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IN THE MATTER OF AN INTEREST ARBITRATION

BETWEEN:

ELECTRICAL SAFETY AUTHORITY, INC.

(the "Employer" or the "ESA")

- AND -

THE SOCIETY OF ENERGY PROFESSIONALS

(the "Union" or the "Society")

AND IN THE MATTER OF THE NEW COLLECTIVE AGREEMENT

ARBITRATOR

ROBERT J. HERMAN

APPEARANCES

FOR THE SOCIETY

**MICHAEL D. WRIGHT
BRENDAN MCCUTCHEON
ROD SHEPPARD
LAURA BROWNELL
KELLY BRACE
P. CATHCART
JASON HRYCYSHYN
DAVE HERON**

FOR THE EMPLOYER

**JOHN WEST
SCOTT SAINT
DAVE KIRKCONNELL
PAUL HAMMOND
WAYNE HOWARD
LIANNE PATTERSON
HEATHER JACKSON**

**MEDIATION AND HEARINGS TOOK PLACE IN TORONTO ON SEPTEMBER
11 AND 12, 2010**

AWARD

1. The Electrical Safety Authority, Inc. is a private, not-for-profit corporation that was established on April 1, 2009 as a result of the demerger of Ontario Hydro. It is an administrative authority established by the *Safety and Consumer Statutes Administration Act*, designated as the responsible authority for the purposes of Section 114 of the *Electricity Act, 1998*. Its mandate is to protect the people of Ontario from electrical shock and fire hazards. It is not an agency of the Crown, its employees are not Crown employees, and it receives no funding from the government. Its revenues are derived from fees charged to users of its services, such as inspection services for home owners and electrical contractors. The ESA has approximately 470 employees, about 360 represented by the Power Workers' Union ("PWU") and approximately 47 represented by the Society.

2. The collective agreement between the parties expired on June 30, 2010. Negotiations did not result in a new agreement and the parties therefore agreed to a mediation-arbitration process for determining the terms and conditions of the new Collective Agreement. Mediation efforts with my involvement were also unsuccessful, and pursuant to the mediation-arbitration protocol, I am now to issue an award as arbitrator determining the matters in issue referred to me. The parties are agreed that they had full opportunity to make submissions and that I am to issue my Award based upon the materials filed and submissions made during the mediation process.

3. As agreed, on monetary issues I am required to consider the issues outlined in Article 15 (a) to (d) of the expired collective agreement:

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

4. The ESA maintains that it should no longer be considered part of the electricity sector and that comparators with other collective agreements in that sector are not valid. However, given the ESA's genesis, history, function, and historical linkage to other electricity sector employers, I am satisfied that other electricity sector employers and their collective agreements with the Union continue to be particularly appropriate external comparators (or "external relativities", to use the term employed in Article 15 (a)), and that the collective agreement between the ESA and the PWU is an appropriate internal comparator ("internal relativities").

5. While the economy has suffered substantial difficulties over the last few years, to its credit the ESA has nevertheless produced significant surpluses in each of its fiscal years since 2004 and it appears that it is likely produce a surplus again in the current fiscal year (which ends March 31, 2011). It cannot therefore be maintained that the ESA is not currently financially sound or is unable to currently pay normative increases. At the same time, it is recognized that the costs of doing business continue to rise, including pension liabilities and costs.

6. All terms and conditions agreed to by the parties shall form part of the Collective Agreement. Unless addressed below, changes requested by either party are denied. The changes awarded below shall be effective the date of the Award unless otherwise indicated.

7. The new Collective Agreement shall run for two years, from July 1, 2010 to June 30, 2012.

8. Chiropractic shall be increased from \$600.00 to \$650.00 per year and Orthotics from \$375.00 to \$400.00 per year. The Society's requested changes to eliminate the requirement for a doctor's note for massage, for payment of the Ontario Health Premium, increased wellness benefit, language concerning working from home and language concerning the impact of future legislative changes, vacation entitlement and Family Care are all denied.

9. The ESA proposes the introduction of an eligibility requirement for post-retirement health and dental benefits, so that employees hired after July 1, 2010 will not receive post-retirement benefits unless they have 7 years of continuous employment at time of retirement. The Society responds that the eligibility requirement should be 5 years of continuous employment. As this is a new eligibility requirement, the new provision shall read:

For employees hired on or after July 1, 2010 who have less than 5 years of continuous employment with the ESA, Health and Dental Benefits cease at retirement.

10. While both parties agree that there are problems with current scheduling and staffing in the IT department, they disagree on the solution. The ESA's proposal would enable it to change an employee's work schedule, with less than 72 hours notice if not possible to provide additional notice, but it has not demonstrated why it would ever be necessary to change a regular work schedule on such short notice. In turn, the Society is only prepared to explore solutions with the Employer. Neither proposal is awarded.

11. The ESA currently has a \$50,000.00 annual Purchase Services Agreement for contracting out IT services, and it seeks an increase to \$150,000.00 annually. As noted in the above paragraph, there appears to be a problem with IT coverage evenings and weekends from time to time. There shall be a new Letter of Understanding as proposed by the Employer (set out at page 40 of the Society's Brief) that replaces the current Letter of Understanding (found on page MT-252 of the expired collective agreement), except that the amount shall be \$100,000.00 and not \$150,000.00 as requested by the ESA.

12. Article 85 shall be amended to indicate that employees are entitled to two paid days per year for development and training, as reflected in the bolded words that follow:

In order to enhance a regular employee's job performance now, or in the future, ESA may provide financial support for external training activities consistent with ESA Policy (**provided each employee receives two paid days of extramural training per year**), subject to the following conditions:

b) The external training should normally be completed outside normal working hours. Where this is not possible, time off with pay to attend external training programs will at the discretion of the employee's supervisor, but **on the basis that an employee is entitled to a minimum of 2 days off with pay in each year of the Agreement for the purposes of attending a mutually agreed-upon training**

course but in no circumstances will the external training exceed six weeks if the employee is required to be absent from work.

13. There shall be no change to the Performance Pay pot, so that it shall remain at 1.75% per year.

14. Pension contributions and wages are the major items in dispute. With respect to pensions, the ESA seeks an increase of 1.0 % in member contributions, from 6.5% to 7.5% on pensionable earnings up to the YMPE (Years Maximum Pensionable Earnings) and from 7.2% to 8.2% above the YMPE. Across the two years of the Collective Agreement, this would be a .5% increase in each year. With respect to wages, the ESA proposes increases of 2.0% per year. The Society opposes any increase in pension contributions from employees and seeks increases of 3.0% per year in all base salary schedules.

15. Pension costs continue to rise. Each party provided actuarial analyses of future pension liabilities and deficits, with the ESA data indicating significantly increased pension liability and deficit going forward and the Society's indicating that the Going Concern deficit should be under \$10.0 million by 2014. In the recently negotiated PWU collective agreement with ESA, it was agreed that PWU members would forgo their annual GAINSHARE payments under the collective agreement and redirect them to pension contributions as long as the Going Concern deficit remained above \$10.0 million. Although GAINSHARE payments to PWU members are not guaranteed, for the approximately 90% of the PWU membership eligible for GAINSHARE payments, those payments have been paid in every year since 2003 and have averaged 3.2% per year over

that period. Pursuant to the new agreement, in 2010 GAINSHARE payments that would otherwise have been received by PWU members in the amount of 3.15% were applied to pension contributions. While Society members do not receive GAINSHARE payments, it remains true that PWU members in 2010 made significantly larger pension contributions because moneys they would otherwise have received were redirected to increased member pension contributions.

16. Pensions are paid for by contributions from both the Employer and individual employees, and while the deficit is above a certain level it is appropriate that both constituencies share in increased costs. The current pension contributions of employees shall be increased by .25% below and .25% above the YMPE in the first year, and an additional .25% below and above in the second year, effective as of July 1 each year, but only as long as the Going Concern deficit remains greater than \$10.0 million. Should this deficit fall below that amount (to be determined annually), the pension contribution percentages in the expired collective agreement will again apply.

17. With respect to wages, negotiated settlements of electricity sector comparators are often around 3.0 % per year (cf. Society Brief, Tab 30), although a number of these collective agreements are for contracts that expire in 2010. In two recent arbitrated settlements, Society employees received 2.6%, 2.7% and 2.85% for three years (IESO, Michel Picher) and 2.5% (Kaplan) for a one year agreement, but there does not appear to have been accompanying increases in employee pension contributions in those two

contracts, as I have awarded here. In February 2009, the ESA agreed to 3.0% increases for the PWU in 2010 and 2011.

18. Any salary base rate increases should take account of the pension contribution increases. In the circumstances, the economic increase on salary base rates for employees shall be 3.0% in each year, effective as of July 1 each year.

19. Both the first 3.0% base rate increase and the first increased pension contribution of .25% shall be retroactive to the start date of the Collective Agreement.

20. I remain seized for any issues arising from the referral to arbitration or this Award, including any disputes over the wording of provisions necessary to implement awarded changes.

Dated at Toronto this 20th day of September, 2010



Robert J. Herman - Arbitrator