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CONFIDENTIAL

UNITED STATES DEPARTMENT OF THE ARMY

OFFICE OF THE CHIEF OF STAFF

WASHINGTON, D. C.

MEMORANDUM FOR THE CHIEF OF STAFF

FROM: THE ADJUTANT GENERAL



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**NATIONAL COAL MINE
CONSTRUCTION AGREEMENT
OF 2002**

Effective February 7, 2002

Article 1—ENABLING CLAUSE

THIS AGREEMENT is made and entered into this 7th day of February, 2002, by and between the Association of Bituminous Contractors, Inc. (hereinafter referred to as the Association) on behalf of itself and each of its members (a member of the Association being hereinafter referred to as the Employer), including such Employers who may hereafter become members of the Association during the life of this Agreement, as parties of the first part, and the International Union, United Mine Workers of America (hereinafter referred to as the Union) on behalf of each member thereof, as party of the second part. This Agreement covers all work related to the development, expansion or alteration of coal mines, including the erection of tipples and preparation plants and other facilities placed in, on or around the coal mines, sinking of shafts, slopes, drifts, or tunnels and all other such coal-related work that is performed at or on coal lands by members of the Association for coal mine operators which require such construction work to be performed under the jurisdiction of the United Mine Workers of America; or where the Employer contracts to perform construction work at a coal mine or coal mine related facility (including idled and abandoned mines) where the Union is the certified or recognized exclusive bargaining representative of the mine's or facility's employees at the time the contract is put out for bids. Provided, this Agreement shall apply only to construction sites at or on coal lands and shall not apply to work performed off coal lands.

In order to protect and preserve work for bargaining unit employees, and to prevent devices to avoid the protection and preservation of such work, the parties agree that if an Employer performs any work within the jurisdiction of the Union covered by this Agreement using another business entity, including but not limited to a corporation, sole proprietorship, partnership, or joint venture, and if the Employer and such other entity constitute a single or joint employer (which shall be interpreted pursuant to applicable legal principles), then the employees performing such work for such entity shall receive wages, fringe benefits and economic terms and conditions of employment equal to or greater than those provided in this Agreement. The foregoing shall not be interpreted to apply to separate Employer situations.

It is not intended that this Article be the exclusive source of rights or remedies which the parties may have under State or Federal laws. Should the Employer use another entity within the meaning of the preceding paragraphs to perform work within the jurisdiction of the Union covered by this Agreement the Employer shall notify the Union of the existence and nature of such work performed by the entity and the nature of its relationship to the signatory Employer. The supplying of false, misleading, or incomplete information (in response to a request by the Union) shall not constitute compliance with this section.

This Agreement shall not void any existing written agreement between the Union or any district or local and specific construction Employers except to the extent that such agreement is inconsistent herewith, provided there shall be no such agreements entered into after February 11, 1995.

It is agreed that this contract is for the exclusive joint use and benefit of the contracting parties, as defined and set forth in this Agreement. It is agreed that the Union is recognized herein as the exclusive bargaining agency representing the employees of the parties of the first part within the scope and coverage of this Agreement, to the manner and extent permitted by law. It is further agreed that as a condition of employment all employees, to the manner and extent permitted by law, shall become members of the Union, at the latest, after the seven (7) day grace period following the beginning of such employment or the effective date of this Agreement whichever is later, except in those exempted classifications of employment as hereinafter provided in this Agreement.

Each Employer promises that its operations covered by this Agreement shall not be sold, conveyed, or otherwise transferred or assigned without first securing the agreement of the successor to assume the Employer's obligations under this Agreement. Provided that the Employer shall not be a guarantor or be held liable for any breach by the successor or assignee of its obligations, and the Union will look exclusively to the successor or assignee for compliance with the terms of this Agreement.

It is the intent and purpose of the parties hereto that this Agreement will promote and improve industrial and economic relationship between the parties and to set forth herein the basic agreements covering rates of pay, hours of work and conditions of employment to be observed between the parties, and shall cover the employment of persons employed by the Employers covered by this Agreement.

Article 2—SCOPE AND COVERAGE

Section (a)—Work Jurisdiction

All work covered by this Agreement shall be performed in accordance with the provisions of this Agreement exclusively by members of the Union to the manner and extent permitted by law.

Section (b)—Exemptions Clause

Supervisors, foremen, assistant foremen, office clerks, guards, engineering and technical forces, and timekeepers are exempted from this Agreement.

All other employees who perform coal mine construction work at a project site, including warehousemen at the job site, shall be covered by this Agreement.

The Union will not seek to organize or to ask recognition for such exempted supervisory employees during the life of this contract.

It is the intention of this Agreement to reserve to the Employers and except from this Agreement an adequate force of supervisory employees to effectively conduct a safe and efficient operation and at the same time, to provide against the abuse of such exemptions by excepting more such employees than are reasonably required for that purpose.

Section (c)—Classified Work

Supervisory employees shall perform no production, classified or other work covered by this Agreement except in emergencies and except as such work is for the purpose of training or instructing employees. When a dispute arises under this section, it shall be adjudicated through the grievance machinery and burden of proof will be on the Employer to provide that the supervisory employee has not performed such work.

Where the Employer fails to prove that the supervisor has not performed work covered by this Agreement, the Employer shall be required to award one shift's pay to the individual who should have performed the work.

To the extent that the Employer's work force at the project includes classified employees who are certified to perform pre-shift and on-shift examinations required by applicable federal or state laws, such employees shall perform such examinations. Where the Employer's work force at the project does not include sufficient classified employees who are certified to perform such examinations, the Employer may use a person of his choice, including a supervisor or foremen, to perform such examinations. The Union and the Employer will cooperate in encouraging employees within the existing classified work force to obtain the necessary certification and the Employer will endeavor to hire classified employees who have the necessary certification.

Section (d)—Subcontracting

All subcontracting shall be done under the jurisdiction of the Union in the manner and to the extent permitted by law. Provided that the Employer shall not subcontract work for the purpose of disciplining employees or discriminating against them for engaging in union activities.

Section (e)—Union Rights

Subject to routine check in and checkout procedures of the Employer, authorized representatives of the Union shall be permitted reasonable access to any project or related facilities where employees covered by this Agreement perform their work, in order to insure compliance with this Agreement, provided they do not interfere with the Employer's operation at the project.

The Union shall have the right to obtain relevant information from the Employer for the purpose of processing grievances to insure compliance with this Agreement. The Employer shall provide adequate space at the project or related facility for holding of Union elections and the ratification of collective agreements. Candidates for Union office may appear at a project during nonworking time for the purpose of campaigning among member-employees.

Section (f)—Employment Outside the Scope of the Agreement

When an Employer signatory to this Agreement, who is engaged in projects, coal or otherwise, which are not covered by a UMW Agreement, asks a classified employee under this Agreement to perform such work, the employee is entitled to refuse such work without loss of seniority or jeopardy to any job rights under this Agreement.

Article 3—MANAGEMENT

This Agreement is not intended to interfere with, abridge or limit the Employer's right to manage its construction operations. It is agreed that the management of said operations, including the direction and scheduling of the work force, the right to hire and discharge, the right to make reasonable rules of conduct, the direction, management and control of business, and other functions and responsibilities which heretofore have been vested in the management, are and shall remain vested exclusively in the Employer provided these rights are not in conflict with any of the provisions of this Agreement.

Article 4—HEALTH AND SAFETY

Section (a)—Right to a Safe Working Place

Every employee covered by this Agreement is entitled to a safe and healthful place to work, and the parties jointly pledge their individual and joint efforts to attain this objective. Recognizing that the health and safety of the employees covered by this Agreement are the highest priorities of the parties, the parties agree to comply fully with all lawful notices and orders issued pursuant to applicable state and Federal health and safety laws, including any provisions of the Federal Mine Safety and Health Act of 1977, which may be applicable.

Neither party waives or repudiates any administrative, procedural, legislative, or judicial rights under or relating to any applicable state or Federal health or safety law.

The parties not only accept their several responsibilities, obligations, and duties imposed by applicable state and Federal health and safety laws, but freely resolve to cooperate among each other and with the responsible officials of state and Federal governments in determined efforts to achieve greatly improved performance in coal mine construction health and safety laws.

Section (b)—Joint Industry Health and Safety Committee

There shall be a Joint Industry Health and Safety Committee composed of six members, three to be appointed by the Union, at least one of whom shall have special knowledge and expertise in coal mine construction industry health and safety matters, and three to be appointed by the Employers, at least one of whom shall have special knowledge and expertise in coal mine construction industry health and safety matters. The Committee shall consult with Federal agencies having jurisdiction over coal mine construction, looking toward review and appropriate development and revision of improved mandatory health and safety standards for the coal mine construction industry. The Committee will meet initially within ninety (90) days of the effective date of this Agreement.

The Committee shall meet at least every four months for study and discussion of developments in the coal mine construction industry relative to occupational health and safety, including reports regarding fatalities and serious injuries suffered by employees in the coal mine construction industry. The Committee shall analyze the causes of such fatalities and accidents, evaluate the actions taken with respect thereto by responsible government agencies and by the parties, and make such recommendations as it deems appropriate.

The Joint Industry Health and Safety Committee shall secure information on different programs and material available by other sources that would be beneficial to employers in conducting orientation and retaining programs.

Section (c)—Project Union Health and Safety Committee

1. At each project of the Employer, there shall be a Health and Safety Committee made up of no more than three (3) employees of the Employer employed at the project site who are qualified by construction experience or training. The Union shall inform the Employer of the names of the Committee members. The Committee, at all times, shall be deemed to be acting within the scope of their employment within the meaning of the applicable Workmen's Compensation Law.

2. The Health and Safety Committee may inspect any portion of the project site at which employees of the Employer are employed. If the Committee believes that conditions found endanger the lives and bodies of the employees, it shall report its findings and recommendations to the Employer. The Employer shall see that all recommendations brought to the Employer's attention by the Safety Committee are investigated, and the Employer shall take whatever corrective action is necessary. The Employer shall notify the Committee of the action taken. In those special instances where the Committee believes that an imminent danger exists and the Committee recommends the Employer remove all employees from the involved area, the Employer is required to follow the Committee's recommendation and remove the employees from the involved area immediately.

The Health and Safety Committee shall, when engaged in its official duties as herein provided, be furnished transportation where necessary at the project.

3. The Committee shall give sufficient advance notice of an intended inspection to allow a representative of the Employer to accompany the Committee. If the Employer does not choose to participate, the Committee may make its inspection alone.

4. If the Health and Safety Committee in closing down an area of the project acts arbitrarily and capriciously, a member (or members) of such Committee may be removed from the Committee. An Employer seeking to remove a Committee member shall so notify the affected Committeeman and other members of the Health and Safety Committee. If the Committee objects to such removal, the matter shall be submitted directly to arbitration within fifteen (15) calendar days. If the other members of the Committee so determine, the affected member shall remain on the Committee until the case is submitted to, and decided by, the Arbitrator. If the Employer requests removal of the entire Committee, the matter automatically shall be submitted to arbitration and the Committee will continue to serve until the case is submitted to, and decided by the Arbitrator. A Committee member shall not be suspended or discharged for official actions as a Committee member.

5. Representatives of the Employer and the Health and Safety Committee shall meet monthly at times arranged by the parties for the purpose of reviewing accident prevention efforts and resolving health and safety problems at the project. Special meetings may be called by either party for the purpose of resolving safety matters.

6. The Employer shall be responsible for paying Committee members at their regular rates of pay including any applicable overtime for the performance of the following duties:

(i) Inspecting the project with management on a regular basis at a time to be mutually agreed upon by the Employer and the Committee, but in no case any less often than once every thirty-day period; Employers with ten (10) or less employees at a project will pay one committeeman up to two hours' pay at his applicable rate in every thirty-day period; Employers with more than ten (10) employees, but fewer than thirty (30) employees at a project will pay two committeemen up to two hours' pay at their applicable rates in every thirty-day period; Employers with thirty (30) or more employees at a project will pay three committeemen up to two hours' pay at their applicable rates in every thirty-day period.

(ii) Time spent in joint meetings as provided for above in paragraph 5 of this Section, but in no case any less often than once every thirty-day period; Employers with ten (10) or less employees at a project will pay one committeeman up to one hour's pay at his applicable rate in every thirty-day period; Employers with more than ten (10) employees but fewer than thirty (30) employees at a project will pay two committeemen up to one hour's pay at their applicable rates in every thirty-day period; Employers with thirty (30) or more employees at a project will pay three committeemen up to one hour's pay at their applicable rates in every thirty-day period.

(iii) Committee members shall be paid their applicable rates for investigating explosions and/or disasters, including any fatality.

Section (d)—Access to the Project

In recognition of the UMWA's concern with health and safety, Union officials and authorized representatives of the UMWA Safety Division or Department of Occupational Health, without interfering with the Project Health and Safety Committee and the grievance committee in performance of their duties, shall be granted access to the project on the following conditions:

1. Subject to the routine check-in and check-out procedures at the project, the officers of the International Union, the District president of the District involved, and the duly elected or appointed representative of the District or International Union's Safety Division and Department of Occupational Health shall be granted access to a project and its related facilities to consult with management or the Project Health and Safety Committee.

2. Where such representatives come to a project to meet management to discuss health or safety problems, management shall have the right to be represented by its own health or safety representative. Where application of a Federal or state law or regulation is involved, either management or the authorized Union representative may invite Federal or state inspectors to participate.

3. The officers of the International Union, the District President of the District involved, and the duly elected or appointed representative of the Union's Safety Division and Department of Occupational Health may accompany state and Federal inspector investigating any fatal or serious nonfatal accident, fires or explosion.

4. The provisions of this Section are in no way intended to impair or to waive any statutory rights under Federal or state laws or regulations which Union officials and representatives may have to enter the project or related facilities.

Section (e)—Reports

Reports of all accidents occurring at the project reported to Federal or state agencies shall be made available to the Project Health and Safety Committee, and the Joint Industry Health and Safety Committee.

In addition, the Employer shall notify the project Health and Safety Committee immediately of all serious injuries known to management which must be immediately reported to state or Federal Agencies.

Section (f)—Safety Rules and Regulations

Reasonable rules and regulations of the Employer, not inconsistent with Federal and state laws, for the protection of the persons of the employees and the preservation of property shall be complied with.

The Employer shall inform the Project Health and Safety Committee of any new or revised safety rule or regulation and shall meet and discuss it with Committee members in an attempt to resolve any differences between the parties. If the Committee or any employee believes that any such new rule or regulation or revision is unreasonable, arbitrary, discriminatory or adversely affects health or safety, they may file and process a grievance. A grievance filed under this section shall be processed in accordance with Section (p) entitled Health and Safety Disputes.

Section (g)—Cooperation in Development of Plans

Copies of approved plans pertaining to health and safety will be made available at the project site to the Project Health and Safety Committee. Approved modifications or revisions of any plan pertaining to health and safety shall be made available at the project site to the Project Health and Safety Committee.

Section (h)—Preservation of Individual Safety Rights

1. No employee will be required to work under conditions which he has reasonable grounds to believe to be abnormally and immediately dangerous to himself beyond the normal hazards inherent in the operation which could reasonably be expected to cause death or serious physical harm before such conditions or practices can be abated. When an employee in good faith believes that he is being required to work under such condition, he shall notify his supervisor of such belief. Unless there is a dispute between the employee and management as to the existence of such condition, steps shall be taken immediately to correct or prevent exposure to such condition, and the Employer may utilize all available employees, including the involved employee, to correct or prevent exposure to such condition.

2. If the existence of such condition is disputed, the employee shall have the right to be relieved from duty on the assignment in dispute. Management shall have the right to assign such employee to safe work available elsewhere at the Project, and the employee shall accept such assignment at the higher of the rate of the job from which he is relieved and the rate of the job to which he is assigned. The assignment of such alternate work shall not be used to discriminate against the employee who expresses such belief. If the existence of such condition is disputed, at least one (1) member of the Project Health and Safety Committee shall review such condition with management as soon as possible to determine whether or not such condition exists. If there is agreement that the condition does not exist, the employee shall return to his regular job immediately.

3. If the dispute remains unsettled following the investigation by a member of the Project Health and Safety Committee and involves an issue concerning compliance with applicable state or Federal health and safety laws, or mandatory health or safety regulations, the appropriate state or Federal inspection agencies shall be called in immediately and the dispute shall be settled on the basis of the findings of these agencies, with both parties reserving all rights of statutory appeal. Should the Federal or state inspectors find the condition complained of requires correction before the employee may return to his job, the Employer shall take the corrective action immediately. Upon correction, the complaining employee shall return to his job. If the Federal or state inspectors do not find conditions requiring correction, the employee shall be returned to his job immediately.

4. For disputes not otherwise settled, a written grievance shall be filed no later than five working days after the findings of the agencies and the dispute shall be referred immediately to step 3 as provided for in Article 21, Settlement of Disputes, Section (b)(3). If upon final resolution of the dispute, as provided above, it is determined that an abnormally unsafe or abnormally unhealthy condition within the meaning of this section existed, the employee shall be paid for all earnings he lost, if any, as a result of his removing himself from his job. In those instances where a determination has been made, as provided above, that an employee did not act in good faith in exercising his rights under the provisions of this Agreement, he shall be subject to appropriate disciplinary action, subject, however, to his right to file and process a grievance.

5. None of the provisions of this section relating to compensation for employees shall apply where the Employer withholds or removes an employee or employees from all or any area of a project, or where a Federal or state inspector orders withdrawal or withholds an employee or employees from all or any area of a project. However, this section is not intended to waive or impair any right to compensation to which such employees may be entitled under Federal or state law, or other provisions of this Agreement.

6. The provisions of this section shall in no way diminish the duties or powers of the Project Health and Safety Committee.

Section (i)—Physical Examination

1. Physical examinations may be required by the Employer as a condition of employment.

2. Physical examination, required as a condition of employment, shall not be used other than to determine the physical condition or to contribute to the health and well-being of the employee or employees. The retention or displacement of employees because of physical conditions, shall not be used for the purpose of effecting discrimination.

3. When a physical examination of a recalled employee on a panel is conducted, the employee shall be allowed to return to work at the project unless he has a physical impairment which constitutes a potential hazard to himself or others.

4. Unless an employee's physician refuses to state that the employee is able to return to work, the employee will not be terminated or refused recall from a panel or recall from sick or injured status for medical reasons over his objection. In the event of a disagreement between the employee's physician and the Em-

ployer's physician, the employee shall be examined by a third physician agreed upon by the Union and by the Employer, whose determination and recommendation regarding return to work, if any, shall be binding upon all parties. Each party shall bear the cost of the examination by its own physician, and shall share equally the cost of examination by the third physician, which they jointly designate. Where an Employer challenges the physical ability of an employee or panel member to continue his employment, and the determination of a third physician is required as provided herein, the employee shall be compensated for time lost due to the Employer's challenge.

Section (j)—Minimum Age

No person under 18 years of age shall be employed in any hazardous occupations provided, however, that where a state law provides a higher minimum age, the state law shall govern.

Section (k)—Workmen's Compensation and Occupational Disease

Each Employer who is a party to this Agreement will provide the protection and coverage of the benefits under workmen's compensation and occupational disease laws, whether compulsory or elective, existing in the states in which the respective employees are employed. Refusal of any Employer to carry out this directive shall be deemed a violation of this Agreement. Notice of compliance with this section shall be posted at the project site.

Section (l)—Maintenance

The Employer shall establish a maintenance program to insure that equipment is maintained in a safe operating condition. Equipment operators shall report promptly all equipment defects of which they have actual knowledge to the Employer, and the Project Health and Safety Committee. Maintenance employees shall exercise required safety precautions while carrying out their duties.

Section (m)—Engineer and Pumper Duties

When required by the Employer, engineers, pumpers, firemen, power plant and substation attendants shall under no conditions suspend work but shall at all times protect all the Employer's property under their care, and operate fans and pumps and lower and hoist persons or supplies as may be required to protect the Employer's property.

Section (n)—Reporting Hazards and Defects

Any employee having actual knowledge of any defect in equipment or working condition which he believes constitutes a hazard to the safety of an employee or endangers property will immediately notify his supervisor and the Project Health and Safety Committee of such hazard. Any employee having actual knowledge of an accident on the job which causes injury to any employee will immediately notify his supervisor of the accident and the name of the injured employee.

Section (o)—Specific Safety Problem Areas

The parties agree to the following as contractual solutions to the safety problems referred to below:

1. The Employer shall notify its employees of all special hazards presented by the introduction or use of any materials, solvents and chemicals at its operations, and shall provide the employee with all the necessary protective equipment when working with such hazardous substances, and the employee shall use the equipment.

2. Each Employer must assure that a well-equipped first aid station is available for each project, and make appropriate arrangements for a physician or nurse to be on call on short notice in case of emergencies.

3. The Employer shall make arrangements for a safe, quick, efficient means of transporting injured employees to nearby medical facilities. The transportation plan shall be submitted to the Project Health and Safety Committee for review.

4. When an employee is injured during his shift and unable to continue to work, he shall be paid for the complete shift.

5. No employee shall be required to lift more weight than he or she is physically capable of lifting.

6. The Employer shall establish standards governing the safe level and duration of noise in the work environment. Such standards shall be in accordance with applicable Federal and state standards.

7. Vertically protruding reinforcing steel must be protected to eliminate the hazard of impalement when employees are working above such reinforcing steel.

8. A signalman shall be assigned to direct a crane, hoist or derrick operator where the absence of one would create a potentially hazardous situation.

9. When a crane, hoist or derrick is used to handle men or materials which constitute a danger to employees, the operator of such equipment shall remain at the controls at all times.

10. A safety meeting shall be held each week between the employees, at the project and management.

11. When an employee is required to work at heights, the following procedures shall be followed:

(a) Flooring, catch nets, handrails, or other approved methods of protection shall be used to prevent employees from falling. Safety belts shall also be provided where required by law.

(b) No employee will work at heights such as on steel in hazardous weather conditions.

(c) Mantowers and/or safety ladders and cages with landings conforming to applicable Federal or state law shall be provided on silo construction sites.

(d) Powered audible means of communications shall be provided between the crane or hoist operator and employees working at a height where necessary to enable the operator or ground employees to communicate with the employees above.

12. The following procedures shall be followed at shaft slope, tunnels or other underground operations covered by this Agreement:

(a) A topman shall be on duty at all times in the vicinity of the portal when employees are working below the surface of a shaft or slope. When men or materials are being raised or lowered, he shall be at the portal.

(b) There shall be a second hoistman on call at all times when men are working below the surface of a shaft or slope, and in addition to the hoistman, there shall be a person present on the surface at all times when employees are working below the surface of the shaft or slope who is able to operate the hoist or auxiliary hoist.

(c) All materials being transported in a shaft or slope shall be properly secured to prevent spilling or falling before any such materials are transported.

(d) The Employer shall establish safety procedures in compliance with applicable Federal and state laws governing the use of work decks and/or platforms.

(e) Federal and state laws requiring direct communication between the crew of the shaft or slope bottom and the hoist operator shall be adhered to by the Employer.

13. All general scaffolding used at any site shall be constructed in accordance with Federal and state regulations. It shall be constructed to safely carry the weight placed on it. All scaffolding shall be inspected by management before use. Any defective scaffolding material shall be removed from service.

14. Cranes, derricks or other such equipment operated near energized high voltage power lines will adhere to Federal and state laws regarding minimum distances.

15. All cranes, hoists and derricks, and other such equipment shall be operated and maintained according to the manufacturer's recommendations. The rated capacities established by the manufacturer shall not be exceeded. The rated capacities and operating requirements of the manufacturer shall be posted in full view of the machine operator.

Section (p)—Settlement of Health and Safety Disputes

When a dispute arises at the project involving health or safety an immediate, earnest and sincere effort shall be made to resolve the matter through the following steps:

(1) By the aggrieved party and his immediate supervisor. Any grievance which is not filed by the aggrieved party within one work day following the shift on which the grievant reasonably should have known of such grievance shall be considered invalid and not subject to further consideration under the grievance procedures. If the grievance is not settled at this step, the ABC-UMWA Standard Health and Safety Grievance Form shall be completed and signed jointly by the parties.

(2) If no agreement is reached at step 1, the grievance shall be taken up by the Project Health and Safety Committee, the UMWA district health and safety representative, and management within four days of the conclusion of step 1. If the dispute involves an issue concerning compliance with Federal or state safety laws or mandatory health or safety regulations, the appropriate Federal or state inspection agencies shall be called in immediately and the dispute shall be settled on the basis of the agencies' findings with both parties reserving all statutory rights of appeal. If the dispute is not settled, a record shall be made of the position of the parties and the evidence at this step.

(3) If no agreement is reached at step 2 within five (5) days, the dispute shall be referred to an arbitrator for settlement in accordance with the procedures under Article 21, section (b)(4).

The grievant shall have the right to be present at each step, if he so desires, of the foregoing procedures until such time as all evidence is taken. A decision reached at any stage prior to step 3 of the proceedings above outlined shall be reduced to writing and signed by both parties. The decision shall be binding on both parties and shall not be subject to reopening except by mutual agreement.

By agreement, the parties may waive the time limits set forth in this procedure.

Article 5—WAGES AND HOURS

Section (a)—Basic Work Week

The basic work week shall begin at 12:01 a.m. Monday.

Section (b)—Basic Work Day

For all employees a work day of eight hours is established not including an unpaid lunch of thirty minutes. These eight hours shall be paid for at straight time rate. Overtime beyond eight hours per day and forty hours per week shall be paid for at time and one-half with no pyramiding of overtime. Straight time earnings for workers shall be the total daily normal shift earnings for eight hours divided by eight hours.

The Employer may schedule a work week of four consecutive ten-hour days at a project with the mutual agreement of two-thirds of the Employer's employees at the project. When a work week of four ten-hour days is scheduled, employees shall be paid at straight time rates for the ten hours, not including an unpaid lunch of thirty minutes. Overtime beyond ten hours per day and forty hours per week shall be paid for at time and one-half with no pyramiding of overtime.

Section (c)—Saturday, Sunday and Premium Work

(1) Work performed on Saturday shall be paid for at time and one-half or rate and one-half, except that double time or double rates shall be paid for all work in excess of an employee's basic work day as defined in section (b); provided that where a scheduled shift is canceled on account of inclement weather or equipment breakdown, the Employer may reschedule that shift for the following Saturday at straight time rate, subject to the conditions set forth in section (b) and provided no employee will be required to perform work on such Saturday unless notified to do so before the end of the day shift on the Thursday prior to such Saturday. Work performed on Sunday shall be paid for at double time or double rates except employees engaged in shaft, slope or tunnel work shall be paid time and one-half for all work performed on Sunday when working as maintenance men or pumpers.

(2) Work on the seventh consecutive day and holidays is optional.

(3) All employees at operations which work six days per week shall be given a fair and equal opportunity to work on each of such six days. Laying off individual workers during the week for the purpose of denying them six days' work is prohibited.

(4) The Employer shall have the right to schedule maintenance crews, powerhouse and substation employees, pumpers, lamphouse and bathhouse men, firemen, fan attendants, switchboard operators and other similar employees for Saturday and Sunday work and schedule their days off during the first five days of the work week (except continuous hoisting engineers). However, such employees shall be given the opportunity to work the same number of days per week as the number of days which the operation works and shall be given equal opportunity to share the available work on premium days.

(5) Except in cases of emergency, all employees required to perform idle day work on Saturday will be notified by the preceding Thursday. The Employer shall post a list of the employees required to perform idle day work on Saturday before the end of the day shift on the Thursday prior to the Saturday on which such work is required.

(6) An employee called to work on idle days at a rate less than his regular classified rate may decline to perform that work at lower rates on idle days.

(7) Idle day work must be equally shared in accordance with past practice and custom.

(8) Overtime and premium time shall be equally distributed as far as practicable, within classification and on shift, providing the employee has the ability to step into and perform the work of the job. Nothing herein shall prevent the employer from assigning overtime and premium time to an employee in a different classification or on a different shift where there is no employee within the classification and/or on shift available or able to perform the work. Any failure to work assigned overtime and premium time shall be considered time worked for purposes of distributing overtime and premium time. The Employer shall be responsible for maintaining a record of overtime and premium time distribution, and shall make the record available to the employees.

(9) If a shaft and slope project is worked around the clock, seven days a week, overtime shall be paid at the rate of time and one-half only for hours worked in excess of eight in a work day or forty hours in a basic work week; premium rates shall not be paid for hours worked on Saturday or Sunday, and Saturday and Sunday work shall not be optional. In lieu of shift differentials, all employees working at such project shall be paid an additional 50 cents for each hour employed. The schedule shall be posted at the job site and shall be either one of the schedules set forth in Appendix C or any other schedule mutually acceptable to the Union and the Employer, and the basic work week shall begin at 12:01 a.m. Monday. If within a reasonable time following the start of a project an Employer gives notification of a schedule which may be used under this paragraph, it may be implemented notwithstanding Article 6, Section (e).

Section (d)—Standard Daily Wage Rate

The standard daily wage rates paid for work performed under this Agreement are set forth in Appendix A. Where an employee believes that the regular duties which he is required to perform are appropriate to a job title and classification other than those which have been assigned to him, he may file and process a grievance under Article 21 (Settlement of Disputes) to be classified under the proper job title. Should an arbitrator decide that the complaining employee has been improperly classified, he shall order the Employer to properly classify him under the proper job title. If the new classification involves a higher rate, the Employer shall reimburse him for all wages he would have earned had he been properly classified, retroactive to the date he filed his grievance. The time limit for the filing of grievances imposed by Article 21, section (e) (Settlement of Disputes) shall not be applicable to this section.

Article 6—SHIFTS AND SHIFT DIFFERENTIALS

Section (a)—Multiple Shifts

The Employer shall have the right to work all projects one or more shifts with different crews. When only one shift is worked, it shall be the day shift, except under unusual circumstances.

Section (b)—Shift Differentials

Employees scheduled for and starting work on the afternoon shift shall be paid 20 cents additional for each hour employed. Employees scheduled for and starting work on the midnight shift, shall be paid 25 cents additional for each hour employed. Shift differentials shall be considered a part of the regular rate of pay in the calculations of overtime, premium rates, holiday, reporting, jury duty, military duty, and bereavement pay.

Section (c)—Working into the Next Shift

An employee who completes his regularly scheduled shift and continues to work into the next shift in excess of two hours shall be paid the applicable differential for all additional hours worked. When an employee works into the day shift from the midnight shift, he shall be paid the midnight shift differential for all hours worked on the day shift in addition to all hours worked on the midnight shift.

Section (d)—Call-back

An employee who completes his regularly scheduled shift and leaves his Employer's premises and is called out on another shift within a twenty-four hour period from the beginning of his regularly scheduled shift shall be paid the applicable premium rate together with any applicable shift differential for the hours worked on the additional shift. Reporting pay shall be applicable to this provision.

Section (e)—Shift Rotation

Shift rotation at existing projects may be continued. An employer may not rotate shifts at a new project after the new project is fully staffed, unless a vote is held among the employees who are involved in shift rotation, and a majority of those employees vote to practice shift rotation.

Article 7—STARTING TIME

Section (a)—Shift Starting Time

Each shift shall have a regular starting time established in accordance with past practice and custom.

Section (b)—Safety and Maintenance

The Employer may stagger the starting time for individuals who perform safety, maintenance or other functions essential to a safe and efficient operation.

Section (c)—Crew Changes

Subject to the provisions of this Agreement, changing crews at the face will be permitted.

Article 8—ALLOWANCES

Section (a)—Bereavement Pay

When death occurs in an employee's immediate family (spouse, mother, father, mother-in-law, father-in-law, son, daughter, brother or sister, step-father, step-mother, step-child, grandfather, grandmother and grandchildren), an em-

ployee upon request will be excused for up to three days, two to be consecutive and include the day of the funeral and the third at the employee's option. The employee shall receive pay at his regular or applicable overtime or premium rate, provided it is established that there was a death in his immediate family.

Section (b)—Jury Duty

When a regular employee is called for jury service, he shall be excused from work on the days he is required to appear in court. Employees called for jury duty, upon proof of such service and of the amount of pay received therefor, will be paid whatever sum, if any, is necessary in addition to the fees received for jury duty service to reimburse him for earnings lost because of such jury duty, including payment for any scheduled overtime or premium time. In determining lost earnings, fees received for jury duty service shall not include payments which the employee may receive for mileage, meals, and accommodations.

Section (c)—Reporting Pay

Unless notified not to report, when an employee reports for work at his usual starting time, he shall be entitled to two hours pay whether or not the operation works the full two hours, but after the first two hours, the employee shall be paid for every hour thereafter by the hour, for each hour's work or fractional part thereof. If, for any reason, the regular routine work cannot be furnished, the Employer may assign the employee to other than the regular work. Reporting pay shall not be applicable to any portion of the two hours not worked by the employee due to his refusal to perform assigned work. Notification of employees not to report means reasonable efforts by management to communicate with the employee.

Section (d)—Military Duty

When an employee is called to active duty in the armed forces, the national guard or the reserves, including emergency call-ups and summer encampment training, he shall be excused from work. Upon proof of service and the amount of pay received therefor, the employee is entitled to receive a maximum of two weeks pay in any calendar year at his regular rate, including payment for any regularly scheduled overtime and premium pay, less any amounts received by the employee from the armed services, the national guard or reserves for such period.

Section (e)—Personal or Sick Leave

(1) During each calendar year of this Agreement, commencing on the effective date of this Agreement, each classified employee shall be eligible upon accrual for unpaid personal or sick leave in the amount of one full day of personal or sick leave for each thirty-three (33) days worked, up to a maximum of six (6) such days in any calendar year.

(2) To the extent practicable, the employee shall notify his immediate supervisor at least twenty-four (24) hours in advance of the shift or shifts for which he will be unable to report. In the event of sudden sickness, accident or emergency, the employee shall make a reasonable effort to notify his immediate supervisor at least two (2) hours in advance of the shift on which he is scheduled to work.

(3) Personal or sick leave days shall not be counted as part of the seven (7) day waiting period under the sick and accident pay program unless the employee is disabled as a result of sickness or accident so as to be prevented from performing his regular classified job and his disability is certified by a physician legally licensed to practice medicine.

Section (f)—Protective Clothing Allowance

Where required the Employer shall furnish the following safety equipment and devices: electric cap lamps, lamp belts, self rescuers, personal ear plugs, safety belts and lanyards, rain gear, muck suits, and hip boots. The employee shall use and take reasonable care of all equipment furnished by the Employer, and the Employer may make and enforce reasonable rules to assure that any equipment which Employer provides is not lost or misused, and the Employer may require employees to return all equipment upon termination of employment or completion of a project.

The Employer shall not be required to provide personal wearing apparel such as clothing, shoes, boots where worn as part of normal footwear, hats, hard hats, belts and gloves.

Section (g)—Travel

Prior practice of the Employer with respect to travel arrangements shall be continued.

Article 9—COST-OF-LIVING WAGE INCREASE

There shall be no Cost-of-Living increase during the term of this Agreement.

Article 10—SICKNESS AND ACCIDENT BENEFITS

Section (a)—General Purpose

The general purpose of the Sickness and Accident Benefits Plan established by this Article is to protect employees against financial hardship resulting from sickness or accident suffered on or off the job, by providing compensation for earnings lost.

Section (b)—Eligibility

Any Employee with six (6) months or more of classified employment with the Employer who becomes disabled as a result of sickness or accident, so as to be prevented from performing his regular classified job, and whose disability is certified by a physician legally licensed to practice medicine, shall be eligible to receive Sickness and Accident Benefits under this Plan. An Employee whose disability is the result of an accident at the construction project site, suffered while he has been a classified employee of the Employer shall be eligible to receive Sickness and Accident Benefits effective with his first day of classified employment. Benefits will not be payable for any period during which the employee is not under the care of a licensed physician.

For the purposes of this Article, "classified employment" means employment in a classified job which has not been broken by quitting, discharge, retirement, refusal to return to work following recall pursuant to the terms of Article 16, section (e), or termination of seniority pursuant to Article 16, section (l).

Benefits shall not be payable in the event that the employee's employment had been terminated, or if he was laid off or was granted a leave of absence prior to his disability, or in the event that his disability is the direct result of an injury or sickness suffered prior to his employment with the Employer, or while the employee is engaged in employment other than classified employment with his Employer under this Agreement.

Benefits shall be terminated in the event that the employee (1) receives a pension pursuant to Article 19; (2) receives Social Security old-age benefits; (3) accepts employment with another signatory Employer or with any employer not signatory to this Agreement; or (4) voluntarily severs employment with his Employer.

If, during a period when an employee receiving Sickness and Accident Benefits is recovering from his disability, his Employer offers him a light-duty classified job, the employee shall have the option to accept such employment, and Sickness and Accident Benefits shall terminate if he does so. For the purposes of this Article, "light-duty" shall be defined as including any job in which occupational hazards, lifting of weights, and exposure to extremes of temperature, dampness, and dust are substantially less than those of the job held by the employee at the time of his disabling accident or illness. An employee's classified employment will be tolled but not terminated during any periods in which he is laid off on his Employer's panel because of his decision not to accept available work, pursuant to Article 16, section (e), with his Employer.

Section (c)—Commencement and Duration of Benefits

Sickness and Accident Benefits shall begin with the first day of disability resulting from an accident, and with the eighth day of disability resulting from sickness, except that if the Employee is hospitalized because of a disabling sickness requiring surgical treatment or intensive care, benefits shall begin with the first full day of hospitalization.

Benefits for disability resulting from an accident, either on or off the job, shall be payable for a maximum of 52 weeks, regardless of the length of the employee's classified employment with the Employer at the time of the accident.

Benefits for disability resulting from sickness shall be payable according to the following schedule:

Length of Classified Employment with the Employer	Maximum Number of Weeks
At least 6 months but less than 1 year.....	6
At least 1 year but less than 5 years.....	13
At least 5 years but less than 10 years.....	26
At least 10 years but less than 15 years.....	39
15 years or more.....	52

If an employee returns to work after receiving Sickness and Accident Benefits for less than the maximum number of weeks to which he is entitled, and is then absent again within 90 days due to the same sickness or accident which disabled him originally, there shall be no waiting period for benefits payable during the remaining weeks of his eligibility but the period during which he again receives benefits will be considered with the first period as one continuous period of disability. If the second absence results from a different sickness or accident, the first absence does not affect the duration of benefits for which the employee shall be eligible for the second absence. If the employee returns to work for 90 calen-

dar days between two periods of disability, the second period shall not be considered as being due to the same sickness or accident as the first disability.

A change in the cause of the employee's disability during a continuous period of absence from work on account of disability does not extend the maximum duration of Sickness and Accident Benefit payments.

In the event that an employee becomes disabled prior to the commencement of a strike or work stoppage, his eligibility for benefits shall not be affected by the strike or work stoppage. In the event that an employee becomes disabled during a strike or work stoppage, the seven-day waiting period, if applicable, will run, but the employee shall not be entitled to receive benefit payments for any day of disability during the strike or work stoppage.

Section (d)—Amount and Payment of Benefits

The amount of Sickness and Accident Benefits payable under this Plan shall be \$260 per week. All weekly benefit payments shall be prorated over a seven-day week (Monday through Sunday).

Benefits shall be reduced by deducting any or all of the following forms of compensation to the extent that they are applicable to and are payable for the same sickness or accident and the same period for which the Employee qualifies for Sickness and Accident Benefits under this Plan: (1) Workmen's Compensation benefits for temporary or permanent disability, including state Black Lung benefits; (2) State or Federal disability benefits, exclusive of veterans' benefits; (3) Social Security primary disability insurance benefits; and (4) Federal Black Lung benefits.

Payment of Sickness and Accident Benefits shall not be made for any days during an employee's disability for which he receives wage allowances pursuant to this Agreement, but the duration of Sickness and Accident Benefits for which the employee is eligible shall be extended by an equal number of days.

Payment of benefits shall be made by check every two weeks, for all days during the preceding two weeks in which the employee was eligible for benefits.

Section (e)—Filing of Claims for Benefits

To be eligible for payment of benefits, the employee must give written notice of disability to the Employer, including certification by a licensed physician upon request by the Employer, within 21 days after the day claimed as the first day of disability. If, however, the employee is unable to give such notice within the 21-day period due solely to physical incapacitation and notice is subsequently given by the employee when his physical condition improves sufficiently to allow him to give notice or have it furnished by someone else on his behalf, this 21-day limitation will not apply. The Employer shall be responsible for promptly forwarding the employee's claim to a responsible insurance carrier unless the Employer elects to provide benefits directly, in which case any undisputed claim shall be paid within fourteen days of receipt of the employee's claim.

Section (f)—Structure and Administration

Each Employer shall be solely and individually responsible for provision of the benefits set forth in this Article, either directly or through a responsible insurance carrier he may designate.

The Employer or his insurance carrier shall have the right to take reasonable steps to investigate the factual aspects of an employee's claim, including examination of the employee by a physician at the Employer's or carrier's expense, in the event of a dispute over medical evidence. A dispute unresolved after such investigation shall be subject to resolution at the fourth step of the grievance procedure as set forth in Article 21 (Settlement of Disputes). A representative of the Department of Occupational Health of the International Union shall have the right to assist a grievant.

Article 11—HOLIDAYS

Section (a)—Holidays Observed

The following eleven holidays shall be observed:

- April 1
- Good Friday
- Memorial Day (Federal Holiday)
- Independence Day
- Labor Day
- Veterans' Day (November 11)
- Thanksgiving Day
- Friday after Thanksgiving
- Christmas Eve Day
- Christmas Day
- New Year's Day

Section (b)—Sunday Holidays

If any of the foregoing holidays fall on a Sunday, it shall be celebrated on the following Monday, provided that if Monday is also a scheduled holiday, the Tuesday following the Monday will also be celebrated as a holiday.

Section (c)—Monday Holidays

If any of the foregoing holidays are celebrated on a Monday, work on the Saturday preceding the holiday is optional for the employees (except for those employees covered by Section (m) of Article 4 (Health and Safety)).

Section (d)—Pay for Holidays Not Worked

An employee on the active payroll of the Employer at the time a holiday occurs, and who does not work on the holiday, shall be paid his regular straight time pay for such day, including regularly scheduled overtime, provided such employee worked his last scheduled work day prior to the holiday and his first scheduled work day following the holiday, unless off work due to authorized absence.

Section (e)—Pay for Holidays Worked

Employees who work on the foregoing holidays will be paid triple time or triple rates for all time worked.

Section (f)—Holidays During Vacation Period

When a holiday occurs during an employee's scheduled vacation, he shall be paid for the holiday not worked and may designate another day he wishes to take off as a holiday.

Section (g)—Holidays for Sick and Injured

If an employee is forced to cease work because of job-related injury or illness, for the duration of the project on which he was employed or one (1) year following such injury or illness, whichever is less, he will be paid holiday pay in the amount of eight times his standard hourly wage rate for each holiday which occurs during such period, provided he establishes medical proof of illness or injury.

Section (h)—Time of Payment

Payment for holidays not worked shall be included with pay for the pay period in which the holiday occurs.

Article 12—REGULAR VACATION**Section (a)—Annual Vacation**

An annual regular vacation of fourteen days without pay shall be the rule of the industry.

Section (b)—Dates of Vacation

The time for taking vacation shall be scheduled by the contractor at the times desired by individual employees of the Employer so long as it does not affect the operation of the Employer.

Should there be a conflicting choice of vacation between two or more employees, the choice will be determined on a seniority basis. Each employee shall have as much advance notice of his scheduled vacation as practicable.

Section (c)—Floating Vacation Days

For each three (3) months of continuous employment with the Employer under this Agreement, an active employee shall be entitled to one (1) additional day of unpaid vacation, up to a maximum of four (4) days in any calendar year, to be taken at such times as desired by the employee as long as approved by the Employer at least 30 days in advance.

Article 13—JOBS

The parties hereto recognize and agree that the coal mine construction industry has suffered severe economic setbacks in recent years. The parties agree further that market conditions in the industry vary greatly from one part of the country to the other. As a result of the special nature of the coal mine construction industry, and the parties' desire to develop a relationship in which the Employees and the Employers retain the ability to procure work, the parties agree to establish the Job Opportunity and Benefits Security (JOBS) Program. Under the JOBS Program, an Employer may request that a modification of this Agreement apply to a specific project. If and only if both the Union and the Association consent to the modification, then this Agreement shall be so modified as applied to such project. The terms and conditions of this Agreement shall not be modified under this Article without the mutual agreement of the Union and the Association. Furthermore, the Union and the Association recognize that modifications are necessary at projects where Employers compete against nonsignatory employers and will consider all reasonable modifications.

Any modification of a prior National Coal Mine Construction Agreement en-

tered into in writing under Article 13 of that agreement shall remain in effect as a modification of this Agreement pursuant to this Article.

Article 14—CHECKOFF

The membership dues, including initiation fees, and assessments of the Union and its various subdivisions, as authorized and approved by the Union, and properly validated credit union deductions, shall be checked off the wages of the employees by the Employers to the properly designated officers of the Union for distribution to its various branches. Such remittances shall be forwarded to the properly designated officers of the Union by the end of the month following the month in which they are checked off, and shall be accompanied by an itemized statement showing the name of each employee, his Social Security number, his Local Union number, project location, and the amount checked off for dues, initiation fees, and assessments, together with a list of employees for whom dues, initiation fees and assessments have not been collected.

In order that this Section may become effective and operate within the limitations of the Labor-Management Relations Act of 1947, the Union hereby agrees to furnish, with all reasonable dispatch to the respective Employers, and the Employers agree to aid, assist and cooperate in obtaining written assignments from each employee so employed. Upon the presentation to the Employers of such assignments in such reasonable form as time and circumstances, looking to the continuous uninterrupted operations, may allow, said Employers shall make deductions so authorized and deliver the same to the authorized representatives as may be designated by the Union.

Membership dues and initiation fees shall be forwarded to the UMWA district in which the project is located at which the employee is working at the time the dues and initiation fees are checked off. A copy of the master dues checkoff sheet shall be sent to all UMWA Districts where the Employer has employees working.

Article 15—TRAINING**Section (a)—Priority**

The parties agree that the establishment of effective training for employees is essential to safe and efficient operations. Training and orientation shall be conducted according to the provisions of this Article until such time as specific training regulations for construction are promulgated pursuant to applicable Federal or state law, including the Federal Mine Safety and Health Act of 1977 to the extent it may be applicable, but in no case shall any part of this Article be deleted where the applicable Federal or state law is less stringent.

Section (b)—Orientation for New Employees

1. Orientation for new employees, regardless of prior experience, shall be put into effect immediately by each Employer covered by this Agreement. Except for instruction in first aid fundamentals, orientation shall be provided to a new employee prior to the assignment of any work. Such orientation shall be developed by the Employer and implemented at each project, and shall emphasize health and safety with particular emphasis on the nature of the Employer's work.

2. Existing or new orientation procedures shall be reviewed by the Employer jointly with the project health and safety committee.

Orientation procedures shall include the elements listed in paragraph 3 or 4 of this section which are applicable. Such review shall be carried out not later than six (6) months after the effective date of this Agreement.

3. Orientation for shaft, slope and underground employees shall include the following elements which are applicable:

(i) Introduction to underground construction work including a complete tour of underground and related facilities; instruction and analysis of hazards encountered by inexperienced employees; instruction in safety laws and regulations and company safety rules applicable to work of inexperienced employees.

(ii) Description of the line of authority and responsibilities of supervisors and of the authority and responsibilities of the Health and Safety Committee.

(iii) The check-in and check-out system, where required by safety laws and procedures regarding the transportation of men and materials.

(iv) Escape and emergency evacuation plans.

(v) Instruction in the use, care and maintenance of the applicable self-rescue device.

(vi) Instruction in the use, care and maintenance of personal protective equipment.

(vii) Instruction regarding roof and rib control, ventilation, dust and noise control plans and procedures.

(viii) Instruction in first-aid fundamentals, including artificial respiration, control of bleeding and treatment for shock.

(ix) Instruction in the recognition and avoidance of electrical hazards.

- (x) Instruction regarding use of the underground communication system.
 - (xi) Instruction in the detection of methane.
 - (xii) Instruction regarding general accident prevention.
4. Orientation programs for surface construction employees or for surface area employees of an underground mine construction project shall include the following elements which are applicable:
- (i) A complete tour of the surface areas; instruction in and analysis of hazard encountered by inexperienced employees; instruction in safety laws and regulations and company safety rules applicable to the work of inexperienced employees.
 - (ii) Description of the line of supervisory authority and responsibilities of the Health and Safety Committee.
 - (iii) Instruction in the use, care and maintenance of personal protective equipment.
 - (iv) Instruction in first-aid fundamentals, including artificial respiration, control of bleeding, and treatment of shock.
 - (v) Instruction regarding plans and procedures for working safely at heights.
 - (vi) Instruction in the recognition and avoidance of electrical hazards.
 - (vii) General instruction in the prevention of accidents.
 - (viii) Instruction in the current laws and regulations applicable to the tasks and work assignment of the individual employee.
 - (ix) Instruction regarding proper procedures for working on and near moving equipment.
 - (x) Instruction in the procedures for recognition and control of hazardous gases and fumes.
 - (xi) Instruction regarding safe work procedures for night-shift employees.
5. Orientation shall be of sufficient length to adequately cover the applicable elements of instruction referred to in paragraph 3 or 4 of this section. New employees shall be paid for time spent in orientation at the lowest classified rate.
6. The parties recognize that there may be approved state or Federal pre-employment programs which cover some of the basic aforementioned elements. In those particular cases where such programs exist, the Employer may adjust its procedures so that there shall be no duplication of training.

Section (c)—Retraining

1. Retraining re-emphasizing the importance of health and safety shall be put into effect immediately by each Employer covered by this Agreement. Every classified employee shall participate.
2. Retraining in underground construction shall include the following elements which are applicable:
- (i) Instruction regarding the roof and rib control plans in effect and procedures for roof and rib control.
 - (ii) Instruction regarding procedures for maintaining ventilation and control of ventilation.
 - (iii) Instruction regarding proper procedures for working on and near moving equipment.
 - (iv) Instruction in the recognition and avoidance of electrical hazards.
 - (v) Instruction in the fundamentals of first-aid.
 - (vi) Instruction in the use, care and maintenance of the applicable self-rescue device.
 - (vii) Instruction regarding the escape and emergency evacuation plans.
 - (viii) Instruction regarding use of the underground communication system.
 - (ix) Instruction in the current laws and regulations applicable to tasks and work assignment of the individual employee.
 - (x) Instruction in safe procedures for handling explosives for all employees who may be asked to handle explosives.
3. Retraining for surface construction employees shall include the following elements which are applicable:
- (i) Fundamentals of first-aid.
 - (ii) Instruction regarding plans and procedures for working safely at heights.
 - (iii) Instruction regarding fire warning signals and fire extinguishing procedures.
 - (iv) Instruction in the recognition and avoidance of electrical hazards.
 - (v) Instruction in the procedures for recognition and control of hazardous gases and fumes.
 - (vi) Instruction in the safe operation of haulage and conveyor systems in use at the project.
 - (vii) Instruction regarding safe work procedures for night-shift employees.
 - (viii) General instruction in the prevention of accidents.
 - (ix) Instruction regarding proper procedures for working on and near moving equipment.
 - (x) Instruction in the current laws and regulations applicable to the tasks and work assignment of the individual employee.
 - (xi) Instruction in the proper operation of equipment for equipment operators.

- (xii) Instruction in safe procedures for handling explosives for all employees who may be asked to handle explosives.
4. Retraining shall not be less than a total of eight (8) hours for each active employee in each calendar year and shall be presented in increments of not less than one-half (½) hour. An employee shall be paid for time spent in retraining at the regular rate applicable to his classification. A retraining meeting held during a particular week which emphasizes health and safety shall satisfy the requirement of Article 4, Section (o)(10).

Section (d)—Safety Training for a Specific Job

After an employee has been awarded a specific job before undertaking the duties of that job, he shall receive a thorough briefing relative to the hazards of the job, including a trial run on the machine or equipment under the direction of an experienced person. Each Employer shall develop a job briefing program for employees who have been awarded a specific job, which program shall take into account changes which may occur in the job as the project progresses. Emphasis shall be on health and safety aspects related to the local conditions and hazards of the particular job.

Section (e)—Certification or Qualification

Where certification or qualification is required by either Federal or state health and safety laws, the Employer and the Union shall cooperate with the appropriate Federal or state agencies to develop programs that will enable classified employees to acquire such certification or qualification.

Article 16—SENIORITY

Section (a)—Definition

An employee's seniority shall be based on his length of service in the coal mine construction industry with the Employer, and ability to step into and perform the work of the job at the time the job is awarded. An employee on the panel of his Employer shall continue to accrue seniority while on the panel. The seniority of any employee established under a predecessor to this Agreement shall not be affected by this Section.

When two or more new hires begin work on the same day, their relative seniority shall be determined by the last four digits of their Social Security numbers, with seniority being awarded to the new hire with the lowest number, provided that this method for determining relative seniority shall not affect the seniority of any employee whose seniority was established by some other method prior to the effective date of this Agreement.

Section (b)—Reduction in Force

When the work force is reduced at a construction project site, employees at the project site with the greatest seniority as defined in Section (a) shall be retained provided they can perform the work which remains to be done at that project site. When the work force is reduced at a construction project site, employees at that project site who would otherwise be laid off, but who have greater seniority as defined in Section (a) than employees in other classifications, shall have the option of either being retained provided they can perform the work which remains to be done at the project site, or being laid off. Employees laid off because of the reduction in force at that project shall be placed on the panel of the Employer. The Employer shall furnish a copy of the Standardized Layoff Form to each employee at the time he is laid off. The employee shall immediately sign the receipt acknowledging that he received the Form. The Standardized Layoff Form adopted by the Association and Union is incorporated by reference herein.

Prior practice of the Employer with respect to District wide layoffs may be continued in those UMWA Districts where the Employer has followed a practice of reducing its work force District-wide.

Section (c)—Panel Registration

Within five days after the employee receives the Standardized Layoff Form, he must fill out the Form and submit it to the Employer. On this Form, the employee shall list:

- (1) his years of service in the coal mine construction industry with his present Employer and all other coal mine construction Employers;
 - (2) job classifications which he has performed or for which he has been trained (for which he wishes to be recalled) and the Employers for whom he has performed them;
 - (3) his home UMWA district; and
 - (4) the other UMWA districts, other than his home UMWA district, where he will accept recall.
- After the employee has completed the Form he may not amend it for three (3) months and, thereafter he may not amend the Form more often than once every three (3) months. The Form, or amended Form, must be either hand-delivered by the employee to his Employer or sent by the employee to his Employer by a type of mail or delivery service that requires a return receipt.

Section (d)—Panel Custodians

A representative of the Employer and a representative designated by the local union shall be the joint custodians of panel records. It shall be the obligation of a laid off employee to keep the custodians advised of any change of address, and a telephone number where he can be reached. Upon request of the designated representative of the local union having jurisdiction over the project, the Employer shall furnish the applicable panel records.

Within 60 days of the effective date of this Agreement, the Employer may require an employee who has been on its panel for one year or more without recall to indicate his desire to remain on the Employer's panel by submitting an updated Standardized Layoff Form. Notice of requirement to update panel registration shall be made to the employee's last known address by certified mail, return receipt, and shall be in the form set forth in Appendix D. The notice shall be accompanied by a Standardized Layoff Form, which the employee must complete and submit to the Employer within thirty (30) days to remain on the Employer's panel.

Section (e)—Recall from the Employer's Panel

Panel members shall be returned to work to projects in their home UMWA districts and other UMWA districts in which they have indicated they will accept recall in accordance with Section (a) and Section (f)(1). Either notice of recall or confirmation of notice of recall shall be made to the employee's last known address by certified mail, registered mail, telegram, or mailgram.

An employee recalled to a project in his home UMWA district, or another UMWA district in which he has indicated he will accept recall, must report to work. An employee who does not report to work, within a reasonable period of time, to a project located in his home UMWA district, or another UMWA district in which he has indicated he will accept recall, shall forfeit his seniority rights.

Panel members may be asked to report to projects in UMWA districts other than their home UMWA districts, or other than in UMWA districts in which they have indicated they will accept recall, but may refuse to go without loss of seniority rights.

An employee's home district shall be the UMWA district in which he has an established permanent residence, except in lieu thereof the employee may designate the UMWA district in which he was hired to be his home district.

Section (f)—Job Bidding for Permanent Vacancies

Filling of all permanent vacancies or new jobs occurring during the term of this Agreement will be made on the basis of seniority, as defined in Section (a) by the following procedure:

1. The vacancy or new job shall be posted on the bulletin board at the project site where the vacancy or new job exists for a period of three (3) work days, and will be identified as to job title, wage rate, and shift (at projects where shift rotation is not practiced). If the vacancy does not yet exist, the estimated date when the vacancy will exist shall also be posted. The prior practice with the Employer of posting the job or vacancy at all job sites where there was interchangeability of employees from one job site to another within the District may be continued. For purposes of this Section, a panel member shall be presumed to have bid on each job at a project in his home UMWA district, or in another UMWA district in which he has indicated he will accept recall, provided it is the type of job which he listed on his layoff form for which he would accept recall.

2. Any classified employee at the project shall be entitled to bid on the vacancy during the three (3) day posting period. When an employee is absent from work during the posting period for an excused reason, he shall be notified of the vacancy and given an opportunity to bid. Notice by the Employer to the employee's last known address by certified mail shall be sufficient notice.

3. At the close of the posting period, upon request, the Employee shall make available to the Union the names of all employees who have bid. Within five (5) work days after the three (3) day posting period, the senior employee as defined in Section (a) making a bid for such permanent vacancy shall be selected from the applicants and the employee's name immediately posted at the project bulletin board. The successful bidder may be required to remain in his present job for a period of time not to exceed thirty (30) days, provided that if during that thirty (30) day period the job for which he has been selected is filled by any other employee, the successful bidder shall receive the established rate of pay for the job for which he has been selected, if that rate is higher than his present job rate, for the actual hours he would have worked on the new job had he not been retained in his present job.

4. During the posting period and the selection period, the Employer shall have the right to fill such vacancy with any classified employee it may select, but shall, in order to help senior employees achieve promotion, give preference to the senior man where practicable. However, the experience an employee has gained during the posting and selection period shall not be considered as evidence of his ability to perform the job for purposes of filling the specific vacancy in question.

5. No claim shall be recognized by either the Employer or Union representatives for any vacancy after the posting period and the job has been filled by the senior man, as defined in Section (a).

6. Under ordinary circumstances, in order to provide a safe and stable work force, an employee will not be entitled to bid on a vacancy or new job which carries the same or a lower wage rate than his present rate more than once on the same project. This limitation will not apply to an employee who bids on a vacancy or new job which carries a higher wage rate than his present rate. Nor will this limitation prevent an employee from bidding on a vacancy or new job which carries the same or lower wage rate than his present rate at least once during any twelve (12) month period.

Section (g)—Staffing of New Projects

After exhausting its own panel but before hiring a new employee from the District Panel or otherwise, the Employer shall comply with the following procedures in staffing a new project in a UMWA District: jobs at the new project shall be offered according to seniority, as defined in Section (a), to those employees working at projects in other UMWA districts, whose home district is the UMWA district in which such project is located, and who have the ability to step into and perform the work of the job at the time it is offered. The Employer may temporarily retain such employees at projects where they are working where necessary to maintain a continuous operation.

Section (h)—District Panels

Each UMWA district shall keep a panel listing all laid off employees of Employers signatory to this Agreement. When an employee is laid off at a project, he may have his name placed on the District Panel by indicating on the Standardized Layoff Form that he wants to be placed on the District Panel. On the Form the employee must list his years of service in the coal mine construction industry, job classifications which he has performed or for which he has been trained (for which he wishes to be called) and the Employers for whom he has performed them, the employee's address, and a telephone number where the employee can be reached. Within five days after the employee receives the Standardized Layoff Form, he must fill out the Form and submit it to the Employer. Within five days after the employee returns the Form to the Employer, the Employer shall submit a copy of the Form to the employee's home UMWA district, or, if the employee so designates, to a UMWA district which is adjacent to the employee's home district.

When an Employer does not fill a permanent vacancy or new job with an employee from the Employer's panel, as provided for in Section (e), or through job posting and bidding is provided for in Section (f), before hiring a new employee off the street, the Employer will request the UMWA district in which the project is located to furnish him with the names and qualifications of employees on the District Panel who have indicated they can perform the job. If requested by the Employer, the District will furnish the names of all employees on the District Panel who have indicated they can perform the job. The Employer shall select one of these employees to fill the job, which employee must have the ability to step into and perform the work of the job at the time the job is to be filled. Consideration shall be given first to employees whose names have been on the District Panel the longest.

Employees will be called from the District Panel according to the following procedure:

(1) The Employer will notify the office of the District Panel Custodian of the name of the employee(s) whom the Employer has selected and the date(s) when the employee(s) is scheduled to report to work;

(2) By 5 P.M. on the work day following the Employer's notification to the office of the District Panel Custodian, the District will contact the employee(s) and notify the Employer whether or not the employee(s) will report to work when scheduled;

(3) The employee(s) must report to work at the time scheduled by the Employer, but no Employer may require an employee to report to work sooner than two full work days from the time that the Employer notifies the Office of the District Panel Custodian that the employee(s) has been selected.

An employee selected from the District Panel who indicates that he will not report to work, or an employee who does not report to work when scheduled, shall be removed from the District Panel.

If the District fails to notify the Employer within the period provided in (2) above, the Employer may hire off the street to fill the job or vacancy. If the employee fails to report to work when scheduled as required in (3) above, before hiring from the street, the Employer will immediately notify the Office of the District Panel Custodian of the name of another employee whom the Employer has selected, and such employee must report to work at the beginning of the same shift on the next work day, but that if such employee fails to report to work at that time, the Employer may hire off the street to fill the job or vacancy.

When an Employer requests the UMWA district to furnish a list of employees on the District Panel, the Union will furnish the Employer with a copy of the standardized form which has been filled out by each employee on the list.

An employee hired from the District Panel will be a new hire, and during the first thirty (30) work days of his employment, the Employer shall have the right to refer the employee back to the District Panel if the Employer decides that the employee is not able to step into and perform the work of the job at the time the job is to be filled. A physical examination may be required as a condition of the employee's continued employment during this period. An employee referred back to the District Panel will not retain seniority rights with the Employer. In calling employees from and in referring employees back to the District Panel, the Employer will not discriminate in violation of Article 23.

When an employee is recalled under Section (e) of this Article, the Employer shall notify the Office of the District Panel Custodian, and the employee shall be removed from the District Panel.

Every month, each UMWA district which maintains a District Panel will furnish to the Association of Bituminous Contractors a list of all employees on the District Panel, which list will indicate the name of each employee, his classification, his previous Employer, and the date he was placed on the District Panel.

This Section shall not prevent an Employer from hiring an employee from any other source in order to comply with an applicable Federal or state law which regulates hiring practices.

Within 60 days of the effective date of this Agreement, each employee on a UMWA district panel in excess of one year shall update his district panel form. Failure to update the district panel form will result in removal from the district panel.

Section (i)—Temporary Vacancies

Temporary vacancies and temporary jobs may be filled by the Employer by any classified employee whom it selects, subject to provisions of Section (a). Wherever practicable, senior employees will be given preference in filling temporary vacancies. Temporary vacancies shall be limited to those jobs where classified employees are off work for periods of short duration because of illness, injury, jury duty, temporary military summer camps, vacations, personal leave, bereavement leave, disciplinary suspension, leave of absence, or other absences.

Section (j)—Temporary Assignment

The Employer may ask any employee, regardless of his seniority, to work temporarily at a project covered by a UMWA Agreement, but the employee shall have the right to refuse the assignment. When an employee works temporarily at another project, he shall not forfeit any rights at the project site where he is regularly employed and, upon completion of the temporary assignment, his employment rights at his regular project site shall be the same as if he never left. No employee shall be penalized for refusing to accept a temporary assignment. Assignments which last sixty (60) work days or less shall be deemed temporary for purposes of this section.

Section (k)—Permanent and Temporary Supervisors

Employees who are promoted to a permanent supervisory position exempt from coverage under this Agreement shall forfeit their original seniority and panel rights. Employees who are permanent supervisors on the effective date of this Agreement shall forfeit their original seniority and panel rights, if any, if they remain permanent supervisors forty-five (45) days after the effective date of this Agreement.

Employees may perform supervisory work exempt from this Agreement on a temporary basis, not to exceed sixty (60) working days (cumulative) during any contract year, without loss of seniority.

Section (l)—Termination of Seniority

An employee's seniority with his Employer shall be terminated for any of the following reasons: (1) voluntary quit; (2) discharge for cause; (3) failure to report for work when recalled to work in his home UMWA district or any other UMWA district in which he has indicated he will accept recall, provided any employee who is recalled to a project scheduled to last less than eight (8) calendar days shall not lose his seniority if he notifies his Employer that he does not wish to accept recall; (4) layoff for a period of three hundred and sixty-five (365) consecutive calendar days, provided any employee who was actively employed by the Employer or on the Employer's panel as of October 1, 1991, and who was not hired from a District Panel, shall not lose his seniority under this provision.

In addition, an employee laid off by an Employer by whom he was hired through a District Panel shall lose seniority rights with that Employer if he is laid off and remains on that Employer's panel for three hundred and sixty-five (365) consecutive work days.

During the first thirty (30) work days of his employment or for the duration of the project, whichever is less, a new employee not hired from the District Panel may be terminated by the Employer if the Employer decides that the employee is not able to step into and perform the work of the job at the time the job is to be filled.

Section (m)—Seniority List

An accurate seniority list of employees at the job site, by seniority, shall be posted on the bulletin board.

Section (n)—Shift Preference

When a permanent vacancy or new job is filled at a project where shift rotation is not practiced, the employee with the greatest seniority shall be given preference with respect to the day, afternoon or midnight shift work on the basis set forth under Section (a) of this Article, notwithstanding the limitations of Section (f), paragraph (6).

Section (o)—Leave of Absence

Employees who have an official request for a leave of absence shall be granted leave to participate in Union activities and to serve as district or international officers or representatives and shall retain their seniority and accrue seniority while they are on such leave. Employees who have an official request for a leave of absence shall be granted leave to accept a temporary Union assignment, not to exceed four (4) consecutive months, and upon the expiration of such leave shall be entitled to return to their former jobs and shifts. Except in cases of District or International Conventions or District Conferences relating to national contract negotiations, no more than three employees may accept such temporary Union assignments from the same Employer at the same time. Permanent Union appointees and those employees who are elected to district and international office shall be entitled to return to a job, provided that employees with greater seniority are not on layoff status, and may bid on such vacancies and new jobs as are posted. Where by prior practice or custom, a permanent Union officer or appointee is entitled to return to his job, that practice shall be continued. This provision is retroactive to April 1, 1964.

Article 17—NEW PROJECT INFORMATION

PRIOR TO STARTING WORK at any new project, the Employer agrees to notify the Union. This information will be submitted sufficiently in advance of work beginning so the appropriate union district officer may be notified. The new project form will give the name of the coal company, name and location of the mine or facility where the work will be performed, the general type of work to be performed, when work will begin, the approximate number of employees involved and the anticipated completion date.

Article 18—CLASSIFICATION

Section (a)—Working in Classification

An employee shall normally be assigned to duties customarily involved with his regular classified job in accordance with the following principles.

Section (b)—Classification Requirement

Within sixty (60) days of his employment or within sixty (60) days of the effective date of this Agreement, whichever is earlier, each new employee—unless prohibited by law—shall be classified in a regular, recognized occupation. Failure to so classify such new employee will result in automatic classification at the rate which is the highest rate for any work performed during the period since he was employed and has not been classified. Nothing in this section, however, shall be understood to require double manning of jobs or prevent return of an employee to his usual classification following temporary assignment to another job.

Section (c)—Temporary Assignments of Work Out of Classification

Every reasonable effort shall be made to keep an employee at work on the job duties normally and customarily a part of his regular job, and to minimize, to the extent practicable, the amount of temporary assignments of particular individuals to other jobs out of the employee's classification. However, where a senior employee has expressed a desire to improve his ability to perform a job to which he wishes to be promoted, to the extent practicable, he shall be given a preference in filling temporary assignments in regard to that job.

Section (d)—Protection Against Discrimination

In no case may the Employer make a temporary assignment of work outside the employee's classification for the purpose of disciplining or discriminating against an employee.

Section (e)—Compensation For Temporary Assignments

When an employee works in another job on a temporary basis, he shall be compensated for the entire shift at the higher of his regular rate or the rate of the job to which he is temporarily assigned. This Section shall not be construed to apply to employees whose regular job duties include the relief of other employ-

ees for short periods of time which do not exceed thirty (30) minutes for each occurrence during the basic workday. For such relief period, however, the employee providing relief shall be paid for the higher rate.

Section (f)—Manning Requirements

The fact that certain classifications and rates are established under this contract does not mean that the Employer must employ employees for each classification listed in Appendix A or employ more employees than the Employer needs.

Article 19—HEALTH AND RETIREMENT

Section (a)—Construction Workers Benefit Plan

Each Employer shall establish and maintain an Employee benefit plan, implemented through an insurance carrier(s), and/or administrator, to provide health and other non-pension benefits for its employees covered by this Agreement. The Employee benefit plan will be the Coal Mine Construction Workers Benefit Plan, which is incorporated by reference herein, and which appears as Appendix E to this Agreement.

When a premium payment is made for an employee, the employee's payroll voucher, for the pay period in which the premium is paid, shall indicate that the premium payment was made. The Employer will also notify monthly those UMWA Districts, where the Employer has employees working, of the names of all employees for whom premium payments are made. Benefits will be provided under this Agreement according to the terms of the Coal Mine Construction Workers Benefit Plan, and, in case of conflicts, the provisions of the Coal Mine Construction Workers Benefit Plan shall be governing. The benefits provided pursuant to such plan will be guaranteed during the term of this Agreement by each Employer at the levels set forth in the Coal Mine Construction Workers Benefit Plan.

The Employer shall post at each job site the name of the insurance carrier or administrator which implements the Benefit Plan. The telephone number for contacting the insurance carrier or administrator shall also be posted.

The Employer must notify each Employee of any month for which a premium payment has not been made in the Employee's behalf. Such notification shall be made in writing and included with the Employee's pay statement.

At the time of layoff or within five (5) working days thereof the Employer shall notify each Employee in writing as to the Employee's extended coverage, if any. Such notification shall include all pertinent information concerning the use of such extended coverage, and shall also provide the appropriate information to enable the Employee to exercise the health conversion privilege provided under the Benefit Plan.

Section (b)—1978 Retired Construction Workers Benefit Plan and Trust

(1) Effective June 1, 1978, there was established a Benefit Plan and Trust which is known as the 1978 Retired Construction Workers Benefit Plan and Trust, which is incorporated by reference and made a part of this Agreement. This Trust provides health and other benefits, not including pension benefits, to certain retired construction workers, disabled construction workers, spouses of deceased construction workers, and eligible dependents, as provided under the terms and conditions set forth in the Plan and Trust, and shall also provide a means for the resolution of disputes arising under this Agreement with regard to the Employee benefit plans established pursuant to Section (a) above.

(2) As of the effective date of this Agreement, each Employer shall contribute into the Trust 26 cents per hour worked by each of the Employer's employees who perform classified work under this Agreement.

Hours of work for purposes of employer contributions to the Trust shall include all hours worked, or fractions thereof, by Employees in a classified job covered by this Agreement. Hours actually worked for which a premium pay of any type is provided shall be treated for purposes of employer contributions to the Trust as though worked on a straight-time basis. Reporting pay for hours not actually worked shall not be included for the purpose of making employer contributions to the Trust.

(3) The sole obligation under this section of any Employer signatory hereto shall be to contribute the amount specified in this Section.

(4) The first payment is to be made on the tenth day of the month following the effective date of this Agreement, and thereafter, payments are to be made continuously on the tenth day of each succeeding calendar month during the term of this Agreement.

(5) It shall be the duty of each Employer signatory to this Agreement to keep current said payment due to the Trust, and to furnish to the Trustees, and any UMWA District(s) where projects are located, a monthly statement showing the full amounts due hereunder. Payments to the trust shall be made by check payable to "Trustees of the 1978 Retired Construction Workers Benefit Trust." Payments shall be delivered or mailed to the Office of the Trust in such manner as may be specified by the Trustees.

(6) Failure of any Employer signatory hereto to make full and prompt payments to the Trust in the manner and on the dates herein provided shall be deemed a violation of this Agreement. This obligation of each Employer signa-

tory hereto, which is several and not joint, to so pay such sums shall be a direct and continuing obligation of said Employer during the life of this Agreement.

(7) Title to all the monies paid into and/or due and owing to the Trust shall be vested in and remain exclusively in the Trustees of the Trust. It is the intention of the parties hereto that the Trust shall constitute an irrevocable trust and that no benefits or money payable from the Trust shall be subject in any manner to anticipation, alienation, sale, transfer, assignment, pledge, encumbrance or charge, and that any attempt so to anticipate, alienate, sell, transfer, assign, pledge, encumber or charge the same shall be void.

(8) It is understood that the individual Employees of Employers agree, through their representative, the United Mine Workers of America, to surrender any personal or individual right to or interest in monies paid or required to be paid to the Trust pursuant to this Agreement.

(9) The Trust shall be administered by a Board of three Trustees, one of whom shall be appointed by the Association of Bituminous Contractors, one of whom shall be appointed by the Union, and one of whom shall be a neutral party, selected by the Association of Bituminous Contractors and the Union. The Trustees shall be appointed within ten days after the effective date of this Agreement. The neutral Trustee shall be the chairman. The Trustees, or their duly appointed successors, shall serve for the duration of the Agreement and as long thereafter as the proper continuation and administration of the Trust shall require. The three Trustees shall constitute the Board of Trustees to administer the Trust.

(10) It is the intent and purpose of the contracting parties that full cooperation shall be given by each of them to one another, to the Trustees provided for under this Article, and to all affected construction workers, to the eventual coordination and development of policies and working agreements necessary or advisable for the effective operation of the Trust and Plans.

(11) If at any time the Association of Bituminous Contractors ceases to exist, action which may be required by the Association in connection with any matter hereunder, including, but not limited to, the appointment of a successor Trustee, may be taken by those Employers who are parties to this Agreement, and authorization, approval or ratification of Employers representing fifty-one percent (51%) or more of the total contributions made to the Trust during the calendar year (or such shorter period which may have elapsed after the effective date of this Agreement) previous to that in which the action is taken shall be sufficient and shall bind all Employers.

(12) All covenants, rights and obligations accruing to the Trust, the Benefit Plan, and the trustees of the Trust and Plan, and all breaches, violations and/or defaults of any provision of this Section pertaining to the Trust and Plan or the Trust Agreement, shall be enforced by the Trustees at their discretion through any and all available legal means without first exhausting the grievance and arbitration procedures set forth in this Agreement, and the Trustees shall determine whether any provision of this Section pertaining to the Trust and Plan, or the Trust Agreement has been breached, violated or is in default.

(13) It is agreed by the contracting parties that an annual independent audit of the Trust shall be made by independent certified public accountants to be designated by the Trustees of the Trust. A statement of the results of such audit shall be sent to the contracting parties.

(14) If the Trustees determine that there is reasonable cause to question the accuracy of the sums paid under this Section, or of any verification thereof made by an Employer for a given monthly or annual period, the Employer shall, upon written request by the Trustees, make available for inspection, audit and/or copying at reasonable times and places to a representative of the Trustees, those records which are necessary to verify the accuracy of the sums paid.

(15) Each Employer shall make available to the Trustees within a reasonable time such information as the Trustees may determine to be reasonably required for the purpose of administering the Trust and Plan.

(16) The Trustees shall furnish the Employers and the Union with such other documentation and information as provided for in the Trust described herein.

(17) The Trustees are authorized, upon prior written approval by the Association of Bituminous Contractors and the Union, to make such changes in the Plan and Trust hereunder as they may deem to be necessary or appropriate. They are also authorized and directed, after adequate notice and consultation with the Association and the Union, to make such changes in the Plan and Trust hereunder, including any retroactive modifications or amendments, which shall be necessary:

(a) to conform the terms of the Plan and Trust to the requirements of ERISA, or any other applicable Federal law, and the regulations issued thereunder;

(b) to obtain determination letters from the Internal Revenue Service that the Trust will be exempt under the provisions of the Internal Revenue Code;

(c) to establish the deductibility for income tax purposes of any and all contributions made by signatory employers to the Trust as paid or incurred; or

(d) to comply with all applicable court or government decisions or rulings.

(18) The Trustees shall take such action as they deem appropriate to collect any such delinquencies, and shall advise the International Union and the appropriate Districts of the Union, on at least a monthly basis, of such delinquencies, as long as such delinquencies continue.

(19) The Trustees shall police and monitor the rolls of those entitled to benefits from the Trust. On at least a quarterly basis, the Trustees shall have available a complete listing of current beneficiaries. The Trustees shall promptly investigate and determine the eligibility or ineligibility of any beneficiary whose right to receive benefits from the Trust has been challenged by an Officer of the International, District or Local Union or by any Employer. In the event that a beneficiary or beneficiaries shall be determined to be ineligible for health care or other benefits, the Trustees shall take prompt action to correct the situation.

(20) Disputes arising under this Agreement with regard to the Employee benefit plans established pursuant to Section (a) above shall be resolved by the Trustees. The Trustees shall develop procedures for the resolution of such disputes. Decisions of the Trustees shall be final and binding on the parties. Any such disputes shall not be processed under the provisions of Article 21 (Settlement of Disputes). It is the intention of the parties of this Agreement that the Trustees may utilize the assets of the Trust to defray any ordinary and necessary administrative expenses incurred in the resolution of these disputes.

(21) The Trustees shall cooperate with the Trustees of the UMWA 1985 Construction Workers Pension Trust in sharing information relevant to the administration of both trusts.

Section (c)—UMWA 1985 Construction Workers Pension Plan and Trust

(1) Effective July 1, 1985, there is established a Pension Plan and Trust which is known as the UMWA 1985 Construction Workers Pension Plan and Trust, which is incorporated by reference and made a part of this Agreement. This Trust provides pension benefits, to certain retired construction workers, disabled construction workers, and spouses of deceased construction workers, as provided under the terms and conditions set forth in the Plan and Trust.

(2) Each signatory Employer shall contribute into the trust as follows for hours worked by each of the Employer's employees who perform classified work under this Agreement: For the period beginning the effective date of this Agreement and ending when this Agreement is terminated, zero cents (\$0.00) per hour on each such hour worked. Hours of work for purposes of employer contributions to the Trust shall include all hours worked, or fractions thereof, by Employees in a classified job covered by this Agreement. Hours actually worked for which a premium pay of any type is provided shall be treated for purposes of employer contributions to the Trust as though worked on a straight-time basis. Reporting pay for hours not actually worked shall not be included for the purpose of making employer contributions to the Trust.

(3) The sole obligation under this section of any Employer signatory hereto shall be to contribute the amount specified in this Section.

(4) The first payment is to be made on the tenth day of the month following the effective date of this Agreement, and thereafter, payments are to be made continuously on the tenth day of each succeeding calendar month during the term of this Agreement.

(5) It shall be the duty of each Employer signatory to this Agreement to keep current said payment due to the Trust, and to furnish to the Trustees, and any UMWA District(s) where projects are located, a monthly statement showing the full amounts due hereunder. Payments to the trust shall be made by check payable to "Trustees of the UMWA 1985 Construction Workers Pension Plan and Trust." Payments shall be delivered or mailed to the Office of the Trust in such manner as may be specified by the Trustees.

(6) Failure of any Employer signatory hereto to make full and prompt payments to the Trust in the manner and on the dates herein provided shall be deemed a violation of this Agreement. This obligation of each Employer signatory hereto, which is several and not joint, to so pay such sums shall be a direct and continuing obligation of said Employer during the life of this Agreement.

(7) Title to all the monies paid into and/or due and owing to the Trust shall be vested in and remain exclusively in the Trustees of the Trust. It is the intention of the parties hereto that the Trust shall constitute an irrevocable trust and that no benefits or money payable from the Trust shall be subject in any manner to anticipation, alienation, sale, transfer, assignment, pledge, encumbrance or charge, and that any attempt so to anticipate, alienate, sell, transfer, assign, pledge, encumber or charge the same shall be void.

(8) It is understood that the individual Employees of Employers agree, through their representative, the United Mine Workers of America, to surrender any personal or individual right to or interest in monies paid or required to be paid to the Trust pursuant to this Agreement.

(9) The Trust shall be administered by a Board of three Trustees, one of whom shall be appointed by the Association of Bituminous Contractors, one of whom shall be appointed by the Union, and one of whom shall be a neutral party, selected by the Association of Bituminous Contractors and the Union. The Trustees shall be appointed prior to the effective date of the Plan. The neutral Trustee shall be the chairman. The Trustees, or their duly appointed successors, shall serve for the duration of the Agreement and as long thereafter as the proper continuation and administration of the Trust shall require. The three Trustees shall constitute the Board of Trustees to administer the Trust.

(10) It is the intent and purpose of the contracting parties that full cooperation

shall be given by each of them to one another, to the Trustees provided for under this Article, and to all affected construction workers, to the eventual coordination and development of policies and working agreements necessary or advisable for the effective operation of the Trust and Plan.

(11) If at any time the Association of Bituminous Contractors ceases to exist, action which may be required by the Association in connection with any matter hereunder, including, but not limited to, the appointment of a successor Trustee, may be taken by those Employers who are parties to this Agreement, and authorization, approval or ratification of Employers representing fifty-one percent (51%) or more of the total contributions made to the Trust during the calendar year (or such shorter period which may have elapsed after the effective date of this Agreement) previous to that in which the action is taken shall be sufficient and shall bind all Employers.

(12) All covenants, rights and obligations accruing to the Trust, the Pension Plan, and the trustees of the Trust and Plan, and all breaches, violations and/or defaults of any provision of this Section pertaining to the Trust and Plan or the Trust Agreement, shall be enforced by the Trustees at their discretion through any and all available legal means without first exhausting the grievance and arbitration procedures set forth in this Agreement, and the Trustees shall determine whether any provision of this Section pertaining to the Trust and Plan, or the Trust Agreement has been breached, violated or is in default.

(13) It is agreed by the contracting parties that an annual independent audit of the Trust shall be made by independent certified public accountants to be designated by the Trustees of the Trust. A statement of the results of such audit shall be sent to the contracting parties.

(14) If the Trustees determine that there is reasonable cause to question the accuracy of the sums paid under this Section, or of any verification thereof made by an Employer for a given monthly or annual period, the Employer shall, upon written request by the Trustees, make available for inspection, audit and/or copying at reasonable times and places to a representative of the Trustees, those records which are necessary to verify the accuracy of the sums paid.

(15) Each Employer shall make available to the Trustees within a reasonable time such information as the Trustees may determine to be reasonably required for the purpose of administering the Trust and Plan.

(16) The Trustees shall furnish the Employers, the Association of Bituminous Contractors, and the Union with such other documentation and information as provided for in the Trust described herein.

(17) The Trustees are authorized, upon prior written approval by the Association of Bituminous Contractors and the Union, to make such changes in the Plan and Trust hereunder as they may deem to be necessary or appropriate. They are also authorized and directed, after adequate notice and consultation with the Association and the Union, to make such changes in the Plan and Trust hereunder, including any retroactive modifications or amendments, which shall be necessary:

(a) to obtain all necessary determination letters or rulings from the Internal Revenue Service or other applicable federal agencies so as to ensure compliance with all applicable federal laws and regulations and ensure the qualification of the Plan and Trust and the deductibility for income tax purposes of any and all contributions made by signatory Employers to such Trust as paid or incurred;

(b) to conform the terms of the Plan and Trust to the requirements of ERISA, or any other applicable Federal law, and the regulations issued thereunder;

(c) to obtain determination letters from the Internal Revenue Service that the Plan will meet the requirements of Section 401 of the Internal Revenue Code and the Trust will be exempt under Section 501(a) of the Internal Revenue Code;

(d) to establish the deductibility for income tax purposes of any and all contributions made by signatory employers to the Trust as paid or incurred; or

(e) to comply with all applicable court or government decisions or rulings.

(18) The Trustees shall take such action as they deem appropriate to collect any such delinquencies, and shall advise the International Union and the appropriate Districts of the Union, on at least a monthly basis, of such delinquencies, as long as such delinquencies continue.

(19) The Trustees shall police and monitor the rolls of those entitled to benefits from the Trust. On at least a quarterly basis, the Trustees shall have available a complete listing of current beneficiaries. The Trustees shall promptly investigate and determine the eligibility or ineligibility of any beneficiary whose right to receive benefits from the Trust has been challenged by an Officer of the International, District or Local Union or by any Employer. In the event that a beneficiary or beneficiaries shall be determined to be ineligible for pension benefits, the Trustees shall take prompt action to correct the situation.

(20) The Trustees shall respond to all written requests for information, applications, and other communications within 15 working days from their receipt. A response from the Trustees may be either a telephonic communication or a letter acknowledging receipt of such communication from the beneficiary. A pension application must be initially approved or denied within 12 weeks of the receipt of the application. The foregoing shall not apply in the event of delays caused by conditions beyond the control of the Trustees.

(21) The Trustees shall cooperate with the Trustees of the 1978 Retired Construction Workers Benefit Trust in sharing information relevant to the administration of both trusts.

GENERAL DESCRIPTION OF CONSTRUCTION WORKERS' HEALTH AND RETIREMENT BENEFITS

The following is a general description of certain information contained in the UMWA 1985 Construction Workers Pension Plan and Trust, the 1978 Retired Construction Workers Benefit Plan and Trust, and the Coal Mine Construction Workers Benefit Plan. This description is intended merely to highlight certain information; it is not a complete statement of all of the provisions of the Plans and Trusts, nor is it intended to be a Summary Plan Description as defined in the Employee Retirement Income Security Act of 1974, and is qualified in its entirety by, and subject to the more detailed information contained in the Plans and Trusts.

(1) PENSIONS FOR CONSTRUCTION WORKERS WHO RETIRED PRIOR TO FEBRUARY 7, 2002:

Pension benefits for pensioners who retired prior to the effective date of this Agreement are increased according to the following schedules:

(a) For pensioners who retired on other than a minimum disability pension, effective March 1, 2002, the pension is increased by \$100 per month for a pensioner who retired prior to February 7, 2002. Such pensioner (other than a pensioner who retired on a deferred vested pension with less than 20 years of service) will be entitled to retain his Health Services card for life, subject to the \$2,000 earnings limit. Upon his death, his widow will retain a Health Services card until her death or remarriage, subject to the \$2,000 earnings limit.

(b) For pensioners who retired on a minimum disability pension, effective March 1, 2002, the pension is increased to \$475 per month. Such pensioner will be entitled to retain his Health Services card for life. Upon his death, his widow will retain a Health Services card until her death or remarriage, subject to the \$2,000 earnings limit.

(c) For surviving spouses of pensioners, effective March 1, 2002, the benefit is increased by \$75 per month. Such surviving spouse (other than the surviving spouse who retired on a deferred vested pension with less than 20 years of service) will retain a Health Services card until her death or remarriage, subject to the \$2,000 earnings limit.

(1)(A) SUPPLEMENTAL PENSION FOR CONSTRUCTION WORKERS WHO RETIRE PRIOR TO FEBRUARY 7, 2002:

Effective April 1, 2002, the pensions being paid to pensioners or surviving spouses who are receiving benefits under the 1978 Retired Construction Workers Benefit Plan as of February 7, 2002 shall be supplemented as set forth below:

	Single	Family
Where the Pensioner or Surviving Spouse (and any family member, if applicable) is not eligible for Medicare coverage	\$428	\$841
Where the Pensioner or Surviving Spouse (and any family member, if applicable) is eligible for Medicare coverage	\$250	\$521
Where the Pensioner or Surviving Spouse is not eligible for Medicare coverage AND any covered family member is eligible for Medicare coverage, or vice versa	N/A	\$712

The pensioner or surviving spouse may, by revocable writing, consistent with applicable law, voluntarily direct the UMWA 1985 Construction Workers Pension Plan to pay the co-premium described hereinafter at "(9) Health Care (f)" directly to the 1978 Retired Construction Workers Benefit Plan and Trust out of his or her monthly pension supplement.

(2) PENSIONS FOR CONSTRUCTION WORKERS WHO RETIRE ON OR AFTER THE EFFECTIVE DATE OF THIS AGREEMENT:

A working construction worker who retires on or after the effective date of this Agreement and who is eligible for a pension under the terms of this Agreement will receive pension benefits based upon the UMWA 1985 Construction Workers Pension Plan. Subject to (3) below, full credit is provided for years worked as a classified Employee of signatory Employers.

The earliest retirement age is 55. A construction worker may retire at 55 with 10 or more years of signatory service; provided however, a construction worker with at least one hour of service on or after January 1, 1998 may retire at 55 with 5 or more years of signatory service.

Pension benefits are increased as a construction worker accumulates years of signatory service. Benefits are also increased based upon a construction worker's age at the time of retirement with maximum benefits payable to construction workers who retire at the age of 60 or more.

For retirement on or after the effective date of this Agreement, the retirement benefit shall be \$60 per month per year of signatory service.

To estimate your pension, use the following tables:

RETIREMENT ON OR AFTER THE EFFECTIVE DATE OF THIS AGREEMENT

Years of Service	55	56	Age 57	58	59	60
5*	240	252	264	276	288	300
6*	288	302	317	331	346	360
7*	336	353	370	386	403	420
8*	384	403	422	442	461	480
9*	432	454	475	497	518	540
10	480	504	528	552	576	600
11	528	554	581	607	634	660
12	576	605	634	662	691	720
13	624	655	686	718	749	780
14	672	706	739	773	806	840
15	720	756	792	828	864	900
16	768	806	845	883	922	960
17	816	857	898	938	979	1,020
18	864	907	950	994	1,037	1,080
19	912	958	1,003	1,049	1,094	1,140
20	960	1,008	1,056	1,104	1,152	1,200
21	1,008	1,058	1,109	1,159	1,210	1,260
22	1,056	1,109	1,162	1,214	1,267	1,320
23	1,104	1,159	1,214	1,270	1,325	1,380
24	1,152	1,210	1,267	1,325	1,382	1,440
25	1,200	1,260	1,320	1,380	1,440	1,500
26	1,248	1,310	1,373	1,435	1,498	1,560
27	1,296	1,361	1,426	1,490	1,555	1,620
28	1,344	1,411	1,478	1,546	1,613	1,680
29	1,392	1,462	1,531	1,601	1,670	1,740
30	1,440	1,512	1,584	1,656	1,728	1,800
31	1,488	1,562	1,637	1,711	1,786	1,860
32	1,536	1,613	1,690	1,766	1,843	1,920
33	1,584	1,663	1,742	1,822	1,901	1,980
34	1,632	1,714	1,795	1,877	1,958	2,040
35	1,680	1,764	1,848	1,932	2,016	2,100
36	1,728	1,814	1,901	1,987	2,074	2,160
37	1,776	1,865	1,954	2,042	2,131	2,220
38	1,824	1,915	2,006	2,098	2,189	2,280
39	1,872	1,966	2,059	2,153	2,246	2,340
40	1,920	2,016	2,112	2,208	2,304	2,400

*Applicable only to construction workers with at least one hour of service on or after January 1, 1998.

(3) SIGNATORY SERVICE:

Effective as of calendar year 1998, for calendar year 1998 and thereafter, each employee who works at least 750 hours in a calendar year as a classified Employee with a signatory Employer will receive credit for a full year of signatory service for the purpose of determining the amount of the pension. Time spent performing contractual obligations (such as safety inspections) shall be considered as hours worked in the schedule below. Time spent performing work for the UMW, its districts and local unions in lieu of regular scheduled classified work for the Employer shall be considered as hours worked in the schedule below. A person who is eligible to receive sickness and accident benefits will receive credit as hours worked for the period of eligibility. Each employee who works less than 750 hours in a calendar year as a classified Employee with a signatory Employer will receive a pro-rated amount of credit.

For the purpose of calculating benefits and/or determining vesting, employment with the United Mine Workers of America, following classified employment with an Employer, shall be treated as signatory service, provided that the employee does not receive a pension from the United Mine Workers of America Pension Plan based on such service.

For the purpose of determining initial eligibility, an employee who works 1000 hours as a classified employee for a signatory Employer in either a 12 or 24 month period after July 1, 1985, shall become a participant; provided however that after January 1, 1998, for the purpose of determining initial eligibility, an employee who works 750 hours as a classified employee for a signatory Employer in either a 12 or 24 month period, shall become a participant.

(4) PENSIONS FOR DISABLED CONSTRUCTION WORKERS:

An employee who becomes permanently and totally disabled as a result of an on-the-job accident occurring after the effective date of this Agreement will become eligible for pension benefits in accordance with the following schedule:

(a) If the employee has less than ten years of signatory service at the time of retirement, he will receive a monthly pension equal to ten times the applicable monthly benefit amount at the time of disability retirement. Such pensioner will be entitled to retain a Health Services card for life. Upon his death, his widow will retain a Health Services card until her death or remarriage, subject to the \$2,000 earnings limit.

(b) If the employee has ten years or more of signatory service at the time of retirement, he will receive the greater of the minimum pension payable to an employee with less than ten years of signatory service or a pension based upon the years of signatory service which the employee has accumulated at the time of retirement calculated in accordance with the benefit schedule in (2) above. Such pensioner will be entitled to retain a Health Services card for life. Upon his death, his widow will retain a Health Services card until her death or remarriage, subject to the \$2,000 earnings limit.

An employee with 20 or more years of signatory service who becomes permanently and totally disabled and is determined to be eligible for Social Security Disability Insurance Benefits under Title II of the Social Security Act after the effective date of this Agreement will be eligible for pension benefits as of the effective date of the Social Security Act determination. The employee shall receive a pension based upon the years of signatory service which the employee has accumulated at the time of retirement calculated in accordance with the benefit schedule in (2) above. Such a pensioner will be entitled to retain a Health Services card for life. Upon his death, his widow will retain the Health Services card until her death or remarriage, subject to the \$2,000 earnings limit.

(5) PENSIONS FOR SURVIVING SPOUSES:

The UMW 1985 Construction Workers Pension Plan provides for Surviving Spouse pensions. Benefits for an eligible surviving spouse will be payable in accordance with the following:

(a) If, on or after the effective date of this Agreement, a working construction worker dies (regardless of cause) and would have been eligible for an immediate pension had the construction worker retired on the date of death, the surviving spouse will be eligible for a pension equal to 75% of the pension the construction worker would have received, and will receive this pension until death. Such surviving spouse will be entitled to retain a Health Services card until death or remarriage, subject to the \$2,000 earnings limit.

(b) Upon the death of a pensioner, other than a deferred vested pensioner with less than 20 years of service, the surviving spouse of such pensioner will receive a pension equal to 75% of the pensioner's pension until death. Such surviving spouse will be entitled to retain a Health Services card until death or remarriage, subject to the \$2,000 earnings limit.

(c) If a construction worker working on or after the effective date of this Agreement becomes eligible for a pension, other than a deferred vested pension with less than 20 years of service, at any time thereafter, upon his death after age 55, the surviving spouse will be entitled to receive a Surviving Spouse pension equal to 75% of the construction worker's pension until death. Such surviving spouse will be entitled to retain a Health Services card until death or remarriage, subject to the \$2,000 earnings limit.

(d) Upon the death of a pensioner with a deferred vested pension with less than 20 years of service, paid in joint survivor form, the surviving spouse shall receive a pension equal to 75% of the pensioner's pension until death.

(5A) PRE-RETIREMENT SURVIVOR'S PENSION:

The Plan also provides a 75% joint survivor's pension for the spouse of a working construction worker with 10 years of vested pension rights who dies before retirement age; provided however, that for a construction worker with at least one hour of service after January 1, 1998, the Plan provides a 75% joint survivor's pension for the spouse of a working construction worker with 5 years of vested pension rights who dies before retirement age. The pension benefits will be payable to the surviving spouse at the time the construction worker would have attained age 55.

(6) DEFERRED VESTED PENSION:

(a) If after the effective date of this Agreement a working employee ceases working for any reason, except as provided in (b) below, after completing at least 5 years of signatory employment, and before age 55, the Employee will be eligible to receive a pension at age 62 60, or an actuarially reduced pension at any time after 55. This pension will be calculated in accordance with (3) above.

(b) If after the effective date of this Agreement a working employee ceases working and meets the following criteria:

(i) had 20 years of signatory service on date last worked;

(ii) had attained the age of 50 on the date last worked; and either

(iii) had been laid off and had not refused a recall from the Employer from which he was laid off; or

(iv) had been terminated under Article 4, Section (i) of the Agreement (or if the employee had not been terminated, there had been a deterioration in physical condition which prevented the employee from performing his regular work as determined by a panel of three physicians, if the degree of such physical deterioration is disputed by the Trustees) and was not employed in the coal mine construction industry thereafter;

then the employee will be eligible to receive a pension at age 60, or a pension at any time after age 55, reduced by 1/3 of one percent for each full month between the date on which pension benefits begin and the date the employee attains age 60.

(c) Any employee who ceased work prior to the effective date of this Agreement, is eligible to receive a deferred vested pension under the UMW 1985 Construction Workers Pension Plan and satisfies the criteria in (b) above shall have his pension recomputed using the 1/4 of one percent reduction based on the formula in effect at his retirement. Such pensioner shall have his pension increased by any increases applicable to Age 55 Retirement which occurred after the date of his retirement and application for pension. Any increase under this paragraph shall be applied prospectively only.

(7) LIFE AND ACCIDENTAL DEATH AND DISMEMBERMENT BENEFITS:

Under the terms of the Coal Mine Construction Workers Benefit Plan, Life and Accidental Death and Dismemberment Insurance benefits will be provided by the Employer for working construction workers in accordance with the following schedule:

(a) Upon the death of a working construction worker due to other than violent, external and accidental means, life insurance benefits in the amount of \$75,000 will be paid to the employee's named beneficiary. Spouses who are not eligible for surviving spouse pension benefits, will continue eligibility for a Health Services card (also covers dependents) until remarriage or for 60 months, whichever occurs first, subject to the \$2,000 earnings limit.

(b) Upon the death of a working construction worker due solely to violent, external and accidental means, life insurance in the amount of \$150,000 will be paid to the employee's named beneficiary. Spouses who are not eligible for surviving spouse pension benefits, will continue eligibility for a Health Services

card (also covers dependents) until remarriage or for 60 months, whichever occurs first, subject to the \$2,000 earnings limit.

(c) If a working construction worker should lose 2 or more members due to violent, external and accidental means, the employee shall receive a \$100,000 dismemberment benefit. If a working construction worker shall lose one member due solely to violent, external and accidental means, the employee shall receive a \$75,000 dismemberment benefit. A member for the purpose of the above is (i) a hand at or above the wrist, (ii) a foot at or above the ankle or (iii) total loss of vision in one eye.

(d) Accidental death or dismemberment benefits are not payable if caused in whole or in part by disease, bodily or mental infirmity, ptomaine or bacterial infection, hernia, suicide, intentional self-inflicted injury, insurrection or acts of war or is caused by or results from committing or attempting to commit a felony.

(8) PENSIONER'S DEATH BENEFITS:

Upon the death of a pensioner who has retired under the UMWA 1985 Construction Workers Pension Plan with other than a deferred vested pension based on less than 20 years of credited service, a \$10,000 life insurance benefit will be paid to the named beneficiary of the deceased retiree if such named beneficiary is a surviving spouse or dependent relative; otherwise a life insurance benefit of \$10,000 will be paid to the named beneficiary of such deceased retiree.

(9) HEALTH CARE:

Health benefits are provided for all beneficiaries defined as eligible under the Construction Workers Benefit Plan, and the 1978 Retired Construction Workers Benefit Plan and Trust for services rendered on and after the effective date of this Agreement. Except for the 1978 Retired Construction Workers Benefit Plan, which is a Defined Contribution Trust, such benefits are guaranteed during the term of this Agreement, subject to the terms of this Agreement.

(a) Working construction workers will be provided health benefits by their individual Employers through the Coal Mine Construction Workers Benefit Plan. A new employee will be eligible for health benefits after he completes 30 calendar days of employment with the Employer.

(b) Pensioners last working under the National Coal Mine Construction Agreement who have at least ten years of credited service including three or more years of signatory classified employment under any National Coal Mine Construction Agreement and/or the Construction Work Addendum of 1968, other than deferred vested pensioners with less than 20 years of service or pensioners receiving a pension based in whole or in part on years of service credited under the terms of Article II-G of the UMWA 1985 Construction Workers Pension Plan, retired under the 1974 Pension Plan or under the UMWA 1985 Construction Workers Pension Plan, after its effective date, will be provided health benefits through the 1978 Retired Construction Workers Benefit Plan and Trust, provided that the requirement of three or more years of signatory classified employment under any National Coal Mine Construction Agreement and/or the Construction Work Addendum of 1968 shall not apply to pensioners receiving benefits through such Plan and Trust prior to the effective date of this Agreement. Notwithstanding the foregoing, pensioners who would otherwise qualify for benefits under the 1978 Retired Construction Workers Benefit Plan who have fewer than five years of service under the National Coal Mine Construction Agreement and who within the two years prior to retirement worked for the Employer in a job covered under the National Bituminous Coal Wage Agreement, shall receive benefits instead under the plan maintained by the Employer pursuant to Article 20, Section (c)(3)(i) of the National Bituminous Coal Wage Agreement of 1988, or any successor provision or agreement, for as long as the Employer maintains such Plan.

(c) Any pensioner or disabled employee (and their dependents) and survivors and dependents of pensioners or former employees who were eligible to receive health benefits under the 1974 National Coal Mine Construction Agreement and whose last employment was with a signatory employer to that Agreement shall continue to receive benefits under the 1978 Retired Construction Workers Benefit Plan and Trust.

(d) Spouses of working construction workers who died, or spouses of former working construction workers who died with 20 or more years of service, who are not eligible for Surviving Spouse pension benefits, will continue eligibility for health care until remarriage, or for 60 months, whichever occurs first, subject to the \$2,000 earnings limit.

(e) Disabled or retarded children of covered persons will be covered for life, so long as a surviving parent qualifies for coverage.

(f) Effective April 1, 2002 to maintain eligibility for benefits under the 1978 Retired Construction Workers Benefit Plan and Trust, each Pensioner or Surviving Spouse receiving a supplemental pension benefit under Article III(C)(11) or

Article VI(A)(7) of the UMWA 1985 Construction Workers Pension Plan shall pay by the 25th of the month preceding the month for which coverage is sought, a co-premium as set out below.

	Single	Family
Where the Pensioner or Surviving Spouse (and any family member, if applicable) is not eligible for Medicare coverage	\$389	\$764
Where the Pensioner or Surviving Spouse (and any family member, if applicable) is eligible for Medicare coverage	\$227	\$473
Where the Pensioner or Surviving Spouse is not eligible for Medicare coverage AND any covered family member is eligible for Medicare coverage, or vice versa	N/A	\$647

The deductible, and copayment in the 1978 Retired Construction Workers Benefit Plan and Trust shall be the same as the deductible, and copayment as in the Coal Mine Construction Workers Benefit Plan; the maximum out of pocket amount for services in a preferred provider network shall be \$200 per family per year, and the maximum out of pocket amount for services not in a preferred provider network shall be \$1,000 per family per year.

Explanatory Note on Employer Provided Health Plans

Active construction workers and their dependents will receive health care provided by their Employer through insurance carriers or administrators. A health service card identifying the Participant's eligibility for benefits under the health plan will be provided by the Employer.

The following co-payments are required under the Plan:

- (a) All expenses are subject to an annual plan deductible of \$750 per family.
- (b) For services in a preferred provider network, beneficiaries pay 20 percent of charges up to a \$1,000 annual out-of-pocket maximum per family.
- (c) For services not in a preferred provider network, beneficiaries pay 20 percent of reasonable and customary charges up to a \$2,500 annual out-of-pocket maximum per family.
- (d) Prescription drugs are subject to a \$50 annual deductible per family, and co-payments of \$10 for generic drugs, \$15 for formulary drugs, and \$25 for brand-name drugs. Different co-payments may be required for prescription drugs obtained through a mail service prescription drug program.
- (e) Preadmission certification of non-emergency hospital admissions is required.

Claim forms will be available at most hospitals, clinics, and physician offices. The insurance carrier or administrator will keep individual records for each Participant and dependent and will notify the Participant of the copayments, deductibles and coinsurance credited to his account. The hospital, clinic, or physician will bill the Participant for the copayments, deductibles and coinsurance amounts until the maximum is reached. In some instances, when the Employee pays for services or drugs, the bills should be obtained and submitted with the claim form according to the instructions on the form. If the annual copayments, deductibles or coinsurance maximum has been reached, the carrier will remit to the Participant the full payment for covered benefits.

Covered drug prescriptions may now be filled at drugstores, clinics and hospital prescription offices.

The Trustees of the 1978 Retired Construction Workers Benefit Plan will resolve any disputes to assure consistent application of the Coal Mine Construction Workers Benefit Plan.

Each Participant will receive a "Summary Plan Description" booklet. Each year a financial report of the Plan will be provided to each Participant.

(10) VISION CARE:

Vision care is provided for Employees, disabled Employees, Pensioners, surviving spouses, and their dependents, covered under the Coal Mine Construction Worker Benefit Plan or the 1978 Retired Construction Workers Benefit Plan and Trust.

(11) DENTAL CARE:

Dental benefits are provided for Employees, their eligible dependents, and any person eligible to receive benefits under the 1978 Retired Construction Workers Benefit Plan and Trust.

(12) HEALTH CARE COST CONTAINMENT:

The Union and the Employers recognize that rapidly escalating health care costs, including the costs of medically unnecessary services and inappropriate treatment, have a detrimental impact on the health benefit program. The Union and the Employers agree that a solution to this mutual problem requires the cooperation of both parties, at all levels, to control costs and to work with the health care community to provide quality health care at reasonable costs. The Union and the Employers are, therefore, committed to fully support appropriate programs designed to accomplish this objective. This statement of purpose in no way implies a reduction of benefits or additional costs for covered services provided miners, pensioners and their families.

In any case in which a provider attempts to collect excessive charges or charges for services not medically necessary, as defined in the Plan, from a Beneficiary, the Trustees, the Plan Administrator or their agent shall, with the written consent of the Beneficiary, attempt to resolve the matter, either by negotiating a resolution or defending any legal action commenced by the provider. Whether the Trustees, the Plan Administrator or their agent negotiates a resolution of a matter or defends a legal action on a Beneficiary's behalf, the Beneficiary shall not be responsible for any legal fees, settlements, judgments or other expenses in connection with the case, but the beneficiary may be liable for any services of the provider which are not provided under the Plan. The Trustees, the Plan Administrator or their agent shall have sole control over the conduct of the defense, including the determination of whether the claim should be settled or an adverse determination should be appealed. The protections of this paragraph shall not apply until the deductible is met in full for the year, and shall not apply in the case of any service or supply obtained from a non-network source.

Article 20—MISCELLANEOUS

Section (a)—Bathhouse

The Employer at shaft or slope sinking projects (excluding projects where a shaft is sunk using a drilling method operated from the surface which does not require employees to work underground, except for start-up, repair, and demobilization of the drill) will provide change rooms and bathhouse facilities. Soap will be furnished in the bathhouse.

The Employer at construction projects will provide adequate facilities for the employee to eat his lunch, to change clothes and a place to leave his clothing and other incidental personal belongings during and between shifts. Such facilities shall be kept clean and adequately heated and ventilated to assure reasonably comfortable conditions in all seasons. Where the employee has access to the cab of the machine or vehicle, such cab shall be considered acceptable and may be used as an eating place.

Section (b)—Access Roads

At new mine locations, the Employer agrees to arrange with the owner to provide and maintain access roads in reasonably good condition to permit safe passage by employees and their vehicles. An access from a public road to the location where employees report to work.

Section (c)—Parking Facilities

The Employer shall provide an adequate parking facility for employees' vehicles. Where practical such facility shall be adequately lighted.

Section (d)—Bulletin Boards

The Employer agrees to provide bulletin boards and bulletin spaces for the Union's use, and the Union agrees to post notices or information of interest to the Union.

Section (e)—Compulsory Retirement

No Employer will have a policy of compulsory retirement based solely on age for the employees covered by this Agreement.

Section (f)—Irregular Work

When any employee absents himself from his work for a period of two (2) days without the consent of the Employer, other than because of proven sickness, he may be discharged.

Section (g)—Memorial Periods

The International Union, United Mine Workers of America, may designate memorial periods not exceeding a total of ten days during the term of this Agreement at any operation provided it shall give reasonable notice to the Employer.

Section (h)—Closing Following Fatal Accident

In addition to the memorial period provisions to be designated under Section (g), work shall cease on any shift during which a fatal accident occurs, and on all succeeding shifts until the starting time of the next regularly scheduled work of the shift on which the fatality occurred.

Section (i)—New Machinery

The right to install and operate new types of equipment is recognized as is the Employer's right to obtain such equipment for any source, whatsoever, without Union interference. Upon installation of major pieces of equipment, not already in use in the industry and for which no wage rates are already established, the Employer will notify the President of the UMWA District in which the new type equipment will be located. Within thirty (30) days after the installation and use of such new type of equipment, the Employer and the District President, with the approval of the International Union, shall jointly determine the rate to be paid the operator of the new equipment, which shall be a rate established on one of the paygrades in Appendix A.

Section (j)—Pay Day

All employees shall be paid at least every two (2) weeks. Payments shall be made in cash or by check with recognition for legitimate deductions. Payroll vouchers shall include gross earnings, straight time earnings and overtime earnings. Any employee, upon his request, may obtain additional information necessary to verify the accuracy of his paycheck.

Section (k)—Tools

The Employer shall furnish all special construction tools. Where an employee's tools are broken or worn out on the job, the Employer shall replace them.

Section (l)—Lunches

Any classified employee working two (2) or more hours in addition to his own regular shift or who is called back to work after leaving the Employer's premises shall be provided a lunch at the Employer's expense.

Section (m)—Tramming

The operator's rate will be paid for tramming mobile machines and equipment from one location to another on the project site or from one project site to another covered by this Agreement.

Article 21—SETTLEMENT OF DISPUTES

Section (a)—Grievance Committee

A committee consisting of no more than three (3) employees shall be elected at each project of each Employer by the employees of that Employer at that project. The duties of the grievance committee shall be confined to the adjustment of disputes arising out of this Agreement that the project management or the employee or employees fail to adjust. The grievance committee shall have no other authority or exercise any other control nor in any way interfere with the operation of the project; for violation of this section, any and all members of the committee may be removed from the committee.

A grievance committee member shall not be suspended or discharged for his official actions as a grievance committee member. An Employer seeking to remove a grievance committee member shall notify the affected grievance committee member and the other members of the grievance committee. If the grievance committee objects to such removal, the matter shall be submitted directly to arbitration within fifteen (15) calendar days from such objection. If the other members of the grievance committee so determine, the affected member shall remain on the grievance committee until the case is submitted to and decided by an arbitrator. If the Employer requests removal of the entire grievance committee, the matter automatically shall be submitted to arbitration within fifteen (15) calendar days after such request, and the grievance committee will continue to serve until the case is submitted to and decided by an arbitrator.

Section (b)—Grievance Procedure

Should differences arise between the mine construction workers and the Employer as to the meaning and application of the provisions of this Agreement, or should differences arise about matters not specifically mentioned in this Agreement, or should any local trouble of any kind arise at the project, an earnest effort shall be made to settle such differences at the earliest practicable time.

Disputes arising under this Agreement shall be resolved as follows:

1. The employee will make his complaint to his immediate foreman who shall have the authority to settle the matter. The foreman will notify the employee of his decision within twenty-four (24) hours following the day when the complaint is made. The grievant shall have the right to be accompanied by a grievance committeeman, provided he chooses to meet with his foreman during non-working hours.

2. If no agreement is reached between the employee and his foreman, then within five (5) work days of the foreman's decision, the grievance shall be presented to the Employer in writing on the standard grievance form and shall be taken up by the grievance committee and a representative of management. The parties shall complete the standard grievance form at the close of the meeting or as soon thereafter as possible. In any event, the grievance committee will complete and deliver to management its portion of the form within three (3) work days after the close of the meeting and management will complete and return to the grievance committee its portion of the form within three (3) work days after receipt of the grievance committee's position.

3. If no agreement is reached by the committee and the representative of management, then within seven (7) work days after the grievance committee's receipt of the management's position on the standard grievance form, a representative of the UMWA District, designated by the Union, and a representative of the Employer shall meet and review the facts and pertinent contract provisions in an effort to reach agreement. Unless both parties consent, no verbatim transcript of testimony shall be taken or brief written. If the District representative and the representative of the Employer agree as to the facts, they shall prepare a joint statement of facts which they shall each sign. Unless impracticable, neither the Union's representative nor the Employer's shall be persons who participated in Steps 1 or 2 of this procedure. Notwithstanding the foregoing, the Construction Representative for the International Union may initiate a grievance at Step 3 to enforce the Agreement.

4. In cases where the District representative and the representative of the Employer fail to reach agreement, the matter shall, within ten (10) calendar days after referral to them, be referred to an arbitrator who shall decide the case without delay. The arbitrator shall be selected by the parties in accordance with the procedure set forth in Section (d) of this Article from the regional arbitration panel established for the arbitration region in which the grievance occurs.

Unless testimony has been taken at Step 3, at the earliest possible time, the arbitrator shall conduct a hearing in order to hear testimony, receive evidence and consider arguments. In cases where a transcript has been made at Step 3, the arbitrator shall have the discretion to conduct a supplementary hearing at or near the project site. The parties shall have an opportunity to present their positions in writing to the arbitrator. The arbitrator's decision shall be final and shall govern only the dispute before him. Expenses and fees incident to the services of an arbitrator shall be paid equally by the Employer and by the Union.

Section (c)—Regional Arbitration Panels

The Union and Association will establish regional arbitration panels in the following arbitration regions. The arbitration panels will be established and maintained according to the procedure set forth in Appendix C:

Arbitration Region	Includes UMWA Districts
One	2, 4, 5, 31
Two	17, 29
Three	28
Four	20
Five	6
Six	11, 12, 23
Seven	15
Eight	22
Nine	14

Section (d)—Selection of the Arbitrator

The parties shall select an arbitrator from the regional arbitration panel established for the arbitration region in which the grievance occurs in the following manner. The parties will alternately strike the names of arbitrators from the regional panel until the name of only one arbitrator remains, which arbitrator shall thereby be designated as the arbitrator to hear the case.

Section (e)—Fifteen (15) Day Limitation

Any grievance which is not filed by the aggrieved party within fifteen (15) calendar days of the time when the employee reasonably should have known it, shall be denied as untimely.

Section (f)—Right of Grievant to Be Present

The grievant shall have the right to be present at each step of the grievance procedure until such time as all evidence is taken.

Section (g)—Finality of Decision or Settlement

Settlements reached at any step of the grievance procedure shall be final and binding on both parties and shall not be subject to further proceedings under this Article except by mutual agreement. Settlements reached at Steps 2 and 3 shall be in writing and signed by appropriate representatives of the Union and the Employer. Proceeding with an arbitration proceeding shall not be deemed to be a waiver by either party of its right to challenge any ruling or award of an arbitrator on the ground that it is in excess of his jurisdiction.

Section (h)—Waiver of Time Limits

By agreement, the parties may waive the time limits set forth in each step of the grievance procedure. By agreement, the parties may waive Step 2 and/or Step 3 of the grievance procedure.

Section (i)—Work Day Defined

For purposes of this Article, a workday shall be any day Monday through Friday exclusive of holidays.

Section (j)—Earnest Effort to Resolve Disputes

An earnest effort shall be made to settle differences at the earliest practicable time. Where an employee makes a complaint during work time, the foreman shall, if requested to do so, and if possible, consistent with continuous operation, discuss the matter briefly on the spot.

Section (k)—Legal Counsel

The parties will not be represented by legal counsel, except by mutual consent, in any step of the grievance procedure. However, this does not preclude either the Union or the Employer from having legal counsel submit written briefs in their behalf.

Article 22—DISCHARGE PROCEDURE

Section (a)—Just Cause Required

No employee covered by this Agreement may be disciplined or discharged except for just cause. The burden shall be on the Employer to establish grounds for discharge in all proceedings under this Agreement.

Section (b)—Procedure

No employee shall be summarily discharged.

All discharges must be accomplished according to the following procedure:

Where management concludes that the conduct of an employee justifies discharge, the employee shall be suspended subject to discharge and shall be given written notice stating the reason, with a copy to be furnished to the Grievance Committee.

If the employee wishes to pursue a grievance, he shall notify the Employer within five (5) work days of receiving the notice of suspension subject to discharge and the employee shall remain suspended for a period of time necessary for an arbitrator to render a decision. If the employee does not do so within five work days of receiving the notice of suspension subject to discharge, the discharge shall become effective immediately.

Within three (3) work days after the employee notifies the Employer of his desire to pursue a grievance, the employee will be afforded the right to meet with a representative of the UMWA district and a representative of the Employer. At such meeting, the grievance committee may be present. After such meeting, if no agreement is reached and if the Employer intends to discharge the employee, the representative of the District and the representative of the Employer shall, within twenty-four (24) hours, select an arbitrator as provided in Article 22, Section (d)(Settlement of Disputes).

Section (c)—Immediate Arbitration

The arbitrator selected shall hear the case within five calendar days. At the conclusion of the hearing, the arbitrator shall at that time announce his decision which shall be binding on all parties. Following the hearing, the arbitrator determines that the Employer has failed to establish just cause for the employee's discharge, the employee shall be immediately reinstated to his job. If the arbitrator determines that there was just cause for discharge, the discharge shall become effective upon the date of the arbitrator's decision.

Section (d)—Regular Arbitration

Cases where an employee is relieved of his duties but is not discharged shall be subject to the regular grievance procedure entitled "Settlement of Disputes."

Section (e)—Compensation for Lost Earnings

In all cases where an arbitrator determines that just cause for discharge has not been established, the Employer shall be ordered to reinstate and compensate the employee for all lost earnings at his applicable straight and premium time rates.

Section (f)—Waiver of Time Limits

By agreement, the parties may waive the time limits set forth in this Article.

Section (g)—Work Day Defined

For purposes of this Article, a work day shall be any day Monday through Friday, exclusive of holidays.

Article 27—SEVERABILITY CLAUSE

Section (a)—General Rule

Except for the provisions of section (b) of this Article, if any provision of this Agreement is declared invalid, all other provisions of this Agreement shall remain in full force and effect.

Section (b)—Exception

In the event the parties are restrained or prohibited by any agency or branch of the federal or state government from implementing or effectuating the economic benefits, including health and retirement fund payments, required by this Agreement, either party hereto may, after the imposition of such restraint, give sixty (60) days notice of termination of this Agreement and, thereafter shall meet and discuss and attempt to agree on the basis for a continuation of the Agreement for its term. If no agreement is reached within the sixty (60) day period, the Agreement will terminate.

Article 23—DISCRIMINATION PROHIBITED

Neither the Employer nor the Union shall discriminate against any employee or with regard to the terms or availability of classified employment on the basis of race, color, creed, national origin, sex, age, or union activity.

Article 24—DISTRICT AGREEMENTS

Section (a)—New Districts

New Districts of the United Mine Workers of America may be established.

Section (b)—Prior Practice and Custom

This Agreement supersedes all existing and previous contracts except as incorporated and carried forward herein by reference; and all local agreements, rules, regulations and customs heretofore established in conflict with this Agreement are hereby abolished. Prior practice and custom not in conflict with this Agreement, including with respect to temporary layoffs, may be continued, but any provisions in any district or local agreement providing for the levying, assessing or collection of fines or providing for "no-strike," "indemnity," or "guarantee" clauses or provisions are hereby expressly repealed and shall not be applicable during the term of this Agreement. Whenever a conflict arises between this Agreement and a district or local agreement, this Agreement shall prevail.

Section (c)—Protection

In the event any contract or agreement is executed on or after the effective date of this Agreement between the Union and any employer covering construction work at a particular project which would be covered under the jurisdiction of this Agreement, and said contract or agreement is more favorable in any of its terms than any of the terms of this Agreement, then these more favorable terms shall be offered in a timely fashion to all members of the Association (by notice to the Association) to be applicable to the construction work to be performed at that particular project. For purposes of this section, "project" shall mean work which is encompassed by a particular bid invitation. The Union shall provide the Association with a copy of any contract or agreement covered by this section.

Article 28—RATIFICATION AND TERMINATION OF THIS AGREEMENT

This Agreement shall become effective at 12:01 A.M. on the day following notification to the Association of Bituminous Contractors by the International Union, United Mine Workers of America, that this Agreement has been ratified and approved by the membership covered hereby. Memoranda of Interpretations approved by the Union and the Association under this Agreement and prior Agreements are incorporated by reference and made a part of this Agreement.

Except as provided in Article 27, Section (b) (Severability Clause), this Agreement is not subject to termination by either party signatory hereto prior to February 6, 2005, provided, however, that either may terminate this Agreement on or after February 6, 2005, by giving at least sixty days written notice to the other party of such desired termination date.

Provided, however, for the sole purpose of negotiating changes in the amount of the supplemental pension under the 1985 UMWA Construction Workers Pension Plan, and the amount of the co-premium required to be paid by the beneficiaries to the 1978 Retired Construction Workers Benefit Trust, either the Union or the ABC may reopen this Agreement at any anniversary date of the Agreement by giving written notice to the other party no later than sixty (60) days prior to such anniversary date.

IN WITNESS WHEREOF, each of the parties signatory hereto has caused this Agreement to be signed on the date specified herein to become effective only upon the condition that it is ratified and approved by the membership covered hereby.

ASSOCIATION OF BITUMINOUS CONTRACTORS

President

UNITED MINE WORKERS OF AMERICA

International President

International Vice President

International Secretary-Treasurer

Article 25—MAINTAIN INTEGRITY OF CONTRACT AND RESORT TO COURTS

The United Mine Workers of America and the Employers agree and affirm that, except as provided herein, they will maintain the integrity of this contract and that all disputes and claims which are not settled by agreement shall be settled by the machinery provided in the "Settlement of Disputes" Article of this Agreement unless national in character in which event the parties shall settle such disputes by free collective bargaining as heretofore practiced in the industry, it being the purpose of this provision to provide for the settlement of all such disputes and claims through the machinery in this contract and by collective bargaining without recourse to the courts.

The Employer, however, expressly authorizes the Union to seek judicial relief, without exhausting the grievance machinery, in cases involving successorship.

Article 26—NATIONAL CONFERENCES

It is hereby stipulated and agreed by all parties signatory hereto that the United Mine Workers of America and the Association of Bituminous Contractors may by mutual agreement call a national conference to discuss issues of general importance to the coal mine construction industry, and that each party signatory hereto will attend such conference or conferences held under the terms of this Agreement in either Washington, D.C. or at such other place as mutually agreed upon by the United Mine Workers of America and the Association of Bituminous Contractors.

DATE: _____

APPENDIX A—PART 1
SURFACE CONSTRUCTION WORK RATES
STANDARD HOURLY* WAGE RATE**

	Effective Date	WAGE Second Year	Third Year
GRADE A	\$19.26	\$19.86	\$20.46
Certified Welder			
Cherry Picker Operator (25 tons and more)			
Ironworker (connector)			
Lead-Bricklayer & Blocksetter*			
Lead-Carpenter*			
Lead-Electrician*			
Lead-Ironworker*			
Lead-Lineman*			
Lead-Mechanic*			
Lead-Millwright*			
Lead-Pipefitter*			
Lead-Sheeter*			
Lead-Welder*			
Rig and Derrick Operator (over 7 tons)			
GRADE B	\$18.75	\$19.30	\$19.85
Blaster (Powderman)			
Bricklayer & Blocksetter			
Carpenter			
Cement Finisher 1st class			
Electrician (Hookup man Power and Control)			
Ironworker (Bolt-up man)			
Lineman (Qualified to perform energized work)			
Mechanic (Equipment Repairman)			
Millwright (Qualified to set and align machinery to specified tolerances using required instruments or tools of the trade)			
Mobile Equipment Operator (dozer, front end loader, off-highway trucks, Euclid, Letourneau, grader, pan line, back hoe, grade all, roller, wagon drills, all rigs & cranes thru 7 tons, cherry picker, concrete pump operator, boom truck, winch operator, silo hoist operator, shotcrete operator and nozzleman, tractor trailer driver, and all other mobile equipment)**			
Pipefitter (Qualified to fit pipe)			
Plumber			
Sheeter (Installer, Roofer)			
Welder, All position			
HVAC Mechanic			

* Employees in lead classifications will be members of the working crew and will work with the crew. No employees in a lead classification shall have any authority to hire, discharge, discipline, direct the work force, or perform any other duties normally performed by supervisory personnel. However, this does not preclude an employee in a lead classification from keeping time, and explaining to other classified employees in the crew how certain tasks should be performed and the priorities of the work for the day. The rate for the lead classification shall apply to an employee who is the only employee at a project in one of these classifications, or who guides other classified employees in the performance of their tasks.

** The type of equipment will be specified when a mobile equipment operator job is posted.

***The Standard Daily Wage Rate shall be computed by multiplying the Standard Hourly Wage Rate by eight (8).

APPENDIX A—PART 1 (Continued)

SURFACE CONSTRUCTION WORK RATES
STANDARD HOURLY*** WAGE RATE

	WAGE		
	Effective Date	Second Year	Third Year
GRADE C	\$18.31	\$18.81	\$19.31
Belt Splicer (Splice, vulcanize)			
Burner (Tacker/Burner)			
Cement Finisher (Rough finishes)			
Electrician (Conduit and Wireman)			
Erection Worker			
Ironworker (Reinforcing steel setter)			
Ironworker (Ground rigger & hookup man)			
Lineman (includes polesetting, wire stringing, assisting in energized work)			
Painter (Spray, roller, brush. Qualified to do all types of painting including climbing steel)			
Silo Builder Slip Form (Qualified to perform all phases slip form silo construction work, build forms and set related equipment)			
Silo Builder Jump Form (Qualified to perform all phases of jump form silo construction work, set forms and related equipment)			
Truck Driver (Tandem or tri-axle)			
GRADE D	\$16.61	\$17.06	\$17.51
Belt Splicer-Helper			
Carpenter-Helper (Form setter, limited experience)			
Cement Finisher-Helper			
Electrician-Helper			
Laborer (skilled, works with hand-operated machinery, air and power tools)			
Lineman-Helper			
Mechanic-Helper			
Millwright-Helper			
Painter-Helper			
Pipefitter-Helper			
Plumber-Helper			
Roofer-Helper			
Sheeter-Helper and Ground Man			
Silo Building-Helper (Assistant to silo builder, semi-skilled and less qualified)			
Truck Driver			
Welder-Helper			
HVAC Helper			
GRADE E	\$14.80	\$15.20	\$15.60
Laborer			
Warehouseman (at project site)			

* Employees in lead classifications will be members of the working crew and will work with the crew. No employees in a lead classification shall have any authority to hire, discharge, discipline, direct the work force, or perform any other duties normally performed by supervisory personnel. However, this does not preclude an employee in a lead classification from keeping time, and explaining to other classified employees in the crew how certain tasks should be performed and the priorities of the work for the day. The rate for the lead classification shall apply to an employee who is the only employee at a project in one of these classifications, or who guides other classified employees in the performance of their tasks.

** The type of equipment will be specified when a mobile equipment operator job is posted.

***The Standard Daily Wage Rate shall be computed by multiplying the Standard Hourly Wage Rate by eight (8).

APPENDIX A—PART 2
SHAFT AND SLOPE RATES
STANDARD HOURLY* WAGE RATE**

	Effective Date	WAGE Second Year	Third Year
GRADE A Certified Electrician Certified Welder Crane or derrick operator Lead miner** Tunnel Boring Machine Operator	\$19.26	\$19.86	\$20.46
GRADE B Hoist Operator Mucking Machine Operator	\$18.75	\$19.30	\$19.85
GRADE C Carpenter Electrician Gunitite Machine Operator Gunitite Nozzle Operator Mechanic Miner-driller Tractor-Trailer Driver Welder	\$18.31	\$18.81	\$19.31
GRADE D Mobile Equipment Operator Topman Dump Truck Driver	\$16.61	\$17.06	\$17.51
GRADE E Carpenter Helper Electrician Helper Labor (inside & outside) Mechanic Helper Truck Driver	14.80	\$15.20	\$15.60

* Certified person doing pre-shift and on-shift examinations will be classified in the type of work he is performing. An additional \$3.20 will be added to that employee's Standard Daily Wage Rate for his service, except that in no case will his standard daily wage rate be less than the Grade A rate. Where there is more than one certified employee on the same shift at a project, the senior employee will be offered these duties.

** A lead miner will be a member of the working crew and will work with the crew. No employee in a lead classification shall have any authority to hire, discharge, discipline, direct the work force, or perform any other duties normally performed by supervisory personnel. However, this does not preclude an employee in a lead classification from keeping time, and explaining to other classified employees in the crew how certain tasks should be performed and the priorities of the work for the day. The rate for the lead classification shall apply to an employee who guides other classified employees in the performance of their tasks.

***The Standard Daily Wage Rate shall be computed by multiplying the Standard Hourly Wage Rate by eight (8).

APPENDIX B

Establishment of Regional Arbitration Panels

The Union and Association will establish regional arbitration panels by contacting the Federal Mediation and Conciliation Service and obtaining a list of arbitrators in each of the arbitration regions listed in 21, Section (c).

From these lists of arbitrators the Union and Association will select a panel of seven (7) arbitrators in each region, plus three (3) alternates in each region who will be substituted for panel members in the event of the death of a panel member or if a panel member becomes incapacitated or resigns.

On the anniversary date of the effective date of the Settlement of Disputes article, and each anniversary date thereafter, either the Union or the Association will have the right to notify the other of its intention to strike one or more arbitrators from any regional panels, or to strike entire panels. Within thirty (30) days after such notification, the Union and Association will replace any arbitrators who have been removed from any panels, or any panels which have been entirely stricken, using the same procedure by which the panels were first established. During this replacement period, the original arbitration panels will continue in existence.

APPENDIX C

**Shaft and Slope
Continuous Operation**

Schedule Option 1

Shift	M	T	W	T	F	S	S
Owl	A	A	A	A	A	B	B
Day	C	D	D	D	D	D	D
Eve	B	B	B	C	C	C	C
Idle	D	C	C	B	B	A	A
Owl	B	B	B	B	B	C	C
Day	D	A	A	A	A	A	A
Eve	C	C	C	D	D	D	D
Idle	A	D	D	C	C	B	B
Owl	C	C	C	C	C	D	D
Day	A	B	B	B	B	B	B
Eve	D	D	D	A	A	A	A
Idle	B	A	A	D	D	C	C
Owl	D	D	D	D	D	A	A
Day	B	C	C	C	C	C	C
Eve	A	A	A	B	B	B	B
Idle	C	B	B	A	A	D	D

(Repeat)

Schedule Option 2

Shift	M	T	W	T	F	S	S
Owl	D	D	D	D	D	A	A
Day	A	A	A	B	B	B	B
Eve	B	B	C	C	C	C	C
Idle	C	C	B	A	A	D	D
Owl	A	A	A	A	A	B	B
Day	B	B	B	C	C	C	C
Eve	C	C	D	D	D	D	D
Idle	D	D	C	B	B	A	A
Owl	B	B	B	B	B	C	C
Day	C	C	C	D	D	D	D
Eve	D	D	A	A	A	A	A
Idle	A	A	D	C	C	B	B
Owl	C	C	C	C	C	D	D
Day	D	D	D	A	A	A	A
Eve	A	A	B	B	B	B	B
Idle	B	B	A	D	D	C	C

(Repeat)

Schedule Option 3

Shift	M	T	W	T	F	S	S
Owl	A	A	A	A	A	B	B
Day	C	C	D	D	D	D	D
Eve	B	B	B	B	C	C	C
Idle	D	D	C	C	B	A	A
Owl	B	B	B	C	C	C	C
Day	A	A	A	A	A	B	B
Eve	C	C	D	D	D	D	D
Idle	D	D	C	B	B	A	A
Owl	C	D	D	D	D	D	D
Day	B	B	B	C	C	C	(Repeat)
Eve	A	A	A	A	A	B	
Idle	D	C	C	B	B	A	

Schedule Option 4

Shift	M	T	W	T	F	S	S
Owl	A	A	A	A	A	A	C
Day	B	B	D	D	D	D	D
Eve	C	C	C	C	B	B	B
Idle	D	D	B	B	C	C	A
Owl	C	C	C	C	C	B	B
Day	D	A	A	A	A	A	A
Eve	B	B	B	D	D	D	D
Idle	A	D	D	B	B	C	C
Owl	B	B	B	B	D	D	D
Day	C	C	C	C	C	C	B
Eve	D	D	A	A	A	A	A
Idle	A	A	D	D	B	B	C
Owl	D	D	D	A	A	A	A
Day	B	B	B	B	B	D	D
Eve	A	C	C	C	C	C	C
Idle	C	A	A	D	D	B	B

Etc.

NOTE: Under this schedule the crews continue to work 6 days on followed by 2 days off, rotating into the next shift after the days off. The cycle repeats beginning the 25th week.

APPENDIX D

Dear Employee:

The records of our company indicate that you have been laid off and on our panel under the National Coal Mine Construction Agreement for a period of one year or more without recall.

Pursuant to Article 16, Section (d), of the Agreement, if you want to remain on our company panel and be eligible for recall, you must complete and return the enclosed Standardized Layoff Form to us within thirty (30) days of the date you received this notice.

If you return the notice by mail, you must send it to us by certified mail, return receipt, postmarked within thirty (30) days, addressed to:

Failure to return or mail the Form to us within thirty (30) days after you receive it will result in the removal of your name from our company panel.

Sincerely,

APPENDIX E

Coal Mine Construction Workers Benefit Plan (and Dental Plan)

INTRODUCTION

This Benefit Plan for United Mine Workers of America Represented Construction Employees has been established pursuant to the provisions of Article 19 of the National Coal Mine Construction Agreement of 2002.

The Benefit Plan provides health and vision care for Employees and their eligible Dependents, and life insurance and accidental death and dismemberment insurance for Employees. In addition, dental care will be provided through a separate Dental Plan. These benefits are provided through insurance carriers and/or administrators.

Each eligible Employee will receive an identification card. Benefits for active Employees will be funded through policies and plans issued directly to signatory Employers or to the Association of Bituminous Contractors.

The provisions of this Benefit Plan apply to all covered goods and services provided to any Beneficiary on or after February 7, 2002.

ARTICLE I—DEFINITIONS

The following terms shall have the meanings herein set forth:

- (1) "Wage Agreement" means the National Coal Mine Construction Agreement of 2002, as amended from time to time and any successor agreement.
- (2) "Employer" means an Employer signatory to the Wage Agreement, including its successors and assigns.
- (3) "Plan Administrator" shall mean the insurance carrier/administrator responsible for your coverage.
- (4) "Employee" shall mean a person working in a classified job under the Wage Agreement for the Employer, eligible to receive benefits hereunder.
- (5) "Beneficiary" shall mean any person who is eligible pursuant to the Plan to receive health benefits as set forth in Article III hereof.
- (6) "Dependent" shall mean any person described in Section D of Article II hereof.
- (7) "Benefit Plan" shall mean the Coal Mine Construction Workers Benefit Plan provided for at Article 19, Section (a), of the Wage Agreement.
- (8) "Attains the age" shall mean on or after 12:01 a.m. of the anniversary date of one's birthday.
- (9) "Preferred Provider" shall mean a medical benefits provider which has agreed to accept negotiated prices as full payment for medical benefits covered under the Plan.

ARTICLE II—ELIGIBILITY

The persons eligible to receive the health benefits pursuant to Article III are as follows:

A. Employees

Benefits under Article III shall be provided to any Employee who is actively at work for the Employer on the effective date of the Wage Agreement and who was eligible for benefits under the Benefit Plan as of February 7, 2002.

Employees receiving Sickness and Accident Benefits pursuant to the Wage Agreement will be eligible for benefits.

B. New Employees

The waiting period for a new Employee shall be as follows:

- (1) A new Employee will be eligible for health benefits after completion of 30 calendar days of employment with the Employer; benefits shall begin on the 31st calendar day of employment with the Employer. In the event a new employee is laid off before the completion of 30 calendar days and returns, pursuant to a recall, to the same Employer in the calendar year, he will be eligible for benefits upon completion of 22 cumulative working days; benefits shall begin on the 23rd working day of employment with the Employer.
- (2) A new Employee will be eligible for life insurance and accidental death and dismemberment insurance after completion of 30 calendar days of employment with the Employer. However, if death or dismemberment should occur as the result of a mine accident, prior to 30 calendar days of such employment, benefits will be paid as though such Employee had satisfied this 30-day requirement.

C. Laid-off Employees

An Employee of the Employer who is eligible for benefits at the time he is laid off shall be eligible for benefits as of the first day he is recalled to work by the Employer.

D. Eligible Dependents

Health benefits under Article III shall be provided to the following members of the family of any Employee receiving health benefits pursuant to paragraph A or B of this Article II:

- (1) A spouse who is living with or being supported by an eligible employee;
- (2) Unmarried dependent children of an eligible Employee who are under 22 years of age;
- (3) A parent of an eligible Employee if the parent has been dependent upon and living in the same household with the eligible Employee for a continuous period of at least one year;
- (4) Unmarried dependent grandchildren of an eligible Employee who are under 22 years of age and are living in the same household with such Employee;
- (5) Dependent children (of any age) of an eligible Employee who are mentally retarded or who become disabled prior to attaining age 22 and such disability is continuous and who are either living in the same household with such Employee or are confined to an institution for care or treatment. Health benefits for such children will continue as long as a surviving parent is eligible for health benefits.

For purposes of this paragraph D, a person shall be considered dependent upon an eligible Employee, if such Employee provides on a regular basis over one-half of the support to such person.

ARTICLE III—BENEFITS

A. Health Benefits

(1) Plan Provisions

(a) Types of Benefits

The Plan provides two types of benefits. In-Network Benefits are covered medical benefits provided by a Preferred Provider. Out-of-Network Benefits are covered medical benefits not provided by a preferred provider.

(b) Deductibles¹

All medical benefits under the Plan are subject to a \$750 deductible per family per calendar year. The first \$750 of all covered medical expenses paid by covered family members will be counted toward satisfying the annual deductible. Before medical benefits are paid by the Plan on behalf of a Beneficiary, this deductible must be satisfied.

(c) Copayments for In-Network Benefits

After the deductible has been satisfied, the Plan will pay 80% of the charges for In-Network Benefits, and the Beneficiary will pay 20% of such charges. In-Network Benefits are subject to an out-of-pocket maximum of \$1,000 per family per calendar year. The first \$1,000 of copayments paid by covered family members for In-Network charges will be counted toward satisfying the \$1,000 annual out-of-pocket maximum for In-Network Benefits. After the \$1,000 annual out-of-pocket maximum has been satisfied, the Plan will pay 100% of the charges for In-Network Benefits.

(d) Copayments for Out-of-Network Benefits

After the deductible has been satisfied, the Plan will pay 80% of the reasonable and customary charges for Out-of-Network Benefits, and the Beneficiary will pay 20% of such charges. Out-of-Network Benefits are subject to an out-of-pocket maximum of \$2,500 per family per calendar year. The first \$2,500 of copayments paid by covered family members for Out-of-Network charges will be counted toward satisfying the \$2,500 annual out-of-pocket maximum for Out-of-Network Benefits. After the \$2,500 annual out-of-pocket maximum has been satisfied, the Plan will pay 100% of the reasonable and customary charges for Out-of-Network Benefits.

NOTE: If the amount payable by the Plan is reduced by more than \$50 due to a determination by the Plan Administrator that the amount billed exceeds reasonable and customary charges, the Plan Administrator will contact the provider and use its best efforts to have the provider accept its determination of reasonable and customary charges as full payment for the services provided.

¹ Any inpatient hospital charges for an inpatient admission ongoing as of October 1, 1991, will not be subject to deductibles, copayments and preadmission certification.

(e) In-Network Benefits Not Available

If a Preferred Provider is not available within a reasonable distance as determined by the Plan Administrator (generally 50 miles for a hospital and 25 miles for a physician), the Beneficiary's copayment for Out-of-Network Benefits will be subject to the same \$1,000 annual out-of-pocket family maximum as for In-Network Benefits.

(f) Preadmission Certification

Preadmission certification is required for all non-emergency inpatient surgical admissions and procedures, medical admissions, and psychiatric admissions. If treatment is performed on an outpatient basis, preadmission certification is not required.

If a covered individual must be admitted in an emergency situation—one that requires treatment within hours for the patient's safety—preadmission certification notification must be given within 48 hours of admission.

The preadmission certification program will not affect or limit health care benefits as long as notification is given, but if the required notification is not given, the Plan shall be responsible for only 90% of any covered reasonable and customary inpatient charges after satisfaction of any deductibles and copayments, and the Beneficiary will be responsible for the remaining 10% of such charges. Payments required to be made by the Beneficiary will not be credited to the deductible or out-of-pocket maximum.

The Plan Administrator will provide procedures for preadmission certification which include the following:

1. Beneficiary notification to the physician of the preadmission certification program.
2. The alternative of a written form or a telephone number which the physician may use to obtain preadmission certification.
3. A response by telephone to the physician within one working day after receipt of a request for preadmission certification, followed by written confirmation to the Beneficiary, the physician and the hospital.
4. Assignment of an initial length of inpatient stay, with any extension to be requested prior to the end of the initially assigned length of stay.

Preadmission certification is not required for any hospital length of stay in connection with childbirth for the mother or newborn if less than or equal to forty-eight (48) hours following a normal vaginal delivery or less than or equal to ninety-six (96) hours following a cesarean section. A hospital length of stay exceeding these time periods requires preadmission certification.

NOTE: The requirement for preadmission certification will be clearly stated on each Beneficiary's identification card. No Beneficiary will be penalized for failure to obtain preadmission certification if there are extenuating circumstances.

(d) Maximum Lifetime Benefits

Beginning July 1, 1998, the maximum lifetime benefits payable to a Beneficiary under the Plan is \$2 million.

(e) Claims Filing

Health providers and Beneficiaries must file claims for benefits under this Plan within one year of the date that services are provided. Claims which are not filed within one year may be subject to nonpayment under this Plan.

(2) Inpatient Hospital Benefits

(a) Semi-private Room

When a Beneficiary is admitted by a licensed physician (hereinafter "physician"), for treatment as an inpatient to an Accredited Hospital (hereinafter "hospital"), benefits will be provided for semi-private room accommodations (including special diets and general nursing care) and all medically necessary services provided by the hospital as set out below for the diagnosis and treatment of the Beneficiary's condition.

Medically necessary services provided in a hospital include the following:

- Operating, recovery and other treatment rooms
- Laboratory tests and x-rays
- Diagnostic or therapy items and services
- Drugs and medication (including take-home drugs which are limited to a 30-day supply)
- Radiation therapy
- Chemotherapy
- Physical therapy
- Anesthesia services
- Oxygen and its administration
- Intravenous injections and solutions
- Administration of blood and blood plasma
- Blood, if it cannot be replaced or on behalf of the Beneficiary

(b) Intensive Care Unit-Coronary Care Unit

Benefits will also be provided for treatment rendered in an Intensive Care or Coronary Care Unit of the hospital, if such treatment is certified as medically necessary by the attending physician.

(c) Private Room

For confinement in a private room, benefits will be provided for the hospital's most common charge for semi-private room accommodations and the Beneficiary shall be responsible for any excess over such charge except that private room rates will be paid when (i) the Beneficiary's condition requires him to be isolated for his own health or that of others, or (ii) the hospital has semi-private or less expensive accommodations but they are occupied and the Beneficiary's condition requires immediate hospitalization. Semi-private room rates, not private room rates, will be paid beyond the date a semi-private room first becomes available and the Beneficiary's condition permits transfer to those accommodations.

(d) Renal Dialysis

Benefits will be provided for renal dialysis provided that the renal dialysis therapy is administered in accordance with Federal Medicare regulations as in effect from time to time.

(e) Mental Illness

Benefits are provided for up to a maximum of 30 days for a Beneficiary who is confined for mental illness in a hospital by a licensed psychiatrist. When medically necessary, hospitalization may be extended for a maximum of 30 additional days for confinements for an acute (short-term) mental illness, per episode of acute illness. (More than 90 days confinement for mental illness over a two year period (dating from the first day of hospital confinement) is deemed for purposes of this Plan to be a chronic (long-term) mental problem for which the Plan will not provide inpatient hospital benefits.)

(f) Alcoholism & Drug Abuse

Benefits are provided for a Beneficiary who requires emergency detoxification hospital care for the treatment of alcoholism or emergency treatment for drug abuse. Such treatment is limited to 7 calendar days per inpatient hospital admission.

If treatment of a medical or mental condition is necessary following detoxification or emergency treatment for drug abuse, benefits may be provided under other provisions of this Plan and are subject to any requirements or limitations in such provisions.

See paragraph (8)(f) for information concerning other services related to treatment of alcoholism and drug abuse.

(g) Oral Surgical/Dental Procedures

Benefits are provided for a Beneficiary who is admitted to a hospital for the oral surgical procedures described in paragraph (4)(e) provided hospitalization is medically necessary.

Benefits are also provided for a Beneficiary admitted to a hospital for dental procedures only if hospitalization is necessary due to a preexisting medical condition and prior approval is received from the Plan Administrator.

(h) Maternity Benefits

Benefits are provided for a female Beneficiary who is confined in a hospital for pregnancy. Such benefits will also be available for services pertaining to termination of pregnancy but only if medically necessary and is so certified to and such services are performed by a licensed gynecologist or surgeon.

(i) General

Accredited Hospital is a hospital which is operated primarily for the purpose of rendering inpatient therapy for the several classifications of medical and surgical cases and which is approved by the Joint Commission on Accreditation of Hospitals.

(3) Outpatient Hospital Benefits

(a) Emergency Medical and Accident Cases

Benefits are provided for a Beneficiary who receives emergency medical treatment or medical treatment of an injury as the result of an accident, provided such emergency medical treatment is rendered within 48 hours following the onset of acute medical symptoms or the occurrence of the accident.

(b) Surgical Cases

Benefits are provided for a Beneficiary who receives surgical treatment in the outpatient department of a hospital.

(c) Laboratory Tests and X-rays

Benefits are provided for laboratory tests and x-ray services performed in the outpatient department of a hospital which provides such services and when they have been ordered by a physician for diagnosis or treatment of a definite condition, illness or injury.

(d) Chemotherapy and Radiation Therapy

Benefits are provided for chemotherapy treatments of a malignant disease or radiation treatments performed in the outpatient department of a hospital.

(e) Physiotherapy

Benefits are provided for physiotherapy treatments performed in the outpatient department of a hospital. Such therapy must be prescribed and supervised by a physician.

(f) Renal Dialysis

Benefits are provided for outpatient renal dialysis treatments rendered in accordance with Federal Medicare regulations as in effect from time to time.

(4) Physicians' Services and Other Primary Care

(a) Surgical Benefits

Benefits are provided for surgical services essential to a Beneficiary's care consisting of operative and cutting procedures (including the usual and necessary post-operative care) for the treatment of illnesses, injuries, fractures or dislocations, which are performed either in or out of a hospital by a physician.

When surgical services consist of necessary major surgery (primary) and the physician performs surgery additional to the primary surgery (incidental surgery), benefits payment for the incidental surgery will be provided by a rate 50% lower than the physician's normal charge had he performed only the incidental surgery.

(b) Assistant Surgeons

If the Beneficiary is an inpatient in a hospital, benefits will also be provided for the services of a physician who actively assists the operating physician in the performance of such surgical services when the condition of the Beneficiary and type of surgical service require such assistance.

(c) Obstetrical Delivery Services

Benefits are provided for a female Beneficiary for obstetrical delivery services (including pre- and post-natal care) by a physician. Benefits will also be provided if such delivery is performed by a midwife certified by the American College of Nurse Midwifery and licensed where such licensure is required.

Such benefits will also be provided for termination of pregnancy but only if medically necessary and is so certified to and such services are performed by a licensed gynecologist or surgeon.

(d) Anesthesia Services

Benefits are provided for the administration of anesthetics provided either in or out of the hospital in surgical or obstetrical cases, when administered and billed by a physician, other than the operating surgeon or his assistant, who is not an employee of, nor compensated by, a hospital, laboratory or other institution.

(e) Oral Surgery

Benefits are not provided for dental services. However, benefits are provided for the following limited oral surgical procedures if performed by a dental surgeon or general surgeon:

- Tumors of the jaw (maxilla and mandible)
- Fractures of the jaw, including reduction and wiring
- Fractures of the facial bones
- Frenulectomy when related only to ankyloglossia (tongue tie)
- Temporomandibular joint dysfunction only when medically necessary
 - and related to an orthopedic problem
- Biopsy of lesions of the oral cavity

(f) Surgical Services Limitations

Benefits are not provided for certain surgical services without prior approval of the Plan Administrator. Such surgical procedures include, but are not limited to, the following:

- Plastic surgery, including mammoplasty
- Reduction mammoplasty
- Intestinal bypass for obesity
- Gastric bypass for obesity
- Cerebellar implants
- Dorsal simulator implants
- Prosthesis for cleft palate if not covered by crippled children services
- Organ transplants

(g) In-hospital Physician's Visits

If a Beneficiary is confined as an inpatient in a hospital because of an illness or injury, benefits are provided for in-hospital visits by the physician in charge of the case. Such benefits will also be provided concurrently with benefits for surgical, obstetrical and radiation therapy services when the Beneficiary has a separate and complicated condition, the treatment of which requires skills not possessed by the physician who is rendering the surgical, obstetrical or radiation therapy services.

(h) Home, Clinic, and Office Visits

Benefits are provided for services rendered to a Beneficiary at home, in a clinic (including the outpatient department of a hospital), or in the physician's office for the treatment of illnesses or injuries, if provided by a physician.

(i) Emergency Treatment

When provided by a physician, benefits are provided for a Beneficiary who receives outpatient emergency medical treatment or medical treat-

ment of an injury as the result of an accident, provided such emergency medical treatment is rendered within 48 hours following the onset of acute medical symptoms or the occurrence of the accident.

(j) Laboratory Tests and X-rays

Benefits will be provided for laboratory tests and x-rays performed in a licensed laboratory when ordered by a physician for diagnosis or treatment of a definite condition, illness or injury.

Such benefits will not cover laboratory tests and x-rays ordered in connection with a routine physical examination, unless the examination is considered medically necessary by a physician.

(k) Radiation and Chemotherapy Benefits

Benefits are provided for treatment by x-ray, radium external radiation or radioactive isotope (including the cost of materials unless supplied by a hospital), provided in or out of a hospital, when performed and billed by a physician.

When a Beneficiary's condition requires radiation therapy services in conjunction with medical, surgical or obstetrical services, benefits will be provided for such radiation therapy in addition to the payment for such other types of covered services if the physician performing the radiation therapy services is not the same physician who performs the medical, surgical or obstetrical services.

Benefits are provided for treatment of malignant diseases by chemotherapy provided in or out of the hospital when prescribed and billed by a physician.

(l) Medical Consultation

Benefits are provided for services rendered, at the request of the attending physician in charge of the case, by a physician who is qualified in a medical specialty necessary in connection with medical treatment required by a Beneficiary.

(m) Specialist Care

Benefits will be provided for treatment prescribed or administered by a specialist if the treatment is for illness or injury which falls within the specialist's area of medical competence.

(n) Primary Care—Podiatrists' Services

Benefits are provided for minor surgery rendered by a qualified licensed podiatrist. Routine care of the feet such as trimming of nails, the treatment of corns, bunions (except capsular or bone surgery therefor) and calluses is excluded.

Covered minor surgery includes surgery for ingrown nails and surgery in connection with the treatment of flat feet, fallen arches, weak feet, chronic foot strain or symptomatic complaints of the feet.

Benefits for major surgical procedures rendered by a licensed podiatrist are provided when medically necessary.

(o) Primary Medical Care—Miscellaneous

1. Benefits are provided for care of newborn babies and routine medical care of children prior to attaining age 6.
2. Benefits are provided for immunizations, allergy desensitization injections, pap smears, screening for hypertension and diabetes, and examinations for cancer, blindness, deafness, and other screening and diagnostic procedures when medically necessary.
3. Benefits are provided for physical examinations when certified as medically necessary by a physician. Medically necessary will mean that a Beneficiary (i) has an existing medical condition under treatment by a physician, (ii) has attained age 55, (iii) is undergoing an annual or semi-annual routine examination by a gynecologist or (iv) is undergoing a routine examination prescribed by a specialist as part of such specialist's care of a medical condition.
4. Benefits are provided for "physical extender" care or medical treatment administered by nurse practitioners, physician's assistants or other trained, certified and/or licensed health personnel when such service is rendered under the supervision of a physician.
5. Benefits are provided for a nominal fee covering instruction in preparation for natural childbirth, if rendered in a hospital or clinic.
6. Benefits are provided for family planning counseling when rendered by a physician or by other appropriately trained and supervised health care professionals.
7. Benefits are provided covering artificial insemination if the service is provided by a licensed gynecologist.
8. Benefits are provided for sterilization procedures if such procedures are performed by a physician.
9. Birth control services and medications are not covered under the Plan, except that benefits are provided for physician services rendered in connection with the prescription of oral contraceptives, the fitting of a diaphragm or the insertion or removal of an IUD.

(p) Services Not Covered

1. Services rendered by a chiropractor or naturopathic services.
2. Acupuncture therapy.

3. Home obstetrical delivery.
 4. Telephone conversations with a physician in lieu of an office visit.
 5. Charges for writing a prescription.
 6. Medications dispensed by other than a licensed pharmacist.
 7. Charges for medical summaries and medical invoice preparations.
 8. Services of any practitioner who is not legally licensed to practice medicine, surgery, or counseling, except as specifically provided herein.
 9. Cosmetic surgery, unless pertaining to surgical scars or to correct results of an accidental injury or birth defects.
 10. Physical examinations, except as specifically provided herein.
 11. Removal of tonsils or adenoids, unless medically necessary.
- (5) Prescription Drugs
- (a) Benefits Provided
- Benefits are provided for prescription drugs prescribed by a physician for treatment or control of an illness or non-occupational accident. The initial amount dispensed shall not exceed a 30-day supply. Any original prescription may be refilled for up to six months as directed by the attending physician. The first such refill may be for an amount up to but no more than a 60-day supply. The second such refill may be for an amount up to but no more than a 90-day supply. Benefits for refills beyond the initial six months require a new prescription by the attending physician.
- Benefits shall not be provided under this paragraph (5)(a) for any medications dispensed in a hospital (including take-home drugs), skilled nursing facility or physician's office. See Article III A (2)(a) and (6)(a) for benefits provided for drugs and medications during inpatient confinement in a hospital or skilled nursing care facility.
- (b) Benefits Excluded
- Benefits are not provided for the following: (1) Birth control prescriptions; (2) Medications dispensed from a physician's office.
- (6) Skilled Nursing Care and Extended Care Units
- (a) Skilled Nursing Care Facility
- Upon determination by the attending physician that confinement in a licensed skilled nursing care facility² is medically necessary, to the extent that benefits are not available from Medicare or other State or Federal programs, benefits will be provided for:
1. Skilled nursing care provided by or under the supervision of a registered nurse;
 2. Room and board;
 3. Physical, occupational, inhalation and speech therapy, either provided or arranged for by the facility;
 4. Medical social services;
 5. Drugs, immunizations, supplies, appliances and equipment ordinarily furnished by the facility for the care and treatment of inpatients;
 6. Medical services, including services provided by interns or residents in an approved, hospital-run training program, as well as other diagnostic and therapeutic services provided by the hospital; and,
 7. Other health services usually provided by skilled nursing care facilities.
- The Plan will not pay for services in a nursing care facility:
1. that is not licensed or approved in accordance with state laws or regulations;
 2. unless the service is provided by or under the direct supervision of licensed nursing personnel and under the general direction of a physician in order to achieve the medically desired results.
- Exclusions:
- Telephone, T.V., radio, visitors' meals, private room or private nursing (unless necessary to preserve life), custodial care, services not usually provided in a skilled nursing facility.
- (b) Extended Care Units
- Benefits are provided for up to two weeks of specialized medical services and daily treatments by licensed personnel in extended care units. When medically necessary, benefits may be provided for a longer period of time, subject to approval from the Plan Administrator.
- The Plan will not pay for services in an extended care unit unless, in the case of a Medicare patient, such extended care has prior approval of Medicare.
- Exclusions:
1. Services, drugs or other items which are not covered for hospital inpatients;
 2. Custodial care.
- (7) Home Health Services & Equipment
- (a) General Provisions
- Benefits are provided for home health services, including nursing visits by registered nurses and home health aides, and various kinds of rehabilitation therapy, subject to the following conditions and approval of the Plan Administrator:
1. The Beneficiary must be under the care of a physician.
 2. The Beneficiary's medical condition must require skilled nursing care, physical therapy, or speech therapy at least once in a 60-day period.
 3. The physician must initiate a treatment plan and specify a diagnosis, the Beneficiary's functional limitations and the type and frequency of skilled services to be rendered.
 4. The Beneficiary must be confined to his home. The services must be provided by a certified home health agency.
- (b) Physical and Speech Therapy
- Benefits are provided for physical and speech therapy services at home when prescribed by a physician to restore functions lost or reduced by illness or injury. Such services must be performed by qualified personnel. When the Beneficiary has reached his or her restoration potential, the services required to maintain this level do not constitute covered care.
- (c) Skilled Nursing
- Benefits are provided for skilled nursing care rendered by a registered nurse as a home health service when a Beneficiary's condition has not stabilized and a physician concludes that the Beneficiary must be carefully evaluated and observed by a registered nurse. The Plan Administrator may request an evaluation visit to the Beneficiary's home.
- (d) Medical Equipment
- Benefits are provided for rental, or where appropriate, purchase of medical equipment suitable for home use when determined to be medically necessary by a physician.
- (e) Oxygen
- Benefits are provided for oxygen supplied to a Beneficiary subject to the following conditions when ordered by the attending physician:
1. The patient is referred to a designated pulmonary consultant for testing.
 2. Such consultant's report is submitted to the Plan Administrator with the order for oxygen.
- Benefits are also provided for services of inhalation therapists in the home with the attending physician's order.
- (f) Coal Miners Respiratory Disease Program
- Benefits are provided for services or treatments administered by personnel employed by the Coal Miners Respiratory Disease Program to a Beneficiary in such Beneficiary's home when ordered or requested by a physician, except where such benefits are available under a government program and such Beneficiary is eligible, or upon application would be eligible, under such programs.
- (8) Other Benefits
- (a) Orthopedic and Prosthetic Devices
- Benefits are provided for orthopedic and prosthetic devices prescribed by a physician when medically necessary. The following types of equipment are covered:
1. Prosthetic devices which serve as replacement for internal or external body parts, other than dental. These include artificial eyes, noses, hands (or hooks), feet, arms, legs and ostomy bags and supplies.
 2. Prosthesis following breast removal.
 3. Leg, arm, back, and neck braces.
 4. Trusses.
 5. Stump stockings and harnesses when these devices are essential for the effective use of an artificial limb. An examination and recommendation is required by an orthopedic physician.
 6. Surgical stockings (up to 2 pair per prescription with no refills) when prescribed by a physician for surgical or medical conditions. The Plan will not pay Beneficiaries for support hose, garter belts, etc.
 7. Orthopedic shoes when specially prescribed by a physician or licensed podiatrist for a Beneficiary according to orthopedist specifications, including orthopedic shoes attached to a brace that have to be modified to accommodate the brace. Benefits will not be provided for stock orthopedic shoes.
 8. Orthopedic corrections added to ordinary shoes by a physician or licensed podiatrist. Benefits are provided for only the correction to the shoe.
- (b) Physical Therapy
- Benefits are provided for physical therapy in a hospital, skilled nursing facility, treatment center, or in the Beneficiary's home. Such therapy must be prescribed and supervised by a physician and administered by a licensed therapist. The physical therapy treatment must be justified on the

² Skilled nursing care facility is limited to a skilled nursing care facility which is licensed and approved by Federal Medicare.

basis of diagnosis, medical recommendation and attainment of maximum restoration.

NOTE: Benefits are provided for repairs and adjustments for braces, trusses, stump stockings and harnesses as well as replacement of any of those devices which have been worn out and can no longer be repaired. Benefits will be provided for replacements for usable appliances and artificial limbs if they are needed because of a change in the Beneficiary's condition. Benefits will also be provided to cover repair and adjustment cost for appliances and artificial limbs.

If replacement of a prosthesis is required, the Beneficiary should in all cases be reevaluated by an orthopedic physician.

(c) Speech Therapy

Benefits are provided for speech therapy rendered by a qualified licensed speech therapist if the Beneficiary is a stroke patient or has had conditions including ruptured aneurysm, brain tumors or autism and needs special instruction to restore technique of sound and to phonate, and needs direction in letter and word exercises in order to express basic needs. Benefits are also provided for speech therapy for child Beneficiaries with a speech impediment from a qualified speech therapist provided that the child cannot receive speech therapy through the public schools.

(d) Hearing Aids

Benefits are provided for hearing aids recommended by a licensed otologist or otolaryngologist and a certified clinical audiologist. Such hearing aids must be purchased from a participating vendor. Benefits for necessary repairs and maintenance, except the replacement of batteries, will be provided after the expiration of the warranty period. Benefits will be provided for replacement hearing aids only if a new aid is needed because of a change in the Beneficiary's condition, or if the aid no longer functions properly. Benefits will not be provided for any fees for incorporating hearing aids into eyeglasses.

(e) Ambulance and Other Transportation

Benefits are provided for ambulance transportation to or from a hospital, clinic, medical center, physician's office, or skilled nursing care facility, when considered medically necessary by a physician.

With prior approval from the Plan Administrator, benefits will also be provided for other transportation subject to the following conditions:

1. If the needed medical care is not available near the Beneficiary's home and the Beneficiary must be taken to an out-of-area medical center.
2. If the Beneficiary requires frequent transportation between the Beneficiary's home and hospital or clinic for such types of treatment as radiation or physical therapy or other special treatment which would otherwise require hospitalization, benefits will be provided for such transportation only when the Beneficiary cannot receive the needed care without such transportation.
3. If the Beneficiary requires an escort during transportation, the attending physician must submit satisfactory evidence to the Plan Administrator as to why the Beneficiary needs an escort.

(f) Outpatient Mental Health, Alcoholism and Drug Addiction

Benefits are provided for:

Psychotherapy, psychological testing, counseling, group therapy and alcoholism or drug rehabilitative programs where free care sources are not available and when determined to be medically required by a physician.

Benefits are not provided for:

1. Encounter and self-improvement group therapy.
2. Custodial care related to mental retardation and other mental deficiencies.
3. School related behavioral problems.
4. Services by private teachers.
5. Alcoholism and drug rehabilitation if an advance determination has not been made by the rehabilitation team that the Beneficiary is a good candidate for rehabilitation.
6. Alcoholism and drug rehabilitation programs not approved by Medicare.
7. Marital maladjustment and divorce counseling.

(9) Prescription Drug Deductible and Copayments

Medication and Drugs as set forth in section A(5), and take-home drugs following a hospital confinement, are subject to the following deductible and copayments:

- (a) All prescriptions are subject to a \$50 deductible per family per year. The first \$50 of all prescriptions by covered family members will be counted toward satisfying the annual family prescription deductible. Before prescription benefits are paid by the Plan on behalf of a beneficiary, this deductible must be satisfied.
- (b) After the deductible has been satisfied, the Beneficiary will pay:
 1. \$10 per prescription on generic drugs.
 2. \$15 per prescription on formulary drugs.
 3. \$25 per prescription on brand name drugs.

2. \$15 per prescription on formulary drugs.

3. \$25 per prescription on brand name drugs.

The deductible and copayments on prescription drugs do not count as part of the annual deductible or out-of-pocket maximums provided at Section A(1)(b),(c) or (d).

(10) Vision Care Program

(1)

Benefits	Actual Charge Up To Maximum Amount	Frequency Limits
Vision Examination	\$36	Once every 24 months
Per Lens (Maximum = 2)		Once every 24 months
Single vision	18	
Bifocal	27	
Trifocal	36	
Lenticular	45	
Contact	27	
Frames	26	Once every 24 months.

Prescription safety glasses for Employees (lenses and frame): actual charge up to a maximum amount of \$90.00, once every 12 months.

(2) Lenses will not be covered unless the new prescription from the most recent one by an axis change of 20 degrees or .50 diopter sphere or cylinder change and the lenses must improve visual acuity by at least one line on the standard chart.

(3) Exclusions include:

- a. sunglasses (other than Tints #1 or #2);
- b. extra charges for photosensitive or anti-reflective lenses;
- c. drugs or medication (other than for vision examination), medical or surgical treatment of eyes;
- d. special procedures, such as orthoptics, vision training, subnormal vision aids, aniseikonic lenses and tonography;
- e. experimental services or supplies;
- f. replacement of lost or broken lenses and/or frames unless replacement is eligible under the frequency and prescription limitations;
- g. services or supplies not prescribed as necessary by a licensed physician, optometrist or optician;
- h. services or supplies for which the insured person is entitled to benefits under any other provision of the Plan or as provided under a mine safety glass program;
- i. any services which are covered by any workers' compensation laws or employer's liability laws, or services which the Employer is required by law to furnish in whole or in part;
- j. services or supplies which are obtained from any governmental agency without cost by compliance with laws or regulations enacted by any federal, state, municipal or other governmental body;
- k. charges for services or supplies for which no charge is made that the Beneficiary is legally obligated to pay or for which no charge would be made in the absence of vision care coverage.

(4) The exclusions in (3) above shall not be read to limit or exclude coverage that may be contained elsewhere in the Plan.

(11) General Provisions

(a) Health Maintenance Organization

Any Beneficiary described in Article II, Sections A, B, and C, may elect coverage by a certified health maintenance organization (HMO) in lieu of the health benefits provided under this Plan, in accordance with Federal or State laws governing HMO's; provided, however, that all Beneficiaries in a family shall be governed by an HMO election.

If the monthly charge made by the HMO exceeds the monthly cost of this Plan to the Employer, the excess charge shall be paid by the Beneficiary.

(b) Administration

The Plan Administrator is authorized to promulgate rules and regulations to implement the Plan, and such rules and regulations shall be binding upon all persons dealing with the Beneficiaries claiming benefits under this Plan. The Trustees of the 1978 Retired Construction Workers Benefit Trust will resolve any disputes to assure consistent application of the Plan provisions, and the Trustees are empowered to make a final determination on all claims disputes which may arise under the Plan. A Beneficiary or Employer who is dissatisfied with a decision by the Plan Administrator shall have 60 days from receipt of the decision to appeal it to the Trustees.

(c) Services Rendered Outside the United States

Benefits are provided for health care rendered outside of the United States on the same basis as if such care had been rendered in the United States.

(d) Subrogation

The Plan does not assume primary responsibility for medical ex-

penses which another party is obligated to pay or which another insurance policy or other medical plan covers. Where there is a dispute between the carriers, the plan shall, subject to provisions 1 and 2 immediately below, pay for such covered expenses but only as a convenience to the Beneficiary eligible for benefits under the Plan and only upon receipt of an indemnification or subrogation agreement; but the primary and ultimate responsibility for payment shall remain with the other party or carrier.

Obligation to pay benefits on behalf of any Beneficiary may be conditioned:

1. Upon such Beneficiary taking all steps necessary or desirable to recover the costs thereof from any third party who may be obligated therefor, and
2. Upon such Beneficiary executing such documents as are reasonably required by the Plan Administrator, including, but not limited to, an assignment of rights to receive such third party payments, in order to protect and perfect the Plan's right to reimbursement from any such third party.

(e) Non-Duplication

The health benefits provided under this Plan are subject to a non-duplication provision as follows:

1. Benefits will be reduced by benefits provided under any other group plan, including a plan of another Employer signatory to the Wage Agreement, if the other plan:

(i) Does not include a coordination of benefits or non-duplication provision, or (ii) includes a coordination of benefits or non-duplication provision and is the primary plan as compared to this Plan.

2. In determining whether this Plan or another group plan is primary, the following criteria will be applied:

(i) the Plan covering the patient other than as a dependent will be the primary plan.

(ii) Where both plans cover the patient as a dependent child, the plan covering the patient as a dependent child of the parent whose month and day of birth occurs earlier in the year will be the primary plan.

(iii) Where the determination cannot be made in accordance with (i) or (ii) above, the plan which has covered the patient the longest period of time will be the primary plan.

3. As used herein, "group plan" means (i) any plan covering the individuals as members of a group and providing the individuals as members of a group and providing hospital or medical care benefits or services through group insurance or a group prepayment arrangement, or (ii) any plan covering individuals as employees of an employer and providing such benefits or services, whether on an insured prepayment or uninsured basis.
4. If it is determined that benefits under this Plan should have been reduced because of benefits provided under another group plan, the Plan Administrator shall have the right to recover any payment already made which is in excess of the Plan's liability. Similarly, whenever benefits which are payable under the Plan have been provided under another group plan, the Plan Administrator may make reimbursement directly to the insurance company or other organization providing benefits under the other plan.
5. For the purpose of this provision, the Plan Administrator may, without consent of or notice to any Beneficiary, release to or obtain from any insurance company or other organization or person any information which may be necessary regarding coverage, expense and benefits.
6. Any Beneficiary claiming benefits under this Plan must furnish the Plan Administrator such information as may be necessary for the purpose of administering this provision.

(f) Explanation of Benefits (EOB)

Each Beneficiary shall receive an explanation of benefits and payment rendered on behalf of such Beneficiary.

(12) General Exclusions

(a) In addition to the specific exclusions otherwise contained in the Plan, benefits are also not provided for the following:

1. Cases covered by workers' compensation laws or employer's liability acts or services for which an employer is required by law to furnish in whole or in part.
2. Services rendered (i) prior to the effective date of a Beneficiary's eligibility under the Plan, (ii) subsequent to the period after which a Beneficiary is no longer eligible for benefits under the Plan, or (iii) in a non-accredited hospital, other than for emergency services as set forth in A(3) and (4)(i).
3. Services furnished by any governmental agency, including benefits provided under Federal Medicare and Federal and State Black Lung

legislation for which a Beneficiary is eligible or upon proper application would be eligible, unless otherwise required under applicable federal law.

4. Services furnished by tax-supported or voluntary agencies.
5. Immunizations provided by local health agencies.
6. Evaluation procedures such as x-rays and pulmonary function tests, in connection with applications for black lung benefits, or required by Federal or State Black Lung legislation.
7. Private duty nursing. If necessary to preserve life and certified as medically necessary by the attending physician and an Intensive Care Unit is unavailable, benefits are provided for private duty nursing services for up to 72 hours per inpatient hospital admission. In no event will payment be made for private duty nursing during a period of confinement in the Intensive Care Unit of a hospital.
8. Custodial care, convalescent or rest cures.
9. Personal Services such as barber services, guest meals and costs, telephone or rental of radio or television and personal comfort items not necessary to the treatment of an illness or injury.
10. Charges for private room confinement, except as specifically described in the Plan.
11. Services for which a Beneficiary is not required to make payment.
12. Excessive charges as determined solely by the Plan Administrator.
13. Charges related to sex transformation.
14. Charges for reversal of sterilization procedures.
15. Charges in connection with a general physical examination, other than as specified in this Plan.
16. Inpatient confinements solely for diagnostic evaluations which can be provided on an outpatient basis.
17. Charges for medical services for inpatient or outpatient treatment for mental retardation and other mental deficiencies.
18. Finance charges in connection with a medical bill.
19. Dental services.
20. Birth control devices and medications.
21. Abortion, except as specifically described in the Plan.
22. Eyeglasses or lenses, except when medically required because of surgically caused refractive errors, or as otherwise provided in section A(9).
23. Exercise equipment.
24. Charges for treatment with new technological medical devices and therapy which are experimental in nature.
25. Charges for treatment of obesity, except for pathological morbid forms of severe obesity (200% or more of desirable weight) when prior approval is obtained from the Plan Administrator.
26. Charges for an autopsy or post-mortem surgery.
27. Any types of services, supplies, or treatments not specifically provided by the Plan.
28. Charges in connection with an intentional self-inflicted injury.

B. Life and Accidental Death and Dismemberment Insurance

Life and accidental death and dismemberment insurance will be provided for Employees, as described in Article II, Sections A and B, in accordance with the following schedule:

- (a) Upon the death of an Employee, occurring while he is eligible for benefits and on or after the effective date of the Wage Agreement, due to other than violent, external and accidental means, life insurance in the amount of \$75,000 will be paid to the Employee's named beneficiary.
- (b) Subject to (d) below, upon the death of an Employee, as the result of an injury occurring while he is eligible for benefits and on or after the effective date of the Wage Agreement, due solely to violent, external and accidental means, life insurance in the amount of \$150,000 will be paid to the Employee's named beneficiary.
- (c) If an Employee shall lose two or more members as the result of an injury occurring while he is eligible for benefits and on or after the effective date of the Wage Agreement, due to violent, external and accidental means, such Employee shall receive a \$100,000 dismemberment benefit. If an Employee shall lose one member as the result of an injury occurring while he is eligible for benefits and on or after the effective date of the Wage Agreement, due solely to violent, external and accidental means, such Employee shall receive a \$75,000 dismemberment benefit. A member for the purpose of the above is (i) a hand at or above the wrist, (ii) a foot at or above the ankle or (iii) total loss of vision of one eye.
- (d) Accidental death or dismemberment benefits are not payable if caused in whole or in part by disease, bodily or mental infirmity, ptomaine or bacterial infection, hernia, suicide, intentional self-inflicted injury, insurrection, acts of war, or is caused by or results from committing a felony.

C. General Provisions**(1) Continuation of Coverage****(a) Layoff**

If an Employee ceases work because of layoff, continuation of health, life and accidental death and dismemberment insurance coverages is as follows:

(i) An Employee who had accrued layoff benefit credits under the Benefit Plan prior to October 1, 1991, shall retain the layoff benefit credits he had accrued as of that time, and in the event of layoff the Employee shall be afforded continued coverage under the provisions of this Plan to the extent that such Employee had accrued layoff benefit credits; provided, however, that layoff benefit credits shall only be utilized in whole month increments. (An Employee who quits or is discharged from an Employer shall forfeit any layoff benefit credits earned from that Employer in his last period of employment with that Employer.) An Employee who had accrued layoff benefit credits shall exhaust such layoff benefit credits prior to being afforded any other extended benefit coverage under this Plan, except no employee shall receive less than the extended coverage to which he is entitled as set forth hereinafter.

(ii) An Employee who is an active employee for at least three months but less than six months during his last period of employment with an Employer (i.e., the date from which he is hired or recalled until the date he is laid off) shall be afforded 30 days of extended coverage under this Plan following his layoff.

An Employee who is an active employee for six months or more during his last period of employment with an Employer shall be afforded 60 days of extended coverage under this Plan following his layoff.

An Employee who does not qualify for extended coverage shall be afforded coverage under this Plan through the end of the month in which he is laid off.

If an Employee entitled to extended coverage at the time he is laid off by an Employer is subsequently recalled and laid off again by the Employer or another employer signatory to the Wage Agreement, under no circumstance will he be entitled to coverage for less than the period of extended coverage to which he was first entitled, measured from the date he was first laid off by the Employer.

Example A: Jones is laid off by ABC Company on May 8. At the time he is laid off, he is entitled to 60 days extended coverage by reason of his length of employment with ABC Company prior to May 8. Jones is recalled by ABC Company on May 17 and laid off again on May 29. Jones has extended coverage through July 7. Jones' coverage cannot be less than 60 days from the date he was first laid off, i.e. 60 days from May 8.

Example B: Jones is laid off by ABC Company on May 8. At the time he is laid off, he is entitled to 60 days extended coverage by reason of his length of employment with ABC Company prior to May 8. Jones goes to work for DEF Corporation on May 17 and is laid off by DEF Corporation on May 29. DEF Corporation is an employer signatory to the Wage Agreement. Jones has extended coverage through July 7. Jones' coverage cannot be less than 60 days from the date he was first laid off by ABC Company, i.e., 60 days from May 8.

Example C: Jones is laid off by ABC Company on May 8. At the time he is laid off, he is entitled to 60 days extended coverage by reason of his length of employment with ABC Company prior to May 8. Jones goes to work for XYZ Inc. on May 17 and is laid off by XYZ Inc. on May 29. XYZ Inc. is not an employer signatory to the Wage Agreement. Jones' coverage ended May 16. Jones' coverage ended when he accepted employment with an employer not signatory to the Wage Agreement.

Example D: Jones is laid off by ABC Company on May 8. At the time he is laid off, he is entitled to 60 days extended coverage by reason of his length of employment with ABC Company prior to May 8. Jones is recalled by ABC Company on June 15 and laid off again on July 3. Jones is entitled to coverage through July 31. Although Jones' extended coverage ended July 7, he is entitled to coverage through the end of the month in which he is laid off.

Example E: Jones is laid off by ABC Company on May 8. At the time he is laid off, he is entitled to 60 days extended coverage by reason of his length of employment with ABC Company prior to May 8. Jones is recalled by ABC Company on May 17 and laid off again on July 31. Jones' coverage ends on July 31. Jones' extended coverage ran only through July 7, and since he was laid off on the last day of the month his coverage ends that day.

(b) Disability

Except as otherwise provided in Article II, Section B, if an Employee ceases work because of disability, the Employee will be eligible to continue health, life and accidental death and dismemberment insurance cov-

erages while disabled for the greater of (i) the period of eligibility for Sickness and Accident benefits, or (ii) the period as set forth in (a) above.

(c) Leave of Absence

1. During any period for which an Employee is granted an approved leave of absence for the purpose of accepting temporary employment with the United Mine Workers of America (UMWA) such Employee may elect to pay premiums for health, life and accidental death and dismemberment insurance coverage for a period not to exceed 120 calendar days from the date last worked.

2. During any period for which an Employee is granted an approved leave of absence for any other reason, such Employee's eligibility for health, life and accidental death and dismemberment insurance coverage shall be suspended during the period of such leave.

(d) Maximum Continuation of Coverage

In no event shall any combination of the provisions (a), (b), or (c) above result in continuation of coverage beyond the balance of the month plus 12 months from the date last worked.

(e) Quit or Discharge

If an Employee quits or is discharged, health, vision care, life and accidental death and dismemberment insurance coverage will terminate as of the date last worked.

(f) Employment with Another Employer

Notwithstanding the foregoing, an Employee's health, vision care, life and accidental death and dismemberment insurance coverage will terminate as of the date the Employee accepts employment with an employer not signatory to the Wage Agreement. When an Employee goes to work for another employer signatory to the Wage Agreement during the time that he is entitled to extended coverage, and becomes eligible for coverage from such second employer, the second employer shall be primarily liable for providing coverage.

(g) Article 4(i) Termination

An employee terminated under the provisions of Article 4(i) of the Wage Agreement shall not be treated as quit or discharge for purposes of continuation of coverage.

(2) Advanced Insurance Premiums

In the event of an economic strike at the expiration of the 2002 National Coal Mine Construction Agreement, the Employer will advance the premiums for its health, vision care, and life and accidental death and dismemberment insurance coverage for the first 30 days of such strike, unless declined by the employee prior to expiration of the Wage Agreement. Such advanced premiums shall be repaid to the Employer by such Employees through a check-off deduction upon their return to work. Should such a strike continue beyond 30 days, the Union or such Employees may elect to pay premiums themselves.

NOTE: Notwithstanding the provisions of paragraphs (1) and (2), upon conclusion of an applicable period of continued coverage, a Beneficiary may elect continuation coverage pursuant to the provisions of paragraph (5).

(3) Conversion Privilege—Life

Upon application to the insurance carrier within 31 days after life insurance coverage terminates, the Employee may, subject to applicable state insurance laws, arrange to continue life insurance protection under an individual policy, for an amount not greater than \$25,000 without evidence of insurability. Such individual policy may be on any one of the forms of policy then customarily issued by the insurance company, other than a policy of term insurance or one which provides disability benefits in the event of accidental death, and will be issued at the rate applicable to the Employee's age and class of risk at the time.

(4) Conversion Privilege—Health

Upon application to the insurance carrier within 31 calendar days after health insurance terminates (including any continuation coverage), the Employee may, without medical examination, arrange to continue health insurance benefits. The type of policy coverage and premiums will be subject to the terms and conditions set forth by the insurance carrier.

(5) Continuation Coverage Under COBRA—Health

Pursuant to the Consolidated Omnibus Budget Reconciliation Act ("COBRA"), eligible Beneficiaries and Dependents enrolled in the Plan are allowed to continue participation as a temporary extension of health coverage upon payment of a monthly premium by the Beneficiary in certain instances where coverage under the Plan would otherwise end. Coverage is deemed to end upon the exhaustion of any extended coverage provided under Section C(1).

(a) A Beneficiary may continue coverage if coverage in the Plan ceases because of the termination of employment for reasons other than gross misconduct;

(b) A dependent spouse of a Beneficiary participating in the Plan may continue coverage if group health coverage terminates for any of the following reasons:

- (i) The death of the Beneficiary;
 - (ii) Termination of the Beneficiary's employment for reasons other than gross misconduct;
 - (iii) Divorce or legal separation from the Beneficiary; or
 - (iv) The Beneficiary becomes eligible for Medicare.
- (c) The enrolled dependent child of a Beneficiary has the right to continue coverage if group health coverage terminates for any of the following reasons:
- (i) The death of the parent/Beneficiary;
 - (ii) Termination of the parent/Beneficiary's employment for reasons other than gross misconduct;
 - (iii) Parent/Beneficiary's divorce or legal separation;
 - (iv) The parent/Beneficiary becomes eligible for Medicare; or
 - (v) The Dependent ceases to be a "dependent child."
- (d) If continuation of coverage is elected under COBRA benefits, health benefits shall remain the same as those received by active Beneficiary.
- (i) For Beneficiaries, coverage may be maintained for a maximum period of 18 months, except that where the Beneficiary is determined to have been disabled under Title II or XVI of the Social Security Act and provides notice of such determination prior to the termination of coverage, the maximum period shall be 29 months;
 - (ii) For Dependents, coverage may be maintained for a maximum period of 36 months if coverage is terminated due to divorce, death of the Beneficiary, Beneficiary's Medicare eligibility or becoming an overage dependent. If coverage is terminated due to termination of the Beneficiary's employment, coverage may be continued for the period provided in subparagraph (i).
- (e) Benefits continued through COBRA will terminate upon:
- (i) The end of the applicable period;
 - (ii) The date the Employer ceases to provide any group health plan;
 - (iii) The end of the period for which the qualified Beneficiary has made the required premium payments (non-payment);
 - (iv) The date the qualified person becomes entitled to Medicare (other qualified persons not entitled to Medicare would be eligible to extend COBRA continuation for 36 months from the original effective date of COBRA continuation);
 - (v) The date the Beneficiary or Dependent becomes covered under another group plan unless that plan has a "pre-existing condition clause" in which case the Beneficiary or Dependent, the qualified beneficiary, would be allowed to continue coverage under this Plan.

NOTE: The Beneficiary or Dependent will receive a written notice of the right to continue the coverage upon termination of coverage. The Beneficiary and/or Dependent will have 60 days to make an election. Such notice will state the amount of the payments required for the continuation of coverage. Payment must be made within 45 days of the election.

At the time the Beneficiary's coverage or that of any eligible dependents ends, the Beneficiary or Dependent may choose to continue benefits under the COBRA provisions of the Plan.

(6) TEFRA/DEFRA/ADEA Compliance

- (a) **Health Coverage for Active Beneficiaries Over Age 65**
- Beneficiaries of the Plan who are over 65 years of age have a choice of carriers for primary health care coverage. The Beneficiary may elect coverage for himself and his Dependents under the Plan as the primary carrier or may choose Medicare to be the primary carrier.
- If the Beneficiary chooses the Plan to provide primary coverage, the Plan will pay the same benefits as if the Beneficiary were under age 65, and any unpaid portion of the bill will be coordinated with Medicare.
- If the Beneficiary chooses Medicare to provide primary coverage, the Plan will only be coordinated with Medicare to the extent that the Plan covers those expenses that Medicare does not cover.
- (b) **Health Coverage for Spouses Over Age 65 of an Active Beneficiary**
- If the spouse of the Beneficiary is age 65 or older, the Beneficiary has the opportunity to elect either the Plan or Medicare as the primary carrier for the spouse.
- If the Beneficiary chooses the Plan to provide primary coverage, the Plan will pay the same benefits as if the Beneficiary were under age 65, and any unpaid portion of the bill will be coordinated with Medicare.
- If the Beneficiary chooses Medicare to provide primary coverage, the Plan will only be coordinated with Medicare to the extent that the Plan covers those expenses that Medicare does not cover.
- All medical expenses covered under this Plan will be reduced by any Medicare benefits available for those expenses. This will be done before the medical benefits of this Plan are determined.

DENTAL PLAN

Introduction

The Dental Plan provides dental benefits for Employees and their eligible Dependents.

Section I—Definitions

The following terms shall have the meaning herein set forth:

- (1) "Employer" means any Employer signatory to the Wage Agreement, including its successors and assigns.
- (2) "Wage Agreement" means the National Coal Mine Construction Agreement of 2002, as amended from time to time and any successor agreement.
- (3) "Plan Administrator" shall be the insurer carrier/administrator responsible for coverage of the Employer's employees.
- (4) "Employee" shall mean a person actively working in a classified job for the Employer, eligible to receive dental benefits pursuant to Section II.
- (5) "Dependent" shall mean any person described in paragraph B of Section II.
- (6) "Attains the age" shall mean on or after 12:01 a.m. of the anniversary date of one's birth.
- (7) "Beneficiary" shall mean any person who is eligible pursuant to the Plan to receive dental benefits as set forth in Section II.
- (8) "Plan" shall mean this Dental Plan.

Section II—Eligibility

The persons eligible to receive the dental benefits pursuant to Section III are as follows:

A. EMPLOYEES

Benefits under Article III shall be provided to any Employee who is actively at work for the Employer on the effective date of the Wage Agreement and who was eligible for benefits under the Plan as of February 7, 2002.

Employees receiving Sickness and Accident Benefits pursuant to the Wage Agreement will be eligible for benefits.

B. NEW EMPLOYEES

The waiting period for a new Employee shall be as follows:

A new Employee will be eligible for dental benefits after completion of 30 calendar days of employment with the Employer; benefits shall begin on the 31st calendar day of employment with the Employer. In the event a new employee is laid off before the completion of 30 calendar days and returns, pursuant to a recall, to the same Employer in the calendar year, he will be eligible for benefits upon completion of 22 cumulative working days; benefits shall begin on the 23rd working day of employment with the Employer.

C. LAID-OFF EMPLOYEES

An Employee of the Employer who is eligible for benefits at the time he is laid off shall be eligible for benefits as of the first day he is recalled to work by the Employer.

D. ELIGIBLE DEPENDENTS

Dental benefits under Article III shall be provided to the following members of the family of any Employee receiving benefits pursuant to paragraph A or B of this Article II:

- (1) A spouse who is living with or being supported by an eligible employee;
- (2) Unmarried dependent children of an eligible Employee who are under 22 years of age;
- (3) A parent of an eligible Employee if the parent has been dependent upon and living in the same household with the eligible Employee for a continuous period of at least one year;
- (4) Unmarried dependent grandchildren of an eligible Employee who are under 22 years of age and are living in the same household with such Employee;
- (5) Dependent children (of any age) of an eligible Employee who are mentally retarded or who become disabled prior to attaining age 22 and such disability is continuous and who are either living in the same household with such Employee or are confined to an institution for care or treatment. Dental benefits for such children will continue as long as a surviving parent is eligible for dental benefits.

For purposes of this paragraph D, a person shall be considered dependent upon an eligible Employee, if such Employee provides on a regular basis over one-half of the support to such person.

E. EFFECTIVE DATE OF COVERAGE

Coverage will become effective as of the date the Employee becomes eligible pursuant to paragraph A above.

Section III—Benefits**A. PAYMENT OF BENEFITS**

After application of a Calendar Year deductible amount of \$50 for the Employee and \$50 for each Dependent for other than preventive services (those procedures prefaced by an asterisk in the Schedule of Benefits), and subject to the maximums specified in this Plan, benefits are payable in accordance with the Schedule of Benefits set out in Section V, but in no event will the benefit for a specific dental service be greater than the dentist's charge for the specific dental procedure.

B. MAXIMUM BENEFITS

After application of the Calendar Year deductible(s) referred to in paragraph A above:

- (1) The maximum benefit payable for all Covered Dental Expenses incurred during any Calendar Year shall be \$1,350 for the Employee and \$1,350 for each Dependent.
- (2) In applying the maximums referred to in (1) above, benefits for Covered Dental Expenses paid under any other group dental plan or program toward the cost of which the Employer contributes shall be considered to have been paid under this Plan.

C. CLAIMS NOT REQUIRING PREDETERMINATION OF BENEFITS

When Covered Dental Expenses are incurred by an Employee or Dependent for emergency treatment, routine oral examinations, x-rays, prophylaxis, fluoride treatments or a course of treatment, the charge for which is not expected to exceed \$150, predetermination of benefits (paragraph D below) is not required. The claims administrator will make the applicable benefit payment; however, any of the dentist's charges not payable under the provisions of the Dental Benefits coverage will be the Employee's responsibility.

D. CLAIMS REQUIRING PREDETERMINATION OF BENEFITS

If a course of treatment for the Employee or Dependent can reasonably be expected to involve dentist's charges of \$225 or more, a description of the procedures to be performed and an estimate of the dentist's charges must be filed with the claims administrator prior to the commencement of the course of treatment.

As used herein "course of treatment" means a planned program of one or more services or supplies, whether rendered by one or more dentists for the treatment of a dental condition diagnosed by the attending dentist as a result of an oral examination. The course of treatment commences on the date a dentist first renders a service to correct or treat such diagnosed dental condition.

The claims administrator will notify the Beneficiary and his dentist of the benefits certified as payable based upon such course of treatment within 30 days of receipt of the request for predetermination, or, if such certification cannot be made within 30 days, the claims administrator will notify the Beneficiary why a certification has been delayed. In determining the amount of benefits payable, consideration will be given to alternate procedures, services or courses of treatment that may be performed for such dental condition in order to accomplish the desired result. The amount included as certified dental expenses will be the appropriate amount determined in accordance with the provisions of paragraph E below, subject to the maximums set forth in paragraph B above and the limitations set forth in paragraph F below. If the Beneficiary and his dentist agree to a charge higher than the amount predetermined by the claims administrator, such excess will not be paid by the Plan and will be the Employee's responsibility.

If description of the procedures to be performed and an estimate of the dentist's charges are not submitted in advance, the claims administrator reserves the right to make a determination of benefits payable taking into account alternate procedures, services or courses of treatment, based on accepted standards of dental practice.

E. COVERED DENTAL EXPENSES

Covered Dental Expenses are those procedures specified in Section V incurred in connection with dental services which are performed by:

- (1) a licensed dentist practicing within the scope of his license, or
- (2) a licensed physician authorized by his license to perform the particular dental services rendered, but only to the extent such charges are for services and supplies customarily employed for treatment of that dental condition and only if rendered in accordance with accepted standards of dental practice.

F. LIMITATIONS

The following limitations³ apply:

- (1) Routine oral examinations and prophylaxis (scaling and cleaning of teeth) are limited to not more than two in any period of 12 consecutive months.
- (2) Space maintainer (a fixed or removable appliance designed to prevent adjacent and opposing teeth from moving) that replaces prematurely lost teeth are provided only for Dependent children.
- (3) Full mouth x-rays are limited to once in any period of 36 consecutive months and supplementary bitewing x-rays are limited to not more than two in any period of 12 consecutive months.
- (4) Relining or rebasing of dentures are limited to once in any period of 36 consecutive months, provided such relining or rebasing occurs more than six months after the initial installation or replacement.
- (5) Adjustments to partial or full removal dentures are limited to the first six months following the date of installation.
- (6) The addition of teeth to an existing partial removable denture or to bridgework is provided only if satisfactory evidence is presented that:
 - (i) the replacement or addition of teeth is required to replace one or more teeth extracted after the existing denture or bridgework was installed; or
 - (ii) the existing denture or bridgework cannot be made serviceable and it was installed at least five years prior to the date of its replacement; or
 - (iii) the existing denture is an immediate temporary denture which cannot be made permanent and replacement by a permanent denture takes place within 12 months from the date of initial installation of the immediate temporary denture.

Normally, dentures will be replaced by dentures but if a professionally adequate result can be achieved only with bridgework, such bridgework will be a Covered Dental Expense.
- (7) Gold, baked porcelain restorations, crowns and jackets—If a tooth can be restored with a material such as amalgam, payment of the benefit, as contained in Section V, for that procedure will be made toward the charge for another type of restoration which the Beneficiary and his dentist may select. In such case, the Employee is responsible for the balance of the treatment charge.
- (8) Reconstruction—Payment of the benefit, as contained in Section V, will be made toward the cost of procedures necessary to eliminate oral disease and to replace missing teeth. Appliances or restorations necessary to alter vertical dimension in restoring occlusion are considered optional and their cost remains the Employee's responsibility.
- (9) Partial Dentures—If a cast chrome or acrylic partial denture will restore the dental arch satisfactorily, payment of the benefit, as contained in Section V, for such procedure will be made toward a more elaborate or precision appliance that the Beneficiary and his dentist may choose to use; the balance of the cost remains the Employee's responsibility.
- (10) Precision Attachments—Benefits will not be provided for precision attachments when used for cosmetic purposes.
- (11) Dentures—If, in the provision of denture services, the Beneficiary and his dentist decide on personalized or specialized techniques as opposed to standard procedures, payment of the benefit, as contained in Section V, for the standard denture services will be made toward such treatment and the balance of the cost remains the Employee's responsibility.
- (12) Replacement of Existing Dentures or Fixed Bridgework—Replacement of an existing denture or fixed bridgework will be a Covered Dental Expense only if the existing denture or fixed bridgework is unserviceable and cannot be made serviceable. Payment of the benefit, as contained in Section V, for such service will be made toward the cost of services which are necessary to render such appliances serviceable. Replacement of prosthodontic appliances will be a Covered Dental Expense only if at least five years have elapsed since the date of the initial installation of that appliance.
- (13) Courses of Treatment in Progress on Effective Date of Dental Benefits—Benefits are not provided for treatment received prior to commencement of coverage. Claims for a course of treatment which was started prior to commencement of coverage but completed while coverage is in force will be investigated to determine the amount of

³ In respect to these services and/or supplies subject to a time period limitation, such period will be determined on a date-to-date basis measured from the date of service.

the entire fee which should be allocated to the treatment which was actually received while covered. Only that portion of the total fee which can be allocated to treatment received while covered will be included as a Covered Dental Expense.

G. EXCLUSIONS

Charges for the following are not Covered Dental Expenses:

- (1) Services other than those specifically listed in the Schedule of Benefits;
- (2) Treatment by other than a licensed dentist or licensed physician, except (a) charges for scaling or cleaning of teeth and topical application of fluoride may be performed by a licensed dental hygienist if the treatment is rendered under the supervision and guidance of and billed for by the dentist; and (b) charges by a dental school if
 - (i) the services are not experimental,
 - (ii) the dental school customarily charges for services and
 - (iii) the services are performed under the supervision of a licensed dentist;
- (3) Local infiltration anesthetic;
- (4) Substances or agents which are administered to minimize fear or charges for analgesia, unless the patient is handicapped by cerebral palsy, mental retardation or spastic disorder;
- (5) Veneers (the coating or covering of plastic or porcelain on the outside of and bonded to a crown or false tooth to cause it to blend with the color of surrounding teeth) or similar properties of crowns and pontics placed on or replacing teeth, other than the 10 upper and lower anterior teeth;
- (6) Prosthetic devices (including bridges), crowns, inlays and onlays, and the fitting thereof which were ordered while the individual was not covered for Dental Benefits, or which were ordered while the individual was covered for Dental Benefits but are finally installed or delivered to such individual more than 60 calendar days after the date of termination of coverage;

As used herein "ordered" means, in the case of dentures, that impressions have been taken from which the denture will be prepared; and, in the case of fixed bridgework, restorative crowns, inlays and onlays, that the teeth which will serve as abutments or support or which are being restored have been fully prepared to receive, and impressions have been taken from which will be prepared the bridge-work, crowns, inlays or onlays.
- (7) Replacement of a lost, missing or stolen prosthetic device;
- (8) Orthodontic procedures and/or treatment;
- (9) Any services which are covered by any workers' compensation laws or employer's liability laws, or services which an employer is required by law to furnish in whole or in part;
- (10) Services rendered through a medical department, clinic or similar facility provided or maintained by the patient's employer;
- (11) Services or supplies for which no charge is made that the Beneficiary is legally obligated to pay or for which no charge would be made in the absence of dental expense coverage, unless otherwise required under applicable federal law;
- (12) Services or supplies which are not necessary, according to accepted standards of dental practice, or which are not recommended or approved by the attending dentist;
- (13) Services or supplies which do not meet accepted standards of dental practice, including charges for services or supplies which are experimental in nature;
- (14) Services or supplies received as a result of dental disease, defect or injury resulting from the commission of a felony or due to an act of war, declared or undeclared;
- (15) Services or supplies which are obtained by the Employee or his Dependent from any governmental agency without cost by compliance with laws or regulations enacted by any governmental body, unless otherwise required under applicable federal law;
- (16) Any duplicate prosthetic device or any other duplicate appliance;
- (17) Charges for any services to the extent for which benefits are payable under any health insurance program supported in whole or in part by funds of the federal government or any state or political subdivision thereof;
- (18) Sealants (materials other than fluorides, painted on the grooves of the teeth in an attempt to prevent future decay) and for oral hygiene and dietary instruction;
- (19) A plaque control program (a series of instructions on the care of the teeth);
- (20) Implantology (an insert set firmly or deeply into or onto the part of the bone that surrounds and supports the teeth); and
- (21) Periodontal splinting.

H. DATE EXPENSES ARE INCURRED

Benefits are provided only for Covered Dental Expenses incurred on a date when coverage by the Dental Benefits provisions in this Plan is in effect for the Employee or his Dependent who incurs such expenses. Covered Dental Expenses are considered to have been incurred on the date when the applicable dental services, supplies or treatments are received, except as otherwise provided in paragraph G(7).

I. SUBROGATION

The Plan does not assume primary responsibility for Covered Dental Expenses which another party is obligated to pay or which another insurance policy or other dental plan covers. Where there is a dispute between the carriers, the Plan shall, subject to provisions (1) and (2) immediately below, pay for such Covered Dental Expenses but only as a convenience to the Employee or his Dependent and only upon receipt of an appropriate indemnification or subrogation agreement; but the primary and ultimate responsibility for payment shall remain with the other party or carrier.

Obligations to pay benefits on behalf of the Beneficiary shall be conditioned upon the Beneficiary:

- (1) taking all steps necessary or desirable to recover the costs thereof from any third party who may be obligated therefor, and
- (2) executing such documents as are reasonably required by the Plan Administrator, including but not limited to, an assignment of rights to receive such third party payments, in order to protect and perfect the Plan's right to reimbursement from any such third party.

J. NON-DUPLICATION

The Dental Benefits provided under this Plan are subject to a non-duplication provision as follows:

- (1) Benefits will be reduced by benefits provided under any other group plan, including a plan of another Employer signatory to the Wage Agreement if the other plan:
 - (i) does not include a coordination of benefits or non-duplication provision, or
 - (ii) includes a coordination of benefits or non-duplication provision and is the primary plan as compared to this Plan.
- (2) In determining whether this Plan or another group plan is primary, the following criteria will be applied:
 - (i) The Plan covering the patient other than as a dependent will be the primary plan.
 - (ii) Where both plans cover the patient as a dependent child, the plan covering the patient as a dependent child of the parent whose month and day of birth occurs earlier in the year will be the primary plan.
 - (iii) Where the determination cannot be made in accordance with (i) and (ii) above, the plan which has covered the patient the longer period of time will be the primary plan.
- (3) As used herein, "group plan" means:
 - (i) Any plan covering the individual as members of a group and providing dental benefits or services through group insurance or a group prepayment arrangement, or
 - (ii) any plan covering individuals as employees of an employer and providing such benefits or services, whether on an insured, prepayment or uninsured basis.
- (4) If it is determined that benefits under this Plan should have been reduced because of benefits provided under another group plan, the Plan Administrator shall have the right to recover any payment already made which is in excess of the Plan's liability. Similarly, whenever benefits which are payable under the Plan have been provided under another group plan, the Plan Administrator may make reimbursement directly to the insurance company or other organization providing benefits under the other plan.
- (5) For the purpose of this provision the Plan Administrator may, without consent of or notice to the Employee or his Dependent, release to or obtain from any insurance company or other organization or person any information which may be necessary regarding coverage, expense and benefits.
- (6) If the Employee or his Dependent is claiming benefits under this Plan, the Employee or such Dependent must furnish the Plan Administrator such information as may be necessary for the purpose of administering this provision.

Section IV—Termination of Coverage

If an Employee ceases active work, coverage will be terminated as set forth below:

A. DISABILITY

Coverage will terminate on the date such Employee ceases to be eligible for Sickness and Accident Benefits pursuant to the Wage Agreement.

B. LAYOFF

Coverage will terminate at the end of the month in which the Employee last worked.

C. ARTICLE IV, Section (i)—WAGE AGREEMENT

Coverage will terminate at the end of the month in which the Employee last worked, unless the Employee is eligible for Sickness and Accident Benefits pursuant to the Wage Agreement.

D. DEATH OF EMPLOYEE

Coverage for the eligible Dependents of the deceased Employee will terminate at the end of the month in which the Employee died.

E. LEAVE OF ABSENCE OR RETIREMENT

Coverage will terminate as of the last day worked.

F. QUIT OR DISCHARGE

Coverage will terminate as of the last day worked.

G. COBRA CONTINUATION COVERAGE

A Beneficiary who was receiving dental benefits prior to termination of employment, and whose health benefits are continuing pursuant to Article III(c)(5) of the Benefit Plan, shall have his dental benefits continued as part of such continuation coverage.

Section V—Schedule of Benefits

Procedures prefaced by an asterisk (*) are not subject to the Calendar Year deductible; all other procedures are subject to the Calendar Year deductible.

ADA Procedure Code	Dental Procedure Description	Maximum Benefit Payable Under the Plan
CLINICAL ORAL EXAMINATION		
0110	*Initial Oral Examination	\$ 18.00
0120	*Periodic Oral Examination.....	\$18.00
0130	*Emergency Oral Examination.....	\$26.00
X-RAYS		
0210	Intra-Oral Complete X-rays	42.00
0220	Intra-Oral—Single X-rays	9.00
0230	Intra-Oral X-ray—Additional	2.00
0240	Intra-Oral—Occlusal Single X-ray	11.00
0250	Extra-Oral Single X-ray	22.00
0260	Extra-Oral X-ray	9.00
0270	Bitewing Single X-ray	9.00
0272	Bitewing—2 films	12.00
0273	Bitewings—3 films	15.00
0274	Bitewings—4 films	18.00
0280	Bitewing X-ray—Additional	3.00
0290	Posteroanterio & Lateral Skull X-ray	34.00
0321	Temporo—Mandibular Joint X-ray	36.00
0330	Panoramic—Maxillary and Mandibular X-ray	41.00
0390	X-Rays—Miscellaneous	28.00
TESTS AND LABORATORY EXAMINATION		
0410	*Bacteriologic Cultures (Pathologic Agent).....	21.00
0420	*Caries Susceptibility Tests.....	12.00
0460	*Pulp Vitality Tests.....	9.00
0470	Diagnostic Models, in Connection with Endodontic or Periodontic Treatment.....	32.00

ADA Procedure Code	Dental Procedure Description	Maximum Benefit Payable Under the Plan
0470	Diagnostic Models, in Connection with Prosthodontic Treatment	20.00
0471	Diagnostic Photographs, in Connection with Endodontic or Periodontic Treatment.....	21.00
0471	Diagnostic Photographs, in Connection with Prosthodontic Treatment	13.00
DENTAL PROPHYLAXIS		
1110	*Dental Prophylaxis—Adults	31.00
1120	*Dental Prophylaxis—Children.....	22.00
FLUORIDE TREATMENTS		
1210	*Top Appl Sodium Fluo EX Pro	31.00
1211	*Top Appl Sodium Fluo INC Pro	36.00
1220	*Top Appl Stannous Fluo EX Pro	22.00
1221	*Top Appl Stannous Fluo INC Pro.....	27.00
1230	*Top Appl Acid Fluo Phos EX Pro	22.00
1231	*Top Appl Acid Fluo Phos INC Pro.....	27.00
SPACE MAINTAINERS		
1510	*Fixed Unilateral Type	135.00
1512	*Fixed Distal Shoe-Type	180.00
1515	*Fixed-Bilateral Type	162.00
1520	*Removable Unilateral Type	180.00
1525	*Removable Bilateral Type	180.00
1540	*Additional Clasps/Activating Wires	15.00
1550	Recement of Space Maintainer	28.00
AMALGAM RESTORATION		
2110	Amalgam One Surface—Primary	21.00
2120	Amalgam Two Surfaces—Primary.....	32.00
2130	Amalgam Three Surfaces—Primary.....	44.00
2131	Amalgam Four or More Surfaces—Primary.....	55.00
2140	Amalgam One Surface—Permanent.....	21.00
2150	Amalgam Two Surfaces—Permanent.....	35.00
2160	Amalgam Three Surfaces—Permanent.....	51.00
2161	Amalgam Four or More Surfaces—Permanent	58.00
2190	Reinforcing Pin	18.00
SILICATE RESTORATION		
2210	Silicate—Per Restoration.....	29.00
ACRYLIC OR PLASTIC RESTORATION		
2310	Acrylic or Plastic—Per Restoration.....	41.00
2320	Acrylic or Plastic/Incisal Angle.....	51.00
2330	Composite Resin 1 Surface	32.00
2331	Composite Resin 2 Surfaces	57.00
2332	Composite Resin 3 Surfaces	81.00
2334	Pin Retention Ex Composite	18.00
2335	Composite Resin Incisal Angle.....	72.00
2340	Acid Etch for Restorations.....	18.00
GOLD FOIL RESTORATION		
2410	Gold Foil Restoration—One Surf.....	116.00
2420	Gold Foil Restoration—Two Surfaces.....	202.00
2430	Gold Foil Restoration—Three Surfaces.....	231.00
GOLD INLAY RESTORATION		
2510	Gold Inlay—One Surface	188.00
2520	Gold Inlay—Two Surfaces	231.00
2530	Gold Inlay—Three Surfaces	260.00
2540	Gold Onlay.....	42.00
PORCELAIN RESTORATIONS		
2610	Porcelain Inlay	180.00
CROWN—SINGLE RESTORATIONS		
2710	Crown—Plastic/Acrylic	231.00
2711	Plastic—Prefabricated Crown.....	72.00
2720	Crown—Plastic with Gold.....	332.00
2721	Crown—Plastic/Nonprecious	297.00
2722	Crown—Plastic/Semiprecious	297.00
2740	Crown—Porcelain.....	317.00

ADA Procedure Code	Dental Procedure Description	Maximum Benefit Payable Under the Plan
2750	Crown—Porcelain with Gold	396.00
2751	Crown—Porcelain/Nonprecious	346.00
2752	Crown—Porcelain/Semiprecious	352.00
2790	Crown—Gold Full Cast	346.00
2791	Crown—Nonprecious—Full Cast	309.00
2792	Crown—Semiprecious—Full Cast	335.00
2810	Crown—Gold 3/4 Cast	288.00
2820	Crown—Gold Thimble	173.00
2830	Crown—Stainless Steel	72.00
2840	Crown—Temporary	55.00
2891	Crown Post and Care	87.00
2892	Crown-Amalgam/Composite BuildUp—W.P.	100.00
OTHER		
2910	Recement Inlay	25.00
2920	Recement Crown	25.00
2940	Fillings—Sedative	21.00
2950	Crown Buildup—Pin Retained	93.00
PULP CAPPING		
3110	Pulp Cap—Direct	18.00
3120	Pulp Cap—Indirect	15.00
PULPOTOMY		
3210	Therapeutic Apical Closure	28.00
3220	Vital Pulpotomy	36.00
ROOT CANAL THERAPY		
3310	Root Canal Therapy—One Canal	209.00
3311	Root Canal—Sargenti Method—One	168.00
3320	Root Canal Therapy—Two Canals	260.00
3321	Root Canal—Sargenti Method—Two	219.00
3330	Root Canal Therapy—Three Canals	389.00
3331	Root Canal—Sargenti Method—Three	317.00
3340	Root Canal Therapy—Four Canals	432.00
3350	Apexification	55.00
PERIAPICAL SERVICES		
3410	Apicoectomy	144.00
3420	Apicoectomy with Endodontic Manipulation	260.00
3430	Retrofilling	108.00
3440	Apical Curettage	108.00
3450	Root Amputation	108.00
OTHER ENDODONTIC PROCEDURES		
3910	Surgical Procedure—Rubber Dam	28.00
3920	Hemisection	90.00
3930	Canal and/or Pulp Chamber Enlargement	11.00
3940	Recalcification	29.00
3950	Canal Prep Fitting Dowel Post	45.00
3990	Emergency Procedure	28.00
SURGICAL SERVICES		
4210	Gingivectomy or Gingivoplasty	144.00
4220	Gingival Curettage	45.00
4240	Gingival Flap Procedure	188.00
4250	Mucogingival Surgery Per Quad	188.00
4260	Osseous Surgery Quadrant	360.00
4261	Osseous Graft Single Site	117.00
4262	Osseous Graft Multiple Site	162.00
4270	Pedicle Soft Tissue Graft	108.00
4271	Free Soft Tissue Graft	108.00
4272	Vestibuloplasty	224.00
4280	Periodontal Pulpal Procedures	72.00
ADJUNCTIVE SERVICES		
4320	Provisional Splinting Intra-Coronal	90.00
4321	Provisional Splinting Extra-Coronal	90.00
4330	Limited Occlusal Adjustment	36.00
4331	Complete Occlusal Adjustment	130.00
4340	Scaling & Root Planting Entire Mouth	87.00
4341	Scaling & Root Planting—Per Quadrant	22.00

ADA Procedure Code	Dental Procedure Description	Maximum Benefit Payable Under the Plan
4350	Tooth Movement for Periodontal Purposes	90.00
4360	Special Periodontal Appliances (B/R)	196.00
MISCELLANEOUS SERVICES		
4910	Preventive Periodontal Procedures	44.00
4920	Unscheduled Dressing Change	18.00
COMPLETE DENTURES		
5110	Complete Upper Denture	338.00
5120	Complete Lower Denture	338.00
5130	Immediate Upper Denture	360.00
5140	Immediate Lower Denture	338.00
PARTIAL DENTURES		
5211	Upper Partial Denture W/O Clasps	305.00
5212	Lower Partial Denture W/O Clasps	305.00
5215	PUD 2 Gold Clasp Acrylic Base	360.00
5216	PUD 2 Chrome Clasp Acrylic Base	360.00
5217	PLD 2 Gold Clasp Acrylic Base	360.00
5218	PLD 2 Chrome Clasp Acrylic Base	360.00
5230	PLD Gold L/Bar 2/C Acrylic Base	360.00
5231	PLD Chrome L/Bar 2/C Acrylic Base	360.00
5240	PLD Gold L/Bar 2/C Cast Base	360.00
5241	PLD Chrome L/Bar 2/C Cast Base	360.00
5250	PUD Gold P/Bar 2/C Acrylic Base	360.00
5251	PUD Chrome P/Bar 2/C Acrylic Base	360.00
5260	PUD Gold P/Bar 2/C Cast Base	414.00
5261	PUD Chrome P/Bar 2/C Cast Base	414.00
5280	Unilateral Partial Denture—Gold	68.00
5281	Unilateral Partial Denture—Chrome	68.00
5291	PUD Full Cast 2 Gold Clasps	428.00
5292	PUD Full Cast 2 Chrome Clasps	428.00
5293	PLD Full Cast 2 Gold Clasps	428.00
5294	PLD Full Cast 2 Chrome Clasps	428.00
ADDITIONAL UNITS FOR PARTIAL DENTURES		
5310	Each Additional Clasp/Rest	41.00
5320	Each Tooth (Applies to 5291-5294 Only)	20.00
ADJUSTMENTS TO DENTURES		
5410	Complete Denture Adjustment	20.00
5421	Partial Denture Adjust (Upper)	20.00
5422	Partial Denture Adjust (Lower)	20.00
REPAIRS TO DENTURES		
5610	Repair Broken Denture—No Tooth Damage	58.00
5620	Repair Broken Denture—Replace One Tooth	65.00
5630	Repair Denture/Replace Additional Tooth	32.00
5640	Replace Broken Tooth on Denture	36.00
5650	Add Tooth to Partial Denture—No Clasp	80.00
5660	Add Tooth to Partial Denture—W/Clasp	108.00
5670	Reattaching Damage Clasp on Denture	55.00
5680	Replace Clasp on Denture	87.00
5690	Replace Additional Clasp on Denture	72.00
DENTURE RELINING		
5710	Dupl U or L Complete Denture—Jump Case	173.00
5720	Dupl U or L Partial Denture—Jump Case	173.00
5730	Reline U or L Complete Denture—Off/Rel	126.00
5740	Reline U or L Partial Denture—Off/Rel	126.00
5750	Reline Complete Denture—Laboratory	159.00
5760	Reline Partial Denture—Laboratory	159.00
PROSTHETIC SERVICES		
5820	Temporary PUD (Stayplate)	135.00
5821	Temporary PLD (Stayplate)	135.00
5830	Obturator Excised Palatal Tissue	383.00
5840	Obturator/Cleft Palate	383.00
5850	Tissue Conditioning	32.00
BRIDGE PONTICS		
6210	Bridge Pontics—Cast Gold	162.00

ADA Procedure Code	Dental Procedure Description	Maximum Benefit Payable Under the Plan
6211	Bridge Pontics—Nonprecious	141.00
6212	Bridge Pontics—Semi-Precious.....	152.00
6220	Bridge Pontics—Steeles Facing.....	157.00
6230	Bridge Pontics—Tru Pontic.....	157.00
6235	Bridge Pontics—Pin Facing.....	157.00
6240	Bridge Pontics—Porcelain Fused to Gold.....	212.00
6241	BDG Pontic—Porc/Nonprecious.....	167.00
6242	BDG Pontic—Porc/Semi-Precious.....	167.00
6250	Bridge Pontics—Plastic Processed to Gold.....	198.00
6251	BDG Pontic—Plastic/Nonprecious.....	177.00
6252	BDG Pontic—Plastic/Semi-Precious 188.00	
ABUTMENTS		
6520	Two Surface Gold Inlay.....	144.00
6530	Three or More Surface Gold Inlay.....	162.00
6540	Gold Inlay (Onlaying Cusps).....	27.00
BRIDGE REPAIR		
6610	Replace Broken Pin Facing with Steeles.....	58.00
6620	Replace Broken Facing—Post Intact.....	55.00
6630	Replace Broken Facing—Post Broken.....	72.00
6640	Replace Broken Facing with Acrylic.....	55.00
6650	Replace Broken Tru Pontic.....	75.00
BRIDGE CROWNS		
6710	Bridge Crown—Plastic Acrylic.....	131.00
6720	Bridge Crown—Plastic Processed to Gold.....	216.00
6721	BDG—Crown—Plastic/Nonprecious.....	180.00
6722	BDG—Crown—Plastic/Semi-Precious.....	189.00
6740	Bridge Crown—Porcelain.....	198.00
6750	Bridge Crown—Porcelain Fused to Gold.....	248.00
6751	BDG—Crown Porcelain/Nonprecious.....	216.00
6752	BDG—Crown Porcelain/Semi-Precious.....	216.00
6760	Reverse Pin Facing and Metal.....	216.00
6780	Bridge Crown—Gold/Three-Fourths Cast.....	162.00
6790	Bridge Crown—Gold/Full Cast.....	180.00
6791	Bridge Crown—Nonprecious/Full Cast.....	162.00
6792	Bridge Crown—Semi-Precious/Full Cast.....	171.00
BRIDGE SERVICES		
6930	Bridge—Recement.....	42.00
6940	Bridge—Stress Breaker.....	54.00
6960	Bridge Dowel Pin Metal.....	68.00
ORAL SURGERY—UNCOMPLICATED EXTRACTIONS		
7110	Uncomplicated Extraction—Single Tooth.....	28.00
7120	Uncomplicated Extraction—Additional.....	21.00
SURGICAL EXTRACTIONS		
7210	Surgical Extraction—Tooth, Erupted.....	45.00
7220	Surgical Extraction—Tooth, Tissue Impact.....	64.00
7230	Extract Tooth—Partially Bony Impaction 90.00	
7240	Extract Tooth—Completely Bony Impaction.....	136.00
7250	Surgical Extraction—Root Recovery.....	64.00
7260	Extraction—Oral Antral Fistula Closure.....	199.00
7270	Surgical—Tooth Replantation.....	100.00
7281	Surgical Exposure and Erupt.....	64.00
7290	Surgical—Repositioning of Teeth.....	90.00
ALVEOPLASTY		
7310	Alveoplasty—Per Quadrant W/Extraction.....	55.00
7320	Alveoplasty—Per Quadrant W/O Extraction.....	67.00
7330	Alveoplasty—Cuspid to Cuspid.....	55.00
7340	Stomatoplasty—Per Arch, Uncomplicated.....	90.00
7350	Stomatoplasty—Per Arch, Complicated.....	306.00
SURGICAL EXCISION		
7410	Radical Excision, Up to 1/2 Inch.....	90.00
7420	Radical Excision, Over to 1/2 Inch.....	234.00
7425	Excision Pericoronal Gingiva.....	234.00

ADA Procedure Code	Dental Procedure Description	Maximum Benefit Payable Under the Plan
7450	Removal Odontogenic Cyst to 1/2 Inch.....	90.00
7451	Removal Odontogenic Cyst Over 1/2 Inch.....	234.00
7470	Removal of Exostosis.....	136.00
7480	Partial Osteotomy.....	180.00
7490	Radical Resection of Mandible.....	720.00
SURGICAL INCISION		
7510	Incision/Drainage of Abscess, Intra-Oral.....	36.00
7520	Incision/Drainage of Abscess, Extra-Oral.....	72.00
7530	Removal of Foreign Body.....	36.00
7540	Removal of Reaction Producing Bodies.....	72.00
7550	Sequestrectomy for Osteomyelitis.....	180.00
7560	Max Sinusotomy—Foreign Body.....	208.00
REDUCTION OF DISLOCATION		
7810	Open Reduction of Dislocation.....	676.00
7820	Closed Reduction of Dislocation.....	90.00
7830	Manipulation Under Anesthesia.....	90.00
7840	Condylectomy.....	631.00
7850	Meniscectomy.....	631.00
7860	Arthrotomy.....	424.00
7870	Arthrocentesis.....	72.00
OTHER ORAL SURGERY		
7910	Simple Suturing.....	55.00
7911	Complicated Suturing—Up to 2 Inches.....	199.00
7912	Complicated Suturing—Over 2 Inches.....	225.00
7920	Skin Grafts.....	144.00
7930	Injection of Trigeminal Nerve.....	108.00
7931	Avulsion of Trigeminal Nerve.....	162.00
7940	Osteoplasty.....	900.00
7950	Osteoperiosteal.....	720.00
7955	Repair Maxillo Facial Tissue.....	81.00
7960	Frenulectomy.....	72.00
7970	Excision of Hyperplastic Tissue.....	108.00
7980	Sialolithotomy Extra—Oral.....	360.00
7981	Excision of Salivary Gland.....	316.00
7982	Sialodochoplasty.....	496.00
7983	Closure of Salivary Fistula.....	540.00

ADJUNCTIVE GENERAL SERVICES

UNCLASSIFIED TREATMENT		
9110	Palliative Emergency Treatment.....	26.00
ANESTHESIA		
9210	Local Anesthesia—Non Operative.....	22.00
9211	Regional Block Anesthesia.....	13.00
9212	Trigeminal Division Block Anesthesia.....	22.00
9220	General Anesthesia.....	69.00
PROFESSIONAL CONSULTATION		
9310	Consultation, Per Session.....	28.00
PROFESSIONAL VISITS		
9410	House Call.....	28.00
9420	Hospital Call.....	28.00
9430	Office Visit During Office Hours.....	28.00
9440	Office Visit After Office Hours.....	28.00
DRUGS		
9610	Therapeutic Drug Injection.....	15.00
9630	Other Medicaments.....	15.00
MISCELLANEOUS SERVICES		
9910	Application of Desensitizing Medicament.....	18.00
9930	Unusual Complication.....	21.00
9940	Occlusal Adjustment, Minor.....	32.00
9950	Occlusion Analysis.....	108.00

IN WITNESS WHEREOF, each of the parties signatory hereto has caused this Agreement to be signed on the date specified herein to become effective.

DATE _____

EMPLOYER (AUTHORIZED SIGNATURE) _____

UNITED MINE WORKERS OF AMERICA

(Type or Print Name of Company) _____

(Address) _____

(City, State, Zip) _____

(Authorized Signature and Title of Signer) _____

(Type or Print Name and Title of Signer) _____

(Authorized Signature and Title of Signer) _____

Type or Print Name and title of Signer) _____