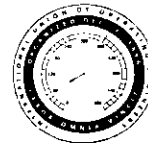


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**WEST VIRGINIA
HEAVY AND HIGHWAY AGREEMENT
2007-2009**

between

**CONSTRUCTORS' LABOR COUNCIL OF
WEST VIRGINIA, INC.**

and

**INTERNATIONAL UNION OF
OPERATING ENGINEERS
LOCAL UNION NO. 132, A.F.L.-C.I.O.**

**CONSTRUCTORS' LABOR COUNCIL OF
WEST VIRGINIA, INC.**

Post Office Box 3778
Charleston West Virginia 25337-3778
Phone: (304) 342-6107
Fax: (304) 342-6108
Internet: www.clcww.com

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UNION INFORMATION SHEET

BUSINESS MANAGER

Ronald L. Burdette
606 Tennessee Avenue
Post Office Box 6770
Charleston, West Virginia 25362-0770
(304) 343-7731 (phone)
(304) 342-8286 (fax)
1-888-440-9899 (toll free)

BUSINESS AGENTS

Charleston Area

Tommy Plymale
Gary Burgess
Todd Mullins - Dispatcher
606 Tennessee Avenue
Post Office Box 6770
Charleston, West Virginia 25362-0770
(304) 343-7731 (office)
(304) 342-8286 (fax)
1-888-440-9899 (toll free)

Clarksburg Area

Tom Halfin
Bill Guice - Dispatcher
118 North Linden Avenue
Clarksburg, West Virginia 26302
(304) 623-0791 (office)
(304) 624-4015 (fax)

Beckley Area

Rodney Marsh
2310 South Fayette
Beckley, West Virginia 25801
(304) 253-6898 (office)
(304) 253-6899 (fax)

Wheeling Area

Mike O'Hara
Donny Miller - Dispatcher
98 D East Cove Avenue
Wheeling, West Virginia 26003
(304) 238-0000 (office)
(304) 238-0002 (fax)

Petersburg Area

Rick Feaster
20 S Main Street
Petersburg, WV 26847
(304) 257-0723 (office and fax)

APPRENTICESHIP TRAINING SCHOOL

Charles "Chuck" Parker, Director of Training
Route 2, Box 137A
Ravenswood, West Virginia 26164
(304) 273-4852 (phone)
1-800-376-4852 (toll free)
(304) 273-4364 (fax)

HEALTH & WELFARE OFFICE

American Benefits
636 4th Avenue
Huntington, West Virginia 25726
(304) 525-0482 (office)
1-800-642-3525 (toll free - WV)
1-800-624-3470 (toll free - KY, PA & OH)
(304) 697-7919 (fax)

WEST VIRGINIA HEAVY AND HIGHWAY AGREEMENT

THIS AGREEMENT, made and entered into this 26th day of October, 2006, by and between the undersigned **CONSTRUCTORS' LABOR COUNCIL OF WEST VIRGINIA, INC.**, representing the members thereof doing business in all Counties within the State of West Virginia, (hereafter referred to as "Employer Association") and the undersigned **INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL UNION NO. 132, A.F.L.-C.I.O.**, (hereinafter referred to as "Union") to cover all Heavy and Highway construction work performed by the aforesaid Contractors in all Counties within the State of West Virginia;

WHEREAS, the parties desire to stabilize employment, promote harmonious relationships and provide a medium whereby Employers and Unions cooperate each with the other; and

WHEREAS, the Employer Association hereby recognizes and acknowledges that the Union signatory hereto is the exclusive representatives of all Employees in the classifications of work covered by this Agreement for the purpose of collective bargaining, as provided by the Labor Management Relations Act of 1947 as amended; and the Union recognizes the Employer Association as the duly authorized bargaining agent for its members;

NOW THEREFORE, the Employer Association and the Union, acting by their duly authorized agents, agree as follows

ARTICLE I **Definitions**

Section 1. "Contractor" or "Employer" when used in this Agreement means any Contractor or Employer engaged in all heavy and highway construction work in all counties in the State of West Virginia.

Section 2. The word "Work" when used herein means all types of "Heavy, Highway and Railroad Construction" work.

Section 3. Heavy Construction and Railroad Construction is defined as all heavy and railroad construction work in all Counties within the State of West Virginia, which includes, but it

is not limited to, constructing, substantially in its entirety, any fixed structures, improvement or modification thereof, addition or repair thereto, including any structure or operation which is an incidental part of a contract thereof including, without limitation, railroad and street railway construction projects, sewers and water mains, retaining walls, viaducts, drainage projects, flood control projects, reclamation projects, airports, athletic fields, ball parks, reservoirs, water supply projects, water power developments, hydroelectric developments, transmission lines, duct lines, pipelines, locks, dams, dikes, levees, revetments, channels, channel cutoff, intakes, dredging projects, jetties, breakwaters, docks, harbors, roads, bridges, overpasses, underpasses, cloverleaf structures, parking buildings, parking lots, sidewalks, river work, industrial plant sites work, sewage disposal plants, water treatment plants, excavation and disposal of earth and rock, clearing, grading and drainage of sites, work on building project to the foundation of the building, wind towers, communication towers, hazardous and toxic waste removal, abandon mine reclamation, landfills, containment facilities, brown field reclamation projects, asbestos removal, demolition work, nuclear and electromagnetic power reactors, bridges and including the erection, dismantling, operation, maintenance and repair of all equipment, vehicles and other facilities used in connection with or serving the aforementioned work.

Section 4. Highway Construction is defined as all highway construction work performed in all Counties within the State of West Virginia, which includes highway tunnels, highway and street grading, paving and drainage, culverts, manholes, water and other utility pipelines (when included in the contract), retaining walls, curbs and sidewalks, seeding and landscaping, clearing (when included in the contract), guardrails and fences, and the erection, dismantling, operation, maintenance and repair of all equipment, vehicles and other facilities used in connection with or serving the aforementioned work.

Section 5. The term "workday" when used herein means a completed eight (8) hour shift.

Section 6. The term "owneroperator" when used herein includes a person or persons who own their own pieces of equipment and hire out said equipment to the Contractor for the performance of bargaining unit work herein. The term driver of

leased equipment includes an "owneroperator" and a driver of equipment owned by another person who hires out or leases one or more pieces of equipment to the Contractor for the purpose of performance of bargaining unit work herein.

Section 7. The term "Union" when used herein is the undersigned International Union Of Operating Engineers, Local Union No. 132, A.F.L.C.I.O.

Section 8. A "make-up day" when used herein is a workday that results from the cancellation of work due to inclement weather.

Section 9. The term "temporary work" when used herein is work performed on a project in which the Employee works less than thirty-one (31) hours during the duration of the project.

ARTICLE II

Union Security

Section 1: Union Membership. All present Employees, within the meaning of this Agreement, who are members of the Union on the effective date of this Agreement shall, as a condition of employment, maintain their membership in the Union. All present Employees who are not members of the Union and all Employees who are hired hereafter shall become and remain members of the appropriate Union as a condition of employment not later than the eighth (8th) day following the beginning of their employment or the effective date of this Agreement, whichever is the later. Failure of any Employee to comply with the provisions of this Article shall, upon the request of the Union, result in the termination of such Employee. Employer shall furnish the Union with the names of any new Employees, no later than eight (8) days after employment, upon forms to be supplied by the Union. The Employer shall not justify the discrimination against any Employee for non-membership in the Union (a) if he has reasonable grounds for believing that such membership was not available to the Employee on the same terms and conditions generally applicable to other members, or (b) if he has reasonable grounds for believing that membership was denied or terminated for reasons other than the failure of the Employee to tender the periodic dues and initiation fees uniformly required as a condition of acquiring or retaining membership.

Employer agrees to check off Union dues and initiation fees, and turn the same over to the proper Union officials upon presentation of proper authorization cards supplied by the Union and signed by the Employee, in conformity with the Labor Management Relations Act of 1947 as amended. Employer, upon written request, will supply the Union with a list of all its Employees names who are performing its bargained for unit work covered by this agreement.

Section 2: Minimum wage scale. The minimum wage scales to be paid by Employer shall be as set out in Article XII of the Agreement except that such Article may be amended by written mutual consent and agreement.

Section 3: Surety Bond. The Union may require those Employers who have not maintained a presence in the jurisdiction of the Union for five (5) years or more or who are not previously a party to an agreement with the Union or who are delinquent or who become delinquent in payment of fringe benefit funds and who do not cure such delinquency within thirty (30) days provided by this Agreement to procure, pay the premium for and deliver to the Union a Bond written by a responsible surety company in the sum of Twenty-five Thousand Dollars (\$25,000.00) plus any existing delinquencies due said fringe benefit funds guaranteeing the payment of all wages and fringe benefits due Employees under this Agreement and all payments and penalties due as provided in this Agreement.

An Employer desiring to start work before furnishing such Bond shall make a Five Hundred Dollar (\$500.00) cash deposit with the Local Union office. His job may then proceed for a period of thirty (30) days. Thereafter, the Surety Bond must be posted before work may continue. Any such deposit shall be refunded to the Employer upon presentation of the Bond. The above Bond and cash deposits are for the purpose of securing the payment by the Employer of all payroll and fringe benefits due Employees and shall be refunded to the Employer upon completion of the work, providing that all obligations with respect to payroll and fringe benefits have been paid.

ARTICLE III

General Working Conditions

Section 1: Accidents. Employees shall immediately report to the Employer all accidents, together with the names and addresses of all witnesses to the accidents. Upon written request, Employer shall furnish the Union concerned with a report of each lost time accident involving a member of that Union on a form to be agreed upon.

Section 2: Street/highway safety. Employer shall not require Employees to take out on the street or highways any vehicles not equipped with the safety appliances prescribed by law, or any vehicle that is not in a safe operating condition.

Section 3: Equipment defects. Employees shall immediately report to the Employer all equipment defects. If an occasion arises that an Employee reports defective equipment to Employer and receives no satisfaction, he shall report the matter to the officers of his Union who shall in turn consult with Employer.

Section 4: Manning equipment. Employer shall man his equipment at all times with a sufficient number of men to properly handle the load. There shall be no limit on production by workmen or restrictions on the full use of tools and equipment. There shall be no restrictions other than may be required by safety regulations on the number of men assigned to any crew or to any service except as otherwise provided for in this Agreement.

Section 5: Safety & sanitary regulations. Employer shall comply with all of the safety and sanitary regulations specified by the laws of the United States of America and the State of West Virginia. Required safety equipment shall be furnished by the Employer. If after analysis by a recognized testing laboratory, materials used in construction are found to be injurious to health and safety to Employees, the Contractor will correct the situation through reasonable protective measures or substitution of other materials.

Section 6: Working steward. The Union may refer a working steward for each shift who will be paid at the journeyman wage rate for the job classification in which he is employed. The steward duties shall be to ascertain the standing of the men employed and

look after the general interests of the Union on that job and will be allowed reasonable time to fulfill his responsibilities for the benefit of the parties to this Agreement. It is understood and agreed that the working steward must be able to productively perform any available work. The working steward shall not be discriminated against for discharging his duties as a steward. The Union shall notify the Employer the name of the working steward on each job. Designated officials of the crafts shall be permitted upon the job site provided that said official complies with safety regulations and does not affect the work in progress. Before the Employer discharges or lays-off a steward, the Employer must discuss the reason for the discharge or layoff with the local Business Agent having jurisdiction over the work.

Section 7: Foul weather. Necessary foul weather gear, including overtheshoe boots, shall be supplied by the Contractor when the weather or type of work requires it and shall be chargeable to the man if lost or damaged beyond ordinary wear and tear. The Employer shall determine if weather is suitable for working. The Employee shall not be punished for refusing to work in unsafe weather conditions.

Section 8: Management of operations. The Employer retains and shall exercise full and exclusive responsibility for the management of its operations. The Employer will be the judge in determining the competency of applicants and Employees with the right to hire, reject or terminate accordingly and will be responsible for determining a fair day's work. The Employer may direct the working force, at its sole prerogative, including hiring, *selection of general foreman, foreman, promotion, transfer, layoff* or discharge of its Employees except as otherwise provided for in this agreement and as set forth in Section 16 of this Article. Further, the Employer shall be the judge as to the number of Employees, foremen, general foremen and other supervisors required to perform the work, and the number of Employees to be assigned to any crew, operation or piece of equipment. Employees may be shifted from one piece of equipment or operation to another, as job conditions require. General foremen, master mechanics, foremen and other supervisors may operate any equipment or use the tools of the craft when instructed to do so by the Employer for instructional or emergency purposes. The fact that certain classifications and rates are established does not mean that the Contractor must employ workmen for any one or on such

classifications or to man any particular piece of equipment that happens to be on the job unless the Contractor has need for such equipment. General foremen and foremen who have been in the employ of the Employer for one year or more, may be transferred from project to project. The Employer shall have the unqualified right to select and hire directly all supervisors it considers necessary and desirable without such persons being referred by the Unions. The Employer may utilize any method or technique of construction and there shall be no limitation or restriction, regardless of the source or location, of the use of machinery, precast, prefabricated or preassembled materials, tools, or other laborsaving devices, nor shall there be any limitation upon choice of materials or design.

Section 9: Union workforce. The Union will exert its utmost efforts to recruit sufficient numbers of skilled applicants to fulfill the workforce requirements of the Employer. In the event the referral facilities maintained by the Union does not refer the required number of qualified applicants requested by the Employer within a twenty-four (24) hour period after such request is made (Saturdays, Sundays and holidays excepted), the Employer may withdraw the request and employ applicants from other sources.

The Employer has executed a hiring hall agreement with the Union that is attached hereto and made apart hereof by reference.

Section 10: Work place. Employees shall be at their work place at the starting time, and shall remain at their place of work performing their assigned duties under supervision of the Employer and shall be returned to their vehicle by quitting time. The Employer shall have the right to determine the work place. There will be no organized coffee breaks, rest periods or other nonworking time established during working hours. Employees will be afforded coffee breaks at their work place provided that the coffee break does not disrupt job progress. It is agreed and understood that coffee breaks, rest periods or other nonworking time will not create a general work stoppage. It is agreed and is the intent of the parties that there be a full day's work for a fair day's wage. When working a ten (10) hour shift, Employees shall receive a ten (10) minute unorganized break at their workstation. The break shall be coordinated by the Contractor so not to impede or impact project operations.

Section 11: Ice water. The Contractor will provide ice water.

Section 12: Notice of work status. Each Employee shall furnish the Employer with a phone number or a point of contact where said Employee may be reached for notice of work status. Employer agrees to not unreasonably withhold "layoff slips" or "low earnings slips" if same is requested by an Employee.

Section 13: Saturday work. In the event Saturday is to be worked, notification must be given the Crafts prior to the start of the Friday daylight shift.

Section 14: Leave of absence. *If an Employee is injured and forced to leave the job, he shall be given a reasonable time to gather his personal belongings and tools. Employer agrees to grant the necessary leave of absence without pay in case of sickness or injury, and Employee shall receive his former position, if available, upon recovery or the expiration of the leave.*

Section 15: On the job injury. If an Employee is injured on the job, it is the responsibility of the Contractor to provide first aid and transportation of the Employee to the nearest hospital or physician. Upon admittance to the hospital by a physician, responsibility of the Employer terminates and the Employee is under the supervision and jurisdiction of the physician and the Workers' Compensation Program for treatment and reassignment to duty status. If the Employee is allowed to return to work by the physician, and if the Employee should require further examination or treatment during duty hours, then the Employer shall pay the Employee for such portion of the work day that he is not on the job, provided that the Employee may be requested to furnish adequate proof of his attendance for medical treatment. The Employer shall not be responsible for payment to the man for any time devoted to such examination or treatment before or after the normal workday.

Section 16: Trial period. New Employees shall be on trial for a period of fifteen (15) workdays and Employer shall be the sole judge of their ability during such trial period. Employees retained after such fifteen (15) workday trial period shall be deemed to be regular Employees. The Employer shall not discharge any Employee working more than fifteen (15) workdays without just cause. In the event of termination, any Employee working more

than fifteen (15) workdays may request an investigation as to his discharge. Should such investigation prove that an injustice has been done, the Employee shall be reinstated and compensated at his usual rate of pay while he has been out of work.

ARTICLE IV

Wages and Work Periods

Section 1: Start time. (a) Starting time of regularly scheduled shift shall be established by the Contractor between the hours of 6 a.m. and 8 a.m. or as agreed upon at the pre-job conference. A Contractor may elect to change the starting time, but must give the Union twentyfour (24) hours notification in advance. Notice shall be effective if orally given to the steward and subsequently confirmed in writing to the respective business agent.

(b) It is recognized and agreed that on certain types of work due to owners' specifications, Governmental restrictions and/or traffic conditions, the work or part of the work must be done on multiple shift basis in which event such shift will be permitted to conform with such restrictions as to starting time or time between shifts, which may be determined at the prejob conference.

(c) On highway projects only, when Employees are required to work away from their home base of operation on temporary work, room, board and transportation shall be provided by the Employer. When Employees are required to work away from their home base of operation on a regular job, they shall provide their own room and board. On highway projects only, the Employee shall be paid for no less than eight (8) hours or his regular shift hours for each day of temporary work, whichever is greater, and payment for all other time required in the service of Employer. On temporary work on highway projects only, in the event of inclement weather, the Employee will receive two (2) hours pay for reporting time or actual hours worked, whichever is greater.

Section 2: Workweek. Except where provided otherwise by the United States Government, forty (40) hours shall constitute a normal workweek and all hours worked over forty (40) per week shall be paid for at the rate of time and one-half (1 1/2). On Heavy construction projects the Employee shall be paid at the rate of time and one-half (1 1/2) for hours worked over eight (8) hours on eight (8) hour shifts or at the rate of time and one-half (1 1/2) for

hours worked over ten (10) hours on ten (10) hour shifts. Nothing herein shall be construed as guaranteeing any Employee eight (8) hours of work per day on eight (8) hour shifts or ten (10) hours of work per day on ten (10) hour shifts or forty (40) hours of work per week. All productive work performed on Sunday shall be computed on a double time basis, and not less than four (4) consecutive hours of work shall be given on Sunday. See "Triple Shift Exception" - Section 3.

It is understood that the Employer is not required to pay travel expenses, travel time, zone pay, or subsistence during the term of this Agreement.

Saturday will be considered the make-up day on eight (8) hour shifts and will be paid straight time if the Employee has not worked a forty (40) hour week prior to Saturday. Friday will be considered the make-up day on ten (10) hour shifts and will be paid straight time if the Employee has not worked a forty (40) hour week prior to Friday. If the Employee notifies the Employer twenty-four (24) hours prior to a make-up day that he does not want to work the make-up day, then the Employee will not be discriminated against for not working said day. On heavy projects all construction work performed on Saturday will be paid at time and one-half unless Saturday is considered a make-up day.

It is agreed and understood that Employees performing non-productive work such as pumping and de-watering will be paid straight time regardless of the day non-productive work is performed.

The Employer and the Union agree that chronic and/or unexcused absenteeism is undesirable and must be controlled. The Employer may terminate, at its discretion, for chronic and/or unexcused absenteeism. The Employer shall be consistent with regard to termination for absenteeism.

Section 3: Triple shift. (a) When three shifts are established and operated, the first or daylight shift will consist of eight (8) hours work, plus one-half (1/2) hour for non-paid lunch. The second shift will consist of seven and one-half (7 1/2) hours work, plus one-half (1/2) hour for non-paid lunch. For the second shift, the Employee will receive eight (8) hours pay for (7 1/2) hours work. The third shift will consist of seven (7) hours work, plus

one-half (1/2) hour for non-paid lunch. For the third shift, the Employee will receive eight (8) hours pay for (7) hours work.

(b) On triple shift operations, the normal workweek shall begin with the first shift Monday morning. All work performed between the beginning of the first shift Friday until the beginning of the first shift on Saturday, shall be considered as worked on Friday and paid at the applicable rate for that day. All work performed between the beginning of the first shift Saturday until the beginning of the first shift on Sunday, shall be considered as worked on Saturday and paid at the applicable rate for that day. All work performed between the beginning of the first shift Sunday until the beginning of the first shift Monday, shall be considered as worked on Sunday and paid at the applicable rate for that day.

Section 4: 8 or 10-hour shifts. When two 8 or 10hour shifts are established and operated, a one-half (1/2) hour free lunch period will be provided. Therefore, Employees will be on the project site for 8 1/2 hours or 10 1/2 hours, but will be paid only for 8 or 10 hours. In the event of the utilization by the Contractor of three shifts, the language provided in Section 3, Paragraph (a) of this Article will prevail.

Section 5: Overtime. The Employer shall determine when overtime shall be worked and by whom. Where Employees are required to work overtime beyond the normal shift, the first period shall consist of two (2) hours work, plus one-half (1/2) hour free lunch time and subsequent periods shall consist of three and one-half (3 1/2) hours work plus one-half (1/2) hour paid lunch time. If the Employee is required to work during any lunchtime, he shall be paid therefore. The Contractor shall provide some type of food during the second or third lunch periods.

Section 6: Show-up time. Engineers who have been ordered to report to work shall be paid one (1) hour reporting time unless notice of call-off shall be given eight (8) hours prior to the beginning of the day shift and six (6) hours prior to the beginning of the night shift. On Heavy and Railroad construction projects with a gross contract value of \$3,000,000.00 or more, the following conditions shall prevail. On eight (8) hour shifts, when ordered to and put to work, employee shall be paid for not less than four (4) hours work and if they remain at work after the end of the fourth hour, they shall be paid not less than eight (8)

hours. On ten (10) hour shifts, when ordered to and put to work, employee shall be paid not less than five (5) hours work and if they remain at work after the fifth hour, they shall be paid for not less the ten (10) hours.

Section 7: Weekly pay. Employees are to be paid weekly. The workweek shall begin with the daylight shift Monday and payment of wages shall be made no later than Friday of the following workweek. The Contractor and the Union shall mutually agree upon the day on which the Employees shall be paid. Employees who report for their paycheck on a day when there is no work scheduled because of weather or other causes shall not be eligible for reporting pay. All paychecks will be available at the start of the day shift on the established payday. The Employee may ask the Contractor to mail his check to his home on a nonwork payday and the Contractor will mail said check prior to 12:00 noon on said day.

Section 8: Lunch Period. The Lunch period will be routinely held between 11:00 a.m. and 1:00 p.m. unless mutually agreed upon otherwise at the pre-job conference.

Section 9: Termination/lay-offs. An Employee whose employment is terminated or who is laidoff for the "convenience of the Employer" shall be paid within one (1) hour of the time of termination or at the end of the shift, whichever is first, unless extraordinary circumstances prevent the timely preparation of a final check. In presence of such circumstances, said check will be mailed the next working day. Absent extraordinary circumstances, the Employee shall be paid at the straight time rate if he is required to wait beyond such period. However, in no event shall the Employee be paid for more than eight (8) hours per day that he is required to wait. An Employee whose work is terminated shall be given sufficient time in which to gather his personal belongings and tools.

Section 10: West Virginia Heavy and Highway Construction Industry Fund. Contractors, both signatory and non-signatory members of the Constructors' Labor Council of West Virginia, Inc., shall pay into the West Virginia Heavy and Highway Construction Industry Fund (WV H/H CIF) twenty cents (\$0.20) per hour for each and every hour worked by Employees covered by this Agreement for all construction work performed in all

construction work performed in all counties in the State of West Virginia. Remittance, with a copy of the West Virginia Heavy and Highway Construction Industry Fund form, shall be forwarded to the West Virginia Heavy and Highway Construction Industry Fund Post Office Box 3778, Charleston, West Virginia, 25337-3778. It is further understood and agreed that if any Contractor shall remit the above-referenced twenty cents (\$0.20) to any Union, the Union shall retain the entire amount paid in trust for the West Virginia Heavy and Highway Industry Fund and the Union shall provide an accounting for all such receipts and immediately forward said receipts to the West Virginia.

ARTICLE V

Holidays

Section 1: Holiday days. New Year's Day, Memorial Day, Fourth of July, Labor Day, Thanksgiving Day and the day after Thanksgiving Day, and Christmas Day shall be holidays. There shall be no work for Employees on Labor Day, Christmas Day and Easter Sunday except in cases of emergency. On holidays the rate of pay shall be twice the regular rate and on such days not less than four (4) consecutive hours of work shall be given. When a holiday falls on Sunday, the following Monday shall be observed as the holiday. It is understood that on eight (8) hour shifts, holidays celebrated on Mondays through Fridays that are not worked, eight (8) hours shall be counted in the computation of hours worked for overtime purposes only. It is understood that on ten (10) hour shifts, holidays celebrated on Mondays through Fridays that are not worked, ten (10) hours shall be counted in the computation of hours worked for overtime purposes only. There shall be no paid non-working holidays. In case of a conflict between the National and State designation of a holiday, the State designation shall be applicable.

Section 2: Holiday time. Thanksgiving holiday shall begin at 12:01 a.m. on Thanksgiving Day and end at 12:00 p.m. midnight on the day after Thanksgiving Day. Christmas holidays shall begin at 12:01 a.m. and end at 12:00 p.m. midnight. All other holidays will be observed starting at the beginning of the first shift on the holiday and ending twentyfour (24) hours later.

Section 3: Emergency work. Emergency work shall be that work necessary to save life or property.

ARTICLE VI

The Contract

Section 1: Amendment to contract. This Agreement may be amended by mutual consent of the Employer Association, as bargaining representative of the Employer members, and the Union's business manager, as the bargaining representative of the Union. Such amendments shall be reduced to writing and made available to all Contractor members. Should the Employer Association, or any of its Contractors working under the terms and conditions of this Collective Bargaining Agreement provide any other signatory craft with hours or working conditions more favorable than those received by the Union Employees, then such items and conditions shall be available to the members of the Union.

The parties hereto agree to meet monthly, or as necessary, to evaluate past projects bid and pending projects to be bid by pre-bid and/or pre-job conferences, for the purpose of determining the impact of such adjustments and the need for competitive adjustments to the wages, hours and working conditions herein established. In absence of pre-bid meeting, no such adjustments or concessions will be entertained. Pre-job conferences are mandatory on all construction jobs of value more than \$3,000,000.00.

Section 2: Wage freeze. At the pre-bid meeting the Contractor and Union may agree, in writing, that the hourly wage rates and fringe benefits in effect on the bid date will prevail for an agreed upon period of time from the date of the Contract Award. In any event, on all construction work performed under this Agreement, on construction projects not to exceed \$3,000,000.00, the hourly wage rates and fringe benefits in effect on the bid date shall prevail for a period of two (2) years from the date of the Contract Award and thereafter at the current wage level.

Section 3: Subcontractors. The Contractor, using its own discretion, may subcontract, assign or transfer portions of the work covered hereby to other subcontractors, persons or entities. Contractor shall use his own equipment whenever practical. Contractor and subcontractors, persons or entities who are signatory to this agreement agree that they will not subcontract, assign, or transfer any portion of their work to any subcontractor, person or entity who is not a party to this bona fide collective

bargaining agreement and that they will make every reasonable effort to do so, with the exception of specialty work or where such subcontractors, persons or entities, are not competitive or available in the area or where contrary to law. The delivery of materials, supplies or equipment shall not in any case be considered as subcontracting.

The employer shall assist in the enforcement of this article and will take whatever action possible to ensure that the Union has access to non-union contractors. To that end, prior to subcontracting with non-signatory subcontractors, the Employer shall contact the Union in a timely manner to provide the Union with an opportunity to solicit Union subcontractors.

Employer will make every reasonable effort to ensure that all work covered under the scope of this Agreement to be performed on the job site shall be subcontracted only to an employer who is party to a current, written collective bargaining agreement with the Union. Employer will also make every reasonable effort to negotiate the subcontracts to include a provision requiring subcontractors to adhere to the conditions of this collective bargaining agreement.

Employer shall make every reasonable effort to ensure that all such work assignable to employees covered under the scope of this Agreement, not to be performed at the job site, shall be subcontracted only to an Employer who observes the wages and benefits of overall labor cost established herein. No such work shall be subcontracted on terms that fail to require subsequent employers to adhere to these conditions, provided however said subcontractor or supplier shall be competitive and available in the area.

It is understood and agreed that all Contractors, subcontractors, persons or entities who are signatory to this agreement shall be solely liable and responsible for their breaches of this agreement and other acts and omissions. Further, it is agreed and understood that all such Contractors, subcontractors, persons or entities shall indemnify and hold harmless those with whom they are in contract for any such breaches, acts or omissions.

Section 4: Owner-operator. The performance of bargaining unit work defined by the scope of this Agreement for the

Contractor, by an owneroperator or operator of leased equipment, shall be governed by the provisions of this Agreement. Operating Engineers who are owner-operators must be on Contractor or Subcontractor's payroll unless otherwise mutually agreed upon in writing, by the Union and the Employer. It is understood and agreed that this Section does not apply to the first point of delivery.

Section 5: Trust Funds. It is agreed and understood that the Constructors' Labor Council of West Virginia, Inc., may have a representative on any and all trust funds into which its members are required to pay. As long as the Constructors' Labor Council of West Virginia, Inc. has a Contractor representative on each trust, it is agreed and understood that the provisions of the trust documents are incorporated herein by reference.

ARTICLE VII

Work Stoppages and Lockouts

Section 1: Work interruptions prohibited. During the term of this Agreement, there shall not be, and the Union shall not sanction, strikes, sympathy strikes, picketing, work stoppages, work interruption, slow downs, sick-outs, other disruptive activities, including, but not limited to destruction of equipment, for any reason by the Union or by the Employee, except for non-payment of wages and fringe benefits when due, and there shall be no lockout by the Employer. The work shall continue uninterrupted as assigned by the Contractor.

ARTICLE VIII

Grievances and Arbitration

for disputes between Union and Contractor/Employer and/or disputes between Unions

Section 1: Grievances, disputes and claims. All grievances, disputes or claims which may arise with respect to wages, hours or conditions of employment or the enforcement or interpretation of any of the terms of this Agreement between the Union and the Employer/Contractor and/or between Unions are to be promptly processed and settled in accordance with the provisions of this Article.

Should any such dispute arise which cannot be adjusted between the Contractor involved and the Union, it shall be taken up between the Union and the Employer Association. The aggrieved party shall comply with the procedures set forth in the Article.

Section 2: Jurisdictional Disputes. It is understood and agreed that any dispute over assignment of work shall be conducted as follows:

If the Contractor and the Union are unable to agree upon the assignment of work, either at the pre-job conference or during the construction project, and a dispute shall arise between two (2) or more Unions as to which Craft the work properly belongs, the Contractor shall utilize its best discretion in assigning the work and work shall proceed as so assigned until such time as the dispute is settled. The Local Union Business Managers of the disputing Unions shall meet within seven (7) calendar days of the dispute to discuss resolution. If the Business Managers are unable to resolve the dispute, the aggrieved party shall file a grievance in accordance with the provision of Section 4 of this Article. If no grievance is filed within fourteen (14) calendar days after the business managers meeting, the dispute shall be forever barred.

Section 3: Discharge. It is understood and agreed that any dispute over discharge shall be conducted as follows:

Employees who have worked fifteen (15) workdays or less are not entitled to the provisions of this Article. The Employee's local representative must request, in writing, within seven (7) calendar days of the discharge, a meeting with the Contractor to discuss the discharge or the dispute shall be forever barred. If the Business Manager and the Contractor are unable to resolve the dispute, the aggrieved party shall file a grievance within ten (10) business days after the Business Manager and Contractor's meeting in accordance with the provision of Section 4 of this Article. If no grievance is filed within fourteen (14) calendar days after the Business Manager and Contractor's meeting, the dispute shall be forever barred.

Section 4: Filing grievance, meeting & arbitration. Any complaint or grievance shall be presented, in writing, signed by

the grievant's representative and approved by the grievant, to the Employer Association, within fourteen (14) calendar days of the event giving rise to the complaint or grievance or such complaint or grievance shall be forever barred. Time periods set forth in Sections 2 and 3 of this Article shall govern for jurisdictional and discharge disputes. If a grievance is properly and timely filed, then the provisions of this Section govern the grievance process. If such complaint or grievance is timely filed, the Employer Association will schedule a meeting between the affected parties to attempt resolution of the matter. In the event the complaint or grievance is not resolved informally through the Employer Association the aggrieved party may refer the matter to arbitration. It is understood and agreed that any such matters shall be filed with the Federal Mediation and Conciliation Service (hereinafter referred to as "FMCS") unless agreed upon in writing otherwise. The demand for arbitration shall be filed in writing with the other party and with FMCS within fourteen (14) calendar days of the meeting with the Employer Association, but in no event later than thirty (30) calendar days from the date of the event giving rise to the complaint or grievance. The decision of arbitration shall be final and binding on the parties hereto. If no written demand for arbitration is filed with the other party and with FMCS within the time and manner prescribed, unless longer times are mutually agreed upon in writing, the grievance shall be forever barred.

ARTICLE IX

Responsibility of Parties

Section 1: Negotiating representatives. The parties hereto agree that Employer Association is acting only as the negotiating representative for its subscribing members and that it shall not be liable as a corporate entity for any violation of this Agreement by any of its subscribing members. The Employer Association certifies that it is authorized by its membership to execute this Agreement on their behalf.

Section 2: Several, not joint liability. Union agrees that the breach or violation of this Agreement by any one or more members of the Employer Association, shall not be treated by them as cause for calling a strike, work interruption, sympathy strike, picketing or sick-outs against any member, including members not in violation. Union further agrees that the members

of the Employer Association shall be severally, and not jointly, liable for any breach or violation of this Agreement.

Section 3: Agreements with non-signatory members. The Employer Association shall furnish the Union, upon the Union's request, with a list of the Employer Association's members; the list shall include all members with whom the Employer Association is signature, whether signatory to this agreement or any other agreement.

Section 4: Conflicts of law. In the event any provisions of this Agreement is held to be in conflict with any state or federal law applicable hereto, the parties shall not be bound by the provisions affected by such law, but all other provisions of this Agreement shall continue in full force and effect.

ARTICLE X

Effective Dates and Termination

Section 1: Agreement Effective Dates. This Agreement shall remain in full force and effect from December 1, 2005 to and including November 30, 2009 and thereafter from year to year unless terminated by either party in accordance with the provisions of Section 2 of this Article.

Section 2: Termination. This Agreement may only be terminated upon its expiration on November 30, 2009, or the expiration of any subsequent contract year, by either party giving written notice to the other party of its intention to terminate this Agreement at least sixty (60) days prior to the expiration of this Agreement on November 30, 2009 or the expiration of any subsequent contract year.

Section 3: The Employer members expressly waive any right to abrogate or repudiate this Agreement during its effective term, or to seek a National Labor Relations Board Election during the term hereof, or to condition voluntary recognition of the Union only upon certification by the National Labor Relations Board following an election.

Section 4: Negotiations. Negotiations for a contract for the year 2010 shall be commenced on or before September 30, 2009.

ARTICLE XI **Miscellaneous**

Section 1: Drug-free workplace. The Employer reserves the right to require a DrugFree Workplace consistent with applicable State and Federal Law. To that end drugscreening is authorized and shall be conducted by the Employer of all personnel employed on all projects within the scope of this Agreement.

Section 2: Single craft agreement. It is agreed and understood that Constructors' Labor Council of West Virginia, Inc. is the representative for Employers who are members of the Association. However, all Employers are not required to be bound by each and every collective bargaining agreement entered into by the Employer Association. Constructors' Labor Council of West Virginia, Inc. maintains records to indicate which of its members have chosen to be bound by each agreement.

ARTICLE XII **Operating Engineers**

Section 1: Definitions.

- A. The term "Operator" or "Operators" when used herein, means a person working for a Contractor in the performance of work within the classifications historically and traditionally recognized in the construction industry commonly referred to as "heavy, highway and railroad construction."
- B. The term "Non-productive work" includes an operator performing the duties of pumping and/or maintaining steam.
- C. The term "Master Mechanic" when used herein means a mechanic who is a member of I.U.O.E. Local 132 and who directs those workers who are members of the Operating Engineers.

Section 2: Classifications for Operating Engineers. Classifications for Operating Engineers shall be as follows:

CLASS I: Class I shall include those operating the following equipment: cranes, tower cranes, derricks, derrick boats, dredge, draglines, clamshells, cableways, boom truck, loaders of six (6) cubic yard capacity and over, Master Mechanics and Operating Engineer foremen. Class I shall also include excavators and shovels with an operating weight of one hundred ten thousand (110,000) pounds and over.

CLASS II: Class II shall include those operating the following equipment: loaders up to six (6) cubic yard capacity, gradall, hoist (two drums or more), mixer plant (two or more mixers including batch control), pile driver, core drill, trencher, backhoe, asphalt paver, cement paver, rotary drill, bulldozers, standard gauge locomotive, concrete pump, controlled fine grade machine, slip form paver, log loader, log skidder, motor grader, rubber tired scraper, tractor pan, Roto Miller, tow or work boat, mobile conveyor, transloader, articulating equipment, material hauler, carry deck, compactor with blade, skidsteer including attachments, fork lift, self-propelled concrete spreader, concrete finishing machine, derrick (single drum), hoist (single drum), single drum paver, air tugger, Ross Carrier, multiple concrete saw, hydraulic post driver, horizontal road-boring machine, tie distributor, track lining machine, ballast tamper, anchor application machine, ribbon rail puller, ballast regulator, auto sled, turn table, pavement breaker, asphalt batch plant, concrete batch plant, crushing plant, compactor with blade, power broom, vac-all truck, self-propelled concrete spreader and concrete finishing machine, mechanics with tools and greasers. Class II shall also include excavators, and shovels with an operating weight of up to one hundred ten thousand (110,000) pounds.

CLASS III: Asphalt roller.

CLASS IV: Class IV shall include those operating the following type of equipment: air compressor, concrete mixer (under one cubic yard), light plant, narrow gauge locomotive, fireman, mechanic's tender, assistant

engineer, deckhand, screed man, spreader box man, joint sealer and pump, steam jenny, stationary conveyor (belt or bucket), gasoline or diesel powered welder, brakeman of locomotive, conductor of locomotive, A-frame, tire man, screening and washing plant, form sub-grader, power form handling equipment, burlap and curing machine, form grader, bull float, bar and joint installing machine, roller and compactor, hydroblaster, concrete mixer (single drum, one cu. yd. or over), portable concrete saw and highway striping operator. Utility operators shall be paid Class II rate when operating more than one (1) but less than five (5) air compressors, pumps, stationary conveyors (belt or bucket), light plants, and gasoline or diesel powered welders.

Section 3: Heavy and highway wage rates.

A. Classes shall be paid the following rates for the years 2007 through and including 2009:

	December 1, 2006 to November 30, 2007	December 1, 2007 to November 30, 2008	December 1, 2008 to November 30, 2009
CLASS I	\$25.97	\$27.06	\$28.00
CLASS II	\$23.41	\$24.39	\$25.24
CLASS III	\$22.38	\$23.32	\$24.13
CLASS IV	\$19.17	\$19.98	\$20.67

B. \$0.25 per hour shall be added to all of the above schedules for tunneling and for all other underground work.

C. \$2.00 per hour shall be added to the Class I rate for individuals operating a lattice boom crane with a fixed boom of 150 feet or more.

D. Capacities for equipment shall be as per manufacturers maximum rated capacity

E. Apprentices shall be paid the following wage scale during their apprenticeship subject to and as applicable to the West Virginia Division of Labor's apprenticeship standards and the Local Union #132 I.U.O.E. working agreement:

First Year	75% of the rate for the job being performed
Second Year	80% of the rate for the job being performed
Third Year	85% of the rate for the job being performed

The Contractor shall pay on behalf of each apprentice employed the same amount of fringe contributions per hour for the job being performed.

Employers agree to make a reasonable effort to utilize the services of apprentices in their employment so as to provide them exposure and training in all classifications of equipment that is the recognized jurisdiction of the Operating Engineers. The number of Apprentices to Journey persons shall not exceed one (1) Apprentice for the first Journey person employed, and one (1) additional Apprentice for each five (5) Journey persons regularly employed thereafter.

Section 4: Fringe benefits. Fringe Benefits shall be paid as follows for the years 2007 through and including 2009:

	December 1, 2006 to November 30, 2007	December 1, 2007 to November 30, 2008	December 2008 to November 30, 2009
Health & Welfare	\$6.95	\$7.50	\$8.05
Pension	\$4.60	\$4.60	\$4.60
Apprentice Training & Certification Program	\$0.75	\$0.75	\$0.85
Annuity	\$2.05	\$2.05	\$2.05
OLMC	\$0.40	\$0.40	\$0.40
WV H/H CIF	\$0.20	\$0.20	\$0.20
TOTAL	\$14.95	\$15.50	\$16.15

Employee Deductions: Administrative Dues Deduction of 4% of Gross Payroll; A.C.T. Deduction is \$0.15 per hour worked;

Operating Engineers Organizing Fund is \$0.10 per hour. Five (5) cents per hour shall be withheld for the Engineers Political Education Committee (EPEC) when Employee authorizes deduction.

Section 5: Health & Welfare, Pension, Annuity, and OLMC & TRAINING Center Funds.

A. Payments into the Health & Welfare Pension, Annuity, OLMC and Training Trust Funds shall be made to the following:

HEALTH-WELFARE-PENSION-ANNUITY AND
TRAINING FUNDS

I.U.O.E. Local 132 Trust Funds

P.O. Box 2626

Huntington, West Virginia 25726-2626

Further information regarding the specific Fund and necessary forms of reporting payments may be obtained from the business agents or the Fund office indicated.

B. In addition to wages herein provided, the Employer agrees to make contributions to all funds as set forth in Section 4 & 5 of this Article. Each Fund is created and administered under an Agreement and Declaration of Trust and operated by a Board of Trustees as required by law. In some instances, benefits are payable under a master insurance policy purchased by the Fund

Section 6: Miscellaneous.

A. Rates shall be negotiated and agreed upon between the Contractor and the Union for any type of equipment not specifically set out in section 2 of this Article.

B. On Pile Driving Operations, when boiler or air compressor or hydraulic pump is mounted "piggyback" on the crane and on all tower cranes, luffing cranes, ringer cranes, two (2) Class I rated engineers shall operate the complete unit. The second engineer on pile driving shall act as both Assistant Engineer and fireman or compressor or hydraulic pump operator.

C. Where the Employer calls for and requires a mechanic equipped with his or her own equipment, the Mechanic's wage and

fringes shall be in addition to the rental for that equipment. The rental rate for the Mechanic's equipment shall be determined by negotiations between the individual mechanic and the Employer.

D. Recognizing the need of Employers to have skilled operators referred for employment, and the obligation of the Union to refer individuals in accordance with the National Labor Relations Act on a nondiscriminatory basis, the parties agree that the Union will certify individuals utilizing the Union's referral system in the operation of heavier equipment, such as, cranes, shovels, draglines, clamshells, drilling rigs, backhoes, endloaders, gradalls, scrapers, graders, dozers, push cats and side booms. The Certification Program will be formulated and administered by the International Union of Operating Engineers, Local No. 12, AFL-CIO, Apprenticeship and Skill Improvement Fund and shall include the opportunity for individuals to obtain certification through documentation from Contractors working under the terms and conditions of this agreement, or through testing and personal demonstration of their skills at the training site of the Fund. It is the intent of this section to have in place a referral system meeting the requirements of the National Labor Relations Act whereby individuals will be referred for employment based upon their position on the referral list and their certification to operate the heavy equipment to be manned.

E. On temporary road maintenance, equipment repair, maintenance shift, or sealing the fill, the working steward of the Operating Engineers will not be required unless more than four (4) Operating Engineers are working on said job, provided, however, the working steward will be maintained on any regular shift when any operating engineer is working. The Employer may assign the working steward to work in the maintenance crew when no other work is available for said steward.

F. On all truck cranes, shovels, backhoe, trenching machine, standard gauge locomotives, grade-all, concrete mix plants and derricks (two drum or more) an assistant engineer shall be used, except as follows: One yard or smaller crawler type shovel, backhoe, crane or grade-all no Assistant Engineer shall be required. No Assistant Engineer shall be required on a trencher under 20". Two cubic yards and under hydraulic backhoes shall not require an Assistant Engineer. An Operating Engineer shall service the hydraulic backhoe and all other equipment mentioned in this paragraph.

The need for Assistant Engineers and utility operators will be mutually agreed upon on a project-by-project basis, by the Superintendent and the local Business Agent having jurisdiction over the work. If an agreement cannot be reached, then the Business Manager of Local No. 132 will decide the issue.

G. Mechanics, Assistant Engineers and Greasers when required to work during the regular period shall eat their lunch at an established time one-half () hour prior to the regular shift lunch in order to oil, grease, repair and/or safety check machines during the regular lunch period at no extra pay.

H. Master mechanics and working foremen shall be members of I.U.O.E. Local No. 132.

IN WITNESS WHEREOF of the duly authorized representative of the EMPLOYERS, the CONSTRUCTORS' LABOR COUNCIL OF WEST VIRGINIA, INC. whose signature is affixed hereto by and through its Chairman and Board of Governors, and the duly authorized representatives of the EMPLOYEES, the INTERNATIONAL UNION OF OPERATING ENGINEERS LOCAL UNION NO. 132, A.F.L.- C.I.O., whose signature is affixed hereto by and through its Business Manager and President, at Charleston, West Virginia:

**CONSTRUCTORS' LABOR COUNCIL OF
WEST VIRGINIA, INC.**

CLARKE L. WILSON, JR., Chairman of the Board of Governors

KEN BURFORD, PRESIDENT

**INTERNATIONAL UNION OF OPERATING
ENGINEERS, LOCAL UNION NO. 132, A.F.L.C.I.O.**

RONALD L. BURDETTE, Business Manger

DAVID W. MULLINS, President and Director of Training

HIRING HALL AGREEMENT **Operators (I.U.O.E.-West Virginia)**

This hiring hall agreement is between CONSTRUCTORS' LABOR COUNCIL OF WEST VIRGINIA, INC. (hereinafter referred to as the Employer) and INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL NO. 132, A.F.L.-C.I.O. (hereinafter referred to as the Union) in order to provide the Employer with a means of securing an efficient and competent working force, and in order to minimize the evils of casual employment by securing a fair distribution of work among the workers represented by the Union. The Employer shall not be held liable for, and the Union agrees that it will indemnify and hold harmless the Employer from any claims arising from disputes between the Union and its Employees concerning this Hiring Hall Agreement. The Employer and the Union agree as follows:

Section 1. The Employer shall give the Union 24 hours notice of its need for workers, and within such 24-hour period shall not hire persons not referred by the Union. If, however, the Union fails to refer workers within such 24 hour period, Saturday, Sunday and Holidays excepted, after having been notified to do so, the Employer shall have the right to hire persons not referred by the Union from any area of source.

Section 2. In notifying the Union of its need for workers, the Employer shall specify to the Union, (a) the number of workers required, (b) the location of the project, (c) the nature and type of construction involved, (d) the work to be performed, and (e) such other information as may be necessary to enable the Union to make proper referral of applicants.

Section 3. The Employer shall have the right to determine the competency and qualifications of individuals referred by the Union and the right to hire or not hire accordingly.

Section 4. The selection of applicants for referral to jobs shall be on a non-discriminatory basis and shall not be based on, or in any way affected by, union membership, by-laws, rules, regulations, constitutional provisions or any other aspect or obligation of union membership, policies or requirements.

Section 5. There shall be no discrimination against any Employee or applicant for employment because of race, color, religion, sex, age or national origin, and all parties to this Agreement shall comply with the Civil Rights Act of 1964, Executive Orders 11246 and 11375, together with the appropriate provisions of the Federal Highway Act of 1968, as amended.

Section 6. In the event the Union is unable to refer applicants as requested by the Employer within the time limit set forth in the hiring hall agreement, the Employer will, through recruitment procedures, fill the employment vacancies without regard to race, age, color, religion, sex or national origin, making full efforts to obtain qualified minority group persons.

Section 7. An applicant seeking referral to a job must file with the Union a signed and dated referral form providing name, telephone number, social security number and stating any skills the applicant possesses including any relevant licenses or certificates.

(A) The application will remain in effect for a period of ninety (90) days or such, earlier period as provided in Section 14 below. At the expiration of ninety (90) days or such earlier period as set forth in Section 14 below, the applicant's name will be removed from the Referral List and thereafter the applicant will not be eligible for referral until re-registering with the office of the Union.

(B) Once an applicant has registered his or her availability for referral by a signed referral form with the Union, the applicant may afterward register his or her availability by returning a signed, self-addressed postage-paid postcard, which will be provided by the Union. The initial card will be provided at the time the applicant initially registers, and thereafter the card will become available at the offices of the Union.

Section 8. The Union shall register all applicants for employment on the basis of the priority groups listed below. Each applicant shall be registered in the highest priority group for which he/ she qualifies, and must re-register every ninety (90) calendar days.

GROUP A

All applicants who have worked as operating engineers for the past four years, have been employed for a period of at least one year during the last four years by Employers (parties to collective bargaining agreements with the Union, not containing discriminatory referral provisions), and who have maintained residence for the past year within the geographical area constituting the normal construction labor market (as hereafter defined).

Applicants who have gained membership in the Local through organizing while working for the betterment of the Union and have worked at the craft of operating engineers for a minimum of four (4) years. Such applicants must sign a written agreement whereby they agreed to actively work as a Voluntary Union Organizer for at least six (6) months during which they must follow the stringent guidelines and directions of the Organizing Department.

GROUP B

All applicants for employment who have worked as operating engineers in construction for the past four years, and have been employed for a period of at least six months within the past three years by Employers (parties to collective bargaining agreements with the Union, not containing discriminatory referral provisions), and who have maintained residence for the past year within the geographical area constituting the normal construction labor market (as hereinafter defined).

Applications who have gained membership in the Local through organizing while working for the betterment of the Union and have worked at the craft of operating engineers for a minimum of four (4) years. Such applicants must sign a written agreement whereby they agree to actively work as a Voluntary Union Organizer for at least one (1) month during which they must follow the stringent guidelines and directions of the Organizing Department.

GROUP C

All other applicants.

APPRENTICES

Apprentice applicants who are registered with and participating in the Apprenticeship Program developed and administered by the International Union of Operating Engineers, Local No.132 Apprenticeship and Skill Improvement Fund shall be listed on a separate referral list in the order they register as available for employment.

Section 9. The Union shall list the applicants within each group in the order in which they register as available for employment.

Section 10. *Except as hereinafter set forth, the Union shall refer applicants to Employers by first referring applicants in Group A in the order of their place on said list, and then referring applicants in the same manner from the list in Group B, then Group C. Apprentices may be referred to Employers pursuant to the recommendation of the International Union of Operating Engineers, Local No.132 Skill and Improvement Training Fund, irrespective of the order of their registration. In making the recommendations with regard to referral from such group, the coordinator of the Fund shall consider the work to be performed for the Employer and then recommend the first applicant in the order of their place on the list who needs training in the type of work to be performed in order that they may acquire the skill necessary to advance them in such program.*

Section 11. Referrals for job orders shall be processed at the Union office Monday through Friday between the hours of 8:00 a.m. and 4:00 p.m. Applicants holding a position on the out of work list must personally be available at the telephone number on file with the Union during these time periods in order to respond to requests for referrals. Referrals will not be made through individuals other than the applicant answering the phone nor through a phone answering machine. Each qualified applicant will only be called once per job order. In filling requests made by Employers after 4:00 p.m. for Operators required to report to work before the start of the following business day, the Union shall expedite such requests immediately by contacting, in order of the out of work list, the required number of qualified applicants, however, applicants who are unavailable or refuse such referrals will not be penalized. The Union will only offer referral to the applicant named on the out of work list.

Section 12. The order of referrals set forth above shall be followed except in cases where:

(A) The Employer requires and requests Employee(s) possessing special skills and/or abilities, licenses or certificates in which case the Union shall refer the first applicant on the list possessing such special skills and abilities.

(B) The individual is referred as the Steward in which event the individual will be referred irrespective of his place on the list.

(C) The request is for an individual to operate elevators, compressors and/or welding machines in which case preference will be given to individuals fifty (50) years of age or older and the physically handicapped provided they are physically capable of performing other work associated with the assignment, irrespective of their place on the list. This preference shall not be used in any manner to change an assignment.

(D) The Employer requests the referral of an individual who has been employed by the Employer within a period of six (6) months prior to such request and such individual is registered on the referral list. This section shall not apply to an individual referred to an Employer as a fill-in for an Operator who is expected to return to employment or to an individual referred to an Employer pursuant to Subsection (E) herein.

(E) Where an emergency exists or where the request from the Employer is received upon short notice and the contact point is such a distance from the residence of an applicant that the applicant could not reasonably be expected to fulfill the request.

Section 13. An applicant shall not be referred to an Employer if the applicant was previously discharged for cause by the same Employer. Applicants who are twice lawfully rejected by an Employer or Employers for lack of skills, after referral by the Union, shall not be eligible for referral to a job requiring the same skills without first providing the Union with a statement from the coordinator of the International Union of Operating Engineers, Local No.132 Apprenticeship and Skill Improvement Fund evidencing that he or she has acquired such skill.

Section 14. In cases of the occurrence of any of the following events, the applicant will be removed from the referral list and they will not thereafter be eligible for referral until re-registering in person at the office of the Union:

- (A) Refusal of three (3) job referrals;
- (B) Failure for the second time to appear for referral by the time notified to appear and commence work;
- (C) Voluntary termination of employment after having been referred;
- (D) Failure to notify the Union in the event they become employed at the trade either within or outside the geographical jurisdiction of the normal construction labor market; or
- (E) Upon completion of fifteen (15) days of employment the applicant will be removed from the referral list and will not thereafter be eligible for referral until re-registering in person at the office of the Union. Applicants who are referred to fill vacancies created as a result of an Employee being absent from work for reasons such as an accident, illness, death in family, etc., and who would otherwise be expected to return to work, will not be removed from the referral list nor will they lose their position thereon.

DEFINITIONS

(A) "Normal construction labor market" referred to in the Uniform Hiring Hall Procedure shall conform to the territorial jurisdiction of the union as well as any additional area defined by the Secretary of Labor to be the appropriate prevailing wage areas under the Davis-Bacon Act.

(B) "Resident" means a person who has maintained his or her permanent home in the above-defined normal construction labor market for the required period or having had a permanent home in such area, has temporarily left with the intention of returning to that area as his permanent home.

(C) "Operator" or "Operators" means a person working for a contractor in the performance of work within the classifications historically and traditionally recognized in the construction industry commonly referred to as "building and construction," and "heavy and highway."