

IN THE MATTER OF AN INTEREST ARBITRATION

Between:

OPG

and

The Society of United Professionals

Before: William Kaplan
Sole Arbitrator

Appearances

For the Employer: Tom Moutsatsos
Hicks Morley
Barristers & Solicitors

For the Society: Michael Wright
Wright Henry
Barristers & Solicitors

The matters in dispute proceeded to a hearing in Toronto on November 29, 2023, and December 1, 2023.

Introduction

This interest arbitration was consensually convened to settle the terms of a collective agreement between the parties with an agreed-upon term of January 1, 2024, to December 31, 2025. The principal business of OPG (OPG or the employer), as is well known, is the generation and sale of electricity. The Society of United Professionals represents 3443 (Society) engineers, scientists and other professionals who work at the employer (and thousands more throughout Ontario's electrical sector and elsewhere). The parties have a mature bargaining relationship.

In August 2023, the parties exchanged bargaining agendas and they met in collective bargaining throughout the fall (up to the first day of hearing). In brief, the Society sought significant wage improvements while the employer proposed changes to work rules to provide cost savings and efficiencies. The parties were able to agree to a number of items during collective bargaining. With my assistance, the parties were also able to agree to additional items which I will refer to as "the

Bundle.” All agreed-upon items and the Bundle are to be incorporated into the collective agreement settled by this award.

The Criteria

Section 15 of the collective agreement sets out the agreed-upon criteria to be considered in cases between the parties:

The mediator-arbitrator shall consider the following issues as relevant to the determination of the award on monetary issues:

- a) a balanced assessment of internal relativities, general economic conditions, external relativities;
- b) OPG’s need to retain, motivate, and recruit qualified staff;
- c) the cost of changes and their impact on total compensation;
- d) the financial soundness of OPG and its ability to pay.

In deciding the outstanding issues careful attention has been paid to these collective agreement criteria, and to the normative ones that generally apply especially replication of free collective bargaining. Both parties extensively reviewed various sectoral settlements.

Society Submissions

The Society began by categorically rejecting the employer's salary offer of 2% in the first year and 1.5% in the second. These numbers could not be found in the sector, or anywhere else for that matter. OPG's profitability was increasing, with record earnings expected in 2023, all detailed by the Society in its submissions.

In these circumstances, the Society argued in favour of its suggested wage increases of 4.25% in the first year, and 4% in the second, together with a 1.5% catch-up payment to deal with a long-standing internal relatively issue that required immediate attention. The Society further sought the reintroduction of the Escalator Clause – a provision which the Society argued was increasingly becoming sector normative.

General economic circumstances also supported the Society's wage ask.

Overall, the economy was doing well. The likelihood of an economic retraction was becoming increasingly remote. On the other hand, inflation was not only persistent but had become entrenched. The

Society argued that as a result its members had been significantly impacted – and this was continuing – from inflation’s corrosive effects.

In the last round of bargaining, the employer wrongly asserted that inflation was transitory. That was completely unfounded, just like the current employer claim that inflation was on its way to returning historic norms. No one was credibly suggesting that 2% inflation would arrive anytime soon. In this context, a clear arbitral consensus had emerged that interest arbitrators must take inflation into account in arriving at the appropriate outcome. All the economic factors, therefore, supported the Society’s economic proposals.

The other collective agreement factors also supported the Society’s requested increases. Beginning with internal relativity, the Society pointed out that there was a wage disparity between the Society and PWU – the employer had an established track record of bargaining high wage results with the PWU – and this needed to be taken into account. Accordingly, the Society sought an internal relativity adjustment of

1.5%. Equally compelling – and applicable – were sectoral results of direct comparators.

There was now a plethora of voluntary settlements – settlements with the Society – that showed where this award should land (including Bruce Power, agreed to by the parties to be the most appropriate comparator). Notably, none of the various settlements the Society reviewed contained any offsets of benefit to the employer. For all these reasons and others, the Society asked that its requested wage increases, including the catch-up and the COLA clause, be awarded, not the sub-normative wage proposals advanced by the employer which should be rejected.

Employer Submissions

In the employer's view, the appropriate outcome was 2% in the first year and 1.5% in the second. There was no basis to award the proposed catch-up. That request was merely yet another attempt by the Society to relitigate issues from over a decade ago, matters that were now of historical interest, if at all. A decision was issued a long time ago. There

was no reason to revisit it now. Likewise, there was definitely no reason to reintroduce the Escalator Clause.

Insofar as the employer's wage proposals were concerned, they had to be placed in context, as the criteria required. OPG was facing the impending permanent closure of at least two units at the Pickering Generating Station, and possibly all six. This fact alone introduced real economic uncertainty into the equation and could lead to a significant downsizing (with huge associated costs). Net zero carbon goals were also on the agenda, and there were huge expenses that came with them.

It was also important to bear in mind the scrutiny that the employer faced from the regulator and its shareholder. OPG was not a private sector company (unlike Bruce Power, for example, which was not a comparator in the employer's view for this and many other reasons including ownership and structure). The employer needed to be fiscally responsible and prudent. The conclusion was inescapable that this was not the time for a profligate wage increase (especially one that will set a

floor for other negotiations with a different union and the real prospect of ratcheting/whipsawing).

Inflation, the employer agreed, was real, but it was easing. It did not, therefore, need to be addressed. In fact, inflation peaked in mid-2022, but since then price pressures have been reduced with a corresponding decline in inflation numbers. It was expected that inflation would continue its decline, to 2% in 2025. In this context, it would be improper to award a non-normative wage increase because of inflation (especially since in the last interest arbitration award between the parties – the reopener – inflation was more than appropriately addressed).

In addition, the employer argued that external wage outcomes did not support the Society's wage demands. Together with the reasons set out above, OPG rejected the notion that Bruce Power was a comparator. OPG pointed out that most of its employees were based in Durham, a completely different situation than Bruce Power where its location in Bruce County posed real recruitment challenges – challenges reflected in

wage outcomes that were completely inapplicable to OPG where there was no recruitment or retention issue, none whatsoever.

The employer also pointed to many sectoral settlements much closer to the numbers it advanced, and reference was made to them in the employer's brief and at the hearing. There were some non-normative wages increases – the ones relied on by the Society – but they were wholly inapplicable to this case when seen in context. Again, part of that context was that Society members already received significant non-normative increases in the reopener award.

It was also worth bearing in mind, OPG observed, that Society-represented employees were extremely well-compensated. For 2023, the average base salary was more than \$160,000 for a forty-hour work week. Society members had a pension plan that was best in class, as were their other terms and conditions of employment. For all these reasons and others, the employer asked that its wage proposals be awarded.

Award

Having carefully considered the submissions of the parties, it is my view that the collective agreement and normative criteria appropriately applied lead to an award of 3.75% in the first year and 3.25% in the second along with a one-time administrative adjustment to salary schedules. In reaching this result, notice is taken that the employer is, on the one hand, profitable but, on the other, has ongoing capital expenditures relating to closures/refurbishments/transformation. It is also subject to ongoing regulation by the OEB and close scrutiny by its shareholder and the public.

Ontario's economic situation is relevant and has been considered in arriving at outcome. The economy may be slowing, and provincial deficits impose real challenges to government spending. No one can rule out the possibility of a recession during the collective agreement term. However, and at the same time, persistent inflation has eroded, and continues to erode, spending power (and previous inflationary increases now appear to be fully baked into prices). Inflation may be

deaccelerating but will come in above 3% in 2023. A return to targeted 2% inflation during the collective agreement term is aspirational. In the meantime, a demonstrated need to address inflation has been established and is reflected in voluntary sectoral settlements (and across the economy more generally). This point requires some elaboration.

An examination of sectoral results, such as the freely bargained settlements at Bruce Power (as augmented by an operating COLA clause) and Hydro One (economic increases of 4.5% on April 1, 2023, 4.0% on April 1, 2024, and 3.5% on April 1, 2025), make it manifest that the increases that are being awarded here replicate free collective bargaining. I also note that the recent Electrical Safety Authority (ESA) agreement with the Society, which was reached after a nine-day strike, includes negotiated economic increases of 5.75% for 2023, 3.4% for 2024 and 2.85% for 2025, wherein the 5.75% includes a special one-time “administrative revision” to be added to the 2023 general wage increase.

Given the general wage increase provided in this award, it is appropriate to suspend the application of the COLA clause.

Wages

January 1, 2024: 3.75%

January 1, 2025: 3.25%

Administrative Adjustment to Salary Schedules

January 1, 2024: 1% (contemporaneous with general wage increase)

Article 64 – Units of Application

Parties to meet, discuss and review including dispute resolution within 120 days of issue of award. Failing agreement, I remain seized to assist the parties as a facilitator.

LOU #202

Both parties made proposals concerning LOU #202.

Given my role as mediator and arbitrator, I worked hard with the parties to resolve their respective differences. This included advising the Society that despite its forceful arguments they would not be successful before me regarding their opposition to the movement of staff to Durham Region, including staff currently located in Niagara. This also involved advising OPG that it would help to facilitate agreement on outstanding issues by considering options to offset impacts to employees.

The parties were able to achieve agreement on almost all the items contained within LOU #202, save and except for those paragraphs related specifically to the move of Niagara employees which I have included as part of my award. As such, the full revised LOU #202, capturing both agreed to changes and my award, will read as follows:

LETTER OF UNDERSTANDING #202

between

ONTARIO POWER GENERATION INC.

-and -

THE SOCIETY OF UNITED PROFESSIONALS

The Move of Employees from Niagara, 800 Kipling Avenue and 700 University Ave. Sites to 1908 Colonel Sam Drive**

1. In the event that OPG identifies Society-represented employees for relocation from Niagara, 800 Kipling or 700 University Ave. to 1908 Colonel Sam Drive, and such employees shall meet their Earliest Unreduced Retirement Date (“EURD”) before January 1, 2030, or in the case of Niagara based employees who reach the age of 55 on or before January 1, 2030, and reside more than 40 road kilometres from 1908 Colonel Sam Drive, the following shall apply to these employees:
 - A. Subject to paragraph (B) below, such employees may work from their previous work location of Niagara, 800 Kipling or 700 University Ave., respectively, up to two work days a week. These two days are in addition to any ability to work at an Alternate Work Location (AWL) under Letter of Understanding (LOU) #199, or such similar terms and conditions, if available, while in effect, until January 1, 2030. After this date, the employee may still have access to work from home under LOU #199 should LOU #199 still be in effect, in accordance with the terms and conditions of the LOU, if eligible for an AWLA. For clarity the employee is expected to report to work at 1908 Colonel Sam Drive on other work days when not traveling to a temporary work headquarters.
 - B. Pre-January 1, 2030, all such employees shall be required to attend 1908 Colonel Sam Drive at least one day per work week for which there will be no paid travel time or mileage. The date(s) on which they shall be required to attend shall be at their Supervisor’s discretion.
 - C. Should OPG no longer have an 800 Kipling or 700 University Ave. location prior to January 1, 2030 and the employee is

- able to access an AWL under the terms of LOU #199, the employee shall attend 1908 Colonel Sam Drive at least one day or shift per work week for which there will be no paid travel time or mileage. Days not required to be at 1908 Colonel Sam Drive may be worked at an AWL under the terms of LOU #199. Otherwise, all days will be worked at 1908 Colonel Sam Drive.
- D. For clarity, the ability to work from an AWL or a previous location does not determine an employee's location for any Article 64 purposes, including for the Modified Article 64A Process set out in Memorandum of Agreement "Pickering End of Commercial Operations (PECO) JRPT Redeployment Agreement" ("PECO MOA").
- E. As of January 1, 2030, OPG may direct any employee covered by this agreement to work fully at 1908 Colonel Sam Drive for all days not covered by an AWL under LOU #199 or such similar terms and conditions.
2. Employees at Niagara, 800 Kipling or 700 University Ave. who elect to relocate will work from 1908 Colonel Sam Drive and be entitled to relocation benefits pursuant to the terms of the collective agreement and paragraph #7 below. For clarity, employees who elect to continue working at Niagara, 800 Kipling or 700 University Ave. or elect to work from home under this agreement will not be eligible for relocations benefits in respect of the move to 1908 Colonel Sam Drive, including beyond January 1, 2030. In the event the employee accepts a different position at a building other than 1908 Colonel Sam Drive in the future, they may be eligible for relocation benefits subject to the terms of the collective agreement.
3. The Society will withdraw all grievances, related to the posting / hiring of individuals within the Hydro/Thermal Unit of Application (UofA) at a Durham site. The parties agree that OPG has the ability to hire employees within any Unit of Application, except for those

staff who directly work for Renewable Generation Station Operations and Renewable Generation Station Engineering, for positions within Durham Region, which the Society will not challenge or grieve.

4. OPG and the Society will carry out a:

- Article 64B redeployment in 2023-2024 as a single JRPT for each 'Business Unit' Unit of Application for employees at 800 Kipling and 700 University to redeploy them to 1908 Colonel Sam Drive. For this purpose, employees will be assigned to a Unit of Application as defined in 64.9.2 of Appendix A of the PECO MOA. For clarity, there will be no displacements amongst or within work groups moving to 1908 Colonel Sam Drive. The parties recognize that the redeployment dates for specific work groups (that for this purpose is defined as under a Band G manager) as determined by OPG may vary.
- For clarity, OPG may exclude employees within the Energy Markets and Fund Management organizations from such 2023-2024 JRPT and there shall be no displacement of staff in those organizations¹. The parties agree that OPG may relocate such employees to 1908 Colonel Sam Drive, subject to the provisions in Item #1 above, on a date after January 1, 2025 as determined by OPG without the need to operate Article 64B, save and except for the payment specified under the terms and conditions of Article 64B Attachment #1, 2.2.10(b) which will apply should the employee voluntarily terminate their employment upon being notified of the relocation.
- Niagara based employees identified to redeploy to 1908 Colonel Sam Drive will remain at Niagara and participate in the Modified Article 64A JRPT set out in the PECO MOA for their Unit of Application should one be initiated prior to May 1, 2026. These employees will have their base location identified as

¹ Nothing in this clarity note shall prevent qualified employees from being matched to vacant positions within the Energy Markets and Fund Management organizations.

Darlington for purposes of the ‘mix and match’ process defined in 64.10 of Appendix A of the PECO MOA. This decision to treat Niagara employees as if they were at Darlington will not impact these employees’ rights to a Voluntary Exit (VE).

- For clarity, if OPG notifies the Society at any time that it is not initiating a Modified Article 64A JRPT for the applicable Unit of Application for Niagara based employees (i.e. Corporate or Enterprise Projects & Operations) prior to May 1, 2026 as identified above, subject to the provisions in Item #1 above, OPG may relocate such employees to 1908 Colonel Sam Drive through the operation of an Article 64B JRPT for the affected Unit(s) of Application. For clarity, any severance that may be provided under such circumstances will be in accordance with Article 64B.

Additionally, notwithstanding 64.13 and 64.23 of Appendix A of the PECO MOA, such an employee will have the right to elect to terminate their employment with OPG and be entitled to lump sum payments as calculated in Article 64.12(b) of Appendix A of the PECO MOA, if they are not accepted for a VE. Should an employee elect to terminate on this basis, they will not participate in the ‘mix and match’ process defined in 64.10 of Appendix A of the PECO MOA. Employees who participate in this ‘mix and match’ process and relocate as a result will have their relocation entitlements based on their Niagara residence under the terms of the collective agreement and paragraph #7 below.

An employee who has elected to terminate per above will be accepted for a VE where they would have been offered a VE had they been part of the ‘mix and match’ process. This will be determined by performing a simulation of the ‘mix and match’ process including these employees.

Notwithstanding the paragraphs above, Niagara based employees identified to redeploy to 1908 Colonel Sam Drive may, at their sole discretion, after notifying their supervisor, voluntarily elect to move to

Durham Region beginning January 1, 2022. Any relocation entitlements will be based on their Niagara residence.

Employee election to terminate per above will be solicited in conjunction with the irrevocable Employee Preferences as per 64.5.21 of Appendix A of the PECO MOA. Employees who elect to terminate their employment will terminate six (6) months from the receipt of the election to terminate, being Step (I) of Appendix C of the PECO MOA, unless termination is:

- i. extended by OPG for up to twelve (12) months;
- ii. extended by greater than twelve (12) months if so jointly agreed by the employee and OPG; or
- iii. the employee and OPG jointly agree to an earlier termination date.

Notwithstanding the above, Niagara-based employees terminating with lump sum payments as calculated in 64.12 (b) or a VE in accordance with 64.6.5 of Appendix A of the PECO MOA will have the ability to avail themselves of a non- working bridge to the pension milestone on the same terms as under 64.6.6 of Appendix A of the PECO MOA.

5. The parties agree that OPG may relocate employees within the Dam Safety and Water Resources organization at Niagara to 1908 Colonel Sam Drive, subject to the provisions in Item #1 above, through an operation of an Article 64B JRPT for the affected Unit(s) of Application. For clarity, any severance that may be provided under such circumstances will be in accordance with Article 64B.
6. OPG will pay a monthly payment of \$850.00 less all necessary deductions, for a period of 12 months at the end of the 12 week transfer expense decision period (in accordance with Article 52.3.3 a) to all regular, Society represented employees (not including those on long term disability) whose base location is at Niagara, Kipling, or 700 University Ave. and who are relocated to 1908 Colonel Sam Drive, provided they meet the following conditions:

- a. eligible for relocation reimbursement in accordance with the terms of the collective agreement and elect to continue employment with OPG; and
 - b. elect not to relocate their residence and receive no relocation reimbursements at the end of the 12 week transfer period as per Article 52.3.3 (a). For clarity, there shall be no relocation entitlements paid for the move to 1908 Colonel Sam Drive other than the entitlements claimed for the 12 week transfer period as per Article 52.3.3 (a) to an employee who elects the payment noted above; and
 - c. remain in a regular Society represented position (not including those on long term disability) located in Durham on the date of payment; and
 - d. the provisions in paragraph #1 above do not apply.
7. For employees identified by OPG for relocation from Niagara, 800 Kipling or 700 University to 1908 Colonel Sam Drive in paragraph #1 above, the prescribed property value limit of five (5) times the employee's annual base salary in the new location under Article 52.3.2 will be increased to seven (7) times for the relocation to 1908 Colonel Sam Drive.

**For clarity, OPG may identify a building listed in Article 105.2 as Darlington other than 1908 Colonel Sam Drive for employees from 700 University Ave., Kipling, and Niagara for relocation and such identification shall not be considered a material change to this agreement and the terms and conditions of this agreement will continue to apply.

COLA

Suspended during term of the collective agreement.

Conclusion

At the request of the parties, I remain seized with respect to the implementation of my award.

DATED at Toronto this 16th day of December 2023.

“William Kaplan”

William Kaplan, Sole Arbitrator