

IN THE MATTER OF AN ARBITRATION UNDER THE
BRITISH COLUMBIA *LABOUR RELATIONS CODE*, R.S.B.C. 1996 c.244

BETWEEN:

Finning (Canada), A Division of Finning International Inc.

("Employer")

AND:

International Association of Machinists and Aerospace Workers' Union,
District Lodge 250

("Union"/"Machinists")

(Re: Pension Grievance)

ARBITRATOR:

Stan Lanyon, Q.C.

COUNSEL:

Paul Devine
for the Employer

Leo McGrady, Q.C.
for the Union

DATE AND PLACE OF HEARING:

May 13, 14, 15
July 19, 2013
Vancouver, B.C.

DATE OF AWARD:

August 28, 2013

A W A R D

I. Introduction

[1] The Employer argues that it has the right to unilaterally change a pension plan. It has notified the Union that as of January 1, 2016 all existing members of a Defined Benefits Pension Plan shall become members of a Defined Contribution Pension Plan, and shall in the future, accrue earned benefits under this Defined Contribution Pension Plan. The Employer relies upon Article 13.03(a) of the Finning International Inc. Retirement Plan (Retirement Plan):

13.03 Amendment or Termination of the Plan

(a) Right to Amend or Terminate

The Administrator reserves the right at any time to revise or terminate the Plan in whole or in part.

[2] The Union replies that under the Collective Agreement the parties have agreed that the Defined Benefit Pension Plan “shall continue” for all existing members of the Plan. This language, it argues, precludes the Employer from acting unilaterally in respect to the Defined Benefit Pension Plan. The Union relies on the following provision in Letter of Understanding #1 in the 2011 – 2015 Collective Agreement:

Re: Defined Benefit Pension Plan

1. The present Defined Benefit Pension plan shall continue to be available for existing employees/participants in the Defined Benefit Pension Plan.

[3] Both parties have adduced comprehensive negotiation evidence over a number of years in respect to the interpretation of this collective agreement. Although the facts in this matter involve a contest over two distinct types of Pension Plans (Defined Contribution versus Defined Benefit Plans), along with collateral documents (Pension Plan Texts),

fundamentally, this matter concerns the *interpretation* of a pension provision in the collective agreement.

II. Facts

[4] Finning International Inc. (Finning International) is an extra provincially registered company with its Head Office in Vancouver, British Columbia. This Company was originally incorporated as Finning Tractor & Equipment Company Limited in 1933. In 1987 this Company changed its name to Finning Ltd. On January 1, 1997, Finning Ltd. changed its name to Finning International Inc. This current name change reflected the Company's expansion into Britain in the 1980s and Chile in the 1990s.

[5] The operations of Finning International in Canada are carried out by Finning (Canada), A Division of Finning (International). The operational headquarters of Finning (Canada) are in Edmonton, Alberta. Finning (Canada) has field offices in Surrey, British Columbia. It is Finning (Canada) that is party to the collective agreement with the International Association of Machinists and Aerospace Workers Vancouver Lodge 692 (Machinists). The current collective agreement is in force from April 15, 2011 to April 14, 2015. Finning (International) is not a party to this collective agreement. The Machinists are the sole bargaining agent of the employees of Finning (Canada) in British Columbia. There are approximately 800 employees in the bargaining unit, of which 210 are members of the Defined Benefit Pension Plan in British Columbia.

A. Background of Pension Plans

[6] The Finning International Inc. Retirement Plan (Retirement Plan) is administered by Finning (International) for all its employees in Canada. The Retirement Plan has been in place since 1945. It commenced under Finning Tractor & Equipment Limited and has operated continually since then. The benefits of the Retirement Plan are available to both bargaining unit and non-bargaining unit personnel. As stated, this Retirement Plan is administered solely by Finning International; in other words, none of the Divisions of Finning (International), including Finning (Canada), play any role in the administration of

the Retirement Plan. For many years the only pension plan was the Defined Benefit Pension Plan.

[7] The actual administration of the Retirement Plan is carried out by Finning International's Pension Committee. This Committee is made up of four Directors of Finning International, who have final authority in respect to all matters arising under the Retirement Plan. In addition, there is a Management Advisory Committee, with representatives from each of the Divisions, including Finning (Canada). There is a third committee that is focused solely on the Defined Contribution Plan.

[8] It is not in dispute that for many years the Retirement Plan has not been incorporated into the Collective Agreement (more will be said about this matter later in this Award). In 1972 two employees were placed on a Local Pension Committee. This Committee would meet annually along with the Union's Actuary, if requested. In the late 1980s, 1990s and 2000s, issues arose in respect to removal of a surplus that had accumulated in the Retirement Plan. This was resisted by the Union. Ultimately, the Employer opted to take a contribution holiday for many years. However, most recently, the Employer has had to make substantial contributions to ensure the Retirement Plan is able to meet all of its obligations.

[9] There are now two pension plans – a Defined Benefit Pension Plan and a Defined Contribution Pension Plan.

[10] A Defined Benefit Plan defines the *benefit* that a member will receive upon retirement. In general, it is based on a formula that includes years of service, salary and age. The benefit, once determined, remains constant. Investment decisions under a Defined Benefit Plan are made by the Trustees of the plan, usually with the assistance of professional money managers. If the investments do well the Employer may pay less and/or the benefits are increased. If the investments perform poorly then the Employer's pension costs may increase.

[11] In contrast, a Defined Contribution Pension Plan defines the *contribution* that is paid into the pension plan; thus, it is a promise to pay a specific contribution. Therefore, an employee's retirement benefit is based on the total contributions by both the employer and the employee, and the resulting investment earnings. The individual employee is ultimately responsible for these investment decisions. If investments go up, benefits increase; if investments go down, benefits decrease.

[12] In a booklet entitled "Your Pension Choice Guide – It's Time to Choose" (2004) the Retirement Plan provided information in respect to a new Pension Plan that it was introducing to its employees in British Columbia and the Yukon - a Defined Contribution Pension Plan. It was addressed to members of the Finning Defined Benefit Plan for employees in B.C. and the Yukon and was characterized as a "one time opportunity to move to the new Defined Contribution Plan or stay in the current Defined Benefit Pension Plan (page 1)". It describes the differences between a Defined Benefit Plan and a Defined Contribution Pension Plan, and also sets out some of the advantages of each of these plans.

[13] This Guide states that the advantages of a Defined Contribution Plan are its portability (most employees will not work for the same employer throughout their career), equity (there is no difference between the benefits amongst employees), alignment (Finning's goal is to provide Defined Contribution Pension Plans across the entire Company) and finally, and most importantly, the employer's cost are predictable.

[14] In respect to the Defined Benefit Pension Plan the advantages are stated to be, first, the benefit is predictable; second, investment results do not alter benefits; third, investments are managed by professional money managers; and fourth, the most senior employees may receive a higher benefit under a Defined Benefit Pension Plan than under a Defined Contribution Plan.

[15] The Union has historically recognized that the Retirement Plan is outside the Collective Agreement. A Union proposal on September 11, 1991 (page 8) contained the following statement: "Get pension plan in contract (page 8)". In a letter to shop stewards at Finning (International), B.W. Brown, a Business Representative, dated April 18, 1997,

wrote, “Please remember the Pension Plan is outside the Union contract and is not part of the negotiations”.

[16] In the 1993 – 1995 Collective Agreement the Employer and the Union agreed in Letter of Understanding #1, Re *Subject: Pension Plan*, that the Employer would provide the Union with “updated information on an annual basis” in respect to the Pension Plan. This would take the form of an annual information meeting in which it would share investment results with the Union and also discuss actuarial issues. This provision continued in the 1995 – 1997 Collective Agreement, 1997 – 2000 Collective Agreement, 2000 – 2003 Collective Agreement, 2003 – 2006 Collective Agreement, 2006 – 2009 Collective Agreement. Most recently it has been incorporated into the Letter of Understanding #1 in the current Collective Agreement.

[17] Thus, the current Collective Agreement now contains two provisions in respect to Pensions: first, Article 35 – Defined Contribution Pension Plan; and second, Letter of Understanding #1, which deals with the Defined Benefit Pension Plan. These two provisions were the outcome of the 2003 round of collective bargaining; as a result, extensive negotiation evidence was heard - in particular, the 2003 and 2011 rounds of bargaining.

[18] I will begin with the 2003 negotiation evidence, which is the crucial round of collective bargaining in this matter.

B. 2003 Collective Bargaining

[19] Stan Pickthall is the Directing Business Representative for the Machinists Union. He has negotiated and concluded five collective agreements with Finning (Canada): 2000 – 2003; 2003 - 2006; 2006 – 2009; 2009 – 2011; 2011 - 2015. He states that he has always negotiated with Finning (Canada), and never with Finning (International).

[20] Mr. Pickthall chaired the Union’s Bargaining Committee in respect to the 2003 round of collective bargaining. One bargaining issue in which the Union wanted to see improvements was pensions. A local pension committee which included two employees

was purely advisory – it had voice but no vote. The result was that this committee process proved not to be an effective vehicle for obtaining changes to the Pension Plan. Mr. Pickthall, therefore, concluded that changes to the Pension Plan could only be achieved through collective bargaining.

[21] The parties commenced bargaining on February 26, 2003. The Union’s opening bargaining proposal included the following five pension items:

- general increase in benefits;
- buy back of prior years’ service;
- early retirement at age 55 without penalty;
- ability to apply overtime hours/wages into pension plan;
- all employees to be provided with a current copy of Plan Text upon request.

[22] Mr. Pickthall testified that he recalls “clearly” stating to the Company that pension improvements were a “significant issue” at the table. He does not recall the Employer stating at this time that all pension issues were “subject to Pension Committee agreement”.

[23] Jean Martel was the Chief Negotiator for Finning (Canada) for the 2003 – 2006 Collective Agreement. It was the only collective agreement that Mr. Martel negotiated on behalf of Finning (Canada). He is no longer an employee of Finning (Canada). He is now employed as a Senior Labour Relations Manager at Lafarge. He is a very experienced negotiator and labour relations manager, who is currently responsible for approximately 68 collective agreements to which Lafarge is signatory in Western Canada and the United States.

[24] Mr. Martel stated that from the Employer’s perspective pensions were not an issue at the outset of the 2003 negotiations. The Employer’s original proposals, dated February 26, 2003, did not address any pension issues. However, he does recall Mr. Pickthall stating that pensions were a “significant issue” for the Union. He stated that there was no specific language in the collective agreement that dealt with pensions. He agreed that the local

pension committee was basically an information gathering committee, and that it had “no decision making power”.

[25] Mr. Martel testified that Finning (Canada) had “no control over the retirement plan”; further, that Finning (International) was “the only body that could make decisions on the pension plan”; and moreover, the Union was aware of this. He stated that the person he reported to was Kevin Wenger, Vice President Human Resources, Finning (Canada) and that Mr. Wenger “had no position with Finning (International)”, and moreover, that no executives from Finning (Canada) were on the Finning (International) Pension Committee.

[26] In response to the Union’s opening demands, the Employer retained actuaries to estimate the cost of the different benefit scenarios, including early retirement. The Employer also contemplated having its own actuaries and members of the Pension Committee answer questions in respect to any pension plan inquiries from the Union.

[27] In late March 2003, Mr. Martel stated that there were “rumblings” that “Finning (International) had already moved the UK Plan (United Kingdom) to a Defined Contribution Plan”. He stated that in respect to the UK Plan, existing members of the Defined Benefit Plan in that country could either remain in the existing Defined Benefit Plan or had the right to transfer to a Defined Contribution Plan; further, all new hires were required to enroll in a Defined Contribution Plan. He stated that this had already taken place in respect to management employees. He said that these UK changes had taken place during the 2003 round of collective bargaining.

[28] On March 27, 2003, the Union’s bargaining notes, under the heading “Pension Issues”, records Mr. Martel as stating that the “trend is to get out of defined benefit plans and move to defined contributions”. It further records Mr. Martel stating that “legally the company [Finning International]) could have the ability to change to defined contribution”; and finally, he stated that “any changes to Pension must be approved by the Pension Committee” – a reference to the Pension Committee of Finning (International). Mr. Pickthall testified that he disagreed with Mr. Martel’s views.

[29] The following day, March 28, 2003, in a bulletin entitled “Bargaining Matters”, Mr. Pickthall, along with Al Cyr, a Business Representative who was part of the Union’s bargaining team, reported the progress of collective bargaining to Union members. This bulletin, under the heading “*Pension Issues*” reads, in part, as follows:

... However, in reviewing this information, the Company also cautioned that the pension plan is governed by the pension plan trustees and that any changes proposed or made at the bargaining table must be endorsed by the pension committee.

The Union Committee has advised the Company to get that endorsement in principle and report back to us.

[30] Mr. Martel stated that this Union Bulletin accurately reflected his statements at the March 27, 2003 bargaining meeting.

[31] The Union’s bargaining notes of May 7, 2003 records Mr. Pickthall stating that the current Pension Committee has “no teeth”. Mr. Pickthall testified that there was “a lot of frustration over the committee process”; that “nothing was getting done at the committee”; that the committee “had voice, but no vote”; and that the “place for us [Union] to make changes was at the bargaining table”. He stated that at no time did Finning (Canada) ever take the position that pensions were “beyond the scope of bargaining”. Finally, he stated that he “didn’t know anything about Finning’s International Pension Committee”, and that throughout all five rounds of collective bargaining with Finning (Canada), the people that made the decisions were “never in the room”.

[32] It was also on May 7, 2003 that Mr. Martel sent to the Union’s Bargaining Committee, on a confidential basis, a copy of the “Pension Policy Document”: Finning International Inc., November 20, 2002”. This document sets out Finning’s (International) pension philosophy as well as its procedures, its management and governance structure. At page 5, this document states that “Finning’s preference is for company sponsored pension plans to incorporate a defined contribution design”. In the next paragraph, on the same

page (page 5), it states that “Forced conversion for existing employees from defined benefit to defined contribution is not required”. Finally, at page 12, the document sets out the “Approval process”, which reads, in part, as follows:

All requests for changes to existing pension plans and new pension arrangements will need the prior approval of Finning International Inc. Pension Committee (FII Pension Committee). In turn, depending on the significance of the proposed changes, the FII Pension Committee will determine whether such requests should be submitted to the Pension Committee of the Board of Directors for its approval.

[33] Mr. Pickthall testified that the Union “didn’t spend a lot of time with this, frankly” – a reference to the Approval process quoted above. He said that the Company was “giving us assurances that people could remain in the Plan [Defined Benefit Plan]”; and it was that, he stated, that was ultimately “very important”.

[34] The Union’s bargaining notes of May 7, 2003 also record that “Finning International slow in getting info [information]/mandate to Jean [Martel]”. There is a reference to the pension policy document of November 20, 2002 referred to above. The notes further record a statement by Mr. Martel that Finning (International) planned to move to a Defined Contribution Plan for “new hires”, and that each “country”, a reference to Finning Divisions in different countries, would put “a proposal to the Finning Int. [International] Pension Committee” by October 2003. Mr. Martel proposed a Joint Committee in respect to the design of a new pension plan; however, Mr. Pickthall remained skeptical about such a committee because, once again, it would have “no teeth”.

[35] Mr. Martel recalls stating at the May 7, 2003 collective bargaining meeting that the Employer proposed to “keep existing employees in the Defined Benefit Plan and new employees in the Defined Contribution Plan”. He also testified that “we told them at the bargaining table that we could make any changes”.

[36] On May 9, 2003, Finning (Canada) made an offer to settle all outstanding collective agreement issues. In respect to pensions its proposal was “to provide to the Union a copy of the Pension Plan text”.

[37] Mr. Martel testified that by this time the Employer was “prepared to put in writing that the current defined benefit members could stay in the defined benefit plan”; and that “new employees” would be placed in a “defined contribution plan”; and finally, that “defined benefit members could convert to the defined contribution plan”.

[38] Mr. Pickthall stated that the Employer’s proposals “did not meet our expectations, so we told them that we would go out and conduct a strike vote”. Mr. Pickthall issued a new bulletin, “Bargaining Matters”, dated May 9, 2003, and under the heading, “Major issues outstanding”, wrote the following comments in regard to pensions:

1. Pension – Union demands for improved pension benefits and reduced retirement age have not been met. Further, the Company has advised that the Finning International Inc. Pension committee is reviewing the current pension plan and are looking at converting from a defined benefit plan (current) to a defined contribution plan (proposed) that is essentially similar to an RRSP-based plan.

Under this discussion, the Company advised that a similar process was undertaken in the UK, and existing employees were provided an opportunity to remain under the current plan, with an incentive provided to switch over to the new plan type. Finning’s proposal on pension is that we strike a committee to consult and make recommendations to the Finning Pension committee. However, under their proposal, Finning is not obligated to implement any of the changes put forward by the consultation process. We told them this will not fly.

[39] Mr. Martel stated that this was an “accurate summary” of the statements made at the May 9th, 2009, bargaining table. Mr. Pickthall testified that “we took a strike vote and got 95%; very significant”.

[40] On May 12, 2003, Kevin Wenger, Vice President of Human Resources Finning (Canada), emailed Jean Martel a draft letter to all employees in respect to a pension

proposal. Mr. Martel, in turn, forwarded the draft memo to Mr. Pickthall, asking for his “feedback before I issue it”. Mr. Pickthall wrote back stating that he had no difficulty with the Company circulating the letter but made clear that it was for information purposes only and did not represent the Union’s views. Further, the Union considered the matter of pensions to remain outstanding and one that it had to be resolved at the bargaining table. The first and last paragraphs of Mr. Wenger’s draft memo read as follows:

As required by the Board of Directors of Finning International, Finning (Canada) will be reviewing its pension plans to assess the competitiveness of these plans vs. the market. These reviews will involve both the British Columbia Defined Benefit (BC DB) Plan and the Alberta Defined Contribution (AB DC) Plan. A presentation of the findings will be made to the Pension Committee of the Board of Directors at the October 2003 Board meeting.

...

These reviews will certainly challenge us to look at the fundamental structure of our plans; that is, should they be Defined Contribution or Defined Benefit? As we answer this question our commitment to you is:

1. We will maintain your existing pension benefits. (need to time constrain (sic) this commitment?)
2. Employees in BC DB Plan will be allowed to stay in the BC DB Plan (in accordance with current rules regarding transfers to Alberta branches).
3. If we create a Defined Contribution plan for new employees in BC, existing BC employees will have the option to transition to a new Defined Contribution Plan.

(emphasis added)

[41] Mr. Martel testified that at this point in the negotiations he had come to the conclusion that Finning (Canada) had been given “prior approval” by Finning (International) in respect to the assurances set out in Mr. Wenger’s draft memo.

[42] At the meeting of May 28, 2003, the Union’s bargaining notes record Mr. Martel as stating two things: first, both parties would have to be “very creative in getting around pension issues”; and second, that “with respect to existing people, the defined benefit plan

will be maintained”. Mr. Pickthall testified in cross-examination that this was “the first time I recall in a face-to-face that the Defined Benefit Plan will be maintained”. Mr. Martel agreed that he made these statements at the meeting of May 28, 2003.

[43] The following day, May 29, 2003, Mr. Wenger issued the following letter to the Union, addressed to Mr. Pickthall, outlining the Employer’s promise to maintain the Defined Benefit Plan:

Further to your conversations with Jean Martel, please allow me to clarify the position and obligations of Finning (Canada) with regards to its pension plans.

As required by the Board of Directors of Finning International, Finning (Canada) will be reviewing its pension plans to assess the competitiveness of these plans vs. the market. These reviews will involve both the British Columbia Defined Benefit (BC DB) Plan and the Alberta Defined Contribution (AB DC) Plan. A presentation of the findings will be made to the Pension Committee of the Board of Directors at the October 2003 Board meeting.

At the same meeting the Board is expecting Finning (Canada) to recommend any changes that are required as a result of the competitive reviews. In addition to meeting competitive issues any recommended changes must also be aligned with the guidelines and framework of the Finning International pension policy. This policy can be summarized as follows:

Our retirement programs will be:

- Competitive;
- Part of total rewards;
- Aligned with the business; and
- Flexible

This means that our retirement programs should:

- Subject to competitive needs, follow a similar structure in any one country, in order to facilitate transfers across business units;
- Be designed to support our business objectives;
- Be structured so that costs and financial risks are shared between the company and employees;

- Provide employees scope to manage their benefits according to their own circumstances; and
- Be managed and communicated effectively so that employees are well equipped to manage their pension plan effectively.

These reviews will certainly challenge us to look at the fundamental structure of our plans; that is, should they be Defined Contribution or Defined Benefit? As we answer this question our commitment to you is:

1. **Employees in the BC DB Plan will be allowed to stay in the BC DB Plan** (in accordance with current rules regarding transfers to Alberta branches).
2. **If we create a Defined Contribution plan for new employees in BC, existing BC employees will have the option** to transition to a new Defined Contribution Plan.

I hope this clears up any concerns you may have had.

(emphasis in original)

[44] Mr. Pickthall testified that it “was the same document we saw previously”. He said that “we relied on the Employer’s commitment” in respect to Defined Benefit Plan. However, he stated that in addition to Mr. Wenger’s “letter of assurance” the Union “needed something in the collective agreement to settle the matter”. The following day, May 30, 2003, the Union set out the following proposals in the form of Letter of Understanding (LOU) that it sought to have incorporated into the collective agreement:

Pension – LOU

- No penalty retirement at age 59
- No change to defined benefit plan for existing employees/participants in the Pension Plan – this must be put in writing as part of a memorandum of agreement.
- Should the Company proceed with a Pension Review, the Union shall be entitled to appoint three (3) representatives to participate in the Pension Review process.

- In the event that the Company determines to implement a transition to a Defined contribution plan for new hires and new participants in the pension, full details of the proposed changes shall be provided, and the Union and the employees shall be provided with six (6) months notice prior to such implementation.
- Bargaining unit employees of Finning shall continue to have opportunity to join the defined benefit pension plan during the six (6) month notice period shown above.
- If there is implementation of a defined contribution plan, all employees other than those in defined benefit plan shall participate in the defined contribution plan at 6% gross earnings, such contributions to be made by the Company.

(emphasis added)

[45] The Union's bargaining notes of May 30, 2003 record Mr. Martel as stating that there would be "no change to DB Plan [and] should be no reduction to benefit levels". Mr. Pickthall recalls Mr. Martel stating at this meeting that first, "he [Martel] had a mandate from Finning"; and second, that "he had the legal ability to change it [pension plan]; "he certainly said that". Mr. Martel testified that his recollection of the Union's position at the May 30, 2003 meeting was that nothing would happen to the defined benefit plan, and further, that no new plan would be instituted during the life of the collective agreement.

[46] On June 1, 2003, Mr. Pickthall published a new edition of "Bargaining Matters" reporting on the outstanding issues in respect to pensions. Mr. Pickthall refers to Mr. Wenger's letter of May 29, 2003 and attached a copy of it to this Bulletin.

[47] On June 10, 2003 the Union's bargaining notes state that the Employer's position with respect to pensions was that a Defined Contribution Pension Plan would be implemented in 2004, and that after its implementation, no additions would be made to the Defined Benefit Plan.

[48] On June 11, 2003, Finning tabled its "Final Offer Of Settlement Of All Outstanding Collective Agreement Issues". In respect to pensions, the Company proposal was to provide an "Early Exit Program", which as Mr. Martel stated, was an offer to "buy out

people who wanted to leave early”. An employee who was 59 years of age or older, with at least 20 years seniority, would be provided with a “termination allowance”. The Union’s bargaining notes for that date describe a “discussion” with Ian Reid, President of Finning (Canada), and Kevin Wenger, Vice President of Human Resources. Under the name Ian (Reid), Mr. Reid is recorded as saying the “objectives of the Union are shared. Need to find a way to get people out sooner”; and further, that “Pension redesign is a way to facilitate earlier retirement”.

[49] On the same day, June 11, 2003, the Union served strike notice on the Employer, under Section 60(3)(b) of the *Labour Relations Code* of British Columbia. As well, on the same day, the Union issued a new bulletin, “Bargaining Matters”, in which it announced it had served strike notice, and that one of the “major issues” outstanding was pensions. The parties continued to bargain all day, June 11, 2003, and at 11:45 p.m. that same evening, the Union presented to the Employer the following draft Letter of Understanding (LOU) in respect to pensions:

Union Proposal: Pension – LOU

Dated for Reference: June 11, 2003 – 11:45 pm

1. Finning (Canada) Ltd. And the Union shall recommend to the Finning International Pension Committee a pension enhancement reducing the normal retirement age to at least fifty-nine (59). Under this pension enhancement there shall be no change to the pension formula, and employees shall not suffer any penalty for retirement at age 59 or older.
(emphasis in original)
2. The present Defined Benefit plan shall continue to be available for existing employees/participants in the Pension Plan. Any employees not presently enrolled in the Defined Benefit plan shall continue to have opportunity to apply until such time as a Defined Contribution plan is implemented.
(emphasis added)
3. Should *Finning International* proceed with a Pension Review, the Union and the Company shall each be

entitled to appoint three (3) representatives to participate in the Pension Review process.

(emphasis in original)

4. In the event that the Company determines to implement a transition to a Defined Contribution plan for new hires and new participants in the pension, full details of the proposed changes shall be provided to the Union and all employees.
5. If there is implementation of a defined contribution plan, all employees other than those in defined benefit plan shall participate in the defined contribution plan. Contributions shall be made on behalf of employees at 6% [no less than 5%] of gross earnings, full cost of such contributions shall be borne by the Company.

[50] At approximately 12:30 a.m., June 12, 2003, the parties reached an “agreement in principle”. The Union issued another bulletin on June 12, 2003, stating the following in respect to the issue of pensions:

Pension improvements were not achieved; however, the Union and Finning Canada agree to make recommendations to Finning International Pension Committee for early retirement at 59 or earlier without penalty; defined benefit plan remains for existing employees; if a defined contribution plan is implemented for new employees into pension plan, contribution to be no less than 5% of gross wages.

(emphasis added)

[51] The Memorandum of Agreement in respect to pensions, ultimately ratified by the employees, reads as follows:

Pension Plan

1. Finning (Canada) Ltd. And the Union shall recommend to the Finning International Pension Committee a pension enhancement reducing the normal retirement age to at least fifty-nine (59). Under this pension enhancement there shall be no change to the pension formula, and employees shall not suffer any penalty for retirement at age 59 or older.

2. The present Defined Benefit plan shall continue to be available for existing employees/ participants in the Pension Plan. Any employees not presently enrolled in the Defined Benefit plan shall have opportunity to apply until such time as a Defined Contribution plan is implemented.
3. Should Finning International proceed with a Pension Review, the Union and the company shall be entitled to appoint three (3) representatives to participate in the Pension Review process.
4. In the event that the Company determines to implement a transition to a Defined contribution plan for new hires and new participants in the pension, full details of the proposed changes shall be provided to the Union and all employees.
5. If there is implementation of a defined contribution plan, all employees other than those in defined benefit plan shall participate in the defined contribution plan. Contributions shall be made on behalf of employees at no less than 5% of earnings, full cost of such contributions shall be borne by the Company.
6. The company agrees to provide a copy of the plan text to pension plan members upon request.

(emphasis in original)

[52] Mr. Pickthall described this Memorandum of Agreement in respect to pensions as “all brand new language that resulted from collective bargaining”. This language closely follows what was originally proposed by the Union one hour prior to settlement.

[53] Mr. Pickthall testified that in respect to point 1 both Finning and the Union agreed to recommend to Finning (International) a reduction in the retirement age without penalty. However, he stated that in respect to point 2 (continuation of Defined Benefit Plan) there was no equivalent language used in respect to the required approval of Finning (International), and therefore, the continuation of the Defined Benefit Plan for existing employees, “was not subject to Finning International’s approval”; that Finning (Canada) had “agreed to and signed off” on point 2, without Finning (International’s) involvement.

[54] Mr. Martel agreed that the Union's pension proposal was "close to the language that the Company accepted in its final approval". However, he stated that "the parties could not agree directly"; that most of the proposals "had to be approved by the Pension Committee". He stated that although point 2, the continuation of the Defined Benefit Plan, did not expressly require the approval of Finning International, it does mention the Defined Benefit Plan, and therefore implicitly, all the "rules" arising from that Plan were incorporated into the proposal (point 2). Mr. Martel recalls the parties negotiating over this pension language; that is, they had "talked about it". However, he explained that in respect to "what was the meaning of this language, [I] wouldn't be surprised if [we] didn't discuss the meaning of it". He stated that point 5 required, the approval of the Pension Committee of Finning (International), however, Finning Canada could proceed with points 4 and 6 without Finning (International's) approval.

[55] Mr. Martel commented that this Memorandum of Agreement came "after the 72 hour strike notice, a lot of phone calls and last minute decisions".

[56] The language in the Memorandum of Agreement was incorporated into the 2003 - 2006 Collective Agreement as Letter of Understanding #18, pages 103 – 104:

Re: Pension Committee

1. Finning (Canada) Ltd. And the Union shall recommend to the Finning International Pension Committee a pension enhancement reducing the normal retirement age to at least fifty-nine (59). Under this pension enhancement there shall be no change to the pension formula, and employees shall not suffer any penalty for retirement at age 59 or older.
2. The present Defined Benefit plan shall continue to be available for existing employees/ participants in the Pension Plan. Any employees not presently enrolled in the Defined Benefit plan shall have opportunity to apply until such time as a Defined Contribution plan is implemented.

3. Should Finning International proceed with a Pension Review, the Union and the company shall be entitled to appoint three (3) representatives to participate in the Pension Review process.
4. In the event that the Company determines to implement a transition to a Defined contribution plan for new hires and new participants in the pension, full details of the proposed changes shall be provided to the Union and all employees.
5. If there is an implementation of a defined contribution plan, all employees other than those in defined benefit plan shall participate in the defined contribution plan. Contributions shall be made on behalf of employees at no less than five percent (5%) of earnings, full cost of such contributions shall be borne by the Company.
6. The company agrees to provide a copy of the plan text to pension plan members upon request.
7. Dated at Vancouver, B.C. this 5th day of December 2003.

(emphasis added)

[57] On December 3, 2003, the Employer sent a letter to all its employees signed by Kevin Wenger, entitled “Finning (Canada) Pension Plan Update”. It is a one-page information bulletin in respect to the Defined Benefit Pension Plan. It sets out the following statements in regard to the changes which were approved at the October 28, 2003 by the “Finning International Board of Directors Pension Committee”. These changes approved a new Defined Contribution Pension Plan as well as the ability of employees to remain in the Defined Benefit Pension Plan:

Pension recommendations presented to Finning Board of Directors

At the October 28, 2003 meeting of the Finning International Board of Directors Pension Committee, the local committee’s recommendations for pension enhancements and a proposed action plan to move the Finning pension plans to a competitive defined contribution design were presented.

The Pension Committee accepted recommendations for the following changes:

- i. Reduce to 59 years (from 61 years), the age at which an employee who has completed 20 or more years of continuous service may retire, with an unreduced pension.
 - ii. Create a new defined contribution pension plan for all new Finning (Canada) employees hired in BC.
 - iii. Develop a plan to assist Finning (Canada) employees presently in the BC defined benefit pension plan in assessing their options of converting to the defined contribution pension plan or remaining in the defined benefit pension plan.
 - iv. Create a local pension committee to implement these decisions and oversee pension issues across the Finning (Canada) territory.
- ...
- In the third quarter of 2004, employees will make a decision concerning their pension transfer. Arrangements will then be finalized for those employees choosing to convert from the defined benefit pension plan to the defined contribution pension plan.
 - In the fourth quarter of 2004, the retirement age of 59 will be implemented within the BC defined benefit pension plan.

More information to follow in 2004

We hope that this Pension Update has been helpful. Throughout 2004, we will be providing additional opportunities to learn more about the changes that are coming and what they mean to you.

(emphasis added)

[58] In cross-examination, Mr. Pickthall frankly acknowledged that he was not familiar with either the Finning International Pension Committee or the Finning International Retirement Plan document. He did not know who Mr. Martel was required to speak to in order to acquire approvals from Finning (International) or where that approval came from.

He stated that his only concern was not with “how approval was done, but [the Union] simply wanted it done”.

[59] Finally, Mr. Martel stated that Finning (International) became involved in the issue of pensions “only when the Union raised the issue of pensions”. His contact throughout the negotiations was his supervisor, Kevin Wenger, Vice President Human Resources, who directly dealt with Finning (International). In a bargaining document entitled “BC Negotiations – 2003” there is set out, under the heading “Outstanding Issues”, Finning’s (Canada) list of unresolved bargaining issues, including pensions. Under the heading “Management, #2 Pensions” it describes the position of the Employer as “No changes proposed”. Under the heading “Union, - #2, – Pensions” the two issues set out are: “Retirement at 59 with no penalty”, and “Guarantee of defined benefit plan”.

[60] Mr. Martel stated that the use of the word “Guarantee” in the Company’s Negotiation Documents “was my word”. He said that’s how he “viewed the Union’s proposal – [they] wanted the existing plan to continue”.

C. 2004 - 2010

[61] As a result of the parties 2003 – 2006 Collective Agreement employees were presented with an option of either transferring to a new Defined Contribution Plan or remaining in their existing Defined Benefit Plan. Al Cyr, a member of the Union’s bargaining team in 2003, attended all the Employer’s work sites in April and May 2003 and September to November 2003. He stated that in respect to the employee’s election, whether to stay in the Defined Benefit Plan or transfer to the Defined Contribution Plan, this was “the biggest issue raised by our members”; and that members were continually asking him what they should do? His reply was always the same, “I would not move over, I would stay with the Defined Benefit Plan”.

[62] On June 11, 2004 employees made their selection based on the following choices set out in the Pension Choice Form:

Option 1 – Transfer to the *new* Defined Contribution Pension Plan and Receive a Lump-Sum Conversion Transfer Value of my Defined Benefit Pension Plan Benefit.

I would like to join the new defined contribution pension plan.

I understand that I will receive a lump-sum conversion transfer value that represents the value of the defined benefit pension plan service I have earned up until the conversion date. This value will be transferred to the new defined contribution pension plan. All future pension benefits will come from the new defined contribution pension plan.

I understand that I will not receive any other benefits from the defined benefit pension plan.

...

Option 2 – Stay in the *current* Defined Benefit Pension Plan

I would like to continue to earn service in the current defined pension plan.

I understand that I will not have an opportunity in the future to participate in the new defined contribution pension plan.

(emphasis added)

[63] This Pension Choice Form was drafted by the Employer.

[64] Kelly-Ann Drabiuk, Director of Human Resources for the Employer, joined Finning (Canada) in 2005. Ms. Drabiuk stated that she was at the bargaining table with the Machinists in the 2006, 2009 and the 2011 rounds of collective bargaining.

[65] In the 2006 - 2009 Collective Agreement, Letter of Understanding #18 became Letter of Understanding #17. Ms. Drabiuk stated that this new LOU #17 “clarified” and “cleaned up” LOU #18. LOU #17 reads as follows:

Letter of Understanding #17

BETWEEN:

FINNING (CANADA), A DIVISION OF FINNING
INTERNATIONAL INC.

AND

INTERNATIONAL ASSOCIATION OF MACHINISTS
AND AEROSPACE WORKERS, VANCOUVER LODGE
NO. 692

Re: Pension Committee

1. The present Defined Benefit Pension plan shall continue to be available for existing employees/participants in the Defined Benefit Pension Plan.
2. The Company shall maintain a Defined Contribution Pension Plan, and all employees other than those in the Defined Benefit Plan shall participate in the Defined Contribution Plan. Contributions shall be made on behalf of employees at no less than five percent (5%) of earnings, full cost of such contributions shall be borne by the Company.
3. Employees may voluntarily contribute up to a maximum of six percent (6%) toward their Defined Contribution Pension Plan of which the employer will match at a rate of one-fourth (1/4) of the first four percent (4%) to a maximum of one percent (1%).
4. The company agrees to provide a copy of the plan text to pension plan members upon request.

[66] In the 2009 – 2011 Collective Agreement, Ms. Drabiuk stated that LOU #17 and LOU #1 were “merged”, resulting in the current LOU #1 in the 2011 – 2015 Collective Agreement:

Letter of Understanding #1

BETWEEN:

FINNING (CANADA), A DIVISION OF FINNING
INTERNATIONAL INC.

AND

INTERNATIONAL ASSOCIATION OF MACHINISTS
AND AEROSPACE WORKERS, VANCOUVER LODGE
NO. 692

Re: Defined Benefit Pension Plan

1. The present Defined Benefit Pension plan shall continue to be available for existing employees/participants in the Defined Benefit Pension Plan. The Company believes the Union and its members who belong to the Finning (Canada), A Division of Finning International Inc. Retirement Plan should be provided updated information on an annual basis.
2. The Company agrees that the Union can nominate from the membership two Finning employees who will become members of the Pension Committee. These members will be invited to attend the pension committee meetings to gather information and participate in the discussion and decisions with respect to investment performance.
3. The Company agrees to provide a copy of the plan text to pension plan members upon request.

[67] Ms. Drabiuk also stated that in the 2009 – 2011 Collective Agreement the Defined Contribution Plan was “codified”, meaning that it was incorporated into Article 35 of the Collective Agreement:

ARTICLE 35 – DEFINED CONTRIBUTION PLAN

35.01 The Company shall maintain a Defined Contribution Pension Plan, and all employees other than those in the Defined Benefit Plan shall participate in the Defined Contribution Plan. Contributions shall be made on behalf of employees at no less than five **and three quarter** percent (5.75%) of earnings, full cost of such contributions shall be borne by the Company.

(emphasis in original)

35.02 Employees may voluntarily contribute up to a maximum of six percent (6%) toward their Defined Contribution Pension Plan of which the employer will match

at a rate of one fourth (1/4) of the first four percent (4%) to a maximum of one percent (1%).

35.03 The Company agrees to provide a copy of the plan text to the pension plan members upon request.
(emphasis added)

D. 2011 Collective Bargaining

[68] Kelly-Ann Drabiuk was the Employer's Chief Negotiator in 2011. She made clear that she is an employee of Finning (Canada), not Finning (International). She is located in Finning (Canada's) head office in Edmonton Alberta. She reports to the Vice President of Human Resources. In preparation for bargaining in 2011 she canvassed all of Finning (Canada's) outlets, inquiring about any issues that may have arisen over the term of the previous Collective Agreement. She compiled a list of all proposed changes in the form of a "bargaining preparation worksheet". She stated that no issues arose in respect to the Defined Benefit Pension Plan.

[69] In October/November 2010 Ms. Drabiuk testified that the Finning (International) Board decided to seek changes to the Defined Benefit Plan. She had been "updated" in respect to these proposed changes. On January 25, 2011 Dave Parker, President of Finning (Canada), issued a letter to the members of the Defined Benefit Pension Plan, stating that as of January 1, 2016 these members would cease earning future service benefits under the Defined Benefit Pension Plan and would, as of January 1, 2016, "become a member of Finning's DC Plan". I reproduce the entire letter:

January 25, 2011

Dear Defined Benefit Pension Plan Member,

I am writing to share with you important changes to Finning's defined benefit (DB) pension plans that may affect you as a member of one these plans – either the Finning International Inc. Retirement Plan or the Defined Benefit Pension Plan for Alberta Employees of Finning International Inc.

These changes are the result of a comprehensive review undertaken to protect employees' earned retirement benefits and allow us to continue providing competitive retirement programs while addressing the sustainability of Finning's pension programs and our business as a whole. As a result of this review, it was concluded that we must make changes that continue our company's shift towards the more predictable structure of defined contribution (DC) plans and away from managing the volatility associated with our defined benefit pension plans.

It is important to note that these changes will not be effective until January 1, 2016, and we remain firmly committed to meeting our obligations for the benefits that DB plan members have already earned. For those employees retiring from Finning prior to January 1, 2016, the changes will have absolutely no effect on your company pension.

What this means to you

1. Effective January 1, 2016, you will become a member of a Finning DC plan and stop earning future service benefits under the DB plans.
2. With respect to benefits earned under the DB plans prior to January 1, 2016, there will be no changes to the way in which your DB pension entitlements are calculated. So, while your years of DB pension service will freeze at January 1, 2016:
 - a) your earnings in 2016 and beyond will continue to count in calculating your final average earnings (as calculated by reference to your best five calendar years of earnings in your last 10 years of employment); and
 - b) your years of service and age will continue to count in determining your retirement eligibility, your early retirement reductions, and the achievement of your unreduced retirement age.

Why these changes are necessary

As you may know, there is significant uncertainty and risk to Finning associated with the DB plans. This stems from a number of variable factors, such as the economic environment, stock and bond market performance, interest

rates, legislative requirements, and the plan demographics (i.e. how many people receive benefits from the plan and for how long). The resulting volatility poses a significant problem in managing our retirement program as the amount that we must contribute to the DB plans can vary considerably depending on factors over which we have limited or no control.

Over the past several years, we have taken a number of actions to address the DB plan's volatility while funding and securing the benefits that members have already built up. Importantly, Finning has been moving toward DC plans for existing employees as well as closing the DB plans to new hires. Approximately 90% of our employees now participate in a DC plan. As a member of a DC plan, you will receive an automatic company contribution of 5% of pay, a range of investment options from which you can select, and a partial company match if you choose to make additional contributions on your own.

As described in the December 2010 DB annual report and in light of the recent financial crisis which reduced the pension reserves, we have also significantly increased our contributions to fund the two DB plans. For example, from 2007 through 2009, Finning paid nearly \$40 million into the plans – the majority of which was to meet the funds' deficit – yet, the deficit that we are required to fund increased by over \$40 million in the same period. In addition, we have now doubled our required annual contribution to \$26 million (beginning in 2010) from \$13 million in 2009.

Despite having already taken these significant steps, our recent comprehensive review has led the company to the conclusion that the volatility and risk associated with the DB plans is still too great and necessitates further action.

Next steps

No action is required on the part of plan members at this time as the DB plan changes will have absolutely no effect on your pension until 2016. Effective January 1, 2016, all terms and conditions of your employment will remain as they were on December 31, 2015, except that you will participate in a Finning DC plan.

Although these changes are not effective until January 2016, we feel that it is important to communicate this transition now to provide you with significant lead time to plan for your retirement and learn more about the DC plan prior to becoming a member. Between now and January 1, 2016, we are committed to working closely with affected employees to ensure you understand how the Plan changes will affect your pension and how to plan for your retirement with the DC plan.

To assist you in making this transition, we will be conducting employee information sessions later this year to explain these changes further. In addition, more information will be provided along with your annual personalized pension statement of benefits. In 2015, prior to you becoming a DC plan member on January 1, 2016, we will hold additional sessions to assist you in understanding all aspects of the DC Plan, including how to enroll in the plan, manage your investment options, and plan for your retirement. Further information about these sessions will be provided at a later date.

In the meantime, please feel free to contact Giselle Evans, Pension and Benefits Manager, at 780-[xxx-xxxx] or email (xxxxxxx@finning.ca) with any questions that you have at this time.

Finning values our employees and we are committed to providing competitive compensation, including attractive retirement benefits. I believe these changes are essential to preserve that commitment and ensure Finning's retirement benefits continue to be an important component in attracting and retaining the best employees in our industry.

(emphasis added)

[70] Randi Topp, the Director of Compensation for Finning (International), stated that she, along with the Company's Actuary, as well as the Vice President Human Resources Finning (Canada), the Employer's lawyers, and the Communications Department, all reviewed Mr. Parker's letter before it was issued. This took place between November 2010 and January 2011.

[71] Five days earlier, on January 20, 2011, the Employer issued a confidential question and answer memo (Q&A) that provided Finning (Canada's) managers with information that would better enable them to answer questions from their employees. This memo made clear that 90% of Finning (Canada's) employees would not be affected by these changes; as well, approximately 90% of employees were already members of the Company's Defined Contribution Plan. The Employer's chart showed that out of the total of approximately 259 employees who were members of the Defined Benefit Plan, as of January 18, 2011, (there are approximately 3000 employees in North America) 172 were 50 years of age or older. The Q&A stated that although the years of Defined Benefit Pension service would "freeze" on January 1, 2016, a Defined Benefit members years of service and age would continue to count in determining retirement eligibility. It also noted that "Finning" had substantially increased its contributions to the Defined Benefit Plan in order to meet its funding obligations. It also addressed the issue of prior surpluses that had accumulated in the Plan.

[72] On the same day, January 25, 2011, as Mr. Parker's letter, the Union and the Employer met at one of its quarterly meetings. This is a regular meeting which is not concerned with specific grievances but rather with issues that are "broader in scope", as it was characterized by Mr. Pickthall. Randy Jahrig, Vice President of Human Resources, spoke to the Defined Benefit changes and referred to the above Q&A document.

[73] Mr. Pickthall replied to Mr. Parker's letter on February 1, 2011. His response was that "the employer doesn't have the right to unilaterally discontinue it [Defined Benefit Pension Plan]". Mr. Pickthall's letter reads as follows:

I am writing in response to your January 25th letter to all Defined Benefit Plan members.

It is the Union's view and position that the employer does not have the unilateral right to discontinue this Pension Plan. Our Collective Bargaining Agreement contains a Letter of Understanding (#1) respecting the Plan, which reads in part as follows: "The present Defined Benefit Pension Plan shall continue to be available for existing employees/participants in the Defined Pension Plan."

It is our position that this is a matter that is contemplated under our Collective Bargaining agreement, and as such maintaining it is a mandatory requirement of the bargain we have negotiated between us. Further, we would remind the Company that there are over 250 Finning hourly employees who are enrolled in the Defined Benefit Plan, and these employees have committed a significant part of their lives and their future retirement to the Finning plans that were in place when they joined the Company.

I also understand that the Company advised the Union at our recent Quarterly meeting that they intend to propose deletion of the Letter of Understanding at our upcoming round of negotiations. While we recognize the Company has the right to make whatever proposals they choose, this will be a significant matter of contention between the parties in these negotiations. We are scheduled to commence those negotiations in early March, and I am certain this will be a priority issue at the bargaining table.

We look forward to further discussions on this and many other topics.

(emphasis added)

[74] Collective bargaining commenced on March 9, 2011. The Employer introduced the following changes that it sought to Letter of Understanding #1, most of which were proposed deletions of the existing language:

~~LETTER OF UNDERSTANDING #1~~

~~Re: Defined Benefit Pension Plan Defined Contribution Employee Advisory Committee~~

- ~~1- The present Defined Benefit Pension Plan shall continue until December 31, 2015. Effective January 1, 2016, employees will become members of the Defined Contribution Pension Plan. to be available for existing employees/participants in the Defined Benefit Pension Plan. The Company believes the Union and its members who belong to Finning (Canada), A Division of Finning International Inc. Retirement Plan should be provided updated information on an annual basis.~~
- 1- The DC Employee Advisory Committee's main purpose is to facilitate communication between the Company and

the members of the DC Plan, and to promote understanding and awareness of the DC Plan among members.

The Company agrees that ~~the Union can nominate from the membership of this committee shall include two Finning employees who are participants of The Defined Contribution Plan for Hourly British Columbia and Yukon Employees. will become members of the Pension Committee. These members will be invited to attend the pension committee meetings to gather information and participate in the discussion and decisions with respect to investment performance.~~

- ~~2. The Company agrees to provide a copy of the plan text to pension plan members upon request.~~

(deletions in original)

[75] Ms. Drabiuk stated that the “mandate” given to her in respect to LOU #1 was to “make it clear what our position was; and to give the Union an opportunity to bargain something on the DC [Defined Contribution] side”. Ms. Drabiuk explained that the Employer’s “message” in bargaining was to be “consistent with the January letter” [Dave Parker’s letter of January 25, 2011]; that is, the Employer had the “unilateral ability to make the changes consistent with the Plan text”. Moreover, the Employer “didn’t need to negotiate that at the table”. She stated that this “position was consistent throughout bargaining” and that the Employer’s opening proposal, quoted above, was drafted to make Dave Parker’s letter more clear. She stated that “Finning (International) gave directions on this issue, not Finning (Canada)”.

[76] The Union’s counter-proposal on the opening day of negotiations, March 9, 2011, was that the current Defined Benefit Plan be maintained for existing employees. It read as follows:

LOU #1 Defined Benefit Plan

Defined Benefit Plan to be maintained and supported for existing employees on the plan.

[77] Mr. Pickthall testified that the Employer's stated position as to the reason why they had the right to make unilateral changes to the LOU #1 was because the "Plan text allowed us to do it". The Union disagreed.

[78] On April 19, 2011, Mr. Pickthall's bargaining notes record that he stated to the Employer "the Company has an obligation to bargain this [Defined Benefit Plan] out of the CBA [Collective Bargaining Agreement]".

[79] At the May 4, 2011 bargaining meeting, the Employer's bargaining notes record Ms. Drabiuk asking Mr. Pickthall how the parties would "move forward" on the issue of pensions. Mr. Pickthall replied that the Employer did not "have the right to just remove it". Further, he was not "naïve", the Employer had given "notice", and after a two or three year collective agreement it would be able to take "another kick at the can". The Union's bargaining notes also record the Employer stating that if it withdraws its Defined Benefit proposal, it still has "the right to maintain our position and wind up the Plan". However, Mr. Pickthall replies "no, you come to the table to get rid of LOU #1 on the D.B. Plan. You know that if the LOU is gone then you have free hand to close the Plan down". In his testimony, Mr. Pickthall stated once again that the Union wanted to "keep it [Defined Benefit Plan] intact for the current collective agreement", and that the Employer, "could come back the next round of bargaining and try again".

[80] Ms. Drabiuk raised the issue of a referral to adjudication to settle the matter, noting that all bargaining discussions would form part of the evidentiary record in such a hearing.

[81] Ms. Drabiuk testified that the parties had "no discussions over the interpretation of the LOU #1"; that they were "a long way apart" and "entrenched in our positions". At the May 24, 2011 bargaining meeting the Union's notes record Mr. Pickthall stating that the Defined Benefit Plan was a "huge issue" for employees and he insisted that the Defined Benefit Plan had to be "preserved". He explained that the continuation of the Defined Benefit Pension Plan was a "deal breaker", stating that, "we cannot get a deal if DB [Defined Benefit Plan] is not left in place for those 250 employees".

[82] However, by June, 2011, the issue was no longer discussed at the bargaining table. Ms. Drabiuk stated that the Employer “did not formally withdraw” its proposal in respect to LOU #; it was by this time simply “not part of any documents moving forward”. She stated the Employer communicated its position that “we didn’t need the language; it was not necessary”. Mr. Pickthall stated that the Employer “abandoned” its proposal, although he acknowledged that the Employer’s position was that, “if we withdraw we still have the right to do it”.

[83] In cross-examination, Mr. Pickthall agreed that the company made clear that its mandate was in accordance with Dave Parker’s letter of January 25, 2011. He also agreed that the Employer position in bringing the LOU #1 to the bargaining table was to offer the Union the opportunity to improve the Defined Contribution Plan “if the Union would let go of the Defined Benefit Plan”.

[84] Finally, Ms. Drabiuk acknowledged that Finning (Canada) did not seek permission of Finning (International) each time the 2003 agreement in respect to the continuation of the Defined Benefit Plan was renewed in the 2006 – 2009 Collective Agreement, 2009 – 2011 Collective Agreement or the 2011 - 2015 Collective Agreement.

[85] On December 2, 2011, the Union filed a policy grievance “that the Company does not have the right to unilaterally remove this benefit [Defined Benefit Plan]”. The entire policy grievance reads as follows:

Re: Policy Grievance – Defined Benefit Pension Plan

With respect to the above matter, Finning has notified the Union of its intent to discontinue earning of future service benefits for employees in the Defined Benefit Pension Plan. This pension benefit is provided in the Collective Agreement – Letter of Understanding #1.

It is our position that the Company’s proposed change is a violation of the express terms of the Collective Agreement, which states, in part: “The present Defined Benefit Pension Plan shall continue to be available for existing employees/ participants in the Defined Benefit Pension Plan.”

It is our view that the Company does not have the right to unilaterally remove this benefit. Should the Company proceed with their efforts to discontinue the Pension Plan, *this letter shall constitute the Union's Policy Grievance of this matter.* We claim this is a violation of Letter of Understanding #1 and any other terms of the Collective Agreement. The remedy we seek is that the Company agree to maintain accrual of future service benefits in the Defined Benefit Pension Plan for all Union members enrolled in the Plan.

We urge the Company to abandon its efforts to eliminate this Pension Plan, and we remain available to discuss this matter at your earliest convenience.

[86] Ms. Drabiuk replied on December 21, 2011. She once again asserted the Employer's unilateral right to amend the Defined Benefit Pension Plan. That letter reads, in part, as follows:

Re: Defined Benefit Pension Plan Grievance

This letter is in response to the grievance filed by IAM 692 with respect to Finning (Canada)'s decision to discontinue the Defined Benefit Pension Plan as of December 2015.

As originally communicated in January 2011 and continually stressed during 2011 Negotiations, the company intends to convert all members of the Defined Benefit (DB) plan into the Finning Defined Contribution plan and members will stop earning future service benefits under the DB plans. These changes will not be effective until January 1, 2016.

The company maintains that the pension plan is incorporated by reference into the collective agreement by way Letter of Understanding #1. The Plan by its express terms reserves to the Company as the Administrator a unilateral power to amend or terminate the Plan in whole or in part.

...

[87] The Board of Directors of Finning (International) passed the following resolution on November 10, 2010:

FINNING INTERNATIONAL INC.

CERTIFIED COPY
OF
RESOLUTIONS OF THE BOARD OF DIRECTORS

I, J. Gail Sexsmith, Corporate Secretary of Finning International Inc. (the "Corporation"), hereby certify that the following is a true and correct copy of resolutions of the Board of Directors of the Corporation passed on November 10, 2010; that the resolutions were duly and validly passed at a properly constituted meeting of the Board of Directors of the Corporation; and that the resolutions have not been modified or rescinded as of the date hereof.

WHEREAS:

- A. the Corporation sponsors the Finning International Inc. Retirement Plan (the "BC Plan"), currently comprised of Part 1 and Part 2, whereby Part 1 contains the defined benefit provisions for eligible non-executive members (the "Non-Executive DB Provisions") and Part 2 contains the defined benefit provisions for eligible executive employees (the "Executive DB Provisions") and the Defined Benefit Pension Plan for Alberta Employees of Finning International Inc. (the "Alberta Plan"); and
- B. the Corporation wishes to amend the BC Plan and the Alberta Plan to cease future defined benefit ("DB") accruals effective December 31, 2015; and
- C. the Corporation wishes to suspend membership of remaining members accruing benefits under the aforementioned plans as of December 31, 2015 and have such suspended members join the applicable Finning defined contribution ("DC") plan(s) as of January 1, 2016; and
- D. pursuant to Section 13.03 (Amendment or Termination of the Plan) of each Part of the BC Plan, and section 13.03 (Amendment or Termination of the Plan) of the Alberta Plan, the Corporation may amend these plans; and

- E. the HR Committee and Pension Committee of the Board have recommended that the approval of these changes in respect of the Alberta Plan and the Non-Executive DB Provisions of the BC Plan be granted by the Board; and
- F. the HR Committee of the Board has recommended that the approval of these changes in respect of the Executive DB Provisions of the BC Plan be granted by the Board;

ON MOTION DULY MADE AND SECONDED, it was resolved that:

1. The Board hereby approves: (a) the cessation of future DB accruals effective December 31, 2015 under the BC Plan and under the Alberta Plan; (b) the suspension of membership of remaining members accruing benefits under the aforementioned plans as of December 31, 2015; and (c) the entry of those suspended members into the applicable Finning DC plan(s) as of January 1, 2016.
2. The President & CEO or his designated representative(s) are hereby authorized and directed to do all such other acts and things as may be necessary to give effect to the above resolution, including, but not limited to, finalizing the detailed amendments and filing them with the appropriate regulatory authorities.

Dated the 14th day of June, 2012.

(emphasis added)

E. Finning International Inc. Retirement Plan

[88] The Employer's final witness was Ms. Randi Topp. Ms. Topp is a Pension Actuary and Compensation expert. She is a Fellow of both the Society of Actuaries (FSA) and a Fellow of the Canadian Institute of Actuaries (FCIA). She has been employed by Finning (International) since 2007. She is currently the Director of Total Compensation which includes all pension matters. Her office is located at the Finning (International) Head Office in Vancouver, British Columbia.

[89] Ms. Topp introduced the Finning International Inc. Retirement Plan dated November 1, 2000, that was in effect at the time the 2003 – 2006 Collective Agreement was negotiated and concluded. Article 2.03 lists Finning International Inc. as the Administrator of the Retirement Plan. Article 12.01 states that the Administrator has the ability to determine all questions in respect to eligibility and other matters under the Plan. Ms. Topp stated that the Plan at this time had only a “Defined Benefit component”. Article 13.01 states that the Plan was “voluntarily undertaken by the Company”. The key provision, Article 13.03(a), Amendment or Termination of Plan, states that the Administrator reserves the right at any time to “revise or terminate the Plan in whole or in part”:

13.03 Amendment or Termination of the Plan

(a) Right to Amend or Terminate

The Administrator reserves the right at any time to revise or terminate the Plan in whole or in part. No such amendment or termination shall permit any of the monies in the Pension Fund to revert to the Company until adequate provision has been made for all accrued obligations under the Plan. If, upon amendment or termination of the Plan, monies are available in the Pension Fund after all obligations under the Plan have been adequately provided for, the Board of Directors may direct that such excess monies be returned to the Company or, alternatively, that all or a portion of such excess monies be first applied to provide further benefits to some or all of those who were covered by the Plan prior to its amendment or termination, provided that such improved benefits shall not be paid until the approval of Canada Customs and Revenue Agency has been obtained with respect to both the amounts and the method of payment of such improved benefits.

(emphasis added)

[90] Ms. Topp testified that this “Plan relates to both Union and management employees, it doesn’t make sense for it to be controlled outside of Finning”. Although she stated that she is “not familiar with the collective agreement”, she had read Letter of Understanding #1 and it was her view that Finning (International) “rights” under Article 13.03(a) of the Plan were “not impacted”. She estimated that approximately 150 – 170 employees who are

members of the Defined Benefit Plan will be affected by the January 1, 2016 resolution. She said that the effect of Finning's resolution is to convert all members of the Defined Benefit Plan to the Defined Contribution Plan as of January 1, 2016. The result is that after January 1, 2016 the Defined Benefit Member Service will be "frozen", and that all further "service earned", would be under the Defined Contribution Plan.

[91] Finally, she stated that this did not amount to a "forced conversion", which she stated "had happened a lot in the past". This was because under pension or actuarial terms a forced conversion only took place in cases where a member's past Defined Benefit contributions were converted into the Defined Contribution Plan; that the Employer was "not converting past service or changing old benefits into something new". Thus, she stated the Employer's prior commitment not to implement a "forced conversion" had been complied with.

III. Analysis and Decision

[92] This dispute involves the interpretation of Letter of Understanding #1 (page 63) in the parties' current Collective Agreement (April 13, 2011 – April 14, 2015). It is the first sentence in paragraph 1 of Letter of Understanding #1 (LOU #1), under the heading RE: DEFINED PENSION BENEFITS PLAN that is at issue. That first sentence reads as follows:

Re: Defined Benefit Pension Plan

1. The present Defined Benefit Pension plan shall continue to be available for existing employees/participants in the Defined Benefit Pension Plan.

[93] The Union argues that the parties have agreed under LOU #1 that the Defined Benefit Plan "shall continue" for all existing members of the Plan, and as a result, the Employer does not have the unilateral right to discontinue that Plan.

[94] The Employer replies that under the Finning International Inc. Retirement Plan, Finning (International) is the sole Administrator of the Plan, (Article 12.01). Therefore,

Finning (Canada), the Employer under the Collective Agreement, has no authority over the Retirement Plan. Further, the Retirement Plan falls outside the scope of the Collective Agreement. Thus, only the Administrator of the Plan, Finning (International), has the authority to amend or terminate the Plan under Article 13.03(a). The first sentence of Article 13.03(a) of the Retirement Plan reads as follows:

13.04 Amendment or Termination of the Plan

(a) Right to Amend or Terminate

The Administrator reserves the right at any time to revise or terminate the Plan in whole or in part.

[95] The Employer argues that “LOU #1 does not fetter the power of Finning International to amend the Retirement Plan in whole or in part” (paragraph 36, Employer’s written argument, July 19, 2013).

[96] The issue to be addressed, therefore, is: does Finning (Canada), the Employer under the Collective Agreement, have the right to unilaterally discontinue the Defined Benefit Plan set out in the Collective Agreement (LOU #1)?

[97] The current language in LOU #1 was negotiated in the 2003 round of collective bargaining and incorporated into the 2003 – 2006 Collective Agreement. The context in which the language was negotiated was that the Employer strongly supported a Direct Contribution Pension Plan and the Union steadfastly supported the existing Defined Benefit Pension Plan. In support of their positions both parties adduced negotiation evidence; each party had kept comprehensive bargaining notes for the 2003 and 2011 rounds of collective bargaining.

[98] I will first review the law and policy in respect to the general principles that apply to the interpretation of collective agreements. I will then address Letter of Understanding #1. Second, I will review the specific rule applicable to the role of extrinsic evidence in the interpretation of collective agreements followed by an examination of the negotiation evidence adduced in this matter.

A. Rules of Interpretation/Letter of Understanding #1

[99] The general principles of collective agreement interpretation applicable to this dispute are those aptly summarized by Arbitrator Bird in *Pacific Press Graphic Communications International Union, Local 25*, [1995], B.C.C.A.A.A. No. 637:

The first major issue I address is one of interpretation. I reaffirm my adherence to the rules of interpretation which I set out in *White Spot*. I summarize as follows:

1. The object of interpretation is to discover the mutual intention of the parties.
2. The primary resource for an interpretation is the collective agreement.
3. Extrinsic evidence (evidence outside the official record of agreement, being the written collective agreement itself) is only helpful when it reveals the mutual intention.
4. Extrinsic evidence may clarify but not contradict a collective agreement.
5. A very important promise is likely to be clearly and unequivocally expressed.
6. In construing two provisions a harmonious interpretation is preferred rather than one which places them in conflict.
7. All clauses and words in a collective agreement should be given meaning, if possible.
8. Where an agreement uses different words one presumes that the parties intended different meanings.
9. Ordinarily words in a collective agreement should be given their plain meaning.
10. Parties are presumed to know about relevant jurisprudence.

(para. 27)

[100] The first rule is the most important; that is, the task of an arbitrator is to discover the mutual intention of the parties. This is true whether it involves the examination of the terms used in the collective agreement, or an examination of the extrinsic evidence adduced – negotiation evidence and/or past practice. As stated by Arbitrator Bird in *Pacific Press, supra* the “primary resource” for the interpretation of a collective agreement, is, of course, the collective agreement itself.

B. Letter of Understanding #1

[101] The current Letter of Understanding #1, in full, reads as follows:

LETTER OF UNDERSTANDING #1

BETWEEN

FINNING (CANADA), A DIVISION OF FINNING
INTERNATIONAL INC.

AND

INTERNATIONAL ASSOCIATION OF MACHINISTS
AND AEROSPACE WORKERS, VANCOUVER LODGE
NO. 692

Re: Defined Benefit Pension Plan

1. The present Defined Benefit Pension Plan shall continue to be available for existing employees/participants in the Defined Benefit Pension Plan. The Company believes the Union and its members who belong to the Finning (Canada), a Division of Finning International Inc. Retirement Plan should be provided updated information on an annual basis.
2. The Company agrees that the Union can nominate from the membership two finning employees who will become members of the Pension Committee. These members will be invited to attend the pension committee meetings to gather information and participate in the discussion and decisions with respect to investment performance.
3. The Company agrees to provide a copy of the plan text to pension plan members upon request.

(emphasis added)

[102] LOU #1 as a whole, represents an amalgam of the prior LOU #1, LOU #18 and LOU #17. It incorporates language that was developed prior to 2003 negotiations, for example, the participation of employees on a local pension committee. However, what is specifically at issue is the first sentence of paragraph 1, which has been underlined for emphasis in the above quote. The objective in examining the actual terms of the Collective

Agreement, LOU #1, is to “discover the mutual intention of the parties” (*Pacific Press, supra*).

[103] I conclude that the words specifically chosen by the parties in respect to the present Defined Benefit Pension Plan, “shall continue to be available”, on a plain and literal meaning, amount to a binding commitment by the Employer that the existing members of the Defined Benefit Pension Plan are entitled to remain in that Plan during the term of the current Collective Agreement. Therefore, as with any other contract, neither party, in principle, can unilaterally change that contractual commitment.

[104] Does the negotiation evidence adduced create any ambiguity in respect to the plain and literal meaning of LOU #1, or is it consistent with this conclusion (*Nanaimo Times Ltd.*, [1996] B.C.L.R.B. NO. 40). I will break the evidence down, as did the parties, into the following categories: the 2003 collective bargaining; the 2004 – 2010 collective bargaining; and the 2011 collective bargaining.

C. Extrinsic Evidence

[105] Although parties may argue that the collective agreement provisions in dispute are clear and unambiguous on their face it is not uncommon for them to adduce negotiation evidence. The primary purpose of extrinsic evidence is that the parties may reveal an understanding of their mutual intentions through their words and/or conduct, either through the negotiation of, or in the administration of, the provisions of the agreement that are in dispute.

[106] Negotiation evidence inherently raises the issue of both the characteristics of collective bargaining and the nature of collective agreements. The interpretation of collective agreements, and the use of extrinsic evidence, was best captured in Canadian labour law by Chair Paul Weiler in *UBC and CUPE, Local 116*, [1977] 1 C.L.R.B.R. 13. Weiler reviews the common law approach to the interpretation of contracts, in particular the parole evidence rule. He concludes that arbitrators under the British Columbia *Labour*

Relations Code, R.S.B.C. 1996 c. 244 are no longer bound by the common law rules of interpretation. Under their statutory role, specifically Section 82(2), an arbitrator must have regard to the “real substance of the matters in dispute”, and are not bound by “strict legal interpretations of the issues in dispute”:

82(2) An arbitration board, to further the purpose expressed in subsection (1), must have regard to the real substance of the matters in dispute and the respective merit of the positions of the parties to it under the terms of the collective agreement, and must apply principles consistent with the industrial relations policy of this Code, and is not bound by a strict legal interpretation of the issue in dispute.

(emphasis added)

[107] Second, Weiler addresses the “special features” of collective bargaining and collective agreements:

In British Columbia labour law, arbitrators are no longer strictly bound by this common law approach, an approach which would keep out all evidence of negotiation history because of a well-founded distrust of such evidence upon occasion. In our view, whatever might be the merits of such a doctrine for commercial contracts – in which a battery of corporate lawyers may take months to fashion carefully-honed language to deal with just one business transaction – it simply makes no sense for the world of industrial relations. There are at least three reasons for that judgment. The first is the inevitable imprecision of the language of collective agreements. In the *Simon Fraser University* decision, the Board adverted to some of the special features of collective bargaining which must in turn shape the legal approach to interpretation of its product [at p. 59]:

What are these special features? Collective agreements deal with the entire range of employment terms and working conditions often in large, diverse bargaining units. The agreement lays down standards which will govern that industrial establishment for lengthy periods – one, two, even three years. The negotiators are often under heavy pressure to reach agreement at the eleventh hour to avoid a work stoppage, and their focus of attention is primarily on the economic content of the

proposed settlement, not the precise contract language in which it will be expressed. Finally, the collective agreement, though the product of negotiations over many years, must remain a relatively concise and intelligible document to the members of the bargaining unit and the lower echelon of management whose actions are governed by it.

Any agreement which is the end product of such a bargaining process must be approached by arbitrators with a very different set of mind than a judge construing a corporate indenture developed by batteries of lawyers for two large corporations. In particular, arbitrators have to appreciate the inability of written language to speak precisely to each of the innumerable real-life disputes which might arise in the lengthy life of clauses in a collective agreement.

(page 16)
(emphasis added)

[108] Weiler then describes the nature of negotiation evidence and summarizes the distinctiveness of collective bargaining and collective agreements:

Finally, collective bargaining is a process which tends to produce a considerable body of evidence – much of it written – about the actual understandings of the parties. Earlier collective agreements and their administration form the background for negotiations; committees from each side may keep extensive notes of developments; a written memorandum of agreement sums up the items in the settlement; the negotiators often prepare explanations of the major contract changes for their principals (especially the union membership) who must ratify the settlement. Only at the end of these several stages, and occasionally not until long after the agreement has been put into effect, may the precise wording of the new clauses be drafted and incorporated into the formal contract. Properly analyzed, this body of materials is often quite illuminating of the parties' actual understanding of a provision whose meaning is murky on the face of its language.

For these reasons – the inherent vagueness of contract language, the need in industrial relations to remain faithful to the real-life expectations of the parties, and the availability of

useful material in the bargaining process – labour law has gradually moved away from the strict rule of exclusion.

(pages 16 – 17)
(emphasis added)

[109] Finally, Weiler summarizes the purpose of extrinsic evidence under the *Labour Relations Code*:

But quite a different appraisal should be made of extrinsic evidence which is presented to persuade the arbitrator of the proper interpretation of the written contract. Section 92(3) [now 82(2)] of the Code directs the arbitrator to have regard to the “real substance” of the issues and the “respective merit ... under the terms of the collective agreement”. The parties do not draft their formal contract as a purely literary exercise. They use this instrument to express the real-life bargain arrived at in their negotiations. When a dispute arises later on, an arbitrator will reach the true substantive merits of the parties’ position under the agreement only if his interpretation is in accord with their expectations when they reached that agreement. Accordingly, in any case in which there is a bona fide doubt about the proper meaning of the language in the agreement – and the experience of arbitrators is that such cases are quite common – arbitrators must have available to them a broad range of evidence about the meaning which was mutually intended by the negotiators. In our judgment, it is not consistent with s. 92 of the Code for arbitrators to be prevented by artificial legal blinkers from looking at material which in real-life is clearly relevant to an accurate reading of disputed contract language.

(pages 17 – 18)
(emphasis added)

[110] The use of extrinsic evidence is expressly contemplated in the interpretive principles as set out by Arbitrator Bird in *Pacific Press, supra* (See also Brown and Beatty, *Canadian Labour Arbitration*, Fourth edition, 3:4400, Extrinsic Evidence).

D. Negotiation Evidence: 2003

[111] There are two issues that arise from the 2003 negotiation evidence: first, does the negotiation evidence reveal a mutual intention that is consistent with the plain and literal meaning of the language; and second, who has the actual authority to amend the Retirement Plan.

a) Evidence of Mutual Intention

[112] I will summarize the most important aspects of the negotiation evidence that deal specifically with “mutual intention”.

[113] The Union’s opening proposal on February 6, 2003 sought to increase pension benefits such as early retirement, buying back years of service and applying overtime hours to the calculation of pension credits. Mr. Pickthall stated that pensions were a “significant issue” for the Union. The Union was unhappy with the local Pension Committee which had voice, but no vote. The Union in 2003 had concluded that the only way to obtain increased pension benefits was at the bargaining table.

[114] The Employer’s opening proposal did not include any pension matters. However, as a result of the opening proposal of the Union, and the events in the United Kingdom, Mr. Martel, at the March 27, 2003 bargaining meeting, declared the Employer’s interest in the development of a Defined Contribution Pension Plan in preference to the existing Defined Benefit Pension Plan. On May 7, 2003, the Employer provided the Union with the Finning International Pension Policy Document, dated November 20, 2002, that stated Finning International’s “preference” for Defined Contribution Pension Plans.

[115] Also at the May 7, 2003 bargaining meeting, Mr. Martel recalls stating to the Union that the Employer was prepared to “keep existing employees in the Defined Benefit Pension Plan” and “new employees in the Defined Contribution Plan”. He further stated to the Union, “we told them at the bargaining table that we can make any changes”. I take this statement by Mr. Martel to mean that the Employer could make “any changes” that related

to either keeping the existing employees in the Defined Benefit Plan or the Employer's interest in having all new employees enrolled in their prospective Defined Contribution Plan.

[116] Two days later, on May 9, 2003, Finning (Canada) made a final offer. Its proposal in respect to pensions was simply to provide employees with a copy of the pension plan text. However, in addition to the Employer's verbal assurances to "keep" existing employees in the Defined Benefits Pension Plan, Mr. Martel stated that the Employer was now "prepared to put in writing that the current Defined Benefit members could stay in the Defined Benefit Plan" and the "new employees would be placed in the Defined Contribution Plan" and that the "Defined Benefit members could convert to the Defined Contribution Plan".

[117] The Employer's final offer failed to find agreement. The Union stated that it would take a strike vote, which it did, and the employees voted 95% in favour of a strike. On May 12, 2003, Kevin Wenger, Vice President of Human Resources, drafted a letter, forwarded it to Mr. Martel, who in turn forwarded it to Mr. Pickthall, setting out the Employer's "commitment" that "Employees in BC DB Plan will be allowed to stay in the BC DB Plan...".

[118] Once again, on May 28, 2003, Mr. Martel stated that "with respect to existing people, the defined benefit plan will be maintained".

[119] On May 29, 2003, Mr. Wenger sent the letter that he had earlier drafted on May 12, 2003, reiterating in bold letters that "**Employees in the BC DB Plan will be allowed to stay in the BC DB Plan**".

[120] Mr. Pickthall stated that the Union was relying on the Employer's "commitment"; however, a "letter of assurance" was insufficient; the Union "needed something in the collective agreement to settle the matter". The Union's proposal on the following day, May 30, 2003, stated the following:

"No change to defined benefit plan for existing employees/participants of the pension plan – this must be put in writing as part of the memorandum of agreement".

[121] The Union's bargaining notes on May 30, 2003 record Mr. Martel stating that there would be "no change to the DB Plan. Should be no reduction to benefit levels". Mr. Pickthall recalls Mr. Martel stating that "he [Martel] had a mandate from Finning" and that "he had the legal ability to change the pension plan; he certainly said that".

[122] On June 11, 2003 the Employer made a "second" final offer. Its pension proposal was to provide employees with an "Early Exit Program", which, Mr. Martel characterized, as a proposal to "buy out people who wanted to leave early". Once again the Union rejected this final offer. The Union served strike notice the same day (June 11, 2003). The parties continued to bargain all that day. At 11:45 p.m. the Union proposed a Letter of Understanding, which at point 2, read in part as follows:

The present Defined Benefit Plan shall continue to be available for existing employees/participants in the Pension Plan.

[123] At 12:30 a.m., June 12, 2003, the parties reached an "agreement in principle". The Letter of Understanding concluded by the parties in respect to pensions proposed at point 2 that:

The present Defined Benefit Plan shall continue to be available for existing employees/participants in the Pension Plan.

[124] It is precisely the same language proposed by the Union. Mr. Martel recalls talking about this language but not about its meaning.

[125] On December 3, 2003, Finning (Canada) sent out to its employees a Pension Update Bulletin. It stated that the Pension Committee of Finning International accepted the recommendations, set out in LOU #1. This included not only early retirement but also the promise that employees who were in the BC Defined Pension Plan had the option of "remaining in the Defined Benefit Pension Plan".

[126] Two days later on December 5, 2003, LOU #18, (pages 103 – 104) of the 2003 – 2006 Collective Agreement, was signed by the parties.

[127] On June 11, 2004, each employee elected to either transfer to the new Direct Contribution Pension Plan or to remain in the Defined Benefit Plan. It is instructive to set out the choice that was put to employees:

Option 1 – Transfer to the *new* Defined Contribution Pension Plan and Receive a Lump-Sum Conversion Transfer Value of my Defined Benefit Pension Plan Benefit.

...

Option 2 – Stay in the *current* Defined Benefit Pension Plan

I would like to continue to earn service in the current defined pension plan.

I understand that I will not have an opportunity in the future to participate in the new defined contribution pension plan.

(emphasis added)

[128] This pension choice form was drafted by the Employer.

[129] Therefore, in summary, the Employer began first with verbal assurances that it would maintain the Defined Benefit Plan for existing employees; for example, on May 7, 2003, Mr. Martel stated that the Employer would “keep existing employees in the Defined Benefit Pension Plan”. This was also to be accompanied by a joint committee which the Union no longer considered a viable option. The Union had concluded that it could only make pension improvements at the bargaining table.

[130] From verbal assurances, the Employer, on May 9, 2003, stated that it was now prepared to put such a verbal commitment into writing. It was on this same day, May 9, 2003, that the Employer’s final offer was rejected. First, in a draft memo (May 12), and then in a letter, May 29, 2003, Vice President of Human Resources, Kevin Wenger, gave the Union a written commitment that employees “would be allowed to stay in the BC DB Plan”.

[131] The third stage, which was the ultimate goal of the Union, was to see such a commitment incorporated into the Collective Agreement. The Union, on May 30, 2003, put forward the proposed language that the present Defined Benefit Plan “shall continue to be available” for existing employees; that language was ultimately accepted by the Employer in the final hour of negotiations on June 11 and 12, 2003.

[132] It is interesting to note that the Employer’s own negotiations document entitled, “BC Negotiations – 2003 Finning” described one of the outstanding pension issues as the Union seeking a “Guarantee of the Defined Benefit Plan”. Mr. Martel stated these were his own words; it was how he “viewed” the Union’s proposal – “they wanted the existing plan to continue”.

[133] A promise that began with verbal assurances, and then proceeded to written assurances, and then was followed finally by a Letter of Understanding incorporated into the Collective Agreement, remained the same throughout; that the existing Defined Benefit Plan would continue to be available to the existing members of that Plan during the term of the Collective Agreement. The negotiation evidence clearly reveals that this was the *mutual intention* of the parties.

[134] Thus, the negotiation evidence in 2003 does not create any ambiguity; rather, it is consistent with the plain and literal meaning of the words as set out in LOU #1. I conclude, therefore, that the mutual intention of the parties in respect to LOU #1 was to ensure that the existing members of the Defined Benefit Plan would have the right to continue to participate in that Plan during the life of the collective agreement.

[135] At one point in its written argument of July 19, 2013, paragraph 140, the Employer is prepared to admit that the pension plan “...will continue to be available during the term of the Collective Agreement”. However, this is qualified by its primary position that “The Collective Agreement, properly interpreted, does not promise that the Retirement Plan will not be amended during the term of the agreement.”

b) Right of Approval and Actual Approval

[136] The Employer says that it, Finning (Canada), has no ability to negotiate changes to the Finning International Retirement Plan. It says that this was well known to the Union, not only at the bargaining table in 2003, but for many years prior to that.

[137] Historically the Employer is correct. The Union has understood that for many years the Retirement Plan resides outside the collective agreement. In 1991 one of its bargaining goals was to “Get pension plan in contract” (September 11, 1991, page 8, Union Bargaining Proposal). As well, a Union Business Agent, B.W. Brown, wrote to bargaining unit shop steward that they should be aware “... the Pension Plan is outside the union contract...” (letter, April 18, 1997). For many years there had been a local pension committee that was entitled to investment information; it had voice, but no vote. By 2003 the Union no longer found this acceptable and sought to bargain pension improvements into the collective agreement.

[138] In collective bargaining 2003, the Employer on May 7, 2003, sent the Union a “Pension Policy Document, dated November 20, 2002, that included at page 12, the “Approval process” for changes to the Finning International Retirement Plan. It states that all changes to the existing pension plan, or any new pension arrangements, requires “...the prior approval of Finning International Inc. Pension Committee (FII Pension Committee)”. On May 7, 2003, the Union bargaining notes state that Finning (International) was “slow” in getting its “mandate” to Mr. Martel. The same day the Union issued a Bargaining Bulletin which stated:

1. Pension – Union demands for improved pension benefits and reduced retirement age have not been met. Further, the Company has advised that the Finning International Inc. Pension committee is reviewing the current pension plan and are looking at converting from a defined benefit plan (current) to a defined contribution plan (proposed) that is essentially similar to an RRSP-based plan.

Under this discussion, the Company advised that a similar process was undertaken in the UK, and existing employees were provided an opportunity to remain under the current plan, with an incentive provided to switch over to the new plan type. Finning's proposal on pension is that we strike a committee to consult and make recommendations to the Finning Pension committee. However, under their proposal, Finning is not obligated to implement any of the changes put forward by the consultation process. We told them this will not fly.

(emphasis added)

[139] Mr. Martel stated this was an accurate summary of the statements made at the May 9, 2003 bargaining table.

[140] Moreover, on May 12, 2003, Kevin Wenger, reviewed with the Union a draft memo which stated that Finning (International) was conducting a review of the pension plans. That opening paragraph reads as follows:

As required by the Board of Directors of Finning International, Finning (Canada) will be reviewing its pension plans to assess the competitiveness of these plans vs. the market. These reviews will involve both the British Columbia Defined Benefit (BC DB) Plan and the Alberta Defined Contribution (AB DC) Plan. A presentation of the findings will be made to the Pension Committee of the Board of Directors at the October 2003 Board meeting.

...

These reviews will certainly challenge us to look at the fundamental structure of our plans; that is, should they be Defined Contribution or Defined Benefit? As we answer this question our commitment to you is:

1. We will maintain your existing pension benefits. (*need to time constrain this commitment?*)
2. Employees in BC DB Plan will be allowed to stay in the BC DB Plan (in accordance with current rules regarding transfers to Alberta branches).

3. If we create a Defined Contribution plan for new employees in BC, existing BC employees will have the option to transition to a new Defined Contribution Plan.

(emphasis added)

[141] That specific paragraph was repeated in the actual letter issued by Mr. Wenger on May 29, 2003. Although the Union stated it was never fully aware of the actual process undertaken by Finning (Canada) and Finning (International's) Pension Committee, I conclude that the Union had knowledge that the pension plan lay outside the collective agreement, and that any changes to the pension plan required the approval of Finning (International).

[142] On June 11 and 12, 2003, the parties reached a Memorandum of Agreement in respect to pensions. The first two paragraphs, which were incorporated into LOU #18 in the 2003 – 2006 Collective Agreement, read as follows:

Re: Pension Committee

1. Finning (Canada) Ltd. And the Union shall recommend to the Finning International Pension Committee a pension enhancement reducing the normal retirement age to at least fifty-nine (59). Under this pension enhancement there shall be no change to the pension formula, and employees shall not suffer any penalty for retirement at age 59 or older.
2. The present Defined Benefit plan shall continue to be available for existing employees/ participants in the Pension Plan. Any employees not presently enrolled in the Defined Benefit plan shall have opportunity to apply until such time as a Defined Contribution plan is implemented.

[143] Both parties agreed that with respect to paragraph 1, as is expressly stated, both Finning (Canada) and the Union would be recommending to the Finning International

Pension Committee an early retirement benefit. However, the words, Finning International Pension Committee are not expressly set out in paragraph 2 above. Mr. Martel stated that paragraph 2 also required the approval of the Finning International Pension Committee; however, Mr. Pickthall stated that the Finning's International Pension Committee approval was not required to implement paragraph 2. For the purpose of analysis I will proceed on the basis that Mr. Martel is correct; that is, that Finning International Pension Committee approval was required to bind the Employer, Finning (Canada), to a promise to continue the existing Defined Benefit Pension Plan during the life of the collective agreement.

[144] Several weeks prior to the agreement in principle, June 11, 2003, Mr. Wenger had stated in his letter of May 29, 2003, that the Board of Directors of Finning International Pension Committee would be reviewing the British Columbia Defined Benefit Plan and that all recommendations would be presented to the Board of Directors at its October 2003 Board meeting.

[145] On December 3, 2003, Mr. Wenger issued a Finning (Canada) Pension Plan update, stating that pension plan changes had been approved on October 28, 2003 at the Finning International Board of Directors Pension Committee. These approved changes included a new Defined Contribution Pension Plan and the ability of members of the Defined Pension Benefit Plan to remain in that plan:

iii. Develop a plan to assist Finning (Canada) employees presently in the BC defined benefit pension plan in assessing their options of converting to the defined contribution pension plan or remaining in the defined benefit pension plan.

(emphasis added)

[146] The evidence, therefore, leads to the following two conclusions: first, that the Employer is correct that changes to the Finning International Retirement Plan required the approval of the Finning International Pension Committee; and second, that on October 28, 2003, Finning International Pension Committee approved paragraph 2 of Letter of Understanding #18 which reads:

2. The present Defined Benefit plan shall continue to be available for existing employees/ participants in the Pension Plan.

[147] Two days after Mr. Wenger's Pension update, setting out Finning (International) Pension Committee's approval, December 5, 2003, LOU #18 was signed by the Union and Finning (Canada) and incorporated into the 2003 – 2006 collective agreement.

[148] Finally, the Employer in its submission of July 19, 2013, paragraph 48, acknowledges the fact: "Mr. Martel testified that the early out agreement found at page 9 paragraph 1 of the Memorandum of Agreement and the Agreement in paragraph 2 to continue the plan for existing employees were both approved by the Pension Committee". (emphasis in original)

E. Negotiations 2004 - 2010

[149] As I had previously stated the post-bargaining conduct of the Employer is consistent with the 2003 negotiations and the resulting Letter of Understanding #18. Employees on June 11, 2004, were given the option of either transferring the newly proposed Defined Contribution Plan or given the option of remaining in the current Defined Benefit Pension Plan. It is instructive to set out option 2 once again:

Option 2 – Stay in the current Defined Benefit Pension Plan

I would like to continue to earn service in the current defined benefit pension plan.

I understand that I will not have an opportunity in the future to participate in the new defined contribution pension plan.

[150] This option makes clear not only the ability of members to stay in the current Defined Pension Benefit Plan but also that they would "continue to earn service" in the Defined Pension Benefit Plan. It was also made clear that they would not have the opportunity in the future to participate in the newly Defined Contribution Pension Plan.

[151] In the 2006 – 2009 Collective Agreement LOU #18 became LOU #17. Ms. Drabiuk stated that the LOU #18 was both “clarified” and “cleaned up”. She stated that the Defined Contribution Plan had become “codified” into Article 35 of the Collective Agreement.

[152] In the 2009 – 2011 Collective Agreement LOU #17 and LOU #1 were combined, resulting in current LOU #1 being incorporated into the 2011 – 2015 Collective Agreement. It is uncontested that the language in dispute has remained the same since the 2003 – 2006 Collective Agreement; (replicated in the 2006 – 2009 Collective agreement; the 2009 – 2011 Collective Agreement and the 2011 – 2015 Collective Agreement). Finally Ms. Drabiuk acknowledged that Finning (Canada) did not seek the approval or permission of Finning (International) in respect to LOU #1 remaining in the collective agreement in the intervening years since 2003.

[153] Ms. Drabiuk was Finning (Canada’s) Chief Negotiator in the 2011 round of collective bargaining. She stated that in October/November 2010 she learned of Finning (International’s) decision to seek changes to the BC Defined Benefit Plan. On January 25, 2011, Dave Parker, President of Finning Canada, issued a letter to members of the Defined Benefit Plan stating that as of January 1, 2016 the Defined Benefit Plan would be capped and all further service benefits would be earned under the Defined Contribution Plan. Mr. Pickthall replied on February 1, 2011, stating that the Employer did not have the right to unilaterally discontinue the Defined Benefit Plan.

[154] When bargaining commenced on March 9th, 2011, the Employer’s proposal deleted the right of existing employees to continue to participate in the Defined Benefit Plan. Instead it substituted wording that would continue the Defined Benefit Plan only to December 31, 2015; and that as of January 1, 2016 these former Defined Benefit Plan members would “become members of the Defined Contribution Pension Plan”.

[155] Ms. Drabiuk stated that her “mandate” was clear – that the message at the bargaining table was to be “consistent with Dave Parker’s letter”, that, the Employer had the “unilateral ability to make changes consistent with the [Pension] Plan text”. She explained that in bringing the Defined Benefit Pension Plan to the bargaining table the

Employer was actually giving the Union the ability to obtain something on the “DC (Defined Contribution) side”. She stated that this mandate came from Finning (International), not Finning (Canada). Conversely the Union’s proposal in the 2011 round of bargaining, was that the Defined Benefit Plan “be maintained and supported for existing employees on the Plan” (March 9, 2011 Union Proposal).

[156] The Union repeated its view in bargaining that the Employer had an “obligation to bargain the Defined Benefit Plan out of the CBA [Collective Bargaining Agreement]” (April 19, 2011 Union Bargaining Notes).

[157] Over the course of bargaining in 2011 Ms. Drabiuk described the parties as “entrenched in our positions”. As a result, by June 2011, the Employer had dropped its original demand to discontinue the Defined Benefit Plan and convert all employees to the Defined Contribution Plan. The Union acknowledged that although the Employer had dropped its proposal it continued to insist that it had the right to unilaterally amend the Defined Benefit Plan. There was eventually a strike that year; however, LOU #1 was not an issue in that strike.

[158] It is not in dispute that the negotiation evidence in 2011, leading to the 2011 – 2015 Collective Agreement, and as well, collective bargaining in 2006 – 2009, and 2009 – 2011, resulted in no changes to the wording of LOU #1. I further conclude that nothing arising in the negotiation evidence in collective bargaining from 2006 to 2011 had changed the mutual intention of the parties reached in the 2003 round of collective bargaining; in other words, no new agreement had been reached that amended the wording agreed to in the 2003 LOU #1.

F. Letter of Understanding #1 and Article 13.03(a) of Finning (International’s) Retirement Plan

[159] The Employer’s next argument is that “LOU #1 does not fetter the power of Finning International to amend the Retirement Plan in full or in part” (Written argument paragraph

36, July 19, 2013). The Employer points to the first sentence of Article 13.03(a) of the Retirement Plan which reads as follows:

13.03 Amendment or Termination of the Plan

(a) Right to Amend or Terminate

The Administrator reserves the right at any time to revise or terminate the Plan in whole or in part.

[160] Article 2.03 of the Retirement Plan lists Finning International Inc. as the “Administrator”. Article 12.01 of the Retirement Plan states the Administrator “...shall determine all questions regarding length of service, eligibility, retirements, reinstatements, the amount to be credited as Earnings and shall, consistent with the terms of the Plan and the Funding Agreement, administer, interpret and apply the intent of the Plan. The decisions of the Administrator shall be final and conclusive”.

[161] First, I agree with the Employer’s position that Letter of Understanding #1 does not have the general effect of restricting the power of the Administrator to amend the Retirement Plan. For example, Finning (International) would have the unilateral ability to initiate new pension plans. Second, Finning International may be required to amend the plan in response to legislative or government regulations.

[162] However, the Union’s argument is a much more modest one; it says that Finning (Canada) and Finning (International) have in fact both agreed to continue to operate the current Defined Benefits Plan for its existing members. As I have concluded, based upon the wording of the collective agreement, and the negotiation evidence, both Finning (Canada) and Finning (International) have in the 2011 – 2015 Collective Agreement, promised to continue the Defined Benefit Plan on behalf of its existing members until the expiry of the current collective agreement. However, the Employer says that at the expiry of the current collective agreement it can unilaterally change this commitment. In essence, the Employer is saying that it can go back to its pre-2003 position in respect to Article 13.03(a). In other words, any commitment it may have made between 2003 and 2015 has no impact on Article 13.03(a) beginning January 1, 2016.

[163] In 2003 Finning (International) gave its approval to Finning (Canada) to introduce a new Defined Contribution Plan, and at the same time approved the continuation of the Defined Benefit Plan for its existing members. However, in 2011, Finning (International) gave instructions to Finning (Canada) to negotiate LOU #1 out of the collective agreement. However, its 2011 bargaining strategy proved unsuccessful.

[164] Finning (Canada) and the Union are parties to this Collective Agreement. All collective agreements are governed by legislation; in this case the British Columbia *Labour Relations Code* R.S.B.C. 1996 c. 244. Finning (Canada) and the Union are the only parties who may negotiate, amend or terminate the agreement. They may do so only by consensus – neither has the authority to unilaterally change the agreement during its term (a different set of rules apply at expiry; this is addressed at the conclusion of this Award). Neither Finning (Canada) nor the Union is a Settlor or Trustee of the Retirement Plan. Moreover, this Retirement Plan is not incorporated into the Collective Agreement. Therefore, neither Finning (Canada) nor the Union has any authority over the Retirement Plan; in other words, neither has the right, individually or in combination, to amend the Retirement Plan.

[165] Finning (International) is the sole Settlor, Trustee and Administrator of the Retirement Plan. The Retirement Plan is governed by the common law of trusts and the *Pension Benefits Standards Act* R.S.B.C. 1996 c. 352. It alone has the authority to amend or terminate (Article 13.03(a)) the Retirement Plan (Defined Contribution Plan and the Defined Benefit Plan). Finning (International) therefore, has a free hand to make whatever amendments it sees as desirable. The only restrictions on this general power are those that it chooses to place on itself; for example, a self-imposed restriction to permit Finning (Canada) to maintain the Defined Benefit Plan in the collective agreement. However, Finning (International) is not a party to the Collective Agreement; it cannot negotiate nor can it amend the collective agreement. Any potential remedy, therefore, arising in the grievance/arbitration process is limited to Finning (Canada). Conversely, any potential remedy in respect to Finning (International) must arise in a different forum – either in collective bargaining, as in the past, or perhaps in the Courts.

[166] Although it proved unsuccessful at the bargaining table, Finning (International) passed a resolution on November 10, 2010, a certified copy of which is dated the 14th day of June, 2012, unilaterally cancelling the Defined Benefit Plan, and forcing the members of that Plan into its Defined Contribution Plan; that resolution reads as follows:

1. The Board hereby approves: (a) the cessation of future DB accruals effective December 31, 2015 under the BC Plan and under the Alberta Plan; (b) the suspension of membership of remaining members accruing benefits under the aforementioned plans as of December 31, 2015; and (c) the entry of those suspended members into the applicable Finning DC plan(s) as of January 1, 2016.

[167] As stated, I do not take the view that Finning International Retirement Plan has been incorporated into the collective agreement. However, I have concluded that both Finning (Canada) and the Finning (International) Retirement Plan have contractually committed themselves in LOU #1 to continue the Defined Benefit Plan, and as a result, cannot avail themselves of the general power under Article 13.03 (a) to amend the plan in order to unilaterally breach this contractual commitment.

[168] Ms. Topp is the Director of Total Compensation for Finning (International) and a Pension Actuary and Compensation Expert. She offered the opinion that although she is not familiar with the collective agreement, it was her view that LOU #1 “did not impact”, the right of Finning (International) under 13.03(a) because “it didn’t make sense to have the Plan controlled outside of Finning because it applied to both Union and non-union employees”. In view of the evidence and law, I have, with respect, reached a different conclusion. Second, she also stated that it was her view that when these employees are transferred from the Defined Benefit to the Defined Contribution Plan, this would not amount to a “forced conversion”, as that term is understood by the Actuarial profession. This second opinion is not material to my conclusion. But certainly under any common understanding of Finning (International’s) resolution compelling employees to convert from the Defined Benefit Plan to the Defined Contribution Plan, as of January 1, 2016, this would, as that term is generally understood, amount to a “forced conversion”.

G. Duration /Continuation Clauses

[169] This agreement expires in little more than two years (December 2015). Article 36 of the collective agreement is what is referred to as the Duration or Continuation Clause:

ARTICLE 36 – DURATION OF AGREEMENT

36.01 This Agreement shall be in full force and effect up to and including APRIL 15, 2011 to and including APRIL 14, 2015 and shall continue in full force and effect from year to year thereafter subject to the right of either Party to this Collective Agreement within four (4) months immediately preceding the date of APRIL 14, 2015 or immediately preceding the anniversary date in any year thereafter, by written notice to the other Party, require the other Party to commence collective bargaining with a view to the conclusion of a renewal or revision of the Collective Agreement or a new Collective Agreement.

36.02 Should either Party give written notice to the other Party pursuant hereto, this Agreement shall thereafter continue in full force and effect until the Union shall give notice of strike, or the Company shall give notice of lockout, or the Parties shall conclude a renewal or revision of the Collective Agreement or a new Collective Agreement.

36.03 During the life of this Agreement, or while negotiations for a further Agreement are in progress, there shall be no strikes or stoppages of work on the part of the Members of the Union, nor any lockout on the part of the Company.

(emphasis added)

[170] Four months prior to the expiry of the collective agreement either party may give notice to commence collective bargaining (Article 36.01). At the expiry of the collective agreement it continues to be in effect until a strike is commenced, or a lockout is imposed, or the parties conclude a new collective agreement. (Article 36.02). During the life of the Collective Agreement, or while the parties are in negotiations for a new collective agreement, there can be no strikes or stoppages of work, nor any lockouts (Article 36.03).

[171] The Supreme Court of Canada in *Canadian Association of Industrial Mechanical and Allied Workers, Local 14 vs. Paccar Canada*, [1989] 2 SCR 983 established the fact that an employer had the right at the expiry of a collective agreement to impose unilateral terms and conditions of employment. If this happened the Union had the right to either accept those terms or to exercise its right to strike. Section 45(2) was subsequently incorporated into the B.C. *Labour Relations Code* to deal with this particular circumstance.

45(2) If notice to commence collective bargaining has been given and the term of a Collective Agreement that was in force between the parties has expired, the employer or the trade union must not, except with the consent of the other, alter any term or condition of employment until

- (a) a strike or lockout has commenced,
- (b) a new Collective Agreement has been negotiated, or
- (c) the right of the trade Union to represent the employees in the bargaining unit has been terminated,

whichever occurs first.

[172] Thus, the purpose of Section 45(2) is to preclude the unilateral alteration of the terms of employment during the negotiation of a collective agreement, which *Paccar, supra* had approved. The result is that an Employer who believes that a change in the terms of the collective agreement are essential to its continued viability, but has been unable to persuade the Union to agree to such changes, has two options: first, it can exercise a right under Section 78 of the *Labour Relations Code* to require that its final offer be put directly to a vote by the bargaining unit; and second, it can invoke a lockout. If following the lockout the Employer offers employment on different terms and conditions than those set out in the current collective agreement, the employees may either elect to accept those new terms, or commence a strike.

[173] Mr. Pickthall stated that he is not naïve, and that the Employer will get a “second kick at the can” to bargain a cap in respect to the Defined Benefit Pension Plan at the expiry of the current collective agreement. The Union also understands that in 2016 the number of

employees affected will fall to approximately 150 – 170, out of a bargaining unit of some 800 employees.

[174] Thus, this Employer, when it returns to the bargaining table in 2015, can, once again, attempt to amend LOU #1. If it is not successful in negotiating a change to LOU #1, it can, at the expiry of bargaining, impose a lockout, and then unilaterally change the terms of LOU #1, as well as any other terms it considers essential. In such a case the Union would understand that this Employer is adamant that LOU #1 cannot be incorporated into any new collective agreement.

[175] Therefore, Finning (Canada) must bargain any changes to LOU #1. It cannot unilaterally delete the accrual of earned benefits under the Defined Benefit Pension Plan from the Collective Agreement. If the parties are unable to achieve consensus in respect to LOU #1 in the next round of collective bargaining (2015) then their respective statutory remedies lay under the B.C. *Labour Relations Code*.

[176] It is so Awarded.

[177] Dated at the City of New Westminster in the Province of British Columbia this 28th day of August, 2013.

A handwritten signature in black ink that reads "Stan Lanyon". The signature is written in a cursive, slightly slanted style.

Stan Lanyon, Q.C.