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Wednesday 17 September 2008

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des débats
(Hansard)**

Mercredi 17 septembre 2008

**Standing Committee on
General Government**

Colleges Collective
Bargaining Act, 2008

**Comité permanent des
affaires gouvernementales**

Loi de 2008 sur la négociation
collective dans les collèges

Chair: Linda Jeffrey
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LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

**STANDING COMMITTEE ON
GENERAL GOVERNMENT**

**COMITÉ PERMANENT DES
AFFAIRES GOUVERNEMENTALES**

Wednesday 17 September 2008

Mercredi 17 septembre 2008

The committee met at 0935 in committee room 1.

**COLLEGES COLLECTIVE
BARGAINING ACT, 2008**

**LOI DE 2008 SUR LA NÉGOCIATION
COLLECTIVE DANS LES COLLÈGES**

Consideration of Bill 90, An Act to enact the Colleges Collective Bargaining Act, 2008, to repeal the Colleges Collective Bargaining Act and to make related amendments to other Acts / Projet de loi 90, Loi édictant la Loi de 2008 sur la négociation collective dans les collèges, abrogeant la Loi sur la négociation collective dans les collèges et apportant des modifications connexes à d'autres lois.

The Chair (Mrs. Linda Jeffrey): Good morning. The Standing Committee on General Government is called to order. We're here today to begin clause-by-clause consideration of Bill 90, An Act to enact the Colleges Collective Bargaining Act, 2008, to repeal the Colleges Collective Bargaining Act and to make related amendments to other Acts.

Our first amendment is an NDP motion. Ms. DiNovo.
Interjection.

The Chair (Mrs. Linda Jeffrey): Sorry, I've got to go through my list. We're at section 1. There are no amendments to sections 1 through 7. Is there any debate? Questions? Comments? Seeing none, all those in favour? All those opposed? That's carried.

The first section, section 7.1, Ms. DiNovo.

Ms. Cheri DiNovo: I move that the bill be amended by adding the following section:

"Voluntary arbitration

"7.1(1) Despite any other provision of this act, the parties may at any time following the giving of notice of desire to bargain under section 3, irrevocably agree in writing to refer all matters remaining in dispute between them to an arbitrator or a board of arbitration for final and binding determination.

"Powers of arbitrator or board of arbitration

"(2) The agreement to arbitrate shall supersede all other dispute settlement provisions of this act, including those provisions relating to conciliation, mediation, strike and lockout, and the provisions of subsections 14(7), (8), (11), (12) and (18) to (20) apply with necessary modifications to the proceedings before the arbitrator or board of arbitration and to its decision under this section.

"Effect of agreement

"(3) For the purposes of section 38, an irrevocable agreement in writing referred to in subsection (1) shall have the same effect as a collective agreement."

This is simply to allow either party to request binding arbitration. I hearken back, my friends across the aisle here, to David Peterson's history with this and the first passing of it, so it's in the great tradition of the Liberal Party of Ontario that we allow this to happen; and he was right. So why should we take out what has been part of the Ontario Labour Relations Act with this bill? It seems silly, in light of the step forward we hope that this bill is going to be.

The Chair (Mrs. Linda Jeffrey): Questions or comments?

Mr. Reza Moridi: The Whitaker report specifically recommended removing the binding arbitration provision from the act to send the right signal to the parties to resolve their issues at the bargaining table rather than relying on the arbitrator.

The Chair (Mrs. Linda Jeffrey): Any other questions or comments?

Ms. Cheri DiNovo: Just to respond back to my friend, in fact this will lead to more wrangling, not less; to longer negotiation, not shorter; and we have a history of that in the province of Ontario. Really, this is about the rights of teachers and the rights of students, I might add, because teachers' and students' rights are tied up in this. I would certainly ask for a recorded vote on this.

Ayes

Bailey, DiNovo, Wilson.

Nays

Colle, Mitchell, Moridi, Zimmer.

The Chair (Mrs. Linda Jeffrey): That's lost. Section 7.2, Ms. DiNovo.

Ms. Cheri DiNovo: It's a sad day when the Tories vote with me and the Liberals vote against me.

I move that subsections 8(1) and (2) of the bill be struck out and the following substituted:

"Term of collective agreement

"8.(1) Every collective agreement shall,

"(a) provide for a term of operation of not less than one year;

“(b) state that it is effective on and after the 1st day of September in the year in which it is to come into operation”—

Interjection.

Ms. Cheri DiNovo: Oh, sorry. I’m jumping ahead of myself.

I move that the bill be amended by adding the following section:

“First agreement arbitration

“7.2(1) Where the parties are unable to effect a first collective agreement and a conciliation officer has made a report to the Minister of Labour under clause 7(3)(b) to the effect that, despite his or her efforts, the terms of a collective agreement have not been settled and the minister has informed the parties of the report by notice in writing in accordance with subsection 7(4), either party may apply to the board to direct the settlement of a first collective agreement by arbitration.”

Again, this is binding arbitration—

The Chair (Mrs. Linda Jeffrey): Can I ask you to read the rest of that amendment, please, under “Same.” At the bottom of that paragraph, there’s the last sentence that’s part of the amendment.

Ms. Cheri DiNovo: Okay; sorry.

“Same

“(2) Subsections 43(2) to (26) of the Labour Relations Act, 1995 apply with necessary modifications in respect of subsection (1).”

Again, these are the same arguments that I used before. In this case, we’re looking at binding arbitration where both parties agree.

The Chair (Mrs. Linda Jeffrey): Questions or comments?

0940

Mr. Reza Moridi: The Whitaker report specifically recommends that the parties resolve their issues at the bargaining table rather than relying on arbitration. The Labour Relations Act’s first contract arbitration provision does not provide automatic access to arbitration for the first contracts. In this particular case, the parties have 30 years of experience in negotiating and bargaining, on the college side and also on the union side. There’s no need, in our view, to make this amendment.

The Chair (Mrs. Linda Jeffrey): Any further questions or comments?

Ms. Cheri DiNovo: Again, recorded vote, please.

Ayes

Bailey, DiNovo, Wilson.

Nays

Colle, Mitchell, Moridi, Zimmer.

The Chair (Mrs. Linda Jeffrey): That’s lost.

We’re on section 8. Ms. DiNovo.

Ms. Cheri DiNovo: I move that subsections 8(1) and (2) of the bill be struck out and the following substituted:

“Term of collective agreement

“8(1) Every collective agreement shall,

“(a) provide for a term of operation of not less than one year;

“(b) state that it is effective on and after the 1st day of September in the year in which it is to come into operation; and

“(c) state that it expires on the 31st day of August in the year in which it ceases to operate.”

This is common sense. The school year operates from September until August. Certainly public school systems and staff collective agreements begin September 1 and end August 31. This creates more of a possibility of conflict between bargaining positions and units, the way the bill is constructed. This is in accordance with other accepted labour practices.

The Chair (Mrs. Linda Jeffrey): Further comments?

Mr. Reza Moridi: The current bill sets out the minimum term for one year. Unlike the previous bill, it doesn’t have a fixed calendar date. The Whitaker report specifically recommended the removal of August 31 as it exists in the current bill. This bill reflects this fact. The parties would have the provision to select their own fixed date. Given the college system, we think that that’s the most appropriate way to go. The parties can have their own date.

The Chair (Mrs. Linda Jeffrey): Further comments or questions?

Ms. Cheri DiNovo: This is a request from the union concerned, so clearly it evinces the wishes of the teachers that are involved here, very similarly to the public school system. I don’t see the difference here. It’s a very similar system. We’re dealing with teachers and students. The school year is pretty obvious. It keeps everybody on the same schedule.

Again, I would ask for a recorded vote.

The Chair (Mrs. Linda Jeffrey): Any further comments or questions?

Mr. Reza Moridi: Still, if they wish to have August 31 as their fixed date, they can. It is up to them.

Ayes

DiNovo.

Nays

Bailey, Colle, Mitchell, Moridi, Wilson, Zimmer.

The Chair (Mrs. Linda Jeffrey): That’s lost.

Shall section 8 carry? All those in favour? All those opposed? That’s carried.

Sections 9 through 13 have no amendments. Shall they carry? All those in favour? All those opposed? That’s carried.

Section 14: Who’s reading that motion, the PC motion? Mr. Wilson.

Mr. Jim Wilson: We’re going to withdraw that motion because I think the next motion on the same subsection, subsection 14(16), is a government motion that we can agree with and that corrects the same problem.

The Chair (Mrs. Linda Jeffrey): Okay, great. The government motion: Mr. Moridi.

Mr. Reza Moridi: Madam Chair, may I ask for 20 minutes' recess, please?

The Chair (Mrs. Linda Jeffrey): Sure. A 20-minute recess has been asked for.

The committee recessed from 0946 to 0955.

The Chair (Mrs. Linda Jeffrey): We're back in committee. We're at section 14(6), a government motion. Mr. Moridi.

Mr. Reza Moridi: I move that subsection 14(16) of the bill be amended by striking out "and that no party will not be substantially prejudiced"—

The Chair (Mrs. Linda Jeffrey): Sorry, Mr. Moridi. I think you're on the wrong one. Want to start again?

Mr. Reza Moridi: Yes. I move that the English version of subsection 14(16) of the bill be amended by striking out "and that no party will not be" and substituting "and that no party will be".

The Chair (Mrs. Linda Jeffrey): Any comments or questions? Seeing none, all those in favour? It's carried.

The next motion is a Conservative motion. Mr. Wilson.

Mr. Jim Wilson: I withdraw that motion.

The Chair (Mrs. Linda Jeffrey): That motion has been withdrawn.

The next motion is an NDP motion. Ms. DiNovo.

Ms. Cheri DiNovo: I move that subsection 14(18) of the bill be struck out and the following substituted:

"Effect of arbitrator's decision

"(18) The decision of an arbitrator or of an arbitration board is binding,

"(a) on the parties;

"(b) on the employers covered by the collective agreement who are affected by the decision;

"(c) on the employees covered by the collective agreement who are affected by the decision,

"and the parties, employers, council, employee organizations and employees shall do or abstain from doing anything required of them by the decision."

This follows, of course, from the other motions that I've moved.

The Chair (Mrs. Linda Jeffrey): Any comments or questions?

Mr. Reza Moridi: The point here is that the grievance arbitration decision from one college should be automatically binding on the other 24 colleges. To make such a change would make substantial changes from the existing law that would be strongly opposed by colleges.

The Supreme Court of Canada explicitly addressed this issue in 1981 and found that the grievance arbitration decision in one college does not apply to other colleges. Its reasoning was that while there is central bargaining, grievance arbitration is case-specific and only involves the officials of that college against which the grievance is lodged.

Given the complicated system within the colleges in Ontario—24 colleges and 100 campuses spread all over the province—one case on one campus or in one college

may not be applicable to the others. Therefore, we are opposed to this amendment.

The Chair (Mrs. Linda Jeffrey): Further comments or questions?

Ms. Cheri DiNovo: We had a strike in 2006 in the college system that was resolved by binding arbitration. Bill 90 would make that impossible. There's been precedent for binding arbitration and for both parties to consent to binding arbitration. So again, this flows from what we've already done.

Might I say at this point that, generally speaking, Bill 90 takes a step forward. It's a step that we've been hoping to take for a while, which extends, of course, charter rights to part-time and sessional college faculty. But the problem with the bill is that it giveth and it taketh away. We want to make this bill stronger for both the college teachers—all college teachers, who all perform the same job, whether full-time, part-time or sessional—and for the students that they teach. Again, we don't see why they should be separated out in the labour pool from other labour unions and other labour union rights.

The Chair (Mrs. Linda Jeffrey): Further comments or questions?

Mr. Reza Moridi: As I indicated earlier, given the college system in Ontario, with the large number of campuses and the various conditions, various situations, at each campus and each college things might be different from what the ruling would be if applied to that particular college or that particular campus.

Ms. Cheri DiNovo: This has nothing to do with the number of colleges; this has to do with the possibility of having binding arbitration. Whether there are 5,000 colleges or five colleges, what we're asking for here is something that's extended to other unions across the province, which is the possibility of entering into binding arbitration. It's already had historical precedent. So I don't understand the member opposite's comments, because they're not pertinent to this amendment.

Anyway, enough said. Let's vote, and let's have the votes recorded.

The Chair (Mrs. Linda Jeffrey): Any further comments or questions? Mr. Moridi? No.

Ayes

DiNovo.

Nays

Colle, Mangat, Mitchell, Moridi, Zimmer, Wilson.

The Chair (Mrs. Linda Jeffrey): That vote's lost. Shall section 14, as amended, carry? All those in favour? All those opposed. That's carried.

There are no amendments to sections 15 and 16. Shall they carry? All in favour? All opposed? That's carried.

Ms. DiNovo, you have the next amendment.

1000

Ms. Cheri DiNovo: I move that section 17 of the bill be amended by adding the following subsection:

“Where employees deemed to take part in strike

“(5) Where the employee organization gives notice of a lawful strike, all employees in the bargaining unit concerned shall be deemed to be taking part in the strike from the date on which the strike commences to the date on which the strike ends, and no employee shall be paid salary or benefits during such period.”

It’s interesting that even the Tories understood that it’s very dangerous—this is essentially talking about scabs and anti-scab provisions—to have scabs entering a place of work on college campuses during a strike. It leads to violence. We know that strikes that allow scabs in last longer and, of course, we have the problem of students who are working and students who are taking classes and trying to figure out which is which. Crossing a picket line is always counterproductive. So, again, that’s the argument behind this amendment.

The Chair (Mrs. Linda Jeffrey): Thank you. Mr. Wilson.

Mr. Jim Wilson: I just wanted to comment that I’m certainly in favour of this particular amendment and want to know why the government isn’t.

Mr. Reza Moridi: The Whitaker report specifically removed the deemed strike and deemed lockout provision from this bill. Given that in the college system we have about 5,000 student workers, if one group wants to enter into the college then it’s not easy to distinguish whether this particular student is a working student or he or she is just a student. We oppose this amendment.

Ms. Cheri DiNovo: You just gave exactly the reasons why we need it in—exactly the reasons why we need it in—because that way we know that the students who are entering are students and not workers, and that all workers are out when they’re out. Again, we’ve got 180,000 students on our college campuses. This could lead to incredible violence.

Again, I note for the record that it’s quite wild when the Progressive Conservative Party sees this very clearly and the Liberals do not. Certainly, in other venues the New Democratic Party has tried to pass anti-scab legislation with the McGuinty government to no avail. Here’s another classic case where the McGuinty government is in bed with scab labour.

So, again, I definitely want a recorded vote. Every union out there, from CAW to CUPE, should take note of this historic moment.

The Chair (Mrs. Linda Jeffrey): Any further comments or questions? Mr. Moridi.

Mr. Reza Moridi: This provision doesn’t exist in any larger organizations, neither in universities. So the college system is not going to be exceptional. It doesn’t exist in other places either.

The Chair (Mrs. Linda Jeffrey): Thank you. Any further comments or questions? Ms. DiNovo.

Ms. Cheri DiNovo: Just to know that forthcoming you’ll see what has, of course, happened in the past, which is violence on the picket lines.

The Chair (Mrs. Linda Jeffrey): Any further comments or questions?

Ayes

Bailey, DiNovo, Wilson.

Nays

Colle, Mangat, Mitchell, Zimmer, Moridi.

The Chair (Mrs. Linda Jeffrey): That amendment is lost.

Shall section 17 carry? All those in favour? All those opposed? That’s carried.

There are no amendments in sections 18, 19 and 20. Shall they carry? All in favour? All opposed? They are carried.

The next motion is yours, Ms. DiNovo.

Ms. Cheri DiNovo: I move that section 21 of the bill be amended by adding the following subsection:

“Where lockout deemed

“(4) Where the council gives notice of a lawful lockout, all employers shall be deemed to be taking part in the lockout from the date on which the lockout commences and an employee in the bargaining unit concerned is not entitled to be paid salary and benefits in respect of the days on which the employee is prevented from performing his or her duty as the result of action by an employer under this section.”

Again, this follows from the other amendment.

The Chair (Mrs. Linda Jeffrey): Any further speakers? Mr. Moridi.

Mr. Reza Moridi: Madam Chair, again, similar to the previous case, the Whitaker report specifically recommends that we remove the lockout provision from the bill, and we believe that this will serve the college system and the students much better. Furthermore, the lockout provision doesn’t exist in larger organizations, including the universities in the province.

The Chair (Mrs. Linda Jeffrey): Further comments or questions?

Ms. Cheri DiNovo: A recorded vote, please.

Ayes

Bailey, DiNovo, Wilson.

Nays

Colle, Mangat, Mitchell, Moridi, Zimmer.

The Chair (Mrs. Linda Jeffrey): That’s lost.

Shall section 21 carry? All those in favour? All those opposed? That’s carried.

Sections 22 through 25 have no amendments. Shall they carry? All those in favour? All those opposed? They’re carried.

Section 26, government motion. Mr. Moridi.

Mr. Reza Moridi: I move that subsection 26(4) of the bill be struck out and the following substituted:

“Timing of application

“(4) The first application under this section that would change the description of or eliminate a bargaining unit described in section 1 or 2 of schedule 1 shall not be made before the later of,

“(a) one year after the day this act receives royal assent, and

“(b) the day after a collective agreement has been executed in respect of the bargaining unit described in section 2 of schedule 1.

“Same

“(4.1) The first application under this section that would change the description of or eliminate a bargaining unit described in section 3 or 4 of schedule 1 shall not be made before the later of,

“(a) one year after the day this act receives royal assent; and

“(b) the day after a collective agreement has been executed in respect of the bargaining unit described in section 4 of schedule 1.”

The Chair (Mrs. Linda Jeffrey): Did you want to speak to that motion?

Mr. Reza Moridi: Yes. The proposed amendment would address the concern that the requirement for collective agreements to be in place for both part-time units could prevent an application from being made if one of the part-time units never gets organized.

The Chair (Mrs. Linda Jeffrey): Any further comments or questions?

Mr. Jim Wilson: Was this just an oversight from the first draft of the bill?

Mr. Reza Moridi: It wasn't the intention of the first draft not to include this, but now we are amending it.

The Chair (Mrs. Linda Jeffrey): Ms. DiNovo, did you have a question?

Ms. Cheri DiNovo: Yes. We're going to introduce our own amendment; I'm going to vote against this. Really, what we would like to see is that teachers be recognized as teachers; whether they're part-time, full-time, sessional, whatever, they're teachers. So there should be two bargaining units, teachers and support staff, rather than the way that Bill 90 is constructed. That's why we're voting against it.

The Chair (Mrs. Linda Jeffrey): Any further comments or questions?

Mr. Jim Wilson: Perhaps the government could explain in layman's terms what substantial change this makes from the printed bill.

Mr. Reza Moridi: This basically reflects Whitaker's intention that one unit, when it gets organized, can make these decisions. It wouldn't need to wait for the other unit to get organized.

The Chair (Mrs. Linda Jeffrey): Any further comments or questions? Can I just remind you, Mr. Moridi: If you ever want some staff to come up and assist you with your answer, you're welcome to do that if somebody asks you a question you would like some additional help with.

Mr. Reza Moridi: Thank you.

The Chair (Mrs. Linda Jeffrey): Okay. So this is a government motion.

Mr. Mike Colle: A recorded vote, please.

Ayes

Colle, Mangat, Mitchell, Moridi, Zimmer.

Nays

Bailey, Wilson.

The Chair (Mrs. Linda Jeffrey): That's carried.

Ms. DiNovo, you have the next motion.

Ms. Cheri DiNovo: I move that section 26 of the bill be struck out and the following substituted:

“Application re bargaining units

“26.(1) The council, the bargaining agent for a bargaining unit or an employee organization that has applied to be certified as the bargaining agent for a bargaining unit may apply to the Ontario Labour Relations Board proposing,

“(a) changes in the description of bargaining units;

“(b) the establishment of bargaining units;

“(c) the elimination of bargaining units.

“Same

“(2) The applicants shall set out the details of the proposal in the application.

“Same

“(3) The parties to the application shall include,

“(a) the council;

“(b) the bargaining agent for any bargaining unit that would be affected by the proposal; and

“(c) an employee organization that has applied to be certified as the bargaining agent for a bargaining unit that would be affected by the proposal.

“Timing of application

“(4) The first application under this section shall not be made before the later of,

“(a) one year after the day this act receives royal assent; and

“(b) the day after a collective agreement has been executed in respect of each of the bargaining units that would be affected if the proposal were implemented.”

I think I spoke to this.

1010

The Chair (Mrs. Linda Jeffrey): Any further discussion?

Mr. Reza Moridi: The Whitaker report specifically recommended a joint application in order to provide stability and prevent having the attempt to change bargaining unit descriptions to be used as a lever in bargaining.

The Chair (Mrs. Linda Jeffrey): Any further comments or questions?

Ms. Cheri DiNovo: Again, we think there are teachers and support staff, and we think there should be two bargaining units.

The Chair (Mrs. Linda Jeffrey): Any further comments or questions? Mr. Moridi?

Mr. Reza Moridi: No, thank you.

The Chair (Mrs. Linda Jeffrey): All those in favour of the motion? All those opposed? That's lost.

Shall section—Ms. DiNovo.

Ms. Cheri DiNovo: Sorry. I hope it's not too late to have a recorded vote.

The Chair (Mrs. Linda Jeffrey): It's too late. You can catch me at the beginning, but after it's done, I can't.

Shall section 26, as amended, carry? All those in favour? All those opposed? That's carried.

Sections 27 through 29 have no amendments. All those in favour of those sections? All those opposed? That's carried.

Mr. Wilson, you have the next motion.

Mr. Jim Wilson: I move that subsection 30(1) of the bill be amended by striking out "35 per cent" and substituting "40 per cent".

I think it's self-evident.

The Chair (Mrs. Linda Jeffrey): Any further questions?

Mr. Reza Moridi: The Whitaker report specifically recommends a 35% membership support threshold for college workers, based on the idea that the college system consists of 24 colleges and over 100 campuses, and that gives more opportunity for workers to get unionized. After all, there will be a democratically voted system based on majority voting at the end.

The Chair (Mrs. Linda Jeffrey): Further comments or questions?

Ms. Cheri DiNovo: The New Democratic Party supports card-check certification. We put this forward in another bill at another time. But certainly, between 35% and 40%, should we choose, we'd prefer the 35%. We'll be voting against this.

The Chair (Mrs. Linda Jeffrey): Further comments or questions? Seeing none, all those in favour of the motion? All those opposed? That's lost.

Committee, just so you know, there's a numbering error, so we're going to number 7 first and then we'll be coming back to number 6 in the next section.

Interjection.

The Chair (Mrs. Linda Jeffrey): It's motion 7. We're going from five to seven, just so you're following. I have a different road map, so I want to make sure we're on the same page.

Mr. Wilson.

Mr. Jim Wilson: I didn't get the NDP amendments until moments ago. We're doing seven?

The Chair (Mrs. Linda Jeffrey): Yep.

Mr. Jim Wilson: I move that subsections 30(1), (2) and (3) of the bill be struck out and the following substituted:

"Representation vote

"(1) If the Ontario Labour Relations Board is satisfied, based on evidence, that 35 per cent or more of the individuals in the bargaining unit referred to in the application for certification are members of the employee

organization at the time the application was filed, the board shall direct that a representation vote be taken among the individuals in the voting constituency.

"Hearing

"(2) The board may hold a hearing when making a decision under subsection (1)."

I just think it gives more discretion to the board and clarifies this section.

The Chair (Mrs. Linda Jeffrey): Any further comments?

Mr. Reza Moridi: Such challenges are not permitted under the Labour Relations Act, and we believe that allowing such challenges could lead to delays in the decision-making. Also, it will introduce litigation when a union applies for certification. After all, Bill 90, like the Labour Relations Act, would always require a union to win majority support on a secret ballot vote before they could be certified.

The Chair (Mrs. Linda Jeffrey): Further comments or questions?

Ms. Cheri DiNovo: Of course, we think that without card-check certification, at least the vote should be in a timely manner within 14 days and made as fluid as possible, so we're going to vote against this.

The Chair (Mrs. Linda Jeffrey): Any further comments or questions? Seeing none, all those in favour of the motion? All those opposed? That's lost.

The next motion is a government motion. This is number 8.

Mrs. Carol Mitchell: We're going to motion 8 now?

The Chair (Mrs. Linda Jeffrey): Yes. When we get back on track, I'll tell you, but we're not there yet.

Mrs. Carol Mitchell: That's fine.

Mr. Reza Moridi: I move that subsection 30(4) of the bill be struck out and the following substituted:

"Timing of vote

"(4) The representation vote shall be held in a timely manner, within a time period determined by the board."

The Chair (Mrs. Linda Jeffrey): Any comments or questions? Ms. DiNovo.

Ms. Cheri DiNovo: Yes, we think that "timely manner" means within 14 days, so we will be voting against this.

The Chair (Mrs. Linda Jeffrey): Any further comments or questions? Mr. Moridi.

Mr. Reza Moridi: We think that putting it at a strict 14 days or any date is not appropriate. We leave it for the parties to decide.

The Chair (Mrs. Linda Jeffrey): Ms. DiNovo.

Ms. Cheri DiNovo: Clearly, one party has decided and would like to see it in a more timely manner, and that is the union representing the teachers. So we would certainly side with them. Clearly, the longer it goes, the more open to intimidation and undoing of the good work of the union is possible, so again, "a timely manner" means a timely manner: Within 14 days should be possible.

The Chair (Mrs. Linda Jeffrey): Mr. Moridi.

Mr. Reza Moridi: The “timely manner” is within the time period determined in the bill.

The Chair (Mrs. Linda Jeffrey): Any further comments or questions? Seeing none, all those in favour of the motion? All those opposed? That’s carried.

Ms. DiNovo, you have the next motion, 8.1.

Ms. Cheri DiNovo: I move that subsections 30(4) and (5) of the bill be struck out and the following substituted:

“Timing of vote

“(4) Subject to subsection (5), the representation vote shall be held within 14 days (excluding Saturdays, Sundays and holidays) after the day on which the application for certification is filed with the board.

“Same

“(5) The board may order that the vote shall be held during a time period specified by the board that is later than the time period determined under subsection (4) if the board considers that holding the vote within the time period determined under subsection (4) would cause the vote to be held during a time period when the persons eligible to participate in the vote are not substantially representative of persons likely to be substantially affected by the result of the vote.”

Again, I want to mention that we really would like to see card-check certification to avoid this, but since we’re dealing with this, and since the Liberal government under Dalton McGuinty is not in favour of card-check certification, this is as good as it’s going to get, and we would like to see this amendment put forward.

The Chair (Mrs. Linda Jeffrey): Mr. Moridi.

Mr. Reza Moridi: Imposing a 14-day time limit is going to remove the flexibility from both parties, so we are opposed to that. We would like both parties to have flexibility in setting out their time within the period stated in the bill.

The Chair (Mrs. Linda Jeffrey): Ms. DiNovo.

Ms. Cheri DiNovo: In this amendment there’s a provision allowing for some flexibility, but clearly, on the government side they would like to retain flexibility for the employer and not for the employee in this instance. I want to make that very clear and I want a recorded vote on this, please.

The Chair (Mrs. Linda Jeffrey): Any further comments or questions? Seeing none, all those in favour of the amendment? All those opposed? That’s lost.

Shall section 30, as amended, carry? All those in favour? All those opposed? That’s carried.

Now we’re going back to 6, and that’s Mr. Wilson.

Mr. Jim Wilson: I move that subsection 31(3) of the bill be struck out.

Colleges Ontario, when they appeared before this committee, indicated it might be unrealistic for them to have an accurate part-time employees list available within the requirement of the bill as printed. So this would give the board some flexibility to set a timeline, and when the accurate lists could be completed.

The Chair (Mrs. Linda Jeffrey): Further comments or questions? Mr. Moridi.

Mr. Reza Moridi: This two-day rule is based on the Labour Relations Act and it applies to all employers, including very large employers like universities and others. We believe that the colleges, the employer, would have the list of their employees, so two days should be quite adequate for them to come up with that number and the list.

The Chair (Mrs. Linda Jeffrey): Mr. Wilson.

Mr. Jim Wilson: Well, perhaps to their embarrassment, they testified otherwise and said they may not have an accurate list. I think they were just trying to abide by the spirit of the law and be able to go and ask the board for some flexibility. After all, a lot of your arguments are based on the fact that there are so many colleges and just slightly over 100 campuses, and they just maybe need a few more days to make sure that those who are voting are actually employees.

1020

The Chair (Mrs. Linda Jeffrey): Further comments or questions?

Mr. Reza Moridi: I think their payroll list would be a good way to start. Everybody on the college employee list should be on the payroll list. That should be adequate. Within two days, they should be able to pull out the list.

The Chair (Mrs. Linda Jeffrey): Thank you. Ms. DiNovo.

Ms. Cheri DiNovo: We in the New Democratic Party will be voting against this. It seems that the Liberal Party and the Progressive Conservatives are all about flexibility for the employer and not for the employee, so we will be voting against this.

The Chair (Mrs. Linda Jeffrey): Mr. Wilson, did you want to speak again?

Mr. Jim Wilson: No.

The Chair (Mrs. Linda Jeffrey): Okay. Any further questions or comments? All those in favour of the motion? All those opposed? That’s lost.

Shall section 31 carry? All those in favour? All those opposed? That’s carried.

Between sections 32 to 48, there are no amendments. Shall they carry? All in favour? All opposed? That’s carried.

We’re at section 48.1. Ms. DiNovo, motion 8.2.

Mr. Mike Colle: Which one is it?

Ms. Cheri DiNovo: It’s 48.1, the section we’re dealing with now, right?

The Chair (Mrs. Linda Jeffrey): Yes.

Ms. Cheri DiNovo: I move that the bill be amended by adding the following sections at the end of part V:

“Successor Rights and Related Employers

“Declaration of successor union

“48.1 Section 68 of the Labour Relations Act, 1995 applies with necessary modifications with respect to this act.

“Successor employer

“48.2 Section 69 of the Labour Relations Act, 1995 applies with necessary modifications with respect to this act.

“Related employer

“48.3 Subsections 1(4) and (5) of the Labour Relations Act, 1995 apply with necessary modifications with respect to this act.”

This deals with a very fundamental principle of organized labour, and that's successor rights and related employer provisions. It's astounding to us in the New Democratic Party that that's not part of Bill 90, if this was in fact put in place to protect part-time and sessional teachers. By the way, I want to correct for Hansard: When I talked about support staff, I should have mentioned part-time support staff too.

In 2006, the McGuinty government restored successor rights to crown employees. This was a major promise of the 2003 election from Dalton McGuinty. Now here they are, not instating successor rights for college teachers. Why is that? Certainly this is the foundation that, if somebody moves from one employer to another employer and does the same job, they have the same rights. We're kind of gobsmacked in the New Democratic Party that the McGuinty government would make a distinction between crown employees and teachers here.

The Chair (Mrs. Linda Jeffrey): Mr. Moridi.

Mr. Reza Moridi: The Whitaker report did not make any specific recommendations to enforce such provisions in the bill. The Labour Relations Act successor right provisions apply to businesses or undertakings when they are sold or transferred. When it comes to the college system, the core business of the college system is education and training, and this business is legislated and is not going to be transferred or sold to anyone else.

While there are other businesses within the college system, for example, running the parking lot or bookstores, those operations can always be contracted out, and this bill of course wouldn't apply to them.

The Chair (Mrs. Linda Jeffrey): Ms. DiNovo.

Ms. Cheri DiNovo: It's interesting that my colleague across the way talks about contracting out. When the Tories took away successor rights it was in the interests of privatization across the province. Surely the McGuinty Liberals aren't interested in pursuing the same agenda as the Progressive Conservatives under Harris. We hope that they step up to the plate here on behalf of some of the most valued employees across the province and their students, do what's right and really enshrine successor rights here for the folks whom we're talking about in this bill, Bill 90.

The Chair (Mrs. Linda Jeffrey): Any further comments or questions? Seeing none, all those in favour of the motion? All those opposed? That's lost.

Sections 49 through 71 have no amendments. Shall they carry? That's carried.

Our next motion is Ms. DiNovo's.

Ms. Cheri DiNovo: I move that section 72 of the bill be amended by adding “or the council” after “employee organization”.

This is about fairness and clarity. We just want to ensure that that the council has the same duties and responsibilities under the act as do employee organizations.

The Chair (Mrs. Linda Jeffrey): Any further comments or questions?

Mr. Reza Moridi: Under the Labour Relations Act, this exists because employee associations are private organizations and the information regarding bylaws, officers and persons authorized to accept notices is not always publicly available. The employers' council will be established by statutes with the functions established in those statutes.

As well, given that the board is composed of members of college boards, it's likely that all information regarding the council would be accessible under the FOIPPA.

The Chair (Mrs. Linda Jeffrey): Any further comments or questions?

Ms. Cheri DiNovo: Again, this is about an even playing field. This is about ensuring that we have two negotiating partners with the same rights and responsibilities. Again, we see the government falling on the side of the employer here.

The Chair (Mrs. Linda Jeffrey): Further comments or questions? Seeing none, all those in favour of the motion? All those opposed? That's lost.

Shall section 72 carry? All those in favour? All those opposed? That's carried.

There are no amendments for section 73. Shall it carry? All those in favour? All those opposed? That's carried.

Section 74, Ms. DiNovo.

Ms. Cheri DiNovo: I move that section 74 of the bill be struck out and the following substituted:

“Representative for service of process

“74. Every employee organization that represents employees or applies to represent employees under this act and the council shall file with the Ontario Labour Relations Board a notice giving the name and address of a person in Ontario who is authorized by the employee organization or the council, as the case may be, to accept on its behalf service of process and notices under this act, and service on the person named in such notice is good and sufficient service for the purposes of this act on the employee organization or the council that filed the notice.”

It follows from the previous.

The Chair (Mrs. Linda Jeffrey): Any further comments or questions?

Mr. Reza Moridi: Again, here, under the Labour Relations Act, this exists because employee associations are private organizations and the information regarding bylaws, officers and persons authorized to accept notices is not always publicly available. The employers' council will be established by statutes with its functions established in those statutes.

The Chair (Mrs. Linda Jeffrey): Any further comments or questions? All those in favour of the motion? All those opposed? That's lost.

Shall section 74 carry? All those in favour? All those opposed? That's carried.

Ms. DiNovo, you have the next motion.

Ms. Cheri DiNovo: I move that the bill be amended by adding the following section:

“Good faith representation by council

“74.1 The council shall not act in a manner that is arbitrary, discriminatory or in bad faith in the representation of any employer.”

Again, what’s good for the goose is good for the gander, keeping the negotiating field level and bargaining in good faith—it’s a pretty straightforward amendment.

The Chair (Mrs. Linda Jeffrey): Any further questions?

Mr. Reza Moridi: The proposed amendment by the NDP would provide a duty of fair representation that applies to unions under the Labour Relations Act and Bill 90. The relevance or need for such an amendment is not evident here. All colleges would be represented on the council’s board of directors and would have a say in its governance and operations.

The Chair (Mrs. Linda Jeffrey): Any further comments or questions? Seeing none, shall section 74.1 carry? All those in favour? All those opposed? That’s lost.

Ms. DiNovo.

Ms. Cheri DiNovo: I move that the bill be amended by adding the following section:

“Accountability of council

“74.2(1) The council, the employers and the Minister of Training, Colleges and Universities shall make every reasonable effort to negotiate a memorandum of understanding setting out the means by which the council will report on its activities to the minister.

“Same

“(2) The minister may require the council to provide such reports as the minister considers advisable in respect of the council’s activities and the council shall comply with the requirement.”

1030

Again, it’s a level playing field, and again, it’s government oversight. A lot of taxpayer dollars go into this particular employer, so it’s an employer unlike some other employers in the private sector. We think government should be present and that government should provide oversight of this process.

The Chair (Mrs. Linda Jeffrey): Mr. Moridi.

Mr. Reza Moridi: The proposed amendment would in effect make the council accountable to the minister for the way it carries out its collective bargaining role under the act. This would be inappropriate, because the minister is not a party to college collective bargaining.

It’s important to remember that even though the current council is a government agency, its mandate is to act at arm’s length from the government in the matter of labour negotiations and it’s not accountable to the minister for this aspect of its role. The proposed amendment would also be contrary to the Whitaker report, which specifically recommended setting up a separate employer bargaining association within the control and direction of the colleges themselves.

The Chair (Mrs. Linda Jeffrey): Mr. Wilson.

Mr. Jim Wilson: I don’t disagree with what the parliamentary assistant has just said, but perhaps for the record we could either ask the parliamentary assistant or staff to just give us a general oversight in terms of how the council is accountable to the government and the taxpayer.

The Chair (Mrs. Linda Jeffrey): Mr. Moridi, are you comfortable answering that, or would you like some assistance?

Mr. Reza Moridi: Yes. The council board of directors will be composed of the chair of the board of governors of every college and also the presidents of the college. So through this arm’s-length organization, accountability will be exercised.

The Chair (Mrs. Linda Jeffrey): Ms. DiNovo.

Ms. Cheri DiNovo: For the record, that’s a pretty bureaucratic answer over there. Hence, we have the highest student fees in Canada, just about the highest student debt in Canada and no relief in sight, and a government that steps away from the entire process, either teachers’ rights or students’ rights, here. Again, I’d like a recorded vote on this. This is a government that’s not upholding its end of the responsibility to make sure that education is a fundamental human right in the province of Ontario.

The Chair (Mrs. Linda Jeffrey): Any further comments or questions?

Ayes

DiNovo.

Nays

Bailey, Colle, Mangat, Mitchell, Moridi, Wilson, Zimmer.

The Chair (Mrs. Linda Jeffrey): That’s lost.

There are no amendments to sections 75 or 76. Shall they carry? All in favour? All opposed? That’s carried.

The next motion is a government motion. Mr. Moridi.

Mr. Reza Moridi: I move that the bill be amended by adding the following section:

“Declaration of successor union

“76.1 Section 68 of the Labour Relations Act, 1995 applies with necessary modifications with respect to representation rights under this act.”

The proposed amendment would incorporate section 68 of the Labour Relations Act to deal with unions’ success of rights if unions merge or amalgamate and would allow the Ontario Labour Relations Board to make a declaration that the new union is the successor to the previous union, so that that union doesn’t lose its bargaining rights.

The Chair (Mrs. Linda Jeffrey): Any further debate? Ms. DiNovo.

Ms. Cheri DiNovo: Yes, I’m going to be supporting this; it’s better than nothing. We’d like to also see section 69 of the Labour Relations Act with respect to successive

employer rights as well. But we're going to be voting for this and we're glad to see that the government has taken some of our lead on this.

Mr. Reza Moridi: Thank you.

Mr. Mike Colle: A recorded vote, please.

Ayes

Bailey, Colle, DiNovo, Mangat, Mitchell, Moridi, Wilson, Zimmer.

The Chair (Mrs. Linda Jeffrey): A unanimous carry. Terrific.

Section 77, there are no amendments; shall the section carry? All those in favour? All those opposed? That's carried.

The next motion is yours, Ms. DiNovo.

Ms. Cheri DiNovo: I move that the bill be amended by adding the following section:

"Duties of OLRB

"77.1 The Ontario Labour Relations Board shall,

"(a) compile statistical information on the supply, distribution, professional activities and salaries of employees; and

"(b) advise the Lieutenant Governor in Council when, in the opinion of the board, the continuance of a strike, lockout or closing of a college or colleges will place in jeopardy the successful completion of courses of study by the students affected by the strike, lockout or closing of the college or colleges."

This just ensures that the two most useful functions of the former college relations committee under the old CCBA are carried over. This helped, of course, to shorten strike times when the public was aware of how the strike and how the actions of the employer in this instance were impacting students, faculty and, of course, the public.

The Chair (Mrs. Linda Jeffrey): Further debate?

Mr. Jim Wilson: Could we just go over, from the government side, how jeopardy is going to be dealt with under the new act?

Mr. Reza Moridi: The Whitaker report specifically recommended that the jeopardy advice function be removed from the act. Removing this safety net, which lets the parties avoid taking responsibility themselves for the serious consequences of a strike, would be one more factor to encourage the parties to remain at the bargaining table. There's no jeopardy advice function in the university sector, as we know. After all, a government can introduce back-to-work legislation at any time if it considers that the public interest is in jeopardy. So there is a provision there: The government can always bring back-to-work legislation if needed.

Mr. Jim Wilson: I don't really understand why you wouldn't want jeopardy provisions in there. They're certainly in there for elementary and secondary schools. It gives cabinet an excuse to order the parties back to work. So it's a bit of a mystery to me. It was a nice crutch in the past, in my eight years in government. Also, it's ulti-

mately about the students and whether their year or semester is in jeopardy or not.

Ms. Cheri DiNovo: Absolutely. Really, we're talking about the principle of transparency here, the public's right to know. I don't understand why the government wouldn't want the public to know what's happening and how it affects the students and the teachers and the public.

Mr. Reza Moridi: Madam Chair, may I consult with my staff, please?

The Chair (Mrs. Linda Jeffrey): Sure.

As you sit down, could you introduce yourself for the committee?

Mrs. Carol Mitchell: I just wanted to make a short comment. This is about accountability, it's about transparency. We understand how important post-secondary education is for the future of our children. We have made significant investments, and this is just another piece of it. I certainly welcome the input, but I just wanted to reinforce to all of the members of the committee how important this is to our government because it's about the future.

The Chair (Mrs. Linda Jeffrey): Thank you.

Good morning.

Ms. Elisabeth Scarff: Good morning. My name is Elisabeth Scarff. I'm legal counsel with the Ministry of Training, Colleges and Universities.

The question was—I'm sorry; Mr. Wilson, can you repeat the original question?

Mr. Jim Wilson: Yes. The motion deals with jeopardy, in terms of it's not going to be in the new act. To me, in the past, it was a handy tool and a good indicator to government of when you should order the parties back to work.

Ms. Elisabeth Scarff: I don't know if it's my role to comment on the rationale. It was more like, how would the government know jeopardy is going to be there? It would be in the same manner, essentially, as happens now, in any event, by which colleges advise the College Relations Commission—and presumably would advise the government—as to when colleges would no longer be able to make up for academic years if a strike continued, which is essentially what happens now. Colleges decide at what point practically, if a strike continued, they couldn't compress academic years or provide alternate means for the students to complete their programs within the time frame. That information presumably would still be forthcoming to the government, and the government would then have before it the same decisions as it has now when that information is provided to the College Relations Commission, because even under the current system, it is still the government that decides what to do with the information.

1040

Mr. Jim Wilson: I guess it's the word "presumably," that presumably they'll report. Is there anything wrong with the NDP amendment in terms of requiring them to report?

Mr. Reza Moridi: We don't have this clause for the universities, which are similar to colleges in terms of

their function as far as the school year goes, so there's really no need to have this clause put into the bill, though the government always has the authority to bring back to work legislation once it feels that the interests of the students are in jeopardy.

Ms. Cheri DiNovo: Yes. We just want to ensure that you do. We just want to ensure that we have access to that information, not only members of government, but that members of the public have access to what's going on during a strike.

Also, the other part of this amendment—and I don't want to skip over it—is about “the supply, distribution, professional activities and salaries of employees,” because right now in the college system we have part-time employees and sessional employees who are making a great deal less than their permanent counterparts doing the same job. We think, again, that the public has a right to know that their college professors are making less than they do if they're working at Starbucks on occasion. That's a pretty telling statistic. We want access to that kind of information. We want the public to have access to that kind of information and think that this needs to be in this act because we're frightened, of course—otherwise we wouldn't make this amendment—that we won't be able to get our hands on it. So if the government has nothing to hide, if they plan on making this information public anyway, what's the harm in passing this amendment that just asks that it be so?

The Chair (Mrs. Linda Jeffrey): Any further debate? Mr. Colle.

Mr. Mike Colle: Just to note that the Whitaker report recommended specifically on deleting the jeopardy advice from this board called the College Relations Commission, so it puts more onus on the government and it puts more onus on the bargaining agents and the colleges to essentially take their full responsibility and make them more mature, rather than setting up this nameless, faceless College Relations Commission of which none of us know who the members are or what they do. It really demonstrates the government's acknowledgment of the maturity of the colleges sector and also the fact that Whitaker is very clear: He feels it's better that this be taken out, and the universities have never had it. So it seems to make pretty common sense, eminent sense, that this is the way to go. Are the NDP going to argue with Kevin Whitaker's report and his esteemed advice?

Ms. Cheri DiNovo: With all respect to Mr. Whitaker, what we're here to defend are the rights of the students and the rights of the faculty—part-time and sessional faculty—and all employees of the college system—part-time, full-time support workers as well—but particularly we know that there's this trend, which is marked, in the United States. The whole point of this bill, in effect, we hope, is to bring back rights that have been taken away, that are charter rights, I would argue, for faculty who are doing the same job—the same job—as their full-time counterparts and getting paid way less. In fact, until this bill is passed, they don't even have the right to form a union. That's what this exercise is about today. We fool

ourselves if we think that this is a trend that's not going to continue and grow. It's sad that they don't do this at the university level. If you look at the Americans to the south of us, you see that some universities have way more faculty who are on contract and part-time than are full-time, and, guess what, they could lose their jobs at any moment, they have no rights. Any of the crown employees who are sitting in this room who are part of a union, part of OPSEU possibly, the very union that we're arguing for in this plank, will understand that. Here you have people with Ph.D.s and many of them are making less per hour, by the time they count grading papers, doing all the work they do, than the students sitting in front of them in the classes. Is that ethical? Is that right? Is that just? We in the NDP say absolutely not. Mr. Whitaker aside, that's what we're here to fight for.

Mr. Reza Moridi: Specifically for that reason, our government has made a commitment and a policy decision in our last mandate to look into this issue of bargaining rights for part-time workers and part-time academics in our college system. That's why our government requested Kevin Whitaker to review the whole system from A to Z and come up with a report, which he did. He presented his report in February with 17 recommendations. As a government, we accepted all his recommendations and we built them into the bill. This bill which is before you is based on Whitaker's very thorough review. He actually conducted lots of consultations with stakeholders, and we also conducted hearings last week here. So these are the amendments we are going to make today, and the bill will be presented to the House.

Ms. Cheri DiNovo: Just to get back to this one particular little amendment, all we're asking for in it is transparency and the ability to get our hands on facts and figures that would aid and abet the educational system in Ontario.

Mr. Mike Colle: Just about transparency again, what Mr. Whitaker is recommending and our government is supporting is that you don't put in this nameless, faceless third party here, this nebulous College Relations Commission, and you give more power, more recognition, to the union and to the colleges directly upfront in the bargaining process. You talk about transparency. This is much more transparent and that's why Kevin Whitaker has recommended this.

The NDP never brought forward this kind of bill that gives bargaining rights to temporary college workers when they were in power. We're doing it. It's a commitment that we made and we're doing it, because the NDP never did it when they were in power. It's long overdue, and it's proceeding on the basis of the advice of one of North America's foremost labour relations experts, Mr. Whitaker. It's a great step forward in transparency, responsibility and taking a very balanced approach in ensuring that the rights of the students, first of all, across our great colleges are appreciated and also the rights of the workers—the professors, the part-time workers. They're now going to get extra rights to bargain when they're part-time, because we know that there's a

growing number of part-time teachers and workers in the college system. That's why this bill is very appropriate, and I can't see why the NDP is arguing against that, when they've been asking for it and never did it. It's kind of trying to have it both ways. We're doing it.

Ms. Cheri DiNovo: I think that Mr. Colle refers to the former government of Bob Rae, who I gather has something else going on in his life now, as he was then a Liberal. So I'm not here to defend the actions of a Liberal.

What I'm here to do in this amendment is simply—we're not arguing for the old College Relations Commission and we're not arguing against Bill 90. What we're talking about is a little amendment that's simply asking for some more transparency. This is a function that was a good thing to carry over. We're not saying that everything is a good thing to carry over; we're simply saying that all we want is to be able to get our hands on statistical information and to understand when the students are at risk, in jeopardy, of losing their year. This is a very simple thing that I think everybody in the public would want to know. That's it; we're not arguing about anything larger with this amendment, just that.

1050

The Chair (Mrs. Linda Jeffrey): Further comments or questions? Mr. Moridi.

Mr. Reza Moridi: No comments.

The Chair (Mrs. Linda Jeffrey): Mr. Colle.

Mr. Mike Colle: Again, transparency is enhanced when you get rid of the NDP's College Relations Commission, which they want to hold onto. Why? I don't know. Let the parties decide in good faith what they hope to achieve in a clear, transparent way. Why the NDP wants this middle group in there, basically clouding the issue, is beyond me. And they talk about their government: Well, it wasn't just one man in that government. All the members of the NDP cabinet had five years to introduce this legislation. They sat on their hands and did nothing. We are doing something.

The Chair (Mrs. Linda Jeffrey): Any further comments or questions? Ms. DiNovo, are you indicating you want to speak?

Ms. Cheri DiNovo: Sure, why not? First of all, absolutely we're in favour of bargaining rights for part-time workers; absolutely, we're in favour of that. What we're trying to do here is to make this bill stronger, not make it weaker. That's what we're doing in this room at this time. Did I say that I wanted the College Relations Commission back? Did we say—no. What we said is we want more transparency in reporting. That's all this amendment calls for: more transparency in reporting.

Certainly, if we're going to discuss or debate the powers of the Premier's office, I'm sure that Mr. Zimmer would like to have some words about that, and other members of the Liberal caucus who would like to have seen some of their bills passed that didn't get passed. We know that there are huge amounts of power in the Premier's office. Some of us wish that weren't so. Mr. McGuinty promised that it would not be so under his leadership. It certainly was so under Bob Rae; it certainly

is under Dalton McGuinty. We certainly have had that concentration of power in the Premier's office with two Liberal premiers.

The Chair (Mrs. Linda Jeffrey): Any further comments or questions? Mr. Colle.

Mr. Mike Colle: Yes. Again, to state on the record clearly that Mr. Whitaker in his report, probably one of the most comprehensive reports in this whole area of collective bargaining in the colleges, has produced a very astute series of recommendations which the NDP, in this case, are opposing because they want to see this nebulous, no-name College Relations Commission. And I challenge the NDP to name me who's on that commission, but they want to keep that commission to muddy the waters, whereas Mr. Whitaker and our government are saying that we have two mature sides.

We've got the colleges' association; we have the labour unions, OPSEU or whoever may want to represent the part-time workers or the professors at the colleges. They're capable of resolving some of these issues even before it goes the final step. That's what Mr. Whitaker has recommended in his report all along. He respects their growing maturity as bargaining agents or as a college association because for too many years, there wasn't enough attention given to our incredibly successful colleges and all the wonderful institutes that make up our college system.

That's why our government has taken the time to put forward this legislation, because it's not just an afterthought. Our colleges are fundamental parts of our post-secondary education system. They are one of the reasons why Ontario leads, I think, in Canada. It's not just what the Liberals have done; our colleges system, set up by Bill Davis, is a real credit to Ontario. This is a step in that tradition in Ontario, and that is why we didn't sit on our hands like the NDP, when they had a chance to do this and did nothing but talked about it. Shame on them.

The Chair (Mrs. Linda Jeffrey): Mr. Colle, can I ask you to speak to the NDP motion, please? And any future discussion—

Mr. Mike Colle: The NDP motion basically says they want to keep the status quo and have this colleges commission in place, whereas we are saying to vote with the Whitaker report and this new bill, which is a great breakthrough for part-time workers in our colleges.

The Chair (Mrs. Linda Jeffrey): Ms. DiNovo.

Ms. Cheri DiNovo: Actually, I draw the member's attention to the NDP motion. It doesn't mention the College Relations Commission at all. What it does ask is that the statistical information on the supply, distribution, professional activities and salaries of employees be made public and that the jeopardy of students losing their school year be made public. That's all it asks for in this little amendment.

Madam Chair, in the interest of brevity, I'd call the question on this.

The Chair (Mrs. Linda Jeffrey): Any further comments or questions? Shall section 77.1 carry? All those in favour? All those opposed? That's lost.

No amendments in sections 78 through 80. Shall those sections carry? All those in favour? All those opposed? That's carried.

Ms. Cheri DiNovo: I move that subsection 81(5) of the bill be struck out and the following substituted:

"Notice of desire to negotiate under predecessor act

"(5) Where, before the day this act receives royal assent, the council or an employee organization gave written notice of its desire to negotiate under subsection 4(1) of the Colleges Collective Bargaining Act with respect to a bargaining unit within the meaning of that act, the Colleges Collective Bargaining Act applies in relation to collective negotiations between the council and the employee organization with respect to the bargaining unit as if that act had not been repealed until the day on which a new collective agreement between the council and the employee organization with respect to the bargaining unit is executed."

What we're asking for here is transitional protection for all the good work that OPSECAAT has done in signing up, I believe, 7,000 members before April who want to be members of a bargaining unit. That preceded Bill 90, so we want to make sure that they don't have to do all that good work all over again.

The Chair (Mrs. Linda Jeffrey): Any questions? Mr. Moridi.

Mr. Reza Moridi: Madam Chair, if a notice of bargaining is given under the current act before Bill 90 receives royal assent, the current act would continue to apply to such bargaining until a new collective agreement is executed or one year after royal assent, whichever comes earlier. That's what it is in the bill, and we believe this is quite adequate to address that concern.

The Chair (Mrs. Linda Jeffrey): Any further comments or questions? Seeing none, shall the amendment carry? All those in favour? All those opposed? That's lost.

Ms. DiNovo.

Ms. Cheri DiNovo: Section 81.1 of the bill: I move that the bill be amended by adding the following section:

"Special process, representation vote

"81.1 (1)—

The Chair (Mrs. Linda Jeffrey): Can I stop you for just one second, please? I'm sorry, I have to go back. I missed section 81; it's not you.

Shall section 81 carry? All those in favour? All those opposed? That's carried.

Sorry, I missed some housekeeping as we went along. Now you can begin again, if you don't mind.

Ms. Cheri DiNovo: I move that the bill be amended by adding the following section:

"Special process, representation vote

"81.1 (1) Despite sections 29 to 43, but subject to subsection (19) of this section, the process set out in this section may be used during the three year period beginning on the day this act receives royal assent, by the employee organization that is deemed under subsection 81(1) to be certified as the bargaining agent for the

members of the bargaining units described in sections 1 and 3 of schedule 1.

"Application

"(2) The employee organization may apply in writing to the Ontario Labour Relations Board for a representation vote in respect of a bargaining unit described in section 2 or 4 of schedule 1.

"Notice to council

"(3) The employee organization shall deliver a copy of the application for a representation vote to the council by the time required under the rules made by the board and, if there is no rule, not later than the day on which the application is filed with the board.

"Contents of application

"(4) The application shall include,

"(a) an estimate of the number of individuals in the bargaining unit in respect of which the application is made; and;

"(b) a proposed time period for the holding of the representation vote.

"Response of council

"(5) On receiving the application, the council shall,

"(a) provide to the employee organization and to the board, in writing, its response to the application; and

"(b) provide to the employee organization, in writing, a list of the individuals who are members of the bargaining unit in respect of which the application is made, together with the work location and classification of those individuals.

1100

"Timing of vote

"(6) Subject to subsection (7), the board shall order that a representation vote be held during the period proposed in the application.

"Same

"(7) The board may order that the vote be held during a different time if the board considers that holding the vote within the time period proposed in the application would cause the vote to be held during a time period when the persons eligible to participate in the vote are not substantially representative of persons likely to be substantially affected by the result of the vote.

"Conduct of vote

"(8) The representation vote shall be a vote by secret ballot conducted under the supervision of and in the manner determined by the board.

"Sealing of ballot box, etc.

"(9) The board may direct that one or more ballots be segregated and that the ballot box containing the ballots be sealed until such time as the board directs.

"Subsequent hearing

"(10) After the representation vote has been taken, the board may hold a hearing if the board considers it necessary in order to make a decision respecting certification of the employee organization as bargaining agent for the members of the bargaining unit.

"Certification after representation vote

"(11) The board shall certify the employee organization as the bargaining agent for the members of the

bargaining unit if more than 50% of the ballots cast in the representation vote are cast in favour of the employee organization.

“No certification

“(12) The board shall not certify the employee organization as bargaining agent for the members of the bargaining unit if 50% or less of the ballots cast in the representation vote are cast in favour of the employee organization.

“Bar to reapplying under this section

“(13) If, following an application under this section by the employee organization in respect of a bargaining unit, the board does not certify the employee organization as bargaining agent for the members of the bargaining unit, the board shall not accept another application under this section by the employee organization in respect of the bargaining unit.

“Direction to council for information

“(14) On the application of the employee organization in respect of a bargaining unit, the board shall direct the council to provide the information referred to in subsection (16) to the board and to the employee organization.

“Same

“(15) An application under subsection (14) may be made twice in every 12-month period during the three-year period referred to in subsection (1).

“Same

“(16) On receiving a direction under subsection (14) in respect of a bargaining unit, the council shall provide the employee organization and the board with the following information respecting each member of the bargaining unit:

“1. Name.

“2. Contact information, including, if known, phone number and email address;

“3. College and department or branch in which the member is employed.

“4. Duration of the member’s employment by the college.

“5. Whether or not the member is a student at a college.

“Interference by council, etc.

“(17) The council, an employer or any person acting on behalf of the council or an employer shall not interfere in any way with the ability of members of a bargaining unit to exercise their choice in a representation vote.

“Access to places of work

“(18) The council, an employer and persons acting on behalf of the council or an employer shall allow representatives of the employee organization reasonable access to the places where members of the bargaining unit in respect of which an application is made work for the purpose of,

“(a) informing, outside a member’s working hours, the member about the representation vote; and

“(b) attempting, outside a member’s working hours, to persuade the member to vote in favour of representation by the employee organization.

“Application of certain provisions

“(19) Sections 33 to 35 and section 37 apply, with necessary modifications, in respect of a process under this section.”

Again, I bring this committee’s attention to the fact that there has been a great deal of hard work. This expands on the last amendment. In terms of signing up those employees, faculty, who would want to be part of a union, this goes into detail about how that would be made possible and asks that this could be able to trigger a certification vote without having to go back again and do it. This, of course, recognizes the democratic rights, which I think Bill 90 is trying to enshrine, of those faculty to do what they intended to do.

I’ve heard from the parliamentary assistant. I’m hoping, after all of that reading, that they pass this amendment. I fear that they will not, and if they do not, I’m hoping that the government bargains in itself in good faith with all that good work that the unions have done and allows this particular vote to go ahead.

Mr. Reza Moridi: The proposed amendment would give OPSEU a one-time opportunity to trigger a representation vote, while Bill 90 provides a certification process that would allow a union, including OPSEU, to seek a representation vote if it has the requisite membership support. The proposed amendment doesn’t explicitly refer to the cards that OPSEU filed in its April 2008 application, but one would assume that it wants those cards to apply, since there’s no reference in the proposal to filing new cards.

Mr. Jim Wilson: Perhaps staff could take us through this amendment and tell us what the effect would be, in terms of the amendment versus the bill as written?

The Chair (Mrs. Linda Jeffrey): Okay. Do we have some leg counsel? Will they help us with that?

Ms. Mariam Leitman: This is, obviously, an NDP motion. What it provides for is a special process during the three-year period following royal assent for the bargaining agent that represents the full-time academics and full-time support staff at colleges to have a kind of expedited process for being certified as the bargaining agent for the new part-time units. Obviously, when it refers to the bargaining agent for the members of the bargaining units, described in sections 1 and 3 of schedule 1, that’s deemed to be OPSEU by section 81 of Bill 90. This is essentially, as I understand it, the NDP’s desire to give an expedited process to a vote and certification for OPSEU for the new units during the three years following royal assent.

The Chair (Mrs. Linda Jeffrey): Ms. DiNovo.

Ms. Cheri DiNovo: Yes, thanks—

Mr. Mike Colle: I have a question, Madam Chair.

The Chair (Mrs. Linda Jeffrey): Hold on a second. Ms. DiNovo has the floor. I’ll come back to Mr. Colle. You can ask leg counsel after that.

Ms. Cheri DiNovo: Thank you for that. That’s what we’re asking for.

The Chair (Mrs. Linda Jeffrey): Mr. Colle.

Mr. Mike Colle: Does the NDP motion exclude—let's say another union, CUPE or somebody, wanted to come in and represent. Would that exclude their ability to sign up members and be part of the process?

Ms. Mariam Leitman: No, Mr. Colle. As you know, Bill 90 provides for certification of any union. It sets out, in sections 29 to 43, certification, decertification processes etc.—very similar to those under the Labour Relations Act. Those are available to any union; they could proceed. What this does is give an expedited process for OPSEU in addition to the regular process for certification in Bill 90.

Mr. Reza Moridi: May I ask ministry staff to address the committee, please?

The Chair (Mrs. Linda Jeffrey): Sure. Ministry staff? Good morning. Welcome. If you can identify yourself for Hansard, please.

Mr. Trevor Rands: Trevor Rands, legal counsel for the Ministry of Labour, legal services branch. From a legal perspective, I don't really have anything additional to add, other than what legislative counsel has already indicated, and that is, essentially, that this provides a special process, in addition to the general process for representation rights set out in Bill 90, for OPSEU.

The Chair (Mrs. Linda Jeffrey): Okay. Any further questions of the committee?

Ms. Cheri DiNovo: Just to address my colleagues opposite's concerns, we're not dealing—this is really apples and oranges that he's brought to the table. The fact is that OPSECAAT—that we have had a signing-up process in place and that a great deal of work has already been done, clearly, in part, leading to Bill 90, and we would just like to see that work recognized. We don't want to have to send them back to do the same work all over again. We're not talking about partisanship here. I would like to see the government do this in light of what they've already done, whether they want to pass this amendment. I know that this is a partisan-warfare place and they'll probably vote against this amendment, but what I would ask them, and I want to see in Hansard, is that they do the right thing here and recognize the hard work, so that perhaps in regulations, perhaps in some other method, this be expedited. Again, 7,000 people have requested an action of this government, and we are simply asking that the government take that action.

1110

The Chair (Mrs. Linda Jeffrey): Any further comments or questions? Mrs. Mitchell.

Mrs. Carol Mitchell: The Ontario Labour Relations Board will determine the status of the cards?

The Chair (Mrs. Linda Jeffrey): Is that a question?

Mrs. Carol Mitchell: To the staff.

The Chair (Mrs. Linda Jeffrey): That's a question to leg counsel, is it?

Mrs. Carol Mitchell: That's a question to the staff from the ministry. Is it up to the Ontario relations board to determine the status of the cards filed by OPSEU?

Mr. Trevor Rands: Under the representation rights set out in the bill in part V, it has to appear to the board

that there is a requisite amount of support in order for the board to order an application, and that threshold of support is 35%. So the board will determine whether it appears to them that there is that requisite support in order to make its assessment about whether to order a representation vote. That's the process, the general process, under part V of the bill.

Mrs. Carol Mitchell: Clearly, the previous motions that we spoke to were voted on the percentage of the 35, which was supported. So it would be up to the Ontario relations board to move beyond that or to recognize those cards. We've laid out the process of going forward, correct? If this is supported, it obviously has to go to the House and be further debated.

The Chair (Mrs. Linda Jeffrey): Any further comments or questions of committee? Seeing none, shall section 81.1 carry? All those in favour? Ms. DiNovo, this is your bill. All those opposed?

Ms. Cheri DiNovo: I just wanted to make a further comment. I had my hand up.

The Chair (Mrs. Linda Jeffrey): Okay, sorry.

Interjection.

The Chair (Mrs. Linda Jeffrey): Your hand was up. I'm sorry, I assumed it was a vote.

Ms. Cheri DiNovo: Fair enough.

The Chair (Mrs. Linda Jeffrey): I'm going to take the vote as it was. That's lost.

Next are sections 82 through 85. We have no amendments. Shall they carry? All in favour? All opposed? That's carried.

Next section: Mr. Wilson, I understand that your second motion on page 11 refers to the one on page 10, so can we do page 11 before we do page 10, since one is dependent on the other?

Mr. Jim Wilson: Yes. I'm going to withdraw both amendments on pages 10 and 11.

The Chair (Mrs. Linda Jeffrey): Okay. So you're going to page 12?

Mr. Jim Wilson: Yes.

I move that subsections 7.1(9) and (10) of the Ontario Colleges of Applied Arts and Technology Act, 2002, as set out in subsection 86(1) of the bill, be struck out and the following substituted:

"Composition of board

"(9) The board of directors shall consist of the president of each college."

This, of course, was a request by Colleges Ontario, indicating that it might be rather awkward and unworkable if the chairs are also included on the board. They talked about the difficulty they've had with their own organization when both presidents and chairs were represented. Their request to the government and to all of us was to just have the college presidents represent their respective colleges on the board.

The Chair (Mrs. Linda Jeffrey): Mr. Moridi.

Mr. Reza Moridi: The council would have mechanisms to address colleges' concerns about governance without requiring an amendment to Bill 90. Like any other corporations, the council would have the power to

pass bylaws to create executive committees, other committees, subcommittees etc. In the role of board chairs here, the college boards of governors are accountable for the financial management and the strategic direction of the colleges, and they are the employer. Therefore, in governance terms, board chairs have a role to play that's distinct from college presidents and need to be involved in the critical decision-making concerning collective bargaining settlements that will be binding on the colleges' side.

The Chair (Mrs. Linda Jeffrey): Any further comments or questions? Seeing none, all those in favour of the motion? Those opposed? That's lost.

Shall section 86 carry? All those in favour? All those opposed? That's carried.

There are no amendments to section 87. Shall it carry? All those in favour? All those opposed? That's carried.

Interjection.

The Chair (Mrs. Linda Jeffrey): Section 88: Shall it carry? All those in favour? All those opposed? That's carried.

On the schedule, we're going to deal with the NDP motion since it affects all of the schedule rather than going through each section.

Ms. Cheri DiNovo: I move that schedule 1 to the bill be repealed and the following substituted:

"Schedule 1

"Academic staff bargaining unit

"1. The academic staff bargaining unit includes all persons employed by an employer as teachers, counsellors or librarians, but does not include,

"(a) chairs, department heads or directors;

"(b) persons above the rank of chair, department head or director;

"(c) other persons employed in a managerial or confidential capacity within the meaning of section 3 of this schedule;

"(d) a person who is a member of the architectural, dental, engineering, legal or medical profession, entitled to practise in Ontario and employed in a professional capacity; or

"(e) a person employed outside Ontario.

"Support staff bargaining unit

"2. The support staff bargaining unit includes all persons employed by an employer in positions or classifications in the office, clerical, technical, health care, maintenance, building service, shipping, transportation, cafeteria and nursery staff, but does not include,

"(a) foremen or supervisors;

"(b) persons above the rank of foreman or supervisor;

"(c) persons employed in a confidential capacity in matters related to employee relations or the formulation of a budget of a college or of a constituent campus of a college, including persons employed in clerical, stenographic or secretarial positions;

"(d) other persons employed in a managerial or confidential capacity within the meaning of section 3 of this schedule;

"(e) students employed in a co-operative educational training program undertaken with a school, college or university;

"(f) a graduate of a college during the period of 12 months immediately following completion of a course of study or instruction at the college by the graduate if the employment of the graduate is associated with a certification, registration or other licensing requirement;

"(g) a person who is a member of the architectural, dental, engineering, legal or medical profession, entitled to practise in Ontario and employed in a professional capacity; or

"(h) a person employed outside Ontario.

"3. In this schedule,

"person employed in a managerial or confidential capacity' means a person who,

"(a) is involved in the formulation of organization objectives and policy in relation to the development and administration of programs of the employer or in the formulation of budgets of the employer,

"(b) spends a significant portion of his or her time in the supervision of employees,

"(c) is required by reason of his or her duties or responsibilities to deal formally on behalf of the employer with a grievance of an employee,

"(d) is employed in a position confidential to any person described in clause (a), (b) or (c),

"(e) is employed in a confidential capacity in matters relating to employee relations,

"(f) is not otherwise described in clauses (a) to (e) but who, in the opinion of the Ontario Labour Relations Board, should not be included in a bargaining unit by reason of his or her duties and responsibilities to the employer."

Very succinctly, what we're after here—and what we don't understand that is included in Bill 90—is that teachers are teachers are teachers, and support staff are support staff are support staff. There should be two bargaining units, representing support staff on one side, faculty on the other side. Really, in a sense, we hope the whole gist of Bill 90 is to bring part-time, sessional and contract faculty onto the same playing field as their full-time counterparts, because they do the same job. So that's the gist of this. Instead of having a number of bargaining units—it makes it unwieldy; you need, of course, more administration to administer them; negotiations are more unwieldy; possibility for settlement is less likely across the board. This just streamlines the process and really recognizes who part-time, sessional and contract faculty and support staff, both part-time and full-time, really are.

The Chair (Mrs. Linda Jeffrey): Comments or questions?

Mr. Reza Moridi: The Whitaker report, from the beginning, recommended that there would be two bargaining units for part-time support staff and part-time academics to address their unique needs. In the meantime, Bill 90 gives provision and also flexibility for those two part-time bargaining units to merge with the full-time ones in the future. So the provision is in the act, but

in the meantime, the bill considers and recognizes the specific needs of part-time staffers in the college system. That's what becomes of the two separate units for part-timers. In the meantime, the provision is there in the bill, in the act, that in the future, if they want to merge, they can.

1120

The Chair (Mrs. Linda Jeffrey): Further comments or questions? Mr. Bailey.

Mr. Robert Bailey: I'd like to ask our legislative counsel to explain to myself and for the record the impact on Bill 90 if this were accepted.

Ms. Mariam Leitman: The impact on Bill 90, legislatively—Bill 90, as it's set up, addresses a schedule that includes four bargaining units. The processes, for example, for changing the bargaining units assume four bargaining units, and it's my opinion that moving to two bargaining units in the schedule, given the sections and amendments that have been carried thus far, would not work with the preceding part of the bill.

The Chair (Mrs. Linda Jeffrey): Further debate? Seeing none, all those in favour of the amendment? All those opposed? That's lost.

Shall sections 1 through 5 of schedule 1 carry? All those in favour? All those opposed? That's carried.

Shall schedule 1 carry? All those in favour? All those opposed? That's carried.

Shall the title of the bill carry? All those in favour? All those opposed? That's carried.

Shall Bill 90, as amended, carry? All those in favour?

Mr. Mike Colle: A recorded vote.

The Chair (Mrs. Linda Jeffrey): A recorded vote has been requested. Ms. DiNovo, you have a comment?

Ms. Cheri DiNovo: Yes, I just want to go over, just succinctly—we're going to vote in favour of Bill 90; there's no question. We want to move forward with the

rights for part-time and sessional college faculty and everyone else in the college system and for the sake of the students and the public.

But I want to go over our concerns, and I hope, again, setting partisan interests aside, that the government addresses these concerns in some way, shape or form. Number one, successor rights, and that's very key; second of all, contract arbitration and the fact that Bill 90 leaves it out; we're very concerned that there aren't any anti-scab provisions—so deemed strike or lockout provisions, the bargaining units and modifications to bargaining units.

Again, we brought forward amendments; again, they were defeated. But we hope that the government itself bargains in good faith there around bargaining units.

Handling existing certification applications: We hope the government assists those who have already gone forward with that and works with the Labour Relations Board making sure that that happens for OPSEU. With that said, we in the New Democratic Party are prepared to vote for Bill 90.

The Chair (Mrs. Linda Jeffrey): Any further comments or questions? Shall Bill 90, as amended, carry?

Ayes

Bailey, Colle, DiNovo, Mangat, Mitchell, Moridi, Wilson, Zimmer.

The Chair (Mrs. Linda Jeffrey): That's unanimous; it's carried.

Shall I report the bill, as amended, to the House? All those in favour? All those opposed? That's carried.

Thank you, committee. I just remind you that the subcommittee of general government will be meeting on September 22 after question period. We're adjourned.

The committee adjourned at 1125.

CONTENTS

Wednesday 17 September 2008

**Colleges Collective Bargaining Act, 2008, Bill 90, *Mr. Milloy* /
Loi de 2008 sur la négociation collective dans les collèges, projet de loi 90, *M. Milloy*** G-139

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