

News from the Society of Energy Professionals

Inergi settlement ratified



Phil Dale (l) is the new Local VP of the Kinectrics Local (see article, pg. 7). He replaces David Young (r), who has retired.

Members of the Inergi Local have voted unanimously to ratify a renewal collective agreement.

"It's a tremendous victory," said Local VP **Elaina De Luca**, in presenting the settlement to her members. "We've been so down for so long we didn't think this was possible, but it was, and we did it. Both parties can be very proud of this agreement as it dealt with very challenging issues which will hopefully move Inergi forward in a positive direction"

The settlement was ratified by a vote of 180 for, 0 against.

The agreement was reached with Capgemini—Inergi's owner—in late November (see *Newscast 2008:04*). Given the Society's battle with Cap over their offshoring plans (see *NewsFLASH 2008:04*, and previous *Newscasts*) negotiations for the Local were considered a huge priority, with Society President **Rod Sheppard** and Staff Officer **André Kolompar**, who normally services the OPG Local, joining the Inergi bargaining team.

"As far as the Society was concerned," said Sheppard, "this company is going to survive and prosper, even if we have to fight the owner to make it happen. We're hoping the fighting is over, and we'll be able to work together now."

For a Local that had been under the offshoring gun, the monetary part of the three-year settlement is good in itself:

- ◆ Salary increases of three per cent per year each year, beginning January 1st, 2009; the one per cent "competency pot" will be maintained
- ◆ The Variable Incentive Pay Plan (VIPP) is maintained, with a four per cent pot for meeting targets, and a further two per cent for exceeding them
- ◆ While the employer can request that employees change to a 40-hour work week, to do so is entirely voluntary, paid, and pensionable; employees are strongly protected against reprisal for refusing to do so
- ◆ Capgemini will make a \$10 million lump-sum contribution to the Inergi pension fund, and maintain the transfer ratio at 0.80; employee contributions will be increased over the agreement from four to 5.5 per cent *under* YMPE (yearly maximum pensionable earnings) and from 5.5 per cent to 7.5 per cent *above* YMPE.



Inergi Local unit director Diane Mowat helps to present the settlement to members

(The Local had reason to believe the Inergi Pension Fund had been depleted, to the point it was seriously in deficit.)

But the Employer's agenda has been clear: they wanted to downsize the bargaining unit, increase the use of "external sources," including offshore, and escape any responsibility to channel work, including Hydro One work, to Inergi over other Capgemini units. The Local's achievement in this area is remarkable:

- ◆ The Local's anti-offshoring language is maintained
- ◆ Inergi will pay \$19 per week into a training fund for Society-represented employees for every contractor employed; the training fund will be focussed on "hot skills" (i.e. making outside contractors less "attractive") and union training
- ◆ New Hydro One "sustainment work" in the Society jurisdiction will be performed by Society employees and contractors, whether won by Inergi **or** Cap
- ◆ For the most part, at least 50 per cent of offshored work brought back onshore (because of the Energy Minister's "declaration" to Hydro One that its work is not to be offshored—see **NewsFLASH** 2008:04) will be assigned to Society-represented employees

- ◆ Monitoring of Inergi's use of contractors, and the scope of the employer's workplaces covered, will be vastly improved; a joint working team with decision-making power will be struck (to enforce the limits on contractors already contained in the collective agreement)
- ◆ The Employer must maintain a threshold of 210 employees, but can offer a voluntary termination, retirement, or retraining program before July 1st, 2010 to achieve that number

Finally, the mediation/arbitration agreement has been extended to 2012.

In meetings held to present the settlement, De Luca told members that their 90 per cent response rate in the Local's bargaining survey, and the things they told the bargaining team, were "crucial" to the bargaining team's ability to make gains in the context of the employer's desire to achieve cutbacks.

"When we told [the management bargaining team] that 95 per cent of their employees thought Inergi wouldn't be able to renew its contract with Hydro One, that there was no future for Inergi, I think their eyes were opened," she said. "This settlement gives us hope. It looks like there might be a future after all."

The Society bargaining team included Sheppard, De Luca, unit directors **Dianne Mowat** and **Andre Ramsaroop**, and delegates **Mike Armstrong** and **Zvi Vaxman**. Staff support was provided by Staff Officers **Raymond Wong** and **André Kolompar**.

Happy holidays!

As the winter holidays approach, the Society Officers and staff wish to all members all the joy of the season. Please enjoy the holidays happily and safely, to return well-rested and content in the New Year.

The Society office will be closed for the holidays, starting at noon on December 24th. It will re-open at 8:30 a.m. on January 5th, 2009.

Board highlights: December, 2008

The Society's Executive Board met on December 2nd in its last meeting of the calendar year. Society President **Rod Sheppard** opened the meeting with the good news that he'd been speaking with Energy Minister George Smitherman's office, and had received a commitment from the Minister that he would meet with the Board early in the new year.

Recognition: The following were recognized for significant contributions to the Society:

- ◆ **David Young** (Kinectrics), who has retired, and **Joseph Sarick** (New Horizon) and **Michael Lohse** (OPG), who are about to retire, for their many years of service at all levels of the Society
- ◆ Society President **Rod Sheppard** and Staff Officers **Raymond Wong** and **André Kolompar** for their contribution to the Inergi Local Bargaining Team (see also *Newscast* 2008:04)
- ◆ Staff Officer **Mary Donnelly**, who has done an unusual amount of work over the last few weeks, preparing several arbitrations for the Bruce Power Local to be heard in a two-week period
- ◆ The Society Staff Union bargaining team, for their "spirit of cooperation" and their "real maturity," not only in recent negotiations but in assisting the Society to come through a very difficult period
- ◆ **Matthew Kellway** and **Brian Robinson**, for their dedication and enthusiasm, having been called in on a Sunday to work on a letter and media release in response to a *Globe and Mail* column
- ◆ **Matthew Kellway** for his "creative, timely, wise, and thorough efforts in support of strategic planning"

Strategic Planning: EVP Policy **Leslie Forge** led the Board through two items pertaining to strategic planning "priority objectives" identified by Society Council in its meeting in November.

The first was a "Coordinated Bargaining Policy and Procedure." The purpose of the policy and procedure is to "maximize the bargaining power derived from [the Soci-

ety's] industry and occupational density," by "mitigat[ing] the effect of [the Society's] fragmentation into multiple bargaining units."

Under the procedure, the Society will set up a "Coordinated Collective Bargaining Committee," chaired by the EVP Policy and including the Vice Presidents of all Society locals. The other principal officers (President, EVP Finance, and EVP Member Services) and the Staff Manager will be *ex-officio* (that is, by virtue of their office) members of the Committee. The Committee will meet at least quarterly to:

- ◆ Assess collective bargaining research
- ◆ Incorporate policy into collective bargaining
- ◆ Develop coordinated bargaining strategy and methods
- ◆ Plan campaigns in support of collective bargaining

The Committee will have the power to make recommendations to the Executive Board on a wide range of matters, including:

- ◆ Identification of bargaining comparitors, sectoral groupings, and issues for coordination
- ◆ Possible sequencing of the bargaining of Local agreements
- ◆ Bargaining targets: objectives and/or parameters, and
- ◆ Methods of bargaining coordination to accomplish Society objectives

Under the policy (and under the Society Constitution), all Society representatives will be required to "comply and cooperate" with bargaining coordination efforts approved by the Executive Board.

The Board also approved a "strategic organizing analysis" as part of its organizing plan. "External organizing is crucial to effectively respond to the changing dynamics in the province," the analysis points out.

EVP Forge was assisted by Staff Officer **Matthew Kellway** in the discussion of coordinated bargaining, and by IFPTE Organizer **Bill Fitzpatrick** in the item on organizing.

Audit Committee: Under new stipulations in the Society Constitution approved by Society Council in its meeting of November 3rd, Council is responsible for appointing two members of the Society's Audit Committee. However, as Council wasn't able to do so in the same meeting as the new rules were approved, it authorized the Executive Board to do so on its behalf.

The Executive Board directed Society President (and Council Chair) Rod Sheppard to circulate a call for nominations among Society Council representatives, which will include a closing date. The Board will choose members of the Audit Committee from among the nominated individuals at the first meeting following the nomination period.

Nominations are required to be accompanied by a statement of the "audit credentials" of the person nominated. The term of office of those appointed will be from the day of appointment until the Fall, 2009 meeting of Society Council.

The Executive Board is also required to select two of its members to serve on the Committee, using a similar nomination/credentials/appointment process.

Indemnification Referendum: EVP Member Services **Dennis Minello** reported that ballots were to be distributed on or about December 10th in a referendum to approve the indemnification of Executive Board members from liabilities arising out of the exercise of their duties and responsibilities as union officials (see *Newscast* 2008:04, and article below). He said ballots would be due by January 29th.

Brookfield Local: The bargaining unit at Brookfield Power Trust has one member, since the Mississagi River system of four dams was sold by OPG to Brascan Corporation in 2002. The unit has been serviced successfully since then by Society officers and staff; however, these arrangements had not been codified.

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Society bylaws provide that, "A Local shall normally be established for each bargaining unit." However, the Board decided an exception was appropriate for a Local with one member. The operation of the Brookfield Power Trust Local is now the responsibility of the EVP Member Services.

Staff Bargaining: The Board considered a recent settlement with the Society Staff Union for a four-year renewal collective agreement, effective January 1st, 2009. The settlement provides for a three per cent per year salary increase, and two per cent increase to the retirement savings payment (from 10 per cent). The Board ratified the agreement. (The Staff Union ratified the settlement on December 3rd.)

Referendum to indemnify Society Executive Board

Ballots have been mailed for a membership referendum on legal indemnification.

The referendum is for the purpose of ratifying a change to the Constitution approved by Society Council on November 3rd. If members vote in favour, the Constitution will be changed such that Executive Board will be indemnified against legal actions mounted against them in the

performance of their duties and responsibilities in service of Society members.

"When Board members act honestly and lawfully in the

best interests of the Society, they should be appropriately indemnified by the Society," said **Dennis Minello**, EVP Member Services, in a memo that accompanies the ballot package.

The subject matter of the referendum arose in a July, 2008 program of training on Executive Board responsibilities, their rights, and the exercise of "due diligence." At that session, Society counsel Jo-Anne Pickel noted that, while

When Board members act honestly and lawfully in the best interests of the Society, they should be appropriately indemnified by the Society

the best course is to avoid legal liabilities whenever possible, acting in members' interests will occasionally be perceived by others as causing them injury. (An apt example would be when OPG sued the Society in 2005, claiming damages for the disruption caused by Society picketing during the Hydro One strike.) To ensure that union officials are free to do the best job they can, many unions indemnify them against such claims.

The Constitutional amendments and indemnification agreements that members are asked to ratify were drafted by Society counsel.

Ballots must be returned to the Society office by noon on January 29th, 2009, or be postmarked before that time.

Pleased with Pension Commission recommendations

By Leslie Forge, EVP Policy

I attended the Ontario Expert Commission on Pensions (OECF) report release on Thursday November 20th, 2008 at Queen's Park. I was generally pleased with the recommendations and certainly impressed with the obvious extent and quality of the research. I provided the following comments from my first review of the report to Society Board members on November 23rd. The government has asked that submissions in response to the report be submitted by February, 2009.

In addition to commission chairperson Harry Arthurs, the commission included Bob Baldwin, formerly a pensions specialist for the Canadian Labour Congress; and Murray Gold, head of the Pension and Benefits department at Koskie Minsky. (In the mid-90s Mr. Gold advised the Society on pension governance and multi-employer plans.) Staff for the commission included Simon Archer, whom the Society consulted when he was on staff at Cavalluzzo Hayes, the Society's legal firm.

The OECF report, entitled "A Fine Balance" includes recommendations in three thematic areas they refer to as: Safe Pensions, Affordable Plans, and Fair Rules.



photo: David Smiley

Society Executive Vice President Policy Leslie Forge

The OECF recommendations relating to Safe Pensions cover many Society concerns, including: more transparent valuations and more aggressive follow-up on delayed filings; 105 per cent target funding (in recognition of market fluctuations); limits to contribution holidays (to starting when if valuation is 105 per cent or more and stopping immediately if valuation drops below 95 per cent, with ability of the regulator to order repayments, fines, penalties); better oversight/governance; recommendation for federal government increases to the problematic Income Tax Act limits; measure to improve portability; grow-in benefits; maintenance of Pension Benefit Guarantee Fund (PBGF) and an increase in the level of PBGF benefits (from \$1000 to \$2500); and re-assignment of pension regulation from FSCO to a Pension Agency with increased resourcing.

The OECF addressed governance issues to improve the process, quality and transparency of plan governance and decision-making, including published benchmarks, encouraging unions to negotiate for a greater role in plan

governance for themselves and for retired plan members, greater training/ education for governance roles, provision of more and better information to plan members, and reinforcing requirements for pension advisory committees.

The OECP recommendations relating to Fair Rules cover other important concerns: improved pension analysis/ policy capacity; enhanced stakeholder input, integrated pension regime within Canada (ex PQ); restructured/ empowered regulator, streamlined adjudication that should reduce litigation; and governance-regulation balance.

The OECP made recommendations to protect members in the event of plan mergers, splits and failures: procedures be put in place to ensure that when plans are merged or split that unions should have an opportunity to approve the new arrangements and that splits and mergers should generally not result in a reduction of funding levels below 105 per cent (and that surpluses should be used for plan purposes); that in the instance of conversion of Defined Benefit (DB) plans to Defined Contribution (DC) plans any surplus should be used first to protect accrued entitlements to DB's and preserve the plan's five per cent security margin, with union opportunity to review and approve the arrangements; that the Ontario government should support recent federal legislation that gives priority to unpaid current service costs in the event of sponsor bankruptcy, extend priority to special payments owing, permit Superintendent and union intervention in federal proceedings; along with enhance regulatory oversight.

The OECP Affordable Plans recommendations offer more for the plan sponsor/ employer side (along with the continuation of contribution holidays but with greater limits, as mentioned above): clearer sponsor access to surplus; no surplus distribution on partial wind-up; longer amortization time to meet funding obligations (as long as valuation is 95 per cent or more); going concern funding for Jointly Sponsored Pension Plans (JSPP) as well as Multi-Employer Pension Plans (MEPPs). Other items in the Affordable Plans section include: template plans for small- and medium-sized enterprises; provisions for the use of

letters of credit/pledges to provide security for unpaid contributions; facilitation of corporate transactions and reform of investment rules.

The OECP also made recommendations to facilitate greater pension plan coverage, including supporting pension legislation and review, provision for indexation especially in inflation emergencies, standard policy to facilitate pension mobility and the enhanced role of the pension regulator, codes of best practice, and the templates for small/medium businesses mentioned above).

The OECP also recommended that the Ontario government pass legislation to provide for phased retirement and investigate the advantages/ disadvantages of expanding the CPP or creating a comparable provincial plan to enhance pension coverage, control costs, and improve benefit portability (sort of a second level of CPP if provinces could agree). The report noted that the federal legislation that prohibited active and pensioner simultaneous participation was changed in 2007. This remains an issue of contention and grievance for the Society.

Another interesting recommendation is that so far as possible, the *Pension Benefits Act (PBA)* should become the exclusive source of law governing the pension system. If the Ontario Government adopts this recommendation it should be ready to remove the limits that were placed on Ontario Hydro successor employers with respect to pension administration (preventing MEPPs or any other jointly governed plans—a limit that we lobbied against at the time of the split). The recommendations also get into joint governance of a single employer plan that would provide target benefits. The Society engaged in discussions about joint governance in the 90s and could consider such issues again—although it is important to proceed cautiously, since “target benefits” can also mean benefit reductions if the plan runs into trouble (as is currently the case with MEPPs (e.g. OPSEU trust, teachers' plans).

The website link for the full report and for further information is: <http://www.pensionreview.on.ca/english/report/>

The Ontario Ministry of Finance website link is: <http://www.fin.gov.on.ca/english/consultations/pension/index.html>.

OPG told to pay Society for Agreement breach

An arbitrator has awarded the Society \$5,000 as a penalty for OPG's continuing refusal to observe the Collective Agreement when making relief and rotation assignments.

Arbitrator Jules Bloch's award is the second in a case initially ruled on in 2007 regarding OPG's nuclear division.

When OPG has the need to strike a temporary assignment, an article titled "Advance Planning" requires them to meet with the local Society representative "to discuss the nature of the requirement (e.g., relief, rotation), its expected duration, the selection process, and whether there is an expectation that the work assignment will result in an ongoing position."



OPG Unit Director Michael Lohse

Consultation with the local representative must occur before the position is posted. Unfortunately, some OPG managers are loath to conform. In the original 2007 case, noting that OPG's top management "sent out numerous communications...demanding compliance with the article," Mr. Bloch endorsed a process the two parties had devised to police the situation. (In that process, Management was required to send an e-mail to the relevant unit director with the required information, and the UD can request a meeting if necessary.) Disputes in individual breaches, he said, could be brought back to him to resolve.

The Society presented the Arbitrator with about a dozen individual violations over a two-month period.

"Everyone's aligned on this in HR and up," says OPG Unit Director **Michael Lohse**, explaining that most line management also now cooperate. "It took years to get most line managers to comply, but there are still some hold-outs. It seems they either dislike complying with the Collective Agreement or they're trying to hide the need for ongoing positions."

Mr. Bloch ruled that OPG must "re-communicate" the requirement to all its line managers, levied a fine of \$5,000 to cover all breaches up to November 24th, 2008, and notified OPG that in future he'd levy such damages in a "case-by-case" basis.

Dale new Kinectrics VP

Philip Dale is the new Local Vice President for the Kinectrics Local.

An election was called in November for someone to take over the position on the retirement of the long-serving **David Young**. On December 3rd, Deputy Returning Officer **Jim Service** ruled that Dale was the only candidate, and declared him elected.

Dale has a PhD in tribology, a sub-category of metallurgy, from Brunel University, outside London, U.K. He began his working career with Ontario Hydro's Research Division in



Photo: John Peever

In November, the Bruce Power Local donated \$5,000 to the Saugeen Shores Winterhawks Senior AA hockey team. Presenting the cheque are Unit Director Ken Martin (l) and Local VP Rob Stanley, while Greg Thede accepts.

1982, shortly after completing that PhD, and has worked a total of 25 years, both at Ontario Hydro and Kinectrics, which was created when OPG spun off its research unit in 2000 to a joint venture including both OPG and AEA Technologies of the U.K. (Since 2006, Kinectrics has been owned by Vision Capital of the U.K.)

Dale is a scientist who works in seismic qualifications, currently on projects with AECL, OPG, and a number of other Kinectrics clients.

He became a delegate in 2006, and learned the ropes looking after the needs of professional employees in a quickly-growing company.

The Company's in aggressive growth mode, and that can cause problems for both management and staff. Often there's conflict between the need to grow and the workload that results. This leads to significant work-life issues, which need to be monitored constantly. Kinectrics are hiring, but we aren't keeping up with the demand.

Dale says as Local VP his main focus will be the employees in his own local.

This is a great opportunity for me to do some things I think are really important, and hopefully represent

the people on-site really well—that's what I'm really looking to do.

Elan Thomas, who was elected a unit director in the Local earlier this year, has agreed to take on the task of dealing with Society issues outside the Kinectrics Local.

Dale says he's a "hands-on" kind of guy, and can back it up. He's currently building a car from scratch, starting with the sheet metal.

He makes his home in Mississauga, and has two grown children and three cats, two of which are his daughter's.

Arbitrator rules benefits coordination discrimination not illegal

OPG can continue to discriminate against employed spouses in its health plan, says Arbitrator Kevin Burkett.

Mr. Burkett ruled on a policy grievance filed by the Society in August, alleging that the plan discriminates against employees who are in a spousal relationship by disallowing them from coordinating dependent benefits.

The internal coordination of benefits refers to that aspect of a benefit plan that would allow two spouses employed by the same employer to each enrol as a member of the benefit plan and to each claim their children as dependents under the plan. The effect would be to permit these children to claim under each parent's membership the maximum dollar amounts permitted a dependent under those benefits that limit reimbursement to a maximum dollar amount. In this case, although each spouse is allowed to enrol as a separate member of the benefit plan, each child may be listed as a dependent with only one of the parents, not both.

Where an OPG employee's spouse is employed outside OPG, however, coordination of benefits is routine, unremarkable, expected—dual reimbursement for the claim of a dependent child, up to the maximum of the claim, is allowed. The Society argued that making a distinction between a spouse employed by OPG and one employed by someone else was discrimination disallowed by the Ontario Human Rights Code.

The Society relied on a 1997 arbitration decision in Alberta, in which the same circumstances were ruled to be discrimination disallowed by that province's human rights legislation. Mr. Burkett declined to follow the Alberta precedent, however, choosing to follow more recent rulings in Ontario. In 2005, for example, Arbitrator MacDowell said, "in order to equalize benefits to insured persons under a group plan, it is necessary to treat employees differently and in this purely economic sense, unequally."

"The decision is indeed unfortunate, said Society Staff Officer **André Kolompar**, who instructed counsel at the hearing into the grievance. "However, to the Society's credit, it made the effort and arguments on behalf of its members."

Domain name change

The Society's domain name for e-mail is about to change.

Beginning January 15th, 2009, all Society e-mail addresses will change from *user*@society.on.ca to *user*@the-society.ca, that is, the same as the domain name for the Society web-site.

While those who correspond and do business with the Society are encouraged to update, in fact they will have a long time to change their contact lists. The "society.on.ca" address will continue to work for at least a year after the domain name officially changes.

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