

COLLECTIVE AGREEMENT

Between

KLEMKE MINING CORPORATION

and

**INTERNATIONAL UNION OF
OPERATING ENGINEERS, LOCAL UNION NO. 955**

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COLLECTIVE AGREEMENT

between

KLEMKE MINING CORPORATION
(hereinafter referred to as the Employer)

and

**INTERNATIONAL UNION OF OPERATING ENGINEERS,
LOCAL UNION NO. 955**
(hereinafter referred to as the Union)

ARTICLE 1:00 PURPOSE

1:01 The purpose of this Agreement shall be to record the agreement of the parties arrived at through negotiations as to terms and conditions of employment relating to rates of pay, hours of work and other working conditions of employees, to provide a method of settlement of disputes and grievances, and to maintain a harmonious relationship between the Employer and its employees.

ARTICLE 2:00 SCOPE

2:01 The Employer recognizes the Union as the sole and exclusive bargaining agent for employees covered under this Agreement with respect to rate of pay, hours of work and other working conditions.

The Agreement shall cover all employees of the Employer except office, clerical and purchasing engaged in Oilsand mine development, operation, maintenance and reclamation.

2:02 If any provision of this Agreement is in conflict with the laws or regulations of Canada or Alberta, such provision shall be superceded by such law or regulation. Unless prohibited from doing so by such law or regulations, or by a ruling of any Court or Board of competent jurisdiction which has declared any provision of the Agreement invalid or inoperable, the Employer and the Union, within fifteen (15) days of notice of either upon the other, shall commence negotiations, the sole and restricted purpose of which shall be to provide adequate legal replacement of such provision. In the event that such negotiations do not result in agreement upon legal replacement for such provision within seven (7) days of commencement of negotiations or such longer period as may be mutually agreed between the parties, the matter shall be resolved in accordance with Article 6:00.

ARTICLE 3.00 MANAGEMENT RIGHTS

- 3:01 Subject to the terms of this Agreement, the Union recognizes the right of the Employer to the management of its operations and direction of the working forces including the right to hire and select employees, promote or discharge any employee for just cause, and further recognizes the right of the Employer to operate and manage its business in accordance with its commitments and responsibilities including methods, processes and means of production or handling.
- 3:02 The Employer shall have the right to name-hire I.U.O.E. Local 955 members who have been employed by the Employer in the previous eighteen (18) months.
- 3:03 In the event that a project's conditions place the contractor in an uncompetitive position with non-Union bidders, or with the owners forces, this Agreement may be altered accordingly by mutual agreement of the Union and the Employer's negotiating committee.

The Union warrants that this Agreement will not come into competition with any other International Union of Operating Engineers Local Union No. 955 Agreement for the same work.

ARTICLE 4:00 UNION RIGHTS

- 4:01 When the Employer is in need of employees, qualified members in good standing from the Union will be employed. Such members from the Fort McMurray area shall be given preference. Employees shall be requested from the Union and the employees will be issued a referral slip in due course. If the Union is unable to supply qualified persons within twenty-four (24) hours, the Employer may hire wherever possible. On Saturdays, Sundays, and Holidays the Employer shall have the right to hire employees directly with preference to qualified members of the Union and the job steward shall be advised when they commence work. The Employer shall advise the Union on the first working day following of anyone so employed on a Saturday, Sunday, or Holiday. If any such employee is not an eligible member in good standing with the Union, the Union shall have the right to have the employee replaced forthwith with a qualified local residential member in good standing with the Union.

The right to employ people on Saturdays, Sundays, and Holidays, shall not be abused by the Employer.

On projects where circumstances have necessitated the hiring of Local 955 permit holders, and layoffs take place, the following procedures and

sequence for layoff shall be followed provided the remaining employees are qualified to perform the work required:

- 1) Permit holders first
- 2) Travel cards next, and
- 3) Good standing members last

When there is a temporary slowdown of work, good standing members shall be retained on the projects, and travel cards and permits shall be sent home unless all good standing members are working provided the remaining employees are qualified to perform the work required.

- 4:02 All persons employed as operating engineers shall, as a condition of employment, apply to become members of the Union within 400 hours worked after commencement of employment or be replaced by a competent Union worker when available.
- 4:03 All employees shall be required to pay an amount equal to Union dues during their term of employment. The Employer shall deduct this amount from the employee's wages by the first payday after commencement of employment and thereafter on the first payday of each month. All dues so collected shall be remitted to the Union, together with a list of employees concerned, not later than the 15th day of the month following such deduction.
- 4:04 The Employer agrees to deduct all Union dues in excess of the normal monthly Union dues, fees and assessments as evidenced by a signed authorization from an employee covered by this Agreement, and forward such monies once each month to the Union with a list showing the amount deducted for each person, said monies to be remitted not later than the 15th day of the month following such deduction.
- 4:05 (a) Job Stewards shall be recognized by the Employer and shall be treated fairly and impartially. Stewards shall be allowed time during working hours to perform the work of the Union but shall not abuse that privilege.
- (b) The Union may appoint one of its members who is a qualified worker in their classification as job steward for each shift. The Union will notify the Employer in writing the names of the job stewards appointed. The job steward(s) will be one of the last two (2) employees laid off in their classification. The Employer and the Union will endeavor to ensure that there is a job steward on each crew of six (6) or more members when available, provided that the job steward is a qualified steward and is qualified to perform the work required.

- 4:06 The Business Agent is to have access to all projects covered by this Agreement after first notifying the Superintendent or person in charge, having due regard to project rules and safety regulations. The Business Agent shall not interfere with the progress of the work.

The Union shall have the right to post notices at the designated places on the job. All such notices must be signed by the proper officer of the Local Union and submitted to the management of the Employer for approval.

- 4:07 A copy of this Agreement shall be provided by the Union to all employees covered by this Agreement.

ARTICLE 5:00 SUB-CONTRACTING

- 5:01 Definition of Sub-Contractor: A Sub-Contractor is a person or contractor who performs work at the project under a sub-contract from the Employer and that work, if done by the Employer, would have come under the terms of this Agreement.

- 5:02 It is recognized by the Union that circumstances may require the use of sub-contractors on work covered under the terms of this Agreement. The Employer agrees that if such circumstances arise, they shall notify the Union prior to the letting of any sub-contracts. Notification shall be in the form of written notice to the job steward on shift, or the Union office.

- 5:03 Employees of sub-contractors, as referred to in 5:02, shall be employed under and in accordance with all of the terms and conditions of this Agreement.

- 5:04 Owner-operated and manned rented equipment shall in no way be used to circumvent the intentions and provisions of this Agreement. Where owner-operated or manned rented equipment is utilized and performs work beyond six (6) consecutive working days, the operator shall thereafter become an employee and be entitled and subject to all of the terms and conditions of this Agreement.

(a) Definition of Owner-Operator: Owner-operator shall include the owner of equipment who physically operates equipment such as bulldozers, scrapers, backhoes, trucks and similar types of equipment covered under the classifications contained in this Agreement.

(b) Definition of Manned Rented Equipment: Manned rented equipment is equipment such as that described in "(a) Definition of Owner-Operator", but is physically operated and/or manned by other than the owner of said equipment.

- (c) It is agreed that Warranty and Manufacturer's service work is excluded from the terms and conditions of this Agreement. The parties agree that training opportunities for Local 955 trades and service personnel shall be utilized on such work whenever possible.
- (d) Survey work will be excluded from the sub-contracting clause.

The Union will be notified prior to any person performing Warranty or Survey work as above in all cases as soon as possible.

ARTICLE 6:00 GRIEVANCE PROCEDURE

6:01 All differences between the Employer and the Union concerning the interpretation, application, operation, and/or an alleged violation of this Agreement shall be settled without stoppage of work or lockout and the dispute shall be submitted in writing within ten (10) days and then referred to paragraph (d) below.

In the event of any dispute arising out of this Agreement between the Employer and an employee, the following procedure will be followed:

- (a) An aggrieved party shall within ten (10) days of the alleged violation submit their complaint in writing to the Steward who shall endeavor to settle the complaint between the employee and the employee's immediate supervisor.
- (b) If the complaint is not settled within two (2) days (excluding Saturdays, Sundays, and Holidays) it may be referred to the Project Superintendent and an official representative of the Union.
- (c) If the complaint is not then settled within three (3) days (excluding Saturdays, Sundays, and Holidays) it shall be referred to the Management of the Employer involved and the Business Agent of the Union.
- (d) If the complaint is not settled within seven (7) days (excluding Saturdays, Sundays, and Holidays) it shall be referred to an Arbitration Board. By mutual consent of the parties this time limit may be extended. The Arbitration Board shall be comprised of one (1) member appointed by the Employer, one (1) member appointed by the Union and a neutral Chairperson appointed by the members. Each party shall bear the expense of their appointee and the expense of the Chairperson shall be shared equally by the parties.
- (e) If a grievance is not submitted or advanced from one step to another within the time limits, the grievance shall be deemed to be abandoned and all rights of recourse to the grievance procedure

shall be at an end, except the Union and the Employer may mutually agree to extend the time limits in writing.

- (f) If either party fails to appoint a member or if the appointed members cannot agree on a neutral Chairperson, such appointments shall be made in accordance with the Alberta Labour Relations Code.
- (g) The Arbitration Board shall be vested with the authority to decide whether any matter referred to it is arbitrable. It shall make its decision within fourteen (14) days of the appointment of the Chairperson. **By** mutual consent of the parties the time limits may be extended.

The Arbitration Board shall not alter, amend or change the terms of this Agreement. The majority decision of the Arbitration Board shall be final and binding upon both parties but if there is no majority award, the decision of the Chairperson shall be the award.

6:02 As an alternative procedure to that outlined, commencing with 6:01 (d) the following procedure shall be used if mutually agreed in writing between the Employer and the Union.

- (a) The steps prescribed in 6:01 (a), (b) and (c) shall apply.
- (b) If the matter of complaint is not then settled within seven (7) days (excluding Saturdays, Sundays, and Holidays), it shall be referred to a single Arbitrator who shall be selected and agreed upon by the Employer and the Union.
- (c) Should the Employer and the Union fail to agree on the appointment of a single Arbitrator, the appointment shall be made by the Minister of Labour.
- (d) The single Arbitrator shall have the same authority as an Arbitration Board and shall make his decision within fourteen (14) days of his appointment. **By** mutual consent of the parties the time limits may be extended.
- (e) The costs of and in connection with the single Arbitrator shall be borne equally by the Employer and the Union.

The single Arbitrator shall not alter, amend or change the terms of this Agreement. The decision of the Arbitrator shall be final and binding on both parties.

6.03 The parties may, upon mutual agreement, refer any outstanding grievance to the Canadian Joint Grievance Panel process as outlined in the agreed Procedures for Schedule 1 and Schedule 2 hearings that

form a part of this Agreement. The Panel decision shall be final and binding on the Parties. The Panel shall not have the authority to change this Agreement or to alter, modify or amend any of its provisions. However, the panel shall have the authority to dispense of a grievance by any arrangement that is deemed just and equitable. It is further agreed that in the event the Panel is unable to render a majority decision that the grieving party may refer the matter to a Schedule II Hearing under the Panel process, refer the matter back to the arbitration process as outlined above in this Article or, withdraw the grievance.

ARTICLE 7:00 RATES OF PAY AND CLASSIFICATIONS

7:01 New Classifications: When the Employer utilizes employees not covered by existing classifications, the Employer will establish a rate for such classification and notify the Union in writing within two (2) days of employment. If the Union disagrees with the rate, the proper Union representatives will advise the Employer in writing within fifteen (15) days from the date of the notification requesting negotiation. In the event that such negotiations do not result in Agreement upon the classification within seven (7) days of commencement of negotiations or such longer period as may be mutually agreed between the parties, the matter shall be resolved by an Arbitration Board as provided in the grievance procedure. The wage rate established shall become effective on the date upon which notice is given to commence negotiations.

7:02 Classifications:

- Group 1 Journeyman Mechanic, Welder, Electrical Mechanic, Machinist
- Group 2 Crane, over 15 ton capacity; Service truck; Lubricator; Tire serviceman; dragline, shovel, Front-end Loader, over 7.5 m³ capacity; Backhoe over 2.3 m³ capacity, Survey Instrument Person. The operators on loading equipment with bucket capacities over 15 m³, and Tire serviceman shall be paid an additional \$1.00 per hour over the contract group rate.
- Group 3 Dragline, Shovel, Clam up to and including 7.5 m³ capacity; Motor Scraper; Front-end Loader, .75 m³ capacity and up to 7.5 m³ capacity; A-Frame; Lowboy; Grader; Off Highway vehicle, 50 ton capacity and over; Crawler tractor with attachments such as dozer, scraper, larger than D4 or equivalent; Partsperson; Crane up to 15 ton; Backhoe up to and including 2.3 m³ capacity; Qualified bus and van drivers (when transporting employees).

- Group4 Crawler tractor with attachments such as dozer, scraper, up to and including D4 or equivalent; Front-end Loader, up to .75 m³ capacity; Dump truck; Compaction equipment with attachments such as dozer blade; Off-Highway vehicle, under 50 ton capacity; Apprentice survey instrument person; Mobile steamcleaner.
- Group5 Oiler; Assistant operator; Water Pump; Compressor; Mechanical heater; Tow tractor without attachments, Mechanic's helper; Partsperson's helper; Compaction equipment without attachments, Forklift; Flagperson; Labourer; Steam Cleaner; Rod and Chainperson.

Note: The Employer shall **be** allowed to sponsor **4** (four) individuals per calendar year into the bargaining unit as **partsperson** positions, in addition to the existing partsmen (list to be supplied by Employer) who shall apply to become members.

7:03 HOURLY **WAGE** RATES:

Trades Adjustment of \$1.00 per hour to be added to base rate of Group ■ effective January 1, 2005, prior to:
There will be a market wage rate adjustment of 3% for all employees effective January ■ 2005.

Then a general wage increase for all employees as follows:

February 1, 2005 the base rate to be increased by a minimum of 3%
January ■ 2006 the base rate to be increased by a minimum of 3%
January 1, 2007 the base rate to be increased by a minimum of 3%
January 1, 2008 the base rate to be increased by a minimum of 3%
January 1, 2009 the base rate to be increased by a minimum of 3%

The following wage rates shall be effective for the duration of this Agreement:

January 1, 2005	Group 1 *	Group 2	Group 3	Group 4	Group 5
Base Rate	\$32.85	\$30.24	\$28.77	\$24.97	\$20.31
Pension	\$4.00	\$4.00	\$4.00	\$4.00	\$4.00
Health & Welfare	\$1.46	\$1.46	\$1.46	\$1.46	\$1.46
Training Fund	\$0.06	\$0.06	\$0.06	\$0.06	\$0.06
Vacation Pay (6%)	\$1.97	\$1.81	\$1.73	\$1.50	\$1.22
Holiday Pay (4%)	\$1.31	\$1.21	\$1.15	\$1.00	\$0.81
Gross Rate	\$41.65	\$38.78	\$37.17	\$32.99	\$27.86
* Note: Group / Rate was adjusted by \$1.00 <u>PRIOR</u> to application of the 3% increase for ALL Groups.					

February 1, 2005	Group 1	Group 2	Group 3	Group 4	Group 5
Base Rate	\$33.84	\$31.15	\$29.63	\$25.72	\$20.92
Pension	\$4.00	\$4.00	\$4.00	\$4.00	\$4.00
Health & Welfare	\$1.55	\$1.55	\$1.55	\$1.55	\$1.55
Training Fund	\$0.06	\$0.06	\$0.06	\$0.06	\$0.06
Vacation Pay (6%)	\$2.03	\$1.87	\$1.78	\$1.54	\$1.26
Holiday Pay (4%)	\$1.35	\$1.25	\$1.19	\$1.03	\$0.84
Gross Rate	\$42.83	\$39.88	\$38.21	\$33.90	\$28.63

January 1, 2006	Group 1	Group 2	Group 3	Group 4	Group 5
Base Rate	\$34.86	\$32.08	\$30.52	\$26.49	\$21.55
Pension	\$4.00	\$4.00	\$4.00	\$4.00	\$4.00
Health & Welfare	\$1.60	\$1.60	\$1.60	\$1.60	\$1.60
Training Fund	\$0.06	\$0.06	\$0.06	\$0.06	\$0.06
Vacation Pay (6%)	\$2.09	\$1.92	\$1.83	\$1.59	\$1.29
Holiday Pay (4%)	\$1.39	\$1.28	\$1.22	\$1.06	\$0.86

January 1, 2007	Group 1	Group 2	Group 3	Group 4	Group 5
Base Rate	\$35.91	\$33.04	\$31.44	\$27.28	\$22.20
Pension	\$4.10	\$4.10	\$4.10	\$4.10	\$4.10
Health & Welfare	\$1.65	\$1.65	\$1.65	\$1.65	\$1.65
Training Fund	\$0.06	\$0.06	\$0.06	\$0.06	\$0.06
Vacation Pay (6%)	\$2.15	\$1.98	\$1.89	\$1.64	\$1.33
Holiday Pay (4%)	\$1.44	\$1.32	\$1.26	\$1.09	\$0.89
Gross Rate	\$45.31	\$42.15	\$40.40	\$35.82	\$30.23

January 1, 2008	Group 1	Group 2	Group 3	Group 4	Group 5
Base Rate	\$36.99	\$34.03	\$32.38	\$28.10	\$22.87
Pension	\$4.20	\$4.20	\$4.20	\$4.20	\$4.20
Health & Welfare	\$1.70	\$1.70	\$1.70	\$1.70	\$1.70
Training Fund	\$0.085	\$0.085	\$0.085	\$0.085	\$0.085
Vacation Pay (6%)	\$2.22	\$2.04	\$1.94	\$1.69	\$1.37
Holiday Pay (4%)	\$1.48	\$1.36	\$1.30	\$1.12	\$0.91
Gross Rate	\$46.675	\$43.415	\$41.605	\$36.895	\$31.135

January 1, 2009	Group 1	Group 2	Group 3	Group 4	Group 5
Base Rate	\$38.10	\$35.05	\$33.35	\$28.94	\$23.56
Pension	\$4.30	\$4.30	\$4.30	\$4.30	\$4.30
Health & Welfare	\$1.75	\$1.75	\$1.75	\$1.75	\$1.75
Training Fund	\$0.11	\$0.11	\$0.11	\$0.11	\$0.11
Vacation Pay (6%)	\$2.29	\$2.10	\$2.00	\$1.74	\$1.41
Holiday Pay (4%)	\$1.52	\$1.40	\$1.33	\$1.16	\$0.94
Gross Rate	\$48.07	\$44.71	\$42.84	\$38.00	\$32.07

On January 1st of each of years 2006, 2007, 2008 and 2009, the base rate will increase by at least three percent (3%), as identified in the tables above. If the average increase of the Oilsands Mining Industry settlements within the Fort McMurray area of each year ending May 1st exceeds the 3% increase as identified in the tables above, all the base rates shall increase accordingly as of May 1st starting in 2006. Average Oilsands Mining Industry settlements in 2005 will be taken into account in 2006.

In the event that the Employer and the Union are not able to agree as to the benchmark base rate increases or their weighting, either party may refer the issue to arbitration through Article 6:01 Grievance Procedure. In this case the arbitrator will be restricted to addressing base rates only.

After an initial adjustment to bring Health and Welfare contributions to one dollar and fifty-five cents (\$1.55) per hour effective the Sunday following the date of ratification (February 6, 2005), Health and Welfare is to be increased by five cents (5¢) per hour each year on January 1 starting January 1, 2006.

Pension is to be increased by ten cents (10¢) per hour each year on January 1 starting January 1, 2007.

Training to be increased two point five cents (2.5¢) per hour each year on January 1 starting January 1, 2008.

- 7:04 Tool Allowance: All employees employed as Journeyman Mechanics and Apprentice Mechanics shall receive a tool allowance of one (\$1.00) dollar per hour worked on a straight time basis for all hours worked.

All employees employed as Apprentice Mechanics shall be paid at least the equivalent of the Alberta Apprenticeship Board Wage Schedule but in any case no lower than Group 5.

All employees employed other than as Mechanics "ie: Serviceman, Welders" which are required by the Employer to use their own tools shall receive a tool allowance of fifty cents (\$0.50) cents per hour worked on a straight time basis for all hours worked. (See attached list.)

The tool allowance shall be paid at least monthly.

All employees employed as mechanics, welders, apprentice mechanics, tire servicemen, service truck and lubricator persons, will receive a boot allowance of ten cents (\$0.10) per hour for all hours worked, to a maximum of two hundred and twenty-five dollars (\$225.00) per year.

- 7:05 Employees required to work scheduled shifts which start between 4:00 p.m. and 5:00 a.m. shall receive an hourly shift premium of one dollar and twenty cents (\$1.20) on a straight time basis for all hours worked on such scheduled shifts.

ARTICLE 8:00 HOLIDAYS AND VACATION PAY

8:01 The following Holidays will be observed as follows:

New Year's Day	Labour Day
Family day	Thanksgiving Day
Good Friday	Remembrance Day
Victoria Day	Christmas Day
Canada Day	Boxing Day
Heritage Day	

8:02 The Employer may require employees to work on Named Holidays in which event all time worked on a Named Holiday as specified in clause 8:01 of this Article shall be paid at one and one-half **(1.5)** times the regular rate of pay. The Employer shall endeavor to seek qualified volunteers firstly for work on Christmas Day, New Year's Day and Labour Day.

8:03 Holiday pay shall be credited to the employee and shall be calculated at four **(4%)** percent of the straight time rate for all hours worked.

8:04 Vacation pay shall be credited to the employee at the rate of six **(6%)** percent of the straight time rate for all hours worked.

8:05 Holiday and Vacation Pay shall be paid on each payday and upon termination.

ARTICLE 9:00 HOURS OF WORK

9:01 In recognizing that our industry serves the needs of operating mines, it is understood that shift schedules and hours of work may vary to suit the requirements of the job.

9:02 (a) All overtime will be paid at one and one-half **(1.5)** times the regular rate of pay.

(b) Any employee who was available for work or worked on all of their regularly scheduled days of work, and who works on any of their regularly scheduled day(s) off following their regular scheduled days of work, will be paid overtime for that time.

(c) Every employee will be assigned a shift schedule with regularly scheduled days off. Shift schedules shall be posted.

(d) In the case of new hires it may be necessary to move an employee from one shift to another during their site orientation period to allow a thorough assessment of their skills. Such period shall not exceed fifteen **(15)** days.

- (e) Where the Employer changes an employee's shift schedule, resulting in the schedule having fewer days off than those originally scheduled, then the originally scheduled days off shall be at overtime rates, in addition to any overtime that would ordinarily be paid on the new shift schedule. This would apply only for the transition period from one shift schedule to another.

9:03 Continuous and/or compressed work weeks may be required to provide a competitive and acceptable service to the mines.

- (a) Continuous non-compressed schedules may be scheduled on the basis of a maximum of twelve (12) regularly scheduled hours per day. Overtime will be paid for hours worked over eight (8) in a day, forty (40) in a week or seven (7) day period.
- (b) Upon mutual agreement between the Union and the Employer compressed work week schedules may be instituted.

9:04 No employee shall work more than one straight time shift in each consecutive twenty-four (24) hour period. An employee shall continue to receive the overtime rate after each shift until a break of eight (8) consecutive hours occurs.

9:05 If the end of shift, 8:10 o'clock, Syncrude bus is utilized for return from site to Fort McMurray, due to continuous (hot change) or twelve (12) hour shift length, an inconvenience allowance of ten dollars (\$10.00) per day will be paid for the duration of the Agreement as per Article 21:01.

On continuous shifts (hot change) the equipment stop time may vary up to ten (10) minutes to accommodate the arrival of the incoming crew.

If the end of shift, 7:40 o'clock, Syncrude bus is utilized for return from site to Fort McMurray, employees pay will be increased from the current eleven and one-half (11.5) hours to eleven and three quarter (11.75) hours @ eight (8) hours of straight time and three and three quarter (3.75) hours of overtime.

The Employer shall pay employees working at the Albian Sands or Aurora sites a transportation allowance corresponding to the Syncrude Canada transportation allowance to the Aurora site, but in any case, no less than twenty-two dollars (\$22.00) per day worked.

ARTICLE 10:00 REPORTING AND CALL-OUT PAY

10:01 An employee who reports for work as scheduled without having been notified not to report and for whom no work is available, will be allowed three (3) hours pay at the rate of the job for which they were scheduled to report.

An employee who reports for and commences work, shall be paid at the applicable rate for a minimum of four **(4)** hours or hours worked, whichever is greater.

These payments shall apply only in cases where an employee discontinues work at the request of the Employer.

10:02 When an employee is called out to work on their regularly assigned period of rest, they will be paid for a minimum of three (3) hours at the applicable rate. The Employer may require an employee to perform work within their jurisdiction for the three (3) hour call-out. Employees shall have the right to refuse overtime when an employee is called out or requested to work on a scheduled day off; emergencies not included.

10:03 If circumstances arise that there is no work available, two (2) hours notice shall be given the employees. If such notice is not given, the Employer shall pay reporting time as set out in Article 10:01.

Employees shall be provided notice through a telephone message service which they may call or other means mutually agreed upon between the Employer and the Union.

ARTICLE 11:00 PAY DAYS

11:01 The Employer shall pay employees every two **(2)** weeks and not more than seven (7) calendar days shall be held back. All wages, overtime pay, and entitlement owing to an employee shall be paid by direct deposit to an account of the employees choice in a Bank, Treasury Branch, Credit Union, Trust Company, or other corporation insured under the Canada Deposit Insurance Corporation Act (Canada). A detailed pay stub outlining hours worked, rate of pay, deductions, etc. will be supplied to each employee.

11:02 Employees shall be paid wages in full at the time of layoff or discharge or arrangements made whereby a cheque will be mailed not later than the following working day. When an employee quits, they shall be paid on the next regular payday.

11:03 The Employer and the Union shall establish a Group RRSP that employees may contribute to in their own account by payroll deduction, in

an amount specified by the employee. The institution, plan and governing regulations will be mutually agreed upon by the Union and the Employer.

ARTICLE 12:00 TRANSPORTATION

12:01 The Employer shall supply daily transportation from the employee's residence in Fort McMurray, or from a pick-up spot that is similar to a Project Owners' prescribed route, to the job-site and return. Employees shall report to the designated pickup point(s) within Fort McMurray in time to reach the project at the regular starting time of their designated shifts. If an employee uses their own vehicle at the request of the Employer, they shall be compensated at the rate of thirty-nine cents (\$0.39) per kilometre (Syncrude to be calculated at 80 kms). The paid length of the shift will not differ as a result of utilization of the project specific transportation system as opposed to Klemke buses.

The above mentioned transportation shall be of a quality no less than presently supplied. Any changes to current quality must be agreed to by the Union.

12:02 Suitable covered transportation daily from the camp area to the work area and return, or a point mutually agreed upon by the Employer and the Union, shall be provided.

ARTICLE 13:00 WORKING CONDITIONS

13:01 The Employer shall provide suitable sanitary facilities, propane-type toilets with hand cleaning supplies, including wet towels and a lock-fast place for storage of employee's tools.

The Employer shall provide flush toilets in the area of the main shop.

The Employer shall ensure that all mobile equipment has fully enclosed cabs with operating air conditioning and heating systems where conditions warrant. This will not apply to tree clearing equipment due to safety concerns.

13:02 The Employer shall provide reasonable protection from severe weather elements for all employees. When an employee is required to work in the rain, rainwear shall be supplied by the Employer. Such rainwear shall remain the property of the Employer and must be returned upon request by the Employer or upon termination of employment. Failing such return, the Employer is authorized to deduct the cost of the rainwear from the employee's pay.

13:03 All employees covered by this Agreement shall be permitted ten (10) minutes in the first half and ten (10) minutes in the second half of a shift for a coffee break on the job during regular working hours.

13:04 When a mechanic as a condition of employment, is required to carry a full complement of tools, they shall before starting work for the Employer, submit an inventory of tools which will be checked by the management. Upon acceptance, the Employer shall insure those tools and toolbox at the agreed value against fire and/or theft of the complete unit of tools while on the Employer's premises.

13:05 When an employee works in a higher hourly wage classification they shall be paid the higher rate for the entire half of the shift in which they work the higher classification.

13:06 Fresh drinking water in approved sanitary containers, and paper cups will be provided and placed in a convenient location on all jobs.

13:07 The Employer shall supply a clothes locker, gloves, wristlets, tinted non-prescription safety glasses, coveralls and quilted coveralls, and laundering of same to those employees employed in the servicing and repair of equipment. The above items shall remain the property of the Employer and will be replaced without charge when worn out or soiled items are presented for exchange. This provision shall apply only to the following classifications:

Mechanics, Electrical Mechanics, Machinists, Welders, Bodymen, Servicemen, Fuel truck drivers, Steam cleaner operators, Tire servicemen and Mechanic's and Servicemen's helpers.

Operators will be issued coveralls, tinted non-prescription safety glasses, and gloves for use when required. The above items shall remain the property of the Employer and will be replaced without charge when worn out or soiled items are presented for exchange.

Employees employed in the welding trade will be supplied leathers on a "sign-out" basis.

13:08 At no time will an employee be required to work in a lesser wage classification than that for which they were hired unless the employee agrees to the lesser wage classification in writing.

ARTICLE 14:00 ROOM AND BOARD

14:01 Room and Board shall be provided to those employees, who are non-residents of Fort McMurray, on those contracts when Room and Board is provided and approved by the Project Owner under the terms and conditions of the Employer's contract with either the Prime Contractor or the Owner of the Project.

Should the Project Owner or prime contractor during the course of the work remove the provisions of free of charge or reimbursable room and board, then the Employer maintains the right to remove the provision of free issue room and board to the employee.

ARTICLE 15:00 ABSENCE FROM WORK

15:01 An employee who may be absent from work or late for work for any reason, shall notify their supervisor at least four **(4)** hours prior to the beginning of their shift, with the exception of day shift when the notification shall be two (2) hours. It is understood that in emergency circumstances, employees may not be able to provide the required notification.

15:02 The parties recognize that attendance at work by employees is important to the efficient operation of the Employer's business. Any undue or habitual absenteeism shall be cause for discipline of the employee including discharge.

ARTICLE 16:00 BEREAVEMENT LEAVE

16:01 Bereavement leave with pay will be granted to a maximum of twenty-four **(24)** regularly scheduled hours at straight time rates in case of death in an employee's immediate family, provided that the employee is directly involved in making funeral arrangements or attending the funeral. Immediate family shall include the employee's mother, father, grandmother, grandfather, brother, sister, spouse, children, mother-in-law, father-in-law, brother-in-law, sister-in-law, and grandchildren. The employee must return to work and provide documentation indicating attendance at the funeral or involvement in funeral arrangements to qualify for payment.

ARTICLE 17:00 APPRENTICESHIP

17:01 Apprentices shall be paid in accordance with the appropriate regulations of the Apprenticeship and Industry Training Act, but in any case at a rate that is no lower than that of Group 5.

17:02 All Apprentices shall acquire and maintain basic hand tools required to carry out their apprenticeship training.

17:03 Operators training on unfamiliar types or categories of equipment (ie. scraper, dozer, grader, truck, loader, excavator, shovel, etc.) will be paid one classification below the applicable classification for said equipment for a period of not more than four hundred (400) hours operating time. The Shift Steward shall be notified at the time of all employees working under the provisions of this clause and will be advised on the request of

the Steward of the applicable hours worked at the reduced rate. This procedure will be administered in a fair manner.

ARTICLE 18:00 ACCIDENT PREVENTION AND SAFETY EQUIPMENT

18:01 It is understood and agreed that the parties to this Agreement shall at all times comply with the accident prevention and safety regulations as stipulated by the KMC Standard Practice for Health, Safety and the Environment, the Project Owner's Safety, Health and Environment Program or the Occupational Health and Safety Act. It is also agreed that any refusal on the part of the worker to perform their duties or to continue to perform their duties in contravention of the above Health and Safety regulations shall not be deemed to be in violation of this Agreement.

A violation of any regulation of the Occupational Health and Safety Act or any unsafe working practice shall be cause for dismissal. The Employer shall notify the Job Steward at the time of any such occurrences.

18.02 Every potential employee shall submit to and pass the Employer's lawful designated drug/alcohol test prior to employment with the Employer on a project. Employees may also be required to submit to a lawful drug/alcohol test for just cause during the course of their employment. The Employer and the employee shall also adhere to such other lawful drug/alcohol tests as required by the Owner.

ARTICLE 19:00 SPECIAL PROVISIONS

19:01 The selection and appointment of foremen shall be the sole responsibility of the Employer. The designation and determination of the number of foremen, should any be required, is the sole responsibility of the Employer.

When a foreman is required and no qualified candidate is available from the Union hall, a foreman may be recruited by the Employer. Such recruits shall be permitted into or apply to become members of the Union within four hundred (400) hours worked after commencement of employment.

19:02 Foremen shall be paid not less than one dollar and fifty cents (\$1.50) per hour above the highest classification supervised.

19:03 A Joint Labour-Management Committee consisting of representatives of the Employer and representatives of the Union shall be formed. The Committee will meet periodically to discuss matters of mutual concern with a view to maintaining and improving effective labour-management relations in the Oilsands Industry. There shall be, during the term of this Agreement, no slowdown, stoppage of work, picketing, strike or walkout for any reason.

19:04 The Employer and the Union will co-operate in the implementation of First Nations employment and/or sub-contracting programs as appropriate. Any case of implementation of this clause shall be subject to agreement of the Employer and the Union.

ARTICLE 20:00 EMPLOYER CONTRIBUTIONS

20:01 Health and Welfare - The Employer shall pay the hourly rate provided for in Article 7:03 for each hour worked by each employee into the Operating Engineers Local 955 Health and Welfare Trust Fund and agrees to be bound by the current Trust Deed presently in effect or as it may be amended by the Trust Fund Trustees.

The Employer shall, not later than the fifteenth (15th) of each month, mail Health and Welfare Trust Fund contributions for the previous month to the Office of the Trust Fund. Cheques are to be made payable to the Operating Engineers Local 955 Health and Welfare Trust Fund.

20:02 Pension - The Employer shall pay the hourly rate provided for in Article 7:03 for each hour worked by each employee into the Operating Engineers Local 955 Pension Trust Fund and agrees to be bound by the current Trust Deed presently in effect or as it may be amended by the Trust Fund Trustees.

The Employer shall, not later than the fifteenth (15th) day of each month, mail Pension Trust Fund contributions for the previous month to the Office of the Trust Fund. Cheques are to be made payable to the Operating Engineers Local 955 Pension Trust Fund.

20:03 Training - The Employer shall pay the hourly rate provided for in Article 7:03, for each hour worked by each employee into the Operating Engineers Local 955 Training Trust Fund and agrees to be bound by the current Trust Deed presently in effect or as it may be amended by the Trust Fund Trustees.

The Employer shall, not later than the fifteenth (15th) of each month, mail Training Trust Fund contributions for the previous month to the Office of the Trust Fund. Cheques are to be made payable to the Operating Engineers Local 955 Training Trust Fund.

ARTICLE 21:00 DURATION OF AGREEMENT


21:01 Except as otherwise specified herein, the Agreement shall be in full force and effect as of the first Sunday following date of ratification (Sunday February 6, 2005) except where otherwise noted, until December 31, 2009 and from year to year thereafter except as hereinafter provided.

- 21:02 The Union or the Employer may, not less than thirty (30) days and not more than one hundred and twenty (120) days immediately prior to the expiry date of the Agreement, request the other party to the Agreement to commence collective bargaining. Such notice shall be given by registered mail.
- 21:03 It being the intent of the parties to this Agreement that negotiations be concluded and a new Agreement signed prior to December 31st, 2009. The parties agree that if no Agreement is reached by November 30th, 2009 both parties shall apply for the services of a mediator immediately as provided for in the Labour Relations Code. It is the express intent of this provision to have concluded a new Collective Agreement or to have exhausted all the procedures as set out in the Labour Relations Code prior to the expiry date of the Agreement.
- 21:04 If notice has been given by the Union and/or the Employer, this Agreement shall remain in full force and effect during any period of negotiations even though such negotiations may extend beyond the said expiry date, until the procedures in the Labour Relations Code have been exhausted. The parties to this Agreement shall make every effort to complete the procedures in the Code and conclude an Agreement prior to the expiry date.

SIGNED this 17TH Day of FEBRUARY, 2005 On behalf of:

KLEMKE MINING CORPORATION

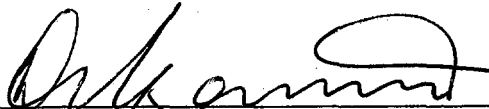
**INTERNATIONAL UNION OF
OPERATING ENGINEERS,
LOCAL UNION NO. 955**



Dan Klemke




Doug Gosset



Dennis Neuman



Ron Macdonald



Ralph Hope



Bruce Kiryluik

LETTER OF UNDERSTANDING
between

KLEMKE MINING CORPORATION
(hereinafter referred to as the Employer)

and

**INTERNATIONAL UNION OF OPERATING ENGINEERS,
LOCAL UNION NO. 955**
(hereinafter referred to as the Union)

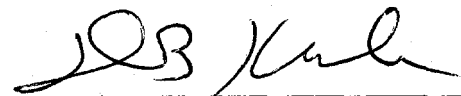
If during the term of this Agreement it becomes necessary for the Employer to perform work which falls within the Scope of this Agreement on any other site, the parties agree to meet and discuss transportation, travel time, and lodging terms and conditions posed by the implementation of this Collective Agreement at a different geographical site.

If during the term of this Agreement it becomes necessary for the Employer to perform long term work that falls within the scope of this Agreement, the parties agree to meet and discuss shift schedules, compressed work weeks, and sick leave provisions. A committee comprised of at least two (2) stewards and a Union Officer approved by the Business Manager of Local 955 will meet to discuss proposed provisions.

SIGNED this 17TH Day of FEBRUARY, 2005 On behalf of:

KLEMKE MINING CORPORATION

**INTERNATIONAL UNION OF
OPERATING ENGINEERS,
LOCAL UNION NO. 955**



Dan Klemke



Doug Gosset



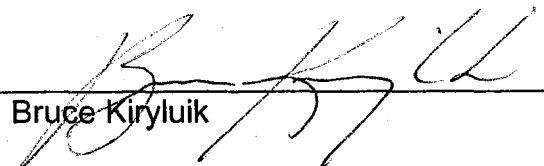
Dennis Neuman



Ron Macdonald



Ralph Hope



Bruce Kiryluik

LETTER OF UNDERSTANDING

between

KLEMKE MINING CORPORATION
(hereinafter referred to as the Employer)

and

**INTERNATIONAL UNION OF OPERATING ENGINEERS,
LOCAL UNION NO. 955**
(hereinafter referred to as the Union)

Re: Suncor Site

The current practice of door to door pickup for the Suncor bussing system shall be maintained.

Employees' paid time shall be from the time they receive their orders in the mine dry at the start of their shift in accordance with their shift schedule and end when the vans leave the mine dry at the end of the shift. The mine dry shall be based on the current location just east of the Steepbank Bridge. If the mine dry is relocated from the current location, then any additional travel time from the new location to the current location just east of the Steepbank Bridge shall be paid at the applicable rate.

A Bussing Committee shall be established within four **(4)** weeks of the date of ratification to address bussing issues. The committee shall meet monthly and be made up of Union and Employer representatives. Employee representatives may attend the meetings as required, on paid time. Pressing issues shall be dealt with between meetings.

The number of passengers on a 15 passenger van shall not exceed 11 passengers, not including the driver, on the portion of the trip from the outskirts of Ft. McMurray to the work site due to the consideration of employee's clothing and gear. Issues such as overcrowding, etc. shall be dealt with by the Bussing Committee on an as required basis.

If during the term of this Agreement Suncor requires the Employer to use the Suncor transportation system, the Employer and the Union agree to meet and discuss transportation and inconvenience allowance issues.

SIGNED this 17TH Day of FEBRUARY, 2005 On behalf of:

KLEMKE MINING CORPORATION

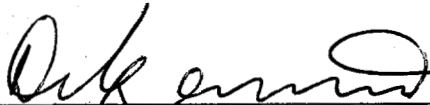
**INTERNATIONAL UNION OF
OPERATING ENGINEERS,
LOCAL UNION NO. 055**



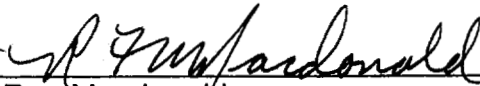
Dan Klemke



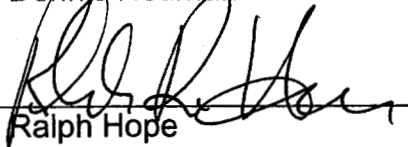
Doug Gosset



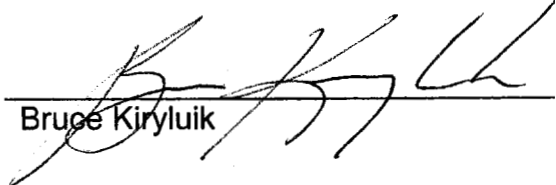
Dennis Neuman



Ron Macdonald



Ralph Hope



Bruce Kiryluik

SERVICEMEN & WELDERS REQUIRED TOOL LIST

- 1 2 lb ball peen hammer
- 1 8" crescent wrench
- 1 12" crescent wrench
- 1 Set of screw drivers (six assorted)
- 1 Pair of pliers
- 1 Chisel
- 1 Punch
- 1 Set of combination wrenches from 1/2" to 1 1/8" inclusive
- 1 Set of 1/2" drive sockets from 3/8" to 1" inclusive together
with a ratchet & flex handle
- 1 Tool box with lock
- 1 Standard 3/4" Drive Set
- 1 Filter Wrench (Auto) Serviceman
- 1 Filter Wrench (Cat) Serviceman
- 1 Chipping Hammer - Welder
- 1 Measuring Tape - Welder

THE CANADIAN JOINT GRIEVANCE PANEL INC.

SCHEDULE 1

RULES OF PROCEDURE FOR
THE CANADIAN JOINT GRIEVANCE PANEL INC.
AS ESTABLISHED PURSUANT TO
THE COLLECTIVE AGREEMENT OR MEMORANDUM OF AGREEMENT
ENTERED INTO BY

KLEMKE MINING CORPORATION
(hereinafter referred to as the Employer)
AND
INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL UNION NO. 955
(hereinafter referred to as the Union)

I) FUNCTION OF THE PANEL

- (A) The Canadian Joint Grievance Panel Inc. has been established jointly by the Employer and the Union party to the Collective Agreement. This Panel is designed to provide an alternative to traditional Arbitration Boards and to provide a regular schedule of hearing dates in order to reduce the time required to have a dispute heard.
- (B) The function of the Panel is to hear disputes and to render decisions in accordance with the provisions of the Collective Agreement. The Panel has the same judicial powers as Boards of Arbitration established under the Collective Agreement and a decision rendered by the Panel is final and binding but not precedent setting.

II) COMPOSITION OF THE PANEL

- (A) The Union shall provide a list of Representatives who shall comprise the Union Panel of Nominees.
- (B) The Employer shall provide a list of Representatives who shall comprise the Employer Panel of Nominees.
- (C) Each representative named to a Panel of Nominees should be experienced in the day to day administration of Collective Agreements.
- (D) It shall be the duty of the Coordinator to arrange Hearings.

- (E) No Union Representative or any Employer Representative who has been directly involved in a grievance or who has participated in the investigation of a grievance shall be permitted to act as a member of the Panel hearing the case. It is understood that in the selection of the representatives to the Panel, the Employer will not name a representative from the Employer involved nor will the Union name a representative from the Union involved.
- (F) At each Hearing, not less than four (4) Panel representatives shall be selected to hear each case presented. The Panel shall consist of ~~two~~ **(2)** Panel representatives selected from the Union Panel of Nominees, and two (2) Panel representatives selected from the Employer Panel of Nominees, which will constitute the Panel.
- (G) When, due to unforeseen circumstances it is not possible to provide a Panel with four **(4)** Representatives a case may be heard by a Panel consisting of one ~~(1)~~ Union Panelist and one (1) Employer Panelist.
- (H) The Panels as listed above (F) or (G) will sit only if all parties involved agree to the composition of the Panel prior to the Hearing.
- (I) At the beginning of each Hearing, one of the four **(4)** Panelists (or one of the two **(2)** Panelists), shall be selected to act as Chairperson. Selection of Chairperson of the Panel shall be based upon the mutual agreement of all Panelists.

III) COORDINATOR ~~OF~~ THE PANEL

- (A) It shall be the duty of the Coordinator to maintain a current listing of potential Panelists. The Coordinator shall also advise all parties concerned in the event of changes in the Panel of Nominees, prepare a docket of cases to be heard for each day of hearings and to type, reproduce, file and distribute copies of the Panel Awards.

IV) FILING A GRIEVANCE WITH THE PANEL

- (A) If a matter is not resolved according to the procedure as outlined in the Collective Agreement and the matter is referred to The Canadian Joint Grievance Panel, then the grieving party shall:
 - a) Notify the appropriate representative of the other party to the matter in writing of the agreement to have the matter heard by The Canadian Joint Grievance Panel.

- b) Notify the Coordinator in writing, either directly or by copy of the notice given in (a), with an enclosed copy of the grievance.

V) TIME AND PLACE OF HEARING

- (A) The Panel shall meet as scheduled by the Coordinator.
- (B) The Hearing shall be held at a mutually agreed upon location.
- (C) A Docket of cases to be heard including the Notice of Hearing will be typed and distributed by the Coordinator. The Panel will begin at a mutually agreed upon time and all parties docketed that day should be present at that time.

Vi) OPERATION OF THE PANEL

- (A) The Conduct of Proceeding of the Panel shall be in accordance with rules, which may be established from time to time by mutual agreement between the parties, the most recent version of which is attached as "Appendix A .
- (B) During the Hearing, only the members of the Panel hearing the case, parties presenting the case and the Coordinator shall be allowed to sit in the immediate area where the Hearing is being conducted. Any other observers shall only be allowed to be present where specifically granted permission by the Coordinator of the Panel.
- (C) The Panel shall make all decisions in an executive session after each individual case has been heard. While in Executive Session only Panel members and the Coordinator will be in attendance.
- (D) After each decision is reached by a majority of the Panel, the Panel will issue their Award on the Award Form provided for this purpose and it shall be signed by the members of the Panel and filed with the Coordinator.
- (E) The Coordinator will mail decisions within 48 hours of the Hearing. No decisions will be given the day of the Hearing.

VII) ADMINISTRATION OF THE PANEL

- (A) All correspondence issued on behalf of The Canadian Joint Grievance Panel Inc. shall be issued on stationary bearing its name. All authorized expenses incurred on behalf of or in the name of The Canadian Joint Grievance Panel shall be paid jointly by all attending parties.

- (B) Rules and Regulations may be changed or amended by mutual agreement of the participating parties.
- (C) Cancellation fees will be assessed in the following manner:
 - a) If only one party chooses to cancel (either the Employer or the Union), that party will be responsible for all costs associated with the case.
 - b) If both parties mutually cancel a case they will both be responsible for the remaining costs operating the Panel on the date the case was scheduled to be heard.
 - c) In the event of cancellation, it is understood and agreed by both parties that the Coordinator shall be paid a cancellation fee as per (i) or (ii) above.

SIGNED this 17th day of FEBRUARY, 2005 on behalf of:

KLEMKE MINING CORPORATION

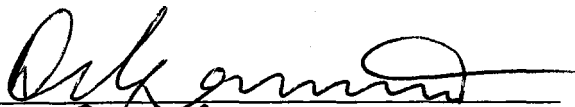
**INTERNATIONAL UNION OF
OPERATING ENGINEERS,
LOCAL UNION NO. 955**



Dan Klemke



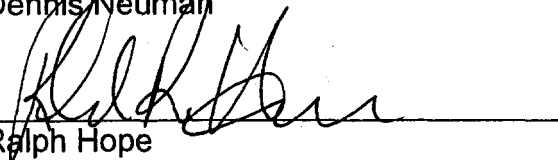
Doug Gosset



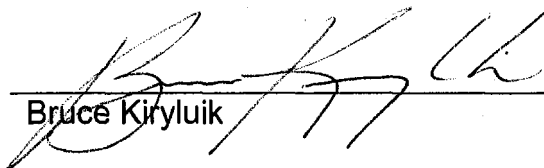
Dennis Neuman



Ron Macdonald



Ralph Hope



Bruce Kiryluik

THE CANADIAN JOINT GRIEVANCE PANEL INC.

“APPENDIX A”

CONDUCT OF PROCEEDINGS

- A CONDUCT OF HEARING
- B DECISIONS OF THE PANEL
- C BACKGROUND TO THE DISPUTE
 - I) Preliminary Objections
 - II) Agreed Facts
 - III) Nature of the Grievance
 - IV) Remedy Sought
- D PRESENTATION OF THE DISPUTE
 - I) **Onus** of Proof
 - II) Order of Presentation
 - III) Submission of Evidence
 - IV) Arguments
 - V) Objections during the Hearing
- E DECIDING ON THE DISPUTE
 - I) Levels of Proof
 - II) Decision
- F FILING MATERIAL
- G NON-APPEARANCE

A CONDUCT OF HEARING

- l) The Hearing conducted on a relatively informal basis, allows the parties a full say before a Panel of industry experts.

B DECISION OF THE PANEL

- l) The decisions of the Panel are final and binding but not precedent setting.

C BACKGROUND TO THE DISPUTE

l) Preliminary Objections

- i) If the grievance procedure has not been followed as outlined in the contract, then the Panel shall dismiss the case or refer it back to the parties.
- ii) Preliminary objections regarding the qualifications or eligibility of the employee or his grievance to be before the Panel are left to the discretion of the Panel.
- iii) A preliminary objection to the arbitrability of a grievance must be provided in writing to the other party prior to the hearing.

II) Agreed Facts

- i) The parties may present a written submission pertaining only to the facts of the case to the Panel. Such a statement should briefly outline the facts of the dispute, the clauses of the agreement that have alleged to have been violated and the remedy sought by the grieving party. If no agreement can be reached on the facts, both sides can present their own facts to outline their case.

III) Nature of the Grievance

- i) In order to afford the Panel a clear understanding of the grievance that is being heard, it shall be the responsibility of the grieving party to state the basis of the grievance and to specify the contract clauses that are alleged to have been violated.

IV) Remedy Sought

- i) Upon clarification of the nature of the dispute, the grieving party should present an exact definition of the remedy sought. The Panel shall have the flexibility to determine and apply appropriate remedies.

D PRESENTATION OF THE DISPUTE

I) Onus of Proof

- i) In all discharge and discipline cases, the initial onus of proof lies with the Employer to substantiate the penalty.
- ii) In all other cases, the initial onus of proof rests with the Union to substantiate the grievance.

II) Order of Presentation

- i) The party saddled with the initial onus of proof is deemed to have initiated the action and makes the first presentation regarding the merits of the case.
- ii) The first presentation shall include evidence as to the agreed-upon facts, the facts in dispute, the evidence to be given, the presentation of that evidence and arguments of the case.
- iii) When the leading party closes their case, the opposing party may ask the Panel to dismiss the grievance. This is usually done on the basis that the leading party did not meet its case. The moving party is then asked to elect to call evidence or not. If they choose to call evidence the matter is closed. If not, then arguments will be heard on the motion and a ruling is made. Some parties believe that if they lose the motion to dismiss, they can then present their evidence. This in essence gives them two opportunities to receive a favourable ruling.
- iv) Once the first party has properly presented its case, the onus then shifts to the other party to make its formal presentation of evidence and arguments.

- v) The subsequent presentations by both sides are then determined by the rules of evidence regarding newly introduced testimony or documents or the introduction of surprise evidence.

III) Submission of Evidence

- i) Evidence may come in the form of witnesses or documents but first must be judged admissible.

IV) Admissibility

- i) **All** evidence bearing on the case with regard to events related to the issue is admissible. This is considered to be primary evidence of the facts, as they were known at the time that the critical decisions were made. It includes, therefore, any evidence which logically surrounds the alleged violation and any events which were considered at the time.
- ii) Evidence is inadmissible if:
 - (a) It does not relate to the points at issue.
 - (b) Concerns events following the incident that have not been justified a concerning points at issue.
 - (c) Does not establish a fact or refute one previously established.

V) Witnesses

- i) Testimony of witnesses referring to something observed by the witnesses is direct evidence and fully admissible as long as it complies with the conditions in (i) above. This evidence can be taken as establishing fact.
- ii) Testimony of a witness referring to something observed but which is not to be used as direct evidence shall be presented as corroborating evidence that will be used to substantiate an action or support an argument to be presented later in the hearing.
- iii) Hearsay evidence presented by a witness must be fully scrutinized as to admissibility and if admissible, have considerably less weight than first hand or direct evidence.

- iv) In the presentation of evidence, the witness may be:
 - (a) questioned by the party presenting evidence
 - (b) cross-examined by the other party
 - (c) re-examined by the initial party
 - (d) questioned by the Panel

After questioned by the Panel, the whole process may be repeated for further clarification solely on the issues raised by a Panel member.

- v) During a witness's testimony-in-chief, questions asked of the witness should not be phrased so as to lead the witness. Leading questions are permissible on cross-examination. Either party may request the exclusion of witnesses.

Vi) Documents

- i) Documents are subject to the same rules of admissibility and are divided into the same classes of evidence as are statements of witnesses.
- ii) Direct documentary evidence may be presented in the form of documents recorded by instrument, i.e. photographs or official records i.e. attendance record. Direct evidence may also be presented in the form of a report from a qualified "expert" in any given field as long as his qualifications are established. Any of the above may also be introduced as corroborating evidence.
- iii) Documents presenting a person's written recollection of certain events are subject to full scrutiny under the rules of admissibility and should not be accepted unless the writer is in attendance for purposes of cross-examination.

Vii) Arguments

- i) Upon the presentation of all evidence the parties will then present their arguments, The same order of procedure shall follow.

VIII) Objections during the Hearing

- i) Major objections during a hearing will involve:
 - (a) admissibility of evidence
 - (b) irregularity in proceeding
 - (c) jurisdiction of the Panel
- ii) If the Panel is unable to rule immediately on an objection, then an executive session will be held to discuss the individual merits of the objection.
- iii) The Panel has wide discretionary powers in this area that allow it to rule that the objection is denied or at the other end of the spectrum, the case may be adjourned.
- iv) The Panel is empowered to accept all evidence, but is then free to place any value upon it.

E DECIDING ON THE DISPUTE

I) Levels of Proof

- i) When two parties have presented cases alleging different facts, then the two arguments must be weighed. The level of proof may become a determining factor.
- ii) The level of proof used in arbitration is always the civil standard of the balance of probabilities. However, where more serious allegations are made “theft or dishonesty”, the amount and quality of proof while still on balance of probability are generally required to be more compelling. Generally, to sustain a serious allegation like theft or dishonesty, the evidence should be “clear, cogent and compelling”.
- iii) The lower level of proof in cases of conflicting fact is “upon a balance of probabilities and by a preponderance of evidence.” Less stringent interpretation of evidence is required here.
- iv) It should be noted that a great majority of cases will not refer to level of proof because it is not the fact but rather the interpretation of, or alleged violation of the Collective Agreement which is at issue. Further, it should be noted that in dealing with levels of proof, there is no middle ground. Either one level is used, or the other, nothing in between.

II) The Decision

- i) The decision of the Panel shall not be released until the day following the case. This decision is recorded on the Award Form and is signed by each of the panel members.
- ii) The actual decision is usually a simple statement, denying, upholding or deadlocking the grievance on the basis of the evidence presented.
- iii) The Panel has in its powers, the right to amend or reduce penalties or claims brought before them and they may also substitute claims and penalties not asked for in the original grievance.
- iv) There is no mechanism for the review or appeal of decisions since they are given equal weight as arbitration decisions. As a result, appeals or reviews would have to be applied for in the courts on the basis of an error in law or a transgression of jurisdiction.

F FILING MATERIAL

- I) Where material (i.e. copy of grievance/ warning letter, etc.) is used and relied upon by one of the parties, copies are supplied to the Panel.
- II) All material should be prepared with 7 copies - 4 copies to the Panel, 1 copy to the opposing party, one copy for yourself and one for the Coordinator for inclusion in the record of that case.

G NON-APPEARANCE\ POSTPONEMENT WITHOUT SUFFICIENT NOTICE

- I) If a party fails to attend the Hearing without adequate notice or reason, the Coordinator of the Canadian Joint Grievance Panel shall have the authority to set the date, starting time and location for the new Hearing and will provide reasonable notice to the parties by certified mail or fax. The parties will also be advised if there is further non-attendance without adequate reason, the case may be heard in their absence. In all cases, a cancellation fee shall apply in accordance to Schedule I section VII (C).

THE CANADIAN JOINT GRIEVANCE PANEL INC.

SCHEDULE 2

RULES OF PROCEDURE FOR
THE CANADIAN JOINT GRIEVANCE PANEL INC.
AS ESTABLISHED PURSUANT TO
THE COLLECTIVE AGREEMENT OR MEMORANDUM OF AGREEMENT
ENTERED INTO BY

KLEMKE MINING CORPORATION
(hereinafter referred to as the Employer)
AND

INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL UNION NO. 955
(hereinafter referred to as the Union)

I) FUNCTION OF THE PANEL

- (A) The Canadian Joint Grievance Panel Inc. has been established jointly by the Employer and the Union party to the Collective Agreement. This Panel is designed to provide an alternative to traditional Arbitration Boards and to provide a regular schedule of hearing dates in order to reduce the time required to have a dispute heard.
- (B) The function of the Panel is to hear disputes and to render decisions in accordance with the provisions of the Collective Agreement. The Panel has the same judicial powers as Boards of Arbitration established under the Collective Agreement and a decision rendered by the Panel is final and binding but not precedent setting.

II) COMPOSITION OF THE PANEL

- (A) The Union shall provide a list of Representatives who shall comprise the Union Panel of Nominees.
- (B) The Employer shall provide a list of Representatives who shall comprise the Employer Panel of Nominees.
- (C) Each representative named to a Panel of Nominees should be experienced in the day to day administration of Collective Agreements.

- (D) It shall be the duty of the Coordinator to arrange Hearings.
- (E) No Union Representative or any Employer Representative who has been directly involved in a grievance or who has participated in the investigation of a grievance shall be permitted to act as a member of the Panel hearing the case. It is understood that in the selection of the representatives to the Panel, the Employer will not name a representative from the Employer involved nor will the Union name a representative from the Union involved.
- (F) At each Hearing an equal number of representatives will be selected from the agreed upon list of Panelists along with the agreed upon Arbitrator. The Panel may consist of one Union and one Employer Panelist and an Arbitrator.

III) COORDINATOR OF THE PANEL

- (A) It shall be the duty of the Coordinator to maintain a current listing of potential Panelists. The Coordinator shall also advise all parties concerned in the event of changes in the Panel of Nominees, prepare a docket of cases to be heard for each day of hearings and to type, reproduce, file and distribute copies of the Panel Awards.

IV) FILING A GRIEVANCE WITH THE PANEL

- (A) If a matter is not resolved according to the procedure as outlined in the Collective Agreement and the matter is referred to The Canadian Joint Grievance Panel, then the grieving party shall:
 - a) Notify the appropriate representative of the other party to the matter in writing of the agreement to have the matter heard by The Canadian Joint Grievance Panel.
 - b) Notify the Coordinator in writing, either directly or by copy of the notice given in (a), with an enclosed copy of the grievance.

V) TIME AND PLACE OF HEARING

- (A) The Panel shall meet as scheduled by the Coordinator.
- (B) The Hearing shall be held at a mutually agreed upon location.
- (C) A Docket of cases to be heard including the Notice of Hearing will be typed and distributed by the Coordinator. The Panel will begin at a

mutually agreed upon time and all parties docketed that day should be present at that time.

Vi) OPERATION OF THE PANEL

- (A) The Conduct of Proceeding of the Panel shall be in accordance with rules, which may be established from time to time by mutual agreement between the parties, the most recent version of which is attached as "Appendix B".
- (B) During the Hearing, only the Arbitrator, members of the Panel hearing the case, parties presenting the case and the Coordinator shall be allowed to sit in the immediate area where the Hearing is being conducted. Any other observers shall only be allowed to be present where specifically granted permission by the Coordinator of the Panel.
- (C) The Panel shall make all decisions in an executive session after each individual case has been heard, While in Executive Session only Panel members and the Coordinator will be in attendance.
- (D) After each decision is reached by the Arbitrator and Panel, the Arbitrator will issue the Award on the Award Form provided for this purpose and it shall be signed by the Arbitrator and members of the Panel and filed with the Coordinator.
- (E) The Coordinator will mail decisions within 48 hours of the Hearing. No decisions will be given the day of the Hearing.

Vii) ADMINISTRATION OF THE PANEL

- (A) All correspondence issued on behalf of The Canadian Joint Grievance Panel Inc. shall be issued on stationary bearing its name. All authorized expenses incurred on behalf of or in the name of The Canadian Joint Grievance Panel shall be paid jointly by all attending parties.
- (B) Rules and Regulations may be changed or amended by mutual agreement of the participating parties.
- (C) Cancellation fees will be assessed in the following manner:
 - a) If only one party chooses to cancel (either the Employer or the Union), that party will be responsible for all costs associated with the case.

- b) If both parties mutually cancel a case they will both be responsible for the remaining costs operating the Panel on the date the case was scheduled to be heard.
- c) In the event of cancellation, it is understood and agreed by both parties that the Coordinator shall be paid a cancellation fee as per (a) or (b) above.

SIGNED this 17TH day of FEBRUARY, 2005 on behalf of:

KLEMKE MINING CORPORATION

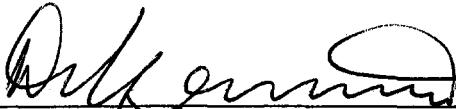
**INTERNATIONAL UNION OF
OPERATING ENGINEERS,
LOCAL UNION NO. 955**



Dan Klemke



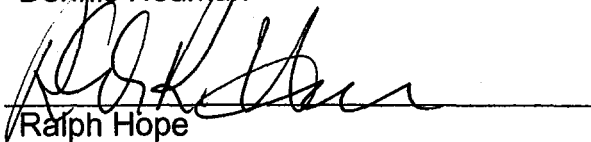
Doug Gosset



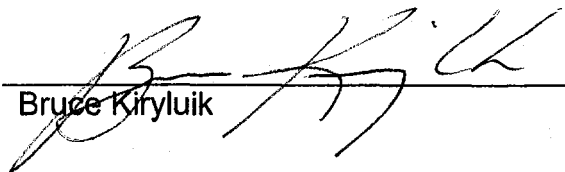
Dennis Neuman



Ron Macdonald



Ralph Hope



Bruce Kiryluik

THE CANADIAN JOINT GRIEVANCE PANEL INC.

"APPENDIX B"

CONDUCT OF PROCEEDINGS

- A CONDUCT OF HEARING
- B DECISIONS OF THE PANEL
- C BACKGROUND TO THE DISPUTE
 - I) Preliminary Objections
 - II) Agreed Facts
 - III) Nature of the Grievance
 - IV) Remedy Sought
- D PRESENTATION OF THE DISPUTE
 - I) Onus of Proof
 - II) Order of Presentation
 - III) Submission of Evidence
 - IV) Arguments
 - V) Objections during the Hearing
- E DECIDING ON THE DISPUTE
 - I) Levels of Proof
 - II) Decision
- F FILING MATERIAL
- G NON-APPEARANCE

A CONDUCT OF HEARING

- i) The Hearing conducted on a relatively informal basis, allows the parties a full say before a Panel and agreed upon Arbitrator.

B DECISION OF THE PANEL

- i) The decisions of the Panel and Arbitrator are final and binding but not precedent setting.

C BACKGROUND TO THE DISPUTE

i) Preliminary Objections

- i) If the grievance procedure has not been followed as outlined in the contract, then the Panel shall dismiss the case or refer it back to the parties.
- ii) Preliminary objections regarding the qualifications or eligibility of the employee or his grievance to be before the Panel are left to the discretion of the Panel.
- iii) A preliminary objection to the arbitrability of a grievance must be provided in writing to the other party prior to the hearing.

ii) Agreed Facts

- i) The parties may present a written submission pertaining only to the facts of the case to the Panel. Such a statement should briefly outline the facts of the dispute, the clauses of the agreement that have alleged to have been violated and the remedy sought by the grieving party. If no agreement can be reached on the facts, both sides can present their own facts to outline their case.

iii) Nature of the Grievance

- i) In order to afford the Panel a clear understanding of the grievance that is being heard, it shall be the responsibility of the grieving party to state the basis of the grievance and to specify the contract clauses that are alleged to have been violated.

IV) R Sought

- i) Upon clarification of the nature of the dispute, the grieving party should present an exact definition of the remedy sought. The Panel and Arbitrator shall have the flexibility to determine and apply appropriate remedies.

D PRESENTATION OF THE DISPUTE

I) Onus of Proof

- i) In all discharge and discipline cases, the initial onus of proof lies with the Employer to substantiate the penalty.
- ii) In all other cases, the initial onus of proof rests with the Union to substantiate the grievance.

II) Order of Presentation

- i) The party saddled with the initial onus of proof is deemed to have initiated the action and makes the first presentation regarding the merits of the case.
- ii) The first presentation shall include evidence as to the agreed-upon facts, the facts in dispute, the evidence to be given, the presentation of that evidence and the arguments of the case.
- iii) When the leading party closes their case, the opposing party may ask the Panel and Arbitrator to dismiss the grievance. This is usually done on the basis that the leading party did not meet its case. The moving party is then asked to elect to call evidence or not. If they choose to call evidence the matter is closed. If not, then arguments will be heard on the motion and a ruling is made. Some parties believe that if they lose the motion to dismiss, they can then present their evidence. This in essence gives them two opportunities to receive a favourable ruling.
- iv) Once the first party has properly presented its case, the onus then shifts to the other party to make its formal presentation of evidence and arguments.

- v) The subsequent presentations by both sides are then determined by the rules of evidence regarding newly introduced testimony or documents or the introduction of surprise evidence.

III) Submission of Evidence

- i) Evidence may come in the form of witnesses or documents but first must be judged admissible.

IV) Admissibility

- i) All evidence bearing on the case with regard to events related to the issue is admissible. This is considered to be primary evidence of the facts, as they were known at the time that the critical decisions were made. It includes, therefore, any evidence which logically surrounds the alleged violation and any events which were considered at the time.
- ii) Evidence is inadmissible if:
 - (a) It does not relate to the points at issue.
 - (b) Concerns events following the incident that have not been justified a concerning points at issue.
 - (c) Does not establish a fact or refute one previously established.

V) Witnesses

- i) Testimony of witnesses referring to something observed by the witnesses is direct evidence and fully admissible as long as it complies with the conditions in IV (i) above. This evidence can be taken as establishing fact.
- ii) Testimony of a witness referring to something observed but which is not to be used as direct evidence shall be presented as corroborating evidence that will be used to substantiate an action or support an argument to be presented later in the hearing.
- iii) Hearsay evidence presented by a witness must be fully scrutinized **as** to admissibility and if admissible, have considerably less weight than first hand or direct evidence.

- iv) In the presentation of evidence, the witness may be:
 - (a) questioned by the party presenting evidence
 - (b) cross-examined by the other party
 - (c) re-examined by the initial party
 - (d) questioned by the Panel and Arbitrator
- v) After questioned by the Panel and Arbitrator, the whole process may be repeated for further clarification solely on the issues raised by a Panel member or the Arbitrator.
- vi) During a witness's testimony-in-chief, questions asked of the witness should not be phrased so as to lead the witness. Leading questions are permissible on cross-examination. Either party may request the exclusion of witnesses.

Vi) Documents

- i) Documents are subject to the same rules of admissibility and are divided into the same classes of evidence as are statements of witnesses.
- ii) Direct documentary evidence may be presented in the form of documents recorded by instrument, i.e. photographs or official records i.e. attendance record. Direct evidence may also be presented in the form of a report from a qualified "expert" in any given field as long as his qualifications are established. Any of the above may also be introduced as corroborating evidence.
- iii) Documents presenting a person's written recollection of certain events are subject to full scrutiny under the rules of admissibility and should not be accepted unless the writer is in attendance for purposes of cross-examination.

VII) Arguments

- i) Upon the presentation of all evidence the parties will then present their arguments. The same order of procedure shall follow.

VIII) Objections during the Hearing

- i) Major objections during a hearing will involve:
 - (a) admissibility of evidence
 - (b) irregularity in proceeding
 - (c) jurisdiction of the Panel
- ii) If the Panel is unable to rule immediately on an objection, then an executive session will be held to discuss the individual merits of the objection.
- iii) The Panel has wide discretionary powers in this area that allow it to rule that the objection is denied or at the other end of the spectrum, the case may be adjourned.
- iv) The Panel is empowered to accept all evidence, but is then free to place any value upon it.

E DECIDING ON THE DISPUTE

I) Levels of Proof

- i) When two parties have presented cases alleging different facts, then the two arguments must be weighed. The level of proof may become a determining factor.
- ii) The level of proof used in arbitration is always the civil standard of the balance of probabilities. However, where more serious allegations are made, “theft or dishonesty” the amount and quality of proof while still on balance of probability are generally required to be more compelling. Generally, to sustain a serious allegation like theft or dishonesty, the evidence should be “clear, cogent and compelling”.
- iii) The lower level of proof in cases of conflicting fact is “upon a balance of probabilities and by a preponderance of evidence.” Less stringent interpretation of evidence is required here.
- iv) It should be noted **that** a great majority of cases will not refer to level of proof because it is not the facts but rather the interpretation of, or alleged violation of the Collective Agreement which **is** at issue. Further, it should be noted that in dealing with levels of proof, there is no middle ground. Either one level is used, or the other, nothing in between.

II) The Decision

- i) The decision of the Panel shall not be released until the day following the case. This decision is recorded on the Award Form and is signed by the Arbitrator and each panel member.
- ii) The actual decision **is** usually a simple statement, denying, or upholding the grievance on the basis of the evidence presented. Reasons may be given **by** the Arbitrator but not to be longer in length than one (1) page.
- iii) The Panel has in its **powers**, the right to amend or reduce penalties or claims brought before them and they may also substitute claims and penalties not asked for in the original grievance.

F FILING MATERIAL

- I) Where material (i.e. copy of grievance/warning letter, etc.) is used and relied upon by one of the parties, copies are supplied to the Panel.
- II) All material should be prepared with 6 copies - 3 copies to the Panel, 1 copy to the opposing party, one copy for yourself and one for the Coordinator for inclusion in the record of that case.

G NON-APPEARANCE\POSTPONEMENTWITHOUT SUFFICIENT NOTICE

- I) If a party fails to attend the Hearing without adequate notice or reason, the Coordinator of the Canadian Joint Grievance Panel shall have the authority to set the date, starting time and location for the new Hearing and will provide reasonable notice to the parties **by** certified mail or fax. The parties will also be advised if there is further non-attendance without adequate reason, the case may be heard in their absence. In all cases, a cancellation fee shall apply in accordance to Schedule 2 section VII (C).

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