinkable. Not providing the service of marking its exams was "unprofessional." The department mused about bringing in nonteacher "markers" or using retired teachers to mark diploma exams, but no one was fooled, and the Alberta Retired Teachers' Association shortly weighed in with a refusal by its members to act as strikebreakers. The department's measuring and record-keeping were more important than the education provided every day in the classroom. The time had come to bring in some labour expertise and commence negotiations.

The Association was under pressure too. The withdrawal of voluntary services was solid and receiving a great deal of publicity. The direct attack on services provided by teachers to the Department of Learning had not gone unnoticed. But teachers had to maintain the work-to-rule, perhaps for years. And while the Association was convinced that the government was legally vulnerable, even if it was right results would be slow in coming. A biased arbitration would proceed, and teachers would almost certainly have to live with the results of that arbitration as well as the worsening of their conditions of practice. Finally, although the ESSA was an unmitigated public relations disaster for the government and almost without exception the press was reporting negatively

on the act, the position of teachers was probably as strong as it was going to get. If the government was serious, negotiations were in order. If the Association was going to try to get the best possible deal for its members, it couldn't afford to refuse to negotiate even though it knew that there would be teachers who would object to its decision. There was an opportunity to maximize the possibilities of the arbitration process, to ensure the vital position of chair was occupied by a reputable person and to relax the monetary straitjacket. Perhaps one might be able to mitigate some of the other negative possibilities as well.

Negotiating the ESSA

The Association began to receive feelers. Booi was unimpressed. Would the government rescind the law? No. Would it amend the legislation? Not likely. What then might it do? The answer was that it might "interpret its law." Could the Association and the government jointly interpret the act in such a way as to permit both sides to move forward to settle the dispute? Skeptical as Booi was, the Association agreed to talk.

Indeed, the government was serious about the process, and this time it got it right. It brought in as a mediator a respected Alberta labour expert, one whose expertise and objectivity were widely acknowledged. It then brought in outside management lawyers, experienced in education disputes, to handle its side of the negotiations. Finally, the players were in a room to sweat out an agreement. A year in the streets and on the airwaves was collapsed into a few days of intense negotiations.

Representatives of the two parties were brought together in secret at a neutral

location, and the initial conversations were held. At first there were no face-to-face meetings. Negotiations proceeded through the intermediary, with lawyers representing the respective sides. Some progress was made during the first three days, and after a one-week hiatus, the negotiations recommenced.

Although the dispute had always been between the Association and the government, one more actor had to be brought in. With the recent destructive behaviour of the ASBA still fresh in its mind, the Association, with no reason to believe that the organization would make a positive contribution, opposed its participation. However, the ASBA had to be acknowledged. More properly, it would have been the individual school boards, but there were more than 60 of them, so it would be their provincial organization. Adding a third party, a party with no independent standing, to such a process runs a significant risk of disrupting that process. The Association was concerned that the ASBA would prove to be a spoiler, a role it clearly played in the lead-up to the ESSA when it had demanded an arbitration process with “fences” to prevent arbitration of conditions of practice. The government was adamant. It insisted that it was in charge of the negotiations. The ASBA would do as it was told. A deal was finalized and announced to the public on April 18.

The ESSA Interpreted

The government and the Association arrived at a memorandum of agreement that addressed a number of issues growing out of the ESSA. Government appointment of the chair of the

arbitration tribunal was widely perceived as a source of bias in the arbitration process. The memorandum resolved the issue by appointing an agreed-to impartial chair. The ESSA stated that awards must not cause or increase a deficit. This effectively made the government grants the maximum available for salaries and opened the process to employer manipulation as school boards could claim all other funds were already allocated. Indeed, a number of boards were still bargaining from the position that 4 per cent and 2 per cent was the maximum available and that the per-student grants were already fully allocated. The ASBA continued to cling to this argument right into the arbitration hearings. The memorandum clarified that the deficit provision was “directory requiring that the tribunal be satisfied that any award can be implemented without causing or increasing a deficit, but does not have to be satisfied that any potential method for implementing the award without causing or increasing a deficit, will be carried out.”¹⁴⁷ Traditionally, when a board had to pay higher salaries, it could solve the problem by paying fewer teachers. Since all boards could now vary the number of teachers they paid and the number of hours they worked, there was flexibility in the amount they could be required to pay each teacher. The ESSA prohibited conditions of practice clauses. The prohibition remained, but evidence in relation to them would be admissible on arbitral issues. The Association could introduce evidence that loss of these clauses ought to be compensated for, and it was not to be charged with bargaining in bad faith if it found it necessary to introduce new proposals as a result of these losses. The memorandum also permitted teachers and boards to sign agreements outside the collective

¹⁴⁷ Her Majesty the Queen in Right of the Province of Alberta, Alberta Teachers’ Association and Alberta School Boards Association, Memorandum of Agreement, April 18, 2002.

agreement, agreeing to conditions of practice arrangements effective September 1, 2003. The government stated that it had no intention of more legislation on the issues in dispute in the ESSA and no intention of introducing punitive legislation for the Association and would not do so without prior consultation. The Association, for its part, agreed that it would not commence any legal proceedings over the ESSA. The government agreed that it would, after consultation with the Association, establish a process to address the problem posed by the unfunded liability in the pension plan and, as a gesture of goodwill, pay the teachers' portion of the pension contributions to the unfunded liability for one year. This provided the first concrete indication that the government might be prepared to address this long-standing sore spot with teachers. The Association committed to recommend to its members that they re-establish extracurricular and other services to boards, with the proviso that, if the government moved to introduce legislation to punish the Association, that commitment would end. The cessation of services to the Department of Learning would continue with one notable exception. Recognizing that refusing to mark diploma exams, like striking during the writing of those exams, created real hardship for students, the Association would advise teachers that marking of diploma exams was in the best interests of students but that any decision to do so was personal. The government, in turn, agreed to pay the same rates it had the year before. The commitment to examine the learning system was made concrete. There would be a commission. Its terms of reference would include teachers' conditions of practice, and the Association and the ASBA would be

consulted regarding its composition, terms of reference and reporting period. Since the ASBA had no authority to bind its member boards, the memorandum recognized that its signature meant only that it would recommend the memorandum to its member boards.

Public Perceptions

A number of commentators claimed that the memorandum was difficult to interpret, but for all that, most managed to get even the convoluted sections essentially correct: "For what it's worth, the clause legally softens the part of Bill 12 that said an arbiter couldn't approve a settlement that created a school board deficit. Clause 2 says, in effect, that an arbiter can approve a settlement that exceeds the board's available funds as long as the government somehow comes up with the cash."¹⁴⁸ The reaction of the public seems to have been largely one of relief. However, there were more analytical responses as well:

A year of anger and hot words appears to have come to an end. ... Teachers can abandon the barricades and let the arbitration process, in which they now can trust, do what it will. Schools can get back to normal.

The government appears to have realized that by winning unfairly, it would end up losing. If teachers feel mistreated, if students are robbed of the educational experience they deserve, it is the government that is held to account. By making this gesture of good faith, Oberg has mended fences in a substantial way.

¹⁴⁸ R Dolphin, "Oberg, Booi make manure needle jump," *Calgary Herald*, April 20, 2002.

The ATA is a strong and vigorous union. It will inevitably clash with the government from time to time, as do other government unions at contract time.

But even the toughest negotiations need to be conducted in an atmosphere of fairness and mutual respect, so that when they're over, the two sides can put their differences aside and work together.

That mutual respect nearly disappeared into the abyss this year. This unusual deal seems to have rescued it.¹⁴⁹

Some were troubled by the lessons that might be learned: "The ATA has learned just how brutally effective a work-to-rule can be. The teachers withdrew their extracurricular services. The public screamed. The government caved in. It's an ugly precedent to set."¹⁵⁰ Some saw it as "proof that in Alberta—unlike B.C. and Ontario—there's still a measure of trust and compromise in education labour disputes."¹⁵¹ However, on the whole perhaps, this statement sums it up best: "yesterday's deal proves it is possible for everyone to come out a winner."¹⁵²

Meanwhile, the arbitration board had been constituted with an experienced and reputable chair; status reports were being finalized for each of the disputes; and the chair, having put his mind to the organizational issues the panel needed to address, set April 25 for a preliminary meeting. The Association was

in the initial stages of what became two and a half months of all-out effort to build and present the teachers' case at arbitration while simultaneously beginning the preparation for the learning commission.

Teacher Perceptions

Teachers across the province began to resume their voluntary activities. What the future held for such volunteerism was uncertain, but for the moment, the level of restoration was sufficient to satisfy most, an indication that there was widespread support for the memorandum and for Booi's actions. There was criticism of the secretive nature of the talks and the lack of an opportunity to vote on the interpretation, but most seemed to accept that it improved their position. While openness is preferable, in a dispute as politicized as this one had been, public talks would have meant no talks, and no talks would have meant no progress toward a resolution. Most teachers did not let dislike for the process prevent them from coming to a favourable evaluation of the memorandum. The pressure was greatest on the president. Booi was the undisputed front man, and teachers' inevitable disappointments were visited on their leader. Some teachers had to be offended. No settlement could please everyone, and those who saw the dispute as a fight for classroom conditions were almost certain to be disappointed by any result other than the outright overturning of the ESSA. Calgary Public teachers were the most vociferous. Their local had long been the most

¹⁴⁹ "A year of hot words finally ends," *Edmonton Journal*, April 20, 2002.

¹⁵⁰ P Simons, "Teachers' 'victory' sets ugly precedent," *Edmonton Journal*, April 20, 2002.

¹⁵¹ D Braid, "Deal done silently, or else . . .," *Calgary Herald*, April 20, 2002.

¹⁵² "Everyone wins," editorial, *Calgary Sun*, April 20, 2002.

aggressive local when it came to conditions of practice, and their pupil–teacher ratio clause had been specifically targeted by the government. Accordingly, they had lost the most as a result of the ESSA. Their time on strike had been short, and now their employer waded into the dispute by announcing that a worst-case scenario was for every teacher to teach more time next school year, with a loss of up to 400 teaching positions. Booi had to accept responsibility for his judgment that the interpretation was a better, or at least a less bad, course of action than continuing to pursue the overturning of the ESSA in view of the government’s adamant refusal to withdraw it. Teachers were reminded that overturning the ESSA would not in itself guarantee a better process. Other governments had legislated settlements, and this government was well

known to harbour desires to implement other draconian punishments on teachers. It takes a lot of courage to lead people into a battle. It takes even more courage to tell them it’s time to put an end to the battle and accept a partial victory that falls short of one’s goals. That job fell to Booi.

Nonetheless, the road to resolution was now in place. The issues were split in two and would be dealt with through two different processes. Classroom conditions would be the subject of research presentations and recommendations of a learning commission. Denied the right to negotiate improved classroom conditions, the Association proceeded to look after the monetary self-interest of teachers through the arbitration process.

CHAPTER 4

ARBITRATION

Classroom conditions had been separated from monetary issues, with the former scheduled for hearings by the learning commission. The collective bargaining process was about to play itself out in front of the arbitration tribunal.

Organizing the Arbitration Process

The arbitration tribunal held its organizational meeting on April 25, at which time it addressed submissions from the parties on logistical and procedural matters. The tribunal faced daunting organizational problems. In addition to the usual problems of coordinating the calendars of busy people, it was charged with settling 37 disputes (many of which had not made significant progress toward agreement), requiring application of a new, untested and highly controversial piece of legislation plus its “interpretation,” all under tight deadlines in a highly charged political atmosphere. Logistics and commitment would be key, but first everyone required a conceptually sound idea of how to confront the problem. The plan adopted was simple enough. The tribunal would hear test cases. The parties would present overall arguments applicable to all school jurisdictions and then

present on each specific dispute. Decisions would be rendered in the test cases, and if all went well, those decisions would provide a blueprint for the remaining units. The tribunal would encourage the parties to pare down the items in dispute and would assist that process through its interpretation of section 23 of the *Education Services Settlement Act* (ESSA). The test cases had to be carefully selected. The parties presented their criteria and their recommendations, and the tribunal adjourned to make its decisions.

The parties received their marching orders the next day. Six test cases would be heard: Elk Island Public Schools Regional Division, Rocky View School Division, Holy Spirit Roman Catholic Separate Regional Division, Grande Prairie Public School District, Edmonton School District and Calgary School District. May and June hearing dates for the six were scheduled, and additional dates were set aside in July and August in the event they were needed. The tribunal would issue separate awards in the six test cases but would do so simultaneously.

On May 10, the marathon to end the disputes began. The arbitration tribunal met to hear preliminary matters. On May 14, both the Association and the Alberta School Boards Association (ASBA) presented their main briefs. Beginning May 15, the arbitration tribunal began hearing the arguments for individual units.

The requirements were huge. A general arguments binder relating to overriding themes had to be developed, presented and then revised in response to specific questions raised at the hearings. The school jurisdiction-specific binders had to be developed, presented and revised. Meanwhile, in the background, negotiations continued both for the six units

where the items in dispute had to be whittled down wherever possible and for the other units where, notwithstanding previous ASBA advice, settlements were being sought.

Some units had the dubious pleasure of being designated “flex” units. That is to say, they were advised that they should expect to be called in front of the tribunal at any time one of the original six was unavailable on a day the tribunal was scheduled to sit. Being told to prepare under pressure on short notice for a hearing that might well never take place (and indeed did not) was not popular with the negotiators involved, but it was a measure of the seriousness with which the process was imbued.

Local Association negotiators were warned that Association resources would be severely taxed. Teacher Welfare staff, in particular, might not be readily available for the next few months to answer the normal questions. They were asked to rely on the economic consultant assigned to their area wherever possible. This was a considerable understatement, as all Teacher Welfare staff, the Association lawyers, the rehired staff and a number of staff from other program areas spent virtually every waking moment on the arbitrations or related bargaining for the next several months. Simultaneously, the organization had to prepare for massive input by teachers into the learning commission process.

The Preliminaries

Before the main round, there were preliminary items to be dealt with. Chief among these were the provisions of section 23 of the ESSA. The tribunal would, in cases where the Association and the school board could not agree, need

to rule on whether clauses both extant and proposed were caught by these provisions of the act. Collective agreements settled on or after March 11 could not contain provisions dealing with the number of students in class, pupil–teacher ratios or maximum instructional time. However, the April 18 agreement had attached three provisos. Evidence about conditions of practice would be relevant and admissible before the tribunal on, among other things, monetary matters. Agreements on these matters could be made as long as they were outside of the collective agreement. The Association would not be guilty of bargaining in bad faith if it introduced proposals as a result of the legislation. But which clauses were caught in the six test cases?

On May 10, the parties presented their arguments. Four days later, they had their decision. Section 23 was to be interpreted in a purposive manner. If the pith and substance of a provision constituted a rule, limitation or obligation with respect to any of the prohibited subjects, that provision was caught by section 23. The tribunal ruled that existing clauses providing for the principal to assign duties in consultation with staff and provisions limiting the number of days in the school year were not caught by section 23. Provisions requiring payment at 1/200 per day or days in lieu for summer work were compensation items and not caught by section 23. Requiring and scheduling of lieu time for parent–teacher interviews were not caught by section 23. A new provision proposed by the Association requiring agreement prior to any change in the required hours in a part-time contract was not caught, a proposed assignable and instructional hours clause was caught but a maximum length of working day clause was not as long as it could accommodate the 1,100-hour limit prescribed by the *School Act*.

A clause requiring payment of part-time teachers based on the assumption that a full-time teacher taught 1,350 minutes per week was ruled to be a compensation clause that did not establish or deal with instructional time, and that was not caught by section 23. A letter of intent setting the school year and specifying 10 noninstructional days was caught by section 23; the Association could propose revised wording. There was no disagreement over the conditions of practice clauses in the Calgary Public or the Edmonton Public agreements. The act had deliberately targeted exactly those clauses, and it had not missed.

Some parameters had been set, the tribunal had taken charge of the process and every one had pretty clear marching orders. Presentations on the main arguments began. The Association presentations were made by the Association's law firm with staff and local representative in attendance as required. The school boards were represented by ASBA lawyers and staff except for the two large public boards, which presented their cases through their own lawyers and in-house labour experts.

The Association Brief of General Argument

The general argument was a massive effort. The brief alone ran to 47 pages. The exhibits ran to several thousand. In addition to the Background and Conclusion, the brief addressed ten topics:

- Education Governance and Funding
- Government Role in Teacher Bargaining

- Alberta's Economy and Fiscal Position
- Impact of ESSA on Teachers' Compensation Proposals
- Public Sector Bargaining
- Compensation Comparators
- Employment Levels/Opportunities in Education, the Public and Private Sector
- Relationships to Other School Board Employee Groups
- Fair and Reasonable Payment for Qualifications, Services and Responsibility
- Classroom Conditions

Education Governance and Funding

The brief was pretty clear on the significance of the government's role in funding: "For the purpose of arbitration, the interests and capacity of school boards and Government in matters of governance and finance cannot be separated. School boards are creatures of the Government and are bereft of any substantive fund raising authority. Essentially, they act as agents of the Government, disbursing funds provided to them in accordance with provincial regulation and direction."¹⁵³ In 1994, boards had lost their access to local property taxes and had since relied almost completely on uniform per-student grants from the government. Uniform inputs caused disparities when applied to the differing needs of different communities. Whether one liked it or not, the government was at the table.

Government Role in Teacher Bargaining

Of course, in this dispute the government had gone well beyond seeking to influence bargaining through funding. It had directly intervened. Ralph Klein had made supportive noises, but the government had consistently

¹⁵³ Alberta Teachers' Association, Brief of General Argument, May 14, 2002, 2.

acted to constrain teachers' salaries. The tribunal was presented with evidence of deliberate, consistent and wide-ranging Department of Learning efforts to prevent grant money from falling into the hands of teachers. First, the government created a teacher salary line item in school board budgets and stipulated that boards could offer 4 per cent and 2 per cent. Some boards then took the opportunity to commit the general grant increase to other initiatives. The Association presented evidence that the Department of Learning knew teachers' salaries had fallen behind inflation, that the 4 per cent and 2 per cent would not make up the difference and that its claim Alberta teachers would be the best paid in Canada was fallacious. The government "contrived to transfer funds to boards outside the basic instructional grant."¹⁵⁴ The Association presented evidence that the Department of Learning had advised Treasury Board that it was reallocating salary funding to earmarked programs, the explicit rationale for which was to reduce salary settlements for teachers. The department's own briefing notes in one case stated that it would be making what was essentially a basic instructional grant but trying to call it something else. Deputy Minister of Learning Maria David-Evans had warned boards not to use accumulated surpluses for salary increases. There was one bright light: the \$46 million saved by not paying striking teachers could now be used to fund arbitrated settlements.

Alberta's Economy and Fiscal Position

It was not just that the mechanics of funding had been manipulated. The level of funding

represented an even more fundamental problem. The Alberta economy had "ample capacity and opportunity to fund teacher salary settlements while improving teaching and learning conditions."¹⁵⁵ The Alberta economy was the strongest in Canada and continued to experience solid growth. The government's fiscal position was strong. It consistently underestimated the size of budget surpluses, emphasized debt reduction over program spending and chose to cut taxes. Its expenditures on education were lower than the Canadian average, achieved in part by its having the highest pupil-teacher ratio in Canada. Funding had not kept pace with inflation, and "government claims that education spending has increased 41% are deliberately misleading; because they start from an improper base, and fail to account for student enrolment growth, or inflation."¹⁵⁶ This government position continued, despite support for increased spending on education from the Public School Boards' Association of Alberta (PSBAA), the Alberta Home and School Councils' Association and the public in general.

Impact of ESSA on Teachers' Compensation Proposals

The ESSA required two-year agreements, and the Association modified its one-year position to fit the act. Naturally, the issue of deficit had to be addressed. The brief reminded the tribunal that while it had to be satisfied its award would not cause a deficit, it did not have to be assured that potential ways of preventing a deficit would indeed be carried out. Most school jurisdictions would not face deficits

¹⁵⁴ Alberta Teachers' Association, Brief of General Argument, May 14, 2002, 6.

¹⁵⁵ Alberta Teachers' Association, Brief of General Argument, May 14, 2002, 10.

¹⁵⁶ Alberta Teachers' Association, Brief of General Argument, May 14, 2002, 14.

and those that did could, among other things, reduce programs or raise hours of instruction, or they could do what the Association and some of them had always advocated and seek greater government assistance. Finally, the ESSA had removed the Association's nonmonetary items from the table but had left employer nonmonetary items unaffected. The Association believed that it would be profoundly unfair to permit only one party's issues to be dealt with and requested that the tribunal concentrate on compensation.

Public Sector Bargaining

Teachers' salary increases had been lower and slower than other public-sector settlements and settlements in general. Immediate increases of 12 per cent would be required to match the accumulated increases of the rest of the public sector. It was public-sector settlements, for which the government was the funding agency, that had lit the fire under teacher negotiations. The brief detailed those other settlements: doctors, 22 per cent; nurses, 17 to 22 per cent over two years; general service workers, 12.3 to 15.7 per cent over two years; social workers, nearly 25 per cent; Crown prosecutors, 5 to 14.5 per cent. "The actions of Government have led Alberta's teachers to the conclusion that they ought to receive increases over two years comparable to those of others who serve the Alberta public (in the 17% to 22% range)."¹⁵⁷ Then, in the midst of calls for restraint and holding the line on teachers, MLAs awarded themselves increases totalling 17.6 per cent, an action that provided "further evidence that the Government concluded it could afford and justify substantial salary increases for people serving the public."¹⁵⁸

Compensation Comparators

Comparators are key in virtually every arbitrated settlement, but no one could have foreseen just how contentious they were to become in this case. The Association argument rested on two comparators: other Alberta teacher settlements and teacher agreements in other provinces. The first of these was precisely the one the ASBA had sought to control by subverting bargaining in the period running up to the ESSA, and its importance was highlighted by the fact that the appropriate application of this factor remained a source of conflict and thus constant revision throughout the entire arbitration process. The interprovincial comparison was hard fought as well, but here the disagreement was over what exactly ought to be compared. On the interunit comparator, the Association presented the standard data with which practitioners in Alberta teacher collective bargaining were familiar and explained both the data and its conceptual base. This base data followed a familiar pattern and was seldom the subject of significant debate between the parties. The most important statistic was the percentage increase in the category IV minimum and maximum figures for the school year 2001/02 over those for school year 2000/01. And this crucial figure contained a potentially fatal flaw from the Association's perspective. Several of the settlements were in the 3 to 4 per cent range. Clearly, this statistic did not support teachers' position. Fortunately for teachers, there was a second group of settlements. The average here was 11.44 per cent. Also, there was a clear dividing line between the two. The first group represented the second year of two-year agreements signed before the events

¹⁵⁷ Alberta Teachers' Association, Brief of General Argument, May 14, 2002, 20.

¹⁵⁸ Alberta Teachers' Association, Brief of General Argument, May 14, 2002, 20.

that had ignited the current disputes. The second group was, the Association contended, the true representatives of the new reality. This second group would come to be identified as the S15.¹⁵⁹ Of course, the ASBA, still dug in on its 4 per cent and 2 per cent position, disagreed. However, none of this mattered unless there was a relationship among the settlements in school jurisdictions. This, fortunately, was not seriously in dispute. The Association contended that “pattern bargaining is highly developed in Alberta teacher collective bargaining”¹⁶⁰ and pointed out that in 2000/01, the last year for which full data was available, category IV maximum figures, if one removed just the two highest and the two lowest percentage increases, for the remaining 58 settlements fell within a variance of less than 1 per cent of one another. 80 per cent of the category IV maximum figures fell within a range of just 1 per cent of the mean. Then there were the formula settlements. Some school jurisdictions, having been able to agree in principle that their settlement ought to place them in a certain position relative to other settlements, for example, at or near the 50th percentile, had not been able to agree on a particular percentage increase. These jurisdictions, as long as they were few in number, could ride the coattails of the rest of the province by inserting in their collective agreement a formula of one kind or another that placed them at some position relative to the rest of the province. But now what did a formula to place a unit at, say, 18th place mean when calculating an average for the tribunal? Whatever it meant, and the parties would disagree on this, it served to reinforce the idea that pattern bargaining was deeply ingrained in the Alberta scene.

Inflation is one of the basic determinants of wages and salaries, and it had to be dealt with. The Association brief conceded that, in the end, the increases being requested would exceed inflation but contended that even these increases would not make up for the losses to inflation over the previous decade.

The brief also referenced roll-ups, the device that was being adopted for increasing initial hiring rates to attract new teachers. Eleven of the recent 15 agreements had eliminated step 0 of their grids, thus effectively raising the starting salaries without affecting the salaries or the cost of current staff.

For the first time, the Association had to face the issue of a second year. Here, the data was sparse. There were 12 agreements for 2002/03, but nine were formulas. Of the remainder, the Association argued that the Medicine Hat Public memorandum should be valued at 4.56 per cent. Medicine Hat Public, now that conditions of practice were no longer on the table, resumed its traditional position as a pacesetter.

Interprovincial salary comparisons are fraught with difficulties, but given that the government had made a point of comparing Alberta teacher salaries in its publicity campaign, it was inevitable that they would be a feature of the hearings, and they were relevant to the Association argument on hiring difficulties. Minister of Learning Lyle Oberg had argued that 6 per cent would make Alberta teachers the best paid in Canada. That contention was easy enough to refute before the tribunal: “His assertions were erroneous to the extent that his comparators were faulty and because he

¹⁵⁹ By the end of the hearings, there were 17 settlements in this group, but the S15 identifier stuck.

¹⁶⁰ Alberta Teachers' Association, Brief of General Argument, May 14, 2002, 23.

applied them incorrectly. ... It compared what Alberta teacher salaries might be two years in the future against salary scales in other provinces that, in many cases, were already out of date."¹⁶¹ Alberta settlements and Association demands presented more difficulty. The ASBA assumed that, since category IV maximum and, to a lesser extent, minimum, had been agreed on as the appropriate comparator between Alberta school jurisdictions, the same applied between provinces. The Association disagreed. Other provinces had moved, and Alberta was in the process of moving to having most teachers at category V or VI, and therefore these represented the appropriate comparators. In the end, the Association essentially conceded on the interprovincial comparator, stating that, yes, a salary increase in the order of that being requested would put Alberta teachers on a par with the highest paid in Ontario and British Columbia, which was precisely where they ought to be and for which no apologies needed be made. Nor was there any reason for the tribunal not to award increases that put Alberta teachers at the top of, but not outside, the range of salaries elsewhere.

Comparability of benefits was a matter raised by the ASBA; however, this area is so fraught with variations in plans, definitions, government programs and problems of measurement that it constituted a morass into which the Association contended the tribunal ought not to venture. In due course, the tribunal declined to include benefits in its considerations.

Employment Levels/Opportunities in Education, the Public and Private Sector

The Association brief conceded that there was probably not an overall teacher shortage at the moment. However, unemployment in the sector was very low, and there were increasing difficulties in attracting teachers in certain subject areas and to certain geographic locations. Addressing the issue sooner rather than later was recommended. In addition to things that could be done elsewhere, collective bargaining could assist in addressing the matter by raising starting salaries. From this came the elimination of step 0 on the salary grid.

Relationships to Other School Board Employee Groups

While this topic had to be mentioned, the Association brief dismissed it in just two sentences: "Settlements between school boards and other employee groups are not particularly helpful in setting teacher compensation. Teacher agreements set the pattern and others follow."¹⁶²

Fair and Reasonable Payment for Qualifications, Services and Responsibility

The Association argued that the job of teaching had changed significantly, with considerable expansion of teachers' responsibilities but without a corresponding increase in their pay.

Classroom Conditions

The ESSA had stripped these clauses from the agreements and precluded their inclusion in any arbitrated award. This did not mean

¹⁶¹ Alberta Teachers' Association, Brief of General Argument, May 14, 2002, 28, 29.

¹⁶² Alberta Teachers' Association, Brief of General Argument, May 14, 2002, 37.

that the issues that had given rise to such clauses were incidental to the proceedings of the tribunal. The brief reviewed in some detail the history of the issues from the Worth report, through the Kratzmann report and to the recent *Trying to Teach* reports. After 30 years of efforts to bring light to these issues to resolve them, Alberta had the largest class sizes in Canada. Almost two-thirds of teachers reported increased workloads in the last two years and larger classes even as integration of students with special needs proceeded. Alberta survey results, confirmed by cross-Canada statistics, reported that teachers worked an average of 52.9 hours per week. While the tribunal could not address these issues, it was, the Association felt, obligated to take note of the effect of the ESSA on the ability-to-pay argument. School boards had sought and now had the ability to increase the number of hours a teacher would be required to teach. Calgary Public had just announced that it was going to increase teaching hours and that as many as 400 teaching positions might be lost as a result. While the Association decried “the damage that would be done to both teachers and to education by such a move, it removes all doubt as to the fiscal capacity of boards to fund current teacher salary demands now and for the future without incurring a deficit.”

It was a massive effort, but of course it was not enough. The ASBA raised counterarguments, and the tribunal asked its own questions. Despite the massive effort, more was required. Constant research and writing were required to update the presentation throughout the work of the tribunal.

The ASBA Brief

In the ASBA version of history, the current round of bargaining began with the 2001 Annual Representative Assembly, at which the Association demanded additional funding, set bargaining goals and took over local bargaining. The impossibly high financial demands targeted the provincial government, and as a consequence, little real bargaining took place. This conveniently ignored the places where real bargaining had occurred, mostly places where ASBA involvement had been minimal. If there was recognition of the deep-seated and long-term problems cited by teachers or any recognition of or objection to the underfunding of education, it was not recognized as the source of the labour problem. The source of the problem lay with the messenger who had, admittedly rather forcefully, delivered the message.

The brief outlined the very real financial problems of school boards. Virtually all their funds came from the provincial government, with boards being left the unenviable job of allocating that money. The ASBA reported that in the previous five years, funding had increased by 11.1 per cent, and teachers’ salaries by an average of 16.7 per cent. As a consequence, reserves were depleted, fewer teachers could be hired, class sizes could not be lowered and the level of services provided to students was reduced.

There was clearly a fear that the tribunal would award settlements above the four and two guideline in the expectation that the government would fund them in the future, something the ASBA warned against. It warned that neither school boards nor the tribunal could change the funding level, which, while technically true, ignored the very real two-way relationship between salary

settlements and funding. Naturally enough, the ASBA also warned against depending on reserves for funding the ongoing effects of the tribunal's awards. In addition, many of these funds were earmarked for other purposes and thus unavailable to the tribunal, exactly the situation that had formed one of the bases of the Association objection to the no-deficit provisions of the ESSA.

The ASBA expended considerable effort telling the tribunal what it must, could and must not take into account in making its decisions. In this matter, not surprisingly, the ASBA insisted that the tribunal be guided as much as possible by application of the ESSA, the legislation upon which its influence had been so marked. The tribunal must not try to emulate what it might think would have resulted from bargaining had the act not been passed. Rather, it must do as it was required to do by the act and award salaries that were fair and reasonable to employees and employers and in the best interests of the public.

The S15 were particularly troubling to the ASBA. As soon as it became apparent that arbitration was likely to be the method by which settlements were arrived at, that organization had tried desperately to prevent any trend-setting agreements. Now, the ASBA had 15 of them setting a trend that was clearly not to its liking. And so the S15 were not meaningful comparators. They affected fewer than 4,000 teachers. There was no evidence that the settlements were based on the ESSA. Only one of those school boards had been struck. The contention by the Association that the S15 represented a trend was wrong because one had to add to the 15 the five settlements that had been reached two years ago. The ESSA had not directed the tribunal to consider the other teacher settlements, which implied the legislature did not consider them

to be appropriate comparators. This was the first round of the battle over the infamous S15. By the time the tribunal had completed its hearings, one school jurisdiction had reopened its 2001/02 agreement in order to raise its salary increase, and in another case, it became possible to calculate the floor figure for the formula used to calculate salaries in that jurisdiction. The duelling over this comparator went on throughout the hearings, with the ASBA constantly attacking its utility as a comparator and the Association continually seeking to buttress it and to add more settlements as this became possible

As for the nurses, doctors, etcetera, none of these was a traditional comparator for Alberta teachers. Greatest weight ought to be given to teacher salaries in other provinces, the local circumstances of each school board and the no-deficit provision. The 4 per cent increase would make Alberta category IV minimum and maximum figures the highest or second highest in Canada. The data provided was eerily similar to that which had been promoted so persistently by Oberg, right down to the shortcomings in the data. The ASBA contended that inclusion of Alberta's low income tax rate and the value of the Alberta benefits package meant that Alberta teachers were even further ahead. It chose its statistics carefully. Low income taxes were considered; health premiums and high pension contributions were not. The interrelationship among government programs, supported through the higher taxes, and the board-supported benefits package was not even acknowledged, let alone analyzed. Finally, only the claimed cost of the package was presented. Nothing was mentioned about the comparability of the benefits provided. To be fair, as the Association had contended, these were complex comparisons, and the ASBA probably simply did not have the information.

Lack of knowledge did not, however, prevent it from making the claim.

A number of other comparators or factors were referred to by the ASBA. Increases to the consumer price index, private-sector agreements and private-school salaries were cited as support for their four and two position.

There was generally no difficulty hiring teachers, so no roll-ups were needed.

The Six Test Cases

General arguments made, subject to rebuttal and revision, the tribunal went forward with the hearings on each of the six test cases. Each of these cases would make for a story in its own right, but for purposes of a general history, Edmonton Public will serve as example. Both of the big urban school jurisdictions had instructional hours clauses; Calgary Public also had the province's only pupil-teacher ratio clause, and its loss was keenly felt. Edmonton teachers suspected that their board had been complicit in the ASBA "fences" move, but other than that, their board had played its cards throughout the dispute in a very careful manner. The board must have recognized early on that it was not going to be able to meet teachers' demands within the resources allocated to it and further decided that it would minimize the extent to which it was to be ground between the Association and the government. Edmonton Public had appeared to a large extent to step aside from the dispute even when faced with strike action. It had been part of PSBAA representation for better funding and had made public its dissatisfaction with current funding. When a letter had been published asserting that 3 per cent of teachers were incompetent, Superintendent

Angus McBeath responded with a letter of his own, lauding the outstanding group of professionals he had been given the opportunity to lead. Following the signing of the memorandum of agreement interpreting the ESSA, Don Fleming, chair of the board, wrote Karen Beaton, president of the local, a carefully neutral letter stating that the board's preference was always to have a negotiated settlement with teachers but that circumstances had prevented that. The board had been concerned that the ESSA would create low morale among teachers and welcomed the memorandum, which, it was hoped, would mitigate some of the negativity surrounding the act. Animosity between teachers and their employer was at a remarkably low level considering the circumstances. In its award, the tribunal would even make a point of mentioning the fact that relations between the Association and the Edmonton Public board were excellent, notwithstanding the strike. Public anger had been largely deflected. Unlike its southern counterparts, Edmonton Public was careful to stay relatively neutral on the matter of instructional hours, stating that schools were to continue to be staffed on the basis of the now defunct 1,400-minute clause. This defused potential anger while keeping open its option in the event it later decided it needed to increase those hours. It did not, however, make any written commitment to reinstate the instructional hours clause. There would be no sidebar agreement. If teachers wanted that back, they would have to negotiate it in the next round. Accordingly, when the requirement to meet the tribunal had to be met, its response was to narrow the dispute. By the time the tribunal saw the dispute, agreement had been reached on a number of items: section 23 of the ESSA had been applied, provisions had been made for teachers in modified school calendars and

the maternity clause had been brought into compliance with legislation, as well as several other matters. Differences on other matters had been narrowed. The Association had demanded 19 per cent up front but had now reduced its position to 18 per cent end-rated over two years and had reduced its requests for structural changes to the grid. The Edmonton Public board had been adhering to the party line at 4 per cent and 2 per cent over two years. Now, sensing that the four and two position adopted by the ASBA was untenable, it had advanced its position to a more defensible but still affordable 6 per cent and 4 per cent. It was this position it defended in front of the tribunal.

Both parties proposed a roll-up of step 0 on the grid. The parties still had different positions on group insurance, allowances for administrators and substitute pay, and of course, the Association had the remnants of its conditions of practice proposals. On the whole, the dispute was ready for the arbitrator.

Representatives of the Association and the Edmonton Public board appeared before the tribunal on June 11 and 12. The local reported back to its membership that “the presentations were scrutinized very carefully by Tribunal members who questioned both sides extensively. There was every indication that members of the Tribunal were up to speed on matters related to the labour situation in public education.”¹⁶³ One might not like the decision one got from the tribunal, but at least the process was satisfactory, and in the larger scheme of things, that was important to ongoing labour relations in education.

Ongoing Negotiations

In the run-up to the tribunal hearings and continuing while it was sitting, negotiations went on in a number of school jurisdictions, some of which had from the outset sought to avoid the strike and now sought to avoid the tribunal. Throughout the entire period of the hearings, negotiations continued at many of the other tables in the province.

The Awards

On June 27, the parties received the first six awards from the arbitration tribunal. The tribunal had met its self-imposed deadline of six awards before the end of June. More importantly, it would meet its objective of ending the labour dispute by means of the awards in the six test cases. Six settlements were laid down, six crucial settlements that in themselves set terms for half the teachers with outstanding disputes, irrevocably setting the parameters for the balance of the outstanding settlements and bringing an end to Alberta’s biggest teacher conflict ever.

The tribunal took some care to place arbitration in context and thus to provide a conceptual basis for its decisions. It noted that the process was neither precise nor scientific but rather involved the application of judgment to weigh many different factors. The ESSA required that the awards be fair and reasonable to teachers and school boards and in the interests of the public. The tribunal cited expert opinion to the effect that fairness in interest arbitration depends directly on the selection of fair

¹⁶³ Edmonton Public Teachers Local, *Negotiations 2002*, June 20, 2002.

comparisons. The public's interest lay in having an excellent education system and getting value for its money and in harmonious labour relations. The tribunal noted that it was required to consider certain matters, for example, interprovincial teacher salary comparisons and the no-deficit provisions of the ESSA and its "interpretation." It reviewed funding, described the salary grid, noted some boards had accumulated surpluses and touched briefly on a few other factors. It then reviewed the parties' submissions.

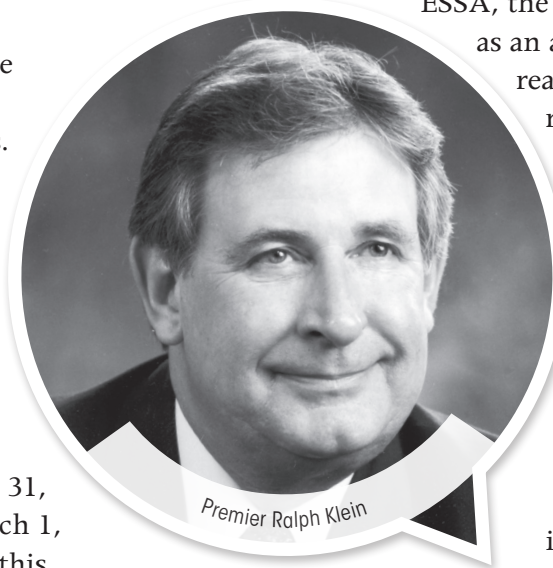
With minor differences, one monetary template was applied across the six cases. It had not been an easy decision: the nominees had gone in different directions on the matter, and the chair exercised his prerogative and made the award. Salaries would rise 6.25 per cent September 1, 2001; 3.75 per cent August 31, 2002; and 3.5 per cent March 1, 2003. With compounding, this would increase end rates by 14.09 per cent over the two-year period and would cost employers 6.25 per cent in the first year and 5.5 per cent in the second year. Substitute pay, administrative allowances and other allowances where they were in dispute would increase by, or approximately by, the same amounts as the salary grid.

Minister of Human Resources and Employment Clint Dunford had said that the panel would rule on a case-by-case basis, but the chair of the arbitration board made it abundantly clear that there would have to be compelling reasons for him to vary the awards for any new cases. Its assignment was to render decisions for up to 37 units. The arbitration board chair

indicated that he had absolutely no intention of writing 37 awards. Rather, by the time he had concluded the first six, there would be no doubt in anyone's mind what the settlements would be and no point in anyone continuing to fight.

Reasons by the Chair

After reviewing the submissions and the ESSA, the chair made what he saw as an award that was fair and reasonable. Prior to the 17 recent settlements, a number of factors had pointed to settlements in the 2.5 to 4.5 per cent range in each of the two years. There were, however, three factors that had led teachers to expect higher increases: the other public-sector settlements, Klein's comments and the introduction of the teacher salary enhancement funding.



The chair was satisfied that the requirements of the ESSA had been met, in particular, that the costs of the award could be met by all school boards but that there might be adverse effects on classroom conditions. This had become inevitable in a system where the government controlled funding. Finally, while the government had declined to appear before the tribunal, it would in the long run have to decide how to address the significant increase in costs incurred as a result of the settlements and the awards.

Each of the awards was individualized in that the specific positions of the parties

were reviewed and decisions made, but with the exception of Grande Prairie Public, the increases in salary were all the same.

There was consideration given to local differences and arguments, but it was with one exception on matters other than the salary grid. Grande Prairie Public had offered more than the tribunal was awarding for September 2001, so the tribunal let that amount stand but adjusted the end rate to be the same as the rest of the awards. Where there were differences, it was where there were important improvements, such as the increases in the portion of the benefit premiums paid by the Edmonton Public board.

Responding to the Awards

The government responded in a neutral fashion, not commenting on the content of the awards and still giving no indication that it accepted responsibility for the situation it had, in large part, been responsible for creating. Six settlements had been issued; the parties should try to reach agreement in the remaining units; and, according to Oberg, “school boards will need to analyze the details and determine how to accommodate the awards within their existing budget.”¹⁶⁴

The Association response to the settlements was low key and measured. Booi said, “While arbitration has never been seen by teachers as an ideal solution, this process was fair and we are prepared to live with the results.”¹⁶⁵ This did not prevent him from reminding everyone

that many school boards needed funds if they were to pay for the increases without compromising programs and that classroom conditions had yet to be addressed.

In the end, the tribunal put it as well as anyone: “The process is not precise or scientific, but rather the result of applying judgement to weigh many different factors.” It should be no surprise if, in the end, the results did not satisfy anyone completely.

Fourteen more days were set aside for hearings for the remaining school jurisdictions in July and August. The Association warned its local committees that there might well be a flurry of activity in July as boards decided to negotiate rather than arbitrate. Of course, if boards really had to have a hearing and have a settlement imposed on them, the tribunal would oblige, but they could be in no doubt as to the outcome of that adventure. Nonetheless, some had to try. In the end, only two more had to have their day in court. The rest managed to settle without the assistance of the tribunal.

Winners and Losers

Of course, the pundits had a field day. If editorialists and columnists reflect public perception, then there is no doubt about who was seen to have prevailed in the conflict. *Edmonton Sun* columnist Neil Waugh, in addition to his usual antiemployee rant, spewed his most dripping sarcasm on the Tories. His interpretation of the three reasons for the arbitrated increases made it clear he

¹⁶⁴ Government of Alberta, “First six arbitrated settlements issued in teachers’ salary disputes,” news release, June 27, 2002.

¹⁶⁵ Alberta Teachers’ Association, “Teachers accept arbitration ruling,” news release, June 27, 2002.

was less than enchanted with the government's performance:

The government spin doctors make it painfully obvious that it was a case of reaping what you've sown. ...

Health Minister Gary Mar's decision to roll over and play dead by giving nurses and doctors wage and fee increases over 20% in the build-up to the 2001 election was the fiscally irresponsible act that got the ball rolling. ...

As it turns out, a very unfortunate statement made by Premier Ralph—promising to reward teachers for their sacrifices ... also played into the arbitrators' hand.

And so did Klein and Oberg's insistence that the 4% and 2% hikes in the budget were only a starting point.¹⁶⁶

The *Calgary Herald* sounded a more measured tone but arrived at the same conclusion: "While Larry Booi is wise not to gloat, there's no question who won this mismatched chess game. The settlement, which affects six districts including the Calgary Board of Education, is a clear win for teachers and the Alberta Teachers' Association."¹⁶⁷

In the End

It is tempting, but hazardous, to tally up wins and losses in an event such as this, an episode that is but part of the continuum of teachers' lives in Alberta. Teachers achieved a salary increase similar to those of others in the public sector, becoming among the highest paid teachers in Canada. The learning commission held the promise of addressing conditions of practice, but in the meantime, conditions, if anything, got worse, and the loss of some of the conditions of practice clauses might be long term. Improvements to conditions of practice would have to wait, but at least no one could say he remained unaware of the issues. The issue of the unfunded liability of teachers' pension plan made it to the table. The pension door had opened a crack, and the process for government assumption of that liability began. The value of the voluntary commitments made by teachers was made apparent provincewide and in the halls of the Department of Learning. Elimination of step 0 in some salary grids marked a start on the impediments to recruiting and retaining young teachers. School boards had lost a bit more of their autonomy; whether that was permanent remained to be seen. Funding, for the moment at least, remained unchanged. But in the end what mattered most was that 20,000 teachers stood up for what they believed. Perhaps that was enough.

¹⁶⁶ N Waugh, "Just like old times," *Edmonton Sun*, June 30, 2002.

¹⁶⁷ "Costly lesson," editorial, *Calgary Herald*, July 1, 2002.

TEACHERS ON THE MARCH: THE 2002 STRIKE

ISBN 978-1-927074-18-3
COOR-95 2014 08