

THE STELCO SAGA: RESTRUCTURING AND RESISTANCE

THE STELCO SAGA:
RESTRUCTURING AND RESISTANCE IN THE NEO-LIBERAL ERA

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Abstract

Global market conditions have led to large corporate bankruptcies in recent years, particularly in the steel sector. Bankruptcy restructuring under the U.S. Chapter 11 or Canadian Companies' Creditors Arrangement Act [CCAA] places employee pensions at risk. In response to concessionary restructuring, the U.S. arm of the United Steelworkers [USW] intervened in several steel sector bankruptcies, developing restructuring solutions that led to partial or near-complete restoration of pensions and collective agreements. In Canada, during Stelco's troubled bankruptcy process between 2004 and 2006, Steelworker locals employed this interventionist method to prevent pension and collective agreement concessions. Scholars, such as Frost and Bacon, implicitly provide a rationale for union intervention into bankruptcy restructuring. They argue that union intervention in general corporate restructuring allows workers a greater voice in the process, leads to optimal results, and prevents union irrelevance. Frost outlines several criteria for maximizing union success during restructuring: the strength of union intra-organizational and external ties; the responsiveness of the union leadership towards the interests of the membership; and the ability of the union to access information and participate at all levels of the process. Many of Frost's recommendations were critical to the success of the USW locals at Stelco in achieving their bargaining and restructuring goals. Unlike in the more cooperative restructuring examples studied by Frost and Bacon, however, Stelco's Canadian locals employed a very assertive stance, since management exhibited initial hostility to union intervention. The union also found it necessary to enlist the help of government. While union intervention in bankruptcies remains a controversial process, it is one possible solution for troubled manufacturing unions, represents an overall USW push towards greater involvement in management, and may even lead towards an exit for labour from the discarded "post-war compromise."

Acknowledgements

I dedicate this thesis to all those who stood up for Stelco and the collective agreement, particularly the retired and active workers who participated in protests, court meetings, and letter writing campaigns, and the union executives who guided them. I extend this salute to workers all over the world who fight for pensions and benefits in this age of reaction. I would like to thank my thesis advisor, Professor David Goutor, and my readers, Professors Don Wells and Charlotte Yates, for their role in bringing this thesis to fruition. The graduate faculty, including Wayne Lewchuk and Greg McElligott, provided an informative series of courses that progressed smoothly, easing the transition to the Masters program. I appreciate the role of the latter two members in reviewing and shaping the early proposals of my thesis. Recognition is also due to the Labour Studies administrative assistants, Delia Hutchinson and Sharon Molnar, without whose deadline reminders and facilitation of paperwork, none of this would have been possible. Finally, I would like to thank my father, Ken Stone, for reviewing certain drafts after my eyes glazed over, and for providing some of the contacts used in the research. The support I received from my family sustained me throughout the process.

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Introduction

On January 29, 2004, iconic steel producer Stelco publicly entered bankruptcy protection under the Companies' Creditors Arrangement Act [CCAA]. A Canadian equivalent to U.S. "Chapter 11" bankruptcy protection, the CCAA is a "legislative framework" that outlines how a company can reorganize while under court protection from creditors, including unions.¹

The modern labour movement first witnessed the CCAA on a grand scale during Air Canada's bankruptcy negotiations in 2003. Using bankruptcy as a justification, and following painful negotiations with its unions, Air Canada reached a "cost-cutting deal" that terminated hundreds of jobs, and reduced workers' pay. The courts continued to grant Air Canada extensions for its bankruptcy protection, and in 2004, management extracted further concessions through a second round of bargaining, despite the agreement reached with its unions a year prior. Management extracted a further \$200 million dollars from staff, reaching a total one billion dollars in labour restructuring cuts.²

Stelco's January 29 declaration alarmed its United Steelworker [USW] locals because they had witnessed brothers and sisters at Algoma, Ivaco, and Slater Steel face attempts at concession bargaining during prior company bankruptcy protection negotiations. *Labor Notes* characterizes the recent upsurge in steel and airline bankruptcy restructuring as an overall employer "strategy for gutting union contracts [with the goal] to impose layoffs and givebacks even deeper than those workers made in the concessions of the early 1980s."

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Disconcertingly, Stelco cited “high cash funding cost for pension plans and other employee plans” as a key reason for its resort to CCAA, signaling employee pensions and benefits as foremost on the chopping block.³

Yet 23 months later, in a completely unprecedented turn, the union had pushed Stelco and its creditors into reaching a Steelworker-developed collective agreement and restructuring plan that gave no concessions. Brascan-based Tricap Management agreed to fund the \$1.3 billion dollar pension deficit, starting with a \$400 million dollar down-payment, as well as productivity bonuses.⁴ Steelworkers traveled a rocky road from company catastrophe to the completion of their collective agreement, leading the way forward, and learning hard-fought lessons for the labour movement.

The USW owed the success of their new collective agreement to an interventionist strategy. This introduction describes how, in response to the increased threat to pensions and collective agreements posed by corporate bankruptcies, resulting from the dynamic inherent in the ‘new economy,’ unions such as the Steelworkers have become involved in corporate bankruptcy restructuring. This new approach may broadly compare, at least in spirit, to elements of prior USW participation in efficiency-based work restructuring, designed to protect steel manufacturers and worker gains alike. Theorists such as Ann Frost and Nicolas Bacon have explored the benefits and necessity of union involvement during regular corporate restructuring procedures. In particular, they suggest that union involvement allows a union greater ability to shape

restructuring processes, maximizing the positive impact of the restructuring, and preventing union irrelevance. Arguably, elements of this logic apply to bankruptcies as well.

The union's thorough engagement in Stelco's bankruptcy restructuring was unprecedented, and the Steelworkers took the initiative unilaterally to open negotiations with corporate bidders. The USW solicitation of buyers for Stelco did not occur automatically, however, and was the result of a long and drawn out process. Chapters One and Two explain how, following Stelco's entry into CCAA, the locals had initially adopted an obstructionist response to Stelco's bankruptcy protection, attempting to overturn the legal CCAA ruling. The union argued that Stelco had exaggerated the degree of its insolvency in order to pressure Steelworkers into negotiating changes to the terms of their pensions and benefits. In court, the USW argued that Stelco had entered bankruptcy protection based on future projected losses at a time when steel market projections indicated a rise in the price of steel. The bankruptcy judge overruled the union's challenge. The USW nonetheless refused to enter into multi-party negotiations in which the pension plan could have been restructured, and instead opted to engage Stelco in strict union-company collective bargaining discussions under the Labour Relations Act.

After an upturn in the steel market led to a significant rise in Stelco's revenues, Stelco's high income weakened its case for concessions. The company instead turned to a capital raising strategy, and solicited buyers to patch the hole

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in its finances. Steelworkers found the Stelco-endorsed Deutsche Bank bid unsatisfactory, as, in their view, it lacked sufficient pension security. As a result, Stelco's union locals decided to intervene decisively in the corporate bankruptcy process. After a lengthy period of searching for buyers who could fulfill union requirements to preserve the company and pension plan, the USW eventually chose Tricap Management, a subsidiary of Brascan, as a satisfactory bidder. By engaging in a multifaceted strategy of public relations and union mobilization, on the one hand, and using its collective bargaining rights on the other, the union was able to repudiate 'unsatisfactory' bids for Stelco's restructuring, while at the same time enlisting government support for its Tricap bid. The engagement of Steelworkers in a 'three front' legal, collective bargaining, and restructuring 'battle' eventually compelled Stelco, and finally, the bondholders, into accepting the union's restructuring plan. Successful Steelworker involvement in Stelco's restructuring rested upon several factors described by Frost, such as the locals' ability to mobilize all levels of the union. The locals further benefited from effective networking, drawing upon expertise and support outside the locals. Since Stelco was at first unwilling to allow the union to participate, however, the USW required a more assertive approach towards the CCAA restructuring than Frost's model allowed.

The third chapter discusses the degree to which Canadian unions can learn from the USW's CCAA experience, and also the potential pitfalls of an interventionist strategy. Overall, interventionism is one viable response to the

wave of bankruptcies faced by the manufacturing sector. Unions expecting to employ an interventionist approach should expect conflict before they experience positive results. The Steelworkers endured nearly two years of intense courtroom and backroom negotiations in order to rescue their collective agreements. However, they achieved the protection of their collective agreements in an era of union decline, and the context of increasing attacks from capital, known more broadly as “neo-liberal” globalization.

Stelco’s CCAA

From Air Canada to Stelco, pension plan deficiencies since 2000 had pushed a number of industry giants into bankruptcy restructuring. *Blake’s Bulletin on Restructuring and Insolvency* remarked, “It is likely that this trend will continue.” Following Stelco’s entry into CCAA, a growing corporate and media consensus argued that all Stelco’s major stakeholders, including workers, should meet one another and collectively take a “haircut.” *The Hamilton Spectator* reported on Feb. 2 that Steelworkers benefited from a costly and “generous” pension plan of about \$30,000 a year, after working for thirty years in a steel mill. Some remedies for Stelco’s unfunded pension liability called for a forty percent reduction in retiree income. *American Metal Market* noted the Steelworkers’ defense of their collective agreement but suggested that, given Stelco’s apparently extraordinary troubles, the “union might have to give in.”⁵

Stelco’s concessionary demands closely reflected labour-relations changes in U.S. manufacturing. Whereas U.S. producers had previously sought to lock

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unions into long-term pattern agreements in an effort to limit shop-floor militancy and wage increases, the post-1990s crisis in the auto, airline, and steel sectors prompted manufacturers to view these long-term agreements as limitations. The business press labeled plants with deep-rooted unions as “ailing legacy industries,” under the assumption that decades of wage and pension gains necessitated cutbacks. Bankruptcy restructuring offered employers the chance to completely shed pension ‘obligations.’ Worse yet, industrial workers increasingly discovered their fate in the hands of “private equity firms, hedge funds, and private multi-billion dollar investors,” seeking to purchase bankrupt companies only to sell them off quickly, without improving their value, in “strip-and-flip” operations. Kutalik and Eyck explain that turnaround restructuring “has also frequently led to large-scale layoffs, wage/benefit givebacks, the dumping of pension and retiree health care benefits, and the weakening of union strength in affected industries...often aided by federal bankruptcy courts.”⁶

The company’s entry into CCAA affected workers across Canada. In 2004, Stelco was a publicly-traded corporation conducting operations in Hamilton through Hilton Works, Stelco-McMaster, and Stelwire, as well as Nanticoke (Lake Erie Works), Edmonton (Altasteel), Contrecoeur, Quebec (Norambar), and Lachine, Quebec (Stelfil). Following Stelco’s CCAA announcement, more than eight thousand workers, and thirteen-thousand retirees, faced new uncertainty. One 51-year old Steelworker asked, “Will there be layoffs with restructuring? I don't know. What will happen to my pension, my benefits, my wages? My future

is in the hands of a court-appointed administrator.” While Stelco’s bankruptcy presented an immediate problem for its employees, it reflected a crisis that is global in nature.⁷

The Global Context

The current crisis in steel traces its roots to capital’s ending of the “post-war compromise.” The “post-war compromise” is an abstract term used by academics to refer to implicit agreements in the U.S. and Canada reached unevenly through trial-and-error by labour, business, and government leaders following the end of the Second World War. Conservative, or ‘pragmatic’ ‘Cold War’ union leaders agreed to maintain labour stability, purge unions of suspected communists, and cede decisions about company policy to management, and employers in return agreed to recognize unions, and allow upward wage bargaining and a higher standard of living for predominantly-male, unionized industrial workers. The term is an abstraction since in reality, many employers and governments attacked union recognition and bargaining efforts, and many frustrated unionists engaged in illegal wildcat strikes. The decision among employers and politicians implicitly to end this ‘compromise’ occurred largely as a response to the “stagflation,” declining profits, and oil crisis of the 1970s. Conservative politicians initiated a radical “neo-liberal” revolution that aimed to dismantle the welfare state under the guise of “free market” limitations on state economic intervention. The decline of state-socialism in China and the USSR further facilitated the creation of a global “new economy,” and accelerated

economic rivalry between Western industrialized countries. Albo described the mechanism underlying this new international system of vicious competition, wherein,

...each country reduces domestic demand and adopts an export-oriented strategy of dumping its surplus production, for which there are fewer customers in its national economy given the decrease in workers' living standards and productivity gains all going to the capitalists, in the world market. This has created a global demand crisis and the growth of surplus capacity across the business cycle.⁸

Corporate buyers and manufacturers shift production to low-waged countries, weakening labour's bargaining power. First-world industrial workers are caught in a global "race to the bottom," plunging them into a downward spiral aimed at the lowest possible wages. Coates, Panitch, Gindin, and others use the metaphor of a "treadmill," where competing workers are running faster and faster in order to remain in the same spot. If workers are able to negotiate terms at all, they do so increasingly through "concession bargaining." Instead of the old redistributive and competitive bargaining characteristic of the welfare state, employers and governments now expect workers to give up wages, benefits, and increase efficiency, so that a company's viability and workforce is sustained.⁹

North America's Steel Crisis and the USW Response

Leo Gerard, USW International President, knows only too well the problems inherent in global competitiveness. Union research indicates that since the 1970s, a number of countries, such as Bulgaria, developed steel capacity in excess of their domestic capacity to absorb it. Domestic steel industries offered developing countries a chance to create a national economy, and increase

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international prestige. As one U.S. official pointed out, “If a leader had a steel mill and an airplane, he had a real country.” Developing manufacturers also produced excess steel as a direct means of attracting dollar denominated currencies from Canada. They produced approximately thirty to forty percent greater than domestic demand, targeting certain Canadian product lines.¹⁰

Following the Asian economic crisis of the late 1990s, North American steel producers experienced the fallout from a rolling series of industrial meltdowns from Asia to South America. In 2000, the economic crisis hit Russia. In a manner consistent with Albo’s observations, many former state industries, now ‘freed’ to participate in the global market, sought to relieve their burdens by dumping steel on the U.S. and Canadian markets. The glut of foreign steel led to a wave of North American steel bankruptcies, wiping out a legacy of established mills. As late as 2003, the Canadian government investigated charges of steel dumping from Bulgaria, the Czech Republic and Romania.¹¹

As an international union, the USW co-ordinated a campaign to pressure the U.S. government to enact protective tariffs, while excluding Canada. They were unable, however, to persuade the Canadian government to adopt a similar policy, and both Ivaco and Algoma in Canada experienced bankruptcy. The tariffs negotiated by the USW offered domestic industries some protection, but were alone insufficient to prevent the collapse of nearly a third of U.S. steelmaking capacity.¹²

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International steel giants purchased some of the bankrupt U.S. companies, and Chapter 11 bankruptcy law did not require them to honour the pensions and benefits that unions negotiated with the prior management. Initially, then, successful bidders secured enormous concessions as an automatic result of purchasing a defunct company. Only through a massive campaign involving government lobbying, sit-ins, and even a USW tent city was the union able to force the new employers to restore most of the benefits entailed in prior collective agreements.¹³

Wysocki writes in *AP Financial* that the near-death of their plants and basic agreements also galvanized the Steelworkers into further developing a new labour approach of taking part in corporate bankruptcy restructurings. “At a time when organized labor at times seems a feeble anachronism,” he explains, “the USW is exercising plenty of power, by playing for keeps with the capitalists. Its strategy, rather than simply to pound the table for higher pay or threaten strikes, is to block takeovers, take sides in bidding wars and fight for board seats.”¹⁴

When corporate restructuring occurs, the union ‘plays the game’ by becoming involved as a key player and stakeholder, or a ‘creditor’ in the case of bankruptcies. It negotiates with the finance industry for support, when appropriate. When plummeting steelmaker LTV lost \$1 million dollars per day during the U.S. steel meltdown, for example, the USW stepped in to negotiate a buyer to save the desperate company. In cases such as LTV’s, and also Bethlehem

steel, the union typically accepted the loss of union and management jobs at the downsized plants, while preserving the crucial wage and pension packages.¹⁵

By entering into the bankruptcy restructuring process, the union increased its participation in company affairs, while simultaneously attempting to revive the fortunes of the company. The strategy draws precedent from earlier USW efforts described by Applebaum, in which the union entered into “strategic partnership” with management to gain a degree of control over increasingly-common workplace restructuring efforts. Indeed, the USW is no stranger to co-operative efforts geared towards increasing union participation and company viability. Like many large unions, it adopted QWL [Quality-of-Work-Life] measures in the 1980s. Labour-management participation teams attempted to shore up the ailing performance of steel manufacturers. Involvement in QWL represented a significant step for the Steelworkers because the union became involved in attempts to increase employer competitiveness as a means of securing wage and employment levels. Some scholars, such as Moody, criticized QWL on the basis that it encouraged unionized workers to adopt management values. The QWL programs eventually became extinct largely because the QWL teams existed outside real decision-making channels.¹⁶

Later in 1992, Appelbaum notes, “the USWA adopted its New Directions bargaining program, seeking ‘an ongoing voice for itself and its members in managerial decisions affecting shop-floor, plant, and corporate performance.’” The program emphasized job security, union participation at all levels, and corporate

competitiveness. It was a “strategic alliance” and a response to broader industry trends. Many of these agreements, negotiated with companies such as LTV and Bethlehem, carried into the 21st century. The agreements included mechanisms for union involvement in corporate planning, new technology and work practices, and general company organization and scheduling.¹⁷

At LTV, the USW was able to enforce provisions it had negotiated under “New Directions” for ensuring company neutrality during union drives. The union protested the company’s interference in a particular union drive in an LTV subsidiary, and threatened to withdraw from the “New Directions” program. Appelbaum suggests that because LTV eventually acquiesced to the union’s demand for neutrality, the participation program must have brought economic benefits for the company. Indeed, at least one business study from 1993 claimed that “at LTV Steel in Pennsylvania...crews that have been involved in work redesign have demonstrated excellent bottom-line results--more value per hour worked.” The union, for its part, benefited from the leverage that participation brought with it, as well as greater legitimacy for worker involvement. However, Appelbaum admits that the program may not have lived up to the expectations of either union or management.¹⁸

The USW’s more recent involvement in Chapter 11 restructuring departs from the earlier co-operative programs, because the union plays a much more independent role during corporate bankruptcy. It is true that, as in the previous co-operative programs, the heart of the union’s Chapter 11 restructuring strategy

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remains the desire to sustain plants and jobs, despite a wild climate of mergers and bankruptcies. Union involvement mitigates the damage inherent in bankruptcy restructuring. “Companies like LTV still had valuable operations [following the recent crisis],” asserts Peter Leibovitch, District 6 political Action Co-Coordinator. “If we didn’t intervene in those bankrupt steel producers, bondholders could have shut them down and reopened them with no union, and no benefits.”¹⁹

Unlike QWL or “New Directions,” however, the union’s involvement in bankruptcy is self-motivated, and not a response to bi-lateral co-operative initiatives from management. With management potentially fractured or non-existent following insolvency, the impetus falls upon the union to restore the company by way of negotiation with external buyers. The new USW bankruptcy restructuring strategy strongly influenced the Canadian locals’ response to CCAA.

The District 6 Intervention

In entering CCAA on a pension deficiency, Stelco raised the ire of several Steelworker locals representing a strong tradition of labour activism. Local 1005, encompassing the greatest number of Stelco’s pensioners, is the largest Steelworker local in Canada. It is the product of a famed 1946 recognition strike that involved considerable Steelworker and community mobilization, mock aerial dogfights, and a worker air, land, and sea blockade of Stelco's Hamilton operation. Local 1005 militantly defends its post-war gains. Notably, it led major strikes in 1981 and 1990, both lasting over one-hundred days. Its contracts

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regularly set precedents for the rest of the industry, but its relations with plant management remain notoriously poor. Watson indicates that, “union officials and management communicate largely via propaganda,” such as leaflets. To a limited degree, this manner of communication extended into the CCAA process.²⁰

When Stelco opened a new Nanticoke/Lake Erie operation in 1980, Local 1005 also played a significant role in organizing Nanticoke Local 8782. Stelco had hoped to create a less militant workforce from Nanticoke's rural population. It even voluntarily recognized Local 8782. Yet while Frost suggests that labour relations are more “co-operative” between Local 8782 and Nanticoke management, the CCAA struggle also demonstrated that that local defended its gains as strongly as its sister local in Hamilton. The regional, national, and international USW leadership stood behind Local 8782, led by Bill Ferguson, together with four other Stelco USW locals who shared a common interest in negotiating the terms of Stelco's CCAA restructuring. What became known, within media and union publications, as the “Five Locals” thus included two Ontario locals: Local 8782 at Nanticoke and Local 5328 (Stelwire-Parkdale) in Hamilton; two Quebec locals, Locals 3258 and 6951; and Local 5220 in Alberta. The Stelwire-Parkdale local was led by President Scott Duvall, the two Quebec locals were led by Guy Gaudette and Serge Gailloux, respectively, and the Edmonton local was led by Paul Perrault.²¹

Blake's Bankruptcy and Insolvency notes that union involvement in bankruptcy restructuring has grown dramatically in recent years.²² The USW

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prevented Stelco's attempt at concessionary restructuring because the union combined old, proven tactics of assertive bargaining and community mobilization associated with manufacturing unions, with the new expedient of union involvement in restructuring. The District 6 Locals conducted a three-front battle. Their legal battle protected their right to bargain collectively, their restructuring battle allowed the union to develop a positive solution for Stelco's bankruptcy, and the collective bargaining struggle mobilized resources both inside and outside the union, and pressured Stelco to accept the USW restructuring plan.

Steelworkers found engagement with government as vital to the restructuring process. The USW convinced a skeptical court that the union intended not only to vocally protest possible cuts to pensions, but also play a serious role in a major corporate bankruptcy restructuring. In its publicity and mobilization, the union accentuated its commonalities with the government. Namely, a real solution to Stelco's pension deficit offered to prevent financial disaster for both pensioners and taxpayers. The government initially envisioned the union only in its legal capacity as an unsecured creditor, but eventually recognized the USW as an integral and indispensable component of Stelco's restructuring process.

Union Approaches Towards Restructuring

Findings from Frost's 2001 study of three North American USW locals suggested that the manner in which unions responded to corporate restructuring markedly affected the outcome of the process. She developed a model reflecting

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the Steelworker actions in which unions adopt one of four responses: interventionist, pragmatist, apathetic, and obstructionist. Significantly, in her “interventionist” model, unions engage their membership at all levels to play an active and direct role throughout the entire restructuring process, and towards the end goal of a solution acceptable to all stakeholders. Conversely, unions that adopt the pragmatist response to restructuring “[rely] on management to make workplace-related decisions, and then [negotiate] with management over the implications of those changes.” While a common union strategy, the “pragmatic” response leads to “less than optimal outcomes” because the company makes decisions without full information and input from the union, the union as a body does not become involved in decision-making, and management disproportionately decides outcomes. Frost’s “apathetic” unions choose not to respond in any significant way to corporate restructuring. Finally, “obstructionist” unions seek to block change entirely, in order to protect existing gains. During the showdown that follows, the company either relents, or forces the union to strike. Obstructionism, she argues, is viable if the union possesses sufficient power. Of the four models, Frost suggests that the interventionist approach produces the best results for the union, because its involvement in restructuring allows it to maximize results for its members.²³

Local 8782, the lead actor in District 6’s CCAA restructuring, was for Frost a key “interventionist” case-study in 2000. Her framework remains useful, as the District employed a very similar approach towards Stelco’s restructuring

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between 2004-2006. In a related study that likewise included USW Locals 1005 and 8782, Frost also elaborated the primacy of four main union requirements towards restructuring success, namely, the “ability to access information, to educate and mobilize the membership, to communicate with management at multiple levels, and to access decision-making at multiple points.”²⁴ Meeting these requirements facilitated the implementation of the interventionist strategy.

Bacon’s study of European trade union approaches towards steel restructuring served as an inspiration for Frost’s writings on union intervention. Analysis beginning in the 1980s revealed that weakness among steel unions followed from their inability to proactively engage in corporate restructuring. Bacon's 1996 study in the U.K. further suggested that, given few outlets for participation by government and corporations, and facing internal organizational difficulties, these unions reverted to a “reactive and defensive” strategy when faced with corporate restructuring. “The inherent danger in this representational shortfall for the UK steel unions is in the corresponding increase in management prerogative...in which the union has little influence.”²⁵

German steelworkers, conversely, are represented predominantly by a large union, IG Metall, that has used its considerable resources to maintain a role in corporate restructuring. Bacon's research suggests that the German model produces superior restructuring gains for both labour and management.²⁶ There exists, therefore, an academic basis for the idea that union participation in restructuring, properly employed, benefits both company and workers.

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Union involvement is not a panacea, however. In 2006, Bacon released a study describing how Teeside, a U.K. steel local that insulated itself from corporate restructuring, fared better than a local at Scunthorpe that became more involved. Yet Bacon explains that it was a lack of militancy that crippled Scunthorpe. Job insecurity negatively impacted the manner in which the local became involved in the restructuring, whereas the Teeside local had sought to protect its gains.²⁷ Thus, the manner and motivation in which a union local becomes engaged in restructuring affects the outcome. The 2004-2006 USW intervention in Stelco's bankruptcy indeed demonstrates that bold union locals seeking to protect their gains by engaging in restructuring can logically expect different results than those that became engaged because they succumbed to company pressure. The complexity of union responses is partly what compelled Frost to devise her framework. Her vision of an "interventionist" local includes the possibility of assertive action for the protection of member interests.

The example of Stelco's CCAA process suggests that the benefits of union intervention in corporate restructuring, studied by Bacon and Frost, apply equally well to involvement in bankruptcy restructuring. There are caveats in this comparison, however. Frost's framework is well-adapted to the "peacetime" exercise of workplace restructuring, such as the QWL and "New Directions" programs, in which unions are able to sit face-to-face with management and discuss how to streamline. However, Frost's themes of co-operation between union and management do not apply directly towards bankruptcy cases, as in

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Stelco's CCAA, in which non-union bodies such as government, shareholders, and bondholders complicate the restructuring process, threatening to diminish the role of the union. Moreover, the USW's infringement on management prerogative, that resulted from their engagement in the *company* territory of bankruptcy restructuring, such as the process of seeking bidders, differentiated Stelco's CCAA from its prior steel restructurings. Unsolicited union intervention elicited a hostile response from management. While Frost's lessons on the benefits of union intervention remain relevant under bankruptcy restructuring, her implicit framework of union-management co-operation does not. In other words, during corporate bankruptcies, interventionist unions benefit by playing a role in the final outcome of restructuring, but they cannot expect automatically to engage in the same manner of respectful, mutual-gain negotiations characteristic of Stelco's earlier company-initiated efficiency restructuring. Rather, during Stelco's CCAA restructuring, the company's presumption of its exclusive prerogative to oversee its own bankruptcy proceedings resulted in management hostility towards union attempts to develop co-operative financial solutions. Whereas Local 8782 leaders had enjoyed a relatively egalitarian relationship with Nanticoke managers during "peacetime" restructurings in the past, they faced a fierce and protracted struggle with Stelco managers under CCAA, before the company agreed at last jointly to implement a solution proposed by the union. A key lesson the union drew from Stelco's CCAA experience is that bi-lateral, non-concessionary solutions to bankruptcy may require considerable union resolve.

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Albo and Crow indicate that the USW is the largest private sector union in Canada, and a laboratory for observing union adaptation to the new economy. The 2004 CCAA crisis gives researchers an ideal window to evaluate the new ‘interventionist’ approach. Stelco’s workers learned the valuable lesson that taking part in corporate bankruptcy restructuring is a worthwhile endeavour for Canadian unions. The USW became the first union in Canadian history to challenge a company's entry into CCAA, the first to restore collective bargaining rights under its umbrella, and the first to intervene in a company's bankruptcy restructuring, through which it imposed a new contract on the company and creditors.²⁸

Potential Implications

The revival of Stelco from its bankruptcy protection without union concessions is one of the most successful manifestations of a USW drive towards a greater union role in steel industry management. Several interviewed District 6 Steelworkers commented, representative of attitudes within the USW, that “management is too important to be left to management.” When a company as large as Stelco, viewed by government as “too big to fail,” failed nonetheless, the union played a decisive role in its revival. The USW intrusion into management domain represents one possible adaptation by labour to the decline of the post-war compromise.

In 2003, the USW first floated the idea of intervention into the CCAA process only as a trial balloon. Actually, in its initial response to the CCAA in

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2004, the union instead attempted to vanquish the entire process by challenging the court decision that allowed Stelco to enter bankruptcy protection. Intervention into bankruptcy restructuring is unfamiliar as a strategy among most Canadian unions, and is not without controversy. Unionists, within and outside the USW, have expressed reservations about negotiating with corporate bidders who seek to profit from the purchase of bankrupt companies. The USW's participation in Stelco's bidding process indeed entangled the union in a prolonged and complex series of negotiations and battles with the company and its creditors. While the union's final achievement of secured, non-concessionary contracts at Stelco involved a long, exhaustive, and expensive effort, a broad look at USW successes in restructuring nonetheless suggests that the benefits of union intervention appear to outweigh possible drawbacks.

The lessons of the 'Stelco Saga' are not universally applicable. The union-initiated restructuring was highly exceptional in that it led to actual gains in the collective agreement. Other unions cannot expect similar results. The District 6 locals faced different challenges in negotiating with Stelco than did their U.S. counterparts during the "perfect storm" that engulfed U.S. steel. As one District 6 negotiator intoned, "You're a victim of the circumstances that you're in. Air Canada was really between a rock and a hard place...And in the states, Steelworkers had to make tough decisions." Despite a strong effort on the company's part, Stelco was unprepared for the degree of resistance to its concession proposals. Steelworkers relate that one senior Stelco HR official

explained, off the record, that Stelco expected the union typically to “huff and puff” against demands for concessions, only to be blown down by the CCAA legal process into meek acceptance. Stelco further underestimated the union’s ability to mobilize financial and community support, and declared bankruptcy at a time in which market conditions, namely climbing steel prices, disadvantaged the company’s case for concessions.²⁹

At the same time, the leaders of the “Five Locals” deserve considerable credit for embarking upon a decisive anti-concessionary bargaining effort. Every USW restructuring case is different, and one cannot be compared to the other. Regardless of its peculiarities, however, the “Stelco Saga” illustrates the mechanics, peaks, and pitfalls of union engagement in restructuring. It serves as an example of why the ‘interventionist’ strategy is a viable union response to bankruptcy restructuring in Canada. Union intervention may not be the only possible response to bankruptcy restructuring, but it allows labour to retain some bargaining power. Roy Adams indicates that collective bargaining rights, which management initially attempted to withhold from District 6 under the CCAA legal process, were key to protecting the pensions of thousands of workers.³⁰ Above all else, Steelworkers learned the valuable lesson that, even in the age of neo-liberal globalization, it is still both crucial and feasible for unions to fight for and to use their collective bargaining rights. Not only in sloganeering, but in practice, these unionists demonstrated that “concessions are not solutions.”

Methods

This paper benefits from a preponderance of primary data as a result of the paucity of academic research on Stelco's landmark CCAA process. A timeline was formed from journalistic, union, and industry publications to create an empirical overview of the events that transpired between 2004 and 2006. Interviews with union members, both in the executives and the rank-and-file, illustrated the union strategy that guided its participation the process. Glesne and Peshkin's methods further proved helpful towards the sorting of interview data, wherein data was colour-categorized into key subjects, and sorted into relevant slots that created a useful framework for presentation.³¹

The interview participants contributed their knowledge fully cognizant of the research goals. As Kirby and McKenna indicated, knowing that the research could aid future union responses to corporate bankruptcy restructuring gave participants a 'stake' in the process, facilitating worker willingness to aid in the study. Participants were selected first from key actors in the CCAA process, and later from rank and file workers known through personal acquaintance, and union contacts. Participants found the McMaster Research Ethics Board consent process reassuring, as it guaranteed their ability to withdraw part of or all interview data should they develop concerns about its use. Moreover, their consent was entirely voluntarily, as the researcher only provided basic information on the thesis, relying upon participant interest to make contact. On the experience of Kirby and McKenna, participants were interviewed in 'neutral' public places, but often also

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in the friendly comfort of interviewees' own homes. Because of geographical separation, however, face-to-face interviews were not always possible, and some Canadian and U.S.-based USW executives provided their testimony through telephone conversations.³²

Choosing an appropriate theoretical framework brought to light conceptual difficulties. Bacon's literature on union co-operation during ordinary corporate restructuring provided insight into the challenges faced by labour, but academics have conducted little research on assertive union involvement in North American bankruptcies. Frost's research proved helpful, since she had investigated recent restructuring efforts of two of the locals under investigation. While neither Frost nor Bacon intended for their work on restructuring to apply to bankruptcies, the framework Frost derived in part from her research on Canadian USW locals resembles the real choices faced by District 6 in 2004, and its actual responses. Her examination of qualities necessary for successful restructuring corresponds closely to the factors that in actuality enabled District 6 to develop a positive solution for Stelco. The correspondence between Frost's analysis, and actual events during Stelco's CCAA, suggests that theoretical frameworks developed towards a better understanding of union response to regular restructuring may also be applicable in bankruptcies. Future research may bridge the gap in theory between these related fields.

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Chapter 1 – Union Mobilization and Legal BattleThe Stage is Set

Prior to Stelco's January 29, 2004, announcement of its entry into CCAA, management hinted that the company faced bankruptcy protection, and approached the union with concessionary demands. In July 2003 for example, Stelco CEO Jim Alfano argued that his company required a twenty percent cut in wages and benefits and a thirty percent productivity increase. CEO Jim Alfano claimed that bankruptcy-restructured U.S. steel producers paid fewer 'legacy' costs, placing Stelco at a competitive disadvantage. Despite the different bankruptcy conditions faced by U.S. steelworkers, Alfano called in effect for a race to the bottom, stating, "Your union, the Steelworkers, gave our competitors breaks, and we want the same breaks that they got."³³

As Cohen mentions in *Labour Notes'* advice for pension bargaining, "when it comes to bargaining, prepare in advance—far in advance."³⁴ During the summer of 2003, the District 6 locals that faced imminent contract renegotiation developed an internal policy that the union should insulate itself from any bankruptcy restructuring by bargaining for a new collective agreement under the Labour Relations Act. The LRA guaranteed traditional collective-bargaining rights, as opposed to the debtor protection of the CCAA. When Stelco entered CCAA in 2004, Locals 8782 and 5328 related their policy to the union's legal team.

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The decentralized structure of the USW allowed the locals independently to develop these approaches at both the local and district level. The local-based strategy corresponds to trends that grew out of the 1980s, where centralized bargaining structures declined, and local unions superseded the role of national unions in negotiating terms of restructuring.³⁵ Though the District 6 locals operated with considerable autonomy, they also enlisted the support of the international union, which later became an enormous factor in the success of the restructuring efforts.

At first, the International leadership had faced uncertainty as to whether the union should give some concessions to Stelco, and then win back wages and benefits through a new bidder, as had occurred in a number of U.S. cases. The Canadian locals, however, demonstrated their confidence in a “no concessions” policy. Canadian CCAA law, unlike Chapter 11, does not mandate the reopening or cancellation of collective agreements upon corporate bankruptcy. The District 6 locals were able to convince the International of their position, and enlist its support in the strategy’s implementation.³⁶

Eaton indicates that union linkages with an international body, as well as numerous contacts with other local unions, strengthen its ability to exert control over restructuring outcomes. Frost encapsulated the widely-understood benefits of union co-operation with outside or national bodies by using the term “network embeddedness.” This “embeddedness” is a catchword that describes the “extent and nature of a local union's ties to external organizations.”³⁷ By integrating the

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Stelco locals' battle with the resources of the national union, through Wayne Fraser and a "Made-in-Canada" solution in January, and later through the international, District 6 employed its "vertical embeddedness," or ties within the larger organization.

The Shifting Legal Front

When Justice James Farley granted Stelco's January 29, 2004, entry into CCAA, Stelco was up to date on all its debt payments, but it exhibited a 1.3 billion dollar *unfunded pension liability* as a key motivator of financial collapse. In 1996, Stelco had made use of a legal "5.1 exemption" clause in Ontario's Pension Benefits Act [PBA] that allowed large companies to defer the solvency costs of its pension payments. Ordinarily, companies such as Stelco are required under law to be able to fund five years of pension costs at any given time. However, the PBA "Regulation 5.1" allowed companies "too big to fail," specifically those possessing pension plans valued greater than \$500 million dollars, to defer these solvency expenses. When Stelco's pension liabilities grew in 2002, the company did not increase contributions to match its growing requirements. Stelco deferred its payments on solvency costs until 2004, subsequently deciding that company could no longer fund the pension plan. Stelco's pension crisis somewhat resembled events in the United States. Following the 2001 recession, U.S. manufacturers underfunded pensions by as much as \$305 billion dollars in total, and sought Chapter 11 as an escape.³⁸

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Stelco's union locals immediately responded by challenging the legitimacy of the company's bankruptcy, first in the media, then in court. Union executives suggested to the media that Stelco's accounting was inconsistent and deceptive. They drew attention to apparent discrepancies in Stelco's published claims, and also argued that Stelco's bankruptcy was based on a worst-case-scenario, which furthermore relied upon projected losses rather than any immediate financial crisis. The union and business press jostled to point out that Judge Farley had created a legal precedent by allowing CCAA "protection because of imminent, not immediate, insolvency." While the local media aired the union's counterclaims, their reports on the CCAA tended to support Stelco's interpretation of its financial situation, initially lending credence to Stelco's call for concessions.³⁹

USW executives acknowledge that Stelco possessed a pension funding problem, but that it was only one of several causes of the company's financial troubles, which themselves were exaggerated. They believe that, by releasing such a large figure, the 1.3 billion dollars in unfunded pension liabilities, Stelco hoped to use its CCAA 'blitz' to 'scare' the union into concessions, and the province into funding the pension plan. At this stage, the initiative rested with Stelco, and the union mainly reacted to the company's moves. After January 29, Stelco refrained from asking for any direct concessions from the union because the CCAA legislation allowed for union participation in the event of concession demands. Union lawyer David Jacobs explains, "Stelco wanted to formulate a

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plan that had an impact on the pension agreement. The company did not come to the union with direct concessions.” Instead, Stelco expected the union to participate in multi-party bargaining.⁴⁰

However, by providing dire forewarnings of company fortunes to the media, and describing the need for all parties to ‘take a cut,’ Stelco implicitly desired concessions. Government-appointed restructuring expert James Arnett later argued,

Great reliance was placed in Stelco’s pension fund deficiencies in Stelco’s application for the CCAA order...It was clear that Stelco expected significant compromises from employees and pensioners, and assistance from the government, in funding the pension fund deficiency.⁴¹

The union quickly elaborated a public consensus that, while it would engage in co-operation with management to alleviate Stelco’s financial problems, “concessions are not solutions.” The creation of unity around the defence of pensions and benefits drew upon the union’s political vitality, a term defined by Frost as the “degree of responsiveness of a local union's leaders to the interests of the membership and by the broad-based activity of its membership.” Local 1005 President Rolf Gerstenberger explained in the *Hamilton Spectator* that Stelco’s workers would never accept pension concessions, which represented earned but deferred wages. As one steelworker facing a similar crisis in the U.S. earlier commented, “We [already] paid for these benefits.” Stelco’s workers would have refused management’s earlier bid to increase pensions in lieu of wage increases had they known that pensions were to become a disposable ‘legacy cost.’

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Gerstenberger stated, “You can't change the rules after 30 and 40 years.” Union negotiators expressed strong disappointment with the company's portrayal of the collective agreement, or wages and benefits, as the source of Stelco's problems, arguing “the collective agreement is not the problem, and concessions are not the answer.” District 6 Director Wayne Fraser referred to Stelco's years of neglect in technological and capital investment, and its unwillingness to curtail management bonuses and its top-heavy structure, as the company's real problems. In short, the USW argued that Stelco would not be ‘saved’ on the backs of the pensioners.⁴²

During the time of pre-CCAA intrigues in 2003, Local 1005, home to nine thousand pensioners, conducted standing-room-only meetings to discuss the problems in the industry, and the fate of companies under bankruptcy protection. Subsequent union meetings in Locals 1005 and 8782 typically involved hundreds of members. Workers responded well to the union's information campaign, and one retiree commented, “The information was all over the place. They'd be putting stuff out constantly...the newspaper clippings, all the stuff from the internet, and whatnot.” Pensioners felt reassured that the union stood behind them.⁴³ The locals' strong stand placed the gathering rank-and-file momentum behind the union's no-concession position.

The union mobilization around CCAA also generated what Sutton called “new faces” from the retirees, who came out in unheard-of numbers to attend rallies and court sessions. “They [1005] got people out on an issue that faced people directly, and in bigger numbers than even the time of the Days of Action

protests.” The union’s political vitality became apparent in these actions. This vitality is an important quality in negotiations, because it allows a union to bring its maximum personnel capacity to bear upon a corporation. As one retired Steelworker put it, “We’d go marching around the Stelco tower and whatnot...I think it made an impact on Stelco, and all levels of government.” Sutton also approved of the union’s impromptu mobilization of workers for court visits, agreeing that they were a show of force. “They said to the government ‘we’re not giving up, don’t think that you’re going to side with the company [on CCAA].”⁴⁴

Jacobs agrees that the physical presence of numbers of Steelworkers played a valuable role in the court proceedings. Crucially, he argues, the presence of Steelworkers underscored for the court and media that bankruptcy cases are not dry legal questions.

There were real human beings involved in Stelco’s CCAA process. I think that there’s no doubt that the court was quite sensitive to that. The Steelworkers were a living presence in court. They listened intently, they responded to jokes from the lawyers and the bench. It was very difficult for some of the stakeholders who were completely self-interested to get up in front of the judge and discuss how a multi-millionaire was worried about losing one of his ‘multis’ in front of workers who had deferred their wages into the pension plan that was jeopardized.⁴⁵

One lawyer published his observations of the union’s characteristic slogans in *Blake’s Bulletin on Restructuring and Insolvency*:

On the wall of my colleague’s office is a newspaper clipping showing a picture of protesting steelworkers outside of the courthouse in Toronto. A stern looking worker holds two placards. One reads “CCAA is legalized theft.” The other reads “CCAA is Fraud”⁴⁶

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The lawyer also referred to the union's position that workers merited special creditor status in the process, since they created the value that sustained the company.⁴⁷ Clearly, the union's publicity effort had begun to influence the legal community.

Despite a compelling court challenge, in which the union presented financial data suggesting that imminent steel market growth strongly undermined Stelco's bankruptcy projections, the Supreme Court of Ontario allowed Judge Farley to uphold his own ruling granting bankruptcy protection. Because the legal framework upheld Stelco's bankruptcy protection, the locals that faced pending contract renegotiation chose to abandon the legal challenge to Stelco's entry into CCAA, while at the same time insulating themselves from its impact.⁴⁸

The benefit of the union's legal challenge against Stelco's entry into CCAA, despite its failure, was that it demonstrated to the rank-and-file that the executive was prepared to fight for their pensions. The executive also learned that political vitality is a two-way street. Sutton explains that "one of the things that the rallies do is give the union executive the confidence to make these tough decisions."⁴⁹ Emboldening the workers in turn emboldened the executive.

The challenge to the CCAA itself began a credibility battle in the greater public relations sphere in which the union continued to gain strength. The early media acceptance of Stelco's bankruptcy claims contrasted sharply with the Keystone-Kops manner in which the process unfolded even in the business press, in articles such as Watson's *Canadian Business* article, "What a mess."⁵⁰ Whether

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intentionally or not, the mainstream media and business press moved closer towards the union interpretation that the CCAA ruling did not entirely reflect Stelco's reality, and should not have occurred when it did.

A Shift in Direction

Because CCAA remained in effect after the court challenge, the union returned to the interventionist restructuring strategy rooted in brainstorming sessions during the past summer. However, by the spring of 2004, the direction pursued by Local 1005 diverged from that of Locals 8782 and 5328. While all the involved Stelco locals continued to pursue a “no concessions” policy, Local 1005, not facing imminent contract renegotiation, chose to not participate in either the CCAA or any Stelco restructuring process. The Canadian district and national-level leaderships, on the other hand, began proposing serious intervention into Stelco's actual restructuring. Locals 8782 and 5328, first up for bargaining, served as the nucleus for what later became known as the “Five Locals” restructuring effort, as it eventually also drew in Locals 3258, 5220, and 6951.

As early as January 29, 2004, the USW, in a move characteristic of the International's new bargaining pattern, released a statement claiming that “the union is prepared to play a leading role in a restructuring of the company.” National Director Lawrence McBrearty and Ontario Director Wayne Fraser revealed the union's intention to develop a “Made-in-Canada” solution that drew upon all levels of government, and the USW's restructuring experience, in order to restructure Stelco in a satisfactory manner.⁵¹

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District 6 possessed some precedent for direct involvement in restructuring. In 1990, Locals 1005 and 8782 negotiated contracts that incorporated a union role in standard non-bankruptcy restructuring. Local 8782, in particular, had earlier secured a multi-faceted agreement for various levels of the union to participate in joint union-management restructuring, and had invoked the clause during 1993 restructuring negotiations.⁵² While the productivity improvements achieved during the 1990's required a delicate union balance between co-operation and independence, the CCAA process required a much more assertive role from the union. The first acts were defensive. The "Made-in-Canada" solution initially sought to shift the terrain from Stelco's attempts to use the CCAA process to influence contract renegotiation towards a traditional bread-and-butter collective agreement negotiation that could be won through aggressive bargaining.

Stelco's desire to subsume all stakeholder concerns under the CCAA implied that any negotiations about the company's future, including labour negotiations, were to be conducted at a multi-party table. Because Stelco's proposed arrangement could have resulted in changes to the pension plan, relates Jacobs, "during this impasse, the union did what unions do." The USW sent a letter to the Ontario Ministry of Labour requesting a conciliation officer in order to begin the collective bargaining process under the Labour Relations Act.⁵³

In Ontario, when one actor in a labour dispute gives notice to bargain, the opposing party is obliged to take part in collective bargaining. Stelco, however,

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opposed the USW's letter on the grounds of its CCAA protection, arguing that no proceeding could go forward without the approval of the court. The union explained that request merely involved a letter to the minister, and did not fall under court jurisdiction.⁵⁴

Stelco's challenge took place before the Ministry of Labour and also in court. Under Ontario labour law, however, both the union and the employer are entitled to the right of economic sanction, such as strikes and lockouts. Eventually, the court appointed mediator George Adams as a conciliator between Stelco and the union. Adams was given jurisdiction to preside over collective bargaining both under the CCAA and the LRA, effectively acknowledging the union's collective bargaining rights under the Act. According to Jacobs,

That court decision was a real step forward for the union because the union afterwards was on its own turf – collective bargaining. I think, frankly, that Justice Farley carefully stick-handled this. At no time did he imply that the court was going to involve itself in the terms and conditions of a collective agreement. From the union point of view, that was very useful. It was an indication that the court was not going to impose its own collective agreement terms on us.⁵⁵

Though the union had failed in its unprecedented challenge against Stelco's entry into CCAA protection, it was able to retain considerable freedom of action by standing up for its collective bargaining rights. Jacobs concludes that "what the Stelco locals did, which was so bold and innovative, was to use the labour relations process on its own, and for leverage within the CCAA." Because the union retained its rights to bargain collectively and strike, and because the court

required Stelco eventually to emerge from CCAA protection, “the company had to resolve things with the union.”⁵⁶

The Restructuring Front Opens

During the legal battle over the LRA, the union’s predictions about rising steel prices materialized. As reporter Steve Buist explained, “The company started churning out record profits.” Stelco amassed \$100 million dollars in profits over two quarters in its best year since 1998. Even Pratt admitted, “It’s hard to get concessions when you’re making money,” and in September, the company turned their efforts towards finding a buyer to inject enough money to draw Stelco out of bankruptcy.⁵⁷

Leading bondholder Deutsche Bank [DB], of Air Canada fame, became a major actor in Stelco’s recapitalization, and offered to take over the company. DB eventually tabled a bid that would have injected \$200 million dollars into the pension plan, and paid off the pension deficit over the next decade. The DB offer converted unsecured debt into secured debt, a proposal the union could not accept. CCAA rules mandated that secured debt was paid off first, with the result that, under the DB plan, pensions would have come second. According to Ferguson, the union’s experts determined that the DB arrangement was a “full cash payout to all of the creditors, leaving the pension fund undecided.” One USW statement asserted that, “the DB Commitment is simply DB paying itself and converting its debt from an unsecured to a senior secured position.”⁵⁸

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In November, 2004, Judge Farley declared the DB bid the ‘stalking horse,’ or minimum acceptable offer. Stelco favoured the DB package, and even rejected higher bids from other companies. With some modifications, the union could have accepted the DB bid. However, union executives assert their belief that Stelco became overly fixated on producing a stalking horse. They argue that Stelco overplayed its hand with the province, the court, and the USW in the belief that a DB bid could prevail.⁵⁹

Instead, the Steelworkers drew upon their experience in restructuring, and created “Seven Principles” that outlined their requirements for a Stelco bid. These Principles emphasized the creation of a viable Stelco without employee concessions. Gerard provided the resources of the International to seek out buyers.⁶⁰

Stelco’s “5.1 exemption,” the 1996 government ruling that allowed Stelco continually to defer pension solvency payments, presented a major obstacle towards a restructuring outcome favourable to the union. Ferguson claims that Stelco had used the exemption as an incentive for buyers, telling bidders that purchasers of the company would be exempt from funding the pension solvency. A sale of Stelco with the “5.1 exemption” intact conflicted with several of the “Seven Principles,” particularly the avoidance of concessions, and the creation of a viable company able to support a pension plan.⁶¹

As part of their broader effort to protect their pensions, the USW locals therefore sought to mobilize Stelco’s employees in support of the removal of the

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5.1 exemption. In doing so, the USW benefited from its “horizontal embeddedness,” a term simply referring to the union’s co-operation with “other unions, social coalitions, or community groups.” District 6 received strong support from an affiliated organization, the “Stelco Organization of Active Retirees.” SOAR links retired Steelworkers with the ongoing initiatives of their active union counterparts, including developments related to pensions, and it provides pensioners with information on adjusting to retired life. SOAR President Ray Silenzi recounts, “The whole idea of SOAR was to get retired Steelworkers together to take care of issues of health care, pensions, benefits, and also as a political body. In the U.S., they’ve organized as political response units. We’re not quite that organized yet here.” Though a USW-affiliated pensioner’s organization, Hamilton SOAR Chapter 10 did not automatically integrate fully into the active union strategy. Through a membership vote, Silenzi was able to mobilize SOAR’s resources in assistance of District 6.⁶²

Moreover, the USW was able to enlist some co-operation from SASSEA, the professional organization representing Stelco’s other salaried workers. SASSEA spontaneously organized a legal staff and other resources to protect their pensions, and became a natural ally for the USW strategy. The union held meetings with SASSEA and developed a co-operative relationship in pursuit of a constructive solution. Silenzi states,

What you need is a united front to take care of all these issues that come up with CCAA... With the pension issue, everybody – the union, salaried, active and retired workers – was moving in the same

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direction. It's one of the most fantastic things I've been involved with, and we created this just super team.

The horizontal integration of pensioners and salaried employees added weight to the union's collective strength. Sutton ventures that, "SASSEA's opposition to many of the concessions helped the union executive feel that they were making the right decision in opposing the CCAA concessions."⁶³

The advocacy surrounding the 5.1 exemption involved direct pressure against the government and courts through behind-the-scenes meeting with the bargaining and legal team, and through telephone calls and mailings from the international leadership and pensioners.⁶⁴ In a letter to its members, the Steel Salaried Pensioners Organization [SSPO] also implored retirees to contact provincial government officials:

In order for our efforts to succeed, EACH AND EVERY ONE OF US MUST ACT NOW WITHOUT DELAY...to force a solution to the 5.1 Election inside of CCAA. Your influence cannot be overstated. We urge you to sit down right now and take a few moments to invest your future security by sending a letter voicing your concerns.⁶⁵

SSPO provided sample letters and the addresses of such figures as Ontario Premier Dalton McGuinty and to James Arnett, Special Advisor to the Premier. In February, 2005, the court finally withdrew Stelco's 5.1 exemption. This successful campaign against the exemption, while significant, comprised only one front of a much larger clash over Stelco's restructuring.

Chapter 2 – Stelco’s Restructuring and Bidding WarA Two-Front Battle

Events during the fall of 2004 revealed divisions within Stelco, and unity among the bargaining locals. In its contract negotiations, Stelco’s Edmonton subsidiary proposed a two-tier pension system on the basis that only new employees would be affected. Steelworkers had witnessed how a similar system had divided members at a Quebec local, and argued that the demand be dropped from Edmonton’s collective bargaining process.⁶⁶

Stelco claimed that its own subsidiaries were operating independently, and that head office was virtually unable to control them. According to Duvall, “The plant managers were rebelling. Some of them had their own idea that they knew it was going to fall and they were looking at buying the plants themselves.” He compared Stelco’s division to an uprising of feudal lords against a king. Management at Edmonton and Quebec attempted to craft separate deals with the unions, without Stelco’s knowledge. Duvall states, “We asked Courtney Pratt a number of times, ‘Who the hell’s running this show?’” In some respects, the union was able to access management more fully than corporate headquarters, and this disorganization angered the Steelworkers. With Stelco “out of control and [having] no direction,” Local 8782 tested its new strike mandate by issuing its 90-day notice.⁶⁷

The strike notice served both as an act of solidarity, and a show of force. Stelco responded to the challenge by publicizing that the company would lose a

major contract with GM if labour stability was not assured. Fearful headlines in *the Hamilton Spectator*, such as “On the Brink,” helped convince the general public that the company might collapse unless the union backed down and accepted the DB bid.⁶⁸

The USW surprised and pleased Stelco’s auto customers by assuring them of the union’s intent to continue production as long as Stelco respected the LRA. Yet Stelco refused to attend the union’s meetings with the auto companies. Despite initial interest by GM, it suddenly terminated its contract. The automaker ended up purchasing, through back-door suppliers, Stelco’s auto-grade steel at higher market prices. The favourable result for Stelco delegitimized its apocalyptic claims about the GM contract, and from that point onwards, the union found the media and government more receptive to its side of the story.⁶⁹

As the 90-day notice reached its end, DB indicated its willingness to drop concessions. However, even its new bid did not fully address the pension deficiency. Union negotiators ‘accepted’ DB’s offer of “no concessions,” and returned to their effort to find an alternate bid. Ferguson and Leibovitch believe that the union’s use of the strike mandate produced DB’s reversal on concessions.⁷⁰ By holding out against the GM contract threats, and resisting an inadequate DB proposal, the union preserved the integrity of its “no concessions” bargaining position.

On the restructuring front, the union engaged in prolonged negotiations with potential buyers, but found that all of Stelco’s “suitsors” wanted concessions

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in one form or another. Notably, Severstal offered an attractive deal that proposed an integrated Lake-Erie-based system of steel production incorporating Stelco and other plants linked by a waterborne route. The most promising of several large offers under simultaneous negotiation by the USW team, even Severstal could not meet the pension requirements. The bidding process itself involved a considerable level of organization within the union. In soliciting bidders, drawing five union locals into the process, District 6 reached a high level of network embeddedness. One member of the negotiating team recalls life inside what he termed the union's "command centre:"

Whatever we needed was supplied. We had actuaries there giving presentations to us on the pension plans. Any information on bidders was supplied through Ron Bloom, the international, and so on. Researchers were brought in. We had a staff of lawyers. It was impressive. If you can imagine, we're all in this room, around this table is all 5 local unions and negotiations committees. And some part of the day, somebody's always being briefed on something.⁷¹

Finally, in Brascan-backed Tricap Corporation, Ron Bloom located a bidder that offered to meet the seven principles. Bloom was able to secure a bid from Tricap through existing union contacts on Wall Street and Bay Street. While Judge Farley had initially rejected an early Tricap offer, the USW negotiated a no-concessions bid with Tricap that included an immediate \$500 million dollar downpayment in the pension fund, and payment of the deficit in 5 years. The Tricap bid offered money for refinancing and upgrading Stelco, but all these measures came at the expense of the bondholders, since the bid proposed to convert their shares into less-secure common stock. The USW only put forth their

Tricap bid once they had secured a written arrangement from the bidder. “We negotiated a solid deal,” explained Leibovitch. “The union wasn’t going to be whipsawed between buyers.”⁷² As in the union’s effort to win concession-free proposals from Stelco, and determination not to waver in the face of the GM ‘crisis,’ patience and dedication proved essential. By focusing on specific objectives, especially the “Seven Principles,” the union circumvented inappropriate offers from both Stelco and external bidders.

Unlike in the past consensual management-labour restructurings at Stelco, the company and the other stakeholders at first abhorred the union’s involvement in the restructuring process. According to one union negotiator,

Stelco was just aghast. I mean they were just aghast. I think at first they believed they could just dismiss it, that if they just kind of ignored us, we would go away. Then when they realized we were serious and weren't going away, they were incredibly offended by the audacity of the union in trying to play a role in the process. In court, the bondholder representatives treated it as if we were committing a sin against humanity. I think in hindsight that they underestimated us. They were confident in their multitude of lawyers and the way the court system worked.

USW executives today believe that the securing of the Tricap bid marked the union’s transition from defensive to offensive tactics.⁷³ As predicted in Frost’s model, the union’s ability to access information, in the form of the International’s involvement of specialists in the bidding negotiations, as well as its network connections with financial experts, proved crucial to this stage of the restructuring.

Government Support Shocks Stelco

While the union was not firmly wedded to the Tricap bid, and remained open to possibilities from other bidders, none were forthcoming. Stelco attempted to delay and obstruct the Tricap bid variously by claiming new financial instability, and by arranging dead-end meetings with the union in which the DB bid was re-offered. After *Spectator* reporter Naomi Powell published an article entitled “Is Stelco Dragging its Heels,” the company finally offered to match their DB bid with Tricap’s. However, Stelco was unable to raise enough capital to match Tricap.⁷⁴

District 6 reached out to Hamilton-area provincial and federal MPs to raise support for the union’s Tricap proposal. Hamilton East NDP MPP Andrea Horwath quickly became an advocate of the union program, introducing legislation that called for a pension-friendly solution at Stelco. In April, 2005, Horwath called for a non-partisan effort with Hamilton-area provincial Liberal MPPs to facilitate Stelco’s meeting with Tricap. The Liberal provincial government was slow to react, however, prompting Horwath to comment that the other Hamilton MPPs appeared to be in hiding. Representatives from all levels of the union eventually met with the federal and provincial governments. “We put pressure on them, reminding them that no politician could have survived in Hamilton while sitting on the sidelines,” commented one union executive.⁷⁵

During this time, both the court and the provincial government chose to recognize Tricap as a legitimate and promising offer. The province preferred the

union's bid because it reduced fiscal pressure on the government. Unlike in the DB plan, if Tricap fully funded the pension deficiency, the province no longer faced liability for part of the 1.3 billion dollar pension deficit.⁷⁶ The union had finally reached an understanding with government that allowed the process to move forward.

Union negotiators believe that the combined pressure from worker court pickets, the executive and bargaining team, and the efforts at the provincial and federal level, all played a role in finally convincing Justice Arnett and the court to withdraw Stelco's 5.1 protection in February, and later providing Judge Farley the legitimacy to support the Tricap bid." Silenzi elaborates,

The pressure on government came from all of us being united in front of government. Don't forget that they came to some of our meetings, and we addressed them there and at headquarters, so they understood the support and rallying behind our program.⁷⁷

In this way, the union effectively utilized both the vertical embeddedness of the union, with members from Leo Gerard all the way to individual pensioners together writing letters to government and the court, as well as horizontal embeddedness through MPPs, and the symmetrical actions conducted by salaried employees and pensioners.

With Judge Farley and the union working in concert to champion the Tricap offer, Stelco's lawyers argued that the union could not participate in negotiations because it was not a creditor. They were not successful. Because the company continued in its effort to table concessions, Local 8782 again submitted its 90-day strike notice. Ken Neumann expressed, "Our patience is truly running

out and if that's what it takes, that's what we'll do.” Bruce Leonard of the Insolvency Institute of Canada observed, “[The union] is wielding a heavy hammer and nobody's taken it away from them yet.” The union’s ability to bargain under the LRA clearly gave them a powerful veto over the process.⁷⁸

Stelco returned to its tactics of challenging the union’s right to strike, and claiming new financial woes. It even developed a theory that the USW’s Tricap bid was an attempt to sabotage the restructuring process, break up Stelco as part of a continental union plan for steel consolidation, and sell off all the company’s assets. The company also argued that without Local 1005’s participation in the restructuring, the USW did not represent a majority of Stelco’s employees. With the union and government backing the Tricap plan, however, the company faced a losing battle. Instead of the union appearing obstinate for refusing concessions, union executives now believe that Stelco appeared obstinate for refusing to consider Tricap. While Stelco opposed the plan, and criticized the union’s involvement in the process, it offered no better alternative. The union tabled memos demonstrating the viability of the Tricap plan, and referred to their legal team’s considerable experience in restructuring. “So the company found itself playing defence,” concludes one union executive, “Honestly, they were losing slowly. And that’s what became their strategy.”⁷⁹

One by one, the union was able to establish its Seven Principles in court. “Every offensive we would launch,” recounts Leibovitch, “they [the company] would push it back some, but we would make some progress.” When the union

found bidders, especially Tricap, that agreed with a specific union principle, such as the need for a large up-front contribution to the pension, or that Stelco required considerable liquidity and financial cushioning, or that the employees would never accept concessions, the union was able de-facto to fortify these principles in court as an integral part of the restructuring process.⁸⁰

Because the province understood that the union's Tricap plan proposed to pay off the pension deficit more quickly than the DB plan, it offered to exempt Stelco from a mandatory \$300 million dollar yearly deficit payment, provided that Stelco adopted the Tricap bid. In August, 2005, Stelco finally broke its own deadlock, accepting the Tricap offer. Following painful court-ordered negotiations, after many extensions of its bankruptcy protection, Stelco and the union developed the first collective agreement with increases for workers that had ever occurred under the CCAA. During the restructuring of the previous decade, Local 8782 had aimed to negotiate co-operatively from a position of strength.⁸¹ The opportunity to do so in the CCAA process, then, finally presented itself to the Five Locals in August, and brought the company and the union towards the pursuit of the same positive goal.

A Game of Chicken

The Tricap plan immediately faced considerable opposition from the bondholders. Among Stelco's creditors, bondholders held the largest influence. Controlling \$275 million of the \$660 million owed to Stelco's unsecured creditors, they possessed veto power over the Tricap contract, and the ability to

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bring the hard-earned restructuring plan to a complete halt. Little is known about the group of anonymous bondholders that challenged the agreement,ⁱ though one New York firm critical of the restructuring, the Wexford Credit Opportunities Fund, controlled \$26 million in Stelco bonds. Berman explained in *Forbes* how, through the process of “distressed investing,” “vulture investors” purchase bankrupt company shares at cents on the dollar, potentially selling the shares at much higher prices. The *Spectator* reported on this bondholder propensity for “buy low, sell high” strategies in October, 2005, and stated that Stelco’s bondholders “are holding out for a deal with a better cash return.” In general, a number of investors purchase stock in distressed companies in order to enhance their value during restructuring, as did Wilbur L. Ross when his company reached a special agreement with the USW during LTV’s bankruptcy. The *Spectator*, however, noted that observers of Stelco’s CCAA process believed that the holdout bondholders were “more interested in getting money than a stake in the company.” In the union’s view, Stelco’s bondholders appeared to prioritize their desire for higher returns in cash form over the compromise solution reached by the company and union, the funding of the pension plan, and the company’s survival. In their court challenges, bondholders argued that the Tricap agreement was reached without their consent, shifted what they termed “excessive” money into pensions, and offered ownership and “IOUs” rather than immediate cash,

ⁱ The Hamilton Spectator article “Creditors file bid to derail Stelco” by Chinta Puxley on Oct. 7., 2005, stated that the bondholders who challenged the agreement “are not required to publicly identify themselves.”

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with no security if Stelco collapsed again. The bondholders instead proposed a plan that reduced the initial downpayment into the pension deficit, and repaid it over a longer period of time, leaving Stelco with an additional \$200 million debt.⁸²

Stelco and the USW chose to interpret the bondholder plan simply as a misguided variant of the Tricap plan, and one that could be remedied by placing pensions first. Ferguson stated, “Everybody is on board with this plan and the only real outstanding difference is that \$200 million.” Because the bondholders continued to criticize the court decision, the union developed a “carrot and stick” approach, in which it emphasized that the bondholders stood to gain twice as much from the agreement reached in August than a sale of the company. Alternately, the USW threatened to allow a liquidation of Stelco, plunging the value of the bondholders’ investment.⁸³

As the fate of Stelco hung in the balance, awaiting the decisive bondholder court battle, the USW laid the groundwork for a broad mobilization on the basis of the Tricap plan. It arranged a “Stand up for Stelco” rally, perhaps the culmination of the union’s efforts towards network embeddedness. The union invited all the contacts and decision-makers who shared a common interest in Stelco’s survival to speak in the centre of Hamilton beside Steelworker pensioners and representatives from all levels. The district placed a full-page advertisement in the *Hamilton Spectator* which thanked the city for their support, and contained the following message:

The only relevant opposition to this Plan is coming from the company's financial creditors, who would rather see the cash that is targeted for the pension fund go into their bank accounts. While this [Tricap] plan offers [bondholders] a fair deal - swapping their debt holdings to equity - they have made it clear that they want more. They want to bleed the company dry and leave it for dead to satisfy their greed.⁸⁴

Together with the Hamilton City Council, the union called for a November 7 rally supporting the union's restructuring plan. Publicized by the Hamilton Spectator, it was attended by twice the anticipated number of 1,000. The rally demonstrated the widespread support that the Steelworkers had cultivated over nearly two years of bargaining. Hamilton's mayor, members of parliament, and city councilors joined Pratt to promote the Tricap bid. The union's efforts to build credibility, beginning with the challenge to the CCAA numbers, and reaching a plateau during the scuffle over GM, succeeded in mobilizing a representation of the entire community behind a joint USW-Stelco agreement, and personified the union's desire for a positive solution based on consensus. Whether or not the rally actually influenced the bondholders is open to question. Silenzi expresses, however, that the rally reminded SOAR's retired workers that the entire union and the community supported their fight to protect pensions.⁸⁵ The rally, then, served to maintain the high level of political vitality among the active union and retirees.

Following the rally, the USW continued in its "carrot and stick" approach towards the bondholders. The government, union, and company, thanks in part to pressure from a Stelco-initiated deadline, eventually persuaded bondholders to adopt a new Plan of Arrangement that featured a \$400m immediate payment into

the pension plan. Some bondholder holdouts continued their legal challenge, however, and the high-risk game of ‘chicken’ continued until the government stepped in to offer an incentive. The bondholders accepted an increased equity share, and a pledge from federal and provincial governments for additional \$80 million dollars into Stelco’s deficits. All parties agreed to the modified Tricap plan in December, 2005.⁸⁶ Pratt evaluated the factors behind the plan’s adoption,

To have the province, Tricap and the union all on board was clearly very important. The province coming up with such a significant loan for the pension plan was a very critical step. The other thing was that we were facing a deadline. The judge ordered a vote. We were into negotiations up to that day. I think everyone realized we had to come up with a plan or we risked losing everything.⁸⁷

Stelco has since implemented the Tricap restructuring plan. The Steelworkers gave no concessions in the December 9, 2006 agreement, and negotiated new productivity bonuses. Despite their initial wrangling, the bondholders brought home a considerable profit from their investment in Stelco. “Even then,” as Pratt noted, “the one clear group that lost is the shareholders.” Under the CCAA process and final plan of arrangement, shareholders, including Steelworkers who had invested in the company, lost their current stock. Several Steelworkers that participated in interviews expressed frustration that, had Stelco not chosen to enter CCAA, the tens of millions of dollars that Stelco paid to lawyers and financial experts during the process could instead have gone into the company.⁸⁸

Local 1005 later negotiated a collective agreement with the new Brascan ownership under CEO Rodney Mott that included \$1-4 dollar per-hour pay raises,

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bi-weekly bonuses, and cost-of-living allowances. Mott also began to downsize Hilton Works employees by one-third, offering “golden handshake” packages to workers, such as a \$20,000 bonus for retiring before 2008. In efforts to improve competitiveness, Stelco reduced job categories from 28 to 8. Elements of Hilton Works have been sold off, or transferred to the more modern Lake Erie plant, which is itself a growing target of investment. By July 2007, Hilton Works was slated to employ 2,000 workers, from 14,000 in the early 1980s.

Feelings at Hilton Works are mixed. Local 1005 was able to negotiate the highest wage increases in its history under the new collective agreement, complementing the bonuses and allowances. While the job categories were reduced, partly as a result of technological change, each job category received a pay raise. The local leadership proudly proclaimed the success of the ‘no concessions’ policy. On the other hand, the job reductions at Hilton Works, though softened by the union, and implemented through “golden handshakes” and attrition, has further diminished what was a flagship plant. The locals, then, are quick to differentiate between their victory over company attempts at pension and wage concessions during the CCAA process, and the plant modernization carried out under Stelco’s new post-CCAA management. The job loss at Hilton Works occurred also as a result of changes in Stelco’s customer base. Though rank-and-file workers felt ‘animosity’ over the streamlining, Local 1005's executive accepts and understands the company's decision.⁸⁹ The union does not view the effects of technological and customer changes at Stelco as comparable to the concessions

that prior management attempted to impose on Stelco's workers. Ray Silenzi perhaps best summarizes the bittersweet ending reached under CCAA,

If you look at the two plants in Quebec, they're not going to shut them down right now and we've bought some time on that. A financially-stable company took them over, Mittal. We also saved 300 jobs at Parkdale. That turned out to be really good. At Edmonton, they were going to bring in a buyer, the union found a different a buyer that was a better fit because they make the same product. At 8782, they're a pretty well-organized plant and that turned out okay. That's 4/5. Now you take a look at Hilton..."

Silenzi believes that the mixed results at Hilton Works underscore the need for investment in the plant, which retains a great deal of skills, usable land, and expansion potential.⁹⁰

On August 26, 2007, U.S. Steel negotiated the purchase of Stelco via the post-CCAA management, paying \$1.9 billion dollars, and a share price greater than the company's share value. Observers expect the deal will inject fresh capital into the company, including the Hamilton operations. Most significantly, U.S. Steel offered a voluntary contribution of \$31 million USD into the pension plan. In an interview on *Business News Network*, Steelworker national director Ken Neumann expressed the union's comfort with the agreement, citing the USW's existing relationship and familiarity with U.S. Steel. When asked for his opinion on the increased investment into the pension plan, and U.S. Steel assurances that it sought no job cuts, Neumann agreed that the deal negotiated in August brought "no downside" in the form it was written. He further argued that the two year battle waged by the Steelworkers during the CCAA process influenced the union-

friendly terms of the buyout. “It was because of the fight that we’ve maintained that [security].”⁹¹

Though the pension deficit is under repair, Stelco's future is by no means secure. Stelco's revenues have declined since the restructuring as a result of global market conditions, and the company experienced a \$145-million loss in Q4 2006. On the other hand, the company recently turned a \$5 million dollar profit, before deductions, in the second quarter of 2007. If Stelco is to survive, however, it will do so in a climate of deindustrialization and a rising Canadian dollar. The uncertain future of Canada's manufacturing industry necessitates continued union vigilance in protecting existing gains. Some recent news is encouraging. In June, 2007, the Supreme Court of Canada ruled that collective bargaining rights were protected by the Charter of Rights and Freedoms. While the decision impacts government employees most strongly,⁹² the collective bargaining crucial to Stelco's restructuring is now assured as a right for Canadian workers.

Chapter 3 – Lessons from the Interventionist Strategy

When questioned about the implications of the USW's involvement in CCAA, Stelco's rank-and-file workers and union executives exhibited reluctance to draw lessons for other unions. They argued that Stelco's CCAA process was as unique as that faced by any other union, and other workers experiencing bankruptcy necessarily would face different challenges. Certainly, the USW's CCAA experience will not fully apply to unions engaged in other cases of corporate bankruptcy restructuring. Stelco atypically suffered not from immediate, crippling insolvency, but only future projected bankruptcy, facilitating the union's resistance to concessions. Other factors further set the USW intervention in Stelco's CCAA apart from other Canadian restructurings. The decentralized structure of the USW allowed for the development of the "Made-in-Canada" solution by union locals determined to avoid concessions. Many Canadian manufacturing locals belong to more centralized unions. Whether these locals could attempt an interventionist strategy would depend on initiative from their central union body. Moreover, Stelco's locals were supported by experts from the international union, experienced in prior bankruptcy restructurings. Other Canadian unions may require experience-building in bankruptcy intervention before engaging in major restructurings.

On the other hand, as Leibovitch put it, Stelco's workers learned that "if there is a pot of gold to be fought over [i.e. Stelco as a viable company] - fight for it. Don't let the bondholders get it all."⁹³ Union involvement ensured that pension

security came first in the restructured Stelco. The collective agreements negotiated at the completion of the process validated the interventionist strategy.

The USW's interventionist strategy was key to a bankruptcy restructuring that resulted in no concessions: the collective agreement remained intact; the company continued operations; the pension fund was secured; and the locals even negotiated some productivity bonuses. Some jobs were lost, though the climate of restructuring and difficulties in the Canadian manufacturing sector virtually guaranteed that outcome.

Defensive tactics alone did not save the pensions. Ferguson recounts, "We didn't just say 'no' to Stelco. We got on the field and we participated and we created a true alternative." Without the USW's restructuring bid, the initiative and government support would have rested with Stelco and Deutsche Bank. Cohesiveness was vital among the participating locals. As Silenzi stated, if the Five Locals had not together engaged in the restructuring process, "They [Stelco] would have ripped us apart. It was either 'divide and conquer' or 'united we stand.' We had more resources than anybody, but we had to bring them together from the top of the international, to the government, to the salaried employees."⁹⁴

The general principles Frost articulated governing union participation in regular restructuring applied equally well to District 6's engagement in Stelco's CCAA. The locals benefited from adopting an interventionist strategy supported by union strengths in the four areas that Frost outlined, namely, effective mobilization, as well as access to information, access to company management,

and access to decision-making processes. Success in resisting concessions was enhanced by effective network embeddedness, and a high level of political vitality within the union. Further, the old mobilization strategies remain relevant in today's non-standard bargaining. The union was able to use its mobilization apparatus previously employed in contract negotiations and political protests towards the bankruptcy restructuring process.

Unions should direct mobilization and public relations campaigns towards government under bankruptcy restructuring, since the government remains as vulnerable to major industrial collapse as unions. Because of emergency pension fund bailouts, and the possibility of thousands of pensioners suddenly thrown into welfare rolls, governments face negative financial and political pressures in the event of industrial bankruptcy. As a result, unions and governments share a common interest in protecting the pensions and jobs of active and retired workers. Steelworker presence in courtrooms, in Hamilton's city streets, and on the editorial pages of newspapers no doubt 'reminded' government of its commitments.

The Five Locals' links with other organizations and within the broader union also facilitated the interventionist approach. For Steelworkers fighting for their pensions, solidarity is not merely a 'buzzword.' The support they received from the international union, and from smaller affiliated organizations such as SOAR, lent weight, experience, and expertise to the restructuring strategy. The union's established links with labour lawyers, financial services, and the

investment community proved useful when it decided to engage with Stelco head-on. Union parochialism is probably not compatible with an interventionist strategy.

Scholars may further consider the Canadian labour climate as salient in the results of District 6's intervention. Brennan argues that "it is undeniably true that the Canadian labor movement has been healthier than our neighbors to the south in the past twenty years."⁹⁵ While Canadian union decline mirrors that in the U.S., Canadians have retained an electable social-democratic party and some trappings of a welfare state. Canadian USW executives agree that the more pronounced social-democratic consciousness in Canada, and residual strength of labour, facilitated worker and government support for and confidence in the USW's restructuring bid. Simply put, they argue it is easier to be militant in Canada.

Finally, unions employing an interventionist strategy benefit if they are situated in fixed, capital-intensive, heavy industries such as steel. Unlike elements of auto assembly lines, for example, corporations cannot simply move a blast furnace. The fact that Stelco's plants are relatively immovable assets assisted the union in its independent search for bidders. Foreign steel giants are currently seeking footholds in North American manufacturing, and the Steelworkers understood that they could make or break a sale of Stelco's sought-after assets.

Restructuring as Strategy

The business community has increasingly recognized the significance of the USW's CCAA restructuring initiative. Yet organized labour and analysts

remain unclear over the strategy's desirability. CAW leader Buzz Hargrove, for example, states "We see [bidders] simply as a group of wealthy people that control a group of other wealthy people's money, and buy low, throw a lot of people out of work, and sell high." Local 1005's executive also demonstrated marked opposition to negotiation with the "vulture capitalists."⁹⁶

A potential criticism of the USW strategy is that it only mitigates the damage caused by broader economic crises. For example, during the U.S. steel "meltdown" prior to Stelco's CCAA, the USW engaged in precedent-setting negotiations with International Steel Group to purchase bankrupt Bethlehem Steel. The union allowed ISG to cut jobs at Bethlehem, in return for reviving the company and remaining jobs, and maintaining healthy wages and benefits.⁹⁷

A related problem involves what Appelbaum describes as the role of international unions in "setting industry frameworks for bargaining, and [establishing] common standards and principles." Once the union allows job cuts at one plant, other steelmakers demand concessions from their workforce in order to remain competitive, as did Stelco in 2004, and a number of U.S. manufacturers after LTV's restructuring in 2001.⁹⁸

On the other hand, while the USW gave up jobs at Bethlehem, *American Metal Market* acknowledges that the union did so on its own terms. Leo Gerard even arranged successfully for proportionately greater cuts in the company's management structure than the workforce. Moreover, the rank-and-file staff reductions were implemented through a voluntary retirement program that offered

bonuses to blue-collar workers. In an economic environment where downsizing, rightsizing, and offshoring is commonplace, the ‘inevitable’ crisis-driven job cuts occurred on the Steelworkers’ terms, who maintained a share of control in the process. The alternative was to accept wage and benefits cuts, or watch all of Bethlehem’s jobs disappear.⁹⁹ Broadly, the USW views the pattern-setting agreements they negotiated following the U.S. steel crisis as an example of bargaining upward from a depressed position, establishing a healthy standard for collective agreements.

Bethlehem’s restructuring illustrates the importance of control in a zero-sum process. As in Stelco’s example, the Bethlehem agreement streamlined the corporation, while preserving the union’s wage and benefit package. According to Gerard,

A lot of analysts are trying to figure out what we gave up. We haven’t given anything away. We sat down with the ISG team and...we built a collective agreement - and I mean built - that gives the union and its membership more influence and control over the daily going-ons of the company. We have improved our position on the contracting-out of work and delayed management.¹⁰⁰

District 6 applied a similar strategy for Stelco’s CCAA. None of the negotiators possessed any illusions about the nature of Tricap, who were tough-minded capitalists with the objective of profiting from Stelco’s purchase. Yet, engagement with Tricap, under the mutual understanding that both parties stood to gain more from co-operation than the alternatives, allowed the union to create a positive alternative for Stelco’s restructuring. Leo Gerard believes that restructuring examples from Bethlehem to Stelco demonstrate the strategy’s

necessity in both the U.S. and Canada. “If you're not in the game, you're really going to get really screwed.”¹⁰¹ Gerard's pithy statement mirrors the results of Bacon's study on the necessity of trade union involvement in restructuring.

A Broader Viewpoint?

Labour analysts may accept the USW restructuring strategy, but they sometimes qualify their support. Brennan recognized District 6's involvement in Stelco's bidding process, but wrote in *Monthly Review* that “without an alternative vision for the industry, and a strategy to fight for it, the effort remains uphill.” The District 6 negotiating team agrees that the restructuring strategy is limited in its application, and some members even recognize their position in a broader capitalist society that limits their ability to deliver real justice. As one union official explains, “Every trade union in history knows that every time you settle a contract, you didn't get full justice. Because you don't get that in our society! But that doesn't mean you can't try to get the best contracts you can.”¹⁰²

Instead, the Steelworkers have put forth an evolving alternative vision for the industry within a wider context that USW International Affairs Director Gerry Fernandez calls “offensive and defensive” strategies. The USW intends to directly confront the power of multinational capital by seeking a greater union role in company affairs where possible, and organizing opposition when appropriate. Broadly, the USW seeks to counter the power of the multinational conglomerates through transnational unionism. The USW demonstrated the international importance of union-to-union linkages when it developed alliances with

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Australian workers at Alcoa and Bluestone, steelmakers with operations in both Australia and the U.S., mutually to enhance the bargaining positions of geographically-separated steelworkers. The union similarly advised Serbian and Croatian workers on how to bargain with U.S. companies, and has extended its efforts to South Africa and Brazil.¹⁰³

USW tariff lobbying in the U.S., and its engagement with government during Stelco's CCAA, evince how the Steelworkers also seek through state intervention to create improved labour protections, and a positive environment for steel manufacturing. Likewise, the Steelworkers enter into politics at the municipal level. Scott Duvall ran for Hamilton City Council following the conclusion of the CCAA process and won.

Consistent with its support of the NDP, at no point in the CCAA process did the Steelworkers enter into any mutual support or endorsement agreements with the governing Liberal party that represented most of Hamilton. The USW instead lobbied the appropriate members of parliament to represent their constituencies. A key lesson, perhaps, is that governments may require union encouragement in order to act on pension crises in a timely fashion. And while government played a significant role in Stelco's positive restructuring solution, thanks in part to USW efforts, it was the union's intervention into the CCAA process itself from which lessons of a broader nature may be drawn.

Involvement in corporate bankruptcy restructuring represents only one aspect of the USW's continuing effort to increase worker participation in

company affairs. Notably, Gerard claimed that Bethlehem's workplace reorganization signified the union's turn to a "more Western European style of labor structure in the workplace." Bargaining and labour relations structures in countries such as Germany have clearly influenced the direction and goals of the Steelworkers. Union officials involved in the CCAA have expressed their interest in systems similar to the German model, but admit that the political and regulatory environment in the United States and Canada is not amenable to European-style corporatist relationships. If Steelworkers are successful in increasing the union's role in corporate and decision-making processes, they will do so through the creation of a uniquely North-American model. Steelworkers may aim for new participation frameworks within individual plants or corporations rather than at the industry or national level.¹⁰⁴

In their review of the future of U.S. labour, Gapasin and Yates note that since the 1970s, "the class struggle has been a pretty one-sided affair." They suggest that organized workers "were slow to react to capital's offensive, especially in the rich countries." While the USW advocates for government improvements in social spending in areas such as pensions, as well as legal protection for workers and tariff protection for the productive sectors, it has also had to adjust to the realities of a neo-liberal world. The "New Deal" is unlikely to return any time soon.¹⁰⁵

Intervention into bankruptcy restructuring offers the USW inroads into what was formerly understood as "management domain." Since capital no longer

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honours its end of the post-war compromise, it stands to reason that unions are not required to either. Union involvement in bankruptcy restructuring, including changes in corporate ownership, is one area in which unions can become productively involved in the fate of the company. Certainly, this was the case at Stelco. As Jacobs recounts,

I think there is a tendency to view unions as being unsophisticated actors in these processes whose interests start and stop at the issue of wages. But the unions brought legal, financial, and strategic expertise into the process. The locals' lawyers and the union leaders poured their entire lives into this. There was nothing but Stelco's CCAA. That was what we ate, breathed, and thought for the better part of two years. These actors brought as much legal expertise to bear as possible in order to assist the members, including appearances in the commercial court, appearances at the court of appeal, and applications to the Supreme Court of Canada. The advocacy by people like Bill Ferguson, Ken Rosenberg, Ron Bloom, and others showed that Stelco did not have the corner on expertise in this area.¹⁰⁶

If unions such as the USW remain successful in their interventionist approach, the practice could gain further legitimacy. Assuming that management really is “too important to be left (solely) to management,” union involvement in bankruptcy restructuring represents one possible exit from the shackling framework of the post-war compromise, and one long overdue for North American workers. Union interventionism may even set a precedent for future changes in labour relations, popularizing the value of labour's decision-making power. The Steelworkers never desired Stelco's management to enter bankruptcy protection. But in their intervention, the USW demonstrated not only that workers can intervene in ‘corporate’ processes to protect their well-being, but that they *should* do so.

ENDNOTES

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