

October 1, 2012

Chris G. Paliare
Ian J. Roland
Ken Rosenberg
Linda R. Rothstein
Richard P. Stephenson
Nick Coleman
Margaret L. Waddell
Donald K. Eady
Gordon D. Capern
Lily I. Harmer
Andrew Lokan
John Monger
Odette Soriano
Andrew C. Lewis
Megan E. Shortreed
Massimo Starnino
Karen Jones
Robert A. Centa
Nini Jones
Jeffrey Larry
Kristian Borg-Olivier
Emily Lawrence
Denise Sayer
Danny Kastner
Tina H. Lie
Jean-Claude Killey
Jodi Martin
Michael Fenrick
Nasha Nijhawan
Jessica Latimer
Debra Newell
Lindsay Scott
Alysha Shore
Gregory Ko

VIA RESS FILING AND COURIER

Ms. Kirstin Walli
Board Secretary
Ontario Energy Board
2300 Yonge Street
Suite 2700
Toronto ON M4P 1E4

Dear Ms. Walli:

**Re: Hydro One Networks Inc.
Change to Electricity Transmission Revenue Requirement and Rates
Power Workers' Union ("PWU") Evidence
Board File No. EB-2012-0031**

Please find attached Intervenor Evidence for Power Workers' Union in connection with the above-noted proceeding.

Yours very truly,

PALIARE ROLAND ROSENBERG ROTHSTEIN LLP



Richard P. Stephenson
RPS:jr
encl.

Doc 840213v1

HONORARY COUNSEL
Ian G. Scott, Q.C., O.C.
(1934 - 2006)

EB-2012-0031

IN THE MATTER OF the *Ontario Energy Board Act*,
1998, S. O. 1998, c. 15, Schedule B;

AND IN THE MATTER OF a review of an
application filed by Hydro One Networks Inc. for an
order or orders approving a transmission revenue
requirement and rates and other charges for the
transmission of electricity for 2013 and 2014.

Intervenor Evidence Filed on Behalf of the Power Workers' Union

Report of Robert Hebdon - McGill University

Introduction and Summary of Conclusions

1. The purpose of this report to respond to various question posed to me by counsel for the Power Workers' Union ("PWU") about the determinants of relative bargaining power under collective bargaining with Hydro One. I interpreted that my primary task was to identify the key bargaining power factors that affect collective bargaining outcomes and then apply these factors to the case of Hydro One and the PWU.

2. My qualifications for this undertaking are a combination of twenty-five years experience as a practitioner of labour relations and a twenty-year career as an academic at Cornell University, the University of Manitoba, and McGill University. I have published numerous articles and books on the topics of collective bargaining, dispute resolution, and industrial conflict (my CV is attached as Appendix I).

3. While it is impossible to precisely predict future collective bargaining behaviour or outcomes, nonetheless I am able to reach several conclusions about the collective bargaining relationship between Hydro One and the PWU and how it may influence the outcomes of their collective bargaining. Here is a summary of these conclusions:

- a. In a collective bargaining system, the primary determinant of outcomes is the relative bargaining power of management and labour and their willingness and ability to exercise it.
- b. The most significant determinant of existing contract conditions is the historical balance of bargaining power between Hydro One and the PWU.
- c. The ranking of wages and benefits of Hydro One in relation to other similar companies is an insignificant determinant of collective bargaining outcomes; and

- d. Unless there is a material change in the factors that have historically affected the relative bargaining power of the parties, it is unreasonable to assume that outcomes will change. It is certainly unreasonable to expect collective bargaining to produce an outcome that is based primarily on a survey of compensation of comparable employers.

Part I – Legal Environment

1. Describe the legal environment which governs labour relations between Hydro One and the PWU, including:

a. Exclusive bargaining agent;

4. Canadian labour laws are substantially based on the US Wagner Act (*National Labor Relations Act*) passed into law in 1935. The *Wagner Act* was passed in a period of intense conflict between labour and management. The conflict, however, was not restricted to labour and management. Because the employees of a given firm could belong to more than one union, inter-union conflict over representation rights was not uncommon (Hebdon and Brown 2012). To deal with this conflict, the *Wagner Act* provided the following:

- Recognition strikes and lockouts were declared illegal.
- As a substitute for industrial conflict over union recognition, labour boards were established to provide a process where employees could obtain union recognition by a free expression of support.
- To prevent inter-union conflict the union that obtained recognition was granted exclusive jurisdiction to represent all employees in a given bargaining unit.

b. Duty to negotiate in good faith;

5. Labour laws in North America all require labour and management to bargain in good faith. The idea of good faith bargaining is that union and management must make a serious attempt to negotiate a collective agreement. The concept of good faith bargaining is not easy to define, because it has been rarely tested, and boards have displayed a reluctance to interfere in private negotiations between the parties. One of the reasons that good faith bargaining rarely goes before labour boards is that between 75 and 90 percent of all cases are settled by mediation (Davenport, 2003). In general, unless there is a clear demonstration of anti-union bargaining behaviour, labour boards will not interfere. Boards will not hear bad faith bargaining charges based on the reasonableness of offers

and counteroffers. An exception might be a first agreement, in which a firm deliberately makes offers that it knows the union will not or cannot accept

c. Collective agreement binding on employer, union and employees in bargaining unit

6. Labour laws in Canada require that collective agreements bind the employer, the union, and all employees of the bargaining unit. A nuance of the Ontario *Labour Relations Act* (the “*LRA*”) is that collective agreements are binding on all unions that sign the agreement whether certified as bargaining agents or not. The *LRA* provides as follows:

Binding effect of collective agreements on employers, trade unions and employees

56. A collective agreement is, subject to and for the purposes of this Act, binding upon the employer and upon the trade union that is a party to the agreement whether or not the trade union is certified and upon the employees in the bargaining unit defined in the agreement. 1995, c. 1, Sched. A, s. 56.

d. No strike/no lockout during collective agreement

7. The law in Canada dealing with collective agreement administration differs significantly from its American parent. In all Canadian jurisdictions, strikes are illegal during the term of a collective agreement. The *Wagner Act* contains no such prohibition. In Canada, all laws substitute arbitration for the right to strike during the contract term. This restriction on strikes is known as the “labour peace” provision of the law (Hebdon and Brown 2012).

e. Rights disputes settled by binding arbitration

8. Rights disputes are alleged violations of the collective agreement. In Canada, all rights disputes must be resolved by binding arbitration. The labour peace provision, discussed above, is also known as the “deemed provision” of the labour law, because the law deems it be included in every collective agreement. Thus even if labour and management choose not to include an arbitration provision in the collective agreement, the law puts it in the agreement as if the parties had agreed to it (see *LRA* s.48(1) below).

Arbitration

48. (1) Every collective agreement shall provide for the final and binding settlement by arbitration, without stoppage of work, of all differences between the parties arising from the interpretation, application, administration or alleged violation of the agreement, including any question as to whether a matter is arbitrable. 1995, c. 1, Sched. A, s. 48 (1).

Same

(2) If a collective agreement does not contain a provision that is mentioned in subsection (1), it shall be deemed to contain a provision to the following effect:

Where a difference arises between the parties relating to the interpretation, application or administration of this agreement, including any question as to whether a matter is arbitrable, or where an allegation is made that this agreement has been violated, either of the parties may after exhausting any grievance procedure established by this agreement, notify the other party in writing of its desire to submit the difference or allegation to arbitration and the notice shall contain the name of the first party’s appointee to an arbitration board. The recipient of the notice shall within five days inform the other party of the name of its appointee to the arbitration board. The two appointees so selected shall, within five days of the appointment of the second of them, appoint a third person who shall be the chair. If the recipient of the notice fails to appoint an arbitrator, or if the two appointees fail to agree upon a chair within the time limited, the appointment shall be made by the Minister of Labour for Ontario upon the request of either party. The arbitration board shall hear and determine the difference or allegation and shall issue a decision and the decision is final and binding upon the parties and upon any employee or employer affected by it. The decision of a majority is the decision of the arbitration board, but if there is no majority the decision of the chair governs.

2. *Describe the means by which a collective agreement can be finalized in a unionized environment, including:*

9. Except for special public sector legislation that provides for arbitration of interest disputes for such occupations as fire, police, and hospital employees, all other public and private sector employees in Ontario have a legal right to strike in all negotiations for a first contract or renewal. Final and binding interest arbitration is available by mutual agreement of the parties under the *LRA* as provided below under s. 40.

Voluntary arbitration

40. (1) Despite any other provision of this Act, the parties may at any time following the giving of notice of desire to bargain under section 16 or 59, irrevocably agree in writing to refer all matters remaining in dispute between them to an arbitrator or a board of arbitration for final and binding determination.

10. Given this legal framework, the possibilities of settlement of a collective agreement are either by negotiations or arbitration. Each of these possibilities can occur before or after a strike or lockout.

11. Since collective bargaining outcomes are primarily determined by the relative bargaining power of management and labour, I propose to commence the next section with a general discussion of the determinants of bargaining power (Part II). In Part III the determinants developed in Part II will be applied to the instant case of Hydro One and the PWU.

Part II – Determinants of Bargaining Power

3. *Describe the factors which affect the collective bargaining process in terms of outcomes, including the parties' relative bargaining power and the will and ability to exercise it*

12. The relative bargaining power of the parties is the major determinant of the bargained outcome of collective bargaining. Godard (2000), for example, ranks bargaining power the highest ahead of such other factors as the parties' interests, values, and expectations, and their negotiating skills. The only exception to this may be the case of interest arbitration (discussed more fully below), but even here, an arbitrator may try to replicate the freely bargained outcome that takes into account the power balance between the parties.

13. Bargaining power has many dimensions as the sub-sections of this question imply. A classic conception of bargaining power found in the industrial relations literature is that of Chamberlain and Kuhn (1986). Describing power as the costs of agreement and disagreement, they state that power means:

..the ability to secure another's agreement on one's own terms. A union's bargaining power at any point of time *is*, for example, management's willingness to agree to the union's terms. Management's willingness, in turn, depends upon the costs of disagreement with the union terms relative to the costs of agreeing to them (p.176).

14. A thorough examination of power determinants in the literature classified them into three groups: environmental, socio-demographic, and organizational (Chaykowski (2005, 272).

1. Environmental

15. Shifts in public support for unions on strike can affect community support. This is especially important for such public sector occupations as nurses and teachers. Also changes in the legal framework can affect bargaining power. For example, the ban on replacement workers introduced in Ontario in the 90's (later removed) increased union power.

16. Several economic factors can affect the power of the parties. In an economic upswing firms will try to avoid strike losses. On the other hand, in a downturn high unemployment may reduce alternate opportunities for jobs during a strike thus weakening union power. Consumers may find easy substitutes for the firm's product during a strike adding to union power. Such macroeconomic factors as free trade and deregulation can weaken union power by increasing capital mobility. Outsourcing and threats of plant closure are more likely with free trade. In addition, the deregulation of such industries as the airlines has increased competition and weakened the bargaining power of unions.

2. Socio-demographic

17. If there is diversity within the bargaining unit, bargaining preferences may vary and the union could be weakened if it has difficulty getting support for its agenda of issues. Similarly, management bargaining teams may represent diverse interests at the plant or corporate levels.

3. Organizational factors

18. If the product is a type that can easily be stockpiled before a strike, union power can be reduced, at least for the short term. The production technology that is employed can also affect union power. Some technologies can be maintained by management personnel during a strike. Generally the higher the skill level of the unionized employees, the stronger will be their bargaining power, because they are more difficult to replace in the event of a strike. Various characteristics of the union can impact its bargaining power. For example, if a union has a large strike fund and a cohesive membership they will have more power.

4. Other Factors

a. Potential Losses to the Parties

19. In addition to the environmental, socio-demographic, and organizations factors discussed above, Hebdon and Brown (2012) examine relative bargaining power in terms of the pressures on the parties caused by potential losses.

i. Potential firm losses during a strike

20. In the typical union–management collective bargaining relationship, the potential of a strike may put pressure on the firm because of the potential loss of sales, revenue, profits, and market share; decreased stock prices; bad publicity; etc. (Hebdon and Brown 2012). The firm may relieve some of this pressure by *stockpiling*, or building up inventory. To the extent possible, it will have a plan to shift production to alternative sites. All this depends on the level of competition in the market for the firm’s goods or services. A firm’s ability to withstand a strike may also depend on its debt load. The lower the fixed costs of operating the plant, the less pressure there will be on it during a strike. The likelihood of losing some market share also raises the spectre of uncertainty. A strike is a venture into the unknown, especially if there is no prior history. Every strike has an element of unpredictability to it. How will the bottom line be affected? How long will the strike last? What will it take to get a settlement?

ii. Potential union and striker losses during a strike

21. The pressures on individual employees and union members to avoid a strike are many. Union members know that strike pay usually comes after a waiting period of one

or two weeks. When it finally arrives, it will normally pay only for subsistence items. The loss of income during a strike can adversely affect an employee's personal financial situation. Employees may have mortgage or rent payments, loan payments for cars, appliances, or schooling, and upcoming expenses for a scheduled vacation. There may be pressures from the union and other members for strike solidarity, and family pressures against striking. However, studies show that communities with a strong union presence often rally behind striking employees. Employees about to take a strike vote will be feeling psychological stress from the fear of the unknown and the insecurity a strike presents.

b. The Relationship Between Market and Collective Bargaining Factors in the Wage Determination Process under Collective Bargaining

22. In order to fully understand wage determination under collective bargaining it is necessary to explore the relationship between market forces and collective bargaining factors. A classic work on this topic was published in 1948 by Arthur Ross. In my view his conclusions about wage determination under collective bargaining are particularly relevant to this case. Here is a small sample of his thought on the subject (Ross 1948, 49-50):

Economic theory does provide for equalizing tendencies, expressed in the Law of One price and working through the interaction of supply and demand in the labor market area. It is not argued that the traditional market forces have no significance in a system of administered wages, but we have seen that they do not have compelling significance.

In collective wage determination the strongest equalizing tendencies emanate from forces of a different nature entirely – the forces of organization and the force of ideas. Organizations are established for the very purpose of achieving mastery over market factors. The ideas are concepts of equity and justice which move in an orbit different from that of supply and demand.

The equalizing tendencies are of two kinds – comparison and consolidation. Equitable comparison links together a chain of wage bargains into a political system which displays many of the characteristics of an equilibrium relationship. Consolidation

throws together previously separated bargaining units into the scope of unitary decision. Both have the effect of integrating that portion of the wage structure in which they operate.

What is referred to here as the pressure of equitable comparison has been variously characterized in the literature as patterns of wage adjustment, wage leadership, key wage bargains, imitation, repetition, and diffusion. However we entitle them, comparison plays a large and often dominate role as a standard of equity in the determination of wages under collective bargaining.

23. There are three points that I would like to emphasize in this quotation. First, while market factors play a role in wage determination they are less important than collective bargaining factors. Second, under collective bargaining a system of wage determination develops into a political system that is based on comparison and consolidation of relevant wage bargains. Third, and perhaps most important, Ross introduces the collective bargaining notions of equity and justice into the mix. Collective bargaining is seen as a process that replaces individual bargaining and thus supply and demand forces, with a more equitable balance of power between labour and management. In so doing, its main goal is economic justice. In this next section we use the above discussion about power determinants to answer some specific questions about work stoppages and their consequences.

a. Ability of the employer to operate the enterprise for a reasonable period of time in the face of a work stoppage

24. Bargaining power will depend directly on the ability of the enterprise to maintain production during the strike. If production is easily maintained by shifting it to other plants, using management or other non-union replacements, or stockpiling before the strike, then the threat of a strike will have little impact.

b. Likelihood that a work stoppage inflict harm on the employer:

i. Economically? Will it result in decreased revenues to the employer?

25. The impact of a strike on a firm will inflict more harm the more immediate and pervasive the impact is on revenues. Revenue loss can be offset by stockpiling, maintaining production either internally or shifting it to other plants. If neither of these is available then union relative bargaining power would increase. In the public sector employers may save money during a work stoppage since revenue may not be affected. An education strike, for example, may actually save the school board money, but a TTC strike will have a negative impact the employer's revenue.

ii. Non-economically? Will it impose unacceptable inconvenience to the users of the employer's product/services?

26. Inconvenience to users will depend on the availability of substitutes. If the product market is highly competitive then consumers are less likely to be affected. On the other hand consumers of public services can be more severely impacted if the public employer is the sole provider. The nature of the service in question will have a significant effect on inconvenience. The catastrophic loss of electricity supply, for example, will have a much greater impact on the economy and the public than a library work stoppage. In circumstances, it is probable that public opinion would quickly turn to resolving any strike or lockout.

iii. Ability and/or willingness of the employer to downsize or move its operations to another jurisdiction?

27. Many private sector firms operating globally have the option today of shifting production to an offshore plant. During a strike this action could stabilize world-wide revenue and would increase the bargaining power of the firm (for an example see the Vale strike case in Hebdon and Brown 2012, ch.7).

c. State of growth (or decline) in the employer's operations

28. A firm may be experiencing declining revenues, market share, and profits due to such factors as a lack of competitiveness or a downturn in the economy. When this occurs the firm's ability to provide industry level conditions will be weakened and their resolve in bargaining with unions strengthened. Concession bargaining is often the result of a decline in revenues (see Chaykowski 2005). The situation is reversed when a firm is growing. Hydro One seems to fit into the latter category - it is a growing business.

d. Supply and demand of qualified labour

29. The competitiveness of the labour market and the problem of shortages of skilled employees for some key jobs can affect the bargaining power of unions. If labour is in short supply, typically in an economic upswing, then union bargaining power is enhanced. This may occur in two ways. First, in order to attract and retain qualified staff, the firm must, at least, meet industry norms for wages, benefits and other conditions. This will put pressure on the firm to meet wage demands. Second, if a strike did occur, employees would have an easier time maintaining their income by finding work.

e. Cost of living changes in broader economy

30. The cost of living can have a profound impact on employee expectations and, in turn, bargaining power. In the 1970s, inflation largely generated by the oil cartel resulted in double digit inflation. Union members' expectations were so high due to the loss of purchasing power that unions and management had difficulty negotiating mutually acceptable settlement at the bargaining table. Many tentative settlements were not ratified by the union membership. In general, employees see increases in the cost of living as a loss in real wages and thus a minimum to be sought at the bargaining table.

f. Industry trends with respect to wage settlements

31. An important factor in both union and management bargaining objectives and outcomes is the negotiated wage settlement trend in the industry. As discussed previously by Ross (1948), the collective bargaining parties tend to develop over time a network of key negotiations that are used in wage determination. These patterns often establish the percent increase settlement that is used by the parties as the basis of settlement in most if not all collective bargaining agreements in the industry. The choice of pattern setter may be a function of bargaining power, company size, industry dominance, or simply the negotiations timetable determined by the expiry date of the collective agreements. When the percent pattern is established and then adopted by subsequent management and union negotiators, it is effectively preserving the existing industry wage hierarchy. Once the pattern has been established it develops a momentum or pressure of its own in the sense that it would take considerable bargaining power of a union or management to alter it. Thus these collective bargaining pattern settlements may be important determinants of wage outcomes.

g. Employer's level of absolute compensation relative to peers

32. Total compensation comparisons may be useful as a rough guide to the firm's relative wage and benefit policies. As a major determinant of collective bargaining outcomes, however, they have little weight. Unions with strong bargaining power can use, or may be able to use, their bargaining power to negotiate wages and benefits that are above industry norms. One reason for this is that industry surveys typically include non-union firms. If the union were to agree to some average wage, for example, of union and non-union respondents, the union members might rightfully ask their leaders why they are paying union dues. Workers do not need a union to obtain non-union wage levels.

h. Other

33. Such other factors as company debt load and union and employee pressures were discussed above.

4. Describe the significance of 3(g) relative to other drivers. How significant is this factor in driving collective bargaining outcomes? What if the employer is at or near the highest paying amongst peers? How does that affect collective bargaining outcomes, on a go-forward basis?

34. There are probably two main reasons why the firm is at or near the top in pay. First, the firm may have a combination of highly skilled occupations that are in relatively short supply. The firm is a dominant firm in the industry in terms of market share and overall competitiveness. Thus both product and labour market conditions support a strong compensation package. The second set of factors has to do with unionization and collective bargaining. The union has the right combination of environmental, socio-demographic, and organizational factors (as discussed above) to possess extraordinary bargaining power.

35. Moreover, to the extent that these are the reasons why pay is relatively high, then they will also be the reasons that pay will remain relatively high unless there is a significant change in any of the underlying factors. In other words, extraordinary union bargaining power combined with favourable market conditions will continue to produce industry leading conditions.

5. Describe interest arbitration:

a. What is it, and how does it work?

36. Although interest arbitration is not the paradigm under which Hydro One and the PWU have historically resolved their collective agreements, it is relevant to consider here because interest arbitration is a substitute for a negotiated settlement. It is also used as a substitute for resort to the threat of strike or lockout.

37. Conventional interest arbitration is defined as a final and binding procedure conducted by a neutral sole arbitrator or arbitration board where the arbitrator or board is free to award either position of the parties or something in between on any issue in dispute. The mandate of the neutral arbitrator or board is to resolve all outstanding issues in dispute. Thus, unlike rights arbitration, where the jurisdiction of an arbitrator is restricted to the interpretation of a collective agreement, the interest arbitrator must establish conditions of employment. But like rights arbitration, interest arbitration is a substitute for the right to strike.

b. What are the advantages and disadvantages to the respective parties?

38. Conventional interest arbitration has received much criticism from academics and others for its overuse. It is believed to produce a ‘chilling effect’ on negotiations, due in part, to the parties’ reluctance to moderate their positions in negotiations because of a

fear that such flexibility could adversely affect their arbitration outcome. Moreover, if the parties constantly use arbitration instead of a negotiated settlement, over time a dependency on arbitration may develop coupled with an inability to negotiate. This is known in the industrial relations literature as a ‘narcotic’ effect. The lack of freely negotiated settlements is universally held to be negative because the best deal is almost always the one that the parties work out for themselves.

39. The evidence of the existence of chilling and narcotic effects is mixed but most studies using a variety of methodologies show a chilling effect. Fewer studies exist examining the narcotic effect, due in part, to the difficulty of obtaining data over time. Nonetheless a narcotic effect has also been found in the literature (for a review see Hebdon 1996; Hebdon and Mazerolle 2003).

40. The major benefit of interest arbitration is that it is a process that it reduces strikes in sectors where employees perform essential services. In Ontario, for example, fire, police, and hospital services are under special interest arbitration legislation.

c. What is the evidence re: effect on go-forward compensation levels relative to those determined in negotiated strike/lock out environment?

41. An important shortcoming of interest arbitration is that arbitrators increase wage rates at a higher rate than directly negotiated settlements where a right to strike exists. Previous analyses have shown that a compulsory arbitration legal structure was associated with an increase in wages relative to those prevailing in a strike/lockout environment (Stern et al. (1975), Olson (1980), Mitchell (1988), Currie and McConnell (1991), Gunderson, Hebdon and Hyatt (1996) and Gunderson and Hyatt (1996)). Using a unique 30 year Canadian data set from 1978-2008, Dachis and Hebdon (2010) also found

that legislation requiring compulsory arbitration in labour disputes involving public employees increased wages by about 1.2 percent per settlement, relative to those prevailing in a strike/lockout environment.

6. *Describe the interaction between collective bargaining re: wage rates and bargaining with respect to other economic and non-economic items. To what extent are these factors dealt with in isolation, and to what extent does one item play off against others?*

42. As a matter of bargaining process, the parties typically leave economic issues to the end game after all other terms of the agreement are resolved. The principal reason for this is that bargaining leverage reduces dramatically once economic issues are resolved. Thus union and management will each use their respective bargaining power on economic issues to resolve non-economic issues. The traditional approach of the parties to economic or financial issues is to treat them as a package. Management will normally keep tight control over the package avoiding the temptation to deal with compensation issues on a piecemeal basis. So as far as compensation is concerned, in collective bargaining, nothing is resolved until everything is settled.

Part III – Application of Determinants to Hydro One

43. Using the Chaykowski (2005) categories of industrial relations environment, socio-demographic, and organizational determinants, we apply them to the relationship between Hydro One and the PWU.

1. Environment

a. Financial and economic

44. Hydro One Inc. is one the largest electricity delivery companies in North America. Its financial position as measured by net income after taxes is good. During the recent economic downturn, Hydro One's core businesses earned stable, regulated returns of \$641 million up from \$399 million in 2007 (sources: financial statements). In terms of productivity, Hydro One benchmarks the electricity industry-wide measures of transmission unit and distribution unit costs. Both of these performance targets were met as reported in the 2011 financial report.

45. Hydro One's skilled workforce is important to its success. As stated on their website:

Hydro One is a great company in large part because of the skilled and dedicated individuals who make up our workforce of over 5,000 employees province-wide. We're committed to attracting and retaining the best and the brightest people to our team.

b. Legal

46. Hydro One and the PWU are under the *LRA* as discussed above. Collective bargaining takes place under the threat of a strike or lock-out.

2. Socio-demographic

47. Hydro One's values include running its business in a socially responsible way including commitments to the environment, safety, community, and First Nations and Métis. The PWU represented bargaining unit is relatively homogeneous, comprised of highly skilled mechanical and electrical tradespersons and related occupations. The labour-management relationship might be described as mature and stable. Some form of collective bargaining goes back to 1944 (PWU).

3. Organizational

48. The union is an affiliate of the Canadian Union of Public Employees, Canada's largest union. As such it has ample resources to support a strike. Because of its long history and its homogeneous nature, the PWU is a cohesive bargaining force relative to other unions.

49. Hydro One is also a large and powerful entity with vast resources. It is a natural monopoly within its service territories. Insofar as collective bargaining is concerned, however, it lacks many of the options of the typical global company. Production cannot be shifted to other plants or offshore. Strike options in bargaining would only be considered by Hydro One, in my view, if it were in a critical financial state. In a document filed with the OEB in this proceeding, Hydro One sheds light on the previous 1985 strike and the implications today:

An attempt by Hydro One to achieve significant cost reductions in wages, benefits and pension would likely result in a strike. The last PWU strike was in 1985 and lasted 12 days. It was handled by placing management and Society-represented staff in key functions to maintain operations/service to the extent possible. However, as a result of numerous downsizing programs, and reorganization of work, there are far fewer management staff available today with the requisite skills and experience to occupy key PWU positions during a strike. Furthermore, unlike other industries, Hydro One does not have a product that can be stockpiled. As a result, the Company would be unable to continue operations for a sustained period of time during a PWU strike.

Rather than risk jeopardizing the supply of reliable electricity, the company has sought to achieve overall cost reductions by negotiating increased management flexibility to run the operations, as opposed to wide scale reductions in wages, benefits and pensions. (EB-2012-0031, Ex. C1, Tab 5, Sched 2, pp. 5-6)

50. In my view, Hydro One's inability to withstand a PWU strike is a very significant factor which gives the PWU substantial bargaining power in its relationship with Hydro One.

Conclusion

51. Given the my analysis of strike determinants discussed above, it is my view that the compensation package negotiated between Hydro One and the PWU is the logical outcome of the relative bargaining power of the parties. I would summarize my main findings as follows:

- a. In a collective bargaining system, the primary determinant of outcomes is the relative bargaining power of management and labour and their willingness and ability to exercise it.
- b. The most significant determinant of existing contract conditions is the historical balance of bargaining power between Hydro One and the PWU.
- c. The ranking of wages and benefits of Hydro One in relation to other similar companies is an insignificant determinant of collective bargaining outcomes.
- d. Unless there is a material change in the factors that have historically affected the relative bargaining power of the parties, it is unreasonable to assume that outcomes will change. It is certainly unreasonable to expect collective bargaining to produce an outcome that is based primarily on a survey of compensation of comparable employers.

Robert Hebdon

Associate Dean Student Affairs and Professor of Industrial Relations and Organizational Behaviour, Desautels Faculty of Management, McGill University

October 1, 2012

References

Chaykowski, Richard. 2005. "Collective Bargaining: Structure, Process, and Innovation", chapter 10 in *Labour-Management Relations in Canada*, 56th edition, edited by Morley Gunderson, Alan Ponak, and Daphne Taras. Toronto: Addison Wesley, 558 pages.

Chamberlain, N.W. and J.W. Kuhn. 1986. *Collective Bargaining*, 3rd edition. New York, NY: McGraw-Hill, 493 pages.

Currie, J. and S. McConnell 1991. "Collective Bargaining in the Public Sector: The Effect of Legal Structure on Dispute Costs and Wages," *American Economic Review* 81, 693-718.

Dachis, Benjamin and Robert Hebdon. 2010. "The Laws of Unintended Consequences: The Effect of Labour Legislation on Wages and Strikes". C. D. Howe Institute, 26 pages.

Davenport, G. 2003. "Approach to good faith negotiations in Canada: What could be the lesson for us?" *New Zealand Journal of Industrial Relations*, 28, pp. 150–156.

Godard, John. 2000. *Industrial Relations, the Economy, and Society*. 2nd edition. Toronto, Ontario: Captus Press, 554 pages.

Gunderson, M., B. Hebdon and D. Hyatt 1996. "Collective Bargaining in the Public Sector: Comment," *American Economic Review* 86, 315-326.

Gunderson, M. and D. Hyatt 1996. "Canadian Public Sector Employment Relations in Transition," in *Public Sector Employment Relations in a Time of Transition*, ed. D. Belman, M. Gunderson and D. Hyatt. Industrial Relations Research Association: Madison.

Hebdon, Robert. 1996. "Public Sector Dispute Resolution in Transition, " Dale Belman, Morley Gunderson, and Douglas Hyatt, eds., Ch.3 in *Public Sector Employment In a Time of Transition*, Industrial Relations Research Association, pp. 85-125.

Hebdon, Robert and Maurice Mazerolle. 2003. "Regulating Conflict in Public Sector Labour Relations: The Ontario Experience (1984–1993)", *Relations Industrielles*, Vol.58, No.4, pp. 667-686.

Hebdon, Robert and Trevor Brown. 2012. *Industrial Relations in Canada*, 2nd. edition. Toronto: Nelson Thompson, 444 pages.

Hydro One Information sources:

Background

<http://www.hydroone.com/InvestorRelations/Pages/default.aspx>

Standard and Poor's

<http://www.hydroone.com/InvestorRelations/Pages/DebtInformation.aspx>

Workforce

<http://www.hydroone.com/OurCommitment/OurEmployees/Pages/Default.aspx>

Productivity

http://www.hydroone.com/InvestorRelations/Documents/Quarterly_Reports/HydroOne_2011_Year-End_MDA_and_FS.pdf

2010 Compensation Filing before Energy Board

<http://www.hydroone.com/RegulatoryAffairs/Documents/EB-2010-0002/C/C1-03-02%20Compensation%20Wages%20Benefits.pdf>

Olson, C. 1980. "The Impact of Arbitration on the Wage of Firefighters," *Industrial Relations* 19, 325-339.

Power Workers' Union

History

<http://www.pwu.ca/history.php>

Ross, A. 1948. Trade union wage policy. Berkeley: University of California Press, 134 pages.

Stern, J.L., C.M. Rehmus, J.J. Loewenberg, H. Kasper and B.D. Dennis. 1975. *Final Offer Arbitration: The Effects on Public Safety Employee Bargaining*. D.C. Heath and Co.: Toronto.

Appendix I – CURRICULUM VITAE

ROBERT HEBDON

CITIZENSHIP: Canadian

DEGREES:

Ph.D., Industrial Relations, University of Toronto, June 1992

M.A., Economics, University of Toronto, 1968 (Completed course work for Ph.D. in Economics in 1970)

B.A., General Arts (Economics Major), University of Toronto, 1966

EMPLOYMENT EXPERIENCE:

- McGill University
 - Professor Faculty of Management 2009 to current
 - Associate Professor Faculty of Management July 2000 to 2009
- University of Manitoba
 - Associate Professor Faculty of Management July 1999 to June 2000
- Cornell University
 - Assistant Professor in the School of Industrial and Labor Relations March 1992 to 1999
- Ontario Public Service Employees Union
 - Senior Research Officer, Research Director May 1968 to August 1992

JOURNAL ARTICLES:

- Jalette, P., and Hebdon, R. 2012. Unions and Privatization: Opening the “Black Box”. *Industrial and Labor Relations Review*, Vol. 65, issue 1, pp. 17-35.

- Hebdon, Robert and Patrice Jalette. 2008. “The Restructuring of Municipal Services: A Canada - United States Comparison”, *Journal of Environment and Planning C - Local Government and Policy*, Vol. 26, pp. 144-58.

- Bel, Germà, Robert Hebdon and Mildred Warner. 2007. "Local Government Reform: Privatisation and its Alternatives". *Local Government Studies*, Vol. 33, Issue 4, pp. 507 - 515
- Hebdon, Robert. 2006. "Contracting Public Services in New York State: Labor Effects". *Relations Industrielles*, Vol. 61, No. 3., pp. 513-533.
- Hebdon, Robert. 2005. "Toward a Theory of Workplace Conflict: The Case of U.S. Municipal Collective Bargaining", *Advances in Industrial and Labor Relations*, Vol. 14, pp. 35-67.
- Campolieti, Michael, Robert Hebdon, and Douglas Hyatt. 2005. "Strike Incidence and Strike Duration: Some New Evidence from Ontario", *Industrial and Labor Relations Review*, Vol. 58, No. 4 (July 2005), pp. 610-630.
- Hebdon, Robert and Maurice Mazerolle. 2003. "Regulating Conflict in Public Sector Labour Relations: The Ontario Experience (1984-1993)", *Relations Industrielles*, Vol.58, No.4, pp. 667-686.
- Hebdon, Robert and Robert Stern. 2003. "Do Public Sector Strike Bans Really Prevent Conflict?", *Industrial Relations*, July, pp. 493-512.
- Hebdon, Robert. 2001."Fact-Finding Effectiveness: Evidence from New York State", *Industrial Relations*, Vol. 40, No. 1, (January), pp. 73-82.
- Warner, Mildred and Robert Hebdon.2001. "Local Government Restructuring: Privatization and Its Alternatives," *Journal of Policy Analysis and Management*, Vol. 20, No. 2, (Spring), pp. 315-336.
- Hebdon, Robert, Maurice Mazerolle, and Douglas Hyatt. 1999."Implications of Small Bargaining Units and Enterprise Unions on Bargaining Disputes: A Look into the Future?", *Relations Industrielles*, Vol. 54, No. 3, pp.503-526.
- Hebdon, Robert and Peter Warrian. 1999. "Coercive Bargaining: Public Sector Restructuring Under The Ontario Social Contract 1993-96," *Industrial and Labor Relations Review*, Vol.52, No.2, (January), pp.196-212.
- Hebdon, Robert. 1998. "Behavioral Determinants of Public Sector Illegal Strikes: Cases from Canada and the U.S.", *Relations Industrielles*, Vol.53, No.4, (Fall), pp.667-690.
- Hebdon, Robert and Douglas Hyatt. 1998. "The Impact of Industrial

Relations Factors on Health and Safety Conflict," *Industrial and Labor Relations Review*, Vol. 51, No.4, (July), pp.579-593.

- Hebdon, Robert and Robert Stern. 1998. "Tradeoffs Among Expressions of Industrial Conflict: Public Sector Strike Bans and Grievance Arbitrations," *Industrial and Labor Relations Review*, Vol. 51, No.2, (January), pp.204-221.
- Hebdon, Robert and Maurice Mazerolle.1998. "The Impact of Relations by Objectives (RBO) on the Grievance Mediation and Arbitration Processes: Evidence from the Education Sector in Ontario," *Labour Arbitration Yearbook*, pp. 39-49.
- Gunderson, Morley, Robert Hebdon, and Douglas Hyatt. 1996. "Collective Bargaining in the Public Sector: A Comment," *American Economic Review*, Vol. 86, No.3, (March), pp. 315-326.
- Hebdon, Robert and Douglas Hyatt. 1996. "Workplace Innovation in the Public Sector: The Case of the Office of the Ontario Registrar General," *Journal of Collective Negotiations in the Public Sector*, Vol. 25, No. 1, pp. 63-81.
- Hebdon, Robert and Maurice Mazerolle. 1995."Mending Fences, Building Bridges: The Effect of RBO on Conflict", *Relations Industrielles*, Vol.50, No.1, pp. 164-183.
- Hebdon, Robert. 1995. "Contracting Out in New York State: The Story the Lauder Report Chose Not to Tell," *Labor Studies Journal*, Vol. 20, No. 1 (Spring), pp. 3-29.
- Hebdon, Robert. 1995. "The Freezing Effect of Public Sector Bargaining: The Case of Ontario Crown Employees," *Journal of Collective Negotiations in the Public Sector*, Vol. 24(3), pp. 233-254.

BOOKS AND MONOGRAPHS

-Hebdon, Robert and Travor Brown. 2012. "Industrial Relations in Canada" 2nd. edition.Toronto: Nelson Thompson, 444 pages.

-Dachis, Benjamin and Robert Hebdon. 2010. "The Laws of Unintended Consequences: The Effect of Labour Legislation on Wages and Strikes". C. D. Howe Institute, 26 pages.

-Polushin, William and Robert Hebdon. 2009. "Sustaining and Improving Growth and Competitiveness: Addressing the Needs of the Labour Market in Knowledge-

Driven Economies”. Program for International Competitiveness, Faculty of Management, McGill University, 65 pages.

-Hebdon, Robert and Trevor Brown. 2007. “Industrial Relations in Canada”. Toronto: Nelson Thompson, 384 pages.

-Hebdon, Robert and Hazel Dayton Gunn. 1995. "The Costs and Benefits of Privatization at the Local Level in New York State," Community and Rural Development Institute, Cornell University.

-Hebdon, Robert. 1994. "The Perils of Privatization: Lessons for New York State", monograph, Cornell University, 80 pages.

CHAPTERS IN BOOKS

- Hebdon, Robert and Sung Chul Noh. “A Theory of Workplace Conflict Development: From Grievances to Strikes, forthcoming in 'New Forms and Expressions of Conflict at Work', edited by Gregor Gall, Palgrave Macmillan.

- Gunderson, Morley and Robert Hebdon. 2010. “Collective Bargaining and Dispute Resolution in the Public Sector”, Chapter 28 the Handbook of Canadian Public Administration. Oxford: Oxford University Press.

- Gunderson, Morley, Robert Hebdon, and Douglas Hyatt. 2009. “Strikes and Dispute Resolution”, chapter 11 in *Labour-Management Relations in Canada, sixth edition* edited by Gunderson, and Taras. Toronto: Addison Wesley.

- Gall, Gregor and Robert Hebdon. 2007. “Conflict at Work”, in N. Bacon et al. (eds.), Sage Handbook of Industrial and Employment Relations.

- Hebdon, Robert and Ian Kirkpatrick. 2005. “Changes in the Organisation of Public Services and Their Effects on Employment Relations”, chapter 22 in Oxford Handbook of Work and Organization, Ackroyd, Batt, and Tolbert editors. Oxford: Oxford University Press.

- Gunderson, Morley, Robert Hebdon, Douglas Hyatt, Allen Ponak. 2004. “Strikes and Dispute Resolution”, chapter 12 in *Labour-Management Relations in Canada, fifth edition* edited by Gunderson, Ponak, and Taras. Toronto: Addison Wesley, pp.332-370.

- Hebdon, Robert. “Collective Bargaining”. 2004. Chapter in Encyclopedia of Public Administration and Public Policy, Jack Rabin ed..

New York: Marcel Dekker (CD format), pp.210-213.

- Hebdon, Robert. "The Politics of Collective Bargaining". 2004. Chapter in Encyclopedia of Public Administration and Public Policy, Jack Rabin ed.. New York: Marcel Dekker (CD format)pp.213-216.
- Hebdon, Robert and Janet McEneaney. 2001. "Labor Relations in New York State", chapter in Collective Bargaining in the Public Sector: The Experience of Eight States, Joyce Najita and James Stern editors. New York: M.E. Sharpe, Inc., 272 pages.
- Hebdon, Robert. 2000. "Labor-Management Relations in the United States, 1999", Ch. 4 in the Municipal Yearbook 2000. Washington, D.C.: International Cities/Counties Management Association, pp. 22-27.
- Hebdon, Robert. 1996. "Public Sector Dispute Resolution in Transition, " Dale Belman, Morley Gunderson, and Douglas Hyatt, eds., Ch.3 in *Public Sector Employment In a Time of Transition*, Industrial Relations Research Association, pp. 85-125.

PUBLISHED CONFERENCE PAPERS

- Hebdon, Robert. 1998. "Contracting Out of Government Services: Panacea or Poison", in Responding to Challenges and Conflict in Higher Education Collective Bargaining, proceedings of the twenty-sixth annual conference, Baruch College, City University of New York, April.
- Hebdon, Robert. 1991. "Ontario's No-Strike Laws: A Test of the Safety Valve Hypothesis", proceedings of the 1991 Canadian Industrial Relations Association meeting at Queens University, Kingston, Ontario.

BOOK REVIEWS

- Hebdon Robert. 2007. British Journal of Industrial Relations, "Labour Left Out: Canada's Failure to Protect and promote Collective Bargaining as a Human Right, by Roy Adams. Ottawa: Canadian Centre for Policy Alternatives.
- Hebdon, Robert. 1993. *Industrial and Labor Relations Review*, "Getting on Track: Social Democratic Strategies for Ontario", ed. Daniel Drache. Kingston, Ont: Queen's University Press.
- Hebdon, Robert. 1993. *Industrial and Labor Relations Review*, "Labour

Legislation and Public Policy: A Contemporary History", Paul Davies and Mark Freeland. Oxford: Clarendon Press.

PROFESSIONAL ACTIVITIES

Member of the editorial board of the Journal *State and Local Government Review*.

Past President and Executive Board member of the Canadian Industrial Relations Association

AWARDS AND GRANTS:

Social Sciences and Humanities Research Grant - 3 year \$96,000 grant - April 2008

Morley Gunderson Prize in Industrial Relation in recognition of outstanding Professional achievement with significant service to the Centre for Industrial Relations and Human Resources, University of Toronto, 2007

<http://www.chass.utoronto.ca/cir/aboutcir/morleygundersonprize.html>

Social Sciences and Humanities Research Grant - 3 year \$48,000 grant - April 2004

Social Sciences and Humanities Research Grant - Internal McGill - \$2,500 - 2003

Hatch Grant - Cornell University - Community and Rural Development Institute - 1996 - Principal researcher (with Mildred Warner of Cornell) - \$10,000 to study local government restructuring in New York State. I received a supplementary grant from CARDI of \$2,000 to do a follow-up telephone survey of the impact of privatization on employees in upstate New York.

Social Sciences and Humanities Research Council - Doctoral - 1990-91
University of Toronto Open Doctoral 1989-90

Canadian Pacific Scholarship 1989

Robarts Fellowship 1968, 1970.

