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A Militancy of Invidious Comparisons
The Contested Value of Hospital Work in Ontario, 1959–1974

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Résumé de l'article

Cet article examine les efforts visant à établir les critères objectifs pour décider des niveaux de salaire appropriés pour les travailleurs des services non professionnels dans le secteur hospitalier de l'Ontario au cours des années 1960 et 1970. S'inspirant de la littérature récente en économie politique culturelle et en politique d'évaluation, il montre comment les spécialistes des relations industrielles ont cherché à recadrer le champ de la lutte par la pratique de l'arbitrage des intérêts. À travers une étude comparative des cas d'arbitrage de cette période, l'article explore le déplacement complexe de l'expertise des conseils d'administration des hôpitaux locaux et des professionnels de la santé vers les professeurs de droit et les économistes du travail, qui ont cherché à établir une jurisprudence industrielle pouvant éviter les grèves et les lock-out dans ces industries essentielles en attribuant des récompenses en fonction des résultats probables de conflit industriel. Les différends n'étaient désormais plus réglés par les obfuscations idéologiques de « justice » ; au lieu de cela, des arbitres experts se sont inspirés de la science économique pour affirmer des « réalités » irréfutables du marché du travail. Alors que les prétentions à l'expertise scientifique dans le règlement des différends sont restées hégémoniques jusqu'à la fin des années 1960, les travailleurs hospitaliers de l'Ontario, par l'intermédiaire de leurs syndicats et en alliance avec les organismes de la nouvelle gauche, ont effectivement réaffirmé la « justice » comme unité de valeur hautement contextualisée à travers leurs luttes militantes dans le début des années 1970. L'article conclut en discutant des tensions et des contradictions produites par ces luttes et des défis qui en découlent dans la régulation des conflits du travail dans le secteur public.

RESEARCH NOTE / NOTE DE RECHERCHE

A Militancy of Invidious Comparisons: The Contested Value of Hospital Work in Ontario, 1959–1974

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Abstract: This article examines the efforts to establish objective criteria in deciding on appropriate wage levels for non-professional service workers in Ontario's hospital sector during the 1960s and 1970s. Drawing from recent literature in cultural political economy and the politics of valuation, it shows how industrial relations specialists sought to reframe the field of struggle through the practice of interest arbitration. Through a comparative study of arbitration cases in this period, the article explores the complex displacement of expertise from local hospital boards and medical professionals to law professors and labour economists, who sought to establish an industrial jurisprudence that could avoid strikes and lockouts in such essential industries by assigning awards based on the probable outcomes of industrial conflict. No longer were disputes settled through the ideological obfuscations of "justice"; instead, expert arbitrators drew on the science of economics in asserting irrefutable labour market "realities." While pretensions to scientific expertise in the settlement of disputes remained hegemonic through the late 1960s, hospital workers in Ontario, through their unions and in alliance with New Left organizations, effectively reasserted "justice" as a highly contextualized unit of value through their militant struggles in the early 1970s. The article concludes by discussing the tensions and contradictions produced out of these struggles and the subsequent challenges in regulating public-sector labour disputes.

Keywords: interest arbitration, Ontario, healthcare workers, labour unions, valuation studies, public sector, Keynesian welfare state, labour history

Résumé : Cet article examine les efforts visant à établir les critères objectifs pour décider des niveaux de salaire appropriés pour les travailleurs des services non professionnels dans le secteur hospitalier de l'Ontario au cours des années 1960 et 1970. S'inspirant de la littérature récente en économie politique culturelle et en politique d'évaluation, il montre comment les spécialistes des relations industrielles ont cherché à recadrer le champ de la lutte par la pratique de l'arbitrage des intérêts. À travers une étude comparative des cas d'arbitrage de cette période, l'article explore le déplacement complexe de l'expertise des conseils d'administration des hôpitaux locaux et des professionnels de la santé vers les professeurs de droit et les économistes du travail, qui ont cherché à établir une jurisprudence industrielle pouvant éviter

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les grèves et les lock-out dans ces industries essentielles en attribuant des récompenses en fonction des résultats probables de conflit industriel. Les différends n'étaient désormais plus réglés par les obfuscations idéologiques de « justice » ; au lieu de cela, des arbitres experts se sont inspirés de la science économique pour affirmer des « réalités » irréfutables du marché du travail. Alors que les prétentions à l'expertise scientifique dans le règlement des différends sont restées hégémoniques jusqu'à la fin des années 1960, les travailleurs hospitaliers de l'Ontario, par l'intermédiaire de leurs syndicats et en alliance avec les organismes de la nouvelle gauche, ont effectivement réaffirmé la « justice » comme unité de valeur hautement contextualisée à travers leurs luttes militantes dans le début des années 1970. L'article conclut en discutant des tensions et des contradictions produites par ces luttes et des défis qui en découlent dans la régulation des conflits du travail dans le secteur public.

Mots clefs : arbitrage de différends, Ontario, travailleuses et travailleurs de la santé, syndicats, études de la valeur, secteur public, État-providence keynésien, histoire du travail

In the late 1960s, the question of how much non-professional service workers in Ontario's hospital sector should be paid was an open one. The provincial government's attempts to rationalize wage structures under a system of interest arbitration were widely regarded as an unmitigated failure. With the growing centralization of fiscal control under the Ontario Hospital Services Commission (OHSC), the ability of arbitrators to decide on an objective unit of measure in settling disputes had become increasingly discredited. This was noted not only by the unions representing hospital workers but also by the Ontario Hospital Association (OHA), the Ontario Medical Association (OMA), and senior civil servants. It was pointed out in the major newspapers, such as the *Toronto Star*, which observed that caretakers at the Riverdale Zoo were paid more than orderlies looking after patients in Toronto's hospitals, raising the question "Is looking after animals more important than looking after people?"[1] Moreover, prominent civil society organizations, including the Social Planning Council of Metropolitan Toronto and the Canadian Council on Social Development, stepped in to expose the depressed wages of hospital workers, who would earn more if they quit their jobs and went on welfare.

This article examines the *crisis of valuation* that emerged with the establishment of public hospital insurance and the OHSC in 1959 and escalated through to 1974, when the OHSC was abolished and the provincial government came to adopt a more direct role in wage negotiations via the Ministry of Health. In confronting the incapacity of various institutions to credibly gauge the value of care work, I examine the shift in *modalities of valuation* – that is, the ways in which questions of value were formulated and instituted. With the adoption of public hospital insurance, the rapid expansion of an ostensibly "integrated and balanced" hospital system across the province, the professionalization of nurses, physiotherapists, and laboratory technicians, and the growing unionization of non-professional service workers, the nascent provincial social security apparatus remained highly contested throughout this period. Without clear and accepted criteria for negotiating wage rates, the

1. "More Money for Hospital Workers," *Toronto Star*, 24 April 1974.

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growing militancy of workers in the hospital sector was met by experimentation in labour policy. Governments adopted special measures, designating essential services where the right to strike would not apply, and decisions in the last instance were passed on to a growing cadre of industrial relations specialists in implementing a more rational and stable system of compulsory interest arbitration.

The aim of this case study is to explore the social, political, and cultural relationships through which the calculations of value were embedded. Rather than assuming that industrial relations experts somehow discovered *a priori* labour market realities, I argue that they skilfully assembled a hegemonic field of valuation through the infusion of arbitration decisions with economic "facts." As I will show, beyond government efforts to restrict the right to strike through statutory means, a hegemonic position was also established through the skilful deployment of industrial expertise and administrative technologies that enabled government at a distance, establishing an arm's-length and ostensibly impartial framework for allocating value. In the process, a reconfiguration of legal knowledges took place, contributing to the ascendancy of labour economics in determining the proper disposition of forces. Yet the apparent distance achieved through the application of calculative technologies could be actively challenged through the radical recontextualization of value, directly linking wages to the conditions of living and working. In this sense, value was no longer simply an object to be discovered; it was something to be militantly *realized*.

Between Economy and Politics: Boundary Struggles

While many studies have documented labour struggles in Canada during the 1960s and 1970s, less research has attended to the economic models that were deployed in making sense of labour relations and how they shaped and were shaped by the struggles of the period.[2] This article explores the historically contingent models and practices through which the "economic" was understood and acted upon. Drawing from the recent literature in cultural political economy and the politics of valuation, my research is framed by four theoretical insights.

First, I view economics as performative. As Koray Caliskan and Michel Callon argue, "the economy is an achievement rather than a starting point

2. Examples of studies of Canadian labor struggles include Craig Heron and Charles Smith, *The Canadian Labour Movement*, 4th ed. (Toronto: Lorimer, 2020); Bryan D. Palmer, *Working Class Experience*, 2nd ed. (Toronto: McClelland & Stewart, 1992); Palmer, *Canada's 1960s: The Ironies of Identity in a Rebellious Era* (Toronto: University of Toronto Press, 2009); Peter S. McInnis, "Hothead Troubles: 1960s-Era Wildcat Strike Culture in Canada," in Lara Campbell, Dominique Clément and Gregory S. Kealey, eds., *Debating Dissent: Canada and the Sixties* (Toronto: University of Toronto Press, 2012), 155–170.

or a pre-existing reality that can simply be revealed and acted upon."[3] From this perspective, the "hospital sector" is not a pre-existing economic domain within which workers are located. Rather, the hospital sector had to be actively *rendered* economic, made intelligible and governable through the application of economic models, technologies, and practices.[4] Along these lines, I begin by investigating the conditions of possibility for the transformation of the hospital sector into an economic domain. This involves investigating the conditions under which people developed and implemented economic models, technologies, and practices. From the perspective of performativity, the development of these models has not simply led to a better understanding of the labour market but has fundamentally (re)formatted the market as a domain within which different actors participate.

Second, I highlight the importance of boundary-making as a strategy for delimiting what should properly be understood as "economic." A foundational principle of liberal governmentality has been the circumscription of the "economic" as a domain at arm's length from the "political."[5] Rather than directly intervening in the economy, liberal political programs have been premised on governing from a distance, through "mechanisms that promise to shape the conduct of diverse actors without shattering their formally autonomous character."[6] From this perspective, as we will see below, public officials avoided directly setting the wages of public-sector workers by political fiat. Rather than exercising sovereign discretion in setting wage levels, public officials sought to subsume wage decisions under economic rationalities, which were viewed as more natural and more real than political or justice-based rationalities.

Third, through historical research, I explore how the distinction between these two domains – the economic and the political – has been the object of "boundary struggles" contesting "capitalism's constitutive institutional

3. Koray Caliskan and Michel Callon, "Economization, Part 1: Shifting Attention from the Economy toward Processes of Economization," *Economy and Society* 38, 3 (2009): 370. For discussions of performativity, see Michel Callon, "Introduction: The Embeddedness of Economic Markets in Economics," in Callon, ed., *The Laws of the Markets* (Oxford: Blackwell, 1998); Donald MacKenzie. *An Engine, Not a Camera: How Financial Models Shape Markets* (Cambridge, Massachusetts: MIT Press, 2008).

4. The role of experts in assembling "economies" is highlighted in Timothy Mitchell, "Rethinking Economy," *Geoforum* 39 (2008): 1116–1121; "Fixing the Economy," *Cultural Studies* 12, 1 (1998): 82–101. See also Caliskan and Callon, "Economization, Part 1."

5. See the governmentality literature here, especially Michel Foucault, *The Birth of Biopolitics* (New York: Palgrave Macmillan, 2008); Nikolas Rose and Peter Miller, "Political Power beyond the State: Problematics of Government," *British Journal of Sociology* 43, 2 (1992): 173–205; Miller and Rose, *Governing the Present* (Cambridge: Polity Press, 2008); Ute Tellmann. *Life and Money: The Genealogy of the Liberal Economy and the Displacement of Politics* (New York: Columbia University Press, 2018); Michael Walzer. "Liberalism and the Art of Separation," *Political Theory* 1, 3 (1984): 315–330.

6. Miller and Rose, *Governing the Present*, 39.

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separations."[7] By returning to these crisis moments, I aim to uncover how the ordinarily taken-for-granted boundary between the political and the economic has become malleable at certain moments. Drawing from Foucault's genealogical approach, I explore arbitration hearings as particular "scenes of emergence" – moments when prevailing views of the world are destabilized and contested.[8]

Fourth, while actors devise new understandings of "economy" and the "economic," they do not do so under conditions of their own choosing, to paraphrase Marx. Very often, these models and technologies are deployed at specific sites, drawing from pre-existing administrative technologies, and in response to unexpected circumstances that various actors frame as problematic in distinctive ways. Along these lines, arbitration involves "political reasoning as a situated practice through which existing governmental forms are reflected upon, reworked, and redeployed."[9] Moreover, as a situated practice, it entails a whole social and material infrastructure for assembling and processing information, "stitch[ing] together bits of the outside world with the network of files" through which accounts can be forged and decisions rendered.[10]

Drawing from this theoretical framework, I explore arbitration hearings as specific sites where labour struggles have been dramatized. I ground my analysis in an examination of four dimensions of the arbitration process. I begin by examining the way disputes were generated and brought under the purview of arbitration boards, which are tasked with the responsibility of assembling and evaluating evidence from both the union and the hospital board. Next, I investigate how files were generated, bringing together heterogeneous materials – including government data, scientific research, and everyday anecdotes – in seeking to render value intelligible, facilitating specific kinds of intervention by political agencies. Then, I look at the movement of officials, employers, and rank-and-file workers within and beyond these political agencies. Finally, I explore the legal reasoning that was adopted in discussions between union and government officials, employers, and rank-and-file workers.

Drawing from Ute Tellmann, my aim is to "retrieve moments of conceptual openness," when the boundaries between the economic and political were not

7. Nancy Fraser and Rahel Jaeggi, *Capitalism: A Conversation in Critical Theory* (Cambridge: Polity Press, 2018), 82.

8. Michel Foucault. "Nietzsche, Genealogy, History," in D. F. Bouchard, ed., *Language, Counter-Memory, Practice* (Ithaca: Cornell University Press, 1977); see also Tellmann, *Life and Money*.

9. Stephan Collier, *Post-Soviet Social: Neoliberalism, Social Modernity, Biopolitics* (Princeton: Princeton University Press, 2011), 19.

10. Ron Levi and Mariana Valverde, "Studying Law by Association: Bruno Latour Goes to the Conseil d'Etat," *Law and Social Inquiry* 33, 3 (2008): 819.

as clear-cut.[11] By returning to the scenes of emergence, I hope to unlock the different trajectories contained in these moments, enabling the envisioning of alternatives. Exposing the fraught and contested ground of the economic during this period contributes to troubling historical accounts that overemphasize the stability of the Keynesian era and provides important lessons for understanding the terrain of struggle today.

Setting the Stage: The Problem of Essential Services

To understand how wage rates were destabilized in Ontario's hospital sector, we need to first look at the changing political and administrative context. Two events were central in changing the way in which wage rates were negotiated in Ontario during the 1960s and 1970s: the rise of public health insurance and the development of a legal regime of industrial pluralism. Taken together, these developments transformed what was previously a private matter, left to the discretion of local notables, into a public issue.

First, there were changes in the governance and administration of hospitals through the postwar period. While hospitals were previously administered as charitable organizations under the oversight of local notables, the transition to social insurance in 1959 led public officials to increasingly administer hospitals as an "integrated and balanced system" on a provincial scale. Through the 1960s, public officials moved to consolidate the administrative capacity of the health "sector" under the OHSC, which was established in 1959 with the aim of modernizing hospital administration. The OHSC promptly moved to extend healthcare capacities through the construction of new hospitals, increasing the number of available beds in the province from 30,600 in 1957 to 50,000 by 1969.[12] By 1974, the OHSC was overseeing a network of 234 hospitals across the province and over 113,000 workers (94,135 full time and 19,638 part time).[13] By the early 1970s more people were employed in hospitals in Canada than in auto production, iron and steel, and pulp and paper combined.[14] Alongside the construction of new facilities, the OHSC also played an increasingly central role in the administration of hospital funding, as, through a system of public

11. Tellmann, *Life and Money*, 2.

12. Minister's Address to Ontario Hospital Association convention, Royal York Hotel, 28 October 1971, RG10-6-0-1752, Archives of Ontario, Toronto (hereafter AO); D. W. Rose (counsel and registrar of Ontario Labour-Management Arbitration Commission), address to the Labour Relations Workshop, 1970, of the Association of Municipal Electrical Utilities, 18 October 1970, Ontario Ministry of Labour, RG7-37-3, AO.

13. Ontario, Hospital Inquiry Commission, *Report of the Hospital Inquiry Commission* (Toronto: Ministry of Labour, 1974).

14. George M. Torrance. "Hospitals as Health Factories," in David Coburn, Carl D'Arcy and George M. Torrance, eds., *Health and Canadian Society*, 3rd ed. (Toronto: University of Toronto Press, 1998), 438.

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health insurance, it came to provide the bulk of funding for hospitals, raising questions as to how funding was determined.

Second, the development of a regime of industrial pluralism in the postwar period extended the right to unionize, collectively bargain, and strike first to private-sector workers and, increasingly, to segments of the public sector.[15] Since 1943, the province of Ontario had entrenched Wagner-style labour laws that mandated compulsory collective bargaining and established the right to strike for workers negotiating new contracts. While these reforms were contested and uneven, they contributed to the rapid expansion of unions across the province, including in the hospital sector, with the first collective agreement signed in 1945.[16] Through the late 1950s, the provincial government faced the growing unionization of healthcare workers, who were covered under the same provisions of the *Labour Relations Act* as private-sector workers. By the early 1960s, unions were established in the hospitals of most major cities across the province, under the affiliation of the Canadian Union of Public Employees (CUPE), the Building and Service Employees International Union (BSEIU), and the International Union of Operating Engineers (IUOE).[17] As unionization drives spread across the hospital sector, with the number of collective agreements growing from 128 in 1963 to 243 in 1970, collective bargaining and the strike weapon were increasingly advanced as methods for determining wage rates and working conditions for non-professional care workers, including dietary and housekeeping employees, orderlies, porters, aides, and unlicensed nursing assistants.[18]

However, while the OHSC provided over 90 per cent of the funding for hospitals, the commissioners refused to take a formal position in collective

15. Judy Fudge and Eric Tucker, *Labour before the Law: The Regulation of Workers' Collective Action in Canada, 1900–1948* (Don Mills, Ontario: Oxford University Press, 2001); Bob Russell, *Back to Work: Labour, State, and Industrial Relations in Canada* (Scarborough, Ontario: Nelson, 1990); Peter S. McInnis, *Harnessing Labour Confrontation: Shaping the Postwar Settlement in Canada, 1943–1950* (Toronto: University of Toronto Press, 2002).

16. See, for example, Frederick David Millar, "Shapes of Power: The Ontario Labour Relations Board, 1944–1950," PhD diss., York University, 1980; Charles Smith, "The Politics of the Ontario Labour Relations Act: Business, Labour, and Government in the Consolidation of Post-War Industrial Relations, 1949–1961," *Labour/Le Travail* 62 (2008): 109–151.

17. As of 1974, the report of the Hospital Inquiry Commission noted that CUPE and the BSEIU had unionized the bulk of non-professional workers – accounting for just under 30,000 hospital workers and over 150 collective agreements.

18. Torrance, "Hospitals as Health Factories." Alongside private-sector workers, hospital workers in Ontario were governed under the provisions of the *Labour Relations Act* and had the right to strike until 1965 (unless exempted by a municipality under section 89). By 1961, it was noted that "collective bargaining with one or more unions was standard practice for the majority of large and medium sized hospitals in Ontario." Ontario, *Royal Commission Report on Compulsory Arbitration in Disputes Affecting Hospitals and Their Employees* (Toronto 1964), 9.

bargaining, preferring instead to reside as a "ghost" at the bargaining table.[19] This led to problems as unionization moved from the metropolitan centres to smaller cities, suburbs, and towns. Just as smaller municipal corporations tended toward paternalism under the leadership of local notables and business leaders, so too were school and hospital boards in smaller communities often havens for local privilege.[20] Consequently, they tended to be more obstinate in granting wage concessions or even recognizing unions under the provisions of the *Ontario Labour Relations Act*.[21]

When hospital boards refused to accede to union demands, they would go to the provincial government for funds that would ensure the continued operations of the hospital during the strike. This put the provincial government in an awkward position: it could either fund strikebreakers, to keep the hospital operational, or cut off funding, compelling the board to accede to the union's demands. Hence, the provincial government faced the dilemma of governing at a distance, having failed to develop structures that kept it insulated from the bargaining process. In seeking to establish an objective basis for determining wage rates, public officials faced the challenge of developing mechanisms that would "shape the conduct of diverse actors without shattering their formally autonomous character."[22] This became a major problem as local hospital boards were subsumed under an increasingly integrated and balanced system that was administered and funded by an ostensibly independent government commission.

It was in this context that the Government of Ontario moved toward interest arbitration, passing the *Hospital Labour Disputes Arbitration Act* (HLDAA) in 1965. Going against the recommendations of its own commission of inquiry (the Bennett Commission), the Conservative government contended that granting workers the right to strike would endanger the health of the public and, therefore, other means of settling industrial disputes should be developed.[23] In this context, the quasi-judicial model of compulsory interest

19. Harry Arthurs, in his precedent-setting arbitration report, highlights "the ghostly presence at the bargaining table" of the OHSC. See Re Building Service Employees, Local 204, and Welland County General Hospital [1966] 16 LAC 1 (OLRB). For a deeper discussion of this term and its application in Ontario's hospital sector, see Allan Ian MacDonald, "Hospital Collective Bargaining in Ontario: The Political Function of Interest Arbitration," MA thesis, Carleton University, 1987.

20. Chris Hurl, "Local Government, the Standard Employment Relationship, and the Making of Ontario's Public Sector, 1945–1963," *Environment and Planning A* 48, 2 (2016): 330–347; David Gagan and Rosemary Gagan, *For Patients of Moderate Means: A Social History of the Voluntary Public General Hospital in Canada, 1890–1950* (Montréal & Kingston: McGill-Queen's University Press, 2002).

21. For instance, this was a key issue in the 1963 strike of hospital workers in Trenton, which spurred the creation of the *Hospital Labour Disputes Arbitration Act*.

22. Miller and Rose, *Governing the Present*, 39.

23. The Bennett Commission recommended that cabinet only be empowered to submit a

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arbitration provided a means of insulating the provincial government from the responsibility of assigning value to hospital workers. Under the HLDAA, if the parties to the dispute were unable to reach a negotiated settlement, then the dispute would be referred to compulsory arbitration. Arbitrators were empowered to "examine into and decide on matters that are in dispute and any other matters that appear to the board necessary to be decided in order to conclude a collective agreement between the two parties."[24] Along these lines, the arbitration board was organized as a sort of court of law in which both parties would present briefs making their case, at which point an impartial chairperson and the two representatives would render judgement.

By considering evidence in this way it was thought that the arbitration process would bring stability to the labour relations process in the absence of the right to strike. However, the process and its attendant principles were highly contested through the 1960s and, some thought, risked undermining collective bargaining itself, as there was no incentive for parties to bargain in good faith. Table 1 shows (1) the total number of settlements per year, which increased from 66 in 1964 to 153 in 1970, and (2) the number of arbitration awards, which increased from 13 in 1966 to 39 in 1970 (a quarter of settlements reached). This table was presented as part of a governmental review of the impact of the HLDAA in 1970. At the time, it was used as evidence of the growing destabilization of the industrial relations regime under interest arbitration, and the review led to calls for reform.

As I will show, the process of arbitration was transformed through the growing research and organizing capacities of unions and hospital boards that were increasingly effective at collecting various kinds of evidence – including wage rates from comparable sectors, economic measures such as the cost of living and the poverty line, and job evaluation schema and categories – in building their cases. The character of arbitration was also reshaped by the shift from mediation by judges to adjudication by a new generation of academics who sought to establish more stable and scientific grounds for arbitration by drawing on the principles of labour economics.

An Avalanche of Numbers: Generating Evidence

THE ARBITRATION HEARING SERVED as a quasi-judicial institutional setting in which value claims were assembled, mobilized, and performed. The determination of value was based on the consideration of documentary, oral, and "real" (i.e. objects, exhibits) evidence. Both the union and the employer typically submitted typewritten briefs, appealing to a range of different sources, which framed their claims to value. While this work was initially carried out

dispute to arbitration (a) "when patient care is adversely affected or seriously threatened" or (b) "if either party is guilty of a refusal to bargain in good faith."

24. Hospital Labour Disputes Arbitration Act, [1965] Ont. Stat., c. 48, s. 6(1).

Table 1. Hospital Settlements Reached at Various Stages of the Bargaining-Arbitration Process, Years Ending 31 July 1964–70

Settlement stage	1964		1965		1966		1967		1968		1969		1970	
	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%
Total settlements	66	100	78	100	84	100	94	100	115	100	119	100	153	100
Pre-conciliation bargaining	35	53	42	54	41	49	59	63	56	49	48	40	59	39
Conciliation officer	16	24	17	22	25	30	16	17	33	29	29	24	40	26
Conciliation board	7	11	10	13	2	2	–	–	–	–	–	–	–	–
Post-conciliation bargaining	8	12	9	11	3	4	3	3	5	4	21	18	15	10
Arbitration award	–	–	–	–	13	15	16	17	21	18	21	18	39	25

Source: Ontario Department of Labour, *The Impact of the Ontario Hospital Labour Disputes Arbitration Act, 1965: A Statistical Analysis* (Toronto 1970).

directly by the parties themselves, by the mid to late 1960s it would increasingly be contracted out to law firms or industrial relations consultants, who drew from a growing range of sources in making their case. Over the years, the arbitration files tended to get thicker and more carefully indexed, often drawing on information from a variety of sources, including scientific journals, newspaper clippings, government documents, census reports, and the rulings of earlier arbitration boards.

Collecting information was initially problematic for both unions and hospital boards. In fact, the *reach* of state and non-state agencies in accumulating, processing, and disseminating information was quite limited in the wake of World War II.[25] Until the Ontario Labour Management Arbitration Commission was established in 1970, there was no central state institution charged with the collection of arbitration reports, so there was no clear archive that could be drawn from in establishing precedent. Apart from a small selection of key decisions compiled by a private publishing company (Labour Arbitration Cases), the arbitration board depended largely on data collected by the participants themselves in rendering its decisions.

Throughout the 1960s, there was a struggle to develop more centralized research and organizing capacities on the part of unions and hospital boards in buttressing their arguments. With its centralized sectoral structure, the BSEIU

25. See Hurl, "Local Government."

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facilitated the close coordination of collective bargaining activities between unions. Through the mid to late 1960s, the hospital boards complained of their whipsawing tactics, which targeted the weakest employers first in setting strong bargaining patterns across the province. Likewise, under the direction of Gil Levine, CUPE spearheaded innovative approaches to labour research that other unions would later emulate.[26] Bargaining demands were consolidated under model agreements, developed in the early 1960s, and later the Standard Agreement, which provided a benchmark against which collective agreements could be measured for each provision in a particular industry in a region. Information-gathering capacities were later augmented by the computerization of data in the early 1970s, with the development of the System for the Analysis of Labour Agreement Data (SALAD system), which coded and produced reports that compared wages and key contract rights. In addition, regular conferences between unions organized at the regional and sectoral levels provided a basis for information sharing. For instance, beginning in the late 1960s hospital locals in the Metro Toronto area met on a regular basis to coordinate their bargaining activities.

While the unions had moved toward the formation of standard bargaining language by the mid to late 1960s, there was considerable resistance to the development of common forms of measurement and calculation on the side of the employer. Since the boards only consented to the creation of a system of public insurance on the condition that they be given autonomy in administration, any direct involvement by the OHSC in the process of collective bargaining was seen as political interference. As late as 1968, the OHSC's finance commissioner articulated the dilemma facing the OHSC: "Hospitals cannot be pushed by an authority into doing things," he argued. "The Commission cannot act like a Treasury Board. It must have more information."[27] In the meeting minutes of the OHSC, lack of information is persistently raised as a factor that inhibited control of costs. Throughout the 1960s hospital boards lacked standard budgetary protocol, leaving the OHSC to decide on funding through a painstaking line-by-line assessment of each hospital's budget.

The problems in gathering and processing information were only partially rectified with the creation in 1965 of the Hospital Personnel Relations Bureau (HPRB), an independent organization established by hospital managers to compile data and assist hospital boards in collective bargaining. However, membership in the HPRB was voluntary, and in many hospitals, local autonomy

26. Through the adoption of practices such as standard agreements, Jane Stinson notes, "the Levine-led Research Department led the way within trade union circles in producing highly relevant, understandable, left-wing analysis that pushed for improvements in material conditions for workers, progressive public policy, and greater internal democracy." Stinson, "A Tribute to Gilbert Levine: His Pioneering Role in Labour Research," *Labour/Le Travail* 67 (2011): 179.

27. Abstract of an interview with E. P. McGavin, Commissioner of Finance, 25 July 1968, RG10-222-0-188, AO.

was jealously guarded. As late as 1973, Peter Grady noted in his regular column in the trade journal *Hospital Administration in Canada* that there was little cooperation between the OHA, the HPRB, and individual hospitals. He added that "this lack of cohesion has led to a situation whereby some hospitals seem to operate in a vacuum with respect to what the rest of the province is doing in labour relations settlements and decisions."[28] While other provinces had moved toward regional or province-wide bargaining, Ontario did not even have a set of standard classifications for employees across hospitals.

In the absence of a standardized system of classifications, the work of arbitrating collective bargaining disputes in the hospital sector proved difficult. Arbitrators could not simply rely on information collected by the two parties. As late as 1969, arbitrators were complaining that they "lacked necessary data to permit entirely satisfactory application of many standards," noting a diversity of information presented that was not sufficiently elaborated.[29] In rendering their decisions, arbitrators cobbled together the "true" value of services using a wide range of data, including information provided by expert witnesses, civil society organizations, and the Dominion Census Bureau. Despite efforts to establish an undistorted conception of value, the arbitrated settlements often remained quite contentious, with no clear rationale for why specific decisions were made.

Consolidating a Discipline, Creating Officials

ALONGSIDE THE CHANGING information-gathering capacities of the actors, there was also a shift in expertise deployed in assembling decisions. As Gregor Murray and Anthony Giles note, the "new" industrial relations framework – which viewed industrial relations as a "relatively self-contained 'sub-system'" containing its own dynamics of equilibrium and adjustment – displaced earlier individualist and contractarian conceptions of labour relations.[30] Echoing Keynesian conceptions of the economy, the systems perspective emphasized stability, "focusing on institutions and inter-group accommodation to the

28. P. E. Grady, "The Labour Relations Quagmire in Ontario," *Hospital Administration in Canada* 15 (1973): 73–74.

29. Re Canadian Union of Public Employees, Local 576, and the Trustees of Ottawa Civic Hospital, 1969, S. A. Schiff, M. W. Wright, QC, J. Reid (unpublished), 146. As late as 1972, the Ontario Ministry of Labour noted in its submission on proposed changes to the *Hospital Labour Disputes Arbitration Act* that "information currently available is not ideal either for making inter-hospital comparisons or comparisons with general community standards."

30. Gregor Murray and Anthony Giles, "Toward an Historical Understanding of Industrial Relations Theory in Canada," *Relations Industrielles/Industrial Relations* 43, 4 (1988): 780–811. See also the discussion of industrial voluntarism in Fudge and Tucker, *Labour before the Law.*

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detriment of an understanding of the creation, development and transformation of social actors and of relations of social power."[31]

This changing orientation was reflected in the shifting professional composition of arbitrators. With the rapidly growing number of collective agreements through the 1950s and 1960s, the capacity to arbitrate labour disputes – which had been largely undertaken by supreme, county, and district court judges – was increasingly stretched to the limit. As the volume of cases continued to increase (see Table 1), the ranks of suitable chairs (all were men through the 1960s)[32] were augmented by the appointment of professors from law schools and industrial relations departments of local universities, most notably the University of Toronto, Osgoode Hall, and the Industrial Relations Centre at Queen's University, building on the pioneering work of figures such as Bora Laskin, Jacob Finkelman, and H. D. Woods.[33] By the mid-1960s, there was a shift to a new generation of young arbitrators, whose expertise often derived from the academy instead of the courts. This changing of the guard was formally recognized in 1967 with the amendment of the provincial *Judges Act*, which discouraged judges from accepting extrajudicial assignments as arbitrators and conciliators as, public officials contended, doing so threatened judicial independence and impartiality. Increasingly through the 1950s and 1960s the arbitration process was undertaken under the guidance of academics and industrial relations experts. As M. McConnell observed, "the ivory tower has become the control tower of navigation in this area."[34] The shifting composition of the pool of arbitrators, Warren Winkler notes, "changed the tenor of both the hearings and the decisions to a more academic discourse."[35]

Academic institutions played a leading role in training a growing cadre of arbitrators recruited from the emerging disciplines of industrial relations, economics, and labour law. During this time, industrial relations rapidly grew as a core discipline promoted by universities across the country. It had become visible as a distinctive field as early as 1937, when Queen's University

31. Murray and Giles, "Toward an Historical Understanding," 798.

32. Submission of the Ontario Division, CUPE, to Fernand Guidon, Minister of Labour, Re: Ontario Hospital Labour Disputes Arbitration Act, 1965, 18 October 1972, CUPE Ontario fonds, F1289-3-0-190, AO. By 1972, CUPE was actively challenging the practice of nominating only men as arbitrators in a field that was overwhelmingly dominated by women.

33. For a discussion of Finkelman, see Millar, "Shapes of Power." On Laskin, see David Beatty and Brian Langille, "Bora Laskin and Labour Law: From Vision to Legacy," *University of Toronto Law Journal* 35, 4 (1985): 672–727; see also Philip Girard, *Bora Laskin: Bringing Law to Life* (Toronto: University of Toronto Press, 2005). On Woods, see Murray and Giles, "Toward an Historical Understanding."

34. M. McConnell, "Wage Standards Used in Hospital Disputes under the Hospital Labour Disputes Act (1965)," *Western Ontario Law Review* 9 (1970): 237.

35. Warren Winkler, "Arbitration as a Cornerstone of Industrial Justice," School of Policy Studies, Queen's University, 2011, https://www.ontariocourts.ca/coa/about-the-court/archives/2011-arbitration-cornerstone-industrial-justice/.

created the first industrial relations program, yet the discipline would only really gain traction in the 1940s, when there was an explosion of industrial relations research and industrial relations courses became a regular feature in curricula in many Canadian universities. As a part of its discipline-building ambitions, a concerted effort was made to reorient industrial relations from problem solving, based on developing ad hoc solutions to historically specific problems, to system building, in which labour disputes could be subjected to the standardized methods of a universal science.[36]

During the 1950s and 1960s, functionalist sociology and neoclassical methods were imported into industrial relations, inspired by American academics such as John Dunlop, Clark Kerr, Lloyd Reynolds, and Richard Lester. As Bruce Kaufman notes, such approaches "turned away from a historical, descriptive analysis of labor problems and toward an analytical study of labor markets."[37] They attempted to provide a general theory of industrial relations that shifted focus from the specificities of the workplace to the relative position of economic actors within "sectors" and across a wider labour market, focusing on what Murray and Giles describe as a "liberal pluralist vision of a three-cornered process of competitive accommodation among unions, management and government."[38] While abstracting to a wider economic field, questions of leadership, social hierarchy, worker morale, and patterns of interaction that had previously been taken into consideration were now omitted.

During the 1950s and 1960s, these ideas became influential in framing an impartial and objective field of value through which labour disputes were presumed to take place. Of course, this was not a foregone conclusion; rather, these disciplines came to be solidified and accepted within public agencies and the larger industrial relations system through a long process of network building.[39] These ideas found fertile ground at the University of Toronto and Osgoode Hall, where a younger generation of scholars combined the sociological jurisprudence of Laskin and Finkelman with the systems thinking of industrial relations theorists like Dunlop and Kerr.[40] For instance, Harry

36. Bruce E. Kaufman, *The Origins and Evolution of the Field of Industrial Relations in the United States* (Ithaca: ILR Press, 1993). This can be contrasted to earlier approaches to industrial relations. See Jessica Wang, "Local Knowledge, State Power, and the Science of Industrial Labour Relations: William Leiserson, David Saposs, and American Labor Economics in the Interwar Years," *Journal of the History of the Behavioural Sciences* 46, no 4 (2010): 371–393.

37. Kaufman, *Origins and Evolution*, 84.

38. "Towards a Historical Understanding of Industrial Relations Theory in Canada," 793.

39. For a discussion of the uneven influence of these ideas in Ontario, see Millar, "Shapes of Power."

40. Most notably, it is important to consider the influence of John Dunlop, *Industrial Relations Systems* (New York: Henry Holt, 1958), and Clark Kerr, *Industrialism and Industrial Man* (London: Heinemann, 1960). The influence of these texts in shaping a broader systems-building approach in industrial relations is discussed in Paul J. McNulty, *The Origins and*

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Arthurs – a young Harvard-educated law professor at Osgoode Hall who established the criteria guiding interest arbitration in Ontario's hospitals (see below) – pointed to a growing recognition that the "regulation of the labour sector is an intrinsic part of the overall task of producing a well-modulated economy."[41] From this perspective, the (legally sanctioned) strike became a normal process of economic adjustment between actors; it was, as Arthurs put it, an "exercise in discovering labour market realities." Within this framework, the purpose of government was to ensure that it did not unduly distort the dynamics of supply and demand by granting an unfair advantage to either labour or capital through its laws and regulations.[42] As Arthurs noted in his 1970 contribution to the federal Task Force on Industrial Relations, "The whole free enterprise system rests on the efficiency of private decision making in response to market pressures."[43] Any undue state interference in this context risked undermining the process.

In the 1950s and 1960s different levels of government increasingly appealed to such expertise in conceptualizing a system that would establish an economy of services in the public sector. The problem was in developing a method of governing at a distance, which would ensure both that partial political alliances would not mar the bargaining process and that an "undistorted" value could be arrived at. In this context, the rise of interest arbitration in the mid-1960s was a central object of debate. What was the role of the arbitrator in deciding on the value of service? By what method could disputes be impartially settled? It was not enough to leave the process to the discretion of a local notable or county judge. Instead, it was necessary to establish an industrial jurisprudence that could account for the growing complexity of society and the increasing significance of public interest disputes. However, exactly how such a new science of arbitration could be developed remained unclear.

The role of the professional and permanent labour arbitrator in solving collective bargaining disputes had already been widely discussed since the mid-1940s. In a central contribution to the debate, Osgoode law professor Paul Weiler in 1969 noted two distinctive ways of viewing the arbitrator's role in

Development of Labour Economics (Cambridge, Massachusetts: MIT Press, 1980); Kaufman, *Origins and Evolution*. For the Canadian context, see Murray and Giles, "Toward an Historical Understanding."

41. Harry W. Arthurs, "Developing Industrial Citizenship: A Challenge for Canada's Second Century," *Canadian Bar Review* 45 (1967): 813.

42. Through the 1960s and 1970s, this perspective is reflected in a series of contributions by Arthurs. In addition to "Developing Industrial Citizenship," see H. W. Arthurs, "Public Interest Labor Disputes in Canada: A Legislative Perspective," *Buffalo Law Review* 17 (1967–68): 39–64, as well as "Labour Disputes in Essential Industries," in H. D. Woods, *Canadian Industrial Relations: Report of Task Force on Industrial Relations* (Ottawa 1970). See also Arthurs' memoir, *Connecting the Dots: The Life of an Academic Lawyer* (Montréal & Kingston: McGill-Queen's University Press, 2019).

43. Arthurs, "Labour Disputes," 232.

the system of postwar labour relations. On the one side is the "lawyer-judge," who "brings 'legalist' tools to bear on the interpretation of the collective agreement."[44] The lawyer-judge seeks to base their decision on a close reading of the collective agreement. On the other side is the "labour relations physician," who bases decisions on non-legal criteria in the interests of maintaining peaceful, uninterrupted, and fair industrial enterprise. The prevailing view at the time was that of the physician. In the 1958 *Polymer* decision, Laskin spearheaded the view that the arbitrator "should be an innovator or creator of labour relations law and in making decisions."[45] The problem was that such an approach raised fundamental questions about the limits of the arbitrator's power.

The issue of arbitrator power became more pronounced as decisions moved beyond the purview of private parties and the arbitrator came to serve as a representative of the public interest, as in public-sector labour disputes. In this context, Weiler claimed, it was necessary to carefully delimit the role of the arbitrator; specifically, he argued, their role should be restricted to simple adjudication of collective bargaining disputes. For Weiler, the arbitrator should be bounded by the language of the collective agreement and refrain from serving as a broad policymaker. However, with the rise of interest arbitration in the public sector in the mid to late 1960s, there could be no agreement to which the process could be referred. In this context, there was a real struggle to subsume arbitrated decisions under an objective field of comparisons that could provide some economic foundation for decisions.

Toward a Hegemonic Conception of Value

Under the HLDAA, arbitrators were given no criteria with which to decide cases; rather, "they were free, and forced, to develop their own."[46] Influenced by systems-building ideas and the growing quantity of data that facilitated detailed comparisons within and between economic "sectors," an emerging cadre of labour law and industrial relations specialists set out to establish an industrial jurisprudence that could provide a solid foundation for consistent and uniform decisions in assigning wage rates. Increasingly, labour disputes were not settled through simple adjustment, or seeking to find an agreement acceptable to both parties; rather, arbitrators trained in industrial relations made a concerted effort to develop a systematic and scientific approach in adjudicating disputes. The aim was to develop a formula that could be uniformly applied in different disputes to reach a decision. This is reflected in the 1965 *Welland County Hospital* decision, in which Arthurs attempted to set

44. Paul Weiler, "The Role of the Labour Arbitrator: Alternative Visions," *University of Toronto Law Journal* 19, 1 (1969): 16.

45. Rose, address to the Labour Relations Workshop, 1970.

46. MacDonald, "Hospital Collective Bargaining," 15.

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down guidelines in determining wage rates in the hospital sector, establishing a precedent that would be widely taken up in arbitration decisions throughout the mid to late 1960s.[47]

In this decision, Arthurs turned away from approaches to arbitration that were based on adjustment, favouring a principled approach based on adjudication. Hence, he attempted to provide an industrial jurisprudence, defining objective criteria for settlement of wages that could be applied across the sector. For Arthurs, the aim was to establish a basis for deciding on value that was separated from the ideological obfuscations of justice and rooted in the material realities of the laws of supply and demand. Essentially, Arthurs' practice of arbitration was fixed to a specific conception of the economy and how it functions. The aim of arbitration, as he noted, was to derive legal conclusions based on economic facts. In seeking to establish standards of compulsory arbitration in the hospital sector, Arthurs argued, "One scans the Hospital Labour Disputes Arbitration Act in vain for any indication that 'justice' is to replace the law of supply and demand as the pricing mechanism for hospital wages."[48] It should be noted that the HLDAA makes no mention of the law of supply and demand. In fact, it provides no criteria whatsoever by which arbitrators should make their decisions. The "economy" is simply taken for granted as a determinant object by Arthurs, while justice remains an ephemeral concern, a superstructure that obfuscates the real value of things. Rather than basing arbitration on moral concepts, Arthurs argued that modern collective bargaining is undertaken through the sheer force of economic power. He stated, "arbitration is made to substitute for the strike and should therefore likewise be considered an exercise in discovering labour market realities." From this perspective, the task of the arbitrator is to simulate this economic landscape, *virtually* re-enacting the strike in order to determine the probable outcome and distributing wages accordingly.

Value is determined through abstracting from the local context, departing from the conditions of specific hospitals, to recognize the position of the hospital in a wider system. It is assigned as a relational object defined through comparisons with other hospitals. The source of value is not derived from the substance of labour itself. Arbitrators did not attribute value to hospital work based on the number of meals prepared or the number of linen sheets that were cleaned. Most arbitration reports do not even mention the costs of wages per patient day, the so-called "gold standard" of hospital measurement.[49] While both unions and employers presented briefs that emphasized more

47. Re Building Service Employees, Local 204, and Welland County General Hospital. On the influence of the decision on arbitrators, see McConnell, "Wage Standards," 237.

48. Re Building Service Employees, Local 204, and Welland County General Hospital, 139.

49. The OHSC referenced wages per patient day in assessing operations in other areas. For instance, see Ontario Hospital Services Commission, *Survey of Organization and Operations*, November 1962, Price Waterhouse and Co., RG 10-222-0-86, AO.

substantive issues, Arthurs and other arbitrators attempted to abstract from substantive issues in seeking to locate value in a wider field of comparisons. To some extent, what the workers are doing appears irrelevant. All that matters is that they can enter into a closed system with other workers in comparable institutions.

In aiming to establish grounds for determining value, Arthurs established a whole hierarchy of criteria, ranging from cost of living and difficulties in retaining staff to abstract appeals to justice. However, the most significant measure was wages in comparable hospitals whose contracts were not settled by arbitration. From 1965 to 1968, it appears that many arbitration boards based their decisions on this framework.[50] Consequently, arbitration decisions largely hinged on the struggle to define a "comparable hospital." In drawing comparisons, arbitrators would look to the size of the hospital and the kind of community in which it was situated, with those working for large hospitals in urban centres typically earning more. The lower earnings of workers in smaller communities were often justified by the assumption that there was a lower cost of living and higher quality of life. Pastoral visions contributed to a romanticized sense of the rural hospital. For instance, one arbitrator justified his decision to dole out lower wages to rural hospital workers by arguing that "a segment of our population apparently prefers to live in a smaller place rather than the busy city and are willing to accept somewhat smaller wages in exchange for what they believe is a more relaxed and pleasant life."[51]

The benchmark set by Arthurs in the 1965 *Welland* decision was a central reference point to which both unions and hospitals appealed in drafting their reports over the following three years. Hence, many hospital boards took up the view of the hospital sector as a closed system in their reports, justifying their claims to keep costs down by appealing to the low wages paid to workers in comparable hospitals. They rejected any claims to comparison outside the hospital sector, arguing that hospital norms departed from those of general industry. It was the nature of the hospital that necessitated certain patterns of work. Value, it was argued, should not be determined by looking at the work itself. It was not a matter of analyzing the numbers of bedsheets being folded or meals prepared in the cafeteria; value was derived from the position of labour in a wider system. Value was derived through comparisons between "similar" hospitals.

On this basis, the primary source of information that the hospital boards drew from was data taken from the Hospital Personnel Relations Bureau,

50. The extent to which any comprehensive rationale was adopted is unclear as the criteria informing decisions often remained implicit. However, a government commission would later conclude that Arthurs' criteria "was largely adhered to by subsequent boards of arbitration though the specific criteria were not always afforded the same weight." Ontario, Hospital Inquiry Commission, *Report*, 26.

51. Cited in McConnell, "Wage Standards," 143.

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which depicted the sector through flat tables that simply demarcated the size and geographic location of a hospital. HPRB briefs were often quite short and included a series of rebuffs to union demands based on the argument that such concessions have not been granted by other employers in the sector. In general, the information provided by hospital boards was quite limited. As mentioned above, the HPRB was a voluntary organization that only had access to data readily conceded by hospital boards. This information remained spotty, uneven, and self-selective even in the early 1970s. In fact, it was later speculated that many hospital personnel officers had been reluctant to contribute information from their hospitals to the extent that it would undercut their power, rendering them redundant in negotiations.[52]

The hospital boards were first and foremost concerned with avoiding comparisons with other industries. Standards of employment taken from industry – such as a five-day, forty-hour workweek, advance scheduling of shifts, and fringe benefits – were rejected. The hospital sector was distinctive, the boards argued, to the extent that a hospital *normally* operates twenty-four hours a day, seven days a week. The language of the briefs refers to the "inherent needs of a hospital operation." It is "essential to have adequate staff."[53] Given the emergency function of a hospital, certain circumstances may necessitate changes, meaning that there could be no rigid rules surrounding working conditions. There can be no advance scheduling. While the manufacturing sector, as a distinctive section of the economy, is rendered productive and functional through the forty-hour week, this is not necessarily the case in hospitals, which have distinctive needs and can only be rendered productive through different kinds of criteria. Moreover, hospital arbitration board appointees argued that hospitals had a right to demand special duties from their workers; it was understood to be a condition of employment when workers chose to enter this field.

Bringing Justice Back In

DESPITE EFFORTS TO EXPUNGE questions of justice from arbitration decisions, by the late 1960s it had become evident that closing off the hospital sector from other kinds of comparisons was not so easy. In fact, union arbitration board appointees refused to accept the notion that an objective conception of value could be arrived at simply through comparing wages at different hospitals. Drawing data from a wide array of sources – including academic journals, government reports, and social planning documents – they pursued a strategy of rupture, exposing the self-referential categories that were deployed in

52. Grady, "Labour Relations Quagmire."

53. London and District Service Workers Union and Victoria Hospital Board of the City of London, 19 May 1971, file 1.1 – Brief – Employers, William Walsh fonds, MG31 B27 – vol. 1, Library and Archives Canada, Ottawa (hereafter LAC).

rendering decisions, challenging the apparent distance that had been established between local boards and the OHSC, and making a case for wage rates based on health, well-being, and the cost of living.

While the rise of wildcat strikes in public hospitals in the early 1970s certainly created the impetus for a reconsideration of the value of hospital work, arbitrators were also compelled to confront contradictions internal to the system-based reasoning that they had devised. In fact, the inherent limits of a systems approach to valuation were noted from the very beginning. In his decision regarding the Welland County Hospital, Arthurs noted that arbitration awards based on settlements negotiated at other hospitals would become "increasingly artificial after all hospital wages have been determined one or more times by compulsory arbitration."[54] Weiler later noted in a 1969 decision that "after a time the arbitration decisions themselves become a major factor determining the kinds of settlements which will be agreed to … The level of private agreement will tend to reflect the trends in the awards. If this is the case, one completes the vicious circle if the awards are themselves justified by patterns of wages arrived at by settlement."[55] In other words, the inherent limits of valuating the hospital sector as a closed system created epistemological obstacles that were internal to the structure of the discourse itself.[56] In the absence of an impartial outside to which value could be referred, arbitrators increasingly confronted the problem of achieving neutrality in the settlement process.

By the late 1960s, unions were able to challenge the established jurisprudence through skilfully appealing to moral criteria. Instead of referring to systems theory, they drew expertise from long-time labour militants. For instance, Bill Walsh, a former Communist and United Electrical (UE) staffer, who had become a popular choice in representing unions in arbitration through the 1960s and 1970s, was unabashedly partial: "A lot of union nominees held to the view that they were there in a judicial role and therefore should be neutral. They took a hands-off approach. For Bill, there could be no neutrality for a union nominee. He was there to represent the union. Neutrality was a sham."[57]

The briefs of union appointees such as Walsh troubled established boundaries of comparison that arbitration boards used to frame the value of hospital work and called attention to the immoral exploitation of hospital workers,

54. Re Building Service Employees, Local 204, and Welland County General Hospital.

55. Re Building Service Employees, Local 204 and Peel Memorial Hospital [1970] 20 LAC 1 (OLRB), 11.

56. Drawing from Gaston Bachelard, I conceptualize "epistemological obstacles" as barriers to knowledge that are immanent to the system of knowing itself. See Bachelard, *The Formation of the Scientific Mind* (Manchester: Clinamen Press, 2006); see also Louis Althusser, *Philosophy and the Spontaneous Philosophy of Scientists* (London: Verso Books, 1990).

57. Cy Gonick, *A Very Red Life: The Story of Bill Walsh* (St. John's: Canadian Committee on Labour History, 2001), 255.

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contributing to the changing tone of arbitrated settlements. In a landmark 1969 decision, which was upheld following an appeal at the Ontario Superior Court, the arbitrator came to accept union appeals to justice in advancing the award:

> While in 1965, a levelling up of wages of hospital employees appeared "unfounded upon any data measurable in adjudication," today, before arbitrators, hospital units of the public service union manifest their involvement in trade union militancy by strong invidious comparisons of hospital wages and other benefits with those received by non-hospital employees (and particularly persons employed directly by government), as the top of the range, and with poverty levels established by the Economic Council of Canada and levels of municipal welfare payments, at the bottom of the range. With these examples before them, the unions now urge that their pleas for labour "justice" are not "abstract" but are concretely founded on measureable data.[58]

By 1969, the pretensions of arbitrators to objectivity were collapsing, as unions had effectively operationalized their appeals to justice, consolidating vehicles for research that could effectively outmanoeuvre the local-level administrators. Consequently, justice became a concrete rather than abstract unit of measure that could be taken up in rendering impartial decisions.

Unions adopted three strategies in challenging the articulation of the hospital sector as a closed system. First, they set out to expand the domain of comparisons, making non-professional hospital work comparable with lines of work in other economic sectors. Rather than presuming that different norms should apply to different industries, unions argued that the hospital sector constituted a "depressed industry" and that some form of compensation was required to bring wages in line with the "general economy." As evidence, union representatives compared the average wages in the hospital sector with the average income in the cities in which they were bargaining.[59] By the late 1960s, this rationale was accepted by some boards. For instance, the Meaford General Hospital award (1968) noted that arbitration boards should be "improving the wage and working conditions of hospital workers more rapidly than the wages and conditions of most other groups in the community are being improved until hospital wages clearly bear an equitable relationship with the wages paid generally throughout the Province of Ontario."[60] This was upheld by the decisions at Peel Hospital (1969), Ottawa Civic Hospital (1969), and Hamilton Civic Hospital (1969), which threw out the "comparable hospital doctrine" and focused much more on the workers' "general economic position." This also led to comparisons of hospital workers with workers in other sectors. For instance, one union submission noted that city trash collectors were paid

58. Re Canadian Union of Public Employees, Local 576, and Trustees of Ottawa Civic Hospital, 149.

59. See, for example, CUPE, Local 576, and Ottawa Civic Hospital, 5 and 6 March 1973, William Walsh fonds, MG31 B27 – vol. 1, file 1.6, LAC.

60. CUPE, Local 576, and Ottawa Civic Hospital.

much more than hospital orderlies: "Where is the justice in this situation? Is the City Garbage man performing a more skilled or performing a more useful service to society than a Hospital employee? The answer is of course NO."[61] Union advocates also noted the gendered dimensions of this, pointing out that "90 percent of hospital employees in Ontario are women; therefore, the whole hospital industry, with its wage levels far below community averages, discriminates in the worst way, against women."[62]

Second, unions challenged the distribution of wages *within* the hospital sector. Building on feminist analysis, which was increasingly influential in public-sector unions in the late 1960s, and evoking the "equal pay for equal work" clause in the *Employment Standards Act*, unions made a case that the wages in occupational categories associated with women required adjustment. It was noted that "relative wage rates of cleaners/maids and orderlies/nursing aides do not reflect the (alleged) fact that duties of the two groups are 'essentially the same'; the latter have lower rates because it is a traditional 'female' classification."[63] This further destabilized the claims that wages should be set at the sectoral level and instead led to investigations of job classification schemes by both unions and the OHSC through the 1970s.

Third, unions framed labour in the hospital sector as exceptional, meriting employer accommodations. Drawing from industrial psychology, unions argued that working abnormal hours in the hospital contributed to poor diet, irregular sleep, and disconnection from family and friends. For instance, in addressing irregular work hours, one union appointee cited US and European research in noting that "physical health problems arise as a result of a worker's inability to adjust his time-oriented body functions to the requirements of his shift; the first symptoms are difficulties in sleeping, eating and elimination patterns leading to fatigue and poor appetite; then general over-all physical health adjustment problems."[64] From this perspective, union appointees counterposed a substantive view of value to the objectivist economic language of the hospital appointees. This argument was unabashedly moral in tone, advancing an argument that justice must be done. Moreover, unions argued that the norms for employment should be based on what is healthy for the worker. If hospital work departs from these norms, then hospital workers should be compensated.

It should not be presumed that such identities pre-existed the process of arbitration, as if the experiences of hospital workers were transparently expressed before the arbitration boards. The law does not exist as part of an "expressive

61. London and District Service Workers Union and Victoria Hospital Board of the City of London, 19 May 1971, file 1.2 – Brief – Union, William Walsh fonds. MG31 B27 – vol. 1, LAC.

62. Submission of Ontario Division, CUPE, to Guidon, AO.

63. Ontario, Hospital Inquiry Commission, *Report*, 15.

64. CUPE, Local 576, and Ottawa Civic Hospital, 5 and 6 March 1973, William Walsh fonds, MG31 B27 – vol. 1, file 1.6, LAC.

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totality," that is, a simple expression of underlying class relations. Rather, the manner in which economy was taken up and defined in arbitrated settlements demonstrates how the legal process itself performatively constructs class relations. In fact, it was through connecting and disconnecting "different areas, regions, identities, functions and capacities existing in the configuration of a given experience" that union nominees were capable of advancing hospital workers as impoverished even by the minimal standards of social security, on the one hand, and as part of a broader "public sector" identity, on the other.[65]

In their reports, union appointees actively exposed the self-referentiality of closed systems as a means of assigning value and consequently challenged the underlying premises of industrial pluralism, which regarded unions and employers as independent and equivalent actors functioning in a broader decontextualized field of comparisons. There was no Archimedean standpoint from which labour relations in the hospital sector could be viewed. There could be no speculative standpoint that would predict the outcome of collective bargaining *as if* there was a right to strike. There was no outside or impartial space of evaluation. There was only the cramped physical space of the hospital within which the bodies of hospital workers were exposed to intensifying discipline and subjected to "abnormal" and profoundly "unhealthy" hours of work. The wide array of sources that unions drew from is notable. Through their growing research departments, they were able to collect and compile information from news clippings, government reports, academic journals, and various social planning agencies.

Such appraisals of hospital work on the basis of justice were fed by an increasing militancy on the part of the rank-and-file through the late 1960s and early 1970s. The illegal strikes of this period are often portrayed as wildcats – spontaneous and deeply anti-bureaucratic, challenging the complacency of the union leadership – but the struggles of workers in the hospital sector are notable to the extent that they fused together a commitment to illegal action with the development of coordinated bargaining and research capacities. For instance, the advancement of a Toronto catch-up campaign in 1973 explicitly linked a commitment to illegal strikes across twelve Toronto-area hospitals with appeals for justice in the arbitration process and a concerted public relations campaign that sought to expose the substandard conditions of hospital workers. The union gave notice of its intent to strike well in advance and, even though it threatened illegal action, it gained widespread support from the major newspapers, Toronto city councillors, and civil society organizations. For instance, the *Globe and Mail* excused the militancy of the Toronto hospital workers, claiming that this was not so much an illegal strike as "an effort to get the provincial Government and the hospitals to pay some serious attention to the very real frustrations and inequities the hospital workers face."[66] The

65. Jacques Ranciere, *Disagreement* (Minneapolis: University of Minnesota Press, 1999), 40.

66. "Time for Consultation Not Confrontation," *Globe and Mail*, 23 March 1974, 6.

Toronto hospital workers would effectively double their wages through this struggle, and through the arbitration process these wages would be rolled out to hospital workers and workers in other sectors all across the province. In this context, the provincial government's apparent distance from the case quickly broke down.

Inflated Identities

The economic crisis of the mid-1970s is often attributed to rapidly growing inflation, with the Consumer Price Index for Canada jumping by between 10 per cent and 12 per cent annually from 1974 to 1976. However, this inflationary crisis did not just express the volatility of the world market. It also reflected the breakdown of the arbitration system as an accepted method of enforcing an economy of service and presaged the decline of industrial relations as a hegemonic discourse in addressing labour disputes more broadly. In the face of the rapidly rising cost of living, the appeal to the laws of supply and demand in providing a stable basis for the determination of value increasingly rang hollow. The limited pool of qualified arbitrators faced growing strains as negotiated settlements became less likely in the face of rigid wage guidelines imposed from above, and as power was increasingly concentrated under the Ministry of Health. In the absence of established criteria for determining wage rates, there was a sort of inflation of the arbitration process as more and more time and energy were put into it. This is reflected in the generation of disputes, the composition of reports, the movement of officials, and the changing rationale for decisions rendered by arbitrators.

A 1970 report by the HPRB noted that "many recent Awards of Arbitration Boards have created an ever-increasing spiral in wages and benefits." This made it more difficult to arrive at negotiated settlements and led to a growing reliance on arbitration "both because of recent Union successes through the avenues of arbitration and the difficulty in obtaining ratification by the membership of negotiated settlements." The increasing demand for arbitration was further exacerbated by a severe shortage of experienced chairmen, necessitating greater use of inexperienced individuals from varying disciplines. "Consequently," the HPRB report stated, "such chairmen with a wide range of philosophical and social approaches to salary and fringe benefit determination have reached decisions setting a wide range of salary rates based on contradictory and inconsistent principles."[67] In confronting the intransigence of the provincial government, the rapidly growing demand for arbitration services, and the growing expertise of the workers and hospitals, the arbitration process

67. Hospital Personnel Relations Bureau, "Critique as to Major Considerations in Current Bargaining Procedures under the Hospital Labour Arbitration Act and Outline of Alternate Remedies," 21 May 1970, n.p., Ontario Personnel Relations Bureau fonds, RG 10-222-0-297, AO.

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was pulled apart at the seams, increasingly losing coherence and failing to provide an "impartial" method through which value could be assigned.

As a result of the growing expertise of unions and hospital boards, the amount of evidence collected for the arbitration process increased significantly through the late 1960s and early 1970s. The proliferation of data had destabilized the criteria for reaching decisions, and thus it became more difficult to apply a comparative formula in assigning value. We see the proliferation of different lines of measurement. The expertise of arbitrators was called into question by both hospital boards and unions. Moreover, arbitrators raised concerns about the quality of data available. By the late 1960s, both employers and workers were complaining about the significant amount of time that it took to reach an arbitrated settlement.

In confronting the rapidly rising costs of health care throughout the late 1960s and early 1970s, the provincial government increasingly intervened, doing away with the OHSC and putting authority directly in the hands of the Ministry of Health, which imposed increasingly sophisticated budget guidelines intending to control costs. This led to the breakdown of bargaining relationships, as labour disputes were increasingly taken to arbitration. Through the early 1970s, with growing demand for the services of a limited supply of skilled arbitrators, the process was increasingly delayed: reaching a decision took an average of nine months. This became especially significant in a context of rising inflation, as a decision that appeared to be relatively generous in early 1974 would appear to be quite conservative nine months later. Hence, even greater pressure was placed on the arbitration system, as the unions pushed for more frequent collective bargaining with the aim of keeping up.

The inflation of the process was notable not only at the level of arbitration but in the day-to-day management of the workforce. For instance, an article in *Hospital Administration in Canada* penned by an anonymous personnel relations officer warned of the increasing amount of time consumed by hospital management in handling grievances on the shop floor. "As unions become more active, to protect their membership, the personnel department's job becomes bigger, more demanding," the writer noted. "Department supervision is under more strain and life becomes increasingly more frustrating."[68] Far from the pursuit of a transparent and functional managerial environment, this is described as a deliberate tactic of escalation used by the union to increase its control over the workplace. The personnel officer warned that any grievances should be nipped in the bud before they grow to consume more and more of the personnel department's time.

By the mid-1970s, industrial relations specialists were increasingly complaining about the haphazard practices of state officials who ignored the established channels in order to advance expedient solutions. Political leaders

68. "Living with a Militant Union," *Hospital Administration in Canada* 15 (1973): 58.

had come to privilege the *public mood* over *public interests*, these specialists argued, as governments impulsively acquiesced to public outrage and ignored the more sensible advice of industrial relations experts.[69] With the fear of causing a public backlash, politicians faced the dangerous temptation to take the easy way out and deny the right to strike to public-sector workers altogether.

In fact, such sentiments reflect the declining hegemony of industrial relations as a science deemed capable of providing a technical solution to the problem of determining value in the public sector.[70] As political leaders targeted arbitrators for contributing to a vicious cycle of wage inflation – assigning wage increases to workers on the basis of dignity and justice rather than on the basis of economy – arbitrators were increasingly cut out of the process as governments moved to legislate wage restraint directly by the mid-1970s.

Conclusion

While many studies have looked at the emergence of a juridical regime centred on the rights of workers through the postwar period, less research has been done on the economic models deployed in mediating labour disputes.[71] In this article, I have explored how industrial relations specialists addressed questions of economy by developing methods through which the true value of labour could be determined without resorting to direct state intervention. This problem was especially pronounced in the public sector, as workers in municipalities, utilities, schools, and hospitals increasingly coordinated together to effectively make demands for improved wages and working conditions. In this context, I have highlighted the rise of interest arbitration through the mid-1960s as a method through such matters could be settled "impartially."

Rather than viewing interest arbitration as part of a closed regime, I explore how it was part of an institutional dynamic that was constantly opening to new problems and contradictions. This led to a proliferation of lines of comparison, as unions and hospital boards were provoked to develop increasingly sophisticated practices in the classification and enumeration of hospital work. In seeking to achieve some modicum of stability, a budding cadre of industrial relations specialists attempted to establish overarching criteria that could be taken up and uniformly applied in the adjudication of disputes. In this way, arbitrators attempted to frame the hospital sector as a closed system, within

69. Robert E. Clarke, "Commentary," in Alexander C. Pathy, ed., *The Problem of "Essential Services": Inconvenience, Importance, or Emergency* (Montréal: McGill University Industrial Relations Centre, 1980), 30.

70. For a fuller discussion of the decline of industrial relations as a discipline, see Kaufman, *Origins and Evolution*.

71. For discussions of regimes of industrial legality, see Fudge and Tucker, *Labour before the Law*; McInnis, *Harnessing Labour Confrontation*; Russell, *Back to Work*.

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which the value of labour was established in comparisons between hospitals based on size and region. However, this approach began to break down by the late 1960s. Building from an increasingly militant rank-and-file movement and a growing body of data that revealed the extent of exploitation in the hospital sector, labour officials through this period were able to reframe the arbitration process around questions of justice.

The reterritorialization of non-professional care work – that is, removing valuation from the confines of the charitable enclosure and putting it in circulation through a wider system of social insurance – created an opening for hospital workers to make demands for a decent wage as part of a wider economy. However, the power of hospital workers to rescale collective bargaining in this way fed into growing concerns about distorted wages – concerns that were raised not just by state officials but also by policymakers all the way up the chain of hospital administration and feeding into provincial government policy. Under an integrated and balanced system of health care, the wage gains granted to Toronto hospital workers in 1973 rippled across the province and across the country, giving unions in other hospitals bargaining leverage. These wage gains leaked into other jurisdictions, as janitors in public schools and government buildings could appeal to rates of pay in the hospital sector; moreover, workers in the private sector could take up these guidelines in advancing their own demands.

Increasingly, the process of arbitration became inflated, bloated with irreconcilable economic facts that increased the amount of time required to make decisions. In this context, policymakers took up the successful struggle of Toronto hospital workers as evidence of a wage-price spiral that was fuelling rampant inflation into the 1970s. In the wake of the strike, the OHA engaged in a massive PR campaign and established Hospital Employee Relations Services, which would increasingly step directly into negotiations between hospital boards and the unions. This was paralleled by the abandonment of industrial jurisprudence as a realistic goal and the subsequent decline of industrial relations as an impartial academic discipline, giving way to ad hoc intervention by elected officials who drew increasingly on the rhetoric of crisis in justifying emergency interventions. In fact, state officials would identify the wage gains in the hospital sector as a justification for the imposition of wage and price controls in 1975, anticipating the shift to directly coercive methods employed by state agencies in the resolution of labour disputes through the 1980s and 1990s.[72]

72. As documented in Leo Panitch and Donald Swartz, *From Consent to Coercion: The Assault on Trade Union Freedoms* (Toronto: Garamond, 2003).