

**IN THE MATTER OF AN ARBITRATION OF A GRIEVANCE CONCERNING IMPROPER
ADMINISTRATION OF SICK LEAVE**

BETWEEN:

THE SOCIETY OF UNITED PROFESSIONALS

(hereafter either "the Society" or "the Union")

-and-

HYDRO ONE NETWORKS INC.

(hereafter either "Hydro One" or "the Employer")

BEFORE: Bernard Fishbein, Sole Arbitrator

APPEARANCES:

For the Society: Ryan White and others

For Hydro One: Daniel McDonald and others

For Telus Health: Ellen Swan

A hearing was held by Zoom on April 30, 2026

PRELIMINARY AWARD

Background

1. This is a policy grievance, dated February 7, 2025, by the Society alleging violation and/or unreasonable exercise of the Employer's discretion in the interpretation, administration and application of the of the Sick Leave and Long Term Disability Plan provided for in Article 12 and 44 of the collective agreement by:

"a) applying a different standard to qualify for sick leave than what is in the collective agreement.

b) by not seeking the least intrusive information to support applications for leave.

c) by requiring medical information that far exceed what is necessary to support applications for sick leave.

d) by unreasonably withholding wages due to their untimely or inappropriate review of applications for sick leave."

By way of relief, the grievance sought general declarations or general orders to correct these alleged violations. No particular or specific relief was sought with respect to any particular or specific employee.

2. In response to a request for particulars, *inter alia*, the Society referred to circumstances (or "fact patterns" as Hydro One characterized it) of four employees (or former employees):

Dolly Shetty

Rima Al-Tawil

Laura Cavazzon

Aseel Chehade

All four had filed individual grievances previously with respect to sick pay. All four grievances had been settled (those of Chehade and Shetty shortly before, and the other two not long after the filing of this policy grievance). They all appear to have been settled at the outset without the hearing actually commencing or any evidence being called. Other than the particular terms unique to their individual grievances, relatively "standard" Minutes of Settlement ("MOS") were entered into with respect to the settlement of the grievances--in particular they all contained recital clauses or provisions in the body of the MOS essentially to the effect:

"WHEREAS the parties wish to resolve the Grievance and all matters, issues and/or disputes between them raised or which could have been raised in the

Grievance including any claim under the Collective Agreement or under statute and specifically including the Ontario *Human Rights Code*" (from the Shetty MOS, the Chehade MOS contains identical language, the Cavazzon MOS more tersely provided, WHEREAS the Parties wish to resolve all outstanding issues arising from the Grievances" but did provide in the body of the MOS "The parties agree that all issues raised or which could have been raised in the Grievances are fully and finally resolved", the Al Tawil MOS appears to contain no such language).

Each respective MOS leaves the particular arbitrator hearing the matter (ironically me in two of them) seized with any issues arising out of the interpretation or implementation of the respective MOS. Equally significantly each MOS has an explicit term that the MOS "are without prejudice or precedent to any other matter between the parties".

3. Hydro One objected to the admissibility or use of any of the evidence (or "fact patterns") of these four settled grievances. I heard the submissions of the parties. This is the decision with respect to Hydro One's preliminary objections.

Decision

4. Hydro One says that unlike much, if not all, of the jurisprudence that the Society referred me to this is not a unilateral withdrawal of a grievance (and therefore distinguishable from that jurisprudence) but the result of negotiated robust MOS involving good consideration and *quid pro quo* concessions by two sophisticated parties that resolved everything with respect to the grievances. For Hydro One this means these grievances were "done", "finished" and "fully resolved" or "settled"--an intention that is crystal clear no matter what the actual wordings is--and not that they can be revived, raised again and litigated (relitigated?) at the convenience, tactical choice or insistence of the Society. That finality which Hydro One negotiated and paid for is part of the bargain which must be given effect--not only because of the wording of the MOS to that effect, but because that is what good and sensible labour relations demand. Otherwise, the Society "gets to have its cake and eat it too"--the individual grievors get to keep the gains they achieved in the MOS and rather than the finality and resolution that Hydro One bargained and paid for, it is compelled to now litigate the same fact situation as the Society wishes. In effect, says Hydro One, this is no more than a collateral attack on the MOS that the Society has already agreed to. Moreover, there is yet another grievance filed by Ms. Al-Tawil which the Society has referred to arbitration before another arbitrator—Arbitrator Randazzo-- (and

in which the Society is represented by different counsel) which is proceeding. In Hydro One's view, this amounts to an abuse of process when the MOS was supposed to resolve her complaints. Needless to say, the Society disagrees with this characterization—rather this grievance is simply another matter about which the MOS is expressly "without prejudice".

5. After some reflection, I am not persuaded by Hydro One's objection in these circumstances. First to deal with the abuse of process argument, Ms. Al-Tawil's other grievance, is a separate and different grievance. It is a grievance that alleges harassment. To establish that alleged harassment, the Society and Ms. Al-Tawil may in fact seek to rely on the same circumstances of her settled individual sick pay grievance which arguably amounts to an abuse of process in Hydro One's view. I do not know. But that is a matter to raise in the Randazzo arbitration, not for me in this arbitration (and again, notwithstanding any irony, that I am the arbitrator who remains seized under the Al-Tawil MOS which related to a separate and different grievance and which grievance no one seeks to bring back to me). Moreover, in none of the grievances settled by any of the MOS's and certainly not the Al-Tawil one, was the arbitration actually started in the sense of any evidence being called and accordingly no findings of fact made, so there cannot be any abuse of process in the sense of trying to redo or having "a second kick at the can" in terms of any evidentiary findings.
6. But more importantly, Hydro One's argument essentially discounts, if not totally ignores, the other just as explicit provision of all of the MOS's, namely, that the MOS is without prejudice or precedent to any other matter between the parties. Clearly, this policy grievance about sick leave generally (and not about any particular relief for any of the grievors) is another matter between the parties (and was filed before at least two of the MOS's were signed). The MOS's relate to individual sick pay grievances. The Society does not seek to overturn or change or increase the relief granted to any of the individual grievors under their respective MOS (it concedes it cannot). This is a policy grievance seeking general and essentially prospective relief on how the sick leave plan should be administered. That is what policy grievances are for. It cannot be said to be unusual in the world of labour relations that alleged violations of the collective agreement may trigger both a personal individual grievance and a policy grievance--the difference may be in the relief attainable in each. Every argument that Hydro One makes about what the Society should have done, *i.e.* if the Society wished to carve out an exception for the policy

grievance from the finality and resolution provisions of the MOS it should have explicitly and specifically done so, is equally applicable to Hydro One--it could have explicitly carved out this policy grievance from the very commonplace without prejudice and precedent language to any other matter language in each MOS. It is far from clear to me why the greater labour relations value or the virtue of holding a party to the bargain it made lies in Hydro One's assertion of the finality and resolution of matters in dispute rather than the Society's assertion that a matter settled without prejudice or precedents to other matters between the parties means exactly that or is applicable here.

7. In fact, I think the greater labour relations value is in the approach of the Society. I believe it is generally accepted that a union withdrawing a grievance on a "without prejudice" basis is not precluded from raising the same issue on fresh facts. See *University Health Network*, 2012 CarswellOnt 1339 (Waddingham) at para. 47 and the cases cited there including *Saint-Gobain Abrasives*, (2003) 120 L.A.C. (4th) 73 (Burkett). As many arbitrators have noted, there can be a multiplicity of legitimate reasons why the interests of an individual grievor and a union can diverge and why an individual grievance may be settled, but a policy grievance may not (See *University Health Network*, *supra*, at para 65, *Bell Canada*, 2021 CarswellNat 2665 (Luborsky) at para 35, *University of Fraser Valley*, 2024 CarswellBC 3224 (Noonan) at para 38).
8. The only cases to which I was referred (by the Society--Hydro One referred me to no particular jurisprudence whatsoever) that explicitly discussed this issue were *Bell Canada* and *University of Fraser Valley*, *supra*. Both contained similar preliminary objections to the introduction and use of settled grievances in the litigating of a subsequent policy grievance. After reviewing the relevant jurisprudence cited to them, neither arbitrator was prepared to exclude the previous settled grievances on a preliminary basis but rather said that needed to be determined during and in the course of the hearing on the merits--so they are of limited use to me.
9. Accordingly, I am not prepared (and certainly not at this point) to exclude the facts of the previous four settled grievances and Hydro One's preliminary objection is dismissed. There may be issues with respect to a summons that the Society served on Telus Health, the administrator of Hydro One's sick leave policy, with respect to the four settled grievances. However, the parties all agreed that I should determine Hydro One's preliminary objection first and then they would determine if any production issues

remained outstanding or could not be resolved among themselves. The parties are free to contact me when (or if) they wish to schedule further hearing dates.

DATED at TORONTO this 4th day of May, 2026



Bernard Fishbein

Sole Arbitrator