

Unifor Local 127/35 Navistar Dispute Highlights: What did we achieve?

In many ways the Union's longstanding dispute with Navistar has its history as far back as 2002 or 2003. It was during a labour dispute back then that Navistar tried, unsuccessfully, to break the union and scab the Chatham Assembly Plant. CAW members were joined by workers from around Ontario in their struggle to resist the hostile anti-union efforts of a US multinational corporation. In hindsight, this could have been seen as a precursor to the latest dispute with Navistar – how a distant foreign controlled corporation thought itself above the law: how it had no regard for Canadian workers, and the laws and labour relations practices in Canada, and how it took advantage of some of the many loop holes available to corporations who choose to deny Ontario workers what they are legally entitled to.

The current dispute began in mid-to-late 2008. As documents filed with the Financial Services Commission of Ontario showed, Navistar launched its plan to reorganize North America heavy truck assembly operations in mid-2008. The plan included the transfer of the majority of work out of the Chatham assembly plant into Navistar plants in the US and Mexico. Navistar began executing the plan and laying off workers in Chatham in the fall of 2008, taking the membership down from roughly 1200 workers in the October 2008 to 0 on June 30, 2009, the expiry date of the collective agreement. No one worked in the Chatham Assembly Plant again after that.

Navistar went through the motions of bargaining a new collective agreement, right to the agreement deadline: its final position was the plant would only reopen if the union, and the Chatham membership, agreed to a new collective agreement that provided for fewer than 150 full time jobs -- subcontracting the majority of the bargaining unit work to outside contractors -- and slashed the wages and benefits and collective agreement rights for those lucky enough to remain: those with 20+ years seniority. The company's "proposal" was soundly rejected by the Local 127 and 35 memberships.

As time passed and it became clear the company had no intention of re-opening the Chatham facility, the union's continued efforts at negotiating a closure agreement failed: Navistar insisted that legislative minimum entitlements under Ontario law – both under the Pension Benefits Act (PBA) and Employment Standards Act (ESA) -- did not apply, and in order to provide the legal minimums in one area meant the union had to agree to less than the minimum standard in the other. The Union resolved that this would not happen.

On July 28, 2011 Navistar notified the Union and members that the Chatham assembly plant was being officially closed. Again closure discussions go nowhere, with Navistar arguing that Ontario law doesn't apply. For example, Navistar argued:

- that Navistar's heavy truck assembly operations, including the now closed Chatham plant, had not been restructured or reorganized,

- that any member who was laid off, or who retired or terminated prior to June 30, 2009 was not entitled to partial wind up pension benefits as a result of the closure,

- that any member who retired or severed employment between June 30 2009 and the announced closure date of July 28, 2011 was not entitled to the benefits of the partial windup as a result of the plant closure,

- that the enhanced Special Early retirement benefit contained in the pension plan does not apply in the case of the closure because Navistar has not "consented" to provide members access to it,

- that eligible members who were laid off were not entitled to accrue an additional 0.9 years of pension credits as a result of the closure, despite what the pension plan text provided,

- that members who had retired on a reduced early retirement pension were not entitled to severance pay,

- and subsequently, after the pension issues had been decided, that members who were entitled to Special Early retirement pensions, or who could grow-into Special Early retirement pensions under the PBA (as a result of the closure of the Chatham assembly plant), were not entitled to severance pay.

The Union fought Navistar's narrow interpretations and delay tactics at every turn: launching discussions with FSCO and through attempts to have statutory severance pay provided through the courts, the Ontario Labour Relations Board, and, ultimately, through arbitration. The goal: to obtain rulings that applied to the benefits of the partial windup to the largest number of members, that solidified the entitlement of laid off members to the additional 0.9 years credited service, that provided members access to grow-into the Special Early Retirement benefit, and to get workers the severance pay they were entitled to.

In early 2013, after off the record hearings with the Deputy Superintendent of Pensions, the Union's position on pension plan entitlements was upheld by FSCO on all counts, and Navistar was ordered to comply. Navistar appealed this decision to the Financial Services Tribunal, and again the Union position was upheld on all counts. Navistar appealed again, this time to the Divisional Court in Ontario. The Division Court again ruled in the Union's favour on all counts, dismissing Navistar's arguments. Navistar attempted to appeal even this ruling, but that request was rejected by the Division Court. Despite spending hundreds of thousands – possibly millions -- of dollars on misguided advice from overpaid management lawyers, Navistar had lost, and lost big on every count! Navistar was ordered to follow the decision of the Superintendent of Pensions and conduct a partial windup of the pension plan, consistent in every respect with the positions on member entitlement that the Union had put forth.

- A similar story unfolded in the struggle to win severance pay for Local 127 and 35 members. In 2012, after Navistar's stonewalling and refusal to recognize basic Ontario employment law, the union filed a civil action in Ontario court to win severance pay for workers. The court dismissed the union action. The union filed bad faith bargaining charges against Navistar at the Ontario Labour Relations board, but the OLRB cites the unresolved pension issues as reason for not finding in the union's favour. Finally, in February 2017, the union is successful in getting the severance issue to arbitration. The arbitration award by arbitrator Shime finds in the union's favour: 598 members are found to be entitled to severance pay. Only those members who were eligible for a true unreduced pension on their severance eligibility date were not entitled to severance pay, consistent with the current Ontario law.