

BEFORE THE ONTARIO LABOUR RELATIONS BOARD

BETWEEN:

UNIFOR and its LOCALS 127 and 35

Applicant

and

NAVISTAR CANADA INC.

Respondent

STATEMENT OF AGREED FACTS

The parties agree that, for the purposes of this proceeding only, the following facts may be accepted by the Ontario Labour Relations Board as true, without the necessity of calling evidence as proof:

Introduction

1. The applicants, Unifor and its Locals 127 and 35 (hereinafter “the union”) are the trade union successors to CAW-Canada and its Locals 127 and 35, respectively.
2. The respondent employer Navistar Canada Inc. (hereinafter “Navistar”) was formerly known as International Truck and Engine Corporation of Canada. Navistar is incorporated under the laws of Ontario.
3. Navistar’s head office is located in Burlington, Ontario.
4. Navistar is a wholly owned subsidiary of Navistar International Corporation, a multi-national corporation with headquarters in Lisle, Illinois, USA.
5. The truck models manufactured most recently by Navistar at its Chatham facility included the International Truck brands of Prostar and Lonestar.

6. The union and Navistar are parties to a collective bargaining relationship going back several decades.
7. The terms and conditions of hourly unionized production employees (the “unionized hourly production employees”) employed at Navistar’s Chatham facility were defined and governed by successive collective bargaining agreements, made between the union, specifically Local 127, and Navistar, the last of which was in effect between January 31, 2007 and June 30, 2009.

Reference: Book of Documents of the Union Volume 1, Tab 1.

8. The terms and conditions of employment of unionized office , clerical, and salaried employees employed at Navistar’s Chatham facility (the “unionized office employees”) were defined and governed by successive collective bargaining agreements between the union, specifically Local 35, and Navistar, the last of which was in effect between January 31, 2007 and June 30, 2009.

Reference: Book of Documents of the Union Volume 1, Tab 2.

Layoffs of Hourly Production Employees

9. On or about November 2, 2008, there were approximately 1,135 unionized hourly production employees employed by Navistar at its Chatham facility represented by the union. Approximately 852 of these hourly production employees were actively employed, and approximately 283 were on layoff from active employment with a right of recall.
10. On November 5, 2008, 470 unionized hourly production employees were provided a notice of layoff, due to a shortage of work, for the purpose of section 58 of Part XV of the *Employment Standards Act, 2000*, effective February 1, 2009.
11. On January 5, 2009, 170 unionized hourly production employees were provided a notice of layoff, due to a shortage of work, for the purpose of Section 58 of Part XV of the *Employment Standards Act, 2000*, effective March 1, 2009.
12. On April 2, 2009, all remaining active unionized hourly production employees represented by the union were provided a notice of layoff, due to a shortage of work, for the purpose of Section 58 of Part XV of the *Employment Standards Act, 2000* effective June 30, 2009. As at June 30, 2009 (subject leaves of absence) all unionized hourly production employees were on layoff.

Layoffs of Unionized Office Employees

13. On or about November 4, 2008, there were approximately 101 unionized office employees employed by Navistar at its Chatham facility.
14. On November 5, 2008, 29 unionized office employees were given a notice of layoff, due to a shortage of work, for the purpose of Section 58 of Part XV of the *Employment Standards Act, 2000*, effective February 1, 2009.
15. On January 5, 2009, a further 29 unionized office employees were given a notice of layoff, due to a shortage of work, for the purpose of Section 58 of Part XV of the *Employment Standards Act, 2000*, effective March 1, 2009.
16. On April 2, 2009, all remaining unionized office employees were given a notice of layoff, due to a shortage of work, for the purpose of Section 58 of Part XV of the *Employment Standards Act, 2000*, effective June 20, 2009. As at June 30, 2009 (subject leaves of absence) all unionized office employees were on layoff.

Collective Bargaining

17. Prior to June 30, 2009, Navistar sent notice to the union of its intention to bargain for the renewal of the collective agreements covering unionized hourly production employees and unionized office employees.
18. Navistar and the union commenced negotiations on May 4, 2009. Those negotiations did not result in a settlement by June 30, 2009 being the expiration date of the collective agreements.
19. By operation of the Ontario *Labour Relations Act, 1995* (the “LRA”), and by the terms of collective agreements covering unionized hourly production employees and unionized office employees, the union and Navistar entered into a legal strike/lockout position effective 12:01 am June 30, 2009, at which time both collective agreements ceased to operate.
20. Notwithstanding the issuance of a “no board” report on June 13, 2009 in accordance with the *LRA*, the union membership did not commence any strike activity and Navistar did not lock out any of its unionized employees.
21. Navistar and the union continued negotiations after the expiration of the collective agreements and specifically met to negotiate 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.

22. During the course of negotiations, in September, 2010, a bargaining unit member filed a complaint with the OLRB pursuant to s. 74 of the LRA to which the union responded in part: “Despite being very dissatisfied with the proposals and positions [Navistar] was adopting, the union’s considered view was that [Navistar] was engaged in ‘hard bargaining’ as opposed to ‘bad faith bargaining’.”
23. On or about July 28, 2011 Navistar International Corporation, on behalf of Navistar, delivered a letter to the union’s President, Mr. Ken Lewenza, advising of the decision taken by the parent corporation on behalf of Navistar to permanently close Navistar’s Chatham facility “as part of Navistar’s North American manufacturing restructuring initiative”.
24. On or about August 2, 2011, Navistar sent a letter to each unionized employee represented by the union advising them that Navistar had notified the union about Navistar’s intentions to close the Chatham production facility as part of the company’s efforts to restructure its North American operations. Navistar advised that its decision to close was driven by “the unparalleled economic industry and operational conditions that have rendered the Chatham plant uncompetitive”.
25. No collective agreements were in place when the union, and the affected unionized employees received notice of closure of the Chatham facility from Navistar.

Post-Closure Chatham Plant Collective Bargaining

26. Following the announcement of the permanent closure of the Chatham facility, representatives of the union and Navistar met to bargain the terms of a closure agreement.
27. During the years 2011 and 2012, post Chatham 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; December 22, 2011; January 4, 5, 17, 19, 23, & 25-27, 2012; February 6, 21, 24 & 28, 2012; and March 5, 2012.
28. As a consequence of bargaining, Navistar and the union by December 20, 2011 had reached tentative agreement, subject to the complete resolution of a closure agreement, on the following items:
 - Continuation of bargaining rights
 - Recall rights
 - Employee records
 - Post-employment health care benefits

Treatment of employees in receipt of WSIB benefits
Certain conditions pertaining to the Health Security Agreement
Employee Assistance Plan
Worker Adjustment Centre funding
Grievances
Supplemental Unemployment Benefits Fund
Post-closure dispute resolution procedure
Final release and agreement

29. As of December 2011, Navistar and the union did not have agreement on the terms and conditions for the wind up of a defined benefit non-contributory pension plan (the “DB Plan”). Further, as of December 2011, Navistar and the union did not have agreement on issues related to severance pay, termination pay and payments supplementary to any entitlements pursuant to the Ontario *Employment Standards Act, 2000* (“ESA”).
30. Both Navistar and the union in their negotiations recognized that the potential for an employee to receive an actuarially unreduced pension, which could be as a consequence of a wind up or partial wind up of the DB Plan, could have an impact on the application of paragraph 9(3) of Ontario Regulation 288/01 pursuant to the ESA which exempts certain employees from statutory severance pay entitlement.
31. By December 2011, Navistar and the union had tentative agreement, subject to the complete resolution of a closure agreement, to a Post-Closure Dispute Resolution Procedure to address any dispute concerning either party’s compliance with the terms of a closure agreement or dispute relating to the interpretation or administration of a closure agreement. The parties had tentatively agreed that such disputes would be subject to an arbitration provision which included recognition of the application of s.49(1) of the LRA to the power, authority, and jurisdiction of any selected or appointed arbitrator called upon to adjudicate disputes under the Post-Closure Dispute Resolution Procedure.

Pension Windup Proceedings

32. On March 23, 2012, Navistar wrote to the Deputy Superintendent of Pensions at the Financial Services Commission of Ontario (“FSCO”), to request the partial windup of the DB Plan.
33. On March 7, 2013, FSCO issued a Notice of Intended Decision which would require Navistar to partially windup the DB Plan effective July 28, 2011 and to include certain Plan members in the partial windup who ceased to be employed by Navistar after June 30, 2009, including those Plan members who retired or

voluntarily severed their employment relationship with Navistar between June 30, 2009 and July 28, 2011.

Reference: Book of Documents of the Union Volume 1, Tab 3.

34. Navistar appealed the notice of intended decision issued by FSCO to the Financial Services Tribunal (“FST”).
35. At issue, as between Navistar, the union, and FSCO, before the FST were the following issues amongst others:
 - (a) Should DB Plan members who retired or severed their employment during the period June 30, 2009 to July 28, 2011 be included in the partial windup group?
 - (b) Is a DB Plan member required to physically return to work from layoff or sick leave in order to be entitled to a 0.9 banked pensionable service credit under the DB Plan?
 - (c) Should DB Plan members who terminated prior to July 28, 2011 and who met all the eligibility requirements for entitlement to a special early retirement benefit (“SER”) in the DB Plan, other than having the consent of Navistar, be entitled to such pension enhancement or grow into the SER benefit if they are not immediately entitled to the benefit?
 - (d) Are DB Plan members whose combination of age plus years of continuous employment or membership in the DB Plan equals 55 years or more on the effective date of the DB Plan windup, entitled to the SER benefit as a pension enhancement absent the consent of Navistar?

Reference: Book of Documents of the Union Volume 1, Tab 5, Page 2.

36. The FST issued its decision on July 11th, 2014 and decided in part:
 - (a) The DB Plan members to be included in the windup group and thus eligible for pension enhancements includes all employees on roll as at July 28, 2011 (partial plan windup date) and those employees who terminated or retired from February 1, 2009 through and including July 28, 2011.
 - (b) DB Plan members in the windup group who were on layoff or disability regardless of the fact they did not return to work are entitled to a 0.9 banked pensionable service credit to the later of their date of termination or the partial plan windup date.

- (c) DB Plan members in the windup group whose age and continuous service or plan membership equals 55 years or more are entitled to receive the SER benefit as a pension enhancement.

Reference: Book of Documents of the Union Volume 1, Tab 5, Page 5.

37. In August, 2014, Navistar commenced an appeal of the decisions by the FST to the Ontario Superior Court of Justice, Divisional Court.

Reference: Book of the Documents of the Respondent Tab 14, Page 59.

Book of Documents of the Union Volume 1, Tab 6.

38. Navistar and the union in the course of bargaining have represented a commitment to each other of resolving the outstanding pension issues to be addressed in a closure agreement in compliance with and subject to the outcome of the FSCO, FST proceedings and the outcome of any related appeals.

Severance Pay

39. The dispute between the parties with respect to statutory severance pay and, inferentially, the enhancements sought by the union as part of a negotiated closure agreement centers upon the meaning, interpretation, and application of paragraph 9(3) of Ontario Regulation 288/01.

40. Paragraph 9(3) of Ontario Regulation 288/01 exempts certain workers from entitlement to severance pay. Specifically, it states:

The following employees are prescribed for the purposes of sub-section 64(3) of the *Act* as employees who are not entitled to severance pay under section 64 of the *Act*: an employee who, on having his or her employment severed, retires and receives an actuarially unreduced pension benefit that reflects any service credits which the employee, had the employment not been severed, would have been expected to have earned in the normal course of events for purposes of the pension plan.

41. On January 4, 2012, Navistar provided the union with a comprehensive proposal to settle all issues outstanding regarding a closure agreement including an offer

on Transition Payments for all on-roll employees not entitled to severance as an “eligible employee” as defined in the proposal. Such employees with 30 or more years of service would receive \$35,000 dollars; those employees with between 20 and 30 years of service would receive \$20,000 dollars. Those employees with 10 but less than 20 years of service would receive \$17,500 dollars and everyone with less than 10 years of service would receive \$3,000 dollars.

Reference: Book of Documents of the Union Volume 2, Tab 3.

42. As at August 21, 2011, there was tentative agreement between the parties, subject to complete resolution of a closure agreement, on the following language regarding Termination and Severance Pay:

“One week of pay (applicable wage rate and COLA on employee’s last day worked) per year of service, up to and including the employee’s date of layoff, for all eligible employees who are severed and renounce recall rights, to a maximum of 26 weeks. Partial weeks of service will be paid as per ESA.”

Reference: Book of Documents of the Union Volume 2, Tab 3.

43. As at September 24, 2011, there was tentative agreement between the parties, subject to complete resolution of a closure agreement, on the following language regarding the definition of “on-roll employees”:

“On-roll is defined as all current laid-off employees, employees on Company approved leave of absence, employees on disability and WSIB. This definition applies to all references of on-roll employees in this agreement.”

Reference: Book of Documents of the Union Volume 2, Tab 3.

44. As at January 4, 2012, Navistar’s position on the Termination and Severance Pay definitions of “eligible employee” it was seeking as part of a closure agreement was:

“Eligible employees are defined as employees with greater than five years service as of June 30, 2009 who are not immediately retirement eligible. Immediately retirement eligible includes Normal Retirement, Regular Early Retirement and Disability Retirement. Additionally, on-roll employees eligible for Special Early Retirement as defined below will not be entitled to severance.”

Reference: Book of Documents of the Union Volume 2, Tab 3.

45. In addition to the request by the union for a provision in a closure agreement regarding Termination and Severance Pay, the union sought transition payments for employees not entitled to Termination and Severance Pay.

46. On March 5, 2012, the union wrote to Navistar and advised, inter alia, that it rejected Navistar's proposals but did not provide any comprehensive proposal in response.

Reference: Book of Documents of the Union Volume 2, Tab 9.

47. On March 19, 2012 Navistar wrote the union and advised as follows:

"I am in receipt of your email of March 5, 2012 as well as a hard copy letter of the same rejecting our latest proposal to the Union. Over the course of several months the Company has attempted to close the gaps between our respective positions on a number of issues. The Company made several attempts to address many of the concerns of the CAW Bargaining Team. In light of the circumstances, I think it is important that I formally tell you that the Company's latest proposal is now off the table in its entirety and we will be proceeding to the Financial Services Commission of Ontario for their determination of the relevant pension matters. As you requested, we will forward relevant correspondence with FSCO to yourself, Jeff Wareham and Bob Chernecki.

Regarding your request concerning the SUB monies held in trust, please review the enclosed document that includes up to date account balances and describes the agreement for disbursement of all funds to the CAW. If you find this agreement acceptable, I will direct Todd Armstrong to work with whomever you designate to execute the agreement and funds distribution."

Reference: Book of Documents of the Union Volume 2, Tab 13.

48. Individual workers who sought, on their own accord, severance pay from Navistar, were required to sign the form found at Volume 2, Tab 10 of the union's Book of Documents. Some other workers who were absent from work beyond their length of service with Navistar received payments as shown in the letters found at Volume 1, Tab 30 of the union's Book of Documents.

49. On November 21, 2012, Navistar advised Unifor inter alia:

"...if a CAW member approaches the Company with respect to a request for the payment of severance pay and the Company determines, based on the Union's position before FSCO, that the individual CAW member may fall within the group of CAW members who may become entitled to receive an actuarially unreduced pension, the Company will hold in abeyance the severance payment, pending the determination of whether or not the particular CAW member will or will not receive an actuarially unreduced pension. Where the CAW member will not receive an actuarially unreduced pension, the Company will proceed to carry out its statutory obligations with respect to the severance payment to the CAW

member. Where the CAW member ultimately receives an actuarially unreduced pension, the Company is not required to pay severance pay to the CAW member in those circumstances, by virtue of the provisions of the Ontario Employment Standards Act, as confirmed by jurisprudence.”

Reference: Book of Documents of the Respondents Tab 1, Page 1.

50. As of December 2012, Navistar would only pay severance pay to individual workers in accordance with the terms set out in its correspondence of November 21, 2012.
51. Approximately 153 workers received severance pay from Navistar upon termination of employment or upon signing the form found at Volume 2, Tab 10 of the union’s Book of Documents.

Class Action Proceedings

52. On March 27, 2012 the union advanced a class action proceeding on behalf of certain of its members in the Ontario Superior Court of Justice against Navistar in which the union utilized Local 127’s chairperson and Local 35’s vice-chairperson as class action plaintiffs.

Reference: Book of Documents of the Union Volume 1, Tab 7.

53. The class action sought:
 - (a) an order certifying this proceeding as a class proceeding and appointing the plaintiffs as representative plaintiffs for a class described as:

“All unionized employees of the defendant at its Chatham, Ontario facility represented by the CAW-Canada and its Locals 127 or 35 who were constructively dismissed and/or terminated from employment upon the announcement of the closure of the defendant’s facility on or about July 28, 2011, and who:

 - (i) have not executed a full and final release that prohibits them from commencing an action in regard to their dismissal or cessation of employment;
 - (ii) did not file a complaint pursuant to the *Employment Standards Act, 2000*; unless he or she withdraws or has withdrawn the complaint within the time specified in that *Act*.”
 - (b) a declaration that the defendant, Navistar Canada, Inc. has constructively and/or wrongfully dismissed them and all class

members, from employment and that the plaintiffs and all class members are therefore entitled to compensation in lieu of notice including compensation for all outstanding wages, vacation pay, overtime, premiums, benefits, and severance pay;

- (c) a declaration that the defendant has breached its contracts of employment or the terms of its employment relationship with the plaintiffs and each member of the class;
- (d) an order that the defendant pay the plaintiffs, and all class members, compensation in lieu of notice, including payment for all outstanding or wages, vacation pay, overtime, premiums, benefits and severance pay in amounts to be determined by the Court;
- (e) a declaration that the defendant has breached the terms of its employment relationship with the plaintiffs and each member of the class and /or its obligation to act in good faith and/or duty of fair dealing in the performance of its contracts of employment with the plaintiffs and each members of the class, by failing to comply with its contractual or legal obligations towards its unionized employees, by failing to adhere to statutory requirements, and by retaining for itself amounts in respect of wages, and/or compensation owing to the plaintiffs and members of the class;
- (f) an order that the defendant pay the plaintiffs and all class members compensation with respect to the breaches of law committed by the defendant as referred to in paragraph (e) above;
- (g) general damages in the amount of \$10,000,000.00 on their own behalf and on behalf of all class members for the manner of dismissal;
- (h) costs on a partial indemnity scale; and
- (i) prejudgment and post-judgment interest on the amounts payable pursuant to sections 128 and 129 of the *Courts of Justice Act*, compounded annually;
- (j) such further and other relief as may be required by the *Class Proceedings Act, 1992*, or as this Honourable Court may deem just.

Reference: Book of Documents of the Union, Vol. 1, Tab 7, Amended Statement of Claim

54. On September 12, 2012 Navistar brought a motion to strike out the Statement of Claim as advanced by the union as a class action proceeding on grounds which included:

“(iii) The Plaintiff’s claims are premised on alleged existence of individual contracts of employment and claimed individual terms and conditions of employment. This is wrong in law. Where there is no individual contract of employment, a fortiori, there can be no claim for breach of any such contract.”

Reference: Book of Documents of the Union Volume 1, Tab 8, Page 2, Sub-paragraph 1(iii).

55. On May 9, 2013, Mr. Justice Gates, sitting in motions court, dismissed the Statement of Claim as advanced by the union as a class action proceeding.

Reference: Book of Documents of the Union Volume 1, Tab 9.

56. On February 7, 2014, the Ontario Court of Appeal dismissed the appeal from the order of Mr. Justice Gates of the Ontario Superior Court of Justice dated May 9, 2013.

Reference: Book of Documents of the Union Volume 1, Tab 10.

Bargaining Post Class Action Dismissal

57. On May 16, 2013, subsequent to the dismissal by Mr. Justice Gates of the class action proceeding, but before the Court of Appeal hearing, the union wrote to Navistar and stated:

“The purpose of this letter is engage with the Company and ask your team to prepare and deliver to the CAW-Canada and its Locals 127 and 35 a comprehensive closure agreement document that would treat all outstanding issues. The Union would then of course respond and we could see where the process may go. This letter should be seen as without prejudice to the interests of the proposed representative plaintiffs who have made clear their intention to appeal the recent ruling of the Superior Court.

Thank you for your attention to this matter. We look forward to your early reply.”

Reference: Book of Documents of the Union Volume 2, Tab 7.

58. On May 24, 2013, Navistar wrote to the union and stated:

“This letter will confirm my receipt of your e-mail of May 16, 2013 followed by your letter dated May 16, 2013 in the regular mail. I remind you that by

your letter dated March 5, 2012, the Union rejected the Company's proposals concerning a closure agreement. The Company continues to be prepared to consider, as it has throughout, any further proposal from the Union regarding all outstanding issues.

I confirm that if you wish to forward a proposal to my attention addressing all outstanding issues, I will review the document and respond to you with the Company's position. It would assist me for my own scheduling and planning purposes, if you could respond to this letter to advise if the Union intends to provide its proposal, and your expected timing in that regard.

I thank you for your attention to the matter."

Reference: Book of Documents of the Union Volume 2, Tab 8.

59. On June 17, 2013, Robert Chernecki (retired) Assistant to the President for the union wrote to Barry Morris, Director of Labour Relations for Navistar International.

Reference: Book of Documents of the Union Volume 1, Tab 13.

60. On the issues of Termination and Severance Pay and Transition Payments, the union's proposals as contained in Mr. Chernecki's letter of June 17, 2013 included, amongst others, the following changes from language set out in the January 4, 2012 proposal. In particular:

- (a) The union proposed to add 35 weeks to employment service; and
- (b) The union proposed that on-roll employees eligible for Special Early Retirement and a deferred pension benefit will be entitled to severance.

Reference: Book of Documents of the Union Volume 1, Tab 13.

61. Navistar rejected the offer and thereafter, Navistar and the union engaged in discussions and exchanges on or about August 13, 2013, which were agreed to be "off the record."
62. On October 17, 2013 the union presented a letter to Navistar which it stated was "...for the record, the terms of a union offer to settle all outstanding issues between the parties arising out of the closure."

Reference: Book of Documents of the Union Volume 1, Tab 14.

63. The union's proposal as contained in its letter of October 17, 2013 presented new language for the definition of "on-roll employees", which referenced June 30, 2009 production and clerical unit seniority lists. The letter also added the following proposal:

"Severance pay – Company accepts last proposal of Union OR accepts the following terms.

Any dispute with respect to entitlement to severance pay as per ESA for any or all on-roll employees is sent to grievance arbitration to a mutually agreed arbitrator who has all the powers and authority of a s. 48 arbitrator under the OLRA and law, including the authority to make a full remedy if warranted (no claim will be made for any employee who has received ESA severance pay)(in default of mutual agreement on appointment MOL will appoint)."

**Reference: Book of Documents of the Union Volume 1,
Tab 14.**

64. On November 13, 2013, a written reply from Navistar to the union was provided. It stated as follows:

"Thank you for your letter and proposal dated October 17, 2013. I apologize for the delay in my response as the letter was addressed to the former Navistar headquarters and accordingly spent some time getting to me. The company has given careful consideration to your proposal for a settlement of all outstanding issues related to the closure of the Chatham Assembly Plant and, unfortunately, find that this does not represent a basis for final agreement. Both parties have clearly defined our respective positions and at this point, we feel that the appropriate course is to pursue the process we are currently in with the Financial Services Tribunal".

**Reference: Book of Documents of the Union Volume 1,
Tab 15.**

65. On November 25, 2013, the union replied in writing to Navistar. The union stated, in part, as follows:

"On October 17, 2013, the union sent you, by email and letter, a comprehensive offer. The offer is and remains straight forward. It calls for the resolution of some secondary issues on the basis of previous tentative agreements.

The two major cost items remain pensions and severance pay. With respect to pensions, the union's offer is simple and cannot be any more plain. The company will do whatever the minimum standards of the PBA call for in the plan wind-up. There can be no bargaining over that point.

With respect to severance pay, the union's offer is that the company should pay severance pay according to the minimum entitlements in the Employment Standards Act, 2000. Again, there can be no bargaining over that point. In light of any disagreements over WHO is entitled to severance pay, the union says an arbitrator should decide that issue. Again, there is no real bargaining that can occur with respect to this request: the company has to honour the ESA 2000, the union asks for no more on that point.

The only issue that goes beyond the legal minimum is the issue of transition payments to workers not entitled to severance pay. This is a cost item. The company has a duty to bargain with the union. The company itself has repeated this principle many times – it must bargain in good faith with the union after the closure announcement of July 28, 2011. However, since at least August 2013 the company has not engaged in bargaining. Your letter of November 13, 2013 is a non-starter; it does not define the company's position. The company says that the process before the FST should play out presumably before the company will bargain. But the parties cannot delay bargaining in that fashion. What is the company's position for settlement? What will constitute grounds for a deal? The process for the FST will not advance a settlement discussion because that process will define minimum entitlements. What is the company's position for settlement today? Please advise in detail with a supporting explanation”.

**Reference: Book of Documents of the Union Volume 1,
Tab 16.**

66. Navistar replied in writing to the union on November 27, 2013. In that correspondence Navistar stated:

“We acknowledge receipt of your letter dated November 25, 2013. We agree with you that the pension issue remains a major cost item and we too share your disappointment with the lack of progress to date.

Given the fact that pensions would be an important item in any overall settlement proposal, given the fact that we are less than two weeks away from the commencement of a four day Tribunal hearing regarding the parties rights and obligations with respect to the various pension issues, we feel that it would be the most prudent use of everyone's time to focus their efforts on that proceeding, in order to ensure that the Financial Service Tribunal thoroughly briefed on the outstanding pension matters and is able to make a fully informed decision. We are more than happy to resume our negotiations after the conclusion of the hearing, and we suggest we touch base at that time to discuss next steps”.

**Reference: Book of Documents of the Union Volume 1,
Tab 17.**

67. On December 5, 2013, the parties were advised that the FST hearings scheduled for December 9, 11, 12, and 16, 2013 were cancelled due to a lack of quorum among members of the FST.
68. On December 13, 2013, the union's legal counsel wrote to Navistar and stated as follows:

“We acknowledge receipt of your correspondence dated November 27, 2013.

We again disagree with the contents. We cannot defer discussions in the manner you suggest. Our union and Navistar need to act to bargain a resolution to our issues now, something that can and must be done now, assuming as we must that Navistar agrees to abide by any FST ruling with respect to the FST file which was to be heard commencing on December 9, 2013. Indeed, the cancellation of the hearing by the Registrar's office demonstrates clearly why a deferral of bargaining cannot and must not await a ruling of the FST. In any event, it is clear that the FST will simply direct what constitutes minimum standards entitlements in the pension sphere.

Navistar has to bargain with the union with respect to severance pay issues now given the union's recent offer on this subject. Indeed the company cannot plead elsewhere that severance pay is only an issue for negotiations, and then instead of negotiating ask for an order of the FST denying severance pay entitlement as the company did in its brief of submissions to the FST. That kind of positioning is arbitrary and inconsistent.

Accordingly, we return to the key issues between us which in our view can be simply stated – we can put them in the form of a question.

(1) Will Navistar agree to put the issue of any disputed entitlement of any employee on the seniority list as of June 2009 to minimum standards ESA severance pay to an independent arbitrator for resolution?

The union has proposed a transition payment for all employees found not to be entitled to severance pay under the ESA rules. If that sum of money is not acceptable,

(2) What sum of money is acceptable?

Your substantive answers to these questions are imperative in our view to permit the parties to complete our efforts in bargaining.

We look forward to these answers within the briefest of delays”.

**Reference: Book of Documents of the Union Volume 1,
Tab 18.**

69. On December 23, 2013, legal counsel for Navistar wrote to legal counsel for the union:

“Navistar acknowledges receipt of your letter dated December 13, 2013.

Navistar disagrees with many of the assumptions and conclusions made in the letter.

Further to Navistar’s letter to Ken Lewenza dated November 27, 2013 we agree that the pension issues remain a major cost item and we too share your disappointment with the lack of progress to date. Given the fact that the Financial Services Tribunal hearing regarding the parties rights and obligations with respect to the various pension issues has been adjourned, Navistar would be happy to resume our negotiations on a “without prejudice” basis subject to Unifor submitting a reasonable “without prejudice” settlement proposal for our review in preparation for such negotiations.

We look forward to hearing from you.”

**Reference: Book of Documents of the Union Volume 1,
Tab 19.**

70. On February 17, 2014, the union wrote Navistar the following:

“We acknowledge receipt of your letter dated November 27, 2013. As you will recall just days after November 27, 2013 the FST cancelled the hearings in the pension appeal initiated by the Company.

Last week (February 7, 2014) the Court of Appeal turned down the appeal of the dismissal of the proposed class action lawsuit brought by Cathy Baker and Joe Lucier.

However, the Court of Appeal was careful to say the dismissal had nothing to do with a worker’s entitlement to severance pay.

The Company has consistently submitted that the ability to bargain in good faith applies to the issues arising out of the closure.

That duty cannot be suspended or put off. Nor can the union wait several months until the FST issues a ruling (with the possibility Navistar may appeal an adverse FST ruling) before meaningful negotiations are undertaken. This is especially true when the union’s offer to settle the

pension issue is simple: each side will respect the outcome of the legal proceedings as that outcome simply defines minimum standards in the pension context. The other significant cost item for the Company is severance pay. Again, here the Union's position is simple – any dispute regarding ESA severance pay entitlement is sent to arbitration. Finally, the amount of transition pay to be awarded anyone not entitled to severance pay (potentially a very small group) is negotiable. Accordingly, we are putting our position expressed in the attached October 17, 2013 letter (and reaffirmed since) back on the table.

Navistar has an obligation to respond with a substantive response. The duty to bargain in good faith calls for nothing less.

We look forward to Navistar's response"

**Reference: Book of Documents of the Union Volume 1,
Tab 20.**

71. On March 3, 2014 Navistar wrote to the union:

"We acknowledge receipt of your letter dated February 17, 2014. Further to our letter to Lewis Gottheil dated December 23, 2013 (a copy is attached for your reference), we are happy to resume our negotiations on a "without prejudice" basis.

We recognize that the Financial Services Tribunal hearing regarding the pension matters has been rescheduled for early April 2014. As such, we suggest that it would be most efficient if we could arrange a face-to-face meeting in March 2013, subject to everyone's schedules.

Please advise as to your availability in March 2014, and if you have a preference as to meeting location, attending parties, etc".

**Reference: Book of the Documents of the Respondent, Tab 3,
Page 4.**

**Book of Documents of the Union Volume 1,
Tab 21.**

72. On March 11, 2014 the union wrote to Navistar:

"Unifor and its affected Local Unions as previously noted seek to meet with the Company. However, the identity of the attending parties, the scope of the meeting, and indeed the meeting location depends on the Company's response to two simple points:

a) Will the company present a proposal for settlement at the meeting in response to the Union's last proposal and if so would the Company do so in advance of the meeting to allow the Union to save time in its analysis of same; and

b) The Union says the negotiations must be on the record, save for the following point. We recognize that the issues of pension benefit entitlement and windup are the subject of litigation before the FST. As such, we recognize that any discussion of such pension issues cannot be relied upon or repeated by either side in connection with the FST proceedings. Everything else is on the record.

Please provide us with your response to these points and we can move forward”.

Reference: Book of the Documents of the Respondent, Tab 4, Page 5.

Book of Documents of the Union Volume 1, Tab 22.

73. On March 17, 2014 Navistar wrote to the union:

“We acknowledge receipt of your letter dated March 11, 2014 and we join you in wanting to move forward with a face-to-face meeting.

Further to your correspondence, we will prepare a response to the Union's last proposal, and will endeavor to provide it to the Union in advance of our meeting. We agree with having these negotiations on the record.

Could you please advise as to your availability and preferences as to meeting location, identity of the parties attending and the scope of the meeting”.

Reference: Book of the Documents of the Respondent, Tab 5, Page 6.

Book of Documents of the Union Volume 1, Tab 23.

74. On March 24, 2014 Navistar tabled a comprehensive offer for settlement.

Reference: Book of the Documents of the Respondent, Tab 7, Pages 8-15.

Book of Documents of the Union Volume 1, Tab 24.

75. On the issues of Termination and Severance Pay Navistar's March 24, 2014 proposal changed to:

"Company will meet legislative requirements subject to final pension eligibility determinations."

Reference: Book of the Documents of the Respondent, Tab 7, Page 10.

Book of Documents of the Union Volume 1, Tab 24.

76. On the issue of a Post-Closure Dispute Resolution Procedure, Navistar's March 24, 2014 proposal maintained its position that the procedure as tentatively agreed by December 2011, subject to complete resolution of a closure agreement, remained acceptable to Navistar.

Reference: Book of the Documents of the Respondent, Tab 7, Pages 12-14.

Book of Documents of the Union Volume 1, Tab 24.

77. On March 24, 2014, presumably crossing with Navistar's correspondence of the same date, the union wrote to Navistar proposing meeting dates and requesting Navistar's proposal.

Reference: Book of the Documents of the Respondent, Tab 8, Page 16.

78. On March 26, 2014 Navistar acknowledged receipt of the union's letter of March 24, 2014 and confirmed that Navistar's proposal had been sent to the union's counsel and received March 25, 2014.

Reference: Book of the Documents of the Respondent, Tab 9, Page 17.

79. On March 31, 2014 the union' legal counsel wrote to Navistar as follows:

"Thank you for your letter of March 26, 2014. I have been instructed to send along this reply. The union seeks to meet with the company at the earliest available opportunity. It appears that the best way forward is to take an hour or so at the end of one of the days of hearings that are already set in front of the FST.

We can ask FSCO to provide us a room in which to meet. There are many such meetings rooms on the floor of the building where the hearing will take place.

We suggest we met Friday, April 11th when the first day ends.

We look forward to the company's response".

**Reference: Book of the Documents of the Respondent,
Tab 10, Page 18.**

**Book of Documents of the Union Volume 1,
Tab 26.**

80. On April 7, 2014 Navistar wrote to the union's legal counsel:

"I acknowledge receipt of your letter dated March 31, 2014 via email regarding a meeting to discuss the issues related to the above matter. We share your desire to meet at the earliest possible time to attempt to bring the issues that separate us to resolution. You have suggested a meeting following the first day of the Tribunal hearing. I suggest we take the opportunity to use that time to identify a suitable date for both teams to meet that will give us ample time to fully explore potential solutions to the issues. In earlier correspondence, the Union suggested a Saturday meeting in Windsor. The Company is in agreement with that plan on a date that is mutually acceptable.

If you would like to discuss prior to April 11th, please feel free to call me at your convenience at my office – (331) 332-3570 or on my cell phone (630) 605-2032. I look forward to hearing from you".

**Reference: Book of the Documents of the Respondent,
Tab 11, Page 19.**

**Book of Documents of the Union Volume 1,
Tab 27.**

81. On April 11, 2014 representatives of the union and Navistar met following a day of hearing before the FST.

82. At the meeting on April 11, 2014, Mr. Lewis Gottheil, as counsel for the union, asked at the outset of Navistar: "Will you agree to send the issue of who is entitled to severance pay under the ESA to arbitration?" At the time of the meeting, the union's last proposal with respect to severance pay (or, alternatively, arbitration during the negotiation process) was that outlined in its letter of October 17, 2013.

**Reference: Book of Documents of the Union Volume 1,
Tab 14.**

83. Mr. Barry Morris, on behalf of Navistar, responded “No” to Mr. Gottheil’s question. The union representatives then walked out of the meeting room without further discussion.
84. The union filed a complaint to the Ontario Labour Relations Board.
85. The parties agree that the “agreed” documents are authentic, and were authored, sent and received, by the persons indicated and on or about the times indicated thereon. The parties reserve the right to take any position with respect to the relevance and/or weight of any documents. The agreed documents are:

Union Book of Documents Volume I Tabs 1-31

Union Book of Documents Volume II Tabs 1-11 (Not including Tab 12)

Book of Documents of the Respondent Tabs 1-18

March 19, 2012 Correspondence Barry Morris to Ken Lewenza (Referred to herein as Union Book of Documents Volume II Tab 13)