No. S-1510120
Vancouver Registry
Affidavit of R. Gatzka #1
Sworn Dec 24, 2015

IN THE SUPREME COURT OF BRITISH COLUMBIA

IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED, IN THE MATTER OF THE BUSINESS CORPORATIONS ACT, S.B.C. 2002, c. 57, AS AMENDED

AND

IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF WALTER ENERGY CANADA HOLDINGS, INC. AND THE OTHER PETITIONERS LISTED ON SCHEDULE "A"

PETITIONERS
(APPLICANTS)

AND

THE UNITED STEEL, PAPER AND FORESTRY, RUBBER, MANUFACTURING, ENERGY, ALLIED INDUSTRIAL AND SERVICE WORKERS INTERNATIONAL UNION (UNITED STEELWORKERS), LOCAL 1-424

RESPONDENT

AFFIDAVIT #1 OF RANDY GATZKA

I, Randy Gatzka, Union Staff Representative of #300 - 3920 Norland Avenue Burnaby, British Columbia, **MAKE OATH AND SAY AS FOLLOWS**:

1. I am a staff representative for the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, District 3 (the "Steelworkers"), in British Columbia and as such have personal knowledge of the facts hereinafter deposed to save and except where same are stated to be based on information and belief and where so stated I believe them to be true.

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1. I am a staff representative for the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, District 3 (the "Steelworkers"), in British Columbia and as such have personal knowledge of the facts hereinafter deposed to save and except where same are stated to be based on information and belief and where so stated I believe them to be true.

2. The Steelworkers is the certified bargaining agent for production employees at the Perry Creek Mine near Tumbler Ridge BC (also known as the Wolverine Mine) an open pit coal mine (the "Mine") operated by the Petitioners Walter Energy Inc. and Wolverine Coal Ltd. as Wolverine Coal Partnership ("Wolverine").

3. My assignment includes collective bargaining and collective agreement administration with Wolverine, supporting Steelworkers Local 1-424 in dealing with Wolverine, and attending arbitrations and Labour Relations Board hearings involving Wolverine.

4. The Steelworkers and Wolverine are parties to a collective agreement setting out the terms and conditions of employment for approximately 308 bargaining unit employees workers at the Mine. A true copy of the Collective Agreement is attached as **Exhibit "A"** to this my affidavit.

5. In my experience as a Union staff representative, businesses prefer to purchase unionized operations when they can do so without outstanding grievances and liabilities. The Mine is more attractive to buyers if all outstanding grievances are claims are resolved rather than unresolved.

Adjustment Plan Complaint

6. On April 15, 2014, Wolverine initiated an immediate shut down of the Mine and indefinitely laid off the vast majority of the 308 employee bargaining unit without any advance to notice the Steelworkers.

7. The indefinite layoff affected the conditions and security of employment of a significant number of employees, triggering requirements under section 54 of the *BC. Labour Relations Code*.

> 54(1) If an employer introduces or intends to introduce a measure, policy, practice or change that affects the terms, conditions or security of employment of a significant number of employees to whom a collective agreement applies,

> (a) the employer must give notice to the trade union that is party to the collective agreement at least 60 days before the date on which the measure, policy, practice or change is to be effected, and
>
> (b) after notice has been given, the employer and trade union must meet, in good faith, and endeavour to develop an adjustment plan...

8. Because Wolverine did not provide notice to the Steelworkers or meet to develop an adjustment plan, the Steelworkers filed a complaint with the BC Labour Relations Board alleging a breach of s. 54 of the *Labour Relations Code*.

9. Wolverine took the position that s. 54 did not apply to an indefinite layoff if there was the possibility of a recall.

10. The Labour Relations Board found that Wolverine was in breach of the *Code* on June 9, 2015 in BCLRB No. B106/2015, and ordered Wolverine to pay "damages equivalent to 60 days' pay for each of the affected employees, subject to mitigation". A true copy of BCLRB No. B106/2015 is attached as **Exhibit "B"** to this my affidavit.

11. Following the Board's decision in BCLRB No. B106/2015, the Steelworkers were concerned that Wolverine would become insolvent and requested an order requiring Wolverine to pay damages into trust pending agreement on the calculations of what was owed to each employee.

12. In support of this application, the Steelworkers filed a statutory declaration from Frank Everitt, President of Steelworkers Local 1-424, setting out its calculations on damages. Mr. Everitt estimated the wage loss to be $3,669,291.36 minus mitigation of wage loss in the amount of $1,265,317.52, for a total owed of 2,403,973.84. A true copy of Frank Everritt's statutory declaration is attached as **Exhibit "C"** to this my affidavit.

13. During this period, the Steelworkers were in the process of collecting information from employees on their mitigation of losses during the period April 16 to June 15, 2014. Because many employees left the Tumbler Ridge area, this information is taking a considerable amount of time to collect. As of July 2015, the Steelworkers had not heard from over 100 employees.

14. Wolverine submitted calculations to the Board which set the minimum amount of damages payable to be $771,378.70, based on employees who had provided mitigation information, but excluded approximately $1.3 million in wages for employees who had not provided mitigation information yet.

15. The Board issued BCLRB Decision No. B151/2015, ordering Wolverine to pay $771,378.70 in damages in trust to the Steelworkers pending final disposition of this matter. This amount is presently in the trust account of the Steelworkers' lawyers, Victory Square Law Office LLP. A true copy of BCLRB Decision No. B151/2015 is attached as **Exhibit "D"** to this my affidavit.

16. Wolverine sought reconsideration of BCLRB No. B106/2015, which was dismissed by a three-person panel of the Labour Relations Board, including the Chair and Associate Chair, Adjudication, on September 23, 2015 in BCLRB No. B185/2015. A true copy of BCLRB No. B185/2015 is attached as **Exhibit "E"** to this my affidavit.

17. On November 24, 2015, Wolverine served the Steelworkers with a Petition for Judicial Review of BCLRB No. B106/2015 and B185/2015 in the matter of *Wolverine Coal Partnership v. United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, Local 1-424 -and- BC Labour Relations Board*, BC Supreme Court File No. S-159678, Vancouver Registry (the "Adjustment Plan JR").

18. The Steelworkers have not filed a Response to the Adjustment Plan JR due to the Order in this matter. The Labour Relations Board is named as a Respondent, but has not filed a Response. No date has been set for the hearing of this Adjustment Plan JR, although Wolverine has stated that one day will be required to hear this matter.

19. The Labour Relations Board remains seized of the issue of remedy in the event the parties need to remit any disputes over damages owed for determination. Wolverine and the Steelworkers, and their respective counsel, have been discussing the calculations of damages but this is not complete.

20. A true copy of the December 4, 2015 letter from Wolverine's counsel to Steelworker's Counsel setting out their position on remedy calculations is attached as **Exhibit "F"** to this my affidavit.

21. A true copy of the December 8, 2015 letter from Steelworker's Counsel to Wolverine's counsel setting out their position on remedy calculations is attached as **Exhibit "G"** to this my affidavit.

22. Until the Adjustment Plan JR is determined, the liability of Wolverine to employees remains uncertain.

23. If the Stay in this matter remains in effect, the parties are unable to remit matters back to the Labour Relations Board to settle outstanding issues relating to quantification of damages.

24. In my experience as a Union representative, if the Mine does not reopen by April 2016 and employees' recall rights expire, many will leave the Tumbler Ridge area to work elsewhere. I believe that it will continue to be increasingly difficult to contract employees to determine the Adjustment Plan damages if the Mine closes and the Adjustment Plan JR continues to be stayed and is not heard for many months.

The Retention List Grievance

25. The Steelworkers filed a grievance in April 2014 relating to Wolverine's decision to retain and lay off certain people in the months following the Mine shut down based on their skills and seniority (the "Retention List Grievance"). The parties have held the Retention List Grievance in abeyance pending the final disposition of the Adjustment Plan JR.

26. If the Steelworkers succeed in the Adjustment Plan JR, then the Retention List Grievance will likely be withdrawn as all employees will receive payment for this time period.

27. If the Steelworkers do not succeed in the Adjustment Plan JR, then the Retention List Grievance will likely proceed to arbitration as some employees are entitled to damages for not being offered work per the Collective Agreement.

Northern Allowance

28. Following the April 2014 layoff, the Steelworkers filed a grievance over the payment of a $500 per month monthly allowance under Schedule A, section 10 the Collective Agreement (the "Northern Allowance").

29. The Steelworkers argued that the Northern Allowance was payable to all employees, including those on lay off. Wolverine argued that the Northern Allowance was payable to employees while actively at work and not payable to employees while on layoff.

30. The grievance was referred to arbitration and the appointed arbitrator, Julie Nichols, dismissed the grievance on August 18, 2014 (the "Northern Allowance Arbitration Award"). A true copy of the Northern Allowance Arbitration Award is attached as **Exhibit "H"** to this my affidavit.

31. The Steelworkers sought review of the Northern Allowance Arbitration Award with the Labour Relations Board, which dismissed the review in BCLRB No. B204/2014. A true copy of BCLRB No. B204/2014 is attached as **Exhibit "I"** to this my affidavit.

32. The Steelworkers applied for leave for reconsideration of BCLRB No. B204/2014, which was denied in BCLRB No B.225/2014. A true copy of BCLRB No. B225/2014 is attached as **Exhibit "J"** to this my affidavit.

33. On February 13, 2015, the Steelworkers filed a Petition for Judicial Review of BCLRB No. B204/2014 and B225/2014 in the matter of *United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union Local 1-424 v. Wolverine Coal Partnership -and- BC Labour Relations Board,* BC Supreme Court File No. S-151240, Vancouver Registry (the "Northern Allowance JR").

34. The parties have agreed that the Northern Allowance will take one day to hear, but the matter has not been set down for hearing. I am advised by counsel for the Steelworkers, Craig Bavis, that his office has attempted in October, November and December to set a mutually available hearing date for the Northern Allowance JR, but because of the Vancouver Registry chambers scheduling practice, counsel have been unable to secure a date. A true copy BC Supreme Court Chambers Booking Memo is attached as **Exhibit "K"** to this my affidavit.

35. Until the Northern Allowance JR is determined, the liability of Wolverine to employees remains uncertain.

36. If the Mine does not reopen prior to the expiration of recall rights and employees are entitled to the Northern Allowance for the full 24 months of layoff, the value of the claim is approximately $3,600,000 based on an estimate of 300 employees receiving $500 per month.

SWORN BEFORE ME at Vancouver, BC, this 24th day of December, 2015.

A Commissioner for taking affidavits for British Columbia

RANDY GATZKA

CRAIG D. BAVIS, Lawyer
5th FLOOR–128 W. PENDER ST.
VANCOUVER, B.C. V6B 1R8
604-684-8421

COLLECTIVE AGREEMENT

For

WOLVERINE COAL LTD
Perry Creek Mine

This is Exhibit" A "referred to in the
Affidavit of RANDY GATZKA
Sworn before me at Vancouver BC
This 24 day of DEC. 2015

A Commissioner for taking Affidavits
within British Columbia

BETWEEN

WALTER ENERGY INC
WOLVERINE COAL LTD

AND

UNITED STEEL, PAPER AND FORESTRY, RUBBER, MANUFACTURING, ENERGY, ALLIED INDUSTRIAL AND SERVICE WORKERS INTERNATIONAL UNION (UNITED STEELWORKERS) ON BEHALF OF LOCAL UNION 1-424

August 1, 2011 – July 31, 2015

INDEX

COLLECTIVE AGREEMENT 005
for the PERRY CREEK MINE OPERATION
("the Agreement")

BETWEEN: **WALTER ENERGY INC**
WOLVERINE COAL LTD
(hereinafter referred to as "the Employer")

AND: **UNITED STEELWORKERS**
LOCAL 1-424
(hereinafter referred to as "the Union")

(and referred to alternately as "Parties" and individually as "Party".)

THIS AGREEMENT made and entered into as of August 1, 2011.

ARTICLE 1 - PURPOSE

1.01 It is the intent and purpose of the Parties to this Agreement, which has been negotiated and entered into in good faith, to:

a) recognize mutually the respective rights, responsibilities and functions of the Parties hereto;

b) provide and maintain working conditions, hours of work, wage rates and benefits as set forth herein;

c) establish a just and prompt procedure for the resolution of grievances;

d) and generally, through the full and fair administration of all the terms and provisions contained herein, to develop and achieve a relationship among the Union, the Employer, and the employees which will be conducive to their mutual well-being.

ARTICLE 2 - RECOGNITION

2.01 The word employee(s) (the "employee[s]") as used in this Agreement, means all employees in the employ of the Employer at

Wolverine Coal Ltd, located approximately twenty-seven (27) kilometres west of Tumbler Ridge, British Columbia, except persons employed in confidential human resources positions, persons excluded by the *Labour Relations Code of British Columbia,* all supervisors, office, clerical, and technical staff, engineering staff, geological staff, and loss control officers.

2.02 The Employer recognizes United Steel, Paper And Forestry, Rubber, Manufacturing, Energy, Allied Industrial And Service Workers International Union (United Steelworkers), On Behalf Of Local Union 1-424 as the sole collective bargaining agent for all employees as defined in Article 2.01.

2.03 Unless agreed to by the Parties through written agreement, or required by law, there shall be no revisions to the collective agreement or the bargaining unit as defined herein.

2.04 Management and non-bargaining unit employees shall not perform work normally performed by members of the bargaining unit, except in cases of emergency, training, instructional, evaluation purposes or short-term (one hour or less) equipment usage for the efficiency of the operations.

2.05 The Employer reserves the right to contract out work for the greater efficiency of the running of the mine and its operations provided that no regular employee is laid off, or recall rights are affected, as a direct result of the contracted out work.

2.06 Words imparting the masculine gender shall include the feminine and vice versa.

ARTICLE 3 - SCOPE

3.01 Should any part of this Agreement be declared or held invalid for any reason, that invalidity shall not affect the validity of the remainder, which shall continue in full force and effect and be construed as if this Agreement had been executed without the invalid portion.

3.02 The parties agree that

- Part 3, Wages, Special Clothing, & Records;
- Part 4, Hours of Work and Overtime;
- Part 5, Statutory Holidays;
- Part 7, Annual Vacation; and
- Part 8, Termination of Employment of the *Employment Standards Act* form part of this Collective Agreement, except those provisions specifically modified by this Collective Agreement.

3.03 The omission of specific mention in this Agreement of existing rights and privileges established or recognized by the Employer shall not be construed to deprive employees or the Union of such rights and privileges.

ARTICLE 4 - MANAGEMENT'S RIGHTS

4.01 The Employer's rights, subject to this Agreement, include but are not limited to the following:

a) the right to maintain order, discipline and efficiency; to make, alter and enforce rules and regulations, policies and practices to be adhered to by its employees; to discipline and discharge employees for just cause;

b) the right to select, hire and direct the working force and employees; to transfer, assign, promote, demote, classify, layoff, recall, and suspend employees; to select and retain employees for positions excluded from the bargaining unit;

c) the right to operate and manage the Employer's business in order to satisfy its commitments and responsibilities. The right to determine the kind and location of business to be done by the Employer; the direction of the working forces; the scheduling of work; the number of shifts; the methods, processes, and means by which work is to be performed; job content, quality, and quantity standards; the right to use improved methods, machinery, and equipment; the right to determine the number of employees needed by the Em-

ployer at any time; and generally, the right to manage the business of the Employer, and to plan, direct, and control the operations of the Employer, without interference.

4.02 The sole and exclusive jurisdiction over operations, building, machinery, and equipment shall be vested in the Employer.

ARTICLE 5 – UNION REPRESENTATION

5.01 For Employee representation purposes, the Union shall function and be recognized as follows:

a) The Union has the right to elect or appoint stewards. There shall be a maximum of one (1) steward per operating shift and one (1) steward for all Trades (as outlined in the Trades 1 and 2 categories in Schedule "A"). Stewards are employee representatives in matters pertaining to the collective agreement, including grievance processing. Stewards are not permitted to amend any terms of this Agreement.

b) The union may appoint an alternate for each of the above to act in the absence of the regular steward.

c) Union Representatives are employee representatives in all Agreement matters and in particular for grievance processing, negotiating Agreement amendments or renewals, and enforcing the employees' collective bargaining rights and any other rights under this Agreement and under the law.

5.02 The Union agrees to provide the Employer in writing with an up-to-date listing of its officials' names, effective date of appointment, and end date of appointment.

5.03 (a) Stewards will not absent themselves from their work to deal with grievances without first obtaining Employer permission. Permission will not be withheld unreasonably and the employer may direct that they be dealt with during breaks. The Employer will pay such stewards at their regular hourly rates while attending to such matters

whenever this takes place during the employees' regular working hours, as well as for time spent on negotiating a renewal of this Collective Agreement with the Employer. Stewards shall receive a premium of fifty cents ($0.50) per hour for all hours worked.

(b) The maximum daily pay for negotiations shall be the employees' regularly scheduled straight time hours. There will be a maximum of five (5) employee representatives selected by the Union on the bargaining committee paid for by the Company.

5.04 The Employer may meet periodically with his employees for the purpose of discussing any matters of mutual interest or concern to the Employer, the Union, and the employees. A Steward will attend such meetings and wherever practicable a Union Representative will attend such meetings.

5.05 There shall be no union activity on Employer's time or on Employer's premises except that which is necessary for grievance processing and Agreement administration and enforcement.

5.06 The Employer shall provide sufficient, secure bulletin board facilities at the Dry and Dispatch areas of the mine for Union use.

ARTICLE 6 - STRIKES OR LOCKOUTS

6.01 During the term of this Agreement, or while negotiations for a further agreement are being held, the Union will not permit or encourage any strike, slowdown, or any stoppage of work or otherwise restrict or interfere with the Employer's operation.

6.02 During the term of this Agreement, or while negotiations for a further agreement are being held, the Employer will not engage in any lockout of its employees.

ARTICLE 7 - EMPLOYMENT POLICY AND UNION MEMBERSHIP

7.01 The Union and the Employer will co-operate in maintaining a de-

sirable and competent labour force. The Employer has the right to hire new employees as needed.

7.02 A list of employee name's, address's, hire date's, and classifications shall be provided to the Union monthly. An employee list, ranked by classification shall be forwarded to the Union twice yearly.

7.03 Each employee shall as a condition of hiring or continued employment:

(a) Authorize the Company in writing to deduct union dues from his pay. The authorization shall be in a form agreed to between the Company and the Union.

(b) Become a member of the Union and maintain membership in good standing.

7.04 The Union agrees that it will make membership in the Union available to all employees covered by this Agreement on the same terms and conditions as are applicable to other members of the Union.

The Parties recognize the mutual desirability of establishing a coordinated program of orientation for new employees.

The Employer will provide an opportunity for a Shop Steward or Union Representative, unpaid time beyond their regular shift schedule, to meet new employees after the employer has concluded the employer segment respecting new employee orientation.

New employees will be hired on a thirty-five-(35) working day probationary period and thereafter shall attain regular employment status subject to available work. The Parties agree that a probationary employee may be discharged or laid off for any work related reason.

Probationary employees are covered by the Agreement, excepting those provisions, which specifically exclude such employees.

Employees laid off and recalled by the Employer within one (1) year shall not serve a new probationary period._

ARTICLE 8 – CHECK-OFF

8.01 (a) The Company shall deduct from the pay of each member of the bargaining unit, an amount equivalent to the monthly dues, fees and assessments prescribed by the Local 1-424.

(b) The Union will give reasonable notice to the Company of any changes in the amount of Union dues, fees or other amounts which the Company is required to deduct. All changes will coincide with the beginning of the Company's next pay period.

(c) No later than ten (10) business days following the last dues deduction of the month, the dues so deducted shall be made payable and remitted electronically to:

Suite 100 – 1777 3rd Avenue
Prince George,
British Columbia
V2L 3G7

(d) The monthly remittance shall be accompanied by a completed USW R115 Form (a summary of the dues calculations made for the month, each month), as well as a statement showing the names, addressed and phone numbers of each employee from whose pay deductions have been made and the total deducted for the month. Such statements shall also list the names of the employees from whom no deductions have been made and the reason why, i.e. W.B.C., W.I., laid off, etc.

(e) A duplicate R115 Form and employee deduction statement as in (d) above shall be forwarded by facsimile to:

International Secretary-Treasurer, United Steelworkers
P.O. Box 9083
Commerce Court Postal Station
Toronto, Ontario, Canada
M5L 1K1

(f) The Company agrees to print the amount of total deductions paid by each employee for the previous calendar year on their annual statement of remuneration (T4 Slip).

(g) The Union agrees to indemnify and save the Company harmless against all claims or other forms of liability that may arise out of, or by reason of deductions made or payments in accordance with the Article.

Notwithstanding any provisions contained in this Article, the responsibility on the part of the Company for dues shall not exceed the amount of an employee's unpaid wages in the hands of the Company.

8.02 The total amount checked off will be mailed to the Union's regional office within one (1) week of the end of each month, together with an itemized list of the employees for whom the deductions are made and the monthly amount checked off for each. The Union and the employees agree that the Employer shall be saved harmless for all deductions and payments so made.

ARTICLE 9 – WAGES AND RATES OF PAY

9.01 Wage schedules and other provisions applicable to various job classifications and work descriptions are as set forth in Schedule "A".

9.02 The Employer may establish additional classifications. The pay rates for new classifications may be negotiated between

the Employer and the Union during the Agreement term. If no agreement is reached, either party may refer the issue to the Grievance Procedure.

9.03 An employee who reports for work without having been notified that there is no work available, and who is sent home because of lack of work, shall receive a minimum of four (4) hours' pay at his prevailing hourly rate. An employee who is called in will be guaranteed a minimum of four (4) hours' pay at his prevailing hourly rate. It is the responsibility of the employee to provide a means by which the Employer can contact him. If an attempt is made by the Employer to contact an employee by way of the contact information provided in an effort to inform the employee of a lack of work, and the Employer is unable to do so, the employee will not be entitled to show up pay.

9.04 When there is a temporary shortage of work within a given work day in a specific classification, the Employer may employ the affected employees in another classification at the rate of pay of their usual specified classifications provided the employee are qualified to do the required work.

9.05 Employees temporarily assigned to another classification for which they are qualified, for more than one shift, will receive the higher of their regular pay rate or the temporary assigned classification pay rate.

ARTICLE 10 - HOURS OF WORK & OVERTIME

10.01 This Article is intended to define the normal work hours and shall not be construed as any guarantee of work or pay of hours of work per day, or per week, or of days of work per week.

10.02 The term "work day" means that period of time starting when an employee is scheduled to commence work and terminating twenty-four (24) hours thereafter.

10.03 The term "work week" means that period of time commencing at the start of dayshift on Sunday and terminating one

hundred sixty-eight (168) hours thereafter. 014

10.04 At its discretion, the Employer may from time to time initiate, maintain, or discontinue to conduct all or any part of its operations on a multiple shift and/or multiple continuous shift basis. Prior to introducing a shift schedule, the Employer will consult with the Union.

10.05 The normal hours of work for employees shall be based on one of the following schedules:

a) eight (8) hours per day, five (5) consecutive days per week;

b) ten (10) hours per day, four (4) consecutive days per week;

c) twelve (12) hours per day based on a work cycle which is eight (8) consecutive weeks (four [4] shifts on, four [4] shifts off) averaging forty-two (42) hours per week.

d) twelve (12) hours per day based on a work cycle which is two (2) consecutive weeks (seven [7] shifts on, seven [7] shifts off) averaging forty-two (42) hours per week.

Any of the above shifts may be worked on an alternating work cycle of all day shifts or all night shifts. The normal shift start and stop times will be 7:00 am and 7:00 pm. The bus will normally arrive and leave fifteen (15) minutes before and fifteen (15) minutes after the shift start and stop times.

10.06 Shift schedules shall be posted in a conspicuous place and changes will be communicated as far in advance as is practicable. In the event that less than twenty-four (24) hours' notice is provided, overtime shall apply for the first shift of the schedule change.

10.07 Employer-provided training sessions during normally scheduled off time shall be voluntary participation. Employees participating in voluntary training shall be paid at regular pay

rates and overtime shall not apply. 015

10.08 (a) Employees working on a schedule defined in 10.05(c) and (d) will have two (2) paid meal breaks of twenty-five (25) minutes at a time designated by the Employer, one (1) in the first half and one (1) in the second half of the shift. Employees working a schedule defined in 10.05(a) and (b) shall receive two (2) ten- (10) minute paid coffee breaks in each half of their shift, and one (1) one-half (1/2) hour unpaid meal break. Employees will receive an additional ten- (10) minute paid coffee break during daily double time (after twelve [12] hours in a day).

(b) With respect to breaks provided in Article 10.08 (a), the employee shall continue all necessary supervision of machinery, maintenance of service, and be available through radio contact. While it is not the intention of the Employer to interrupt an employees' break(s) should a break(s) be interrupted the break(s) will be r e s c h e d - uled by the Employer within one (1) hour following the completion of the work required.

10.09 For all shifts, other than those shifts identified in Article 10.05(c) and (d), all hours worked in excess of forty (40) hours every work week shall be paid at one and one-half (1.5) times their regular pay rate. For shifts identified in Article 10.05(c) and (d), employees will be paid for actual hours worked in each week at straight time, except four (4) hours of the regularly scheduled hours each pay period will be paid at one and one-half (1.5) times the regular rate provided the employee has worked all regularly scheduled hours.

10.10 All hours worked on days of rest shall be paid as follows:

- 1st and 2nd days worked, eight (8) hours at one and one-half (1.5) times the regular hourly rate; all remaining hours shall be paid at two (2) times the hourly rate.
- 3rd and subsequent days worked, all hours at shall be paid at two (2) times the hourly rate.
- All hours worked beyond twelve (12) hours in a day will

be paid at two (2) times the hourly rate.

10.11 The Employer will, subject to operating requirements, attempt to distribute overtime work as evenly as possible among employees who normally perform the work and who indicate they wish to work overtime by Sunday for the coming week, wherever practicable, and in any event no later than Tuesday. Any employee who is affected by a change made to the Sunday posted schedule will be notified no later than end of shift Tuesday.

10.12 The parties agree that the process of equitable distribution of overtime as noted above shall be guided by the following principles:

- Equitably distributed overtime will be offered beginning with the most senior employee on the seniority list.
- If an employee refuses overtime, it will be offered to the next senior employee on the seniority list.
- Employees eligible for overtime will be offered work in blocks up to three (3) days.

ARTICLE 11 - SENIORITY

11.01 Seniority is defined as an employee's length of service with the Employer at the Wolverine Coal Ltd Mine site since the most recent hire date upon successful completion of probation. Seniority for employees hired on the same day will be determined by the employee with the lowest payroll number.

11.02 The Parties agree to the general principle that job security and opportunity should increase commensurate with seniority.

11.03 Qualified employees are defined as those employees who can effectively operate equipment with only familiarization, and do not require additional training.

11.04 A seniority list shall be maintained by the Employer, consisting of the name, hire date, and classification of every Union-represented employee in the Union, and ordered by length

of service. The Employer shall copy the seniority list to the Union quarterly.

11.05 Seniority rights shall cease, and employment shall be deemed terminated, for any employee who:

- voluntarily terminates employment;
- is discharged, and this discharge is not reversed through the grievance procedure;
- is laid off for more than twenty four (24) consecutive months;
- fails to return from an approved leave of absence within five (5) days without having a reasonable explanation;
- fails to return from layoff within fourteen (14) days of recall, pursuant to Article 11.09, after written notice is sent by registered mail, unless medically unfit to return.

11.06 Seniority rights shall continue for employees on approved leave as defined by this Agreement.

11.07 For layoffs up to one (1) complete shift cycle, the most senior qualified employee within each crew will be retained provided they are qualified to perform the work.

11.08 When there is a layoff of longer than one (1) shift cycle, the Employer shall inform the Union. The Employer may issue lay off notices by classification in reverse order of seniority. A senior employee receiving a lay off notice in his classification may bump a less senior employee in another classification, provided he is qualified to perform the work. Employees will be given two (2) work cycles for a familiarization period. Employees will receive the rate of pay applicable to the new classification.

11.09 Employees will be recalled in order of seniority provided they are qualified to perform the available work. If the reduced employee does not accept a recall to his original job, he shall lose the right of any further recall and shall be deemed to have voluntarily quit. Recall notices shall be sent by registered mail.

11.10 In the case of a permanent lay-off occurring after the ratification of this Collective Agreement, resulting in the termination of employment, as defined in the Employment Standards Act, the following will apply.

(i) Two weeks pay or notice for every year of completed service, to a maximum of ten (10) weeks

(ii) Employees shall be paid severance on the expiration of recall rights or upon termination of employment while on lay-off,

(iii) Upon payment of severance the employee shall lose all recall rights.

ARTICLE 12 - VACANCIES AND JOB POSTINGS

12.01 A vacancy that requires a job posting occurs when:

- the Employer requires additional staff;
- an employee vacates his position and the position is going to be re-filled;
- an employee is going to be temporarily absent from his position for a period of more than sixty (60) calendar days. When the absent employee returns to work in the position he held prior to his absence, the employee who is in that position temporarily will be returned to his previous position. As well, any employee affected shall be returned to their previous position.

12.02 The Employer shall post all regular vacant positions and, during the posting period, may temporarily fill the position by re-assignment to another employee. The Employer shall post all vacant regular positions for fourteen (14) calendar days. Employees who are on vacation or on approved leave shall be deemed to have applied.

12.03 The job posting process will be completed within thirty (30) calendar days of the initial posting. At the completion of this thirty (30) day period and with the announcement of the successful candidate, it is the intention of the Employer to move the successful candidate into the position within thirty (30)

days of being selected subject to operational requirements. The Employer will not unreasonably delay the employee transfer to the position. Should the employee transfer be delayed beyond thirty (30) days the employee will receive the higher rate of pay commencing the first day following the thirtieth (30th) day after his/her announcement. In the case of an employee moving into a position at a lower rate of pay, the employee will remain at the higher rate of pay until moved.

12.04 Job postings will be awarded on the basis of both seniority and ability to perform the requirements of the posted job position. This is to say, among all employee applicants that are relatively equal in performing the job, the employee applicant with the highest seniority will be awarded the job posting.

12.05 If no qualified applicants are found through the internal posting process or through a review of employees on recall then external applicants will be considered.

12.06 All existing employees accepted to posted jobs shall serve a thirty (30) working day trial period. During this period, the employee may, at his option, return to his former job; or, if the employee is not progressing satisfactorily, may be returned to his former job. An employee who shows signs of progressing during the trial period but has not achieved qualification status, at the option of the employer, may be required to continue the trial period for a reasonable period of time to allow the employee to become qualified in the position for which he is training.

ARTICLE 13 - VACATION AND VACATION PAY 020

13.01 Employees will accrue vacation hours according to the following schedule:

	Vacation Hours	Vacation Pay
1st calendar year of service	8 hours per month	5% of total wages
2nd calendar year of service	10 hours per month	6% of total wages
4th calendar year of service	14 hours per month	8% of total wages
6th calendar year of service and beyond	16 hours per month	10% of total wages

Note – Employees who have completed probation and commence employment prior to July 1 in any year will be entitled to two (2) additional paid floater vacation days per year. Employees commencing employment on or after July 1 in any year will be entitled to one (1) floater day. Floater days will be taken at a time mutually agreeable to both the employee and the employer. This time off will be granted in the same way as vacation entitlement is administered.

13.02 When employees begin employment in the first half of a month they receive the full monthly allocation. If they begin work in the final half of a month, they receive half of the monthly allocation. The same pro-ration shall apply upon termination of employment.

13.03 Entitlements must be taken in a minimum of full cycle shift blocks unless approved otherwise by the Employer. However, any hours of vacation remaining that are fewer than a full cycle may be taken in smaller increments.

13.04 Employees will be eligible to use their current year's vacation entitlement prior to accruing the entire amount. However, if an employee terminates employment prior to accruing the full amount of vacation taken, the value of the over-taken vacation shall be deducted from his final pay cheque.

13.05 All vacation time is paid out at straight time. At the end of each year, a vacation adjustment will be made whereby any under-payment of vacation pay will be paid out, and any overpayment of vacation pay will be recovered from the employee through a deduction from his pay cheque.

13.06 Vacation requests are granted based on the Employer's operational requirements. If more than four (4) employees request vacation for the same period, the highest seniority employees on the crew shall be granted the vacation request. Specific protocol shall be developed through the Labour-Management Committee and shall include that seniority can only be exercised on the basis of one shift block at a time so as to ensure a more equitable allocation of prime vacation periods. Employee requests will be in by March 1 of each year and the employer will post the vacation schedule by March 31 of that year. Employees will indicate their first choice and second choice for their vacation. It is agreed that January, February and March will be on a first come first serve basis.

ARTICLE 14 – STATUTORY HOLIDAYS & HOLIDAY PAY

14.01 The following days shall be observed as holidays:

- New Year's Day
- Victoria Day
- BC Day
- Thanksgiving Day
- Christmas Day
- Good Friday
- Canada Day
- Labour Day
- Remembrance Day
- Boxing Day

14.02 Employees shall be entitled to receive an amount equal to five percent (5%) of total earnings in lieu of the statutory holidays.

14.03 Employees required to work on one of the above holidays shall receive overtime pay at one and one-half (1½) times their regular wages for all hours worked.

14.04 When operations are scheduled during a holiday period, the

Parties shall mutually agree when the holidays are started and ended as per the shift schedule.

14.05 Premium pay will apply to whole shifts that start during the statutory holiday day (12:01 a.m. to 12:00 p.m.).

ARTICLE 15 – TRANSPORTATION

15.01 The employer will provide transportation from three (3) marshalling points in Tumbler Ridge.

ARTICLE 16 – UNION-MANAGEMENT COMMITTEE

16.01 The Parties pledge to work towards the greatest possible degree of consultation and co-operation, the end result being improved labour-management relations.

16.02 Recognizing the need for good labour relations, the Parties shall schedule Union-Management meetings once every three (3) months or more frequently as required. The meetings shall serve as a forum for discussion and consultation about policies and practices not necessarily covered by the Collective Agreement. Other areas for discussion shall include but not be limited to:

a) discipline and discharge policies;

b) training and promotion;

c) safety measures; and

d) matters that affect the employees' working conditions.

The Employer and the Union shall each appoint a maximum of five (5) representatives to the Union-Management Committee. The Minutes shall record the business of each meeting.

16.03 A committee member attending the Union-Management meetings during regular working hours shall be entitled to his regular hourly rate of pay.

17.01 It is in the interest of all concerned to promote and ensure that, in accordance with the Company's health and safety policy and programs, high standards of health and safety at the Company's operations serve to prevent industrial injury and illness.

To this end, it is expected that all persons on Wolverine operational site property shall co-operate to promote safe work conditions, rules, practices and procedures and generally to promote safety consciousness and a personal sense of responsibility for all persons on the site.

The Employer will publish safety rules and procedures, and will make copies of the Mines Act and health, Safety and Reclamation Code for Mines in British Columbia, available to employees in the dry(s) and the lunchroom(s).

17.02 A joint Occupational Health and Safety ("JOHS") Committee shall be composed of an equal number of union representatives appointed by the Union, one of which shall be the Health and Safety Co-Chairperson, and Management representatives. There shall be an equal number of representatives from the union and the employer, not to exceed a total of five (5) committee members. The function of the JOHS Committee shall be to recommend solutions to problems relating to the promotion of health and safety on the job site. The JOHS committee shall review mine health and safety programs for completeness and effectiveness on an ongoing basis and submit its findings to the General Manager and a copy will be sent to the Local Union.

The committee shall also conduct meetings and monthly tours in accordance with the governing Health and Safety Regulations. All safety matters shall be in accordance with the applicable statutes and the Employer's Health and Safety Policy and Procedures.

Employee's time while involved in authorized crew safety meetings, on the mine site, will be considered as time

worked while in attendance at such meetings. 024

The Union Safety Chairperson or his alternate, and the Union Safety Committee member attending monthly safety tours, on their days off, will receive overtime rates of pay for actual hours spent on the tour.

A monthly tour will be scheduled prior to the monthly JOHS committee meeting. Reasonable efforts will be made to schedule the tour and meeting on the union co-chairs day shift. In the event that the regular monthly inspection or meeting falls on the co-chair persons night shift the co-chair shall be transferred to the appropriate shift in order to facilitate attendance.

17.03 The Company shall provide to the JOHS Committee in a timely manner the following information:

(a) An information sheet (MSDS) on controlled substances used in the various processes, including emergency procedures as per H.S.R. Code for Mines in BC, and WHMIS;

(b) Safety relevant information on major new tools and equipment;

(c) First aid incident reports for employees; and

(d) A monthly summary of injuries sustained on the job by employees and contractors and statistics pertaining to them.

17.04 (a) The crew safety representative or his alternate will be present and involved when there is an investigation of any accident or incident which caused, or had the potential to cause, significant equipment damage or personal injury requiring medical aid on his crew. The supervisor will make personal contact with the safety representative as soon as possible, from the time the incident or accident as referred to above occurs. The crew safety representative and the supervisor will notify the Union Safety Co-Chair or his designate. If the Union Safety Co-Chair person or his/her designate is at work,

the investigating supervisor will assist the crew safety representative in contacting him.

Where a crew safety representative is not available from the immediate work area or crew, the supervisor will make immediate arrangements to obtain a safety representative from another crew.

(b) In the case of a fatal accident, the Union Safety Chairperson or the Unit Chair, or their designates, shall be notified immediately and will participate in the resulting investigation.

(c) All reportable accidents or reportable incidents filed with the Ministry of Mines shall be forwarded to the Union office as soon as possible.

17.05 There shall be regularly scheduled safety meetings on Company time which will normally be scheduled during regular working hours for all members of every crew once per month. Meetings will not normally be scheduled so as to coincide with shift end. Meetings will be held where noise from operations does not unduly interfere. Safety meetings will include in their agenda:

(a) Reading of the previous meeting's minutes for errors or omissions;

(b) Outstanding safety items from previous meetings and progress update, if any;

(c) Report of new safety concerns or suggestions will be recorded and discussed; and

(d) Summary of the JOHS Committee previous minutes if available.

Further, it is recognized that the use of safety videos, guest speakers or other outside sources can serve as useful tools for promoting health, safety and environmental awareness including the distribution of safety meeting minutes held on site.

17.06 An employee who is injured on the job and is unable to complete his shift will have his regular earnings maintained for the balance on that shift. Those employees on scheduled

overtime shifts will be paid the applicable overtime for the actual hours worked, or scheduled hours at straight time rates, whichever is greater. An employee who is injured on the job and requires off-site treatment, shall receive employer provided transportation to the treatment facility and payment for the remainder of the scheduled shift.

If an employee is injured on the job and requires temporary accommodation for injuries incurred, the employee is entitled to modified duty work and shall inform the physician of the physical requirements for the modified duty work available and, upon physician's approval, make such work available to the employee.

17.07 The following items of personal protection equipment and apparel shall be supplied by the Company on an as needed basis and the employee will be required to sign for them and return them in good and serviceable condition (fair wear and tear excepted.) If the employee fails to do so, they shall be charged with the replacement cost. Training on the safe use and inspection of equipment will be provided prior to an employee being required to use such equipment.

Personal Protection Equipment and Apparel

Safety Hat
Safety Glasses
Respiratory Protection
Hearing Protection
Reflector Vests
Balaclava
Hot Gloves
Goggles
High Temperature Gloves
Rubber Boots
(Steam Cleaner)
Safety Chin Straps
Safety Hat Liner
Cutting Goggles
Aprons and Face Shields
Safety Belts and Lines
Safety Shields for Cutting and Grinding
Safety Locks
Welder's Gloves
Rubber Gloves
Lined Gloves
(Steam Cleaner)
Knee Pads
Welding Lenses
Flashlights

The Company will not unreasonably deny a request to replace or repair personal clothing that is damaged and ren-

dered unsuitable for an industrial setting as the result of an unusual and verifiable occurrence in the workplace.

17.08 The Company will familiarize the Union Safety Chairperson and other members of the JOHS committee, with the equipment and techniques of sampling and analysis for potentially toxic substances monitored by the Company. They will also be familiarized with the techniques of monitoring for subsidence in the mine dump.

17.09 **Lock Out**

A lock-out procedure will be made available to all employees potentially involved in lock-out of equipment, as well as the necessary number of personal locks and any other required lock-out equipment required to meet regulations and complete assigned work safely. Lock-out awareness will be included during the new employee orientation.

The lock-out procedure will be reviewed at least annually by the JOHS Committee, or a subcommittee of JOHS, to provide Management with recommendations on changes that might improve the safety of workers involved in lock-out.

(a) A person shall not carry out any work or operate any equipment, tool, or appliance if he has reasonable cause to believe that to do so would create an undue hazard to the health or safety of any person.

(b) A supervisor shall not knowingly perform or permit a worker to perform work which is, or could create, an undue hazard to the health or safety of any person.

(c) A person who refuses to carry out any work or operate any equipment, tool, or appliance, in compliance with (a) above shall forthwith report the circumstance to his supervisor.

(d) The supervisor receiving a report under the preceding (c) shall forthwith investigate the matter with a worker representative if requested and ensure that any hazardous condition is remedied without delay; or if, in his opinion the report is not valid, he shall inform the person who made the report.

(e) If the procedure in section (d) fails to resolve the issue and the person continues to refuse to carry out the work, the supervisor or other management representative shall forthwith make an investigation in the presence of the person who made the report, together with another person having knowledge of the work in question and who is:

(i) a worker representative or designate of the Health and Safety Committee if available, or:

(ii) designated by the Local Union to represent the person refusing to carry out the work.

(f) If the person still refuses to carry out the work after his supervisor and the other person have investigated the issue in accordance with (e) above, and are both of the opinion that no undue hazard exists and that:

(i) the refusal is considered to be justifiable for reasons peculiar to that particular person, and;

(ii) there is no justification for an alternate person to refuse to carry out the work in question then, the supervisor, after informing the alternate person of the reason for the refusal, may have him perform the work.

(g) If the procedures in (d), (e) and (f) fail to resolve the issue, the General Manager, or his designate shall:

(i) conduct an investigation and either develop a plan that is acceptable to the persons who will do the work and which will allow the work to proceed safely, or suspend further work, and;

(ii) if the work is suspended or is allowed to proceed, submit a report to the district inspector describing the situation and any remedial action taken.

17.10 Should production be curtailed in any work area on the property for significant safety reasons, the crew safety representative directly affected will be advised.

17.11 **Dust Control** 029

(a) In recognition of the commitment to educate employees and management representatives, and to ensure that acceptable standards are met regarding allowable dust levels, it is agreed that a continuing program of dust control will be supported by both parties. To this end, the Company commits their resources to maintain air pressurization systems in an efficient and proper manner and to supply and require the use of respirators where employees must work outside of equipment cabs or control rooms in dusty conditions.

In recognition that a proper dust control program requires the co-operation of employees, it is understood that machinery operators will take all reasonable steps to ensure the cleanliness of their operating cabs and treat cab doors, seals and pressurizing equipment with due care in order to maximize the effectiveness of the pressurizing system. It is also understood that equipment operators will inspect and report defective components of the pressurizing system to their supervisors.

It is further understood that the Union will provide its full support to the program and assist in the objectives outlined through education and promotion of the contents of this article.

17.12 Should the Company request a meeting with an employee to discuss his Worksafe BC claim, he will be offered to have a Union representative (or his designate) attend the meeting.

17.13 Employees who require corrective lenses must possess safety lenses and safety frames prior to the commencement of work. The Company will subsidize the cost of an employee's prescription safety eyewear as per article 22.01. The Company will not be responsible for costs under this Article that may be recoverable from another source such as a Health Plan or Workers' Compensation.

17.14 The Company and the Union shall provide each other with copies of reports sent to the Provincial Mines inspector concerning safety-related dispute(s) or incident(s) and will ad-

vise each other on other appropriate safety-related matters. 030

17.15 The cost of medical examinations required in compliance with the health, safety, and reclamation code shall be paid for by the Company. All employees shall be required to take such examinations outside regular working hours and shall be paid four (4) hours pay at straight time and these hours shall not be considered as hours worked for the purpose of calculating overtime.

ARTICLE 18 - HEALTH AND WELFARE PROGRAM

18.01 a) Employees are eligible to receive coverage on the first of the month following three hundred fifty (350) hours worked. It is the responsibility of the employee to complete the enrolment form for the benefit plan, which is a condition of coverage.

b) It is understood and agreed that it is the responsibility of each employee to be familiar with the specific details of coverage and eligibility requirements for all benefit plans, and that neither the Union nor the Employer has any responsibility for ensuring that all requirements for eligibility or conditions of coverage or entitlement of benefits are met by the employee, beyond the obligations specifically stipulated in this Agreement.

18.02 Employees will pay the premium associated with the plan respecting Long Term Disability. The Employer will reimburse the employee with the associated costs in this regard on a monthly basis.

ARTICLE 19 - RETIREMENT FUNDS

19.01 a) The Employer agrees to contribute five percent (5%) of the base hourly rate for each hour worked for each employee to the group RSP administered by Great West Life Insurance Company.

Any penalty incurred as a result of a change in carrier will be paid by the Company

Effective August 1, 2012, the Employer agrees to contribute six percent (6%) of the base hourly rate for each hour worked for each employee to the group RSP.

Effective August 1, 2013, the Employer agrees to contribute seven percent (7%) of the base hourly rate for each hour worked for each employee to the group RSP.

b) The employees may increase their contributions through voluntary payroll deductions.

ARTICLE 20 - EDUCATION, TRAINING, & PUBLICATION

20.01 The Employer agrees to contribute one half of one percent (0.5%) for each straight time hour worked by employees to the Union's Education and Training Fund. Training funds shall be remitted in accordance with the timelines stipulated for union dues.

20.02 The Parties shall equally bear the costs associated with printing and publication of the collective agreement.

ARTICLE 21 - TOOLS

21.01 All tradesmen shall supply their own tools common to their trade. The Employer shall provide speciality tools.

21.02 The Employer shall hold the employees responsible for all tools issued to them. The Employer shall provide adequate security for all tool storage on the site.

21.03 The list of tools to be supplied by tradesmen will be established in consultation with the Union. Tools to be supplied by Mechanics and Electricians are as listed in Schedule "C".

21.04 The Employer agrees to provide Mechanics, Electricians and Welders with a tool allowance of sixty cents ($0.60) for every hour worked and to replace broken tools in kind. Servicemen will be provided with a tool allowance of thirty-four cents ($0.34) for each straight time hour worked and to replace broken tools in kind.

ARTICLE 22 - PROTECTIVE EQUIPMENT

22.01 All employees shall wear safety hats, non-prescription safety glasses, and high visibility vests to be made available by the Employer. If prescription safety glasses are required, the Employer will provide side shields or safety goggles and will pay for the cost of the prescription safety eyewear to a maximum of two hundred ($200.00) dollars every two (2) years.

22.02 All employees shall wear gloves, and rain gear where required, furnished by the Employer.

22.03 Said equipment shall remain the property of the Employer. Any worn out safety equipment will be replaced upon presentation of the worn equipment. The employees shall be held responsible for loss or improper maintenance of Employer-furnished items.

22.04 Upon completion of probation, the Employer agrees to pay employees a clothing/safety allowance, based on the following:

August 1, 2012	August 1, 2013
$350.00	$375.00

Payable every August thereafter

22.05 The Employer agrees to provide coveralls including up to two (2) pairs of insulated coveralls and cleaning services for coveralls to employees employed in the following classifications:

Driller
Blaster
Pit Serviceman
Blasters Helper

Maintenance employees (mechanics, servicemen, welders, steam cleaners)

ARTICLE 23 - LEAVES OF ABSENCE & BEREAVEMENT PAY

23.01 The Employer shall grant leaves of absence without pay for the following reasons:

Marriage of the employee;

Death in the employee's immediate family; 033
Union activity other than that directly related to the Employer.

The employee may also apply in writing to the Employer for personal leaves of absence for reasons other than those listed above, without pay. Such requests will not be unreasonably denied.

23.02 Leaves of absence under Article 23.01 shall not exceed one (1) week unless time is mutually agreed upon between the Employer and the employee.

23.03 An employee will be granted up to three (3) days' leave of absence with pay, at his regular straight time hourly rate, to make arrangements for and to attend the funeral of a member of the employee's immediate family. Immediate family shall mean parents, grandparents, grandparents-in-law, spouse, children (including adopted children), brothers, step-brothers, sisters, step-sisters, mother-in-law, father-in-law, brothers-in-law, and sisters-in-law. The Employer maintains the right to request a copy of the death certificate.

An employee will be granted an additional two (2) days off with pay should the employee be required to travel to the funeral, provided the distance is beyond eight-hundred (800) km.

23.04 Additional leave shall be granted without loss of seniority or entitlement, for any employee who qualifies for compassionate leave benefits under the Employment Standards Act. In such cases, the employment leave expires simultaneously with the compassionate leave.

23.05 The above shall not preclude extensions for education or personal illness as justified in an application prior to the leave of absence expiration.

23.06 Jury Duty

(a) An employee who is called for jury duty or is subpoenaed as a witness if related to their community service

(but not in his defense) will be paid an allowance equal to the difference between the payment, excluding payment for expenses, and what he would have received for each day of such service at his regular straight time pay for work for which he would have been scheduled and which he would otherwise have performed on those days.

(b) Whenever possible, employees are required to report for work during their normal work schedule if not scheduled for court appearances.

23.07 Family Responsibility Leave

(a) An employee is entitled to up to five (5) days of unpaid leave each year to attend to the care, health, and education (in the case of education for a child under 19 years of age), of their child, or member of the immediate family, who is in need of assistance/care.

(b) Employees are expected to give as much notice as possible and to provide sufficient information for the Company to understand the reason for the leave.

23.08 Political Leave

Upon reasonable prior notice in writing, the Company will grant an employee an unpaid leave of absence for the term of office as a Member of Parliament of Canada, or as a Member of the Legislative Assembly of British Columbia.

23.09 Union Business

An employee elected or appointed to a full-time Union position shall be granted an unpaid leave of absence. No more than one (1) employee will be granted leave pursuant to this provision at any one time.

ARTICLE 24 - GRIEVANCE PROCEDURE

24.01 Should a dispute arise between the Employer and an employee or the Union regarding the interpretation, application, administration, or violation of this Agreement, it shall be resolved by the grievance procedure as set out below.

24.02 As an informal step, an employee is encouraged to make an earnest effort to resolve the issue directly with the Supervisor to whom the employee reports. The employee may choose to be accompanied by a Steward.

24.03 Union Representatives and the Union Stewards are the agents through whom employees shall process and resolve their grievances.

24.04 Neither the Employer nor the Union shall be required to consider or process any grievance that arose out of any action or condition more than fourteen (14) calendar days after the subject of such grievance occurred. If the action or condition continues or reoccurs, this limitation period shall not begin until the action or condition has ceased. The limitation period shall not apply to differences arising between the Parties relating to the interpretation, application, or administration of this Agreement.

24.05 A "Policy Grievance" is defined as a grievance that involves a question relating to the interpretation, application, or administration of this Agreement. A Policy Grievance shall be signed by a Steward, a Union Officer, or a Union Representative, or in the case of an Employer's Policy Grievance, by the Employer or his representative.

24.06 A "Group Grievance" is defined as a single grievance signed by a Steward or a Union Representative on behalf of a group of employees who have the same complaint. A group grievance must be resolved through successive stages of the Grievance Procedure, commencing with Step 1. The grievers shall be listed on the grievance form.

24.07 **Step 1**

A grievance shall be submitted in writing to the Department Superintendent within fourteen (14) days of the act or condition causing the grievance. The Parties shall attempt to meet to resolve the grievance within seven (7) calendar days after the Step 1 grievance has been filed. The Employer shall forward a written response to the Union Representative within seven (7) calendar days of the meeting.

24.08 **Step 2**

If the grievance is not resolved at Step 1, a Union Representative may, within seven (7) calendar days of the decision under Step 1, submit a Step 2 grievance to the Mining Operations Manager. The Parties shall attempt to meet to resolve the grievance within seven (7) calendar days after the Step 2 grievance has been filed. The Employer shall forward a written response to the Union Representative within seven (7) calendar days of the submitted Step 2 grievance. If the Parties fail to settle the grievance at Step 2 of the Grievance Procedure, the grievance may be referred to arbitration.

ARTICLE 25 - ARBITRATION

25.01 The Party initiating arbitration must serve the other Party with written notice of desire to arbitrate within five (5) calendar days after receiving the decision given at Step 2 of the Grievance Procedure.

25.02 If a notice to arbitrate is served, the Parties shall attempt to obtain agreement on a single Arbitrator, within seven (7) calendar days.

25.03 If the Parties fail to agree on a single Arbitrator within seven (7) days, either Party may request the Arbitration Bureau to appoint a single Arbitrator.

25.04 If a Party refuses or neglects to answer a grievance, the other Party may commence arbitration proceedings.

25.05 The decision of the Arbitrator will be final and binding on the Parties.

25.06 The Parties will equally bear the Arbitrator expense.

25.07 An Arbitrator shall be empowered to render his decision or interpretation consistent with the provisions of this Agreement.

ARTICLE 26 - DISCHARGE, SUSPENSION, AND WARNING

26.01 An employee may be suspended or discharged for proper cause by the Employer. Such suspension or discharge is subject to the Grievance Procedure.

26.02 In the event the Employer determines it appropriate to issue a written warning, notice of record, or confirming notice of suspension or termination, the Shop Steward shall be forwarded a copy.

26.03 In all instances of disciplinary interviews of record, the employee to be so disciplined shall have an available Steward present. The Steward in attendance will be the Steward working the department wherever practicable. Should the Steward in the department not be available to attend the meeting at the time set for the meeting to take place, a Steward, available and on site at the time, will be required to attend.

26.04 Whenever an employee signs any document pertaining to discipline, he does so only to acknowledge that he has been notified accordingly.

ARTICLE 27 – DURATION

27.01 Pursuant to Article 2.02 of the collective agreement, the Parties have established applicable rates and other terms and conditions of employment for employees of the Wolverine Mine operation. The provisions of this addendum shall be subject to the term of the collective agreement as set out in Article 27, namely the first (1st) day of August, two thousand eleven (2011) to the thirty-first (31st) day of July, two thousand fifteen (2015). Notwithstanding the foregoing, the provisions of this addendum shall be effective as of the first (1st) day of August, two thousand eleven (2011).

27.02 The Parties agree to exclude the operation of Section 50(2) and 50(3) of the Labour Relations Code.

Dated at Tumbler Ridge, B.C. this _____ day of _____, 2012.038

SIGNED on behalf of
WALTER ENERGY/
WOLVERINE COAL LTD

SIGNED on behalf of

_____
H. Kingwell

_____
J. Moberg

_____
M. Milner

SIGNED on behalf of
UNITED STEELWORKERS
LOCAL UNION 1-424

SIGNED on behalf of

_____
F. Everitt

_____
D. Will

_____
R. Colbourne

_____
G. Steele

_____
D. Jensen

_____
D. Sanders

_____
D.Salewski

_____
B. Haider

CLASSIFICATIONS – OPERATIONS

Category	Classification
Mine Operator 1	Shovel, Front End Loader 1350, EX 3600, EX 5500, EX 8000, PC3000, PC4000
Mine Operator 2	Driller, Loader > 990, Blaster (Ticketed)
Mine Operator 3	Dozer, Grader, Back Hoes (All)
Mine Operator 4	Truck Driver, Scrapers, Pit Serviceman, Rubber Tire Dozer, Blaster 2 (non-ticketed)
Mine Operator 5	Packer, Front End Loader <990
Mine Operator 6	Drill/Blast Helper (6 months)
Mine Operator 7	Laborer, Summer Students

CLASSIFICATIONS – MOBILE PIT AND MAINTENANCE

Trades 1	Journeyman TQ
Trades 2	Uncertified Trades with at least 8000 hours
Trades 3	Crane/Boom/Utility Operator **, Tool Crib Attendant**
Trades 4	Lube Attendant (Shop/Field), Fuel and Lube Truck Operator (Shop/Field)
Trades 5	Steam Bay Attendant (Shop/Field), Steam Truck Operator (Shop/Field)

** Pay @ Trades 1 rate if incumbent holds TQ certification qualification

Schedule A

HOURLY RATES OF PAY – OPERATIONS

Category	Current Rate	Effective August 1 2011	Effective August 1 2012	Effective August 1 2013	Effective August 1 2014
		6.0 %	3.5 %	3.5 %	4.0 %
Mine Operator 1	33.12	35.11	36.34	37.61	39.11
Mine Operator 2	31.98	33.90	35.09	36.31	37.77
Mine Operator 3	30.83	32.68	33.82	35.01	36.41
Mine Operator 4	29.69	31.47	32.57	33.71	35.06
Mine Operator 5	25.12	26.63	27.56	28.52	29.66
Mine Operator 6	23.98	25.42	26.31	27.23	28.32
Mine Operator 7	20.56	21.79	22.55	23.35	24.28

HOURLY RATES OF PAY–MOBILE PIT AND MAINTENANCE

Category	Current Rate	Effective August 1 2011	Effective August 1 2012	Effective August 1 2013	Effective August 1 2014
Trades 1	37.69	39.95	41.35	42.80	44.51
Trades 2	35.69	37.83	39.15	40.52	42.14
Trades 3	33.12	35.11	36.34	37.61	39.11
Trades 4	29.69	31.47	32.57	33.71	35.06
Trades 5	23.98	25.42	26.31	27.23	28.32

GENERAL

1 **Apprentice Rates:**

Apprentice – 4th year	90% of classification rate
Apprentice – 3rd year	85% of classification rate
Apprentice – 2nd year	75% of classification rate
Apprentice – 1st year	70% of classification rate

2 **Truck Rate – Less than 500 hours** 041

Truck drivers will be paid two-dollars ($2.00) per hour less the applicable Mine-Operator 4 rate until they have completed five-hundred (500) hours worked. The Employer has the discretion to assign qualified drivers at a rate higher than the entry rate.

3 **Night Shift Premium**

Employees working on shifts that begin after 7:00 p.m. and end before 7:00 a.m. will receive an additional seventy-five cent ($0.75) shift premium for all straight time hours worked on the shift.

Effective August 1, 2012, employees working on shifts that begin after 7:00 p.m. and end before 7:00 a.m. will receive an additional one-dollar ($1.00) shift premium for all straight time hours worked on the shift.

4 **Weekend Premium:**

Employees will be paid a weekend premium of seventy-five cents ($0.75) for all straight time hours worked on a shift for weekends starting Friday night at 7:00 p.m. to 7:00 p.m. Sunday night.

Effective August 1, 2012, employees will be paid a weekend premium of one-dollar ($1.00) for all straight time hours worked on a shift for weekends starting Friday night at 7:00 p.m. to 7:00 p.m. Sunday night.

5 **First Aid Premium**

A holder of a valid Level III first aid certificate shall receive a premium of fifty cents ($0.50) per hour for each shift worked as designated first aid attendant.

6 **Relief Foreman/Lead Hand Premium**

Employees shall receive one dollar ($1.00) per hour above

their own rate of pay or the highest rate of pay supervised (whichever is greater) when designated as a Relief Foreman/Lead Hand.

7 **Equipment Trainer Premium**

Employees designated as equipment trainers will be paid one dollar ($1.00) per hour in addition to their regular hourly rate for all hours spent training.

8 **Stewards' Premium**

Stewards shall receive a premium of fifty cents ($0.50) per hour for all hours worked.

9 **Life Style and Wellness Allowance**

Each calendar year and upon submission of receipts, the Employer will pay an allowance of up to three hundred ($300.00) dollars to each employee representing a life style and wellness allowance for the term of the agreement

10 **Monthly Allowance**

Effective January 1, 2012, employees will receive a monthly allowance of five hundred ($500.00) dollars to offset the cost of working in North Eastern BC. Payment of the allowance shall be made on the 2nd pay period of the month for the term of this agreement.

SCHEDULE "B"

OUTLINE OF INSURANCE PLAN COVERAGE

(This schedule does not form part of the collective agreement. It is for information only).

- $150,000.00 life insurance per employee under age 65; $50,000.00 per employee between the ages of 65 and 75;
- $150,000.00 A. D. & D. per employee under age 65; $50,000.00 per employee between the ages of 65 and 75;
- dental plan at the latest fee schedule available:

Basic services:	100% up to $2,000.00 per person annually
Comprehensive:	50% up to $2,000.00 per person annually Effective August 1, 2013 – 80% up to $2,000.00 per person annually
Orthodontic:	50% up to $3,000 lifetime maximum per child under 19

- prescription drug plan (with drug card) for employee and family at 80% up to $3,000.00 per person annually (or the provincial Pharmacare cap, if applicable) and 100% thereafter;
- optical insurance for employee and family;
  under 21: $300.00 per year
  over 21: $300.00 every two years
- extended health coverage for employee and family;
- semi-private hospital coverage with no deductible for employee and family;
- weekly indemnity insurance at 60% of maximum insurable earnings to a maximum of $600.00 per week to age 75. Weekly benefits payable after the first day of accident or hospitalization and the 4th day of sickness, for a maximum of one hundred nineteen (119) days.
- long term disability insurance at 60% of maximum insurable earnings, to a maximum of $2,000.00 per month, payable after 120 days until age 65. (Employees will pay the premium associated with the plan respecting Long Term Disability. The Employer will reimburse the employee with the associated costs in this regard on a monthly basis.)
- BC Medical Services Plan
- EFAP (Employee Family Assistance Program)

SCHEDULE 'C'

LIST OF PERSONAL TOOLS - MECHANIC

Item #	Description	Journeyman	Apprentice
1	Socket Set - 3/8" Drive, 1/4" to 3/4"	X	X
2	Socket Set - 1/2" Drive, 1/2" to 1 1/4"	X	X
3	Socket Set - 3/4" Drive, 3/4" to 2 1/2"	X	
4	3/8" Air gun	X	X
5	1/2" Air gun	X	X
6	Open End & Box End Wrenches - 1/4" to 1 1/4"	X	X
7	Crescent Wrenches - 8", 10" & 12"	X	X
8	Cold Chisel Set	X	X
9	Pliers - Various Sizes	X	X
10	Pry Bars - Various Sizes	X	X
11	Vise Grips	X	X
12	Screwdrivers - Various Sizes	X	X
13	Hammers - Various Sizes	X	X
14	Calipers	X	
15	Center Punch Set	X	X
16	Scrapers - Various Sizes	X	X
17	Complete Set Feeler Gauges	X	
18	Allen Wrenches to 3/4"	X	
19	Lockable Tool Box	X	X
20	Metric Allen Key set up to 19mm	X	X
21	Metric Combination Wrench set up to 30mm	X	X

22	Metric ½ drive socket set up to 30mm	X	X
23	½ inch torque wrench	X	X
24	Impact sockets-imperial & metric, deep and shallow	X	X
25	Die Grinder complete with brush attachments	X	
26	Snap ring plier set, inner and outer	X	X
27	Assorted files – bastard, triangle, round, half round	X	X
28	Thread files – metric and imperial	X	X
29	Wire crimper	X	X
30	Wire stripper	X	X
31	Air blow gun	X	
32	Multi meter	X	
33	Test light	X	X
34	Torx drivers	X	X
35	O ring picks	X	X

LIST OF PERSONAL TOOLS - ELECTRICIAN 046

	Tool Description
1	3/8” Socket set (3/8-3/4)
2	3/8” extensions (2 1/2” - 5” - 10”)
3	3/8” metric socket set 6mm - 24mm
4	1/2” Socket set standard (7/16 - 11/4)
5	1/2” extensions (2 1/2” - 5” - 10”)
6	1/4” Socket set standard 3/16” - 1/2”
7	1/4” Socket set metric 4mm - 12mm
8	Nut Driver set (1/4”, 5/16”, 3/8”, 7/16”, 1/2”)
9	Combination wrench set (standard) 3/8” - 1 1/2”
10	Combination wrench set (metric) 4mm - 32mm
11	Ignition wrench set 13/64” - 3/8”
12	Adjustable wrench 8”
13	Adjustable wrench 12”
14	Pipe wrench 10”
15	Punch set (13 piece) centre, drift, drive pin, start, 1/4”-1/2”
16	Pliers - needle nose 6”
17	Pliers - linesman 9”
18	Pliers - slip joint 12”
19	Pliers - side cutters 7”
20	Pliers - vice grips 10”
21	Screwdrivers - Standard 1/4, 5/16, 3/8, 1/2
22	Screwdrivers - Phillips #1, #2, #3
23	Screwdrivers - Robertson #1, #2
24	Screw extractor (easy out) set (1/8 - 1/2”)
25	Jeweler screwdriver set (blade type)
26	Allen Wrenches (standard) 1/16” - 5/8”
27	Allen Wrenches (metric) 2mm - 12mm
28	Hammer 16 oz claw (soft face)
29	Pry Bars - alignment head 24”
30	Pry Bar - rolling head 18”
31	Cold chisel set (1/4” - 3/4”)

32	Sta-Kon tool
33	Screw starter (standard & phillips)
34	Hack saw
35	Tape measure - 25’
36	Utility Knife
37	Inspection mirror (telescoping)
38	Retrieving tool magnetic 0”-26”
39	Drill bit set (1/16” - 1/2”)
40	Multimeter
41	Flashlight
42	Tool pouch & belt
43	Lockable tool box

LIST OF PERSONAL TOOLS - SERVICEMAN.

1	Open End & Box End Wrenches 1/4 to 1 1/4
2	Crescent Wrenches 8” & 10”
3	Pliers Small & Large
4	Pry Bars (2) sizes
5	Vise Grips #7 & # 9
6	Screwdrivers Various Sizes
7	Hammers Two Sizes
8	Scrapers – Various sizes
9	Lockable Tool Box
10	Allen Wrenches to 3/4
11	Socket Set 1/2 drive 3/8 to 1 1/4

LETTER OF UNDERSTANDING #1

Between: **WALTER ENERGY/WOLVERINE COAL LTD**
(Hereinafter referred to as "the Employer")

And: **UNITED STEELWORKERS**
LOCAL UNION 1-424
(hereinafter referred to as "the Union")

Re: Training Opportunities

Training opportunities on equipment will be made available to the senior employee expressing an interest in such training through a job posting.

Trainees will maintain their current rate of pay while training until such time as the employee is deemed qualified.

Where the work requirement of the operation does not allow the senior employee to take the training opportunity, and a permanent vacancy for the position becomes available, the next senior qualified employee will temporarily fill the permanent vacancy provided no senior qualified employee applies for the posting.

Within three (3) months of the original posting the senior employee who was bypassed will receive the appropriate training and then be given the permanent vacancy that the junior employee is occupying provided no senior qualified employee has applied for that posting. The junior employee, if assigned to the permanent position, will be assigned back to their previous position.

The senior employee will maintain his current rate of pay until such time as he becomes qualified and is assigned.

It is recognized that the senior qualified operator on any given shift will be assigned relief work.

Dated at **Tumbler Ridge, BC,** this_____day of _____, 2012.

049

SIGNED on behalf of WALTER ENERGY/ WOLVERINE COAL LTD	**SIGNED on behalf of UNITED STEELWORKERS LOCAL UNION 1-424**
_____	_____
Walter Energy/Wolverine Coal Ltd Representative	**United Steelworkers Local 1-424 Representative**

LETTER OF UNDERSTANDING #2 050

Between: **WALTER ENERGY/WOLVERINE COAL LTD**
(Hereinafter referred to as "the Employer")

And: **UNITED STEELWORKERS**
LOCAL UNION 1-424
(hereinafter referred to as "the Union")

Re: **Health and Welfare Extended Coverage**

The Parties agree as follows:

1. In order to protect employees and their families from the financial hazards of illness and in lieu of the provisions outlined in Article 18.01 of the Collective Agreement, the Employer agrees to pay one-hundred percent (100%) of the premium cost of the benefit plan for bargaining unit members covered under the Collective Agreement. An outline of the Plan is outlined in Schedule B.

2. Coverage Qualification

   (a) The Employer will pay the premium cost for all employees

   (b) Coverage for each employee will be effective on the first (1st) of the month immediately following the date in which the employee has completed three-hundred and fifty (350) hours worked

   (c) Coverage for each employee recalled in accordance will be effective on the first (1st) of the month following the date in which the employee commences work.

3. Extended Coverage

   (a) The Employer will pay the cost of this plan for one (1) calendar month following the layoff of each employee, with the applicable coverage commencing on the first (1st) of the month following the termination. The Em-

ployer will also pay the premium cost for an additional one (1) calendar month for each employee's completed calendar year of service, to a maximum of three (3) months' total coverage per employee.

(b) The Employer will pay the cost of this plan for one (1) calendar month following the termination of any employee for cause, provided such employee was eligible for benefits in accordance with this letter at the time of the termination.

(c) The Employer will continue to pay the cost of the plan for a maximum of three (3) calendar months for any employee who takes an approved leave of absence for the period of the leave, or for the full duration on any leave where required in accordance with the BC Employment Standards Act.

(d) The Employer will continue to pay the cost of this plan for a maximum of six (6) calendar months for any employee who is unable to work due to a non-work related injury or illness.

(e) The Employer will continue to pay the cost of this plan for a maximum of twelve (12) calendar months for any employee who is unable to work due to a work related injury or illness.

Dated at **Tumbler Ridge, BC,** this_____day of _____2012.

SIGNED on behalf of
WALTER ENERGY/
WOLVERINE COAL LTD

SIGNED on behalf of
UNITED STEELWORKERS
LOCAL UNION 1-424

_____
Walter Energy/Wolverine Coal Ltd
Representative

_____
United Steelworkers Local 1-424
Representative

LETTER OF UNDERSTANDING #3

052

Between: **WALTER ENERGY/WOLVERINE COAL LTD**
(Hereinafter referred to as "the Employer")

And: **UNITED STEELWORKERS**
LOCAL UNION 1-424
(hereinafter referred to as "the Union")

Re: **Employee Health and Welfare Benefits**

The Employer agrees to ongoing discussions pursuant to and in accordance with the provisions set out in Article 16 Union Management Committee (16.02). The purpose in having discussions respecting employee benefit levels is to review potential enhancements to the current benefit plan document where appropriate in keeping with long term cost exposure.

Dated at **Tumbler Ridge, BC,** this_____day of _____2012.

SIGNED on behalf of
WALTER ENERGY/
WOLVERINE COAL LTD

SIGNED on behalf of
UNITED STEELWORKERS
LOCAL UNION 1-424

_____
Walter Energy/Wolverine Coal Ltd
Representative

_____
United Steelworkers Local 1-424
Representative

Between: **WALTER ENERGY/WOLVERINE COAL LTD**
(Hereinafter referred to as "the Employer")

And: **UNITED STEELWORKERS**
LOCAL UNION 1-424
(hereinafter referred to as "the Union")

Re: Apprenticeship Training Program

During discussions in collective bargaining the Parties agreed to the establishment of an "Apprenticeship Training Program".

In so agreeing the Parties agree to the creation of such a program by paying particular attention to the following program parameters and program elements which will form part of the final product;

Establishment of the committee representatives within sixty (60) days following ratification of the agreement or sooner if at all possible

- Training opportunities
- Educational requirements
- Size of the program and the number of participants
- Educational cost
- Program funding

The Parties agree to work together in a co-operative manner and have open and constructive dialogue respecting this program in an effort to come to an early resolution on a workable framework for both the Union and Employer, one which serves the interests of both the Company and the community.

Dated at **Tumbler Ridge, BC,** this_____day of _____2015

SIGNED on behalf of
WALTER ENERGY/
WOLVERINE COAL LTD

_____
Walter Energy/Wolverine Coal Ltd
Representative

SIGNED on behalf of
UNITED STEELWORKERS
LOCAL UNION 1-424

_____
United Steelworkers Local 1-424
Representative

LETTER OF UNDERSTANDING #5

Between: **WALTER ENERGY/WOLVERINE COAL LTD**
(Hereinafter referred to as "the Employer")

And: **UNITED STEELWORKERS**
LOCAL UNION 1-424
(hereinafter referred to as "the Union")

Re: **Use of Contract Services**

The Parties recognize the sensitivity respecting the use of contractor services on site. As such the Company gives assurance to the Union that it will continue to place reliance on its regular workforce to perform the required operations and maintenance functions.

The Company, through the Union-Management Committee (Article 16.02), at each meeting of the Committee, agrees to engage in dialogue, seek input, and review suggestions respecting this issue with the union committee members.

Dated at **Tumbler Ridge, BC,** this_____day of _____2012.

SIGNED on behalf of **WALTER ENERGY/** **WOLVERINE COAL LTD**	**SIGNED on behalf of** **UNITED STEELWORKERS** **LOCAL UNION 1-424**
_____ **Walter Energy/Wolverine Coal Ltd** **Representative**	_____ **United Steelworkers Local 1-424** **Representative**

Letter of Commitment
(not to be included in agreement)

056

Northern Resident Travel Allowance

The employer commits to report in Box 32 on the employees T4 Tax Return, an amount of $5,000.00. Employees, if audited, will bear the responsibility for providing any and all required receipts to support this declaration. Liability will rest with the employee

Dated at **Tumbler Ridge, BC,** this_____day of _____2012.

SIGNED on behalf of	**SIGNED on behalf of**
WALTER ENERGY/	**UNITED STEELWORKERS**
WOLVERINE COAL LTD	**LOCAL UNION 1-424**
_____	_____
Walter Energy/Wolverine Coal Ltd	**United Steelworkers Local 1-424**

BCLRB No. B106/2015

BRITISH COLUMBIA LABOUR RELATIONS BOARD

This is Exhibit" B "referred to in the
Affidavit of RANDY GATZKA
Sworn before me at Vancouver BC
This 24 day of DEC 2015
A Commissioner for taking Affidavits
within British Columbia

WOLVERINE COAL PARTNERSHIP

(the "Employer")

-and-

UNITED STEEL, PAPER AND FORESTRY, RUBBER, MANUFACTURING, ENERGY, ALLIED INDUSTRIAL AND SERVICE WORKERS INTERNATIONAL UNION, LOCAL NO. 1-424

(the "Union")

PANEL:	Jacquie de Aguayo, Vice-Chair
APPEARANCES:	Thomas A. Roper, Q.C. and Drew Demerse, for the Employer Craig Bavis and Stephanie Drake, for the Union
CASE NO.:	67987
DATES OF HEARING:	May 4 and 5, 2015
DATE OF DECISION:	June 9, 2015

DECISION OF THE BOARD

I. NATURE OF APPLICATION

1 The Union alleges the Employer has breached Section 54 of the *Labour Relations Code* (the "Code") by failing to give the Union 60 days' notice before it idled its coal mining operation at the Wolverine Mine. The idling of the mine resulted in the immediate layoff of the vast majority of bargaining unit employees. The Employer says it intends to reopen its mining operation within the recall period and, as such, the layoff is temporary. It submits temporary layoffs do not trigger the notice and consultation requirements in Section 54 of the Code and asks that the application be dismissed.

II. BACKGROUND

2 This matter was remitted to me further to a decision of a Reconsideration Panel under Section 141 of the Code: *Western Coal Corp. (Wolverine Mine)*, BCLRB No. B216/2014, Leave for Reconsideration of BCLRB No. B137/2014 allowed. Together with their submissions on the original application, the parties filed statutory declarations and further written submissions upon remittal. The majority of the facts are not in dispute. However, a hearing was convened by the Board on May 4 and 5, 2015. The parties called evidence on those facts identified as being in dispute, and provided additional written and oral arguments on the matters at issue.

3 The following is not intended to be a complete recitation of the evidence. Rather, I have set out the facts I find to be material to, or provide relevant context for, the issues to be decided in the application.

4 The Employer owns and operates the Wolverine Mine (the "Mine"), an open-pit coal mine located near Tumbler Ridge, BC. The Employer is a wholly owned subsidiary of Walter Energy, Inc. (the "Company") and is the second largest metallurgical coal producer in Canada. The Company is based in Birmingham, Alabama. For the purposes of this decision, I have distinguished between the Company and the Employer to indicate the different organizational levels of decision-making.

5 The Mine opened in 2006 and was operated under contract by Ledcor CMI Ltd. However, since May 2009, the Mine has been operated directly by the Employer. On March 24, 2011, the Union was certified as the exclusive bargaining agent for a bargaining unit of over 300 employees of the Employer performing mining functions at the Mine. The Union does not represent employees who perform coal processing, office or administrative functions. The Union displaced the previous bargaining agent, the Construction and Allied Workers' Union, Local 68 ("CLAC").

6 At the time the Employer took over operations at the Mine in 2009, it temporarily reduced production by 40% and reduced the workforce by 109 employees (the "2009 Layoff"). It did so on the basis of the impacts of the, then, global economic downturn.

The Union says the Employer gave over 60 days' notice of its decision. However, the Employer says, and the Union does not dispute, that it was not characterized as formal notice under Section 54 of the Code.

7 The Union's first collective agreement with the Employer has a term from August 1, 2011 to July 31, 2015 (the "Collective Agreement"). The Collective Agreement includes, among other things, recognition of the Employer's general right to control its operations, including the right to lay off and recall employees (Articles 4.01, 10 and 11). Article 11.05 of the Collective Agreement confirms that employees are deemed to be terminated at the expiry of a 24-month recall period. Article 11.10 further provides that severance is payable in the case of a permanent layoff resulting in a termination of employment as that term is defined in the *Employment Standards Act*, R.S.B.C. 1996, c. 113 (the "*ESA*").

8 During collective bargaining in 2011, the Union sought and achieved an extension of the recall period originally negotiated by CLAC from 12 to the current 24 months. The Employer says the change was in response to the 2009 Layoff. The Union says this is not an accurate statement of its bargaining position, indicating the Union's general priority in bargaining is to negotiate enhanced recall rights. I find nothing material turns on the reasons for the negotiation of an extended recall period.

THE 2014 LAYOFF

9 On April 15, 2014, the Employer announced and implemented an immediate shutdown of the Mine. It gave no advance notice to the Union or the employees of its decision. The decision was made by representatives of the Company. As is set out more fully below, the Company determined the global price for metallurgical coal had fallen to the point that it no longer made financial sense to continue Mine operations.

10 The layoff affected approximately 308 bargaining unit employees, as well as non-union employees. While virtually all the unionized employees were laid off effective on or around April 15, 2014, approximately 20 of them were temporarily retained to perform the functions of a Mine Rescue Crew as required under the *Mines Act*, R.S.B.C. 1996, c. 293 (the "*Mines Act*"). Some employees were also temporarily retained to perform some non-mining functions related to shipping coal and maintenance. Approximately six weeks after the layoff, the Employer advised the Union it needed to recall a handful of bargaining unit employees on a periodic basis to work a shift to maintain and "exercise" equipment at the Mine. Exercising equipment refers to periodically turning on and off the heavy equipment at the Mine. However, as of January 2015, the Employer had the equipment cylinders wrapped. This meant employees were no longer required to start and stop the equipment. As of January 2015, therefore, the layoff affected the entire bargaining unit.

11 Many of the laid-off employees no longer reside in Tumbler Ridge due to the general unavailability of work in that community.

INDUSTRY CONTEXT

12 It is not disputed that in resource-based industries, such as forestry and metallurgical coal mining, market conditions such as commodity prices, supply, and demand impact on an employer's ongoing operational decisions. At the risk of oversimplification of what is a complex sector of the Canadian economy, as commodity prices decrease, producers with high operating costs tend to be the first to idle or permanently shut down operations. However, the larger the decreases and the longer the price remains low, the more operations may idle or permanently shut down production.

FORESTRY

13 With respect to the forestry sector, the Employer submitted Natural Resources Canada's forestry reports, The State of Canada's Forests, for the years 2010 and 2011 (the "Forestry Reports"). The Forestry Reports reflect the "intense pressures" on the forestry industry resulting from global economic downturn, as well as other economic, social and environmental factors.

14 The Employer emphasized those parts of the Forestry Reports that set out the acquisitions, investments and curtailments by industry employers for the reporting year. Curtailments refer to reductions in production capacity, indefinite and permanent closures. For example, the 2010 Forestry Report shows that, in 2009, Canada saw roughly 52 forestry industry employers curtail operations, including 17 in BC. The 2011 Forestry Report sets out that, in 2010, there were 22 employers that restarted their mills, including 13 in BC. Also in 2010, 15 employers curtailed mill operations, including 6 employers in BC.

15 Statutory declarations from Greg Wishart ("Wishart") and Michael Bryce ("Bryce") were also entered into evidence. Both have significant experience in the forestry industry. Wishart is the President of the Interior Forest Labour Relations Association ("IFLRA"). The IFLRA represents member companies in collective bargaining with three other locals of the United Steelworkers (the "USW"). Bryce is the Executive Director of the Council on Northern Interior Forest Employment Relations (Conifer) ("Conifer"). The USW is certified as bargaining agent for all but one of Conifer's member employers. With respect to the matters at issue, the thrust of their evidence is that temporary shutdowns and layoffs regularly occur in the forestry industry due to market conditions. Neither is aware of Section 54 notice having been given, or of the USW taking the position that Section 54 notice was required. No evidence was called to identify the length or scope of the curtailments that resulted in layoffs or whether notice of any kind was provided in advance of their implementation.

16 The Union filed the statutory declaration of Frank Everitt ("Everitt"). Everitt is the President of the Union. He has worked in the forestry industry since 1971 and has extensive experience representing employees in that industry. As a result of his experience, he was appointed as a Member of the Forestry Roundtable by the

provincial government in 2008. The Roundtable was formed to identify issues and opportunities in the BC forestry sector.

17 Generally speaking, there are two sides to the forestry industry; logging and processing. The logging side is more seasonal, with temporary shutdowns occurring during the freeze-up and thaw cycles. The processing side of the industry includes the production of lumber products, pulp, paper, panels and newsprint. Again, with respect to the matters at issue, the thrust of Everitt's evidence is that the Union has never said Section 54 of the Code does not apply in the case of layoffs arising from curtailments on the processing side of the industry. Everitt says curtailments can occur under a variety of circumstances, but it is unusual that they occur with no notice to the union and involve the layoff of all or substantially all of a bargaining unit on an indefinite basis.

COAL MINING

18 The price for metallurgical coal is a global one, adjusted on a quarterly basis. Producers have regard to these quarterly benchmark prices, as well as interim price fluctuations referred to as "spot pricing", to make a range of operational decisions, including whether to continue a particular mining operation in the short, medium or long-term.

19 In making these complex assessments, the Company relies on reports from a range of experts. For example, the Employer submitted into evidence a report prepared by Wood Mackenzie in November 2013 (the "Wood Mackenzie Report"). Wood Mackenzie is a consulting firm and is viewed as the world's leading authority on projections for metallurgical coal pricing and steel output. Among other things, the Wood Mackenzie Report offers an extensive analysis of pressures, challenges and forecasts in the short, medium and long-term for global metallurgical coal producers.

20 The forecasting of the global price of metallurgical coal takes into account a range of factors, including overall global supply and demand, exchange rate risks, environmental events such as floods, transport costs, port facilities, and factors affecting steel production. The Executive Summary includes the following general forecast for 2014 and beyond:

> The combination of plentiful supply and somewhat dreary demand has resulted in a very low price setting environment for the current market. Spot prices reached a low of around US $130/t in July 2013, rose to over US $150 in September (largely on Chinese restocking) and have fallen into the mid-US$130s/t since. However, we anticipate stronger global economic performance in 2014 and a corresponding increase in steel, hot metal and coke demand. Due to these improvements, we expect the price for the benchmark low-volatile coal to modestly increase to an average of US $161/t for full-year 2014 and surpassing US $200/t by 2021;
>
> […]

> We maintain our view that prices will recover to 2015, after another year of weak prices in 2014. We forecast HCC [hard coking coal] contract prices to average US $161/t in 2014 and US $178/t in 2015. The catalyst for change will be improved global economic performance, as well as a slowdown in supply growth. Current prices – and those forecast for 2014 – are insufficient to enable many current producers to make sustainable margins and will inhibit investment in new capacity. (emphasis added)

21 The Company makes ongoing assessments of the economic viability of its coal mining operations based on, among other things, the existing and forecasted quarterly benchmark price for metallurgical coal. The degree to which the price affects the Company's decision-making is underscored by the evidence of Dan Cartwright ("Cartwright"). He is the President of the Company's Canadian operations, a position he held from January 2012 until his retirement at the end of July 2014. Prior to that, he held a variety of senior management and executive positions in a number of mining companies. He has more than 40 years' experience in the mining industry.

22 Cartwright testified as to the Company's state of mind in 2014. In the second quarter of 2013 ("Q2 2013"), the price of coal was US$170 per tonne. This is a price that he and most experts believe is a sustainable balance point for metallurgical coal. By balance point, Cartwright explained that a higher price would negatively impact the cost of steel, while a lower price impacts on the profitability of the mining of the coal resource. As such, the Company is typically looking for a price in the range of US$170.

23 When the Q3 2013 price was set at the beginning of July, the price had dropped to about US$140. Cartwright said this drop in price was "shocking" because of its "magnitude", and created a lot of concern within the Company about how to improve its standing in light of that price. By October, the Q4 2013 price for metallurgical coal had climbed back to US$150 but was still below what the Company considered to be a sustainable price.

24 Having regard to available information, including the Wood Mackenzie Report, Cartwright testified indicators pointed to an increase in price for 2014 and a sustainable price by 2015. The Wood Mackenzie Report's forecast for 2014 prices, as noted above, remained below the level Cartwright identified as sustainable. However, the Q1 2014 price set at the beginning of January 2014 dropped to US$143.

25 As such, by January 2014 the benchmark price for metallurgical coal was still at or near the price that Cartwright testified "created a lot of concern" within the Company. Its concerns were echoed in the Wood Mackenzie Report's 2014 forecast. It reports that "[c]urrent prices – and those forecast for 2014 – are insufficient to enable many current producers to make sustainable margins and will inhibit investment in new capacity". I find that as of July 2013 and continuing into 2014, the magnitude of the drop in price of metallurgical coal shocked the Company and the price remained at a level the Company indicated raised a lot of concern about the ongoing viability of the operation.

26 The Union is also aware of the market conditions in which the Employer operates. For example, the Union's Business Agent, Dan Will ("Will"), has extensive experience representing unionized workers in the mining industry. He contacted the Director of Human Resources for the Mine, Hugh Kingwell ("Kingwell"), by email on March 14, 2014, to request a meeting. Will testified that he wanted to talk about the future of the Mine as the price of coal had dropped, the Employer's stock price had dropped, and the Employer had stopped mining in an area referred to as Phase 4B. Scheduling conflicts meant that Kingwell and Will did not have an opportunity to meet further to the Union's March 2014 request.

27 Also in March 2014, at a "toolbox meeting" with Union members, a manager for the Employer indicated in response to a question that he was not aware of any plan for layoffs. The Union maintains employees were told there would not be any layoffs. I find nothing material turns on whether the manager indicated he was not aware of any pending layoffs or stated affirmatively that there would be none. I find the evidence shows, however, that by March 2014 the Employer was aware that the Union and employees were growing concerned given the market conditions.

28 Several weeks later, on or about April 2, 2014, the Q2 2014 price was released and the global price for metallurgical coal had now dropped to US$120. Cartwright testified that the US$120 price put the Company below the point it felt it could operate in a "cash positive" position, as the cash it was taking in was less than its expenses. He said the US$120 price "put us in the red" and continued operations would result in the burning of reserves. As such, the period of time where the price for metallurgical coal "alarmed" the Company and caused it "a lot of concern" to the point where the Company was "in the red" was a period of nine months (from Q3 2013 to Q2 2014).

THE DECISION TO IDLE THE MINE

29 The decision to idle the Mine was made in early April 2014 by senior executives of the Company, including Cartwright and Anthony Meyers ("Meyers") on behalf of the Company's Canadian operations. Meyers is the Vice President, Canadian Operations, for the Company. The decision "was not widely known by management at the Mine" and remained with its senior executive team until about five days before the layoffs. The Company is publicly traded and the decision to idle the Mine was "material information" around which there are securities exchange rules about disclosure. No authority was cited for this proposition, nor was evidence presented that elaborated on the nature of the exchange rules or what limitations they placed on the Company's ability to communicate its decision. Accordingly, I find the evidence establishes that from the time the decision to idle the Mine was made by the Company to the date it was publicly announced, the Company viewed its ability to communicate the decision as constrained.

30 The decision to idle the Mine was communicated to employees and the Union on April 15, 2014, the same day crews were advised not to report for shifts and the process for stopping production and idling equipment began. Accordingly, the release of the Q2 2014 coal price, the Company's decision to idle the Mine, the disclosure of that decision

to Mine management, and the layoff of almost the entire bargaining unit occurred within a two-week time frame.

31 The statutory declaration of Meyers, and Cartwright's evidence, set out the range of options for the Mine that were considered by the Company's senior executive team when they met. In general, mining at an open-pit coal mine begins with the logging and removal of trees from the site. Small trees, shrubs or grasses that remain are then burned off. Workers then use heavy equipment to remove the remaining organic matter and the soil below (referred to as overburden) to the depth required to expose the seam of coal to be mined. Workers then excavate the raw coal from the coal seam, process it, and prepare it for shipping.

32 By April 2014, workers at the Mine had already completed the work to expose the seam of raw coal in what is referred to as Phase 4A of the Mine. The Employer also had some raw coal stock ready for processing and shipping.

33 In this context, one option the Company considered was to sell its existing coal stocks. The Company decided this was not an option given the low price at which it could be sold. Cartwright testified that doing so would also make it harder to bear expenses while restarting the mining operation. In other words, having some coal ready to sell and ship on restart would allow the Employer to take advantage of a higher coal price and generate revenue quickly.

34 The Company also considered continuing the mining operation using less equipment and a smaller crew. This option was referred to as operating on a "single shovel" basis. At the time the Mine was idled, it was operating with four shovels. However, the Company concluded this option would raise its expenses on a cost per tonne basis and it was rejected.

35 The next option considered was to idle the Mine and defer mining and processing the exposed coal. In deciding to idle the Mine, the Company nevertheless elected to maintain it in a "ready state" for a quick restart. This involved maintaining equipment, periodically exercising heavy equipment (meaning to start and run it), keeping permits and licenses current, maintaining its tax status as an active mining operation despite the significantly lower tax rate available to nonproducing mines, and keeping a number of excluded and non-union personnel employed performing functions such as environmental monitoring/reporting, mine planning and engineering. The Employer negotiated terms with third party contractors for services such as blasting crews. Finally, the Employer continues to bear the cost of maintaining the Mine in this ready state at a cost of approximately $500,000 per month. At the time of the decision, Kingwell testified that the Company anticipated the layoff would bridge what it anticipated would be a 12 to 15 month slump in the price of metallurgical coal.

36 Kingwell and Cartwright say the Employer intends to recall all bargaining unit employees under two possible scenarios: Once a more sustainable coal price is reached; or, in the event the price does not increase to a sustainable level before expiry of the recall period, employees will be recalled to complete the mining of Phase 4A.

Meyers says this option would involve about 6 to 12 months of work. Cartwright testified that one of the reasons this second option is economically viable for the Company is that a recall of the bargaining unit would avoid the payout of the approximately $11.6 million in severance that is due at the expiry of the 24-month recall period.

37 At the time it implemented the layoff, the Employer circulated a Q&A to the Union and employees to address anticipated questions. Among other things, the Employer said idling the Mine was temporary "until we see coal prices and positive future indicators strong enough to continue sustainable operations". It also indicated that "[a]t this present time, there are no indications this will happen within the next year". With respect to the Employer's intentions, it said "[w]e are leaving the best part of 4a in place to provide favorable costs when we resume. This will improve our chances to develop 4b or EB when we can resume operations. If we did not intend to resume, we would finish mining 4a now".

38 The Union and the Employer met informally on a few occasions soon after the layoff. The Union wanted to discuss a range of issues relating to work opportunities, seniority and recall for those who were kept on to assist in the shut down and equipment maintenance, and whether some form of financial assistance might be available for affected employees. The Union also filed a number of grievances under the Collective Agreement.

39 One such meeting occurred on May 1, 2014. It was convened at the Union's request and present were Kingwell, Will and another Union officer, George Rowe. The parties agree the meeting was an informal one. The main reason for the meeting was that the Union wanted to see if the Employer was prepared to do anything financially for laid-off employees such as maintaining a northern living allowance. Kingwell indicated he did not think so but would check with the Company. Kingwell did not get back to Will on this issue.

40 The layoff and potential for recall were also discussed. Kingwell says that, at the meeting, he told Will of the two possible recall scenarios, referred to above. Will's recollection differs from that of Kingwell. Will says Kingwell identified 3 options for the Mine: The recall of the bargaining unit if coal prices increased; a recall of only about 80 employees for approximately 6 to 8 months to mine the exposed coal in Phase 4A; or a permanent shutdown of the Mine.

41 Kingwell says he would not have said this to Will. He says he did discuss the options considered by the Employer prior to deciding to idle the Mine. This would have been the single shovel option Kingwell says would have resulted in a recall of only 80-100 employees. However, Kingwell says he told Will that this option was not one the Employer was prepared to implement. In cross-examination, Will agreed that he may have had this discussion with Kingwell but could not recall it.

42 I find the evidence of both Will and Kingwell to have been thoughtful and credible. However, on the evidence before me, I find it more likely than not that Kingwell did discuss the single shovel option with Will in the context of one of the scenarios

considered, but rejected, prior to the decision to idle the Mine. Kingwell testified that at that meeting he was "trying to explain as best [he] could" why the decision to idle the Mine was made, how it was "not an easy decision to make" and that he talked about "the different configurations to bridge what was felt was a 12-15 month" slump in the market. His evidence is consistent with the evidence of both Cartwright and Meyers with respect to the Company's discussion in early April 2014, as well as the higher cost of extracting coal under the single shovel scenario.

43 I also find that at the time of the layoffs, and in the Employer's subsequent discussions with the Union, the Employer did not tell the Union it would, definitively, recall employees within the 24-month recall period regardless of market conditions.

44 Will testified the Employer never made that concrete commitment. He also testified that Kingwell has never identified what price would lead the Employer to restart the mining operation. Will says the Employer only indicated an intention to reopen the Mine in the event of a few scenarios. In cross-examination, Kingwell confirmed there is a distinction between an intention and a commitment. The evidence is the Employer tied its intention to recall on what it "felt" would be a price slump lasting 12 to 15 months. Kingwell also confirmed in cross-examination it was a possibility that the price of coal could remain so low that it would be cheaper to pay severance. However, he did state that such a possibility stands in contrast to industry predictions.

45 The Q&A document is the only written communication from the Employer to employees or the Union about the reasons for the layoff. In it, the Employer ties the restart of the mining operations directly to coal prices (market conditions), with the reason for leaving the exposed coal in Phase 4A being "to provide favorable costs when we resume". Cartwright also testified that, when he attended at the Mine to talk to employees on April 15, 2014, he talked about the impact of the price of coal and that the Mine "couldn't weather the storm and needed to idle until pricing improved". The fact the Mine was maintained in a ready state is consistent with the Employer's goal of putting itself in a good position for a quick restart in the event of more favourable market conditions.

46 Kingwell said that, in discussions with the Union on April 15, 2014, he "discussed briefly" but made the definitive point that employees would be recalled within 24 months to mine Phase 4A regardless of market conditions. I find that the preponderance of the evidence before me demonstrates only that this was the Employer's subjective intention, an option under consideration at the time of the decision to idle the Mine or at some later date, or a concrete decision made by the Employer after the fact. However, I find it was not an intention that was clearly communicated to employees or the Union in and around the time it implemented the layoff.

47 I find the layoff was intended to be lengthy, lasting at least 12 to 15 months. I further find that at the time the layoff was implemented, the recall of employees was contingent on, and subject to, an increase in the global price for coal. As such, I find the layoff in the present case was of a long-term and indefinite nature (the "Indefinite Layoff").

48 As of the hearing dates in May 2015, the Mine remains idled.

III. POSITIONS OF THE PARTIES

49 The parties filed thorough written submissions supplemented by oral argument at the hearing. The central issues in the present case are whether Section 54 of the Code applies only to terminations of employment and, if not, was Notice required for the Indefinite Layoff. The following is intended only as a summary of those positions I find to be materially relevant to my determination of these issues.

THE UNION

50 The Union submits that whether the requirement for notice and consultation set out in Section 54 of the Code ("Notice") is engaged is to be decided on a case-by-case basis and applying four interpretive approaches.

51 First, the Board must be guided by the principles and duties set out in Section 2 of the Code and, in particular, the encouragement of cooperative participation and consultation between employers and unions over issues that affect the workplace.

52 Second, the modern approach to statutory interpretation requires that the Code be given a fair, large and liberal construction and an interpretation that best ensures the attainment of its objects: *Pacific Press, A Division of Southam Inc.*, BCLRB No. B374/96 ("*Pacific Press*") at paras. 111-112; and *Health Employers Association of British Columbia*, BCLRB No. B393/2004 (Leave for Reconsideration of BCLRB No. B415/2003), 109 C.L.R.B.R. (2d) 28 ("*HEABC*") at para. 46.

53 Third, the Board must interpret and apply the Code having regard to values set out in the *Canadian Charter of Rights and Freedoms* (the "*Charter*"). The Union submits the right to freedom of association guaranteed by Section 2(d) of the *Charter* includes the right to meaningful collective negotiations on workplace matters: *Mounted Police Association of Ontario v. Canada (Attorney General)*, 2015 SCC 1 at para. 64; and *Doré v. Barreau du Québec*, 2012 SCC 12 at para. 24. The Board's interpretation of Section 54 of the Code, therefore, should be consistent with this fundamental *Charter* value.

54 Fourth, the Board's approach to Section 54 of the Code should be consistent with its express language and with achieving its statutory objective – being to foster employer consultation with unions over a wide range of issues affecting the workplace and the working lives of employees: *University of British Columbia*, BCLRB No. B371/94, 26 C.L.R.B.R. (2d) 33 ("*UBC*") at paras. 46-47.

55 Based on these approaches, the Union submits there is no basis in the language or policy of the Code to exclude all temporary layoffs from the application of Section 54 of the Code. It says it may be that some temporary layoffs do not require Notice. However, it submits the only question for the Board is whether, in the circumstances of the present case, Notice was required. The Union says the decision to idle the Mine and lay off over 300 bargaining unit employees constitutes a measure or change that

affects "the terms, conditions or security of employment of a significant number of employees" within the meaning of Section 54. The Union submits this language is broad enough to include changes to employees' continuity of gainful employment and is not limited to the conclusive termination of the employment relationship. As a result of the Indefinite Layoff, the Union says many employees have left the Tumbler Ridge area in search of other employment. Employees were given no commitment by the Employer they would be recalled, or a date they were expected to be recalled to work. This is so regardless of what the Union acknowledges is a decision to lay off employees that was made in good faith by the Employer due to market conditions.

56 The Union submits it was open to the Legislature to use language in Section 54 that would restrict its application in the manner advocated by the Employer, but it did not. Applying a broad and liberal approach to the language in Section 54(1) of the Code, the Union submits there is no basis for concluding that a "change" that affects the terms and conditions of employment of a significant number of employees excludes this Indefinite Layoff.

57 It further submits that, given the objects of Section 54 of the Code, Notice would have allowed the Union to discuss a range of issues, including ensuring seniority was a factor in retaining some of the employees who were kept on, whether those who could not financially remain in Tumbler Ridge could elect to waive recall rights, and a range of other matters. The Union submits there is no evidence that warrants a finding the Employer could not have discussed these options with the Union prior to idling the Mine, particularly given the Employer was in a position upon receiving the Wood Mackenzie Report to reasonably anticipate that layoffs may be required in 2014.

58 With respect to the exception in Section 54(3) of the Code, the Union submits it does not apply here. The exemption from the Notice requirement applies to specific categories of workers exempted under Section 65 of the *ESA* from the group termination pay provisions in Section 64 of that Act. The Union submits that the employees affected in the present case do not fall within any of the exemptions. A temporary layoff such as the one in the present case is not a termination of employment and, as such, temporary layoffs are not statutorily excluded from the application of Section 54(1) of the Code. The Union says to read in that exclusion in the manner suggested by the Employer is inconsistent with the four principles of statutory construction referred to above.

59 The Union further submits a case-by-case approach does not result in a lack of clarity of certainty in the law, or lead to absurd results. It says its position reflects the reality that the application of Section 54 of the Code is necessarily context-specific.

60 With respect to industry context, the Union submits it is not determinative of whether Notice was required in the present case. The Employer's evidence does not set out what measures were in place for curtailments in the forestry industry. It may be that sufficient measures were in place such that no application to the Board was required. Moreover, the Union says it has neither implicitly nor expressly conceded by its conduct that Notice is not required in the face of a temporary or indefinite layoff in the

forestry industry or elsewhere. Even if it had, the Union says there can be no estoppel to relieve against a statutory duty such as Notice under the Code.

61 By way of remedy, in its final written and oral submissions, the Union is requesting an Order that the Employer meet with the Union to discuss issues related to the viability of the Mine, an Order that the Employer pay wages for 60 days for all bargaining unit employees laid off, and an Order requiring the Employer to pay the Union damages for the lost opportunity to consult prior to the shutdown of the Mine: *Money's Mushrooms Ltd.*, BCLRB No. B82/2005, 110 C.L.R.B.R. (2d) 100 ("*Money's Mushrooms*") at para. 50; *Pacific Pool Water Products Ltd.*, BCLRB No. B43/2000 ("*Pacific Pool*") at para. 59; and *Board of School Trustees, School District No. 60 (Peace River North)*, BCLRB No. B94/2003 ("*Peace River North*").

THE EMPLOYER

62 The Employer submits temporary layoffs do not trigger Section 54 of the Code. In support of its position, the Employer identifies the interpretive approaches it says should govern the Board's analysis.

63 It says the Board must interpret Section 54 in a manner that is consistent and coherent within the section itself, with respect to other provisions of the Code, with respect to the purposes of Section 2, and with respect to established labour relations policy: *Compass Group Canada (Health Services) Ltd./Groupe Compass Canada (Services de Sante) Ltee*, BCLRB No. B193/2009 (Leave for Reconsideration of BCLRB No. B72/2009), 171 C.L.R.B.R. (2d) 101; and *Office and Professional Employees' International Union, Local 378 v. British Columbia (Labour Relations Board)*, 2001 BCCA 433 ("*OPEIU*").

64 In addition, the Board should avoid an interpretation that leads to absurd, unjust or unreasonable results: Elmer A. Driedger, *Construction of Statutes*, 2d ed. (Toronto: Butterworths, 1983) at 57-58, 105; Ruth Sullivan, *Halsbury's Laws of Canada - Legislation*, Chapter VIII (3)(2).

65 The Board's interpretation must also harmonize with the provisions of the *ESA*, incorporated by reference in Section 54(3) of the Code, the terms of the collective agreement, industry practice, and the market-based realities facing employers in resource-based industries.

66 Applying these principles, the Employer submits the exemption in Section 54(3) of the Code leads to the conclusion that Section 54 was intended to only apply to terminations of employment, not temporary layoffs. Having regard to the language of Section 54 of the Code, the Employer states as follows:

> Section 54(3) reads as follows:
>
> > (3) Subsections (1) and (2) do not apply to the termination of the employment of employees exempted by section 65 of the *Employment*

> *Standards Act* from the application of Section 64 of that *Act*.
>
> There are two points to be drawn from the wording of section 54. First, subsection (3) informs the interpretation of subsections (1) and (2). Subsection (3) assumes that section 54 is dealing with "termination" of employment and not a temporary layoff as it makes an exception for termination of employment which otherwise would trigger section 54.
>
> Second, subsection (3) links to the *Employment Standards Act*, and exempts those "terminations" identified in section 65. Other "terminations" are covered by section 54. A "termination" under the *Employment Standards Act* is defined as a layoff that exceeds a "temporary layoff" which by definition only occurs once recall rights have expired. (emphasis in original)

67 Based on the language in Section 54(3), the Employer says "[t]he point is that the premise of section 54(1) is its application to the 'termination' of a significant number of employees, with subsection (3) excepting the 'termination' of employees 'exempted by Section 65 of the [*ESA*] from the application of section 64 of that Act'".

68 The Employer further submits that, having regard to the specific exemptions in Section 65 of the *ESA*, one must conclude that the statutory obligation to give Notice arises only in the context of terminations from employment, not temporary layoffs. Specifically, one of the exemptions in the *ESA* is for employees who are laid off or terminated as a result of the normal seasonal reduction, suspension or closure of an operation (Section 65(4)(b) of the *ESA*). If Section 54 of the Code applies to temporary layoffs, Notice would be required for a seasonal layoff but not for a termination. The Employer says the only way to avoid this absurdity is to conclude that Notice is required only in the face of a termination of employment and not temporary layoffs.

69 The Employer also says that Part 8 of the *ESA* also provides for the establishment of an adjustment committee but one is not required for a temporary layoff. Accordingly, a harmonized reading of the Code would also lead to the conclusion that it was not the Legislature's intention to require a consultation process and an adjustment committee under the Code in what the Employer argues are the same circumstances.

70 With respect to the Collective Agreement, the Employer has a right to lay off and recall employees. With respect to the parties' understanding of employees' "security of employment" it should be characterized as the right to recall for 24 months. As such, Section 54(1) of the Code ought not to apply to a temporary layoff because, during the life of the recall period, the employees' security of employment is not affected by a decision to idle the Mine and implement the Indefinite Layoff.

71 The Employer says the parties' understanding is also consistent with its position that a temporary layoff does not affect "the terms, conditions or security of employment" of a group of employees, while a termination does. It says that the Board has found

Section 54 will apply to a termination of a significant number of employees: *0910196 B.C. Ltd.*, BCLRB No. B52/2012, 207 C.L.R.B.R. (2d) 192 ("*0910196 B.C. Ltd.*"). However, it has found it does not apply to a temporary reduction in the hours of work of part-time employees, with the Board emphasizing the temporary nature of the reduction: *Renew Crew Foundation*, BCLRB No. B18/2009, 174 C.L.R.B.R. (2d) 276 ("*Renew Crew*").

72 The Employer also refers to arbitral and Board decisions that address the question of whether a temporary layoff is, in fact, a termination arising from a permanent shutdown: *Carrier Lumber Ltd*. *v. United Steelworkers of America, Local 1-417*, Ministry No. A-009/10, [2010] B.C.C.A.A.A. No. 10 (McConchie) ("*Carrier Lumber*"); and *Valemount Forest Products Ltd.*, BCLRB No. B146/2010 (Leave for Reconsideration Denied, BCLRB No. B204/2010). It says that if an employer's stated intent is to terminate employment, Notice must be given. However, if an employer's stated intent is not known or is to maintain operations and employment, the Board should consider that intention in the context of the objective facts to determine whether a termination has in fact occurred. In this way, it may be that the Board could be called upon to determine, during the recall period, that a termination of employment requiring Notice has in fact occurred.

73 With respect to industry context, the Employer submits its position is consistent with Section 2 of the Code. It says:

> Perhaps the simplest way to explain why a temporary layoff cannot trigger section 54 obligations is to consider what it would mean for labour relations if section 54 did in fact apply to temporary layoffs. The absurd result would be that an employer would be obliged to give section 54 notice irrespective of the length of the temporary layoff.
>
> As a result, an industrial employer such as a mine or a mill would be required to give 60 days' notice before taking temporary downtime caused by all sorts of events outside the employer's control such as a rail, trucking, or port strike, a maintenance issue requiring immediate downtime, or the temporary shortage of a raw material used in the production process. A sawmill would be obliged to give 60 days' notice before announcing a two week curtailment and layoff in order to effect emergency repairs to a production line. Or it would have to give 60 days' notice to layoff a second shift, or to curtail production. It would be absurd for an employer to have to give 60 days' notice of any of these events, many of which are entirely unforeseeable or outside the employer's control.
>
> It cannot have been the Legislature's intent in enacting section 54 that such events would require 60 days advance notice to the Union, yet the consequence of the Union's position is that any temporary layoff would trigger section 54 obligations. A plain

> reading of section 54(1) and (3) does not support the Union's interpretation.

74 With respect to consistency with other Code provisions, the Employer points to the freeze provisions in Sections 32 and 45 of the Code. During the freeze, an employer is prohibited from altering "a" (Section 32) or "any" (Section 45) "term or condition of employment". However, both Sections 32 and 45 of the Code provide that the freeze must not be construed as affecting the right of an employer to suspend, transfer, layoff, discharge or otherwise discipline an employee for proper cause. The Employer submits this supports its position that a temporary layoff is not treated under the Code as "being an alteration of a term of employment".

75 The Employer says its position supports the principle of consistency and labour relations expectations. The Board should interpret the Code in a manner that provides clarity and guidance for parties as to their rights and obligations under the Code: *Gateway Casinos & Entertainment Inc. carrying on business as Lake City Casinos*, BCLRB No. B81/2010 (Leave for Reconsideration of BCLRB No. B210/2009), 179 C.L.R.B.R. (2d) 134; and *Ecodyne Limited*, BCLRB No. B187/2012 (Leave for Reconsideration of BCLRB No. B81/2012), 218 C.L.R.B.R. (2d) 1 ("*Ecodyne Limited*"). It follows, therefore, that the Code ought not to be interpreted in a way that creates uncertainty and unpredictability.

76 The Employer submits the Board has never required employers to give Notice before implementing temporary layoffs. It says:

> The fact this is the first case in over 20 years on this issue shows that the labour relations community understands how section 54 was intended to operate. Policy statements and statutory interpretation from the Board ought to accord with this experience, and the authorities above provide the Board guidance and the jurisdiction to interpret section 54 in such a way that it does not create absurd results, does not create disharmony within the provision, and does not undo decades of labour relations experience in this Province.

77 The Employer points to the 2009 Layoff at the Mine, forestry industry practice, and the Union's failure to point to a single example of a temporary shutdown in the forestry industry in which it maintained Notice was required, as evidence of this common understanding. The Employer says this common understanding reflects labour relations expectations and this should inform the Board's analysis of Section 54 of the Code in the present case. It says "[c]larity and certainty were built into the Code by a decision not to include temporary layoffs within the scope of events which could trigger section 54 in the first place".

78 The Employer also says, due to market conditions, it is typical that no proposed date of recall is provided as a precise date is largely outside an employer's control as it is determined by the date of a market rebound. Markets can be volatile. As such, if and

when Section 54 of the Code may apply to a particular layoff gives rise to a lack of clarity in the application of the Code and, thus, arbitrary outcomes.

79 The Employer rejects the case-by-case approach advocated by the Union. The Employer says:

> Such an approach would do employers, employees, and unions a great disservice. It would lead to uncertainty about which temporary layoffs trigger section 54 notice, and which do not. The jurisprudence would need to develop some temporal threshold with which the application of section 54 would be decided. Section 54 notice would not be necessary if a temporary layoff was of a lesser duration than this threshold. For layoffs of a longer duration than the threshold, notice would be necessary. Would the threshold be a layoff of a day, a week, a month, a year? And all of these determinations would be made by the Board after the fact, eliminating the opportunity for the employer to provide working notice if the Board ultimately determined that [section] 54 applied.
>
> The answer to this problem is not that section 54 applies to some temporary layoffs, but not to others. The simple answer, and the correct one, is that the Legislature did not intend for section 54 to cover temporary layoffs at all.

80 At the hearing, the Employer confirmed it does not take the position that the meetings held with the Union after the April 15, 2014 layoffs constitute compliance with the requirement to hold adjustment plan meetings under Section 54(1)(b) of the Code, should the Board conclude Section 54 of the Code applies. It also confirmed that, in the event I conclude the Employer's duty to give Notice was breached in the present case, damages are the appropriate remedy subject to the employees' duty to mitigate.

UNION REPLY

81 The Union agrees this is a case of first instance in the sense the jurisprudence of the Board has not yet directly addressed whether an indefinite or temporary layoff triggers the duty to give Notice. However, it maintains the absence of a demand for Notice by the Union in the past does not demonstrate that there were understandings, discussions or agreement by the Union that Notice did not apply.

82 The Union submits, however, it is not asserting that all temporary layoffs trigger Section 54 of the Code. The Union says the interpretive issue before the Board is whether the layoffs in the present case fall within the ambit of Section 54 of the Code. It says the Employer's reliance on hypothetical scenarios, industry practice or an interest in certainty do not warrant an undue narrowing of the language in the Code. The Union says that reading in an exception for temporary layoffs would import restrictive language into Section 54 of the Code.

IV. ANALYSIS AND DECISION

83 Section 54 of the Code provides as follows:

> **54** (1) If an employer introduces or intends to introduce a measure, policy, practice or change that affects the terms, conditions or security of employment of a significant number of employees to whom a collective agreement applies,
>
> (a) the employer must give notice to the trade union that is party to the collective agreement at least 60 days before the date on which the measure, policy, practice or change is to be effected, and
>
> (b) after notice has been given, the employer and trade union must meet, in good faith, and endeavour to develop an adjustment plan, which may include provisions respecting any of the following:
>
> (i) consideration of alternatives to the proposed measure, policy, practice or change, including amendment of provisions in the collective agreement;
>
> (ii) human resource planning and employee counselling and retraining;
>
> (iii) notice of termination;
>
> (iv) severance pay;
>
> (v) entitlement to pension and other benefits including early retirement benefits;
>
> (vi) a bipartite process for overseeing the implementation of the adjustment plan.
>
> (2) If, after meeting in accordance with subsection (1), the parties have agreed to an adjustment plan, it is enforceable as if it were part of the collective agreement between the employer and the trade union.
>
> (3) Subsections (1) and (2) do not apply to the termination of the employment of employees exempted by section 65 of the *Employment Standards Act* from the application of section 64 of that Act.

84 In interpreting and applying the Code, Section 2 provides, in part:

> **2** The board and other persons who exercise powers and perform duties under this Code must exercise the powers and perform the duties in a manner that

> (b) fosters the employment of workers in economically viable businesses,
>
> […]
>
> (d) encourages cooperative participation between employers and trade unions in resolving workplace issues, adapting to changes in the economy, developing workforce skills and developing a workforce and a workplace that promotes productivity,
>
> […]

THE GENERAL APPROACH TO SECTION 54 OF THE CODE

85 It is well-established that Section 54 of the Code is a substantive provision designed to advance the purposes in Section 2. As such, it is to be given a broad and liberal interpretation: *Pacific Press*; *UBC*; and *HEABC*.

86 The language in Section 54(1) of the Code is broadly crafted but includes a number of elements that must be satisfied in order to trigger the duty to give Notice and consult. Section 54 applies if "an employer introduces or intends to introduce a measure, policy, practice or change that affects the terms, conditions or security of employment of a significant number of employees to whom a collective agreement applies". As the Board stated in *UBC*:

> The section requires the parties to engage in bargaining on a wide range of issues. The section contemplates a cooperative model of labour relations, which recognizes the valuable contribution which unions and employees may make to the decision-making processes which affect their working lives. The section is a companion to Section 53 and is in furtherance of a purpose of the Code which is to "encourage cooperative participation between employers and trade unions in resolving workplace issues, adapting to changes in the economy, developing workforce skills and promoting workplace productivity". (p. 53)

87 Fostering cooperation between employers and unions in adapting to changes in the economy is one of the purposes of Section 2 of the Code. Under Section 54 of the Code, the mechanism that fosters this cooperative model of labour relations is the mandatory duty to give notice and consult: *0910196 B.C. Ltd*. Its focus is to encourage the broadest scope of good faith discussions between employers and unions: *0910196 B.C. Ltd.* at paras. 33-34. Its objective is to allow both parties to consider each other's perspectives and interests in an effort to mitigate the effects of, or develop alternatives to, a policy, practice or change falling within its scope: *UBC*; and *HEABC* at paras. 60-62.

88 As the Board stated in *Pacific Press Limited*, BCLRB No. B52/95, 26 C.L.R.B.R. (2d) 127 at para. 51:

> Another point needs to be made. Collective bargaining is a process we all understand. It involves discussion and proposals, alternatives to those proposals, and some give and take. It also involves timing, attitude and bargaining power. The relative ability to conduct a strike or lockout reflect the ultimate bargaining power of each party. Section 54 does not bring these concepts to a mid-contract meeting. The intention behind Section 54 is to remove the parties from this process and to compel them to engage in serious discussion of issues. All concerns can be raised and alternatives should be examined. While an employer is entitled to conduct its business, Section 54 mandates it to discuss the impact of its decisions and to discuss with the union alternatives that ease the negative impact of its decisions. (emphasis added)

89 As such, Section 54 of the Code requires that an employer account for the duty to give Notice when making business decisions. However, an employer is not required to justify or account for the valid business reasons that underpin these decisions. For example, employers are not required to consider alternatives to, reverse, or explain their decisions (although they may choose to do so): *HEABC* at paras. 50-51, 60-62. Nor are employers required to reach agreement with the union on an adjustment plan. They must endeavour in good faith to do so.

90 In the present case, the Employer points to the pressures inherent in the relationship between the global price of metallurgical coal and the ongoing economic viability of its mining operation in the short, medium and long-term. However, I find this evidence speaks largely to the *bona fide* reasons that underlie the decision to implement the Indefinite Layoff. There is no dispute before me that the Indefinite Layoff was a valid response to these market conditions. There is also no dispute before me that a range of layoffs can and do arise due to market conditions. Those market conditions can be volatile and may require quick decisions or make it difficult to identify a fixed date for recall with precision.

91 Consistent with Section 2(b) of the Code and the Board's existing approach under Section 54, the Employer's decision to implement the Indefinite Layoff in response to market conditions was the Employer's to make.

92 However, the Employer also relies on these same market conditions to support its position that a bright line exclusion of all temporary layoffs from Section 54(1) is necessary to avoid arbitrary or absurd outcomes. It submits the exemption in Section 54(3), the purposes in Section 2, and certain principles of statutory construction all lead to the conclusion that temporary layoffs never trigger Section 54 of the Code, only terminations of employment do. It says industry practice reflects and supports this approach. Applying this bright line, the Employer says it was not required to give Notice when it implemented the Indefinite Layoff in the present case.

THE EXEMPTION IN SECTION 54(3) OF THE CODE

93 I turn first to the Employer's position with respect to the exemption in Section 54(3) of the Code. In construing the language of the exemption, I have had particular regard to a number of principles of statutory construction.

94 First, it is well-established that applying the modern approach to statutory construction the Board will construe the words in Section 54 of the Code in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Code, the objects and policy of the Code and the intention of the Legislature: *Ecodyne Limited* at para. 29; and *OPEIU* at paras. 15-16.

95 Second, the Legislature is presumed to avoid superfluous or meaningless words. Every word in a statute is presumed to have meaning and a specific role to play in advancing the legislative purpose. Words that are precise and unambiguous are to be understood in their grammatical and ordinary sense: *Nanaimo-Ladysmith School No. 68 v. Dean (Litigation guardian of)*, 2015 BCSC 11 at paras. 32-33.

96 Third, as an exception to a broad and liberal reading of Section 54(1) of the Code, the exemption in Section 54(3) will be construed narrowly: *Zero Downtime Inc. and Others*, BCLRB No. B374/2004 at para. 65.

97 In interpreting the scope of the exemption in Section 54(3) of the Code, the Board must also have regard to the provisions of the *ESA*. They are incorporated by reference as follows:

> **54** (3) Subsections (1) and (2) do not apply to the termination of the employment of employees exempted by section 65 of the *Employment Standards Act* from the application of section 64 of that Act. (emphasis added)

98 The *ESA* is benefits-conferring legislation. It establishes minimum standards for both unionized and non-unionized employment relationships. As such, it is given a broad and remedial construction: *Rizzo & Rizzo Shoes Ltd.*, [1998] 1 S.C.R. 27 at para. 36.

99 I find the language of the exemption in Section 54(3) of the Code is unambiguous. The exemption applies only to "the termination of the employment of employees" and, more importantly, only to a specific subset of terminations exempted by Section 65 of the *ESA*.

100 A termination of employment is a defined term in Section 1 of the *ESA* as follows:

> "termination of employment" includes a layoff other than a temporary layoff (emphasis added)

101 A temporary layoff is also a defined term in Section 1 of the *ESA* as follows:

> "temporary layoff" means
>
> (a) in the case of an employee who has a right of recall, a layoff that exceeds***** the specified period within which the employee is entitled to be recalled to employment, and
>
> (b) in any other case, a layoff of up to 13 weeks in any period of 20 consecutive weeks; (emphasis added)

*****I note the definition in (a) contains a drafting error that was corrected by the *Employment Standards Regulation*, B.C. Reg. 396/95, as amended, as follows:

> 1(2) In section 1 of the Act, in the definition of "temporary layoff", "**exceeds**" means exceeds by not more than 24 hours. (emphasis in original)

102 There is no dispute the layoff in the present case falls within the definition of "temporary layoff" in the *ESA* and, as such, does not constitute a termination of employment. I find this is sufficient to conclude that temporary layoffs are not expressly exempted from the application of Section 54 of the Code.

103 However, the Employer argues that because only subsets of terminations of employment are exempted under Section 54(3), it necessarily follows that the general obligation to give Notice is limited to terminations of employment. I find limiting the scope of Section 54 of the Code in the manner suggested by the Employer frustrates, rather than furthers, its objects and purposes.

104 Every word in a statute is presumed to have meaning and a specific role to play in advancing the legislative purpose. Had the Legislature intended Section 54 to apply only where an employer terminates the employment of employees, it could have said so expressly. This is particularly the case given the use of the phrase "termination of the employment of employees" in the exemption in Section 54(3) of the Code. However it did not. The Legislature's choice of different, broader language in Section 54(1) of the Code runs counter to the interpretation advocated by the Employer. It would require that the Board interpret the language chosen more narrowly than its plain and ordinary meaning.

105 The Employer urges the Board to look deeper into the specific class of exemptions in the *ESA* in order to reveal the absurd consequences of this conclusion. However, I find no disharmony or absurdity arises when one has due regard to the distinct language and objects of Part 8 of the *ESA* and those of Section 54 of the Code.

106 Part 8 of the *ESA* deals with terminations from employment and includes Sections 63 to 65. Generally speaking, where a termination has occurred, Section 63 of the *ESA* sets out an employer's duty to provide notice, or pay in lieu of notice, to individual employees based on their length of service. Section 64 of the *ESA* is a group

termination provision that requires notice, or pay in lieu of notice, where an employer intends to terminate the employment of 50 or more employees. Under Section 64, the amount of notice, or pay in lieu thereof, is based not on an employee's length of service but on the number of employees affected. The obligations under Section 64 of the *ESA* are in addition to any other severance obligations under a collective agreement, or the obligations to give notice, or pay in lieu of notice, to individual employees set out in Section 63 of the *ESA*.

107 Section 65(1) of the *ESA* provides exemptions from the application of both Sections 63 and 64 for employees employed in circumstances where the cessation of the employment relationship is contemplated by the employment contract, there is an employment contract that is impossible to perform due to unforeseeable events, or employees are offered but refuse reasonable alternative employment. With respect to the former, the *ESA* identifies contracts of a definite term, employment on a temporary basis, or employment at a construction site by an employer whose principal business is construction.

108 I find no incongruence between an exemption for employment of a finite or temporary nature and the objects of Section 54 of the Code. As the Employer points out, these subsets of termination are, by their nature, "predetermined or predictable" and are properly exempted from the application of Section 54 of the Code. For reasons set out more fully later in this decision, events that are predetermined or predictable may not fall within the language in Section 54(1) of the Code that requires Notice where an employer "introduces" a "measure, policy, practice or change".

109 Section 65(3) also exempts certain additional forms of employment, such as seasonal work, from the application of Section 63 of the *ESA*. This exemption is not captured by Section 54(3) of the Code, however, a related provision is.

110 Section 65(4) provides exemptions from the application of Section 64 of the *ESA* in the following circumstances: where employees are offered and refuse alternative work or employment made available to the employees through a seniority system; employees who are laid off or terminated as a result of the normal seasonal reduction, suspension or closure of an operation; or employees who are laid off and do not return to work within a reasonable time period after being requested to do so by the employer.

111 Two of these exemptions relate to employees who refuse alternate work or fail to return to work after recall. The third exemption, on which the Employer places particular reliance, ensures that the duty to give notice, or pay in lieu, is not triggered in the face of a seasonal layoff or termination ("Seasonal Layoff").

112 The Employer argues that, unless Section 54(1) only applies to terminations, the duty to give notice and consult will arise where employees are "laid off" due to a Seasonal Layoff, but not if they are "terminated" in respect of it. Notwithstanding the fact a Seasonal Layoff did not occur in this case, the Employer maintains this outcome demonstrates an absurd result that can only be resolved by limiting Section 54 of the Code to terminations. However, with respect to a Seasonal Layoff, an inherent

characteristic is its normal and seasonal recurrence. A layoff in these circumstances is, by its very nature, predictable.

113 I find the Employer's argument with respect to absurdity is based on the following false premise: If the Indefinite Layoff in the present case triggers Section 54(1) of the Code then all temporary layoffs trigger Section 54(1) of the Code.

114 There is nothing inherent to *all* layoffs that make them inconsistent with the purposes of Section 54(1) of the Code. Similarly, there is nothing about a duty to give notice and consult with a union in the circumstances of *some* layoffs that is inherently inconsistent with the objects of fostering the employment of workers in economically viable businesses.

115 Accordingly, I find it that, as a matter of statutory construction, a bright line approach that limits Section 54(1) to terminations of employment is not necessary to avoid absurd or arbitrary consequences. I find the language of Section 54(1) of the Code, read together with the exemption in Section 54(3), contemplates that a layoff *may* constitute a workplace event falling within its scope.

116 I now turn to the Employer's submissions concerning a harmonized reading of the Code and the *ESA*. For the reasons set out, I do not find those submissions sufficient to overcome the clear language and purpose of Section 54 of the Code. In any event, I would also add the following, additional observations concerning the Employer's arguments in this regard.

117 The purposes of the *ESA* termination provisions and Section 54 of the Code are distinct. In the context of Part 8 of the *ESA*, the exemptions apply to certain types of employment and breaks in service, such as seasonal or temporary layoffs. This ensures, among other things, that such breaks in service do not negatively impact the calculation of an employee's length of service in determining the notice, or pay in lieu of notice, owing when their employment is terminated within the meaning of that Act: *Daniel Salvas*, BC EST # D115/11 at paras. 18-31. By corollary, the exemptions relieve an employer of the duty to provide notice, or pay in lieu of notice, in the circumstances set out.

118 While adjustment committees are contemplated by the *ESA* with respect to group terminations under Section 64 of the *ESA*, they are contingent on a discretionary direction by the Minister. Under Section 54 of the Code, the duties to consult and endeavour to reach an adjustment plan are mandatory.

119 Finally, under Section 54 of the Code, the focus is not on whether the employment relationship is, in fact, at an end for the purposes of determining whether notice, or pay in lieu, is owed. The focus is on encouraging cooperation between unions and employers with respect to a decision falling within its scope. On this basis, I do not find the Employer's arguments with respect to *Carrier Lumber* and *Valemount*, *supra*, to be persuasive.

DOES SECTION 54(1) OF THE CODE APPLY TO THE INDEFINITE LAYOFF AT THE MINE

120 I now turn to the question of whether the Indefinite Layoff at the Mine was, in fact, a "measure, policy, practice or change that affects the terms, conditions or security of employment of a significant number of employees to whom a collective agreement applies" within the meaning of Section 54(1) of the Code.

121 As of April 15, 2014, the vast majority of bargaining unit employees were laid off. Only a few remained to temporarily assist in the shutdown, to meet the Mine Rescue Crew requirements of the *Mines Act*, and, until January 2015, to periodically exercise heavy equipment. I find that the Employer's decision affected "a significant number of employees to whom a collective agreement applies".

122 I also find that the Indefinite Layoff was the introduction by the Employer of a measure, policy, practice or change that affects the employees' security of employment within the meaning of Section 54(1) of the Code.

123 The Employer submits the Collective Agreement shows the parties have turned their minds to and defined "security of employment" as being a 24-month recall period. Since the Indefinite Layoff is intended to have effect within that recall period, the Employer says it did not affect employees' security of employment.

124 I do not accept that recognition in the Collective Agreement of the Employer's right to lay off and/or recall supports a finding that the parties have defined what constitutes "security of employment" for the purposes of Section 54(1) of the Code. In any event, it is well-established that Section 54 of the Code operates independently from, and notwithstanding, collective agreement language that contemplates the actual "measure, policy, practice or change". The Board has found that the plain meaning of "introduce" is to "bring in to use or practice" and, as such, it is the bringing into practice of a decision that otherwise meets the requirements of Section 54(1) of the Code that will trigger the duty to give notice and consult: *Pacific Press* at paras. 115-119 and *0910196 B.C. Ltd.* at paras. 27-33, 39.

125 I find the Employer's decision to implement the Indefinite Layoff was a "change" within the meaning of Section 54(1) of the Code. Unlike the exemptions incorporated in Section 54(3) of the Code, including Seasonal Layoffs, the decision in the present case was neither a predetermined nor predictable feature of the employment relationship.

126 With respect to the effect on employees' "security of employment", the Employer's decision ended a period of gainful employment for employees in the bargaining unit for an indefinite period of time. For many employees, they left the community of Tumbler Ridge to find work. The employees ceased to be employed in a manner that would allow them to provide for themselves and/or their families for the foreseeable future. As such, I find that in the present case, the Indefinite Layoff was a change that affected employees' "security of employment".

127 For all these reasons, I find the Indefinite Layoff was the introduction by the Employer of a change that affected the security of employment of a significant number of employees to whom the Collective Agreement applies. As such, having regard to the language in Section 54(1) of the Code and the facts in the present case, I find the Employer failed to give Notice in violation of Section 54(1)(a).

ADDITIONAL ARGUMENTS

128 The Employer makes a number of arguments to show that, having regard to the Code as a whole, this conclusion leads to absurd and arbitrary outcomes. I address them below.

129 I find the facts in the present case are distinguishable from those in *Renew Crew*. The Employer says *Renew Crew* supports its position that decisions of a temporary nature do not affect employees' "terms, conditions or security of employment". However, in *Renew Crew*, the Board found Section 54 notice was not required where an employer temporarily reduced the hours of work of part-time employees from 35 hours per week to 25 hours per week and affecting 25% of the workforce. It did not rely exclusively on the temporary nature of the employer's decision. The Board looked at a range of factors on which it placed particular importance: The reduction in hours for part-time staff was temporary; no employees were laid off or had their employment terminated; the reduction in hours was still within the range of hours part-time employees were hired for; and there was no impact on other employees in the bargaining unit (See *Renew Crew* at para. 31). I note, in contrast, the Board in *Money's Mushrooms* at paragraphs 49-50, contemplates that the duties under Section 54(1) may arise in the circumstances of a "significant layoff or termination".

130 With respect to the freeze provisions of the Code, I find the purposes and approach under Section 54 are distinguishable from those of Sections 32 and 45. The Employer says the freeze shows the Legislature did not intend a temporary layoff to be an alteration to a term or condition of employment. I disagree. Sections 32 and 45 of the Code ensure that an employer does not alter a term or condition of employment if doing so would constitute a violation of the freeze. However, the prohibition expressly provides that a layoff for proper cause would not constitute a violation of that prohibition. The clear language of the Code is, alone, a full answer to the Employer's submission on this issue.

131 Moreover, among the purposes of the freeze is to provide a period of calm and stability "and avoid the chilling effect that unregulated employer action could have on the representation of employees by a union" while a certification application is pending or during the negotiation of a collective agreement: *Viva Pharmaceutical Inc.*, BCLRB No. B167/2002 ("*Viva Pharmaceutical*") at para. 41. In this way, the freeze provisions are similar to Section 54 of the Code to the extent that Sections 32 and 45 expressly preserve an employer's right to effect changes to the conduct of its business, and that economic circumstances may constitute "proper cause" that justify a change. However, under the freeze provisions, the Board retains the ability to authorize those changes and may attach conditions: *Viva Pharmaceutical* at para. 43. No such similar prohibition

exists under Section 54 of the Code. The focus is on whether, having effected a change, the duty to give Notice is triggered.

132 Finally, the Employer says temporary layoffs are inherently variable in that they take many different forms (removing a single shift to a layoff of the entire bargaining unit), they cover many different time frames (one day, one week, several months or several years), and arise out of many triggering events (foreseen and unforeseen, predictable and unpredictable). It says the labour relations community requires clarity from the Board. On this basis, the Employer submits the only way to read Section 54(1) in a manner that avoids absurdities and arbitrariness is to conclude that all temporary layoffs are excluded from the application of Section 54 of the Code. Thus, it again urges a bright line approach.

133 For the reasons already set out, I do not accept that my conclusion in the present case sweeps all temporary layoffs under Section 54(1) of the Code. Moreover, clarity is an important principle in the Board's approach to the Code. However, the existing jurisprudence of the Board already provides significant guidance to labour relations parties.

134 It is well-established that whether Section 54 is engaged may involve a number of considerations, all of which are assessed by the Board based on the particular circumstances before it: *Pacific Press* at para. 112. It is clear to labour relations parties, therefore, that the Board does not favour a bright line approach such as the one advanced by the Employer in the present case. On the contrary, the Board's approach under Section 54 of the Code is flexible to allow it to take into account the range of workplaces, industries, and circumstances in which it may apply. Accordingly, it is because of the variety of circumstances in which the duties under Section 54(1) of the Code may arise that it is not amenable to a bright line approach.

135 It is also well-established that the duties under Section 54 of the Code must factor into an employer's decision-making process. Employers must take into account the requirement for 60 days' notice. For example, a negotiated closing date for a sale of business should ensure the 60-day notice requirement can be met. A failure to do so will not render the notice provision inapplicable. See *Pacific Pool* at para. 45, citing *Pacific Press* and *Canada Safeway Limited (MacDonald's Consolidated Division)*, BCLRB No. B75/97.

136 Moreover, an employer may wish to maintain secrecy with respect to its decision for a number of valid business reasons. Notwithstanding this, an employer must nevertheless comply with the notice and consultation requirements of the Code before it implements its decision. A failure to do so will not render the notice provisions inapplicable. In such circumstances, the union has a related duty to ensure the confidentiality of sensitive information provided in the context of these discussions: *Pacific Pool* at paras. 45-46.

137 The Board's existing approach under Section 54 of the Code also accounts for those circumstances in which an employer is not able to meet the 60 days' notice

requirement. Again, applying a case-by-case approach, the Board will first examine the circumstances before it to determine whether an employer was nevertheless in a position to advise the union that a decision was likely and to discuss the possible effects of the decision on the affected employees: *The Brewster Healthcare Group Inc*., BCLRB No. B154/2012, 218 C.L.R.B.R. (2d) 142 at paras. 36-37.

138 As a result of actions or circumstances completely outside the control of an employer, if an employer is unable to provide the required notice, the Board may relieve against all or part of the notice period. However, such relief will be the exception. Where notice is possible, it must be provided: *UBC* at p. 56; *Pacific Pool* at paras. 40-41.

139 Finally, the Board will have regard to the practical requirements and consequences of Section 54(1) of the Code to take into account a wide variety of workplace arrangements. As the Court of Appeal recognized in *OPEIU* at paragraph 16, this can involve a delicate balancing between different constituencies with different and competing interests.

140 The Employer says requiring notice for a temporary layoff requires that an employer predict, 60 days in advance, what markets will be like, or else must risk paying 60 days' wages to produce a product that cannot be sold. It says the viability of a business is put at risk by such an interpretation. It further states that, once it reached the point of losing money in April 2014, it should not be required to continue its operations because of the 60 days' Notice requirements in the Code.

141 The only issue before me is whether in the circumstances of the present case Notice was required. The Employer accepts that, if so, damages are appropriate. Having adopted a bright line approach, the Employer did not advance arguments that it could not have given the Union Notice in advance of implementing its decision. On the contrary, it relies on what it asserts are the difficulties arising from its failure to do so. For example, the evidence in the present case was that the Employer knew over a period of nine months that the global price for metallurgical coal was at a level that created a lot of concern for the Company and it was "shocked" by the drop in the coal price in July 2013. These conditions remained relatively constant and were well below what the Employer considered sustainable. The Union and employees voiced their own concerns in March 2014. The evidence does not establish the Employer was not in a position to advise the Union at some point prior to April 15, 2014, that an Indefinite Layoff was likely or would be implemented.

142 Similarly, I find the evidence does not establish that giving Notice to the Union beginning in April 2014 would have put the Employer in the position of being required to "produce a product that cannot be sold". First, the Employer was required to factor into its decision-making its potential obligations under Section 54(1) of the Code. This is particularly so given its knowledge of the long-term nature of the layoff. Among the factors to be taken into account would have been the cost of operating during the notice period and consulting with the Union. As the evidence before me establishes, the Employer was already called upon to make a series of difficult decisions, including maintaining the Mine in a ready state at a cost of $500,000 a month, idling the Mine on

an indefinite basis and avoiding a payout of $11.6 million in severance, among a range of other factors. It had existing coal stock that it decided it would not sell until the price went up. Moreover, the existence of coal reserves ready for quick sale once the price went up was identified in the evidence before me as key in that it provided for a quick infusion of funds during any restart of the mining operation.

143 As the Board stated in *Pacific Pool*:

> […] The Employer did not bring an application to the Board seeking relief from the Section 54 obligation and in doing so provide evidence of the impossibility of complying with the notice provisions. Instead, the Employer balanced its interest in maximizing its ability to sell its assets by keeping the discussions secret, against the notice requirements under Section 54, which it saw as potentially jeopardizing any sale, choosing the first. Put another way, the Employer balanced the potential costs associated with providing notice against the costs associated with not providing notice, preferring the latter. (para. 43)

144 The Employer also did not argue exceptional circumstances exist in the present case such as to relieve against all or part of the Notice requirements. While market conditions may be volatile and fluctuating, the evidence before me shows the Employer and the Company were closely monitoring it for nine months while it was within a price range it characterized as raising a lot of concern.

145 With respect to industry practice, I find the 2009 Layoff does not establish a practice of implementing layoffs without notice under Section 54(1) of the Code for this Employer or within the industry itself. I note some form of notice was provided with respect to the 2009 Layoff. Yet, with respect to the Indefinite Layoff, the layoff was immediate and without Notice.

146 Finally, I find that the evidence of forestry industry practice is not material to my decision with respect to the Indefinite Layoff at the Mine in the present case. The evidence does not establish a clear practice or understanding in the forestry industry with respect to whether notice (whether under Section 54 of the Code or otherwise) is given, or the nature, frequency and length of the curtailments. Based on the reasons given here, it is not the case that each such curtailment will necessarily trigger Section 54(1) of the Code. This is a matter for a future panel to decide, having regard to whether in all the circumstances before it, the layoff falls within the language, objects and purposes of the Code.

V. REMEDY

147 For all of the reasons set out, I find the Employer violated its duty under Section 54(1) of the Code to give notice to, and consult with, the Union when it idled the Mine and implemented the Indefinite Layoff.

148 I hereby order the Employer and the Union to meet forthwith and consult with respect to any issues relating to the Indefinite Layoff.

149 The Employer agrees that damages in lieu of notice are the appropriate remedy in the face of a violation of the duty to give 60 days' notice under Section 54(1) of the Code. Accordingly, I order damages equivalent to 60 days' pay for each of the affected employees, subject to mitigation: *Pacific Pool* at para. 61.

150 The Union seeks additional damages for the lost opportunity to consult. The right to notice and to be consulted is a substantive right under Section 54 of the Code. As such, the lost opportunity to do so is compensable: *Pacific Pool* at para. 59; and *Peace River North* at para. 22. The Union points to the fact it advanced a number of grievances arising out of the Indefinite Layoff. However, I find this evidence is not sufficient to establish a basis for damages to the Union in addition to the real, not nominal, damages award to the affected employees in the bargaining unit. For this reason, I find the Union is not entitled to damages for the lost opportunity to consult.

151 I remain seized with respect with the implementation of this decision.

VI. CONCLUSION

152 For all the reasons set out, I find there is no basis in the Code for adopting a bright line approach under Section 54(1) of the Code that limits its application to terminations of employment. I find the Indefinite Layoff in the present case triggered Section 54 of the Code: *Pacific Press*. I further find the examples of absurd or arbitrary outcomes relied on by the Employer are not necessary consequences of my conclusion that the Indefinite Layoff gave rise to the Employer's duty to give Notice to the Union.

153 As such, I find the Indefinite Layoff in the present case gave rise to the duty to give notice to, and consult with, the Union. Having failed to give Notice to the Union, I find the Employer has violated Section 54(1) of the Code.

LABOUR RELATIONS BOARD

"*JACQUIE DE AGUAYO*"

JACQUIE DE AGUAYO
VICE-CHAIR

This is Exhibit " C " referred to in the
Affidavit of RANDY GATZKA
Sworn before me at Vancouver BC
This 24 day of DEC 20 15

A Commissioner for taking Affidavits
within British Columbia

IN THE MATTER of an application pursuant to the *Labour Relations Code*, R.S.B.C. 1996, c. 244

BETWEEN:

United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, Local 1-424

("Union")

AND:

Wolverine Coal Partnership

("Employer")

STATUTORY DECLARATION OF FRANK EVERITT

I, Frank Everitt, of 1777 3rd Avenue, Prince George, British Columbia, **MAKE OATH AND SAY AS FOLLOWS:**

1. I am the President of the Union and as such have personal knowledge of the facts hereinafter deposed to save and except where same are stated to be based on information and belief and where so stated I believe them to be true.

2. I make this declaration in support of an application by the Union to have money put in trust to put towards damages owed to employees laid off by the Employer on or about April 15, 2014, pursuant to the Labour Relations Board's Order in BCLRB Decision No. B106/2015.

3. The Union has been able to gather from some of its members information with respect to work performed during the notice period that is the subject of the Labour Relations Board's order in BCLRB Decision No. B106/2015. To the best of my knowledge, the bulk of this

information was gathered by Dan Will, the Union's Third Vice-President and Business Agent. However, I am aware of Mr. Will's efforts in this regard, and have participated in creating the documents that the Union has prepared in support of the instant application.

4. Attached as **Exhibit "A"** to this declaration is a document that estimates total wage loss for the laid off employees. The Union has arrived at this calculation using an average of the wage rates available to it, based on the assumption that the employees would have worked four rotations or "tours" of seven twelve hour shifts each during the notice period.

5. Also contained in the document at **Exhibit "A"** is an estimated total amount of earnings through mitigation to be subtracted from the estimated total wage loss. The Union has arrived at this calculation by: a) totalling mitigation earnings where that information was provided; and, b) where employees either indicated they worked but did not provide sufficient particulars for the Union to do the calculations, or have not yet responded to the Union, the Union has attributed to those individuals for the purposes of these calculations the average mitigation income of those employees for whom information was provided.

6. Attached as **Exhibit "B"** to this declaration is a document that estimates the total wage loss for only those employees for whom the Union has the wage rate and particulars of mitigation available.

7. Attached as **Exhibit "C"** to this declaration is a press release from Walter Energy dated July 15, 2015, which confirms that Walter Energy has filed for bankruptcy protection in the United States.

8. Attached as **Exhibit "D"** to this declaration is a statutory declaration of Hugh Kingwell, Director of Human Resources for the Canadian Operations of Walter Energy, which was declared on August ~~14~~ 15 550, 2014 and filed before the Board in the Employer's application for a stay of BCLRB Decision No. B137/2014.

I MAKE THIS SOLEMN DECLARATION conscientiously believing it to be true and knowing that it is of the same force and effect as if made under oath and by virtue of the British Columbia *Evidence Act.*

DECLARED BEFORE ME at the City of Prince George, in the Province of British Columbia this 15th day of July, 2015.

A Commissioner for taking Statutory Declarations in the Province of British Columbia

Frank Everitt

SARBJIT S. DEEPAK
Barrister & Solicitor
303-1777 3rd Avenue
Prince George, BC V2L 3G7
Ph: (250)563-9999
Fax. (250)563-9998

"Witnessed as to execution only; advice neither sought nor given."

EMPLOYEE NAME	JOB CLASS	RATE OF PAY AT WOLVERINE	EARNING AT WOLVERINE IF 336 HOURS WORKED	SHIFT A,B,C,D, OTHER	STD	LTD	WCB	REPLACEMENT EMPLOYMENT Y/N	REPLACEMENT EMPLOYMENT HOURS	REPLACEMENT EMPLOYMENT RATE OF PAY	REPLACEMENT EMPLOYMENT GROSS WAGES	WORKED BUT NO/INCOMPLETE REPLACEMENT EMPLOYMENT DATA ATTRIBUTE AVERGAE GROSS WAGES ($6560.70)
ABROMOVICH, SHAWN M		$ 36.31	$ 12,200.16									
ADEKAT, LESTER			$ 11,763.36					N				
ANDERSON, TRAVIS			$ 11,763.36									
ARSENAULT, KRISTON R	welder appentice		$ 11,763.36	B				N				
ARSENAULT, LLOYD	welder		$ 11,763.36	A				N				
BAILEY, BOBBY D			$ 11,763.36					Y	395.50	$ 37.50	$ 14,831.25	
BALL, COLLIN			$ 11,763.36									
BARGY, BRENDA F	haul truck	$ 33.00	$ 11,088.00	D	-	-	-	N				
BARKER, EUGENE	building maintenance	$ 40.52	$ 13,614.72		x			n				
BEAUSOLIE, KATRINA	haul truck	$ 33.71	$ 11,326.56	C				n				
BEGON, GARY	truck driver	$ 33.71	$ 11,326.56	B	-	-	-	n				
BELLOWS, PAUL			$ 11,763.36									
BENIOT, ROBERT L	haul truck driver	$ 33.71	$ 11,326.56					y	160.00	$ 25.00	$ 4,000.00	
BENNETT, GARRETT COLIN			$ 11,763.36									
BERGSON, PATTI	truck driver	$ 33.71	$ 11,326.56	B	-	-	-	n				
BERTRAND, LEON ERNEST			$ 11,763.36									
BIELECKI, ARTUR	welder	$ 42.80	$ 14,380.80	c/d	-	-	-	n				
BISSET, JASON	haul truck	$ 33.71	$ 11,326.56	b	-	-	-	n				
BISSET, JOHN T	pit services	$ 33.71	$ 11,326.56	c/d	-	-	-	y	84.00	$ 33.71	$ 2,831.64	
BISSON, TYLA	welder	$ 42.80	$ 14,380.80	b	-	-	-	n				
BLADE, JASON			$ 11,763.36									
BOUTILIER, TREVOR			$ 11,763.36	C		-						$ 6,560.70
BOWERMAN, KEVIN	driller	$ 36.31	$ 12,200.16	B				y				
BRADLEY, KENNETH R	H.D. Operator	$ 35.01	$ 11,763.36	B	-	-	-	y		various	$ 16,297.23	
BRAKE, CASSANDRA	lube service	$ 33.71	$ 11,326.56	B	-	-	-	N				
BREDESON, SHAIA	fuel truck operator	$ 32.71	$ 10,990.56					Y				6,560.70
BRIGHT, CLINT	haul truck operator	$ 33.71	$ 11,326.56	A	-	-	-	N				

This is Exhibit "A" referred to in the Statutory Declaration of FRANK EVERITT SWORN BEFORE ME at PRINCE GEORGE in the Province of British Columbia, this 15th day of July 2015

A Commissioner for taking Oaths in British Columbia

BROSOSKY, PETER D			$ 11,763.36									
BROWN, MONIKA	driller/blaster	$ 36.31	$ 12,200.16					N				
BROWN, TROY RICHARD	dozer operator	$ 35.01	$ 11,763.36	D				n				
BROWNE, DREW	haul truck	$ 33.71	$ 11,326.56	D	-	-	-	n				
BRYLA, WILLIAM RICHARD	shovel op.	$ 37.61	$ 12,636.96	B				n				
BZDEL, MATTHEW			$ 11,763.36									
CALJOUW, STEVEN M	bui		$ 11,763.36	C/D				n				
CAMPBELL, LLOYD	driller		$ 11,763.36	B	-	-	-	N				
CARR, ENRICA			$ 11,763.36									
CASE, ERIN		-	$ 11,763.36	-	-	-	-	Y	72.00		$ 2,982.00	
CHABOT, ADELARD G	dozer		$ 11,763.36	D	-	-	-	N				
CHAPMAN, KEVIN	fuel truck operator	$ 33.71	$ 11,326.56	D								
CHMELYK, BAILEY	steambay attendant	$ 27.23	$ 9,149.28	D	-	-	-	N				
CLARE, KEVIN			$ 11,763.36		-	-	-					
COLBOURNE, RODDI			$ 11,763.36									
COOK, RONALD J			$ 11,763.36									
CORBETT, JESSE	pit operations	$ 33.71	$ 11,326.56	D	-	-	-	N				
CURTIS, BRANDON	lube truck driver	$ 33.71	$ 11,326.56	C				N				
CURTIS, GORDON	shovel op.	$ 36.71	$ 12,334.56	C				N				
CUTLER, TREVOR			$ 11,763.36									
CYR, PETER "JOSEPH"			$ 11,763.36									
CYR, SANDRA	blaster	$ 36.31	$ 12,200.16	C/D	-	-	-	n				
DAFOE, JERMAINE			$ 11,763.36									
DAVIDSON, TODD			$ 11,763.36									
DAVIS, JEREMY			$ 11,763.36									
DAWBORN, ERIC	loader operator		$ 11,763.36	D	-	-	-	y		$ 23.00	$ 9,137.44	
DEWETTER, LEE			$ 11,763.36		-	-	-	y				$ 6,560.70
DOMEIJ, DEREK			$ 11,763.36									
DOONAN, MARCIE	haul truck	$ 33.71	$ 11,326.56	C	-	-	-	Y				$ 6,560.70
DORE, DARCY	truck driver	$ 33.57	$ 11,279.52	B	-	-	x	N				
DOWNEY, AIDEN			$ 11,763.36									
DROVER, ANN	welder trade 1		$ 11,763.36		-	-	-	N				

DUBOIS, JARROD			$ 11,763.36		-	-	-	N				
DUCK, JODY J	maintenance (lube truck)	$ 33.71	$ 11,326.56	D	-	-	-	N				
DUFRESNE, SARAH L			$ 11,763.36									
DUHAIME, JACK			$ 11,763.36		-	-	-	y			$ 1,200.00	
DUNN, JAMES L	haul truck	$ 33.71	$ 11,326.56		-	-	-	n				
DURAND, ORVILLE		$ 37.61	$ 12,636.96		-	-	-	y	12.00	$ 37.61	$ 548.88	
DURDLE, DAVID	truck driver	$ 35.01	$ 11,763.36	D	-	-	-	Y	325.00	$ 23.18	$ 10,253.76	
EDWARD, ROBERT T	blaster	$ 36.14	$ 12,143.04	a/b	-	-	-	y	151.50		$ 2,903.28	
ELLIOTT, RON	haul truck		$ 11,763.36		-	x	-	n				
ERICKSON, BRUCE	haul truck	$ 35.01	$ 11,763.36	A	-	-	-	N				
FAIRWEATHER, CARL	scaper		$ 11,763.36	A	-	x	-	N				
FARMER, DEVON			$ 11,763.36									
FELKER, GRAEME			$ 11,763.36									
FELKER, LISA	blaster	$ 33.71	$ 11,326.56	C/D	-	-	-	n				
FELTHAM, GARFIELD	mechanic	$ 40.52	$ 13,614.72	C/D	x	x	-	N				
FENTIMAN, TRAVIS			$ 11,763.36									
FENTON, TIMOTHY GEORGE	HD mechanic, trades 1		$ 11,763.36		-	-	x					
FERGUSON, ERIC C	dozer operator		$ 11,763.36		-	-	-	y				$ 6,560.70
FERGUSON, JOHN R			$ 11,763.36									
FERGUSSON, NICOLE			$ 11,763.36									
FERGUSSON, BRET	welder	$ 42.80	$ 14,380.80	C	-	-	-	Y	168.00		$ 6,739.15	
FILION, PASCAL			$ 11,763.36									
FISCHER, CHRIS	fuel lube teck	$ 33.71	$ 11,326.56		-	-	-	Y				$ 6,560.70
FISS, STEFANIE EMILY	blaster	$ 36.31	$ 12,200.16		-	-	-	n				
FITZGERALD, DAVID M			$ 11,763.36	A	-	-	-	Y	63.00	$ 33.71	$ 2,123.73	
FITZPATRICK, JOHN DEREK			$ 11,763.36									
FLEURY, JASON H	driller	$ 36.31	$ 12,200.16	C	-	-	-	N				
FORRY, MICHAEL			$ 11,763.36									
FORTIER, ALISAN	steamer		$ 11,763.36	C	-	-	-	N				
FOX, BRADLEY			$ 11,763.36									
GANO, DARLENE	haul truck driver	$ 33.71	$ 11,326.56	A	-	-	-	N				
GASHINSKY, CRAIG			$ 11,763.36					N				

GILL, KYLE J	welder		$ 11,763.36		-	-	-	Y	357.50		$ 12,411.00	
GILL, MIKE			$ 11,763.36									
GILLES, SCOTT	welder	$ 40.52	$ 13,614.72	D	-	-	-					
GIRTON, KEITH	grader/loader		$ 11,763.36		-	-	-	y				$ 6,560.70
GODIN, ALVIN			$ 11,763.36									
GRANT, KRISTINA	haul truck driver/loader	-	$ 11,763.36	-	-	-	-	Y	132.00		$ 4,258.56	
GREENE, DALE "ARTHUR"	dozer operator	$ 33.71	$ 11,326.56		-	-	-	Y	583.00	$ 30.00	$ 21,853.80	
GREGOROWICH, CURTIS			$ 11,763.36									
GRINNELL, FREDRICK E	haul truck	$ 33.71	$ 11,326.56	D	-	-	-	N				
GUIMONT, SYLVIE	blaster	$ 33.71	$ 11,326.56	A/B	-	-	-	N				
HAIDER, BRIAN	welder 3rd yr		$ 11,763.36	D	-	-	-	in school:/may 12				
HAIDER, REECE			$ 11,763.36									
HALL, JOESEPH "JOE"	welder	$ 42.80	$ 14,380.80		-	-	-	N				
HALVERSON, JAELENE N	blaster	$ 36.31	$ 12,200.16	C/D	-	-	-					
HAMMON, MARK	haul truck	$ 33.71	$ 11,326.56	B	-	-	-	Y			$ 6,685.11	
HAMMON, TRISTAN			$ 11,763.36									
HAMPEL, WILLIAM	dozer operator	$ 35.01	$ 11,763.36	D	-	-	-	n				
HANEY, JOHN MARK	grader operator	$ 3.01	$ 1,011.36	C	-	-	-	Y				$ 6,560.70
HANNA, CODY W	grader operator	$ 35.01	$ 11,763.36	A	-	-	-	Y	161.00		$ 9,765.60	
HANNA, MICHAEL B			$ 11,763.36									
HANSEN, DUSTY A	dozer & hoe		$ 11,763.36	C	-	-	-	N				
HARVEY, CRYSTAL	operator 4	$ 33.71	$ 11,326.56	A	-	-	-	N				
HAWLEY, CHRIS			$ 11,763.36									
HAWRYLUK, TANNER			$ 11,763.36									
HEATON, RONAELE			$ 11,763.36									
HENDERSON, DON J			$ 11,763.36									
HEWITT, EWART S	haul truck	$ 33.71	$ 11,326.56	A	-	-	-	Y	84.00	$ 33.71	$ 2,831.64	
HEWITT, MAXWELL J			$ 11,763.36		-	-	-	Y				$ 6,560.70
HOHNER, SARAH			$ 11,763.36									
HOLLAND, JEFFERY R			$ 11,763.36									
HOMISTER, MARTY	dozer	$ 35.01	$ 11,763.36	C	-	-	-	N				
HOMISTER, PATRICK S		$ 42.80	$ 14,380.80	c/d	-	-	-					

HOWES, KEVIN			$ 11,763.36									
HUGHES, DAWSON D	driller	$ 36.31	$ 12,200.16	D	-	-	-	Y		$ 36.00		$ 6,560.70
HUGHES, GARY	driller	$ 36.31	$ 12,200.16	D	-	-	-	Y		$ 36.31		$ 6,560.70
HUNTER, D. WAYNE			$ 11,763.36									
HURLEY, MELVIN P	dozer/grader operator		$ 11,763.36		-	-	-	N				
HUTCHISON, MATTHEW R	shop lube	$ 33.71	$ 11,326.56	B	-	-	-	N				
IRVING, KYLE R	shovel op.	$ 37.61	$ 12,636.96	D	-	-	-	Y	84.00	$ 37.61	$ 3,159.24	
JAMIESON, KIMBERLY DAWN	dozer operator		$ 11,763.36	D	-	-	-	N				
JAMIESON, SHANE	shovel op.	$ 37.61	$ 12,636.96		-	-	-	Y				$ 6,560.70
JASWAL, GULEENA	fuel truck driver	$ 33.71	$ 11,326.56					N				
JEFFREY, JOSH	lube service	$ 33.71	$ 11,326.56	D	-	-	-	N				
JEFFREY, MONICA LISA			$ 11,763.36									
JENSEN, DONALD	haul truck op		$ 11,763.36	B	-	-	-	N				
JOHNSTON, JUSTIN	haul truck	$ 33.71	$ 11,326.56	C	-	-	-	N				
JONES, JENIFER	haul truck		$ 11,763.36	B	-	-	-	N				
JUST, DANIEL	haul truck	$ 33.71	$ 11,326.56		-	-	-	N				
JUST, JAMIE K	mine op 1	$ 37.61	$ 12,636.96	A	-	-	-	N				
KAO, NATASHA	maintenance welder	$ 42.80	$ 14,380.80	D	-	-	-	N				
KAYLL, WILLIAM LANCE			$ 11,763.36									
KENNEDY, MARK			$ 11,763.36									
KIRKHAM, BRODY	lube service	$ 33.71	$ 11,326.56	B	-	-	-	Y		$ 27.31		$ 6,560.70
KLIKACH, KADE	haul truck driver	$ 33.71	$ 11,326.56	A	-	-	-	n				
KLOOSTERBOER, RYAN	HD Mechanic	$ 42.80	$ 14,380.80	B	-	-	-	Y	20.00	$ 38.00	$ 889.96	
KNOKE, DWAIN			$ 11,763.36									
KNOWLES, CLAYTON	driller	$ 36.31	$ 12,200.16	B	-	-	-	Y	21.50	$ 27.00	$ 653.82	
KNOWLES, JASON EDWARD	shovel op.	$ 37.61	$ 12,636.96	B	-	-	-	Y				
KORTZ, JASON		$ 36.31	$ 12,200.16	B	-	-	-	N				
LABOUNTY, DAVE			$ 11,763.36									
LACEY, TIM	blast hole driller	$ 33.71	$ 11,326.56	D	-	-	-	n				
LAFORTUNE, MATHIEU P			$ 11,763.36									
LANDA, CHUCK	fuel man		$ 11,763.36		-	-	-	y				$ 6,560.70

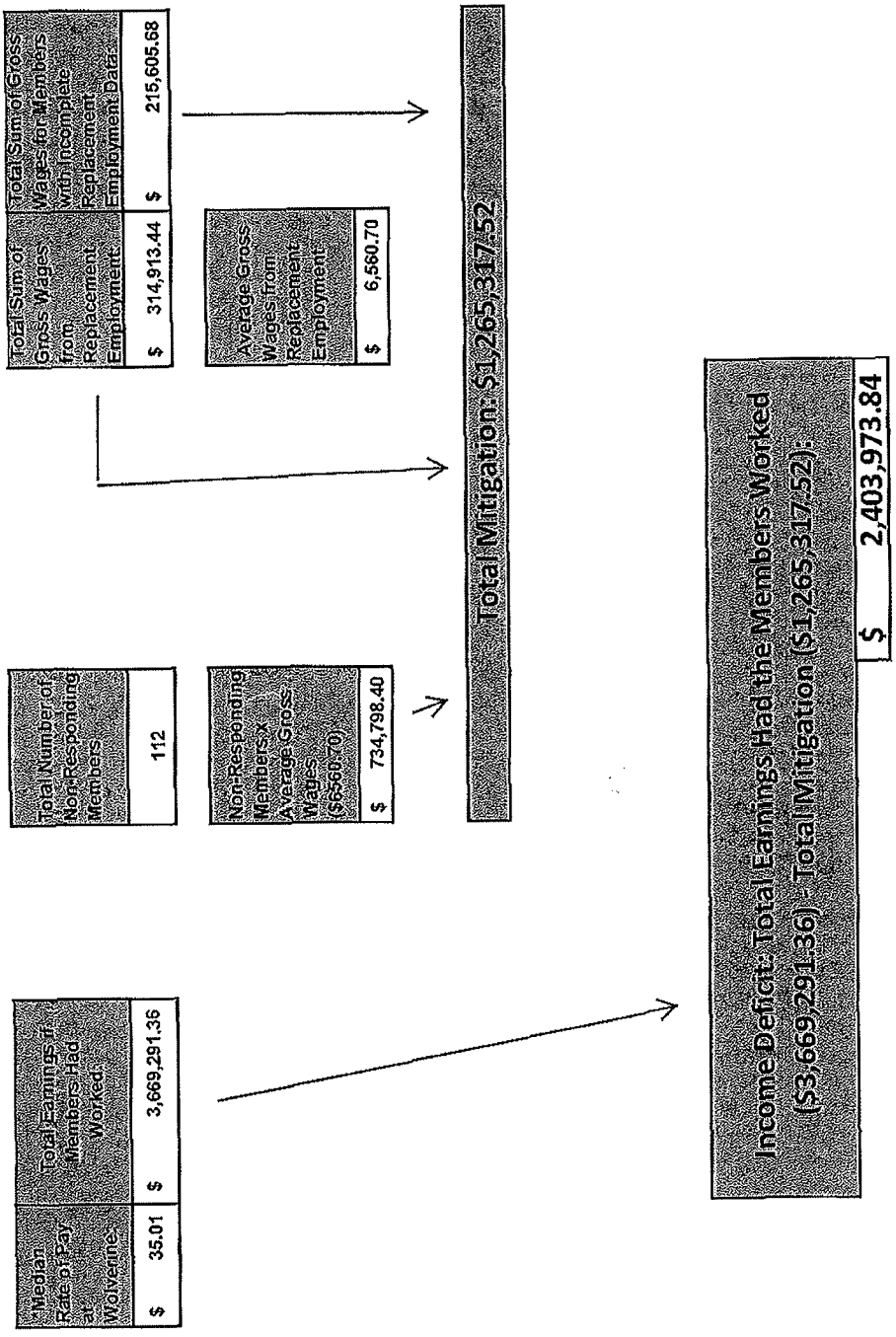
LARSSON, CARL	haul truck driver/loader	$ 33.71	$ 11,326.56		-	-	-	N					
LEBLANC, BERNARD	haul truck driver	$ 33.53	$ 11,266.08	C	-	-	-	N					
LEGALL, CINDY			$ 11,763.36										
LEMON, AMBER	blaster		$ 11,763.36	A/B	-	-	-	N					
LENART, JASON J S			$ 11,763.36										
LENART, WILLIAM F	operator 3	$ 35.01	$ 11,763.36	A/B	-	-	-	Y		$ 35.01	$ 22,717.44		
LEWIS, KRIS	HD apprentice III		$ 11,763.36	A/B	-	-	-	N					
LOXAM, COLIN	dozer	$ 35.01	$ 11,763.36	A	-	-	-	Y				$	6,560.70
LUTGEN (STRANG), NICOLE	haul truck driver	$ 33.71	$ 11,326.56	A	-	-	-	N					
LUTZ, ERIN M			$ 11,763.36										
MACDONALD, DEREK			$ 11,763.36										
MACEACHERN, LORNE	shovel op.		$ 11,763.36		-	-	-	N					
MACKAY, ASHLEE	blaster	$ 32.36	$ 10,872.96		-	-	-	N					
MACKIE, COREY	leadhand pit operations	$ 38.61	$ 12,972.96	D	-	-	-	Y				$	6,560.70
MACKIE, JESSICA	blaster	$ 36.17	$ 12,153.12		-	-	-	N					
MARIE, ROLAIN	haul truck	$ 33.71	$ 11,326.56	A	-	-	-	N					
MARSEL, KEN			$ 11,763.36										
MARTIN, MAURICE	haul truck	$ 33.71	$ 11,326.56	B	-	-	-	N					
MATTHEWS, ROBERT			$ 336.00		-	-	-	N					
MAXON, JESSIE	blaster	$ 36.14	$ 12,143.04	A/B	-	-	-	N					
MCARTHUR, REMA	haul truck op		$ 11,763.36		-	-	-	Y		$ 14.68	$ 520.60	$	2,831.64
MCCALLUM, MICHAEL	haul truck		$ 11,763.36		-	-	-	N					
MCCARTHY, DIANE			$ 11,763.36										
MCCARTHY, TINA E	equipment op	$ 33.71	$ 11,326.56	B	-	-	-	N					
MCCLURE, DALLAS	dozer/Hoe	$ 35.01	$ 11,763.36	A	-	-	-	N					
MCCLURE, ROGER	hoe/shovel	$ 37.61	$ 12,636.96	B	-	-	-	N					
MCCLURE, SANDRA	haul truck	$ 33.71	$ 11,326.56	B	-	-	-	N					
MCNEIL, ROBYN D			$ 11,763.36										
MCQUEEN, DON H			$ 11,763.36										
MEIERHOFER, DONNAVAN			$ 11,763.36										
MENDOZA, CRESENCIANO	HD mechanic	$ 40.52	$ 13,614.72		-	-	-	Y	80.00	$ 40.52	$ 4,581.62		
MERCREDI, MARGARET			$ 11,763.36		-	-	-	N					

MEYER, MICHAEL			$ 11,763.36	A/B	-	-	-	Y				$ 6,560.70
MICHA, COLIN	welder		$ 11,763.36	A	-	-	-	Y	453.50		$ 11,197.46	
MILLER, FRED	backhoe	$ 35.01	$ 11,763.36	D	-	-	-	Y	31.75		$ 2,042.38	
MILNER, RACHEL			$ 11,763.36									
MOINEAU, ROBERT	shovel op.		$ 11,763.36	B	-	-	-	N				
MONIAL, TYREL			$ 11,763.36									
NETTER, ARMAND			$ 11,763.36									
NGUYEN, TUNG			$ 11,763.36									
NICHOLLS, CRYSTAL	haul truck driver/loader	$ 33.71	$ 11,326.56	B	-	-	-	N				
NICHOLSON, JACOB	haul truck driver		$ 11,763.36		-	-	-	Y				$ 2,831.64
NIELSEN, TREVOR			$ 11,763.36									
NIXON, ROBERT			$ 11,763.36									
NOBLE, DEVIN	steamer	$ 27.23	$ 9,149.28	B	-	-	-	Y	71.00		$ 3,314.69	
O'HANDLEY, CLAIR A			$ 11,763.36									
O'HANDLEY, DEBORAH		$ 33.71	$ 11,326.56	A	-	-	-	Y	48.00		$ 980.00	
O'HANDLEY, JOSEPH B	OPS 4	$ 33.71	$ 11,326.56	B	-	-	-	y	36.00		$ 1,667.20	
O'NEILL, JOHN			$ 11,763.36		-	x	-	N				
O'NEILL, SHANE			$ 11,763.36									
PACK, JUSTIN J		$ 29.96	$ 10,066.56		-	-	-	N				
PANKHURST, DAN			$ 11,763.36									
PEITZSCHE, RALPH	driller		$ 11,763.36	C	-	-	-	n				
PESONEN, HARRY	driller		$ 11,763.36	A	-	-	-	Y				$ 6,560.70
PETTIPAS, ERIN P	blaster	$ 36.31	$ 12,200.16	A/B	-	-	-	Y	75.00		$ 2,723.25	
PHILPOTT, ASHTON	lube truck	$ 33.71	$ 11,326.56	B	-	-	-	N				
PIDWERBESKI, DON	heavy duty mechanic	$ 42.80	$ 14,380.80	A	-	-	-					
PIMM, TREVOR	heavy duty mechanic	$ 42.80	$ 14,380.80		-	-	-					
PINDERA, GEOFF	HAUL TRUCK	$ 33.71	$ 11,326.56	A	-	-	-	Y	70.00	$ 33.71	$ 3,737.14	
PITTMAN, JORDAN			$ 11,763.36									
POULIOT, DAWN	haul truck	$ 33.71	$ 11,326.56	a	-	-	-	n				
POULIOT, JORDAN	HD Mechanic	$ 43.80	$ 14,716.80	a	-	-	-	Y	80.00	$ 42.80	$ 4,990.21	
POWER, CONRAD P	mechanic apprentice	$ 32.65	$ 10,970.40	B	-	-	-	N				

POWER, ELLIOTT T			$ 11,763.36		-	-	-	N					
PRISEMAN, ALLAN H			$ 11,763.36										
PROCTOR, MELANIE	excavator		$ 11,763.36		-	x	-	N					
RAE, NEIL ALEXANDER	dozer operator	$ 35.01	$ 11,763.36	C	-	-	-	N					
REBCHUK, THARAS S			$ 11,763.36										
REIMER, AL	haul truck		$ 11,763.36	b	-	-	-	N					
REMPEL, JOSHUA	op 4		$ 11,763.36	c	-	-	-	N					
RICHARDS, CHAD	welder	$ 42.81	$ 14,384.16		-	-	-	Y		$ 42.81		$ 6,560.70	
RICHARDS, DALE E			$ 11,763.36										
ROBBINS, CURTIS			$ 11,763.36		-	-	-	N					
ROBERGE, TRAVIS			$ 11,763.36					Y	99.40	$ 20.00	$ 2,067.52		
ROBINSON, HAROLD	dozer operator		$ 11,763.36	c/d	-	-	-	N					
ROBINSON, RYAN			$ 11,763.36										
ROSBOROUGH, PAUL			$ 11,763.36										
ROSE, TINA	haul truck		$ 11,763.36	D	-	-	-	Y		$ 26.99		$ 6,560.70	
ROWE, GEORGE	haul truck	$ 33.71	$ 11,326.56		-	-	-	Y				$ 6,560.70	
RUMBOLT, KARISA	haul truck	$ 33.71	$ 11,326.56	C	-	-	-	N					
RUSCHKOWSKI, CRAIG			$ 11,763.36										
SALEWSKI, DAVID A			$ 11,763.36										
SANDERS, DAVE	dozer grader - mine operator	$ 35.01	$ 11,763.36	D	-	-	-	Y		$ 35.01		$ 6,560.70	
SAUL, GEORGE	dozer operator	$ 35.01	$ 11,763.36	A	-	-	-	N					
SAWATZKY, DALE			$ 11,763.36		-	-	-	Y				$ 6,560.70	
SAWICKI, DAVE	mechanic		$ 11,763.36		-	-	-	Y				$ 6,560.70	
SCHNEIDER, THOMAS	HD Mechanic	$ 42.80	$ 14,380.80	B	-	-	-	Y		$ 40.00	$ 16,687.00		
SCHOFIELD, TIMM		$ 33.71	$ 11,326.56	B	-	-	-	Y		$ 33.71			
SEBASTIAN, DEANNA	haul truck	$ 33.71	$ 11,326.56	C	-	-	-	Y	84.00	$ 33.71	$ 3,342.71		
SEBASTIAN, JANINE			$ 11,763.36										
SENDLER, JESSICA			$ 11,763.36										
SENFT, MURRAY R	haul truck		$ 11,763.36		-	-	-						
SEVIGNY, BRENT	light duty mechanic	$ 42.51	$ 14,283.36	A/B	-	-	-	N					
SEYMOUR, JONATHAN			$ 11,763.36										
SHERBURNE, WAYNE			$ 11,763.36	-	-	-	-	N					

SIMINGTON, BOB	heavy duty mechanic	$ 42.80	$ 14,380.80	d	-	-	-					
SLANEY, JAMIE	driller	$ 36.31	$ 12,200.16	d	-	-	-	Y			$ 7,918.61	
SMATHERS, THOMAS (Lee)			$ 11,763.36		-	-	-	Y			$ 3,980.37	
SMITH, TIMMOTHY W	shovel op.	$ 35.00	$ 11,760.00	D	-	-	-	Y	152.00	$ 33.71	$ 13,753.96	
SNODGRASS, WALTER H			$ 11,763.36									
SOLMONSON, CHANCE			$ 11,763.36									
SOLMONSON, OLIVEA	haul truck	$ 33.71	$ 11,326.56	C	-	-	-					
SOLMONSON, SANDY			$ 11,763.36									
SOUTHWICK, ARLAN	hoe operator	$ 35.01	$ 11,763.36		-	-	-					
SPLINTER, CHRIS			$ 11,763.36									
STANGOE, WARD	HD Mechanic		$ 11,763.36	D	-	-	-	N				
STEELE, GLENN E	driller	$ 36.01	$ 12,099.36	A	-	-	-	N				
STEENBERGEN, DIRK			$ 11,763.36									
STERN, MATT			$ 11,763.36									
STEVENSON, TYLER	welder appentice	$ 29.96	$ 10,066.56		-	-	-					
STEVES, COLIN			$ 11,763.36									
STIRLING, PHILIP C	driller	$ 36.31	$ 12,200.16	a	-	-	-	Y		$ 35.01	$ 793.00	
STJEPANOVIC, DENNIS	mechanic apprentice	$ 36.50	$ 12,264.00		-	-	-	Y				$ 6,560.70
STRAND, OLE C	tool crib	$ 37.61	$ 12,636.96	A/B	-	-	-	Y	188.00	$ 46.00	$ 11,003.20	
STRAND, TONIA L	backhoe	$ 35.01	$ 11,763.36	c/d	-	-	-	Y	196.00	$ 33.71	$ 8,431.65	
STRANG, AMI			$ 11,763.36									
STRANG, DANIEL V	mechanic	$ 40.52	$ 13,614.72	A/B	-	-	-	Y				$ 6,560.70
STRANG, JEFF	haul truck	$ 33.71	$ 11,326.56	c	-	-	-	N				
STRANG, Nicole	haul truck		$ 11,763.36		-	-	-	N				
STRONG, JOSEPH	shovel op.	$ 37.61	$ 12,636.96	C	-	-	-	Y			$ 7,208.54	
TACKABERRY, BRIAN JOHN			$ 11,763.36									
TAYLOR, BRUCE E	Heavy duty mech apprentice		$ 11,763.36		-	-	-	N				
TAYLOR, CHRISTOPHER	operator		$ 11,763.36	C	-	-	-	Y				$ 6,560.70
TAYLOR, DOUG L			$ 11,763.36									
TAYLOR, ERIC L	driller	$ 36.31	$ 12,200.16		-	-	-	N				
TAYLOR, SCOT	dozer operator	$ 35.02	$ 11,766.72	D	-	-	-	Y	176.00	$ 30.00	$ 10,264.80	

THURSTON, JASON K	heavy duty operator	$ 35.01	$ 11,763.36	A	-	-	-	n				
TOMKINSON, GARY W	haul truck	$ 33.71	$ 11,326.56	A	-	-	-					
TORRAVILLE, JARED			$ 11,763.36									
TORRAVILLE, JORDAN	welder (uncertified)	$ 40.52	$ 13,614.72	B	-	-	-	Y			$ 8,526.47	
TRAVERSE, FRASER	truck driver	$ 33.25	$ 11,172.00		x	-	-	N				
TRAVERSE, PATRICK	pumps & pit service	$ 33.71	$ 11,326.56		-	-	-	Y				$ 6,560.70
TYTULA, MIKE			$ 11,763.36									
VAN BASTEN, JAYLENE			$ 11,763.36		-	-	-	Y		$ 20.00	$ 8,301.60	
VERGE, HEDLEY D	HD Mechanic	$ 42.80	$ 14,380.80	C/D	-	-	-	Y		$ 116.00	$ 15,926.77	
VERGE, HOLI	truck driver	$ 33.71	$ 11,326.56	C	-	-	-	n				
WAGNER, STEPHEN A			$ 11,763.36					y				$ 6,560.70
WALLBANK, CRAIG			$ 11,763.36									
WALTER, RICHARD			$ 11,763.36									
WARNER, JAMES	welder		$ 11,763.36	D	-	-	-	Y	33.00		$ 1,539.20	
WATT, RICHARD S	truck driver	$ 33.71	$ 11,326.56	D	-	-	-	N				
WATT, WILLIAM	driller		$ 11,763.36	A	-	-	-	Y		$ 27.61		$ 6,560.70
WEIGHTMAN, BRADLEY			$ 11,763.36									
WHITE, ROBERT S			$ 11,763.36									
WIED, BRIAN	doze op	$ 35.01	$ 11,763.36	A	-	-	-	N				
WILLIAMS, DON	driller		$ 11,763.36		-	-	-	N				
WILSON, KEITH O	loader operator	$ 37.61	$ 12,636.96		-	-	-	N				
WISMAN, ADAM			$ 11,763.36									
WOODS, KEVIN	mine ops 4	$ 33.71	$ 11,326.56	A	-	-	-	N				
WORTHINGTON, RICHARD	hoe/dozer	$ 36.31	$ 12,200.16	C	-	-	-	Y	27.00		$ 338.96	
YANDEAU, LANCE	shovel op.	$ 37.61	$ 12,636.96	C	-	-	-	N				
YORK, CHARLES	heavy duty mechanic		$ 11,763.36	A/B	-	-	-	Y	72.00			$ 6,560.70
ZAVAGLIA, GENO	welder	$ 40.52	$ 13,614.72	c/d	-	-	-	Y				$ 6,560.70
ZIMMER, JUSTIN	steam bay	$ 27.83	$ 9,350.88	B	-	-	-	N				
ZIMMER, RICHARD			$ 11,763.36									
ZOSIAK, DAVE			$ 11,763.36									
ZUNTI, CONRAD			$ 11,763.36		-	-	-	Y				$ 6,560.70


Median Rate of Pay at Wolverines
$ 35.01
Total Earnings if Members Had Worked
$ 3,669,291.36
Total Number of Non-Responding Members
112
Non-Responding Members x Average Gross Wages ($6560.70)
$ 734,798.40
Total Sum of Gross Wages from Replacement Employment
$ 314,913.44
Total Sum of Gross Wages for Members with Incomplete Replacement Employment Data
$ 215,605.68
Average Gross Wages from Replacement Employment
$ 6,560.70
Total Mitigation: $1,265,317.52
Income Deficit: Total Earnings Had the Members Worked ($3,669,291.36) - Total Mitigation ($1,265,317.52):
$ 2,403,973.84

EMPLOYEE NAME	JOB CLASS	RATE OF PAY AT WOLVERINE	EARNING AT WOLVERINE IF 336 HOURS WORKED	SHIFT A,B,C,D, OTHER	STD	LTD	WCB	REPLACEMENT EMPLOYMENT Y/N	REPLACEMENT EMPLOYMENT HOURS	REPLACEMENT EMPLOYMENT RATE OF PAY	REPLACEMENT EMPLOYMENT GROSS WAGES
ABROMOVICH, SHAWN M		$ 36.31	$ 12,200.16								
ADEKAT, LESTER								N			
ANDERSON, TRAVIS											
ARSENAULT, KRISTON R	welder appentice			B				N			
ARSENAULT, LLOYD	welder			A				N			
BAILEY, BOBBY D	welder							Y	395.50	$ 37.50	$ 14,831.25
BALL, COLLIN											
BARGY, BRENDA F	haul truck	$ 33.00	$ 11,088.00	D	-	-	-	N			
BARKER, EUGENE	building maintenance	$ 40.52	$ 13,614.72		x			n			
BEAUSOLIE, KATRINA	haul truck	$ 33.71	$ 11,326.56	C				n			
BEGON, GARY	truck driver	$ 33.71	$ 11,326.56	B	-	-	-	n			
BELLOWS, PAUL											
BENIOT, ROBERT L	haul truck driver	$ 33.71	$ 11,326.56					y	160.00	$ 25.00	$ 4,000.00
BENNETT, GARRETT COLIN											
BERGSON, PATTI	truck driver	$ 33.71	$ 11,326.56	B	-	-	-	n			
BERTRAND, LEON ERNEST											
BIELECKI, ARTUR	welder	$ 42.80	$ 14,380.80	c/d	-	-	-	n			
BISSET, JASON	haul truck	$ 33.71	$ 11,326.56	b	-	-	-	n			
BISSET, JOHN T	pit services	$ 33.71	$ 11,326.56	c/d	-	-	-	y	84.00	$ 33.71	$ 2,831.64
BISSON, TYLA	welder	$ 42.80	$ 14,380.80	b	-	-	-	n			
BLADE, JASON											
BOUTILIER, TREVOR				C		-					
BOWERMAN, KEVIN	driller	$ 36.31	$ 12,200.16	B				y			
BRADLEY, KENNETH R	H.D. Operator	$ 35.01	$ 11,763.36	B	-	-	-	y		various	$ 16,297.23
BRAKE, CASSANDRA	lube service	$ 33.71	$ 11,326.56	B	-	-	-	N			
BREDESON, SHAIA	fuel truck operator	$ 32.71	$ 10,990.56					Y			
BRIGHT, CLINT	haul truck operator	$ 33.71	$ 11,326.56	A	-	-	-	N			
BROSOSKY, PETER D											
BROWN, MONIKA	driller/blaster	$ 36.31	$ 12,200.16					N			

This is Exhibit "B" referred to in the Statutory Declaration of FRANK EVERITT SWORN BEFORE ME at Prince George in the Province of British Columbia, this 15th day of July 2015

A Commissioner for taking Oaths in British Columbia

BROWN, TROY RICHARD	dozer operator	$ 35.01	$ 11,763.36	D				n			
BROWNE, DREW	haul truck	$ 33.71	$ 11,326.56	D	-	-	-	n			
BRYLA, WILLIAM RICHARD	shovel op.	$ 37.61	$ 12,636.96	B				n			
BZDEL, MATTHEW											
CALJOUW, STEVEN M	bui			C/D				n			
CAMPBELL, LLOYD	driller			B	-	-	-	N			
CARR, ENRICA											
CASE, ERIN				-	-	-	-	Y	72.00		$ 2,982.00
CHABOT, ADELARD G	dozer			D	-	-	-	N			
CHAPMAN, KEVIN	fuel truck operator	$ 33.71	$ 11,326.56	D							
CHMELYK, BAILEY	steambay attendant	$ 27.23	$ 9,149.28	D	-	-	-	N			
CLARE, KEVIN					-	-	-				
COLBOURNE, RODDI											
COOK, RONALD J											
CORBETT, JESSE	pit operations	$ 33.71	$ 11,326.56	D	-	-	-	N			
CURTIS, BRANDON	lube truck driver	$ 33.71	$ 11,326.56	C				N			
CURTIS, GORDON	shovel op.	$ 36.71	$ 12,334.56	C				N			
CUTLER, TREVOR											
CYR, PETER "JOSEPH"											
CYR, SANDRA	blaster	$ 36.31	$ 12,200.16	C/D	-	-	-	n			
DAFOE, JERMAINE											
DAVIDSON, TODD											
DAVIS, JEREMY											
DAWBORN, ERIC	loader operator			D	-	-	-	y		$ 23.00	$ 9,137.44
DEWETTER, LEE					-	-	-	y			
DOMEIJ, DEREK											
DOONAN, MARCIE	haul truck	$ 33.71	$ 11,326.56	C	-	-	-	Y			
DORE, DARCY	truck driver	$ 33.57	$ 11,279.52	B	-	-	x	N			
DOWNEY, AIDEN											
DROVER, ANN	welder trade 1				-	-	-	N			
DUBOIS, JARROD					-	-	-	N			

DUCK, JODY J	maintenance (lube truck)	$ 33.71	$ 11,326.56	D	-	-	-	N			
DUFRESNE, SARAH L											
DUHAIME, JACK					-	-	-	y			$ 1,200.00
DUNN, JAMES L	haul truck	$ 33.71	$ 11,326.56		-	-	-	n			
DURAND, ORVILLE		$ 37.61	$ 12,636.96		-	-	-	y	12.00	$ 37.61	$ 548.88
DURDLE, DAVID	truck driver	$ 35.01	$ 11,763.36	D	-	-	-	Y	325.00	$ 23.18	$ 10,253.76
EDWARD, ROBERT T	blaster	$ 36.14	$ 12,143.04	a/b	-	-	-	y	151.50		$ 2,903.28
ELLIOTT, RON	haul truck				-	x	-	n			
ERICKSON, BRUCE	haul truck	$ 35.01	$ 11,763.36	A	-	-	-	N			
FAIRWEATHER, CARL	scaper			A	-	x	-	N			
FARMER, DEVON											
FELKER, GRAEME											
FELKER, LISA	blaster	$ 33.71	$ 11,326.56	C/D	-	-	-	n			
FELTHAM, GARFIELD	mechanic	$ 40.52	$ 13,614.72	C/D	x	x	-	N			
FENTIMAN, TRAVIS											
FENTON, TIMOTHY GEORGE	HD mechanic, trades 1				-	-	x				
FERGUSON, ERIC C	dozer operator				-	-	-	y			
FERGUSON, JOHN R											
FERGUSSON, NICOLE											
FERGUSSON, BRET	welder	$ 42.80	$ 14,380.80	C	-	-	-	Y	168.00		$ 6,739.15
FILION, PASCAL											
FISCHER, CHRIS	fuel lube teck	$ 33.71	$ 11,326.56		-	-	-	Y			
FISS, STEFANIE EMILY	blaster	$ 36.31	$ 12,200.16		-	-	-	n			
FITZGERALD, DAVID M				A	-	-	-	Y	63.00	$ 33.71	$ 2,123.73
FITZPATRICK, JOHN DEREK											
FLEURY, JASON H	driller	$ 36.31	$ 12,200.16	C	-	-	-	N			
FORRY, MICHAEL											
FORTIER, ALISAN	steamer			C	-	-	-	N			
FOX, BRADLEY											
GANO, DARLENE	haul truck driver	$ 33.71	$ 11,326.56	A	-	-	-	N			
GASHINSKY, CRAIG								N			
GILL, KYLE J	welder				-	-	-	Y	357.50		$ 12,411.00

GILL, MIKE											
GILLES, SCOTT	welder	$ 40.52	$ 13,614.72	D	-	-	-				
GIRTON, KEITH	grader/loader				-	-	-	y			
GODIN, ALVIN											
GRANT, KRISTINA	haul truck driver/loader	-		-	-	-	-	Y	132.00		$ 4,258.56
GREENE, DALE "ARTHUR"	dozer operator	$ 33.71	$ 11,326.56		-	-	-	Y	583.00	$ 30.00	$ 21,853.80
GREGOROWICH, CURTIS											
GRINNELL, FREDRICK E	haul truck	$ 33.71	$ 11,326.56	D	-	-	-	N			
GUIMONT, SYLVIE	blaster	$ 33.71	$ 11,326.56	A/B	-	-	-	N			
HAIDER, BRIAN	welder 3rd yr			D	-	-	-	in school:/may 12			
HAIDER, REECE											
HALL, JOESEPH "JOE"	welder	$ 42.80	$ 14,380.80		-	-	-	N			
HALVERSON, JAELENE N	blaster	$ 36.31	$ 12,200.16	C/D	-	-	-				
HAMMON, MARK	haul truck	$ 33.71	$ 11,326.56	B	-	-	-	Y			$ 6,685.11
HAMMON, TRISTAN											
HAMPEL, WILLIAM	dozer operator	$ 35.01	$ 11,763.36	D	-	-	-	n			
HANEY, JOHN MARK	grader operator	$ 3.01	$ 1,011.36	C	-	-	-	Y			
HANNA, CODY W	grader operator	$ 35.01	$ 11,763.36	A	-	-	-	Y	161.00		$ 9,765.60
HANNA, MICHAEL B											
HANSEN, DUSTY A	dozer & hoe			C	-	-	-	N			
HARVEY, CRYSTAL	operator 4	$ 33.71	$ 11,326.56	A	-	-	-	N			
HAWLEY, CHRIS											
HAWRYLUK, TANNER											
HEATON, RONAELE											
HENDERSON, DON J											
HEWITT, EWART S	haul truck	$ 33.71	$ 11,326.56	A	-	-	-	Y	84.00	$ 33.71	$ 2,831.64
HEWITT, MAXWELL J					-	-	-	Y			
HOHNER, SARAH											
HOLLAND, JEFFERY R											
HOMISTER, MARTY	dozer	$ 35.01	$ 11,763.36	C	-	-	-	N			
HOMISTER, PATRICK S		$ 42.80	$ 14,380.80	c/d	-	-	-				
HOWES, KEVIN											

HUGHES, DAWSON D	driller	$ 36.31	$ 12,200.16	D	-	-	-	Y		$ 36.00	
HUGHES, GARY	driller	$ 36.31	$ 12,200.16	D	-	-	-	Y		$ 36.31	
HUNTER, D. WAYNE											
HURLEY, MELVIN P	dozer/grader operator				-	-	-	N			
HUTCHISON, MATTHEW R	shop lube	$ 33.71	$ 11,326.56	B	-	-	-	N			
IRVING, KYLE R	shovel op.	$ 37.61	$ 12,636.96	D	-	-	-	Y	84.00	$ 37.61	$ 3,159.24
JAMIESON, KIMBERLY DAWN	dozer operator			D	-	-	-	N			
JAMIESON, SHANE	shovel op.	$ 37.61	$ 12,636.96		-	-	-	Y			
JASWAL, GULEENA	fuel truck driver	$ 33.71	$ 11,326.56					N			
JEFFREY, JOSH	lube service	$ 33.71	$ 11,326.56	D	-	-	-	N			
JEFFREY, MONICA LISA											
JENSEN, DONALD	haul truck op			B	-	-	-	N			
JOHNSTON, JUSTIN	haul truck	$ 33.71	$ 11,326.56	C	-	-	-	N			
JONES, JENIFER	haul truck			B	-	-	-	N			
JUST, DANIEL	haul truck	$ 33.71	$ 11,326.56		-	-	-	N			
JUST, JAMIE K	mine op 1	$ 37.61	$ 12,636.96	A	-	-	-	N			
KAO, NATASHA	maintenance welder	$ 42.80	$ 14,380.80	D	-	-	-	N			
KAYLL, WILLIAM LANCE											
KENNEDY, MARK											
KIRKHAM, BRODY	lube service	$ 33.71	$ 11,326.56	B	-	-	-	Y		$ 27.31	
KLIKACH, KADE	haul truck driver	$ 33.71	$ 11,326.56	A	-	-	-	n			
KLOOSTERBOER, RYAN	HD Mechanic	$ 42.80	$ 14,380.80	B	-	-	-	Y	20.00	$ 38.00	$ 889.96
KNOKE, DWAIN											
KNOWLES, CLAYTON	driller	$ 36.31	$ 12,200.16	B	-	-	-	Y	21.50	$ 27.00	$ 653.82
KNOWLES, JASON EDWARD	shovel op.	$ 37.61	$ 12,636.96	B	-	-	-	Y			
KORTZ, JASON		$ 36.31	$ 12,200.16	B	-	-	-	N			
LABOUNTY, DAVE											
LACEY, TIM	blast hole driller	$ 33.71	$ 11,326.56	D	-	-	-	n			
LAFORTUNE, MATHIEU P											
LANDA, CHUCK	fuel man				-	-	-	y			
LARSSON, CARL	haul truck driver/loader	$ 33.71	$ 11,326.56		-	-	-	N			

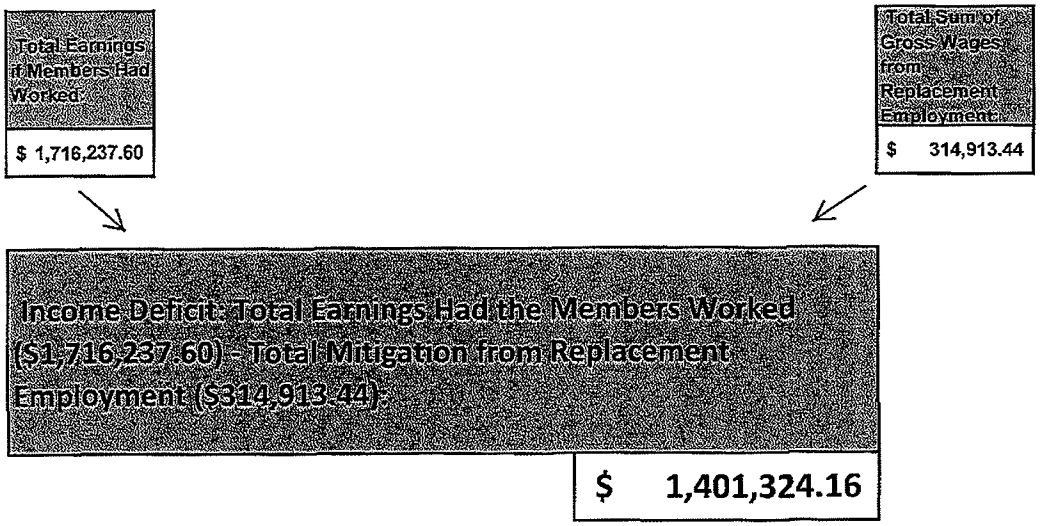
LEBLANC, BERNARD	haul truck driver	$ 33.53	$ 11,266.08	C	-	-	-	N			
LEGALL, CINDY											
LEMON, AMBER	blaster			A/B	-	-	-	N			
LENART, JASON J S											
LENART, WILLIAM F	operator 3	$ 35.01	$ 11,763.36	A/B	-	-	-	Y		$ 35.01	$ 22,717.44
LEWIS, KRIS	HD apprentice III			A/B	-	-	-	N			
LOXAM, COLIN	dozer	$ 35.01	$ 11,763.36	A	-	-	-	Y			
LUTGEN (STRANG), NICOLE	haul truck driver	$ 33.71	$ 11,326.56	A	-	-	-	N			
LUTZ, ERIN M											
MACDONALD, DEREK											
MACEACHERN, LORNE	shovel op.				-	-	-	N			
MACKAY, ASHLEE	blaster	$ 32.36	$ 10,872.96		-	-	-	N			
MACKIE, COREY	leadhand pit operations	$ 38.61	$ 12,972.96	D	-	-	-	Y			
MACKIE, JESSICA	blaster	$ 36.17	$ 12,153.12		-	-	-	N			
MARIE, ROLAIN	haul truck	$ 33.71	$ 11,326.56	A	-	-	-	N			
MARSEL, KEN											
MARTIN, MAURICE	haul truck	$ 33.71	$ 11,326.56	B	-	-	-	N			
MATTHEWS, ROBERT					-	-	-	N			
MAXON, JESSIE	blaster	$ 36.14	$ 12,143.04	A/B	-	-	-	N			
MCARTHUR, REMA	haul truck op				-	-	-	Y		$ 14.68	$ 520.60
MCCALLUM, MICHAEL	haul truck				-	-	-	N			
MCCARTHY, DIANE											
MCCARTHY, TINA E	equipment op	$ 33.71	$ 11,326.56	B	-	-	-	N			
MCCLURE, DALLAS	dozer/Hoe	$ 35.01	$ 11,763.36	A	-	-	-	N			
MCCLURE, ROGER	hoe/shovel	$ 37.61	$ 12,636.96	B	-	-	-	N			
MCCLURE, SANDRA	haul truck	$ 33.71	$ 11,326.56	B	-	-	-	N			
MCNEIL, ROBYN D											
MCQUEEN, DON H											
MEIERHOFER, DONNAVAN											
MENDOZA, CRESENCIANO	HD mechanic	$ 40.52	$ 13,614.72		-	-	-	Y	80.00	$ 40.52	$ 4,581.62
MERCREDI, MARGARET					-	-	-	N			
MEYER, MICHAEL				A/B	-	-	-	Y			

MICHA, COLIN	welder			A	-	-	-	Y	453.50		$ 11,197.46
MILLER, FRED	backhoe	$ 35.01	$ 11,763.36	D	-	-	-	Y	31.75		$ 2,042.38
MILNER, RACHEL											
MOINEAU, ROBERT	shovel op.			B	-	-	-	N			
MONIAL, TYREL											
NETTER, ARMAND											
NGUYEN, TUNG											
NICHOLLS, CRYSTAL	haul truck driver/loader	$ 33.71	$ 11,326.56	B	-	-	-	N			
NICHOLSON, JACOB	haul truck driver				-	-	-	Y			
NIELSEN, TREVOR											
NIXON, ROBERT											
NOBLE, DEVIN	steamer	$ 27.23	$ 9,149.28	B	-	-	-	Y	71.00		$ 3,314.69
O'HANDLEY, CLAIR A											
O'HANDLEY, DEBORAH		$ 33.71	$ 11,326.56	A	-	-	-	Y	48.00		$ 980.00
O'HANDLEY, JOSEPH B	OPS 4	$ 33.71	$ 11,326.56	B	-	-	-	y	36.00		$ 1,667.20
O'NEILL, JOHN					-	x	-	N			
O'NEILL, SHANE											
PACK, JUSTIN J		$ 29.96	$ 10,066.56		-	-	-	N			
PANKHURST, DAN											
PEITZSCHE, RALPH	driller			C	-	-	-	n			
PESONEN, HARRY	driller			A	-	-	-	Y			
PETTIPAS, ERIN P	blaster	$ 36.31	$ 12,200.16	A/B	-	-	-	Y	75.00		$ 2,723.25
PHILPOTT, ASHTON	lube truck	$ 33.71	$ 11,326.56	B	-	-	-	N			
PIDWERBESKI, DON	heavy duty mechanic	$ 42.80	$ 14,380.80	A	-	-	-				
PIMM, TREVOR	heavy duty mechanic	$ 42.80	$ 14,380.80		-	-	-				
PINDERA, GEOFF	HAUL TRUCK	$ 33.71	$ 11,326.56	A	-	-	-	Y	70.00	$ 33.71	$ 3,737.14
PITTMAN, JORDAN											
POULIOT, DAWN	haul truck	$ 33.71	$ 11,326.56	a	-	-	-	n			
POULIOT, JORDAN	HD Mechanic	$ 43.80	$ 14,716.80	a	-	-	-	Y	80.00	$ 42.80	$ 4,990.21
POWER, CONRAD P	mechanic apprentice	$ 32.65	$ 10,970.40	B	-	-	-	N			
POWER, ELLIOTT T					-	-	-	N			

PRISEMAN, ALLAN H											
PROCTOR, MELANIE	excavator				-	x	-	N			
RAE, NEIL ALEXANDER	dozer operator	$ 35.01	$ 11,763.36	C	-	-	-	N			
REBCHUK, THARAS S											
REIMER, AL	haul truck			b	-	-	-	N			
REMPEL, JOSHUA	op 4			c	-	-	-	N			
RICHARDS, CHAD	welder	$ 42.81	$ 14,384.16		-	-	-	Y		$ 42.81	
RICHARDS, DALE E											
ROBBINS, CURTIS					-	-	-	N			
ROBERGE, TRAVIS								Y	99.40	$ 20.00	$ 2,067.52
ROBINSON, HAROLD	dozer operator			c/d	-	-	-	N			
ROBINSON, RYAN											
ROSBOROUGH, PAUL											
ROSE, TINA	haul truck			D	-	-	-	Y		$ 26.99	
ROWE, GEORGE	haul truck	$ 33.71	$ 11,326.56		-	-	-	Y			
RUMBOLT, KARISA	haul truck	$ 33.71	$ 11,326.56	C	-	-	-	N			
RUSCHKOWSKI, CRAIG											
SALEWSKI, DAVID A											
SANDERS, DAVE	dozer grader - mine operator	$ 35.01	$ 11,763.36	D	-	-	-	Y		$ 35.01	
SAUL, GEORGE	dozer operator	$ 35.01	$ 11,763.36	A	-	-	-	N			
SAWATZKY, DALE					-	-	-	Y			
SAWICKI, DAVE	mechanic				-	-	-	Y			
SCHNEIDER, THOMAS	HD Mechanic	$ 42.80	$ 14,380.80	B	-	-	-	Y		$ 40.00	$ 16,687.00
SCHOFIELD, TIMM		$ 33.71	$ 11,326.56	B	-	-	-	Y		$ 33.71	
SEBASTIAN, DEANNA	haul truck	$ 33.71	$ 11,326.56	C	-	-	-	Y	84.00	$ 33.71	$ 3,342.71
SEBASTIAN, JANINE											
SENDLER, JESSICA											
SENFT, MURRAY R	haul truck				-	-	-				
SEVIGNY, BRENT	light duty mechanic	$ 42.51	$ 14,283.36	A/B	-	-	-	N			
SEYMOUR, JONATHAN											
SHERBURNE, WAYNE				-	-	-	-	N			

SIMINGTON, BOB	heavy duty mechanic	$ 42.80	$ 14,380.80	d	-	-	-				
SLANEY, JAMIE	driller	$ 36.31	$ 12,200.16	d	-	-	-	Y			$ 7,918.61
SMATHERS, THOMAS (Lee)					-	-	-	Y			$ 3,980.37
SMITH, TIMMOTHY W	shovel op.	$ 35.00	$ 11,760.00	D	-	-	-	Y	152.00	$ 33.71	$ 13,753.96
SNODGRASS, WALTER H											
SOLMONSON, CHANCE											
SOLMONSON, OLIVEA	haul truck	$ 33.71	$ 11,326.56	C	-	-	-				
SOLMONSON, SANDY											
SOUTHWICK, ARLAN	hoe operator	$ 35.01	$ 11,763.36		-	-	-				
SPLINTER, CHRIS											
STANGOE, WARD	HD Mechanic			D	-	-	-	N			
STEELE, GLENN E	driller	$ 36.01	$ 12,099.36	A	-	-	-	N			
STEENBERGEN, DIRK											
STERN, MATT											
STEVENSON, TYLER	welder appentice	$ 29.96	$ 10,066.56		-	-	-				
STEVES, COLIN											
STIRLING, PHILIP C	driller	$ 36.31	$ 12,200.16	a	-	-	-	Y		$ 35.01	$ 793.00
STJEPANOVIC, DENNIS	mechanic apprentice	$ 36.50	$ 12,264.00		-	-	-	Y			
STRAND, OLE C	tool crib	$ 37.61	$ 12,636.96	A/B	-	-	-	Y	188.00	$ 46.00	$ 11,003.20
STRAND, TONIA L	backhoe	$ 35.01	$ 11,763.36	c/d	-	-	-	Y	196.00	$ 33.71	$ 8,431.65
STRANG, AMI											
STRANG, DANIEL V	mechanic	$ 40.52	$ 13,614.72	A/B	-	-	-	Y			
STRANG, JEFF	haul truck	$ 33.71	$ 11,326.56	c	-	-	-	N			
STRANG, Nicole	haul truck				-	-	-	N			
STRONG, JOSEPH	shovel op.	$ 37.61	$ 12,636.96	C	-	-	-	Y			$ 7,208.54
TACKABERRY, BRIAN JOHN											
TAYLOR, BRUCE E	Heavy duty mech apprentice				-	-	-	N			
TAYLOR, CHRISTOPHER	operator			C	-	-	-	Y			
TAYLOR, DOUG L											
TAYLOR, ERIC L	driller	$ 36.31	$ 12,200.16		-	-	-	N			
TAYLOR, SCOT	dozer operator	$ 35.02	$ 11,766.72	D	-	-	-	Y	176.00	$ 30.00	$ 10,264.80

THURSTON, JASON K	heavy duty operator	$ 35.01	$ 11,763.36	A	-	-	-	n			
TOMKINSON, GARY W	haul truck	$ 33.71	$ 11,326.56	A	-	-	-				
TORRAVILLE, JARED											
TORRAVILLE, JORDAN	welder (uncertified)	$ 40.52	$ 13,614.72	B	-	-	-	Y			$ 8,526.47
TRAVERSE, FRASER	truck driver	$ 33.25	$ 11,172.00		x	-	-	N			
TRAVERSE, PATRICK	pumps & pit service	$ 33.71	$ 11,326.56		-	-	-	Y			
TYTULA, MIKE											
VAN BASTEN, JAYLENE					-	-	-	Y		$ 20.00	$ 8,301.60
VERGE, HEDLEY D	HD Mechanic	$ 42.80	$ 14,380.80	C/D	-	-	-	Y		$ 116.00	$ 15,926.77
VERGE, HOLI	truck driver	$ 33.71	$ 11,326.56	C	-	-	-	n			
WAGNER, STEPHEN A								y			
WALLBANK, CRAIG											
WALTER, RICHARD											
WARNER, JAMES	welder			D	-	-	-	Y	33.00		$ 1,539.20
WATT, RICHARD S	truck driver	$ 33.71	$ 11,326.56	D	-	-	-	N			
WATT, WILLIAM	driller			A	-	-	-	Y		$ 27.61	
WEIGHTMAN, BRADLEY											
WHITE, ROBERT S											
WIED, BRIAN	doze op	$ 35.01	$ 11,763.36	A	-	-	-	N			
WILLIAMS, DON	driller				-	-	-	N			
WILSON, KEITH O	loader operator	$ 37.61	$ 12,636.96		-	-	-	N			
WISMAN, ADAM											
WOODS, KEVIN	mine ops 4	$ 33.71	$ 11,326.56	A	-	-	-	N			
WORTHINGTON, RICHARD	hoe/dozer	$ 36.31	$ 12,200.16	C	-	-	-	Y	27.00		$ 338.96
YANDEAU, LANCE	shovel op.	$ 37.61	$ 12,636.96	C	-	-	-	N			
YORK, CHARLES	heavy duty mechanic			A/B	-	-	-	Y	72.00		
ZAVAGLIA, GENO	welder	$ 40.52	$ 13,614.72	c/d	-	-	-	Y			
ZIMMER, JUSTIN	steam bay	$ 27.83	$ 9,350.88	B	-	-	-	N			
ZIMMER, RICHARD											
ZOSIAK, DAVE											
ZUNTI, CONRAD					-	-	-	Y			


Total Earnings if Members Had Worked
$ 1,716,237.60
Total Sum of Gross Wages from Replacement Employment
$ 314,913.44
Income Deficit: Total Earnings Had the Members Worked ($1,716,237.60) - Total Mitigation from Replacement Employment ($314,913.44)
$ 1,401,324.16

This is Exhibit "C" referred to in the
Statutory Declaration of FRANK EVERITT
SWORN BEFORE ME at PRINCE GEORGE
in the Province of British Columbia,
this 15th day of July 2015

A Commissioner for taking
Oaths in British Columbia

For media:
William Stanhouse, 205-745-2664
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or
Ruth Pachman, 212-521-4891
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Walter Energy Reaches Restructuring Agreement with Senior Lenders to be Implemented through Chapter 11 Filing

BIRMINGHAM, AL — July 15, 2015 — Walter Energy, Inc. (OTC Pink:WLTG) ("Walter Energy" or the "Company") today announced that it has entered into an agreement with certain of its senior lenders on the material terms of a restructuring. To implement this pre-negotiated restructuring, Walter Energy and its U.S. subsidiaries have filed for relief under chapter 11 of the U.S. Bankruptcy Code in the Bankruptcy Court for the Northern District of Alabama. Walter Energy's non-U.S. operations, including those in Canada and the U.K., are not included in the filings.

"This restructuring plan provides a roadmap for Walter Energy to establish a sustainable capital structure, make further changes to operational cost drivers, and ensure that the Company can continue to operate safely and competitively in the years ahead," said Walt Scheller, Chief Executive Officer. "With the support of our key senior lenders, we will use this process to pursue the best possible outcome on behalf of all of our stakeholders, including our employees and our communities. In the face of ongoing depressed conditions in the market for met coal, we must do what is necessary to adapt to the new reality in our industry."

Walter Energy has sufficient cash to assure that vendors, suppliers and other business partners will be paid in full for goods and services that they provide during the reorganization process.

The terms of the restructuring contemplate the senior lenders converting all of their debt into equity. The agreement also establishes a timeline for confirmation of a chapter 11 plan and the fulfillment of certain other conditions and milestones. If the Company otherwise cannot satisfy the various conditions and milestones or confirm a chapter 11 plan, the Company will pursue a sale of substantially all of its assets through a court-supervised auction process.

The Company has made customary filings, including first day motions, with the U.S. Bankruptcy Court, which, if granted, will help ensure a smooth transition into the reorganization process without business disruption. The motions are expected to be addressed promptly by the Court.

Additional information on the restructuring can be found at www.walterenergy.com/restructuring or by calling the Company's toll-free restructuring information line at (866) 967-0679 (or, if calling from outside the U.S. or Canada,

at +1 310-751-2679). Information about the chapter 11 case and the claims process will also be available at www.kccllc.net/walterenergy.

Walter Energy has retained Blackstone Advisory Partners L.P. as its financial advisor and AlixPartners LLP as its restructuring advisor. It has engaged Paul Weiss Rifkind Wharton & Garrison LLP and Bradley Arant Boult Cummings LLP for legal advice.

About Walter Energy

Walter Energy is a leading metallurgical coal producer for the global steel industry with strategic access to steel producers in Europe, Asia and South America. The Company also produces thermal coal, anthracite, metallurgical coke and coal bed methane gas, with operations in the United States, Canada and the United Kingdom. For more information about Walter Energy, please visit www.walterenergy.com.

Safe Harbor Statement

This news release contains forward-looking statements as that term is defined in the Private Securities Litigation Reform Act of 1995. These forward-looking statements include statements that relate to the intent, beliefs, plans or expectations of Walter Energy or its management at the time of this release, as well as any estimates or projections for the outcome of events that have not yet occurred at the time of this release. All statements other than statements of historical fact are forward-looking statements. Forward-looking statements include expressions such as "believe," "anticipate," "expect," "estimate," "intend," "may," "plan," "predict," "will" and similar terms and expressions. All forward-looking statements made by Walter Energy are predictions and not guarantees of future performance and are subject to various risks, uncertainties and factors relating to Walter Energy's operations and business environment, and the progress of its chapter 11 bankruptcy proceedings, all of which are difficult to predict and many of which are beyond Walter Energy's control, which could cause Walter Energy's actual results to differ materially from those matters expressed in or implied by these forward-looking statements. Such factors include, but are not limited to: those described under the "Risk Factors" section and elsewhere in Walter Energy's most recently filed Annual Report on Form 10-K and subsequent filings with the Securities and Exchange Commission ("SEC"), including its Quarterly Report on Form 10-Q for the quarter ended March 31, 2015, which are available on Walter Energy's website at www.walterenergy.com and on the SEC's website at www.sec.gov; unfavorable economic, financial and business conditions; risks and uncertainties relating to the bankruptcy filing by Walter Energy, including, but not limited to, (i) Walter Energy's ability to obtain Bankruptcy Court approval with respect to motions or other requests made to the Bankruptcy Court in the chapter 11 case, including maintaining strategic control as debtor-in-possession, (ii) the ability of Walter Energy and its subsidiaries to negotiate, develop, confirm and consummate a plan of reorganization, (iii) the effects of Walter Energy's bankruptcy filing on Walter Energy and on the interests of various constituents, (iv) Bankruptcy Court rulings in the chapter 11 case as well the outcome of all other pending litigation and the outcome of the chapter 11 case in general, (v) the length of time that Walter Energy will operate under chapter 11 protection and the continued availability of operating capital during the pendency of the proceedings, (vi) risks associated with third party motions in the chapter 11 case, which may interfere with Walter Energy's ability to confirm and consummate a plan of reorganization, (vii) the potential adverse effects of the chapter 11 proceedings on Walter Energy's liquidity or results of operations, and (viii) increased advisory costs to execute Walter Energy's reorganization; the impact of the NYSE's suspension of trading and commencement of delisting proceedings on the liquidity and market price of Walter Energy's common stock and on Walter Energy's ability to access the public capital markets; the uncertainty that any trading market for Walter Energy's common stock will exist or develop in the over-the-counter markets; and other risks and uncertainties. Forward-looking statements made by Walter Energy in this release, or elsewhere, speak only as of the date on which the statements were made. New risks and uncertainties arise from time to time, and it is impossible for Walter Energy to predict these events or how they may affect it or its anticipated results. Walter Energy does not undertake any obligation to publicly update or review any forward-looking statements except as may be required by law, whether as a result of new information, future developments or otherwise. In light of these risks and uncertainties, readers should keep in mind that any forward-looking statements made in this release may not occur and should not place undue reliance on any forward-looking statements.

Walter Energy cautions that the trading in its securities during the pendency of chapter 11 proceedings is highly speculative and poses substantial risks. A joint plan of reorganization could result in Walter Energy's outstanding common stock being diluted or extinguished, and the holders of Walter Energy's common stock may not receive any distribution or other favorable treatment within the chapter 11 proceedings or pursuant to any confirmed plan of reorganization based on any securities held. Accordingly, Walter Energy's future performance and financial results may differ materially and/or adversely from those expressed or implied in any forward-looking statements made by Walter Energy in this release.

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IN THE MATTER OF THE *LABOUR RELATIONS CODE*, RSBC 1996, C. 244

AND IN THE MATTER OF AN APPLICATION TO THE LABOUR RELATIONS BOARD

BETWEEN:

United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, Local 1-424

("Union")

AND:

Wolverine Coal Partnership

("Employer")

Application for stay of BCLRB No. B137/2014

STATUTORY DECLARATION OF HUGH KINGWELL

I, Hugh Kingwell, of Tumbler Ridge, British Columbia, MAKE OATH AND SAY AS FOLLOWS:

[1] I am the Director of Human Resources, Canadian Operations, for Walter Energy, Inc. and as such have personal knowledge of the facts and matters hereinafter deposed to save and except where the same are to be stated to be based on information and belief and where so stated I believe them to be true.

[2] Wolverine Coal Partnership, which owns and operates the Wolverine Coal Mine, is a wholly owned subsidiary of Walter Energy, Inc.

[3] I have reviewed the order of the B.C. Labour Relations Board in BCLRB Decision No. B137/2014.

This is Exhibit "D" referred to in the Statutory Declaration of FRANK EVERITT SWORN BEFORE ME at PRINCE GEORGE in the Province of British Columbia, this 15th day of July 2015

A Commissioner for taking Oaths in British Columbia

[4] There were approximately 302 employees at the Wolverine Coal Mine who were part of the bargaining unit as of April 15, 2014. Approximately 283 of these employees were actively at work as of April 15, 2014. Approximately 19 employees were inactive, on various types of leaves of absences.

[5] Complying with the Board's order would mean payments to members of the bargaining of up to approximately four million dollars.

[6] The Company would also incur substantial administrative costs in order to implement the Board's Order. In order to implement the Order, the Company would need to undertake the following work:

[a] The Company would need to obtain updated contact information from each employee, including updated addresses and banking information, as appropriate. The Company understands from the Union's submissions to the Labour Relations Board that many laid off employees have left the Tumbler Ridge area.

[b] The Company would need to review and consider the large volume of mitigation documents that the Union has been ordered to provide to the Company.

[c] The Company would need to determine, on an individual basis for each employee, the amount of any overpayment from the Receiver General in respect of employment insurance benefits received by the Employee for the 60 period following their temporary layoff.

[d] The Company would then need to remit any such overpayment to the Receiver General out of the gross amount of wages owed to each employee.

[e] The Company would need to reactivate up to 302 employees in the payroll system, prepare detailed documents showing the gross amount, mitigation and repayment deductions, and net amounts for each employee. This information would then need to be inputted into the Company's payroll system.

[f] The Company would need to determine what amounts need to be deducted for garnishing and family support / maintenance payments. These require special manual calculations to be done and are likely to affect approximately three employees.

[g] The Company would need to determine what statutory deductions would apply to each employee. These would differ from employee to employee depending on the employment insurance repayment amounts.

[h] The Company would then need to remit such statutory deductions to the appropriate government authority, on each employee's behalf.

[i] The Company would then issue direct deposits into each employee's bank account.

[j] These payments may spread over several pay periods depending on each employee's responsiveness to mitigation and employment insurance information requests. This would increase the company's administrative burden and cost.

[7] I have consulted with our payroll and human resources departments and estimate that the cost of undertaking all of this work would be in excess of $ 77,795. None of these costs would be recoverable by the Company if the Board later overturns the decision.

[8] If the Board overturns the decision and the Company has already paid out damages to laid off employees, the Company would then be in a position of trying to recover the money from each of these individuals. This would include the following work:

[a] Locating and contacting each employee to seek repayment of not only the net amount paid by the Company to each employee, but the gross amount paid by the Company including all amounts paid by the Company to government agencies on behalf of each employee. In particular, the Company would need to recover from each employee any amounts deducted on account of

income taxes, employment insurance and Canada Pension Plan contributions, and employment insurance overpayment repayments.

[b] It would be up to individual employees to then seek tax refunds or employment insurance payments to offset their obligation to pay back to the Company the entire amount.

[c] In other words, in order to make the Company whole it would need to recover more money from each employee than it actually paid the employee, and in some cases, likely substantially more money.

[d] The Company expects that in many cases, employees will have already spent the funds or may not have sufficient additional funds to pay back to the Company the gross amount the Company paid to the employee and to the government on their behalf.

[e] For any employees who do not voluntarily pay the money back to the Company, the Company would need to undertake legal action against the Union in respect of any employees who do not volunteer repayment.

[f] Such legal action would be costly and time consuming, and with respect to those employees without the means to repay the gross amount of the repayment, may ultimately prove ineffective as judgments would be costly, time consuming, and difficult to enforce.

[9] It would be a very time consuming and expensive exercise to try to obtain repayment from each individual employee.

[10] My opinion is that it is almost certain that the Company would not recover the full amount paid out pursuant to the Board's order if that order was later overturned. It is also my opinion that the Company would likely have to spend in excess of $400,000 trying to recover these monies.

[11] As a result of all of the costs set out above, in my opinion the Company's reconsideration application would be a pointless and futile exercise if a stay is not granted.

I MAKE THIS SOLEMN DECLARATION conscientiously believing it to be true and knowing that it is of the same force and effect as if made under oath and by virtue of the British Columbia *Evidence Act.*

DECLARED BEFORE ME at the City of Dawson Creek, in the Province of British Columbia, this 15th day of August, 2014

A Commissioner for Taking Statutory Declarations in the Province of British Columbia

SHANE ALLEN
Barrister & Solicitor
Ste. #2, 933-103 Avenue
Dawson Creek, BC
V1G 2G4

HUGH KINGWELL

BRITISH COLUMBIA LABOUR RELATIONS BOARD

This is Exhibit" D "referred to in the
Affidavit of RANDY GATZKA
Sworn before me at Vancouver BC
This 24 day of DEC 20 15

A Commissioner for taking Affidavits
within British Columbia

WOLVERINE COAL PARTNERSHIP

(the "Employer")

-and-

UNITED STEEL, PAPER AND FORESTRY, RUBBER, MANUFACTURING, ENERGY, ALLIED INDUSTRIAL AND SERVICE WORKERS INTERNATIONAL UNION, LOCAL NO. 1-424

(the "Union")

PANEL:	Jacquie de Aguayo, Vice-Chair
APPEARANCES:	Drew Demerse, for the Employer Stephanie Drake, for the Union
CASE NO.:	67987
DATE OF DECISION:	July 22, 2015
DATE OF REASONS:	July 30, 2015

REASONS FOR THE BOARD'S DECISION

I. NATURE OF APPLICATION

1 On July 15, 2015, the Union applied to the Board for further remedial relief (the "Relief Request") in accordance with my retained jurisdiction in *Wolverine Coal Partnership*, BCLRB No. B106/2015 (the "Merits Decision").

2 In the Merits Decision, dated June 9, 2015, I found the Employer breached Section 54(1) of the *Labour Relations Code* (the "Code") when it failed to give 60 days' notice to, and consult with, the Union in the context of an indefinite layoff. One of the remedies for that contravention of the Code was for the Employer to pay 60 days' pay in lieu of notice to affected employees, subject to mitigation (the "Damages Remedy").

3 The Union's Relief Request is for the Employer to pay into trust an amount equal to the estimated amount of the Damages Remedy because Walter Energy Inc. (the "Company") recently filed for bankruptcy protection in respect of its US operations only. The Employer is a wholly owned subsidiary of the Company, but is part of its Canadian operations.

4 After having sought and considered the submissions of the parties, I issued a bottom line decision on July 22, 2015 (the "Interim Trust Payment") stating, in part:

> The Employer shall forthwith pay to the Union, in trust, $771,378.70, pending final disposition of this matter.
>
> I remain seized with respect to remedy.

II. BACKGROUND

PROCEDURAL HISTORY

5 The Merits Decision was remitted to me further to a decision of a Reconsideration Panel under Section 141 of the Code: *Western Coal Corp. (Wolverine Mine)*, BCLRB No. B216/2014 (Leave for Reconsideration of BCLRB No. B137/2014) 252 C.L.R.B.R. (2d) 83 allowed on December 11, 2014. The Original Panel in *Western Coal Corp. (Wolverine Mine)*, BCLRB No. B137/2014, 246 C.L.R.B.R. (2d) 282 ("B137/2014") also found the Employer breached Section 54(1) of the Code and ordered the Employer to pay damages equivalent to 60 days' pay in lieu of notice, subject to mitigation (the "Original Damages Remedy"). In *Western Coal Corp. (Wolverine Mine)*, BCLRB No. B186/2014, 251 C.L.R.B.R. (2d) 106 (the "Stay Application"), the Board granted a partial stay of the Original Panel's decision pending that reconsideration application. The Employer applied for reconsideration of the Merits

Decision pursuant to Section 141 of the Code. It did not seek a stay pending that application. No decision has yet been rendered on reconsideration.

6 The Company is based in the US. The nature of the Employer's coal mining operation at the Wolverine Mine in Tumbler Ridge, BC, as well as the circumstances of the indefinite layoff of all the employees in the Union's bargaining unit (the "Layoff"), are set out in the Merits Decision. At the time of writing, over 300 employees remain on layoff and many have left the Tumbler Ridge area.

THE AMOUNT OWING PURSUANT TO THE DAMAGES REMEDY

7 As a result of the Merits Decision, the Union has been collecting information for the purposes of calculating the final amount owing under the Damages Remedy, including mitigation income earned by affected employees during the notice period. Both the Union and Employer had commenced that work in 2014 in accordance with the Board's decision on the Stay Application and pending reconsideration of B137/2014. For example, in its response to the Relief Request, the Employer attached a letter from December 9, 2014 that refers to earlier correspondence and provides its revised list of employees affected by the Layoff.

8 Both parties have said the process of calculating the Damages Remedy is time consuming. It includes locating affected employees, identifying the wages that would have been earned in the notice period, obtaining information of any mitigation income, and calculating and remitting appropriate statutory withholding amounts. For example, the Union included in its Relief Request a copy of the statutory declaration of Hugh Kingwell, Director of Human Resources for the Company's Canadian operations (the "Kingwell Declaration"). The Kingwell Declaration was filed by the Employer in support of its Stay Application. At paragraph six of the Kingwell Declaration, he sets out the administrative steps required to identify the amount of damages payable to affected employees. With respect to the Original Damages Remedy, he stated that "[c]omplying with the Board's order would mean payments to members of the bargaining [sic] of up to approximately four million dollars".

9 In its Remedial Request, the Union also included the statutory declaration of Frank Everitt, President of the Union. In it he attaches copies of the Union's working list of affected employees, including particulars of mitigation income from approximately half of the affected employees. He also identifies an estimate of the total amount of the Damages Remedy, including noting any assumptions made in its calculation where the Union lacked concrete information. This includes taking average earnings based on standard work schedules and assigning individuals an average amount of mitigation income based on the actual mitigation figures it has obtained.

10 The parties are in dispute with respect to the total amount of the Damages Remedy. In their submissions, the parties addressed a range of adjustments, corrections, and clarifications to the information provided by the Union. Both the Union

and Employer have identified areas where additional information is required, challenges to certain operating assumptions supporting each party's estimates, as well as other potential areas of ongoing dispute. The Employer has not yet made payments pursuant to the Damages Remedy.

11 After having made adjustments to its initial estimate based on information provided by the Employer in its response, the Union set out a revised estimate of the total of the Damages Remedy at approximately $1.96 million, subject to a possible gross-up for premiums and other benefits.

12 In the Kingwell Declaration, the Employer initially estimated the total amount owing under the Original Damages Remedy to be in the range of $4 million. In response to the Union's Relief Request, the Employer estimates the total damages owing to be $771,378.70.

13 The Employer's estimate excludes affected employees falling into three categories. First, those employees who were inactive during the notice period, such as those on short or long-term disability, workers' compensation benefits, maternity leave or sick leave. Second, those who worked for the Employer during the mitigation period. Third, those who refused recall or were otherwise unavailable to work during the mitigation period.

14 From the list of affected employees remaining, the Employer's estimate is based on the total wages owing minus the amount of actual mitigation income identified by the Union and minus $1.3 million being the total amount of damages owing for the 112 employees who have not yet responded to the Union's request for mitigation information. The Union disputes a number of the Employer's exclusions from the employee list as well as certain of its operating assumptions.

THE COMPANY FILED FOR BANKRUPTCY PROTECTION IN THE US

15 The Union's Relief Request was in response to the Company's decision to file for bankruptcy protection in the US. In an announcement dated July 15, 2015 (the "Announcement"), the Company's statement included the following:

> …[I]t has entered into an agreement with certain of its senior lenders on the material terms of a restructuring. To implement this pre-negotiated restructuring, Walter Energy and its U.S. subsidiaries have filed for relief under chapter 11 of the U.S. Bankruptcy Code in the Bankruptcy Court for the Northern District of Alabama. Walter Energy's non-U.S. operations, including those in Canada and the U.K., are not included in the filings.

16 The Announcement describes the framework for a restructuring plan for its operations and states: "In the face of ongoing depressed conditions in the market for

[metallurgical] coal, we must do what is necessary to adapt to the new reality in our industry".

17 The stated reason for the Layoff was that the Company, not the Employer, decided that the global price for metallurgical coal had fallen to the point that it no longer made financial sense to continue the mining operation at the Wolverine Mine (Merits Decision, para. 29).

18 The Announcement concludes with a cautionary "Safe Harbor Statement". It identifies the Announcement as "forward-looking statements" as defined in the applicable legislation, and includes the following:

> […] All forward-looking statements made by Walter Energy are predictions and not guarantees of future performance and are subject to various risks, uncertainties and factors relating to Walter Energy's operations and business environment, and the progress of its chapter 11 bankruptcy proceedings, all of which are difficult to predict and many of which are beyond Walter Energy's control, which could cause Walter Energy's actual results to differ materially from those matters expressed in or implied by these forward-looking statements. […] In light of these risks and uncertainties, readers should keep in mind that any forward-looking statements made in this release may not occur and should not place undue reliance on any forward-looking statements.
>
> Walter Energy cautions that the trading in its securities during the pendency of chapter 11 proceedings is highly speculative and poses substantial risks. A joint plan of reorganization could result in Walter Energy's outstanding common stock being diluted or extinguished, and the holders of Walter Energy's common stock may not receive any distribution or other favorable treatment within the chapter 11 proceedings or pursuant to any confirmed plan of reorganization based on any securities held. Accordingly, Walter Energy's future performance and financial results may differ materially and/or adversely from those expressed or implied in any forward-looking statements made by Walter Energy in this release.

19 There is no dispute the Employer's operation is not included in the July 2015 bankruptcy filing, nor has a similar application been filed in Canada with respect to the Employer. The Employer points out its Canadian operations have separate bank accounts and are continuing to pay employees and vendors in the normal course of business.

20 Based on the information before me, I find the calculation of the final amount owing under the Damages Remedy is a work in progress. Given my decision to order an Interim Trust Payment, and for the reasons set out more fully below, I find the resolution

of the parties' dispute over methodology, as well as any final agreement or adjudication setting the final amount owing are not material to my decision.

II. ANALYSIS AND DECISION

21 I do not intend to summarize the parties' positions. Rather, where I find they are relevant to the material issue(s) to be decided, I have addressed them in my reasons.

22 Based on the Announcement, the Union says it "is extremely concerned that the Employer may imminently file for protection in Canada under the *Companies' Creditors Arrangement Act* (*CCAA*)". The Union filed its Relief Request pursuant to the Board's retained jurisdiction in the Merits Decision, including with respect to the Damages Remedy. It seeks an order on an urgent basis that its estimate of the total damages owing pursuant to the Damages Remedy be placed in trust "to ensure that, if the Employer files for CCAA protection in Canada, the decision is able to be implemented at all".

23 The Employer questions the basis for the Union's application, indicating the Union failed to set out those sections of the Code it relies on for the relief it seeks. The Employer says this is in contravention of Labour Relations Board Rules. It says the Union's failure to do so is prejudicial to its ability to respond.

24 In the Merits Decision, I expressly retained jurisdiction over the implementation of the Damages Remedy. I find the Union's application is properly brought pursuant to that retained jurisdiction.

25 I have taken into account the following factors in concluding that the Announcement warrants the exercise of my discretion to require the Employer to make the Interim Trust Payment.

26 In compliance with the Merits Decision, the Employer is lawfully required to make payments to affected employees pursuant to the Damages Remedy. The information before me shows that arriving at a final figure for payments will take time. There may be disputes with respect to a range of issues. As such, identifying a final total for payment under the Damages Remedy is not imminent.

27 There is no dispute the Announcement does not establish that the Employer, or the Company, have filed for bankruptcy protection in Canada with respect to the Wolverine Mine. However, the Merits Decision sets out that the Company exercises a degree of decision-making authority over significant operational decisions of the Employer. It was the Senior Executives of the Company that decided to idle the Wolverine Mine, resulting in the Layoff. The Employer is a wholly owned subsidiary of the Company. The stated reason for the Layoff arose out of the drop in the global price for metallurgical coal. This is the same economic reality identified in the Announcement for the filing for bankruptcy protection and the restructuring proposal in the US.

28 In the event a similar decision is made by the Employer and/or the Company for its Canadian operations, payments to affected employees lawfully owing pursuant to the Damages Remedy may be prejudiced by a filing for protection under the *CCAA*.

29 The Union says its Relief Request is urgent in light of the Announcement. The Employer says there is no urgency because the filing in the US does not affect its Canadian operations and, therefore, nothing has changed. I find it is not necessary to determine whether any such filing is imminent or that the Union has established urgency to support its Remedial Request. Given the potential prejudice to those employees affected by the Layoff, and the Employer's existing duty to make payments pursuant to the Damages Remedy, and taking into account the other factors summarized here, I find the balance of convenience warrants an exercise of my discretion in favour of securing some funds in trust.

30 In considering the amount to be placed in trust, the Union asks for an amount equal to its estimate of the total amount owing under the Damages Remedy. I have taken into account the Employer's position that the Board ought not to make any order for an interim payment as the issue of quantum remains in issue: *Celtic Pacific Contractors Ltd.*, BCLRB No. B22/98; *Community Social Services Employers' Association (Kamloops Community Support Society)*, BCLRB No. B468/2001; *Johnston International Services Inc.*, BCLRB No. B338/97.

31 In the circumstances of the present case, I find the Employer's concerns with respect to the dispute over the amounts owing under the Damages Remedy, its inability to review and verify the information provided by the Union, as well as the expedited nature of the submission process, are relevant to determining the amount ordered into trust.

32 As is set out, above, the calculation of the Damages Remedy is a work in progress. I accept the Employer has not had a full opportunity to review the Union's information in support of its request for placement into trust of its estimate of the full amount owing. The parties themselves have not had a full opportunity to exchange information and work cooperatively toward resolving any areas of dispute, some of which were identified in their submissions before me. On this basis, and having regard to my conclusions with respect to potential prejudice to affected employees, above, I ordered an Interim Trust Payment that reflects the Employer's estimated calculations.

33 Finally, the Employer says the Union delayed and withheld the information it disclosed in support of its Remedial Request. I find the evidence before me does not support a finding or an inference of fault on the part of the Union. Based on the amount of information obtained by the Union to date, taking into account the procedural history of the Merits Decision (including that it was issued on June 9, 2015), and noting the Union acted quickly upon learning of the Announcement and disclosed the information it had, I find the Union has not unreasonably delayed or withheld information from the Employer.

III. CONCLUSION

34 For all these reasons, I grant the Union's Remedial Request, in part.

35 I find that the circumstances warrant the exercise of my discretion under my retained jurisdiction in the Merits Decision. As is set out in my decision of July 22, 2015, and for the reasons set out here, I direct that the Employer make an Interim Trust Payment as follows:

> The Employer shall forthwith pay to the Union, in trust, $771,378.70, pending final disposition of this matter.
>
> I remain seized with respect to remedy.

LABOUR RELATIONS BOARD

"*JACQUIE DE AGUAYO*"

JACQUIE DE AGUAYO
VICE-CHAIR

BCLRB No. B185/2015
(Leave for Reconsideration of BCLRB No. B106/2015)

BRITISH COLUMBIA LABOUR RELATIONS BOARD

WOLVERINE COAL PARTNERSHIP

(the "Employer")

-and-

UNITED STEEL, PAPER AND FORESTRY, RUBBER, MANUFACTURING, ENERGY, ALLIED INDUSTRIAL AND SERVICE WORKERS INTERNATIONAL UNION, LOCAL NO. 1-424

(the "Union")

This is Exhibit" E "referred to in the
Affidavit of RANDY GATZKA
Sworn before me at Vancouver BC
This 24 day of DEC. 20 15
A Commissioner for taking Affidavits
within British Columbia

PANEL:	Brent Mullin, Chair Bruce R. Wilkins, Associate Chair, Adjudication Ken Saunders, Vice-Chair
APPEARANCES:	Thomas A. Roper, Q.C. and Drew Demerse, for the Employer Craig Bavis and Stephanie Drake, for the Union
CASE NO.:	68683
DATE OF DECISION:	September 23, 2015

DECISION OF THE BOARD

1 The Employer applies under Section 141 of the *Labour Relations Code* (the "Code") for leave and reconsideration of BCLRB No. B106/2015. The decision in B106/2015 has been referred to as the "Remittal Decision" in these proceedings. It arose after the original decision in this matter, BCLRB No. B137/2014, was overturned and the matter was remitted to a new panel of the Board as a result of the unavailability of the previous panel.

2 The Remittal Decision found that the Employer's layoff of approximately 300 employees without a definite time for the recall of the employees fell within Section 54 of the Code. The Remittal Decision concluded that the Employer was in breach of that provision as the Employer had not given notice of the layoff or engaged in adjustment plan discussions with the Union as required under Section 54. As the Employer had agreed to damages in lieu of notice being an appropriate remedy if a breach of Section 54 was found (Remittal Decision, para. 80), the Remittal Decision ordered damages equivalent to sixty days' pay for each of the affected employees, subject to mitigation.

3 The Employer applies for leave and reconsideration of the Remittal Decision on the following grounds:

(a) The Original Panel made palpable and overriding errors in concluding:

i. that the experts were forecasting a decline in Canadian coal production in 2014;

ii. that layoffs in 2014 were likely and predictable based upon market forecasts; and

iii. that price levels in the fall of 2013 were "unsustainable" for the Employer and caused "alarm" as to the "viability" of the Wolverine Mine.

(b) The Decision is inconsistent with the principles expressed or implied in the Code because the Original Panel:

i. concluded that the layoff was indefinite, not temporary;

A. based on irrelevant factors not tied to the true nature of the layoff; and

B. by giving no consideration to the fact the Union did not call one of its Officers to testify about the contents of an important conversation between the Employer and the Union;

> ii. expanded the application of section 54 to include circumstances where an employer is "likely" to implement a change, or where a change "may be" necessary when the section on its face only applies if "an employer introduces or intends to introduce" a change;
>
> iii. expanded the application of section 54 to require employers to give 'notice' of future events outside the employer's control; and
>
> iv. adopted an interpretation of section 54 notice that is inconsistent with labour relations expectations and which leads to uncertainty.

4 In its leave and reconsideration application, the Employer submitted detailed arguments in respect to each of these grounds. The Union responded in detail to the Employer's arguments.

5 We have reviewed and considered the parties' submissions in a manner corresponding to the care and detail with which they have been put forward.

6 An application under Section 141 must meet the Board's established test before leave for reconsideration will be granted. An applicant must establish a good, arguable case of sufficient merit that may succeed on one of the established grounds for reconsideration: *Brinco Coal Mining Corporation*, BCLRB No. B74/93 (Leave for Reconsideration of BCLRB No. B6/93), 20 C.L.R.B.R. (2d) 44 ("*Brinco*").

7 The Employer's primary argument before the remittal panel was that temporary layoffs do not fall under Section 54 of the Code. That argument forms the basis of grounds (b) i and iv in the present leave and reconsideration application. We will address those arguments first below.

8 Along with its determination in respect to that position, however, the Remittal Decision went on to conclude, "The evidence does not establish the Employer was not in a position to advise the Union at some point prior to April 15, 2014, that an Indefinite Layoff was likely or would be implemented" (para. 141). The explanation earlier in paragraph 141 and in the second sentence of paragraph 144 make it clear that the evidence being referred to is the previous nine month period from July 2013 to the end of March 2014. That conclusion in paragraph 141 of the Remittal Decision has prompted grounds (a) i - iii and (b) ii - iii of the leave and reconsideration application. We will address those grounds for review after dealing with the temporary layoff grounds.

9 We turn first to ground (b) i of the leave and reconsideration application. It states:

> (b) The Decision is inconsistent with the principles expressed or implied in the Code because the Original Panel:

i. concluded that the layoff was indefinite, not temporary;

A. based on irrelevant factors not tied to the true nature of the layoff; and

B. by giving no consideration to the fact the Union did not call one of its Officers to testify about the contents of an important conversation between the Employer and the Union.

10 In this ground for leave and reconsideration, the Employer challenges the determination in the Remittal Decision that the layoff was for an indefinite period of time, not temporary. In its argument, the Employer says that this issue raises a question of labour relations policy. The Employer says "it cannot be the case [as concluded in paragraph 46 of the Remittal Decision] that whether or not a layoff is temporary or indefinite in nature depends on whether the Employer 'clearly communicated' its intentions with respect to recall to employees and to the union". The Employer says that it "is the actual subjective intention of the Employer, at the time of the layoff, that is relevant to this determination".

11 In the facts of the case the layoff was decided upon and implemented within a short period of time in early to mid-April 2014. As such, the facts quickly moved beyond the potential subjective intentions of the Employer in respect to whether it intended to introduce a measure or change that would fall within Section 54 of the Code: see the initial language in Section 54 of the Code, "if an employer introduces or intends to introduce a measure, policy practice or change…". The change was in fact decided upon and implemented. The question is the nature of the change. That is not a policy question. That is a factual determination to be made based upon the evidence in the case.

12 The factual determination made in that regard in the Remittal Decision has not been challenged on a palpable and overriding error basis. In considering the grounds that are advanced, for the purposes of our determination here we will accept, without deciding, that an adverse inference should be drawn in respect to Will's evidence as a result of the Union not calling a fellow Union officer, George Rowe, in respect to a conversation among Kingwell, the Director of Human Resources for the Mine, Will and Rowe. In doing so, we do not see the resultant evidence of that conversation impugning the overall factual determination in the Remittal Decision that the layoff was of an indefinite nature. Among other matters, that determination rested on the Q&A given to the employees by the Employer on the date of the layoff, April 15, 2014: Remittal Decision, para. 37. That communication clearly left the possibility of recall in an indefinite status, subject to "coal prices and positive future indicators strong enough to continue sustainable operations". The intent was to resume, but that was subject to "coal prices and positive future indicators".

13 As well, the nature of that communication was consistent with what the then President of the Company's Canadian Operations, Dan Cartwright, said that same day to the employees: Remittal Decision, para. 45. Cartwright was part of what is referred

to in the Remittal Decision as the Company, with the Company being the decision maker in the matter, as opposed to the local management of the Mine, which was identified as the Employer: see Remittal Decision, para. 4. The decision to idle the Mine was made by the Company, not the Employer: Remittal Decision, para. 29. As a result, in terms of the factual determination to be made regarding the nature of the layoff, it is clear that the evidence of what the Company had to say through Cartwright and the Q&A given to the employees would in any event outweigh in the circumstances what Kingwell, as a member of the non-decision making local Employer, had to say to Will and Rowe.

14 Accordingly, we do not accept this ground for leave and reconsideration.

15 In support of its position regarding temporary layoffs and Section 54 of the Code, the Employer submits (b) iv of the leave and reconsideration application. In this ground for leave and reconsideration, the Employer says the Remittal Decision is inconsistent with the principles expressed and implied in the Code because it has "adopted an interpretation of Section 54 notice that is inconsistent with labour relations expectations and which leads to uncertainty". The Employer's arguments before the remittal panel on this point are summarized in paragraphs 75-79 of the Remittal Decision. The Employer says the Remittal Decision has created uncertainty in the law by applying Section 54 of the Code to a temporary layoff. The Employer submits that "[l]egislation should not be interpreted in a way that creates uncertainty and unpredictability".

16 In support of that position the Employer cites comments at paragraphs 88-90 of *Gateway Casinos & Entertainment Inc.*, BCLRB No. B81/2010 (Leave for Reconsideration of BCLRB No. B210/2009) ("*Gateway Casinos*"). Those comments confirm "the need for the Board to provide the parties in the workplaces of British Columbia with as much clarity and certainty as possible" and thus the need for the Board "to be as clear and practically oriented as possible". (paras. 88-90) Those comments in effect deal with the three evils of litigation – cost, delay and complexity – in regard to Board proceedings. Of those three, complexity can be argued to be a driver or enabler of the other two, cost and delay. In turn, uncertainty and unpredictability can be seen to be contributors to complexity. The concerns are real and of general application.

17 However, the specific concerns in *Gateway Casinos* addressed in these comments were in respect to "endless debate and attempted jurisprudential revision". (para. 88) What had occurred in that case, and was further referenced in respect to another case at paragraph 89, was continued, seemingly "endless debate and attempted jurisprudential revision" regarding a recurring issue under the Code, namely who is an "employee" under the Code. In prior cases, that issue had in reality been beaten to death, at great cost to the parties and the Board over a protracted period of time. While the Board may not have achieved the kind of clarity one would hope for in respect to the issue, nonetheless there was and is a need for some practicality in the approach to this recurring issue in the interest of all involved.

18 The current case is different. It is acknowledged by all involved that it is a case of first instance. In that regard, the Employer argues there should be a black and white, or light switch, distinction drawn by the Board that Section 54 of the Code applies to permanent closures of operations, but not any form of layoff absent a permanent closure and formal, issued terminations of employment. The problem of course is that the statute does not say that. It easily could do so. It could, for instance, limit the application of Section 54 of the Code to terminations of employment. The fact that it does not do so gives rise to the interpretation issue in this case, at first instance.

19 The first instance nature of that issue arises in the following context. The facts are that the Employer laid off approximately 300 employees for an unspecified period of time without notice. The recall of the employees was explained to be subject to the recovery of the international price for metallurgical coal. That in fact left the employees with uncertainty in respect to their "security of employment". "Security of employment" is an express concern under Section 54 of the Code. In the circumstances, the issue then becomes whether the Board should interpret Section 54 to categorically not apply to layoffs, thus including this very significant layoff of employees affecting their "security of employment".

20 Section 2(a) of the Code makes it a specific duty of the Board to recognize the "rights and obligations of employees" under the Code, as well as the more usually considered rights and obligations of the two more usual participants in Board proceedings, unions and employers.

21 In our view, the express concern in Section 54 of the Code regarding employees' "security of employment" falls within the Section 2(a) duty of the Board to recognize the "rights and obligations of employees", as well as employers and unions. The black and white certainty the Employer calls for here under Section 54 of the Code would in effect undermine consideration of the "security of employment" of the 300 indefinitely laid off employees, with "security of employment" being an expressly referenced concern under Section 54 of the Code. Interpretively, in terms of the specific provision in Section 54, the Code overall (including Section 2), and purposively, we do not find that would be appropriate.

22 The Remittal Decision was careful to note the specific nature of the layoff in this case. It was identified as being "of a long-term and indefinite nature" and then in fact defined as the "Indefinite Layoff":

> I find the layoff was intended to be lengthy, lasting at least 12 to 15 months. I further find that at the time the layoff was implemented, the recall of employees was contingent on, and subject to, an increase in the global price for coal. As such, I find the layoff in the present case was of a long-term and indefinite nature (the "Indefinite Layoff"). (Remittal Decision, para. 47)

In the circumstances we have identified, we do not find that it would be possible or appropriate for the Board to categorically say that all layoffs of employees are not subject to Section 54 of the Code, including the layoff of the particular nature so

carefully defined in this case. As a result, we do not accept this ground for reconsideration and leave is denied in respect to it.

23 We turn then to grounds (b) ii and iii in the Employer's overview of its grounds for reconsideration. The Union submits that these grounds overlap. We agree and will consider them in effect together. Grounds (b) ii and iii are as follows:

> (b) The Decision is inconsistent with the principles expressed or implied in the Code because the Original Panel:
>
> …
>
> ii expanded the application of section 54 to include circumstances where an employer is "likely" to implement a change, or where a change "may be" necessary when the section on its face only applies if "an employer introduces or intends to introduce" a change;
>
> iii expanded the application of section 54 to require employers to give 'notice' of future events outside the employer's control; … .

24 These grounds, and the Union's response to them, in effect focus on paragraphs 137-144 of the Remittal Decision. In particular, the Employer challenges the conclusion reached in paragraph 141. For convenience, we set out paragraphs 137-144 of the Remittal Decision in their entirety:

> The Board's existing approach under Section 54 of the Code also accounts for those circumstances in which an employer is not able to meet the 60 days' notice requirement. Again, applying a case-by-case approach, the Board will first examine the circumstances before it to determine whether an employer was nevertheless in a position to advise the union that a decision was likely and to discuss the possible effects of the decision on the affected employees: *The Brewster Healthcare Group Inc*., BCLRB No. B154/2012, 218 C.L.R.B.R. (2d) 142 at paras. 36-37. (para. 137)
>
> As a result of actions or circumstances completely outside the control of an employer, if an employer is unable to provide the required notice, the Board may relieve against all or part of the notice period. However, such relief will be the exception. Where notice is possible, it must be provided: *UBC* at p. 56; *Pacific Pool* at paras. 40-41. (para. 138)
>
> Finally, the Board will have regard to the practical requirements and consequences of Section 54(1) of the Code to take into account a wide variety of workplace arrangements. As the Court of Appeal recognized in *OPEIU* at paragraph 16, this can

involve a delicate balancing between different constituencies with different and competing interests. (para. 139)

The Employer says requiring notice for a temporary layoff requires that an employer predict, 60 days in advance, what markets will be like, or else must risk paying 60 days' wages to produce a product that cannot be sold. It says the viability of a business is put at risk by such an interpretation. It further states that, once it reached the point of losing money in April 2014, it should not be required to continue its operations because of the 60 days' Notice requirements in the Code. (para. 140)

The only issue before me is whether in the circumstances of the present case Notice was required. The Employer accepts that, if so, damages are appropriate. Having adopted a bright line approach, the Employer did not advance arguments that it could not have given the Union Notice in advance of implementing its decision. On the contrary, it relies on what it asserts are the difficulties arising from its failure to do so. For example, the evidence in the present case was that the Employer knew over a period of nine months that the global price for metallurgical coal was at a level that created a lot of concern for the Company and it was "shocked" by the drop in the coal price in July 2013. These conditions remained relatively constant and were well below what the Employer considered sustainable. The Union and employees voiced their own concerns in March 2014. The evidence does not establish the Employer was not in a position to advise the Union at some point prior to April 15, 2014, that an Indefinite Layoff was likely or would be implemented. (para. 141)

Similarly, I find the evidence does not establish that giving Notice to the Union beginning in April 2014 would have put the Employer in the position of being required to "produce a product that cannot be sold". First, the Employer was required to factor into its decision-making its potential obligations under Section 54(1) of the Code. This is particularly so given its knowledge of the long-term nature of the layoff. Among the factors to be taken into account would have been the cost of operating during the notice period and consulting with the Union. As the evidence before me establishes, the Employer was already called upon to make a series of difficult decisions, including maintaining the Mine in a ready state at a cost of $500,000 a month, idling the Mine on an indefinite basis and avoiding a payout of $11.6 million in severance, among a range of other factors. It had existing coal stock that it decided it would not sell until the price went up. Moreover, the existence of coal reserves ready for quick sale once the price went up was identified in the evidence before me as key in that it provided for a quick infusion of funds during any restart of the mining operation. (para. 142)

As the Board stated in *Pacific Pool*:

> […] The Employer did not bring an application to the Board seeking relief from the Section 54 obligation and in doing so provide evidence of the impossibility of complying with the notice provisions. Instead, the Employer balanced its interest in maximizing its ability to sell its assets by keeping the discussions secret, against the notice requirements under Section 54, which it saw as potentially jeopardizing any sale, choosing the first. Put another way, the Employer balanced the potential costs associated with providing notice against the costs associated with not providing notice, preferring the latter. (para. 43) (para. 143)
>
> The Employer also did not argue exceptional circumstances exist in the present case such as to relieve against all or part of the Notice requirements. While market conditions may be volatile and fluctuating, the evidence before me shows the Employer and the Company were closely monitoring it for nine months while it was within a price range it characterized as raising a lot of concern. (para. 144)

25 Having reviewed the Remittal Decision and the parties' submissions we find that the conclusion to paragraph 141 above is in error. The conclusion to paragraph 141 is inconsistent with the requirements in the statute.

26 Paragraph 141 concludes, "The evidence does not establish the Employer was not in a position to advise the Union at some point prior to April 15, 2014, that an Indefinite Layoff was likely or would be implemented". The conclusion infers that Section 54 notice can be required in circumstances where it may be "likely" that the kind of measures or changes noted in the section may occur. That is clearly incorrect. It does not meet the statutory language requiring that the section is triggered only where an employer "introduces or intends to introduce" such a measure, policy, practice, or change.

27 This is apparent not only from a statutory interpretation perspective, but also important from a practical perspective. It is simply not reasonable or practical that an employer should be required to give Section 54 notice if a change, etc., is "likely". In industries with market volatility, such as in the present case, that could result in the need for ongoing, re-issued, rolling notices. That would make no practical sense, be unfairly onerous, and unhelpful to the parties overall, along with being inconsistent with the statutory language.

28 To the extent that the Remittal Decision relied upon the Board's decision in *The Brewster Healthcare Group Inc.*, BCLRB No. B154/2012 ("*Brewster*") in respect to the relevance of what is "likely", we find that decision is distinguishable. The distinguishable nature of *Brewster* can be gleaned from the first few sentences of paragraph 37:

> The Employer could have advised the Union, under Section 54 of the Code, of the impending change of ownership in August 2010 when the financial difficulties led to foreclosure proceedings, or in April 2011 when the Lender obtained a court order for the sale of Arbor House. The Employer chose not to advise the Union until November 17, 2011 which is the date that it also notified the employees of a layoff effective November 30, 2011. The Employer has not provided any arguments before the Board to justify this choice. …

Brewster was not subject to reconsideration. It is also apparent that the use of "likely" in the decision was not in an effort to establish a statutorily based test after a careful consideration and explanation of the statutory language. Rather, the panel in *Brewster* was providing an answer in what was very much a fact driven case and, as we have noted, the answer provided was not appealed. As a result, we do not find it is appropriate to attempt to draw from the use of the word "likely" in paragraph 36 of *Brewster* a test that what may be "likely" in certain circumstances meets the statutory test of an employer introducing or intending to introduce the kind of measures or changes noted in Section 54 of the Code. That is particularly the case when the leading decisions to turn to on this point are *University of British Columbia*, BCLRB No. B371/94, 26 C.L.R.B.R. (2d) 33 ("*UBC*") and *Pacific Pool Water Products Ltd.*, BCLRB No. B43/2000.

29 The use of "likely" at the end of paragraph 141 of the Remittal Decision is thus in error. However, that error is not material to the bright line statutory interpretation issue regarding Section 54 of the Code and temporary layoffs that the Employer was advancing in this case. In other words, it was not necessary for the Remittal Decision to adopt this use of the term "likely" in order to answer the Employer's temporary layoffs argument and we have found that the Remittal Decision correctly answers that argument in the facts of the case. As a result, the error in respect to "likely" does not result in the Remittal Decision being overturned.

30 We turn to grounds (a) i - iii of the leave and reconsideration application. While the specific assertions in these grounds are in respect to asserted palpable and overriding errors in the Remittal Decision, ultimately all of these grounds refer to the use of "likely" at the end of paragraph 141 of the Remittal Decision. As just noted, we have found error in that regard but also that the error does not affect or obviate the conclusion in the Remittal Decision regarding Section 54 of the Code in the particular facts of this case. This in itself disposes of grounds (a) i - iii.

31 However, we add that we do not find that the Remittal Decision in fact made the errors asserted in i and ii. In respect to iii, in any event these points again ultimately speak to the use of "likely" at the end of paragraph 141 and we have concluded "likely" does not meet the statutory test of an Employer introducing or intending to introduce a change, etc. Nonetheless, as explained above, that does not undermine the conclusion in the Remittal Decision which does not accept that a layoff of the nature in this case categorically cannot fall within Section 54 of the Code.

32 In light of the above, leave is denied and the application for reconsideration is dismissed.

LABOUR RELATIONS BOARD

"BRENT MULLIN"

BRENT MULLIN
CHAIR

"BRUCE R. WILKINS"

BRUCE R. WILKINS
ASSOCIATE CHAIR, ADJUDICATION

"KEN SAUNDERS"

KEN SAUNDERS
VICE-CHAIR

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ROPERGREYELL EMPLOYMENT + LABOUR LAWYERS

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Law Corporation*
Direct Line: 604 806 3852
ddemerse@ropergreyell.com

FILE NO. 3621-006

December 4, 2015

VIA EMAIL

This is Exhibit " F " referred to in the
Affidavit of RANDY GATZKA
Sworn before me at Vancouver BC
This 24 day of DEC 20 15
A Commissioner for taking Affidavits
within British Columbia

Victory Square Law Office LLP
5th floor – 128 West Pender St.
Vancouver, BC V6B 1R8

Attention: Craig Bavis and Stephanie Drake

Dear Sirs and Mesdames:

**Re: Wolverine Coal Partnership (the "Employer") -and- United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, Local 1-424 (the "Union")
BCLRB Decision No. B106/2015 (the "Remittal Decision")**

We have been provided a copy of the documents delivered by the Union to the Employer as part of the process of assessing damages further to the Remittal Decision.

We are in the process of reviewing the information provided.

The Employer has two significant concerns based upon the preliminary review we have completed to date.

First, the Employer is concerned by a lack of detail or documentation pertaining to many employees. The Employer's expectation was that the Union's records would be much more complete given that 19 months have passed since the date the Union filed its complaint.

To that end, the number of files provided is less than the number of employees for which the Union has claimed damages. The Employer's position is that any employee who does not provide sufficient particulars and documents to substantiate their claim will not be entitled to any amount of damages.

The Employer's position is that employees are required to establish that they took reasonable steps to mitigate their losses. This position is consistent with Vice-Chair de Aguayo's reliance on paragraph 61 of *Pacific Pool* at paragraph 149 of her decision.

Second, with respect to the spreadsheets the Union has provided, it is our client's position that the damages owing would not include all of the additional amounts that the Union has included in the spreadsheet that are over and above an employee's hourly wage claim.

To that end, our client would be prepared to deal with this matter in a bifurcated approach, whereby the resolution of the second issue we have identified need not await the conclusion of the first issue.

Yours very truly,

Roper Greyell LLP

Per: 

Drew Demerse*

DGD:sh

cc. Client

VICTORY SQUARE LAW OFFICE LLP

David Blair, Steven Rogers‡, John Rogers, Q.C., Colin Gusikoski‡, John Hodgins, Stephanie Drake, Craig Bavis*‡, Allison Tremblay, Marjorie Brown*, Shannon Beckett
‡Professional Law Corporation *also of the Saskatchewan Bar

BY EMAIL

Reply to: **STEPHANIE DRAKE**

telephone direct: 604.602.7982
e-mail: sdrake@vslo.ca

December 8, 2015

This is Exhibit "G" referred to in the
Affidavit of RANDY GATZKA
Sworn before me at Vancouver, BC
This 24 day of DEC 20 15
A Commissioner for taking Affidavits
within British Columbia

Roper Greyell LLP
800 - 666 Burrard Street
Vancouver BC V6C 3P3

Attention: Drew Demerse

Dear Sir:

Re: Wolverine Coal Partnership (the "Employer") -and- United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, Local 1-424 (the "Union")
BCLRB Decision No. B106/2015 (the "Remittal Decision")

We have for reply your letter of December 4, 2015. Your letter identifies general concerns, but they are not sufficiently particularized for us to provide you with a response. If you provide us with a list of the names of employees whose claims you contest and a brief explanation of the basis for your objections, we will be pleased to discuss your concerns with our client and respond.

Contrary to your assertion, the Employer bears the burden to demonstrate that mitigation was possible and that there was a failure on the part of employees to take reasonable steps to mitigate: *Red Deer College v. Michaels*, [1976] 2 S.C.R. 324; *Southcott Estates Inc. v. Toronto Catholic District School Board*, 2012 SCC 51.

Yours truly,

VICTORY SQUARE LAW OFFICE LLP
per:

Stephanie Drake

cc: client (by email)

IN THE MATTER OF AN ARBITRATION, PURSUANT TO THE
B.C. *LABOUR RELATIONS CODE*

BETWEEN:

WOLVERINE COAL PARTNERSHIP
(the "Employer")

AND:

UNITED STEELWORKERS, LOCAL UNION 1-424
(the "Union")

(Monthly Allowance Grievance)

This is Exhibit" H "referred to in the
Affidavit of RANDY GATZKA
Sworn before me at Vancouver BC
This 24 day of DEC 20 15
A Commissioner for taking Affidavits
within British Columbia

AWARD

ARBITRATOR:	JULIE NICHOLS
COUNSEL for the EMPLOYER:	DREW DEMERSE
COUNSEL for the UNION:	CRAIG BAVIS SHANNON BECKETT
DATE of HEARING:	JULY 7, 2014
PLACE of HEARING:	VANCOUVER, B.C.
DATE of AWARD:	AUGUST 18, 2014

Introduction

This is an interpretation matter. The issue in dispute is whether employees on layoff are entitled to a monthly allowance (the "Northern Allowance" or "Allowance") pursuant to Article 10 of Schedule A of the Collective Agreement ("Article 10").

The Union called two witnesses: Dan Will, who is currently a Business Agent for the Local Union and was a Staff Representative for District 3 of the Union at the time the Collective Agreement was bargained; and, Randy Gatzka, a Staff Representative for District 3. The Employer called one witness: Hugh Kingwell, who is currently the Director of Human Resources for Canadian Operations and who was, at the time of bargaining, Human Resources Manager for the Wolverine Mine.

Factual Background

The Employer operates the Wolverine Mine near Tumbler Ridge, BC. In April 2014, the Employer temporarily shut down the Mine and laid off over 300 bargaining unit members. Many of those employees have since left Tumbler Ridge.

The bargaining unit was previously represented by CLAC, Local 68, until the Union was successful in a raid of the unit in March 2011. The CLAC collective agreement, which expired on July 31, 2011, did not provide for the disputed Northern Allowance.

The Employer implemented a North East British Columbia Regional Allowance Policy, dated July 14, 2011 (the "Policy"), for non-unionized employees. It provides, in part:

> Purpose
>
> In recognition of the need to encourage employees to live and work in the North East British Columbia Region, the determination has been made by the company to provide a monthly living allowance.
>
> …
>
> Procedure
>
> Upon hiring a decision will be made as to whether the Regional Allowance will be provided to the employee. The allowance will be $500 per month and will be paid on the last pay date of the month.

> Employees must be actively working to qualify for this allowance. When employees begin employment or return from leave on or before the 15th of the month, they shall receive the full monthly allowance. If employees commence approved leave, they shall receive the monthly allowance for the month if the last day of work is on or after the 16th of the month. Upon termination, the employee shall qualify for the monthly alliance only if they remain actively employed on the last day of the month.
>
> The regional allowance is a "flat rate" premium that is determined annually at the discretion of the executive committee of Walter Energy Western Coal operations. The premium is not to be included as a component of the annual Walter Energy salary review program.
>
> This program can be terminated at any time at the discretion of the executive committee of Walter Energy Western Coal operations.
>
> …

Kingwell testified that, under the Policy, employees on long and short term disability ("LTD" and "STD", respectively) would not qualify for the allowance. Employees who were on vacation would qualify as they were still being paid a salary. The Policy makes no reference to layoff as that term does not apply to non-unionized salaried staff.

While bargaining the Collective Agreement after the raid, Will acted as spokesperson and Gatzka did most of the paperwork, including tracking proposals. Gatzka testified that the parties' positions were set out on paper and reviewed at brief bargaining meetings. In cross-examination, he indicated that there was very little face-to-face bargaining; the parties were in different locations and met only to go over proposals. Beyond the proposals, not much was discussed.

The parties first exchanged non-monetary proposals in June 2011. Monetary proposals were presented in November 2011, but did not address duration or wages. Those items were addressed by the Union in late January 2012.

The Union proposed a new article providing for the Northern Allowance on February 21 and 22, 2012 as follows:

> New Article:
>
> Effective August 1, 2011, employees will receive $500.00 per month to offset the cost of working in Northern British Columbia. Payment of the $500.00 shall be made on the 2nd pay period of the month.

Kingwell testified that the Union indicated that it did not want its members to be treated differently from the non-unionized employees who were covered by the Policy.

Will testified that this was a significant issue for the Union and was intended to address the difficulty and high cost of obtaining accommodation/housing in Tumbler Ridge. The Union had a copy of and was familiar with the Policy during bargaining and had concerns with it. The biggest concern was that, to receive the allowance, employees had to be actively at work. The Union's position was that as long as you were an employee, you would get the Northern Allowance. It was also concerned that, under the Policy, the Employer had discretion to change the amount of and to discontinue the allowance.

Gatzka testified that the Union wanted the Northern Allowance for "all employees, all of the time", not only for "active" employees. It also did not want the Employer to be able to turn the Allowance "on and off". The Union's concerns about the Policy were discussed in bargaining. Gatzka's February 22, 2012 bargaining notes read "union – 500.00 – as union proposed – no "active".

On February 23rd and 24th, 2012, the Employer's proposals relating to the Northern Allowance included reference to the Policy:

> New Article:
>
> Effective August 1, 2012, employees will receive a monthly allowance to offset the cost of working in North Eastern BC. As such employees will receive an allowance pursuant to the "Northeast British Columbia Regional Allowance" policy in place by the employer. Payment of the allowance shall be made on the 2nd pay period of the month.

Those proposals were unacceptable to the Union. Will testified that the parties would have had discussions about removing reference to the Policy as it referred to being active. He indicated the parties would have discussed examples of who would receive the Allowance. The Union's position was "if you are an employee, you get it". The Employer did not say the Allowance would not be payable to employees.

On February 24th, 2012, the Union proposed the following:

> New Article:
>
> Effective August 1, 2011, employees will receive $500.00 per month to offset the cost of working in Northern British Columbia. Payment of the $500.00 shall be made on the 2nd pay period of the month **for the term of the Collective Agreement**.

Kingwell understood the Union did not want to reference the Policy because it gave the Employer too much latitude to cancel the Allowance. He testified that the Union also had issues with the exclusions to the Policy and it took the position that employees who were absent and receiving STD, LTD, and Workers' Compensation Benefits ("WCB") needed to be included. There was no discussion about paying the Allowance to employees on layoff or during periods when the mine was not generating revenue. The Union did not state that it wanted the Employer to pay the Allowance to "all employees, all of the time" and that was not Employer's understanding of the bargain.

In terms of its internal process, Kingwell testified that additional expenditures (i.e., commitments that were beyond what the Employer had initially prepared for) had to be taken back to the executive group for approval. To understand the financial implications of the Union's position of including employees on STD, LTD and WCB, the Employer calculated the added costs based on historical data, which indicated there were 15-25 people in total for the three groups. The costing was taken to the executive group. After extensive discussion, the executive group approved it. The Employer estimated that the annualized value of the Northern Allowance was $2.88 per hour over the base hourly wage rate. It ultimately agreed not to require "active" in the language in order to include employees on STD, LTD and WCB.

Kingwell testified that the requirement to pay the Northern Allowance to laid off employees would amount to a financial commitment of $1.8 Million annually. Had it been discussed, it would have been at the top of the list of financial commitments. Given its significance, such an obligation would have been referred to the executive group.

In cross-examination, Kingwell confirmed that the parties used the terms Northern Allowance, Northern Working Allowance and Northern Living Allowance interchangeably. He also confirmed that the Employer did not share the actual costing information relating to the inclusion of employees on STD, LTD and WCB with the Union. Nor, did it discuss its internal processes, except to indicate the proposal represented a significant cost and the bargaining committee needed to take it back to the executive group. The Employer did share a summary of the estimated annualized per

hour cost with the Union after the deal was concluded and before ratification to assist the Union in explaining the total compensation package to its members.

The date on which the Northern Allowance would take effect was the last issue on the table to be bargained. The Union wanted it to be paid retroactively to August 1, 2011. The Employer wanted it to take effect on the ratification date in early March 2012. The parties agreed it would be effective on January 1, 2012.

The Memorandum of Agreement setting out the terms of the new Collective Agreement was signed February 24, 2012 and included the following:

> New Article:
>
> ~~Effective date of ratification~~, employees will receive a monthly allowance of $500.00 to offset the cost of working in North Eastern BC. Payment of the allowance shall be made on the 2nd pay period of the month for the term of this agreement. Effective Jan 1/ 2012

Article 10 of the ratified Collective Agreement provides:

> Effective January 1, 2012, employees will receive a monthly allowance of five hundred ($500.00) dollars to offset the cost of working in North Eastern BC. Payment of the allowance shall be made on the 2nd pay period of the month for the term of this agreement.

In cross-examination, Will confirmed that the Northern Allowance was not part of the Union's non-monetary package, but was first proposed on February 21, 2012 as a monetary proposal. In an earlier monetary proposal, the Allowance was included as part of the 1st year wage proposal. He recollected that the parties talked about certain items that the Northern Allowance would apply to. He indicated that the parties would have discussed the application of the Allowance to employees on some, but not all, leaves (i.e., LTD and STD). He believed they discussed its application to employees on maternity leave, but not to employees away for apprenticeship. He was referred to the last page of his bargaining notes which provide:

> Union ended up with
> 6% yr 1 retro
> 3.5 yr 2
> 3.5 yr 3
> 4% yr 4.
> Plus the 500.00 allowance the way we proposed all employees will receive the 500.00. Includes L.T.D. W.I. S.T ect. [*sic*]

He testified that the parties did not discuss removing the term "active" in order to include employees on certain leaves. He maintained that they talked about some situations, but not all, and the Union's position was "if you are an employee, you get it". He agreed that it was reasonable to expect that if a party made a key concession, there would be a written record of it. He also agreed that the parties did not discuss paying the Allowance to an employee on layoff.

Gatzka testified that the Letter of Understanding #2 ("LOU 2") which deals with Health and Welfare Coverage existed in the previous CLAC collective agreement. The Union did not bargain similar language to LOU 2 for the Northern Allowance because the mining industry was booming and there were no layoffs in sight. The Union wanted the Allowance for any employee and examples such as STD, LTD and WCB were simply types of leave. He confirmed that the Employer did not put forward any language that restricted the amount of time the Allowance would be paid.

In cross-examination, Gatzka agreed that the Union did not propose the Northern Allowance until approximately one month after the parties began to exchange monetary proposals. He also agreed that the Union did not propose extension language (such as LOU 2) with respect to the Northern Allowance or other benefits for employees on layoff. When it was put to him, he disagreed that the term "active" was a non-starter because of the intention to pay the Allowance to employees on STD, LTD and WCB. He maintained that the Union's position was that all employees would receive the $500 while employed by the Employer, whether they were at work or not; although, he acknowledged that that was not what was communicated. In terms of proposing the Allowance for the term of the Collective Agreement, he indicated that, due to pressure from the membership to get a deal, the Union avoided a dispute about how long it would be in place and secured it for the term of the agreement. He agreed that the Employer was not privy to caucus discussions, including any relating to why the Union wanted the Northern Allowance. He also agreed that there were no specific discussions about paying the Allowance to employees on layoff and indicated that the issue did not come up at all.

In cross-examination, Kingwell confirmed his understanding that the Northern Allowance applies to employees working for the Employer, as well as those who were included through specific discussions in bargaining (i.e., those absent and on STD, LTD and WCB). He could not specifically recall why the language was left as it is. He believed that because the term "working" was left in the provision, he was satisfied; and because the term "active" was taken out, the Union was satisfied given the inclusion of employees on STD, LTD and WCB. He testified that, while the Union may have discussed the inclusions as examples in their own caucus, those were the issues it raised at the table.

Will confirmed that the Union bargained an extension to recall rights (i.e., from 12 to 24 months). It had characterized the extension as a language issue that had no cost and had included it in its non-monetary package. He indicated that, when they bargained the extension, they would not have been talking about monetary issues.

Kingwell testified that the Union had presented the extension of recall rights as a non-monetary item and the Employer agreed to it as a non-monetary commitment. When asked for its rationale for the extension, the Union indicated that it was looking for extended protection for its members. No discussion of recall rights arose when the Northern Allowance was negotiated.

In cross-examination, Kingwell acknowledged that the purpose of the Employer agreeing to recall rights was so the workforce would be available should the Mine reopen; and, although it had not been framed as an advantage to the Employer, it arguably could allow for expeditious recruiting. He agreed that, during the recall period, laid off employees retain their recall rights, remain on an employee list and remain employees (until they terminate their employment or collect severance (after 24 months of layoff or, if the Mine closes and the Employer pays severance, prior to the 24 months).

After ratification in mid-March 2012, Gatzka put the Collective Agreement together with Kingwell. Gatzka indicated that a number of issues arose with people on LTD who were not being paid the Northern Allowance. Kingwell told Gatzka that he believed they were being paid. When he identified certain people who were on LTD for more than two years and were not on the pay system, Kingwell advised that the Employer would cut them a

cheque. Gatzka testified that Kingwell never took the position that the Northern Allowance would only be paid to employees who were actively at work.

In terms of the practice prior to the layoff, Will indicated that he was not aware of any employee who had not been paid the Northern Allowance, as long as they remained an employee. He identified an employee on short term disability and another who was away attending his apprenticeship program who received the Allowance.

In cross-examination, Kingwell agreed that the Northern Allowance was paid to employees who are away for their apprenticeship because they continue to be paid and the Employer considered them to be attending school on its behalf. It paid the Northern Allowance to employees on maternity leave further to its legislative obligations. He indicated that, prior to April 2014, every employee received the Allowance as long as they were on an approved leave.

Kingwell testified that benefits relating to protective equipment under Articles 22.01. 22.04, 22.05 as well as the Lifestyle and Wellness Allowance (Schedule A Article 9) are not paid during layoff. The Union stipulated that it has never agreed that certain benefits are not payable during layoff, pointing out that this is the first issue that has arisen.

Positions of the Parties

Union

The Union argues that Article 10 is clear and there is no need to resort to the bargaining history or past practice. It says the language provides that the Northern Allowance must be paid to all employees, whether or not they are actively working with the Employer. This includes employees who are laid off and retain recall rights. As this is an interpretation matter, it submits that neither party faces a special onus to prove its case. It says there is no additional burden on the Union to show the parties agreed that the Northern Allowance would be payable in the event of layoff.

The Union submits that the term “employee” is broadly defined in Article 2.01 and includes “all employees”, except for certain excluded individuals. The definition is not

limited to those actively at work and, interpreted expansively, means anyone on the payroll who has a continuing relationship with the Employer and Collective Agreement rights. Employees who are laid off for less than 24 months are not terminated; rather, they retain recall rights and remain in the Employer's employ even though they are not actively working (see Article 11.05). Thus, for the purposes of the Collective Agreement, the parties intended that an employee includes a worker who is not actively employed, but retains recall rights.

It argues that the fact that Article 10 does not expressly state that the Northern Allowance applies in the context of layoff does not disentitle employees to the benefit. The Collective Agreement cannot contemplate every scenario. Here, the parties used the unrestricted term "employees" and the benefit flows naturally from the language. It argues that where a fringe benefit was negotiated as part of the overall compensation package, its application cannot be limited to active employment without clear language. There is no restriction in the Collective Agreement respecting the payment of the Allowance to certain employees in certain circumstances. It notes that the Employer has limited benefits during layoff in other respects (i.e., LOU 2) and could have done so expressly if that was its intention.

The Union submits that the Northern Allowance was negotiated to address the high costs of housing in the North and those costs do not disappear when an employee is not actively working and is on STD, LTD, WCB or layoff. It says the parties used the term "working" as shorthand for living and working in a northern community. While the Employer may have believed that the term "working" limited the application of the Northern Allowance, it failed to share its belief with the Union and the Union did not agree to it. If the Employer misunderstood the bargain, that does not negate the Collective Agreement. The only way the Collective Agreement can be varied is if there is a finding of mutual mistake. It says the Employer's interpretation amounts to an amendment of the Collective Agreement and is inconsistent with the clear meaning of Article 10 and with the law relating to employees' entitlement to benefits while on leave.

Alternatively, if the Collective Agreement is found to be ambiguous, the Union submits that the bargaining history shows that the parties considered whether the Northern Allowance would be paid only to "active" employees (as the term appeared in the Policy and was referenced in the Employer's proposals) and the Union bargained hard to have that limitation removed and to broaden the application of the Allowance. Further, the Employer's past practice of paying the Allowance to individuals who were not actively working and on a variety of leaves supports the Union's interpretation.

The Union argues that the fact that the Employer did not cost the application of the Northern Allowance to employees on layoff, did not appreciate the costs related to the issue and did not tell the Union of financial concerns related to an expansive definition of "employee" is not determinative of the issue, even if the costs are prohibitive. Concerns about financial liabilities should be addressed in bargaining. The Employer understood there would be costs to removing the term "active" and, in practice, has paid the Allowance to employees who are not actively at work. Its liability may be reduced by employees who take or receive severance or if there is a permanent closure of the Mine. The Union says it is not seeking a windfall since the Employer receives an advantage for paying the Allowance to employees on layoff because it encourages them to retain recall rights and be available should the Mine re-open.

Finally, the Union takes the position that the same interpretation would apply to benefits in Article 22 and in Schedule A Article 9 (noting some are paid annually, every two years or as needed), although those issues have not arisen yet.

In support of its submissions, the Union relies on the following authorities: *British Columbia Public School Employers' Assn. -and- British Columbia Teachers' Federation*, unreported, January 29, 2014 (Holden); *Andres Wines (BC) -and- Canadian Union of United Brewery, Flour, Cereal, Soft Drink and Distillery Workers, Local 300*, [1977] BCLRBD No. 73 (Weiler); *Re Sola Basic Ltd -and- International Assoc. of Machinists, Local Lodge 1168*, [1976] OLAA No. 33 (Beck); *Thompson Community Services Inc. -and- BCGEU*, [2002] BCCAAA No. 187 (Jackson); *Selkirk Metalbestos Household Manufacturing Canada (Inc.) -and- Sheet Workers' International Assn.*, [1992] OLAA

No. 21 (Kates); *Iron Ore Co. of Canada -and- United Steelworkers of America, Local 5795*, [1998] Nfld LAA No. 43 (Browne); *DHL Express (Canada) Ltd. -and- CAW – Canada, Locals 4251, 144 & 4178*, [2004] CLAD 613; *John Bertam & Sons Co. -and- IAM, Local 1720*, [1967] OLAA No. 2 (Weiler); *Surrey School District No. 36 (British Columbia Public School Employers' Assn.) -and- British Columbia Teachers' Federation/Surrey Teachers' Assn.*, [2009] BCCAAA No. 27 (Korbin); *Catalyst Paper Corp. -and- Communications, Energy and Paperworkers Union of Canada, Local 1123*, [2013] BCCAAA No. 28 (Pekeles).

In its reply, the Union submits that certain entitlements under Article 22 could be payable to a laid off employee and would have to be reviewed on a case-by-case basis, noting the language in Article 22 differs significantly from Article 10. It says that on the Employer's argument, the Allowance would not be payable to employees on STD, LTD and WCB; yet, the Employer agreed that it would be payable to a broader group. It maintains that the Employer has, in essence, argued that the Union has to meet a special onus. However, the Union must only prove the parties' mutual intention, not their mutual agreement. It says the arbitral assumption is that the term "employee" should be interpreted broadly along with the benefits that flow from that status. The fact that the parties did not turn their minds to the specific scenario is not determinative as it is impossible to canvass every contingency in the Collective Agreement.

Employer

The Employer argues that the object of this interpretation exercise is to discover the mutual intention of the parties. It says the Union must prove its claim on the balance of probabilities (as opposed to a special onus) when the nature and context of the provision is considered. The issue is whether it was more probable than not that the parties agreed to the Union's interpretation of the language. This involves considering the likelihood of the Employer agreeing to the provision. It submits that the question is not answered on the basis of employment status; rather, it must be determined whether the provision of the particular benefit during a period of layoff was intended by the parties. An employee on

layoff is not entitled to wages or benefits; their tie to the workplace is limited to recall rights. The only benefits that continue are those specifically negotiated by the parties.

The Employer says the Union has not satisfied that onus, particularly given its interpretation would confer a significant monetary benefit and represents a significant cost to the Employer. It is more likely than not that the parties would record such an agreement in clear and unambiguous terms, or, put another way, the probability of the Employer agreeing to such an obligation without express language is remote. Here, clear language is required to support a finding that the Employer agreed to pay the Northern Allowance to employees on layoff for up to 24 months, an obligation which would amount to millions of dollars. It says there is no ambiguity in the language, the parties simply did not contemplate, discuss or agree to pay the Allowance in a layoff situation.

Where there is a bona fide doubt as to the parties' intentions, extrinsic evidence may assist if it discloses the mutual intentions of the parties. In terms of the bargaining evidence, there were no discussions about layoff and the payment of the Northern Allowance. The extension of recall rights was proposed as a non-monetary issue, which is not consistent with extending benefits for an additional period. The Employer's evidence was that the parties discussed the removal of the term "active" specifically with respect to applying the Allowance to employees on STD, LTD and WCB, which was collaborated by Will's bargaining notes. Given its significance, if the Union's interpretation was intended and considered at the time, it would have been discussed between the parties and by the Employer internally and documented in the bargaining notes. Neither party turned their mind to the issue of paying the Allowance during a layoff. As such, there was no mutual intention for it to apply in those circumstances.

The Employer submits that the Collective Agreement must be interpreted harmoniously and be read as a whole. It says that the protective equipment benefits and the wellness allowance provided in Article 22 and Schedule A Article 9 do not apply during layoff. Similarly, it is reasonable to restrict the application of the Northern Allowance. In contrast, in LOU 2, the parties clearly negotiated the benefits that would continue during

layoff. Had they intended to do so with the Northern Allowance, they would have used similar language.

The Employer notes many employees have left Tumbler Ridge. It says that, on the Union's interpretation, employees would obtain a significant windfall as they could be working and getting paid allowances with new employment, in addition to receiving the Northern Allowance from the Employer. In the case of very short term employees, the obligation to pay up to a $12,000 benefit over a 24 month period to individuals who no longer work at the Mine would result in an absurdity. The costs that the Allowance was intended to address have changed for employees who move away and are no longer tied to the Employer. Had the Employer agreed to pay the Allowance when the Mine was idled and not generating revenue and when employees could move away and earn income with other employers, there would be a clear indication of that significant concession.

The Employer does not dispute its past practice, but maintains that there is a fundamental difference between employees on STD, LTD, WBC or an approved leave of absence (i.e., employee who remain tied to the Employer and cannot work for others) and those on recall who may search for work. There is no evidence of any practice of paying the Allowance to people on layoff. Thus, it argues that the past practice evidence is irrelevant to the issue in this case.

In support of its argument, the Employer relies upon the following authorities: *Pacific Press -and- Graphic Communications International Union, Local 25-C*, [1995] BCCAAA No. 637 (Bird); *Western Forest Products Inc. -and- United Steelworkers, Local 1-1937*, [2012] BCCAAA No. 42 (McPhillips); *British Columbia Hydro -and- Int'l Brotherhood of Electrical Workers, Local 258,* [1987] BCCAAA No. 4 (Hope); *Brown and Beatty*, Canadian Labour Arbitration, 4th ed. (Toronto: Canada Law Book, 2010) at para 4:2120; *Canada Post Corp -and- CUPW*, [1993] CLAD No. 1139 (Bird); *Andres Wines, supra*; *BCIT -and- BCGEU, Local 703*, [2012] BCCAAA No. 53 (McPhillips); *Superior Propane -and- Teamsters, Local 31*, [2012] BCCAAA No. 117 (Glass); *Saskatchewan Wheat Pool -and- Int'l Longshore and Warehouse Union, Local 1000*, [2003] CLAD No. 45 (Hood).

Decision

My task in interpreting Article 10 is to determine the parties' mutual intention in terms of the application of the Northern Allowance. There is no dispute as to the applicable interpretative principles, some of which were summarized in *Pacific Press, supra* (at para. 27):

> The first major issue I address is one of interpretation. I reaffirm my adherence to the rules of interpretation which I set out in White Spot. I summarize as follows:
>
> 1. The object of interpretation is to discover the mutual intention of the parties.
> 2. The primary resource for an interpretation is the collective agreement.
> 3. Extrinsic evidence (evidence outside the official record of agreement, being the written collective agreement itself) is only helpful when it reveals the mutual intention.
> 4. Extrinsic evidence may clarify but not contradict a collective agreement.
> 5. A very important promise is likely to be clearly and unequivocally expressed.
> 6. In construing two provisions a harmonious interpretation is preferred rather than one which places them in conflict.
> 7. All clauses and words in a collective agreement should be giving meaning, if possible.
> 8. Where an agreement uses different words one presumes that the parties intended different meanings.
> 9. Ordinarily words in a collective agreement should be given their plain meaning.
> 10. Parties are presumed to know about relevant jurisprudence.

In *Superior Propane, supra*, at p. 7-8, Arbitrator Glass referred to the principles summarized in *HEABC*, [2002] BCCAAA No. 130 (Gordon) (at paras. 13-14):

> The task for this board is to determine the meaning which was mutually intended by the parties for the words they used in their collective agreement. In fulfilling this task, arbitrators adhere to certain rules of interpretation including the following.
>
> The primary resource for interpretation is the collective agreement. The search for the purpose of a particular provision may serve as a guide to interpretation. Significant benefits and obligations are likely to be clearly and unequivocally expressed in the language used by the parties. When interpreting two provisions, a harmonious interpretation will be preferred to conflicting one. Wherever possible, all words and provisions should be given meaning. Words in the agreement should be viewed in their normal and ordinary source [*sic*] unless that would lead to some uncertainty or inconsistency with the rest of the collective agreement or unless the context establishes the words were used in another sense. The words in the collective agreement should be read in the context of the phrase, sentence, provision and collective agreement as a whole.

> When faced with a choice between two linguistically permissible interpretations, the reasonableness and administrative feasibility of each may be considered. Additionally, the parties are presumed to be aware of the relevant jurisprudence.

On the issue of burden of proof, I agree there is no special onus that must be met by the Union in this case. In interpreting the Collective Agreement by applying the balance of probabilities test and using the principles set out above, an assessment of the likelihood that the parties have agreed to a specific interpretation may include considerations related to the nature of the provision, the purpose for and context in which it was negotiated, the impact of the provision on the parties, the clarity (or lack thereof) of the expression of the bargain, among others. This does not create a heavier burden for the Union; the question remains whether it is more likely than not that the parties intended to create a benefit explicitly or by necessary implication given what flows naturally from the language. In deciding that question, some considerations may carry more weight than others, depending on the circumstances of the case.

I begin the analysis by considering the language of the Collective Agreement, which is the primary resource for this exercise of interpretation. Article 10 provides:

> Effective January 1, 2012, employees will receive a monthly allowance of five hundred ($500.00) dollars to offset the cost of working in North Eastern BC. Payment of the allowance shall be made on the 2nd pay period of the month for the term of this agreement.

The crux of the case turns on the term "employees" in the provision. The Union says the parties' unrestricted use of that term means that they intended that all employees would receive the Northern Allowance. Thus, the provision would necessarily apply to employees on layoff. In support, it relies on Article 2.01 and 11.05, which provide:

> 2.01 The word employee(s) (the "employee[s]") as used in this Agreement, means all employees in the employ of the Employer at Wolverine Coal Ltd., located approximately twenty-seven (27) kilometres west of Tumbler Ridge, British Columbia, except persons employed in confidential human resources positions, persons excluded by the *Labour Relations Code of British Columbia*, all supervisors, office, clerical, and technical staff, engineering staff, geological staff, and loss control officers.
>
> 11.05 Seniority rights shall cease, and employment shall be deemed terminated, for any employee who:
>
> - voluntarily terminates employment;
> - is discharged, and this discharge is not reversed through the grievance procedure;

- is laid off for more than twenty-four (24) consecutive months;
- fails to return from an approved leave of absence within five (5) days without having a reasonable explanation;
- fails to return from layoff within fourteen (14) days of recall, pursuant to Article 11.09, after written notice is sent by registered mail, unless medically unfit to return.

The Employer says the parties negotiated the Allowance for employees who were actively at work as well as those who were away on specific absences and maintained a tie to the Employer.

In *Andres Wines, supra*, Chairman Weiler described the jurisprudential evolution with respect to benefits that employees may enjoy on layoff. In the early stages, the analysis focussed on employment status, but it has since evolved. He described the evolved approach as follows (at p. 7):

> Arbitrators have eventually realized that the answer to this problem does not live solely in a judgement about whether the grievor remains legally an employee, (especially since it is not that easy to justify the dismissal of an employee by reason of a single, long-term absence). Instead, the real question is whether one may reasonably infer that this kind of employee was intended by the parties to enjoy the contractual benefit in question:
>
> > Although the cases dealing with this question usually do so in terms of whether or not the person claiming certain entitlement is an 'employee' or not, the issue may, I think, be more helpfully put as whether the person making the claim comes within the scope of those the parties intended to benefit by the provision in question. Thus, a person who has been discharged is no longer an employee (although this matter has been dealt with by legislation and some jurisdictions) and yet he may, within the procedure provided, invoke the provisions of the collective agreement in order to present a grievance. Again, an employee even on a very extended lay-off retains certain rights under the provisions of most collective agreements including the present one. To have some of the rights of an 'employee' under a collective agreement, is not necessarily to have all of the rights of an employee. It is whether one comes within the scope of the intended benefit which must be determined in each case.
>
> Northern Electric Co. Ltd. (1972), 1 LAC (2^{nd}) 310 at 312.

The Union argues that, while the Collective Agreement does not address every contingency, laid off employees are entitled to all of the benefits that flow naturally from the clear language of the bargain. However, in my view, in order to flow naturally from the contractual language, the benefit must be one that was intended to apply in the circumstances. The connection between the nature and purpose of the benefit and the

situation at issue is an important consideration. In *Andres Wines, supra*, the need to find a nexus between the nature of the benefit and work was recognized (at p. 8):

> But arbitrators recently have been groping for a test which will place some time limit on the duration of that benefit, in order to preserve a reasonable nexus between the work performed and the benefit claimed: …

On the evidence, the Policy was originally established by the Employer to provide a financial benefit in order "to encourage employees to live and work" in the Northern part of the Province. The Union wanted a similar type of benefit for its members. In particular, it wanted the benefit to assist with the housing costs in Tumbler Ridge. It was concerned that the Policy only applied to active employees and was discretionary both in terms of the amount of the allowance and its continuation. Thus, the Union sought changes in bargaining. It proposed "$500.00 per month to offset the cost of working in Northern British Columbia" throughout the negotiations. Article 10 provides for a $500 monthly allowance "to offset the cost of working in North Eastern BC" [my emphasis]. Accordingly, it is reasonable to conclude that the purpose of the benefit was to offset the costs of living in the North in order to work for the Employer, not simply to live in the North per se. I note that, while an employee on layoff maintains employment status, there is no obligation to remain in the North for the duration of the recall period or to wait out the period without working for others. It is not disputed that many employees have now left Tumbler Ridge. Thus, in my view, the benefit sought by the Union does not flow naturally from the language of Article 10, when it is viewed with its purpose and the proper context in mind.

In terms of context, the Collective Agreement cannot be interpreted in a vacuum; rather, the language must be considered in light of the circumstances in which it arose as well as the purpose it was intended to address. That is consistent with the notion that parties bargain their agreement to address their particular labour relations issues in their specific environment. I have considered the language of the Collective Agreement, the purpose of the provision, and the extrinsic evidence to assist in determining whether the term "employees" in Article 10 is ambiguous. I find that it is. The mutual intention of the parties is not clear on the plain language, even when Articles 2.01 and 11 are taken into account. In my view, there are a number of possible interpretations of the term

"employees" with respect to the application of the Northern Allowance when the nature of the provision and its evolution during bargaining are assessed. Accordingly, I have considered the bargaining history and the past practice in ascertaining whether the parties intended the Allowance to apply in a layoff situation.

There are several significant facts that emerge from the bargaining evidence. First, the terms of the Policy were not accepted for the provision of the Allowance. Removal of the term "active" was discussed and agreed upon. Both the amount and duration of the benefit were defined. Second, the parties specifically discussed and agreed that the Allowance would apply to certain groups of employees who were absent from work (as referenced in Will's bargaining notes). Third, the parties did not discuss the Northern Allowance applying in a situation of layoff. Fourth, the Union's position that the Northern Allowance applied to "all employees, all the time" was not communicated to the Employer. Nor, was the Employer's analysis and internal consideration of providing the Northern Allowance only to employees on STD, LTD and WCB shared with the Union. Finally, the Union raised the Allowance as part of its monetary demands later in bargaining; the benefit was not discussed as part of the extension of recall rights which was negotiated as a non-monetary item.

Given the bargaining history, it is clear that Article 10 was intended to apply to more than active employees. The parties agreed to remove that limitation. The Union says the parties discussed employees on STD, LTD and WCB as examples and that the removal of the term "active" meant that all employees would receive the Allowance. The Employer understood that the removal of the term was necessitated because of the agreement to include those three groups of employees. It is not uncommon in the back and forth of negotiations that certain matters may not be addressed with exacting clarity, even when the parties believe that their respective positions on the issue were made clear. Here, the parties did not discuss the application of the Northern Allowance to "all employees, all of the time". Rather, specific groups of employees were addressed. When the bargaining evidence is viewed objectively, I find that, while the Union may have had a broad application for the Allowance in mind, that was not what it raised at the bargaining table

with the Employer. More specifically, given the booming nature of the industry, the Union was not contemplating its application to a layoff situation at the time.

Further support for those conclusions is found in the fact that the Northern Allowance was not discussed when the parties negotiated an extension of recall rights. That issue was dealt with as a non-monetary item. Yet, the Union's interpretation would result in a significant cost to the Employer. I accept Kingwell's evidence that the potential value of the Northern Allowance is approximately $1.8 Million per year for the employees on layoff and that financial obligation would have been one of the highest costs for the Employer to consider as a bargaining outcome.

While it will not relieve a party of its obligations under a collective agreement to claim it misunderstood the financial impact of its bargain, the significance of the benefit is relevant in assessing what the parties' intentions were when the bargain was made. This was described in *Western Forest Products, supra* (at paras 61 and 109):

> A second principle is that when provisions are established that are particularly onerous on either party (e.g., monetary benefits, infringement on the seniority of employees), the parties must express those limitations in very clear and unequivocal contractual language:…
>
> …
>
> As noted above, in cases such as this where the claim is for significant amount of money, it must be established that the parties clearly and unequivocally intended a particular result. This is not to say that the Union bears the onus in a legal sense of proving its interpretation is correct *CN/CP Telecommunications*, 18 LAC (3d) 78 (Picher); *BC Hydro*, January 5, 1987 (Hope). However, in these situations, the language of the collective agreement must be construed by an arbitration board with strictness and there should be a reluctance to infer or imply intentions to the parties that may not have been present. That requirement has been expressed in a number of ways. For example, Arbitrator Morrison (as she then was) observed in *Vancouver Hospital, supra*, at para. 45, that "arbitration boards must be careful not to confer any additional monetary benefits to a collective agreement, unless the intention of both parties is clear and unambiguous." Similarly, Arbitrator Hope in *BC Hydro, supra*, observed, at p. 31, that there must be "evidence in which the intention to confer the benefit arises expressly or [*sic*] necessary implication". Finally, Arbitrator Kelleher (as he then was) stated in *Highmount Operating Corporation*, October 31, 1985, that "the more grave the consequences to the parties concerned, the more inherently unlikely it is that their bargain in that regard would be expressed in anything other than appropriately precise language". That is the legal test which must be applied and in these circumstances there is an absence of clear and cogent evidence to establish that it was the mutual intention of the parties to confer severance pay on employees at Nanaimo if only the planer mill remained closed.

The payment of the Northern Allowance is a significant monetary benefit. On the Union's interpretation, its potential magnitude would double as a direct result of the negotiated extension of recall rights. However, on the evidence, the extension was not intended to have a cost implication; it was considered a language issue. In my view, had the parties intended that the Allowance would be payable to employees on layoff, which would now be over the newly bargained 24 month period, it would be reasonable to expect that they would have discussed the implications of that aspect of the bargain and would have provided for the entitlement in clear and unambiguous language.

The Employer points to LOU 2 as an example in the Collective Agreement, albeit inherited from the previous agreement negotiated by CLAC, where the extension of benefits during layoff is addressed. I agree that LOU 2 is an example of express language that speaks to the extension of certain benefits during layoff which the parties had at their disposal during bargaining. It provides further support for the finding that, had the parties intended to pay the Northern Allowance to employees on layoff, it is likely they would have expressed that intention unequivocally.

The Employer also points to Article 22 and Schedule A Article 9 as examples where the term "employee" appears but the provisions could not be reasonably interpreted to provide benefits during layoff. I do not have any bargaining evidence or past practice relating to those Articles. Given that the purpose and frequency of those entitlements differ substantially from the Northern Allowance as well as the fact that this is the first instance that the issue of the application of certain benefits in a layoff situation has arisen, I do not find they assist in the interpretation of Article 10 in this case.

Finally, the past practice shows that the Employer has consistently paid the Northern Allowance to active employees as well as to those away from work on STD, LTD, WCB, maternity leave and apprenticeship. The Union says this supports its broad interpretation of "employees". In my view, the Employer's practice does support a finding that the parties intended that the Allowance would apply to situations where the employee is away on certain kinds of approved leave (i.e., in circumstances where they are not actively at work). However, the 'inactive' employees who have received the Northern

Allowance are not working elsewhere, are expected to return to work when the reason for absence has resolved or ended and, as such, maintain an obvious and direct nexus with their employment with the Employer. I note that those situations are quite distinct from a layoff where employees are expected to find alternate work, and they may live and work in other areas and receive compensation from other employers. In my view, there would need to be some clear indication that the parties intended to provide the Allowance in circumstances where its purpose may no longer be applicable.

Thus, I cannot conclude that the parties mutually intended to pay the Northern Allowance to employees on lay off, particularly given its purpose, the significance of the monetary benefit claimed and the lack of any clear and unequivocal indication that the parties intended to do so. Accordingly, the grievance is dismissed.

DATED: August 18, 2014

JULIE NICHOLS, ARBITRATOR

BCLRB No. B204/2014

BRITISH COLUMBIA LABOUR RELATIONS BOARD

WOLVERINE COAL PARTNERSHIP

(the "Employer")

-and-

UNITED STEEL, PAPER AND FORESTRY, RUBBER, MANUFACTURING, ENERGY, ALLIED INDUSTRIAL AND SERVICE WORKERS INTERNATIONAL UNION, LOCAL NO. 1-424

(the "Union")

PANEL:	Leah Terai, Vice-Chair
APPEARANCES:	Craig Bavis and Shannon Beckett, for the Union
CASE NO.:	67649
DATE OF DECISION:	November 24, 2014

This is Exhibit" I "referred to in the
Affidavit of RANDY GATZKA
Sworn before me at Vancouver, BC
This 24 day of DEC 2015

A Commissioner for taking Affidavits
within British Columbia

DECISION OF THE BOARD

I. NATURE OF THE APPLICATION

1 The Union applies under Section 99 of the *Labour Relations Code* (the "Code") for review of an arbitration award issued by Arbitrator Julie Nichols (the "Arbitrator") on August 18, 2014 (Ministry No. A-080/14) (the "Award"). The Award decided a dispute between the Union and the Employer as to whether employees on layoff were entitled to a monthly allowance (the "Northern Allowance") under Article 10 of Schedule A of the Collective Agreement. The Arbitrator concluded they were not.

2 The Union seeks review of the Award on the basis that the "legal reasoning in the Award constitutes a clear and significant departure from well-established arbitral and judicial jurisprudence regarding burden of proof, standard of proof and mutual intent in contract interpretation cases, and as such is inconsistent with principles expressed or implied in the *Code*".

3 I am able to decide this matter on the basis of the Union's application and the materials attached to it, which includes the Award as required by the Board's Rules.

II. THE AWARD

4 The Award notes (at p. 1) that the Employer operates Wolverine Mine near Tumbler Ridge, BC (the "Mine"), and in April 2014 it temporarily shut down the Mine and laid off more than 300 bargaining unit employees. It further notes (at p. 5) that Article 10 of the Collective Agreement provides:

> Effective January 1, 2012, employees will receive a monthly allowance of five hundred ($500.00) dollars to offset the cost of working in North Eastern BC. Payment of the allowance shall be made on the 2nd pay period of the month for the term of this agreement.

5 The Union argued that Article 10 is clear and there is no need to resort to bargaining history or past practice. The language provides that the monthly Northern Allowance of $500.00 a month must be paid to all employees, whether or not they are actively working for the Employer; that is, it includes employees who are laid off and retain recall rights (Award, p. 8). The Union argued in the alternative that, if the language was ambiguous, the bargaining history and past practice support its interpretation (Award, p. 10).

6 The Employer submitted the language of Article 10 does not clearly and unambiguously require it to pay the Northern Allowance to employees on layoff, and "the parties simply did not contemplate, discuss or agree to pay the Allowance in a layoff situation" (Award, p. 12). It submitted a number of arguments why Article 10

should not be interpreted as requiring it to pay the Northern Allowance to laid-off employees.

7 In its final reply, the Union submitted that the fact the parties did not turn their minds to the specific scenario of laid-off employees receiving the Northern Allowance was not determinative, as it is impossible to canvass every contingency in the Collective Agreement (Award, p. 11).

8 The Arbitrator began her analysis by noting that her task in interpreting Article 10 was "to determine the parties' mutual intention in terms of the application of the Northern Allowance" (Award, p. 14). She further stated that she agreed there was "no special onus that must be met by the Union in this case", and the question was "whether it is more likely than not that the parties intended to create a benefit explicitly or by necessary implication given what flows naturally from the language" (Award, p. 15). She added that, in deciding that question, "some considerations may carry more weight than others, depending on the circumstances of the case" (*ibid.*).

9 The Arbitrator then set out Article 10 and noted that the "crux of the case turns on the term 'employees' in the provision" (Award, p. 15). She noted the Union argued the parties' unrestricted use of the term meant they intended that all employees would receive the Northern Allowance, including those on layoff (*ibid.*). The Employer argued the parties negotiated the Northern Allowance for employees who were actively at work, as well as those who were away on specific absences, but not those on layoff (Award, p. 16).

10 After considering extrinsic evidence including bargaining history and the context of the Collective Agreement as a whole (Award, pp. 16-17), the Arbitrator found the term "employees" in Article 10 was "ambiguous" with respect to "whether the parties intended the Allowance to apply in a layoff situation" (Award, pp. 17-18).

11 After further consideration of the extrinsic evidence, including the bargaining history, the Arbitrator concluded that, while the parties intended Article 10 to apply "to more than active employees", and they discussed its application to employees "on STD, LTD and WCB as examples", the parties did not discuss it applying to "all employees, all of the time" (Award, p. 18). She further found that, "given the booming nature of the industry, the Union was not contemplating its application to a layoff situation at the time" (Award, p. 19).

12 The Arbitrator further found that the "Union's interpretation would result in a significant cost to the Employer" of approximately $1.8 million per year for employees on layoff, and "that financial obligation would have been one of the highest costs for the Employer to consider as a bargaining outcome" (Award, p. 19). She added that, while it "will not relieve a party of its obligations under a collective agreement to claim it misunderstood the financial impact of its bargain, the significance of the benefit is relevant in assessing what the parties' intentions were when the bargain was made" (*ibid.*).

13 In support of this proposition the Arbitrator cited (at pp. 19-20 of the Award), a passage from *Western Forest Products Inc. and United Steelworkers, Local 1-1937 (Nanaimo Sawmill/Planer Grievance)*, Ministry No. A-031/12, [2012] B.C.C.A.A.A. No. 42 ("*Western Forest Products*"), in which Arbitrator McPhillips stated that "when provisions are established that are particularly onerous on either party (e.g., monetary benefits, infringement on the seniority of employees), the parties must express those limitations in very clear and unequivocal language" (para. 61).

14 The Arbitrator then stated:

> The payment of the Northern Allowance is a significant monetary benefit. On the Union's interpretation, its potential magnitude would double as a direct result of the negotiated extension of recall rights. However, on the evidence, the extension was not intended to have a cost implication; it was considered a language issue. In my view, had the parties intended that the Allowance would be payable to employees on layoff, which would now be over the newly bargained 24 month period, it would be reasonable to expect that they would have discussed the implications of that aspect of the bargain and would have provided for the entitlement in clear and unambiguous language.
>
> The Employer points to LOU 2 as an example in the Collective Agreement, albeit inherited from the previous agreement negotiated by CLAC, where the extension of benefits during layoff is addressed. I agree that LOU 2 is an example of express language that speaks to the extension of certain benefits during layoff which the parties had at their disposal during bargaining. It provides further support for the finding that, had the parties intended to pay the Northern Allowance to employees on layoff, it is likely they would have expressed that intention unequivocally.
>
> * * *
>
> Finally, the past practice shows that the Employer has consistently paid the Northern Allowance to active employees as well as to those away from work on STD, LTD, WCB, maternity leave and apprenticeship. The Union says this supports its broad interpretation of "employees". In my view, the Employer's practice does support a finding that the parties intended that the Allowance would apply to situations where the employee is away on certain kinds of approved leave (i.e., in circumstances where they are not actively at work). However, the 'inactive' employees who have received the Northern Allowance are not working elsewhere, are expected to return to work when the reason for absence has resolved or ended and, as such, maintain an obvious and direct nexus with their employment with the Employer. I note that those situations are quite distinct from a layoff where employees are expected to find alternate work, and they may live and work in other areas and receive compensation from other employers. In my view,

> there would need to be some clear indication that the parties intended to provide the Allowance in circumstances where its purpose may no longer be applicable.
>
> Thus, I cannot conclude that the parties mutually intended to pay the Northern Allowance to employees on lay off, particularly given its purpose, the significance of the monetary benefit claimed and the lack of any clear and unequivocal indication that the parties intended to do so. Accordingly, the grievance is dismissed. (Award, pp. 20-21)

III. SECTION 99 APPLICATION

15 The Union submits that, while interpretation of collective agreement provisions "typically attracts a deferential standard of review, identification and application of the legal tests which apply to collective agreement interpretation must be reviewed on a correctness standard". It further submits that, on a correctness review, the Board "reviews whether the arbitrator has applied the correct test or analytical framework required by the Code", citing *Teck Coal Limited (Elkview Operations and Fording River Operation)*, BCLRB No. B28/2014 ("*Teck Coal*") at para. 65.

16 The Union further submits that the basis for its application "involves the proper identification and application of legal tests developed in the arbitral jurisprudence" and that, therefore, the Award must be reviewed on a correctness standard. It submits that even if the Award is reviewed "on the reasonableness standard, because the Arbitrator clearly misapplied several legal tests, the decision is unreasonable".

17 In that regard, the Union submits the Arbitrator wrongly placed an onus on it to establish its interpretation of Article 10 which she did not place on the Employer. The Union submits this was a legal error because "the question of onus of proof arises only where a conflict respecting facts as found has occurred; the onus of proof has no bearing in situations involving questions of law, which includes the interpretation of a term in the collective agreement", citing Brown and Beatty, *Canadian Labour Arbitration*, 4th ed. looseleaf (Toronto: Canada Law Book, 2014) at 3:2400.

18 The Union further submits that the "line of cases which at one time held that there was an onus on the grieving party in contract interpretation case[s], has now been discredited", which includes the "older view" that the union must show "by clear and specific terms, that employees are entitled to the benefits claimed", citing Palmer & Snyder*, Collective Agreement Arbitration in Canada*, 5th ed. (Markham: LexisNexis, 2013) at 26.

19 The Union submits that in contract interpretation cases, no party bears an onus or burden of proof with respect to interpretation of the language of the agreement. It further submits that the "balance of probabilities" test also does not apply. Rather, it submits:

> The only onus/burden that can be said to exist in contract interpretation arises in the case of adjudication of facts put forward to support one party's interpretation. If such facts are disputed, then the party asserting them must prove them… . However, after the factual underpinning of the decision has been decided, the job of the arbitrator is to choose which of the two interpretations proposed by the parties she prefers, not to determine whether one party has shown that its interpretation is correct on a balance of probabilities. These are two distinct analyses which were confused by the Arbitrator.

20 The Union further submits the Arbitrator wrongly accepted the Employer's submission that the issue was whether it was more probable than not that the parties agreed to the Union's interpretation of Article 10. It submits this also wrongly put an onus on the Union to establish its interpretation on a balance of probabilities, when the "real question the Arbitrator should have asked was which of the two proposed interpretations of the Northern Allowance reflected the mutual intent of the parties". The Union submits the balance of probabilities test "does not apply to this analysis", and the Arbitrator used that standard "as a synonym for onus/burden".

21 The Union submits that, as a result of applying a balance of probabilities test, "the Arbitrator had to presumptively favour the Employer's starting point that what had to be decided was whether the benefit was to be extended", while ignoring "the starting point of the Union which was that what had to be decided was whether the benefit was to be limited". The Union submits even though the Arbitrator stated in the Award that the Union did not have to meet a "special onus", the Arbitrator "effectively placed an onus of proof onto the Union where none should have existed".

22 The Union further submits the Arbitrator's citing of *Western Forest Products* and repeated references to the proposition that "significant" monetary benefits had to be expressed in "clear and unequivocal terms" shows she "improperly relied on a discredited line of arbitral jurisprudence which, like the balance of probabilities test, improperly imports an onus on the Union". The Union submits the Arbitrator "implicitly adopted a discredited line of cases" which held that "clear and unequivocal" language is required to prove entitlement to a benefit, and that this line of cases was "convincingly rebutted" by Arbitrator Germaine in *British Columbia Teachers' Federation and British Columbia Teachers' Federation Administrative Staff Union*, Ministry No. A-076/95, [1995] B.C.C.A.A.A. No. 80. The Union further submits that, more recently Arbitrator Pekeles in *Catalyst Paper Corp. and Communications, Energy and Paperworkers Union of Canada, Local 1123 (Long Term Disability Benefits Grievance)*, Ministry No. A-020/13, [2013] B.C.C.A.A.A. No. 28 "agreed with an earlier decision of Arbitrator Hall which reviewed the authorities and held that the *Noranda* and *Wire Rope* line of cases is no longer good law".

23 The Union concludes on this point that requiring it to show clear and unequivocal or unambiguous language in order to establish entitlement to a benefit "necessarily presumes the position of the Employer is the default position which has to be overcome

by the Union in every case", and that this is both unfair and inconsistent with Code and labour relations principles.

24 The Union further submits, in the alternative, if there was a burden on it to convince the Arbitrator that its interpretation was the correct one, "by suggesting that because the provision at issue involved a 'significant monetary benefit', and therefore that contract language had to be 'clear and unequivocal' in order to confer such a benefit, the Arbitrator was, in effect, enhancing the standard of proof in response to the kind of provision at issue". The Union submits that an enhancement of the standard of proof in relation to particular kinds of cases was expressly rejected by the Supreme Court of Canada in *F.H. v. McDougall*, 2008 SCC 53 ("*McDougall*") and accordingly, the Arbitrator "erred in law by enhancing the applicable standard of proof".

25 The Union submits the Arbitrator also erred after she determined that the parties lacked mutual intent with respect to whether the Northern Allowance in Article 10 applied to laid-off employees because she found they never turned their minds to that circumstance. The Union submits that, given the meaning of the word "employees" in Article 10 was ambiguous and the extrinsic evidence did not disclose a mutual intent as to its meaning in this context, the Arbitrator "was required to return to the language of the agreement to determine its proper interpretation". Instead, the Union submits, the Arbitrator "treated the lack of mutual intent as proving the Employer's interpretation of the provision". Because she could not conclude that the parties had mutually intended to pay the Northern Allowance to employees on layoff, she dismissed the grievance. Instead, she should have "continued her analysis of the language in order to decide which of the two proposed interpretations made the most sense to her".

26 By way of remedy, the Union requests that the Award be set aside and the matter remitted to a new arbitrator "to interpret the collective agreement provision in accordance with the correct legal and analytical framework".

IV. ANALYSIS AND DECISION

27 Section 99(1) provides for review of arbitration awards on two grounds:

> (a) a party to the arbitration has been or is likely to be denied a fair hearing, or
>
> (b) the decision or award of the arbitration board is inconsistent with the principles expressed or implied in this Code or another Act dealing with labour relations.

28 In the present case, the Union relies on Section 99(1)(b); it submits the Award is inconsistent with principles expressed or implied in the Code. It does not allege a denial of a fair hearing or otherwise place any reliance on Section 99(1)(a).

29 The Board's long-established law and policy with respect to review under Section 99(1)(b) for consistency with Code principles is that this review does not constitute a

"full-fledged avenue of appeal" of the award: *Simon Fraser University*, BCLRB No. 16/76, [1976] 2 Canadian LRBR 54. Most arbitration awards, like the one in the present case, decide disputes over collective agreement interpretation. In such cases, the Board does not review for whether it agrees with the arbitrator's interpretation of the collective agreement language at issue. As explained in *British Columbia Public School Employers' Association*, BCLRB No. B73/99:

> The Board does not review an award to determine whether it agrees with the arbitrator's interpretation or not. Rather, the Board will give an award a sympathetic reading and will review an arbitrator's interpretation of a collective agreement on the basis of whether the arbitrator made a genuine effort to interpret the collective agreement provision in dispute: *Lornex Mining Corporation Limited,* BCLRB No. 96/76, [1977] 1 Can LRBR 377. (para. 7)

30 The Board applies a "genuine effort" test, not a correctness test, to arbitrators' interpretations of collective agreements. In the present case, the Union does not allege the Arbitrator's interpretation of the Collective Agreement provision in dispute (Article 10) would fail the genuine effort test, and I find it would not. The Award shows the Arbitrator turned her mind to the relevant Collective Agreement provisions and the parties' evidence and arguments with respect to them. She addressed the evidence and arguments and provided a reasoned analysis with respect to why she preferred the Employer's position that Article 10 did not entitle employees on layoff to the Northern Allowance over the Union's position that it did. The Award clearly meets the genuine effort test, and the Union does not argue otherwise.

31 Rather, the Union argues the Award is subject to review on a correctness standard because it alleges the Arbitrator misapplied legal tests and analytical frameworks in the course of coming to her decision on the Collective Agreement interpretation issue. Specifically, the Union asserts the Arbitrator erred in placing an onus or burden on the Union to prove its interpretation of Article 10 which she did not place on the Employer. It submits that this approach is contrary to arbitral and judicial jurisprudence regarding burden of proof, standard of proof and mutual intent in contract interpretation cases, citing various arbitral and judicial authorities. The Union further submits the Board reviews legal tests and analytical frameworks applied by arbitrators for correctness, citing *Teck Coal*.

32 *Teck Coal*, however, does not indicate that the Board reviews all legal tests and analytical frameworks applied by arbitrators for correctness. As noted in *Teck Coal* (at para. 65), it is legal tests and analytical frameworks "required by the Code" (such as the *Wm. Scott* test for just and reasonable cause, a Code principle) which are subject to review for correctness. The panel in *Teck Coal* continued in the next paragraph:

> Thus, because Section 99(1) does not provide a full-fledged avenue of appeal, but rather review for (a) procedural fairness and (b) consistency with Code principles, the Board's "correctness" review under Section 99(1)(b) is for correct interpretation and

> application of Code provisions and principles, not for whether the Board agrees with the award or finds it to be the "correct" outcome on the facts. … (para. 66, emphasis added)

33 Not every legal test or analytical framework applied by an arbitrator in the course of deciding an issue of collective agreement interpretation is "required by the Code" (that is, involves an interpretation of the Code or an application of Code principles). Legal tests and analytical frameworks which evolve out of arbitral jurisprudence and do not involve the interpretation or application of the Code are not reviewable by the Board on a standard of correctness. To the contrary, the Board has made it clear that it will not interfere with the development of such legal tests and analytical frameworks. As explained in *Pirelli Cables & Systems Inc.*, BCLRB No. B57/2003 (Leave for Reconsideration of BCLRB No. B256/2002) ("*Pirelli*"):

> The Board has long drawn a distinction under Section 99 between issues arising under the "law of the contract" and those arising under the "law of the statute". Former Chair Weiler first articulated this distinction in *Andres Wines, supra*. Chair Weiler emphasized the importance of the Board taking a "hands off" approach to arbitral issues that do not involve Code principles:
>
> > … The focus of Section 108(1)(b) is to see that arbitrators conform to legal principles created by labour legislation. But there is nothing in the Labour Code which even addresses, let alone prefers, any one of the alternative positions about whether and to what extent laid-off employees should enjoy contract benefits. The solution to that problem must be found in a "common law" of the collective agreement, whose ultimate source is the evolving jurisprudence of Canadian arbitrators. There is a crucial difference between this law of the *contract* and the law of the *statute*, and the Board must not blur the line between the two.
> >
> > What is the rationale for that distinction? It lies in the nature of these contract principles themselves. As is indicated by this example of the rights of the absent employee, such a principle emerges only after a long period of gestation, after many arbitrators have examined the problem in a variety of contexts, and after their extended reflection generates some degree of consensus. The tacit assumption of that process is that the award of one arbitrator influences others through the persuasive force of its analysis, not as a binding precedent. I am sure that the B.C. Legislature did not intend in Section 108(1)(b) of the Code, to confer any special authority on this Labour Board by which we would mandate those contract

> principles which would be followed by B.C. arbitrators. The Board does have a vehicle for influencing the course of arbitral jurisprudence in the Province, through its Section 96 jurisdiction (as is exemplified by decisions such as *Penticton and District Retirement Service*, [1977] 2 Canadian LRBR, and *Cominco Ltd.,* B.C.L.R.B. No. 14/77). But the halting progress made with the peculiar problem raised in this case, in over twenty years of reported arbitration decisions, demonstrates how unfortunate it would be if that process could be frozen by a binding Labour Board decision rendered in the early stages. (para. 15, emphasis in original)

34 The Board further stated in *Pirelli* (at para. 18):

> The Board's role in review of arbitration awards is "to ensure that arbitrators remain…faithful to the spirit of the legislation…"; Paul Weiler, *Reconcilable Differences, (*Toronto*:* Carswell, 1980) at 97. Thus*,* Board review under the Code is limited to ensuring consistency with Code principles and the requirement of a fair hearing: Section 99(1)(a) and (b). Provided there is no evidence of systemic or structural problems within the arbitral system which could undermine the principles and values inherent in the system of arbitration established under Part 8 of the Code, it is not the Board's role to select from among diverging lines of arbitral jurisprudence in respect to an issue.

35 Absent evidence of systemic or structural problems with the arbitral system which could undermine the principles and values inherent in the arbitration system established under the Code, the Board allows arbitrators to select from among diverging lines of arbitral jurisprudence with respect to issues of collective agreement interpretation.

36 Here, the Union does not argue, and I find there is no basis for concluding, that this Award reflects systemic or structural problems with the arbitral system which could undermine the principles and values inherent in the arbitration system established under the Code. Accordingly, I find there is no basis to depart from the general principle enunciated in *Pirelli* and *Andres Wines*, BCLRB No. 75/77, [1978] 1 Can LRBR 251 ("*Andres Wines*") that the Board takes a "hands off" approach to arbitrators' application of arbitral jurisprudence and in that way allows arbitrators to develop the "common law" of collective agreement interpretation over time. Under that approach, individual arbitrators may "select from among diverging lines of arbitral jurisprudence in respect to an issue", and the Board does not interfere with those choices by preferring one line of arbitral jurisprudence over another.

37 In the Award, the Arbitrator found, and the Union does not dispute, that its claim for payment of the Northern Allowance to employees on layoff would result in a significant and onerous financial burden being imposed on the Employer. The Arbitrator

accepted that the Employer would not be relieved of this burden if unambiguous language showed it had agreed to it. However, the Arbitrator found that, when viewed in light of the extrinsic evidence, the language in question did not unambiguously confer this benefit. Ultimately, she concluded the Union had not established the parties had clearly and unequivocally agreed to the significant and onerous monetary benefit it asserted, for reasons set out in the Award.

38 The Union submits the approach the Arbitrator followed was based on a line of arbitral jurisprudence that has been "discredited" in some subsequent arbitral decisions; however, it is not the Board's role to select from among competing lines of arbitral authorities. The Arbitrator was therefore entitled to follow the approach taken by Arbitrator McPhillips in *Western Forest Products* and not a different arbitral approach. The preferred arbitral approach (or analytical framework or legal test) for collective agreement interpretation issues which are not determined by Code principles (such as just and reasonable cause) is for arbitrators, not the Board, to decide: *Andres Wines*; *Pirelli*. Accordingly, I find no reviewable error in the Arbitrator's decision to apply the particular arbitral approach to collective agreement interpretation to the circumstances before her.

39 Turning to other arguments raised by the Union, I am not persuaded the Arbitrator imposed a burden of proof on the Union that she did not impose on the Employer, or that she made a reviewable error when she referred to establishing the proper interpretation of Article 10 on a "balance of probabilities". On review of the Award, I am satisfied that the Arbitrator carefully considered the evidence and arguments proffered by each of the parties in support of its interpretation of Article 10 and did not wrongly place a greater burden on one party or the other to prove its interpretation of Article 10. She considered the language of the provision in the context of the Collective Agreement as a whole and in light of the extrinsic evidence. She found, and the Union does not dispute, that in agreeing to the language, the parties had not turned their minds to the possibility of employees who had been laid off receiving the Northern Allowance. For reasons explained in the Award, she concluded the mutual intent to be attributed to the parties in the circumstances was not that employees on layoff would receive the Northern Allowance. I find no basis under Section 99 of the Code to interfere with this interpretation of the Collective Agreement and this resolution of the parties' dispute.

40 With respect to the Union's argument based on *McDougall*, I am not persuaded the Arbitrator, by referring to the need for "clear and unequivocal" language to underpin a claim for a significant and onerous monetary benefit, was "enhancing the standard of proof", as alleged by the Union. In *McDougall*, the Supreme Court of Canada stated:

> …there is only one civil standard of proof at common law and that is proof on a balance of probabilities. Of course, context is all important and a judge should not be unmindful, where appropriate, of inherent probabilities or improbabilities or the seriousness of the allegations or consequences. However, these considerations do not change the standard of proof. … (para. 40)

41 Here, the Arbitrator considered the inherent probability or improbability of the parties having agreed that employees who are laid off (and therefore no longer required to work or live near the Mine in northeastern BC) would nonetheless be entitled to continue to receive the Northern Allowance. She also considered the seriousness or consequences of that interpretation for the parties. As the parties had not specifically turned their minds to the circumstance, the Arbitrator faced the challenging task of determining what mutual intent should be attributed to them. Ultimately, for the reasons given in the Award, she found it was not that laid-off employees would receive the Northern Allowance. In reaching this conclusion, I find she did not apply an improper standard of proof.

42 Finally, I find she did not err in her approach to the issue once she had determined that there was no actual mutual intent (as the parties had not turned their minds to the circumstance of laid-off employees). Where unions and employers did not specifically consider the application of a provision to a particular set of circumstances, collective agreements do not fail for lack of a meeting of the minds. Rather, an arbitrator must interpret the language at issue based on whatever mutual intent the arbitrator finds to be most properly attributable to the parties in the circumstances. I find that this is what the Arbitrator did. She did not reject the Union's interpretation merely because it was not mutually intended; she concluded that in all the circumstances, a mutual intent to pay the Northern Allowance to employees on layoff should not be attributed to the parties. I find no basis for interfering with this conclusion.

V. CONCLUSION

43 For the reasons given, the Section 99 application is dismissed.

LABOUR RELATIONS BOARD

"LEAH TERAI"

LEAH TERAI
VICE-CHAIR

BCLRB No. B225/2014
(Leave for Reconsideration of BCLRB No. B204/2014)

BRITISH COLUMBIA LABOUR RELATIONS BOARD

WOLVERINE COAL PARTNERSHIP

(the "Employer")

-and-

UNITED STEEL, PAPER AND FORESTRY, RUBBER, MANUFACTURING, ENERGY, ALLIED INDUSTRIAL AND SERVICE WORKERS INTERNATIONAL UNION, LOCAL NO. 1-424

(the "Union")

PANEL:	Brent Mullin, Chair Bruce R. Wilkins, Associate Chair, Adjudication Ken Saunders, Vice-Chair and Registrar
APPEARANCES:	Craig Bavis and Shannon Beckett, for the Union
CASE NO.:	67995
DATE OF DECISION:	December 18, 2014

This is Exhibit "J" referred to in the
Affidavit of RANDY GATZKA
Sworn before me at Vancouver, BC
This 24 day of DEC. 2015

A Commissioner for taking Affidavits
within British Columbia

DECISION OF THE BOARD

1 The Union applies under Section 141 of the *Labour Relations Code* for leave and reconsideration of BCLRB No. B204/2014. We find the application does not disclose a good, arguable case of reviewable error. Accordingly, leave is denied: *RG Properties Ltd.,* BCLRB No. B378/2003 (Leave for Reconsideration of BCLRB No. B252/2003).

LABOUR RELATIONS BOARD

"BRENT MULLIN"

BRENT MULLIN
CHAIR

"BRUCE R. WILKINS"

BRUCE R. WILKINS
ASSOCIATE CHAIR, ADJUDICATION

"KEN SAUNDERS"

KEN SAUNDERS
VICE-CHAIR AND REGISTRAR

This is Exhibit " K " referred to in the
Affidavit of RANDY GATZKA
Sworn before me at Vancouver, BC
This 24 day of DEC 20 15

A Commissioner for taking Affidavits within British Columbia

MEMORANDUM

To: The Profession

From: Sue Smolen, Manager
Supreme Court Scheduling, Vancouver Law Courts

Date: December 8, 2015

Re: Vancouver Civil & Family Lengthy Chambers Bookings

Bookings for lengthy chambers hearings (any chambers matter estimated to take over 2 hours) will open in accordance with the dates listed below. These will be booked by telephone at 604-660-2853. Bookings will be limited to **2 bookings per call**. Booking day will be the 2nd Tuesday of each month.

Please note the dates listed below reflect the *earliest* date our calendar is open for booking for lengthy chambers. They do not indicate available hearing dates, and earlier dates may be available. Counsel should direct their inquiries to 604-660-2853.

The Court is aware of complaints pertaining to telephone queuing, and is exploring the prospect of replacing the current booking system with a web based booking process.

DATES

March 2016	Booking commences:	January 12, 2016
April 2016	Booking commences:	February 9, 2016
May 2016	Booking commences:	March 8, 2016
June 2016	Booking commences:	April 12, 2016
July 2016	Booking commences:	May 10, 2016
August 2016	Booking commences:	June 14, 2016
September 2016	Booking commences:	July 12, 2016
October 2016	Booking commences:	August 9, 2016
November 2016	Booking commences:	September 13, 2016
December 2016	Booking commences:	October 11, 2016