

# **Memorandum of Understanding**

**Between**

**The Ministry of Education**

**And**

**Canadian Union of Public Employees – Ontario School Board Coordinating Committee**

**December 31, 2012**

Submitted on a confidential and without prejudice basis, subject to errors and omissions. Any agreement is subject to an agreement being reached on all "parameters" issues.

## **A. Term**

1. The term of the collective agreement within the scope of this MOU is two (2) years (September 1, 2012 to August 31, 2014).

## **B. Salary Increases**

1. 0% in 2012-13
2. 0% in 2013-14

## **C. Retirement Gratuities (Where Applicable)**

1. Effective August 31, 2012, employees currently eligible for a retirement gratuity shall have accumulated sick days vested, up to the maximum eligible under the retirement gratuity plan.
2. Upon retirement to pension, an employee eligible for a retirement gratuity shall receive a gratuity payout based on the employee's current accumulated vested sick days, in accordance with #1 above, and years of service and salary as of August 31, 2012.
3. Effective September 1, 2012, all accumulated non-vested sick days shall be eliminated.
4. Eligible employees shall be informed not later than May 31, 2013, indicating their future entitlement to a gratuity payment in accordance with numbers 1 to 3 above. Such statement shall also identify the number of vested sick days.

5. Such retirement gratuity shall be paid in accordance with the terms and conditions of the 2008-12 collective agreement.
6. For employees covered by a collective agreement that has a service requirement greater than 10 years, this requirement shall be reduced to ten years as at 31 August, 2012 and their days shall be vested.
7. Those employees not eligible for a retirement gratuity as of August 31, 2012 as a result of insufficient service credits shall be entitled to a Gratuity Wind-Up Payment based on their years of service, accumulated sick days and annual salary as of August 31, 2012, provided this is funded by the Provincial Government.
8. The Gratuity Wind-Up Payment shall be calculated as follows :

For Non-vested days, there would be a payout based on a formula, as follows:

Those employees with less than the minimum number of years of service shall have that entitlement frozen as of August 31, 2012. Providing this is fully funded by the Provincial Government, these employees shall be entitled to a Gratuity Wind-Up Payment calculated as follows:

$$\frac{X}{30} \quad \times \quad \frac{Y}{200} \quad \times \quad \frac{Z}{10} \quad = \text{Gratuity Wind-Up Payment}$$

X = years of services

Y = accumulated sick days up to a maximum of 200 days (as of August 31, 2012)

Z = annual salary (as of August 31, 2012)

9. The Gratuity Wind-Up Payment shall be paid to each employee by June 30, 2013.

**D. Sick Leave/Short Term Leave and Disability Plan/Short Term Leave and Disability Plan Top-Up /Long Term Disability Plan**

The provisions relating to the Sick Leave/Short Term Leave and Disability Plan, outlined below, meet the requirements of the Employment Insurance (EI) Regulations for a premium reduction under S.69 of the EI Act. If there is any question as to whether the Plan meets these requirements, the parties will cooperate so as to ensure compliance with these requirements.

**i) Sick Leave Days**

1. Each school year, an employee shall be paid 100% of regular salary for up to eleven (11) days of absence due to personal illness. Personal illness shall be defined as per the 2008-2012 local collective agreement. A less than full-time employee shall be paid 100% of the employee's regular salary (as per the employee's full-time equivalent status) for up to eleven (11) days of absence due to personal illness. These days shall not accumulate from year-to-year. Subject to section 2 below, such days shall be granted on the first day of the school year provided the employee is actively at work and shall not accumulate from year-to-year. During the transition year, Regulation 313/12 shall apply.
2. An employee who was actively at work or on an approved leave of absence on the last scheduled day of work prior to September 1<sup>st</sup> and scheduled to return to work on September 1<sup>st</sup> and is unable to return due to a medical condition that is documented to the satisfaction of the Board and meets the requirements under the applicable disability management program, shall qualify for their entitlement to sick days at 100% in accordance with clause i) 1 above.

For clarity September 1<sup>st</sup> is read as the first day of the school year.

3. The Board shall notify employees, copied to the Bargaining Unit, when they have exhausted their maximum days of sick leave at 100% salary in any school year. It shall not be a breach of the collective agreement if the board fails to advise the employee or the bargaining unit due to circumstances beyond its control.
4. Any leave of absence, in the 2008-12 Collective Agreement, that utilizes deduction from sick leave for reasons other than personal illness shall be granted without loss of salary or deduction from sick leave, to a maximum of five (5) days per school year. These days shall not be used for the purpose of personal sick leave nor shall they be accumulated from year-to-year.

**ii) Short Term Leave and Disability Plan (STLDP)**

1. The Board's internal disability management processes, which may include third party adjudication, shall determine eligibility under the STLDP.
2. Each school year, an employee absent beyond the sick leave days paid at 100% of salary, as noted in clause i) 1 above, shall be entitled up to an additional one hundred and twenty (120) days short term sick leave to be paid at a rate of 66.67% of the employee's regular salary and be eligible for 90% of regular salary in accordance with the Short-Term Leave and Disability

Plan (STLDP) provisions detailed below. Where evidence or medical documentation exists the employee will be upgraded to 90% of regular salary and such upgrade will not be unduly withheld.

3. Where the Board's internal disability management process is unable to make a decision, the case will be referred to third party adjudication for determination. Pending the outcome of the third party adjudication process, the employee will receive 66.67% of their pay until such time as a decision is rendered.
4. Short Term Sick Leave days under the Short Term Leave and Disability Plan (STLDP) shall be treated as traditional sick leave days for the purposes of determining entitlements to paid benefits and for the purpose of serving the waiting period for Long Term Disability (LTD) Insurance.
5. The Board shall be responsible for any costs related to third party assessments required by the Board to comply with the Board's disability management program.
6. The Parties agree to continue to cooperate in the implementation and administration of early intervention and safe return to work processes as a component of the Short and Long Term Disability Plans.
7. OMERS Contributions - When an employee is on short term sick leave and receiving less than 100% of regular salary, the Board will continue to deduct and remit OMERS contributions based on 100% of the employee's regular pay.
8. OTPP Contributions - For OTPP members, the following clause is subject to either Teacher Pension Plan amendment or legislation:

Within the purview of the Teachers' Pension Act (TPA), the Minister of Education will seek an agreement from the Ontario Teachers' Federation to amend the Ontario Teachers' Pension Plan to allow for adjusting pension contributions to reflect the Short-Term Sickness Leave/Short Term Leave and Disability Proposal (STLDP) with the following principles:

- i. Contributions will be made by the employee/plan member on the unpaid portion of each sick leave day under the STLDP, unless directed otherwise in writing by the employee/plan member;
- ii. The government/employer will be obligated to match these contributions;

- iii. If the plan member/employee exceeds the maximum allowable sick-days and does not qualify for Long Term Disability (LTD)/Long Term Income Protection (LTI), pension contributions will cease and the employee is not eligible to earn pensionable service until the LTD/LTIP claim is re-assessed and approved or if the employee returns to work.
    - a. If the LTD/LTIP claim is re-assessed and approved, then the member will be entitled to earn service by making contributions subject to existing plan provisions for a period of time that does not exceed the difference between the last day of work and the day when LTIP benefits begin and the government/employer will be obligated to match these contributions.
    - b. If not approved for LTD/LTIP, such absence shall be subject to existing plan provisions.
  - iv. The exact plan amendments required to implement this change will be developed in collaboration with Ontario Teachers' Pension Plan (OTPP) and the co-sponsors of the OTPP (Ontario Teachers Federation (OTF) and the Minister of Education.
  - v. The plan amendments will have to respect any legislation that applies to registered pension plans such as the Pension Benefits Act and the Income Tax Act.
9. Any language in the 2008-2012 collective agreement that is not inconsistent with the terms of this clause D (Sick Leave / Short Term Leave and Disability Plan / Short Term Leave and Disability Plan Top-Up/ Long Term Disability) is unaffected. The parties agree however that the collective agreement terminology shall be amended to the extent necessary to give effect to the provisions contained herein.

***iii) Short-Term Leave and Disability Plan Top-up (STLDPT)***

- 1. If additional funding is provided by the Provincial government, employees will have access to a sick leave top up for the purpose of topping up salary to one hundred percent (100%) under the Short Term Leave and Disability Plan (STLDP).
- 2. This top up is calculated as follows:
  - 11 days, less the number of sick days used in the prior year.

3. In 2012-13, the transition year, each employee shall begin the year with a two (2) day allocation (pro-rated for part-time employees).
4. For employee absences that extend beyond the sick leave days paid at 100% of salary as noted in clause D i) above, the employee shall be eligible for a STLDPT for up to 100% of regular salary, subject to their top up availability and subject to the Board's disability management program.
5. An absence is eligible for the STLDPT, subject to the following:
  - a. All or any part of an absence occurs beyond the sick leave days paid at 100% of salary.
  - b. Provision of objective medical documentation, satisfactory to the Board, which, when required, includes limitations and restrictions.
6. (a) Where the 2008-2012 local collective agreement does have paid leave days as referenced in clause D i) 4.

In addition to the sick leave top up, additional top-up may be considered at the discretion of the Board. The additional leave top-up will not exceed two (2) days, and is dependent on having two (2) unused paid leave days, as referenced in clause D i) 4, remaining in the current year.

- (b) Where the 2008-2012 local collective agreement does not provide any paid leave days as referenced in clause D i) 4, the preceding paragraph shall be replaced by the following:

In addition to the sick leave top up as mentioned above, a compassionate leave top up is available at the discretion of the board. The compassionate leave top-up will not exceed two days, and is dependent on having two unused paid leave days, as specified in the 2008-2012 collective agreement as a "leave of absence without a salary deduction or deduction from sick leave", remaining in the current year. These days can be used to top-up salary under the STLDP.

**iv) Long Term Temporary Employees (who currently have access to sick leave provided in their 2008-2012 Collective Agreement)**

1. The definition of Long Term Temporary Employee shall be as per the collective agreement.

2. Long Term Temporary Employees during a Long Term Assignment shall be eligible for the Sick Leave and STLDP subject to the conditions in number three (3) below. For clarity, such plans cannot extend beyond the term of a given Long Term Assignment.
3. The number of days available to a Long Term Temporary Employee in a Long Term Assignment in the Sick Leave and STLDP shall be based upon the following:
  - (a) Sick leave and STLDP days are allocated at the commencement of the Long Term Assignment;
  - (b) Ten (10) days of sick leave at 100% of salary based on a ten (10) month assignment, pro-rated based on the length of the assignment. Such leave shall not accumulate from school year to school year.
  - (c) i) Sixty (60) days of STLDP at 90% of salary for a ten (10) month assignment and subject to the conditions governing the STLDP as specified above. Such leave shall not accumulate from school year to school year.  
  
ii) For Long Term Assignments of less than ten (10) months, three (3) days of STLDP per month, subject to the conditions governing the STLDP as specified above. Such leave shall not accumulate from school year to school year. These days shall be credited at the beginning of each month of the assignment, except in the case of pre-determined assignments of more than three (3) months, where such days shall be credited at the beginning of the assignment.
  - (d) A Long Term Temporary Employee may accumulate unused sick leave from one Long Term Assignment to another Long Term Assignment within the same school year.
4. Any leave of absence specified in the 2008-12 collective agreement, that utilizes deduction from sick leave, to a maximum of five (5) days pro-rated, for reasons other than illness, shall be granted without loss of salary or deduction from the Long Term Temporary Employee's sick leave. These days shall not be used for the purpose of sick leave nor shall they be accumulated from year-to-year.

**v) Long-Term Disability (LTD) Plans**

1. If the Long Term Disability Plan contained in the 2008-2012 collective agreement provides for a waiting period of more than 130 days, the 120 day short term sick

leave period referenced above shall be extended to the minimum waiting period required by the plan.

2. If there is no provision for a Long Term Disability Plan in the 2008-2012 collective agreement, at the request of and in consultation with the local union, the Board shall make available an LTD Plan at no cost to the Board.

### **E. Graduated Return to Work**

The Parties agree to continue to cooperate in the implementation and administration of early intervention and safe return to work processes as a component of the Short Term Sick Leave and Long Term Disability Plans.

All employees will be eligible for top up from the sick leave days paid at 100%, as noted in clause D i) 1 above, while working on a graduated hours return to work plan. This top up shall be granted in the form of a deduction of the sick leave days paid at 100%, as noted in clause D i), proportional to the percentage of the top up.

If the return to work plan extends beyond the expiration of sick leave under D i), the following shall apply:

In addition to receiving regular salary for the portion of the day worked while on a graduated hours return to work the plan, an employee will be eligible to receive a top up of 90% of regular salary for the remaining portion of the day that was not worked. This top up shall be granted in the form of a deduction from the maximum of 120 days, which for this clause are non-divisible days, pursuant to D(ii), proportional to the percentage of the top up.

For clarity, in this section the term "proportional to the percentage of top up" means a percentage of the work day and not a percentage of salary.

For further clarity, WSIB and LTD providers are first payors. In cases where the employee is returning to work from an absence funded through WSIB or LTD, the return to work protocols inherent in the WSIB/LTD shall take precedence.

### **F. Workplace Safety and Insurance Board (WSIB)**

WSIB benefits shall be maintained in accordance with the 2008-2012 local collective agreement and/or the current practices of the parties. For clarity, where the current WSIB top up is deducted from sick leave the Board shall maintain the same level of top-up without deduction from sick leave.

## **G. Maternity Leave**

The following is available to an employee who, under the 2008-2012 collective agreement, would have been eligible to accumulate sick leave from year to year.

1. For an employee who has not been laid-off in the fifty-two (52) weeks prior to the birth of her child :
  - a. An employee on pregnancy leave shall receive 100% of salary through a SEB plan for not less than a six (6) week period following the birth of her child, subject to provisions in the 2008-2012 local collective agreement but without deduction from sick leave or STLDP. An employee not eligible for a SEB plan shall receive sick leave at 100% of her salary for a period of not less than six (6) weeks. An employee who requires a longer than six week recuperation period shall have access to the STLDP through the normal adjudication process in accordance with current practice.
  - b. For clarity, the aforementioned provides a minimum, but where superior entitlements exist in the 2008-2012 Collective Agreement, those superior provisions shall apply.
2. For an employee who has been laid-off in the fifty-two (52) weeks prior to the birth of her child :
  - a. An employee on pregnancy leave shall receive 100% of salary through a SEB plan for not less than a six (6) week period following the birth of her child, subject to provisions in the 2008-2012 local collective agreement but without deduction from sick leave or STLDP. An employee not eligible for a SEB plan shall receive sick leave at 100% of her salary for a period of not less than six (6) weeks. An employee who requires a longer than six week recuperation period shall have access to the STLDP through the normal adjudication process in accordance with current practice.
  - b. Notwithstanding the above, if the employee will be able to establish a new EI Maternity Benefit claim in the six weeks immediately following the birth of her child through access to sick leave at 100% of her regular salary, she shall be eligible for up to six weeks leave at 100% of her regular salary without deduction from the sick days or the STLDP (remainder of six weeks topped-up as SEB).
  - c. For clarity, the aforementioned provides a minimum, but where superior entitlements exist in the 2008-2012 Collective Agreement, those superior provisions shall apply.

3. The preceding provisions are subject to revision pending Ministry of Education clarification in writing regarding pyramiding of entitlements in this provision between this MOU and the 2008-2012 Collective Agreement.

## **H. Benefits (Health, Dental and Extended)**

### **1. Benefits for Current Employees**

- a. All group benefit plan coverage levels, provisions and practices in place in 2011-2012 shall remain status quo for the 2012-2014 collective agreement. For clarity, status quo includes scheduled adjustments based on the contract definition(s) and these will occur as scheduled (eg. If in September 2011 the ODA rate was set at 2010 rates, in September 2012 the ODA rate would be set at 2011 rates).

### **2. Benefits after Retirement**

- a. Effective September 1, 2013, any new retiree (or his/her family) who has access to post-retirement benefits (health, dental, life, etc.) and pays premiums for such benefits shall be included in an experience pool segregated from all active employees, such that the pool is self-funded.
- b. Effective September 1, 2013, no new retirees (or his/her family) shall be eligible for employer contributions to any post-retirement benefits (health, dental, life, etc.).
- c. Existing retirees (or his/her family) and any employee retiring before September 1, 2013 who has access to post-retirement benefits (health, dental, life, etc.) will continue to be included in the experience pool in which they are presently included and pay the appropriate premiums for that existing experience pool. Employer contributions where they currently exist will continue for this group.

## **I. Provincial Benefits Plan or CUPE Benefits Trust**

In the event that CUPE and the government agree on a Provincial Benefits Plan or CUPE Benefit Trust, the Board will support this agreement provided there are no additional costs to the Board or substantial increases to the administration requirements.

## **J. Salary Grids**

1. Where there are grids in the collective agreement, all employees shall move on the salary grid in accordance with their individual experience and qualifications, in accordance with the collective agreement.
2. The increments shall come into effect following a delay of one-half of the employee's regular work year.
3. In cases where an employee is entitled to more than one grid movement in a fiscal year, the delay in the implementation of the grid movement will be adjusted proportionately to ensure that the employee is not unduly affected, that is an employee will not lose more than 50% of the dollar value of their grid movement over the term of the collective agreement.
4. The Parties agree that movement from a Probation Rate on to a Salary Grid will not be frozen or delayed.
5. The Parties agree that other service based grids (i.e. vacation) are not frozen or delayed.

## **K. Dispute Resolution/Enforcement Mechanism**

As per existing practice, disputes shall continue to be resolved, through joint problem-solving and informal dialogue, and then defer to the grievance-arbitration process as outlined in the 2008-2012 collective agreement.

Any party or person present at the discussions leading to this MOU may be called on to give evidence and is compellable, except counsel.

## **L. Ratification**

1. CUPE will undertake to recommend this MOU to its leadership at a duly called meeting of the CUPE school board sector leadership (not later than January 6<sup>th</sup>, 2013). Subject to the agreement of the CUPE school board sector leadership, CUPE will recommend this MOU to its Locals for ratification by their membership.
2. Any changes to local agreements, other than those specifically required by this MOU must be mutually agreed to by the local CUPE bargaining unit and the local school board. Any local bargaining will not amend sections of the collective agreement amended by this MOU.

3. All clauses of the collective agreement that are not amended by this MOU or by the process identified above shall remain status quo.
4. The parties agree that for the purpose of the 2012 -2014 collective agreements all letters of intent or understanding, minutes of settlement, or any other memoranda, contained or pertaining to the 2008-2012 collective agreements, dealing with any term or condition of a collective agreement, or any other term or condition negotiated between the parties, shall continue in force and effect unless renegotiated by the parties.
5. For clarity, any local issues which remain unresolved shall be withdrawn, and the renewal collective agreement shall move forward for ratification together with this MOU.

### **M. Letter of Understanding – Job Security**

Whereas the parties are negotiating in a context where the protection of government initiatives for students and the preservation of jobs have been identified as government priorities;

Whereas the parties agree that any reduction in funding which directly or indirectly affect student services or the preservation of jobs should not be undertaken without prior consultation by the government with the parties and due consideration by the government to the concessions made in the context of the renewal of the Collective Agreement ;

Whereas it is the mutual desire of the parties to protect existing workforce complement without restricting its growth;

1. For school year 2012-2013, except in cases of a catastrophic or unforeseeable event or circumstance (e.g. school closed as a result of a fire), the Board undertakes to maintain its Protected Complement.
2. For school year 2013-2014, the Board undertakes to maintain its Protected Complement, except in cases of :
  - a. A catastrophic or unforeseeable event or circumstance;
  - b. Declining enrolment, or
  - c. Funding reductions directly related to services provided by bargaining unit members.
3. Where complement reductions are required pursuant to paragraph 2b) or c) above, they shall be achieved as follows:

- a. In the case of declining enrolment, complement reductions shall occur at a rate not greater than the rate of student loss, and
  - b. In the case of funding reductions, complement reductions shall not exceed the amount of such funding reductions.
4. For the purpose of this Letter of Understanding, at any relevant time, the Board's Protected Complement is equal to:
  - a. ● FTE (excluding temporary, casual and/or occasional positions) as of August 31, 2012. (Memorandum note: ● is the FTE number to be agreed to by the parties through consultation at the bargaining unit level.)
  - b. minus any FTE attrition of bargaining unit members which occurs after the date of this Letter of Understanding.
5. Reductions as may be required in 2 (b) and (c) above shall only be achieved through lay-off after consultation with the union on alternative measures, which may include :
  - (a) priority for available temporary, casual and/or occasional assignments;
  - (b) the establishment of a permanent supply pool where feasible;
  - (c) the development of a voluntary workforce reduction program (contingent on full provincial government funding).
6. This Letter of Understanding expires on August 31, 2014.

#### **N. Offsetting Measures**

1. Where no salary grid exists there is no requirement for offsetting measures.
2. Where a salary grid exists and there is movement through the grid, each employee may by May 1, 2013, apply for a voluntary unpaid leave day or days, subject to Board approval. The unpaid leave day or days shall be approved provided that there is no requirement to replace the absent employee and there is no mandatory PD for the employee on the day or days. In other cases, approval is at the Board's discretion. The Board and the union can agree to other offsetting measures.
3. The required savings target is equal to the cost of grid movement under this agreement for the period from September 1, 2012 to August 31, 2014. Where an employee takes an unpaid leave day and is replaced, the cost of the replacement will be considered in calculating the savings generated by this unpaid leave.
4. In the event that the savings generated by the above measures is insufficient to meet the required savings target, all members of the bargaining unit will be required to take up to one (1) mandatory unpaid day in the second year of the

agreement on a day to be determined by the Board in consultation with the Union.

5. The offsetting measures noted above shall only apply for the 2012/2013 and 2013/2014 school years, unless they are extended in future negotiations or through mutual consent.

### **O. Reconciliation**

A reconciliation committee will be created with equal representation from the Board and the Union. The committee will meet in May 2013, and if necessary in October 2013 and January 2014, to track targeted savings generated from the offsetting measures as listed in section N. In the event that by May 15, 2013, savings targets do not meet the overall goal, up to one (1) mandatory unpaid day will be required in the 2013/2014 school year to meet the target.

### **P. Province Wide Collective Bargaining**

The Parties acknowledge the fact that the Government of Ontario intends to begin consultations in the Fall of 2012 with the teachers' federations, support staff unions, school board trustee associations and school boards to develop the appropriate legislative and regulatory framework for provincial bargaining that would, if approved by the legislature, take effect by January 1, 2014.

### **Q. CUPE Members on Provincial Committees**

CUPE appointees to Provincial Committees will not have their participation charged against local collective agreement union release time or days.

### **R. Transferability of Other Agreements**

CUPE and the Board acknowledge the Government's commitment that school boards and the CUPE local unions will not receive amounts proportionally less than the overall financial settlements reached in any other PDT agreement or Memoranda of Understanding that relate to education support workers subject to CUPE complying with the conditions associated with this Bargaining Framework.

Dated this 31<sup>st</sup> day of December, 2012, Toronto, Ontario

For the Ministry of Education:

original signed by

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Laurel Broten, Minister

For the Canadian Union of Public Employees:

original signed by

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Terri Preston, Chair, Ontario School  
Boards Coordinating Committee

original signed by

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Brian Blakeley, CUPE School Boards  
Coordinator - Ontario