



Affidavit #1 of Mario Santos  
Affirmed: April 4, 2025

No. S-238572  
Vancouver Registry

**IN THE SUPREME COURT OF BRITISH COLUMBIA**

IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985,  
c. C-36, AS AMENDED

AND

IN THE MATTER OF THE PLAN OF COMPROMISE AND ARRANGEMENT OF MYRA  
FALLS MINE LTD.

**AFFIDAVIT #1 OF MARIO SANTOS**

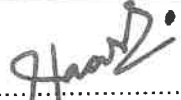
I, Mario Santos, with an address of 326-12th Street, New Westminster BC, British Columbia,  
AFFIRM THAT:

1. I am the Area Director, British Columbia, for Unifor. Starting June 26, 2023, I have also acted as lead negotiator of the bargaining committee for Unifor Local 3019 (the "Unifor Local 3019") for the purposes of collective bargaining with Myra Falls Mine Limited (the "Petitioner"). As the lead negotiator, I have been privy to negotiations between the Petitioner and the Union, and have full access to bargaining proposals, memorandum of agreement, and other related documents. As such, I have personal knowledge of the matters hereinafter deposed to, save where the same are stated to be made upon information and belief, and where so stated I verily believe the same to be true.
2. Unifor is a trade union that represents more than 315,000 members working across 29 sectors in over 2883 bargaining units across Canada.
3. Since 1990, Unifor Local 3019 has been certified as the sole and exclusive bargaining agent for the employees of the Petitioner and its predecessors, except supervisory, technical and clerical staff.
4. The Petitioner and the Union have been and continue to be bound by the collective agreement contained in Exhibit 'F' of Affidavit # 1 of Hein Frey, affirmed on December 17, 2023 (the "Collective Agreement").
5. Before the commencement of the present proceedings under Companies' Creditors Arrangement Act, r.s.c. 1985, c. c-36, as amended (the "Proceedings"), the Union served a notice to bargain to the Petitioner on June 26, 2023
6. Pursuant to the Proceedings, the Petitioner placed 250 out of around 273 employees on temporary lay off under the Collective Agreement. These employees are representative of the residential community where the Petitioner's operations are located.

7. Despite challenges in fixing mutually agreeable dates, the Union and the Petitioner bargained for 10 days as listed below (the "Bargaining Dates"). However, the Union and the Petitioner could not arrive at a consensus on the terms of renewal of the Collective Agreement.
  - a) Before the commencement of the Proceedings: October 18, 2023, October 19, 2023, October 30, 2023, October 31, 2023, November 15, 2023 and November 16, 2023.
  - b) Following the Proceedings: July 4, 2024, October 3, 2024, November 6, 2024 and November 7, 2024,
8. The Union and the Petitioner could not convene a meeting in August 2024 as the Petitioner failed to show up, despite the parties having set aside an entire week starting August 19, 2024. Attached and marked as **Exhibit A** are copies the August 12, 2024 and August 15, 2024 emails sent by me to David McDonald, the counsel for the Petitioner, including David McDonald's response dated August 19, 2024.
9. Throughout the Bargaining Dates, the Union has been negotiating in good faith and making sincere attempts to reach an agreement considering the financial, economic and practical difficulties of the Petitioner. However, the Union's inability to arrive at a consensus with the Petitioner has been triggered by the fact that some of the concessions (as set out below) sought by the Petitioner go to the essence of the collective bargaining rights of the employees represented by the Union, and fettering them would mean not having a collective agreement at all.
  - a) Fundamentally altering the nature of jobs, classification, and wages under the Collective Agreement in a way that even has the potential of imposing a pay cut on certain employees.
  - b) Selectively recalling and terminating employees at the Petitioner's discretion. Attached and marked as **Exhibit B** are copies of the November 7, 2024 emails sent to me by David McDonald, the counsel for the Petitioner, declining the Union's request for a list of employees who the Petitioner intends to recall and lay off.
  - c) Contracting out an undefined amount of the Petitioner's operations. This further reduces the chances of the employees to be recalled. **Exhibit B** contains copies of the November 7, 2024 emails sent to me by David McDonald, the counsel for the Petitioner, declining the Union's request for percentage of contracted out operations.
  - d) Requiring the Union to waive its rights to file grievances with respect to items (b) and (c) above.
10. Pursuant to this Honourable Court's Order dated January 29, 2025, the Union attended a mediation with the Petitioner. However, the parties could not arrive at a consensus on the terms of renewal of the Collective Agreement.
11. The employees represented by the Union are not in receipt of initial and supplemental hardship payment totalling to eight weeks of wages per employee as authorized by the Amended and Restated Initial Order dated December 28, 2023 since the parties could not arrive at a consensus on the conditions for payment for hardship pay.

12. The Union awaits the disclosure of information of pension contributions per employee under the defined contribution pension plan sponsored by the Petitioner.
13. The severance and recall rights of 128 employees on temporary lay off are due for expiry June 18, 2025 with an option to extend up to December 18, 2026. The remaining 144 employees are due for expiry on December 18, 2025 with an option to extend up to December 18, 2027. The Collective Agreement entitles the employees to elect receiving severance payment or extending their of recall rights in accordance with the provisions set out therein. Attached and marked as **Exhibit C** are copies excerpts of the Collective Agreement.

AFFIRMED BEFORE ME  
at APRIL 2, 2025, British Columbia  
on VANCOUVER

  
.....  
A commissioner for taking  
affidavits for British Columbia  
Raashi Ahluwalia

  
.....  
Mario Santos

**From:** Dawid Cieloszczyk  
**To:** Mario Santos  
**Subject:** Re: [EXT] RE: Unifor local 3019  
**Date:** Monday, August 19, 2024 4:55:58 PM  
**Attachments:** [image001.png](#)  
[image002.png](#)  
[image003.png](#)  
[image005.png](#)

This is Exhibit - A referred to in the affidavit of Mario Santos sworn before me at Vancouver, BC this 2nd day of April 20 25  
Haas  
A Commissioner for taking Affidavits for British Columbia

**Attention:** This email originated from outside of Unifor. | Ce courriel provient de l'extérieur de Unifor.

Ok, thanks, Mario. I am now catching up with my emails after returning from vacation. I will have a look at where we were at with the final NDA edits. I'll be in touch shortly.

**Dawid Cieloszczyk** | Associate  
T 604.734.8001 | F 604.734.8004 | [E DCieloszczyk@koskielavlin.com](mailto:DCieloszczyk@koskielavlin.com) |



**KOSKIE GLAVIN GORDON**

1650-409 Granville St | Vancouver, British Columbia | Canada V6C 1T2  
[www.koskielavlin.com](http://www.koskielavlin.com)

**Important Notice to Recipient**

This e-mail may contain information that is privileged, confidential, or otherwise exempt from disclosure under applicable laws and is intended only for the person to whom it is addressed. If you are not the intended recipient, please notify the sender immediately.

Unauthorized use, reproduction or dissemination of this e-mail is strictly prohibited. If you have received this e-mail in error, please contact the sender immediately. If you submit personal information about you or any other person to Koskie Glavin Gordon, its affiliates, representatives or agents, you agree and confirm your authority to consent to our collection, use and disclosure of such information. This collection, use and disclosure may be subject to solicitor/client privilege and is subject to our privacy policy available [here](#).

---

**From:** Mario Santos <Mario.Santos@unifor.org>  
**Date:** Monday, August 19, 2024 at 4:51 PM  
**To:** Dawid Cieloszczyk <DCieloszczyk@koskielavlin.com>  
**Subject:** FW: [EXT] RE: Unifor local 3019

Fyi

I also received this on Friday.

I apologize, I have sent a number of follow up emails to both Hein and counsel, but have not

heard anything back to confirm location and meetings for next week. I don't know what to say at this stage other than I will let you know as soon as I hear anything. I have the entire week set aside so maybe if we are not meeting Monday it can be later in the week.

Dave

**Mario Santos**

**Area Director BC**  
**Directeur local C.-B.**



326-12th Street, New Westminster BC  
Cell: 604-349-9058  
Fax: 604-522-8975  
[Mario.santos@unifor.org](mailto:Mario.santos@unifor.org)

@UniforTheUnion | @SyndicatUnifor  
 [facebook.com/UniforCanada](https://facebook.com/UniforCanada) | [facebook.com/SyndicatUnifor](https://facebook.com/SyndicatUnifor)

**From:** David McDonald <dmcDonald@fasken.com>

**Sent:** August 19, 2024 4:22 PM

**To:** Mario Santos <Mario.Santos@unifor.org>; Frey, Hein <Hein.Frey@myrafallsmine.com>

**Subject:** RE: [EXT] RE: Unifor local 3019

**Attention:** This email originated from outside of Unifor. | Ce courriel provient de l'extérieur de Unifor.

Mario,

Apologies about this week. Hein was not receiving my messages. I have now been provided some direction on where the Employer is at. The Employer would like to have some discussions with the Union to review Myra Falls' options. A necessary precondition to sharing confidential financial information is to have the NDA signed and returned. On Friday afternoon I confirmed with Unifor counsel that the proposed amendments to the NDA are fine. Assuming we can get the NDA out of the way, the Employer is proposing an in-person meeting in Campbell River on August 29, 2024.

The meeting would be devoted to Myra Falls presenting the historical financial operating

information about the mine and comparative operating costs and we would also discuss the scope of the proposed financial report from Grant Thornton to ensure that it covers the information in a way that is useful for the Union.

Can you confirm the Union is prepared to meet on this basis and that this date works?

Dave

**David McDonald\***

Partner

**T** +1 604 631 4751 **M** +1 604 762 1126

[dmcDonald@fasken.com](mailto:dmcDonald@fasken.com) | [www.fasken.com/en/David-McDonald](http://www.fasken.com/en/David-McDonald)

**FASKEN**

**Fasken Martineau DuMoulin LLP**

550 Burrard Street, Suite 2900, Vancouver, British Columbia V6C 0A3

\*Law Corporation

**From:** Mario Santos <[Mario.Santos@unifor.org](mailto:Mario.Santos@unifor.org)>

**Sent:** Thursday, August 15, 2024 4:18 PM

**To:** David McDonald <[dmcDonald@fasken.com](mailto:dmcDonald@fasken.com)>

**Subject:** [EXT] RE: Unifor local 3019

**{CAUTION: This email originated from outside of Fasken. Exercise care before clicking links or opening attachments.}**

Hi David

Just confirming we are going to meet next week. If I don't hear from you by Friday afternoon I will assume we are not.

**Mario Santos**

**Area Director BC**

**Directeur local C.-B.**




326-12th Street, New Westminster BC  
Cell: 604-349-9058

Fax: 604-522-8975

[Mario.santos@unifor.org](mailto:Mario.santos@unifor.org)

 @UniforTheUnion | @SyndicatUnifor

 [facebook.com/UniforCanada](https://facebook.com/UniforCanada) | [facebook.com/SyndicatUnifor](https://facebook.com/SyndicatUnifor)

**From:** Mario Santos

**Sent:** August 12, 2024 3:35 PM

**To:** 'David McDonald' <[dmcDonald@fasken.com](mailto:dmcDonald@fasken.com)>

**Subject:** Unifor local 3019

Hi David

I am just checking in to see where you want to meet next week? I can check to see if the Union hall is free?

I plan to meet with the committee on Monday at 8:30 am at the Unifor Hall.

**Mario Santos**

**Area Director BC**

**Directeur local C.-B.**





326-12th Street, New Westminster BC

Cell: 604-349-9058

Fax: 604-522-8975

[Mario.santos@unifor.org](mailto:Mario.santos@unifor.org)

 @UniforTheUnion | @SyndicatUnifor

 [facebook.com/UniforCanada](https://facebook.com/UniforCanada) | [facebook.com/SyndicatUnifor](https://facebook.com/SyndicatUnifor)

This email contains privileged or confidential information and is intended only for the named recipients. If you have received this email in error or are not a named recipient, please notify the sender and destroy the email. A detailed statement of the terms of use can be found at the following address: <https://www.fasken.com/en/terms-of-use-email/>.

*Ce message contient des renseignements confidentiels ou privilégiés et est destiné seulement à la personne à qui il est adressé. Si vous avez reçu ce courriel par erreur, S.V.P. le retourner à l'expéditeur et le détruire. Une version détaillée des modalités et conditions d'utilisation se retrouve à l'adresse suivante : <https://www.fasken.com/fr/terms-of-use-email/>.*

---

\*\*\*\*\* This email and (including any attachments) transmitted with it are confidential and intended solely for the use of the individual or entity to whom they are addressed. If you have received this email in error please notify the sender immediately. If you are not the named addressee you should not disseminate, distribute or copy this e-mail or attachment. If you are not the intended recipient you are notified that disclosing, copying, distributing or taking any action in reliance on the contents of this information is strictly prohibited. Thank you.

**From:** David McDonald  
**To:** Mario Santos; Frey, Hein; David Sams (david.sams@myrafallsmine.com)  
**Cc:** Maciej Sciazko; Olley, Stuart  
**Subject:** RE: Myra Falls: Restart MOA  
**Date:** Thursday, November 7, 2024 11:44:34 AM

---

**Attention:** This email originated from outside of Unifor. | Ce courriel provient de l'extérieur de Unifor.

Mario,

Following up on your further questions:

5. The Company requires the ability for selective recall during a restart in all areas of operations.
6. The Company will not agree to a percentage cap on the use of contractors underground.

Dave

**David McDonald\***

Partner

T +1 604 631 4751 | M +1 604 762 1126 | [dmcdonald@fasken.com](mailto:dmcdonald@fasken.com)

**Fasken Martineau DuMoulin LLP**

\*Law Corporation

This is Exhibit - B referred to in the affidavit of Mario Santos  
sworn before me at Vancouver, BC  
this 2nd day of April 20 25  
g. and Z.  
A Commissioner for taking Affidavits  
for British Columbia

**From:** David McDonald

**Sent:** November-07-24 11:05 AM

**To:** Mario Santos <Mario.Santos@unifor.org>; Frey, Hein <Hein.Frey@myrafallsmine.com>; David Sams (david.sams@myrafallsmine.com) <david.sams@myrafallsmine.com>

**Cc:** Maciej Sciazko <Maciej.Sciazko@trafigura.com>; Olley, Stuart <Stuart.Olley@gowlingwlg.com>

**Subject:** Myra Falls: Restart MOA

Mario

In response to your questions:

1. At the time the mine was placed into care and maintenance in December 2023, there were approximately 250 hourly employees: 130 mining; 44 mtnc, half on surface, half underground; 55 mill; 20 surface; 7 admin (health and safety etc.)
2. The anticipated milled ore threshold is approximately 650,000-680,000 tonnes per year.
3. We are not able to provide an estimate of the number of hourly employees for both the ramp-up and operating period for the MOA right now. Ramp-up will have a minimum of 25 hourly (already on site), increasing during the ramp-up to operations to



- approximately 100, plus whatever hourly mine operations employees are recalled.
4. You have asked for a list of who the Company would intend to recall, we have a very preliminary one prepared, but have not reviewed for who is available or who would be interested in coming back and we are hesitant to share at this early stage because we really don't want this early assessment being distributed. We would prefer to share with a very small group and refine the list well before it is widely reviewed.

Dave

**David McDonald\***

Partner

T +1 604 631 4751 M +1 604 762 1126

[dmcdonald@fasken.com](mailto:dmcdonald@fasken.com) | [www.fasken.com/en/David-McDonald](http://www.fasken.com/en/David-McDonald)

# FASKEN

**Fasken Martineau DuMoulin LLP**

550 Burrard Street, Suite 2900, Vancouver, British Columbia V6C 0A3

\*Law Corporation

This email contains privileged or confidential information and is intended only for the named recipients. If you have received this email in error or are not a named recipient, please notify the sender and destroy the email. A detailed statement of the terms of use can be found at the following address: <https://www.fasken.com/en/terms-of-use-email/>.

*Ce message contient des renseignements confidentiels ou privilégiés et est destiné seulement à la personne à qui il est adressé. Si vous avez reçu ce courriel par erreur, S.V.P. le retourner à l'expéditeur et le détruire. Une version détaillée des modalités et conditions d'utilisation se retrouve à l'adresse suivante : <https://www.fasken.com/fr/terms-of-use-email/>.*

This is Exhibit "C" referred to in the affidavit of Mario Santos sworn before me at Vancouver, BC this 2nd day of April 2023.  
[Signature]  
A Commissioner for taking Affidavits  
for British Columbia

## EXHIBIT C

### Article 4

#### TERM OF AGREEMENT

This Agreement shall be in force from ratification to and including September 30, 2023. Thereafter, the agreement shall continue in full force and effect from year to year unless written notice of intent to amend the agreement at the expiration of any yearly period is given by either party. Subsections 50 (2) & (3) of the Labour Relations Code of B.C. are excluded from operation under this Agreement.

#### 4.02 Status During Negotiations

During any period when negotiations are being conducted between the parties for the renewal of this Agreement, the present Agreement shall continue in full force and effect until:

- (a) The Union commences a legal strike;
- (b) The Employer commences a legal lockout; or
- (c) The parties enter into a new or further agreement.

#### 4.03 Effective Date

Except as otherwise provided herein, the terms and conditions of this agreement shall become effective from the date of signing of the Collective Agreement by both parties.

### Article 12.05 (b)

Seniority will be maintained and accumulated during:

- (i) Absence due to lay-off up to eighteen (18) months with less than five (5) years seniority.
- (ii) Absence due to lay-off up to twenty-four (24) months with more than five (5) years seniority

### 12.10 Lay Off

In the event of a reduction of employment levels (except in the event of a temporary layoff as per Article 12.12) the Company will lay off in inverse order of Company seniority within affected classifications.

An employee displaced from his classification may displace a junior employee in either an entry level position or another position, provided he has sufficient ability to perform the work required, or elect to be laid off from the Company.

Employees shall be provided a period of up to one shift cycle for familiarization and to demonstrate that they have sufficient ability to perform the work required.

Apprentices shall be laid off in accordance with their seniority within their trade group.

Should an apprentice not have the seniority to retain employment within his trade group, he may elect to exercise his seniority to displace a junior employee in either an entry level position or a position he has the ability to perform the work required.

The Company and the Union shall meet no later than one (1) month prior to any layoff to discuss all matters concerning the layoff.

Employees must exercise their rights under article 12.10 within seven (7) working days of being informed of such displacement or they will be deemed to have elected lay off.

Employees shall maintain recall rights as per Article 12.05(b) and 12.13.

Employees may opt to receive their earned vacation pay in the week preceding the lay off.

The Company will provide all employees affected by layoff the contact information for the North Island Employment Foundation Society or its equivalent.

#### **12.11 Notice of Lay off**

The Company agrees to provide employees affected with notice of lay off as per the Employment Standards Act of B.C. or failing such notice pay in lieu thereof or a portion thereof at the employee's basic hourly rate of pay.

#### **12.13 Recall**

When it is necessary to increase the forces, employees on recall will be re-employed as closely as possible in the inverse order in which they were laid off. Employees are eligible for recall to the positions from which they were laid off or reduced from or to any entry level position, provided they have sufficient ability to perform the work required.

It shall be the responsibility of the laid off employee to notify the Company of any change to their current address and telephone number. Such notification shall be by registered mail or email with confirmation of receipt by the Company.

In the event that the Company recalls an employee to the position which he held at the time of his layoff, the Company will notify the laid off employee of the date of recall by registered mail at the last known address on file with the Company. In the event that an employee fails to report to work within fourteen (14) days after receipt of the registered notice, the employee shall lose the right to be recalled, with the exception of reasonable extenuating circumstances with as much notice to the Company as possible.

Where the Company recalls an employee to a position other than the position which he held at the time of his layoff, the Company will notify the laid off employee by telephone and will speak with the employee making the employee aware of the work opportunity. The employee so contacted will have forty-eight (48) hours from the time of the telephone conversation to either

accept or reject the work opportunity. An employee electing not to return for such work assignment will not be penalized in any manner, and will retain his recall rights as provided at Article 12.05(b). If the Company is not successful in contacting the employee on its first attempt, it will initiate two additional telephone calls within twenty-four (24) hours of the first call, with at least six (6) hours between calls ("waiting period") and if unsuccessful after three attempts, the Company will move to the next most senior eligible employee, and the employee who was not contacted will suffer no loss of seniority. The waiting period will be of four (4) hours between calls for the period of the first nine (9) months following ratification. The Company will provide the Union with a written list of those called and when.

The process established in the two paragraphs above will also apply to an employee being recalled from layoff as an alternative to using outside contractors as set out at Article 3.03.

#### **12.14 Permanent Layoff, Shutdown or Closure**

In the event an employee is permanently laid off as a result of:

- i) a permanent shutdown of the Company's operation or a department thereof;
- ii) Closure or partial closure of the mine;
- iii) A re-organization of the Myra Falls Operations that results in a reduction of the work force;

employees will be laid off as per Article 12.10.

The Company agrees to provide employees affected with notice as per Article 12.11.

The Company and the Union shall meet no later than one month prior to any layoff to discuss all matters concerning the layoff.

(1) Where an employee is laid off and the layoff is not deemed by the Company to be a permanent layoff, the employee will become entitled to severance pay (calculated based on the formula in article 12.14) upon the expiry of the employee's recall rights under article 12.05 (b) and 12.05 (c).

(2) Upon the expiry of the laid off employee's recall rights, the employee may elect to be paid severance pay at that time, or the employee may elect to have his recall rights continued for a further period equal to the employee's original period of recall rights under article 12.05 (b) (the "extension period").

(3) If the employee elects to have his recall rights continued for a further period under paragraph (2), the employee may elect at any time during the extension period to be paid severance pay (calculated based on the formula in article 12.14) and forfeit all further rights under the collective agreement, including the right to recall.

(4) At the conclusion of the extension period, if the employee has not elected to be paid severance pay previously, the employee shall be paid severance pay (calculated based on the formula in article 12.14).

(5) The principles stated in paragraphs (1) to (4) above will apply to the layoffs effected on February 15, 2008, the layoffs of June 4 and July 7, 2008, and to future layoffs.

(6) Where an employee makes an election under paragraph (2) or (3) above, the employee shall do so in writing, and the payment of severance pay will be made within two weeks after such written election is delivered to the Company.

Employees may opt to defer collection of their severance pay and retain recall rights as per Article 12.05 (b) and 12.14. Employees may elect to be paid severance in lieu of recall rights any time during the recall period or be paid severance when his recall rights expire.

Eligible employees who elect to be paid a severance, will be paid two calendar weeks of basic hourly rate of pay per year of service calculated to the nearest full month of service from his most recent date of hire.

To qualify for this severance payment, the employee must be actively employed, on vacation or in receipt of Worker's Compensation or Weekly Indemnity benefits. Employees on long term disability will not qualify for severance but shall continue to receive long term disability benefits under the terms of the long term disability plan. 26

Employees, upon receipt of severance payment, will have severed the employee/employer relationship and forfeited any and all rights under the Collective Agreement, including the right to recall.

The Company will make available the services of the Industrial Adjustment Service to employees affected by a permanent layoff.