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October 28, 2016

David Pahn
Pension Officer
Financial Services Commission of Ontario
5160 Yonge Street, 4th Floor
Box 85
Toronto, ON M2N 6L9

Dear Mr. Pahn,

Re: Navistar Canada Inc. Non-Contributory Retirement Plan – Reg. No. 0351684 (the "Plan")

Please find below the responses of Unifor to the September 30, 2016 letter from Howard Cimring of Morneau Shepell:

FSCO item #1 – Notice of Plant Closure and Partial Wind up

Respectfully, the response from Navistar and Morneau confirms Unifor's argument and position – both of which were made at the meeting held September 7th: Navistar provided no notice or information with respect to possible plant closure to plan members prior to August, 2011 – fully 2 years after the last day of work at the plant (June 30, 2009), despite implementing a reorganization and restructuring plan beginning in 2008. Furthermore, Navistar failed to inform plan members of their entitlements to a Special Early Retirement pension as provided under the Plan until January 2016 – a full 6 and ½ years following the cessation of work at the plant. The result is that many eligible members were denied access to SER Benefits, particularly those who first became eligible at a date prior to the partial wind up date.

Morneau Response

Morneau states that "bargaining with Unifor continued and it would have been inappropriate for Navistar to provide notice in respect of plant closure or partial wind up". Unifor disagrees. Both the Notice of Intended Decision (NOID) and Financial Services Tribunal decision clearly have held that Navistar began a deliberate and planned restructuring and reorganization of its heavy truck operations beginning in 2008 – well before the production rate at the Chatham Assembly plant (CAP) was reduced, and prior to the beginning of layoffs in the fall of 2008. This reorganization included the transfer of Chatham truck production to Navistar assembly plants in Mexico and the United States, beginning in the spring of 2009. This reorganization resulted in the Unifor plant and office membership declining from approximately 1,100 members in the fall of 2008, to 0 active members as of July 1 2009. No trucks were ever produced at the Chatham plant again after June 30, 2009.

The fact that this planned restructuring and reorganization had begun in 2008, and was being followed and implemented by Navistar through to June 30, 2009, has two very important dimensions to it: one

affecting members who retired or terminated prior to the partial windup date of July 28, 2011, and the second to the bargaining that occurred with the union

The Decision of the Financial Services Tribunal

The first dimension to the Navistar restructuring and reorganization, and the implications that flow from it, are addressed directly in the Decision of the Financial Services Tribunal ("the FST") itself. For this analysis we refer back to the decision of the FST dated July 11, 2014 (the "Decision"), particularly paragraphs 92(d) and 12.

Paragraph 92(d) reads as follows:

> Navistar is ordered to provide proof to the Superintendent that the pensions or commuted values of the pensions have been recalculated to include the SER Benefit benefits for all members **who are not affected by the partial windup** and who are entitled to the SER Benefit in section 1.03 of the Plan by virtue of being 55 years of age, but not 65, with 10 years of credited service under the plan on the date they retired, and provided that they were not discharged for cause. In the case of deceased members with such an entitlement, Navistar shall provide proof of payment to the deceased member's beneficiary. (p35, emphasis added)

In Paragraph 92(d) the FST finds an entitlement to the SER Benefit, and sets out a clear order, for members who met the eligibility criteria for the SER Benefit on the date they retired and are not affected by the partial windup are entitled to a recalculation of their pensions to include the SER Benefit.

But what of members who are "affected by the partial windup"? Paragraph 12 of the Decision addresses this group of members. It reads as follows:

> Further, all Plan members **who terminated prior to July 28, 2011** and met all the eligibility requirements for entitlement to the special early 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. (p5)

Paragraph 12 of the decision is clear. In it, the FST extends the entitlement to the SER Benefit to "all Plan members who terminated prior to July 28, 2011" and who otherwise met all the eligibility requirements of the SER, save for employer consent. The logic is undeniable – it simply puts all members eligible for the SER Benefit who retired or terminated prior to the partial windup date – whether included in the partial windup or not -- on the same footing. After all, members who had already qualified for SER prior to the partial windup date and then retired prior to the partial windup date do not "benefit" from inclusion in the partial windup.

This interpretation -- the union's interpretation -- properly extends the operation of Section 40(2) and (3) to members of the partial windup group who retired or terminated prior to the partial windup date, and simply puts them on the same footing as similar members who were not affected by the partial windup. To give effect to this equal treatment, the calculation of the pension entitlement (or commuted value) for such members must, in our view, include retroactivity to the date of retirement or termination, even though that date precedes the partial windup date. Where a member has retired or terminated prior to the partial windup date and met the eligibility requirements for the SER benefit – and the SER pension exceeds the pension paid to the member - that entitlement must be granted and reflected in the member's monthly pension or commuted value as of a member's date of retirement or termination.

Negotiations

The second dimension to the issue of retroactivity relates to the nature and content of the negotiations between Navistar and the union. Navistar's so-called "bargaining" position with Unifor during the negotiations leading up to, and following, the cessation of operations at the Chatham Assembly Plant ("CAP") in 2009 was centered-around a new "regional production model." Navistar made acceptance of this new operating "model" essential to reaching an agreement, and is the main reason an agreement was never reached. Under Navistar's new regional model, had the union agreed, union membership in the CAP would have been reduced from approximately 1,100 active members to fewer than 100 active members. Work from the CAP was to be transferred to other Navistar facilities, and outside contractors were to be granted access to perform work formerly covered under the Unifor collective agreements. The result ultimate result of this new operating model would have been that approximately 1000 Unifor members would have lost their jobs at CAP – their work was to be transferred elsewhere or contracted out. Details of this plan are set out in Unifor's submissions to FSCO and the FST.

It follows, then, that Navistar's position - that it was "inappropriate" to provide access to the SER benefit, and to undertake a partial wind up of the Plan - is incredulous. Notwithstanding that in our view Navistar was obligated to properly communicate and provide plan members access to the SER benefit following cessation of operations on June 30, 2009, even if the union had agreed with Navistar and concluded a collective agreement, the Plan would have had to have been partially wound up in any case; under Navistar's new operating model the majority of the work was to be transferred elsewhere, and the majority of plan members, some 950, would have had their employment terminated following such an agreement.

Navistar's refusal to provide plan members access to a benefit in the pension plan that was intended to help cushion the blow of unexpected job loss – the SER – is what is inappropriate, and in our view, falls outside the spirit and intent of the Pensions Benefit Act. Had Navistar got what it wanted in the negotiations, the Plan would have had to have been partially wound up because of the permanent job loss and transfer of work. The transfer of work happened, and the job loss happened. What did not happen was plan members being provided access to Special Early Retirement pensions as a result – at least not for 2 or more years following their loss of employment. Navistar, by delaying and denying access to SER from the outset, and now by refusing to provide access to members who otherwise qualified prior to July 2011, has effectively denied hundreds of members access to an enhanced pension benefit that the PBA provides for them. In our view such an interpretation cannot be allowed to stand.

FSCO Item #2 – layoff dates

The list of layoff dates is helpful.

FSCO Item #3 – credited service discrepancies

Member 314 The response to the credited service provided for member 314 is confusing to us, and it may call into question the credited service utilized for members in the report. If the member's "previous" credited service" included 0.3 years of credited service for layoff in 2009, why isn't that total reflected in the "original" listing provided by Morneau? Why wasn't total credited service used in the preparation of the partial windup report? Alternatively, if the original listing of credited service does not include credited service for layoff in 2009, what does it include? Please verify that the treatment of 2009 credited service for layoff is consistent for all plan members covered under the partial windup report, and provide the date to which the "original" credited service applies, and how much credited service it includes for layoff time in 2009. Finally, please explain why the member's individual pension

statement provides more credited service than that used by the plan's actuary in the partial windup of the plan.

Member 216 confirmed

Member 153 In the "layoff date" file provided by Morneau on September 30th 2016, a layoff date of June 30, 2009 is indicated for this member. Why, then, did this member only accrue 0.1 years of credited service in 2009 prior to layoff?

Member 205 Again, the "layoff date" file provides a date of June 30, 2009 as the member's date of layoff. Why, then, is this member not credited with an additional 0.9 years for the 2009 layoff?

FSCO Item #4 – interest on back payments

Our actuary agrees.

FSCO Item #5 – financial statements

Thank you.

FSCO Item #6 – members on disability pension

We accept Morneau's response and would only like to have it confirmed that such additional liability will be recognized and included in the partial windup report, with such members being given the option to receive the greater benefit.

Regards,

Jeff Wareham
National Representative (Retired)

lhcope343

cc. Leon Cornelius, Navistar Leon.Cornelius@Navistar.com