



## INFORMATION UPDATE #38

October 26, 2011

### **Workers Start Returning to Work**

U.S. Steel has a policy that before workers can return to work after layoffs, strikes or lockouts they must undergo a week of health and safety training.

Beginning October 18, 2011, 210 workers started returning to work for 40 hours of health and safety training. They are assigned to various jobs in the coke ovens, cold mill and Z-line departments. The second group of about 205 workers began their health and safety training on October 24 with the final group beginning October 31.

Local 1005 would like to bring to your attention that each group of returning workers should have 250 workers. It is therefore clear that the rosters of returning workers are not complete.

We are concerned that the phony 11-month lock-out created very difficult circumstances for some workers. We know of some who were forced to change their phone numbers or addresses during the phony lockout so as to avert harassment from creditors. As a result of this or

other circumstances, neither the company nor the union have up-to-date contact information for these workers.

According to company regulations, it phones the workers several times and if they do not answer, it sends a letter. After five days if it gets no response, it claims it is entitled to terminate the workers. We do not want the company to use the difficulties facing workers as an excuse to terminate them.

While we try to work out a reasonable and just protocol to deal with this matter, Local 1005 appeals to all workers, pensioners, family members and members of the community to look out for one another and make sure all workers are informed about the back to work requirements of U.S. Steel. We are calling on all members and pensioners and community members to stand up for the right of these workers to their jobs and to please help by informing whoever you can to make sure their contact information is up to date with the company as well as the union.

### **Information on the Status of the Pension Fund**

When Stelco exited bankruptcy protection under the *Company Creditor's Arrangement Act* (CCAA) on March 31, 2006, the new Stelco was party to a new pension agreement with the provincial government. While the aim of pension legislation is to guarantee that plans are properly funded, under the new Stelco agreement, the province introduced an ambiguity. As part of the plan of arrangement to exit CCAA, it offered to allow the new Stelco to keep \$100 million of the \$150 million loan it gave it at one per cent interest if the pension fund was made solvent by the due date. We are told that this was an incentive to the company to make the plans solvent.

Does this not suggest that the company has a choice, whether to make the pension plans solvent or not?

We asked President of Local 1005 USW Rolf Gerstenberger to explain to us how matters stand.

Rolf said that there is no doubt in anybody's mind that the agreement between the provincial government and the new Stelco was designed to ensure that the four Stelco pension plans would be solvent by December 31, 2015. Rodney Mott, the CEO of the new Stelco even reported



this to his shareholders in June 2007 saying that because of the return on the investments of the pension plan for 2006-07, he expected that the plans would be solvent before December 31, 2015.

"We should recall that at that time, the Ontario government was rescinding the fraudulent 5.1 election introduced by the Bob Rae government in 1992, according to which certain companies were 'too big to fail.' In lieu of making payments into the pension funds, they could elect to make a \$5 million payment to the provincial government's Pension Benefit Guarantee Fund. Depending on whether there is enough money in it, the fund ensures that the first \$1000 of a workers pension is paid out, and any amount over \$1000 is paid out according to the transfer ratio of the pension fund in the event the companies responsible for the pension default. This was such an irresponsible arrangement to let the companies off scot-free that the government was forced to rescind it and end the companies' pension holiday. Governments then said that funds with unfunded liabilities, i.e., big solvency deficiencies, should be properly funded within five years, .../ 2

according to Ontario pension law. The Ontario government plans on extending this to ten years,” said Rolf. (The federal government has already extended it to ten years, but provincially it hasn’t happened yet.)

“So yes, the government’s offer of an incentive to forgive \$100 million of an \$150 million low interest loan raises a serious doubt about the government’s responsibility. If it is the law that companies must fund the pension fund adequately, why then did the government offer an ‘incentive?’ Local 1005 intervened at the time the government was making deals with U.S. Steel on the grounds that now U.S. Steel ‘was too big to fail’ and made it very clear it would hold the government responsible for the pension fund. All of this is on the record,” Rolf explained.

“U.S. Steel, which inherited this agreement between the new Stelco and the province of Ontario, did its due diligence and it and its spokespersons are perfectly clear they are responsible to fully fund the pension. Gretchen Haggerty, the CFO of U.S. Steel stated on October 5, 2007 in the *Hamilton Spectator* that ‘of course, all laws that presently apply to Stelco will continue to apply, as will all other provisions of the Stelco pension agreement, including those provisions requiring pension contributions to **fully fund Stelco’s pension plans by 2015.**” (*emphasis added*)

“Nonetheless, since then, despite being legally responsible for the fulfilment of the legal requirements, U.S. Steel’s spokespersons have subsequently insisted that it is responsible for making specific payments mentioned in the agreement calculated on the basis of the actuarial reports at that time. They have repeatedly refused to make a clear statement about U.S. Steel’s responsibility to make the fund solvent by December 31, 2015. They have gone so far as to make snide remarks that the 9,000 pensioners U.S. Steel inherited from the former Stelco are not its responsibility and that they are a cost it cannot sustain, etc. Even though one of their spokespersons was forced to recant, claiming his remarks were not intended to be interpreted in such a manner, the company has also made self-serving statements that the agreement with the province is ambiguous. Under pressure from Local 1005, its representative finally said that it will implement its agreement with the province and it does not have to pledge more than that.”

So what is the company up to?

Rolf explained that U.S. Steel signed an agreement on August 26, 2007 when it agreed to purchase Stelco. Schedule “B” of this agreement entitled “Guarantee” states that U.S. Steel “has agreed to guarantee payment and performance of certain obligations of Stelco under the Pension Agreement.” “USS hereby unconditionally and irrevocably guarantees the full and prompt payment of the obligations.” The “obligations” are defined to mean “all obligations of performance and payment undertaken by Stelco pursuant to Sections 3.2, 3.4 and 3.5 and Article 7 of the Pension Agreement.”

Rolf added that, “Section 3.2 outlines the level of funding obligations, stipulating that based on actuarial reports at that time, \$70 million in yearly contributions must be made from January 1, 2011 to December 31, 2015 for the four pension plans. Of course, due to losses to the pension plans subsequently incurred because of the manipulation of the stock market, these payments fall far short of what is required to fund the plans. The workers must block any attempt on the part of U.S. Steel or the Government of Ontario to claim that the intent to fully fund the plan is ambiguous because of the obligation to make the \$70 million payments. Any attempt to declare that the Stelco pensioners have to pay for the manipulation of the stock market by thieves and corrupt individuals being financed by the Obama administration and even the Harper Government in the case of GM, must also not be permitted by the workers.”

Other “obligations” are outlined in Section 3.4 which deals with funding any benefit improvements in accordance with the *Pension Benefits Act* regulatory regime (meaning that any benefit improvements must be funded on a solvency basis.) Section 3.5 deals with “Wind-up Benefits which shall be funded pursuant to Article 7 of this Pension Agreement and the Stelco Regulation.”

*Information Update* will continue this conversation with Rolf to make sure all workers and pensioners are clear about the challenges which lie ahead, the necessity to keep themselves informed about what U.S. Steel is up to and for Local 1005 USW to stand as one to uphold the dignity of labour so as to make sure the workers can successfully defend their rights.

## **U.S. Steel Seeks Another Delay in Its Case vs. Her Majesty the Queen**

The prosecution of U.S. Steel for violating its agreement under the *Investment Canada Act* has been dragging on as a result of U.S. Steel’s endless stalling. Local 1005 has been informed by the lawyers for the National Office of USW that the affidavits for the case have at last been submitted along with all of the supporting documentation. The discovery process – where witnesses are cross-examined – will take place over the next few

months with the first hearing of the case to be held at the beginning of next year.

Local 1005 has also been informed that U.S. Steel has now asked for leave to appeal to the Supreme Court of Canada claiming that under the *Bill of Rights*, the *Investment Canada Act* proceedings deny U.S. Steel its right to a fair trial. The Supreme Court has yet to hear the case as to whether to grant leave to appeal.

**To contact USW Local 1005: Call 905-547-1417 or e-mail [info@uswa1005.ca](mailto:info@uswa1005.ca).  
Visit the website: [www.uswa1005.ca](http://www.uswa1005.ca)**