Ref. #201403.ARB

Whether Employer bound by Construction Labour Relations Collective Agreement

In the Matter of an Arbitration

Between

SODEXO CANADA LIMITED.
(hereinafter referred to as "the Employer" or "the Company")

And

THE HOTEL EMPLOYEES & RESTAURANT EMPLOYEES INTERNATIONAL UNION, LOCAL 779
(hereinafter referred to as "the Union" or "Local 779" or "HRW 779")

THE GRIEVANCE

February 20, 2014

Sodexo Canada Ltd.
930 Wellington Street
Suite 100
Montreal, QC
H3C 1T8

Attention: **Pierre Vaillancourt, Director Labour Relations**
Pierre.Vaillancourt @sodexo.com

Dear Mr. Vaillancourt :

Re : HRW 779 Bargaining Unit of Sodexo Canada Ltd. at Tata Steel Timmins Camp – Labrador, NL – Collective Agreement between Construction Labour Relations Association of Newfoundland and Labrador and HRW 779

This letter will serve as a group grievance filed on behalf of the employees at Sodexo Canada Ltd. affected by the Certification order of the Newfoundland and Labrador Labour Relations Board, dated December 18, 2013

You have been previously provided with the collective agreement in effect between the Construction Labour Relations Association of Newfoundland

And Labrador and HRW 779, to which Sodexo Canada Ltd. is bound pursuant to an accreditation order granted the Construction Labour Relations Association by the Newfoundland and Labrador Relations Board in October 1976, and pursuant to the provisions of the Labour Relations Act of Newfoundland and Labrador.

This grievance is a continuing grievance. Sodexo Canada Ltd. has failed to abide by any of the terms of the collective agreement. Without limiting the foregoing, Sodexo Canada Ltd. has failed to pay the wage rates established in Article 14 and Appendix "A"; has failed to pay overtime as established in Article 7; has failed to remit check off to the union as established in Article 6; has failed to pay vacation pay established in Article 13; and has failed to fulfill man power requirements established in articles 4 and 15. Sodexo Canada Ltd. is directed to Article 26 with respect to adjustments to wage rates.

The union reserves the right to assert violations of other specific articles of the collective agreement and present evidence in relation to those other articles, as those violations may be disclosed.

HRW 779 requests full compliance with the collective agreement retroactive to the date of certification, December 18, 2013. HRW 770 seeks full financial compensation for its members and for the union as required under the collective agreement including lost wages, benefits and other earnings; loss contributions, loss check off, and all applicable penalties plus interest.

Yours truly,

_____

Barbara Woolridge, President
Hotel & Restaurant Workers. Local 779

Cc: Construction Labour Relations Association
of Newfoundland and Labrador

The foregoing letter was accompanied by the following letter:

The email I suggest you do is:

Mr. Vaillancourt,

Re: HRW 779 bargaining unit of Sodexo Canada Ltd. at Tata Steel Timmins Camp, Labrador

I understand from Craig Power of the CLRA, you have been provided with a copy of the provincial agreement between HRW 779 and the CLRA. I understand from speaking with our legal counsel, Dana Lenehan, you confirmed in a telephone conversation with him approximately two weeks ago Sodexo Canada Ltd would abide by the terms of the collective agreement retroactive to the date of certification. However, recently senior management of Sodexo Canada Ltd. informed the bargaining unit employees Sodexo Canada Ltd. would not follow the collective agreement and the terms and working conditions would remain as they were prior to certification.

Attached is a grievance submitted on behalf of HRW 779. We regard this as Step 1 of the grievance procedure. If there is no settlement satisfactory to the union and the employees by February 22, 2014, we will proceed to Step 2. You may then expect us to proceed to that step on Monday, February24.

If Sodexo Canada Ltd. is interested in settling this grievance please contact the business manager, Patrick McCormick, at 726-7180 or pat@ hrwlocal 779.ca, or our legal counsel Dana Lenehan at 709-754-1400 or dlenehan@mwhslaw.com.

Arbitration hearings were conducted at St. John's, Newfoundland and Labrador on April 3rd, 4th, 29th and 30th, 2014.

For the Union:	Mr. Dana Lenehan Q.C., *et al.*
For the Employer:	Mr. Harold Smith, Q.C., *et al.*
Sole arbitrator:	Mr. David Alcock.

The parties agreed:

1) to the selection of the arbitrator;
2) that the arbitrator had jurisdiction to deal with the dispute;
3) that the issues of *quantum* of compensation and liability would not be separated and the arbitrator would not remain seized of jurisdiction;
4) that there were no other interested parties who might be affected by the award;
5) that witnesses would be excluded;
6) that the time limits for filing the final award were waived, but the award would be filed within a reasonable period of time.

The following items were received by consent:

1) 2011 – 2016 collective agreement between the Construction Labour Relations Association of Newfoundland and Labrador Inc. (CLRA) and Hotel and Restaurant Workers Union Local 779;

2(a) Grievance letter, February 20, 2014;

2(b) Letter dated February 24, 2014 advising Pierre Vaillancourt that the matter is being moved to Step 2 and unless resolution occurs by the close of business on Wednesday, February 26th, the Union will be moving t step 3 of the grievance procedure;

2(c) Letter dated February 27, 2014, advising Pierre Vaillancourt that the matter had been moved to Step 3 and would proceed further if the requested meeting did not occur;

2(d) Letter dated March 7, 2014 from Sodexo solicitor Harold M. Smith re the Union's letters in 2(a) and 2(c), as follows:

VIA FACSIMILIE

Hotel & Restaurant
Worker's [sic] union Local 779
P.O. Box 6142
St. John's NL A1C 5X8

Attention: Mr. P. McCormick

Dear Mr. McCormick:

Re: Group Grievance dated February 20, 2014
Letter of February 27, 2014

We are solicitors for Sodexo Canada Ltd. and as such have been referred to your letter of Grievance dated February 20, 2014 and your progression to Step III dated February 27, 2014.

We note that you assert that the Provincial Construction Labour Relations Agreement applies to our client's workplace and further that you claim that our client has failed to apply the said Collective Agreement.

We have taken the opportunity to review the Certification Order in the context of the workplace.

It s our view that our client is not engaged in the construction industry as the camp in question is permanent and operates in support of an operating mine site. The billeting of construction personnel is of necessity of the remote location but essentially are permanent operations as support for the operating mine site.

Aside from this fact is the real issue of establishing terms and conditions reflective of the contract we have with the owner. Unlike construction operations our contract is not with the general contractor but is in support of the owners mine operation on a now and go forward basis.

The terms and conditions of the Provincial Agreement threaten the ability of our client to continue to provide services at the agreed upon contractual price.

As a consequence we must deny the grievance and seek a meeting with the union as soon as possible to attempt to find a solution to these issues.

Could you advise whether you are prepared to discuss these matters with the undersigned and other representatives of Sodexo. If not we expect that if no solutions are found the owner will give notice of cancellation of our contract and proceed to tender.

We await your contact to set a meeting to discuss our client's real concerns.

Yours very truly,

Harold M. Smith

Cc Barbara Woolridge
President
Hotel & Restaurant Worker's [sic] Union Local 779
P.O. Box 6142
St. John's NL A1C 5X8

Construction Labour Relations Association of
Newfoundland and Labrador Inc.

2(e) Letter in response to the foregoing faxed on March 10, 2014.

March 10, 2014

Steward [sic] McKelvey
P.O. Box 5038
Cabot Place
1100 -100 New Gower Street
St. John's NL A1C 5V3

Attention: Harold M. Smith, Q.C.

Dear Mr. Smith:

Re: Your Client: Sodexo Canada Ltd.

Our Clients: HRW 779
Group Grievance dated February 20, 2014

I acknowledge receipt of a copy of your letter to Hotel & Restaurant Worker's [sic] Union Local 779 of March 7, 2014, concerning the above noted. I am responding to the correspondence at the request of Mr. McCormick as he is currently out of the province.

Your letter denying the grievance comes 15 days after it was submitted and a full week after it was moved to Step 3. You will know from the February 27, 2014 letter from the union, HRW 779 sought to have a prompt meeting and requested that it take place by Wednesday March 5, 2014. There was no response from your client until your letter. It is the union's position that if the union wished, it could proceed directly to seek the appointment of an arbitrator as your client has failed to meet promptly with the union. Nonetheless, in the interest of co-operation, HRW 779 will meet with representatives of Sodexo Canada Ltd. The meeting will take place at this office on Friday March 14, 2014 at 9:00 a.m.

Yours truly,
MARTIN WHALEN HENNEBURY AND STAMP

DANA LENEHAN, Q.C.

cc Construction Labour Relations of Newfoundland and Labrador Inc. (Via email cpower@clranl.com)

3) Certification Order effective December 18th, 2013, stating in part:

. . . .

NOW THEREFORE IT IS HEREBY ORDERED BY THE Labour Relations Board that Hotel and Restaurant Workers Union, Local 779 be and it is hereby certified to be the bargaining agent for a unit of employees of Sodexo Canada Ltd. comprising all catering employees of Sodexo Canada Ltd. working at the Tata Steel Timmins Camp in Labrador, Newfoundland and Labrador save and except Manager, Assistant Manager, Camp Coordinators, Executive Chef, Maintenance Manager, Assistant Maintenance Manager, non-working supervisors, and those above the rank of non-working supervisor;

. . . .

4) Accreditation Order for Newfoundland Construction Labour Relations Association dated October 12, 1976, stated in part:

WHEREAS an application for accreditation under Section 26C(5)(b) of The Labour Relations Act has been received from the Applicant by the Newfoundland Labour Relations Board;

AND WHEREAS, the Labour Relations Board on the14th day of July, 1976 issued to the Applicant an order of Accreditation with the condition that its Articles of Association be amended as requested in the order;

AND WHEREAS, the Applicant has amended its Articles of Association as requested by the Board and has so informed the Board.

NOW, THEREFORE, it is hereby ordered by the Newfoundland Labour Relations Board that Newfoundland Construction Labour Relations Association be and is hereby accredited to be the sole collective bargaining agent for all unionized employers in the industrial and commercial sector of the construction industry in the province subject to the provisions set out below:

(a) The Board decides that the employers represented by the National Employer Organizations (i.e., The Canadian Automatic Sprinkler Association, The Boilermaker Contractors' Association of Newfoundland) should not be excluded from the bargaining unit.

(b) The Board decides that pipeline construction work falls outside the industrial and commercial sector and would likely constitute an area appropriate for a separate accreditation order.

(c) The Board decides that industrial plant maintenance and maintenance performed on completed installations and specifically but without limiting the generality of the foregoing, maintenance and service of elevating devices, does not fall within the Industrial and Commercial sector of the construction industry and should be excluded from the order of accreditation.

ISSUED AT St. John's this 12th day of October, 1976 by the Newfoundland Labour Relations Board and signed by its Chief Executive Officer.

5) NEW MILLENNIUM IRON News Release 14-01 titled "New Millennium Iron Corp. Provides Update on TSMC's (Tata Steel Minerals Canada Limited) Direct Shipping Ore Project Progress."

The Release, market-wired January 20, 2014 disclosed, *inter alia,* that "TSMC continued with trial production in 2013" and that the "Plan for 2014" included the following:

- TSMC is planning to continue trial production by crushing and screening products in 2014, and to install a dryer to reduce product moisture as required to meet shipping regulations.
- Link to TSH Railway, including the KéRail portion, is expected to be operational by June 2014.
- Construction of the processing plant and the product load out, storage and train loading system will be a focus in the summer and fall of 2014.
- The processing plant is scheduled to be completed in Q4 2014 with commissioning by year-end
- TSMC is currently reviewing the cost of completion for the project. The development of the Howse joint venture is also being evaluated.
- TSMC plans to export its ore through the new multi-user dock in Sept-Iles in the long term. In the interim, TSMC has contracted with Iron Ore Company of Canada for train-unloading, product storage, ship loading and marketing through its established network.

. . . .

Witnesses called by the Union	
Mr. Jacques Dufresne (by summons)	General Manager Sodexo for Tata Steel Camp
Mr. Bill Schenkles (by Summons)	VP Construction, Sunny Corner Enterprises
Mr. Vincent Plamondon (by summons)	Mechanical Engineer, AECOM
Mr. Craig Power (by summons)	President, CLRA
Mr. Pat McCormick	Sec. Treas./Bus Mgr., Local 779
Mr. Tom Woodford	Bus. Mgr., Iron Workers' Union, Local 764
Mr. Jim Myers	Bus. Mgr., UA Local 740
Mr. Doug Harris C.A.	Harris Ryan Chartered Accountants
Witnesses called by the Employer	
Mr. Jean Marc Blake	Tata Steel Minerals Canada
Mr. Cyrille Collin	District Manager, Sodexo Canada Ltd.

The following items were introduced into evidence by witnesses:

JD#1	Rooms List Timmins Camp, November 2013
JD#2	Rooms List Timmins Camp, December 2013
JD#3	Rooms List Timmins Camp, January 2014
JD#4	Rooms List Timmins Camp, February 2014
JD#5	Rooms List Timmins Camp, March 2014

JD#6 Sunny Corner Reservations List, November 17, 2013 – April 28, 2014
JD#7 IBA Reservations List, November 18, 2013 – March 29, 2014
JD#8 AECOM Reservations List, November 16, 2013 – March 28, 2014
JD#9 LOMA CONSTRUCTION (GARDINER ELECTRIC), Reservations List, November 1, 2013- March 27, 2014
JD#10 GREY ROCK MINING Reservations List, November 2013 –March 2014
JD#11 SODEXO Payroll, December 18, 2013 – March 28, 2014
JD#12 Casual Meals, January 2014 only.

CP#1 Current CLRA Collective Agreements with eight (8) Unions
CP#2 2007 Memorandum of Agreement between the CLRA (on behalf of Contractors engaged at the Concentrate Expansion Project at Carol Lake Labrador) and the Newfoundland and Labrador Building and Construction Trades Council (on behalf of those Trade Unions specified in Schedule "A")
CP#3 November 13, 2008 Collective agreement between the CLRA and the NLBCTC and Local 779 in respect of the Concentrate Expansion Project at Carol Lake, Labrador
CR#4 May 1, 2006 – April 30, 2011 collective agreement between the CLRA and the Hotel & Restaurant Workers Union Local 779
CR#5 By-Law #1 for the Construction Labour Relations Association of Newfoundland and Labrador. Inc. (CLRA)

PM#1 Project Agreement between Hibernia Employer's Association Inc. and Newfoundland and Labrador Oil Development Allied Trades Council, July 1990
PM#2 Special Project Collective Agreement between Voisey's Bay Employers' Association Inc. and Resource Development Trades Council of Newfoundland and Labrador, September 9, 2002 – for the Construction Phase of the Voisey's Bay Mine/Mill Development
PM#3 Special Project Collective Agreement between Long Harbour Employers' Association Inc. and Resource Development Trades Council of Newfoundland and Labrador, (updated July 23, 2012) – for the Construction Phase of the Vale Inco Long Harbour Processing Plant Special Project at Long Harbour, Placentia Bay, Newfoundland and Labrador
PM#4 Project Agreement between Hebron Project Employers' Association Inc. and Resource Development Trades Council of Newfoundland and Labrador, October 27, 2011
PM#5 Collective Agreement between Muskrat Falls Employer's Association Inc. and Resource Development Trades Council of Newfoundland and Labrador, May 2012-2017 – for the Construction of The Lower Churchill Hydroelectric Generation Project at Muskrat Falls on the Lower Churchill River, Newfoundland and Labrador
PM#6 Collective Agreement between The Churchill Falls Power Project Contractors' Association and The Churchill Falls Power Project Allied Construction Council, August 10, 1967 to August 31, 1975

PM#7 Project Collective Agreement for Stephenville Linerboard Mill and Facilities between McAlpine of Newfoundland Limited and The Newfoundland and Labrador Building and Construction Trades Council. March 9, 1970

PM#8 January 12, 1962 Certification Order certifying Hotel and Restaurant Workers Local 779 of the Bartenders International Union for a bargaining unit of employees of Georgetown Realty Company Limited, trading under the name of Corner Tavern

PM#9 November 18, 2009 Certification Order certifying Hotel and Restaurant Workers Union Local 779 for a bargaining unit of employees of Sodexo Canada Limited compromising all catering employees working for the Employer at the IOC Industrial Camp worksite, 2 Avalon Drive, Labrador City, Newfoundland and Labrador.

TW#1 Dispatch List & Referrals Documentation, Local 764, November 6, 2013 February 27, 2014

DH#1 Summary of Sodexo Payroll Data by Employee, prepared by Doug Harris CA.

Union's Opening Statement

All the Building Trades unions negotiate collective agreements with the Construction Labour Relations Association (CLRA) in the industrial and commercial sector of the construction industry in the province. Thereafter, when a certification order occurs, the applicable collective agreement applies automatically. In November 2013, Local 779 applied for certification to represent Sodexo's catering (food & accommodation) employees at the Tata Steel Timmins Canada camp, which is located in Labrador close to Shefferville, Quebec. The certification order was issued on December 18, 2013. It is the Union's position that the CLRA collective agreement applied to the Local 779 bargaining unit at Sodexo Canada Limited effective that date. At one point, the Employer indicated its acceptance of the collective agreement, but then backed off, thereby violating the terms and conditions of the agreement. Therefore, the Union requests that the arbitrator verify that the CLRA collective agreement applies retroactive to the date of certification on December 18, 2013.

The Union has evidence of the levels of construction that have occurred at the Tata Steel site and of a number of trades that have been dispatched to work at that site who have been covered by the CLRA collective agreement. Mr. Craig Power of the CLRA will testify to talks held with Sodexo concerning such work.

In contrast, C#2 expresses the Employer's position that the camp in dispute caters to a permanent operations mining site, and is not a camp for construction workers.

The Employer's Opening Statement

The CLRA collective agreement does not apply to Sodexo Canada Ltd. Therefore, the grievance should be dismissed.

THE EVIDENCE

The evidence in this case, which includes a massive amount of documentation, is far too prodigious to relate in its entirety in this award. Therefore, with the greatest of respect to the parties and to the witnesses who testified at length, the arbitrator has significantly condensed and summarized their contributions to the most salient elements that are essential to the determination of this dispute.

The Union

Mr. Jacques Dufresne, General Manager of the Sodexo camp for the Tata Steel site, testified under *subpoena duces tecum*, providing and answering questions on the vast majority of documentation relevant to the catering role played by Sodexo under its

contract to the site owner and developer Tata Steel. Mr. Dufresne explained that the Sodexo camp is located 20 km east of Shefferville, Quebec, but inside the Labrador border. Since January 2012, this remote camp has provided daily catering, janitorial and housekeeping services to all residents referred to it by Tata Steel and by EPCM Contractor Aecom on behalf of various other contractors on the site. There are some 220 single person rooms, a cafeteria, a recreation room, and some offices in trailers for contractors. Rooms are generally full in the summertime; lower numbers occur in the winter time due to the cold weather; at Christmas a skeleton crew is maintained. On March 31st, 2014, there were 154 residents.

Sodexo employees work in the following categories: Housekeeper, Janitor, Dishwasher, Breakfast Cook, Cook, Short Order Cook, Sandwich Maker, Cleaner, Snow Shoveller and Driver. In their various capacities, they work a variety of shift schedules and are on a number of different work rotations. The Manager, Assistant Manager, Camp Coordinators, Executive Chef and Maintenance Manager compose the management group. The camp is run like a hotel. All the housekeepers live in Shefferville and in native communities across the border in Quebec. When work ramps up, hiring is done as far away as St. Iles. Hiring arrangements also exist among some native communities in Quebec. There is another camp in Shefferville for 52 people, which is not handled by Sodexo, except for casual meals as required when those people are at the Labrador camp. Some site personnel also live in homes in Shefferville. Drivers transport residents to and from the airport, to and from the Tata Steel site, and also transport housekeepers to and from their homes on a daily basis.

Mr. Dufresne explained the scope and nature of each document JD#1 through JD#12 by way of answering counsels' questions about selected examples therein contained. In doing do, he established the names and dates of residency for each employee and their Contractor companies, including Sodexo Employees, whose payroll information from December 18, 2013 to March 28, 2014, is provided in JD#11. He also explained that the sub contractors each send to AECOM a list of all those employees working for them at the site. AECOM sends this to a Sodexo employee and then checks to ensure that the number of people indicated are given rooms. The same process is used for every contractor on site. Among the contractors were IBA, Sunny Corner, Grey Rock Mining, Loma Construction (Gardiner Electric), AECOM, Beauce-Atlas, Nirint, Atlantic Safety, Cheminee Lining, United Rentals, General Steam Clean, Tata Steel, Omnia, AllNorth, Mamu Construction I, Transport Robert, CanaRail, Morris Inc., and Sodexo.

Sodexo employees' wages in JD#11 are identified by name, hours, rate of pay and earning Code (regular, overtime, holiday, etc.). Benefits are 16% of total, including 4% for vacation. There were no benefits paid for sick leave, and there was no pay for travel time.

Mr. Dufresne testified that he was made aware of the certification order unionizing Sodexo employees in the first week in February 14, 2014 by e-mail from Pierre Vaillancourt (Human Resources). Mr. Collin (to whom he reports in Sodexo) was copied on the same e-mail, which indicated that HRW 779 had been certified since December 18, 2013. The CLRA collective agreement was attached to that e-mail, and Mr. Dufresne was told to keep it quiet. Therefore, he did not discuss the matter with Sodexo employees, or hold any meeting on the matter. He did not tell the employees that

he would not follow that collective agreement. When Mr. Collin came to the camp around February 20th – 22nd, 2014, Mr. Dufresne was on vacation. He confirmed that he (Dufresne) did have knowledge of Sodexo's contract with Tata Steel and that all his commercial reporting concerning room occupancy is sent to Tata Steel.

In cross examination, Mr. Dufresne described the physical layout of the camp and that it operates on top of a hill; its water is supplied by 2 or 3 wells which the company maintains; grey water is colleted and purified for reuse; electrical power is supplied by generator. He also indicated that arriving residents are given room keys, reminded of check-out time and are told about the no drugs or alcohol policy. Those that are assigned to outside houses are also given keys by Sodexo. For various reasons, not everyone on the reservation system stays in the Camp, such as the drivers, some housekeepers and employees of a few contractors. Since January 2014, Sodexo (Mr. Dufresne has driven the vehicle on occasions) has provided transportation from the camp to the site about 2 kilometres away. There is another site farther away, but Mr. Dufresne explained that his route took him only as far as the Dome, which can be seen from the camp. He testified that he does not know what is inside the Dome; he has only dropped people off outside of it. Mr. Dufresne confirmed that he does not know what the various companies in JD#5 do.

As for the Sodexo staff, Mr. Dufresne indicated that none of the housekeepers, janitors dishwasher, cleaners, shovellers have certificates; the first cook has attended cooking school, but is not certified by the red seal program. But both drivers have heavy machinery courses and have the appropriate drivers' licenses.

Finally, Mr. Dufresne indicated that Sodexo's work force fluctuates depending on how many people Tata Steel tells it will be in residence. However, Sodexo does not have to get permission from Tata Steel to hire additional housekeepers – no approvals for that sort of thing are required from Tata.

Mr. Bill Schenkles, P. Eng NB, is VP Construction with Sunny Corner Enterprises, which is involved in industrial construction and fabrication with power plants, hydro facilities and mines mainly in Atlantic Canada. Sunny Corner is a building trades contractor, employing electricians, millwrights, pipefitters, carpenters, etc. The company negotiated a contract in July/August 2013 with Tata Steel for mechanical installation for its direct shipping ore project. The work involves piping and mechanical located in the Dome, which contains all the in-site processing operations, such as crushers, precipitators, pumps, etc. For what his company needed to do, the Dome has been a place to keep warm. The Dome itself is not fully completed, but work on permanent bracing is ongoing by Sunny Corner and IBA Construction Co.

Mr. Schenkles testified that Sunny Corner employees stay in the camp as residents, except for some people who had to stay in town for a time because of a freeze-up at the camp. Referring to JD#6, the reservations list, at page 110, he identified all the Sunny Corner employees. Page 121 indicated all the trades that were involved. In JD#5, page 140 again shows Sunny Corner tradesmen whose rotation is two weeks in and one week out (either 20 days in and 8 out or 21 days in and 7 out. All his company's trades people are paid in accordance with the CLRA collective agreement for each relevant trade union. Staffing requirements are met by Union hiring hall. For example,

ironworkers are hired on the basis of the Company's requests to the Union. Once the supply of local tradesmen is exhausted, ironworkers may come from anywhere; a few names he recognized from New Brunswick, but the majority are dispatched from Newfoundland by the Union. Since this work site is not a "Special Project," the standard protocol applied is the CLRA collective agreement, which the payroll office relies on to determine wage rates, benefits and remittances to the Union.

By way of cross examination, Mr. Schenkles testified that Sunny Corner has never employed any Local 779 members. Questioned whether his Company adheres to any Innu hiring agreement, he said that Sunny Corner employs via the hiring hall and does not seek to identify any such people. His Company was not approached by any of the aboriginal communities to employ their people. Neither has the Government of the province contacted Sunny Corner about aboriginal or local hiring, or about Labrador benefits.

Mr. Schenkles indicated that his Company's contract with Tata Steel requires Tata to provide accommodation for Sunny Corner's employees. He agreed that Tata Steel is not dependent on Sunny Corner to ship ore directly. However, he was not sure whether Tata Steel was engaged in mining. While he was at the Camp briefly, he did meet with two engineering people, but there was no discussion about Tata Steel doing mining. They only discussed the work his Company was doing at the Dome. There were other companies also working in the Dome on rental equipment. He believed that it might have been United Rentals who his Company negotiated with to go there to start up. That was a support service, as was steam cleaning. No Union request was made for those support services. Those employees were hired from other companies. Mr. Schenkles recalled

that in November 2013, Lomac Construction worked on finishing the crusher outside the Dome. No other buildings were being constructed, although his Company replaced a roof on a temporary office trailer on site. Up to this point, the trades involved were Carpenters, Labourers, Millwrights, Boilermakers, Iron Workers, Electricians, Insulators and Painters. No Bricklayers, Sheet metal Workers or Operating Engineers have yet been employed.

Sunny Corner's contract is due to end in December 2014. Mr. Schenkles did not know how many rooms will be needed to accommodate the Company's employees. There is flexibility in the contract for Tata Steel to place his employees where they choose. The number of on-site tradespersons will vary depending on the work that is required to be done. He did not know who transports his people from the camp to the site.

Mr. Vincent Plamondon, a Mechanical Engineer registered with the Engineering Association of Quebec who has a General Contractor's License testified under summons that he was self-employed and was contracted to AECOM at the Tata Steel project in Labrador since July 2013. AECOM had already started as the EPCM Project Manager for the construction of the Tata Steel project before he came. AECOM is now out of the picture except for a few matters. When the client, Tata Steel, began to get involved with EPCM issues, AECOM backed off.

What has been constructed to date is the process relating to extraction of iron ore in the Dome, including: all concrete, structural steel, mechanical, electrical, heating and ventilation in the Plant – approximately $550 million plus engineering. There is a

different contractor for the rail spur, CanRail; Grey Rock is the non-union arm of the contractor. Grey Rock has been involved in Site services, snow clearing, excavation, sedimentation pond, tailings line, fire protection system, and excavation for the Dome, backfilling, grading, manholes for the water system, etc. Loma had the contract for the structural steel and electrical for the first phase of the Dome; the electrical was subcontracted to Gardiner. Grey Rock was first on site in 2011 when the project began. It is still doing some site support and excavating. For pre-construction, excavator operators, pipe fitters, surveyors and labourers were needed.

Beauce Atlas is not on site. IBA is installing all steel in the processing plant, i.e., in the Dome. Sunny Corner has been installing all the mechanical equipment in the processing plant, as well as piping and structural steel for the Dome. Mr. Plamondon also named a significant number of other contractors who had various tradespersons on site performing various segments of construction work. Examples were: Atlantic Safety Cen, General Steam Clean, Cheminee Lining, Transport Robert, Mamu Construction, Nirint, and Hewitt Equipment. JD#5 lists all the various contractors who have been on site. Mr. Plamondon testified that only Sodexo did not perform construction work. Sodexo handled the workers' accommodations at the Camp, which had 220 beds. There were other houses in town mostly for management.

Mr. Plamondon said that the aim is for the construction project to be completed by December 2014. To reach that objective, there will be a ramp up of manpower in the summer period and the type of trades may change from time to time. For example, form work, rebar work and slab on grade work will have to be done for the process plant, and a pre-fabricated administration building will also have to be erected on site.

By way of cross examination, Mr. Plamaondon testified that his Company currently has six (6) employees on the site and are gradually being moved off. But the average has been 18 people, none of whom were trades people; therefore they did not have to follow the collective agreement. He also understood that no Tata Steel employees are tradespersons. Tata Steel mined iron ore up to November/December 2013 and shipped out 17,000 tons. It did not do any mining in March of 2014. The mining operation is located separately from the Dome. Aecom has no control over who is accommodated at the camp. Tata Steel decides who will go where. Trades people could be in the camp as well as in town. Generally the camp will take everybody they are able to accommodate, although some people do not reside in the camp.

Mr. Plamondon said he was hired by Aecom and he has no other projects at this time. Therefore, he has to give 100% to the Tata Steel project. Directed to page 28 of JD#5, he conceded that he was not aware that there was a Grey Rock Mining as well as a Grey Rock Civil. On balance he has no knowledge of Tata Steel's mining operations. He indicated that the contractor for the administration building will be putting it in the north east corner of the site, in the vicinity of the Dome. Seventy-five per cent of the 5 or 6 modules has been completed, and waste water and domestic water plumbing has to be installed. There will also be two little warehouses erected in April in the laydown areas, both partially pre-fabricated, which will be smaller versions of the Dome, but still requiring steel trusses to be installed by an industrial contractor. Generally all the trades people from the various contractor work in the vicinity of the Dome, the Administration Building, the Crusher and the two Warehouses. Mr. Plamaondon (p.3 of JD#5) was unsure what services Ingenium supplies. Nirint is part of the transport company; they do

the off loading of material. The train station itself is in Shefferville, not on the site. Morris Inc. did repair work on some equipment in the process plant – not a construction job. The crusher itself is getting close to commissioning, and the wet/dry process is approximately 8 or 9 months from completion.

Mr. Craig Power, President of the CLRA for the past 8 years, testified under summons that the CLRA was accredited in 1973 as the bargaining agent for all employers in the industrial and commercial sector of the construction industry in the province. His duties include administering all the building trade collective agreements and dealing with matters of interpretation that may arise. In that regard he recognized Consent #1, the current collective agreement with the Hotel & Restaurant Employees, Local 779, which was effective on May 1, 2011 and expires on April 30, 2016. He also introduced CP#1, the current CLRA collective agreements with eight (8) building trade unions: 1) UA Pipefitters Local 740; 2) Ironworkers Local 764 (including 2013 wage rates); 3) Bricklayers Local 1; 4) Millwrights Local 1009; 5) Carpenters Local 579 (including 2013 wage rates); 6) Boilermakers Local 203 (National agreement adopted re rates and some terms); 7) Labourers Local 1208; 8) EBEW Local 2330. Mr. Power testified that there are also collective agreements with the Operating Engineers, the Teamsters, Painters & Allied Trades, Sheet Metal Workers, Elevator Constructors, and IBEW Linesmen. The CLRA agreement applies if a trade is working with a company in construction, or by voluntary agreement. The CLRA monitors the collective agreements and can make modifications if necessary. The Association may also be involved in grievances between a trade and a Contractor. Contractors do not have to be members of the CLRA, but are

bound by the agreements if they perform work in the industrial and commercial sector. They also pay into an industry fund which partly funds the CLRA.

CP#2 is a December 20, 2007 collective agreement for the IOC Carol Lake project at Labrador City between the CLRA on behalf of Contractors To Be Engaged To Complete The Project and the Newfoundland and Labrador Building and Construction Trades Council "NLBCTC" on behalf of the Trade Unions specified in Schedule A (which did not include Local 779, but did include Elevator Constructors, Local 125 who did not sign because they did not want to participate). CP#3 rectifies CP#2 by including Local 779. Section 1(b) indicates that the Camp would be used by people employed at the project and also by people not associated with the project, but that did not alter the nature or terms of the project agreement. This is part of the overall project document.

When the Tata Steel project began, there was some discussion about contractors performing work under collective agreements from other provinces such as Quebec, but that matter was resolved by having all contractors pick up the CLRA agreements. Under those agreements, the CLRA collects some funds but others funds go to the Fund Administrators. All the provincial CLRA collective agreements were provided to Tata Steel on two (2) occasions. Mr. Power's Assistant sent the Local 779 agreement in May 2013, and it was sent again when word was received that someone had not received it. All in all there was very little discussion with Tata Steel when Sunny Corner had an issue of trade jurisdiction because there had been no markups. This matter was resolved. However some fine tuning occurred between Tata Steel, CLRA and Government on the issue of voluntary recognition.

The CLRA was not involved in the certification process between Sodexo and Local 779. Later Mr. Power contacted Sodexo and sent the collective agreement to them. Mr. Pierre Vaillancourt, the HR contact for Sodexo, telephoned Mr. Power on February 4, 2014 to ask why he had to use the CLRA collective agreement; he did not mind doing so, but was just asking. When Mr. Power called him back that day, Mr. Vaillancourt said he had no problem with the collective agreement (C#1), but questioned whether the start date should be December 18, 2013 or January 1, 2014. In Mr. Power's view, dealing with the start date was not in his area.

In cross examination, Mr. Power was referred to CP#2 and asked whether paragraph 1 on page 2 was a collective agreement or an amendment to the project agreement. His answer was that it was an amendment to the tailings project of April 18, 2001. When a project agreement is negotiated, a non-union contractor can go on the site and follow the CLRA collective agreement (including the various trade appendices attached), but not be bound by it after it leaves. The parties to the Carol Lake project were the IOC, the CLRA and the Trade Unions. IOC did not sign the amending agreement. In effect, this project agreement precluded a strike (somewhat similar to Special Project Legislation). Local 779 was not part of the 2001 project agreement. The 2007 amendment does not agree to add additional appendices. Therefore, on November 13, 2008, another agreement was made to amend the project retroactively. Again IOC did not sign it. The Local 779 agreement was then added. There was no provincial agreement with the CLRA at that time. Therefore, a request was made to add the Local 779 agreement. Mr. Power agreed that there were other unions besides the Elevator Constructors Union that did not want to participate in the original project agreement. The

purpose of C#3 was to have Local 779 sign on to the Carol Lake project as a Trade Appendix to the main project contract. Up to 2008, two pages were missing in CP#3: the signature page and the Appendix page. The Building Trades Council did not sign CP#3.

Prior to CP#4 there were no collective agreements with Local 779. CP#4 arose from the understanding in CP#3, and that project is still ongoing.

Mr. Power worked with an Elevator Company earlier and had 10 stints on the executive of the CLRA. C#4 is the Accreditation Order of October 12, 1976. For the Teamsters Union, an agreement was put in place for certain vehicles, but the Teamsters Union was not part of C#4. That Union entered into an agreement with Parsons Construction in violation of the CLRA, so the agreement was rejected. Mr. Power thought that either the Labour Relations Board or the Supreme Court ruled that The Teamsters had a role in the industrial and commercial sector of the construction industry. In C#5, 15 Unions are named. The Teamsters and the Hotel and Restaurant Employees were not included. The CLRA now has 17 collective agreements. There was one Teamsters collective agreement relating to the Glaziers trade before agreement was reached for vehicles with certain size axels, etc.

In Mr. Power's experience, the following trade Unions may be active on a project site: Elevator Constructors, Carpenters, painters, Pipefitters, Bricklayers, General Labourers, Sheet metal Workers, Electricians (Local 2330), Millwrights, Iron Workers, and Operating Engineers. IBEW Local 1620 (Linemen) is an exception. He had no idea what Local 1232 of the Carpenters and Joiners do.

When Mr. Power was advised by Local 779 that Sodexo might not have a copy of the CLRA collective agreement, he sent one to Mr. Vaillancourt on February 4, 2014.

Although he didn't have a discussion about it with Local 779, his assumption at the time was that Sodexo was in the Industrial and Commercial sector of the construction industry. He conceded however, that the CLRA did not investigate the operation of Sodexo. What he had at the time was the Union's certification order, but he agreed that this order did not say that Sodexo was in that sector. Also when Mr. Vaillancourt told him about the Camp that Sodexo was running, Mr. Power concluded that it was indeed in the industrial and commercial sector. Although he discussed the certification order with Mr. Lenehan on February 3, 2014, Mr. Lenehan did not advise him that Sodexo was an employer in the industrial and commercial sector. Mr. Power simply sent the certification Order to Mr. Vaillancourt at 7:14 am the next day. Mr. Vaillancourt asked him why he needed the CLRA collective agreement if the certification order was dated December 2013. So Mr. Power advised him that if Sodexo is operating in the industrial and commercial sector, the agreement applies. Mr. Vaillancourt then told him that they would be paying retroactively to January. Then he said maybe he would apply a mix of that agreement and another one, but Mr. Power told him that would be a disaster. Clearly somebody had a change of mind after that conversation.

When CP#4 was negotiated and signed on June 30, 2009, the relevant people were already on site. The Director at Large for the CLRA was not involved in those negotiations. Instead a contractor owner was at the table, first the father and then the son when the father died. This was negotiated on the request of the Contractor on the IOC site.

Examples of the signature pages for collective agreements in CP#1 found at p. 29, p. 27 and p. 19 of Tabs 1, 2, and 3 respectively indicate the signatories for the CLRA,

including CLRA Directors, Sector Committee members, Sector chairs, the President. This was common to all the CLRA collective agreements negotiated with the Trade Unions. CP#4 was signed by Mr. Power and a member of the board. Feedback on negotiations was received from non-association contractors, but they were not signatories, so he and the Chair of the Executive signed the document.

Mr. Power explained that every sector in the industrial and construction industry has a trade. The Teamsters are currently handled by an at large member – someone from Parsons Construction. However, there is no member in the Hotel & Restaurant sector, but a director at large gives advice. In the case of Local 779, the CLRA drew information from two companies owned by Mr. Fifield – as indicated by their signatures on C#1. Mr. Power's practice is not to sign collective agreements, preferring to have signers from the particular sectors. He could not, however, recall what the CLRA By-Laws say about this. When referred to section 9 of the By-Law, Clauses 9.04.1 and 9.04.2, *viz*:

> 9.04.1 Subject to Clause 9.04.2 a Collective Agreement shall not be executed until approved by the Board and must be signed by the President and countersigned by at least one (1) member of the Board authorized by the Board to do so.
>
> 9.04.2 A Collective Agreement shall not be executed by or on behalf of the Association unless and until it has been approved by a majority of the members of the Trade Division present at a meeting of the Trade Division called for the purpose of considering the proposed Collective Agreement. A meeting may be held by telephone conference call or in person as may be determined by the President from time to time.

Mr. Power confirmed that the Board had not established a Trade Division in the case of the Hotel and Restaurant Workers Local 779. He also testified that there are those who participate in negotiations, but who are not members.

By way of redirect examination, Mr. Power said that, in his discussion with Mr. Vaillancourt, the latter initially said that he would apply the CLRA collective agreement retroactively, and then said he would meet with the operations people. Mr. Power then expressed his hope that he did not plan to apply two (2) collective agreements.

Mr. Pat McCormick, Secretary Treasurer and Business Manager of Local 779, explained that his Union represents catering industry chefs, cooks, bakers, salad & sandwich makers, janitors, cleaners, security personnel, camp maintenance, service attendants and front desk attendants. He has been Business Manager since 1982. Previously he was involved with the Sheet Metal Workers International Union from 1974 till 1986 and Labourers International Union from 1984 till 2002.

Mr. McCormick indicated that he has been involved in the construction industry since 1963 and negotiated with the Sheet Metal Workers International prior to 1974. He further indicated that Hotel & Restaurant Workers Local 779 was a founding member of the Newfoundland and Labrador Building Construction Trades Council (NLBCTC) and is still a member today. Local 779 was also a founding member of the Resource Development Trades Council (RDC), which was formed to participate in Special Construction Projects within the province. The first such Union organization was the Churchill Falls Allied Trades Council for the Churchill Falls Project; the second was the Oil Development Council (ODC) for the Hibernia Project. Since the latter development,

the organization has been the RDTC. Mr. McCormick has been President of both the NLBCTC and the RDTC.

The Hotel & Restaurant Workers Union Local 779 worked on the Upper Churchill Falls Special Project at three (3) camps: Main, Esker and Lobstick. Other projects it worked on were camps for The Stephenville Linerboard Mill, Hinds Lake, Cat Arm, Upper Salmon, Granite Lake (5 to 6 years ago), and with East Coast Catering City for the Labrador City Mine.

Mr. McCormick submitted 5 Special Project collective agreements (including trade appendices) on which Local 779 supplied Security Services during construction: 1) Hibernia Project; 2) Voisey's Bay Mining Project; 3) Long Harbour Hydromet Facility Project; 4) Hebron Project and 5) Muskrat Falls Hydro Project. At Hibernia, Local 779 also represented the communications and dispatch workers. Catering was by Major Offshore, which was then sold to another company; this involved a 7 year camp at Bull Arm. At Voisey's Bay, catering was by Labrador Catering at a 3-4 year camp. At Long Harbour, the catering Company was ESM until the Spring of 2011. Security was provided since 2009: Spectrum Security has been the latest ongoing operator. At the Hebron Project at Bull Arm, the catering company was ESM; Spectrum provided security. At Muskrat Falls catering is by Labrador Catering and Spectrum does the security. All the foregoing were big construction projects. Local 779 and all the other trade unions involved were under the umbrella of the RDTC.

For the Labrador City project at IOC, Mr. McCormick testified that Local 779 organized the Camp workers when he became aware of the project. If Local 779 remained outside the Private Labour Agreement for that project, which prohibited strikes

by the included Unions, his Union would be able to strike. Therefore, his Union was included in the agreement. The camp involved a hodgepodge of accommodations and meal provisions. The Local 779 CLRA collective agreement and appendices was part of that project as were those of the other trade unions that were involved. CP#4 is that CLRA collective agreement. Mr. McCormick said he was involved with the CLRA collective agreement under the following CLRA presidents: Vince Rossiter, Bill Alcock, Ches Winsor; and Craig Power. Both CP#3 and CP#4 documents were signed by Craig Power and Mr. Myers. Mr. McCormick assumed that they had authority to do so. C#1 was signed by Messrs. Fifield, Courtenay and Fowler. Mr. Fifield's father owned the company; Mr. Courtenay was with Labrador Catering, and Mr. Fowler was an officer of the CLRA. Mr. McCormick assumed that those men also had the CLRA's blessing to negotiate on its behalf.

What was going on at the Tata Steel Camp in Labrador had been the subject of a lot of discussion within the NLBCTC. So Local 779 organized at the camp, had the requisite number of Union cards signed, and Mr. McCormick arranged to apply for certification, which did occur on December 18, 2013. The following account might not be entirely accurate because it was somewhat confusing, but nothing significant turns on it as it is common ground that both Tata Steel and Sodexo were made aware of the Certification Order and the CLRA collective agreement, and Sodexo ultimately decided not to abide by that agreement. After certification, Mr. McCormick advised Craig Power of the CLRA and suggested that he should send copies of the CLRA collective agreement to Tata Steel. Mr. McCormick subsequently became aware that Sodexo was not following the CLRA collective agreement because he had not received financial contributions as

required by that agreement. He enquired of employees at the camp if they had been paid a raise and he learned that Sodexo was not going to do so until negotiations occurred in March 2014. So Mr. McCormick contacted the Union's solicitor, Mr. Lenehan, who spoke to Mr. Power. Mr. Power said he talked to Mr. Pierre Vaillancourt but was unsure if the copies had been distributed, so he advised that he would send all the copies again and the Local 779 certification order to Sodexo.

In Mr. McCormick's experience, all the catering camps his Union had been associated with were happy to have paying customers over and above those employees working on the construction projects. The workers involved received the same wages for dealing with all types of customers. At the Tata Steel Camp, there were 20 or more extra people staying there and others were supplied with meals. Mr. McCormick recalled that such extra customers and the provision of other meals also occurred at the Labrador City camp. In his view, nothing Mr. McCormick heard in this arbitration hearing was any different for the situations that occurred at other catering camps elsewhere. The Tata Steel camp has not been run any differently from any other camp he has been involved with.

By way of examining the evidence concerning the first employee on the list, Mr. Fontaine, Mr. McCormick compared the actual Sodexo Payroll (JD#11) December 18, 2013 -- March 28, 2014, to the wages and benefits that are required by the CLRA collective agreement. Mr. Fontaine was a General Help/Snowshoveller, Group 7, who was paid $14.00/hr + 16% benefits. The CLRA agreement shows $28.19/hr (double what he was paid) plus 8% vacation pay, 5% holiday pay, Health & Welfare of $3.00/hr earned is due to be paid to the plan administrator. In addition, there is a pension contribution to

be paid, as well as contributions to the Promotion Fund and the Recovery Fund on the basis of hours worked. Thirty cents/hour worked would go to the NLBCTC and 30 cents would go to the CLRA. An additional penalty would apply if contributions to the Industry Trust Funds were not made by the 15th of the month. To protect employees, the Employer must hold contributions in trust. This would make the wage package for Mr. Fontaine $43.07/hour. Also, in the construction industry, overtime is paid as double time after 8 hours per day on a regular schedule, or double time after 10 hours on a contractor's 12 hour shift. Double time is paid for split shifts not completed within 12 hours. A 15% premium/hr applies for additional shifts. When Mr. Fontaine worked overtime, he was paid time and one-half @ $21.00. All the various funds and payouts would double for overtime under the CLRA collective agreement. Therefore, in total, for Mr. Fontaine, his CLRA wage would be $86.14/hour.

This example would apply to all the following employees, with the necessary changes in accordance with their respective "group" category:

Benjamin Einish	General Help (GH)	Group 7
Caroline Uniam	Housekeeping (HSKP)	Group 7
Celine McKenzie	Sandwich Maker	Group 6
Crystal Quiscappio	HSKP	Group 7
Danielle Boucher	HSKP	Group 7
Elizabeth McKenzie-Rossignol	GH/Cleaner	Group 7
Francois Boisvert	Breakfast Cook	Group 5 or 4
Genevive Quiscappio	HSKP	Group 7
George Quiscappio	GH/Dishwasher	Group 7
Gerard Pinette	GH/Dishwasher	Group 7
Ghislaine Dube	3rd Cook	Group 5
Gustave Joseph	GH/Shoveller	Group 7
Jean-Francois Meloatam	Service Attendant	Group 4
Jean-Michel Foster-Meloatam	GH/Dishwasher	Group 7
John Tobin	1St Cook	Group 2
John Uniam	GH/Janatorial	Group 7
Johnny Andre Vachon	GH/Shoveller	Group 7
Judith Mckenzie	HSKP	Group 7

Kateri Hervieux Einish	HKSP	Group 7
Kitty Tooma	Driver	Group 4
Lianne Chemaganish	HSKP	Group 7
Linda Shecanapish	HSKP	Group 7
Louis Dominique	GH/Dishwasher	Group 7
Marc McKenzie	Sandwich Maker	Group 6
Marc-Shannon Shecanapish	HSKP	Group 7
Marie-Andree Alix	3rd Cook	Group 5
Martin Tremblay	Breakfast Cook	Group 5
Megan Meloatam	HSKP	Group 7
Melanie Ambrose	HSKP	Group 7
Michelle Guanish	HSKP	Group 7
Mirka Sioui	HSKP	Group 7
Myriam Thibault-Einish	HSKP	Group 7
Nicolas Joseph	GH/Janatorial	Group 7
Pamela O'Neil	3rd Cook`	Group 5
Patricia-Louise Einish	Driver	Group 4
Patrick Dominique	GH/Janitorial	Group 7
Patrick Pien	Driver	Group 4
Pierre Janelle	Breakfast Cook	Group 5
Raphael Bacon	GH/Shoveller	Group 7
Romain Meloatam	GH/Shoveller	Group 7
Salomon Uniam	GH/Janitorial	Group 7
Scott Rogers	1st Cook	Group 2
Shanon Pinette	GH/Dishwasher	Group 7
Shaun Vautour-Sandy	HSKP	Group 7
Simon Jean-Pierre-Moreau	GH/Dishwasher	Group 7
Tamara Einish	HSKP	Group 7
Theresa Shecanapish	HSKP	Group 7

The above represents the difference owed in wage rates and benefits being sought under the CLRA collective agreement from December 18, 2013 – forward.

Cross examination of Mr. McCormick was a testy match between him and counsel for the Employer.

Mr. McCormick testified that his Union did not have members from the two aboriginal communities and Shefferville prior to certification. Such members were obtained after certification as Sodexo hired and Local 779 co-operated. The Union did have aboriginal employees from Labrador. Asked what remedy the Union is seeking

under Article 4 of C#1, Mr. McCormick said that Article 4.02 applied to all the people who should have been hired under 4.02 after certification.

With respect to JD#11, Mr. McCormick indicated that another witness is doing the calculations for the difference between what Sodexo paid its employees and what is due under the CLRA agreement. He explained that the figure of $43.07/hr does not contain a shift premium or a split shift penalty. Therefore, the difference at p. 21 is between $21.00/hr and $43.07/hr. Also, So since Sodexo operated on a 7 day operation, employees would be working double time for part of every day Monday through Thursday. Friday, Saturday and Sunday would all be considered overtime. Mr. McCormick agreed that Sodexo would face making big pay increases. However, he was not privy to anything that might happen between the owner Tata Steel and Sodexo in this regard.

Asked about the beginnings of Local 779 in the province, Mr. McCormick said that the Union has been around since the old Newfoundland Hotel operated. It entered the construction industry at the time of the Upper Churchill River Special Project. The Union has also been certified in non-construction areas (see PM#8 1962 Certification Order for employees of a Tavern). He disagreed that Local 779 is not certified for employees at 5 Wing in Goose Bay. He suggested that the Labourers or the Steelworkers might have been certified there. And he denied that his Union did have certification there and then lost it.

Mr. McCormick agreed that, in 1967 when his Union entered the construction industry, it was not part of the CLRA accreditation order in 1976 because it did not have construction members at that time. Other than Special Project Orders, Local 779 was not

involved in the CLRA accreditation as a union. PM#9 was a November 2009 Sodexo certification, in which Sodexo assumed responsibility for the CLRA agreement in respect of the Labrador City project. He pointed out that it is not unusual for a camp to be located in a town outside the area where the construction project takes place. That was the case in both Labrador City and Stephenville. Mr. McCormick reiterated that PM#9 happened because IOC was concerned that if Local 7789 was not party to that project (See CP#3 the project agreement dated November 13, 2008 between the CLRA and the particular building trades unions that were invited), its collective agreement could expire and it could then go on strike. So Local 779 was "requested" to join the project, which it did.

Asked about CP#4, the May 1, 2006 – April 30, 2011 CLRA collective agreement. Mr. McCormick testified that President Neil Chapman felt that Local 779 did not represent construction industry workers. Although he could not remember the year it happened, he recalled that Mr. Ches Winsor had to testify before the LRB that the Union had been voluntarily recognized as a bargaining agent. Mr. McCormick indicated that Local 779 would have applied this collective agreement to any employer if it had members employed. This was the situation in section 2(b) of CP#3, the Concentrate Expansion Project at Carol Lake Labrador, which stated:

> The newly ratified CLRA Provincial Agreement between CLRA and HRW ("the provincial Agreement") shall thereafter constitute a Trade Appendix forming part of and which shall operate in accordance with the terms of the Project Agreement.

Local 779 obtained a certification order for the Camp employees on that project.

Mr. McCormick agreed that he has not visited the Sodexo site in Shefferville. Therefore, he has not observed what Sodexo has done at that location. He was also not

aware that production mining operations are going on outside that location. He only was aware of what he has read in the newspaper, if the paper can be believed. Mr. McCormick agreed that there is no mention of the construction industry in C#3, the December 18, 2013 Certification Order. He also agreed that he has no personal knowledge of the actual operations of the Tata Steel project.

By way of re-direct, Mr. McCormick testified that in the aforementioned appeal to the LRB about the status of Local 779, Mr. Dana Lenehan was counsel for the Union and Mr. Michael Harrington was counsel for the CLRA. At that time Mr. Harrington (now a Supreme Court of Appeal judge) was a partner in the same firm Mr. Smith works for.

Mr. Tom Woodford, Business Manager of the Iron Workers Union Local 764 for 14 years, testified that his union has been party to collective agreements with the CLRA in the industrial and commercial sector of the provincial construction industry. He has dispatched Iron Workers to contractors at the Tata Steel site. In particular, he was aware of his members working for IBA there since 2012. More recently he has dispatched approximately 30 members to Sunny Corner, plus 5 more on this date and 7 more to report next week. Loma Construction also has about 12 of his members. All those dispatched are paid in accordance with the CLRA/Iron Workers collective agreement. No change of any kind was made to that agreement for this project. All the contractor companies voluntarily recognized this collective agreement.

In cross examination, Mr. Woodford testified that he was aware that IBA was constructing the Dome. Sunny Corner was working on installing equipment and steel in the Dome. And Loma was performing mechanical work there. Mr. Woodford submitted a

package of documentation representing requests and referrals for Iron Workers inside the Dome. He had no idea what the Dome was or what it was intended to house. He also said that there is no requirement in the provincial CLRA collective agreement to hire aboriginal people. He was not aware of any applications from aboriginal communities. However, his Union is involved in a rebar course in Goose Bay, which aboriginal people have attended.

Mr. Jim Myers, Business Manager for UA Local 740, testified that his Local has been involved in all the major special projects in the province for the past 25 years. His Union is also party to the CLRA collective agreement in the industrial and commercial sector. The Local's members consist of Plumbers, Pipefitters, Welders, Refrigeration and Instrumentation mechanics. Mr. Myers indicated that he has dispatched his members to Sunny Corner at the Tata Steel project, all of whom have been paid under the CLRA collective agreement, which has been voluntarily recognized by Sunny Corner and no concessions or changes have been made. He understood that work at the project has been slow because of problems with the Dome structure, so the number of UA members has been low. However, he believed his Local's numbers will ramp up to 30-50 soon.

In cross examination, Mr. Myers indicated that the 3 pipefitter members currently on site are with Sunny Corner who are installing the mechanical system under the Dome. He agreed that Local 740 does not negotiate terms and conditions of the Camp. When his members report for work, they fly in and are met by the Contractor, who transports them to the office. On ramp-up there will be 30-50 pipefitters and pipe welders, who hold their own certificates. Sunny Corner voluntarily recognized Local 740 by contacting it for

workers. The Local supplies Sunny Corner's manpower needs, which would include aboriginals if they possessed the required qualifications.

Mr. Doug Harris, CA (since 1976), of the Accounting firm Harris Ryan, testified that his firm performs various audits for businesses and unions, including Local 779, with which it has worked over the years. Mr. Harris submitted DH#1, a calculation comparison for 48 Sodexo employees among 7 groups between the Sodexo payroll and C#1 the CLRA/HRW Local 779 collective agreement. No health and welfare benefits are included, just wages and some vacation pay. If time permitted in this exercise, he could calculate H&W benefits with the correct base rates. The parameters of these calculations are explained in Mr. Harris' April 29, 2014 cover letter to Mr. Lenehan, which states in part:

> . . . .
> We have been instructed to compare the wages that were actually paid to each of 48 (forty eight) employees from the period from December 18, 2013 to March 28, 2014 to the amount that would have been paid to them if the terms of the collective agreement negotiated between HRW 779 and Construction Labour Relations Association of Newfoundland and Labrador (CLRA) had been followed. We were instructed to do these calculations under two different scenarios:
>
> - Scenario 1: The pay is calculated using the rates of pay applicable to each employee under the collective agreement. Overtime pay is calculated using the provisions of the collective agreement, which is all overtime pay is at double the base hourly rate. Overtime hours are determined in accordance with the terms of the collective agreement, that is, any hours worked in excess of 10 hours a day, and hours worked in excess of 40 hours in a week, and any hours worked on either a Saturday or a Sunday are overtime hours. The work week begins on Monday and ends on Sunday, in accordance with the collective agreement.
>
> - Scenario 2: The pay is calculated using Sodexo Canada Ltd.'s payroll records with the only change being to modify the rates of pay to be the

rates of pay specified in the collective agreement. In other words, whatever hours Sodexo Canada Ltd. paid at regular rates use the regular rates in the collective agreement and whatever hours Sodexo Canada Ltd. paid at overtime rates use the overtime rates specified in the collective agreement.

We were also instructed to prepare a summary of the differences between the amounts actually recorded by Sodexo Canada Ltd. and the amounts that would have been the gross pay under each scenario.

We used the following documentation in the course of our assignment:

1. A copy of the 2011-2016 Collective Agreement between [CLRA] and Local 779.

2. A copy of the payroll records of Sodexo Canada Ltd. for the affected employees from December 18, 2013 to March 28, 2014.

3. A list of the affected employees indicating their employee group which determines their regular hourly wage under the Collective Agreement.

. . . .

Spreadsheets detailing calculations for each individual employee were produced and a Summary of the Payroll Data By Employee was provided on the first page of the package of documentation. Three gross total payrolls were determined: Sodexo, Scenario 1 and Scenario 2; two shortfall amounts were determined under Scenario 1 and Scenario 2, as follows:

	Gross Payroll Calculated by			Shortfall Under	
	Sodexo	Scenario 1	Scenario 2	Scenario 1	Scenario 2
	A	B	C	D B-A	E C-A
Totals	**$278,744.16**	**$631,371.63**	**$592,862.72**	**$352,627.47**	**$314,118.56**

In cross examination, Mr. Harris testified that he did not prepare each of these calculations; assistants did some and he verified them. He agreed that he was instructed to do these particular calculations rather than the H&W benefit calculations. The methodology was to compare the base wage rates in the CLRA collective agreement to

the actual wage rates used in the payroll records. If the full rate under the collective agreement was used, it would significantly increase the differences under Scenario 1 and Scenario 2.

The Employer

Mr. Jean Marc Blake, Vice President of HR with Tata Steel Minerals Canada, explained that the Company was a 2010 joint venture between Tata Steel (80%) and New Millennium Mining (20%) to exploit mining operations in Labrador close to Shefferville, Quebec. At the current time, mining operations are on the Labrador side of the border – there had been mining claims of IOC that had been picked up by a junior mining company owned by a former employee of IOC, Bob Martin. The mining site was developed in 2011, i.e., erecting the accommodations and infrastructure to support the mining involvement of the somewhat rich deposits of iron ore. Mr. Blake, previously a VP of IOC, came to Tata Steel in early 2011 as an HR advisor, a role that grew to full-time employment, and expanded to include the administration of the hotel. Mr. Blake has visited the site and commented on its mining activities, which have been in operation from 2012 to 2014. The long term project is to extract and crush, screen and ship the iron ore product.

By way of JMB#1, a picture of the Dome taken in 2013, Mr. Blake explained that the Dome, which is located 2-3 kilometers from the camp, is currently fully covered and closed in. The Concentrator will be housed under the Dome to permit crushing of ore for 12 months of the year, and to remove moisture from the ore to permit it to be shipped to Sept. Iles, Quebec.

JMB#2 shows the Dome covered, but now in 2014 the ends are closed over. Meanwhile work is proceeding in the Dome by Sunny Corner, which is erecting the steel and doing piping. The electrical contract will be coming soon.

JMB #3 is an aerial view of the Dome showing the railway loop. A conveyor will be used to stockpile the ore, and the Concentrator will process the rock for shipping. Currently, no hydro electricity is available at the site, which runs by diesel generator. No Tata Steel employees work in this area. Sunny Corner is working inside the Dome. Other contractors supply cement and make the forms for the concrete. And another contractor is building the railway structures. All these things occur in the vicinity of the Dome. IBA did steel erection but is now demobilized. Grey Rock worked on mining activities, which are east and west of the Dome, except for some engineers and management people. And Mr. Blake believed Mamu Construction was the fuel supply company.

JM#4, taken in 2013, shows a crushing operation for crushing ore to a primary and a secondary size, both dimensions to accommodate shipping after being stockpiled. Ore is removed to the yard for shipping where it is loaded onto ore cars. Mr. Blake testified that this is the Company's third year of shipping since 2012, all done from a temporary facility. 250,000 tons were shipped in 2013 and 1.5 million tons will be shipped in 2014.

JMB#5 shows the Silver Yard owned by a competitor, Labrador Iron Mine. Here the ore is loaded onto rail cars and is shipped by train links between Shefferville to IOC and then to the QNSLR yard at Sept Isles. The customer is Tata Steel mills in the UK and Netherlands. Outside of India, Tata Steel did not have its own supply of iron ore.

Mr. Blake indicated that people are housed in the hotel (camp) and in the town of Shefferville. There are no residences in the mining area, and there is no commercial park. The project team (which manages the subcontractors who do the work) mobilizes the workers and Sodexo accommodates whoever is directed to it. Others are accommodated outside the camp. Tata Steel mining and other activities are all contracted out, except for some management. The workers engaged in mining are lodged on a first come first serve in the camp or in houses in Shefferville. Sodexo manages the catering, the feeding of people, cleaning rooms, clearing steps, running the cafeteria, and runs a bus service from the airport to the Hotel (camp). Sodexo maintains its wells and pumps, monitors the septic gauges, and orders products for those systems. Mr. Blake was involved in the locating of the camp. The Company wanted it placed away from the mining operation and Dome construction worksite, so as to provide an environment where employees could get away from the site for awhile.

The contract between Tata Steel and Sodexo is for 5 years, but Mr. Blake indicated that construction activity should end on December 19, 2014, at which time it will be turned over to operations. So far mining has run on a seasonal basis. However, the Company will introduce a dryer for JMB#4 to allow shipping hopefully into November.

The current accommodations camp was put in place in the fall of 2011, and was commissioned in early January 2012. For the purpose of water and sewer facilities, the camp is fully connected to two wells – it is difficult to put anything permanent in place in such remote areas. JMB#6 is the camp map, which Mr. Blake refers to as the Hotel.

In cross examination, Mr. Blake testified that Tata Steel Minerals Canada has 100 employees, none of whom are construction workers. All construction work is contracted out.

Although he is not an operations person, as a member of the executive group, Mr. Blake knows that full production would be 4 millions tons when the mine is fully operational.

Asked about Craig Power's evidence that he provided all the CLRA collective agreements to Tata Steel, Mr. Blake said he did not receive those documents. His involvement with the Sodexo subcontract was with the buildings, etc. No Sodexo staff report to him. A renewal of the Sodexo contract involved an increase in the cleaning of the rooms. If that meant Sodexo had to hire more staff, that was ok. Mr. Blake was involved in negotiating the commercial rates, i.e., the rates Sodexo has for housing people at the camp. These were the Sodexo/Tata rates.

Asked about Mr. Plamondon's testimony as AECOM General Superintendent, identifying the mining operations as minor, and that the managers and workers at the camp were mostly construction employees, Mr. Blake said that there was no mining operation from November or December 2013. He indicated that there were some mining people on site in 2014, which were mobilized to remove snow and work with geologists. Beyond that, Mr. Blake does not monitor how many people were in the camp and their respective proportions. He was aware however that there are 280 total people on the site, 168 were in the Camp and 112 were housed in Shefferville, etc. He also said that the numbers will ramp up during the summer, both in mining and construction. $550-$700 million has been earmarked as the target for the completion of construction in 2014.

Mr. Blake described mining production in 2013 as a "direct shipping project". About 63% of ore was shipped to the customer. Explanation of this project and an update on the project's progress was accepted by the parties as C#5, a New Millennium Iron News Release 14-02, January 20, 2014, titled: New Millennium Iron Corp. Provides Update on TSMC's Direct Shipping Ore Project Progress".

Mr. Cyrille Collin, District Manager for Sodexo (Ontario, Quebec, and Maritimes – including Newfoundland and Labrador), testified that Sodexo is a French company that was established in 1956 as a service company to various clients in the areas of Health Care, Pensions, Education, etc.

Mr. Collin indicated that he was involved in the original negotiations for the Tata Steel site project. He also visits the site regularly to ensure quality and that the client is provided with the type of service sought. As such he is involved in contract management, budgeting and forecasting. He has visited the site once and the camp approximately 15 times. Mr. Collin does not dispute the number of Sodexo employees identified by Mr. Harris CA from December 18, 2013 to March 28, 2014.

Mr. Dufresne and Mr. Collin visited the Dome location. No Sodexo employees are employed at the Dome. All Sodexo employees work at the Camp performing catering, housekeeping, janitorial, front office management for guest allocation, and other services such as transportation from the camp to the site and the airport, and maintain the waste water system at the camp. The cleaning of rooms is done for all clients who stay in the camp. For the period December 2013 to March end 2014, the clients were all the contractors for Tata Steel, aboriginal visitors and workers on the generating stations, etc. Sodexo has a 5 year contract with Tata Steel to provide those services. CC#1 is that

contract, commencing on January 4, 2012, describing the Project as: "Direct Shipping Ore project, located in Timmins, Newfoundland". The various services are provided on page 8, and an amendment is provided on page 35 for cleaning services to be provided every day. No Sodexo employees work away from this facility, and no Sodexo employees have a trade or are members of a trade union.

Mr. Collin explained that Mr. Vaillancourt is the director of Labour Relations for Eastern Canada. In November 2013, Mr. Vaillancourt told him about the request for certification. So he waited for the Union to make a request to bargain for a collective agreement. Then in February/March 2014, he received the CLRA collective agreement from Mr. Vaillancourt. This was the first time he saw that document and he was surprised at the rates of pay it contained. Therefore, he e-mailed the document to his supervisor, who gave it to legal people. As a result, he did not apply the CLRA collective agreement at that time and has not done so since.

By way of cross examination, Mr. Collin said that the 16% denoted on JD#1, the Sodexo Payroll, does not represent anything. It is merely an internal cost to the Company of other benefits. Sodexo pays 4% vacation pay. Wherever Employer and Employee contributions are involved, the Employer portion would be a cost to the Employer. The only extra cost is the 4% vacation pay for Sodexo employees.

Mr. Collin reiterated that Sodexo is a big company internationally. In his capacity as District Manager, Mr. Collin is only involved in 15 remote sites or places such as Goose Bay. Of those 15 remote sites, 10 are unionized. Some are construction camps in Quebec, but Sodexo is not unionized there. Both he and Mr. Vaillancourt understood that the CLRA collective agreement was the one that Sodexo had to follow. In February, he

went to the camp and met with the housekeeping crew about obtaining new shovels and winter coats, etc. At that time he did discuss the certification order with the group, who wanted a raise back to January 2014. He told them that there would be no raise because that subject would be discussed in negotiations for a collective agreement. Mr. Collin had not seen the CLRA collective agreement at that point.

ARGUMENT

The Union

In support of its various positions, the Union submitted the following legislation, authorities and jurisprudence:

Tab 1 *Labour Relations Act, RSNL* 1990, cL-1, ss. 54 – 68, Division II – Employers' organization;

Tab 2 Adams George W., *Canadian Labour Law*, 2nd ed. vol. 2, 2014 Thomson Reuters Canada Ltd., (Ch. 15) "*Accreditation*";

Tab 3 *Re Multiplex Ltd., & United Brotherhood of Carpenters & Joiners of America, Local 579*, 1983 *Newfoundland Supreme Court Trial Division, Steele J.,* CLB 407, 5 D.L.R. (4th) 420;

Tab 4 *Trent Construction Ltd. v. Labourers International Union of Newfoundland, Local 128*, 1995 *Newfoundland Supreme Court Trial Division, Woolridge J.,* CarswellNfld 53, 136 Nfld. & P.E.I. R. 240;

Tab 5 *U.A. Local 740 v. Marshall Industries Ltd.* (1999) *Newfoundland Supreme Court Trial Division, Orsborn J.,* 1999 CarswellNfld 27;

Tab 6 *Transport and Allied Workers, Local 855 v. Construction Labour Relations Association of Newfoundland and Labrador and Parsons Trucking*, Labour Relations Board 118:467, Morgan Cooper (Chair) (December 18, 2002);

Tab 7 *Construction General Labourers, Rock & Tunnel Workers, Local 1208 v. Newfoundland & Labrador (Labour Relations Board),* 2004 CarswellNfld 8, *Supreme Court Trial Division,* Wells J.;

Tab 8 *Transport & Allied Workers Union, Local 855 v. Construction Labour Relations Association of Newfoundland and Labrador Inc.*, Newfoundland & Labrador Labour Relations Board (Marshall panel), 2005 CarswellNfld 380;

Tab 9 *Re Newfoundland Processing Co. and USWA, Local 9316* (1997), 1997 CarswellNfld 382, 46 C.L.A.S. 459, Oakley;

Tab 10 Adams George W., *Canadian Labour Law*, 2nd ed. vol. 2, 2014 Thomson Reuters Canada Ltd., (Ch. 12) "*The Collective Agreement*".

Tab 11 *Re International Alliance of Theatrical Stage Employees, Moving Picture Technicians, Artists and Allied Crafts of the United States and Canada, Local No. 118 v. Vogue Theatre Inc.* (2003) BCLRB No. B89/2003, (Leave for Reconsideration of BCLRB) No. B264/2002;

Tab 12 *Re Toronto District School Board and CUPE, Local 1280 (Giordanella)* (2010), 2010 CarswellOnt 12246, 102 C.L.A.S. 180, Springate.

There are many exhibits to be considered in this case.

The grievance alleges that, in accordance with section 54 of the Labour Relations Act (Tab 1), Sodexo is bound by the CLRA collective agreement.

At the Tata Steel Camp in Labrador close to Shefferville Quebec, the iron ore mine is being redeveloped from an old IOC mine site. Major construction was required to permit production to take place. Aecom's Vincent Plamondon gave evidence that construction started in 2011 and is due to be completed in 2014. Jean Marc Blake agreed with this. Mr. Plamondon and Mr. Schenkle broke down the significant scope of work the different companies were doing.

When Local 779 was certified on December 18, 2013, the primary focus of work at the site was construction. Since there was no mining performed from December 2013 until the date of this hearing, the primary focus was construction activity. The January 2014 News Release C#6 supports that fact, describing any mining activity as "trial

production, which would increase when all the necessary construction work is completed. Therefore, the evidence clearly establishes that the primary focus of work performed on the project site since 2011 has been construction, not mining. Mr. Dufresne brought Sodexo records indicating the companies who had employees staying in the camp. Mr. Plamondon went through each one of those companies, stating that the same companies show up over the months and almost all are construction companies.

There is nobody better qualified to testify about the construction plans than Mr. Plamondon of Aecom. He identified each worker with his particular trade. Those workers were in the building trades. They were recruited from the Iron Workers and UA, etc. hiring halls. Only one contractor does not abide by the CLRA collective agreement, i.e., Sodexo.

Local 779 does not provide trades people to construction project sites. Rather it represents employees whose work supports the construction trades people. Local 779 has a long history of involvement in the industrial and commercial sector of the construction industry in the province and also in designated Special Projects. Whether Local 779 was signatory to the CLRA collective agreement or a Special Project is not relevant. The evidence is that it has represented employees engaged in accommodations at construction projects for the Linerboard Mill at Stephenville, the Iron Ore Company of Canada expansion at Labrador City, at the Churchill Falls project, the Long Harbour project, the Hebron project, and the Muskrat Falls project. In each case, Local 779 has represented employees engaged in catering and accommodation in support of construction trades people employed at the sites.

The foregoing is more than sufficient for the arbitrator to order Sodexo to abide by the CLRA collective agreement with HRW Local 779.

The Employer seems to suggest that the CLRA collective agreement is something less than a provincial agreement because it was attached as an amendment to the IOC Carol Lake expansion project. The CLRA itself was also attached to the IOC project amendment. Clearly none of that matters. What matters is the fact that Local 779 was properly certified for the relevant employees and was entitled to apply the CLRA collective agreement for their benefit. Whether or not there was a HRW division within the CLRA, the fact of the matter is that the CLRA collective agreement was valid because it was signed by an official (VP) of the CLRA as well as by a couple of other individuals, and it was negotiated in good faith by the HRW Union.

With respect to the allegation that Local 779 was not included in the original CLRA accreditation order, counsel for the Union noted that the Millwrights and the Teamsters were also not part of that accreditation order. However, the evidence is that the Teamsters went to the Labour Relations Board and the Courts to obtain bargaining rights in the industry. The Union acknowledged that arguments about the authority to sign the collective agreement are on the edge of this case. But the fact is that the CLRA collective agreement in dispute was valid. Sodexo is bound by that agreement. The evidence indicates that Mr. Vaillancourt was in support of Newfoundland law on this subject. However, it is interesting that the Employer chose to call Mr. Blake for Tata Steel and Mr. Collin for Sodexo. Mr. Vaillancourt did not testify.

In accordance with Newfoundland law and the foregoing evidence, it is clear that, as of December 18, 2013, the date of Local 779's certification order for Sodexo's

employees at the Tata Steel Camp in Labrador, those employees were entitled to receive the wages and benefits of the CLRA collective agreement. Even though the cost would be onerous, Sodexo was obliged to comply with that agreement as of the date of certification.

Mr. Doug Harris examined the subpoenaed payroll records for each of the 48 Sodexo employees. Those employees are entitled to receive retroactive payment of wages under the CLRA agreement and are also entitled to receive continuing wages and benefits of that collective agreement. What the Union wanted from Mr. Harris was enough information to show the amount of money owed to those employees for a defined period. Mr. Harris did exactly that. He stuck to the wage rates involved under both scenario 1 and scenario 2. Scenario 1 applies the CLRA wage rates on the Monday – Friday 10 hour work rotation in the collective agreement; this scenario generates the larger wage difference. Scenario 2 makes calculations on the basis of the actual work schedule followed by Sodexo, which would result in a lesser difference owed to each employee. If the arbitrator rules that a period of grace must be given to Sodexo to convert its own rotation to the CLRA rotation, then the arbitrator may accept Scenario 2 as the appropriate one.

In this case, the Employer does not want to pay the wages contained in the CLRA collective agreement. Instead the Employer wants to negotiate wages. However, the December 18, 2013 certification order established Local 779 as the bargaining agent as of December 18, 2013, and the existing CLRA collective agreement establishes the wages to be paid. No other wage negotiations are permitted.

Therefore, the Union requests the arbitrator to award an order for part of the damages for monies owed from December 18, 2013 to March 28, 2014 as determined by Mr. Harris CA. The Union will then resister this judgment with the Supreme Court to obtain those monies.

The Union also requests a further order from the arbitrator, requiring Sodexo to pay to its employees on a continuing basis past March 2014 the wages contained in the CLRA collective agreement.

The Union further requests an order for Sodexo to provide the payroll record numbers that would permit calculation of wages and other benefits owing under the CLRA collective agreement.

Tab 2 is an explanation of accreditation in Canada by George W. Adams. In this province, the only accredited sector in the construction industry is the industrial and commercial sector. Adams' explanation makes it clear that accreditation in this jurisdiction applies throughout the province.

In Tab 3, *Multiplex Ltd.,* a 1983 decision interpreted the *Labour Relations Act 1977* in a case where a union was certified in 1977 to represent employees of an employer at a named construction site. A collective agreement was negotiated in 1980 between the CLRA and the Union in the industrial and commercial sector of the construction industry. The issue was whether the Employer was bound by the collective agreement since it was not a member of the CLRA, and the work at the site for which the union had been certified had ceased. The Labour Relations Board held that the Employer was bound by the agreement. The Supreme Court Trial Division Judge commented at p.6:

> Subsection (1) of s. 63 states that where an employers' organization has been accredited and after the date of the accreditation orders a union is certifies for another employer in the sector and area, the bargaining rights, etc., of that employer, whether he becomes a member of the accredited organization or not, are vested in or imposed on the employers' organization and the employer is bound by any collective agreement in effect or subsequently negotiated between the organization and the union in that sector. I find myself in complete agreement with the Board "that the employer fits squarely within the section...".
>
> ....
>
> ...all the bargaining rights, etc. of the employer company became vested in the Association; that it did not matter that the Company was never a member of the Association or had not authorized the Association to bargain on its behalf; and that like it or not the Company – the employer – became bound by the collective agreement subsequently negotiated....s.63(1) does not draw a distinction between a "normal" certification order and a so called "site" certification. The section does not exempt a "site" certification from the operation of the section. In any event the Board concludes that the certification of September 7, 1977, was not a "site" certification and I know of no valid reason or jurisdiction to interfere with that finding.

Similarly, HRW Local 779 was certified to represent the employees of Sodexo and, whether it likes it or not, Sodexo became bound to the collective agreement that existed between the CLRA and Local 779.

In Tab 4, *Trent Construction*, the court commented at paragraphs 5 and 6, viz:

> After accreditation of the employers' organization, the bargaining rights, duties and obligations of any given employer in the sector are vested in the employers' organization even if that employer does not become a member of the employers' organization. In brief, all bargaining rights are taken from the individual employer and given to the employer's organization, and any collective agreement, or amendments to such an agreement made by the employers' organization is binding on that employer.
>
> Such is the case at bar. The Applicant Trent, although not a member, is bound by collective agreements negotiated by the Newfoundland Construction Labour Relations Association ("N.C.L.R."), an accredited employer's organization. That would include the dispute settlement clauses found in Articles 22 and 23, and Article 15. This latter Article, among other things, deals with a fringe benefit, namely, the amount of

employer contributions payable to a health and welfare plan under which the grievance in question arose.

In Tab 5, *U.A. Local 740,* The Union sought judicial review to dismiss the LRB's decision to dismiss its application for certification of bargaining unit for employees of a company who were members of various trades. A contract was let by the company, which the Union claimed was not maintenance work, and therefore sought certification under construction classification. In 1999, the court found that the LRB's finding was not patently unreasonable that the work in dispute was maintenance. Interestingly, the learned judge commented at paragraphs 31 -34:

> 31 A final comment. I noted at the beginning of these reasons my difficulty with the use of the definition of "construction" in para. 54(1)(b) in the context of a certification application.
>
> 32 Section 54 is in Division II of the *Labour Relations Act* – Employers' Organizations. The definitions in s. 54 are only for the purpose of Division II, which encompasses ss. 54 to 68.
>
> 33 Essentially Division II deals with the accreditation of employers' organizations in the construction industry. The definition in para. 54(1)(b) is not of "construction" but of "construction industry", and is for the purpose of determining whether or not a particular employer is engaged in a particular sector (para. 54(1)(c)) of the industry. This in turn determines whether or not a unionized employer is bound by a collective agreement entered into by an accredited employers' organization.
>
> 34 Nowhere in ss. 54 to 68 is there any mention of an application for certification by a union. Such applications are made under s. 36, a general section applicable to all certification applications. Division II sets out the consequences of an employer in the construction industry becoming unionized, or voluntarily recognizing a union, but nowhere does it indicate that a definition of "construction" is relevant to the disposition of an initial application for certification.

In the instant case, Mr. Plamondon clearly testified that the work involved at the site was unequivocally construction work. Counsel for the Employer questions whether Mr.

McCormick's union was certified in the industrial or commercial sector of the construction industry. It has been many years since the LRB has certified unions specifically to the construction industry. Now the LRB simply certifies a union to represent employees of an employer.

Tab 6 is a decision of the LRB finding that The CLRA's refusal to bargain with the Teamsters union did not violate Sections 23(1) or 25(1) of *The Labour Relations Act.* However, the Board did express its satisfaction at p. 28 that the Applicant trade union did have an established practice of representing workers in the construction industry. In support of that conclusion, the Board noted that the union had represented workers on a number of projects within the province which could fairly be characterized as construction, including mega projects (special projects) such as Churchill Falls and Hibernia, as well as non-special construction projects such as the Stephenville Linerboard Mill, Elizabeth Towers and the Royal Trust Building.

Counsel for Local 779 pointed out that the HRW Union has established a similar history of participation on special as well as non-special projects.

Tabs 7, 8, 9, 10, 11 and 12 were not addressed in detail, but were submitted in further support of the Union's position that the CLRA/ HRW collective agreement was a valid agreement to which Sodexo was bound as of December 18, 2013 by the certification order that Local 779 was the bargaining agent for its employees.

Counsel at this point chose to wait for argument on behalf of the Employer, but asserted that, based on the foregoing, the outcome is abundantly clear. However, it should be noted that Local 779 has been put to a lot of expense in establishing this case.

The Employer

Counsel for the Employer mused that he has learned that nothing in the construction industry is what it appears to be. In this case, the Union has missed the point that C#1 the CLRA/HRW document is not a collective agreement in accordance with the *Labour Relations Act.* The Union has failed to prove that C#1 is binding on Sodexo. Counsel for the Union says that s. 64 is an important section, but from the Employer's perspective s.64(1) is especially important because that is the starting point for this case. The section states:

> 64.(1) A collective agreement entered into between an employers' organization and a trade union, or council of trade unions, is binding upon the employers' organization, employers whose bargaining rights have been acquired by the employers' organization engaged in the construction industry in the sector and area covered by the accreditation order, the trade union, council of trade unions and employees within the scope of the collective agreement.

Sodexo's bargaining rights are at issue only when they have been acquired by the employers' organization. As the Supreme Court Judge said at paragraph 32 in *U.A. Local 740, supra,*

> Section 54 is in Division II of the *Labour Relations Act* – Employers' Organizations. The definitions in s. 54 are only for the purpose of Division II, which encompasses ss. 54 to 68.

Therefore, the arbitrator must look at the definition in s.54.(1) of the *Act* and determine first whether or not the Employer is in the "construction industry". It is not automatic, as the Union suggests, that because Local 779 is a construction union, Sodexo is automatically covered by the CLRA collective agreement. In order for Sodexo's

bargaining rights to move to the CLRA, there has to be a finding that the employer Sodexo is in the construction industry (see paragraph 33).

For example, at the Stephenville Linerboard Mill, Bonavista Foods and the Union had a bargaining relationship. The situation is different for Sodexo. Sodexo's bargaining rights can only be taken away in accordance with the law. As the *U.A. Local 740* decision indicates that only in one case, the industrial and commercial sector of the construction industry, can a company's bargaining rights be taken over. However, that cannot happen if a company is not in the industrial and commercial sector.

"Construction industry" is defined in s.54(1)(b), viz:

> ...means the on-site constructing, erecting, altering, decorating, repairing or demolishing of buildings, structures, roads, sewers, water mains, pipe lines, tunnels, shafts, bridges, wharves, piers, canals or other works.

The evidence in this case is that Sodexo employees do not do any of the things listed in the definition of construction industry. The maintenance it does at the camp on wells and water system, and the changing of light bulbs, is not part of construction. It is not whether the employer is ancillary to a construction site, it must be "engaged" in the construction industry.

The Employer has established what the construction site was at the Tata Steel location. Sodexo was not engaged in the construction industry there. Tata Steel itself has no employees working on construction. All such work is contracted out. There were trades people working in the Dome. In other words, they were actively engaged in the work of the Dome. Sodexo employees were not. Therefore, it does not matter that Local 779 chose to pick up the CLRA collective agreement. The issue is not whether or not the

Union can negotiate with Sodexo. Rather, the issue is whether that collective agreement applies to Sodexo if it is not engaged in the construction industry.

In Tab 7, the LRB was dealing with situations of specific projects in the construction industry outside of special project circumstances, by which the Teamsters met s.43 of the *Act.* At pp.27-28, the CLRA's position was that:

> ...bargaining rights in the construction industry should only arise (whether through voluntary recognition or certification) in relation to trade unions with an established practice of representing workers in the construction industry. In this regard, it is noteworthy that Section 43 of our *Act*, which empowers the Board to define construction bargaining units in terms of geographic area, refers to applicant trade unions that have an established practice of representing workers in the construction industry....

Local 779 has a connection to the construction industry. In the *Labour Relations Act s.2.(u)* defines a special project thus:

> "special project" means an undertaking for the construction of works designed to develop a natural resource or establish a primary industry that is planned to require a construction period exceeding 2 years, and include ancillary work, services and catering relating to the undertaking of project.

Otherwise such ancillary work is not included. Section 70.(1)(b) was added in 2012:

> The Lieutenant Governor in Council may by order:
>
> (a) ....
>
> (b) notwithstanding paragraph 2(1)(u), declare an undertaking for the construction or fabrication of works at the Bull Arm site, including all ancillary work, services and catering to be a special project and the project so declared is a special project for all the purposes of this Act.

Obviously, this was added in 2012 to ensure that everything is covered that could otherwise interfere with a project.

At the IOC Carol Lake site, the Company wanted Local 779 included in the project in order to avoid a strike by that union. Clearly, it was only because of that

situation Local 779 was negotiated into the project and able to take up the CLRA collective agreement. C#1 was the only CLRA collective agreement negotiated for Local 779.

Section 54.(1) (a) defines "accredited employers' organization" as meaning:

> ...an organization of employers that is accredited under the Act as the bargaining agent for a unit of employers in the construction industry.

Therefore, only those employers who are in the construction industry are covered by the CLRA collective agreement. That is why Sunny Corner and all the other construction industry contractors are covered by CLRA collective agreements at the Tata Steel site. Sodexo is not covered.

Clearly, Judge Orsborn's decision in the Marshall industries case shows that just because a union is in the construction industry does not mean that a company it becomes certified for is in the construction industry. Mr. McCormick testified that it is not uncommon for accommodation camps to be away from construction sites (as in Labrador City). However, employees in such camps are not working in construction, except for those under special project orders.

It is very disconcerting to hear the Union say that Sodexo's employees have been denied wage payments under the CLRA collective agreement when what they actually have been denied is the right to negotiate with Sodexo for a collective agreement. Sodexo does not dispute that the work in the Dome and mine site is construction work. That construction site was not declared a special project, although it could have been because it was for more than 2 years and involved the development of a natural resource in the province. That meant that the Tata Steel site was caught under the CLRA collective agreement for the construction employers. Sodexo was not caught under the CLRA

agreement because it did not meet the definition of an employer engaged in the construction industry.

The foregoing is the primary argument of the Employer. Therefore, Local 779 is entitled to negotiate a collective agreement with Sodexo.

In *Re International Association of Bridge, Structural & Ornamental Ironworkers, Local 764 and United Brotherhood of Carpenters and Joiners of America, Local 579* (Applicants) and *Construction General Labourers, Rock & Tunnel Workers, Local 1208* (First Respondent) + 5 others), (March 13, 2002), Newfoundland and Labrador Labour Relations Board, (Cooper – Chair), at page 26, commenting on the issue of site-specific agreements, the Board expressed its view that:

> ... project agreements incorporating the provincial agreements, are entered into by duly authorized representatives of the NCLRA and the participating trade unions are not repugnant to the accreditation scheme under the *Labour Relations Act* provided such agreements, including any amendments to existing provincial agreements, are entered into by duly authorized representatives of the NCLRA and the participating trade unions and are not otherwise in contravention of the *Act*....

In negotiating C#1, the parties are deemed to know the law. However, the CLRA By-Laws make it clear that someone incorrectly negotiated or signed the IOC project agreement, thereby making the 2011—2016 CLRA/HRW, Local 779 collective agreement not lawful. Mr. Wayne Fowlow had no authority to sign the agreement for that project. One must be a duly authorized representative of the CLRA to do that.

In the result, C#1 is effectively void because any agreement not entered into by the CLRA is void. But if it is not void, the best the Union could say is that the Employer at the IOC project was estopped. Therefore, it could be that the agreement was entered

into strictly with respect to the IOC site. However, it was perfectly acceptable for Sodexo to consider whether the CLRA collective agreement applies to the company. Having done so, it is entitled to assert that the CLRA collective agreement does not apply to it because that agreement was void. At most, Sodexo may negotiate with HRW Local 779.

The Employer also takes the position that the CLRA cannot voluntarily recognize a union. No such right exists in the *Act*. Rather, an employer must first voluntarily recognize a union, and then if that employer is engaged in the industrial and commercial sector of the construction industry, the bargaining rights of that employer moves to the CLRA, whether or not the employer becomes a member of the CLRA.

Also the CLRA cannot rationally negotiate with caterers outside of a special project because they are not a craft union. Local 779 members are not trade persons. While HRW, Local 779 is a member of the NLCBTC, it is not a traditional craft union as are the Millwrights and the Teamsters. Clearly there is no labour relations reason for the Labour Relations Board to add Local 779 to the trades working in the industrial and commercial sector of the construction industry. The actual trades work performed in that industry, not work that is associated with it, is what determines what work is in the construction industry.

Mr. Cooper did not consider the special project legislation in his decision above. However, the November 16, 2007 Board decision (Marshall, Chair) between *International Association of Bridge, Structural, Ornamental and Reinforcing Ironworkers, Local 764 v. Bluebird Construction* commented on this matter at pp. 9-10, viz:

> The Board has not been consistent in past determinations in that it sometimes referenced a sector in bargaining unit descriptions and

> sometimes did not. Having now considered the foregoing comments of Justice Orsborn (albeit obiter dicta) and particularly his comments as to the purpose of the definition in section 54(1)(b) of the Act, the Board is of the view that reference to sectors in bargaining units descriptions is usually irrelevant and incongruous. Indeed, this Applicant has filed several applications with this Board containing a reference to sectors, and the Board has ultimately removed same in its determinations. Having said this, however, it is necessary to recognize that, when considering certification applications, it is relevant to determine whether the employees in a proposed unit are employed in the construction industry. Such a finding has an impact on the operative date and the description of the unit.

This point is further addressed in a February 7, 2007, decision by the NLLRB (Marshall, Chair) between *United Brotherhood of Carpenters and Joiners of America, Local 579 v. Allied Construction Inc.* at pp. 15-16 where reference to Justice Orsborn's decision in *U.A., Local 740, supra,* is reiterated, appearing below in part:

> ... Division II sets out the consequences of an employer in the construction industry becoming unionized, or voluntarily recognizing a union, but nowhere does it indicate that a definition of "construction" is relevant to the disposition of an initial application for certification.
>
> In my view, the only question properly before the Board in this case was whether or not there was a collective agreement in force governing the employees for whom certification was sought. A collective agreement is defined (para. 2(1)(f) as an agreement on behalf of "a unit of employees" – the existence of a collective agreement is a bar to certification except at defined times – subs. 36(4).

Having noted that the Board has sometimes removed reference to a sector by applicants, the Board went on to say at p. 16 "it is relevant to determine whether the employees in a proposed unit are employed in the construction industry. Such a finding has an impact on the operative date and the description of the unit." In support, the board cited *United Brotherhood of Carpenters and Joiners of America, Local 579 v. S.E.A. Contracting Ltd.* (2002) N.J. No. 171 where the Newfoundland Court of Appeal stated at para. 17:

> It is true that traditionally the Board certifies bargaining units in the industrial and commercial sector of the construction industry on the basis of trade or craft and all employee bargaining units are generally considered inappropriate. (Re Roycefield Resources Ltd., International Union of Operating Engineers, Local 904 and Roycefield Resources Ltd., [1998] Nfld. L.R.B.D. No.1) A finding of employment in the construction industry is therefore relevant to a determination whether a proposed unit is an appropriate one. However, in the context of this case the Board found that all of the employees shared a similar range of duties and none should be excluded from any bargaining unit. Whether they were carpenters working in the construction industry or a group of persons whose duties regularly crossed a number of trades performing maintenance or renovation work, the union did not have sufficient support for certification. [emphasis added]

> In this matter, there is no dispute that the Respondent engages in work in the industrial and commercial sector of the construction industry. That fact alone allows the Board to conclude that trade-based certification is appropriate in the circumstances, which is not disputed by the parties.

In an August 3, 1999 NLLRB decision (Fagan, Chair), the Board considered whether the actual work in dispute was maintenance or construction work. In determining it was maintenance work, the Board concluded that the CLRA/ Labourers' Union Local 1208 collective agreement was not in operation at the relevant times for which the application had been made.

In a July 15, 2002 NLLRB decision (Cooper, Chair), between *United Brotherhood of Carpenters and Joiners of America, Local 579 v. Newfoundland Aluminum Products Limited*, the Board found that there was no collective agreement between the CLRA and Local 579. Therefore, given that HRW Local 779 members are not traditional craft persons, the Union needs to go through the LRB process. Notwithstanding Mr. McCormick's assertion, the CLRA is not permitted to recognize the Hotel and Restaurant workers as he said it did. Local 779 was not part of the original

accreditation order, notwithstanding that they did have experience with special projects. They were not included because they had nobody engaged in the construction industry.

In an October 26, 1988 NLRB decision (Clarke, Chair) between *Hotel Restaurant and Bartender Employees' International Union and Newfoundland Management and Catering Limited*, the union filed an unfair labour practice for the Employer's failure to negotiate and also requested the Minister to impose a First Collective agreement with the Company. The Union asserted that a collective agreement with another employer (since ceased operating) was essentially the one governing all catering work in the commercial and industrial sector in the province. Although the only work being performed by the respondent was in the commercial and industrial sector at the time, the Board did not find the Minister's direction for imposition of a First Collective agreement as conflicting with the Act prohibiting individual negotiation within the sector because the evidence was that it was possible that the respondent would be performing duties in sectors which are not within the commercial and industrial sector of the construction industry. Since the applicant was seeking certification for the respondent company for the entire province, and the Board found that the respondent had not made an effort to bargain in good faith, it did impose a first collective agreement as requested.

In the Employer's view, if the Union believed it had rights to assert a CLRA collective agreement, it should have gone to the NLRB on that point at the time.

As the matter stands, Sodexo is not in the industrial and commercial sector of the construction industry. Therefore, the CLRA collective agreement being asserted is not applicable to Sodexo. At the same time, the CLRA/HRW Local 779 collective agreement (C#1) is not a valid collective agreement because the CLRA had no right to negotiate

with Local 779 because its accreditation is restricted to negotiating with craft unions, not merely members of the NLCBTC. Being a member of the Building Trades Council means nothing to the law.

With respect to the issue of the arbitrator ordering compensation in this case, the Employer's position is that the arbitrator can determine if he accepts the wages summary submitted by the Chartered Accountant Mr. Harris, but cautioned that there is no evidence on the issue of any other claims by the Union. Therefore, beyond scenario 1 and scenario 2, no evidence has been presented on any other type of compensation being sought by the Union.

Union Rebuttal

The Union proposed to submit three or four cases post hearing for the arbitrator's reference. This was accepted with the understanding that the Union will also supply those cases to counsel for the Employer for his perusal. In the meantime, the Union commented on the following issues:

On the matter of compensation, it was the Union's intent to establish some amount of money that it could initially work with at the time of the arbitration hearings. The intent was to get the issue of quantum of compensation completely done at the hearings, but that simply could not be accomplished where all the necessary information was not available to cover all the various aspects of compensation up to the end of March, and also because no evidence could be presented on the Union's continuing claims for compensation post March end 2014. On the issue of whether the grievance should be strictly construed, in *Re Blouin Drywall Contractors Ltd, v, C.J.A. Local 2486* (August 6,

1975), Ontario Court of Appeal, 1775 CarswellOnt 827, 8 O.R. (2d) 103, 57 D.L.R. (3d) 199, 75 C.L.L.C. 14, 295, 9 L.A.C. (2d) 26n, at p. 4, it is reported that:

> ...Appeal allowed -- Court of Appeal finding arbitration board correct in liberally construing grievance to deal with real complaint and providing appropriate remedy in accordance with collective agreement – Court stating general rule that cases not to be decided on technicalities but on merits and as provided in collective agreement -- Board can make monetary award so as to restore person to position he would have had if agreement had been performed.

Although the parties agreed at the beginning of the hearing that the issue of compensation would be dealt with at the hearing and that the arbitrator would not remain seized of jurisdiction, the Union relies on this decision to support its submission that the arbitrator is not functus after the hearing, but is actually obligated to consider the final amount of compensation owing.

On the issue of counsel for the Employer's interpretation of the *Labour Relations Act*, the Union submitted *Archean Resources Ltd. v. Newfoundland (Minister of Finance)* (July 30, 2002) Newfoundland Court of Appeal, 2002 CarswellNfld 199, 2002 NFCA 43, 215 Nfld & P.E.I.R. 124, 644 A.P.R. 124, 2003 G.T.C. 1501, a case dealing with interpretation of statutes. There, at para 19, reference is made to s. 16 of the *Interpretation Act:*

> The starting point for interpretation of any statute enacted by the legislature of this province is the legislature's own directive to the courts as found in s. 16 of the **Interpretation Act:**
>
> > Every Act and every regulation and every provision of an Act or regulation shall be considered remedial and shall receive the liberal construction and interpretation that best ensures the attainment of the objects of the Act, regulation or provision according to its true meaning.

At paragraph 22, the court continues:

> Instead of mandating some fictionalized search for a collective "legislative intention", s. 16 directs the court to consider every provision "remedial" and to interpret it so that it "best" ensures the attainment of its "objects" according to its "true" meaning. This requires a consideration, as an integral part of the interpretive exercise, at the problem or "mischief" to which the legislature directed its legislative act as a remedy and then the drawing of an inference, based on the language of the whole enactment and the court's general knowledge of the state of the pre-existing law and any information as to the broad social context in which the legislative act occurred, as to what, broadly speaking, the object or objects of the legislative act must have been. The end result is to arrive at a "true" meaning. That inevitably requires an examination of more than the bare words of the legislative enactment that is in issue, no matter how clear or unambiguous they may at first blush appear. The surrounding text, the interrelation of other statutes, the social and legislative context in which the provision was enacted, and other extrinsic aids are all sources to be consulted in this exercise. Obviously, if the bare words of the relevant provision appear to be straight forward and seem on their face to admit to only one meaning, they may end up controlling the result, but even in such a case, it is not sufficient to stop the interpretive exercise at this "plain" meaning: s. 16 requires that at the very least this plain meaning be given a "reality check" by being tested against other relevant sources of meaning to ensure that there is not some nuance or variation in the normal or apparent meaning that might indicate a different meaning in the particular contest under consideration. "True" meaning is not plain meaning; it is a conclusion arrived at by reconciling all the appropriate indicators of meaning that the court is directed to consider.

And at paragraph 23:

> In truth therefore, s. 16 enunciates a principle of harmonization in which the courts are directed, in cases of dispute, to adopt and apply an interpretation that fairly reconciles the language used in the enactment with the broader objects of the legislation so as to achieve the general goal, or to rectify the mischief, to which the legislative act appears to have been directed. That exercise determines the general ambit of impact of the legislative act and provides the basis for the court to conclude whether the particular fact situation before it should fall inside our [sic] that ambit.

In the Union's view, the *Labour Relations Act* is not difficult for the parties to understand and there has never been a problem with it until this arbitration. In the construction industry sections, there are two further interpretations involving

"construction industry", i.e., s. 54 and s. 64. By a broad interpretation, s. 54.1(b) includes the Teamsters who do warehousing, etc. And the notion of "other works," is an extension of what comes before those words. The courts have always given a broad interpretation of these matters. The Union also submits that the Employer has misread s. 64. The reference to being "engaged in the construction industry, is not the "employer" whose bargaining rights have been acquired (in this case, not Sodexo), but it is the "employers' organization engaged in the construction industry in the sector and area covered by the accreditation order. By virtue of s. 54.1(a), the CLRA is the employers' organization that has been accredited as bargaining agent for a unit of employers in the construction industry, and in its capacity as accredited bargaining agent, it has entered into a collective agreement (C#1) with HRW Local 779 who is certified to represent Sodexo's employees. This effectively cures any defect alleged by counsel for the Employer.

The Employer raised the issue of the authority of the CLRA to sign a collective agreement by referencing LRB chair Morgan Cooper's comments on p. 26 of the Boards decision concerning the Teamsters, where he wrote:

> ...With regard to the Teamsters concerns with the propriety of site-specific agreements for work in the industrial and commercial sector, the Board takes the view that project agreements incorporating the provincial agreements between NCLRA and participating unions are not repugnant to the accreditation scheme under the *Labour Relations Act* provided by such agreements, including any amendments to existing provincial agreements, are entered into by duly authorized representatives of the NCLRA and the participating trade union and are not otherwise in contravention of the *Act*. In expressing this view, the Board takes no position with regard to the legal effect of agreements between participating contractors and their unions which purport to limit the scope of voluntary recognition to the duration of the project.

Mr. Cooper's comments were obiter and the issue he discussed was not the one the Board was dealing with. The issue in dispute in the instant grievance is different and

must be examined in its own context. To suggest that the Union is deemed to know that the CLRA's negotiators and signers were not duly authorized representatives of the NCLRA is silly. The representatives of the HRW, Local 779 Union were clearly entitled to assume that the individuals involved in negotiating and signing the collective agreement C#1 did have the authority to do so.

With respect to the Employer's assertion that Local 779 has not been a craft union, the evidence clearly established that it had a connection to the construction industry. It has had a long history of involvement with the building trades unions in the NCBTC; indeed, Mr. McCormick is a past president of the Council. Mr. Smith seems to be deeming his own view of a craft union, but the fact of the matter is that, as the other Council member trade unions do, Local 779 has a jurisdictional dispute settlement mechanism.

Also, simply because ancillary work is included in the language establishing Special Projects does not mean that such work is excluded elsewhere (see again *Archean Resources, supra*), on the issue of interpreting legislation. There are trade unions in Newfoundland and Labrador who have been certified for many different types of employees. Clearly the Labourers Union applied for a range of different types of employees within, but was not denied certification on that ground; it was not certified because it subsequently lost the vote. Certification orders are not required to specify certain employees. They may do so, but don't always do so. Meanwhile, the LRB may certify for different type of employees for the purpose of making sense of the bargaining unit.

Finally the Union cautioned about the dangers of looking at cases that are 26 years old, especially the *Hotel Restaurant and Bartender Employees International Union, Local, 779, supra* case submitted by the Employer, which dealt with civil work done by Atlas Construction, not in the industrial and commercial sector of the construction industry.

CONSIDERATIONS

The evidence is that there was no other collective agreement the Union could possibly have grieved under in this case. Therefore, a position taken by the Employer that Sodexo was not subject to the CLRA collective agreement, was essentially tantamount to a claim that, in the absence of a collective agreement providing for grievances, the Union had no right to grieve in the first place, and even if a grievance could somehow occur, no violation could possibly be established of provisions that did not exist. Indeed, it might also be argued that, since the arbitrator's jurisdiction to deal with a grievance is provided by the collective agreement, in the absence of a collective agreement, he would have no jurisdiction to hear the Union's grievance. In my view, that circumstance is of even more fundamental labour relations concern than an arbitrator's right under the *Labour Relations Act* to determine whether a grievance is arbitrable. Such a determination could not be made in the first place if the right to grieve did not exist. Therefore, in my respectful opinion, this dispute should have been heard by the Labour Relations Board from the very beginning.

However, that position was not advanced by the Employer, and no mention was made of an alternate procedure by either party until the Employer raised it late in the arbitration process. Indeed both parties agreed at the start of hearings that the arbitrator had jurisdiction to deal with the dispute. Under the circumstances, I accede to the parties' wishes and will proceed to render arbitration rulings on all the various matters that have been referred to me.

Matters Of Evidence On Which There Is No Disagreement

In my view, it is common ground:

1. that the Tata Steel Site and camp are in Newfoundland and Labrador
2. that the nature of the development work at the Site in and around the Dome is predominately construction work, with some trial mining work occurring seasonally;
3. that the construction phase is anticipated to be completed by December 2014, after which the predominant activity is expected to be mining operations;
4. that the contractors on Site who employ traditional tradespersons to perform construction work have accepted that the various CLRA/Trade Union collective agreements apply to them;
5. that the nature and scope of the work performed at the camp to date is accommodation and catering, mostly for contractors' construction employees;
6. that the December 18, 2013 certification order is valid;
7. that the list of Sodexo employees on which Mr. Harris CA based his calculations on wages owing is an accurate list to the end of the period indicated, i.e., March 28, 2014;

The Primary Issue

The primary issue before me is whether there is a valid CLRA/HRW, Local 779 collective agreement in place, which binds Sodexo Canada Ltd. to its terms and conditions in these particular circumstances.

On the one hand, the Union's position is that, as of December 18, 2013, the date it became certified to represent the catering employees of Sodexo Canada Ltd., the CLRA

accreditation as the employers' organization in the industrial and commercial sector of the construction industry absorbed any and all of Sodexo's collective bargaining rights and caused the CLRA/HRW, Local 779 collective agreement to be the sole collective agreement in effect between Sodexo and Local 779.

On the other hand, the Employer's position is that the CLRA/Local 779 collective agreement does not apply to Sodexo Canada Ltd. because the Employer was not an employer in "the construction industry" as defined by s. 54.1(b):

> "construction industry" means the on-site constructing, erecting, altering, decorating, repairing or demolishing of buildings, structures, roads, sewers, water mains, pipe lines, tunnels, shafts, bridges, wharves, piers, canals or other works.

In the Employer's view, all the other contractors at the Tata Steel site employed trades people hired by the contractors to perform construction industry work that squarely fit the above definition, but the employees at Sodexo were catering employees, who were not trades people and they did not perform work that was in the "construction industry". Therefore, since Sodexo was not "engaged in the construction industry" as contemplated by s. 64.(1), HRW Local 779 was entitled only to bargain with Sodexo for a first collective agreement; it was not entitled to apply the terms and conditions of the CLRA/HRW, Local 779 collective agreement. The Employer also argued that, since s.70.(1)(b) in Division III – Special Projects, "Declaration of special projects" was changed in 2012 to state:

> The Lieutenant-Governor in Council may by order
>
> (a) . . . .
>
> (b) notwithstanding paragraph 2(1)(u), declare an undertaking for the construction or fabrication of works at the Bull Arm site, including all

> ancillary work, services and catering to be a special project and the project so declared is a special project for all the purposes of this Act

the inclusion of "all ancillary work, services and catering" indicates that, without such inclusion, catering work is not "construction industry" work, because it is not reflective of traditional trades or craft union work.

I have examined, *inter alia*, s. 54.1 the definitions section of Division II—Employers' Organization, and s. 64. dealing with "Collective Agreements", s.2(1)(u) the definition of "special project" and s. 70.(1) My approach to interpreting these as well as all other sections of the *Labour Relations Act* is guided by the reasoning of the Newfoundland Court of Appeal on the subject in *Archean Resources Ltd, supra.*

In my opinion, the "mischief" (see p. 6 above) sought to be remedied in the construction industry by the legislation in the *Labour Relations Act,* was the prospect of significantly important construction projects in the province being jeopardized by individual interests of employers and unions that could otherwise unduly interfere with the economic efficiency, the efficacy of skilled labour supply, and overall labour relations stability of those projects. To achieve that deliberate objective, the *Act* provides a significant volume of dedicated language to express the legislators' concerns for the desirability of forming accredited employers' organizations, and the designation of Trade Union Councils, whose expertise, proficiency, experience and knowledge of what makes a construction project work well is molded into a comprehensive, cohesive, streamlined labour relations system, producing a synergy operating for the attainment of the legislators' objective.

I accept the legislature's directive to the courts as found in s. 16 of the *Interpretation Act* and expressed at p.8 of *Archean Resources, supra*, and is quoted at p.

63 of these considerations and find that, even if one were to consider the four sections referred to above as capable of "plain meaning," I am nonetheless inclined to conduct a "reality check" to test the notion of what and who is in the "construction industry" or as counsel for the Employer characterizes it "engaged in the construction industry" so as to determine what meaning might be indicated "in the particular context under consideration".

In my humble view, this requires consideration of the extrinsic evidence that has been offered at this arbitration on what stakeholders in the construction industry have long recognized as pertinent features in the construction industry. To that end, I accept the evidence that the provision of camp accommodation and catering, especially remote camp accommodation and catering, for employees performing construction work in what is regarded as traditional trades, has been integral and critical to the operation of large project sites, whether at a designated "special project" or a significantly large non-special project. While I am inclined to agree that the provision of accommodations or catering is not the same work that is performed by red seal tradespersons and apprentices such as welders, pipefitters, ironworkers, carpenters, millwrights, and other such categories whose members are required to possess particular certificates or designations of trade skills, catering has long been recognized and considered as an essential element of the construction industry, particularly on large projects. In those circumstances, it is not difficult to imagine the detrimental consequences that would occur in the absence of camp accommodation or catering on or near the project sites. Indeed, the evidence is that the provision of accommodation and catering has been deemed by employers and unions involved in large construction projects to be both desirable and necessary, even where the

proximity of the site is close to towns, (e.g., Labrador City, Stephenville, etc.), and even where other than trades employees are accommodated. In my view, the reason for this is rooted in the stakeholders' experience that being engaged in the activity of accommodation and catering is an essential feature under the umbrella of large construction projects, because the alternative would likely be *ad hoc* and more distant housing arrangements. They know that accommodation and catering significantly contributes to overall economic efficiency, the efficacy of the supply of trades people to the construction sites on a daily basis, and that it can be depended upon to continue its uninterrupted contribution to the project to the same extent that the other contractors do.

There is a definite element of control involved in this arrangement that is desirable for large projects. The control feature is the common objective of reliable labour stability of every contractor, including a contractor for accommodation and catering. This is recognized as being achieved in this province by adherence to various CLRA/Trade Union collective agreements, and I submit, has also been equally achieved by similar CLR/HRW, Local 779 collective agreements, certainly on special projects, and on some large non-special construction projects. Local 779 does have members in the construction industry whenever it becomes certified for an employer's employees providing camp accommodation and catering on a large non-special project. While the CLRA/Local 779 collective agreement may not receive as much use as some of the other CLRA agreements with traditional craft unions, when the appropriate occasion does arise for it to be activated, it is as valid as any of the other CLRA/Trade Union collective agreements.

Although the Employer's argument places little significance on Local 779 being a member of the Newfoundland and Labrador Construction Building Trades Council (NLBCTC), I do view the Union's long term membership in that organization as strong indication among the other trade unions that Local 779 is, for them, the union that has been and still is the most experienced union involved in accommodation and catering on large construction projects. It also has jurisdictional dispute settlement mechanisms that mimic those of the other trade unions. On balance, I view this as strong recognition and endorsement among the building trades for Local 779's participation on large projects in the construction industry. Moreover, I consider the fact that the CLRA has negotiated a trade specific collective agreement with Local 779 in the industrial and commercial sector of the construction industry as strong recognition and endorsement from the accredited employers' association that it belongs on large construction projects in that sector.

By the time the Union applied for certification, Sodexo already had a contract from Tata Steel to provide accommodation and catering for the workers on the Timmins, Labrador iron ore development site. While counsel for the Employer insisted that the camp was a permanent camp in support of mining operations, I am satisfied that the evidence unequivocally established that, from the date of the certification order on December 18, 2013, construction activity was the predominant activity on that project and that the clientele at the camp were predominantly, but not exclusively, construction industry employees. Clearly, mining activities have been and still are seasonal and are conducted on a trial basis. Indeed there was no mining activity at all between the date of the certification order until some time in March 2014. Whatever the ultimate intention

may have been for the camp, its *raison d'être* during the construction phase of the development project was mainly to accommodate construction industry employees. Whether by design or circumstance, this was the situation that existed for Sodexo at the time of certification and continues to exist until the construction phase is completed. In my view, Sodexo has found itself to be an employer squarely engaged in the construction industry on the project at the Tata Steel site.

Although there was some argument about whether or not there was a site specific certification order granted to the Union by the Labour Relations Board, and whether the Board makes such orders anymore, I note first of all that the order states that the Respondent consented to the Order requested, and while no specific reference to construction is made in the Order, paragraph 4 was quite specific about where the unit of employees was located:

> **NOW THEREFORE** IT IS HEREBY ORDERED BY THE Labour Relations Board that Hotel and Restaurant Workers Union, Local 779 be and it is hereby certified to be the bargaining agent for a unit of employees of Sodexo Canada Ltd. comprising all catering employees of Sodexo Canada Ltd. working at the Tata Steel Timmins Camp in Labrador, Newfoundland and Labrador save and except Manager, Assistant Manager, Camp Coordinators, Executive Chef, Maintenance Manager, Assistant Maintenance Manager, non-working supervisors, and those above the rank of non-working supervisor;

Clearly the Board specified that the Order was for the employees working at the Tata Steel Camp in Labrador compromising all catering employees of Sodexo Canada Ltd. In my view, it is unlikely that the Labour Relations Board, whose business it is to be informed about issues affecting labour relations in the province, was unaware of HRW Local 779's experience in the construction industry and its long membership association with the NLBCTC, as well as the fact that an CLRA/Local 779 collective agreement in

the industrial and commercial sector was in existence when the Union applied for certification. It also knew the employees concerned were camp employees, which would almost certainly indicate that this was a commonplace situation where a large construction industry project existed. On balance, I consider it most unlikely indeed that there was no understanding and expectation on the Board's part that the Union would seek to have the CLRA/Local 779 collective agreement apply to Sodexo.

In my view, all the foregoing factors serve to overwhelmingly indicate that the nature and scope of the work that Sodexo's employees were contracted by Tata Steel to perform were familiar activities within the construction industry that were an inexorable part of the existing construction project on that site. The notion of being "engaged in the construction industry" is expressed in s. 64.(1) of the *Act* in the context of "the *employer's organization* engaged in the construction industry in the sector and area covered by the accreditation order..." [Emphasis mine]. At paragraph 33 in *Marshall Industries Ltd. supra,* Orsborn J. commented by way of obiter on the context of particular employers under the accreditation regime:

> Essentially Division II deals with the accreditation of employers' organizations in the construction industry. The definition in para. 54(1)(b) is not of "construction" but of "construction industry", and is for the purpose of determining whether or not a particular employer is engaged in a particular sector (para, 54(1)(c)) of the industry. This in turn determines whether or not a unionized employer is bound by a collective agreement entered into by an accredited employers' organization.

On the basis of the preceding considerations, I am satisfied that the work performed by Sodexo's employees was not "construction" work as was performed by the contractors employing traditional trades or craftsmen, but it was most definitely work in the "construction industry". As such, it is my interpretation that the inclusion of that familiar

activity in the notion of "construction industry" in s. 54.(1)(b) "fairly reconciles the language used with the broader objects of the legislation so as to achieve the general goal, or to rectify the mischief to which the legislative act appears to have been directed." (see p. 9 of *Archean Resources*). Though different in nature than work performed by the various construction contractors and construction trade unions, the contributions to the Tata Steel construction project made by Sodexo as a employer and its employees as members of a well known trade union (in its own right), were thoroughly consistent with the objectives I have enunciated earlier as those the legislators sought to create in order to achieve economic efficiency, the efficacy of the supply of labour on a daily basis, and a stable, dependable labour relations system to the benefit of all stakeholders involved in a large construction industry project.

On the issue of the *Act* including language ensuring the participation of all ancillary work, services and catering for the Bull Arm Special project, but not requiring the same inclusion on other construction projects, I respectfully disagree with the position of counsel for the Employer, that catering is not considered by the *Act* to be work in the construction industry. I do not share the view that because those activities are specifically included in s.70.(1)(b) for special projects, that they are intended to be excluded in other situations. In my view, they are included in s. 70.(1)(b) for the purpose of ensuring the broad objectives of economic efficiency, efficacy of daily labour supply and labour relations stability in special projects, but I do not accept that it must necessarily follow that those activities have been deliberately excluded elsewhere because they do not belong in the construction industry in general.

In my view, what the construction industry itself considers to be in the "construction industry" provides an additional practical and relevant extrinsic source of meaning to the term as expressed in the *Act*. Therefore, I am satisfied that, in the particular circumstances Sodexo Canada Ltd. found itself as a contractor running the Tata Steel Timmins Labrador Camp, it was effectively an employer in the industrial and commercial sector of the construction industry. Although different in the type of activity it provided, it was as much engaged in the construction industry as any other contractor on that project. In the result, Sodexo's bargaining rights were assumed by the accredited employers' organization in that industry, i.e., the CLRA, and Sodexo was bound by the terms and conditions of the existing CLRA/Local 779 collective agreement. As of the date of the Union's certification order on December 18, 2013, Sodexo did not have any authority to negotiate a separate collective agreement with Local 779.

The Allegation That the NCLRA Did Not Have Authority To Negotiate with Local 779 Because There Was No Trade Division and No Members of a Trade Division As Required by The NCLRA By-Laws. And

The Allegation That The NCLRA/Local 779 Collective Agreement Was Void Because It Was Negotiated and Signed by Individuals Not Authorized by The NCLRA By-Laws

Presumably, the first allegation is based on s. 8.01 of CP#5, the CLRA By-Law #1:

> Each Trade Division established by the Board shall have a Trade Committee, the Chairperson of which shall be the member of the Board elected from such Trade Division, and the members of such Committee shall be the President and those appointed by the Chairperson of the Trade Division (after consultation with such members of the Trade Division) as he considers appropriate as being representative of a cross-section of the Trade Division).

A Trade Division is defined by s. 1.11 thus: "**Trade Division** has the meaning assigned to it by Clause 3.01(f). Clause 3.01(f) states:

> The Board shall have power:
>
> . . . .
>
> (f) To establish for its members Trade Divisions pertaining to a particular sector of the Construction Industry or to a particular sector of Newfoundland and Labrador as defined by it, or both, and to supervise the assignment of the members to one or more of the Trade Divisions by the Executive, provided always that there shall exist a Trade Division for each Trade engaged in the Construction Industry.

The evidence adduced on this issue was spotty, mostly by cross examination of Mr. Craig Power, whose organization was not represented by counsel and who personally appeared to be rather confused about the details of the issue, and appeared to be ill at ease that this matter was raised unexpectedly. Counsel for the Employer, who has had long experience with general construction industry matters and appeared to be critical about deficiencies in certain decisions made within the CLRA, effectively had Mr. Power at a disadvantage on whether and how a Trade Division was determined which could be of relevance to Local 779.

As I see this matter, whether or not the provisions of the By-Law were appropriately met in allowing a trade sector negotiation to occur with HRW, Local 779, the bald fact of the matter is that such a collective agreement was negotiated either in compliance with or in violation of the By-Law. If those negotiations occurred in contravention of the By-Law, I am satisfied that the issue is one that first and foremost should be dealt with internally by the CLRA. It is its responsibility to police adherence to its own By-Law. Whether or not it does so, an action complained of, such as this one, might be alleged to be not in conformance with the By-Law, but that does not necessarily mean that the action was contrary to law.

In my opinion, the instrument negotiated was between two parties who had the right under the *Labour Relations Act* to bargain on behalf of their respective members -- the NCLRA by virtue of accreditation and the Union by virtue of it being a "trade union" or "union" as defined in s. 2.1(u) in the *Act*. I note that the *Act* uses the term "trade union" throughout its provisions, and I am satisfied that Local 779 squares with that definition. I also note the evidence that HRW, Local 779 is recognized and active as a trade Union within the NLCBTC and has involvement as a trade union on various special project and non special project construction sites in the province. Therefore, a collective agreement between those parties would appear to be desirable from a practical and common sense perspective. Indeed, by all accounts, negotiations were mutually desirable, mutually pursued and mutually agreed.

On balance, I do not find the Employer's position to be convincing on either Issue 1 or Issue 2 above. I note that the functions of a Trade Committee are enunciated in Clauses 8.02.1 through 8.02.4. Clause 8.02.1 deals with implementation of industry funds relating to the specific trade concerned, and the other three Clauses deal with recommendations of the terms of collective agreements to be negotiated, discussion among members of the Trade Division, and advising members of the date of execution of a collective agreement. On balance, I think I might tend to lean more favourably toward the Employer's position in all this if any supporting evidence happened to be available indicating dissatisfaction or concern among members of the Association. As the matter stands, I see no indication of even the slightest concern within the CLRA. It seems that nobody has objected to it and nobody has sought to have it rescinded.

As for the Union, all indications are that it negotiated this collective agreement entirely in good faith, believing that the representatives on the other side were doing likewise. I reject the notion that the Union should have been required to ensure that the CLRA By-Law had been followed before it sat down to negotiate. It is not the Union's place to police the CLRA By-Law any more than it is the CLRA's place to police the Union's By-Law(s). It would have been clear to the Union at negotiations that Mr. Fifield (whose father owned the relevant employer company on the IOC project) and Mr. Courtenay were well known to them as industry people. It would also hardly have been of concern that Mr. Fowlow, who apparently was VP of the Construction Labour Relations Association, also signed the document. Here again for Issue #2, I echo the same rationale as in Issue #1 that an apparent failure to follow Clause 9.04.01 and Clause 9.04.02 of the CLRA By-Law are matters that should be dealt with internally by the CLRA, and that a breach of the By-Law does not necessarily mean that there has been a violation of law that would have the effect of making that collective agreement null and void. In that regard, I note that the collective agreement that was signed clearly met the necessary elements of a collective agreement under the *Act*, which is defined in s. 2.(1)(f):

> "collective agreement" means a written agreement between an employer or an employers' organization acting on behalf of employers, and a bargaining agent employees acting on behalf of a unit of employees containing provisions respecting terms and conditions of employment and related matters.

I see no violation of the law, i.e., the *Labour Relations Act* in this disputed CLRA/HRW, Local 779 collective agreement. By virtue of the accreditation process and the existence of the CLRA/HRW, Local 779 ready-and-waiting collective agreement, Sodexo's

bargaining rights belonged to the CLRA as of December 18, 2013, when Local 779 was certified for the unit of Sodexo employees. That agreement then legally became the sole collective agreement in effect between the Employer and the Union.

More importantly, the evidence strongly indicates that both the Union and the NCLRA acted in apparent good faith on the first appropriate situation after their agreement was negotiated – regardless how it was negotiated or signed. The Union, obviously interested in the familiar and dependable effect of legislation to declare the CLRA collective agreement binding on the Employer, acted within its rights and labour relations interest by attempting to ensure that copies of the NCLRA collective agreement were forwarded to Sodexo and others. Mr. Power, on the CLRA's behalf sent that collective agreement by mail to Mr. Vaillancourt of Sodexo and had telephone conversations with him making it clear that this was the only collective agreement that applied to Sodexo. None of this suggests to me that there was any attempt to provide Sodexo with a flawed or illegal collective agreement. On balance, I am satisfied that both the CLRA and the Union proposed to the Employer what they firmly believed was a valid collective agreement.

Under the circumstances, I accept that the CLRA/HRW, Local 779 collective agreement was valid and legal and did bind Sodexo and the Union to its terms and conditions effective December 18, 2013. Whether or not an estoppel argument might have applied to the IOC project agreement, I find no application for estoppel with respect to the existing CLRA/Local 779 collective agreement. It is valid and applicable in its own right. Therefore, I order the Employer to comply with the terms and conditions of

the collective agreement retroactive to the date of December 18, 2013 and to continue compliance for the duration of the construction phase of the Tata Steel project site.

Compensation of Wages and Seizure of Jurisdiction on The Issue of Compensation

At the beginning of hearings, the parties agreed that the arbitrator had jurisdiction to award compensation, that quantum of compensation would be established by the Union during the hearings, and that the arbitrator would not remain seized of further jurisdiction. A further discussion occurred at the conclusion of hearings after it became abundantly clear that the only category of compensation that the Union was able to establish with the documentation currently available to it and with the assistance of accounting services provided by Mr. Harris CA was wages from December 18, 2013 to March 28, 2014 for the list of employees attached to the accountant's calculations. I am told that more information is needed to establish compensation for employee benefits and also for payments to the various industry funds under the NCLRA collective agreement, which accrue to the Union (and also to the NCLRA for one fund). Seizure on those matters is not denied.

On the issue of Wages, the Union has left it to the arbitrator to choose either scenario 1 or scenario 2 as the appropriate calculation, ostensibly at least on the rationale that some period of grace might be given to the Employer because of the difficulty that would be involved in switching to the CLRA work schedule as of December 18, 2013. Since I have been granted discretion on this matter by the Union, I will use it. In my opinion, there is a significant element of unfairness inherent in an expectation that the Employer would be able to switch immediately to a new CLRA agreement work schedule

upon being advised of the certification order. On the one hand, I would be inclined to suggest that it might take up to 4 weeks to adjust the camp's current schedule to the new one in the collective agreement. On the other hand, it would seem to me that the Employer should take some responsibility for mitigating its circumstances within a reasonable period of time. However, it appears that the Union has not put too fine a point on the subject to make complicated calculations necessary. Therefore, I accept the difference owed of $314,118.56 as determined by Scenario #2 as the established compensation for wages owed to employees for the period December 18 to March 28, 2014. If separate amounts for individual employees can be accurately identified, individual payments shall be made directly to the employees. If payments cannot be made to the respective employees, I direct that the full payment be made to the Union and that the Union will distribute appropriate amounts to individual employees. I will not remain seized of jurisdiction on this particular matter.

On balance, I am satisfied that an extra amount for benefits owing to employees for the period December 18, 2013 to March 28, 2014 could not reasonably have been determined for these hearings. Explanations on benefit percentages were lacking. Although the details of the CLRA agreement were fully available to the accountant, the nature and scope of the Sodexo percentages was not clear enough in the material available. Therefore, I order the Employer to provide the necessary documentation relating to employee benefits that will enable the Union to determine the appropriate amount of pay in lieu of benefits and for other benefits owing to employees. I direct the parties to attempt joint agreement on that amount. The Employer is ordered to pay appropriate amounts to the individual employees for the period involved. If the parties

are unable to agree on this extra amount for benefits owing to employees, I will remain seized of the matter.

I am also satisfied from the evidence that the Union could not possibly have access to all the information necessary to establish the quantum of compensation on a continuing basis past March 28th. Since this is a continuing grievance, the Employer is ordered to make the necessary documentation available to the Union for the period from March 29, 2014 to the date of this award and the parties are directed to jointly determine the wages and benefits amounts owing to the employees. The Employer is ordered to pay such amounts to the appropriate individual employees. I will remain seized of this matter in the event the parties cannot agree.

The Employer is ordered to make wage and benefit payments to the employees on a continuing basis from the date of this award until the completion of the construction phase of the Tata Steel project.

Although the grievance letter states that it shall serve as a group grievance, it also make clear in paragraphs 3 and 4 that the scope of the grievance extends *inter alia* to other fund payments and check-off remittances due to the Union itself. The parties are directed to those paragraphs again below:

> This grievance is a continuing grievance. Sodexo Canada Ltd. has failed to abide by any of the terms of the collective agreement. Without limiting the foregoing, Sodexo Canada Ltd. has failed to pay the wage rates established in Article 14 and Appendix "A"; has failed to pay overtime as established in Article 7; has failed to remit check off to the union as established in Article 6; has failed to pay vacation pay established in Article 13; and has failed to fulfill man power requirements established in articles 4 and 15. Sodexo Canada Ltd. is directed to Article 26 with respect to adjustments to wage rates.

> The union reserves the right to assert violations of other specific articles of the collective agreement and present evidence in relation to those other articles, as those violations may be disclosed.
>
> HRW 779 requests full compliance with the collective agreement retroactive to the date of certification, December 18, 2013. HRW 770 seeks full financial compensation for its members and for the union as required under the collective agreement including lost wages, benefits and other earnings; loss contributions, loss check off, and all applicable penalties plus interest.

On the basis of the evidence adduced at the hearings, I am satisfied that the Union has proven that Sodexo has failed to abide by any of the terms of the CLRA/Local 779 collective agreement. Therefore, I consider it plain to see that a range of other violations as indicated by the Union have necessarily occurred. Under the circumstances, I consider the evidence to date sufficient to establish proof of such violations, and I order the Employer to pay the outstanding amounts owing to the Union. Therefore, the remaining issue is one of compensation owing. In my opinion, since the determination of compensation for these matters is mostly tied to employee wages and benefits, for which the Employer's payroll and other relevant records contain the required information, and since this information must be provided to the Union before the parties can jointly determine the *quantum* of such compensation, I order the Employer to provide same to the Union for the period December 18, 2013 until the date of this award. I further order the parties to attempt mutual agreement on the amount of such compensation owing. I will remain seized of this matter in the event that the parties cannot occur.

The Employer is further ordered to make the required CLRA/Local 779 collective agreement payments to the Union on a continuing basis as of the date of this award until the conclusion of the construction phase of the Tata Steel project.

I do not comment on the Employer's ability to pay.

DECISION

The grievance is upheld.

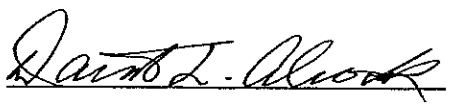
Sodexo Canada Ltd. is bound by the terms and conditions of the CLRA/Local 779 collective agreement.

Wage compensation to the affected employees for the period December 18, 2013 to March 28, 2014 shall be paid based on the amount of $314,118.56 calculated by Mr. Doug Harris CA under Scenario 2.

Further compensation amounts which were unable to be determined to this point, shall be determined in accordance with my findings on pages 82 to 85 immediately preceding. I will remain seized in the event the parties cannot agree on the *quantum* of this compensation.

Respectfully submitted as the decision of the arbitrator.

Dated at Mount Pearl, Newfoundland and Labrador, this 21st day of July, 2014.



David L. Alcock
Sole Arbitrator