

The perils of back-to-work legislation

Ending the strike at York U. may be politically expedient, but it opens the door to more costly conflict and legal action

Opinion Jul 26, 2018 by Brad Walchuk Hamilton Spectator



CUPE union members rally at York University near the beginning of their epic strike, which the Ford government has now ended. - Colin McConnell , Toronto Star

On July 15, Premier Doug Ford's government tabled back-to-work legislation to end a strike by roughly 2,000 precarious academic workers at York University — the longest post-secondary strike in Canadian history. As part of the so-called Urgent Priorities Act, the "Back to Class" provisions for York University ends the strike, bans any lockouts, and sends all outstanding issues to a third-party arbitrator.

While the strike itself may be over by September, the issues surrounding it — and the costs that the provincial government will likely face as a result of the legislation — are likely only beginning. Relative to all other provinces, Ontario universities receive the lowest per student government funding. There is no reason to think that this will change under the new Progressive Conservative government, and in fact, it may even

get worse. This funding shortfall leads to larger class sizes, fewer tenure-track jobs, and an increased use of precariously employed sessional faculty who teach term-to-term. It also leads to less money being available for scholarships, especially for graduate students, and an increased reliance on tuition and other ancillary fees by universities to cover a shortfall in government funding. A lack of government funding also reduces on-campus employment opportunities, such as research assistants, for graduate students. This is especially true in summer months. All of these issues led, in part, to the strike at York University, and the introduction of back-to-work legislation fails to address these issues in a meaningful and systematic way.

The other and perhaps more notable shortfall is that it legislates away rights protected by the Canadian Charter of Rights and Freedoms, notably the right to bargain collectively and the right to strike. The right to bargain collectively was secured as a constitutionally protected right by the Supreme Court of Canada in 2007, and the right to strike was similarly found to be a constitutionally protected right by the Supreme Court of Canada in 2015. As constitutionally protected rights they cannot, or at least should not, simply be legislated away by governments when it seems politically expedient to do so.

Mark Hancock, President of CUPE National, has noted that "The Premier does not get to ignore the Charter-protected rights of working people in Ontario when it's inconvenient for his political agenda" and that "CUPE will respond with necessary actions to protect our right to free collective bargaining."

Legislating away constitutionally protected rights such as the right to bargain and the right to strike, as the newly elected government has made it clear it will do here, does not come without its costs. For example, in 2008, the provincial government in British Columbia was forced to come to a settlement with the Hospital Employees Union (HEU) for \$75 million to cover compensation and retraining for thousand of members whose bargaining rights were legislated away.

More recently, in Ontario, the previous Liberal government was compelled to compensate teachers and education workers for over \$100 million for violating their rights with the passage of Bill 115 in 2012. A judge found that the government "substantially interfered with meaningful collective bargaining" in 2012 when it passed legislation that imposed contracts on teachers and education workers.

The portions of the Urgent Priorities Act that have ended a legal strike by teaching assistants at York University have similarly interfered with meaningful and constitutionally protected collective bargaining rights (and the related right to strike), and there is a clear precedent for a long and costly judicial battle. The government is at risk of being on the hook for a large settlement for violating the constitutionally protected rights to bargain collectively and strike held by CUPE members.

York University cannot be ignored for their role in prolonging the strike, as evidenced by their bargaining only twice with CUPE 3903 over the duration of the 20-week strike. The

province's passage of back-to-work legislation may provide York what it has long sought — an arbitrated settlement and the ability to not have to negotiate with CUPE — but a developing legal precedent around back-to-work legislation is likely to pass the buck from the employer to the province, and fails to address the issues which led to the strike in the first place.

While legislating striking workers back to work may appear to be politically expedient, the reality is that it violates basic rights, fails to address the root cause of labour unrest, and often results in significant settlements. The newly elected government would be wise to review the recently developed jurisprudence on constitutionally protected rights for workers, most notably the right to bargain collectively and the right to strike.

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