PROVINCE OF NEWFOUNDLAND AND LABRADOR

LABOUR RELATIONS AGENCY

REPORT OF THE INDUSTRIAL INQUIRY COMMISSION

In a Matter Between

VALE NEWFOUNDLAND & LABRADOR LIMITED (VALE)

- and –

UNITED STEEL, PAPER AND FORESTRY, RUBBER, MANUFACTURING, ENERGY, ALLIED INDUSTRIAL AND SERVICE WORKERS INTERNATIONAL UNION (UNITED STEELWORKERS), LOCAL 9508

REPORT NO. 1

Preliminary

The parties to this dispute are Vale Newfoundland and Labrador Limited (referred to within this Report as "Vale" or the "Employer") and the United Steelworkers, Local 9508 (referred to within this Report as "USW" or the "Union").

On October 23, 2010**,** the following Terms of Reference were issued creating this Industrial Inquiry Commission. The preambles within the Ministerial decision set out a brief history of the circumstances leading up to Government's decision to take this action:

PROVINCE OF NEWFOUNDLAND AND LABRADOR

LABOUR RELATIONS AGENCY

NOTICE OF APPOINTMENT OF AN INDUSTRIAL INQUIRY COMMISSION

In a Matter Between

VALE NEWFOUNDLAND & LABRADOR LIMITED (VALE)
- and –
UNITED STEEL, PAPER AND FORESTRY, RUBBER, MANUFACTURING, ENERGY, ALLIED INDUSTRIAL AND SERVICE WORKERS INTERNATIONAL UNION (UNITED STEELWORKERS), LOCAL 9508

WHEREAS Vale and the United Steelworkers, Local 9508, have been without a collective agreement since March 1, 2009 and there has been a work stoppage and dispute ongoing at the Voisey's Bay mine since August 1, 2009;

AND WHEREAS following the provision of extensive conciliation support involving the Labour Relations Agency and the assistance of an independent mediator, parties have been unable to resolve their differences and negotiate a new collective agreement;

AND WHEREAS the strike has been ongoing for over a year and there appears little likelihood of a settlement at this time;

AND WHEREAS Section 140 of the Labour Relations Act provides that the Minister responsible for the Labour Relations Agency may make inquiries she thinks appropriate regarding industrial matters and may do those things that seem calculated to maintain or secure industrial peace and to promote conditions favourable to settlement of disputes;

AND WHEREAS a dispute exists between Vale and the United Steelworkers, Local 9508;

AND WHEREAS the collective bargaining relationship between Vale and the United Steelworkers, Local 9508, has deteriorated to such a degree that Government is concerned about the long-term impact this strike will have on the employment relations climate in Newfoundland and Labrador, the economic stability of the region, and the longer-term labour-management relationship at Voisey's Bay;

AND WHEREAS the Government of Newfoundland and Labrador submits that there is a need to inquire into this labour dispute in order to help secure industrial peace and promote the settlement of this dispute;

AND WHEREAS the Minister is referring the matter to an Industrial Inquiry Commission for investigation and report;

NOW THEREFORE, pursuant to Section 140 of the Labour Relations Act, I hereby appoint an Industrial Inquiry Commission, composed of John F. Roil, Q.C., as Inquiry Chairperson, and V. Randell J. Earle, Q.C., and Brian R. Gatien as Inquiry Members, to inquire into and investigate the following industrial matters at Voisey's Bay, Labrador:

1. *the positions of the parties in relation to the outstanding collective bargaining issues;*

2. *the factors which have led to the existing labour-management relations climate at the Voisey's Bay project site in Labrador and options to improve these relations;*

3. *the identification of local, provincial, national or international matters that may be contributing factors in this dispute;*

4. *a discussion of any impacts this dispute may be having on other labour-management relationships;*

5. *a discussion of the ramifications of this dispute, and its costs to the Province and the parties involved;*

6. *the options to resolve this dispute, including proposed terms of settlement, should the parties fail to conclude a collective agreement before the filing of the Commission's report; and,*

7. *other matters the Commission may deem appropriate.*

The Commission shall report its findings together with such recommendations as it may deem necessary to the Minister by a date not to exceed two months from the date of this appointment unless otherwise extended by the Minister.

Dated at St. John's this 23 day of October, 2010.

SUSAN SULLIVAN
Minister Responsible for the
Labour Relations Agency

Background

Vale currently operates a nickel, copper and cobalt facility which includes a mine, mill and concentrator in northern Labrador. The mine was initially commenced and operated by Voisey's Bay Nickel Company, a subsidiary of Inco. All of Inco's Canadian operations, including those in Thompson, Manitoba, Sudbury and Port Colbourne, Ontario and Voisey's Bay, Newfoundland and Labrador were acquired in 2006 by Vale, an international business entity headquartered in Brazil.

Vale has in excess of 100,000 employees throughout the world; but its worldwide nickel operations are headquartered in Ontario. Approximately 12,000 employees are engaged in this aspect of its business. Of that amount, about 180 employees are working in the Labrador mine site. The approximately 120 unionized employees in Labrador are represented by the United Steelworkers, Local 9508. It is worthy of note that, in Vale's other mining operations in Sudbury, Port Colbourne and Thompson, USW locals represent the bargaining unit employees there.

During the summer of 2009 and within weeks of each other, USW employees at Sudbury and Port Colbourne and Labrador commenced strike action against Vale, a factor that appears to have affected the progress and extent of negotiations in this Province for many months. Ontario operations resumed in June 2010 with the ending of the strike there, but the strike in Labrador has continued.

The Employer's business has been able to continue with the mine and mill being operated by replacement workers. In excess of one-third of the bargaining unit are being gainfully employed elsewhere and are not "actively engaged in a strike".

The membership details of the two bargaining committees who have represented the parties in negotiations are set out in Schedule “A”.

A brief review of the negotiating history in this Province may also be instructive in understanding the depth of the division between the parties.

This round of negotiations is for the first renewal of the initial collective agreement at the Labrador mine site. The first contract (then involving Inco as employer) was signed in 2006, but only after a 9-week legal strike. That first contract was for a 3-year term.

In this round, the parties originally met in meetings on February 12-13, 2009 when Vale presented some initial proposals. In early May, 2009 and before any in-depth discussions took place, USW requested the appointment of a conciliation board. As is often the case in this Province, a conciliation officer was appointed instead by Government to assist the parties in their negotiations. The conciliation officer met only briefly with the parties and was unsuccessful in averting a work stoppage. No conciliation board was ever appointed in this dispute.

A legal strike commenced at the mine site on August 1, 2009 without additional negotiations having taken place. The strike at Vale’s operations in Sudbury and Port Colbourne, Ontario had commenced slightly earlier on July 13, 2009.

The next negotiating meetings were not conducted until January 22-24, 2010, then with the assistance of two conciliation officers. During these sessions, Vale submitted additional proposals and USW tendered their initial negotiating proposals. The parties met once more on March 15-16, 2010, but they adjourned the meetings again without significant negotiations taking place. On May 25-26, 2010, the parties met and engaged in interest based negotiations with the assistance of those conciliation officers. At a meeting on June 19-20, 2010, USW responded to Vale proposals earlier submitted, but little progress was achieved once again.

No additional meetings were conducted until September 15-21, 2010. In that interval, however, and without having received a request from either of the parties, Government appointed a mediator to assist the parties. These mediator-assisted meetings extended beyond the initial September 21 timeframe and continued until October 3, 2010, but no major consensus was reached.

One must be aware of other proceedings which are also engaged this dispute and its resolution. Both of the parties have, during the course of their negotiations, exercised their right to make formal complaints about each other's actions during those negotiations, using processes provided in the Labour Relations Act of the Province. The Employer has filed a complaint (identified as Board file# 5263) of an unfair labour practice against USW in that the Union allegedly has failed to bargain with the Employer in good faith, contrary section 75(a) of the Labour Relations Act. This ongoing matter includes an application (identified as Board File # 5331) by the Employer for reconsideration of an oral ruling rendered by the Board at an earlier stage of the hearings into their unfair labour practice allegations. The USW takes the position that it has a counter complaint against Vale (contained within its response in file #5263) for Vale's alleged failure to bargain in good faith with the Union. These matters have not yet been disposed of by final Board decisions.

Although Government had already announced its intention to appoint the Industrial Inquiry Commission, at the then Premier's request the parties met once again in negotiations with the assistance of the mediator on October 22-23, 2010, but these efforts were still unsuccessful in reaching a new collective agreement.

It is at this point that the Commission became engaged in this matter.

Early Steps in the Inquiry

Initially, members of the Commission needed to become familiar with the details of the negotiations and various positions taken by the parties throughout the process. The

parties were required to produce for the Commission extensive documentation indicating their opening positions, the matters that were agreed upon during negotiations and the issues that remained outstanding. As indicative of the lack of consensus in their past dealings or even of good communications between the parties, there was not even agreement on the number of matters remaining unresolved – Vale suggested to the Commission that there were only 6 items remaining, while USW stated there were 15 items. Some of the 15 items in the Union's list could be considered as within the 6 items stated by the Employer, so that the gulf between the parties' positions may not have been as large as those numbers would initially suggest

Commission members then met with each side independently to attempt to determine the reasons behind the disagreement on the remaining issues and to assess whether there might be a basis to extend additional mediation efforts to the parties from the Commission as a part of its overall mandate. Vale and USW both cooperated fully in this early investigative stage. Much of the early focus of the Commission's activities centered on this effort.

With the consent of the parties, Commission members met with mediator William Wells, a respected lawyer with extensive labour relations experience, to gain insights into the processes he had undertaken with the parties earlier in September and October 2010. The Commission quickly learned that, after two separate attempts to bring the parties together, Mr. Wells was unable to identify a real desire on the part of each to develop the necessary flexibility in their positions to reach a consensus, despite their assurances that each wanted to achieve a contract. In fact, while some movement was initially displayed and certain contract provisions were explored, both parties retreated in their prior positions once it became clear that a total agreement on all issues could not be found.

The mediator was, however, able to achieve an acknowledgment on September 24, 2010, which was rendered into writing and in which all three parties agreed as follows:

The parties are agreed and confirm to each other and the mediator that upon the resumption of negotiations on Oct. 2, 2010 the discussion will be confined to the following six items, the resolution of which will result in the conclusion of a collective agreement. The items are:

1. *Wages*
2. *Bonus*
3. *Duration of contract (Term of the Agreement)*
4. *Return to Work Protocol*
5. *Contracting Out*
6. *Union Leave*

As explained by the mediator, in the context of those discussions, the word "Wages" encompassed hourly rates of pay, cost of living allowance (COLA) and a site premium. The expression "Union Leave" was understood to be restricted to proposal for a paid leave for the Union's Local President.

The greatest obstacle appeared to be the fact that, despite commencing negotiations on October 3, 2010 with the understood 6 items for discussion, the Employer felt that the Union was still adding new items as negotiations evolved. There was, in the Employer's view, a "moving target" or "receding horizon" to which they were unwilling to respond. Ultimately, the mediator believed that the required "will" to make the deal was not present while he was involved, despite that fact that both parties continued to profess their desire to find a new agreement.

Additional meetings by Commission members with the parties during early and mid-November 2010 confirmed Mr. Wells' assessment of the continuing positions of the parties. Each stated it was ready and willing to negotiate, but each felt that the other side did not have a true intention to find a basis for agreement. Perception often drives results in collective bargaining.

Visit to Labrador

The Commission travelled to Happy Valley–Goose Bay in late November 2010 to meet with the two aboriginal groups that have signed Impacts and Benefit Agreements (IBAs)

with the Employer. The Nunatsiavut Government represents the Inuit of Labrador who are the beneficiaries under the terms of the Labrador Inuit Land Claims Settlement. The two Innu groups within Labrador, the Sheshatshiu First Nation and the Mushuau First Nation, are both represented by the one entity known as 'Innu Nation'. While their community structures and organizational details are quite different, both groups share commonality on the objective of securing the financial and social advancement of their constituencies in Labrador. These groups have unique engagement and commitments in workplace practices and employment opportunities at Voisey's Bay and elsewhere in Labrador because of their IBAs with the Employer/mine operator. The Commission believed that it was necessary to meet with these two groups to ensure that the Commission would be aware of the nature and extent of their interests. (Schedule "B" identifies the representatives with whom the Commission met.)

While the exact content of the IBAs has not been shared with the Commission, it can be said that the Employer as mine operator has made commitments to both groups about employment and contract preferences at the mine site for their membership, or for business entities in which their members are beneficiaries, together with financial commitments to the two governance groups themselves. The Collective Agreement between the parties recognizes that the Employer's commitments to the Innu and Inuit have precedence.

The Commission met in private sessions with each aboriginal group in the presence of representatives of the two disputing parties. While the presentations were individual and unique to each group, the messaging from them was clear and common. The two aboriginal peoples of Labrador are clearly disappointed and upset with both Vale and USW over the adverse impact that this strike has had on their peoples. Not only are the individuals whom they represent losing the financial advantages of steady and reasonably paid employment because they are on strike, more importantly the negative social impacts of the strike on their communities has been devastating. Both groups also advised the Commission that, as a consequence of the loss of household income, many aboriginal

families were experiencing the hardship and the emotional fallout that it often brings – increased domestic violence and substance abuse.

According to the records of the Employer, the aboriginal employees who are without work because of the strike are as follows:

Inuit	Innu
65	08

Although the actual numbers of employees out of work from the two groups is not large in absolute terms, the financial impact on the small communities in which they live is significant. It should also be noted that 12 additional Innu members now work in the mine as replacement workers, another factor which creates conflict in their small communities. Striking workers, who are not employed elsewhere, within which group the majority of aboriginal workers are, now receive only strike pay from USW. The loss in family income is profound.

The fiscal loss to the two organizations themselves was more difficult to estimate at the time of the Commission's visit. As a consequence of their acquiescence in the resource development, each group derives revenues from both Government and the Employer, the first by return of taxes paid by their membership/beneficiaries and the latter by grants based on mine productivity. The Commission was unable to obtain firm estimates of losses. These losses will, however, be able to be determined at the end of the fiscal year for each group.

Another more disturbing disclosure was made by representatives of the native peoples of Labrador. There is a common feeling of lack of respect and understanding for the needs and hopes for their peoples arising not only out of the strike, but also apparently as an ongoing issue. This criticism, which was directed to both the Employer and the Union, is something on which both must make greater efforts. The Innu and the Inuit peoples of Labrador each believe that they are given only minimal employment advantages and little respect for their culture and their employment aspirations, despite the commitments made to them in the IBAs. This perception is inconsistent with the positive relationship intended by these IBAs.

Perhaps more importantly for the Commission's limited early focus, each group pleaded with the disputing parties and with the Commissioners to seek a resolution of this labour dispute before Christmas 2010. With that directive in mind, the Commission put its immediate attention to trying to find mechanisms to achieve that very evasive objective.

More will be said in the second Report of the Commission on the broad societal issues raised by the Innu and Inuit representatives. The perspective of the Employer and the Union will also be examined and commented upon. There are improvements needed in all the relationships created in this unique but important piece of northern development.

Efforts to Find a Solution

Having met with both parties and then the mediator, the Commission determined that it would likely be unsuccessful in assisting the parties to reach an agreement by extending further mediation efforts to them. While both continued to express a desire to reach agreement, the Commissioners could not then find sufficient flexibility in the parties' positions to believe that mediation services would assist. Bringing the parties together in face-to-face discussions was deemed to be counter-productive. Other approaches or conflict resolution initiatives needed to be found.

In an effort to find a contract agreement before Christmas 2010, the objective pleaded for by the two aboriginal groups, on November 29, 2010 the Commission offered the two contracting parties another opportunity to achieve an agreement by December 17, 2010. A modified two-stage form of "final offer selection" (FOS) was advanced, allowing the Commission to select, as the final resolution of the collective bargaining dispute, one of two positions as presented formally to the Commission by the parties. Because that FOS process could not be enforced or demanded within the Commission's limited powers, the parties were required to indicate their support for this initiative on or before December1, 2010.

On November 30, the Employer advised that it declined the offer on the basis that it felt it was more appropriate for the parties to find their own agreement through direct discussions and negotiations. A collective agreement that was to be imposed by third party intervention was unacceptable to the Employer. Unfortunately there did not appear to be the common will necessary to achieve that objective. Since support from both parties was required to participate in the voluntary FOS mechanism, the Commission decided to commence a formal process which would enable it to make recommendations about the resolution of the dispute and about the other issues referred to in the Terms of Reference. Hearings with the parties were required to allow them an opportunity to place their positions to the Commission in the presence of each other.

Throughout the early stages of this investigation, the Employer continually complained that the Union was not bargaining in good faith, was making no real effort to reach a settlement, and that this behaviour was obstructing the Employer's efforts to find an agreement. While the Union was more limited in its criticism of the Employer's behaviour, it was clear that, from the Union's perspective, the Employer was the obstruction in the negotiating process. As one Commission member observed: "Everyone is complaining about who caused the accident, but no one wants to fix the car!" That analogy is simple and compelling.

Jurisdiction of the Labour Relations Board

One aspect of the Commission's jurisdiction as given within the Terms of Reference has presented some challenges. Although this Commission is mandated to look into what appear to be all aspects of this dispute, as identified earlier the parties have existing proceedings before the Newfoundland and Labrador Labour Relations Board (the "Board") dealing with allegations from each of them that the other has committed unfair labour practices during the course of these negotiations. These existing proceedings (Board files # 5263 and 5331) are still within the exclusive ambit of the Board, so the Commission is not entitled to examine the same issues. If it were otherwise, two separate

bodies looking into the same issues might come up with different conclusions, thereby leading to an unacceptable outcome.

More problematic was the Employer's insistence that the Commission look into the facts and circumstances around Vale's allegations against the Union, so that the Employer could demonstrate and prove to the Commission that the Union had been dealing in bad faith. The Employer argued that as a consequence of the Union's behaviour, Vale's proposals for settlement should be taken by the Commission as persuasive over those advanced by the Union.

The Commission decided that it would not commence an investigation into the circumstances and unproven allegations which were still clearly within the exclusive jurisdiction of the Board. Hearings of the Board into all the allegations had been scheduled for December 6-8, 2010, but were ultimately postponed by the Board at the request of the Union once the Board became aware of the Commission's intention to conduct formal hearings with the parties on or about the same dates. The Commission took no part in the Board processes or its decision to postpone. The Board's hearings are to be rescheduled to dates in early 2011.

Dividing the Commission's Mandate

An examination of the Terms of Reference demonstrates that the focus of the Inquiry is two-fold: Issues 1 and 6 relate primarily to the labour dispute itself and how it can or should be resolved, while Issues 2 to 5 involve a broader examination of labour relations conditions at the mine site plus the social and financial impacts of the strike on the broader community and the Province. The parties who have an interest in the second group of matters include many groups beyond Vale and the USW.

Having finally determined that getting the parties to reach an agreement through its mediation efforts was unlikely, the Commission concluded that it should conduct formal hearings with the parties on the details of their positions and their views on how the

dispute should be resolved. Then in a second step, the Commission would seek input from both the parties and from the public on those issues in which public engagement would be appropriate.

Accordingly, on November 30, 2010 the Commission sought from the Minister permission to divide its mandate into two sections – one focused on the recommendations to assist in resolving the immediate collective bargaining dispute between the parties (Issues 1 and 6 within the Terms of Reference) and another dealing with the broader issues arising from the dispute (Issues 2 though 5 of the Terms of Reference). The first section of the assignment could clearly be achieved within the two-month mandate initially granted, while completion of the second section would be impossible within that timeframe. Two months is clearly insufficient time to engage the public interest, to research and consider the broader social issues that are within Issues 2 to 5, and to prepare a comprehensive Report.

On December 8, 2010, the Minister granted the Commission's request and provided an extension to February 25, 2011 to fulfill the entire assignment of the Inquiry within the Terms of Reference, while maintaining the December 23, 2010 date for reporting on Issues 1 and 6.

Creating a two-tiered approach allowed the Commission to focus its efforts on the collective bargaining dispute itself up to December 23, and allowed the focus to turn later to receiving input from not only the parties, but also the other interested groups and members of the public, on the broader Issues that required examination and comment.

It should be noted that, in their presentation at the hearings, Vale objected to this two-staged approach, believing that the Commission could only deal appropriately with the resolution of the dispute by examining all of the behaviours of the Union, which, according to the Employer, would not be possible unless aspects of the broader issues were included in first phase. The Union accepted the division of the mandate. The Commission dismissed the Employer's objection.

Thus, this initial Report deals only with the following items from the Commission's Terms of Reference:

1. *the positions of the parties in relation to the outstanding collective bargaining issues.*

6. *the options to resolve this dispute, including proposed terms of settlement.*

The following Issues from the Terms of Reference will be dealt with in the Commission's second Report, which is due not later than February 25, 2011:

2. *the factors which have led to the existing labour-management relations climate at the Voisey's Bay project site in Labrador and options to improve these relations.*

3. *the identification of local, provincial, national or international matters that may be contributing factors in this dispute.*

4. *a discussion of any impacts this dispute may be having on other labour-management relationships.*

5. *a discussion of the ramifications of this dispute, and its costs to the Province and the parties involved.*

If there are any residual issues which could possibly fall within the "*other matters*" identified in Issue 7 of the Terms of Reference, then they of necessity will be dealt with in the later Report.

Issue 1 - The Positions of the Parties

The Commission conducted formal hearings with the two disputing parties in St. John's, NL on Tuesday and Thursday, December 7 and 9, 2010 to allow them the opportunity to present their final positions with regard to the outstanding collective bargaining issues and to rebut the other party's position. From these final stated positions of the parties, the Commission will determine the proposed recommendations for settling this dispute. The behaviours of the parties in their past negotiations will not be a factor.

It must be remembered that the parties do not even agree upon which items are left outstanding from their bargaining efforts to date. In fact, the Employer has objected to the Commission even considering those items which were not in the mediator's list of September 24, on the basis that such items are not properly open for discussion as the result of the alleged breach of the Union's duty of good faith bargaining. The Commission allowed each party to present its own concept of what the final contract should look like and what clauses should be included.

Outstanding issues as per USW:

By the time the hearing commenced, the Union maintained that 8 items were outstanding in negotiations. The Article numbers used by the Union refer to the proposed Collective Agreement filed by the Union in proceedings before the Commission.

1. Wages

a. General Wage Increase

The Union has proposed that the following general wage increases be applied to the current wage rates in effect under Appendix "A". But the wage rates provided in the expired Collective Agreement do not reflect the COLA increases that were generated over the term of that Agreement and do not represent the rates in effect at expiration of that Agreement.

Therefore, the Union proposes rolling in outstanding COLA adjustments, totalling $0.62 per hour, and then amending the 2009 rates and adding the following proposed wage increases.

On Ratification	*$0.20*
March 1, 2011	*$0.20*
March 1, 2012	*$0.25*
March 1, 2013	*$0.15*
March 1, 2014	*$0.10*

b. Article 15.06 - Cost of Living

The Union agrees with the formula proposed by Vale. However, it proposes that the dates need to be changed to reflect the Union's proposed duration for the new Collective Agreement. The Union proposes that the new Agreement expire on March 1, 2015; the Company has proposed September 2013. The Union's COLA proposal is consistent with the proposal from the Employer, other than the termination date.

c. Site Premium

The Employer proposes that a site premium be paid to workers in Labrador. At the hearing, the Union accepted the Employer's proposal. (See Employer proposal for wording.)

d. Article 14.23 - Shift Premium

The Union proposes a new article to provide a premium to be paid for all work performed by bargaining unit members on night shirt hours:

> *14.23 – An employee shall be paid a shift premium of seventy-five (75) cents per hour for time worked during his/her night shift hours.*

2. Employee Bonus Plan

The Union proposes the inclusion of a "Bonus" Letter of Understanding with language as below, similar in content and identical in application to the one recently negotiated between Vale and the USW for the Sudbury operations:

LETTER OF UNDERSTANDING - EMPLOYEE BONUS PLAN

This will confirm our agreement with respect to the payment of a new Employee Bonus Plan ("EBP") to employees. Employees will be eligible to receive, in each year, EBP payments totalling up to twenty-five percent (25%) of the employees "AIP period earnings" (as defined below). The Employee Bonus Plan has two (2) components: the "Quarterly Bonus Component"; and the "Annual Bonus Component" as set out below:

1. *Quarterly Bonus Component*

*The Quarterly Bonus Component represents up to seventy-five (75%) of the bonus in each year. **I**n the second pay period following the reporting of the quarterly results for the periods ending March 31st, June 30th, September 30th and December 31st, employees will be paid the greater of:*

a. *The Nickel Price Bonus (NPB) (as described below); or*
b. *The Earnings Based Compensation (EBC) (as described below).*

To a maximum of seventy-five percent (75%) of twenty-five percent (25%) of the employee's applicable hourly rate on the last day of the quarter multiplied by the regular non-overtime hours worked by the employee and vacation hours in the quarter.

NPB

For the purpose of the foregoing, the NPB attributable to an employee shall be calculated in the following manner:

1. *This NPB will be based on the average realized price per pound of nickel, in U.S. dollars, including intermediates, published by the Company in its Quarterly Reports for periods ending March 31st, June 30th, September 30th and December 31st (hereinafter called the 'Average Realized Price').*

2. *If the Average Realized Price for any Quarter in which the Company has net earnings is equal to the Trigger Price, The NPB for each employee will be equal to the number of hours worked by him in that Quarter multiplied by ten cents (10¢) Canadian. If the Average Realized Price exceeds the Trigger Price, the multiplier used to calculate the lump sum*

payment will be increased by one cent (1¢) Canadian for each one cent (1¢) U.S. by which the Average Realized Price exceeds the Trigger Price.

3. *The Trigger Price as of January 1, 2009 is three dollars and seventy-five cents ($3.75).*

EBC

For the purpose of the foregoing, EBC attributable to an employee shall be calculated in the following manner:

1. *EBC will be based upon the Operating Earnings of the Ontario Operations of the Company published/reported in U.S. dollars by the Company quarterly (the "Operating Earnings") for the periods ending in March 31, June 30, September 30 and December 31 in each year.*

2. *If the Ontario Operations of the Company has Net Pre-Tax Operating Earnings for the quarter that are positive and the payment of the Quarterly Bonus for the quarter will not put Net Pre-Tax Operating Earnings at zero or below zero, the EBC attributable to an employee is: For every $10 million in Operating Earnings published/reported in a quarter, 25 cents for each hour worked by the employee, including regular vacation, in that quarter (the Ratio). If the quarterly Operating Earnings are greater or lesser than $10 million, the amount earned by the employee will be adjusted using the Ratio. By way of example, if the Operating Earnings for the quarter are $53.5 million and the employee works 475 hours in the quarter, the EBC attributable to the employee for that quarter will be 475 X 5.35 X $.25 = $635.31 Canadian.*

2. *Annual Bonus Component*

The Annual Bonus Component represents up to twenty-five (25%) of the Employees Bonus in each year and is part of the Vale S.A. Annual incentive Plan ("AIP), in effect from time to time, that is based upon the Corporate Performance Factor.

a. *The Corporate Performance Factor is the rating announced by Vale S.A. that represents how it has performed during the AIP period.*

b. *The Annual Incentive Plan period (AIP period) is January 1 to December 31.*

c. *Regular full-time employees who have completed at least one full calendar month of employment in the AIP period are eligible to participate in the Annual Bonus Component.*

d. *In the month following the publication by Vale S.A. of its annual Corporate Performance Factor, all eligible employees will receive their Annual Bonus Component calculated as follows:*

   i. *The Corporate Performance Factor will be multiplied by twenty-five percent (25%) of the employees AIP period earnings as defined below. This number will in turn be multiplied by twenty-five percent (25%), which represents the maximum Employee Bonus payable in any year under the Annual Bonus Component.*

   ii. *The "AIP period earnings" means the employee's applicable hourly rate on the last day of the AIP period multiplied by the regular non-overtime hours worked by the employee and his/her vacation hours in the AIP period.*

3. Article 30.01 – Duration

The Union proposes an almost 5-year term for the new collective agreement with the following language proposed for Article 30.01:

30.01 This Agreement shall be effective from the date of ratification and remain in force to March 1, 2015

4. Return to Work Protocol – Back to Work/Retention Bonus

The Union proposes the signing of a separate agreement between Vale and the Union which would have the following content and format covering striking employees returning to work:

2010 RETURN TO WORK PROTOCOL

BETWEEN

VALE NEWFOUNDLAND AND LABRADOR LIMITED (the "Company")

- and –

UNITED STEEL, PAPER AND FORESTRY, RUBBER, MANUFACTURING, ENERGY, ALLIED INDUSTRIAL AND SERVICE WORKERS INTERNATIONAL UNION (UNITED STEELWORKERS) AND ITS LOCAL 9508 (the "Union")

WHEREAS the previous collective bargaining agreement between the Company and the Union expired on March 1, 2009;

AND WHEREAS the Union commenced a lawful strike at 12:01 a.m. on August 1, 2009 (the "strike");

AND WHEREAS the Company and the Union wish to agree to a procedure for the orderly return to work of returning employees and the resolution of certain outstanding issues between the Company and the Union related to the strike and its conclusion;

NOW THEREFORE the Company and the Union agree as follows:

1. *Effective immediately upon settlement of the New CBA, for the purposes of this Return to Work Protocol, all employees will be deemed to be returned to work to the positions they occupied immediately prior to the strike, or if not actively at work (e.g. leaves of absence, Union leaves, WSIB, LTD, S&A), to the status they held immediately prior to the commencement of the strike. All replacement workers shall be removed from the workplace immediately.*

2. *The Company agrees to make a one time special return to work delay payment of four thousand dollars ($4,000.00) less deductions required by law to each employee who is deemed to be returned under paragraph 1. The Company will process the payment on their first regular pay after the employee returns to work or to their previous status.*

3. *All employees shall be returned to work to their pre-strike occupational classifications and on their regular scheduled shift no later than the beginning of the seventh day following the effective date of the New CBA. For those employees who are unable to return to work for any reason, including receipt of WSIB, S&A benefits or leaves of absence their pre-strike status shall be continued.*

4. *The Company agrees to allow returning employees who make their intentions to return known to the Company within seven days of the effective date of the New CBA to return within four weeks.*

5. *No replacement workers currently doing bargaining unit work shall be hired to replace non-returning bargaining unit employees.*

6. *Returning employees will attend at site for a total of seven (7) days of orientation and training. Three (3) of these days will be site specific training sessions ("Site Specific Training") during the seven days following ratification of the New CBA in accordance with operational requirements. Returning employees shall be paid twelve (12) hours pay per day while at site at their regular rate of pay for these seven days of orientation and Site Specific Training.*

7. *Employees will return to regular production schedules following their Site Specific Training.*

8. *Entitlement to the 10% Site Premium will commence upon the employee's return to site in accordance with the terms of the New CBA.*

9. *This protocol shall be incorporated into and shall form part of the New CBA. Any violation of this protocol shall be enforceable through the grievance procedure.*

10. *The Company agrees that it, its officers, supervisors and agents shall not condone or engage in any intimidation, reprisals, threats, violence or differential treatment against any employee because of the employee's participation in the strike or because of alleged misconduct during the strike.*

11. *The Union agrees that it, its officers, executives and members shall not condone or engage in any intimidation, reprisals, threats, violence or differential treatment of any kind against any person hired to bargaining unit positions during the strike or any employee who returned to work during the strike.*

12. *The Company shall direct the benefit carrier to reinstate benefit coverage for employees beginning the effective date of the New CBA.*

13. *All picketing activity shall cease the effective date of the New CBA.*

14. *The Union shall remove all non-company owned material associated with the strike (signs, picket shacks, temporary sanitary facilities, etc.) within seven days of the effective date of the New CBA.*

15. *The Union and the Company consent to the withdrawal of the Applications to the Labour Relations Board in Board File Numbers 5263 and 5284 and*

agree that they will not re-file any further applications before the Board or in the Supreme Court of Newfoundland and Labrador in respect of those Board Files or make any application which make the same or similar allegations as those contained the applications noted above with respect to these negotiations.

16. *The Company agrees to discontinue all actions, applications and all other legal proceedings of any kind related to the strike currently before the Courts, which are listed in Schedule "A" to this Agreement, without costs and shall instruct its Counsel to consent to the dismissal of the said actions without costs. The Company agrees that it will not re-file any further actions or applications or legal proceedings arising from or related to the strike.*

17. *Errors and omission from the Memorandum of Settlement will be allowed for a period of two weeks after the effective date of the New CBA.*

18. *The Company will provide booklets of the New CBA to all employees within two months after proof reading has been completed by the parties.*

5. Article 25 – Contracting

The Commission understands that language of the Articles 25.02 and 25.03 are common to both parties, but the Articles have not been formally agreed upon.

The final sentence of Articles 25.01 and 25.04(a), (b) and (c), as shown below in italics, constitute the Union's currently outstanding proposals.

25.01 – It is the Company's intention and desire to manage its business in a manner that provides continuous employment for employees on Site. *The Company will not use contractors to do work normally performed by Local 9508 bargaining unit members.*

25.02 - The Company and the Union agree to establish a joint committee to discuss the use of contractors at the Voisey's Bay worksite. The committee will be comprised of two representatives appointed by the Union and up to two representative appointed by the Company. Meetings shall be held once per quarter, or upon such other schedule mutually agreed by the Committee members.

25.03 - Committee discussions may include those issues of interest to either the Company or the Union relating to the use of contractors such as communication and information processes, efficiency, work opportunity, work planning, warranty

services and cost effectiveness. Such discussions shall respect the provisions of Article 1.04 IBAs and 25.01 contracting of this Agreement.

25.04(a) – *No employee in the bargaining unit will be laid off or displaced to a lower rated job because of work performed by any employee in the bargaining unit being contracted out, or such work being performed on site by a contractor. Furthermore, before contracting out such work, the Company will recall, qualified employees who are laid off or displaced, for such work, provided these employees are available.*

25.04(b) - *No employee working in a job in the department or departments in which a contractor is employed will be displaced from his/her department because of the contractor's work during the period of time a contractor's employee is working in a similar occupation on site.*

25.04 (c) - *Employees working in the department or departments were a contractor is employed will be scheduled for not less than the same number of hours per week as employees in the bargaining unit working in other departments.*

6. Article 11.02 – Union Leave

Article 11.02(a) below is current language (appearing as Article 11.02 from the expired Collective Agreement). Both parties have agreed upon the new language in Article 11.02(b) below, leaving only the italicized language in Article 11.02(c) as the Union's outstanding proposal for a new benefit of a paid leave for the Union's local President:

11.02 (a) **-** Upon written request from the Local Union given with as much notice as possible and at least one (1) week in advance, the Company will during each year of the term of this Agreement grant leave of absence, without pay, to the employees named in the request for the purpose of attending union courses, conferences, conventions and Local union business. It is recognized that the operational requirements may be taken into consideration in granting such requests and leave is not arbitrarily denied.

11.02 (b) – Overtime hours not worked by an employee due to absence on union leave will not be credited under the provisions of article 14.21.

11.02(c) - *The Company will grant full time leave to the President of Local 9508 effective as of the signature date and for the duration of the current Collective Agreement. Such leave shall be with pay at forty (40) straight time hours per*

week at the employee's regular rate of pay, including all benefits and bonus, in lieu of time worked.

7. Article 14.24 - Sunday Premium

At the commencement of the Commission's proceedings, the Union presented a proposal that work performed on a Sunday be paid at the rate of time and one-half.

During the course of the Commission's proceedings, the Union amended that proposal to seek instead a premium for all work performed on a Sunday, rather than for overtime rates to apply on that day. The Union's final proposal as presented was as follows:

Article 14.24 – A Sunday premium of one dollar per hour ($1. 00) would be paid for all time worked by employee between the start of the day shift on Sunday and the start of the day shift on Monday.

8. Northern Allowance/Travel Allowance Letters

The Union seeks the inclusion of two Letters of Understanding in the new Collective Agreement to confirm that the Employer will continue during the term of the new agreement to pay bargaining unit employees the current Northern Allowance and Travel Allowance benefits that are a part of the Company Policy for all employees as set out in the Employee Handbook.

No suggested wording for those proposed Letters of Understanding was provided by the Union in its proposals to the Commission.

Outstanding Issues as per Vale/Employer:

The Employer argues that only the following 6 items remain open for resolution. It therefore objects to the Commission even considering any of the additional issues raised by the Union.

Vale proposes the following solutions to the outstanding collective bargaining issues. The proposed language from the Employer is once again shown in italics:

1. Cost of Living and Wages

Article 15 – Wages & Benefits

The Employer proposes wage increases over a three-year contract on the following basis:

Appendix "A" – Wages

Hourly Wages for the Classifications Listed in Appendix A to be adjusted as follows: Effective on ratification, roll into the wage rates in effect as of February 28, 2009 COLA adjustments of sixty two cents (0.62) per hour.

> *Year 1 -twenty cents (0.20) effective date of ratification*
> *Year 2 -twenty cents (0.20) effective December 1, 2011*
> *Year 3 -twenty five cents (0.25) effective December 1, 2012*

Included in the Employer proposal on "Wages" is a retention bonus of $2,000 as set out below:

> *In addition the Company will pay a lump sum Retention Bonus of two thousand dollars ($2000) to employees who return to work as scheduled upon resumption of operations and who remain employed three months following his/her return to work. This Retention Bonus is not considered pensionable earnings.*

There is also proposal from the Employer for a $2,000 bonus for employees on returning to work, as set out in its Return to Work agreement, detailed in item 4 below.

The Employer also proposes the following cost of living adjustment to the wage rates:

Cost of Living

15.06 A cost of living allowance will, if applicable, be paid to each employee as set out below. This allowance will be based on the Consumer Price Index (all items - base: 1992 = 100) published by Statistics Canada (hereinafter referred to as the "CPI") and will be calculated as follows:

a. The CPI published for December 2010, shall be compared with the CPI published for September 2010, and effective the pay period immediately following the publication of the December 2010 CPI, the allowance shall be one (1) cent per hour worked for each zero point zero seven seven (0.077) point increase by which the December 2010 CPI exceeds the September 2010 CPI.

b. Such allowance, if any, shall continue until the publication of the CPI for March 2011 at which time the March 2011 CPI shall be compared with the CPI published for December 2010, and effective the pay period immediately following the publication of the March 2011 CPI, the allowance shall be adjusted by one (1) cent per hour worked for each zero point zero seven seven (0.077) point increase by which the March 2011 CPI exceeds the December 2010 CPI.

c. A similar comparison and adjustment shall be made thereafter on the basis of the CPI published every three (3) months apart as follows:

FOLLOWING THE RELEASE OF THE CPI FOR:	*BASED ON THE COMPARISON OF:*
June 2011	*March 2011 with June 2011*
September 2011	*June 2011 with September 2011*
December 2011	*September 2011 with December 2011*
March 2012	*December 2011 with March 2012*
June 2012	*March 2012 with June 2012*
September 2012	*June 2012 with September 2012*
December 2012	*September 2012 with December 2012*
March 2013	*December 2012 with March 2013*
June 2013	*March 2013 with June 2013*
September 2013	*June 2013 with September 2013*

a. Wage rates effective December 1, 2011 and December 1, 2012 will be increased by any Cost of Living Allowance in effect on those dates and the Cost of Living Allowance will be reduced by the same amount

e. If there is a decrease in the CPI on the basis of the quarter to quarter comparison, the allowance shall be adjusted downward by using the formula mentioned above but an employee's applicable hourly rate shall not be affected by any downward adjustment.

f. No adjustment retroactive or otherwise shall be made due to any revision which may later be made in any Consumer Price Index published by Statistics Canada.

g. The continuance of the cost of living allowance shall depend upon the availability of the CPI calculated on its present basis and in its present form. Should this

occur, the parties will meet and agree upon an appropriate alternative conversion of the CPI.

The Employer has presented a new Site Premium benefit for employees as set out below:

15.07 Working on Site Premium

a. A ten percent (10%) Working on Site Premium will be paid for each day and consecutive night period that an employee spends working at the Voisey's Bay Mine and Concentrator site. This premium is paid in recognition of work performed at a northern, remote, fly-in, fly-out operation which presents some unique demands and challenges for employees.

b. The premium will be 10% of the employee's equivalent hourly rate of pay which is calculated based on his/her annual base salary (i.e. paid as a percentage of the annual base salary only) for the employee's normal work schedule pursuant to Article 14. The premium will also be paid for shifts worked beyond the employee's normal schedule for such events as weather delays at site and extra shifts worked at site, which will be paid in accordance with 15.07a.

c. The premium does not include other compensation such as overtime or other premiums paid as part of an employee's total compensation.

d. As vacation is part of the normal schedule at the Voisey's Bay site, the premium will be paid for each vacation day taken as if the employee was at the Voisey's Bay site.

e. The Working on Site Premium is not considered pensionable earnings.

2. Bonus Plan

In the past Collective Agreement, the Employer paid a bonus to all employees based on the price of nickel sold on world marketplaces. The higher the price, the better was the bonus. The benefit was called the "Nickel Bonus".

The Employer argues for a change in the bonus structure and the insertion of the following Letter of Understanding, worded to describe its proposal for a new Bonus Plan:

Letter of Understanding – Employee Bonus Plan

This will confirm our agreement with respect to the payment of the new Employee Bonus Plan (Bonus) to employees as set out below.

Employees are eligible to receive, in each year, a Bonus payment under Components 1, 2 and 3 totaling up to twenty five percent (25%) of the employees Eligible Earnings.

The Employee Bonus Plan consists of three components which are applied during the Bonus period of January 1 to December 31 of each year:

Component 1: Company

The Company component represents up to twenty five percent (25%) of the Bonus in each year and is part of the Vale S.A. Annual Incentive Plan (AIP) in effect from time to time, which is based upon the Corporate Performance Factor.

The Corporate Performance Factor is the rating announced by Vale S.A. that represents how it has performed during the Bonus period.

Component 2: Business Unit

The Business Unit component represents up to twenty five percent (25%) of the Bonus in each year.
The metric used to measure Business Unit results is Cash Flow Return on Gross Investment (CFROGI) for the Canada/UK region. This metric is an indicator of the efficiency of the region to use assets to create value.

Component 3: Operating Team

The Operating Team component represents up to fifty percent (50%) of the Bonus in each year.

The metrics are common to the production and maintenance employees in the Labrador Operations given that everyone has the capacity to affect outcomes in these areas and therefore the results are interdependent. The four (4) metrics used to measure Operating

Team results include the following:

1. Equipment Availability
i. Availability scores to be based on availability of a blend of Mine and Site Services equipment.
ii. Weighting: 10%

2. Quantity of metal in concentrate produced
i. Revenue equivalent nickel units produced versus budget

ii. Converting all metals produced into an equivalent amount of nickel
iii. Weighting: 15%

3. Quality of concentrate
i. Nickel in copper concentrate
ii. Nickel to copper ratio in high-grade concentrate
iii. Combined nickel concentrate nickel grade
iv. Nickel recovery to high-grade nickel concentrate
v. Copper recovery to copper concentrate
vi. Weighting: 15%

4. Overall Equipment Efficiency (OEE) - Mill
i. OEE is an industry standard measurement of how the machines, production lines and processes are performing. OEE is calculated based on:
a. Overall availability (Run time of the equipment), expressed as a percentage
b. Efficiency (amount of ore processed in the Mill), expressed as a percentage; and
c. Yield (Tons recovered from Ore put into the Mill), expressed as a percentage.
ii. Formula is a x b x c = OEE
iii. Weighting: 10%

Payout Calculation

Points for each metric shall be calculated by multiplying the rating achieved for the metric (based on a 6 level rating scale of 0 to 5) by the weight (%) of the respective metric as noted above. The Total Points Earned is determined by summing-up the scores for each component: Company, Business Unit, and Operating Team. The Bonus payout varies according to the scores obtained between 100 and 500 points. A minimum of 100 points is required for Operating Team metrics to receive a Bonus payout.

The Bonus payout calculation formula is as follows:

Maximum Participation Level (25%)
x
Total Points Earned/500 (Company + Business Unit +Operating Team)
x
Eligible Earnings

General

Eligible Earnings for the Bonus are the employee's applicable hourly rate on the last day of the Bonus period (December 31st) multiplied by the employee's regular non-overtime hours worked and his/her vacation hours during the Bonus period.

The Bonus payment will be paid annually, in the first quarter of the year following the Bonus period.
Regular full-time employees who have completed at least one full calendar month of employment in the Bonus period are eligible to participate in the Bonus for that year.
Targets for each specific metric are established by the Company based on the annual plan for the respective components.

Employees who have been dismissed (except for cause), die, or retire from the Company, are eligible for a bonus payment after the end of the Bonus period on a prorated basis for the period worked during the Bonus period. Employees must have "actively" worked for a minimum period of one full month in the Bonus period.

If an employee voluntarily resigns prior to the end of the Bonus period, the full award is forfeited. If an employee works for the full Bonus period (i.e. January 1 to December 31) and voluntarily resigns prior to the payment of the Bonus, the Bonus will be paid to the employee on the scheduled payment date.

Verification Process

The Company will meet with two (2) representatives of the Union within sixty (60) days of the completion of each Bonus Period and make a report on the financial results that are relevant to the calculation of the Bonus payment for that period. For this purpose the Union will sign a confidentiality agreement that is satisfactory to the Company.

Note: This Letter of Understanding replaces the existing Letter of Understanding with respect to Bonus at page 37-38 of the prior collective agreement.

3. Duration

The Employer seeks an almost three-year duration for the new Collective Agreement with the following proposed contract language:

Article 30 - Duration

30.01 This Agreement shall be effective from date of ratification and remain in force to November 30, 2013.

4. Return to Work Agreement

The Employer proposes a return to work protocol for striking employees, in accordance with its proposed agreement set out below:

RETURN TO WORK AGREEMENT

BETWEEN:

VALE NEWFOUNDLAND & LABRADOR LIMITED (the "Company")

- and –

UNITED STEEL, PAPER AND FORESTRY, RUBBER, MANUFACTURING, ENERGY, ALLIED INDUSTRIAL AND SERVICE WORKERS INTERNATIONAL UNION (UNITED STEELWORKERS) AND ITS LOCAL 9508 (the "Union")

WHEREAS the previous collective bargaining agreement between the Company and the Union expired on March 1st, 2009;

AND WHEREAS the Union commenced a lawful strike at 12:01 a.m. on August 1st, 2009 (the "strike");

AND WHEREAS the Company and the Union have concluded, contemporaneously with this Agreement, a Memorandum of Settlement which, subject to ratification by the Parties' respective principals, will establish a new collective bargaining agreement (the "New CBA") and resolve the strike;

AND WHEREAS the Company and the Union wish to agree to a procedure for the orderly return to work of returning employees and the resolution of all issues between the Company and the Union related to the strike and its conclusion;

NOW THEREFORE contingent upon the ratification of the Memorandum of Settlement, the Company and the Union agree as follows:

1. This Agreement shall be deemed to modify the New CBA where there is any conflict with the provisions of this Agreement during the "Return to Work Period", except where otherwise specified.

2. All employees will be eligible to return to work throughout the seven (7) week period following the date of ratification of the Memorandum of Settlement (Referred to as the "Return to Work Period").

3. The following conditions shall apply during the Return to Work Period unless otherwise specified:

- *(a) Employees will be returned to work at such times during the Return to Work Period as dictated by operational requirements.*
- *(b) A Return to Work Information Package ("Information Package") will be given to returning employees in person immediately after a positive ratification vote, or sent by Express Post/Courier mail, with a sample copy*

to the Local Union, to the last address the returning employee has on file with the Human Resources Department of the Company. This will include a Medical Information Form that must be submitted to Shepell FGI immediately after ratification. Additionally, the Company will communicate broadly through various media upon ratification information which will include contact information with respect to the return to work process.

(c) The Company and the Union agree that no grievances, complaints or other action shall be filed or processed to arbitration under the New CBA with respect to the Return to Work Period.

(d) In an effort to expedite a return to normal operations, bargaining unit work may be performed by persons other than members of the bargaining unit, notwithstanding any provisions of the New CBA to the contrary but no bargaining unit employee will be prevented from being returned to work by the end of the Return to Work Period as a direct result of such performance of work.

(e) No regular vacation time may be scheduled during the Return to Work Period.

(f) It is understood that all unused regular vacation for 2009 will be prorated based on hours worked and paid out, or adjusted accordingly for those overpaid.

(g) The Company may transfer or assign employees for all, or part, of the Return to Work Period, in order to achieve required staffing levels within the operation notwithstanding any provisions of the New CBA.

(h) Returning employees require medical clearance as a condition to be eligible to return to work. Returning employees must also declare their intention to return to work as instructed in the Return to Work package. These returning employees will then be assigned to attend a Return to Work Orientation and Training Session ("Orientation Session") which will commence on or before the 21st day following the date of ratification. For attending the seven (7) day Orientation Session which will be 8 hours per day (including full medicals where required), the returning employee will be paid (8) hours per day at their regular rate of pay, and the following will apply to the Orientation Session process:

(i) Returning employees shall attend the Orientation Session to which they are assigned;

(ii) Where a returning employee cannot attend the Orientation Session to which they are assigned, the returning employee may, in advance, arrange to attend the alternative Orientation Session. Such attendance will be at the Company's discretion;

(iii) Where the Company sent the Information Package to a returning employee and the returning employee fails to attend the Orientation Session to which they are assigned or have arranged in accordance with sub-clause (ii) above, the returning employee shall be deemed to have resigned from employment unless the returning employee contacts the Company within fourteen (14)

days after the date of ratification and the Company has granted permission.

(iv) Returning employees shall return their completed Human Resource Forms as included in the Employee Information Package, at the Orientation Session to which they are assigned;

(v) At the Orientation Session, each returning employee will be provided with notification of the date and time the returning employee shall attend a site specific orientation and training session.

4. In recognition of the fact that some returning employees may not be fully returned to regular duties for at site for seven (7) weeks, the Company agrees to make a one time special return to work delay payment of two thousand dollars ($2,000.00), less deductions required by law, to each returning employee who confirms their intention to return to work, and completes the Orientation and Training. The Company will process the payment on the next regular pay after the returning employee returns the required document and completes the Orientation and Training Session.

5. Returning employees will attend at site for a three (3) day, site specific orientation and training session ("Site Specific Training") during the Return to Work Period in accordance with operational requirements. Returning employees will be paid twelve (12) hours pay per day while at Site at their regular rate of pay for Site Specific Training.

(i) Where a returning employee can not attend the Site Specific Training to which they are assigned, the returning employee shall, in advance, make alternative arrangements with the Company Representative designated at the Orientation Session;

(ii) Where a returning employee fails to attend their assigned Site Specific Training without making alternative arrangements pursuant to sub-clause (iii) above, or providing a reason satisfactory to the Company, the returning employee shall be deemed to have resigned from employment;

(iii) Where a returning employee fails to attend regular work at the location on the date and time directed by the Company pursuant to sub-clause (ii), above, the returning employee shall be deemed to have resigned from employment unless there is a reason satisfactory to the Company.

6. Employees will return to regular production schedules following their Site Specific Training.

7. Any person who advised the Company of his or her resignation or retirement during the strike shall not be considered to be a returning employee for the purposes of this Agreement.

8. Entitlement to the 10% Site Premium will commence upon the employees return to site. The Site Premium is paid as a lump sum on a monthly basis for time spent at the Voisey's Bay site during the previous month.

9. Employees returning to work will be paid in accordance to article 15.02. There will be a 42 hour hold back in accordance with pay practices.

10. It is understood and agreed that for the purposes of Article 14.21, all overtime balances accumulated prior to the strike are reset to zero and a new period of accumulation shall commence on the date of ratification.

11. It is understood that for the purpose of calculating seniority and company service, time on strike will not be included under Article 12.

12. The Union agrees that it, its officers, executives and members shall not condone or engage in any intimidation, reprisal, threats, violence or differential treatment of any kind against any person who performed work for or on behalf of Vale, contractor or other third party in relation to the Voisey's Bay site during the strike or any employee or contractor who returned to work during the strike.

13. The Company agrees that it, its officers, supervisors and agents shall not condone or engage in any intimidation, reprisals, threats, violence or differential treatment against any Union representative or employee because of the employee's participation in the strike.

14. It is understood that the application of clause 12 and 13 of this Return to Work Memorandum will apply for the duration of the New Collective Bargaining Agreement.

15. The Company shall direct the benefit carrier, to reinstate benefit coverage for returning employees effective the date deemed eligible to return to work. It is understood that there may be a delay of up to seven (7) days in reactivating benefit coverage systems, in which case manual claims may be filed for covered expenses during this period.

16. All picketing activity shall cease immediately upon ratification.

17. The Union shall remove from all Vale places of business all non-company owned material associated with the strike (signs, picket shacks, temporary sanitary facilities, etc.) within five (5) business days of the date of ratification. Should the Union fail to remove any such material in the said period, the Company may do so at the Union's expense.

18. The Union and the Company consent to the withdrawal of the Application to the Labour Relations Board in Board File Number 5284 and agrees that it will not re-file any further applications before the Board or in the Supreme Court of Newfoundland and Labrador in respect of that Board File or make any application which make the same or similar allegations as those contained in the application noted above with respect to these negotiations.

19. The Company agrees to discontinue all actions related to the strike currently before the Courts, which are listed in Schedule "A" to this Agreement, without costs and shall instruct its Counsel to consent to the dismissal of the said actions without costs.

20. This Agreement is without prejudice or precedent to any future return to work situation or operating circumstance during or after the term of the New CBA.

5. Contracting

The Employer is not prepared to extend changes to the existing language in Article 25.01. The Commission understands the Employer's proposals for Articles 25.02 and 25.03 are the same as the Union's proposals:

Article 25 - Contracting

25.01 It is the Company's intention and desire to manage its business in a manner that provides continuous employment for employees at Site. The Company will not use contractors for the sole purpose of reducing the compliment of employees within the bargaining unit.

25.02 The Company and the Union agree to establish a joint committee to discuss the use of contractors at the Voisey's Bay worksite. The committee will be comprised of two representatives appointed by the Union and up to two representatives appointed by the Company. Meetings shall be held once per quarter, or upon such other schedule mutually agreed by the Committee members.

25.03 Committee discussions may include those issues of interest to either the Company or the Union relating to the use of contractors such as communication and information processes, efficiency, work opportunity, work planning, warranty services and cost effectiveness. Such discussions shall respect the provisions of Article 1.04 IBA's and 25.01 Contracting of this Agreement.

6. Union Leave

The Employer is not prepared to offer a paid leave to the Union President, so its only offer includes Article 11.02 (b) below which was discussed and agreed during earlier negotiations. Article 11.02 (a) is the current Article 11.02 from the expired Collective Agreement.

Article 11 – Leaves of Absence

11:02 a. Upon written request from the Local Union given with as much notice as possible and at least one (1) week in advance, the Company will during each year of the term of this Agreement grant leave of absence, without pay, to the employees named in the request for the purpose of attending union courses, conferences, conventions and Local union business. It is recognized that operational requirements may be taken into consideration in granting such requests and leave is not to be arbitrarily denied.

b. Overtime hours not worked by an employee due to absence on union leave will not be credited under the provisions of article 14.21.

Consistent with its position that no other issues are outstanding, the Employer resists presenting any proposals on Sunday Premium, Shift Premium or on the Letters of Understanding respecting the Northern and Travel Allowances.

Late Settlement Attempts

Although the parties had engaged in formal presentation of their final positions before the Commission sitting in hearings, members of the Commission believed that one final attempt at achieving a voluntary settlement of the outstanding issues should be made. The parties' positions were so close that it seemed unfortunate if an opportunity such as this were not extended. The parties were approached and asked if they would entertain a settlement proposal developed together by Commissioners Earle and Gatien. Both parties agreed to the "no risk-no prejudice" approach which removed the Chair from any knowledge of the contents of this proposal for settlement.

The two Commissioners met privately on December 15, 2010 to develop a set of settlement terms that they believed should be acceptable to the two parties. Those settlement terms once established were to be communicated to the parties' representatives on December 16. If both sides agreed that the suggested terms of settlement as developed by the two Commission members were acceptable to them, then a tentative settlement would be achieved. If either party or both parties rejected any or all of the terms, then the

proposed settlement failed. Each party was to indicate its position (i.e., yes or no to the proposal) to the Chair by noon on December 20, 2010.

Before the deadline expired, both parties contacted the Chair to communicate their positions. The requirement that both parties agree in the result was not achieved. Thus, another effort to bring about a solution had also failed.

The Commission is satisfied that all reasonable efforts have been made to assist these parties in reaching a new Collective Agreement. Regrettably, a pre-Christmas settlement of this dispute is not possible.

Some Observations

Each of the parties claims to want a new collective agreement. It is apparent that, while this might be the stated objective of the Employer, the "need" for it to reach a new collective agreement is not evident. The Voisey's Bay operation continues in production with the work of the bargaining unit being performed by replacement workers. The Employer has repeatedly indicated that this is not a dispute generated by its cost issues. It is thus fair to conclude that any increased operating costs during the strike are not a significant impediment to the Employer.

Collective bargaining is a process which necessarily involves rationalizing one's own position, understanding the opposing party's position, seeking common ground and allowing for compromise. The latter requirement most frequently arises when it has become clear that the gap between the parties is not able to be closed by the use of simple persuasion.

The Employer has insisted throughout that the Union has from time to time altered its position on the total number of outstanding issues. When the parties came before this Inquiry, the Employer made a major issue of the difference between the parties on the list of outstanding issues. As the parties moved into the formal presentation stage, the Union

made significant movement by not only formally dropping a number of its outstanding issues but also by accepting the Employer's position on Wages, Site Premium and COLA. The Employer's response of indignation, complaining that such moves should have been made at an earlier time, was unlikely to engender trust or encourage further movement by the USW.

Despite the Commission's repeated statements to the Employer that this Inquiry had limited jurisdiction to consider matters that were properly before the Labour Relations Board, during the course of its presentation the Employer repeatedly admonished the Union for its behaviour in bargaining. It was apparent to the Commission that the only effect of this approach was to anger members of the Union's negotiating team who were all present.

The Employer came to the presentation represented by its lawyer and negotiator, Mr. Mahoney, his associate counsel and Ms. Lamothe, the local Manager of Human Resources. No other member of its bargaining committee, or other representative from the operations side in Labrador or from the Toronto office was present. This approach seemed to send a clear message to Union that Vale did not view the Inquiry process as important or useful.

The Employer has through the process of this Inquiry chosen not to alter its position from that presented to the mediator and the Union on October 3, 2010, despite the fact that the Union made significant movement in its position. While it might be argued by the Employer that the Union's changes were, in part, simply an acknowledgement of what it had previously communicated to the mediator, it cannot be argued that the Union was not moving closer to the Employer's position on some important outstanding issues. One would have expected that these actions by the Union would have generated a positive response from the Employer. In fact, the response and reaction from the Employer was quite the opposite. It was in fact quite negative. The Employer maintains that it has a desire to conclude a collective agreement, but its actions and reactions send the opposite message.

The Employer's justification for its position is that the Inquiry is not the appropriate place to reach a new collective agreement with the Union. This may be an interesting theory, but the history of negotiations between these parties demonstrates that it is nothing but a theory. These parties have used all of the tools available in collective bargaining – direct negotiations, conciliation assistance, unfair labour practice complaints, special mediation efforts and the ultimate weapon in industrial relations, a strike. A party motivated by a desire to reach a new agreement would certainly seize upon any opportunity to find settlement, regardless of the venue or timing.

It is apparent to the Commission that the Employer has an approach that does not contemplate compromise on any basis that might be acceptable to the Union. It has asked the Commission to direct that the Employer's final offer be put to the members of the bargaining unit for a vote. It apparently believes that the Union does not represent its membership or that an employer should be allowed to circumvent a union's right and obligation to bargain on behalf of its membership in the bargaining unit. Whichever is the case, this behaviour demonstrates disrespect for the role of a bargaining agent. It is not surprising that this has contributed to a continued failure in these negotiations. It is difficult to comprehend that any union, especially a strong national entity such as USW, would be intimidated by such an approach.

Collective bargaining is designed to be a process of open, frank and respectful discussions aimed at finding a compromise that balances the interests of each of the parties to the collective agreement. It requires a degree of trust, sometimes a leap of faith, and always a genuine effort to reach common ground.

At the same time,, the Union in these negotiations appears to have objectives that reach beyond this particular Collective Agreement. While coordination with other bargaining units in Canada may sometimes be a valid objective, at some point the interests of the local bargaining unit should be paramount over the collective interests of the union as a national or international organization. A union must always ask itself: when have the local employees endured enough sacrifice for the objectives in a national struggle?

By not fixing the confines of this dispute sufficiently early on in the negotiating process, the Union has fuelled the Employer's mistrust of its real objectives. When the Union sought to add to its list of outstanding issues some additional items (which had not been on the bargaining table until after the settlement in Sudbury, almost a year into this strike), the Union confirmed that perception by the Employer. By continuing its insistence on a common expiry date with the Sudbury contract, under the guise of seeking a longer-term agreement only for stability reasons, and not admitting until pressed by the Commission that this was one of its objectives, it has prevented movement by the Employer in other areas. The Union has continued to insist on the longer Sudbury term, even in the face of higher and better compensation than in Sudbury, (i.e. the 10% Site Premium which Vale had tabled much earlier in bargaining). The Union appeared to be sacrificing its local members' interests for some larger national goal. There seemed to be no willingness by the Union to engage in a fundamental element of collective bargaining, that is, a willingness to not only listen and consider the position of the opposing side, but also to abandon fixed positions, such as duration, in order to find common ground.

The Union recently shifted its position significantly on major issues. In its presentation to the Commission, it finally agreed to the Employer's wage positions for the first three years of a new Collective Agreement. While in the normal course one might see that as bringing the parties together, in the context of a lack of meaningful early negotiations here and a 16-month strike, it did not stimulate a similar response. Instead, the Union provided another opportunity for the Employer to complain about the Union's conduct when it logically asked: why has it taken so long to get to this common ground?

The behaviour of both of these parties has, in the Commission's view, contributed to an unhealthy negotiating environment where collective bargaining deteriorates and trust evaporates. It is not surprising that a consensus has not been found.

Issue 6 – Options to Resolve the Dispute and Recommended Terms of Settlement

This Issue 6 raises two separate but related concepts, first, what are the options available to the parties and/or to Government to aid in settlement of the dispute; and second, what are the recommended terms of settlement that should constitute the final terms of the new Collective Agreement.

a. Options to Resolve this Dispute

A protracted strike such as this, with

a) inflexibility shown by the parties' negotiating approaches, plus

b) replacement workers readily available to work at a remote site far from the scrutiny of the public, and

c) a small bargaining unit which can easily find financial support from the national union

invites consideration of such options as legislating employees back to work, legislating the terms of a new collective agreement, banning the use of replacement workers and limiting the right of workers to accept or reject a new contract to only those who are actively engaged in a strike.

These are all issues of great significance to the labour relations community in this Province. A far more in-depth consideration of the implications of such alternatives is required before a Commission would be in a position to make recommendations of such magnitude.

Based on the information accumulated by the Commission to this point in time, the only limited and meaningful options which are currently available to the Commission are directed to the parties; and therefore:

1. The Commission recommends that the parties execute a new Collective Agreement based on the recommended Terms of Settlement as set forth within this Report.

2. As an alternative, the Commissioners are all fully aware from their work experiences that personal chemistry is often an essential ingredient to successful outcomes in collective bargaining negotiations. A change in negotiators can induce a more positive atmosphere at the negotiating table. The role of negotiators is not simply to advocate the position they represent. It is equally important that they be able to fully understand the motivations and sensitivities of the other side. In the interaction of the parties' negotiators in front of the Commission, these qualities have not been clearly evident. Thus, the Commission recommends that the parties restructure their bargaining teams to change their chief spokespersons in order to infuse future negotiations with the right atmosphere.

3. There is a third alternative. Notwithstanding that the parties were unable to agree to utilize the 'final offer selection' process offered earlier by the Commission, the parties now find themselves with an even narrower group of issues which are outstanding. Since that offer was proposed, agreement has been reached on wages for the first 3 years, cost of living adjustments and a site premium. The Union has withdrawn a number of its positions, such that the outstanding issues are no more than 5. Even within those issues there is commonality on significant points. The current negotiating positions of the parties are so close that there is minimal risk to either of them in allowing the outstanding issues in this dispute to be resolved by a binding third-party process. It is highly unlikely that a settlement imposed by third-party intervention would depart markedly from the final position of either party. Therefore, the Commission recommends that the parties agree to submit their dispute to a 'final offer selection' binding process.

b. Recommended Terms of Settlement

What is most interesting is that the parties to this dispute are not very far apart in their current positions on the few outstanding items. In the context of a full collective agreement, the division between them should not have been insurmountable. But it has been, and as a result, the Commission must develop a set of recommended settlement terms.

The two parties have advanced two separate paths or suggested approaches for the Commission to adopt in determining its recommended terms of settlement.

The Employer suggests that, in its view because the Union has been negotiating in bad faith, then the Commission should invoke the Employer's final offer as the Commission's recommended terms of settlement. This approach presupposes that the Commission agrees that the Employer has made out its allegation of bad faith bargaining against the Union, and that the Union will be unsuccessful in proving its case of unfair bargaining against the Employer in the current proceedings before the Labour Relations Board. But as the Commission stated to the parties during the formal hearings, it is not able to stand in the place of the Board or make judgments on facts that might not be proven at the Board when it conducts its hearings into the complaints of both parties.

The Union alternatively advances that the Commission should work on principles that are taken from interest arbitration processes to interpret a "replication" of what the parties might have achieved had they successfully negotiated their contract. Under that approach, because one cannot speculate on what the parties themselves might have done, considerable reliance is placed on "comparator" collective agreements, that is, those agreements negotiated by other parties in similar workplace situations. This approach, while initially attractive, does not offer the same flexibility that the Terms of Reference suggest by their broad wording. Government has not placed any restriction on how this Commission should determine its recommend settlement terms. In addition, any reliance on comparative collective agreements signed freely in similar industries in Canada fails

to replicate the unique characteristics of this Collective Agreement and the dispute surrounding it, the distinct features of the economy in this Province, and the fact that this dispute has been outstanding now for more than 16 months.

To "cherry pick" language for clauses to be used in this fact situation and this Collective Agreement from a narrow range of collective agreements signed recently in other place by other parties is a precarious approach. One needs to understand the full context of a clause within a collective agreement, what issue or problem it was intending to address, what that agreement's other related provisions might entail and how the consensus was reached over a series of negotiations. Compromises made by the parties and withdrawn clauses do not appear in the so-called comparator agreement. All of those factors are not available to this Commission – only the bare words themselves as they exist in the comparator document as printed. The Commission does not consider itself to be an interest arbitration panel nor should its powers and discretion be limited by constraints normally associated with such panels.

The Commissioners are, by virtue of the work experiences, familiar with collective bargaining processes generally; they have familiarized themselves, to the extent they can within the restrictive timeframe, on the background, context, bargaining processes, aims and objectives of the two competing parties in this dispute.

Thus, the following Recommendations on resolution of the outstanding issues are derived from that overall knowledge and understanding of the collective bargaining milieu in which this dispute arises and continues.

Items Already Agreed

The new Collective Agreement should amend the expired Collective Agreement and include those items identified as agreed on 3 October 2010 and contained in Appendices B, C, and D to the Employer's Memorandum of that date, together with the following further amendments:

Wage Related Items

a) **Wage rates:** The parties have now agreed on the annual wage increase to apply for the first three years of a new collective agreement. They are as follows.

$0.20 effective date of ratification
$0.20 effective January 1, 2012
$0.25 effective January 1, 2013
** The effective dates are the Commission's determination*

The only item left outstanding is the wage rate, if any, to be applied for any years that the contract continues beyond the first three. This Report will deal with and recommend on that issue in the subsequent section dealing with Duration.

b) **Site Premium:**. The parties have also agreed that a new site premium should be paid to all bargaining unit members. The definition of that premium and how it applies is set out in the Employer's proposal to the Commission, which proposal is worded as follows:

Article 15.07 Working on Site Premium

a. A ten percent (10%) Working on Site Premium will be paid for each day and consecutive night period that an employee spends working at the Voisey's Bay Mine and Concentrator site. This premium is paid in recognition of work performed at a northern, remote, fly-in, fly-out operation which presents some unique demands and challenges for employees.

b. The premium will be 10% of the employee's equivalent hourly rate of pay which is calculated based on his/her annual base salary (i.e. paid as a percentage of the annual base salary only) for the employee's normal work schedule pursuant to Article 14. The premium will also be paid for shifts worked beyond the employee's normal schedule for such events as weather delays at site and extra shifts worked at site, which will be paid in accordance with 15.07a.

c. The premium does not include other compensation such as overtime or other premiums paid as part of an employee's total compensation.

d. As vacation is part of the normal schedule at the Voisey's Bay site, the premium will be paid for each vacation day taken as if the employee was at the Voisey's Bay site.

e. The Working on Site Premium is not considered pensionable earnings.

c) **COLA:** The cost of living adjustment is now agreed upon as to both formula and application. It is also set out in the Employer's proposal to the Commission.

Article 15.06 Cost of Living

A cost of living allowance will, if applicable, be paid to each employee as set out below. This allowance will be based on the Consumer Price Index (all items - base: 1992 = 100) published by Statistics Canada (hereinafter referred to as the "CPI") and will be calculated as follows:

a. The CPI published for December 2010, shall be compared with the CPI published for September 2010, and effective the pay period immediately following the publication of the December 2010 CPI, the allowance shall be one (1) cent per hour worked for each zero point zero seven seven (0.077) point increase by which the December 2010 CPI exceeds the September 2010 CPI.

b. Such allowance, if any, shall continue until the publication of the CPI for March 2011 at which time the March 2011 CPI shall be compared with the CPI published for December 2010, and effective the pay period immediately following the publication of the March 2011 CPI, the allowance shall be adjusted by one (1) cent per hour worked for each zero point zero seven seven (0.077) point increase by which the March 2011 CPI exceeds the December 2010 CPI.

c. A similar comparison and adjustment shall be made thereafter on the basis of the CPI published every three (3) months apart as follows:

FOLLOWING THE RELEASE OF THE CPI FOR:	*BASED ON THE COMPARISON OF:*
June 2011	*March 2011 with June 2011*
September 2011	*June 2011 with September 2011*
December 2011	*September 2011 with December 2011*
March 2012	*December 2011 with March 2012*
June 2012	*March 2012 with June 2012*
September 2012	*June 2012 with September 2012*
December 2012	*September 2012 with December 2012*
March 2013	*December 2012 with March 2013*
June 2013	*March 2013 with June 2013*
September 2013	*June 2013 with September 2013*

a. Wage rates effective December 1, 2011 and December 1, 2012 will be increased by any Cost of Living Allowance in effect on those dates and the Cost of Living Allowance will be reduced by the same amount

e. If there is a decrease in the CPI on the basis of the quarter to quarter comparison, the allowance shall be adjusted downward by using the formula mentioned above but an employee's applicable hourly rate shall not be affected by any downward adjustment.

f. No adjustment retroactive or otherwise shall be made due to any revision which may later be made in any Consumer Price Index published by Statistics Canada.

g. The continuance of the cost of living allowance shall depend upon the availability of the CPI calculated on its present basis and in its present form. Should this occur, the parties will meet and agree upon an appropriate alternative conversion of the CPI.

Once the new starting date and duration for a Collective Agreement are determined, adjustments to the starting and application dates may be necessary to reflect the reporting periods for calculating COLA adjustments during the new term. The parties are aware of the constraints existing there.

d) **Shift Premium**

The Commission is aware that the Union has already accepted the Employer's position with respect to wage rates in the first three years of a new contract. Given that circumstance, the Commission is prepared to recommend inclusion of a shift premium provision in the terms of settlement for the new Collective Agreement. While the amount to be paid as a premium is less than the amount sought by the Union, the Commission is satisfied that the premium recommended below is sufficient to recognize the undesirable aspects of working on a night shift.

Accordingly, the Commission recommends inclusion of a new Article 24.23 in the Collective Agreement, worded as follows:

> *Article 14.23 – An employee shall be paid a shift premium of fifty five (55) cents per hour for time worked during his/her night shift hours.*

e) **Sunday Premium**

Although the Union did not withdraw its claim for a Sunday working premium, and even recognizing that some other remote site collective agreements may contain a similar benefit, the Commission does not believe that it is appropriate to grant such a benefit in its recommended terms of settlement for this Collective Agreement at this time. The Commission rejects the inclusion of a Sunday premium in the new Collective Agreement.

Bonus Plan

Two separate visions of the employee bonus plan have been presented to replace the former “Nickel Bonus”. The Employer proposes a unique-to-Labrador formula. The Union wishes to “piggyback” on the bonus plan already developed by the Union and the Employer for the Ontario operation.

Under the Employer proposal, employees have the opportunity to earn up to 25% of their regular and vacation earnings, calculated using three components: Vale corporate (global) performance inputting 25% of the payout, Canada-UK business unit performance at 25%, and of Voisey's Bay team metrics at 50%. The Employer argues that it wants a “made in Newfoundland and Labrador” bonus system.

The Union’s proposal is essentially a revision of the Ontario bonus plan settlement achieved in June 2010, which is itself a modification from the old "Nickel Bonus" which had existed in both Ontario and Labrador in the years up to 2009.

There is no way to meld both visions of a bonus programs into one forward-looking plan for the Labrador employees. The Commission must choose one of the approaches and work on developing a recommendation based on that one.

It is the Commission’s belief that the better approach is the Employer’s concept of a Bonus Plan, but modified in two important aspects. Any bonus plan must balance the

Employer's interest in motivating employees in order to ensure a good return on investment, and at the same time, employees must recognize that their efforts can affect the outcome and the amount that they achieve.

The Commission accepts the Union's position that in Component 3 "overall equipment efficiency" is more susceptible to employee effort than "quality of concentrate". It is therefore appropriate to adjust the weightings within Component 3, with the result that overall equipment efficiency has a weighting of 15% and quality of concentrate has a weighting of 10%.

The Employer's proposal has a maximum payout at 100% on all components, based on achieving 500 total points. A payout at 80% is more consistent with progressive compensation models which do not require maximum points for maximum payout. It also recognizes that, in a diverse integrated corporation such as Vale, there could be a failure in one or other of the business components in respect of which the employees of a particular site cannot have a realistic impact. Therefore, the Commission recommends a cap of 400 points for maximum payment of the employees' bonus

It must also be remembered that the old "Nickel Bonus" from the expired contract had no cap on the maximum payout. An employee could conceivably have achieved a bonus representing a very high percentage of full salary, or perhaps no bonus, all depending on the vagaries of world nickel market pricing. The Union has acknowledged that it is acceptable under the new bonus system to have a cap of 25% of an employee's regular non-overtime hours and vacation hours.

The Commission recommends the inclusion of the following Bonus Plan:

Letter of Understanding – Employee Bonus Plan

This will confirm our agreement with respect to the payment of the new Employee Bonus Plan (Bonus) to employees as set out below.

Employees are eligible to receive, in each year, a Bonus payment under Components 1, 2 and 3 totaling up to twenty five percent (25%) of the employees' Eligible Earnings.

The Employee Bonus Plan consists of three components which are applied during the Bonus period of January 1 to December 31 of each year:

Component 1: Company

The Company component represents up to 125 points of the Bonus calculation in each year and is part of the Vale S.A. Annual Incentive Plan (AIP) in effect from time to time, which is based upon the Corporate Performance Factor.

The Corporate Performance Factor is the rating announced by Vale S.A. that represents how it has performed during the Bonus period.

Component 2: Business Unit

The Business Unit component represents up to 125 points of the Bonus calculation in each year.
The metric used to measure Business Unit results is Cash Flow Return on Gross Investment (CFROGI) for the Canada/UK region. This metric is an indicator of the efficiency of the region to use assets to create value.

Component 3: Operating Team

The Operating Team component represents up to 250 points of the Bonus calculation in each year.

The metrics are common to the production and maintenance employees in the Labrador Operations given that everyone has the capacity to affect outcomes in these areas and therefore the results are interdependent. The four (4) metrics used to measure Operating

Team results include the following:

1. *Equipment Availability*
   i. *Availability scores to be based on availability of a blend of Mine and Site Services equipment.*
   ii. *Weighting: 10%*

2. *Quantity of metal in concentrate produced*
   i. *Revenue equivalent nickel units produced versus budget*
   ii. *Converting all metals produced into an equivalent amount of nickel*
   iii. *Weighting: 15%*

3. *Quality of concentrate*
   i. *Nickel in copper concentrate*

ii. *Nickel to copper ratio in high-grade concentrate*
iii. *Combined nickel concentrate nickel grade*
iv. *Nickel recovery to high-grade nickel concentrate*
v. *Copper recovery to copper concentrate*
vi. *Weighting: 10%*

4. *Overall Equipment Efficiency (OEE) - Mill*
i. OEE is an industry standard measurement of how the machines, production lines and processes are performing. OEE is calculated based on:
a. Overall availability (Run time of the equipment), expressed as a percentage
b. Efficiency (amount of ore processed in the Mill), expressed as a percentage; and
c. Yield (Tons recovered from Ore put into the Mill), expressed as a percentage.
ii. *Formula is a x b x c = OEE*
iii. *Weighting: 15%*

Payout Calculation

Points for each metric shall be calculated by multiplying the rating achieved for the metric (based on a 6 level rating scale of 0 to 5) by the weight (%) of the respective metric as noted above. The Total Points Earned is determined by summing-up the scores for each component: Company, Business Unit, and Operating Team. The Bonus payout varies according to the scores obtained between 100 and 400 points. A minimum of 100 points is required for Operating Team metrics to receive a Bonus payout. A maximum of 400 points is necessary to achieve full payout of the bonus.

The Bonus payout calculation formula is as follows:

Maximum Participation Level (25%)
x
Total Points Earned/400 (Company + Business Unit +Operating Team) to a maximum of 400)
x
Eligible Earnings

General

Eligible Earnings for the Bonus are the employee's applicable hourly rate on the last day of the Bonus period (December 31st) multiplied by the employee's regular non-overtime hours worked and his/her vacation hours during the Bonus period.

The Bonus payment will be paid annually, in the first quarter of the year following the Bonus period.

Regular full-time employees who have completed at least one full calendar month of employment in the Bonus period are eligible to participate in the Bonus for that year. Targets for each specific metric are established by the Company based on the annual plan for the respective components.

Employees who have been dismissed (except for cause), die, or retire from the Company, are eligible for a bonus payment after the end of the Bonus period on a prorated basis for the period worked during the Bonus period. Employees must have "actively" worked for a minimum period of one full month in the Bonus period.

If an employee voluntarily resigns prior to the end of the Bonus period, the full award is forfeited. If an employee works for the full Bonus period (i.e. January 1 to December 31) and voluntarily resigns prior to the payment of the Bonus, the Bonus will be paid to the employee on the scheduled payment date.

Verification Process

The Company will meet with two (2) representatives of the Union within sixty (60) days of the completion of each Bonus Period and make a report on the financial results that are relevant to the calculation of the Bonus payment for that period. For this purpose the Union will sign a confidentiality agreement that is satisfactory to the Company.

Note: This Letter of Understanding replaces the existing Letter of Understanding with respect to Bonus at page 37-38 of the prior collective agreement.

Duration of the Collective Agreement

The Employer proposes a three-year contract and openly admits that one of its major objectives in doing so is to develop a timeframe that is not synchronized for expiry with its Ontario operations. It believes that negotiating in tandem in two provinces at one time is not in the interests of industrial harmony for either location. It argues that businesses are separate and the collective agreements should not impact one another.

The Union proposes a five-year contract. It ostensibly wants a longer period to allow 'industrial peace' to be developed between the parties during that relatively longer period; but perhaps somewhat begrudgingly, it also acknowledges that one of its objectives is to attempt to "line up" with Ontario negotiations, as it apparently did in 2009 when strikes occurred in both provinces.

The Commission's recommended terms of settlement provide a Collective Agreement so substantially different than the one applicable in Ontario that synchronization of collective bargaining will be less significant in the future.

The Commission is satisfied that allowing this contract to be tied in duration with collective agreements in other Vale operations in Canada is not a beneficial collective bargaining objective. The Commission is also satisfied that some of the delays in negotiation during 2009/2010 were caused by the fact that no progress was intended in Labrador negotiations as long as Ontario negotiations were outstanding. On the other hand, the Commission does see some advantages in allowing these two parties a somewhat longer period of time within which they can and should create an opportunity to stabilize their industrial relations.

The Union's proposal for the fourth and fifth years of a new contract was designed to attract the Employer's attention by having a lower rate in the fourth and fifth years. This approach is not uncommon when a bargaining unit wishes to achieve a longer contract than the company would normally desire. The Commission believes that a longer than 3 year contract is necessary here to allow a meaningful period of adjustment following this very long strike. A shorter term runs a higher risk that it might result in the same negotiating problems arising next time. The parties need an opportunity to heal and develop a better working relationship.

Therefore, the Commission recommends that the duration of the new collective agreement should be for a period of 4 years. The duration clause should be worded as follows:

> *Article 30.01*
>
> *This Agreement shall be effective from date of ratification and remain in force to December 31, 2014.*

As a consequence, for the fourth year of the new contract, the Commission recommends that the wage rate in Schedule 'A' Wages to the new Collective Agreement should be an additional $0.15 cents per hour, effective January 1, 2014.

Return to Work Agreement

It is clear that after a lengthy strike of this nature for an operation in a remote site, all bargaining unit employees cannot be returned to work in a matter of days. Some retraining and assessment (particularly with respect to medical issues) would be appropriate to allow this business operation to get back to normal operations, working with its regular employee group.

Additionally, the whole issue of the exit process for replacement workers will need to be handled in a way that is both sensitive and safe. There may be hard feelings between replacement workers and returning bargaining unit members, who in some cases live in the same small and close knit communities. For this reason, the Commission is supportive of a detailed protocol explaining for everyone how that transitional process will take place.

There is, however, another aspect to the return to work process. Both parties anticipate that a lump sum or sums should be paid to returning burn unit members. The Employer and the Union both appear to agree that $4,000 is the appropriate amount to be paid in total to each returning worker. Where the parties disagree is on how that amount could or should he paid and under what circumstances. The Union proposes one lump sum and the Employer suggests a two-tiered payment process.

The Commission recommends the signing of a Return to Work Agreement between the parties, worded as follows:

RETURN TO WORK

The following principles apply to the return to work. A Joint Committee of up to two representatives from each of the parties shall meet to discuss any details that need to be determined. As its first item of business the parties shall agree upon an Arbitrator to resolve issues which the Committee is unable to resolve. If the parties are unable to agree upon the choice of the Arbitrator within 48 hours of the first meeting of the Committee, the Chair of the Labour Relations Board shall be requested to forthwith appoint an Arbitrator for that purpose. The Committee shall complete its work prior to the commencement of the first rotation in for work on site. Any issues which cannot be resolved shall be referred by either party to the Arbitrator to decide the issue within 12 hours of the determination of the failure to resolve the issue. The arbitrator shall render a decision to the parties by e-mail within 12 hours of receipt of the referral. The arbitrator's decision shall be final and binding on both parties.

1. *This Procedure takes precedence over the Collective Agreement during the return to work period.*
2. *The return to work period shall be no longer than 28 calendar days from the date of ratification.*
3. *Employees to give notice of intent to return to work as soon as possible; however, such notice shall not be given later than seven calendar days from the date of ratification. Employees working elsewhere shall have 21 calendar days to report for orientation and work on site.*
4. *Upon giving notice of intent to return to work, employees shall be reinstated to employment status, retroactive to date of ratification; employees working elsewhere deemed to be on unpaid leave of absence until commencing their orientation.*
5. *Company shall commence orientation and site specific training within seven days of the date of ratification.*
6. *Orientation and site specific training shall not exceed seven days, to be scheduled and paid on a 12-hour day basis.*
7. *Employees shall be required to obtain medical clearance before returning to the work site.*
8. *The Company shall reinstate the health and welfare benefit plan on the date of ratification.*
9. *There shall be no regular vacation scheduled during the return to work period. Any unused vacation from 2009 shall be paid out and any vacation overpaid shall be adjusted accordingly.*
10. *For the purposes of distribution of overtime under Article 14.21, all overtime balances accumulated prior to the strike are reset to 0.*
11. *Employees returning to work will be paid according to Article 15.02 with a 42-hour hold back in accordance with pay practices.*

12. *There shall be no break in seniority or service; however for the purposes of calculating seniority and service, the time period of the strike shall not be included.*
13. *Replacement workers:*
    a. Company will remove replacement workers from site within 14 calendar days of the date of ratification. Replacement worker does not include an employee who was a member of the bargaining unit prior to the commencement of the strike and who returned to work during the strike.
    b. No member of the bargaining unit shall be required to work with a replacement worker without the member's consent or the union's. Such consent shall not be unreasonably or arbitrarily withheld.
    c. The collective agreement shall not apply to replacement workers.
    d. Subject to any specific requirements of the Impact Benefits Agreements, no replacement worker shall be hired into the bargaining unit for a period of one year from the date of ratification.
14. *The Company may transfer or assign employees during the return to work period and the provisions of the Collective Agreement regarding the assignment of work and scheduling shall not apply.*
15. *Non-reprisal:*
    a. The Company agrees that it, its officers, supervisors and agents shall not condone or engage in any intimidation, reprisals, threats, violence or differential treatment of any kind against any employee because of the employee's participation in the strike or because of alleged misconduct during the strike.
    b. The Union agrees that it, its officers, executives and members shall not condone or engage in any intimidation, reprisals, threats, violence or differential treatment of any kind against any person hired to bargaining unit positions during the strike or any employee who returned to work during the strike.
16. *All picketing activity shall cease the date of ratification.*
17. *The Union shall remove from all Vale places of business, all non-company owned material associated with the strike (signs, picket shacks, temporary sanitary facilities, etc.) within seven calendar days of the date of ratification. Should the Union fail to remove such materials in that period, the Company may do so at the Union's expense.*
18. *The Committee established in the preamble above shall make any corrections or adjustments to the Collective Agreement prior to printing booklets to ensure that the booklet reflects the actual agreement of the parties, including any necessary renumbering and gender neutrality of language. Agreement on the booklet shall be completed within two weeks of the date of ratification. Resolution of differences shall be promptly referred to the Chair of the Industrial Inquiry Commission.*

19. *The Company will pay the costs of printing sufficient copies of the Collective Agreement booklet. The union shall be responsible for the distribution of the booklet to its members.*
20. *The Union and the Company consent to the withdrawal of the Applications to the Labour Relations Board in Board File Numbers 5263 and 5284 and agree that they will not re-file any further applications before the Board or in the Supreme Court of Newfoundland and Labrador in respect of those Board Files or make any application which make the same or similar allegations as those contained the applications noted above with respect to these negotiations.*
21. *The Company agrees to discontinue all actions, applications and all other legal proceedings of any kind related to the strike currently before the Courts, which are listed in Schedule "A" (as attached to the Company memorandum), without costs and shall instruct its Counsel to consent to the dismissal of the said actions without costs. The Company agrees that it will not re-file any further actions or applications or legal proceedings arising from or related to the strike.*

Contracting Out

There are significant differences between the two parties' positions on any additional restrictions to the Employer's fundamental ability to contract out parts of its work requirement. The Union has an equal interest in protecting from erosion the work of the bargaining unit. There are circumstances that are unique to this location and require a careful analysis of any proposed contract language. The Innu and Inuit of Labrador, through their IBAs, have secured assurances from the Employer that, in contracting out work, preference will be shown for business entities in which these aboriginal groups participate. In fact, Article 1.04 of the Collective Agreement already states:

> *The Employer is party to Impacts and Benefits Agreements ("IBA's ") with, respectively, the Nunatsiavut Government, formerly Labrador Inuit Association (hereinafter referred to as "Labrador Inuit") and the Innu Nation (hereinafter referred to as "Labrador Innu"). Edited versions of the IBA's have been disclosed to the Union. The parties agree that the versions of the IBA's, as disclosed to the Union, shall be given precedence over this Agreement*
>
> *The IBA's do not limit either the Union's authority as bargaining agent for all employees in the bargaining unit covered by this agreement, or the authority of an arbitrator appointed under this Agreement or governing legislation. The Union*

retains the right to file grievances and pursue them to arbitration in accordance with this collective agreement.

The IBA's with Labrador Inuit and Labrador Innu do not form part of this collective agreement.

The Employer shall save the Union harmless from any lawsuits, applications or claims of any kind arising from the Employer's application or interpretation of the IBA's provided that the Union does not take any position that is contrary to the IBA's in any lawsuits, applications or claims of any kind.

The Commission believes that a more proactive approach is necessary both to manage this challenges within this Collective Agreement and unique workplace. Accordingly, the Commission recommends new provisions for the Collective Agreement, worded as follows:

Article 25.01

The Employer's policy is to maintain and ensure, through sound management practices, the highest profitability of its departmental operations, where possible by giving first priority to its own employees with respect to the regular work.

Thus, the Employer shall give preference to its own employees rather than subcontractors and shall avoid any lay-offs if its employees who have the necessary skills and qualifications to perform the regular work.

It is understood that the Employer may contract out where it does not have the necessary equipment or qualified bargaining unit members to carry out the work. The contracting out with respect to such specific jobs or work shall not result in any lay-offs among employees presently employed.

Article 25.02

Each month a representative of the union may request a meeting with a representative of the Company to discuss the status of contracting and the number of contractors being used by the Company. Discussions may include those issues of interest to either the Company or the union relating to the use of contractors such as communication and information process, efficiency, work opportunity, work planning, warranty services and cost effectiveness. Such discussions shall respect the provisions of Article 1.04 with respect to the Impact Benefits Agreements and Article 25.01 above.

The Commission's recommendation on Article 25.02 above encompasses some of the concepts in the seemingly agreed Articles 25.02 and 25.03 in the parties' proposals, and so replaces those two articles.

Recommendations on Union Leave

The mine in Labrador is a remote and isolated workplace. While the number of employees working on any shift may be relatively low, this is not a workplace where there is a long history of collective bargaining or collective agreement administration. The workforce is significantly made up workers who are employed in a unionized mining environment for the first time in their working lives.

The Union argues that having a full-time and fully paid President available on-site to deal with issues as they arise would be beneficial to both the employees and to the Employer. But the President works only for twelve hours per day and for two weeks of a month, leaving the site without that support for the rest of the time.

The Employer takes a position that payment of a Union President's wages would not be appropriate and, in fact, might offend the provisions of the Labour Relations Act of Newfoundland and Labrador by allowing the Employer to "participate" in a union. This is not a cogent or compelling argument.

The Commission is satisfied that having the Employer assist in the payment of wages for a dedicated union position is not offensive to the legislation and is by no means a controversial outcome. But the Union should also contribute to that cost. Having a dedicated official with sufficient time to develop a level of skill and agility necessary to support a mature collective bargaining relationship is a beneficial outcome for both parties.

Therefore, the Commission recommends that the following provision be included as a new Article 12.34 of the Collective Agreement:

A designated union official on site shall be released from work for four consecutive hours each day without loss of regular earnings or benefits for the purpose of attending to the administration of this collective agreement and similar union business. The Union shall advise the Company on a quarterly basis who the designated union officials will be and shall do so at least one rotation in advance of the commencement of the designation. An official shall be designated for the official's entire rotation, except where a shorter period of designation is required to maintain coverage.

Northern/Travel Allowance - Letter of Understanding

This one additional proposal as raised by the Union requires some comment from the Commission.

The Union seeks an assurance that the existing management practice of paying a travel allowance and a northern allowance to all employees be maintained and be reflected by a reference to it in the new Collective Agreement. It claims that the failure to include some reference to these benefits in the prior agreement was simply a lack of good housekeeping, and it wishes to have this "administrative oversight" corrected.

The Employer maintains that these benefits are a part of the Company's overall employee benefits package as set out in the Employee Handbook. These benefits are, simply put, the current Company policy. There is no indication that this situation is to change or that there have been problems in administering this benefit in the past.

The focus of the parties' attention should be on the divisive issues that currently separate them and upon which they have real conflict. Raising the spectre of a problem with a non-issue is not productive, especially in the troubled relationship that now exists.

The Commission makes no recommendation with respect to this proposal from the Union. It should not be allowed to become a stumbling block to a new collective agreement, from either party's perspective.

Other Outstanding Issues

The Commission considers that all other negotiating issues, as raised by either party at any time during negotiations, are considered to have been withdrawn.

Conclusion

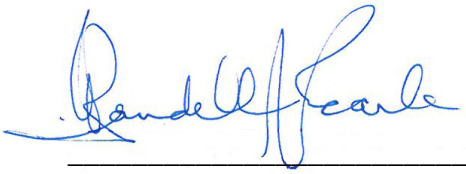
The Commission has used its best effort to assist the parties in reaching a new Collective Agreement. Having not achieved that objective, the Commission believes that its recommended terms of settlement should be considered by the parties as the basis of a new agreement. The Commissioners encourage the parties to put aside past differences and to focus positively on a new agreement that benefits all parties. The employees of the Employer, who are all represented by the Union and who have suffered the effects of a very long strike, now deserve to have the focus turn to their needs.

In the next phase of this Inquiry, the Commission will examine further the context of this industrial dispute on the working environment in Voisey's Bay and its impact on the broader community and the Province.

Respectfully submitted this 22nd day of December, 2010.

John F. Roil, QC, Commission Chair

Brian R. Gatien, Commissioner



V. Randell J. Earle, QC, Commissioner

Schedule "A"

Vale Newfoundland and Labrador Limited Bargaining Committee:

Denis Mahoney, Legal Counsel and Chief Negotiator
Jackie Lamothe, Manager, Human Resources
Bill Legge, Manager Camp and Power Services
Larry Pittman, Senior Human Resources Business Partner
Tony Woodfine, Superintendent Mine Planning and Geology

USW Local 9508 Bargaining Committee:

Boyd Bussey, Staff Representative and Chief Negotiator
Darren Cove, President USW Local 9508
Morgan Michelin, Vice-President USW Local 9508
Curtis Saunders, Unit Chair Vale Unit
Doreen Squires, Unit Co-Chair Vale Unit
Byron Rumbolt, Bargaining Committee Member

Schedule "B "

Nunatsiavut Government

Participants at meeting on November 25, 2010-12-20

Darryl Shiwak **–** First Minister and Minister of Lands and Natural Resources

Carl McLean – Deputy Minister

Keith Russell – Minister of Health and Social Development

Theresa Hollett – Impact and Benefit Agreement Coordinator

(Plus three other observers/beneficiaries)

Innu Nation

Participants at meeting on November 26, 2010

Maggie Wente - Legal Counsel

Joseph Riche - Grand Chief, Innu Nation

Jerome Jack – Assistant Grand Chief, Innu Nation

Bart Jack – Consultant

David Mik – Consultant

Paul Jack – Community Member

Peter Penashue – Community Member

Ian Rich - Community Member (also member of USW bargaining unit)

Alex Nuna – Community Member (also member of USW bargaining unit)