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Toronto, Ontario M2H 3H9



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JERRY DIAS
National President
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PETER KENNEDY
National Secretary-Treasurer
Secrétaire-trésorier national

October 16, 2014

By Fax (416) 326-7531
and By Regular Mail

Peter Gallus, Director/Registrar
Ontario Labour Relations Board
505 University Avenue, 2nd Floor
Toronto, Ontario M5G 2P1

Dear Sir:

Re: Unifor and its Locals 127 and 35 and Navistar Canada Inc., OLRB File No. 0520-14-U

As the OLRB is aware from the record of the above captioned file, this matter has been adjourned *sine die*. The applicant union hereby requests that the matter be brought on for hearing. The applicant union estimates that three days of hearing ought to be fixed to complete this matter.

The applicant union also files the attached letter containing supplementary particulars regarding this file.

Thank you for your attention to these matters.

Yours truly,

LEWIS GOTTHEIL
Counsel, Unifor

LG/lc/cope343
Enc.

cc. K. Lewenza, B. Chernecki, J. Mitchell, R. Reaume-Local 127, R. Charron-Local 35

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Dear Sir:

Re: Unifor and its Locals 127 and 35 and Navistar Canada Inc., OLRB File No. 0520-14-U

This letter serves to provide (i) supplementary factual particulars, and (ii) submissions pertaining to the law regarding the respondent's duty to bargain in good faith, and failure to do so, based on the facts as pleaded.

Part I – Supplementary Particulars

1. On April 11, 14 and 15, 2014 Navistar's appeal of the Notice of Intended Decision dated March 7, 2013, issued by the Financial Services Commission of Ontario and referred to at paragraphs 33 and 34 of Schedule "A" of the complaint was heard by the FST.
2. On July 11, 2014 the FST issued a ruling. The FST dismissed Navistar's appeal. Further, the FST granted the Union's request to expand the scope of the laid off workers who are entitled to the statutory enhancements provided by the *Pension Benefits Act* in connection with a partial plan windup of Navistar's pension plan for union employees.
3. The FST ruled that workers terminated on or after February 2, 2009 were/are entitled to receive the deemed consent of Navistar to speak early unreduced pension benefits if they meet the eligibility requirements under s. 1.03 of the Navistar pension plan.
4. The FST also ruled as follows:

"Having considered all of the evidence and submissions before us, we find that a partial Plan windup exists under both subsections 77.03(1)(a) and (b) of the Act,

effective July 28, 2011. The Plan members included in the windup group shall include all employees "on roll" as a July 28, 2011 and those employees who terminated or retired from February 1, 2009 through and including July 28, 2011.

Further we have determined that Plan members who were on layoff or disability and who otherwise met the requirements of section 7.03(b)(iii) of the Plan, should be granted the 0.9 years of banked credited service, such additional credited service not to go beyond the later of the individual's termination date or the effective windup date of July 28, 2011.

Further all Plan members who terminated prior to July 28, 2011 and met all the eligibility requirements for entitlement to the special early retirement benefit in section 1.03 of the Plan (the "SER Benefit"), other than the consent of the Applicant, are entitled to the SER Benefit pursuant to subsections 40(2) and (3) of the Act, if certain conditions are met as described below.

All Plan members who combination of age plus years of continuous employment or membership in the Plan equals 55 years or more on the effective date of Plan partial windup, would also be entitled to the SER Benefit, once the member has met all eligibility requirements under section 1.03 of the Plan except the consent of the Applicant, pursuant to subsections 74(1.3) and (7) of the Act."

5. The hearing of the union's application set for September 3, 2014 was adjourned *sine die* on a without prejudice basis.
6. On September 9, 2014 the applicant union wrote the respondent, made certain requests and submissions to which a reply was sought. A copy of same is attached.
7. No substantive answer has been received from the respondent despite a reasonable amount of time having passed.

Part II – Supplementary Observations

8. The decision of the FST demonstrates that in the eyes of that Tribunal, Navistar's position regarding pension benefit entitlements for union employees upon closure of the facility is and was inferior to the minimum standards guaranteed by the *Pension Benefits Act*.
9. The dispute over pension benefit entitlements was a contributing factor leading to the current breakdown and impasse; Navistar's initial insistence that the union accept less than the statutory minimum is an aspect of its violation of the duty to bargaining in good faith.
10. The Union/Applicant submits further that the narrative set out in this application demonstrates several aspects of conduct amounting to bargaining in bad faith as that phrase is understood in the jurisprudence.

11. Navistar has made clear that it is not ready to discuss or resolve in a substantive way the matter of severance entitlement until the pension benefit entitlement upon windup issue is fully resolved. This constitutes a violation of the statutory duty to bargain in good faith.
12. Moreover, more generally, the insistence of the company that the union accept statutory minimum standards with respect to two key aspects of a closure agreement, namely severance and pension entitlements, (after initially insisting that the Union accept less than the guarantees offered by the *PBA*) has been maintained without regard to what would reasonably be required to make a closure agreement between a major multi-national corporation and a Canadian union with respect to a large industrial truck manufacturing facility with over 1000 employees. Further, in some instances Navistar insists that a worker is entitled to less than the statutory minimum provided in the *ESA 2000*.
13. The delaying tactics of the respondent employer with respect to efforts to conclude an agreement served to frustrate the process and demonstrated the company was not open to making an agreement except on the terms of minimum standards legislation. This is to say that the company intended to make no agreement at all since employees can have access to minimum standards entitlements without the intervention of or representation by a collective bargaining agent. Contrary to the company's expressed position to the Courts of Ontario that the parties must bargain a severance pay resolution for all workers, concurrently Navistar has dealt with individual workers individually by paying out individual minimum severance entitlements and demanding a renunciation and release of all rights. Navistar's insistence that a worker sign a release or waiver of liability is also a breach of the minimum standard rules expressed in the *ESA 2000*.
14. On the other hand, the Union has demonstrated flexibility and has made significant movement towards finding a resolution to the matter of plant closure since the discussions began many months ago.
15. The applicant Union reserves the right to expand upon its submissions regarding the application of the law to the facts as pleaded or proven at an appropriate time as directed by the OLRB.

Yours truly,



LEWIS GOTTHEIL
Counsel, Unifor

LG/ww/lc/cope343

cc. K. Lewenza, B. Chernecki, J. Mitchell, R. Reaume-Local 127, R. Charron-Local 35, R. Salisbury-Gowlings

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PETER KENNEDY
National Secretary-Treasurer
Secrétaire-trésorier national

September 9, 2014

Sent by Fax: 519-571-5020
and Email: Rob.salisbury@gowlings.com

Robert Salisbury
Gowlings
50 Queen Street North,
Suite 1020
Kitchener, ON

Dear Sir,

Re: Navistar Canada Inc. and Unifor and its Locals 127 and 35

Please find attached a document entitled Appendix "A" in which the union lists several points or questions for which we seek the company's reply forthwith.

Thank you for your attention to this matter.

Yours truly,

LEWIS GOTTHEIL
Counsel, Unifor

LG\lc\cope343

cc: B. Chernecki, J. Mitchell, J. Wareham, C. Wiebenga, J. Lucier, S. Galea

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APPENDIX "A"

1. The union understands that there are several workers who are entitled now, without objection, to severance pay under the *ESA*, notwithstanding the parties' disagreement over certain of the rules in the *Employment Standards Act 2000* and the Regulations, including Regulation 288/01. We understand that the company will pay these workers their respective severance pay entitlement **subject** to the workers signing off individually a form called the "Irrevocable Recall Rights Election" form, a copy of which is attached. The union is aware that this form has been signed by other workers in the past. The union has never agreed to or condoned the use of this form. However, we realize that certain workers have decided in any event to sign it because they were anxious indeed perhaps desperate to obtain the severance pay compensation from the company in order to pay the bills etc. This letter confirms the union's opposition to the use of the attached form. It is our position that this is both improper and illegal for the company to insist that a worker sign a "Release of Liability" undertaking in order to obtain his or her severance pay entitlement. The only statement that the company is entitled and should receive regarding the payment of severance pay is a renunciation of recall rights under the collective agreement. But, again, a worker has no legal obligation to sign a waiver of liability or discharge of claims in order to obtain his or her severance pay. In this respect, the union agrees that paragraph 1 of the attached form may remain in the attached form. However paragraphs 2 and 3 are entirely improper and should be removed. Please confirm as soon as possible that the company will remove paragraph 2 and 3 from the Irrevocable Recall Rights Election form.
2. The union has made certain requests for production/disclosure. They are attached. We repeat that request though the union no longer requires the seniority list or the up-to-date list of recipients of severance pay. But we need the defined benefit pension plan membership list, including the members date of birth, pension class code, credited service calculation, date of layoff/last day of active employment.

Please confirm that the company will produce these materials and when it will be produced.

3. In the last offer made by the company on or about March 24, 2014, the company offered the following position on three key outstanding issues:
 - 1) With respect to the pension issue the company position was expressed as being "subject to the outcome of the FST decision and any and all related appeals;
 - 2) With respect to termination and severance pay the company position was expressed as follows:

Company will meet legislative requirements subject to final pension eligibility determinations;

- 3) With respect to the issue of transition payments, the company position was expressed as: no transition payments to be made.

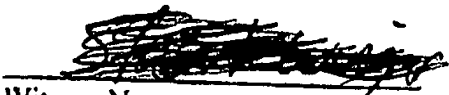
Will the company make any other offer regarding the matter of transition pay? Will the company entertain any improvements to its monetary offer either by way of an enhanced notice or severance payment to some or all workers, transition pay to workers not entitled to severance pay, or any other monetary compensation to address the loss of income suffered by the workers due to termination of employment. In other words, will the company make any other offer in the nature of compensation which is superior to the legislated minimum standards now spelled out in the *PBA* and the *ESA*. Please advise us to the company's position as soon as possible.

4. The Company is denying workers with just under 5 years' service on June 29, 2009 (or their respective last day of employment) their entitlement to "grow into" 5 years' service during their 35 consecutive weeks of layoff. Please see the attached email chain as an example of the issue. Please advise that the company will change its position.
5. The Company at the very least should contact the union with respect to communications to or from workers who seek severance pay on their own or any other individual entitlement. If the Union is not involved then it is improperly forced to "catch up" on issues or disputes after they have gone too far.

Irrevocable Recall Rights Election

1. I, (Employee), hereby elect to be paid any severance pay to which I may be entitled in accordance with the Employment Standards Act, 2000 and to renounce all seniority rights and rights to recall to employment I may have now or in the future with the Company.
2. I acknowledge that I have no claims of any kind or nature whatsoever against the Company, its Officers and Directors or other employees relating to my employment, the termination thereof other than specifically provided for in this agreement.
3. I agree not to file any grievance or any other claim or to commence any action with respect to my employment, the termination of my employment or this irrevocable election to sever my employment and to renounce my recall rights.
4. I have entered into this agreement voluntarily having had the opportunity to obtain advice from legal counsel or representative of my choosing.


Employee's Name


Witness Name


Employee's Signature


Witness Signature


Dated


Dated



From: Vanvroenhoven, Henry [mailto:Henry.VanVroenhoven@Navistar.com]
Sent: July-15-14 8:05 AM
To: Sonny Galea
Cc: 'Joe Pisquem'
Subject: RE: Navistar

Hi Sonny,

Please refer to Section 64 (1) of the Employment Standards Act, 2000. According to Company records Joe commenced employment on August 9, 2004 and did not meet the five (5) year requirement.

Henry

From: Sonny Galea [mailto:skgalea@xplornet.com]
Sent: Monday, July 14, 2014 8:12 PM
To: Vanvroenhoven, Henry
Cc: 'Joe Pisquem'
Subject: FW: Navistar

Hi Henry, can you explain to me the provision of the ESA that relieves Navistar from paying severance to Joe?

Regards
Sonny Galea

Begin forwarded message:

From: "Vanvroenhoven, Henry" <Henry.VanVroenhoven@Navistar.com>
Date: July 14, 2014 at 3:06:42 PM EDT
To: Joe Pisquem <jpisquem@gmail.com>
Subject: RE: Navistar

Hi Joe,

We have processed a change in your employment status from that of laid off to terminated as your recall rights have expired. Manulife was advised of the change in status.

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The Company is of the opinion that in accordance with ESA provisions that there is no severance entitlement owing.

Regards,

Henry Van Vroenhoven, CHRP
Manager, Human Resources-Employee Relations Navistar Canada, Inc.
Phone: (905) 332-2968
Cell: (905) 379-7577
Fax: (905) 332-2975
e-mail: Henry.VanVroenhoven@navistar.com

-----Original Message-----

From: Joe Pisquem [mailto:jpisquem@gmail.com]
Sent: Monday, July 14, 2014 7:53 AM
To: Vanvroenhoven, Henry
Subject: Navistar

Good morning Henry,

Last week I received some paperwork from Manulife informing me that my stays with Navistar has changed. I do understand recall rights have expired.

I have not received any official documentation from Navistar on my release. I am inquiring on my severance package entitlement or procedures I may need to complete on my end.

Regards

Joe Pisquem

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