Citation: ***M. A. et al v. Canada Employment Insurance Commission*****, 2015 SSTGDEI 182**

Date: October 30, 2015

File number: GE-14-1565

GENERAL DIVISION - Employment Insurance Section

Between:

M. A. et al

Appellant

and

Canada Employment Insurance Commission

Respondent

and

U.S. Steel Canada Inc. (07)

Added Party

Decision by: Eleni Palantzas, Member,
General Division - Employment Insurance Section

Heard In person on September 9, 10 and 11, 2015 in Hamilton, Ontario

REASONS AND DECISION

PERSONS IN ATTENDANCE

The Appellants, members of United Steel Workers Local Union 8782 (Union), were represented by Ms. Colleen Barr, Consultant to the Union and Mr. Mark Talbot, Vice-President of the Union Local 8782 assisted by Ms. Shannon Horner.

The Respondent, the Canada Employment Insurance Commission (Commission), was represented by Ms. Carol Robillard, Appeals Division, National Head Quarters.

The Added Party, U.S. Steel Canada Inc. (Employer) was represented by Mr. Stephen Shamie, Legal Counsel, Hicks Morley Hamilton assisted by Ms. Allison MacIsaac.

The Witness for the Added Party was Ms. J. K., Director of Human Resources at the Employer.

INTRODUCTION

[1] The Appellants are 475 employees of U.S. Steel Canada Inc. and members of the United Steel Workers Local 8782 (see Appendix 1) who applied for, but were denied, employment insurance regular benefits from April 29, 2013 to September 10, 2013. On June 27, 2013, the Commission determined that the Appellants were unable to resume their employment because of a work stoppage attributable to a labour dispute pursuant to section 36 of the *Employment Insurance Act* (EI Act). On October 16, 2013, the Appellants requested that the Commission reconsider its decision however; on February 4, 2014, the Commission maintained its decision.

[2] On April 14, 2014, the Appellants appealed late to the Social Security Tribunal of Canada (Tribunal), General Division. On February 24, 2015, the Tribunal allowed for an extension of time to appeal (GD6).

[3] On March 9, 2015, the Member determined that the Employer has a direct interest in this appeal and therefore added the Employer as a party to the appeal (GD8 to GD12).

[4] The Appellants' representative requested that the Tribunal hear and render a decision for all 475 appeals jointly. The request was granted pursuant to section 13 of the *Social Security Tribunal Regulations* (SST Regulations) (GD2(1) and GD7). The list of the 475 joined appeal files was confirmed to be complete by both the Appellants' and Employer's representatives at the prehearing conference of April 29, 2014 (GD14) and at the hearing (GD23).

[5] Prehearing conferences were held on November 27, 2014 and April 29, 2014 in order to clarify certain procedural issues and to determine next steps regarding the setting down of the hearing. At the latter prehearing conference it was decided that the Appellants would make additional submissions by June 30, 2015 and that the Employer and Commission would have until July 31, 2015 to reply/make additional submissions (GD5, GD13 and GD14).

[6] The hearing was held in person because of the complexity of the issue under appeal, the information on the file and the need for additional information. Plus, more than one party, their representatives, and witnesses were expected to be in attendance (GD1).

ISSUE

[7] The Member must decide whether the Appellants should be disentitled to benefits from April 29, 2013 to September 10, 2013 because they lost their employment during this period due to a work stoppage attributable to a labour dispute pursuant to section 36 of the EI Act.

THE LAW

[8] Section 2 of the EI Act defines a "labour dispute" as a dispute between employers and employees, or between employees and employees, that is connected with the employment or non-employment, or the terms or conditions of employment, of any persons.

[9] Subsection 36(1) of the EI Act stipulates that subject to the *Employment Insurance Regulations* (EI Regulations), if a claimant loses an employment, or is unable to resume an employment, because of a work stoppage attributable to a labour dispute at the factory, workshop or other premises at which the claimant was employed, the claimant is not entitled to receive benefits until the earlier of:

a) the end of the work stoppage, and

b) the day on which the claimant becomes regularly engaged elsewhere in insurable employment.

[10] Subsection 36(2) of the EI Act stipulates that the Commission may, with the approval of the Governor in Council, make regulations for determining the number of days of disentitlement in a week of a claimant who loses a part-time employment or is unable to resume a part-time employment because of the reason mentioned in subsection (1).

[11] Subsection 36(3) of the EI Act stipulates that a disentitlement under this section is suspended during any period for which the claimant:

a) establishes that the claimant is otherwise entitled to special benefits or benefits by virtue of section 25; and

b) establishes, in such manner as the Commission may direct, that before the work stoppage, the claimant had anticipated being absent from their employment because of any reason entitling them to those benefits and had begun making arrangements in relation to the absence.

[12] Subsection 36(4) of the EI Act stipulates that this section does not apply if a claimant proves that the claimant is not participating in, financing or directly interested in the labour dispute that caused the stoppage of work.

[13] Subsection 36(5) of the EI Act stipulates that if separate branches of work that are commonly carried on as separate businesses in separate premises are carried on in separate departments on the same premises, each department is, for the purpose of this section, a separate factory or workshop.

[14] Subsection 53(1) of the EI Regulations stipulates that for the purposes of section 36 of the Act and subject to subsection (2), a stoppage of work at a factory, workshop or other premises is terminated when:

a) the work-force at the factory, workshop or other premises attains at least 85 per cent of its normal level; and

b) the level of activity in respect of the production of goods or services at the factory, workshop or other premises attains at least 85 per cent of its normal level.

[15] Subsection 53(2) of the EI Regulations stipulates that where, in respect of a stoppage of work, an occurrence prevents the attainment of at least 85 per cent of the normal level of the work- force or activity in respect of the production of goods or services at a factory, workshop or other premises, the stoppage of work terminates

a) if the occurrence is a discontinuance of business, a permanent restructuring of activity or an act of God, when the level of the work-force or of the activity attains at least 85 per cent of that normal level, with the normal level adjusted by taking that occurrence into account; and

b) if the occurrence is a change in economic or market conditions or in technology, when
   (i) there is a resumption of activity at the factory, workshop or other premises, and
   (ii) the level of the work-force and of the activity attains at least 85 per cent of that normal level as adjusted by taking that occurrence into account.

[16] Subsection 53(3) of the EI Regulations stipulates that for the purposes of calculating the percentages referred to in subsections (1) and (2), no account shall be taken of exceptional or temporary measures taken by the employer before and during the stoppage of work for the purpose of offsetting the effects of the stoppage.

[17] Section 13 of the SST Regulations stipulates that the Tribunal may, on its own initiative or if a request is filed by a party, deal with two or more appeals or applications jointly if (a) a common question of law or fact arises in the appeals or applications; and (b) no injustice is likely to be caused to any party to the appeals or applications.

EVIDENCE

[18] The following evidence has been submitted to the Tribunal under this lead file and applies to all 475 Appellants joined under this appeal. All 475 Appellants are production workers for U.S. Steel Canada Inc., employed at Lake Erie Works, Nanticoke plant and are members of U.S. Steel Workers Union Local 8782 (Union). The list of Appellants (GD23) was confirmed with the Union at the hearing to be correct with minor grammatical corrections and one duplication (GD2(1)-19 and GD23-28).

Documentary Evidence

[19] The Appellants applied for employment insurance regular benefits and established claims effective April 28, 2013 having indicated that they stopped working due to a 'strike or lockout'. The records of employment indicate the same.

[20] The Employer (GD3-5 to GD3-26) and the Appellants (GD27 to GD3-477) submitted their respective Fact Finding Reports and supporting documentation. Both indicated that they were negotiating a new collective agreement that expired April 15, 2013 and that on April 28, 2013 the employer locked out all bargaining employees (GD3-6 and GD3-29).

[21] The Employer submitted:

- charts that show which 869 bargaining employees were locked out and which were not (GD3-11 to GD3-14 and GD3-26)
- Union's request for a Conciliator on February 4, 2013 (GD3-16 to GD3-19)
- appointment of the Conciliator on February 27, 2013 (GD3-20)
- invitation to a meeting with the Conciliator on March 19, 2013 (GD3-22)
- the parties agreement to a 72 hour protocol and on March 30, 2013 (GD3-23)
- the Ministry of Labour's notification ('No Board' report) to the employer that a conciliation board will not be appointed (GD3-24)
- Employer gives the Union 72 hour notice of intent to lockout on April 28, 2013 (GD3-25)

[22] The Appellants submitted:

- a copy of the 2010 collective agreement (GD3-45 to GD3-153)
- the negotiation timelines of 2010 (GD3-154 to GD3-155)
- the 2013 negotiation timeline (GD3-156 to GD3-160)
- U.S. Steel Corporation first quarter report of April 30, 2013 and U.S. Steel CEO's respective comments (GD3-165 to GD3-233)
- news articles and reports regarding U.S. Steel Inc. and the steel industry from 2009 to 2013 (GD3-160 to GD3-165, GD3-234 to GD3-242, GD3-311 to GD3-311, GD3-327 to GD3-348)
- a prior Board of Referees decision (GD3-243 to GD3-247)

- Ms. Barr's January 2011 internal document when she was the Commission's representative during the 2010 U.S. Steel labour dispute (GD3-248 to GD3-255)
- case law (GD3-256 to GD309, GD3-314 to GD3-326)
- a Media Gallery of background internet sites, news articles at the time of this labour dispute and Union letters to the membership (GD3-349 to GD3-477)

[23] On June 27 and 28, 2013 the Commission spoke to the Employer (Ms. J. K.) who stated that she did have the authority to negotiate without the X representatives; that negotiations and counterproposals continued through May 2013 with the Conciliator; the plant was fully operational at the time of the lockout; had there not been a lockout there would have been a strike; the Union membership voted against the Employer's offer 3 times; the Employer chose to lockout its employees because it did not feel that the Union had any intention to bargain on the key issues and to reach a settlement and that this way, the Employer could control the date and safely idle the coke ovens; this was evident to the Employer on April 15, 2013 when the Union had a 'show of hands vote' of its final offer which was unusual; the blast furnace maintenance was pushed back from October 2012 to March 2013 due to other scheduled maintenance/shut downs in other plants across North America; the maintenance on the blast furnace was not completed until one week after the lockout ended; the Employer and Union both applied for a 'No Board' report; the Lake Erie Works plant loses money due in part to labour costs which is why they were not taking anything away but were negotiating caps for vacations into the future; at the time of the lockout, the Employer was looking to hire 150 new production employees and had orders to fill that had to be diverted to other plants which cost more in logistics and shipping; due to production demands, Late Erie Works was running at its normal 90% maximum capacity (GD3-478 to GD3-482).

[24] The Employer provided the following documents in support of its position:

- Employer's final offer of April 15, 2013 (GD3-485 to GD3-512)
- Employer's hiring plan – it noted its recruiting activities and that over 1000 interviews were conducted in 2012 for production and skilled trades; provided the approved manning plans of 2010 to 2012; actual hires 2010 to 2013 and noted that 150 more positions were to be filled but put on hold (GD3-484, GD3-513 to GD3-530, GD3-534 and GD3-535)

[25] On June 27, 2013, the Union (Mr. Talbot) stated to the Commission (in response to the Employer's position) that they were the ones that contacted the Conciliator to restart the negotiations after the lockout of April 28, 2013; confirmed that the key issues were still cost of living allowance (COLA), vacations and group insurance benefits; explained that prior to U.S. Steel Inc. buying Stelco, their plant was their "cash cow" producing much more steel than it presently does even in a bad market; as a member of the senior level committee, he has not seen or heard about a plan to hire 150 people; approximately 100 retired prior to the lockout when there was no indication of a resolution, so the Employer would need to hire more employees; the Employer didn't have serious intent to bargain, and that during the last 72 hours where the parties really bargain, the Employer's executives flew back to X; J. K. was the only one present throughout the weekend, and she doesn't have the authority to address any concerns except administrative; as in the last two negotiations, the Employer is manipulating the situation to its benefit; it is a US company, and therefore will be looking out for American interests; the Union maintains that the Employer has no credibility and where there is doubt, credibility should be awarded to the claimant; the Union did not apply for the 'No Board' report, only for a Conciliator (GD3-531 to GD3-533)

[26] On June 27, 2013 (communicated on July 8, 2013), the Commission determined that the Appellants lost their employment with U.S. Steel Canada Inc. on April 29, 2013 because of a work stoppage attributable to a labour dispute and therefore, imposed a disentitlement pursuant to subsection 36(1) of the EI Act (GD4-25 and GD20).

[27] On July 11, 2013, the Union requested access to the decision file(s) of the Appellants in preparation for its request for reconsideration. The Commission directed the Union to the Access to Information and Privacy processes which it followed and which was met with no objection by the Employer. Access was granted (GD3-539 to GD3-544).

[28] On October 11, 2013, the Employer confirmed to the Commission that a tentative agreement was reached on August 21, 2013, the agreement was ratified on August 30, 2013, and that 85% of the work force had resumed employment by September 10, 2013 (GD3-545 to GD3-552).

[29] On October 16, 2013, the Union, on behalf of the Appellants, requested that the Commission reconsider its initial entitlement decision. It provided extensive submissions (GD3-

553 to GD3-580) that the Commission made mistakes as to material facts, erred in law by ignoring jurisprudence by the Federal Court of Appeal and Supreme Court of Canada, exercised their authority with a lack of neutrality and rendered a decision that was biased in favour of the Employer. In support of its position, the Union submitted:

- reports from an external source regarding the events during the labour dispute and thereafter from May 2013 to September 2013 (GD3-581 to GD3-593)
- the Union's senior level committee meeting notes from December 2011, January 2012, May 2012 and January 2013 (GD3-594 to GD3-603)
- the Union's notes regarding the blast furnace maintenance schedule/delays (GD3-604 and GD3-605)
- the Employer's letter of July 15, 2013 to all bargaining employees' homes prior to the final vote (GD3-606 and GD3-607)

[30] On November 12 and 22, 2013, the Employer (Ms. J. K.) stated that it is not unusual to reschedule maintenance to machines plus, maintenance was not possible during the winter months; she had the authority to negotiate on behalf of the Employer, she had a clear mandate of what she could and could not do and progress was made on other issues on the weekend; the union would not budge on the two key issues regarding vacations and COLA; the Employer made a conditional offer but the union wasn't prepared to take it to a vote on April 15, 2013; the 'No Board' report was jointly requested but the Union was the one who had requested a Conciliator; the hiring plan was only put on hold during the labour dispute and accounts for replacing employees lost during the labour unrest as well as hiring additional employees in areas of demand; the Employer lost millions of dollars in the second and third quarters of 2013, in addition to any seasonal loss, as result of the labour dispute (GD3-608 to GD3-610). The Employer provided documentation regarding the events before and after the lockout until a new collective agreement was ratified on August 30, 2013 (GD3-611 to GD3-979). Documents included the employer's submissions (GD3- 611 to GD3-617) and supporting documentation of the agreements and meetings held from May to August 2013 (GD3-618 to GD3-808). Plus, a summary of all (30) the negotiation meeting dates and attendees from February 28, 2013 to August 22, 2013 (GD3-809 to GD3-812), negotiation meeting notes and letter of understanding from the April 12-15, 2013 negotiations (GD3-813 to GD3-875), documents and notes regarding the events from February to March 19, 2013 (GD3-876 to GD3-893), events from April 11 to 28,

2013 and final offer of April 15, 2013 (GD894 to GD3- 940), financial statements for U.S. Steel Inc. (GD3-941 to GD3-972), a schedule of all maintenance for the plant, and prioritization of the blast furnace (GD3-973 and GD3-974), forecast from April to December 2013 of blast furnace capacity utilization (GD3-975) versus that of Hamilton's in 2010 (GD3-976 to GD3-978), and the Lake Erie Works hiring plan (GD3-979).

[31] On December 11, 2013, the Commission contacted the Ministry of Labour for information regarding the conciliation process and was advised that either party can apply for both the appointment of a Conciliator and/or a 'No Board' report. The latter is provided when the process has not yielded results, and allows the party to proceed to either a strike or lockout (GD3-980).

[32] On December 12, 2013, the Commission contacted the Union (Mr. Talbot, Ms. Barr and Ms. Horner) regarding further fact finding. The Union confirmed that it requested a Conciliator be appointed because substantive issues were not being discussed during negotiations however; it was the Employer that requested a 'No Board' report. It stated to the Commission that the Employer was not negotiating in good faith given and that Ms. J. K. did not have the authority to negotiate. Plus, they made changes to proposals/offers whereas the Employer made none/very few and only wanted to discuss monetary issues just prior to the lockout, providing the Union no time to review the proposal before locking out the employees. The Union confirmed that the blast furnace maintenance cannot be done in the cold. It however contends that the maintenance was timed with the lockout and they are not aware of other shutdowns in other plants. The Union stated to the Commission that the Employer had already incurred a $215M loss as a whole and that the $73M loss in the second quarter report would have been greater had the Employer not locked out its employees at Lake Erie Works. The Union also stated to the Commission that market analysts in the industry have indicated that idling a facility is the best cost saving measure. When there is no market demand for all of the facilities, the Employer would rather move the work to one facility and run it at full capacity rather than run 2 facilities at 45% each. Other benefits to a lockout include not having to pay benefits or compensation associated to a layoff. The Union advised that it cannot provide the Commission with financial details of Lake Erie Works. The Union advised that it is not aware of a hiring plan and that the Employer is operating with less people (GD3-981 to GD3-983).

[33] On February 4, 2013, the Commission advised the Appellants that it is maintaining its initial decision of disentitlement (GD4-26).

[34] At the hearing, the Appellants provided the Member with information regarding the conciliation process from the Ontario Ministry of Labour' s website (GD24), a copy of a radio interview with Minister Finley on May 13,2013 (GD25) and information regarding present negotiations in X as at August 31, 2015 (GD27). The Employer provided information regarding section 17 of Labour Relations Act and the obligation to bargain in good faith (GD26).

Order of Events

[35] A summary of the order of events leading up to the labour dispute was provided by the Appellants (GD3-569 and GD3-570) and the Employer (GD3-613 and GD3-614). At the hearing, the following dates and events were reviewed and confirmed with the representatives of the parties present, and that Ms. J. K. testified to be correct.

January 30, 2013 – Union gave the Employer notice of intent to bargain

February 4, 2013 – Union formally requested a Conciliator (GD3-16)

February 20, 2013 – Employer notified of request for a Conciliator (GD3-19)

February 27, 2013 – Conciliator appointed (GD3-20)

February 28, 2013 – negotiations commenced (GD3-6 and GD3-158)

March 19, 2013, April 12, 2013 and April 15, 2013 – meetings with Conciliator, Union and Employer (GD3-22, GD3-159 and GD3-892)

March 30, 2013 – 'No Board' report/notice issued (GD3-894)

April 2, 2013 – Blast furnace maintenance started (GD3-615)

April 11, 2013 – strike authorization vote (83% of the membership voted, of which 99.6% voted in favour of a strike (GD3-7, GD3-29 and GD3-464, GD3-895)

April 12, 13, 14 and 15, 2013 – negotiations between the parties; Employer decided to idle the coke ovens on April 12, 2013 and all ovens were idling by April 16, 2013

April 15, 2013 – previous collective agreement expired; Employer made final offer; if not ratified by April 20, 2013, offer will be withdrawn on April 21, 2013 (GD3-6 and GD3-29).

April 18, 2013 – Union membership (show of hands) voted 99.6% of not accepting the Employer's offer

April 19, 2013 – Employer extended the offer deadline to April 24, 2013 per the Union's request

April 22, 2013 – Union held information meetings with members

April 23, 2013 – ratification vote - 92% of the membership voted of which 70% voted in favour of not accepting the Employer's final offer (GD3-462)

April 25, 2013 – Employer's 72-hour lockout notice (GD3-25, GD3-29 or GD3-256)

April 28, 2013 – work stoppage (GD3-9 and GD3-29)

July 12, 2013 – contract negotiations resumed with Conciliator present

July 31, 2013 – Ministry supervised "Final Offer Vote" - Union membership did not accept the Employer's final offer

August 21, 2013 – parties reached a tentative agreement (GD3-547)

August 30, 2013 – collective agreement ratified (GD3-547 and GD22)

September 10, 2013 – 85% production reached; work stoppage terminated

September 4, 2014 – Coke ovens at Lake Erie Works brought back up

Testimonial Evidence

[36] The Appellants and the Respondent did not call on any witnesses to testify at the hearing. The Employer called on Ms. J. K. to provide testimonial evidence.

[37] Ms. J. K. stated that she is the Director of Human Resources and member of the Senior Management team of U.S. Steel Canada Inc. since 2010 reporting directly to the President. She is responsible for all Canadian HR Operations including the Hamilton Works, Lake Erie Works and salaried employees at Corporate Head Quarters.

[38] Ms. J. K. testified that prior to the labour dispute, the coke battery, blast furnace, hot strip mill at Lake Erie Works, and the Hamilton pickling lines, were operating fully. All operations employees were actively employed; none laid-off.

[39] Regarding the hiring plan, Ms. J. K. testified that there was a plan in place to hire both bargaining and salaried employees. She stated that at her meeting with the President at the end of January 2013, her entire presentation was about the hiring plan for all of Canada; he approved the plan. They were actively participating in job fairs and advertised on billboards. The plan accounted for attrition and built for the future by hiring coop. students and apprentices. Ms. J. K. testified that in the 12 month preceding the lockout, they conducted over 1000 interviews for bargaining positions including production operators, millwrights, stationary engineers, electricians and other trades (machinists, etc.). She stated that the Union was aware of the plan by attending meetings with the management team and actively participating in the training.

[40] Ms. J. K. testified that they continued to hire during the spring of 2013; business as usual and hired the last group on April 8, 2013. She stated that although they had offered coop. students to work at Lake Erie Works, they were unable to accommodate them due to the work stoppage so they offered them work at the Hamilton plant so that they don't forfeit their term. In the spring of 2014, they hired them at Lake Erie Works. She stated that they were hiring as usual up to the labour dispute, resumed hiring after the labour dispute and continued to the present. She confirmed that the approved manning and hiring plan (GD3-979) shows that there was an intention to hire 150 employees at the time. They continue to monitor the plan monthly and actively hire from it.

[41] In response to Mr. Talbot, Ms. J. K. agreed that the hiring plan is just a 'plan' that can change. She stated that she cannot speak as to whether there was a hiring plan in 2009 because she wasn't there. Ms. J. K. stated that she can say that in 2013 she could say with absolute confidence that the plan was only suspended during the labour dispute and then hiring was resumed thereafter. They hired people on April 8, 2013. She stated that the Union knew of the plan as it is shared with the Senior Level Committee (joint committee of union and management) – Mr. Talbot confirmed. Ms. J. K. stated that hundreds of positions were filled after the labour dispute.

[42] Regarding the negotiations, Ms. J. K. testified that there were two key issues under dispute 1. COLA – employer wanted to change the base upon which this is calculated and 2. Vacation entitlement – employer wanted to cap it at 5 weeks. She stated that the Union understandably resisted. She confirmed that they had about 30 negotiation meetings as shown in the summary GD3-809. She stated that on January 25, 2013 she was told by Mr. F. A., the new District 6 Representative that the union would be applying for a Conciliator. On January 30, 2013 the Union advised the Employer of the intent to bargain. On February 4, 2013, she received notification that a request for a Conciliator has been filed (see GD3-16). On February 28, 2013 they had a 'kick-off' meeting.

[43] Ms. J. K. confirmed to Mr. Talbot that the fact that the Union advised the Employer of the intent to bargain and submitted the request for a Conciliator, is not out of the ordinary; either party can initiate; part of the normal process. She provided the minutes of only certain meetings to show when/where there were areas of dispute as per the Commission's request. She had no objection to submitting all of them.

[44] Regarding her authority to negotiate, Ms. J. K. testified that she was the lead negotiator for Canada and was supported by X (included J. G., D. R., G. S. and T. Z.). She stated that she was autonomous to make decisions within the parameters set out early in the negotiations. Ms. J. K. was asked to clarify by Mr. Talbot. She explained that going into the negotiations they had set certain objectives and the range (parameters) within which they were willing to settle, from the ideal outcome to a secondary position, which included the cost for every possible scenario/outcome. Ms. J. K. stated that anything outside those parameters were "non- starters" for the Employer, that is, the COLA and vacation changes were 'must haves' so they were part of the negotiations. When questioned by Mr. Talbot, Ms. J. K. confirmed that during the 2010 (11 month) lockout, she was not the lead negotiator because she was not yet the Director however; she was part of the negotiating team and X was involved in those negotiations. Ms. J. K. testified that since 2010, she successfully negotiated 4 collective agreements as the lead negotiator, without X involvement – all without labour disputes.

[45] Ms. J. K. stated that (contrary to the Union's position) she did have the authority to negotiate all issues and that in fact, the Union was advised by J. G., on March 3, 2013, to go back

to Canada and work on these issues; that he would be involved only if they cannot come to an agreement or if there is a problem. Ms. J. K. was referred the Union's submission (GD17-9) that she did not have the authority to discuss monetary issues. Ms. J. K. testified that she kept contact with X every day because this was a big deal for them. On April 12, 2013, they had exchanged offers and the Employer told the Union that they would work on the costing of those discussions and come back on Monday, April 15, 2013. Ms. J. K. stated that she absolutely had the authority to negotiate the monetary issues as is also evidenced in all the other collective agreements she had negotiated, that included the same issues, without X present. Ms. J. K. testified that her notes in exhibit GD3-823 are consistent with her present testimony that they were reviewing the proposal of April 12, 2013, deciding on a plan for what to discuss on April 13, 14 and that they were not going to talk about the monetary issues until April 15, 2013 with those in X who were costing out the Union's latest proposal. Ms. J. K. stated that it is part of the normal process to cost out and respond back.

[46] Regarding the 'No Board' report, Ms. J. K. testified that as of right, either party can apply for a 'No Board' report in order to be in a legal position to strike/lockout after the collective agreement expires. This is more of a formality and is always issued even when negotiations ended successfully (without a lockout/strike). She stated that the parties have to apply at least 17 days prior to the expiration of the collective agreement. Ms. J. K. stated that at the meeting of March 19, 2013 with the Conciliator, the notes show (GD3-892) that both the Union and Employer jointly requested the 'No Board' report so that both parties had a deadline to work towards. Ms. J. K. confirmed to Mr. Talbot that this is absolutely her position. She stated that they continued to meet some 23 more times thereafter, the Union held a strike vote on April 11, 2013 with an overwhelming result to not accept the offer, and the Employer then gave the agreed upon 72 hour notice. Ms. J. K. confirmed that neither the Employer nor Union refused to meet. Ms. J. K. confirmed that on March 19, 2013 both the Employer and the Union requested the 'No Board' report jointly and that the negotiations that day went well.

[47] Ms. J. K. stated that if the Union felt that the Employer was not bargaining in good faith, it could have put in a formal complaint with the Ministry of Labour. The Union is well-educated and knowledgeable of the process and if this was the case, it would not hesitate to do so.

[48] Ms. J. K. confirmed that the Appellants received strike pay during the lockout.

[49] Regarding negotiations after the lockout, Ms. J. K. testified that attempts were made with the assistance of the International Union however; they were unable to get the local Union to move on the contentious issues and an agreement looked unlikely. She stated that the Employer exercised its right to request a Ministry supervised "Final Offer Vote" which in U.S. Steel's and Stelco's 60 year history has never been done. She stated that this is an exceptional practice and that she has never had to do this in her 20 year experience. Ms. J. K. stated that the "Final Offer Vote" is where the Employer can take the offer directly to the employees for a vote, without the local negotiating team presenting it to them as per section 42 of the *Labour Relations Act*. Leading up to the vote, the Employer held town hall meetings, did presentations and sent mailings to the employees' homes; it did everything it could to resolve the labour dispute. Despite that, approximately 70% of the employees again, voted 'no' to accepting the Employer's final offer. Ms. J. K. stated that the Employer can only exercise this measure once during a set of collective bargaining. She stated that they wanted the plant to run and the employees back to work. They felt that it was futile to continue negotiations based on their experience in July and although it was a long shot, they felt compelled to give it any chance they could.

[50] Ms. J. K. testified that the Employer resorted to this measure because it was desperate and under immense pressure to resume operations. There was volume allocated to the plant given the expectation that the negotiations would be successful and when that didn't happen, a lot of effort was put into satisfying customers and keeping the business going. She stated that steel mills are costly whether steel is being produced or not (even when shut down); expenses continued but there was no income to offset those costs. She stated "we were losing money and the lockout had a very negative effect on our financial performance during that period". She stated that the Union's contention that the lockout was done for economic reasons is "absolutely not true", that there was absolutely no advantage to the Employer and that "the exact opposite is true". Ms. J. K. stated that they incurred a greater loss because the plant was not operating. She stated that it was ludicrous to suggest that the Employer was trying to keep the plant down and questioned why then would the Employer go to the extent of a "Final Offer Vote" and work so hard to end the labour dispute if its intention was to keep the plant down/idle.

[51] Ms. J. K. testified that between July 31, 2013 and August 21, 2013 the negotiations were moved to X and the new negotiator for the Union (T. C.) was assigned. He was able to move the parties to an agreement on the key issues of COLA and vacation time. Ms. J. K. stated that an agreement was reached on August 21, 2013 and all employees were recalled, blast furnaces maintenance work resumed and so did steelmaking operations.

[52] Regarding the blast furnace, Ms. J. K. stated that it is designed to run 24/7, not be turned on and off and that there is a process to take them down for repair and maintenance. Exhibit GD3- 973 is created from internal documents that shows when and why the maintenance planned for the blast furnace was delayed. She stated that the Employer has a matrix that shows all maintenance and down turn activity, allocates resources and money to those outages and it is not uncommon for those dates to change. She stated that commitments are made with hundreds of specialized external contractors and for equipment plus, with their own employees, several months in advance. That this cannot be done on a whim a month in advance with the expectation that they will be able to line up all the necessary resources in time. Ms. J. K. testified that the maintenance was expected to be done over a 25-day down time. The decision to take down the blast furnace had nothing to do with the labour dispute and that it was scheduled maintenance. Ms. J. K. testified that the maintenance started on April 2, 2013 so when they gave notice of a lockout on April 25, 2013, all the contractors and equipment had to be off site by April 28, 2013. There was another week left to complete the maintenance and after the work stoppage ended, maintenance was resumed and finished.

[53] Ms. J. K. disagrees with the Union's submission (Exhibit 17-25) that the necessary parts that were expected never materialized. She stated that a major job of this magnitude would not start if the necessary parts weren't on hand; the Union's submission is not correct and the parts are addressed in their explanation provided in exhibit GD3-973.

[54] Exhibit GD3-975 is an internal quarterly chart/document showing the planned production is for all of their operations until the end of December 2013. It shows that both the blast furnace and coke ovens were expected to run at full capacity at 92.33% and 86.88 % respectively. She stated that if the plan was to shut down the plant for economic reasons, then one would see 0% projected for April 2013 onward but instead it shows that the Employer's plan

was to run at full capacity (92% is running at full/normal capacity). She stated that "in no way, did we have a plan to idle Lake Erie Works in 2013" and after the lockout, they got the blast furnace maintenance running as soon as possible.

[55] When questioned by Mr. Talbot as to why a 25-day maintenance was scheduled during labour negotiations, Ms. J. K. stated that Operations across the organization makes plans without HR involvement. She stated that regardless, the Employer continues to operate with the expectation that labour negotiations will be successful.

[56] Regarding the coke ovens, Ms. J. K. stated that there are several coke ovens that produce the coke used in the blast furnace. They are meant to run steady, full-out, all the time. Lake Erie Works, in order to run its blast furnace, used coke produced there and supplemented with that produced at Hamilton Works. Ms. J. K. confirmed that the coke ovens at Lake Erie Works were not brought back up after the lockout ended. Ms. J. K. testified that because of the lockout, the blast furnace at Lake Erie Works was idled so there was no need for coke from Hamilton Works however; it continued to produce coke as if the blast furnace at Lake Erie Works was running. As a result, there was a surplus of coke at Hamilton Works. Ms. J. K. explained that coke has a shelf- life and if left too long, it becomes unstable and cannot be used later in the blast furnace. There was a decision therefore, that the Hamilton coke was to be used first and the coke ovens at Lake Erie Works were not brought back up until September 4, 2014 (one year later) and continue to operate today. Ms. J. K. testified that the employees at Lake Erie Works were not prejudiced as a result. Ms. J. K. testified that all employees were recalled and those that used to work on the coke ovens at Lake Erie Works either went back to the coke ovens while they remained on hot idled or they were redeployed to other operating areas of the plant. There was no negative impact on employees.

[57] Ms. J. K. testified that the only reason the coke ovens were taken down was the labour dispute. Ms. J. K. responded to the Union's submission that coke blankets were bought in advance in preparation to idle the coke ovens, by stating that such blankets require a long lead time to source and as part of a 'worst case scenario' contingency plan, they were ordered well in advance. The Employer took every precaution to properly idle the coke battery should it be

required but there was no plan to idle the coke battery until April 12, 2013 when the decision was made to take it down.

[58] Regarding the financial statements, Ms. J. K. testified that U.S. Steel Canada Inc., at the time, did not have standalone financial statements that were disclosed publicly. They were consolidated with North American 'flat roll result' and that this was provided to the Commission. There is a profit sharing plan for bargaining unit employees at Lake Erie Works. If, in any given quarter, there is more than 25 million 'earnings before interest, tax and depreciation' (EBITD(A)), the Employer pays 6% of the excess to bargaining employees. This profit sharing plan under the collective agreement is different from the net profit that would be shown on financial statements. Exhibit GD3-481 is a discussion with the Commission that Ms. J. K. confirmed as being correct. Ms. J. K. testified that there have been losses with U.S. Steel Canada Inc. as a whole (which is Lake Erie Works and Hamilton Works combined) the entire time it has been in Canada with the exception of one quarter, but they continue to operate and produce steel because it helps the Employer's bottom line.

[59] She stated that this has nothing to do with the profit sharing plan; they are separate and distinct things. Ms. J. K. testified that the Employer did not lockout the employees for economic reasons. Ms. J. K. stated that "...the only reason we decided to lockout the employees was our overwhelming concern that the union may elect to strike, and as much as we had a 72 hour protocol, that's really not enough time to successfully and safely idle and protect the assets to ensure that we actually have a usable facility to come back to." Ms. J. K. confirmed to Mr. Talbot that their concern was not that the Union had any intention of jeopardizing those assets but that 72 hours was not enough time to safely take them down. Ms. J. K. agreed with Mr. Talbot that there is a protocol in place during the 72 hours that was respected and that it was in both parties' interest to protect the assets.

[60] The only advantage of a lockout to the Employer was the ability to control the timing of when it started. Ms. J. K. testified that it was not financially advantageous to lockout the employees; that the opposite was true, it cost the Employer money. She stated that there was no business plan to shut down the plant. It was their intention to run the plant at full capacity.

[61] Ms. J. K. stated that there was only one reason for the work stoppage and that was the labour dispute at the Lake Erie Works (one plant) regarding one collective agreement.

SUBMISSIONS

[62] The Appellant submitted (GD3-32 to 45, GD3-555 to GD3-580, GD17 and hearing) that:

(a) the evidence shows that the work stoppage was attributable to several factors including the economic forces/down turn in the steel industry, continual financial losses of the Employer and other events prior to and during the labour dispute;

(b) the evidence shows that the economic conditions and the Employer's need for cost saving measures were pressing reasons for the Employer to close the plant and cause a stoppage of work; the Employer used the timing of the collective agreement expiration as an opportunity to garner the cost savings that it required through a grossly concessionary contract (force the Union to accept a deal that was not beneficial to its members), by not operating the plant, and by not having to fulfill its obligations to its employees caused by a lay-off;

(c) the Appellants have provided a large body of evidence from knowledgeable and credible sources as well as from the Employer itself, that is not contradicted, and all of which corroborate each other and explain the circumstances of this case and why the Employer had reason and motivation to create an opportunity to close Lake Erie Works that is unrelated to the labour dispute;

(d) the legislators never intended for a disentitlement to apply when multiple business objectives are the impetus for a stoppage of work; the clear wording of Section 36 does not provide for disentitlement when there are other factors/reasons for the stoppage of work, and which have caused a serious imbalance to the playing field between the worker and employer in the latter's favour; the stoppage of work must be attributed to the labour dispute and only the dispute for a disentitlement to apply; the law does not say the work stoppage must be "all or partly" or "mostly due to the labour dispute" or "where any labour dispute exists"; the EI Act does not elaborate on the degree of cause of the labour

dispute on the work stoppage, so a narrow interpretation dictates that the labour dispute must be the sole cause of the stoppage of work, and not just a contributing factor;

(e) the Commission bears the burden of showing that the work stoppage was due to the dispute, and only the dispute – that the work stoppage is attributable to the dispute in a singular way;

(f) the Commission has not proven that the dispute was the sole reason that motivated the Employer to initiate a stoppage of work; in fact, a careful analysis of the evidence suggests that the dispute was drawn into the events which resulted in the stoppage of work, and not the other way around;

(g) any ambiguity over the labour dispute and the reason for the lockout, and whether it is the reason for the stoppage of work, should be awarded to the Appellants (Caron A-1063-87, Hills SC 19094); the conditions (causation/reason, timing) surrounding the stoppage of work are extremely ambiguous;

(h) the Employer's lack of intent to bargain was evident by filing for a 'No Board' report well in advance of the expiration of the contract and prior to any monetary issues being discussed, executives with decision making authority did not participate until the final hour, the blast furnace was brought down under the guise of maintenance that was delayed until just prior to the expiration of the contract and it started idling the coke ovens well before the expiration of the collective agreement;

(i) the Employer's lack of credibility is evident in its conduct in Canada since the purchase of Stelco in 2007 and during this third lockout; a factor not considered by the Commission; an assessment of the Employer's credibility is necessary when considering its self-serving statements that the labour dispute is the sole reason for the stoppage of work; there is ample evidence to judge/assess the Employer's motives/intent by its conduct, by what it has done, rather than what it says;

(j) the Commission's lack of neutrality has perpetuated an imbalance in the playing field between the Employer and the Appellants not only by its treatment of the Appellants, but by its failure to fully assess and analyze the evidence and law; the Commission has

interfered with economic forces which have helped determine the outcome of the dispute by creating an undue imbalance between the parties;

(k) the Commission erred in law with respect to its substantive decision by failing to correctly interpret the parameters of section 36 of the EI Act, ignoring/misapplying a preponderance of applicable jurisprudence, inappropriately shifting the onus of proof onto the Appellants contrary to the clear wording of the law; it has ignored or misinterpreted a significant portion of the material facts, failed to make appropriate findings of credibility, accepted the statements of one party over another with no explanation, has not administered the EI Act in a neutral manner by way of its own policies and denied the Appellants natural justice by initially being denied the right to know the case against them;

[63] The Commission submitted (GD4, GD18, GD20 and hearing) that:

a) it has met its onus of proving that the conditions for disentitlement under subsection 36(1) of the EI Act have been met because the Appellants are members of the U.S. Steel Union Local 8782 who lost their employment on April 28, 2013 due to a work stoppage attributable to a labour dispute at U.S. Steel Canada Inc.; the Appellants, as members of the Union, have a direct interest in the outcome of the labour dispute because they will benefit from any improvements in wages and benefits when a new collective agreement is reached, and as a result, are subject to disentitlement pursuant to section 36(1) of the Act; the stoppage of work terminated when the Employer's work force and production levels reached 85% of the normal level on September 10, 2013 pursuant to section 53 of the EI Regulations;

b) there is evidence of (key elements of) a labour dispute: it is undisputed evidence that the collective agreement expired on April 15, 2013 and that the Union acknowledged the labour dispute; that two months prior to the lockout, formal negotiations commenced on February 28, 2013 with additional dates of conciliation on March 19, 2013, April 11, 2013 and April 15, 2013; there were unresolved issues under negotiation including job classification, change to the COLA, vacation entitlement and co-payment of prescription drugs between February 2013 to April 2013; on April 11, 2013 the Union membership

voted in favour of not accepting the company's final offer; it is also undisputed that on April 25, 2013, the Employer issued a notice of intent to lock out the employees; on April 28, 2013 approximately 1000 employees were locked out;

c) the Employer has provided: evidence of a labour dispute, provided a plausible explanation for taking control of the lockout date and evidence that had there not been a labour dispute, Lake Erie Works would still be operational and the Appellants would have continued working, and provided evidence that there was a plan to hire 150 new employees;

d) the Appellants have not provided evidence that there was no labour dispute or that the Lake Erie Works would not have been operational (or even at a reduced level); although it provided evidence of analysts commenting on U.S Steel Inc.'s actions, loss of profits and the status of the markets, it did not provide evidence that the lockout was due to economic forces, or that the lockout was a tactic of the Employer to avoid meeting its obligations of a layoff, to gain advantage in the market place and to avoid possible issues with the Canadian government due to production level agreements;

e) the Appellants interpret the Federal Court of Appeal decision *Caron et al v. Canada (AG),* A-1063-87 to mean that the Commission must prove that the stoppage of work is attributed to the dispute in a singular way, and that the chain of causation began with the dispute and not, (as the union contends) at some earlier time and for a different reason; however, the legislation does not stipulate that the labour dispute must be the sole reason for the stoppage but only states that it be "attributable" to the labour dispute;

f) while other factors existed during contract negotiations, the contract was being negotiated, all the Appellants were represented by the Union at those negotiations and they all lost their employment due to a stoppage of work, so there was a direct link between the labour dispute and the stoppage of work; just as in Dallaire A-825-95, although external factor may contribute to a work stoppage, the basic concept of "attributable to a labour dispute" suffices for section 36 of the EI Act to apply without the labour dispute being the immediate cause;

g) it has presented the facts of this case as they apply to the Appellants and there is nothing in its decision to suggest that it was biased against the Appellants in any way, that it did not act impartially, or that there is any evidence to show there was a breach of natural justice; it has applied the proper principles of law and legal test under subsection 36(1) of the Act to the evidence that leads to the reasonable conclusion that the work stoppage on April 28, 2013 at U.S. Steel Canada Inc. was attributable to a labour dispute;

[64] The Employer submitted (GD3-611to GD3-617, GD15, GD19 and hearing) that:

a) the work stoppage was due to a labour dispute; the Appellants incorrectly attributed the work stoppage to an economic slowdown and to an imminent plant shutdown; the lockout was not a cost saving measure, on the contrary, the labour dispute cost the Employer millions of dollars;

b) by definition, since they were negotiating a collective agreement, there was a labour dispute; plus, evidence shows that all six of the elements of a labour dispute were present for the duration of the labour dispute: there is evidence of insistence of one party or resistance of the other with respect to specific demands, a refusal to negotiate or a disruption of negotiations, an appointment of a conciliator or conciliation board, a failure of the conciliation process, having a strike vote or issuance of a lockout notice and existence of a strike or lockout is even more decisive, but not a prerequisite;

c) the Appellants' reliance on *Caron* is misplaced; *Caron* held that the work stoppage ended once there was an agreement to settle the strike, it therefore, only stands for the proposition that the length of work stoppage is dependent on the *intent* of the parties; nowhere in *Caron* does the Supreme Court of Canada state that a labour dispute must be a "singular" cause of a work stoppage; further, there is nothing in *Hills* that suggests the stoppage of work must be attributed in a singular way;

d) even if the work stoppage could be attributable to other ancillary factors, such as economic reasons as the Appellants suggest (and which it expressly denied), according to the Federal Court of Appeal in *Simoneau*, as long as there is a causal connection between the labour dispute and the work stoppage, the work stoppage will be attributable to a labour dispute.

e) the question of whether the work stoppage is due to a labour dispute is a question of mixed fact and law attracting a standard of reasonableness; the Commission's assessment of the parties' submissions and its interpretation and application of the EI Act all fell within a range of possible outcomes that are defensible in respect of the facts that were before the Commission and the legal principles applied;

f) contrary to the Appellants' allegations, the Employer's intention was to run steelmaking at Lake Erie Works at almost full (normal) capacity for the rest of 2013; prior to the work stoppage they were operating at normal (90%) levels (the coke battery, docks, by-products, blast furnace and hot strip mill) and they had no intention to shut down the plant; in fact, they were hiring new employees up to April 8, 2013; the plan to hire 150 new employees was put on hold only because of the labour dispute; the documentary evidence shows that the business conditions and capacity utilization of the blast furnace was forecast at 92.33% of normal capacity;

g) the date of lockout was chosen in order to protect the assets and to safely idle machinery; the coke oven was placed on hot idle when it was clear that an agreement would not be ratified; the blast furnace scheduled maintenance was postponed for valid business and operational reasons; actually, at the time of the work stoppage, the maintenance of the blast furnace was still one week from completion;

h) the Employer bargained in good faith and had every intention and hope of reaching an agreement as is evident in the significant supporting documentation it provided pertaining to the events leading to the labour dispute including a summary of the contract negotiations; the negotiations that took place on the final weekend (April 12 to 15, 2013) were entirely consistent with those that took place on the majority of the other days of negotiation; Ms. J. K. was the lead negotiator at all of the 30 meetings and had the authority to negotiate on behalf of the Employer;

i) the Commission's decision to disentitle the Appellants was correct and reasonable, based on a thorough evidentiary foundation and comprehensive submissions provided by the parties; it provided the correct analysis, investigated each aspect of the dispute, requested additional information from both parties, and considered all the evidence before it;

j) the appropriate standard of review is reasonableness and the Commission's (initial and reconsideration) decisions to disentitle the Appellants are correct and reasonable; its findings of fact are correct and are owed deference;

k) it was not granted any procedural advantage and certainly not of a nature or magnitude that would justify intervention; the statutorily mandated process resulted in no prejudice to the Appellants; the Commission's decisions and decision-making process adhered to the principles of natural justice and must stand.

ANALYSIS

[65] The issue to be decided herein is whether the Appellants should be disentitled to benefits from April 29, 2013 to September 10, 2013 because they lost their employment during this period due to a work stoppage attributable to a labour dispute pursuant to section 36 of the EI Act.

[66] According to subsection 36(1) of the EI Act and subject to the Regulations, a claimant is not entitled to receive benefits if:

1. the claimant loses an employment, or is unable to resume an employment,
2. because of a work stoppage,
3. attributable to a labour dispute,
4. at the factory, workshop or other premises at which the claimant was employed

[67] Further, according to subsection 36(1) of the EI Act, a claimant is disentitled to benefits until the earlier of (a) the end of the work stoppage and (b) the day on which the claimant becomes regularly engaged elsewhere in insurable employment. In this case, the Appellants confirmed at the hearing that they are not disputing that the work stoppage ended on September 10, 2013 pursuant to section 53 of the Regulations.

[68] The Appellants are also not disputing that they lost their employment due to a work stoppage at Lake Erie Works on April 28, 2013. The Appellants concede that for the purpose of the EI Act, a labour dispute existed at that time, at these premises (GD3-572 and see below). Of these four factors therefore, the only one being disputed by the Appellants is whether the work

stoppage is attributable to a labour dispute. The issue herein is the 'reason' for the work stoppage.

[69] Also, at the hearing, the Appellants confirmed that they will not be bringing forward any submissions or evidence regarding any of the exceptions stipulated in paragraph 36(1)(b), subsection 36(3) or subsection 36(4) of the EI Act.

Was there a labour dispute?

[70] In order to address the issue of whether the work stoppage is attributable to a labour dispute pursuant to subsection 36(1) of the EI Act, it must first be established that there was a 'labour dispute' at the time of the work stoppage.

[71] The Member first considered that the onus lies with the Commission to demonstrate that a claimant is disentitled to benefits (*Valois v. Canada* [1986], 2 S.C.R. 439, Benedetti A-32-09). Whether the Commission has met its burden of demonstrating that a work stoppage is due to a labour dispute is a question of mixed fact and law. This determination depends on the application of the facts to the legal term "labour dispute" (Benedetti A-32-09, Lepage 2004 FCA 17; Stillo A- 651-01).

[72] The Member considered that although the Appellants have conceded that for the purposes of the EI Act, a labour dispute existed at the time of the stoppage of work, they also qualified that statement by stating that the labour dispute existed and "…theoretically has since mid-2009; the resumption of work in the spring of 2010 was based on a Memorandum of Agreement which the company refused to honour" (GD3-572). The Appellants submitted that the definition of dispute in the Employer's organization is a departure from what is normally understood. They contend that since 2010, a state of continual dispute, a pattern of lockouts and coercive ultimatum style bargaining, all at the initiative of the Employer, has become "business as usual". The Appellants submitted therefore, that although the Employer may appear, on paper, to be participating in negotiations, conciliation and mediation, their actions (or lack thereof) demonstrate otherwise. "As such, undue weight cannot be placed on the fact that there is "a dispute" as it is a constant condition of employment at USSC. On the balance of probabilities, it is not the driving reason for the plant closure." (GD3-42)

[73] The Member understands the Appellant's position is that there has been a constant "dispute" at the Employer premises since 2010 and that they are putting forth other reasons for the work stoppage; however as a point of clarification, the Member notes that the facts of a case must be applied to the legal term "labour dispute". The word "dispute" is not defined in the EI Act (Benedetti A-32-09) although it has been interpreted to mean a disagreement or dissention of opinions or positions during negotiations (Gionest A-787-81). On the other hand, the term "labour dispute" is clearly defined in the EI Act because in order for a disentitlement to be imposed, the Commission must demonstrate that the work stoppage is attributable to a "labour dispute".

[74] Section 2 of the EI Act defines the term "labour dispute". It states that a "labour dispute" means a dispute between employers and employees, or between employees and employees, that is connected with the employment or non-employment, or the terms or conditions of employment, of any persons.

[75] The Member also considered relevant case law with respect to further clarification of what is meant by a "labour dispute". The Federal Court of Appeal for instance, has established that when employees and an employer are negotiating a collective agreement there is a labour dispute. It is held that the purpose of negotiations is to put an end to a disagreement where there is insistence of one party and resistance by the other regarding certain claims (Gionest A-787-81). The Member also considered that a labour dispute usually precedes a strike or a lockout, although it is not a prerequisite (CUB 17681). Plus, a labour dispute exists during the period that strike pay was received (CUB 17761). Whether a labour dispute exists is a question of fact (CUB 19156).

[76] In this case, it is undisputed evidence that for several months before (and after) the work stoppage, the Appellants and Employer were negotiating, and disagreeing on, the terms of a collective agreement that was due to expire on April 15, 2013. The evidence shows that on January 30, 2013, the Appellants gave the Employer notice of intent to bargain and over the next few months a conciliator was appointed to assist with the negotiations. From February 28, 2013 onward, several negotiation meetings ensued, bargaining continued and proposals were exchanged. The Appellants voted on the Employer's proposals, there continued to be unresolved

issues when the collective agreement expired on April 15, 2013 without resolution to the main issues, and on April 28, 2013, the Employer locked out all bargaining unit employees, including the Appellants. Both parties have confirmed the existence of these elements in their detailed timeline accounts of the events during negotiations and supporting documentary evidence (GD3-158 to GD3-160, GD3- 569 to GD3-570 and GD3-613 to GD3-614). Finally, the parties confirmed that there were picket lines (GD3-6, GD3-3- and GD3-460) and that they received strike pay (GD3-7 and GD3-31).

[77] Plus, the Employer submitted that a labour dispute had to be recognized to exist in order for the Ministry of Labour to legally sanction and supervise the "final offer vote" that occurred on July 31, 2013. It further noted that the Appellants, at no time, objected to the Ministry of Labour's jurisdiction to sanction this vote (GD3-616).

[78] The Member agrees with the Commission and finds that there are key elements of a labour dispute, as defined in the case law, evident in this case. There is evidence of insistence by one party and resistance by the other with respect to specific terms of their employment, an appointment of a conciliator, a disruption of/impasse in negotiations, a failure of the conciliation process and issuance of a lockout notice. There were picket lines and the Appellants received strike pay. It is obvious therefore, that there was a dispute between the parties connected with the terms and conditions of their employment, which by definition, in section 2 of the EI Act, is a labour dispute.

[79] The Member finds therefore that pursuant to section 2 of the EI Act, there was a labour dispute in existence at Lake Erie Works prior to the work stoppage on April 28, 2013.

Is the work stoppage attributable to a labour dispute?

[80] Having established that a labour dispute existed at the time of the work stoppage, the Member next considered whether the work stoppage was attributable to a labour dispute. This is the issue at the heart of this appeal.

1. Interpretation of subsection 36(1) of the EI Act

[81] According to section 36(1) of the EI Act, a claimant is disentitled to benefits if he/she loses or is unable to resume their employment because of a stoppage of work attributable to a labour dispute. A claimant is re-entitled to benefits if he/she meets one of the conditions in paragraphs 36(1)(a) or 36(1)(b) or, subsection 36(4). At the hearing, the Appellants confirmed that they are not seeking re-entitlement under these latter provisions. The Appellants' appeal therefore is that of the disentitlement in the first place.

[82] The Appellants argued that the legislation was not intended to apply when there are several reasons for the work stoppage; that the stoppage of work must be attributable to the labour dispute and only the labour dispute. They submitted that the legislation does not speak to the degree of cause so a strict interpretation should apply. The work stoppage therefore cannot be mostly due to, or partially due to a labour dispute.

[83] The Member however, agrees with the Commission's interpretation that subsection 36(1) of the EI Act does not stipulate that the labour dispute must be the only reason for the stoppage of work but only that it be attributable to a labour dispute.

[84] Even in the alternative, it so happens that in this case, the reason for the work stoppage was only the labour dispute. The Member considered all of the events, arguments and evidence provided by all the parties to this appeal. In doing so, the Member did not come to the same conclusion as that put forth by the Appellants that there are other reasons for the stoppage of work. The Member found that the work stoppage was not attributable to (a) the economic downtown or the Employer's motivation to save costs, and (b) a lack of intent to bargain by the Employer that caused an impasse, that in turn, caused the work stoppage/lockout. They simply are not the reason for the work stoppage. The Member did not find a causal link between these factors/reasons and the work stoppage. On the other hand, the Member finds that the stoppage of work on April 28, 2013 was caused by and therefore is attributable to, only the labour dispute.

[85] The Member's interpretation is supported by case law.

[86] The Federal Court has established that when there is a work stoppage during the negotiation of a new collective agreement, there is a clear causal connection between the labour

dispute and the work stoppage. The existence of a causal connection between a labour dispute and a work stoppage is a question of law (Simoneau A-611-96, Dallaire et al. A-825-95). In this case, the parties were negotiating a new collective agreement at the time that a legal lockout was exercised by the Employer, and work stopped. There is a clear causal connection therefore, between the labour dispute in this case and the work stoppage.

[87] The Member's interpretation and decision is also supported by the initial Federal Court of Appeal decision in *Caron et al.* that deals with the chain of causation. As in this case, there was the first cause, the labour dispute, followed by an initial effect, the work stoppage, which in turn became the cause of a second effect, the Appellants' loss of employment. The Appellants argued that both the timing of the stoppage of work and the reasons for it/cause are ambiguous and, where there is ambiguity, the matter should be resolved in favour of the Appellants (GD3-43). The Member however disagrees with both, the interpretation of this case law and their fact assessment regarding the reason (see below analysis) for the work stoppage. The Member agrees with the Employer, that nowhere in *Caron et al.* does it say that the labour must be the 'sole' or 'singular' cause of the work stoppage (Caron A-1063-87, [1991] 1 S.C.R. 48).

[88] Further, the Member also disagrees with the Appellants' interpretation of the Supreme Court decision in *Hills*. This decision stands for the principle that a narrow interpretation must be given to the disentitlement provision of subsection 36(1) and that any doubt should be resolved in favour of the claimant (Hills [1988] 1 S.C.R. 513). The Appellants interpreted this case to mean that the labour dispute must be the singular cause of the dispute. The Members disagrees with this interpretation for two reasons (a) a narrow interpretation does not mean that the cause must be singular in manner; that the work stoppage can only be attributable to a labour dispute and (b) there was no doubt/ambiguity in the circumstances; that "both the timing of the stoppage of work and the reason for it cannot be determined with any degree of certainty" (GD3-43).

[89] The Member noted that even in cases where there is an immediate cause for the stoppage of work, the general context and the existence of the labour dispute cannot be forgotten. In Dallaire et al. A-825-95, the Federal Court of Appeal upheld the Umpire's decision because his decision was based on the concept of cause found in the words "attributable to a labour dispute" that is clearly a question of law. Thus, Justice Marceau found the Umpire's intervention

was justified stating that "What the Umpire disagreed with is that the general context and the existence of the labour dispute as a basic context can disappear or be forgotten due to the existence of an immediate cause, as in his view the existence of a labour dispute is all that is needed to establish the causal link required…" In that case, and unlike this one, an immediate cause, the Minister's legislative intervention, was found to be incidental to the dispute, that triggered the work stoppage. In this case, the Appellants also argued that there are other reasons to explain the stoppage of work however; the Member found that they were neither incidental to the labour dispute nor the cause of the work stoppage. This case is relevant however in that, the fact that a labour dispute existed and was directly linked to the work stoppage, cannot disappear or be forgotten.

[90] Finally, the Member considered the intent and interpretation of section 36 of the EI Act. In so doing, the Member considered that the courts have long held that statutory interpretation cannot be founded on the wording of the legislation alone. The Supreme Court of Canada has often referred to Driedger's 'Modern Principle' which stands for this principle, stating that "Today there is only one principle or approach; namely, the words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament." (Driedger, Toronto: Butterworths 1983, p. 87)

[91] Accordingly, the words "a work stoppage attributable to a labour dispute", in the Member's opinion, cannot be interpreted in such a narrow way that only the words, or word "a" labour dispute means that the work stoppage must be attributed to solely/just the labour dispute, as the Appellants have put forth. Parliament chooses its words carefully when drafting legislation and in doing so, a specific result is expected. The intent of subsection 36(1) of the EI Act is to disentitle those who stopped work by reason of a labour dispute from receiving benefits. As long as the stoppage of work can be attributed to a labour dispute, even though there may be other ancillary, contributing or incidental factors/reasons, the appellant must be disentitled to benefits. In this case, even though the Appellants may disagree with the Member regarding this interpretation, it so happens that the Member has found that the work stoppage was attributable to only the labour dispute anyway. What is relevant however that is the Commission's, and now

the Member's, decision is consistent with the intent of this provision, the EI Act and the intention of Parliament.

[92] Simply, the legislative intent of the EI Act, through subsection 36(1), is not to pay benefits to those who lost their employment, or cannot resume their employment, by reason of a stoppage of work attributable to a labour dispute. In this case, the Member agrees with the Commission, that it did apply the appropriate principles of law and its decision conformed to the legislation and its intent. The Member agrees with the Commission that at the time of the work stoppage a labour dispute existed, the Appellants in this appeal had a direct interest in the outcome of that dispute and they lost their employment because of the lockout/work stoppage that was found to be attributable to that labour dispute. By disentitling the Appellants to benefits for these reasons, the intent of the legislation is met.

[93] The Member's conclusions are based on the following assessment of the material facts.

2. Assessment of the material facts

[94] On the one hand, the Commission submitted that it has met the onus of proving that the conditions for disentitlement have been met pursuant to subsection 36(1) of the EI Act. It was provided with evidence that a labour dispute existed at Lake Erie Works prior to the work stoppage and that Lake Erie Works would have been operational had there not been a labour dispute. Plus, it was provided with a plausible explanation by the Employer for taking control of the lockout date. The Commission contends that the Appellants did not provide evidence that (a) there was no labour dispute, (b) that Lake Erie Works would not have been operational regardless of the labour dispute, or (c) that the lockout/work stoppage was due to economic forces or tactics of the Employer to avoid meeting its obligations of a layoff, to gain advantage in the market place and to avoid possible issues with the Canadian government with respect to production agreements. The Commission concluded that while other factors existed during the contract negotiations and they may have contributed to the work stoppage, there was a direct link between the work stoppage and the labour dispute. The work stoppage was therefore, attributable to the labour dispute and a disentitlement must be imposed.

[95] The Employer agrees with the Commission that they were negotiating a collective agreement with the Appellants and so, by definition, a labour dispute existed at the time of the work stoppage. It also submitted that the work stoppage was due to a labour dispute and not to an economic slowdown where a plant shutdown was imminent. On the contrary, it provided evidence that it planned to run steelmaking at Lake Erie Works at almost full capacity to the end of 2013 and submitted that the labour dispute cost them millions of dollars. The Employer submitted that even if the work stoppage could be attributable to other ancillary factors, as long as there is a link between the work stoppage and the labour dispute, the work stoppage is attributable to the labour dispute. Further, the Employer submitted that the case law, upon which the Appellants rely, does not support their position that a labour dispute must be a "singular" cause of a work stoppage.

[96] On the other hand, the Appellants submitted that the evidence shows that the work stoppage was attributable to several factors and that the legislation never intended for a disentitlement to apply when there are other factors/reasons for the work stoppage. It is the position of the Appellants that the work stoppage must be attributed to only the labour dispute; that a narrow interpretation of the legislation dictates that the labour dispute must be the sole cause of the stoppage of work, and not just a contributing factor. The Appellants submitted that the Commission did not consider that the work stoppage was attributable to several factors and events prior to and during the labour dispute including (a) the economic circumstances of the steelmaking industry and the continual financial losses of the Employer (b) the Employer's lack of intent to bargain perpetuating an impasse. Further it submitted that an assessment of the Employer's lack of credibility and the Commission's lack of neutrality are necessary when considering the Employer's position that the labour dispute was the only reason for the work stoppage.

[97] The Member considered each of the factors put forth by the Appellants.

Economics

[98] The Appellants submitted that since the Employer purchased Stelco in 2007, it has been responding to its economic difficulties by shifting production between its operations, and just like in 2009 at Lake Erie Works and in 2010 at Hamilton, it shut down operations again as a

desperately required cost saving measure causing a stoppage of work. The Employer used the timing of the collective agreement expiration as an opportunity to garner cost savings by (a) forcing a grossly concessionary contract (b) not operating the plant, shutting down the blast furnace and idling the coke ovens, and (c) not fulfilling its obligations to its employees caused by a lay-off. The Appellants submitted that the Employer was motivated to create an opportunity to close Lake Erie Works that is unrelated to the labour dispute.

[99] In support of its position that there were economic forces and reasons for the Employer to initiate a stoppage of work, the Appellants provided evidence from various media sources, industry economists and financial reports of the Employer, showing that the Employer experienced losses in 2012 and that in the first quarter of 2013, it experienced a loss of $73 million. Other media articles from industry economists and analysts talk about the oversupply of steel in the market, the Employer's need for cost savings and how idling the blast furnace and plant closures can achieve such savings (GD3-161 to GD3-184, GD3-189 to GD3-190, GD3-215 to GD3-233 and GD3-349 to GD3-425). The Appellants also provided a letter from Ms. J. K. to employees that attests Lake Erie Works continues to lose money whereas other plants are making money (GD3-185 to GD3- 186). It also provided interviews with the Chief Executive Officer of the Employer commenting on the challenging economic conditions in the steel making industry and its losses (GD3-187 to GD3-188, GD3-191, GD3-215 to GD3-233).

[100] In support of their position that the Employer therefore used the work stoppage as a means to save costs, the Appellants provided a copy of their Memorandum of Settlement of April 2010. The Appellants pointed to the costs the Employer would have been obligated to incur had it laid off its employees including, supplementing employment insurance benefits, providing pension credits and group benefits, and accounting for possible severance monies (GD3-192 to GD3-203). Further, the Appellants provided the planned outage charts for the blast furnace at Lake Erie Works which show that the shutdown and maintenance originally planned for June 2012 was delayed several times until April 4, 2013 (GD3-204 to GD3-214). They also contended that the Employer planned well in advance of the collective agreement expiry date to idle the coke ovens by ordering the blankets required to maintain the oven temperature in preparation for a long term shutdown, and by shipping 2,000 hot band coils offsite to another plant.

[101] In response to the Appellants position, the Employer submitted that the work stoppage is not attributed to an economic slowdown, that there was no planned shutdown and in fact, it planned to run steelmaking at Lake Erie Works (and the blast furnace and coke ovens) at almost full (normal) capacity to the end of 2013 (GD3-615 to GD3-617). The lockout was not a cost saving measure; on the contrary, the labour dispute cost the Employer millions of dollars. It maintains that the work stoppage is attributable only to the labour dispute.

[102] The Employer provided direct testimonial evidence from Ms. J. K. and documentary evidence to support its position. At the hearing, Ms. J. K. acknowledged that there have been losses with U.S. Steel Canada Inc. as a whole (Lake Erie Works and Hamilton Works combined) the entire time it has been in Canada with the exception of one quarter, but they continue to operate and produce steel because it helps the Employer's (U.S. Steel Inc.) bottom line. This is evidenced in the financial statements for U.S Steel Inc. (GD3-941 to GD3-972). Ms. J. K. testified that prior to the work stoppage they were fully operating the coke battery, blast furnace and hot strip mill at Lake Erie Works and they planned to run the plant at full capacity. The Employer noted this is evident in the projected forecast that shows the Capacity utilization of the blast furnace was at 92.33% of total capacity and the plan was the same to the end of December 2013 (GD3-975). By comparison, this is unlike that of Hamilton's forecast at the time of that shutdown in 2010 (GD3-976 to GD3-978). Further, Ms. J. K. testified that 12 months prior to the labour dispute, she conducted over 1000 interviews for bargaining positions, planned to hire 150 new employees and in fact, hired new employees on April 8, 2013. Ms. J. K. testified that a hiring plan approved in January 2013 (GD3-979) accounted for the expected attrition and built for the future by hiring co-op students and apprentices (who, because of the work stoppage, had to be place at Hamilton Works). Ms. J. K. testified that the Union was aware of the plan and actively participated in the training. She stated that the only reason the plan was put on hold was the labour dispute.

[103] Ms. J. K. acknowledged that the blast furnace maintenance was postponed several times but stated that it was done for valid business and operational reasons and in accordance with other planned maintenance across all operations, as evidenced in the schedule (GD3-973 and GD3-974). Ms. J. K.'s testimony is consistent with her prior written explanation of the delays (GD3-615). The maintenance of the blast furnace was started on April 2, 2013 and was expected

to have a 25- day down time and at the time of the work stoppage; it was still one week from completion. Similarly, Ms. J. K. stated that there was no plan to idle the coke battery until April 12, 2013 when it was clear that an agreement would not be ratified. Ms. J. K. acknowledged that coke blankets were bought well in advance as a 'worst case scenario' contingency plan given the long lead time required to source them. She stated that the only reason the coke ovens were taken down was the labour dispute.

[104] Ms. J. K. testified that the only advantage of a lockout was the ability to control the timing of when it started so that it can protect the assets and to safely idle machinery. Ms. J. K. also confirmed to Mr. Talbot that their concern was not that the Union had any intention of jeopardizing the assets but that 72 hours was not enough time to a safely take them down. She stated that it was not financially advantageous to lockout employees; that in fact, the Employer lost money during the lockout because it did not have income to offset the continued costs incurred even during a shutdown. She testified that the employees were not negatively impacted by the idling of the coke ovens and there was no business plan to shut down the plant. Ms. J. K.'s testimony was consistent with her statements to the Commission (GD3-479 to GD3-480, GD3-608 to GD3-610 and GD3-615 to GD3-617).

[105] The Member considered the large body of evidence from varied sources submitted by the Appellants regarding the economic conditions of both the steel industry and that of the Employer, U.S. Steel Canada Inc. (and U.S. Steel Inc.). This evidence is undisputed and well documented by economists and analysts in the industry. The Member therefore understands the Appellants' position that the Employer was motivated to create opportunities for cost savings and that such savings could be achieved by idling a blast furnace and/or closing a plant. This evidence also shows the economic climate within which the Employer operated. The Member finds however, that the totality of the evidence does not support the Appellants' contention that the Employer shut down operations at Lake Erie Works on April 28, 2013, for these economic reasons and as a cost saving measure for two reasons.

[106] Firstly, the documentary evidence submitted by the Appellants does not support or link the shutdown/work stoppage to the economic forces or alleged scheme of the Employer to save costs (GD3-192 to GD3-214). For instance, the documentary evidence (Memorandum of Settlement)

provided by the Appellants only shows that the Employer would have been obligated to incur certain costs had it laid off its employees. This evidence was rebutted by Ms. J. K.'s testimony that locking out employees and shutting down the plant was not financially advantageous; that the Employer lost millions of dollars by shutting down the plant. Plus, the Appellants did not provide evidence that a shut down and/or lay off was imminent, regardless or independent of the labour dispute. The evidence does not show that the Employer opted to lockout the employees to save more money rather than laying off the employees. In a similar vein, showing that the blast furnace maintenance (outage charts) was repeatedly delayed until it could 'conveniently' be shut down safely during a planned lockout, is speculation, not evidence that the Employer was planning to (and did) shut down the plant for economic reasons.

[107] Secondly, the Appellants' documentary evidence is effectively rebutted by the direct testimonial and corroborating documentary evidence of the Employer. For instance, the Employer provided direct evidence with supporting documentation that provides an alternative, plausible explanation for delaying the blast furnace maintenance. Similarly, Ms. J. K.'s explanation for buying the coke blankets well in advance as a 'worst case scenario' is both plausible and reasonable. Ms. J. K.'s testimony that the Employer was fully operating the coke battery, blast furnace and hot strip mill at Lake Erie Works prior to the work stoppage, and that they planned to run the plant at full capacity to the end of December 2013, is also supported by documentary evidence. Plus, the documentary evidence supports her testimony that the Employer did not idle the coke ovens until April 12, 2013, three days prior to the collective agreement expiring. To further rebut the Appellants' allegation that the Employer was planning to shut down the plant and lay off employees, Ms. J. K. testified and provided supporting documentation that in fact, they were hiring up to and including April 8, 2013 and provided evidence of an approved hiring plan that she testified was known and supported by the Union. Finally, Ms. J. K. testified that they needed and were negotiating for changes to COLA, vacation entitlement, etc. for the long-term sustainability of Lake Erie Works.

[108] The Member considered the evidence of both parties. The Member accepts the large body of 'expert opinion' evidence that the Appellants have submitted regarding the economic circumstances of the steel industry, U.S. Steel Inc.'s financial position of and its requirement to save costs. The documentary evidence provided however, did not support its submission that

these factors caused the work stoppage. The Member gave more weight to the direct, consistent and supported evidence of the Employer than the documentary evidence of the Appellants. The Member also considered that Ms. J. K.'s testimony was based on her experience with the Employer and her direct participation and knowledge of the events at the time of the work stoppage. The Appellants did not call any direct evidence to challenge or refute Ms. J. K.'s direct testimony or to support its position that the Employer was going to shut down the plant.

[109] The Member therefore recognizes that in recent years, there has been a downturn in the steel industry and the Employer has had substantial financial losses, however, the Member finds that the work stoppage on April 28, 2013 is not attributable to these economic factors. The Member finds that the economic circumstances and the Employer's commensurate motivation to save costs existed long before, during, and continued to exist after, the labour dispute in this case. The Member agrees therefore with the Appellants that these factors/reasons are unrelated to the labour dispute (GD3-569). The Member disagrees however, that these factors, the economic circumstances and the Employer's motivation to save costs, were the reason/cause for the work stoppage on April 28, 2013. The above evidence does not support that the stoppage of work on April 28, 2013 is directly linked to, or is attributable to these factors. On the contrary, the Member finds that Lake Erie Works was operating fully prior to the lockout and the Employer did not plan to shut down the plant in 2013 for economic reasons.

Negotiations

[110] The Member also considered the Appellants submission's regarding the nature of the negotiations because of its contention that there was "no reason" to idle/shut down the plant at that particular time during the labour dispute (GD3-571). The Appellants submitted that the Employer's lack of intention to bargain was yet another factor/reason for the work stoppage. In fact, they contend that the Employer orchestrated a work stoppage prematurely by taking steps during negotiations to ensure that it can lockout employees at a time of its choosing. The Employer perpetuated an impasse over what were considered minor issues.

[111] The Appellants submitted that despite what the Employer 'says', its intention to shut down the plant was obvious by what it 'did' during their negotiations of the collective agreement. For instance, the Appellants submitted that the Employer requested a 'No Board' report on March

19, 2013 well in advance of the expiration of the contract on April 15, 2013, prior to any monetary issues being discussed and when there was no indication that negotiations had failed. Plus, the Appellants submitted that the 'No Board' report was not jointly requested as the Employer has put forth. Further, the Employer did not adequately represent itself at most meetings; Ms. J. K. did not have the authority to negotiate on the substantive monetary issues. The Appellants submit that the executives from X that could negotiate such issues only flew in on April 11, 2013, engaged in "chit chat" and left. They flew back in at the final hour, on April 15, 2013, to issue an ultimatum and flew back to X. Further, the Appellants submitted that the blast furnace was brought down under the guise of maintenance that was delayed until just prior to the expiration of the contract. Finally, the Employer started idling the coke ovens on April 12, 2013, well before the expiration of the collective agreement.

[112] On the other hand, the Employer submitted that it bargained in good faith and had every intention and hope of reaching an agreement. The Employer submitted that the Appellants are making allegations without any evidence. If the Appellants felt that the Employer was bargaining in bad faith, they could have filed a 'bad faith claim' under the *Labour Relations Act*, but they did not. The Employer submitted that, on the contrary, its genuine and sincere desire to come to an agreement and keep the plant operating was evident in its unprecedented act of applying for a "Final Offer Vote" under the *Labour Relations Act.* It submitted that taking such an exceptional measure demonstrated its desperate desire to run the plant and get the employees back to work.

[113] Further, the Employer indicated that regarding the 'No Board' pass, Ms. J. K. provided direct testimony that the 'No Board' report was requested jointly so that both parties had a deadline to work towards. She noted that her testimony is supported by the meeting notes of March 19, 2013 (GD3-892). She stated that this was more of a formality that either party can apply for 17 days prior to the expiration of the collective agreement in order to be in a legal position to strike/lockout. In addition, Ms. J. K. testified that she was the lead negotiator for the Employer and absolutely had the authority to negotiate the monetary issues. She noted that she had negotiated the same issues in other collective agreements in the past, without the X representatives present. Further, regarding the negotiations just prior to the expiration of the collective agreement, Ms. J. K. testified that on April 12, 2013 after they exchanged offers, the Employer told the Union that they would work on the costing of the Union's proposals on April

13 and 14, 2013, and get back to them on Monday, April 15, 2013. Ms. J. K. testified that it was part of the normal process to cost out the latest proposal and get back to the Union. Ms. J. K. testified that she was in continuous contact with the X representatives. The monetary issues were not discussed on April 13 and 14, 2013 for this reason and not because she did not have the authority to negotiate these issues. She noted that her testimony is supported by the meeting notes of April 13, 2013 (GD3-823).

[114] Further, it is undisputed evidence that the Employer started to idle the coke ovens on April 12, 2013. Ms. J. K. testified that they started idling the coke ovens when it was clear that an agreement would not be ratified so the only reason the coke ovens were taken down was the labour dispute. The documentary evidence provided by both the Appellants and the Employer shows that in the days leading up to April 12, 2013, there had been proposals and counter proposals exchanged on April 8, 9, 10, 2013 and COLA and wages were discussed (GD3-159, GD3-570 and GD3-811). On April 11, 2013 there was a meeting with the Conciliator and the Union had an authorization to strike vote (GD3-7, GD3-29 and GD3-464, GD3-895).

[115] The Appellants submitted that the Commission did not take into consideration the details of what actually occurred during the events leading up to the work stoppage. The Commission therefore, only considered the misleading appearances and not the substance, or lack thereof, of the Employers actions. Further, the Appellants submitted that neither the Commission nor the Employer has provided evidence that the negotiations were genuine (GD3-570 to GD3-571).

[116] The Member however, did consider the account of events from both parties during their negotiations and considered the details of what each party said occurred at the over 30 meetings (GD3-158 to GD3-160, GD3-569 to GD3-570, GD3-574 to GD3-575, GD3-613 to GD3-614 and GD3-809 to GD3-812). The Member considered the timing of the 'No Board' report request, the blast furnace maintenance and the coke oven idling. The Member also considered that at the hearing, the Employer's witness, Ms. J. K., provided direct testimonial evidence that rebutted the allegations of the Appellants and/or justified its actions. The Member therefore, based on the evidence, made the following findings regarding the Appellants' submissions.

[117] The Member finds that the Appellants' submission that the Employer did not adequately represent itself at most meetings and that Ms. J. K. did not have the authority to negotiate on the

substantive monetary issues, is simply not supported by the evidence. The Appellants made the allegation however provided no evidence that Ms. J. K. did not in fact, possess the requisite authority. Ms. J. K. on the other hand, provided direct evidence to the contrary confirming that she was the lead negotiator on behalf of the Employer with the authority to negotiate all, including monetary, issues. The documentary evidence shows that Ms. J. K. was at all 30 of the negotiation meetings (GD3-809).

[118] With respect to the 'No Board' report, the Member finds that the Appellants have alleged, but have not provided any evidence that only the Employer requested such a report from the Conciliator. Ms. J. K. on the other hand, provided direct testimony that the meeting of March 19, 2013 went well, that both parties requested the report so that they would have a deadline to work toward and that such a request is only a formality. She pointed to the meeting notes of that day to support her testimony. The Member therefore preferred the direct evidence of the Employer over the lack of evidence of the Appellants' submission and finds that on March 19, 2013; both parties requested a 'No Board' report from the Conciliator. Having said that, the Member also finds that regardless of whether one or both of the parties requested the 'No Board' report, it is evident in the Conciliators letters to the parties that it is the Conciliator that decides whether the parties have reached an impasse and that as a result, it is not advisable to appoint a conciliation board. In this case, the Conciliator made that decision and advised the parties on March 30, 2013 (GD3-24). The Member finds therefore, that the 'No Board' report request, or the timing of it, does not support the Appellants' position that the Employer signaled its lack of intention to bargain as early as March 19, 2013 in the negotiations.

[119] Similarly, the Member finds that the Appellants' submissions regarding the timing of the blast furnace shut down for maintenance are simply the Appellants' unsupported conjecture of why the maintenance was delayed. The Appellants' submissions were effectively rebutted by the Employer's direct evidence. Ms. J. K.'s direct testimony was consistent and supported by the documentary evidence, and provided a reasonable explanation to the Appellants' allegations regarding the timing of the blast furnace maintenance and the reasons for the delays. The Member therefore placed more weight on this direct evidence than on the unsupported submissions of the Appellants that the maintenance was purposely delayed to coincide with the end of the contract. Given Ms. J. K.'s testimony regarding the blast furnace maintenance delays

(see previous analysis), the Member finds that the Employer delayed shutting down the blast furnace until April 2, 2013 for valid operational reasons. The only reason that the Employer shut down the blast furnace on April 2, 2013 was for the scheduled maintenance and not because it wanted it to coincide with the lockout.

[120] With respect to the idling of the coke ovens, the Member considered the timeline of events provided by both parties, the meeting notes, and the proposals exchanged leading up to the idling of the coke ovens on April 12, 2013. On the one hand, the Appellants submitted that the meeting notes from the meetings April 12 to 15, 2013, support their position that the Employer had no genuine interest in a settlement and that neither Ms. J. K. nor Mr. G. S. appear to have the authority to negotiate the monetary issues (GD3-813 to GD3-867). The Member also noted that the parties continued to meet on April 13 and 14, 2013 but did not discuss the monetary issues. Plus, the Member considered that in case of a strike/lockout, the parties had agreed to a 72-hour protocol. The Member therefore understands how the Appellants could interpret the idling the coke ovens on April 12, 2013, as the Employer signaling that the negotiations were over and the Employer had no intention of coming to an agreement by the April 15, 2013 expiry date. On the other hand, the Member notes that on April 11, 2013, the Union held an authorization to strike vote for which it received an overwhelming 99% support. Plus, the meeting notes confirm that there was an exchange of proposals on April 12, 2013 with no agreement on the monetary issues. The Employer interpreted these events as an indication that the collective agreement would not be ratified by April 15, 2013. Ms. J. K. testified that they started to idle the coke ovens when it was clear to them that an agreement would not be ratified. Further, Ms. J. K. rebutted the Appellants' submission that the Employer had no interest in a settlement in the final hours, by providing a reasonable explanation of the meeting notes of April 13, 2013 (GD3-823) and why the monetary issues were not discussed on April 13 and 14, 2013. The Member gave more weight to Ms. J. K.'s consistent, unwavering testimony based on her direct participation at those meeting that is supported by the documentary evidence, than on the Appellants' indirect submissions. The Member therefore accepts that the reason that the Employer started to idle the coke ovens on April 12, 2013 was because they felt that the agreement would not be ratified by the April 15, 2013 expiry date.

[121] Further, the Member considered the Appellants' submissions regarding the negotiations themselves, their meaningfulness, the willingness of the parties to return to the table, alternatives to a lockout, etc. (GD17). The Member notes however, that the Tribunal does not have the authority to make a determination as to whether either party 'bargained in good/bad faith', or that the parties did so in a meaningful way, with/without the appropriate parties are at the table, or that they were genuine in their intent to bargain. The Member also considered that the legislation does not take such a position either. The Member made findings based on the assessment of the evidence without delving into the merits of the negotiations or the parties' behavior at the table.

[122] Finally, given the findings herein, the Member cannot come to the same conclusion as the Appellants that the Employer's actions demonstrated a lack of interest to continue bargaining and intentionally perpetuated an impasse in the negotiations causing a lockout and stoppage of work.

Employer's Credibility

[123] Next, the Member considered the Appellants' submission that an assessment of the Employer's credibility is necessary when considering its "self-serving statements" that the work stoppage was attributable to only the labour dispute. The Appellants submitted that by ignoring this factor, the Commission erred in law and accepted the Employer's statements as fact. The Appellants stated that the Commission failed to make an assessment of credibility despite knowing that this is the third time that the Employer "…has drawn a dispute into plant closures, and always at a time when the Company was losing money and under pressure to do something to cut costs" (GD17-24).

[124] Further the Appellants submitted that it has cited ongoing concerns regarding the Employer's credibility pointing to the large body of evidence already in the Commission's possession from (a) two prior lockouts; one in 2009 at Lake Erie Works and the other in 2010 at the Hilton (Hamilton) Works, (b) the Employer's breach of its agreement with the Government of Canada when it purchased the two Stelco plants in 2007 pursuant to the *Canada Investment Act* and (c) from the present case, where these Appellants were locked out yet again by the Employer without participating in any genuine manner in the negotiations. The Appellants

submitted that all of this substantiates that there is a significant credibility issue with the Employer (GD3-561 to GD3-564).

[125] What the Appellants are asking therefore, is for the Commission, and now the Member, to make an overall assessment of the Employer's credibility based on its actions both in the present case, and in consideration of its past behaviour when assessing their position that the labour dispute was the only reason for the work stoppage .

[126] First, with respect to the Employer's past actions, the Member understands that this is the third time that the Employer has locked out its employees and that it submitted that the Employer breached its agreement with the Government of Canada. The Member finds however, to make an overall credibility finding about the Employer based on a different set of circumstances at a different time and to apply it is to the present facts would be unreliable and may not hold up to scrutiny because the circumstances of the prior lockouts were different from those herein.

[127] Second, and more importantly, a credibility finding regarding the Employer (or the Appellants) was not necessary in this case because the Member was able to make findings based on the documentary and direct evidence alone. The Member was able to assess the credibility of the evidence on its own merits and weighed it against the merits of the opposing evidence. Further, the Member had a *de novo* hearing, where submissions were made by all three parties and new direct evidence was provided by the Employer. There was no reason presented (or found) to question the credibility of the witness and in fact, her testimony was found to be consistent and supported by documentary evidence. The Member was not confronted with a situation where the evidence on both sides was equal where the credibility of either the witness or the Employer had to be evaluated. The Member, unlike the Commission, did not have only the submissions of the Employer and the Appellants and the documentary evidence that they each provided, but had the direct evidence of Ms. J. K. that was open to cross examination by the Appellants and the Commission.

[128] The Member finds therefore, that in this case, the Employer's credibility was not a factor that needed to be considered in the assessment of the present facts. It was not required for the determination of whether this work stoppage was attributable to a labour dispute.

Neutrality

[129] The Appellants submitted that the Commission has not conducted itself in a neutral manner, not only by its treatment of the Appellants, but its failure to fully assess and analyze the evidence and the law. The Appellants also submit that on May 13, 2013, Minister Finley stated on a local radio station that workers would not be eligible for employment insurance benefits because lockouts are not covered (GD25). The Minister's statement predetermined and dictated to the Commission the expected outcome regarding eligibility to benefits in this case. Further, the Appellants submitted that the Commission's lack of neutrality perpetuated an imbalance in the playing field influencing the outcome of the labour dispute to the Appellants' determent.

[130] In response, the Commission submitted that there is no evidence to suggest that it did not act impartially, that it was biased to the Appellants in any way, or that there was a breach in natural justice. The Commission submitted that it focused on the material facts before it, applied the principles of law and administered them without any preconceived notions. Further a single sound bite from a radio station that cannot be confirmed as accurate and cannot express the full extent of the legislation would not alter the facts gathered by the Commission from the parties. The Minister's statement was a general statement regarding section 36 and does not negate the extensive fact finding conducted in making a decision in this case.

[131] The Employer, in turn, submitted that the Commission's consideration of the evidence before it was thorough; each aspect of the dispute was investigated, it asked both parties to provide submissions and evidence. The Employer therefore submitted that it was not granted any procedural advantage. The Commission followed the statutorily mandated process which did not result in any prejudice to the Appellants. Regarding the radio interview with Minister Finley, the Employer submitted that this is indirect, hearsay that is not corroborated. Further, there is no evidence that the decision maker in this case had any knowledge of the Minister's statement.

[132] The Member considered the Appellants submissions regarding the Commission's neutrality, the neutrality principle, the commensurate case law and examples of its position (GD2, GD3-39 to GD3-41, GD3-556 to GD3-561 and GD17-4 to GD17-7).

[133] First, the Member notes that even if the Member agreed with the Appellants and/or took a position on any of the arguments the Appellants have put forth regarding the neutrality of the Commission, the Member's present assessment and analysis of the evidence is *de novo*. All parties were provided with the opportunity again to make submissions and provide evidence directly to the Tribunal. That is, regardless of how the Commission handled the claim and/or came to its decision, the Member has taken a fresh look at all the evidence that was put before the Commission and the new evidence provided at the hearing, and has made an independent, unbiase d decision. The Member considered and was sensitive to the Appellants' position both during the hearing proceedings and the analysis herein.

[134] Second, the Member considered the relevancy of this consideration to the legal test at hand. Although the Appellants have argued that the actions of the Minister and/or the Commission's lack of neutrality (and the disentitlement itself) negatively influenced the outcome of the labour dispute to the Appellants' determent, it is not the reason for the work stoppage. In other words, whether the Commission exercised its authority in a neutral manner after the work stoppage is not relevant to the determination of what caused the work stoppage and/or whether it was attributable to a labour dispute.

[135] Finally, the Member understands and acknowledges that the Appellants have made submissions regarding the neutrality principle in general and whether it is (or should be) in fact preserved in cases such as this where there is a lockout, not a strike, and where the parties may not be on equal footing. The Member notes however, that for the time being, this provision must be applied as it is written even if the Appellants feel that it is flawed. A disentitlement must be imposed where the work stoppage is found to be attributable to a labour dispute.

CONCLUSION

[136] The Appellants in this case argued that a disentitlement should not be imposed because the work stoppage on April 28, 2013 was attributable to other factors and that although a labour dispute existed, it was not the "driving reason" (GD3-42). The Commission acknowledged that although other factors existed during the labour dispute and may have contributed to the work stoppage, the work stoppage was attributable to a labour dispute. The Employer on the other

hand, argued that other factors did not exist and the work stoppage on April 28, 2013 was attributable to only a labour dispute.

[137] In the end, having provided extensive consideration to all of the parties' submissions and the evidence, the Member agrees with the Employer's position that the only reason for the work stoppage was a labour dispute. The Member found that although there has been a downturn in the steel industry and the Employer is suffering financial losses, and was motivated to save costs, there was no evidence that the Employer planned to shut down Lake Erie Works in 2013 despite the labour dispute. The Member did not find that there was a lack of intent to bargain by the Employer, which caused an impasse that in turn, caused the work stoppage. Further, the Member did not find a causal link between either of these factors/reasons and the work stoppage. Instead, the Member finds that the stoppage of work on April 28, 2013 was caused by and therefore is attributable to, only the labour dispute. The Appellants' submissions regarding the Employer's credibility (lack thereof) was also considered but the Member found that this was not a factor that needed to be considered during the assessment of the evidence provided herein. Finally, the Member was cognizant of the Appellants' submissions regarding the Commission's lack of neutrality, and took it under advisement however; this case was heard *de novo* and all the material facts were considered anew.

[138] Although the Member agreed with the Commission, that subsection 36(1) of the EI Act does not stipulate that a labour dispute must be the only reason for the stoppage of work, the Member found that in this case, it was attributable only to a labour dispute.

[139] Finally, the Commission bears the burden of demonstrating that a disentitlement should be imposed (Valois [1986] 2 S.C.R. 439, Benedetti A-32-09). In this case, the Member agrees with the Employer's submission that the Commission conducted a thorough evidentiary review of the facts that it had before it, and that it came to a reasonable and correct decision. The Member therefore finds that the Commission has met that burden by appropriately applying the evidence (the facts) to the legal term "labour dispute", finding that the work stoppage was attributable to a labour dispute and imposing a disentitlement.

[140] The Member finds that on a balance of probabilities, the work stoppage on April 28, 2013 was attributable to a labour dispute and a disentitlement must be imposed pursuant to subsection 36(1) of the EI Act.

[141] The Appellants are disentitled to benefits from April 29, 2013 to September 10, 2013 because they were unable to resume their employment during this period due to a work stoppage attributable to a labour dispute pursuant to section 36 of the EI Act.

[142] The appeal is dismissed.

Eleni Palantzas
Member, General Division - Employment Insurance Section

Appendix 1

A., M.	GE-14-1565
A., M.	GE-14-1569
A., A,	GE-14-1525
A., S.	GE-14-1564
A., D.	GE-14-1563
A., F.	GE-14-2312
A., G.	GE-14-1561
A., J.	GE-14-1562
A., S.	GE-14-1560
A., E.	GE-14-1575
A., D.	GE-14-1574
B., G.	GE-14-1573
B., G.	GE-14-2318
B., J.	GE-14-1572
B., A.	GE-14-1590
B., N.	GE-14-1595
B., J.	GE-14-1597
B., A.	GE-14-1728
B., S.	GE-14-1712
B., G.	GE-14-1714
B., W.	GE-14-1715
B., J.	GE-14-1716
B., L.	GE-14-1717
B., T.	GE-14-1700
B., B.	GE-14-1701
B., D.	GE-14-1702
B., B.	GE-14-1703
B., J.	GE-14-1704
B., R.	GE-14-1708
B., W.	GE-14-1707

B., S.	GE-14-1709
B., W.	GE-14-1710
B., M.	GE-14-1711
B., M.	GE-14-1681
B., D.	GE-14-1647
B., P.	GE-14-1682
B., J.	GE-14-1684
B., J.	GE-14-1686
B., C.	GE-14-1688
B., S.	GE-14-1689
B., M.	GE-14-1690
B., S.	GE-14-1692
B., L.	GE-14-1698
B., S.	GE-14-1660
B., R.	GE-14-1661
B., R.	GE-14-1662
B., G.	GE-14-1663
B., J.	GE-14-1672
B., G.	GE-14-1673
B., C.	GE-14-1674
B., T.	GE-14-1676
B., R.	GE-14-1678
B., K.	GE-14-1734
B., K.	GE-14-1733
B., J.	GE-14-1680
B., J.	GE-14-1650
B., A.	GE-14-1651
B., S.	GE-14-1652
B., J.	GE-14-1730
B., J.	GE-14-1729
B., A.	GE-14-1731

B., M.	GE-14-1735
B., R.	GE-14-1732
C., C.	GE-14-1740
C., R.	GE-14-1742
C., S.	GE-14-1746
C., C.	GE-14-1738
C., R.	GE-14-1739
C., B.	GE-14-1737
C., C.	GE-14-1736
C., P.	GE-14-1743
C., M.	GE-14-1745
C., E.	GE-14-1744
C., I.	GE-14-1752
C., V.	GE-14-1750
C., G.	GE-14-1749
C., G.	GE-14-1748
C., J.	GE-14-1751
C., R.	GE-14-1747
C., C.	GE-14-1723
C., C.	GE-14-1753
C., P.	GE-14-1720
C., J.	GE-14-1531
C., M.	GE-14-1722
C., D.	GE-14-1721
C., S.	GE-14-1725
C., D.	GE-14-1754
C., R.	GE-14-1568
C., D.	GE-14-1719
C., O.	GE-14-1536
C., J.	GE-14-1537
C., D.	GE-14-1726

C., T.	GE-14-1539
C., G.	GE-14-1554
C., D.	GE-14-1724
C., P.	GE-14-1534
C., C.	GE-14-1535
C., R.	GE-14-1556
C., G.	GE-14-1558
C., A.	GE-14-1555
C., C.	GE-14-1557
C., P.	GE-14-3313
C., J.	GE-14-1559
D., A.	GE-14-1543
D., W.	GE-14-1547
D., H.	GE-14-1527
D., D.	GE-14-1571
D., M.	GE-14-1587
D., D.	GE-14-1549
D., R.	GE-14-1551
D., J.	GE-14-1552
D., M.	GE-14-1570
D., D.	GE-14-1771
D., G.	GE-14-1727
D., M.	GE-14-1759
D., J.	GE-14-1598
D., V.	GE-14-1761
D., S.	GE-14-1772
D., J.	GE-14-1765
D., S.	GE-14-1763
D., R.	GE-14-1756
D., J.	GE-14-1774
D., G.	GE-14-1764

D., K.	GE-14-1762
D., D.	GE-14-1757
D., R.	GE-14-1773
D., S.	GE-14-1767
D., J.	GE-14-1775
D., J.	GE-14-1760
E., D.	GE-14-1770
E., D.	GE-14-1769
E., J.	GE-14-1780
E., B.	GE-14-1785
E., S.	GE-14-1786
E., T.	GE-14-1781
E., D.	GE-14-1788
E., K.	GE-14-1790
E., N.	GE-14-1791
E., S.	GE-14-1793
F., G.	GE-14-1659
F., E.	GE-14-1889
F., J.	GE-14-1658
F., R.	GE-14-1654
F., J.	GE-14-1885
F., B.	GE-14-1648
F., R.	GE-14-1803
F., W.	GE-14-1795
F., J.	GE-14-1657
F., J.	GE-14-1649
F., D.	GE-14-1799
F., R.	GE-14-1883
F., A.	GE-14-1653
F., B.	GE-14-1656
F., J.	GE-14-1877

F., J.	GE-14-1655
F., P.	GE-14-1797
G., A.	GE-14-1906
G., M.	GE-14-1905
G., D.	GE-14-1907
G., J.	GE-14-1915
G., R.	GE-14-1898
G., A.	GE-14-1900
G., S.	GE-14-1927
G., L.	GE-14-1910
G., J.	GE-14-1904
G., R.	GE-14-1891
G., O.	GE-14-1926
G., R.	GE-14-1919
G., T.	GE-14-1922
G., G.	GE-14-1903
H., K.	GE-14-1776
H., P.	GE-14-1940
H., M.	GE-14-1863
H., M.	GE-14-1933
H., K.	GE-14-1939
H., S.	GE-14-1937
H., J.	GE-14-1935
H., S.	GE-14-1929
H., G.	GE-14-1934
H., J.	GE-14-1858
H., M.	GE-14-1958
H., P.	GE-14-1860
H., W.	GE-14-1875
H., W.	GE-14-1865
H., K.	GE-14-1884

H., R.	GE-14-1909
H., J.	GE-14-1916
H., J.	GE-14-1873
H., B.	GE-14-1894
H., K.	GE-14-1888
H., J.	GE-14-1896
H., R.	GE-14-1874
H., N.	GE-14-1902
H., K.	GE-14-1931
H., M.	GE-14-1866
H., C.	GE-14-1876
H., J.	GE-14-1887
H., S.	GE-14-1867
H., S.	GE-14-1868
H., V.	GE-14-1892
H., G.	GE-14-1908
H., R.	GE-14-1957
H., J.	GE-14-1977
H., S.	GE-14-1897
H., M.	GE-14-1914
H., J.	GE-14-1871
H., P.	GE-14-1917
I., C.	GE-14-1995
J., S.	GE-14-2199
J., R.	GE-14-2226
J., C.	GE-14-2025
J., R.	GE-14-2203
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J., O.	GE-14-2019
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J., G.	GE-14-2229

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K., T.	GE-14-2235
K., W.	GE-14-2275
K., D.	GE-14-2325
K., J.	GE-14-2272
K., K.	GE-14-1953
K., L.	GE-14-2243
K., A.	GE-14-1955
K., J.	GE-14-1718
K., J.	GE-14-2284
K., P.	GE-14-2240
K., J.	GE-14-2329
K., G.	GE-14-2270
K., G.	GE-14-2246
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L., M.	GE-14-1964
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L., J.	GE-14-1956

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L., M.	GE-14-1617
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L., S.	GE-14-1620
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M., R.	GE-14-1969
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M., S.	GE-14-2003
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M., L.	GE-14-2004
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M., J.	GE-14-1599
M., P.	GE-14-1998

M., D.	GE-14-1602
M., J.	GE-14-1603
M., J.	GE-14-1600
M., P.	GE-14-2002
M., P.	GE-14-2001
M., T.	GE-14-2117
M., J.	GE-14-1646
M., J.	GE-14-1980
M., T.	GE-14-1976
M., D.	GE-14-1643
M., B.	GE-14-1975
M., C.	GE-14-1641
M., B.	GE-14-1642
M., A.	GE-14-1985
M., B.	GE-14-1997
M., D.	GE-14-1627
M., D.	GE-14-1630
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M., R.	GE-14-1994
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M., J.	GE-14-1644
M., A.	GE-14-1629
M., S.	GE-14-1972
M., I.	GE-14-1996
M., T.	GE-14-1988
M., P.	GE-14-1959
N., K.	GE-14-1986
N., D.	GE-14-2005
N., L.	GE-14-2006

N., M.	GE-14-2036
N., L.	GE-14-2050
N., J.	GE-14-2051
O., J.	GE-14-2052
O., M.	GE-14-2037
P., E.	GE-14-2038
P., R.	GE-14-2039
P., T.	GE-14-2008
P., J.	GE-14-2009
P., S.	GE-14-2020
P., J.	GE-14-2024
P., S.	GE-14-2022
P., J.	GE-14-2026
P., M.	GE-14-2027
P., R.	GE-14-2065
P., E.	GE-14-2053
P., D.	GE-14-2035
P., R.	GE-14-2054
P., J.	GE-14-2045
P., W.	GE-14-2043
P., B.	GE-14-2049
P., D.	GE-14-2041
Q., J.	GE-14-2055
R., C.	GE-14-2057
R., G.	GE-14-2048
R., A.	GE-14-2062
R., D.	GE-14-2080
R., R.	GE-14-2070
R., D.	GE-14-2063
R., W.	GE-14-2069
R., R.	GE-14-2060

R., J.	GE-14-2081
R., F.	GE-14-2058
R., F.	GE-14-2072
R., G.	GE-14-2079
R., W.	GE-14-2056
R., J.	GE-14-2082
R., P.	GE-14-2061
R., R.	GE-14-2085
R., W.	GE-14-2067
R., D.	GE-14-2059
R., R.	GE-14-2064
R., B.	GE-14-2066
R., M.	GE-14-2068
S., G.	GE-14-2134
S., R.	GE-14-1699
S., J.	GE-14-2083
S., S.	GE-14-1779
S., R.	GE-14-2087
S., A.	GE-14-2096
S., D.	GE-14-2101
S., S.	GE-14-2071
S., V.	GE-14-2077
S., F.	GE-14-2034
S., T.	GE-14-2115
S., M.	GE-14-2140
S., B.	GE-14-2100
S., G.	GE-14-2142
S., B.	GE-14-2029
S., S.	GE-14-2114
S., B.	GE-14-2128
S., W.	GE-14-2113

S., R.	GE-14-2132
S., D.	GE-14-2093
S., W.	GE-14-2116
S., D.	GE-14-2075
S., R.	GE-14-2097
S., R.	GE-14-2073
S., D.	GE-14-2107
S., M.	GE-14-2124
S., M.	GE-14-2090
S., R.	GE-14-2175
S., R.	GE-14-2279
S., S.	GE-14-2120
S., T.	GE-14-1778
S., G.	GE-14-2106
S., T.	GE-14-2099
S., R.	GE-14-2095
S., S.	GE-14-2121
S., C.	GE-14-2139
S., C.	GE-14-2102
S., G.	GE-14-2091
S., J.	GE-14-2092
S., T.	GE-14-2130
S., E.	GE-14-2089
S., T.	GE-14-2030
S., J.	GE-14-2088
S., A.	GE-14-2086
S., P.	GE-14-2103
S., R.	GE-14-2084
S., D.	GE-14-2094
S., K.	GE-14-2118
S., R.	GE-14-2078

S., E.	GE-14-2032
S., J.	GE-14-2126
T., M.	GE-14-2150
T., D.	GE-14-2163
T., T.	GE-14-2147
T., J.	GE-14-2155
T., A.	GE-14-2160
T., D.	GE-14-2158
T., S.	GE-14-2151
T., D.	GE-14-2148
T., D.	GE-14-2143
T., R.	GE-14-2153
T., J.	GE-14-2149
T., M.	GE-14-2156
T., R.	GE-14-2157
T., J.	GE-14-2159
T., D.	GE-14-2154
U., J.	GE-14-2164
V., P.	GE-14-2167
V., J.	GE-14-2193
V., R.	GE-14-2179
V., R.	GE-14-2172
V., T.	GE-14-2185
V., W.	GE-14-2168
V., P.	GE-14-2188
V., C.	GE-14-2169
V., F.	GE-14-2180
V., J.	GE-14-2196
V., M.	GE-14-2171
V., D.	GE-14-2184
V., C.	GE-14-2178

V., E.	GE-14-2174
V., A.	GE-14-2181
V., K.	GE-14-2190
W., B.	GE-14-2274
W., C.	GE-14-2271
W., E.	GE-14-2259
W., M.	GE-14-2278
W., L.	GE-14-2204
W., S.	GE-14-2252
W., W.	GE-14-2233
W., N.	GE-14-2201
W., K.	GE-14-2225
W., B.	GE-14-2299
W., D.	GE-14-2257
W., W.	GE-14-2236
W., R.	GE-14-2269
W., B.	GE-14-2239
W., R.	GE-14-2254
W., A.	GE-14-1766
W., E.	GE-14-2206
W., R.	GE-14-2210
W., L.	GE-14-2264
W., S.	GE-14-2216
W., W.	GE-14-2228
W., D.	GE-14-2223
W., T.	GE-14-2241
W., P.	GE-14-2230
W., R.	GE-14-2213
W., R.	GE-14-2215
W., M.	GE-14-1626
W., S.	GE-14-2304

W., D.	GE-14-2282
W., K.	GE-14-2197
W., G.	GE-14-2281
W., J.	GE-14-2247
W., S.	GE-14-2198
Y., R.	GE-14-2309
Y., T.	GE-14-2311
Z., M.	GE-14-2330
Z., L.	GE-14-2331
Z., H.	GE-14-2332
Z., M.	GE-14-2313