

An Assessment of the Industrial Relations Context and Outcomes at OPG

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1 Executive Summary and Main Conclusions

The guiding principles of Ontario policy support the public interest in:

- Ensuring good labour relations and the rights of association of BPS employees.
- Maintaining the continuous provision of services that are, to varying degrees, essential or, at the least, of very high importance to the welfare and well-being of the public.

While there are a variety of specific circumstances under which a government may want to intervene in a labour-management dispute because there is a broader public interest at stake:

- The power of the government to over-ride collective agreements is constrained.
- The government has demonstrated an understanding that unilateral actions regarding collective agreements and bargaining that attempt to impose employment-related outcomes where collective agreements are in place would likely be subject to a *Charter* challenge.

With respect to unionization and pay determination under collective bargaining:

- A main objective of unions is to achieve greater compensation for their members, relative to nonunionized employees; and unions are better able to achieve this, the higher is the union density in an industry, and the lower is the degree of competition.
- Collective agreements, once in place, are absolutely binding on the parties.

With respect to the impact of unions on compensation and other outcomes that affect labour costs:

- Unions significantly raise the total compensation levels of unionized employees.
- Unions disproportionately increase the wages of lower-skilled workers at the bottom of the wage distribution within a firm, and reduce overall wage differentials across employees within establishments.

With respect to the resolution of impasses in collective bargaining, and essential services:

- An impasse in negotiations can be resolved through mutual agreement or through binding interest arbitration.
- In industries or business lines where services are essential, or where service disruptions impose an undue hardship, as well as in industries where services are not essential, interest arbitration remains a major policy option for dispute resolution.
- In practice interest arbitration is used extensively to determine wages and other terms and conditions of employment throughout the Ontario BPS.

With respect to unionization and pay determination at OPG:

- Aside from the impacts of unions on pay levels, broader external labour market forces are expected to establish pay levels that represent a *base* for the wages/earnings that would be required at OPG to successfully attract and retain workers over time.
- The relevant “comparator” firms for purposes of considering industrial relations outcomes at OPG are those in the same broader industry, that are subject to the same labour market and labour relations regulatory regime, and that have similarly very high levels of unionization.
- Ontario Hydro labour relations legacy effects were substantial and highly deterministic because OPG was bound to accept the existing collective agreements and to recognize and negotiate with the PWU and SEP; and the collective agreements inherited by OPG are highly developed and complex contracts.
- On net, consistent with the empirical research evidence that unions deliver a sizable compensation premium, I expect both the PWU and SEP to be successful in raising compensation levels, considerably, above the wage levels that would be expected to prevail were there broader competitive labour markets characterized by little or no unionization.
- OPG wage settlements are consistently either at or below the wage increases that have been negotiated at the most appropriate comparators in the electricity industry; and the salary levels of individual occupations compare closely as well.

With respect to my assessment of the prospects for achieving significantly different labour costs at OPG: In view of the industrial relations context and specific industrial relations circumstances at OPG, I expect OPG to make incremental changes in various aspects of the terms and conditions of employment negotiated with the unions, including aspects of compensation, job security, or other characteristics of the employment contract deemed significant to the union. In particular:

- OPG faces significant structural challenges even as it engages in workforce downsizing, including ongoing workforce renewal in the context of sustained labour demand in the broader Ontario electricity industry, and across occupational categories, that will create overall upward pressures on wages in the labour market.
- OPG faces significant labour cost challenges associated with growing pension obligations.
- While the government has attempted to set guidelines for wage increases in collective bargaining, there is little prospect of government imposing ongoing limits on wage increases for unionized employees in the electricity sector.
- A “forcing strategy” in collective bargaining that attempts to achieve substantial reductions in the labour cost structure at OPG is not likely to be successful in the near term.
- The best likelihood of success through collective bargaining is to adopt a fostering approach and negotiate incremental change that also preserves the high quality of the labour-management relationship.

- Interest arbitration at OPG will not yield significant labour cost reductions at OPG.
- The OPG collective agreements with the PWU and SEP provide very little scope for achieving significant labour cost reductions through either some form of contracting out or a restructuring.

2 Scope of the Report

The scope of the analysis in this Report includes the industrial relations context and outcomes related to unionized employees at OPG.

In addition to the Executive Summary and this section that describes the scope of the Report, this Report consists of five main sections:

Section 3, which provides a context for the conduct of labour-management relations and collective bargaining at OPG, including:

- An overview of the labour relations policy framework in Ontario, labour policy and the public interest;
- The scope for government intervention in bargaining outcomes, and the importance of the extent of unionization as a determinant of union power and collective bargaining outcomes, including compensation; and
- The resolution of impasses in collective bargaining impasses, and work stoppages in essential services.

Section 4, which considers the impacts of unions, including:

- The factors that determine the capacity of unions to raise wages and enhance the terms and conditions of employment above what is expected to prevail in the absence of collective bargaining;
- Union impacts on wage levels and increases, benefits, and total compensation; and
- Union effects on pay relativities and on operations and human resource management outcomes.

Section 5, which considers:

- The need to resolve work stoppages that would disrupt the provision of services in the broader public sector that would, thereby, impose an undue hardship on the public; and
- The role of interest arbitration in the event of an impasse in negotiations, and the impact of arbitration on pay levels.

Section 6, which considers pay determination at OPG, including:

- The role of the broader labour market in relation to pay levels at OPG;
- Pay determination at OPG, including the legacy effects of collective bargaining at Ontario Hydro, and current factors determining pay levels at OPG;
- Wage increases at OPG, including appropriate comparators of pay increases at OPG, the context of negotiated pay increases at OPG in relation to the Ontario broader public sector, and in relation to pay increases at appropriate comparator firms;

- Pay structures at OPG, including union effects on internal pay relativities, and pay rises associated with pay structures and automatic adjustments.

Section 7, which provides an assessment of the prospects for achieving significantly lower labour costs at OPG, including:

- The constraints imposed by labour market and industrial relations pressures on the labour costs at OPG;
- The prospects for OPG to achieve significantly different collective bargaining outcomes, including the prospect of some form of broad-based government intermediation;
- The prospects for achieving a lower labour cost structure through the collective bargaining route, through arbitration, or through some form of contracting out.

3 Context for Labour-Management Relations in the Ontario Broader Public Sector and Electricity

3.1 Ontario Labour Relations Policy Framework

The labour relations legislative framework within which OPG conducts labour relations and collective bargaining is highly structured and imposes specific requirements and obligations on management and unions regarding the bargaining process and collective agreements. Labour relations at Ontario Hydro, the predecessor company to OPG, were governed under the Ontario *Labour Relations Act* (OLRA);¹ and OPGs unionized employees are currently covered under the OLRA.²

The current Ontario legislative framework governing labour relations, as embodied in the OLRA, has been relatively stable; it was derived from the model established by the Canadian wartime Order in Council *PC1003* of 1944 as well as by the American *Wagner Act* of 1935.³ This framework enshrined several basic principles and processes that continue today including:

- The rights of employees to form a union for purposes of collective bargaining;
- A process for establishing a bargaining unit appropriate to the purpose of collective bargaining between a union and an employer with a view to achieving a collective agreement;
- The rights to strike/lockout in the event of a breakdown of negotiations over interests (i.e., over the terms and conditions of the collective agreement).

¹ In 1993, the Supreme Court of Canada confirmed that jurisdiction for labour relations in nuclear facilities fell under federal jurisdiction; see *Ontario Hydro v. Ontario (Labour Relations Board)*, 1993 CanLII 72 (SCC), [1993] 3 SCR 327, [See: <<http://canlii.ca/t/1fs10>> retrieved on 2012-05-14]. In 1998, the federal government delegated its authority to govern labour relations in nuclear facilities, under the *Canada Labour Code*, to Ontario [see: http://www.thesociety.ca/secondmenu/agreements/opg/opg_ca/opg_part2.html] [Accessed: 14/05/2012 12:02:38 PM]].

Labour relations in OPG nuclear facilities are currently governed by the OLRA (see the OPG and Society collective agreement under “Recognition”).

² OLRA = Ontario *Labour Relations Act*, 1995, S.O.1995, c. 1, Sched. A.

³ In addition to the *Wagner Act*, *PC1003* was also influenced by both the Canadian *Conciliation Act* of 1900 and *Industrial Disputes Investigation Act* (IDI) of 1907; *PC1003* was followed in 1948 by the *Industrial Relations Disputes Investigation Act* (IRDI); see: Canada. *Canada Labour Code Part I Review. Seeking a Balance*, Hull, PQ. 1995, Figure B (Highlights of Federal Collective Bargaining Law in Canada) at p. 13.

- A process for the adjudication and arbitration of rights disputes during the term of a collective agreement, including provision for binding arbitration; and therefore no right to strike or lockout during the term of a contract.

Up until the 1960s, this labour relations framework applied across the private sector. Beginning in the 1960s, the federal and provincial governments undertook to extend this framework to the broader public sector (BPS) industries, in order to provide employees in those industries with the same rights to be represented by a union of their choice and to bargain collectively. However, in crafting the new legislation, it was also recognized that there was a need to take account of several key characteristics of public sector employers and labour markets including that:

- Services provided have either some degree of “public good” characteristic, or that ensuring broad access to the service is considered in the public interest;
- Many services provided to the public are considered necessary and, in some cases “essential”, to the health and/or well-being of the public;
- Many BPS employers are not straight-forward profit-maximizers, and many private employers in BPS industries are publicly funded;
- The budget constraint (ability to pay) that many publicly funded BPS employers confront is determined by the capacity for taxation; while other employers are subject to regulation of their revenue generation.

Over a period of time, Ontario introduced further specialized legislation to govern the conduct of labour relations in certain BPS industries, and that in some cases included significant modifications of the established private sector legislation. Currently, labour relations in BPS industries are, variously, covered under nine major labour relations Acts, including the OLRA.⁴ This array of BPS labour relations legislation and, in particular, the OLRA, reflects government support for several significant overarching labour policy principles, that reflect the importance of the key characteristics of public sector employers and labour markets, including:

- Support for the formation of unions and maintenance of union membership;

⁴These nine labour relations Acts include:

- *Ontario Labour Relations Act*
- *Hospital Labour Disputes Arbitration Act*
- *Crown Employees Collective Bargaining Act*
- *Colleges Collective Bargaining Act, 2008*
- *Police Services Act*
- *Fire Protection and Prevention Act*
- *Ambulance Services Collective Bargaining Act*
- *Ontario Provincial Police Collective Bargaining Act*
- *Education Act*

- Promotion of stable and harmonious labour-management relations;
- Minimization of conflict, especially work stoppages that would disrupt the output of services.

Consequently, the main guiding principles of Ontario labour policy, as embodied in the various labour relations legislation, support:

- **The public interest in ensuring good labour relations and the rights of association of BPS employees;**
- **The public interest, in maintaining the continuous provision of BPS services that are to varying degrees essential or, at the least, of very high importance to the welfare and well-being of the public.**

3.2 The Room for Government Intervention in Collective Agreements

There are a variety of specific circumstances under which a government may want to intervene in a labour-management dispute, or work stoppage, or impose terms or conditions of employment upon unionized employees. In general, a government may decide that there is a broader public interest at stake in a dispute and that this constitutes a sufficient reason for an intervention.

Two recent landmark Supreme Court of Canada (SCC) *Charter of Rights and Freedoms* cases dealing with labour relations, *BC Health Services* and *Fraser*, have significantly impacted labour relations policy.⁵ In *BC Health Services*, the SCC essentially recognized collective bargaining as a constitutionally protected right. The SCC decision in *Fraser*, in 2011, delineates the constraints on governments in undertaking policies that impact collective agreements: “In practical terms, the SCC decision in *Fraser* specifies that a substantive change that is unilaterally imposed on unionized employees (that is significant to, and materially hinders bargaining) is likely to be held invalid unless the government:

- (i) engages in a “meaningful process” of consultation and/or negotiation with the union(s); and
- (ii) that the negotiation be undertaken in “good faith.” ”⁶

In the March 2012 budget, the Ontario government indicated a clear interest in either imposing or actively encouraging restraint in wage and salary increases in the BPS.

⁵ *BC Health Services* is: *Health Services and Support – Facilities Subsector Bargaining Assn v British Columbia* 2007 SCC 27, [2007] 2 SCR 391.

Fraser is: *Ontario (Attorney General) v. Fraser*, 2011 SCC 20.

⁶ Source: Chaykowski and Hickey (2012: 92).

With respect to nonunionized employees in the BPS:

- The Ontario government introduced a pay freeze through the *Public Sector Compensation Restraint to Protect Public Services Act*, 2010; and in 2013 the government introduced legislation to extend the pay freeze, through Bill 5 (*Comprehensive Public Sector Compensation Freeze Act*, 2013);⁷

With respect to unionized employees and their contracts:

- The government explicitly noted that, while its objective was to achieve restraint in pay increases, its approach would be "...consistent with the protections afforded to collective bargaining under the Supreme Court of Canada's interpretation of the Charter of Rights and Freedoms."⁸
- The government drafted and announced comprehensive restraint legislation in 2012 that was intended to cover nonunionized as well as unionized employees across the broader public sector; and which proposed, specifically, the *Respecting Collective Bargaining Act (Public Sector)*, 2012, which would, potentially, under certain circumstances, impose a collective agreement on the parties – however, this legislation was never introduced in the legislature.
- The government passed Bill 115 (*An Act to Implement Restraint Measures in the Education Sector*) in 2012, which introduced restraint, but only on teacher collective bargaining and outcomes. The government subsequently imposed collective agreements on some teachers under this legislation (the Ontario Secondary School Teachers Federation (OSSTF) and Elementary Teachers' Federation of Ontario (ETFO)), in January of 2013;⁹ but the government then rescinded Bill 115 on January 23, 2013.¹⁰ Both unions pursued a Charter challenge to the legislation, even though the government resumed negotiations with the OSSTF and EFTO, and eventually reached agreements with the unions in March and June (of 2013), respectively.¹¹

⁷ This Act passed Second Reading in the Ontario Legislative Assembly in February 2013, and remains under active consideration. (Source: http://www.ontla.on.ca/web/bills/bills_detail.do?locale=en&BillID=2717&detailPage=bills_detail_status.)

⁸ Source: *Strong Action for Ontario. 2012 Ontario Budget*. Toronto: Queen's Printer. p. 70.

⁹ Source: Government of Ontario News Release (January 3, 2013). Accessed at: <http://news.ontario.ca/edu/en/2013/01/new-agreements-for-teacher-support-staff-introduced---bill-115-to-be-repealed.html>.

¹⁰ Source: Government of Ontario News Release (January 21, 2013). http://news.ontario.ca/edu/en/2013/01/ontario-to-repeal-putting-students-first.html?utm_source=ondemand&utm_medium=email&utm_campaign=p.

¹¹ Sources: Government of Ontario News Releases (March 31, 2013; and June 13, 2013). OSSTF Release accessed at: <http://news.ontario.ca/edu/en/2013/03/statement-by-minister-sandals-on-etfo-and-extracurricular-activities.html>; and EFTO Release accessed at: <http://news.ontario.ca/edu/en/2013/06/agreement-in-principle-with-etfo.html>.

Therefore,

- **The power of the government to over-ride collective agreements is constrained.**
- **The government has acknowledged that there are limits to unilateral actions regarding existing collective agreements and bargaining and that there are legal constraints to overcome in terms of their ability to impose the terms and conditions of a collective agreement.**
- **The government has acknowledged that, while it might today enact legislation that could impose terms and conditions of a collective agreement, such legislation may in the future be subject to a Charter challenge.**

4 Pay Determination under Unionization and Collective Bargaining

4.1 Pay Determination through Collective Bargaining

Pay determination through collective bargaining is fundamentally different from wage determination in workplaces that are nonunionized, because unions and management negotiate over the terms and conditions of employment to achieve a collective agreement. The outcome of the negotiations process is largely dependent upon the relative *power* of management and the union.

The degree of power of the parties in negotiations depends upon their respective costs of agreeing and disagreeing;¹² for example, for management, the cost of agreeing to the compensation demands of the union would include the actual cost of the higher wages and benefits paid, while the costs of disagreeing would be the cost of lost production in the event of a work stoppage.

Critically, there are a number of major factors that, generally, are found to determine relative bargaining power including:¹³

- **The legal and political context:**
 - public support/opposition; and
 - legal and legislative regime;
- **Economic conditions:**
 - Product demand and the business cycle;
 - Unemployment levels;
 - Possibilities for product substitution;
- **Organizational factors:**
 - Ability to stockpile;
 - Ability to maintain production – at that facility – or globally;
 - Union’s financial strength and the degree of internal political cohesion.

¹²The concept of bargaining power is based on the parties’ costs of agreement and costs of disagreement and is 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 disagreeing with the union terms relative to the costs of agreeing to them.” [Chamberlain and Kuhn 1986:176]

¹³ See: Chaykowski (2009).

Therefore,

- **The role of bargaining power, and the impact of the factors that determine bargaining power, are fundamental to determining the terms and conditions of employment under collective bargaining, including pay increases.**

4.2 Union Density and the Capacity of Unions to Raise Wages under Collective Bargaining

One of the main objectives of unions in Canada is to raise the wages (earnings) of their members through collective bargaining.¹⁴ However, increases in wages (or benefits) achieved through collective bargaining can increase the cost of labour relative to the cost of other inputs into the production process. This creates an incentive for firms to substitute away from the relatively more expensive unionized labour input, typically toward less expensive nonunionized labour.¹⁵ The greater the proportion of employees that is unionized in an industry, the fewer the options that are available to firms to substitute towards nonunionized workers.

For example, unionized firms may seek to substitute towards less costly nonunionized labour by contracting out, or by opening nonunionized facilities at another location. The problem with these strategies is that unions have tended to be successful in negotiating clauses that prevent contracting out, or in organizing non-union facilities of the same firm.

Therefore, unions seek to “take wages out of competition”; that is, to organize as large a proportion of employees in an industry as is possible, precisely in order to limit substitution possibilities, thereby increasing their bargaining power and enabling them to further increase wages and enhance other employment terms:

“There seems to be a strong relationship between the extent of unionism in an industry (or occupation) and the wage markup ... in industries where almost all firms are unionized, unions will have more bargaining power and will therefore be able to secure a higher wage markup. This is known as the “extent of unionism” effect.”¹⁶

¹⁴ In contrast to unions in other major countries of the world, which have a strong social and/or political agenda, Canadian unions are generally characterized as “business unions” because their main focus is on enhancing the terms and conditions of employment, including the wages, benefits and other working conditions of their members. Most employment terms that are negotiated have either a direct cost, or monetary equivalent value.

¹⁵ Another (typically long term) possibility is for firms to increase the utilization of capital or labour-saving technologies. The standard way in which unions mitigate the employment impacts of substitution towards capital or technology are by negotiating limits to technological change, or strong job security provisions. Alternatively, unions may accept lower employment levels but negotiate for higher wages that are supported by the higher productivity arising from the higher capital-to-labour ratio.

¹⁶Source: Aidt and Tzannatos (2002: 57).

The process of globalization of product markets, production systems, and distribution networks poses a fundamental challenge to many Canadian unions because, even in industries in which unions have traditionally been strong domestically, firms can now readily re-position their production facilities worldwide and operate on a non-union basis. This directly undermines the ability of unions to organize workers across an industry and therefore limits their ability to negotiate sustained high wage increases relative to nonunionized employees (i.e., a wage mark-up, or premium). The impact of globalization on unions has been uneven across industries – while it has been pronounced in many manufacturing industries, not all firms produce products or services that can take advantage of global production and distribution.

Ontario BPS industries produce products or services which, for the most part, cannot be produced off-shore and then distributed domestically – including education, health care, social services, police and firefighting, government services, and electricity. Consequently, the relevant geographic boundaries for purposes of union organizing remain within Canada or, in some cases, within a province, thereby limiting the scope for employers to locate production elsewhere, or otherwise substitute towards nonunionized workers.

In Ontario, the extension to BPS employees of the right to form unions and collectively bargain coincided with the rapid expansion of BPS employment levels so that:

- By the mid-1980s, unionization reached roughly 39% in health, 68% in education, and 80% in public administration.¹⁷
- By the end of the 1990s, union density in the Ontario public sector was approximately 69.3%, compared to only 17.7% in the Ontario private sector and 32.3% across all industries; and in utilities in Ontario, of which a major segment is electricity, union density was 70.3%.¹⁸

Whereas union density in utilities has remained at the very high level of about 70% throughout the 2000 – 2011 period, union density has declined in the private sector, to about 14.9% in 2011 (refer to Figure 1).

While there remains some variation in union density across industries within the BPS (e.g., health has a lower union density), utilities consistently remain, over time, at the particularly high level of about 68-71%, along with education and public administration (refer to Figure 2).¹⁹ The level of unionization in Ontario BPS industries is especially high relative to other major

¹⁷ Source: Rose (1995: 30, Table 3).

¹⁸ Source: Statistics Canada, CANSIM, Table 282-0078 (Labour force Survey Estimates (LFS)) (Accessed March 30, 2012).

¹⁹ It is important to note that not all employees are eligible to join a union (e.g., managerial employees), so that the estimate of 70% likely understates the extent of unionization.

countries and, notably, is in marked contrast to the experience in the United States, where union density:²⁰

- Was only 7.3% in the overall private sector and 39.6% in the overall public sector in 2012;
- Was only 29.8% in utilities, and 29.7% in the electricity industry, in 2012;²¹
- Declined in utilities and electricity, between 2003 and 2012, from 32.2 to 29.8%, and from 33.3% to 29.7%, respectively.

The particularly high level of unionization in Ontario utilities serves to significantly enhance the bargaining position of unions.

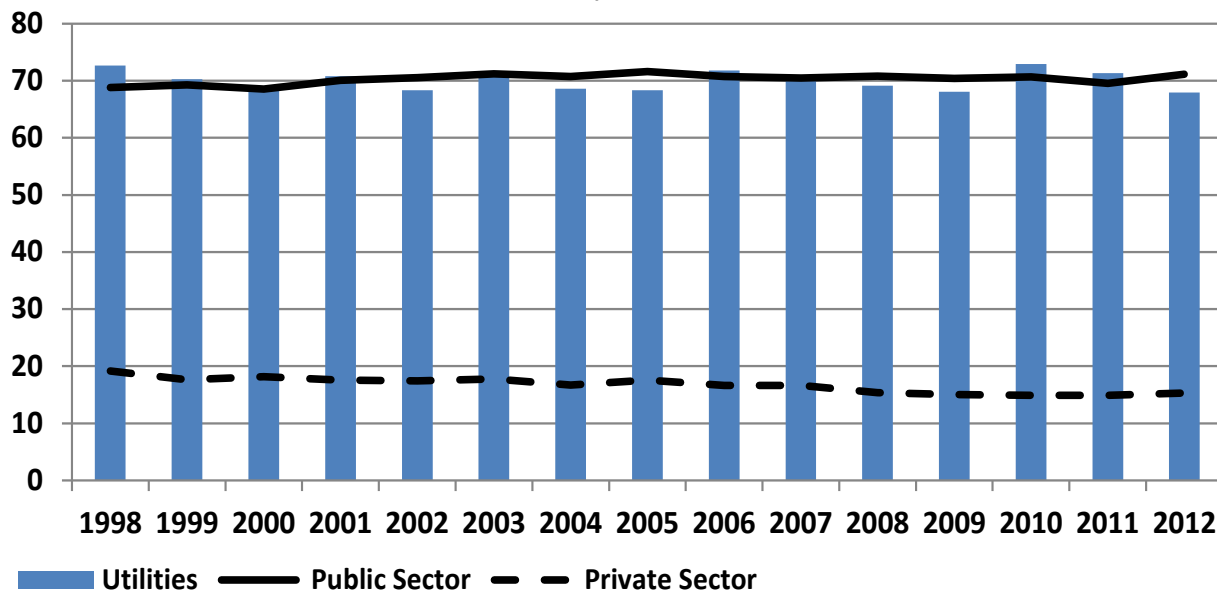
Therefore,

- **A main objective of unions is to achieve greater economic outcomes for their members, relative to nonunionized employees; and unions are better able to achieve this, the higher is the union density in an industry, and the lower is the degree of competition.**
- **While in some sectors economic globalization has undermined the ability of unions to organize employees across an industry, in Ontario BPS industries, services remain geographically bounded within Ontario; this permits unions to effectively organize employees across Ontario and, thereby, limit the possibilities for firms to substitute towards the employment of nonunionized workers.**
- **The extent of unionization in Ontario BPS industries is exceptionally high, thereby permitting unions to “take wages out of competition,” and this significantly enhances the bargaining power of unions and their ability to raise wages to high levels through bargaining.**

²⁰ Source: Hirsch and Macpherson (2003); (data accessed at unionstats.com on 16.06.2013). Union density is defined as the proportion of workers covered by a collective agreement.

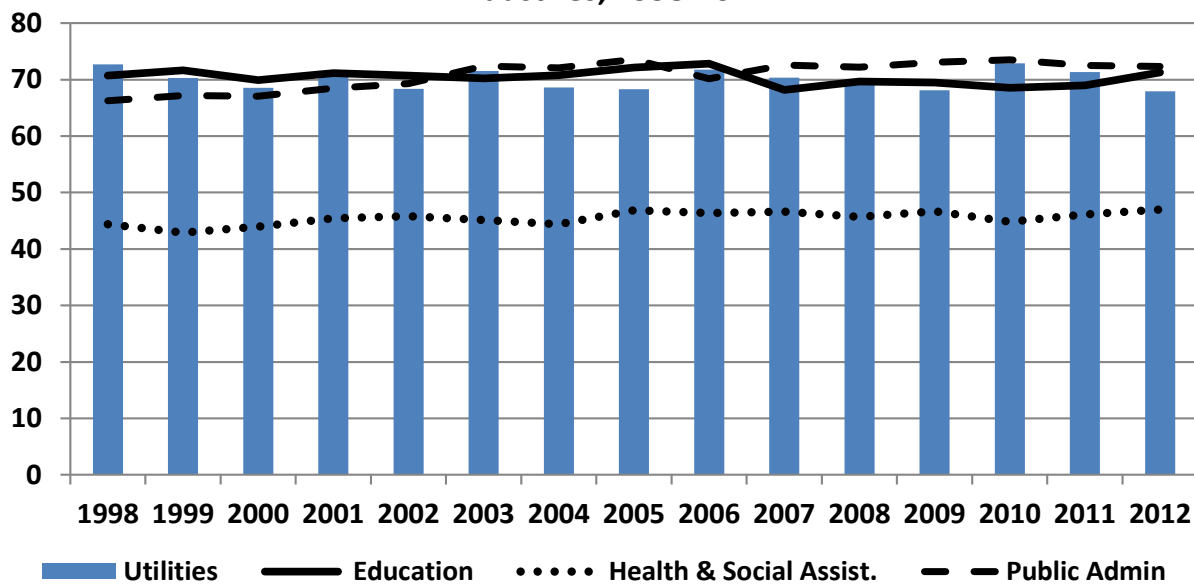
²¹ The US Electricity industrial classification includes electric power generation, transmission, and distribution.

Figure 1: Union Density in Ontario Private and Public Sectors, and Utilities, 1998-2012



Source: Statistics Canada. CANSIM.

Figure 2: Union Density in Ontario Broader Public Sector Industries, 1998-2012



Source: Statistics Canada. CANSIM.

4.3 Effects of Unions on Compensation and Other Outcomes that Affect Labour Costs

Since unions are free to negotiate over the complete range of terms and conditions of employment through the process of collective bargaining, both compensation and other employment-related outcomes are expected to vary between unionized and nonunionized workplaces. In this section I consider the empirical research evidence regarding the effects of unions on: wage levels and increases; benefits; internal pay relativities; and operations and management practices.

Union Effects on Wage Levels and Increases

One of the main objectives of unions is to raise the wages of their members through collective bargaining. After taking account of the variation in employees' characteristics that determine wages (such as education, gender, or age), the magnitude of the overall union-nonunion wage differential (i.e., the "union wage premium") in Canada is in the range of about 5-10%.²²

Wage levels and increases for employees are set in nominal (i.e., not inflation-adjusted) terms, so the real wage levels (wages that reflect real purchasing power after accounting for inflation) tend to decline with general price inflation, unless there are ongoing wage adjustments. Unions tend to factor projected inflation increases into their wage negotiations precisely for that reason; in addition, major unions may negotiate "cost-of-living allowance" ("COLA") adjustment clauses that automatically adjust nominal wages upward as inflation increases, according to a pre-set formula specified in the collective agreement. This results in automatic wage increases, linked to inflation, during the term of the contract.

One consequence of the prevalence of these COLA clauses is that nominal wages are "downward sticky"; that is, while inflation would normally erode the value of nominal wages if wages were left unchanged during the term of a collective agreement (i.e., would decrease real wages), the COLA adjustments prevent this from happening.²³ This is especially relevant during periods of inflation and where there are multi-year contracts.

The rate of pay increases in unionized establishments can also be affected when unions pattern in their bargaining (i.e., unions seek to attain a wage increase that is at least at parity with the pay increases attained in other recently negotiated contracts in order to maintain

²² There is extensive empirical research evidence on the extent to which unions have been able to raise the wages of their members above the wages (earnings) of comparable non-unionized workers. See the comprehensive review of Canadian evidence by Blanchflower and Bryson (2003); and, in particular, Canadian studies by Renaud (1997) and Verma and Fang (2002). The results for Canada are consistent with evidence internationally that finds a sizable positive union wage premium. Within Canada, the magnitude of the union wage premium varies across characteristics such as industry and occupation, and varies, as well, over time.

²³ See: Christofides and Li (2005); Christofides and Stengos (1994); and Christofides and Leung (2003).

“comparability”). In addition, in BPS industries with access to interest arbitration as an option, in the event that negotiations reach an impasse, there is an incentive for unions to utilize interest arbitration because unions are aware that “comparability” is a well-accepted arbitral criterion in deciding on an appropriate wage increase.²⁴

With regard to union effects on wage levels and increases, the research evidence unambiguously finds that:

- **Wage levels under unions and collective bargaining are considerably higher than the levels that would prevail if employees were not unionized.**
- **Unions have a major impact on the rate of wage increases, as well as levels, by negotiating cost-of-living adjustments and because of the patterning of agreements.**

Union Effects on Benefits

Unions negotiate over the full range of compensation elements and, although wages tend to be the centre of attention, benefits are important potential sources of labour costs. Evidence from Canada, the United States, as well as international evidence, underscores the very sizable effect of unionization in increasing both the share and level (cost) of fringe benefits.²⁵ The effect in Canada is especially large:

“... the union impact is to increase total compensation by 12.4 percent, compared to an impact of 10.4 percent on wages ... the percentage impact of unions on benefits is estimated to be 45.5 percent. This latter estimate implies a very substantial impact of unions on benefits in Canada, as large or larger than those reported in the United States.”²⁶

Therefore, with regard to union effects on overall compensation:

- **Unions have a direct and very substantial impact on benefit levels as well as on wages, thereby significantly raising the total compensation levels of unionized employees.**

Union Effects on Internal Pay Relativities

In a unionized employment context, pay levels, pay increases, internal pay relativities, and pay raises through grids are all determined through collective bargaining and negotiated with the union. Unions generally adopt policies aimed at the standardization of pay rates:

“Unionism is expected to reduce the dispersion of wages among organized workers because of long-standing union wage policies in favor of the “standard rate,” defined as uniform piece or

²⁴ See: Chaykowski and Hickey (2012: 37-44).

²⁵ For the U.S. see: R. Freeman (1981). For a comprehensive international review of the evidence see: Aidt and Tzannatos (2002), Table 4-3.

²⁶ Source: Renaud (1998).

time rates among comparable workers across establishments and impersonal rates or ranges of rates in a given occupational class within establishments.”²⁷

In addition to being associated with higher pay levels and increases, and higher benefits, unions have a significant impact on internal pay relativities by generating a higher degree of wage compression relative to nonunionized firms.²⁸ With respect to union impacts on internal pay relativities:

- **Unions both disproportionately increase the wages of lower-skilled workers at the bottom of the wage distribution within a firm, as well as reduce overall wage differentials across employees within establishments.**

Union Effects on Operations and Human Resource Management

Unions have impacts on a range of terms and conditions of employment other than wage and benefit related items. Unions negotiate contractual terms that can constrain managerial discretion by creating rules around decision-making, workforce deployment, staffing processes and requirements, and business decisions. Unions have significant effects that include reducing:²⁹

- hours of work and increasing the use of overtime;
- flexibility in overall staffing levels and (re)deployment by relying upon seniority rules in layoffs as well as in job competitions;
- flexibility in work arrangements – affecting the use of part-time or other flexible work arrangements, including contracting out.

The research evidence clearly underscores that, with respect to union effects on management operations and human resource management:

- **Unions have significant effects on a range of terms and conditions of employment, other than wages and benefits, which impact labour costs.**

²⁷ Source: Freeman (1980).

²⁸ Evidence for both the United States and the UK indicates that within-establishment pay dispersion is lower within unionized establishments; see Freeman (1980); Gosling and Machin (1995); and Freeman (1982). Also see the extensive review by Kuhn (1998).

²⁹ See Verma (2005).

5 Impasse Resolution and the Use of Interest Arbitration to Determine the Terms of Employment in the Ontario BPS

5.1 The Resolution of Impasses in Collective Bargaining and the Binding Nature of Collective Agreements

In general, in the event of an impasse in negotiations, the legislative framework allows a union to engage in a strike to impose costs on the employer in order to induce them to make concessions; alternatively, the employer may lock out employees in order to impose economic costs on the union members. In some circumstances, an impasse may be resolved by having the disputed matters referred to arbitration (i.e., “interest arbitration”) for a decision that is binding upon the parties.

The resultant collective agreement is binding on the parties. Disputes over the interpretation or application of the contract terms are subject, by law, to binding “rights arbitration”. Since the parties are unable to breach a collective agreement, the terms of the collective agreement constrains management from reducing the rate of wage increases and the overall salary mass during the term of the contract.

Therefore,

- **An impasse in negotiations can, ultimately, be resolved through mutual agreement following a work stoppage; or through binding interest arbitration, if the parties agree to arbitration, or if the government refers the dispute to arbitration.**
- **Collective agreements, once in place, are absolutely binding on the parties.**

5.2 Work Stoppages and Essential Services in the BPS

Under the current labour relations policy framework, as noted above, the standard process for resolving an impasse in negotiations provides for either a strike or lockout in order to impose costs on the other party to force concessions. While this process is fairly straightforward in its application in the private sector, in BPS industries this approach is problematic in situations where a cessation of the provision of a service or product has negative consequences for the well-being of the public:³⁰

“Widespread concern exists that the public will suffer undue hardship from stoppages by certain strategically placed groups of workers – most commonly, perhaps, health care workers, but also

³⁰ Source: Labour Law Casebook Group. *Labour and Employment Law*. Eighth Edition. Toronto: Irwin Law, pp. 486-487.

those who provide other services such as policing public transit, electricity and water supply, garbage collection, snow clearing, and teaching.”³¹

Generally, a service is considered *essential* if the withholding of the services imposes an “undue hardship” on the individuals who rely upon it; typically, the hardship test would require that a reduction or cessation of services materially affected the health or security of the public; but it could also encompass economic hardship if these costs were sufficiently high and extensive.³²

Importantly, there is no “bright line test” of whether or not a given service or product would be deemed “essential”;³³ so that:³⁴

“... there are a wide variety of legislative approaches in different jurisdictions across Canada, and sometimes even in different sectors in the same jurisdiction, with respect to the determination of essentiality and the manner of regulating strikes and lockouts once a particular service is deemed essential.”

Furthermore, as noted in the 2012 Drummond Commission Report, there are significant pressures on governments from the public to limit disruptions to the provision of services whether essential or merely desirable:³⁵

“Various governments have tended to undertake policy measures to respond to public pressures to avoid the public outcry that would result from public service delivery disruptions.”

Political responsiveness to public pressure increases significantly the appeal of using arbitration to resolve collective bargaining impasses.

Given that a given service is deemed essential, current labour relations policy provides, generally, two ways to ensure a sufficient provision of the services:

- i. A portion of the workforce may be “designated” as essential and this group is required to continue to work and provide services, even where the non-designated portion of the workforce is permitted to strike. Unions typically dislike this option because it has the

³¹ Although, is important to note that there is also concern that the scope of what may be considered essential is often too broad:

“There is a countervailing view among other observers ... that too wide a range of services are thought to be essential, and that even those which are truly essential can safely be reduced to a much lower level than usual for considerable periods.” [Source: Labour Law Casebook Group. *Labour and Employment Law*. Eighth Edition. Toronto: Irwin Law, p. 487.]

³² See: Labour Law Casebook Group. *Labour and Employment Law*. Eighth Edition. Toronto: Irwin Law, pp. 486-487.

³³ See: Adell, Grant and Ponak (2001).

³⁴ Source: Labour Law Casebook Group. *Labour and Employment Law*. Eighth Edition. Toronto: Irwin Law, p. 487.

³⁵ Source: Drummond Commission Report (2012: 369).

obvious effect of weakening the impact of a strike, thereby reducing the leverage that a strike provides;

- ii. Work stoppages are prohibited (including either a strike or lockout) and outstanding interest disputes are subject to final and binding interest arbitration.

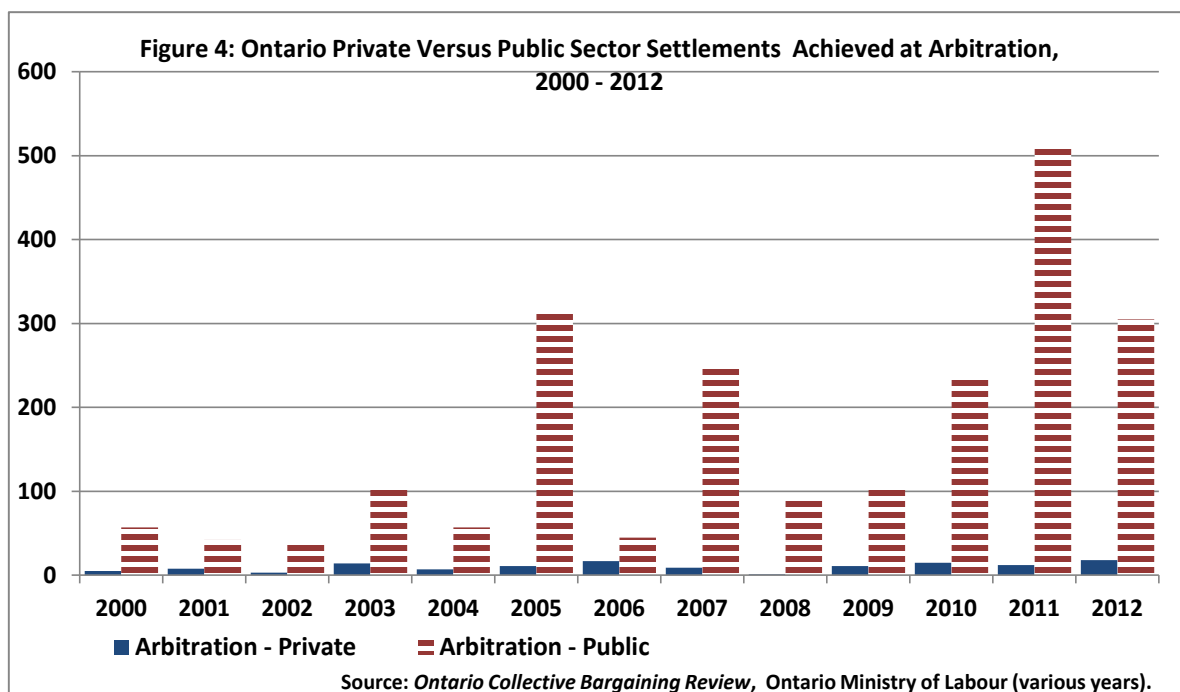
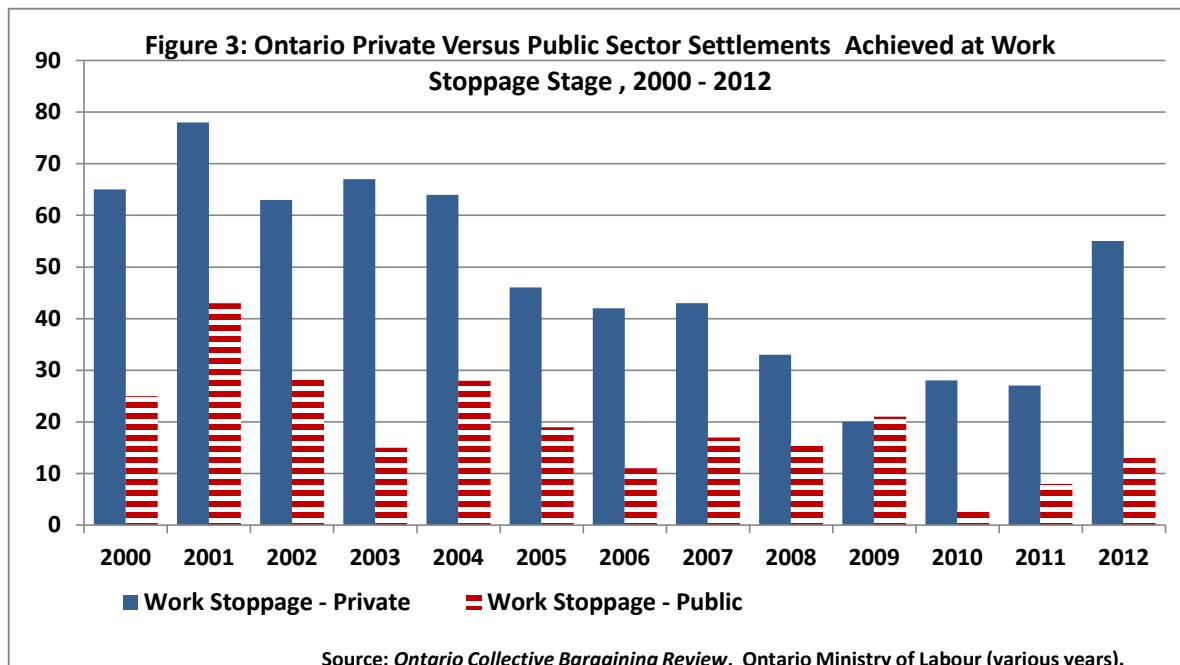
In any event, governments have often, from time to time, also resorted to *ad hoc* back-to-work legislation, and referred a dispute to binding arbitration, when the disruption from a strike is considered contrary to the public interest.³⁶

Relative to the private sector, contract settlements at the strike stage are very infrequent across Ontario broader public sector industries; whereas interest arbitration is frequently utilized to achieve a settlement and resolve impasses in bargaining. The frequency of settlements at the strike stage in the Ontario private versus public sectors is provided in Figure 3; and the relative use of interest arbitration to achieve a settlement in the Ontario private and public sectors is presented in Figure 4. The interest arbitration process is a major determinant of overall wage outcomes across many segments of Ontario broader public sector industries.

Therefore,

- **There is no “bright line test” to determine when a particular service or product would be considered essential by the government.**
- **Public tolerance for service delivery disruptions would be expected to be a significant factor affecting whether the government considers a particular service to be essential.**
- **In industries or business lines where services are essential, or where service disruptions impose an undue hardship, as well as in industries where services are not essential, interest arbitration remains a major policy option for dispute resolution.**
- **In practice interest arbitration is used extensively to determine wages and other terms and conditions of employment throughout the Ontario BPS.**

³⁶ See: Labour Law Casebook Group. *Labour and Employment Law*. Eighth Edition. Toronto: Irwin Law, p. 487.



5.3 Interest Arbitration Outcomes in the Ontario BPS

Across Canada, the use of interest arbitration is particularly prevalent across public and quasi-public sector industries because of the nature of many of the services provided and the potential impact on the public of a disruption in the provision of these services arising from a work stoppage.

In the Ontario BPS, the right to strike is significantly limited in certain industries, either by the extensive use of essential service restrictions, or by widespread prohibitions against the right to strike combined with interest arbitration.³⁷ The right to strike exists in the energy sector, but there are collective agreements with consensual interest arbitration as an alternative to a work stoppage. This particular approach is aligned with long-standing broader labour policy objectives of limiting costly conflicts and in maintaining the uninterrupted provision of services to the public.

Some Ontario labour relations legislation enumerates specific criteria that arbitrators are to consider in crafting their awards, such as:³⁸

- employer ability to pay;
- the general economic circumstances of the province (i.e., the ultimate funder);
- comparability of pay across comparable employees in different establishments; and
- the need to offer competitive pay levels.

These types of standards represent, for the most part, very common criteria that arbitrators tend to rely upon. The crucial problems with the arbitration process are that:³⁹

- i. The “ability to pay” criterion has been rejected or minimized by arbitrators;

³⁷Industries with mandatory binding arbitration of interest disputes include:

- Hospital and acute care;
- Police and firefighters;
- Ontario Provincial Police;
- Long-term care;
- Toronto Transit Commission;

Industries with a right to strike/lockout but subject to limitations imposed by essential services designation include:

- Ontario Public Service;
- Various agencies, Boards and Commissions;
- Ambulance services;

Source: Chaykowski and Hickey (2012: 24-25, Chart 1).

³⁸ For example, the *Ontario Hospitals Labour Disputes Arbitration Act* stipulates that an arbitration board must consider these criteria.

³⁹ See: Chaykowski and Hickey (2012).

- ii. Arbitrators apply, to varying degrees, well-known criterion in deciding awards, but the dominant criteria in use lend themselves to patterning; in particular, the application of the principle of comparability is very difficult to operationalize, in practice, with the result is that:

“Under interest arbitration in the Ontario BPS, there is a tendency to simply pattern after previous, recent BPS awards or settlements, largely on the basis of achieving “comparability” or historical parity (equality) regardless of other characteristics that might be present and that differentiate workplace and enterprise outcomes.”⁴⁰

The consequences of patterning across arbitration awards are three-fold:

- i. It tends to promote upward biased wage awards over time;⁴¹
- ii. It leads to wage awards that are, increasingly, disconnected from the economic circumstances of particular employers;
- iii. It creates an incentive for unions to seek arbitration whenever there is an impasse, because under the criteria typically relied upon by arbitrators the award is likely to be as good as, or better, than one achieved through collective bargaining alone or one following a work stoppage.

When the Ontario government introduced the *Public Sector Compensation Restraint to Protect Public Services Act*, 2010, it simultaneously appealed to unionized employers and unions to *voluntarily* restrain pay increases because the *Act* was not binding on unionized employers/unions.

In fact, arbitrators have consistently and entirely rejected the applicability of the legislation and government guidelines as providing any basis or rationale for affecting pay awards. Arbitrator Burkett’s arbitration award of February 3, 2011, regarding the renewal agreement between OPG and the Society of Energy Professionals, in which he enumerates some of the recent major arbitration awards that reject the government policy, reflects this approach.⁴²

⁴⁰Source: Chaykowski and Hickey (2012: 54).

⁴¹The available empirical research evidence for Canada supports the conclusion that overall wage levels that occur under interest arbitration are likely somewhat higher relative to what we expect to observe under collectively bargained settlements and that the variance is lower. See Currie and McConnell (1991); Currie and McConnell (1996); Dachis and Hebdon (2010); Gunderson, Hebdon, and Hyatt (1996) on the effects of arbitration on outcomes levels; and Currie (1994) on the variance.

⁴²See: In the Matter of an Arbitration Between: Ontario Power Generation (“the employer”) and: The Society of Energy Professionals (“the Society”) in the Matter of: Renewal Collective Agreement. (Sole Arbitrator: Kevin Burkett) (February 3, 2011). Hereafter: the Burkett Award (2011).

Taken together, I conclude that:

- **The use of interest arbitration in Ontario BPS industries is widespread; and the use of arbitration is supported by labour policy as well as by industrial relations practices and conventions.**
- **The explicit mandate in some Ontario labour relations legislation to consider comparability, combined with the established practice of arbitrators of significantly weighting comparability as a criterion in arbitration awards, can result in significant wage patterning and impart an upward bias to wage settlements.**
- **Arbitrators have determined that they are not bound by the Government of Ontario's current legislation or policy of compensation restraint.**

Arbitrator Burkett's award takes note of the following major arbitration awards that reject the government policy:

- Science Centre and SEIU (August 19, 2010) unreported (McDowell)
- Participating Hospitals and SEIU (November 5, 2010) unreported (Burkett)
- University of Toronto and Faculty Association (October 5, 2010) unreported (Teplitsky)
- Participating Nursing Homes and SEIU (September 15, 2010) unreported (Jessin)
- Brain Injury Services of Hamilton, etc. and United Steel, Paper, etc. Workers International Union, Local 1-500 2010 OLAA No. 581 (Albertyn).

6 Unionization and Pay Determination at OPG

6.1 General Role of the Broader Labour Market in Relation to Pay Levels of Unionized Employees at OPG

Wage (earnings) levels in the broader external labour market for the various classes of unionized employees at OPG (e.g., engineers, technicians, technologists, trades) provides, in effect, a *base* for pay levels at OPG if OPG is to successfully attract and retain workers over time. If pay levels at OPG were to fall below the levels available to OPG employees in the broader labour market, then I would expect OPG to experience unwanted turnover as employees seek better paying employment opportunities elsewhere.⁴³ In this general circumstance, OPG would need only to match (competitively) determined pay offers in the labour market in order to attract and retain workers.

Even so, a reasonable pay strategy would also account for such considerations as the merits of being a high-pay organization; or the benefits of being an industry pay leader (e.g., a high pay strategy may result in desirable worker incentive/productivity effects, including decreased turnover, increased retention and commitment, and the ability to attract talent).⁴⁴

In the first instance, and aside from the impacts of unions on pay, the relevant “comparator” firms for OPG, in offering “competitive” pay levels for most classes of employees, would be firms that employ similar classes of workers (in terms of the education and skill profile), in the same broader industry and geographical region within which OPG has operations; and firms that are subject to the same labour market regulatory regime.

Therefore,

Aside from the impacts of unions, broader external labour market forces are expected to establish pay levels that represent a *base* for the wages/earnings that would be required at OPG to successfully attract and retain workers over time.

- **In the first instance, the relevant “comparator” firms are those in the same broader industry and geographical region and that are subject to the same labour market regulatory regime.**

⁴³ On the functioning of labour markets, see Ehrenberg, Smith and Chaykowski (2004).

⁴⁴ See: Ehrenberg, Smith and Chaykowski (2004:347-348).

6.2 Pay Determination for Unionized Employees at OPG

Legacy Effects of Collective Bargaining at Ontario Hydro

Both the PWU and SEP had well-established bargaining relationships and collective agreements at Ontario Hydro, the predecessor company to OPG. Ontario Hydro had been unionized by:

- the Ontario Hydro Employees' Union (the predecessor to the PWU) in the 1950s;⁴⁵ and
- the SEP since 1992.⁴⁶

Therefore, the collective agreements Ontario Hydro had entered into prior to the creation of the successor companies were very well-established contracts.

The PWU and SEP collective agreements in effect at Ontario Hydro just prior to the formation of the successor companies were, in fact, among the most highly sophisticated (i.e., in terms of being comprehensive in scope of subject matter, and highly detailed in terms of specifying rules and obligations), amongst all major collective agreements in Canada.

As a successor company to Ontario Hydro, OPG assumed the full range of labour relations obligations in force at Ontario Hydro, the predecessor company; OPG was obligated to recognize the PWU and SEP as the bargaining agents for the employees, and OPG was bound by those collective agreements, with all associated obligations (e.g., regarding terms and conditions of employment; and collective bargaining). The legacy in terms of coverage and complexity of the contracts included:

- Firmly established patterns of wage settlements;
- Detailed pay grids;
- Extensive rules regarding working conditions;
- Well-defined and strong discipline and discharge procedures;
- Detailed rules relating to job classifications, filling vacancies;
- Strong employment security provisions, including provisions relating to contracting out;
- Strong successor rights and obligations in the event of the sale or transfer of any element of the business.

⁴⁵ Source: <http://www.pwu.ca/history.php> [Accessed 22/05/2012 10:50:55 AM].

⁴⁶ Sources: Memorandum of Settlement on a Voluntary recognition Agreement Between Ontario Hydro and the Society of Ontario Hydro Professional and Administrative Employees (Dated September 12, 1991); and *Hydro One Local Member Handbook*. (Rev. May 28, 2009) at p. 1.) Accessed at: http://www.thesociety.ca/files/mylocal/12/New_Member_Handbook_-_Orientation_Manual_-_Revised-Jan%2018-10%20FINAL.pdf [Accessed 22/5/2012 at 11:00AM]. Although not yet certified as a union under the Ontario LRA, the SEP concluded a voluntary recognition agreement with Ontario Hydro in 1961 which afforded the Society the right to collectively bargain on behalf of engineers.

In addition, there was an extensive line of grievance and arbitration decisions regarding employee rights under the collective agreement that had been built up over an extended period of time. These decisions, collectively, would also have a major role in defining OPG management obligations under their collective agreements.

Therefore,

- **Ontario Hydro labour relations legacy effects were substantial and highly deterministic because OPG was bound to accept the existing collective agreements and to recognize and negotiate with the PWU and SEP; and**
 - **the collective agreements inherited by OPG were highly developed and complex contracts.**
 - **the collective agreements inherited by OPG contained, in particular, strict limitations on contracting out.**

Current Factors Determining Pay of Unionized Employees at OPG

The level of unionization at OPG is at about 90%. In labour relations terms, OPG is essentially fully unionized. There are two major unions at OPG: the Power Workers Union (PWU) and the Society of Energy Professionals (SEP); although OPG also has collective agreements with a variety of other unions, primarily relating to trades employees.⁴⁷

The compensation levels for most employees at OPG are established through collective bargaining, and the actual pay outcomes are determined by the relative power of the parties. There are several key conditions and factors that enhance the relative bargaining power of the unions at OPG:

i. Challenging overall labour market conditions:

- projected sustained overall strong demand for labour;⁴⁸ and
- demographic trends that result in an aging workforce.

These trends reinforce each other to produce a relatively competitive market for many of the classes of skilled workers employed at OPG.

ii. Significant organizational constraints:

- an inability of OPG to shift production to alternative facilities, either locally, nationally or globally; versus,
- considerable financial strength within the unions, which increases their capacity to bargain effectively.⁴⁹

⁴⁷ As examples, OPG also has collective agreements with the Brick and Allied Craft Union of Canada, the Canadian Union of Skilled Workers, and the International Association of Machinists and Aerospace Workers.

⁴⁸ Source: Electricity Sector Council (2012). Taking account of the range of factors that affect both the demand for (e.g, replacement needs arising from retirements; demand arising from expansion of the industry) and supply of labour (e.g, enrolments in education programs related to careers in the electricity industry; immigration; demographics) in the broader Ontario electricity industry, the Electricity Sector Council projects overall “tight” labour markets (i.e., pressures on supply of labour) in the electricity industry through 2016 (see: Electricity Sector Council 2012: 103-105).

⁴⁹ See, for example: Grant Thornton (March 31, 2011). Financial Statements. The Society of Energy Professionals – IFPTE Local 160. Independent Auditor’s Report.

iii. Determinative constraints in the legal and political context:

- political sensitivity to the public's dependence on uninterrupted electricity supply, which lowers the political tolerance for work stoppages and increases the likelihood of reliance upon interest arbitration;⁵⁰
- a legal and legislative regime that enforces successorship rights of the unions, which ensures that attempts to restructure or privatize a business segment would not result in deunionization or shedding of collective agreements.⁵¹

iv. Very high extent of union organization:

- The PWU and SEP also represent employees at other major firms in the industry that employ similar classes of workers:
 - The PWU has bargaining units at over 40 firms in the electricity industry, including major employers: OPG, Hydro One, Bruce Power, Kinectrics, Transalta Energy Corporation, and London Hydro.⁵²
 - The SEP has bargaining units with major firms including: Bruce Power, Hydro One, Inergi, Kinectrics, OPG, and Toronto Hydro.⁵³
- At the aggregate level, the electricity industry in Ontario is highly organized, so that unions have a very high capacity to "take wages out of competition."

Therefore,

- **The compensation levels and increases of unionized employees at OPG are determined solely through the collective bargaining process, and not through the unfettered interaction of supply and demand in the labour market.**
- **The set of main factors that determine the relative bargaining power of the major unions and OPG – including sensitivity to the public's reliance on uninterrupted electricity supply and, therefore, reliance upon interest arbitration – all function to increase the bargaining power of the unions relative to the bargaining power of OPG.**

⁵⁰ For acknowledgement of this general political sensitivity in the context of Ontario, see: Drummond Commission Report (2012: 369).

⁵¹ See: Ontario *Labour Relations Act*, 1995, S.O.1995, c. 1, Sched. A. Section 68 and 69, on Successor Rights; and the Drummond Commission Report (2012) does not recommend that the current Successor Right provisions in the OLRA be altered.

⁵² Source: <http://www.pwu.ca/employers.php>.

⁵³ Source: <http://www.thesociety.ca/secondmenu/agreements/index.html>.

- **On net, consistent with the empirical research evidence that unions deliver a sizable wage premium, I expect both the PWU and SEP to be successful in raising compensation levels, considerably, above the wage levels that would be expected to prevail were there broader competitive labour markets characterized by little or no unionization.**

6.3 Wage Increases among Unionized Employees at OPG

Appropriate Comparators for Pay Increases of Unionized Employees

Any assessment of whether or not the pay levels at OPG are “comparable” to the pay levels elsewhere in the labour market, must take into account:

- The broader industry and geographical region within which OPG has operations;
- Competitors in the labour market for similar classes of workers (in terms of education and skill) and who are subject to similar labour market regulatory regimes; and also, importantly,
- The critical roles played by the very high level of unionization and the labour relations regime governing employment relations.

The electricity industry in Canada, especially nuclear power generation, is populated by a few firms, among which OPG predominates. Even so, other major firms in the broader Canadian electricity industry employ some of the same, or similar, classes of employees, including Bruce Power and Hydro One. Either or both of these major firms would constitute reasonable comparators because they are similarly unionized, operate within the same jurisdiction (i.e., are subject to the same labour relations regulatory regime), and hire workers within the same general labour market in the electricity and (broader) utilities industries – both of which are among the most highly organized industries in the country.

In contrast, using U.S. comparators, for example, would likely be problematic because of the fundamentally different labour relations legal and policy context. Specifically, there are significant differences between the Canadian and American labour relations legal/policy regimes that have important impacts on the relative viability and strength of unions in the two countries, including key legislative differences with respect to: union recognition (including the process by which unions are recognized as well as the criteria to obtain recognition); first-contract arbitration, which is prevalent in Canada (but not mandated in the U.S.); union security (especially the prevalence of right-to-work laws in the U.S. versus the use of the Rand formula in Canada); the scope of issues that are subject to bargaining, which is more limited in the U.S. than in Canada; the treatment of the right to employ replacement workers in the event of a strike, which is highly restricted in Canada; and union successor rights, which are strong in Canada but not in the U.S.⁵⁴

⁵⁴ Source: Wood and Godard (1999: 213-222 and 228, Table 1); and Sack (2000). As Wood and Godard (1999: 222) explain:

“None the less, there is little question that the superior effectiveness of the Canadian system reflects some combination of: (1) more broadly defined recognition criteria, (2) expeditious determination of support for the union in order to minimize the opportunity for employer interference, (3) minimization of the employer's interference during the recognition process so that he/she is less able to play upon

Therefore,

- **In terms of pay and other employment related outcomes of unionized employees, the relevant and appropriate comparators for OPG are those firms that are, in addition to other criteria, subject to similar labour relations policy and legal regimes, and that have similarly high levels of unionization.**

Negotiated Pay Increases at OPG Relative to the Pay Increases in the Broader Public Sector

A process of patterning of wage settlements is expected within many broader public sector industries because of the high level of unionization in most industries. Therefore negotiated pay increases are expected to be similar among employers within many industries in the broader public sector.⁵⁵

The very high degree of unionization in the Ontario electricity industry supports the ability of the two main unions to pattern wage settlements and other terms and conditions of employment across employers in the industry, by “whipsawing” employers over successive rounds of collective bargaining. In view of the high degree of industry concentration in Ontario, and Canada, and the very high level of unionization in electricity, the negotiated wage increases at OPG are expected to be broadly similar to increases elsewhere in the Ontario electricity industry, and at least as high as in the Ontario broader public sector.

The negotiated wage increases in major public sector contracts (bargaining units of 500 or more employees) and the increases at OPG are presented in Figure 5, for the period 2001 through 2013. OPG wage settlements track very closely the negotiated increases in the broader public sector through 2008; although public sector settlements start to trend lower beginning in 2009, OPG settlements remained somewhat higher because:

- i. the collective agreements at OPG are long term and remain in force;

employees' fears and misgivings, (4) no mandatory/non-mandatory distinction, (5) provision for first contract arbitration, (6) strong powers for the administrative body and more effective enforcement mechanisms, (7) provision for union security, and (8) bans on permanent, and in some jurisdictions temporary, replacements for workers on strike.

The implication of this US-Canadian comparison is that the design and administration of a statutory system can indeed make a critical difference to its effectiveness.”

In fact, these significant differences in labour policy regimes is a major reason for the greater success of the Canadian labour movement, as evidenced by the much higher unionization rates in Canada compared to the U.S. (refer to Section 4.2 above on Ontario and U.S. union density).

⁵⁵ It is also a feature of some private sector industries with a high degree of unionization and common unions (e.g., Ford, GM and Chrysler in the automobile industry); see Kumar (1999: 142).

- ii. in the case of the SEP, the Burkett Award (2011) mandated that OPG pay increases of 3% in 2011 and about 3% in 2012.

However, the wage increases after 2012 again more closely align with the overall increases in the Ontario broader public sector because:

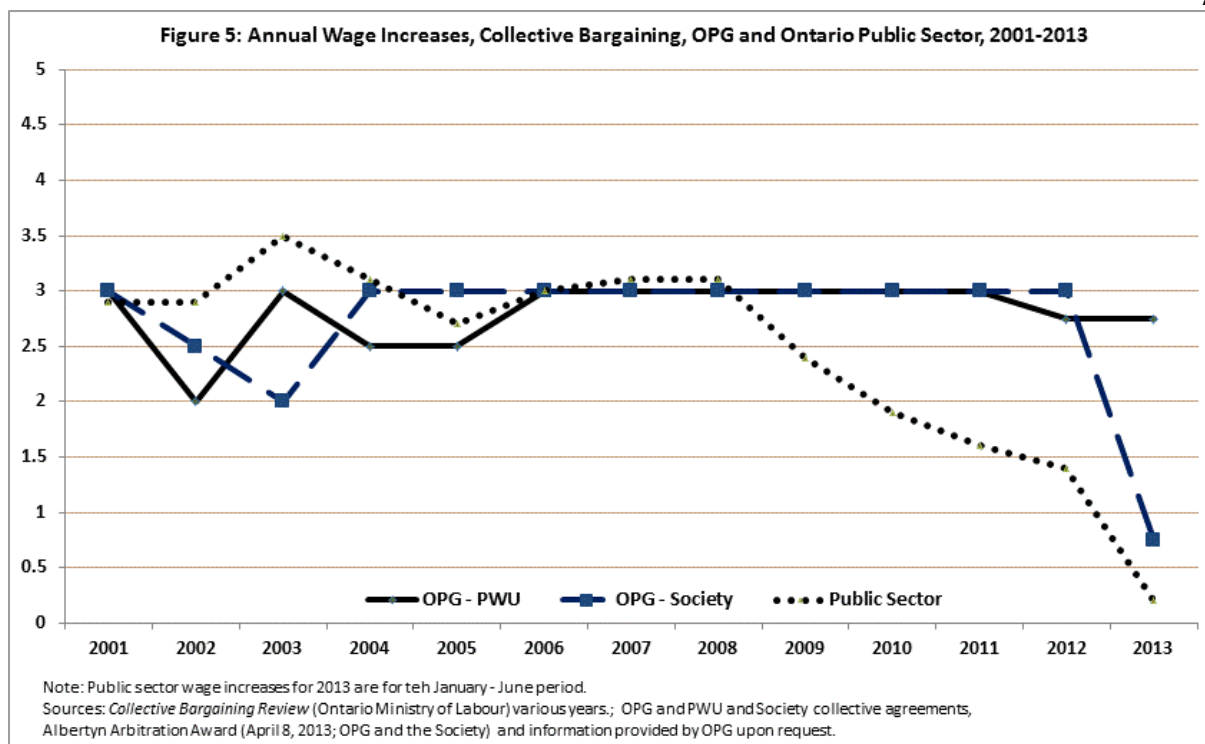
- the 2012 agreement between the PWU and OPG provides for lower general wage increases of 2.75 % in the period from (April) 2012 through (March) 2015 (compared to 3% in the previous contract ending mid-2012);⁵⁶ and
- a 2013 interest arbitration award for the Society includes lower wage increases (less than 2%) for the 2013-2014 period.⁵⁷

Therefore,

- **OPG wage settlements tend to track the negotiated increases in the Ontario broader public sector, over time; this is expected given the overall very high level of unionization across the Ontario public sector, and in the utilities and electricity industries.**
- **The most recent OPG contract settlement with the PWU and interest arbitration award for the Society include lower pay increases than the previous contracts; this is consistent with the long term trend whereby negotiated wage settlements at OPG tend to track the average wage negotiated in large Ontario BPS bargaining units.**

⁵⁶ Source: Memorandum of Settlement Between Ontario Power Generation Inc. and Power Workers' Union CUPE Local 1000 (March 20, 2012).

⁵⁷ See: Albertyn Award (2013).



Pay Increases of Unionized Employees at OPG Relative to Pay Increases at Appropriate Individual Comparators

Determining whether or not the negotiated pay levels and increases at OPG are (mis)aligned with the predominant pay patterns in the industry needs to be assessed in relation to the wage increases negotiated at other appropriate comparators in the electricity industry. The most appropriate comparators for purposes of industrial relations outcomes would (in addition to other relevant criteria⁵⁸):

- be in the same jurisdiction;
- be subject to the same labour relations legislation; and
- negotiate with the same major unions.

Under these three criteria, the relevant comparator companies for industrial relations outcomes for OPG would be Ontario power companies; and among the potential comparator firms in Ontario, the most appropriate are:

- Hydro One, which shares a common predecessor company, the same shareholder, and the same major unions, and is in the BPS; and
- Bruce Power, which has similar operations, and the same major unions, but is in the private sector.

A comparison between OPG and these major comparators, in the general wage increases negotiated with the PWU over the period 2000 through 2013, indicates that:

- OPG wage increases consistently track at or somewhat lower than the increases observed at these comparators (refer to Figure 6);
- the cumulative wage increase at OPG, over the 2001-2013 period, is substantially lower than at either Bruce Power or Hydro One (refer to Figure 7); and
- pay comparisons by specific occupation (e.g., OPG vs. Bruce Power) shows that earnings at OPG are generally lower.⁵⁹

Notably, OPG pay outcomes and increases therefore compare very favourably to Bruce Power, the major private sector comparator.

⁵⁸ These criteria are identified and discussed in Section 6.3 above.

⁵⁹ Source: [EB-2010-0008 Exhibit F4 Tab 3 Schedule 1 Chart 11 (Filed: 2010-05-26)].

The close tracking over time suggests a strong patterning factor in the determination of negotiated wage settlements across major firms in electricity, which follows from both the high level of unionization in electricity and the prevalence of the PWU and SEP across the industry.

I expect the patterning of wage settlements across electricity, and across the major power producers, to be reinforced where impasses in collective bargaining are referred to arbitration because arbitrators heavily weigh the “comparability” criterion. In the 2011 interest arbitration award between OPG and SEP, Arbitrator Burkett explicitly took account of recent settlements in the electricity industry in forming the decision;⁶⁰ and, in turn, in the 2013 interest arbitration award between the OPG and the Society, Arbitrator Albertyn concluded that: “...The most important comparator for the OPG-Society collective agreement is the agreement between OPG and the PWU”, and he emphasized “The historical pattern of maintaining parity with the PWU settlement...”.⁶¹

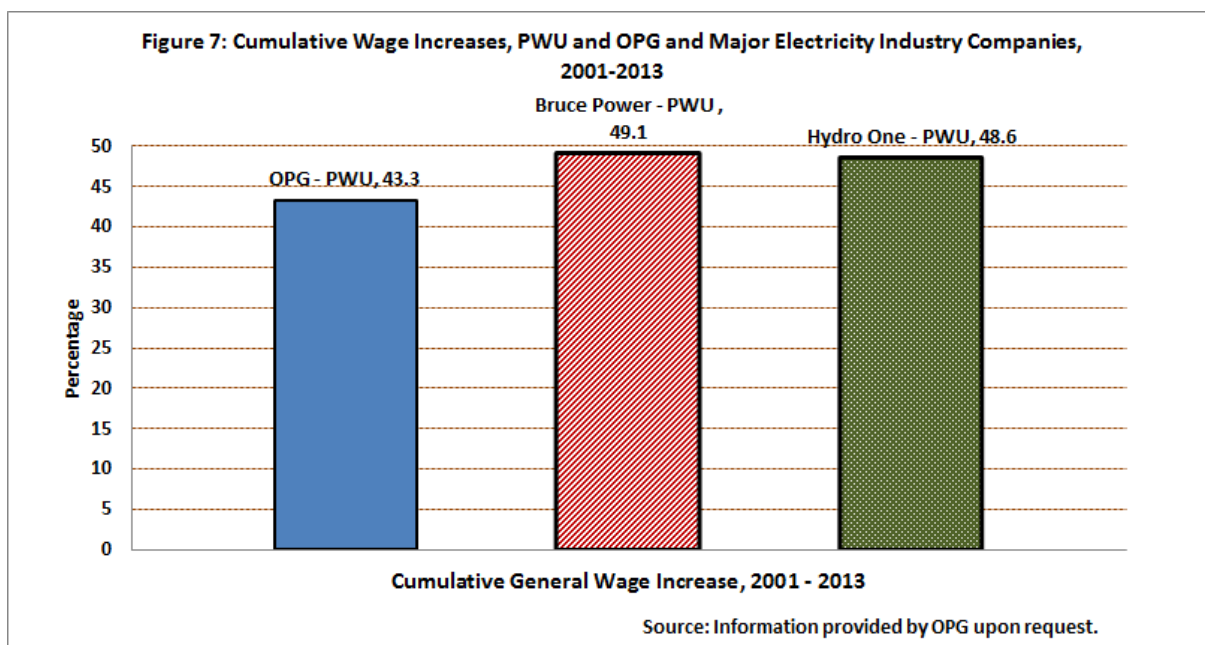
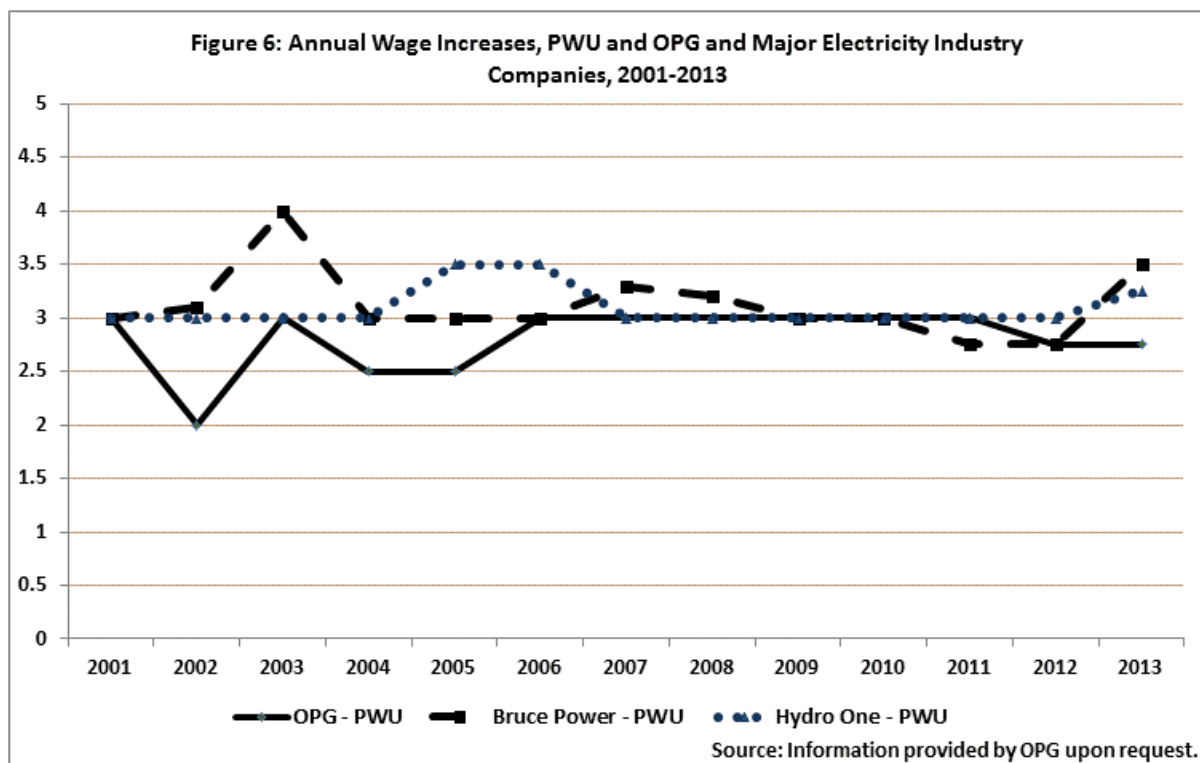
Furthermore, arbitration awards cannot be judicially reviewed merely on the basis of either party not accepting that the award was “reasonable” or “acceptable.”

Therefore,

- **OPG wage settlements are consistently either at or below the wage increases that have been negotiated at the most appropriate comparators in the electricity industry; and the salary levels of individual occupations compare closely as well.**

⁶⁰ See: Burkett Award (2011).

⁶¹ See: Albertyn Award (2013) at Para. 59.



6.4 Pay Structures among Unionized Employees at OPG

Internal Relativities in Pay at OPG

I expect that the combination of a union wage premium, which I expect to especially benefit lower skilled workers, combined with pay compression resulting from union standard rate policies, will result in:⁶²

- A high degree of wage compression between the lowest and highest pay levels, and across employees of different skill levels;
- Disproportionately raising the lower end of the wage scale, thereby increasing the pay levels of the lower skilled/paid employees and reducing internal wage dispersion.

Therefore,

- **The pay structures defined by the collective agreements at OPG reduce the degree of differentiation in pay across employees of different skill levels, thereby increasing pay compression.**

Pay Raises Associated with Pay Structures and Automatic Adjustments

It is standard for major collective agreements in the electricity sector to have: comprehensive rules that specify wage steps through well-defined pay structures; criteria for filling job vacancies, transfers, and access to training; and comprehensive cost-of-living (COLA) clauses that essentially provide for additional wage increases during the term of the contract, in order to limit the erosion of the real value of wages due to inflation.⁶³ Major contracts in the electricity industry with COLA clauses include the following:

- Collective agreement between **Bruce Power** and the Power Workers' Union (CUPE Local 1000), January 1, 2007 – December 31, 2009;
- Collective Agreement between **Toronto Hydro** and CUPE Local No. 1, February 1, 2009 – January 31, 2014;
- Collective Agreement between **Hydro One Inc.** and Society of Energy Professionals, July 1, 2007 – March 31, 2013.

⁶² In his 2013 arbitration award for OPG and the Society, Arbitrator Albertyn noted that wage compression is an important issue with respect to the internal pay structures at OPG.

⁶³ Typically, wage increases under COLA clauses are triggered once inflation [as measured by Statistics Canada's Consumer Price Index (CPI)] reaches a certain level, and the extent of the increase may be subject to a cap.

In addition to providing for annual general wage increases, the collective agreements between OPG and the PWU and SEP, respectively, have:

- i. Defined pay grids (structures) characterized by standardized pay rises that are tied to employee movements across steps in the pay grid:
 - estimates of wage increases due to progression and promotion (increases apart from the general negotiated (across-the-board) wage increases) at OPG appears to be about 1%, annually;⁶⁴
 - I expect that progression and promotion increases in Ontario broader public sector establishments to be of similar magnitude to the increases at OPG.
- ii. Built-in wage increases arising from automatic cost-of-living (COLA) wage adjustments to account for inflation, and where:
 - successive OPG contracts with the PWU have had COLA clauses; and the current 2012-2015 collective agreement between OPG and the PWU provides for a COLA that is effective in the third year of the contract and that specifies that COLA adjustments be made once inflation exceeds 2.75%;
 - the OPG contract with the Society has a COLA clause, and the Burkett Award (2011) renewed the COLA clause (Article 24 in the OPG-SEP collective agreement that expired in December 2010) through to December 2012; and this COLA clause specifies that COLA adjustments be made once inflation reaches 3.5%; the Albertyn Award (2013) renewed the COLA clause, but for the third year of the contract he awarded a lower inflation threshold of 2.75%, after which the COLA is applied.
 - for Ontario, the projected inflation rate (as measured by the percentage change in the CPI for Ontario is projected to be about 2%;⁶⁵ so that I expect that there is a reasonable expectation that the inflation rate may reach the range that will trigger the COLA adjustment in the third year of the PWU and Society contracts.

Therefore,

- **Regular pay increases at OPG arise from the ongoing movement of employees through pay grids and potential inflation-based pay adjustments (COLA increases); these structures and COLA adjustments are enshrined in the collective agreements.**

⁶⁴ Source: Factum of the Appellant, Ontario Power Generation Inc. (Ontario Superior Court of Justice Divisional Court. Ontario Power Generation Inc. and Ontario Energy Board, Court File No. 18411) At Para. 29.

⁶⁵ Source: Ontario. *2013 Ontario Budget*. TABLE 2.9 The Ontario Economy, 2011 to 2016. Accessed 16.06.2013 at: http://www.fin.gov.on.ca/en/budget/ontariobudgets/2013/ch2c.html#ch2_t2-9.

7 Assessment of the Prospects for Achieving Significantly Different Labour Costs among Unionized Employees at OPG

7.1 Constraints Imposed by Structural Pressures on the Workforce at OPG

There are three major structural pressures affecting the workforce at OPG that, in turn, create upward pressure on wages at OPG:

- i. The first structural pressure arises because of the significant aging of the workforce at OPG. In 2010, the median age of the workforce at OPG was approximately 47 years;⁶⁶ this compares to approximately 41 years in 2010 in the general workforce.⁶⁷
- ii. A second structural pressure arises because of the relatively low age at which many employees at OPG are eligible to retire, which results in a very high proportion of OPG employees being eligible to retire over the next 5 years:
 - Unionized employees at OPG are eligible to retire based upon achieving “factor 82” (the combination of years of service and an employee’s age); for example, under this formula, an employee with 25 years of service could retire at age 57.
 - The proportion of current employees (including those represented by the PWU and SEP, as well as management) who are eligible to retire over the period from 2012 through 2016 is approximately 35.7%.⁶⁸
 - There is employee choice as to when to retire; but the process of filling job vacancies created by the retirement of unionized employees is subject to any rules and restrictions in collective agreements regarding the hiring or transfer of employees.
- iii. OPG is utilizing attrition to facilitate the downsizing of its overall workforce, however:
 - Pension plan costs and “other post-employment benefit” (OPEB) costs are expected to continue to escalate as the number of pensioners increases;⁶⁹ while pension plan commitments are subject to the rules that have been negotiated through collective bargaining.

⁶⁶ Source: [EB-2010-0008 Exhibit F4 Tab 3 Schedule 1, At p. 3 (Filed: 2010-05-26)].

⁶⁷ Source: Carrière and Galarneau (2011: Chart F at p. 7). This estimate is based upon the Statistics Canada Labour Force Survey and is for employed persons.

⁶⁸ Source: Data provided by OPG upon request. This total includes approximately 19.8 % by the end of 2012; an additional 3.9% in 2013; and a further 3.5% in 2014, 4.1% in 2015, and 4.4% in 2016.

⁶⁹ Both pension and OPEB costs have increased significantly over the 2011 – 2013 (projected) period; see EB-2012-002, Exhibit H1, Tab 1, Schedule 1, Table 5 (filed 2012-09-24); and EB-2012-0002, Exhibit H1-1-2, Attachment 2, page 5 (filed 2013-02-08).

- The process of filling job vacancies created by the downsizing process, including through retirements and turnover, is subject to any rules and restrictions in collective agreements regarding the hiring or transfer of employees.

I expect these structural factors to combine to create pressures to recruit skilled workers in order to renew the workforce – even though the overall size of the workforce is expected to be smaller. The need for workforce renewal is expected to occur in the context of current and forecast sustained overall strong demand for a variety of skilled workers in the Canadian electricity sector, generally, and in the Ontario electricity industry, specifically.⁷⁰ This, in turn, places overall upward pressure on wages.

Therefore,

- **OPG faces significant structural challenges regarding workforce renewal including an aging workforce and downsizing with an emphasis on attrition. Strong overall labour demand in the broader industry, and across occupational categories, is expected to maintain overall upward pressures on wages in the labour market.**

7.2 Prospects for OPG to Achieve Significantly Different Collective Bargaining Outcomes

In view of the industrial relations context and specific industrial relations circumstances at OPG, I expect OPG to make incremental changes in various aspects of the terms and conditions of employment negotiated with the unions, including aspects of compensation, job security, or other characteristic of the employment contract deemed significant to the union.

I do not expect major changes to be possible without either:

- i. a governmental intervention that (directly or indirectly) imposes the outcome; or
- ii. achieving substantive change through collective bargaining.

In what follows, I consider both of these possibilities, in turn.

7.2.1 Government Intervention in Outcomes

- (i) Direct government intervention.

In view of recent developments in Ontario education labour relations, in which the government briefly introduced direct intervention but then quickly returned to bargaining, there is little

⁷⁰ See: Electricity Sector Council (2012); and Electricity Sector Council (2012: 103-105).

prospect of direct, ongoing, government intervention in specific contract negotiations, or any outcomes of collective bargaining, at OPG – just as there is little at any employer in the province. Such an intervention would trigger even further debate regarding whether it constitutes interfering in collective bargaining and/or imposing a collective agreement and would, therefore, likely bring about a *Charter* challenge.

(ii) *Broader government limits on the compensation of unionized employees.*

One main factor affecting the prospects of a government intervention is the legal viability of any form of broad government compensation restraint legislation; and the Ontario government has been cautious about this type of intervention for unionized workers precisely because of the prospects that the legislation would be subject to a *Charter* challenge, in view of the SCC decisions in *BC Health Services* and *Fraser*.

Therefore,

- **There is little prospect of ongoing government limits on wage increases being imposed upon unionized employees in the electricity sector.**

7.2.2 Achieve Substantive Changes to the Labour Cost Structure Through Collective Bargaining

The two major unions at OPG, the PWU and SEP:

- Have organized essentially the entire workforce eligible for union representation at OPG;
- Have similarly organized the other major employers in the electricity industry, including the two main appropriate comparator firms, Hydro One and Bruce Power;
- Are situated in the broader utilities sector which, at about 70% organized, is among the most highly unionized sectors in Canada;
- Have maintained long-standing complex collective agreements that represent legacy contracts from the predecessor company Ontario Hydro.

These conditions confer a very high degree of bargaining power onto unions precisely because the extent of union organization across the electricity industry is extremely high, permitting the unions to:

- Take wages out of competition, by ensuring that firms cannot substitute towards non-union employees on any meaningful scale;

- Use wage levels/increases in the broader labour market as a floor and then negotiate a further significant wage premium for their members;
- Achieve patterning of wage settlements across the electricity industry.

Consequently, the only way in which OPG can achieve substantial reductions in labour costs is to move to a lower labour cost curve; that is, by such measures as:

- Substantially reducing the rate of increase in wages;
- Achieving structural changes in areas related to pay grids, overtime, or layoff policies;
- Increasing contracting out or other outsourcing measures.

Changes in these aspects of the employment relationship are determined entirely through the labour relations framework at OPG. There are, generally, three basic change strategies available to firms (including OPG):⁷¹

- i. “escape”, which essentially takes advantage of international markets and globalization;
- ii. “foster” change, which is a long term change strategy that:
 - Aligns with an industrial relations context where constraints on change (e.g., a very strong union) are binding in the short run;
 - Tends to achieve incremental change over the longer term;
 - Seeks to foster positive and productive long term labour relations.
- iii. “forcing strategy”, that may seek more significant changes in a short term approach;

At OPG:

- moving operations (escape) is not an option;
- the fostering strategy is more closely associated with the current approach to labour relations;
- short term changes that involve significant concessions by the unions would most likely be associated with a forcing strategy.

In what follows, I consider the three most significant avenues by which OPG could, in practice, expect to achieve lower labour costs:

- collective bargaining;

⁷¹See Walton, Cutcher-Gershenfeld, and McKersie (1994).

- arbitration; and
- contracting out or restructuring.

I consider each of these, in turn.

(i) Collective Bargaining Route.

In the short term, achieving changes along any of the dimensions of the employment relationship that have potential for significant labour cost reductions would require concessions by the PWU and/or SEP in collective bargaining.

Neither union has a record of concession bargaining over wages or any other major terms and conditions of employment. In fact, the PWU and SEP both have significant bargaining power in the electricity industry, generally, and at OPG, specifically, where they negotiate collective agreements.

Concessions would therefore require that:

- OPG undertake a “forcing” strategy and “hard” bargaining in order to extract concessions;
- OPG have the capacity to undertake and sustain a work stoppage of sufficient cost to employees and the union that it outweighs the cost to the union(s) of agreeing to the change (e.g., substantially lower compensation levels).

In the case of the SEP, the collective agreement clearly specifies that, in the event of an impasse in negotiations, the outstanding issues in dispute be referred to binding arbitration (under Article 15).

In the case of the PWU, the capacity of OPG to undertake and sustain a work stoppage is dependent upon the public’s tolerance for actual (or perceived) impacts of a work stoppage on the supply of electricity.

Electricity is considered a vital product necessary to the daily existence of the public; it is therefore highly likely that the government would have little tolerance for a work disruption and would refer any dispute to binding interest arbitration.

Therefore,

- **A “forcing strategy” in collective bargaining that attempts to achieve substantial reductions in the labour cost structure at OPG is not likely to be successful in the near term:**

- **Substantial changes to OPG collective agreements would require a high-conflict, hard bargaining approach, that would be resisted by the unions, including to the point of a strike;**
- **A strike is not likely to achieve the desired result of forcing a settlement on management's terms because the dispute is likely to be resolved by interest arbitration;**
- **A strike would lead to a significant deterioration in the quality of labour relations that would, in turn, reduce the prospect of more cooperative approaches to increasing productivity and lowering the cost structure.**
- **The best likelihood of success through collective bargaining is to adopt a fostering approach and negotiate incremental change that also preserves the high quality of the labour-management relationship.**

(ii) Interest Arbitration Route.

The interest arbitration route is an option to resolve disputes and achieve a collective agreement at OPG:

- The OPG collective agreement with the PWU does not provide for interest arbitration.

However, in the event of a strike, I would expect the government to intervene by mandating that the dispute be resolved through interest arbitration. In this situation, I expect that the wage increases (and other employment terms) awarded would pattern after the wage increases (and other terms) found in other arbitration decisions.

- OPG has previously been subject to interest arbitration in its labour relations relationship with the SEP.⁷²

The OPG-SEP collective agreement (in Article 15) sets out that impasses in collective bargaining are to be resolved through binding interest arbitration of the outstanding issues. The collective agreement specifies general criteria to be considered by the arbitrator; and these criteria essentially parallel the standard criteria found in Ontario

⁷² The arbitration awards include the March 2004 Arbitration Award by Arbitrator Adams (in the matter of OPG and the SEP Re: Renewal of a Collective Agreement); the February 2011 Arbitration Award by Arbitrator Burkett (in the matter of a renewal collective agreement); and the April 2013 Arbitration Award by Arbitrator Albertyn (in the matter of the renewal of a collective agreement)

labour relations legislation, and the types of criteria typically considered by arbitrators in interest disputes.⁷³

The predominant criteria used by arbitrators tend to be “comparability” and “replicability,” which are associated with patterning and upward pressure on wages. While there is no evidence that the labour cost outcomes achieved through arbitration are lower than those achieved through collectively bargained settlements, there is empirical research evidence that wage outcomes under arbitration will be somewhat higher over time.⁷⁴

In addition, Ontario arbitrators have unconditionally rejected factoring in the Ontario government’s stated policy of encouraging wage restraint in all BPS industries, including the electricity industry. This arbitral view has been applied in the context of OPG as recently as 2011. In the Burkett Award (2011), regarding the renewal agreement between OPG and the Society of Energy Professionals, Arbitrator Burkett made clear that government policy on restraint was of no relevance; as he said: “... these pronouncements are of no binding force or effect...”.

Therefore,

- **The net result is that any arbitration award will tend to pattern after other awards and collectively bargained settlements in the industry, and the wage outcomes under arbitration will therefore tend to be at least as high and very likely higher, over time, than the outcomes achieved through a collectively bargained settlement.**
- **Interest arbitration at OPG will not yield significant labour cost reductions at OPG.**

⁷³ Arbitrator Burkett has highlighted that the collective agreement:

“... stipulates that I [the arbitrator] must weigh the following:

- (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.”

⁷⁴ Refer to the research studies in Footnote 41.

(iii) Contracting Out or Restructuring Route.

The scope for OPG to attain labour cost reductions through either some degree of contracting out, or ownership restructuring or transfer of a business unit, is extremely limited. Any aspect of this is regulated by:

- i. Provincial legislation stipulates that full union successor rights apply when a business is sold, which means that union representation of affected workers and the collective agreement are both, in effect, transferred to the new enterprise (e.g., one that has been privatised);⁷⁵ and
- ii. The PWU and SEP collective agreements, each of which contains an article that further requires OPG to abide by successor rights.⁷⁶

Furthermore,

- iii. The ability of OPG to contract out work is constrained by the collective agreements with the PWU and SEP.
 - In the case of the OPG-PWU collective agreement:

⁷⁵ The applicable successor rights provision of the LRA:

“ 69 (2) Where an employer who is bound by or is a party to a collective agreement with a trade union or council of trade unions sells his, her or its business, the person to whom the business has been sold is, until the Board otherwise declares, bound by the collective agreement as if the person had been a party thereto and, where an employer sells his, her or its business while an application for certification or termination of bargaining rights to which the employer is a party is before the Board, the person to whom the business has been sold is, until the Board otherwise declares, the employer for the purposes of the application as if the person were named as the employer in the application.”

⁷⁶ Specifically, Article 15 of the collective agreement between OPG and the PWU, CUPE, Local 1000 [April 1, 2012 -March 31, 2015) states that:

“The Company agrees that it will not directly or indirectly request government to exempt the Company or the Union from the successor rights provisions of the applicable labour relations legislation.

The successor rights provisions of the applicable labour relations statute shall be incorporated by reference into this collective agreement.”

The collective agreement successor rights article dates back to the 1998 labour relations framework agreement crafted between Ontario Hydro and the PWU at the time of the formation of the successor companies to Ontario Hydro.

- any workers displaced as a result of contracting out will be afforded a degree of employment security through application of attrition, transfers and access to job vacancies, or retraining; Article 12 Appendix A] and
 - with disputes resolved through a Joint Employment Security Committee with joint union and management membership and with final and binding arbitration of any disputes [Article 12 Appendix A].
- The SEP collective agreement similarly provides for job security from contracting out.

Therefore,

- **The OPG collective agreements with the PWU and SEP provide very little scope for achieving significant labour cost reductions through either some form of contracting out or a restructuring of some aspect of an enterprise (e.g., through a privatization or creation of a new business entity);**
- **Changes to the existing contract provisions regarding contracting out would likely require a strong forcing strategy in negotiations; and which would be viewed as concessions by the unions, therefore increasing the likelihood of a work stoppage in order to achieve the concessions, again raising the prospect of interest arbitration.**
- **Changes involving the restructuring of some aspect of an enterprise (e.g., through a privatization or creation of a new business entity) would be subject to the strict successor rights provisions that exist, resulting in the employer continuing to be bound by the collective agreement in any new business unit.**

References

Adell, B., M. Grant, and A. Ponak. 2001. *Strikes in Essential Services*. Kingston, ON: Queen's University Press.

Aid, T.t and Z. Tzannatos. 2002. *Unions and Collective Bargaining*. Washington DC: World Bank, Table 4-3. p. 57.

Blanchflower, D. and A. Bryson. 2003. "Changes Over Time in Union Relative Wage Effects in the UK and US Revisited." In J. Addison and C. Schnabel, eds. *International Handbook of Trade Unions*. Cheltenham, UK: Edward Elgar, pp. 197-245.

Carrière, Y. and D. Galarneau. 2011. "Delayed Retirement: A New Trend?" *Perspectives on Labour and Income*. (Winter) Statistics Canada Cat. No. 75-001-X. Pp. 4-16.

Chamberlain, N. and J. Kuhn. 1986. *Collective Bargaining, 3rd edition*. New York: McGraw-Hill Book Company.

Chaykowski, R. and R. Hickey. 2012. *Reform of the Conduct and Structure of Labour Relations in the Ontario Broader Public Service*. Report to the Commission on the Reform of Ontario's Public Services. Kingston, ON: School of Policy Studies.

Chaykowski, R. 2009. "Collective Bargaining: Structure, Process and Innovation" in M. Gunderson and D. Taras (editors) *Canadian Labour and Employment Relations*, 6th Edition, Toronto, ON: Pearson Addison-Wesley: 246-282.

Christofides, L. and D. Li. 2005. "Nominal and real wage rigidity in a friction model." *Economic Letters*. Vol. 87, pp. 235-241.

Christofides, L. and M. T. Leung. 2003. "Nominal Wage Rigidity in Contract Data: A Parametric Approach." *Economica*. Vol. 70, Issue 280. Pp. 619-638.

Christofides, L. and T. Stengos. 1994. "Wage Rigidity in Canadian Collective Agreements." *Industrial and Labor Relations Review*. Vol. 56, pp. 429-428.

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 (4): 693-718.

Currie, J. and S. McConnell. 1996. "Collective Bargaining in the Public Sector: Reply." *American Economic Review*. 86 (1): 327-28.

Dachis, B. and R. Hebbon, R. 2010. "The Laws of Unintended Consequence: The Effect of Labour Legislation on Wages and Strikes." C.D. Howe Institute Commentary No. 304 (June).

Ehrenberg, R., R. Smith and R. Chaykowski. 2004. *Modern Labour Economics: Theory and Public Policy*. Canadian Edition. Toronto: Pearson.

Electricity Sector Council. 2012. *Power in Motion: 2011 Labour Market Information (LMI) Study Full Report* (2012 Update).

Freeman, R. 1982. "Union Wage Practices and Wage Dispersion within Establishments." *Industrial and Labor Relations Review*. Vol. 36, No. 1 (Oct.), pp. 3-21.

Freeman, R. 1981. "The Effect of Unionism on Fringe Benefits." *Industrial and Labor Relations Review*. Vol. 34, No. 4 (July) pp. 489-509.

Freeman, R. 1980. "Unionism and the Dispersion of Wages." *Industrial and Labor Relations Review*. Vol. 34, No. 1 (October) p. 4.

Gosling, A. and S. Machin. 1995. "Trade unions and the dispersion of earnings in British establishments, 1980–1990." *Oxford Bulletin of Economics and Statistics*. Vol. 57. pp. 167–184.

Gunderson, M., R. Hebdon, and D. Hyatt. 1996. "Collective Bargaining in the Public Sector." *American Economic Review*. 86 (1): 315-26.

Hirsch, B. and D. Macpherson. 2003. "Union Membership and Coverage Database from the Current Population Survey: Note," *Industrial and Labor Relations Review*. Vol. 56, No. 2 (January) pp. 349-54.

Kuhn, P. 1998. "Unions and the Economy: What We Know; What We Should Know." *Canadian Journal of Economics*. Vol. 31, No. 5 (Nov), pp. 1033-1056.

Kumar, P. 1999. "In Search of Competitive Efficiency: The General Motors of Canada Experience with Restructuring." In A. Verma and R. Chaykowski, eds., *Contract and Commitment: Employment Relations in the New Economy*. Kingston ON: Queen's University IRC Press.

Ontario. *Public Services for Ontarians: A Path to Sustainability and Excellence*. (2012) Report of the Commission on the Reform of Ontario's Public Services. (Ontario: Queen's Printer) p. 369. [hereafter Drummond Commission Report].

Renaud, S. 1998. "Unions, Wages and Total Compensation in Canada: An Empirical Study." *Relations industrielles*. Vol. 53, No. 4. Pp. 710-729.

Renaud, S., 1997. "Unions and Wages in Canada: A Review of the Literature," in R. Chaykowski, P-A Lapointe, G. Vallée and A. Verma, eds., *Worker Representation in the Era of Trade and Deregulation*. Quebec: CIRA, pp. 211–225.

Rose, J. 1995. The Evolution of Public Sector Unionism." in *Public Sector Collective Bargaining in Canada*, G. Swimmer and M. Thompson, eds., Kingston ON: IRC Press. pp. 20-52.

Sack, J. 2010. "U.S. and Canadian Labour Law: Significant Distinctions." *ABA Journal of Labor and Employment Law*. Vol. 25, No. 2 (Winter) pp. 241-258.

Verma, A. 2005. "What Do Unions Do to the Workplace? Union Effects on Management and HRM Policies." *Journal of Labor Research*. Vol. 26, No. 3 (Summer). Pp. 415-449.

Verma, A. and T. Fang. 2002. "Union Wage Premium." *Perspectives on Labour and Income*. Vol. 3, No. 9. Statistics Canada Cat. No. 75-001-XIE. pp. 13-19.

Walton, R., J. Cutcher-Gershenfeld, and R. McKersie. 1994. *Strategic Negotiations: A Theory of Change in Labor-Management Relations*. Boston MA: Harvard Business School Press.

Wood, S. and J. Godard. 1999. "The Statutory Union Recognition Procedure in the Employment Relations Bill: A Comparative Analysis. *British Journal of Industrial Relations*. Vol. 37, No. 2 (June) pp. 203-245.