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## Facsimile

**To:** L. N. Gottheil  
**Company:** UNIFOR Legal Department  
**Fax Number:** 416-495-3786  
**City/Country:** Toronto, ON  
**Phone Number:** 416-495-3750

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**Date:** June 3, 2014  
**Re:** UNIFOR and its Locals 127 and 35 and Navistar Canada Inc.  
OLRB File No. 0520-14-U  
**Total Pages:** 9 (including cover)  
**File Number:** H188291  
**CopyTrak #:** 1016

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June 3, 2014

**DELIVERED BY COURIER**

Mr. Peter Gallus  
Registrar  
Ontario Labour Relations Board  
505 University Avenue, 2nd Floor  
Toronto, ON M5G 2P1

**Robert E. Salisbury**  
Direct 519-575-7520  
Direct Fax 519-571-5020  
rob.salisbury@gowlings.com  
File No.H188291

Dear Mr. Gallus:

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

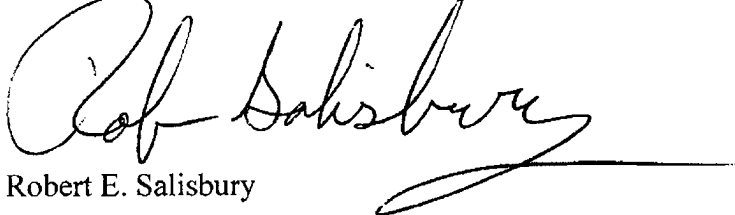
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We are the solicitors for the Responding Party, Navistar Canada Inc., in the above-captioned matter. Please find enclosed the original and one copy of the Response to the Application Under Section 96 of the Act. Our client's response has been delivered to the Applicant.

If you have any questions, please feel free to contact me.

Yours very truly,

**GOWLING LAFLEUR HENDERSON LLP**



Robert E. Salisbury

RES:aa  
Encl.

cc: L.N. Gottheil, Counsel for the Applicant (fax 416-495-3786)

EDC\_LAW\1172824\1

**Form A-34**

File No. 0520-14-U

LABOUR RELATIONS ACT, 1995

**RESPONSE TO APPLICATION  
UNDER SECTION 96 OF THE ACT  
(UNFAIR LABOUR PRACTICE)**

BEFORE THE ONTARIO LABOUR RELATIONS BOARD

**Between:**

UNIFOR and its LOCALS 127 and 35

**Applicant,**

- and -

NAVISTAR CANADA INC.

**Responding Party.**

**The responding party states in response to the application:**

**OR**

\_\_\_\_\_ **intervenes in this proceeding and**  
**(Name of Intervenor)**

**states in response to the application:**

1. (a) Correct name of the responding party/intervenor:

Navistar Canada Inc.

(b) Address, telephone number, facsimile number and e-mail address of the responding party/ intervenor:

Navistar Canada Inc.  
5500 North Service Road  
Burlington, ON, L7L 6W6

Attention: Henry Van Vroenhoven  
Tel: (905) 332-2968  
Fax: (905) 332-2975  
Email: henry.vanvroenhoven@navistar.com

**Form A-34**

- (c) Name, address, telephone number, facsimile number and e-mail address of a contact person for the responding party/intervenor:

GOWLING LAFLEUR HENDERSON LLP  
Barristers and Solicitors  
50 Queen St. N., Suite 1020  
Kitchener, ON N2H 6M2

Attention: John P. Illingworth

Tel: (519) 575-7507  
Fax: (519) 571-5007

Attention: Robert E. Salisbury

Tel: (519) 575-7520  
Fax: (519) 571-5020

- (d) E-mail address of representative and assistant (if any):

**Counsel:** John.illingworth@gowlings.com **Assistant:** Angela.antoniades@gowlings.com  
Robert.salisbury@gowlings.com

**Paralegal:** **Assistant:**

**other:** **Assistant:**

- 2. (a) Name, address, telephone number, facsimile number and e-mail address of any other person, trade union, employer or employers' organization who may be affected by the application and who has not already been identified by another party:

- (b) The person, trade union, employer or employers' organization named in paragraph 2(a) is affected by the application for the following reason(s):

**[You must deliver to the person(s) named in paragraph 2(a): a copy of the application, a copy of the Notice to Responding Party and/or Affected Party of Application under Section 96 of the Act, a completed copy of your response, and a blank response form. You must also complete the attached Certificate of Delivery.]**

- 3. The following statements in the application are agreed to:

Please see Schedule "A" attached

Form A-34

4. The following statements in the application are not agreed to:

Please see Schedule "A" attached.

5. In support of its response, the responding party/intervenor relies on the following material facts:

Please see Schedule "A" attached

(Include **all** of the material facts on which you rely including the circumstances, what happened, where and when it happened, and the names of any persons said to have acted improperly. Please note that you will not be allowed to present evidence or make any representations about any material fact that was not set out in the response and filed promptly in the way required by the Board's Rules of Procedure, except with the permission of the Board.)

6. In respect of the order(s) requested by the applicant, the responding party/intervenor states:

Please see Schedule "A" attached

(Describe your position with respect to the order(s) requested by the applicant.)

7. **[Complete this section only if you are intervening in this case.]**

The intervenor claims to be affected by the application for the following reasons:

8. Other relevant statements:

**Hearing Estimate Information:**

[Note to Applicant: If you disagree with the hearing estimate of the responding party/intervenor, you must file with the Board your own Hearing Estimate form (Form A-16) within seven (7) days of receiving this response.]

9. Estimated number of days to complete the whole case (including evidence and argument): 5

10. Number of major witnesses I expect to call: 2  
(A major witness is one expected to testify for at least one day, including cross-examination.)

**Form A-34**

11. Number of minor witnesses I expect to call:  
(A minor witness is one expected to testify for less than one day, including cross-examination.)

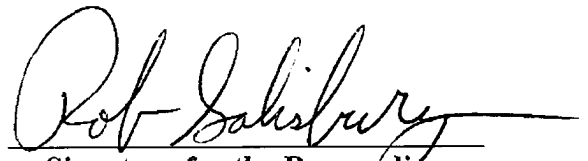
[ X ] do  
12. (a) I [ ] do not intend to make preliminary motions or objections.

(b) The preliminary motions or objections I intend to make are:

The application fails to disclose a *prima facie* case giving rise to a complaint that section 17 of the *Labour Relations Act, 1995* has been violated.

(c) Estimated time required to hear the preliminary objections or motions: 3 hrs

**DATED: June 3, 2014**

  
**Signature for the Responding  
Party/Intervenor**

**Form A-34**

**CERTIFICATE OF DELIVERY**

- 1. I certify that a completed copy of the response was delivered to  the applicant,  the responding party, and/or  any affected party named in paragraph 2 of the application or in a response filed by another party, as follows:

L.N. Gottheil, Counsel  
UNIFOR Legal Department

416-495-3786

\_\_\_\_\_  
Name of Organization and name  
and title of person to whom  
documents were delivered

\_\_\_\_\_  
Address or facsimile number to  
which documents were delivered

\_\_\_\_\_  
Name of Organization and name  
and title of person to whom  
documents were delivered

\_\_\_\_\_  
Address or facsimile number to  
which documents were delivered

- 2. **[Complete this section only if you named an affected party in paragraph 2 of your response that was not named in paragraph 2 of the application or in a response filed by another party.]**

I certify that the following documents were delivered to the affected party named in paragraph 2 of this response, as follows:

- o a copy of the application;
- o a copy of the Notice to Responding Party and/or Affected Party of Application under Section 96 of the Act (Form C-12);
- o a completed copy of the response; and
- o a blank copy of a Response to Application under Section 96 of the Act (Form A-34).

\_\_\_\_\_  
Name of Organization and name  
and title of person to whom  
documents were delivered

\_\_\_\_\_  
Address or facsimile number to  
which documents were delivered

**Form A-34**

[Complete either section 3 or section 4 or section 5 below.]

- 3. The documents were delivered by [ ] facsimile transmission or [ ] hand delivery on \_\_\_\_\_ at \_\_\_\_\_ a.m./p.m.  
(Date)
- 4. The documents were posted by [ ] regular mail on \_\_\_\_\_ at \_\_\_\_\_ a.m./p.m.  
(Date)
- 5. The documents were given to \_\_\_\_\_ on \_\_\_\_\_  
(Name of Courier)  
\_\_\_\_\_, and I was advised that they would be delivered not later than \_\_\_\_\_ at \_\_\_\_\_ a.m./p.m.  
(Date)

NAME: \_\_\_\_\_

TITLE: \_\_\_\_\_

SIGNATURE: \_\_\_\_\_

**IMPORTANT NOTES**

YOU MUST FILE WITH THE BOARD ONE SIGNED ORIGINAL AND ONE COPY OF THIS RESPONSE AND ANY MATERIALS THAT ACCOMPANY IT.

PLEASE CONSULT THE BOARD'S RULES OF PROCEDURE BEFORE COMPLETING THIS RESPONSE. THE RULES OF PROCEDURE DESCRIBE HOW A RESPONSE MUST BE FILED, WHAT INFORMATION MUST BE PROVIDED, AND THE TIME LIMITS THAT APPLY.

YOU CAN OBTAIN A COPY OF THE RULES FROM THE BOARD'S OFFICES AT 505 UNIVERSITY AVENUE, 2ND FLOOR, TORONTO, ONTARIO, M5G 2P1 (TEL. (416) 326-7500) OR FROM THE BOARD'S WEBSITE AT [www.olrb.gov.on.ca](http://www.olrb.gov.on.ca).

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**Form A-34**

THE BOARD ISSUES WRITTEN DECISIONS, WHICH MAY INCLUDE THE NAME AND PERSONAL INFORMATION ABOUT PERSONS APPEARING BEFORE IT. DECISIONS ARE AVAILABLE TO THE PUBLIC FROM A VARIETY OF SOURCES INCLUDING THE ONTARIO WORKPLACE TRIBUNALS LIBRARY, AND OVER THE INTERNET AT [www.canlii.org](http://www.canlii.org), A FREE LEGAL INFORMATION DATA BASE. SOME SUMMARIES AND DECISIONS MAY BE FOUND ON THE BOARD'S WEBSITE UNDER *HIGHLIGHTS* AND RECENT DECISIONS OF INTEREST AT [www.olrb.gov.on.ca](http://www.olrb.gov.on.ca).

IN ACCORDANCE WITH THE *ACCESSIBILITY FOR ONTARIANS WITH DISABILITIES ACT, 2005*, THE BOARD MAKES EVERY EFFORT TO ENSURE THAT ITS SERVICES ARE PROVIDED IN A MANNER THAT RESPECTS THE DIGNITY AND INDEPENDENCE OF PERSONS WITH DISABILITIES. PLEASE TELL THE BOARD IF YOU REQUIRE ANY ACCOMMODATION TO MEET YOUR INDIVIDUAL NEEDS.

PERSONAL INFORMATION IS COLLECTED ON THIS FORM PURSUANT TO THE *FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY ACT*, R.S.O. 1990. C.F.31 ("FIPPA"). THE INFORMATION, AS WELL AS INFORMATION RECEIVED IN WRITTEN OR ORAL SUBMISSIONS, MAY BE USED AND DISCLOSED IN ACCORDANCE WITH THE PROVISIONS OF FIPPA AND FOR THE PROPER ADMINISTRATION OF THE BOARD'S GOVERNING LEGISLATION. FOR MORE INFORMATION, SEE THE BOARD'S POLICY ON OPENNESS AND PRIVACY ON THE OLRB'S WEBSITE AT [www.olrb.gov.on.ca](http://www.olrb.gov.on.ca).

### Schedule A

The Respondent is substantially in agreement with the facts alleged in the Applicant's Schedule "A" commencing at paragraph 1 to and including paragraph 25. Thereafter, while certain allegations of fact in paragraphs 26 to 109 will not be in dispute, there are sufficient inaccuracies, out of context, and out of sequence descriptions of events which prevent the Respondent from agreeing to those facts as presented, and they are denied, unless specifically adopted in the following material facts upon which the Respondent relies:

#### Pre-Plant Closure Negotiations

1. Navistar Canada Inc. ("Navistar") was party to collective agreements at its Chatham Assembly Plant located in Chatham, Ontario. Those collective agreements were with CAW Local 127 and Local 35 and expired on June 30, 2009.
2. Prior to June 30, 2009, Navistar sent notice to the CAW of its intention to bargain for the renewal of its collective agreements with the CAW.
3. Navistar and the CAW commenced negotiations on May 4, 2009. Those bargaining efforts did not result in new collective agreements prior to June 30, 2009.
4. As at June 30, 2009 (subject to leaves of absence), all members of the bargaining units represented by the CAW at the Chatham Assembly Plant were on layoff.
5. Notwithstanding the issuance of a "no board" report on June 13, 2009, in accordance with the *Labour Relations Act*, 1995 (the "Act"), the CAW membership did not commence any strike activity and Navistar did not lock out any employees.
6. Navistar and the CAW continued negotiations after the expiration of the collective agreements, specifically on: November 18, 2009; December 9, 2009; February 16, 2010; August 19, 2010; September 29, 2010; January 20, 2011; March 8, 2011; May 5, 2011; and May 19, 2011.
7. The CAW specifically pled in response to a section 74 complaint proceeding in

September, 2010, relating to its negotiations with Navistar: "Despite being very dissatisfied with the proposals and positions [Navistar] was adopting, the union's [CAW] considered view was that [Navistar] was engaged in 'hard bargaining' as opposed to 'bad faith bargaining'."

8. The negotiation of new collective agreements was ultimately not successful and on July 28, 2011, Navistar announced to the CAW executive and CAW President Ken Lewenza that Navistar intended to close its Chatham Assembly Plant permanently.

#### **Post-Plant Closure Negotiations**

9. Following the announced closure of the Chatham Assembly Plant, negotiations commenced between Navistar and the CAW for a Closure Agreement to address amongst other issues, severance packages and pension benefits for bargaining unit members.
10. During the years 2011 and 2012, post-plant closure negotiations took place in person, by telephone, or by email on the following dates: August 19-21, 2011; September 6, 16, 19, 20 & 23-25, 2011; October 17, 18, 25, & 26, 2011; November 2, 8 & 9, 2011; December 22, 2011; January 4, 5, 17, 19, 23 & 25-27, 2012; February 6, 21, 24 & 28, 2012; and March 5, 2012.
11. At all times, and to date, Navistar recognized and acknowledged the CAW's and its successor, UNIFOR's, rights and capacity to negotiate a Closure Agreement on behalf of unionized employees who worked at the Chatham Assembly Plant.
12. As of July 28, 2011, there were approximately 551 members in the Pension Plan which are the subject of the Closure Agreement negotiations. As at July 1, 2009, 61 employees represented by the CAW had retired. Between July 1, 2009 and July 28, 2011, 43 of the employees represented by the CAW accepted severance packages. Between July 28, 2012 and December 31, 2012, a further 87 employees represented by the CAW severed their employment relationship with Navistar.
13. Both Navistar and the CAW recognized that the potential of a bargaining unit member to receive an actuarially unreduced pension will impact their eligibility for severance under

the *Employment Standards Act, 2000* (“ESA”).

14. Throughout the negotiation of the Closure Agreement, Navistar has maintained that, in identifying employees eligible for severance payments in accordance with the ESA, eligible employees should be defined as employees with greater than five years’ service as of June 30, 2009 who were not immediately retirement eligible, and not including those employees who were “on-roll” as at June 30, 2009 who by operation of the Special Early Retirement provisions would become eligible to receive an actuarially unreduced pension.
15. Throughout the negotiation of the Closure Agreement, the CAW has maintained that “on-roll” employees as at June 30, 2009 who by operation of the Special Early Retirement provisions or otherwise become eligible to receive an actuarially unreduced pension, a matter which will be determined through the final disposition of the pension windup proceedings (subject to the right of appeal), should not be excluded from receiving severance payments in accordance with the ESA.
16. By January 2012, both the CAW and Navistar had as a matter of bargaining, and subject to complete resolution of the Closure Agreement, committed to a Post-Closure Dispute Resolution Procedure to address any dispute concerning either party’s compliance with the terms of the Closure Agreement or dispute relating to the interpretation or administration of the Closure Agreement. Such disputes are to be subject to an arbitration provision which includes recognition of the application of s.49(1) of the Act and the power, authority and jurisdiction of any selected or appointed arbitrator as provided by the Act.

#### **Pension Windup Proceedings**

17. On March 23, 2012, Navistar wrote to the Deputy Superintendent of Pensions at Financial Services Commission of Ontario (“FSCO”), to request the partial windup of the non-contributory retirement pension plan with a windup date effective July 28, 2011.
18. In the proceeding commenced before FSCO, on March 7, 2013, by Notice of Intended

Decision ("NOID"), the Acting Deputy Superintendent conveyed an intention to direct that:

- The Pension Plan be wound up in part effective July 28, 2011 (date of notice of Chatham Assembly Plant closure);
- The partial wind up include Pension Plan members who ceased to be employed by Navistar after June 30, 2009 (date collective agreements with CAW expired);
- Regardless of the specific wording of the Pension Plan document, all employees (including all current, former and retired employees) should be provided with credited service calculated in accordance with the Pension Plan document, regardless of the fact that they had not returned to work; and
- All employees (including all current, former and retired employees) of Navistar who but for Navistar's consent would be eligible for special early retirement benefits should be entitled to same.

19. The NOID has been appealed by Navistar, and the outcome of that appeal process will materially impact on the identification of which employees will receive an actuarially unreduced pension benefit, which in turn will impact the negotiation of the Closure Agreement.

20. The CAW/UNIFOR and Navistar have in the course of bargaining represented a commitment to resolving the pension issues to be addressed in the Closure Agreement in compliance with and subject to the outcome of those appeal proceedings and all related appeal(s). Accordingly, as a matter of bargaining, pension issues remain unresolved as has the identification of all employees who will ultimately be entitled to receive an actuarially unreduced pension benefit.

### **Class Action Proceedings**

21. On March 27, 2012, the CAW advanced a class action in the Ontario Superior Court of Justice against Navistar which utilized Local 127's chairperson and Local 35's vice-chairperson as proposed class action plaintiffs.
22. The class action proceeding was an attempt by the CAW to remove from the Closure Agreement negotiations, in particular, the bargaining issues relating to individual bargaining unit member entitlements to benefits under the ESA.
23. The CAW made public statements to the effect that it also brought the class action proceedings as a means to exert pressure on Navistar at the bargaining table.
24. In response to the class action proceedings, Navistar brought a motion before the court in which it argued that the Ontario Superior Court of Justice lacked jurisdiction to consider individual claims by bargaining unit members for individual contractual claims where those plaintiffs continued to be represented by the CAW, absent the CAW voluntarily abandoning its representational rights as acquired in accordance with the Act.
25. Navistar specifically represented in its motion materials to the Ontario Superior Court of Justice that notwithstanding the expiration of the collective agreements with the CAW:
  - Navistar continues to have a duty to bargain in good faith.  
Sections 17 and 60, Labour Relations Act, 1995
  - The CAW/UNIFOR continues to have successor rights until declared otherwise by the Ontario Labour Relations Board if Navistar sells its business in Chatham, including a part or parts thereof.  
Section 69, Labour Relations Act, 1995
26. On May 9, 2013, Mr. Justice Gates, sitting in motions court, dismissed the statements of claim issued in support of the CAW's attempt to certify a class action proceeding against Navistar on the grounds that the court lacked jurisdiction to address individual employment claims where the plaintiffs continued to be represented by a bargaining agent subject to the requirements of the Act.

27. The CAW appealed the dismissal of the class action proceedings and, on February 7, 2014, the Ontario Court of Appeal dismissed that appeal.

#### **Bargaining Post-Class Action Dismissal**

28. Various exchanges have taken place between UNIFOR and Navistar following the February 7, 2014 dismissal of the class action proceedings. On March 24, 2014, Navistar presented an offer, acknowledging most of the still-relevant tentative agreements achieved during the course of bargaining of the Closure Agreement in 2012, prior to UNIFOR embarking on its class action proceedings, and reaffirmed its position that any bargaining regarding pension issues had to be subject to the outcome of the legislated pension appeal processes.
29. With respect to termination and severance pay, the March 24, 2014 response from Navistar reaffirmed its commitment to providing those payments required by legislation, which in turn were subject to final pension eligibility determinations.
30. The March 24, 2014 Response from Navistar also confirmed that the Post-Closure Dispute Resolution Procedure as negotiated in 2012 remained acceptable to Navistar.
31. Following the March 24, 2014 Response from Navistar, UNIFOR and Navistar met on Friday, April 11 following a day of hearing before the Financial Services Tribunal of Ontario (“FST”), which is addressing the issue of pension eligibility, a matter still to be resolved as part of the Closure Agreement bargaining. Following correspondence between the parties, Navistar agreed to hold the April 11 meeting “on the record” and despite Navistar’s preference to schedule more fulsome discussions on a Saturday in Windsor.
32. Mr. Lewis Gottheil, as counsel for UNIFOR, attended the April 11<sup>th</sup>, 2014 meeting opened discussions by asking the question of the attending representatives of Navistar: “Will you agree to send the issue of who is entitled to severance pay under the ESA to arbitration?” This had been a position first advanced by UNIFOR in bargaining correspondence dated December 13, 2013 and the question was understood by Navistar to support a proposal that, rather than bargain for what employees would be entitled to

receive in accordance with s. 6 of the ESA, UNIFOR was seeking agreement to a form of interest arbitration to resolve an outstanding bargaining issue prior to the parties having knowledge as to which employees will be entitled to receive an actuarially unreduced pension.

33. Navistar has repeatedly and consistently maintained that it would comply with the statutory requirements to pay severance pay, once it had the necessary information regarding pension entitlement, which would impact its obligations. When Navistar, in response to Mr. Gottheil's question, declined to agree to arbitrate in the course of ongoing negotiations, Mr. Gottheil and the representatives of UNIFOR in attendance stood up and walked out of the room.
34. UNIFOR has made it clear that it is not satisfied with Navistar's commitment to compliance with legislative requirements as they relate to the determination of ESA severance entitlements and has refused to bargain further with Navistar unless Navistar agrees to immediate arbitration, separate from the tentatively agreed Post-Closure Dispute Resolution Procedure which would come into effect once UNIFOR and Navistar know the outcome of the pension windup proceedings, and the parties are in a position to resolve any Closure Agreement bargaining issues arising therefrom to conclude the Closure Agreement.
35. Navistar remains willing and prepared to resume negotiations following its presentation on March 24, 2014 of what UNIFOR has acknowledged to be a comprehensive offer for settlement of the Closure Agreement.

#### **Submissions**

36. The Application fails to disclose a *prima facie* case for the relief requested.
37. Navistar denies that it has bargained in bad faith or that the parties have reached an improper impasse. However, even if all the facts alleged in the Application are assumed to be true, at its highest, the Application does not make out a case for the remedies requested. To the contrary, the Applicant's pleadings show that:



- a. Following the decision of the Ontario Court of Appeal upholding the dismissal of the attempted class action proceedings, both parties made timely efforts to resume the negotiation process.
  - b. Navistar presented a comprehensive offer for settlement on March 24, 2014.
  - c. Navistar agreed that it would meet legislative requirements with respect to entitlement to severance pay, subject to the final pension eligibility determinations, which remains outstanding.
  - d. Navistar was not intransigent in its positions following the presentation of its March 24, 2014 offer, expressing a willingness to hold negotiations on the record, and to meet on April 11, 2014, despite Navistar's preference to schedule a more fulsome Saturday meeting in Windsor.
  - e. The parties did meet on April 11, 2014, as per the Applicant's preference. In fact, it was the Applicant who abruptly walked out of the meeting.
38. Navistar has consistently represented that it will meet the legislative requirements with respect to statutory severance pay requirements. Compliance with the legislative requirements would obviously include a determination of who is entitled to severance pay pursuant to the ESA, subject to the relevant exclusions set out in section 9 of Ontario Regulation 288/01.
39. The question of who is entitled to statutory severance pay is directly impacted by the outcome of the pension plan wind-up issues currently before the FST.
40. At paragraph 29 of the Applicant's Schedule "A", the Applicant acknowledges the parties' tentative agreement to a Post-Closure Dispute Resolution Procedure, and does not identify this procedure as being an item that remains in dispute. The Post-Closure Dispute Resolution Procedure clearly provides for a grievance and arbitration procedure with respect to the adjudication of issues arising out of the implementation of the Closure Agreement.
41. Navistar has represented that, as a term of the Closure Agreement, it will comply with the

legislative requirements pertaining to statutory severance pay. Therefore, under the Post-Closure Dispute Resolution Procedure, UNIFOR would have recourse to arbitration in the event of a disagreement as to whether a worker was entitled to statutory severance pay, because it is an issue arising out of the implementation of the Closure Agreement, namely Navistar's agreement to comply with its legislative requirements.

42. Accordingly, Navistar has not refused arbitration as a mechanism for resolving disputes as to who is entitled to statutory severance pay. Rather, the disagreement between the parties is with respect to the timing of arbitration. The Applicant desires to have any disputes as to who is entitled to ESA statutory severance pay sent to arbitration prior to and independent of the outcome of the matters which remain before the FST and, it would appear, the settlement of the terms of the Closure Agreement. Navistar maintains that the determination of who is entitled to statutory severance pay is impacted by the outcome of the matters which remain before the FST, and is committed to the arbitration process outlined in the Post-Closure Dispute Resolution Procedure.
43. The facts as pleaded do not disclose that Navistar has refused to bargain. The facts as pleaded do not disclose that Navistar has improperly bargained an issue to impasse, or that there is an impasse at all.
44. Navistar further submits that the remedy requested by the Applicant in paragraphs 3 and 4 of its Schedule "B", namely that the Board direct that the matter of entitlement to severance pay under the ESA be referred to a neutral arbitrator, is not a remedy that the Board can or ought to provide.
45. The Board has long held that it does not have the power to decide the terms of a collective agreement and impose them on parties. Similarly, the Board cannot direct a third party to decide and impose terms.
46. The Applicant asks the Board to refer to arbitration an issue it describes as being at impasse. To accede to this request would constitute directing a 3<sup>rd</sup> party to determine and impose the terms of a collective agreement (in this case the Closure Agreement). Navistar submits that the Board cannot or ought not to provide such a remedy. Rather, the parties

should be free to negotiate the terms of the Closure Agreement and that any disputes regarding its enforcement be resolved through the Post-Closure Dispute Resolution Procedure the parties have already agreed.

47. Navistar respectfully requests that the Application be dismissed. Navistar reserves the right to make further submissions as may be required.