



THE ASSAULT ON TEACHERS' COLLECTIVE BARGAINING RIGHTS IN NOVA SCOTIA

BY BRIAN FORBES



THE BEGINNING (TA1)

Negotiations between the Province of Nova Scotia and the Nova Scotia Teachers Union, in the fall of 2015, did not begin well.

The preceding summer, Finance Minister Randy Delorey sent a letter to union leaders. While referring to the “stark fiscal reality” facing the province, Minister Delorey explained the government was committed to a balanced budget, without raising taxes, which he claimed taxpayers were “not interested in contributing.”

The following week, the minister summoned all public sector unions in the province to a meeting, at which he delivered a stern message: Nova Scotia’s finances were not in good shape. According to labour leaders who attended the meeting, they were told that there would be no new money available for public sector workers. When later pressed, Delorey denied he had indicated no new money, just that there would be no new taxes. He also disputed assertions that he had warned the government was prepared to introduce legislation imposing its own demands if new agreements did not incorporate them. Perhaps that is what prompted Joan Jessome, president of the province’s largest union, the Nova Scotia Government and General Employees Union [NSGEU], to say that the Minister had used very creative language, forcing the unions to read between the lines.¹ Regardless, with the letter and follow-up meeting on August 18th, the essence of Delorey’s message was clear; the government had attempted to set the tone and predetermine the outcome of all upcoming negotiations.

The union leaders had gone into the meeting wary; they came out angry and apprehensive.

The foreboding was justified. Since his election in 2013, and in spite of pre-election promises to respect unions and collective bargaining rights, Liberal Premier Stephen McNeil had proven himself unsympathetic to both. In particular, he had shown no qualms about using the power of the Legislature, where he had a comfortable majority, to enact conditions he could not get at the bargaining table. In February 2014 he introduced a bill designed to

end a strike by 400 home care workers. The legislation required that the union negotiate with the employer to determine which services were essential, with workers deemed essential prohibited from going on strike.² A month later that principle was extended to 40,000 health and community services workers with passage of the *Essential Health and Community Services Act*, which ended a brief strike by 2,400 nurses in the Capital Health District.³ And in October 2014 McNeil used the *Health Authorities Act* to force a reduction of bargaining units, merging district health authorities across the province from 10 to

IT WAS A SHOCK TO NSTU REPRESENTATIVES WHEN THEY MET WITH THEIR GOVERNMENT COUNTERPARTS ON SEPTEMBER 29, 2015 TO EXCHANGE PROPOSALS. GOVERNMENT PROPOSED A 2% SALARY INCREASE OVER A FIVE YEAR CONTRACT, AND PHASING OUT OF THE LONG TERM SERVICE AWARD (A SIGNIFICANT MONETARY BENEFIT PAYABLE AT RETIREMENT, THAT HAD BEEN A STAPLE OF TEACHERS’ CONTRACTS FOR DECADES).

two.⁴ So unions had every reason to believe that the Premier would not hesitate to resort to legislation to get the agreements he wanted, if they were not compliant with his demands at the table.

Nevertheless it was a shock to NSTU representatives when they met with their government counterparts on September 29, 2015 to exchange proposals. Government proposed a 2% salary increase over a five year contract,⁵ and phasing out of the long term service award (a significant monetary benefit payable at retirement, that had

been a staple of teachers’ contracts for decades). Government also wanted to lengthen the school day and the school year, remove principals (and above) from the union, reduce teacher control over certification and professional development, and eliminate retiree health care benefits, as well as an assortment of other contract stripping proposals. There was no indication of government interest in addressing a myriad of classroom and working conditions issues that teachers had submitted.

That same afternoon, in blatant disregard of a confidentiality agreement between the parties earlier in the day, government posted its salary proposal to teachers on its website. Everything pointed to a tough and nasty round of negotiations.

Then it got worse.

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While the two teams were engaged in trying to establish dates for further meetings, the Union’s chief negotiator, lawyer Ron Pink, was “approached by senior representative of the province ... and asked if [he] would have a ‘discussion’ with the government about the possibility of settling the issues in dispute without lengthy and difficult negotiations.”⁶ According to Mr. Pink, that led to “negotiations” between himself and the individual who had approached him, during which he consulted with “senior leadership of the union” and relayed their responses back to the unnamed government representative. To this day the identity of this government “Mystery Man” has not been revealed by either side. Nor is it known who at the Union office authorized these secret discussions, nor with which Union officials Mr. Pink was consulting. What is clear is that neither the Union’s official negotiating team, nor the government’s, had any inkling that the talks were taking place. It is also acknowledged by Mr. Pink himself that the “Mystery Man” warned that, if the Union did not accede to government demands, they were prepared to legislate all of the most distasteful items in their original proposals, and quite possibly more. It was this overt threat that apparently spooked whoever was speaking for the Union through the agency of Mr. Pink.

On November 12th the Union's negotiating committee was summoned to Halifax to be apprised of the agreement that had been reached through this very irregular process; in effect a *fait accompli* arrived at without their knowledge or participation. In due course, reportedly after some very heated discussion, the agreement was approved by the committee. Only after they

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had done so was it submitted for approval to the government team, who were also taken by complete surprise. Finally the tentative agreement was presented to the NSTU Provincial Executive (PE) for approval, and recommendation of acceptance to the membership, which it received. Finally, the existence of a tentative agreement was announced to astonished NSTU members, media and public, all of whom up to that time were totally unaware that anything was in the works, and were quite realistically resigned to a long and contentious round of bargaining between two parties who were at serious loggerheads with one another.

The terms of the agreement were fairly simple:

1. Wage restraint — salaries to increase over a 4 year term by 0%, 0%, 1%, 1.5%, and 0.5% on the final day of the agreement;

2. Service award accrual to end as of July 31, 2015 and paid out at retirement; and
3. Withdrawal of all other government and union proposals.⁷

In A *Brief Word* distributed to members on November 18th, NSTU President Shelley Morse was explicit about why they were being asked to ratify the agreement. "In the face of impending draconian legislation it was decided to recommend acceptance of this offer." In essence, the Premier had made the Union an offer it couldn't refuse, forcing the Union to give him what he wanted most – wage restraint and surrender of service awards, which would establish the pattern for all upcoming contracts with other public sector unions. The ratification vote would occur on December 1, and it was widely expected that the deal would be accepted.

That judgment proved to be wildly premature. Teachers had not yet had *their* say.

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The sudden unanticipated announcement of a tentative agreement (subsequently known as TA1) was greeted by teachers at first with mystification, possibly mingled with a flicker of relief and hope. Against all expectation, could the two sides have reached a reasonable accommodation

2015

September 29: Meeting between NSTU and government representatives.

November 12: NSTU attends meeting in Halifax to be presented with TA1 (arrived at through a very irregular negotiating process).

November 18: NSTU president, through a memo distributed to membership, asks membership to ratify TA1.

November 26: Former NSTU presidents issue statement critical of the bargaining process and ask that scheduled ratification vote be cancelled, allowing parties to return to the table; failing that, former presidents advocated rejection of TA1.

December 1: Membership votes to reject TA1, 60% to 40%.

December 7: NSTU invites government to resume negotiations.

December 14: Bill 148 (Public Services Sustainability Act) receives first reading in the Legislative Assembly.

December 18: Bill 148 receives third reading and royal assent but was not (and still hasn't been) proclaimed.



2016

January 17: Government renews negotiations with NSTU.

June: Liette Doucet elected president of NSTU.

June 2: Government requests Minister of Labour appoint a conciliation officer.

September 2: New tentative agreement (TA2) reached between province and NSTU.

October 4: TA2 is rejected by NSTU membership by a vote of 70%-30%.

October 25: NSTU members vote 96% in favour of a strike.

October 27: NSTU President Liette Doucet writes letter to Minister of Labour requesting appointment of conciliation board (government rejects request).

November 3: NSTU asks Minister of Labour to appoint a mediator (request is rejected).

November 17: Minister of Education asks conciliation officer to invite parties back to the table (NSTU accepts).

November 21: Talks resume.

November 25: Talks break off.

November 28: NSTU leadership announces to members and government that job action (“partial withdrawal of services”) would begin on December 5.

December 3: Minister of Education announces at a news conference that the Legislative Assembly would convene Monday morning to begin debate on Bill 75, that schools would be closed to students but not teachers because province couldn’t guarantee student safety as Bill 75 would be advanced into law.

December 5: Minister of Education announces schools would be open the following day. A scheduled anti-Bill 75 rally turns into a victory celebration.

December 6: Teachers begin work to rule.

December 17: Parties return to the table with assistance of the Conciliator.



2017

January 18: New tentative agreement (TA3) announced (work to rule to be suspended immediately).

January 27: Conflicts between NSTU and government positions and interpretation of terms of TA3 becomes apparent. President Doucet says teachers have lost confidence in Premier’s intent to honour the agreement, announces work to rule will resume.

January 29: Work to rule resumes.

February 8: TA3 voted down by 78%.

February 14: Government introduces Bill 75, expanded from the December version, and all-night sittings with strict limitations on timelines and debate ensue in an effort to push the legislation through as quickly as possible.

February 17: NSTU calls a province-wide walkout, and “biggest rally ever” in Nova Scotia takes place outside the legislature.

February 21: Bill 75 becomes law, ending job action.

so quickly? But as the substance of the agreement became known, and the process by which it had been arrived at emerged, the reactions quickly turned to shock, disbelief, and outrage.

First, the agreement did nothing to address the many grievances around working conditions and classroom issues that teachers had identified, and expected to see addressed through the collective bargaining process. These included: class size and composition, inadequate or nonexistent behaviour and attendance policies, implementation of new curriculum initiatives without adequate preparation and resources, ever increasing demands on teachers’ time by clerical duties, data collection and entry, innumerable standardized testing requirements at both provincial and board levels, redundancy in reporting results and documenting students’ progress, the need to perform many of their electronic tasks on equipment and utilizing programs that were outdated, glitchy and not user friendly, and so on. In teachers’ minds, the cumulative result of these and similar problems was to impose unreasonably on their time, detracting from their ability to actually teach and give their best to their students, and contributing to a growing sense of stress and burnout. Now it appeared that for the next four years there would be no contractual requirements or leverage to force the government to do *anything* about these teacher-identified issues. At the same time government was walking away with its own fiscal objectives secured, due to a two-year wage freeze followed by another two years of minimal increases, while a major monetary benefit — the service award — was to be erased from the contract. It was hard to see anything but an abject surrender of teachers’ interests.

In the second place, the process that had produced the tentative agreement seemed tainted. Prior to 2015, the NSTU had always relied on its own highly trained, very competent staff in negotiations. The appointment of Mr. Pink as chief negotiator was contrary to all precedent, and to the Union’s own operating procedures. Even NSTU President Shelley Morse acknowledged, “The normal collective bargaining process was not followed for

THIS WAS THE GOVERNMENT'S MOST COMPREHENSIVE LEGISLATED ATTACK ON COLLECTIVE BARGAINING RIGHTS AND ORGANIZED LABOUR SO FAR, CATCHING 75,000 PUBLIC SERVANTS IN ITS NET. BY MEANS OF MARATHON ALL-NIGHT SITTINGS OF THE LEGISLATURE, AND DESPITE HUGE PROTEST RALLIES ORGANIZED BY THE UNIONS OUTSIDE THE LEGISLATURE, AND EXTENDED PROTESTS AND DILATORY TACTICS BY THE OPPOSITION PARTIES INSIDE, THE BILL WAS RAMMED THROUGH.



this tentative agreement.”⁸ The perceptions that the NSTU had yielded to government threats, and that the role of Mr. Pink was of questionable validity and utility, contributed to a sense of bewilderment and frustration on the part of NSTU members. But what could they do? What choices did they have, if their own union appeared unprepared to lead them in a fight? Was there any viable option, other than to hold their noses and vote “Yes”?

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While in the beginning opposition to the agreement was scattered and relatively unorganized, a number of things happened in fairly short order to change that. A few days after details of the deal became public, a letter by Eric Boutilier (a former 1st VP of the NSTU and recent candidate for President) excoriated the agreement in a strongly worded letter which received wide distribution in social media. “None of the day to day needs (working conditions, marking and prep, class caps, salary, among others) of teachers were met in this contract,” wrote Mr. Boutilier. “The NSTU gave in to the threat of legislation. ... Shame on the NSTU for recommending this ‘package’ to the members. And shame on us if it’s voted in favor.” A few days later in a widely-circulated interview, Mr. Boutilier and Brian Forbes (the present writer, and a former president of the NSTU) urged rejection of the agreement, further galvanizing vocal opposition to the package.⁹

Then, on November 26, a few days before the December 1st ratification vote, opponents of the agreement were further electrified when six former NSTU presidents issued a statement which claimed that “The current difficult situation between government and the NSTU results from the abandonment of normal collective bargaining procedures, and failure to allow the process time to resolve the issues in a reasonable manner acceptable to both parties.” By now the once unthinkable notion of a vote to reject was beginning to look increasingly likely. The group urged that the scheduled ratification vote be canceled and that the parties return to the table “to clarify all issues and allow sufficient time for legitimate discussions, conducted

between the appropriate people to arrive at a resolution.” Failing that, the group advocated rejection of the agreement.¹⁰ Although the intervention by former leaders was not appreciated by either the NSTU hierarchy or the government, and their advice was not heeded, the now considerable “No” advocates were encouraged and emboldened. As the vote approached many teachers began wearing buttons and posting memes proclaiming “Ask Me Why I’m Voting No”, and urging each other to wear (anti-bullying) pink on voting day.

On December 1st teachers across the province voted 60% to 40% to reject the tentative agreement, the first time in their history that they had ever done so. They were entering uncharted waters.

THE MIDDLE (TA2)

After the rejection of the November 12 tentative agreement (TA1), on December 7, 2015 the NSTU invited the government to resume negotiations. It did not take the government long to respond, albeit in a rather unexpected way.

On December 14 Bill 148, otherwise known as the *Public Services Sustainability Act* (PSSA) received first reading in the Legislative Assembly. The Act applied to all public service employees and their employers in the province, and effectively decreed that any collective agreement reached among those affected must conform to certain parameters. First there was the “wage pattern”, which was exactly what had been specified in the NSTU tentative agreement, now applied by fiat to all public employees. In addition, all service award accruals were to be discontinued as of April 1, 2015. The Act further provided that its financial compensation restrictions could not be exceeded by an arbitrator or arbitration board. It established a Public Services Sustainability Board with the requisite authority and apparatus to review collective agreements or arbitration awards referred to it, and set aside anything that contravened the bill’s prescriptions. For good measure it established that the constitutional validity or applicability of the PSSA could not be challenged in any court, or by any arbitrator, arbitration board, or tribunal.¹¹

This was the government's most comprehensive legislated attack on collective bargaining rights and organized labour so far, catching 75,000 public servants in its net. By means of marathon all-night sittings of the legislature, and despite huge protest rallies organized by the unions outside the legislature, and extended protests and dilatory tactics by the opposition parties inside, the bill was rammed through. It received third reading in the early morning of December 18th, and royal assent on the same day. But in a curious twist, the Act was not immediately proclaimed, and thus did not acquire the force of law (and, in fact, up to the time of this writing the Act has still not been proclaimed).¹²

By passing and then not proclaiming the PSSA, Premier McNeil had done a number of things. He had served notice on all public sector unions that he was not to be deflected from the quest for the holy grail of his government, a balanced budget. He had predetermined the outcomes of all ongoing and upcoming bargaining between the province and its employees. By not proclaiming the Act he sought to insulate himself from charges that he had interfered with collective bargaining rights. And until the Act was proclaimed there was no possibility of legal challenge to its constitutionality. Yet any union sitting down to negotiate with the government did so with the full knowledge that the threat could be actualized by the stroke of a pen if they pushed too hard at the table. As for proclamation, the Premier let it be known that a request by any union for arbitration would be the trigger. Jason MacLean, 1st Vice President of the NSGEU put it most succinctly from the unions' perspective: "Not only do they have a gun to our head, they have a round in the chamber."¹³

Having rigged the game, the government was ready to renew "negotiations" with the NSTU on January 17, 2016.

Certainly there was plenty of disappointment over TA1's failure to address the concerns of overworked, under resourced and beleaguered teachers. But there was also annoyance over a salary offer that would see a significant loss of purchasing power over the term of the contract, displeasure over the government's attempt to seize their service

awards, and tremendous resentment due to what they saw as outright disrespect and betrayal from those they felt should be listening to them and supporting them, Premier Stephen McNeil and Education Minister Karen Casey. The NSTU's public messaging that "it isn't about the money" was obviously meant to deflect government and media criticism that greedy teachers were prepared to bankrupt the province in pursuit of their own monetary gain. But teachers complained that the full range of their concerns was not being represented fairly or accurately to the public.¹⁴

For the next five months, negotiations continued with little or no encouraging sense of significant movement by either side at the table (an accurate perception, as it turned out). In early June 2016 Liette Doucet was elected NSTU president. As Halifax City local president, Ms. Doucet had been a staunch opponent of TA1, and it was largely that factor that resulted in her victory. Her two-year term of office began on August 1. No NSTU president had ever entered into their duties under more tumultuous circumstances.

Meanwhile, teachers took to social media. One Facebook group page in particular, "NS Teachers Speaking Out" (NSTSO), became a rallying point for teachers who were concerned about the direction in which their union seemed to heading, and the way in which the conflict with the government was unfolding. In general there was a sense that, particularly on the public relations front, the government was outperforming the Union. NSTSO was formed on January 3, 2016, by former NSTU president Brian Forbes (the present writer). It was seen by many of its members as the "go to" place to ask questions about union operational and bargaining procedures and contract provisions (especially pertaining to long term service awards), to exchange information and concerns about working conditions and the progress of negotiations, to propose ideas, and develop a sense of solidarity, commonality and unity with their colleagues. The central ideas that emerged were that there must be more transparency, accountability and attention to member concerns on the part of NSTU leadership; that teachers were increasingly determined to resist the government's agenda; and that

their core mission was to fight for positive changes to their own working conditions and ability to meet student needs in the classroom, and in defense free and fair collective bargaining rights.

On June 2, 2016 the government requested the Minister of Labour appoint a conciliation officer — a somewhat puzzling development, since typically that request would have come from the Union (the filing of a conciliation officer's report is the trigger that starts the clock ticking towards the ability of a union to begin job action, or of an employer to initiate a lockout). The announcement of the government request confirmed that little, if anything, had been achieved in nearly five months of talks. It also set off a flurry of not unreasonable speculation among teachers that possibly the government's game plan was to manipulate bargaining timelines to jam the NSTU into holding either a ratification vote or strike vote during the summer months, which would have presented almost insuperable difficulties for the Union.

To protect itself against such an eventuality, the NSTU held a series of regional meetings of the membership in late June to explain the situation and to request summer contact information from all members.

At the end of June teachers began their summer vacations, badly in need of a break from the tensions that had preoccupied for them for almost the entire school year, but apprehensive of what to expect.

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They didn't have to wait long. On September 2nd it was announced that a new tentative agreement (TA2) had been reached between the province and the NSTU.

A wave of fury broke as soon as details of TA2 became known. Teachers regarded TA2 as virtually the same deal as TA1. The salary package was identical. They saw the changes to the service award provisions as trivial, the salient fact being that in the end there would be no service award. The Union's main selling point was an agreed upon "Partnership on Working Conditions", to be co-chaired by the Department and the NSTU. Systemic working conditions' issues not otherwise addressed

PUBLIC REACTION WAS INSTANTANEOUS AND OVERWHELMINGLY NEGATIVE. PARENTS HAD BEEN CAUGHT OFF-GUARD, AND MANY STRUGGLED TO ARRANGE CHILD CARE FOR THE ENSUING WEEK WITH LESS THAN 48 HOURS NOTICE. PEOPLE IN GENERAL WERE NOT IMPRESSED WITH A STRATEGY OF LOCKING OUT STUDENTS WHILE TEACHERS WERE AT WORK AND READY TO TEACH. MANY THOUGHT THE GOVERNMENT'S FEARS WERE OVERBLOWN.



in the contract, such as “data collection and reporting, scope of practice for teachers, assessment and evaluation, planning for student success, and technology and work processes” could be referred by a teacher to the Partnership. However, since decisions of the Partnership would be non-grievable, teachers had little confidence that it would be effective in addressing their substantial concerns. The Union also declared rather weakly that the agreement was important “because of what it did not contain”, i.e. the various “draconian measures” which, during TA1 “bargaining”, the Mystery Man had threatened would be legislated.¹⁵

On October 4th, 70% of NSTU members voted to reject TA2. This was followed on October 25th with a vote of 96% in favour of strike.¹⁶

It seemed that the NSTU and the government of Nova Scotia had reached a standoff. The timelines stipulated in the *Teachers Collective Bargaining Act* (TCBA) meant that the Union would be in a legal strike position in early December. On October 27th, two days after the strike vote, NSTU President Liette Doucet wrote a letter to the Minister of Labour, requesting appointment of a conciliation board. The government responded by asking for an itemized list of what the Union would be bringing to the table, and informed the Union that the government was only prepared to discuss salaries if savings could be identified that would offset any increases above its predetermined “wage pattern.” The Union answered that it was not prepared to agree to preconditions on what the conciliation board might consider. The government then rejected the conciliation board request...on the grounds that the NSTU was insisting on the precondition that there must be no preconditions!¹⁷

The Union’s next step was to request appointment of a Mediation Officer, but the Minister of Labour declined such an appointment, saying that she doubted it “could assist in resolving this dispute.”¹⁸

However, after rejecting mediation, and constructively rejecting a conciliation board, on November 17th the Minister of Education asked the conciliation officer to invite the parties back to the table. The NSTU accepted, undoubtedly expecting that the government had something new to

put forward on the substantive issues. That was not so, however, and talks which had commenced on November 21st broke off again on the 25th.

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Up to this point in the process, it would be fair to portray the government’s posture as intractable. In addition, it seemed to seasoned and experienced negotiation-watchers that the Premier had basically boxed himself in. By investing himself and his personal prestige so heavily and publicly in the outcome — carrying the ball for the government’s stance in the media and in the court of public opinion at critical junctures, rather than allowing his Minister of Education to do so — any compromise or climb-down on his part in the interests of reaching a resolution would be very problematic for the government. Not that there was any indication that he had the least inclination to do so.

On November 28th word was sent to NSTU members and the government that the first province-wide job action in NSTU history would begin on December 5th, 2016. It would take the form of a “partial withdrawal of services”, less accurately known as “work to rule”.

At a hastily-called Saturday morning news conference on December 3rd, Education Minister Casey announced that the Legislative Assembly would convene on Monday morning. Ostensibly this was because, given the NSTU’s “work to rule” (WTR) instructions to its members, the province could not guarantee the safety of students. With teachers planning on arriving at school 20 minutes before class, and leaving 20 minutes after the end of the instructional day, the fear was that students might be left unattended outside of those times. The NSTU responded that no teacher or administrator would allow that to happen; most boards had hired or were planning to hire extra supervisors to address the issue, and teachers themselves were insulted at the mere suggestion that they would under any circumstances place student safety at risk. Nevertheless the Minister’s fears were not allayed. The plan was to introduce legislation to put an end to the upcoming job action, and to impose a contract, thus

bringing about a conclusion to the difficult negotiations. Meanwhile, schools would be closed to students, but not to teachers, as the proposed legislation (Bill 75) advanced into law, likely taking about a week.¹⁹

Public reaction was instantaneous and overwhelmingly negative. Parents had been caught off-guard, and many struggled to arrange child care for the ensuing week with less than 48 hours notice. People in general were not impressed with a strategy of locking out students while teachers were at work and ready to teach.²⁰ Many thought the government's fears were overblown. All day on Saturday and Sunday MLAs, especially Liberal MLAs, were assailed by emails, social media attacks, and hostile media commentary. And from the moment MLAs filed into the legislative chamber on Monday morning it was clear that something was wrong. Neither the Premier nor the Minister of Education were anywhere to be seen. Deputy Premier Michel Samson was explaining to media that the government was meeting with the NSTU, but reporters pointed out that the Union's entire Provincial Executive was sitting in the gallery.

The first matter to come before the House was a Liberal motion to recess for one hour, which was immediately passed with the support of the majority party. One hour later the House reassembled only to pass a government motion to recess until recalled by the Speaker. Early in the afternoon the Minister of Education, looking flustered and nervous, announced that schools would be reopened to students the following morning. The legislators gathered once more to pass a motion to adjourn. The impending legislation had never seen the light of day.

According to the Minister of Education the legislation had become unnecessary, because on Monday the NSTU had modified the WTR rules to allow principals to arrive earlier and leave later than other teachers. The NSTU quickly pointed out that the changes had been faxed to the Minister's office late on Friday afternoon, before her Saturday morning news conference. In fact it was an open secret that six Liberal backbenchers had refused to support the proposed bill, thus derailing the Premier's plan and causing him a huge public embarrassment.

At 4 p.m. on December 5th a large rally that had originally been scheduled as a protest of Bill 75 turned into a victory celebration.

Conventional wisdom held that WTR is divisive, affecting individual teachers differently, and pitting union members against each other. It was further believed that such measures are harmful to students and tend to alienate parental and public support. The NSTU had not used that strategy since 1971, shortly before gaining the right of collective bargaining.

As WTR got under way on December 6th however, these concerns proved largely unfounded. As the dispute wore on, teachers enjoyed substantial public support, as people began to understand the working conditions and classroom pressures that were driving their frustration and anger. Public opinion polls almost invariably gave teachers an edge over the government, and social media forums sprang up in their support. One Facebook page, "Nova Scotia Parents for Teachers" eventually gathered over 20,000 members, while the founders of a large group called "Students for Teachers" proved exceptionally articulate in expressing their support on Facebook and in provincial media. Both groups were instrumental in organizing protests and rallies, enabling teachers to express their concerns and perspectives directly to a large audience.

There were issues, of course. The cancellation of school Christmas concerts was seen as unfortunate, but did not cause as much consternation as one might have expected. School athletics was severely disrupted when teachers withdrew from coaching activities. Even more problematic was the possibility of cancellation of student trips outside the country, with the potential of significant financial loss to parents who had already signed up for the trips. And the Union's decision that student teachers were not to be accepted into classrooms for their practicums caused the universities to worry about the impact, eventually initiating a lawsuit against the NSTU, which as of this writing has not been fully resolved.

Despite all this, the typical response of parents interviewed about the situation was that they did not like some of the impacts,

but that they understood why teachers felt they must do what they were doing.

As for teachers, many had ambivalent feelings about WTR. The Union's general directive was that teachers would concentrate specifically on teaching students, professionally and conscientiously delivering the Public School Program requirements within the regular school day.²¹ They struggled with their consciences about some of the stances they were obliged to take, such as refusing extra help to students outside of the defined instructional day. At the same time, after about a week in, many teachers began to comment that they felt liberated. Without spending hours collecting and entering data, administering one-on-one assessments during class without a substitute being provided to oversee the rest of the class, and attending myriads of meetings often seen as unproductive, they felt they were able at last to teach as they wanted, to give their very best to their students. And while they disliked some of the requirements of WTR they generally took the view that they needed to follow Union instructions on the matter scrupulously, remaining united and determined in order to win the larger fight. Many teachers, having discovered the joy of teaching unencumbered by bureaucratic requirements and non-teaching expectations, vowed never to resume all they had been doing voluntarily, without appreciation or acknowledgment. They began to speak of the "new normal".

At the same time, after the December 5th Legislature debacle, the parties returned to bargaining with the assistance of the Conciliator on December 17th. Meetings continued, and on January 18th a new tentative agreement (TA3) was announced. Teachers waited expectantly to see if the third time be a charm.

THE END (TA3 AND BILL 75)

The first thing that made teachers suspicious about the new tentative agreement was the announcement that work to rule was to be suspended immediately, before a ratification vote, before they had even seen the content of the agreement. The Union's explanation was that the suspension was a gesture of good faith.

WHEN DETAILS WERE DISCLOSED AT A SERIES OF REGIONAL MEETINGS, SUSPICION TURNED TO RAGE. SALARY AND SERVICE AWARD PROVISIONS REMAINED VIRTUALLY UNCHANGED FROM TA2. THE PROVISION THAT TEACHERS WOULD BE ENTITLED TO TWO DAYS OFF WITH PAY, WHICH THE UNION DEPICTED AS “PERSONAL DAYS” AND SAID COULD BE USED FOR ANY PURPOSE WHATSOEVER, WAS MET WITH SCORN, AS SOMETHING TEACHERS HAD NEVER ASKED FOR AND DID NOT WANT.



When details were disclosed at a series of regional meetings, suspicion turned to rage. Salary and service award provisions remained virtually unchanged from TA2. The provision that teachers would be entitled to two days off with pay, which the Union depicted as “personal days” and said could be used for any purpose whatsoever, was met with scorn, as something teachers had never asked for and did not want. One of the biggest features of TA3 was the agreement to create a Commission on Inclusive Education, which, according to Union officials would “give teachers a voice in changes to the inclusive education model in Nova Scotia”. There would also be a “Partnership on Systemic Working Conditions which will explore and improve systemic problems that prevent teachers from doing their job of teaching children.”²² The Union argued this Partnership would finally enable teachers to address many of their working conditions issues effectively. Most teachers were unimpressed with these proposals, pointing to the high cost of the Commission, which the NSTU would share, and the ephemeral existence (two years) of the Partnership, and limited funds (\$10 million) allocated to effect recommended changes.

As voting day approached, two things happened to further erode whatever support TA3 had among members. On January 27th, in a scrum, the Premier disputed the NSTU’s version of the “personal days”, insisting that they were to be used only as marking and preparation days. In response the NSTU claimed to have a letter from an unnamed government representative confirming its interpretation. But when some members demanded that the letter be released to prove the Premier wrong, the Union refused on grounds of confidentiality. President Doucet announced that work to rule would resume on January 29th, stating that teachers had lost confidence in the premier’s intent to honour the agreement.²³

Later, at a regional meeting in Sydney a Provincial Executive member revealed that the government had insisted on the immediate cessation of teachers’ partial withdrawal of services as a precondition to the Union’s disclosure of the government’s offer to its members. This news spread like wildfire across the province, and created

a huge backlash among members, who believed they had been deceived by their own leadership.

On February 8th TA3 was voted down by 78%, the largest margin yet.

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Premier McNeil recalled the Legislature for Monday, February 13th, but its sitting was delayed until the next day by the worst blizzard Nova Scotia had experienced in more than 10 years. (Rachel Creaser, a teacher at Glooscap Elementary School in the Annapolis Valley, garnered huge media coverage and admiration when she protested outside the empty Legislature all day in the middle of the blizzard.)²⁴ On the 14th the government introduced Bill 75, substantially expanded from the barebones version that the Premier had intended to pass in December. In essence and substance the bill imposed the contract, with slight modifications, that teachers had just rejected, including provision for the “wage pattern”, cessation of service award accrual, and the creation of the Commission on Inclusive Education and the Council to Improve Classroom Conditions, essentially a somewhat enhanced Partnership on Systemic Working Conditions.²⁵

This time the Premier had the backing of all of his caucus, though some (at first) professed to be struggling with their consciences. Throughout the next week the government relentlessly pushed the bill through the legislative process as quickly as possible with all-night sittings and strict application of timelines and limitations on debate. Inside the legislature building the opposition filibustered as much as it could, and for two days teachers, NSTU leaders, retired teachers, labour representatives and concerned citizens made thoughtful, impassioned and informative representations before the Law Amendments Committee.²⁶ Outside there were huge rallies and all-night vigils protesting the bill. What has been described as the biggest rally ever in Nova Scotia occurred on Friday, February 17th, when for the first time in its history the NSTU called a province-wide walkout, and teachers from across the province converged on Halifax. They encircled the Legislature and created

so much noise that it was reported that some Liberal members inside, who sat adjacent to the windows, were forced to cover their ears. But with a comfortable Liberal majority in the House, passage of the bill was a foregone conclusion. In the early morning hours of Tuesday, February 21st, 2017, Bill 75 became law, and the most dramatic and prolonged dispute ever between teachers and the Province of Nova Scotia finally came to an end.²⁷

EPILOGUE

It is remarkable that in his tenure as Premier, Stephen McNeil has not signed a single negotiated collective agreement with any major group of public servants. In every case where he could not achieve his objectives at the bargaining table, he has resorted to legislation to impose them.

Following passage of Bill 75 — the constitutionality of which the NSTU is challenging — Education Minister Karen Casey described herself as “cautiously optimistic about the future of teacher-government relationships moving forward.”²⁸ In my opinion, most teachers do not see it that way under this current government. The Commission on Inclusive Education was only recently formed in March, with its interim report due in June. The Council to Improve Classroom Conditions has met and produced recommendations for some much needed reforms, but those recommendations are in abeyance until after the election scheduled for May 30th, 2017, and are widely seen, at least for now, as useful window-dressing for the Premier's reelection campaign. Polls indicate significant slippage in Liberal support, and an even steeper decline in the Premier's personal popularity. At the time of writing, it remains to be seen what effect this will have on the provincial election results.

It is important to note that NSTU resistance to the government's agenda was entirely member driven. Three times the leadership were prepared to cut a deal, as unpalatable as it would be to the members, and damaging to the Union. Undoubtedly their motivation throughout was to avoid legislation which might be even worse than the terms of the tentative agreement, and so they saw themselves

as looking out for the members' welfare. The members, in contrast, showed very little inclination to surrender. Yet following each rejection of an agreement, the Union sought to realign itself with the members, and members largely were prepared to forgive and allow the Union to lead again — until the next misstep. In short, when the leadership faltered it incurred the wrath of many members, but when it showed itself prepared to resume the fight, it was able to recover broad support. #NSTUnited became a standard feature of NSTU official communications and members' tweets and posts. In the end, as Bill 75 made its inexorable way through the legislature there was a heartening exhibition of unity and solidarity between leaders and members.

In view of the final outcome, was the fight waged by teachers worth it? It appears the vast majority of teachers would answer with a resounding “Yes!” That answer would not be based on improvements gained through negotiation from TA1 through to TA3 and Bill 75. Those were largely (though not entirely) trivial, or else their value (in the case of the Commission on Inclusive Education and the Council to Improve Classroom Conditions) has yet to be proven. But having stood strong in defense of collective bargaining rights and professional integrity against a determined assault is a source of pride and collective self esteem. Just as importantly, because of their sustained articulation of the daily challenges they face as educators, there is a far deeper and broader public understanding of those issues than existed before the impasse.

Hopefully that greater understanding will result in educational change becoming a political priority — and a reality — in the province. ●

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Endnotes

1. <http://www.cbc.ca/news/canada/nova-scotia/nova-scotia-to-introduce-5-year-labour-deals-with-public-sector-unions-1.3194706>
2. <http://www.cbc.ca/news/canada/nova-scotia/premier-stephen-mcneil-s-history-with-labour-unions-1.3821906>
3. <http://www.theglobeandmail.com/news/national/nova-scotia-introduces-new-law-as-nurses-prepare-to-strike/>

- article17751021/
4. <http://atlantic.ctvnews.ca/nova-scotia-legislature-passes-contentious-health-merger-legislation-1.203723517>
5. The Union did not submit a specific salary proposal at the outset of negotiations.
6. The following account is based on a letter from Ron Pink to NSTU members dated November 24th, 2015, and on my own personal knowledge.
7. *A Brief Word*, Nov. 18, 2015.
8. *Ibid.*
9. <http://thchronicleherald.ca/novascotia/1324114-truro-educator-teachers-tentative-deal-a-step-backwards>
10. <http://thchronicleherald.ca/novascotia/1324608-tentative-deal-has-ex-nstu-presidents-critical-of-province-union-leaders>
11. http://nslegislature.ca/legc/bills/62nd_2nd/3rd_read/b148.htm
12. In fact, up to the time of this writing, the Act has still not been proclaimed. But it served its purpose well.
13. <http://thchronicleherald.ca/novascotia/1327587-nova-scotia-introduces-wage-legislation-amid-labour-battle>
14. NSTU members were not aware at the time negotiations resumed that, while the government stuck to its position of “keeping the agreed-to wage package and changes to the phasing-out of the public service award,” the Union did not bring any monetary compensation issues back to the table because they believed progress on such matters was precluded by Bill 148.
15. *A Brief Word*, September 30, 2016. Throughout the entire negotiating process one of the conundrums was that the Premier consistently argued that working conditions ought not to be included in the collective agreement, while the NSTU membership insisted they must.
16. On both the failure of the ratification vote and the success of the strike vote, the Premier and the Minister of Education pronounced themselves “disappointed.” This became their stock description in reacting to any negative development (from their perspective) that it became something of a standing joke among NSTU members.
17. <http://globalnews.ca/news/3039420/attempt-to-avert-potential-ns-teachers-strike-hits-snap-over-preconditions/>
18. <http://www.metronews.ca/news/halifax/2016/11/09/province-rejects-external-mediator-nova-scotia-teachers.html>
19. <http://www.nationalpost.com/m/wp/news/blog.html?b=news.nationalpost.com/news/canada/nova-scotia-will-close-all-of-its-schools-because-student-safety-cant-be-ensured-after-teachers-take-job-action&pubdate=2016-12-03>
20. On December 5th teachers conducted a very successful social media campaign, tweeting and posting pictures of themselves in their empty classrooms and brief descriptions of what they would be doing if students were present, with the slogan “Ready to Teach”.
21. There was, however, an 18 page booklet that carefully tried to identify what was and was not allowed, and some of those matters, and teachers' questions on them, could become quite detailed and convoluted.
22. NSTU “2017 Tentative Agreement Fact Sheet Summary”.
23. <http://atlantic.ctvnews.ca/n-s-teachers-to-resume-work-to-rule-after-premier-s-comment-on-days-off-1.3260317>
24. <http://www.timescolonist.com/nova-scotia-legislature-sits-today-to-resolve-ongoing-teachers-dispute-1.9840210>
25. But in what teachers regarded as a petty punitive measure, the bill imposed the salary provisions of TA1, which were somewhat less “generous” than TA2 and TA3, on the puzzling grounds that it was the salary offer the most teachers had voted for!
26. The Law Amendments Committee is a uniquely Nova Scotian institution, which allows any citizen to make a presentation on a bill before the house before it receives 2nd and 3rd reading. The proceedings of the LAC on Bill 75 were recorded and live streamed, and that record constitutes an invaluable archive for any future historian examining the state of public education in Nova Scotia in 2017.
27. <http://www.cbc.ca/news/canada/nova-scotia/bill-75-passed-teachers-union-contract-stephen-mcneil-liberals-1.2998187>
28. *Ibid.*