



Office of the Auditor General of Ontario

Government Payments to Education-Sector Unions



Special Report
May 2016



Office of the Auditor General of Ontario

To the Honourable Speaker
of the Legislative Assembly

I am pleased to transmit my Special Report on
Government Payments to Education-Sector
Unions, as requested by the Standing Committee
on Public Accounts under Section 17 of the
Auditor General Act.

A handwritten signature in black ink, reading "Bonnie Lysyk". The signature is written in a cursive style.

Bonnie Lysyk
Auditor General

May 2016

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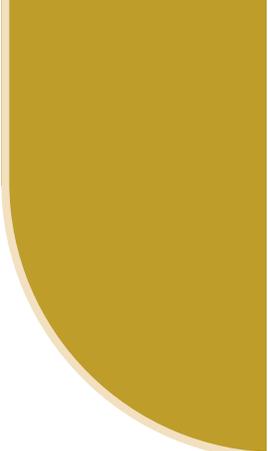


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Government Payments to Education-Sector Unions

1.0 Reflections

On November 4th, 2015, the Standing Committee on Public Accounts passed a motion for my Office to review the bargaining costs paid to education-sector unions since 2008 and a number of related issues. We commenced our review shortly thereafter.

Section 4.0 provides a summary of our findings. In **Section 4.0, Figure 2**, we detail our responses to 13 important questions we used to guide us during our work.

Aside from these 13 questions and responses, I reflected on whether the Ministry of Education's (Ministry) commitments/payments of \$3.796 million to several education-sector unions to advance negotiations is an appropriate use of taxpayer funds, given that union members' dues typically are used to cover bargaining costs.

On the one hand, some may say that when each bargaining party must cover its own bargaining costs, each party likely has more incentive to work as efficiently as possible to reach an agreement. As well, a taxpayer's initial reaction might well be, "Why should my taxpayer dollars be given to the unions as opposed to being spent on services that Ontarians need?" On the other hand, some

may say that the decision was pragmatic, in that the Ministry committed to pay what could be considered a relatively low amount to facilitate its ultimate objective of reaching agreement on central-bargaining issues. If the Ministry's provision of this funding communicated to the unions receiving it that the Ministry recognized the additional unique costs of the evolving two-tier bargaining process, and if this helped in reaching quicker or more cost-effective resolution of issues, money may have been well spent on the taxpayers' behalf. Obviously, we can't know whether or not the same central agreements would have been reached in the same time frame if the Ministry had not made the commitments/payments to the unions.

We found very little evidence of governments paying education-sector unions for significant bargaining costs elsewhere in Canada. Accordingly, Ontario is an outlier with respect to this use of taxpayer funds. We also found no evidence of the Ontario government paying other large public-sector unions for bargaining costs in Ontario.

We further noted with interest that this was not the first time that the Ministry has made payments directly to education-sector unions. In fact, since 2000, the Ministry has made payments totalling about \$80.5 million, consisting of \$45.7 million to education-sector unions in Ontario and another \$34.8 million to the Ontario Teachers' Federation

(an organization governed by the province’s four teachers’ unions that advocates for the teaching profession and publicly funded education, but is not involved in collective bargaining). An additional \$6.8 million was given to school boards to then provide to a teachers’ union. The majority of funding was to be used for unions to provide teacher professional development. Within the \$80.5 million, \$22 million was provided with “no strings attached”—\$15.1 million to four teachers’ unions and \$6.9 million to the Ontario Teachers’ Federation. However, the Ministry has little information as to what these funds were actually used for. One might reasonably ask why such funds were not provided to various school boards throughout the province for their own locally determined professional development needs.

Other than \$16 million in funding provided within the last five years to the Ontario Medical Association, we found that significant payments to unions by other Ontario ministries for professional development are rare. Based on our research, we identified only three other provinces where more than \$1 million has been paid to unions for teacher professional development over the last five years (no province paid more than \$2 million in total).

A large portion of our work depended on the co-operation we received from education-sector unions and school board trustees’ associations in Ontario, as the *Auditor General Act* does not provide us with legislated full access to their financial and operational information. I would like to thank them for meeting with us and sharing their experiences and views on the collective bargaining process over the last 12 years.



Bonnie Lysyk
Auditor General of Ontario

2.0 Background

This section briefly describes the process and participants in the 2014/15 round of education-sector collective bargaining. Additional background information, including the structure of Ontario’s education system and how collective bargaining has evolved in Ontario’s education sector, is provided in **Section 7.0 Appendix: Additional Background Information**.

The 2014/15 round of education-sector central bargaining occurred between April 25, 2014, and December 8, 2015. The process was guided by the requirements of the *School Boards Collective Bargaining Act, 2014*. It involved team set-up, negotiation and ratification between the Crown, central employer bargaining agencies, and central employee bargaining agencies, as shown in **Figure 1**. The following sections fill in the details of this process.

2.1 Team Set-Up

In team set-up, bargaining teams for the management side of negotiations were formed. The teams were made up of the Crown, which was represented by Ministry of Education (Ministry) staff and the Chief of Staff to the Minister of Education, and central employer bargaining agencies, which were school board trustees’ associations representing school boards. There were four central employer bargaining agencies, as well as Councils of Trustees’ Associations designated by regulation, shown in **Figure 1** under these acronyms:

- OPSBA—the Ontario Public School Boards’ Association, representing the 31 English-language public boards and 10 school authorities;
- OCSTA—the Ontario Catholic School Trustees’ Association, representing the 29 English-language Catholic boards;
- AFOCSC—l’Association franco-ontarienne des conseils scolaires catholiques, representing the eight French-language Catholic boards;

Figure 1: The Central Bargaining Process in 2014/15 Negotiations

Source of data: Ministry of Education

- Government/central employer bargaining agent
- Government agreement
- Central employee bargaining agent

TEAM SET-UP

Crown and central employer bargaining agents form co-management bargaining teams, develop strategy

*** NEGOTIATION**

Crown/OPSBA & EFTO	Crown/OPSBA & OSSTF	Crown/OCSTA & OECTA	Crown/AFOCSC/ ACEPO & AEFO	Crown/CTA & CUPE	Crown/CTA & OSSTF-EW, EFTO-EW, EWAQ, OCEW
Central Tentative Agreement	Central Tentative Agreement	Central Tentative Agreement	Central Tentative Agreement	Central Tentative Agreement	4 Central Tentative Agreements

RATIFICATION

EFTO ratifies by majority vote	OSSTF ratifies by majority vote	OECTA ratifies by majority vote	AEFO ratifies by majority vote	CUPE ratifies by majority vote	Union(s) ratifies by majority vote
OPSBA ratifies by majority vote	OPSBA ratifies by majority vote	OCSTA ratifies by majority vote	AFOCSC ratifies by majority vote	CTA ratifies by majority vote	CTA ratifies by majority vote
TB/MBC agrees	TB/MBC agrees	TB/MBC agrees	TB/MBC agrees	TB/MBC agrees	TB/MBC agrees
Central EFTO Agreement	Central OSSTF Agreement	Central OECTA Agreement	Central AEFO Agreement	Central CUPE Agreement	4 Central other union Agreements

* If negotiation fails to lead to an agreement, parties might proceed to strike or lock-out.

- ACEPO—l'Association des conseils scolaires des écoles publiques de l'Ontario, representing the four French-language public boards; and
- CTAs—Councils of Trustees' Associations, partnerships representing different combinations of the four trustees' associations.

2.2 Negotiation

In negotiation, the Crown/central employer bargaining agencies negotiated with central employee bargaining agencies to reach central tentative agreements. There were nine central employee bargaining agencies. Four were teachers' unions that under the *School Boards Collective Bargaining Act, 2014* must engage in central bargaining. Five were unions/union partnerships representing other education professionals and support staff, which the *School Boards Collective Bargaining Act, 2014* does not require to participate in central bargaining but which chose to do so and as a result were designated under regulations to the Act (other education professionals and support staff include psychologists, speech therapists, early childhood educators, and office and maintenance staff). These employee bargaining agencies are shown in **Figure 1** under these acronyms:

- ETFO—the Elementary Teachers' Federation of Ontario, representing 83,000 elementary school teachers in English-language public schools;
- OSSTF—the Ontario Secondary School Teachers' Federation, representing 66,000 secondary school teachers in English-language public schools;
- OECTA—the Ontario English Catholic Teachers' Association, representing 49,000 elementary and secondary school teachers in English-language Catholic schools;
- AEFO—l'Association des enseignantes et des enseignants franco-ontariens, representing 10,000 elementary and secondary school teachers in French-language public and Catholic schools;
- CUPE—the Canadian Union of Public Employees, representing 58,000 other education-sector professionals and support staff; and
- four other unions (OSSTF-EW—OSSTF Education Workers, ETFO-EW—ETFO Education Workers, EWAO—the Education Workers' Alliance of Ontario and OCEW—the Ontario Council of Education Workers), representing the remaining 13,000 other education-sector professionals and support staff.

Under the Act, the bargaining parties must agree on which matters should be negotiated centrally. For the 2014/15 round, these included matters such as teachers' salaries, benefits, paid leaves, sick days and hours of work. The matters for local bargaining included work scheduling, attendance management and disciplinary processes. Certain other matters are set in regulation by the government. These include the school year, school holidays, class size, and teaching and non-teaching time.

The outcome of central negotiations was a central tentative agreement for each of the nine central employee bargaining agencies that then had to be ratified.

2.3 Ratification

In ratification, the central employee bargaining agencies returned to their union members throughout the province to vote on the central tentative agreement. Similarly, the central employer bargaining agencies returned to the school boards they represent, with votes weighted to reasonably reflect the size of the bargaining units at each school board.

All central agreements were ratified before the end of fall 2015. This required both groups to vote yes to their central tentative agreements by a majority, and the government (represented in **Figure 1** as "TB/MBC"—Treasury Board/Management Board of Cabinet) to also agree.

2.4 Local Bargaining

Once the central bargaining agencies determined the issues they would negotiate centrally, individual school boards and the local bargaining units of the unions were able to begin collectively bargaining the terms of the remaining locally negotiable matters.

After a final local collective agreement is ratified, it combines with the applicable ratified central agreement to form a full collective agreement.

As of May 2, 2016, 339 of the total 473 local collective agreements had been settled, leaving 134 local agreements still in negotiations.

3.0 Audit Objective and Scope

In October 2015, the media reported that during central agreement negotiations, the Ministry committed to pay three education-sector unions a total of \$2.5 million to offset their bargaining costs (\$1 million to the Ontario Secondary School Teachers' Federation (OSSTF), \$1 million to the Ontario English Catholic Teachers' Federation (OECTA) and \$500,000 to l'Association des enseignantes et des enseignants franco-ontariens (AEFO—the union representing French-language teachers)).

Section 17 of the *Auditor General Act* states that the Standing Committee on Public Accounts can request that the Auditor General perform special assignments. On November 4, 2015, two weeks after the first media reports appeared, the Standing Committee on Public Accounts (Committee) passed the following motion:

That the Auditor General review the monies paid to bargaining units since 2008 related to negotiations with bargaining representing school board employees that fall under the Ministry of Education's mandate, with specific analysis of the \$2.5 million the government spent this year.

This report should include, but not be limited to, a focus on the following issues:

- (1) Where did the money come from in the ministry or government's budget?
- (2) What are/were the payments to the bargaining units intended to fund?
- (3) Is paying the bargaining units for negotiations a practice used in other jurisdictions?

In addition to these questions from the Committee, our preliminary work led us to seek answers to 10 additional questions. We therefore structured our audit around the 13 questions listed and answered in **Section 4.0, Figure 2**.

To answer these questions, we met with lead negotiators from various education-sector unions and trustees' associations; conducted research; reviewed applicable labour legislation and obtained a legal opinion on whether the Ministry's payments to unions to cover bargaining costs were in violation of the Ontario *Labour Relations Act, 1995*; had discussions with the Ministry of Labour; interviewed staff at the Ministry of Education; interviewed school-board local-level employer negotiators; looked at practices in other ministries and provincial jurisdictions; reviewed relevant documents (including financial records and central agreements); tested a sample of the 2014/15 bargaining expenses submitted by the OSSTF; confirmed receipt of the audited expense statement submitted by the AEFO (provided to us May 6, 2016); and reviewed the involvement of school board trustees' associations and the payments they received.

We did not review school board expenditures to determine whether school boards made payments directly to unions.

We conducted the majority of our fieldwork between December 2015 and April 2016.

Scope Limitation

Under the *Auditor General Act*, we do not legally have unfettered access to all the financial and

operational records of education-sector teachers' unions. Our ability to complete this review was therefore dependent on the unions' voluntary provision of this information. We appreciate their co-operation in meeting with us; however, insofar as we could not legally access financial and operational information that might have provided us with additional information, the scope of our work was limited.

4.0 Summary

The following are some of the highlights of what we note in our report:

- It is understandable that concerns were raised in principle about the Ministry's 2014/15 commitments/payments to unions for bargaining costs, made public in fall 2015. These arrangements initially lacked accountability and the controls usually associated with government funding. After the initial commitments were made and the media and members of the Legislature heavily criticized the Ministry about them, the Ministry, in a letter dated November 12, 2015, requested that the three unions provide support for the costs to be claimed in order to receive payment.
- The Ministry's rationale for making these commitments to reimburse the unions for bargaining costs was that it would advance negotiations. Two teachers' unions told us that negotiations may have stalled without the agreement to pay bargaining costs. The Ministry also recognized that the 2014/15 round of bargaining was longer than in previous years and likely contributed to additional costs for all parties involved.
- The total bargaining costs committed/paid up to March 31, 2016, to unions from the 2008/09, 2012 and 2014/15 central-bargaining rounds was \$3.796 million.
- Across Canada, we found very little evidence of governments paying education-sector unions for bargaining costs. As well, no payments were made by the Ontario government to other large public-sector unions for bargaining costs.
- Under both the *Education Act* and the *School Boards Collective Bargaining Act, 2014*, the Ministry of Education is not defined as the legal employer of school board employees (rather, school boards are defined as employers). As such, the Ministry is also not subject to the *Labour Relations Act, 1995* for collective bargaining. The *Labour Relations Act, 1995* has been interpreted to potentially prohibit payments to a union by an employer or employers' organization, or a person acting on behalf of an employer or an employers' organization, if the payments undermine the independence of the union for the purposes of the Act. Even if the Ministry was defined as the employer and was subject to the *Labour Relations Act, 1995*, given the amount of bargaining costs committed/paid, it is unlikely that the commitment/payments would legally be viewed as undermining the independence of the unions.
- Although central bargaining was initiated by the Ministry beginning in 2004, no policy or legislated framework was put in place until April 2014. Therefore, from 2004 until that point in time, participation in two-tier bargaining by unions, school boards and school board trustees' association in Ontario was voluntary. In order to attract participants to the bargaining table, the Ministry set the precedent for reimbursing bargaining costs. This may very well have created an expectation that continued reimbursement of bargaining costs would be possible in the future.
- From 2000/01 to 2015/16, the Ministry made other payments, totalling \$80.5 million, to education-sector unions in Ontario and the Ontario Teachers' Federation (the Ontario Teachers' Federation, which is governed by

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

- School board trustees' associations also received about \$14.7 million of funding between 2008/09 and 2014/15 for central bargaining (where over \$11 million was for the 2014/15 round as of March 31, 2016) in order to build their capacity and participate in central-bargaining negotiations. The *School Boards Collective Bargaining Act, 2014* signifi-

cantly expanded the associations' mandate to join with the Ministry in co-managing the employer side of bargaining. The Ministry needs to improve the transparency and accountability of this funding by providing funding directly to school board trustees' associations versus transferring it through school boards. Providing the funding to associations through the school boards exempts the payments from being clearly disclosed in Volume 3 of the Public Accounts of Ontario as funding to the associations and exempts associations from the requirements of the *Public Sector Salary Disclosure Act, 1996*.

Performing the work requested by the Standing Committee on Public Accounts required us to gain an understanding of the circumstances around the commitment and actual payment of bargaining costs and other funds to education-sector unions in Ontario. **Figure 2** provides responses to the 13 questions we sought answers to during the audit. The question numbers indicate the sections of the report where we provide more detailed information.

Figure 2: Summary of Audit Findings

Prepared by the Office of the Auditor General of Ontario

5.1 What are/were the payments to the bargaining unions intended to fund?

- The payments to advance negotiations were to offset expenses that were a direct result of central bargaining. The funding therefore reimbursed/will reimburse* expenses such as staffing, operating costs, professional services, legal services, travel, accommodation and meals.
- In 2014/15, the ETFO did not ask for the reimbursement of bargaining costs but instead negotiated \$600,000 to provide professional development for occasional teachers.

5.2 What was the unions' rationale for negotiating the payments for their 2014/15 bargaining costs?

- The OSSTF, the OECTA and the AEFO told us that they requested payments because the central-bargaining process was challenging, frustrating and inefficient. They further told us that, as a result, the costs they incurred under central bargaining were higher than what they normally incurred under a single-tiered bargaining system. All three unions indicated that their costs incurred for this round exceeded the amounts of the payments they negotiated. The AEFO and the OSSTF submitted audited expense statements confirming this. The OECTA had not yet submitted its expense statement as of April 30, 2016, because it had not yet ratified all of its local collective agreements.

5.3 What was the Ministry/Crown's rationale for agreeing to pay union bargaining costs for 2014/15?

- The Ministry/Crown thought agreeing to pay the bargaining costs was needed to advance and/or finalize negotiations. It indicated that it agreed to certain unions' request for reimbursement of their bargaining costs because the central-bargaining process imposed new, sizable costs on the unions. It took over 19 months to complete the central-bargaining process. For the first time, three parties (the Ministry/Crown, trustees' associations and unions) had to agree on which matters to bargain centrally, and then agree on those matters in nine separate central agreements.

* When we completed our audit, only one union, the OSSTF, had met the requirements for reimbursement and received the payment. The other two unions, the OECTA and the AEFO, have to ratify all of their local collective agreements before they meet entitlement conditions.

5.4 Was there a policy framework or legislation in place for central bargaining prior to the *School Board Collective Bargaining Act, 2014*?

- No. The Province introduced central bargaining in 2004 by holding informal discussions with local bargaining parties, and requesting that those parties incorporate provincial funding and staffing policies into their local collective agreements.
- In 2008/09, the Ministry set up a more formal, voluntary central-bargaining process, still without a legislative framework. The Ministry required that the terms of the central bargaining reached be incorporated into all local collective agreements.
- In 2012, central bargaining was again voluntary, and only the AEFO and the OECTA stayed to the end of the process. The government enacted the *Putting Students First Act, 2012* to force all local bargaining parties to abide by the central settlements. Five unions took the Ministry to court over the imposition of this legislation. In April 2016, the Ontario Superior Court of Justice found that this legislation was unconstitutional and that 2012 central bargaining was fundamentally flawed, limiting the ability of bargaining parties to participate meaningfully.
- Overall, it took about 10 years (from 2004 to 2014) for the Ministry to put in place a policy framework with the legal authority for central bargaining.

5.5 Did the 2014/15 payment commitment and reimbursement process include normal accountability and control provisions?

- Not initially. The Ministry/Crown told CUPE in January 2015 that it “is not paying any of the costs that have been or will be incurred by any of the unions during bargaining.” It then later negotiated separate agreements with the OSSTF in August 2015 (to pay \$1 million), the OECTA in August 2015 (to pay \$1 million) and the AEFO in September 2015 (to pay \$500,000). There were initially no accountability provisions (i.e., the unions would not have to provide receipts or expense statements to receive the money). In a letter dated November 12, 2015, a week after the Standing Committee on Public Accounts passed the motion on November 4, 2015, requesting us to perform this audit, the Ministry/Crown informed the unions that they would have to provide an expense report signed off by an authorized union representative and audited by an independent accounting firm. The unions were allowed to use their own rates and allowances for claiming travel, meals and hospitality, which in the case of meals were double the rates used by the Ontario Public Service.

5.6 What was the process followed to reimburse unions’ bargaining costs before 2014/15?

- **2008/09:** The Ministry told the five participating education-sector unions beforehand that it would cover their expenses for participating in central bargaining. Three of those five unions (the OSSTF, the AEFO and CUPE) accepted the Ministry’s offer of reimbursement (the OECTA and the ETFO declined). They filed anticipated expenses, and the Ministry set a maximum amount of reimbursement based on them. The Ministry and each union signed a transfer-payment agreement that laid out the maximum reimbursement amount, the types of eligible expenses, and the requirement that the union submit monthly expense statements signed off by the CEO and CFO. However, there was no independent verification of the expenses or requirement to submit itemized receipts for ministry review.
- **2012:** The Ministry told the unions beforehand it could provide limited financial assistance to support their participation in central bargaining. Eighteen of the 20 participating unions (the AEFO, CUPE, the OSSTF and 15 small unions for other education professionals and support workers) accepted the offer of financial assistance (the ETFO and the OECTA again declined). The Ministry and each union signed a transfer-payment agreement that laid out the maximum reimbursement amount, the types of eligible expenses, and the requirement that each union submit monthly expense statements signed off by the CEO and CFO attesting that the expenses are eligible for reimbursement. When bargaining was over, the larger unions’ expense statements far exceeded the maximum amounts. The Ministry amended the transfer-payment agreements, increasing the maximum reimbursement amount, setting meal allowances and hospitality rates, and adding the requirement that the unions submit itemized receipts for all expenses for ministry review.

5.7 Where did the money come from in the Ministry or government's budget?

- **2014/15:** The money came from the Ministry's 2014/15 Estimates–Vote 1002 (Elementary and Secondary School Education Program), Item 1 (Policy and Program Delivery). There was spending room within this Vote and Item to cover these unplanned-for payment commitments, so additional spending room did not have to be created (either through tabling of supplementary estimates or through a Treasury Board Order to reallocate spending authority from one Vote and Item to another). The spending room allowed the Ministry/Crown to pay \$1 million to the OSSTF in March 2016. The \$1 million committed to the OECTA had not yet been paid because the OECTA's central agreement states that the OECTA has to ratify all of its local collective agreements before it is entitled to submit its claim (it had only ratified about 81% at the time of our audit). The \$500,000 commitment to the AEFO comes from unused money from previous funding provided to the AEFO through school boards that the Ministry is now allowing the AEFO to keep. Specifically, the AEFO negotiated in 2009 to receive \$1,000 in grant money per teacher that teachers could apply to use for professional development. Unused money was to be remitted to school boards in 2014 (still to be used for professional development, as per the central agreement). The AEFO had not yet remitted the unused money when it was negotiating its central agreement and will be able to keep \$500,000 of the unused funds as bargaining-cost reimbursement.
- **2012 and 2008/09:** Also the Elementary and Secondary School Education Program, again due to underspending. We noted a pattern of underspending at the Ministry going back to at least the 2006/07 fiscal year. According to the Public Accounts of Ontario, annual underspending of the operating budget for the Elementary and Secondary School Education Program in this period has ranged from a low of \$16.5 million in 2009/10 to a high of \$171 million in 2006/07.

5.8 What are the public perception concerns about the Ministry/Crown paying unions for bargaining costs?

- The Ministry/Crown's payments to the unions can be perceived as compromising the Ministry/Crown's own interests—the more money the unions have for bargaining, the longer they can negotiate.
- Union members may perceive that their best interests may be compromised when union leaders, negotiating on their behalf, receive payment from the management side of bargaining.
- Also, the public may perceive that the payments put the unions in the Ministry/Crown's debt, encouraging them to support the government's political interests through financial contributions and/or advertising. According to the Office of the Chief Electoral Officer, education-sector unions have increased their spending on political advertising during election campaigns since 2007. However, given that government funding is only one source of union revenue and given that we do not have access to all of the unions' financial and non-financial information, we could neither confirm nor disprove whether government funding enabled political advertising.

5.9 Does the Ministry/Crown's payment of union bargaining costs violate the *Ontario Labour Relations Act, 1995*?

- The *Labour Relations Act, 1995*, Section 70, potentially prohibits employers or representatives of employers from providing financial support to unions if it undermines their independence for the purposes of the Act. We sought a legal opinion on whether the Ministry might be considered an employer or a representative of the employer for the purposes of the *Labour Relations Act, 1995*, given the fact that, in the 2014/15 negotiations, the Ministry co-managed central bargaining teams with employer bargaining agents, had to approve the terms in the Central Agreements ratified by the unions and trustees' associations, and is the primary funder of the school boards that employ teachers. We were informed that the Ministry is not the legal employer of teachers and therefore is not prohibited from providing payments to education-sector unions. Regardless, it would appear unlikely that the bargaining costs the Ministry paid were of an amount large enough to potentially undermine the independence of unions and therefore potentially violate Section 70 of the *Labour Relations Act, 1995*.

5.10 Does the Ontario government pay significant funds to other public-sector unions for bargaining costs?

- No. None of the four public-sector unions we consulted outside of the education sector (the Association of Management, Administrative and Professional Crown Employees of Ontario; the Ontario Medical Association; the Ontario Provincial Police; and the Ontario Public Service Employees Union) had received payments from the Ontario government for bargaining costs.

5.11 Is paying the bargaining unions for negotiations a practice used in other provincial jurisdictions?

- Mostly no. We contacted all other provinces in this regard. Only British Columbia paid a non-teacher education-sector union to bring local representatives to central-bargaining discussions (\$100,000 in 2012, \$100,000 in 2014 and \$200,000 allocated for 2016).

5.12 Since 2000, has the Ministry provided any other kinds of payments to education-sector unions beyond reimbursement of bargaining costs?

- Yes. The Ministry paid unions and the Ontario Teachers' Federation a total of \$80.5 million between 2000 and 2015 for purposes other than reimbursement of bargaining costs. About \$22 million of this amount was provided as an unconditional grant in 2006 to "assist [the union/Federation] in continuing to serve the people of Ontario....with the hope that this funding will enable [the union/Federation] to enhance opportunities for [teachers'] continuing professional growth." The other monies in our sample (of 84% of the remaining \$58.5 million) were provided for professional development, a benefits plan, research and student initiatives.
- In 2008/09, the Ministry also flowed \$6.8 million in funding to school boards to provide to the AEF0 to use for teacher professional development. This \$6.8 million is outside of the \$80.5 million in direct payments from the Ministry to unions.
- Based on our research, other provinces' education ministries appear to follow different practices in this area. We identified three provinces where more than \$1 million has been paid to unions for teacher professional development from 2010/11 to 2014/15. Nova Scotia has been providing about \$200,000 annually to unions for professional development. Saskatchewan provided a total of about \$1.5 million to unions in the last five years to evaluate resource material for teachers' use. Alberta provided \$1.3 million over the last five years for professional development. The remaining provinces either did not pay for professional development at all or did not pay an amount in excess of \$1 million from 2010/11 to 2014/15.
- We found one instance where another Ontario ministry paid another public-sector union for professional development outside of what was negotiated in collective agreements (the Ministry of Health and Long-Term Care paid the Ontario Medical Association a total of \$16 million for continuing medical education for physicians).

5.13 Did the Ministry provide funds to school board trustees' associations with accountability provisions to support central-bargaining negotiations?

- For 2014/15, school board trustees' associations received funding of about \$11.1 million for central bargaining. They received this funding from two sources: directly from the Ministry under four different transfer-payment agreements (about \$6.5 million); and indirectly from the Ministry under the general Grants for Student Needs that the Ministry provides to school boards for student needs (about \$4.6 million).
- The transfer-payment agreements stated the payments were to fund the building of the associations' internal capacity to better participate in central bargaining and support the associations as the statutory employer bargaining agencies in central bargaining. The funding covers expenses such as personnel, operations, professional services, consultations, professional development and travel.
- The transfer-payment agreements had accountability provisions, requiring the associations to provide a schedule of audited expense statements. However, the funding that associations have received and will continue to receive in future from the general grant to school boards does not require associations to report back to the Ministry on how the money is spent.
- Having future funding to the associations provided through school boards results in the associations not having to disclose the salaries of their employees who may otherwise be subject to the *Public Sector Salary Disclosure Act, 1996*. Also, the amount of funds the associations receive directly/indirectly for central bargaining from the government is not transparent in the Public Accounts of Ontario when the funding is flowed through school boards.

OVERALL MINISTRY RESPONSE

The Ministry appreciates the work and advice resulting from the Auditor General's comprehensive audit requested by the Standing Committee on Public Accounts.

The Ministry's relationship with both unions and trustees' associations/school boards is founded on the shared goals of student achievement and well-being. The *School Boards Collective Bargaining Act, 2014* (Act) was a result of extensive consultations with our bargaining

partners, the teachers' federations, education worker unions and school board trustees' associations. As the Auditor's report articulates, the legislation was also a significant step in the evolution of education-sector collective bargaining in Ontario toward a formal, two-tier framework with clear roles for all parties involved. In December 2015, the first round of central bargaining under the Act was completed upon reaching nine central agreements. This historic outcome was a result of all the parties'

collaboration, hard work and respect for the collective-bargaining process.

The audit report articulates that the Ministry had accountability arrangements in prior rounds of provincial-level bargaining with unions and trustees' associations to cover bargaining expenses. While the 2014–17 central agreements did not explicitly specify the accountability mechanisms for funding for bargaining expenses, the Crown would still require, as in the past, to put in place appropriate accountability mechanisms for all the funding in the central agreements. These mechanisms would include: transfer-payment agreements; proposed amendments to regulations (for example, the Grants for Student Needs); or attestations.

The Ministry has reviewed and will continue to review its accountability arrangements, like transfer-payment agreements, used to fund entities including school boards, unions and trustees' associations, such that they meet the appropriate accountability measures in line with the government's Transfer Payment Accountability Directive.

A key theme of the audit is transparency of ministry payments to both our employee and employer bargaining partners. Outside of bargaining, the unions and the trustees' associations are key partners in delivering quality programs to students. The Ministry funds professional learning and training to support educators at all levels of the system to improve professional practice and outcomes for all students. In order to meet the needs of the system and ensure continuous improvement, the Ministry invests in a diverse array of delivery methods. The Ministry funds professional development through school boards, third parties and unions, as well as funding it directly.

The Ministry has provided reports relating to all of the professional-development-related payments to unions requested by the Auditor General, including those provided in 2006/07. With respect to the report's recommendation

about assessing how professional development can “best be delivered,” the Ministry is already assessing the expertise in the sector.

The Ministry has been clear and transparent since 2013 about its intent to conduct a review of the *School Boards Collective Bargaining Act, 2014*. In March 2016, after central bargaining concluded, the Ministry engaged a facilitator to begin the review with our bargaining partners. This work is currently under way, and the Ministry is committed to a central-bargaining framework that works for all education stakeholders.

5.0 Detailed Audit Observations

5.1 The 2014/15 Payments to the Bargaining Unions Were Provided to Reimburse Expenses

According to the central agreements with the AEFO, the OECTA and the OSSTF, the negotiated payments of \$2.5 million were to offset expenses that were a direct result of central bargaining. A November 12, 2015, letter to these unions from the Ministry specified that the following expenses were reimbursable:

- staffing costs for bargaining preparation, meetings with members and engagement with union locals for purposes of the central collective bargaining process (including ratification) and the actual conducting of central bargaining;
- operating expenses such as office space, office supplies, telephones, printing and courier services, and renting space for meeting rooms;
- professional services needed for central bargaining, such as actuarial services, consultants and audit services;
- legal services; and
- travel, accommodation and meals.

Three of the four teachers' unions negotiated for the reimbursement of these costs. The fourth, the ETFO, did not ask for these costs to be reimbursed. Instead, it was able to negotiate \$600,000 worth of professional development for occasional teachers.

The sequence of events was as follows:

- *April 2014*—The latest round of central collective bargaining begins. This is the first-ever round of mandatory central bargaining under the *School Boards Collective Bargaining Act, 2014*.
- *November 2014*—CUPE sends a letter to the Premier requesting that the Ministry cover its negotiating costs. As well, the AEFO verbally asks the Ministry if bargaining costs will be covered, and the Ministry is non-committal.
- *January 2015*—The Minister of Education responds to CUPE's request by letter, stating that "the ministry is not paying any of the costs that have been or will be incurred by any of the unions during bargaining."
- *May 2015*—In the course of its central bargaining, the OSSTF asks the Ministry for \$1 million to cover its bargaining costs. The Ministry agrees to this amount in order to advance the negotiations (according to our discussions with the OSSTF, the negotiations may have stalled without the agreement to pay bargaining costs at this time). The Ministry does not inform the other unions about this due to the confidential nature of the bargaining process and does not make this commitment to anyone else.
- *August 20, 2015*—The OSSTF, the Ministry and the OPSBA are close to reaching a central tentative agreement. Given the Ministry's May 2015 promise, the OSSTF ensures that the \$1-million commitment to offset its bargaining costs is included in the central tentative agreement. Specifically, the Crown states that it will pay the OSSTF \$1 million within 90 days of ratification of the central agreement.
- *Shortly after*—The other unions find out about the Ministry's agreement to offset the OSSTF's bargaining costs, and the AEFO, CUPE and the OECTA request similar payments.
- *August 25, 2015*—The Ministry agrees to include a \$1-million payment to offset bargaining costs in the central tentative agreement with the OECTA. Specifically, the Crown states that it will pay the OECTA \$1 million within 90 days of the ratification of the final OECTA local collective agreements (of which there are 75).
- *September 16, 2015*—The Ministry agrees to include a \$500,000 payment to offset bargaining costs in the central tentative agreement with the AEFO. The AEFO told us that negotiations may have stalled if this agreement had not been made at this time. Specifically, the Crown states that it will pay the AEFO \$500,000 within 90 days of the ratification of all AEFO local collective agreements (of which there are 29).
- *October 21, 2015*—The first of a number of media stories are published reporting the \$2.5 million in promised payments for bargaining costs. The Ministry is criticized in the press and in the Legislature over this, and decides to not pay any bargaining costs to CUPE and the other unions for other education professionals and support staff, none of which have yet reached a central tentative agreement.
- *November 2, 2015*—The last of the four teachers' unions, the ETFO, reaches a central tentative agreement. The ETFO does not request, and states that it does not want, any payment to cover negotiation costs. Instead, it requests funding to support professional development for occasional teachers. The central tentative agreement includes \$600,000 for this purpose.

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

Union leaders told us they were challenged by the complexity of the 2014/15 central-bargaining process and frustrated with the delays and time wasted because of its inefficiency.

A new challenge of the 2014/15 process was the requirement that, at each table, all three parties—the government, the trustees' associations and the unions—had to agree on what issues would be centrally bargained. Then, the parties had to bargain those issues. In the 2008/09 and 2012 bargaining rounds, although the Ministry consulted with unions and school board trustees' associations, it made the final decision on which matters would be dealt with centrally. In 2014/15, because the three parties could not always agree on what the central issues should be, they went to the Ontario Labour Relations Board, which made the decisions to resolve the disputes. It therefore took from September 2014 to January 2015 to determine the issues to be centrally bargained with teachers' unions and to June 2015 for the issues with CUPE.

Many more issues were covered in central bargaining in 2014/15 compared to the previous rounds. In 2008/09 and 2012, the primary central-bargaining discussions were limited to financial matters (for example, compensation and sick leave). In 2014/15, a full range of matters that were beyond direct finances but that could have a financial impact—including performance management, hiring practices and leave provisions—now had to be agreed on centrally instead of locally.

Because some formerly local issues now became central issues, lead union negotiators had to bring in union members from local bargaining units to serve as a caucus to ensure their buy-in. Otherwise, the ratification of the central tentative agreements would be at risk, since a majority of union members have to vote yes to these agreements. This added to the time and expense of negotiations.

Most union leaders told us that, given these challenges that extended the process, it was frustrating when the process was further prolonged by inefficiency. As **Figure 1** shows, central bargaining took place with nine different groups simultaneously. They also told us that union representatives were often called to appear at a downtown hotel at the same time, even though they were not negotiating together. Also, the Ministry and trustees' association teams worked to ensure that tables progressed on shared issues at roughly the same pace. This sometimes put negotiations on hold at some tables while other tables caught up. As a result, most union participants told us they had to wait around and incur costs that they felt they should not have to cover. The OECTA told us that this was why it requested the \$1-million commitment for bargaining costs in 2014/15 while declining the Ministry's offer to reimburse its bargaining costs in 2012 and 2008/09. (The other two unions receiving bargaining-cost reimbursement in 2014/15, the AEFO and the OSSTF, also accepted reimbursement of bargaining costs in 2012 and 2008/09.)

All three unions told us that their central-bargaining costs were higher than what they used to incur when they bargained only locally. We could not confirm this because we do not have access to unions' current or historical financial/operational information. All three unions also said that their costs exceeded the amount of the payments they negotiated. We were able to confirm this for the OSSTF and the AEFO, by reviewing the audited expense statements they submitted. For the OSSTF, since any expenses over \$1 million would not be covered, this union claimed only a little more than \$1 million (\$1,022,427) but told us it incurred several thousand dollars more. The AEFO submitted expenses that exceeded the \$500,000 reimbursement amount it negotiated by \$402,132. The OECTA had not yet submitted its audited expense statement because it had not yet ratified its local agreements and therefore was not yet entitled to payment, and preferred not to share its actual costs until it files its audited expense statement.

At the time of our audit, the Ministry of Education, with the help of a facilitator from the Ministry of Labour, was consulting with unions and school board trustees' associations to identify ways of improving the central-bargaining process. The Ministry was expecting to complete the consultations by mid-May 2016, but did not yet have a preliminary summary for our review.

5.3 Ministry's Rationale for Paying 2014/15 Bargaining Costs Was to Advance Negotiations

As noted in **Section 5.1**, the Ministry agreed to payments to three unions to offset the cost of 2014/15 central bargaining in order to advance its negotiations with them.

The Ministry also believes that these payments are appropriate because the new central-bargaining process imposed by the *School Boards Collective Bargaining Act, 2014* forced all parties involved to bear new costs. These costs were in addition to the local collective bargaining costs that school boards and unions were accustomed to and have been paying for decades. The Ministry also pointed out that, since this was the first mandatory central-bargaining round, the required participants had to work out what would be bargained centrally. The Ministry indicated that the time and expenses of that process were a cost unique to the first round and would probably not be incurred in future.

Central bargaining lasted just over 19 months in 2014/15 (from April 25, 2014, to December 8, 2015), compared to 14 months in 2008/09 (from February 1, 2008, to March 31, 2009) and just over 10 months in 2012 (from February 21, 2012, to December 31, 2012).

For the two rounds of central bargaining preceding 2014/15, the Ministry set up a central-bargaining process, and offered at the outset to cover unions' participation costs (participation was voluntary, so the offer was to encourage unions to join in). This, however, was not planned to be done for the 2014/15 round of central bargaining. In fact, in

response to a letter from CUPE (one of the central-bargaining participants), sent in November 2014 (when central bargaining was in its ninth month), requesting that its negotiation costs be covered by the Ministry, the Minister stated in a letter to CUPE two months later (January 2015) that "the ministry is not paying any of the costs that have been or will be incurred by any of the unions during bargaining." This was because participation in central bargaining was, for the first time, mandatory (under the *School Boards Collective Bargaining Act, 2014*).

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

With the additional legislated powers of the *Education Quality Improvement Act, 1997*, the Ministry started preparing to get further involved in the education-sector collective bargaining process. In 1998, the Ministry created a Labour Relations Branch with five full-time staff and an annual budget of about \$500,000.

In 2004, the Ministry held informal discussions with local bargaining parties and requested that they incorporate provincial funding and staffing policies into their local collective agreements. While local collective bargaining continues to be the process through which local collective agreements are reached, the province moved in 2004 to introduce a voluntary second tier of bargaining. This central bargaining tier would focus on issues that it would make sense to agree on centrally. Salaries and other financial matters were the primary focus, since the province controls funding for education.

In the 2008/09 and 2012 rounds of collective bargaining, the central tier evolved even further, with the support and participation of the Labour Relations Branch.

In the absence of legislation, participation was voluntary. The Ministry encouraged participation by offering in advance to cover participants'

central-bargaining costs. This may very well have created an expectation that continued reimbursement would be provided for central-bargaining costs in the future.

In 2008/09, even though there was no legislative framework, the Ministry required that the terms of the central-bargaining agreements reached be incorporated into all local collective agreements.

In 2012, all trustees' associations and some teachers' unions withdrew from central bargaining. Only two teachers' unions—the OECTA and the AEFO—stayed for the entire course of bargaining. The government enacted the *Putting Students First Act, 2012* to force all local school boards and union districts to abide by the settlements reached on the central issues when they negotiated their local collective agreements.

Five unions took the Ministry to court, arguing that the *Putting Students First Act, 2012*, as well as Ontario's process and procedures leading up to its enactment, resulted in a breach of their right to freedom of association as guaranteed by the Charter of Rights and Freedoms and the *Constitution Act, 1982*. On April 20, 2016, the Ontario Superior Court of Justice found the *Putting Students First Act, 2012* to be unconstitutional. The Court stated that the collective bargaining process used in 2012 was fundamentally flawed in that it limited the ability of the other parties to take part in a meaningful way.

In 2013, with government planning to enact the *School Boards Collective Bargaining Act, 2014*, the Ministry created a new Education Labour Relations Division. The staffing level was increased to 21 full-time staff and the budget was increased to about \$5.7 million.

By the time the *School Boards Collective Bargaining Act, 2014* was passed and the 2014/15 round of central bargaining was completed, the Ministry had spent a total of \$14.2 million on its central-bargaining activities (\$1.9 million for the 2008/09 round, \$4.6 million for the 2012 round and \$7.7 million for the 2014/15 round—all excluding payments to unions and trustees' associations for their bargaining costs).

Given that the first attempt at central talks occurred in 2004, it took about 10 years for the Ministry to put in place a policy framework with the legal authority for central bargaining.

5.5 2014/15 Commitment and Reimbursement Processes Did Not Initially Follow Normal Accountability and Control Provisions

The initial 2014/15 arrangements to pay unions for bargaining costs lacked accountability. The Ministry agreed to include a clause in its central agreements with three teachers' unions (in August for the OECTA and the OSSTF, and in September for the AEFO) to provide them with funding to offset their central-bargaining costs. Based on the central agreements we reviewed and other information we obtained, when the commitments were negotiated, there was no expectation that unions would have to submit supporting documentation to obtain payment. The central agreement did not include an accountability structure for the bargaining-cost payments. When the media first reported in October 2015 that the Ministry was paying \$2.5 million to unions without receipts for collective bargaining costs and labour peace, the Minister accurately said publicly that no receipts were needed. This is confirmed by the fact that in early September 2015, the Ministry contemplated making proof of the ratification of agreements (whether central or local) the only reporting requirement necessary for the reimbursement of bargaining costs.

The Ministry's requirement for unions to provide support for their bargaining costs was introduced later. It was not until November 12, 2015—a week after this audit was requested—that the Ministry sent a letter to the three unions stating that they would have to provide an expense report audited by an independent firm and signed off by an authorized union representative attesting that the expenses were a direct result of central bargaining. The expense report was to group total expenses by

five allowable expense categories: travel; accommodation and meals; legal and professional services; staffing; and operational costs. The unions would be allowed to follow their own expense rules for claiming travel, meal and hospitality expenses, which have higher rates for reimbursement than the rates of the Ontario Public Service.

At the time of our audit, both the OSSTF and the AEFO had submitted their audited expense reports. The audit reports concluded that the OSSTF's and the AEFO's expense claims were in accordance with the requirements set in the November 12th letter.

5.6 Commitment and Reimbursement Processes Had More Accountability and Control Provisions in 2008/09 and 2012

Before negotiations began in 2008 and 2012, the Ministry told all education-sector unions (both teachers' unions and unions of other education professionals and support staff) that it would reimburse them for central-bargaining costs to encourage them to participate in the voluntary central-bargaining process. For both rounds, unions had to provide documentation to support their expenses to receive payment.

Pre-Negotiation Arrangements were Established for Payment of Central-Bargaining Costs in 2008/09 Without Independent Verification

In December 2007 and January 2008, before the 2008/09 central-bargaining sessions began (in February 2008), the Ministry met with school board and union representatives throughout the province. At these meetings, the Ministry told the unions it would cover any expenses they would incur for participating in the voluntary provincial-level discussions. It asked all bargaining parties to submit their anticipated expenses relating to "participation in the framework decisions, as well as their work with local unions to have provincial agreements implemented into local agreements."

Five unions participated in central bargaining: the AEFO, CUPE, the ETFO, the OECTA and the OSSTF. The ETFO and the OECTA declined the offer of reimbursement. The other three unions filed their projected expenses, and the Ministry set a maximum amount of reimbursement based on this information. The Ministry and each union signed a transfer-payment agreement that laid out:

- the maximum amount the union would be reimbursed (see **Figure 3** for the amounts);
- the types of eligible expenses (staffing, research, consultations, initiatives and attendance expenses that are a direct result of central bargaining); and
- the requirement that the union submit monthly expense statements signed off by the CEO and CFO attesting that the expenses were eligible for reimbursement.

The transfer-payment agreements did not set limits on particular types of expenses, such as travel, meals and hospitality. The unions were allowed to follow their own internal expense policies.

Furthermore, the expense statements were not independently verified: the unions were not required to submit receipts, and the Ministry did not require an independent audit of the expense statements.

Pre-Negotiation Arrangements were Established for Payment of Central-Bargaining Costs in 2012

In mid-February 2012, before the 2012 central-bargaining sessions began, the Deputy Minister of Education sent a memo to bargaining parties stating that the Ministry was able to provide limited financial assistance to support their participation in the voluntary central negotiation process.

Twenty unions would participate in the 2012 central bargaining: five large unions (the AEFO, CUPE, the ETFO, the OECTA and the OSSTF) and 15 small unions/local bargaining units for other education professionals and support staff. Again,

Figure 3: Maximum Limits and Actual Payments to Unions for Bargaining Costs in Each Round of Negotiations

Source of data: Ministry of Education

Union	2008/09 (\$ 000)		2012 (\$ 000)			2014/15 (\$ 000)	
	Maximum Stated in Agreement	Actual Payment	Original Maximum	Revised Maximum	Actual Payment	Agreement	Actual Payment
OSSTF	397	406	100	200	200	1,000	1,000
OECTA	0	0	0	0	0	1,000	not yet ^a
AEFO	433	9	100	200	171	500	500 ^b
ETFO	0	0	0	0	0	0	0 ^c
CUPE	948 ^d	290	100	200	182	0	0
Other unions	n/a	n/a	25	40	38	0	0
Total	1,778	705	325	640	591	2,500	1,500

a. Amount not yet paid when we completed our audit because OECTA local collective agreements had not yet been ratified.

b. Instead of receiving a new payment, the AEFO will get to keep \$500,000 of the money it received in 2009 for professional development that it did not spend.

c. The ETFO did not negotiate reimbursement of bargaining costs in its Central Agreement. Instead, its Central Agreement includes \$600,000 worth of occasional teacher professional development.

d. CUPE expected to spend a lot more to build consensus because it had more local bargaining units without a provincial structure for central bargaining.

the ETFO and the OECTA declined the offer of bargaining-cost reimbursements. The Ministry and each other party signed a transfer-payment agreement that laid out:

- the maximum amount the union would be reimbursed (\$100,000 for the each of the larger unions—the AEFO, CUPE and the OSSTF—and \$2,500 or \$5,000 for each of the smaller unions);
- the types of eligible expenses (staffing, research, consultations, initiatives and attendance expenses that are a direct result of central bargaining); and
- the requirement that the union submit monthly expense statements signed off by the CEO and CFO attesting that the expenses were eligible for reimbursement.

The Ministry told us that it based the \$100,000 limit on the actual amounts paid in 2008/09, but as **Figure 3** indicates, there doesn't seem to be any correlation (the OSSTF received about \$406,000, CUPE received about \$290,000 and the AEFO received about \$9,000).

Central bargaining ended on December 31, 2012. In January 2013, it was quickly apparent to the Ministry as the unions submitted their expense

claims that their submitted eligible expenses far exceeded the maximum. The Ministry then increased the maximum to \$200,000 for the large unions. As part of the amended agreements increasing the maximum, the Ministry also added the following requirements:

- specific daily meal allowances and hospitality rates for members staying overnight with friends or family (for other eligible expenses, such as mileage, the unions could follow their own policies for the rate); and
- the requirement that the union submit itemized receipts for all expenses.

The daily meal allowances were double those in the Ontario Public Service (OPS) directive, and more in line with large unions' internal meal rates. This is shown in **Figure 4**.

The hospitality rate for staying overnight with friends or family (that is, the amount of a cash payment or gift that could be given to a friend or family in exchange for accommodation) was also much higher: \$60 per night in the transfer-payment agreement versus \$30 per night in OPS directives.

Unlike the 2008/09 bargaining round, where there was no independent verification of expenses submitted for reimbursement, for the 2012 round,

Figure 4: Comparison of Daily Meal Allowances

Source of data: Ministry of Education

Meal	2012 Transfer-Payment-Agreement Allowance (\$)	OSSTF Internal Allowance in 2012 (\$)	Ontario Public Service Allowance in 2012 (\$)
Breakfast	17.50	13.00	8.75
Lunch	22.50	20.00	11.25
Dinner	40.00	47.00	20.00
Total	80.00	80.00	40.00

the Ministry's internal auditors reviewed all the receipts and invoices submitted to ensure the expenses were eligible. The review identified that about 7% of the amounts claimed (up to the \$200,000 limit) were ineligible and so payments were accordingly reduced.

5.7 Payments to Unions Funded From Existing Ministry Budget

Figure 5 summarizes all bargaining costs committed/paid to unions between 2008 and 2015 (in 2004, no bargaining-cost payments were made to unions). All costs were intended to come from the Ministry's annual Estimates—Vote 1002 (Elementary and Secondary School Education Program), Item 1 (Policy and Program Delivery).

This includes the \$2.5 million committed for bargaining costs in 2014/15. There was spending room within this Vote and Item to cover these payment commitments that were not planned for in 2014/15, so approval for additional funding was not required (either through tabling of supplementary estimates or through a Treasury Board Order to reallocate spending authority from one Vote and Item to another). The following are details on the three payment commitments of \$1 million to the OSSTF, \$1 million to the OECTA and \$500,000 to the AEFO.

- The spending room—or, in other words, underspending—for Vote 1002, Item 1 allowed the Ministry/Crown to pay \$1 million to the OSSTF in March 2016. The amount was expensed in the 2015/16 fiscal year. We noted a pattern of underspending at the Ministry

going back to at least the 2006/07 fiscal year. According to the Public Accounts of Ontario, annual underspending of the operating budget for the Elementary and Secondary School Education Program in this period has ranged from a low of \$16.5 million in 2009/10 to a high of \$171 million in 2006/07.

- The \$1 million committed to the OECTA had not yet been paid at the time of our audit because the OECTA's central agreement states that the OECTA has to ratify all 79 of its local collective agreements before it is entitled to submit its claim. At the time of our audit, only about 60% of the OECTA's local agreements were ratified.
- The \$500,000 in bargaining-cost reimbursement committed to the AEFO comes from unused money from previous funding provided to the AEFO through school boards that the Ministry is now allowing the AEFO to keep. Specifically, the AEFO negotiated in its 2008/09 central agreement to receive \$1,000 in grant money per teacher that teachers could apply to use for professional development. Unused money was supposed to be remitted to school boards in 2014 (again for professional development use). However, the AEFO had not yet done so at the time it was negotiating its 2014/15 central agreement, and the Ministry and the school boards agreed that the AEFO could keep the money as its bargaining-cost reimbursement. Even though the Ministry therefore does not need to make a payment to the AEFO, as per the November 12, 2015,

Figure 5: Breakdown of Bargaining Costs Paid or Committed to Unions by Bargaining Round

Source of data: Ministry of Education

Union	Bargaining Round				Total (\$ 000)
	2008/09 (\$ 000)	2010* (\$ 000)	2012 (\$ 000)	2014/15 (\$ 000)	
OSSTF	406	0	200	1,000	1,606
OECTA	0	0	0	1,000	1,000
AEFO	9	0	171	500	680
CUPE	290	0	182	0	472
Other unions for support staff	0	0	38	0	38
Total	705	0	591	2,500	3,796

* This round of negotiations dealt only with a new collective agreement for early childhood educators. No corresponding payments were made to unions for their bargaining costs.

ministry letter, the AEFO was still required to submit a claim with an audited expense statement. As per the terms of its central agreement, it can only be entitled to this offset once all 29 of its local agreements are ratified. At the time our audit, about 70% of these local agreements had been ratified.

Impact of Bargaining Costs on Provincial “Net-Zero” Projection

The Ministry publicly stated that the 2014/15 central negotiations would be “net zero.” This meant that any cost increases negotiated in the nine central agreements would be matched by corresponding savings elsewhere. As of March 22, 2016, the Ministry estimated that the central agreements’ financial impact over the term of the agreements could range from \$40 million in potential savings to \$66 million in potential costs (excluding any impacts of transferring the administration of the teachers’ provincial benefit plans to the unions). The Ministry included the \$2.5 million in bargaining-cost reimbursement as one of these costs. However, as discussed in **Section 5.13**, 2014/15 payments of \$11.1 million to the school board trustees’ associations for the central-bargaining process, as well as the associations’ ongoing required annual funding of \$4.6 million, were not included.

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

Given the role of unions in protecting the rights and interests of their members, it is generally understood that unions, not employers or outside parties, typically fund union activities. This includes unions paying their own collective bargaining costs. If the employer bargaining agency funds those costs, two potential conflicts of interest can come into play.

First, union members may suspect that their best interests may be compromised when union leaders, negotiating on their behalf, receive funding for bargaining costs from their bargaining counterpart, the employer.

Second, the employer’s best interests may not be best served if paying union bargaining costs enables the union to prolong negotiations and thus strengthen the union’s negotiating position. When each bargaining party must cover its own bargaining costs, each party likely has more incentive to work as efficiently as possible to reach an agreement.

Unions usually have money in reserve that can be used for bargaining costs. One union told us that its reserve fund had a balance of approximately \$40 million. The other unions would not disclose such information to us. But we noted that the OSSTF’s most recent publicly available annual

report (for 2014) stated that the union had \$60.4 million in its Member Protection Account to be used to pay “for provincial resumption of negotiations and legal costs, including grievances and arbitrations.”

We note in this regard that school boards in Ontario have not historically paid local district unions’ bargaining costs, other than continuing to pay salary and benefits for staff involved in local bargaining.

As well, in the case of teachers’ unions in Ontario, the concern arose that ministry funding could have been used for political advertising to the advantage of the sitting government involved in teachers’ contract negotiations. Such advertising has the potential to influence electoral outcomes.

According to the Office of the Chief Electoral Officer, since 2007, education-sector unions have increased their spending on political advertising during election campaigns. For each of the last two election campaign periods (that is, the time between the day the election is called and polling day, also known as the writ period), education-sector unions spent about \$4 million on political advertising (this does not count money spent outside the writ period, which is not tracked).

During the course of our audit, the subject of political advertising by third parties that receive government funding (such as advertising in support of a political party or a policy position paid for by unions) was discussed heavily in the Legislature and the media in Ontario. Currently, there is no legislation or rules in Ontario defining what characteristics of an advertisement would render it partisan.

Given that unions raise their own revenue through union dues, money spent on political advertising could potentially have come from several sources. Without access to all of the unions’ financial and non-financial information, we were unable to confirm or disprove whether government funding enabled union political advertising.

5.9 Ministry Payment of Union Bargaining Costs Does Not Violate the *Ontario Labour Relations Act, 1995*

The Ministry/Crown participated in the 2014/15 central-bargaining process by assuming the following responsibilities:

- co-managing the central-bargaining teams with employer bargaining agencies (this included, for example, agreeing on the matters to be negotiated through central bargaining with the other parties at the table);
- agreeing to the terms in the central agreements ratified by the unions and trustees’ associations; and
- being the primary funder of school boards, which pay the salaries of education-sector workers.

Given the Ministry/Crown’s assumption of these responsibilities, we sought a legal opinion on whether the Ministry’s payments to unions to cover bargaining costs were in violation of Ontario’s *Labour Relations Act, 1995*. Specifically, we asked whether the payments might be considered an unfair practice from a legal point of view.

The 2014 Legislative Framework Governing Collective Bargaining With Teachers’ Unions

The *School Boards Collective Bargaining Act, 2014* legislated the current two-tier collective bargaining structure in Ontario. Before it came into force, the *Education Act* governed the bargaining process with teachers. The *School Boards Collective Bargaining Act, 2014* and the *Education Act*, together with the *Labour Relations Act, 1995*, make up the legislative framework governing collective bargaining with teachers’ unions in Ontario.

The *Labour Relations Act, 1995* states in **Section 70: Unfair Practices—Employer, etc., not to interfere with unions:**

No employer or employers’ organization and no person acting on behalf of an

employer or an employers' organization shall participate in or interfere with the formation, selection or administration of a trade union or the representation of employees by a trade union or contribute financial or other support to a trade union, but nothing in this section shall be deemed to deprive an employer of the employer's freedom to express views so long as the employer does not use coercion, intimidation, threats, promises or undue influence.

Section 70 has been legally interpreted to mean that payments to a union are potentially only prohibited if they undermine the independence of a union for purposes of the *Labour Relations Act, 1995*.

The Ministry/Crown is Not the Legal Employer of Teachers

Before assessing whether the Ministry's commitment/payments to unions constitute an unfair practice under the *Labour Relations Act, 1995*, it must first be determined whether the Ministry is the employer of the teachers. Although the *Labour Relations Act, 1995* does not define "employer," both the *School Boards Collective Bargaining Act, 2014* and the *Education Act* clearly designate the school boards as the employer of the teachers, not the Ministry. Decisions delivered by the Ontario Labour Relations Board also assumed the school boards to be the employers.

The Crown is Legally Exempt from the *Labour Relations Act, 1995* With Respect to Education-Sector Teachers' Unions

The Ministry is not legally the employer in the bargaining process. Read together, the *Labour Relations Act, 1995* and the *School Boards Collective Bargaining Act, 2014* render the Crown exempt from obligations as an employer. The Crown is therefore not prohibited from contributing financial or other

support to teachers' unions. When the Crown is an employer, the *Crown Employees Collective Bargaining Act, 1993* would apply, as would Section 70 of the *Labour Relations Act, 1995*. Regardless, given the amount of bargaining costs paid/committed and the financial resources of the unions involved, it would appear unlikely that the independence of the unions could be legally viewed as undermined.

Most Other Jurisdictions Designate School Boards as Teachers' Employers, But Bargaining Processes Vary

Ontario's legal designation of the school board as the employer of teachers is not unique. All provinces except for New Brunswick also designate their school boards as the teachers' employer.

The collective-bargaining structure for teachers differs across Canada. British Columbia, Alberta, Saskatchewan, Quebec and Nova Scotia employ a two-tier bargaining structure like Ontario's. The other provinces negotiate either only at a provincial level (New Brunswick, Prince Edward Island, and Newfoundland and Labrador), or only at a local level (Manitoba).

5.10 Ontario Government Has Not Typically Paid Significant Amounts to Other Large Public-Sector Unions for Bargaining Costs

During the audit, we reviewed payments by the Ontario government to the Association of Management, Administrative and Professional Crown Employees of Ontario; the Ontario Medical Association; the Ontario Provincial Police; and the Ontario Public Service Employees Union. None had received payments from the Ontario government for bargaining costs.

The Ontario government's payments to these unions primarily consisted of the union dues and the contributions to union-administered benefits plans that the government had deducted from union members' wages and remitted to the unions.

5.11 Other Provinces Have Not Typically Paid Education-Sector Unions for Bargaining Costs

During the audit, we contacted all other provinces regarding payments to teachers' unions for bargaining costs and received responses from all but one. We noted that only one made payments for bargaining costs. British Columbia told us it paid a non-teacher education-worker union \$100,000 in 2012 and another \$100,000 in 2014 "to bring local representatives together for framework discussions that would address provincial policy issues and facilitate the conclusion of local bargaining." It had also allocated \$200,000 to this union for July 1, 2016, for the same purpose as it applies to the Provincial Framework Agreement for 2014–19.

The Ministry's own review of practices in eight provinces found similar results.

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

The Ministry Has Provided About \$80.5 Million to Education-Sector Unions and the Ontario Teachers' Federation for Non-Bargaining Costs Since 2000

From 2000/01 to 2015/16, the Ministry paid a total of almost \$84.3 million directly to education-sector unions in Ontario and the Ontario Teachers' Federation (the Ontario Teachers' Federation, which is governed by the AEFO, the ETFO, the OECTA and the OSSTF, advocates for the teaching profession and publicly funded education but is not involved in collective bargaining). This does not include the indirect payment by the Ministry to the AEFO in 2008/09 for professional development, as noted in **Section 5.7**. We further explain this later in this section.

Figure 6 shows that 95% of the total amount paid by the Ministry, or about \$80.5 million, consisted of payments for purposes other than reimbursement of central-bargaining costs. **Figure 7**

breaks down the payments for other purposes by year for each recipient.

Of the \$80.5 million, we determined that \$22 million was disbursed as unconditional grants. We sampled 84% of the remaining \$58.5 million to identify the purpose for providing funds to the unions and the Federation. Based on our work, we noted that funding has been mainly provided for:

- teacher support, training and professional development (\$34.9 million);
- a negotiated provincial benefits plan for the education sector (\$9.2 million);
- research on classroom assessments and effective teaching strategies for minority communities (\$3.3 million); and
- student awareness of, and promotion of, initiatives (for example, school safety, student equity and eliminating discrimination) (\$1.6 million).

Aside from the unconditional grants, which are discussed in the next section, the Ministry generally put in accountability mechanisms for all the other payments to unions and the Federation. For half of the cases, the recipient was required to provide an independently audited expense statement. For the other half, the recipient was only required to provide a financial report self-attesting that the funding had been spent for the intended purposes.

No Conditions on \$22 Million in Grants to Education-Sector Unions Paid in April 2006

In the 2006/07 fiscal year, the Ministry expensed \$22 million in unconditional grants—\$15.1 million to the four teachers' unions and \$6.9 million to the Ontario Teachers' Federation.

In March 2006, as part of the Ministry's year-end investment strategy to use unspent funds, the Ministry requested and received approval from Treasury Board to provide \$91 million in one-time unconditional grants to third parties. Twenty-five million dollars of that amount was designated for the teachers' unions and the Ontario Teachers' Federation. In addition, money was provided to the

Figure 6: Ministry Payments/Commitments to Education-Sector Unions and the Ontario Teachers' Federation, 2000/01–2015/16

Source of data: Government of Ontario Integrated Financial Information System

Organization	Payments/Commitments for Central-Bargaining Costs (\$ 000) ¹	Payments for Other Purposes (\$ 000) ²	Total (\$ 000)
Ontario Teachers' Federation	0	34,762	34,762
ETFO	0	13,098	13,098
AEFO ³	680	11,535	12,215
OECTA ⁴	1,000	11,503	12,503
OSSTF	1,606	9,366	10,972
CUPE	472	158	630
Other unions for support staff	38	46	84
Total⁵	3,796	80,468	84,264
% of Total⁵	5	95	100

1. All of these costs were incurred since 2008/09.

2. See Figure 7 for the fiscal years in which these costs were incurred.

3. The AEFO's central-bargaining costs include the \$500,000 that its 2014/15 Central Agreement states it is to receive. Instead of receiving a payment for this amount, it will keep \$500,000 in unspent funding for professional development from 2009 that it was to remit to school boards in 2014.

4. The OECTA's central-bargaining costs include the \$1 million that its 2014/15 Central Agreement states it is to receive. The commitment had not been paid by March 31, 2016.

5. When the central-bargaining costs of \$2.5 million committed by the government for the 2014/15 round of negotiations are all paid, total payments to unions for central-bargaining costs since central bargaining began will add up to \$3.8 million.

Figure 7: Breakdown of Payments for Other Purposes by Fiscal Year for Education-Sector Unions and the Ontario Teachers' Federation

Source of data: Ministry of Education

Fiscal Year	Ontario Teachers' Federation (\$ 000)	ETFO (\$ 000)	AEFO (\$ 000)	OECTA (\$ 000)	OSSTF (\$ 000)	CUPE (\$ 000)	Other unions (\$ 000)	Total (\$ 000)
2000/01		7	40					47
2001/02		1	11					12
2002/03			39					39
2003/04			100					100
2004/05	40		449					489
2005/06			1,129				1	1,130
2006/07	9,136	8,281	2,563	5,059	3,027			28,066
2007/08	15	48	800					863
2008/09	2,038	1,187	1,293	125	13		7	4,663
2009/10	3,388	1,873	1,265	1,120	1,200			8,846
2010/11	785	320	730	111	18		1	1,965
2011/12	1,088	50	651	231	8			2,028
2012/13	702		726	427				1,855
2013/14	5,276	405	718	818	200	98		7,515
2014/15	5,537	250	424	770	960	60	18	8,019
2015/16	6,757	676	597	2,842	3,940		19	14,831
Total	34,762	13,098	11,535	11,503	9,366	158	46	80,468

Council of Directors of Education (\$25 million), the Catholic Principals' Council of Ontario (\$4 million) and others.

According to the Treasury Board submission, the funding was to be used for the professional development of teachers through summer institutes and other initiatives throughout the school year in support of priority areas, such as literacy, numeracy, arts, special education, physical education and safe schools.

However, the identical personalized letters notifying the four unions and the Federation of the payment stated merely that the monies were to “assist [the union/Federation] in continuing to serve the people of Ontario....with the hope that this funding will enable [the union/Federation] to enhance opportunities for [teachers’] continuing professional growth.” The letters did not highlight the priority areas or require the recipients to report back on how the funding was spent.

Grants totalling \$22 million were paid to teachers’ unions and the Federation in April 2006. The Ministry could not find original documentation to support how the amount of funding for each union and Federation was determined, and why actual payments totalled only \$22 million when the grants total approved by Treasury Board was \$25 million.

In September 2006, after the money had already been paid, the Ministry engaged an independent consultant to ask the unions and the Federation how they planned to spend the money. However, there was no follow-up to verify if the money was actually spent according to training plans provided by the unions and the federation.

The Ministry told us that, given the negative attention the practice of providing unconditional grants received, especially with the issuance of our Office’s 2007 *Special Report: Year-end Grants Provided by the Ministry of Citizenship and Immigration*, it subsequently stopped providing unconditional grants. Based on our sample testing of payments to unions made up to 2015/16, we can confirm that unions have not received any more unconditional grants from the Ministry since 2006.

The Transfer Payment Accountability Directive, issued in August 2007, now requires that an agreement be in place between the recipient and the province that outlines the purpose, terms and conditions of funding; the rights, responsibilities and obligations of the recipient; and the reporting requirements showing results achieved.

Teacher Professional Development Most Common Purpose for Conditional Payments to Education-Sector Unions Since 2000

The Ministry, the school board trustees’ associations and the unions each have different points of view about who should be funded for teacher professional development.

From the school board trustees’ association point of view, school boards are responsible for, and accountable to the government for, student achievement. The school boards therefore must align their professional development and training to ministry objectives for education.

From the unions’ point of view, the professional development they provide is more relevant and effective than that provided by school boards, because it is the teachers themselves who deliver it. Also, some unions believe that part of the job of unions is to upgrade and maintain the standards of their members.

The Ministry told us it provided professional-development funding to unions to encourage them to “take greater ownership of ministry priorities.” It is crucial, however, that these priorities be specifically stated when the funding is provided. In cases where they have not been in the past, some school board trustees’ associations told us that teachers used Ministry-provided union funding not so much to improve their teaching effectiveness as to upgrade their credentials to help them move higher into the pay scale. This use of funding may not necessarily ensure improved student outcomes in the same way that courses on improved teaching effectiveness could.

Professional-Development Funding to AEFO From the Ministry Through School Boards

The \$500,000 in bargaining-cost reimbursement for the AEFO originated from monies provided by the Ministry to school boards. Specifically, the AEFO wanted its 2008/09 central agreement to include a benefit for its French-speaking teachers. This is because English teachers' unions were benefiting from reductions in class sizes, and this was not an issue in French-language schools. The Ministry agreed to include in the 2008/09 AEFO central agreement that each French-speaking school board must pay the AEFO \$1,000 for every teacher for professional development (this totalled \$6.8 million). The AEFO put this money aside and paid it to teachers who applied to use it for professional development. These funds were to provide training up to the expiry of the central agreement in August 2012. In the 2012 central-bargaining round, the Ministry extended the use of this money until 2014. The Ministry, in the 2014/15 central-bargaining round, agreed that the AEFO could keep unused funding from this allocation as reimbursement of the AEFO's 2014/15 bargaining costs. The Ministry confirmed that, other than this special case in 2008/09, it generally does not flow money to school boards to fund union initiatives.

Varying Provincial Practices in Payments to Teachers' Unions for Professional Development

During the audit, we contacted all other provinces regarding payments to teachers' unions for professional development and received responses from all but one. We noted that practices appear to vary. We identified three provinces where more than \$1 million but less than \$2 million was paid to unions for teacher professional development from 2010/11 to 2014/15. Nova Scotia has been providing about \$200,000 annually from 2010/11 to 2014/15 to unions for professional development under their latest collective agreement. Saskatchewan provided a total of about \$1.5 million to unions outside

the collective agreement in the last five years to evaluate resource material for teachers' use in the classroom. Alberta provided \$1.3 million over the last five years for professional development outside the collective agreements. The remaining provinces either did not pay for professional development at all or did not pay an amount in excess of \$1 million from 2010/11 to 2014/15.

Rare to Find Significant Payments to Unions by Other Ontario Ministries for Professional Development

During our audit, we selected three unions to see if another Ontario ministry had provided significant funding to them for professional development. In the 2010/11 and 2011/12 fiscal years, the Ministry of Health and Long-Term Care paid the Ontario Medical Association a total of \$16 million for continuing medical education for physicians.

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

Payments Were Made to Trustees' Associations in 2014/15 to Build Their Capacity for their New Central-Bargaining Duties

Like unions, school board trustees' associations were asked to voluntarily participate in the central-bargaining processes of 2008/09 and 2012. The Ministry paid their central-bargaining costs to encourage them to join in.

Prior to the 2008/09 central-bargaining round, only school boards engaged in collective bargaining. Up to that time, the main activities of the school board trustees' associations were to advocate on behalf of their member school boards, bringing their interests, needs and perspectives to the attention of the provincial government and the

general public. Lacking experience for the initial rounds of central bargaining, the associations relied on consultants and volunteers from their member school boards to assist their staff in negotiations. That is why, in 2012, about 15% of associations' central-bargaining expense claims were for external staff and consultants.

The amounts the associations received from the Ministry for bargaining costs in 2008/09, 2012 and 2014/15 are shown in **Figure 8** (in 2004, no bargaining-cost payments were made to school board trustees' associations).

The *School Boards Collective Bargaining Act, 2014* officially designated school board trustees' associations as the central employer bargaining agencies for school boards. This required the associations to acquire permanent expertise. As shown in **Figure 9**, the Ministry paid the associations a total of about \$11.1 million for the 2014/15 central-bargaining round up to March 31, 2016. All of this money was funded from the 2014/15 Estimates—Vote 1002 [Elementary and Secondary School Education Program], Item 1 [Policy and Program Delivery]. Within Item 1, about \$6.5 million was funded through the subcategory “Education Programs—Other,” in the form of four transfer-payment agreements that the Ministry paid directly to the associations. Another \$4.6 million came from Grants for Student Needs funding (in Item 1, these Grants for Students Needs are the combination of the subcategories “School Board Operating Grants”

and “Education Property Tax Non-Cash Expense”). This \$4.6-million amount was paid not directly to the associations, but rather to school boards, which then flowed the money to the associations. We discuss the implications of this method of delivering funding later in this section.

The province's school boards are financially dependent on the Ministry. Because the associations represent the school boards in central bargaining, the Ministry's funding of the associations bargaining expenses is an extension of ministry financial support of school boards. Since the *School Boards Collective Bargaining Act, 2014* significantly expanded the association mandate to join with the Ministry in co-managing the employer side of bargaining, the Ministry indicated that the payments were needed and will be needed in the future to enable the continuing involvement of the associations.

Eligibility Periods for Expenses Overlapped

For 2014/15 central bargaining, each association received payments under four different transfer-payment agreements.

As **Figure 10** and **Figure 11** show, the four agreements were all for the same general purpose and the periods for eligible expenses overlapped. For example, eligible expenses incurred during the month of December 2014 and the month of August 2015 could be reimbursed under three different agreements. Similarly, eligible expenses

Figure 8: Breakdown of Payments to Trustees' Associations for Each Round of Negotiations

Source of data: Ministry of Education

Association	Bargaining Round (includes costs up to March 31, 2016)				Total (\$ 000)
	2008/09 (\$ 000)	2010* (\$ 000)	2012 (\$ 000)	2014/15 (\$ 000)	
OPPSBA	868	73	299	3,540	4,780
OCSTA	269	45	383	3,217	3,914
ACEPO	400	73	357	2,395	3,225
AFOCSC	400	83	324	1,971	2,778
Total	1,937	274	1,363	11,123	14,697

* This round of negotiations dealt only with a new collective agreement for early childhood educators. No corresponding payments were made to unions for their bargaining costs.

Figure 9: Payments to Trustees' Associations for 2014/15 Central Bargaining as of March 31, 2016

Source of data: Ministry of Education

Association	Payments Through the Grant for Student Needs (\$ 000)	Payments Through Transfer-Payment Agreements (\$ 000)	Total Payments (\$ 000)
OPSBA	1,352	2,188	3,540
OCSTA	1,247	1,970	3,217
ACEPO	935	1,460	2,395
AFOCSC	1,039	932	1,971
Total	4,573	6,550	11,123

incurred between September 1 and December 1, 2014, and between December 31, 2014, and August 1, 2015, could be reimbursed under two different agreements. None of the agreements expressly prohibits an association from claiming the same expense more than once under different agreements.

The transfer-payment agreements required associations to provide a schedule of audited expense statements relating to each agreement. Based on the information collected from the associations, at the time of our audit, the Ministry could not confirm that the same expenses were not reimbursed more than once under the different agreements. Moreover, the Ministry did not take further steps to determine if this had occurred and if it therefore should have collected back the duplicate payments. However, we tested a sample of the expenses that had been submitted by April 30, 2016, and confirmed that no duplicate payments had been made.

Unused Funding Not Yet Recovered

Under one of the four transfer-payment agreements, one association received \$843,000 upon submitting a projected budget. The payment was to cover bargaining costs for the period of December 1, 2014, to August 31, 2015. On September 30, 2015, the association filed its audited expenditure report for the period, detailing underspending of around \$94,000. At the time of submission, the association also reported that it had not yet received all invoices for professional services

for the eligibility period. In October 2015, the Ministry confirmed the association could use the unused funds toward services provided during the eligibility period but not yet billed. At the time of our audit (eight months after the eligibility period expired), the association had been able to expense only around \$16,000 of these unspent funds. The Ministry had not yet requested the association to account for the use of the \$94,000.

Future Funding Has No Requirement for Supporting Documentation

At the time of our audit, the 2014 supplemental funding transfer-payment agreements were still in force (they expire in November 2016). They state that the "Province may request financial documentation on funds provided to Recipient through mechanisms other than this Agreement." After these agreements expire, there is no provision to make the trustees' associations accountable for their bargaining-cost funding.

The Ministry provides a general grant to school boards called the Grants for Student Needs. Under Ontario Regulation (O. Reg.) 206/15 of the Act, effective April 1, 2015, school boards are given extra money through this grant to pay a fee to their trustees' associations. The trustees' associations are using those fees to support the following labour-relations activities:

- preparation for bargaining;
- bargaining; and
- ongoing contract maintenance.

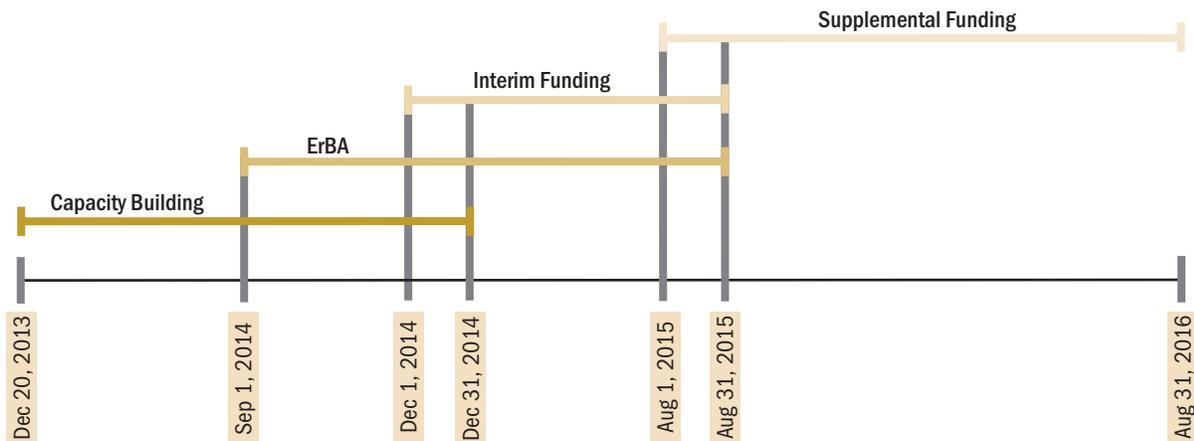
Figure 10: Key Features of the Four Transfer-Payment Agreements Funding Trustees' Associations for Central Bargaining

Source of data: Transfer-payment agreements

Agreement	Purpose	Type of Expenses Covered	Expense Period	Agreement Maximum (\$)	Actual Payment to Associations (\$)
Capacity building	To support the recipient to build internal capacity to better participate in centralized education-sector labour negotiations	<ul style="list-style-type: none"> • personnel • operational • professional services • consultations • professional development 	December 20, 2013–December 31, 2014	2,000,000	2,000,000
Employer Bargaining Agency (ErBA)	To support the recipient in its statutory role as an ErBA	<ul style="list-style-type: none"> • personnel • operational • professional services • consultations • professional development 	September 1, 2014–August 31, 2015	1,000,000	1,000,000
Interim funding	To support the recipient in its statutory role as an ErBA	<ul style="list-style-type: none"> • staffing • operational • professional services • travel 	December 1, 2014–August 31, 2015	2,475,350	2,475,350
Supplemental funding	To support the recipient in its statutory role as an ErBA	<ul style="list-style-type: none"> • staffing • operational • professional services • travel 	August 1, 2015–August 31, 2016	1,535,888	1,074,524
Total				7,011,238	6,549,874

Figure 11: Overlapping Terms of the 2014/15 Transfer-Payment Agreements with Trustees' Associations

Source of data: Transfer-payment agreements between the Trustees' Associations and the Ministry of Education



The fees paid from the Grants for Student Needs provide each association with the same amount of base funding of about \$610,000, as well as a variable amount depending on the number of central-bargaining tables at which the association sits.

The *School Boards Collective Bargaining Act, 2014* instituted a new process for funding the trustees' associations in the future. However, this process does not include a requirement that the associations provide supporting documentation for expenses, nor does it give the Ministry the authority to request such supporting documentation. O. Reg. 206/15 does not provide the Minister with authority to obtain expenditure reports from the associations to determine how they spent the funding.

Most of the associations told us that their boards of directors are comprised of elected trustees from the various school boards they serve. Therefore, the school boards would have access to financial records that would show how funding was spent. However, there is no requirement for the school boards to provide this information to the Ministry, which is the original source of the funding.

Other Concerns With Funding School Board Trustees' Associations Through School Boards

The Ministry's new arrangement to provide central-bargaining funding support through school boards (via the Grants for Student Needs) to the school board trustees' associations results in the associations not having to disclose the salaries of their employees who may otherwise be subject to the *Public Sector Salary Disclosure Act, 1996*. This Act requires that not-for-profit organizations (such as school board trustees' associations) that receive at least \$1 million in funding from the government must publicly disclose the names of employees earning more than \$100,000 and their salary amounts.

More importantly, this new funding arrangement prevents the transparent disclosure of funds provided to school board trustees' associations in Volume 3 of the Public Accounts of Ontario: Detailed Schedules of Payments. This volume

reports the recipients of all government transfer payments of \$120,000 or more. However, when funds are flowed through a school board to the association, the amount provided to the association is not separately disclosed in Volume 3.

6.0 Recommendations

RECOMMENDATION 1

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

MINISTRY RESPONSE

In any major transformation initiative, it is a ministry best practice to pilot, collaborate, and have partners understand the shared processes and policy objectives. The Ministry consciously decided to proceed with voluntary central tables prior to introducing the statutory process. Bargaining has significantly evolved in the education sector over the last 20 years. All of the same parties that have been involved in this evolution were involved in the development of the *School Boards Collective Bargaining Act, 2014*.

RECOMMENDATION 2

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

MINISTRY RESPONSE

The Ministry agrees that the review of the *School Boards Collective Bargaining Act, 2014* is important and has been clear and transparent

about its intent to conduct the review since 2013. In March 2016, after central bargaining concluded, the Ministry engaged a facilitator to begin the review with our bargaining partners. The review is under way and is expected to be completed by summer 2016.

RECOMMENDATION 3

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

MINISTRY RESPONSE

As provincial discussions evolved over the past decade, support for the school boards and the unions has, at times, been provided to ensure the successful transformation of provincial bargaining. As this is the first round of bargaining under the framework of the new *School Boards Collective Bargaining Act, 2014*, the process required more time and resources from all parties involved. This should not be the case in future rounds. Therefore, the Ministry does not expect to fund bargaining costs for education-sector unions in future rounds.

RECOMMENDATION 4

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

MINISTRY RESPONSE

In order to meet the needs of the system and ensure continuous improvement, the Ministry invests in a diverse array of professional-develop-

ment delivery. The Ministry funds professional development through school boards, unions and third parties, as well as funding it directly.

The Ministry is already reviewing the expertise within the sector and assessing the most appropriate bodies to deliver each type of professional development, consistent with the Auditor General's recommendation.

RECOMMENDATION 5

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

MINISTRY RESPONSE

The Ministry agrees that any funding provided to any third party should be assessed upon its merits and will ensure that this practice is upheld.

RECOMMENDATION 6

The Ministry of Education should:

- amend the method of providing funding, outlined in O. Reg. 206/15 of the *School Boards Collective Bargaining Act, 2014*, for the transparent disclosure of payments to school board trustees' associations in Volume 3 of the Public Accounts of Ontario and ensure that the associations are subject to the *Public Sector Salary Disclosure Act, 1996*;
- put in place accountability and control mechanisms to ensure funds provided are used for the purposes intended; and
- ensure that eligibility periods in transfer-payment agreements do not unnecessarily overlap.

MINISTRY RESPONSE

Funding trustees' associations through school boards establishes an important accountability

relationship between the individual employers and their central employer bargaining representatives. The funding formula for school board fees to trustees' associations for central bargaining are disclosed in the annual Grants for Student Needs technical paper. As required by O. Reg 206/15, the funds are provided for the purposes of central labour-relations activities. The Ministry agrees to consider ways to improve transparency while respecting the accountability relationship between the employer entities.

The Ministry agrees to explore ways of further strengthening the accountability and control mechanism for the funds flowed to trustees' associations for the purpose of central bargaining.

Consistent with the Auditor General's recommendations, the Ministry agrees that we should avoid overlapping eligibility periods for transfer payments to recipients. However, the period in question was unique, as bargaining was under way, and the funding was to ensure continuity of operations while the funding formula was being developed. The Ministry has an accountability mechanism to address the risk of overlapping payments. The transfer-payment agreements with the trustees' associations to support their role as central employer bargaining agencies require independently audited final financial reports.

7.0 Appendix: Additional Background Information

The Structure of Ontario's Education System

The Key Players

Ontario's two million elementary and secondary school students are taught by about 186,000 teachers at about 4,900 schools (as of February 2016). Also working at schools are 93,000 other education professionals and support workers, such as teacher assistants, psychologists, attendance counsellors, building maintenance and secretarial staff.

The employers of these teachers and other education professionals and support staff are the province's 72 school boards (31 English public boards, 29 English Catholic boards, four French public boards and eight French Catholic boards). (There are also 10 school authorities that oversee schools in hospitals, treatment centres and remote regions of the province, and one provincially run school). These school boards are responsible for operating the schools in their geographic area with funds they receive from the Ministry of Education (Ministry). School trustees are elected to school boards every four years during municipal elections. Trustees represent the interests of the families in their community and bring the community's concerns to their boards' attention. They are responsible for setting the school board's overall policy direction and budget.

The Ministry, in addition to funding school boards, sets educational policy and administers education-related legislation.

Employee Unions

School board employees' roles and responsibilities are laid out in legislation, school board policy and, for unionized staff, the decisions made through collective bargaining and reflected in collective agree-

ments. Collective agreements, or contracts, are legally binding agreements between an employer and a union that represents its employees.

Most school board employees are unionized, belonging to one of the about 20 unions in the province associated with education workers. The unions represent their members when negotiating new collective agreements when old ones expire.

Union Activities

School board employee unions advocate on behalf of their members to protect their rights and interests. When contracts expire, they collectively bargain to agree on the terms of the next contract. If agreement cannot be reached, they have the right to organize strikes or work stoppages. When contracts are in force, they provide support to their members, such as advocating for members during grievances; holding training events, conferences and workshops; issuing collective bargaining bulletins; and providing financial management services.

Union Financing

Unions are financed by union dues—everyone who belongs to a union contributes a small portion of their salary to a common fund of money. Union dues are used to fund negotiations, to pay for expertise when needed, to train staff and to engage in other activities to support their members (for example, lobbying for better legislation and engaging in other political action, providing pay for striking workers and financing advertising campaigns).

Given their large size, some teachers' unions collect as much as \$50 million a year in union dues to finance these activities.

The Basics of Collective Bargaining

Collective bargaining is the process where an employer and a union negotiate to establish

employees' terms of employment. Terms of employment includes wage, working hours and other workplace rules, overtime pay, holidays, sick leave, vacation time, retirement benefits, health-care benefits, training and grievance methods.

The outcome of negotiations is a collective agreement, or contract, for a set number of years. In total, there are 473 collective agreements between individual school boards and the individual local bargaining units of education-sector unions in Ontario.

Collective bargaining incurs costs such as:

- staffing: as bargaining team members prepare for bargaining by doing research, participate in bargaining and consult with their unions during bargaining, they must be paid for their time, and replacement staff may have to be paid to cover their duties;
- legal services to obtain advice on issues;
- meeting rooms required for negotiation sessions and votes; and
- meal, travel and accommodation expenses for those attending negotiation sessions.

The Evolution of Collective Bargaining in Ontario's Education Sector

Pre-1998: Numerous School Boards Bargained Locally With Unions

Ontario's education sector before 1998 had these characteristics:

- School boards had become progressively larger and fewer in number (over 3,000 in 1960, over 1,000 in 1965, then down to less than 200 in 1969). In 1967, there were five teachers' unions and an umbrella organization, the Ontario Teachers' Federation.
- School boards had the power to fund education by setting the local education tax rate for their municipality, collecting those education taxes from the local property tax base and allocating the taxes collected for the use of

their schools. School boards also received government grants.

- School boards negotiated with unions under the *School Boards and Teachers Collective Negotiations Act*, which became law in 1975.

1998 to 2004: Provincial Restructuring of Education System

On January 1, 1998, the *Education Quality Improvement Act, 1997* came into effect. This Act brought the following changes:

- The number of school boards was reduced from 124 to 72 through amalgamation.
- The Ministry took control of funding for schools and removed school boards' ability to levy taxes. Funding was based on student enrolment.
- The *School Boards and Teachers Collective Negotiations Act* was repealed. Collective bargaining would have to follow the rules of the *Labour Relations Act, 1995*.

Although collective bargaining was still between just school boards and unions, with no provincial involvement in labour negotiations, the 1998 legislation gave the Minister of Education the power to make regulations in areas formerly negotiated through collective bargaining. These included the school year, school holidays, class size, and teaching and non-teaching time.

2004 to 2014: Growing Provincial Involvement in Bargaining

The changes brought about by the 1998 legislation were not welcomed by teachers' unions, and labour disputes, including strikes, were common. The Ministry's desire to bring more stability to the sector, combined with the fact that the Ministry now controlled education funding, led to the Ministry's growing involvement in collective bargaining.

2004: Informal Discussions

In the 2004 round of collective bargaining, the Ministry held informal discussions with the bargaining parties, which at that time were the individual school boards and the local districts of the unions. Negotiators were asked to incorporate new provincial funding and staffing policies into their local collective agreements. In these areas, therefore, the province was centrally influencing terms of employment formerly determined solely by school board and union bargaining.

2008/09 and 2012: Voluntary Provincial Discussion Tables and Agreements

In 2008/09 and 2012, the province's involvement was more formal. The Ministry set up Provincial Discussion Table negotiations, with the Ministry, school board trustees' associations (representing school boards) and provincial union representatives working to reach agreement on key central issues at a "central" provincial level. Participation by trustees' associations and the unions was voluntary.

Trustees' associations and union negotiators were required to incorporate the terms of the Provincial Discussion Table Agreements reached into their final collective agreements negotiated locally. During the 2012 round of negotiations, all

trustees' associations and some teachers' unions withdrew from central provincial negotiations, causing the government to enact legislation (the *Putting Students First Act, 2012*) imposing collective agreements based on settlements the government reached with the two teachers' unions that remained at the table (the AEFO and the OECTA).

From 2014 On: Legislated Mandatory Central Bargaining In Addition to Local Bargaining

New legislation—the *School Boards Collective Bargaining Act, 2014*—made central, provincial-level bargaining mandatory in collective bargaining. In this process, central negotiators from three parties—the Ministry, school board trustees' associations and the four teachers' unions (and any other unions for other education-sector workers that request to negotiate centrally and are approved by the Ministry (designated by Minister's regulation), such as CUPE—the Canadian Union of Public Employees)—must reach central agreements.

After a final local collective agreement is ratified, it combines with the applicable ratified central agreement to form a full collective agreement.



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