

**IN THE MATTER OF AN ARBITRATION**

**BETWEEN**

**HYDRO ONE INC.**

**(“Hydro One”)**

**and**

**POWER WORKERS’ UNION**

**(the “PWU”)**

**GRIEVANCE NUMBERS:  
HO-T-4329, 4330, 4331, 4333,  
4335, 4336, 4337, 4349, 4355  
and HO-WS-1805 and 1806**

**CHIEF ARBITRATOR: John Stout**

**APPEARANCES:**

**For Hydro One:**

Daniel McDonald, Norton Rose Fulbright Canada LLP  
Samantha Black, Norton Rose Fulbright Canada LLP

**For the PWU:**

Donald K. Eady, Paliare Roland LLP  
Kate Shao, Paliare Roland LLP

**HEARING HELD BY VIDEOCONFERENCE ON JANUARY 24, 2022**

## **AWARD**

[1] The parties appeared before me for the monthly grievance arbitration hearing. A number of grievances were addressed during the hearing, some resulting in settlements (HO-T-4260 and HO-T-4340). One grievance involved a termination (HO-T-4304) and I have issued a separate award to resolve that grievance. This award addresses 12 grievances, which all concern Hydro One's COVID-19 Vaccination Policy (the "Policy"). In particular, the grievances were filed by the PWU on behalf of 12 employees (the "Grievors") who were placed on a leave of absence unpaid ("LAU") for failing to comply with the Policy.

[2] The PWU asserts that Hydro One violated the Collective Agreement by acting unreasonable in addressing various concerns the Grievors raised with respect to the testing and reporting protocols found in the Policy. The PWU maintains that the Grievors should not have lost wages for their "early non-compliance" and instead should have been able to work from home, where possible.

[3] Hydro One disagrees with the PWU and asserts that they acted reasonably in the circumstances. Hydro One takes the position that the Grievors were non-compliant with the Policy, which is a reasonable response to the current COVID-19 global pandemic. Hydro One maintains that the Policy is carefully crafted to balance employee rights, while addressing the threat of infection in the workplace. Hydro One notes that COVID-9 infections in the workplace would not only adversely affect operations, but may also place employee health and safety in jeopardy. Hydro One argues that they were reasonable in placing the Grievors on a LAU when they failed to comply with the reasonable terms of the Policy.

[4] After carefully considering the parties' submissions, and for reasons that follow, I am dismissing the grievances.

## **Background**

[5] The Policy was introduced on September 22, 2021 and communicated to all employees by email. On October 27, 2021, Hydro One emailed additional information to employees about the Policy. After consultation with the PWU the Policy was revised on November 2, 2021. The Policy indicates that effective October 22, 2021, all employees are required to provide Hydro One with proof of vaccination status or confirmation of a medical exemption, exemption under the Ontario *Human Rights Code*, or that the employee declines to disclose their vaccination status. Those employees who decline to disclose their vaccination status and those who are unvaccinated are required to undergo regular COVID-19 rapid antigen testing (RAT) prior to reporting to work effective November 8, 2021.

[6] The Grievors, for various reasons, all failed to comply with the Policy's requirements to either provide proof of vaccination or provide a negative RAT. Hydro One placed each of the Grievors on a LAU until they complied with the Policy. One of the Grievors subsequently retired, while the other Grievors eventually complied with the Policy, resulting in their return to work.

[7] The PWU takes the position that the Grievors had legitimate concerns about the Policy and Hydro One did not address such concerns in a timely manner. As a result, the Grievors were unable to comply with the November 5, 2021, deadline, leading to their LAU. The PWU now seeks payment to all the Grievors for the period of time they were on a LAU.

## **Decision**

[8] I begin by noting that the Policy is reasonable, and it is necessary to address the on-going health and safety issues arising from the current COVID-19 global pandemic. The Policy applies the precautionary principle to address legitimate workplace concerns in a fair and balanced approach. I addressed all of

the PWU concerns with respect to the Policy in my *Hydro One v. Power Workers' Union (HO-P-136)* November 22, 2021, award.

[9] In my view, the Grievors all had reasonable advance notice about the requirements of the Policy. In addition, the implementation of mandatory COVID-19 vaccination policies by employers was generally known to the public. Despite being given advance notice, the Grievors waited until the very last minute to raise their concerns about the Policy. While some of the concerns raised by the Grievors may have been legitimate, most, if not all, ought to have been raised in a timelier manner.

[10] I agree with Hydro One that once the concerns were raised, they addressed the concerns in good faith and within a reasonable period of time by providing fair and adequate responses.

[11] I am also of the view that prohibiting employees from attending work if they do not provide proof of vaccination or a negative COVID-19 RAT is fair and reasonable in the circumstances of this pandemic. Hydro One is complying with their obligations under the *Occupational Health & Safety Act*, to take reasonable precautions to protect the health and safety of their employees and the public that they serve. The Policy is a reasonable compromise that respects employee rights and balances the various important interests.

[12] In terms of accommodating the Grievors with remote work, I agree with Hydro One that such an accommodation is not necessary or required in these circumstances. Most of the Grievors could not perform their work remotely in any event. It is also not necessary to provide remote work where a reasonable alternative has already been provided to those employees who refuse to disclose their vaccinated status (i.e., RAT). If employees refuse the reasonable alternative, then that is their free choice but Hydro One has no further obligation to accommodate such individuals.

[13] Accordingly, for all the reasons stated above, the grievances are dismissed.

Dated at Toronto, Ontario this 31<sup>st</sup> day of January 2022.

A handwritten signature in dark ink, consisting of several loops and a long horizontal stroke extending to the right.

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John Stout- Chief Arbitrator