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**2004**

**ENGINEER  
AGREEMENT**

**BETWEEN**

**REALTY ADVISORY BOARD  
ON LABOR RELATIONS,  
INCORPORATED**

**AND**

**LOCAL 94-94A-94B  
International Union of  
Operating Engineers  
AFL-CIO**

**Effective: January 1, 2004  
To December 31, 2006**

46 pages

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## **2004 ENGINEER AGREEMENT**

This agreement is by and between the International Union of Operating Engineers, Local 94-94A-94B, AFL-CIO (hereinafter referred to as the "Union"), acting on behalf of its members and other employees for whom it is recognized as the collective bargaining agent as defined below, and the Realty Advisory Board on Labor Relations, Incorporated (hereinafter referred to as the "RAB"), acting on behalf of various owners of office and commercial buildings in the City of New York and authorized agents of such owners, who become signatory to this agreement (hereinafter severally referred to as "Employer").

### **ARTICLE 1**

#### **Recognition and Union Security**

1. This agreement shall be binding on each owner signatory to this agreement, as well as upon each agent of an owner who becomes signatory hereto as Employer.

2. The Union is recognized as the exclusive bargaining representative of all employees employed as engineers, mechanics, helpers (as well as chief engineers and assistant chief engineers in such buildings where these classifications are represented by the Union ) and wherever the word "employee" appears herein, it shall refer to all such classifications of employee.

3. The Employer shall not enter into any agreement contracting for the performance of work and/or for the categories of work heretofore performed by employees covered by this agreement except within the provisions and limitations set forth below.

4. In the event that an employer desires to contract for the service performed by members of this Union, or change contractors for such services, it shall do so in compliance with the following provisions:

(a) The Employer shall give advance written notice to the R.A.B. and the Union at least three (3) weeks prior to the effective date of its contracting for such services, and set forth the name and address of the contractor.

(b) As a condition of such contracting, the Employer shall require the contractor to become a party to this agreement and to file a sub-assent hereto with the Union through the RAB, and the contractor shall thereafter have all of the rights and obligations of the Employer hereunder. The Union has the right to reject such sub-assent where the contractor has habitually failed to comply with the obligations of the labor agreements with the Union covering other buildings in the industry or has failed to make proper and timely payments to the Union Welfare, Annuity, Sick Pay, Training and/or Pension Funds. The Union shall not arbitrarily refuse to accept a sub-assent and the Employer may have such refusal reviewed by grievance and/or arbitration.

(c) The Employer agrees that its employees then engaged in the particular work which is contracted out shall become employees of the initial contractor or any successor contractor, and agrees to employ or re-employ those employees in the employ of the contractor at any time that such contracts are terminated or canceled. This provision shall not be construed to prevent termination of any employee's employment under other provisions of the agreement relating to illness, retirement, resignation, discharge or lay-offs; however, a contractor may not reduce force or change the work schedule without first obtaining written consent of the Union, which consent shall not be unreasonably withheld, and which shall be subject to grievance and/or arbitration.

(d) If a contractor fails to comply with all provisions of this agreement, the Employer shall be liable jointly and severally with the contractor for any and all damages sustained by the employees or by the Union as a result thereof, as well as for any unpaid Welfare, Sick Pay, Annuity, Training and/or Pension contributions; provided, however, that the Employer's liability shall commence when it receives written notice from the Union of the contractor's failure to so comply.

(e) To determine which employees employed by the Employer should be members of the Union under the terms of this agreement, and to ascertain the amounts payable to the Union Welfare, Annuity, Sick Pay, Training and /or Pension

Funds, the Union and/or the Funds, independently or in coordination and cooperation, shall have the right to inspect and audit the contractor's social security and/or payroll records and all such records shall be made available to the Union and to the Funds upon request.

5. The Employer shall give written notice of vacancies in the staff to the Business Manager of the Union. If the Union is unable to supply a qualified person for such opening within five (5) business days of receipt of such notice, or if the Union waives its right to attempt to supply such a person or if there is an emergency need to fill the position immediately, then the Employer may hire a person. All employees must become members of the Union after the thirtieth (30) day following their employment; provided, however, that the requirement to become a member shall be waived if the Union refuses membership to such persons.

6. Upon the receipt by the Employer of a letter from the Union's Recording Corresponding Secretary requesting any employee's discharge because he/she has not met the requirements of Union membership under the Agreement, unless the Employer questions the propriety of so doing, the employee shall be discharged within fifteen (15) days of said notice if prior thereto he/she does not take proper steps to meet said requirements. If the Employer questions the propriety of the discharge, he/she shall immediately submit the matter to grievance and if not thus settled, to



arbitration for final determination. If it is finally settled or determined that the employee has not met said requirements, the employee shall be discharged within ten (10) days after written notice of the final determination has been given to the RAB and the Employer.

The Union will hold the Employer harmless from any liability arising from a discharge asked by the Union pursuant to this provision, provided *the Employer has done nothing to cause or increase its own liability concerning removal of employees.*

## **ARTICLE II**

### **Wage, Hours and Working Conditions**

1. Employees shall be paid in accordance with the scale of wages as set forth on the assent filed hereto.

**Wage increase shall be granted as follows:  
Effective January 1, 2004:**

**ENGINEERS:** \$.80 per hour, at which time the minimum wage for these employees shall be \$1,094.00 per forty (40) hour week and \$27.35 per hour.

**HELPERS:** \$ .62 per hour, at which time the minimum wage for these employees shall be \$851.60 per forty (40) hour week and \$21.29 per hour.

**OTHERS:** Employees receiving pay scales other than the scale engineers or helpers shall be given

percentage wage increases based on the following formula: (2003 Rate x .03) (Rounded to the nearest penny.).

**EFFECTIVE JANUARY 1, 2005:**

**ENGINEERS:** \$.82 per hour, at which time the minimum wage for these employees shall be \$1,126.80 per forty (40) hour week and \$28.17 per hour.

**HELPERS:** \$ .64 per hour, at which time the minimum wage for these employees shall be \$877.20 per forty (40) hour week and \$21.93 per hour.

**OTHERS:** Employees receiving pay scales other than the scale engineers or helpers shall be given wage increase based on the following formula: (The Employees' 2004 Hourly Rate x .03) (Rounded to the nearest penny.)

**EFFECTIVE JANUARY 1, 2006:**

**ENGINEERS:** \$.84 per hour, at which time the minimum wage for these employees shall be \$1,160.40 per forty (40) hour week and \$29.01 per hour.

**HELPERS:** \$ .66 per hour, at which time the minimum wage for these employees shall be \$903.60 per forty (40) hour week and \$22.59 per hour.

**OTHERS:** Employees receiving pay scales other than the scale engineers or helpers shall be given wage increases based on the following formula: (The Employees' 2005 HOURLY RATE x .03) (Rounded to the nearest penny.).

2. (a) Each employer agrees to deduct the Union's monthly dues, and all legal assessments from the pay of each employee from whom it received written authorization and will continue to make such deduction while the authorization remains in effect.

(b) Such deductions will be made from the pay for the first full pay period worked by such employee following receipt of the authorization, and thereafter will be made the first payday each month, and forwarded to the Union not later than the twentieth day in each and every current month. Such deductions shall constitute trust funds while in the possession of the Employer.

(c) If a signatory does not revoke the authorization at the end of a year following the date of the authorization, or at the end of the current contract, whichever is earlier, it shall be deemed a renewal of authorization, irrevocable for another year, or until the expiration of the next succeeding contract, whichever is earlier.

(d) The Employer agrees to use the lawful forms supplied by the Union for check-off. The Union agrees to indemnify and save such employer and the RAB harmless from any liability incurred without fault on the part of the Employer by reason of such deduction.

3. It is the policy of the Employer to avoid excessive overtime. Where an employee believes he/she is required to work excessive overtime, the

matter shall be submitted to grievance and arbitration. If it is alleged that the excessive overtime is a regular and continuing practice, such grievance may be submitted directly to arbitration.

4. An employee hired as a replacement or an addition to the force may be employed at the minimum rate for an engineer or helper set forth above, except that where an assent has established a rate for such classification higher than such minimum rate, the applicable assent rate shall continue to apply to such building.

5. Any employee required to replace a higher classified employee shall be paid at the rate of the higher classified employee, when and if the absent employee is not being paid by the Employer or the Sick Pay Fund.

6. (a) The standard work week shall be forty (40) hours per week, consisting of five (5) days of eight (8) hours each, and overtime shall be paid at the rate of time and one half the regular straight time hourly rate for all hours worked in excess of eight (8) hours per day or in excess of forty (40) hours per week, whichever is greater. There shall be no split shifts.

(b) Employees required to work overtime shall be paid at least one (1) hour at the overtime rate except for employees working overtime due to absenteeism or lateness.

(c) Any employee who has worked eight (8) hours and is required to work at least four (4)

hours of consecutive overtime before or after the eight (8) hours shall be paid a \$15.00 meal allowance.

(d) Every employee shall be entitled to two (2) consecutive days off in any seven (7) days. Any work performed on such days shall be considered overtime and paid for at the rate of time and one half the regular straight time hourly rate of pay.

(e) Saturday and Sunday shall be premium days and any work performed on those days shall be paid for at the rate of time and one half the regular straight time hourly rate of pay. The determination of whether a particular work shift falls on a premium day shall depend upon the building's practice now applicable to holiday work in that building.

(f) The weekly working hours for regular full-time employees shall include a thirty (30) minute relief and lunch period. Such period, at the Employer's option, shall be taken on the premises at a scheduled time within two (2) hours of the middle of the shift and at such suitable place compatible with building needs as may be designated by the Employer. Where an employee works a shift of more than eight (8) hours in any day, all time beyond eight hours shall be considered overtime and paid for at the rate of time and one half.

7. (a) No provision of this agreement shall be construed as to lower the weekly, daily or hourly wage of any employee. Where in any building, the employees of said building have presently in effect

a practice of terms or conditions better than those provided for herein, applicable generally to the employees in the building covered by this agreement in respect to wages, hours, sick pay, vacations, holidays, premium pay for Saturday and/or Sunday work, relief and lunch periods, and group life insurance, such better conditions shall be continued in effect for all employees who may now, or during the term of this agreement, be employed in the said building, except that such continuance shall be required for group life insurance only for those persons in the employ of the Employer on the effective date this agreement is signed and except insofar as the provisions of Section 1 above, of this Article may apply. The Arbitrator is empowered to afford relief from the obligations expressed in the preceding sentence on the ground that its enforcement would work an undue hardship, injustice or inequity upon the Employer.

(b) A change of schedules or duties shall not constitute a violation of this Section. However, every employee presently working a Monday through Friday work week (and if such employee leaves his job for any reason whatever, the person who fills his position) shall receive premium pay at time and one half the regular straight time hourly rate for any work performed by him on a Saturday or Sunday. The Employer shall post a change of schedule at least ten (10) days in advance of the effective date thereof.

8. Any employee called into work by the Employer for any time not consecutive with his

regular schedule shall be paid for at least four (4) hours of overtime.

9. The Employer may require, subject to existing law and without cost to the employee, that an employee's check be deposited electronically at the employee's designated bank. The Union shall be notified by the Employer of this arrangement.

### **ARTICLE III**

#### **Right of Management**

1. The Union recognizes the right of management to direct and control the policies of management subject to the obligations of this agreement.

2. It is agreed that the employees will cooperate with management within the obligations of this agreement to facilitate the efficient operation of the building.

3. If, through the grievance procedure or by decision of the Arbitrator, it shall be found that an employee has been unjustly discharged, such employee shall be reinstated to his former position without loss of seniority or rank and shall suffer no reduction in salary, and in such event the Grievance Committee or the Arbitrator shall be empowered to determine whether, and to what extent, the employee shall be compensated by the Employer for time lost.

4. It is agreed that in the case of substantial or unreasonable reduction of force, the Union may invoke the grievance procedure on a claim that

such reduction has created an unreasonable hardship on the remaining employees. In the event of failure of the Grievance Committee to resolve the issue, it may be submitted to arbitration.

5. The employer shall not impose discipline on employees for events occurring more than fifteen (15) days prior to the imposition of discipline unless the Grievance Committee or the Arbitrator find that the Employer did not and could not reasonably have known of the existence of said occurrence within fifteen (15) days. This provision shall not be construed to preclude an Arbitrator from receiving evidence of past discipline at any proceeding under this agreement.

## **ARTICLE IV**

### **No Strikes or Lockouts**

1. During the term of this agreement, there shall be no stoppage of work, strike, lock out or picketing in respect to any signatory building, except as provided in Section 2 of this Article. In the event of a violation of this provision by any of the parties to this agreement, such matter shall be submitted immediately to an Arbitrator for such actions as the Arbitrator deems necessary.

2. (a) If an award against the Employer by the Arbitrator for Welfare, Annuity, Sick Pay, Training or Pension Fund payment is not complied with within two (2) weeks after such award is sent by registered or certified mail to the



Employer at his last known address, the Union may order a stoppage of work, strike or picketing in the building involved to enforce such award, and it may also thereby compel payment of lost wages to any employee engaged in such work stoppage or strike. Upon compliance with the Arbitrator's award and payment of lost wages, the stoppage of work or strike shall cease.

(b) The Union shall not be held liable for any violation of this Article where it appears that it has taken all reasonable steps to avoid and end any violation.

## **ARTICLE V**

### **Grievance Procedure**

1. Any grievance or dispute arising out of the interpretation, performance or applicability of any term or provision of this agreement shall be submitted to a Grievance Committee, in writing by the party complaining within fifteen (15) days of occurrence unless the Committee or the Arbitrator finds that the complainant did not and could not reasonably have known of the existence of said occurrence within fifteen (15) days.

2. The Grievance Committee shall consist of one (1) representative chosen by the Union and one (1) representative chosen by the Employer, it being agreed that no issue shall be submitted to arbitration, except as provided in Section 3 of this Article, Article II (3) or Article IV, until it

## **ARTICLE VII**

### **Building Acquisition by Public Authority**

Where a building is acquired by a public authority of any nature through condemnation, purchase or otherwise, the last owner shall guarantee the payment of accrued vacations due to the employees up to the date of transfer of title and termination pay to the same date. Termination Pay, in this provision, shall include wages and fringe benefits. It is understood that the Union will, however, seek to have such public authority assume the obligations for the payment of such accrued vacation and/or termination pay. If unsuccessful, and the last owner becomes liable for such payments, the amounts thereof shall be liens upon any condemnation award or on any amount received by such last owner.

## **ARTICLE VIII**

### **Saving Clause**

If any provision of this agreement shall be held to be illegal or of no legal effect, said provision shall be deemed null and void without affecting the obligations of the balance of the contract.

## **ARTICLE IX**

### **Complete Agreement**

Except as the parties may otherwise mutually agree, and except as set forth below, it is agreed that during the lifetime of this agreement there shall be no demands for collective bargaining

negotiations, as to any matter or issue not covered by the provisions of this agreement, or for the renegotiation of any of the provisions of this agreement.

## **ARTICLE X**

### **Term of Agreement**

1. This agreement shall continue in full force and effect up to and including December 31, 2006. The parties shall enter into direct negotiations looking toward a renewal agreement at least sixty (60) days before the expiration date.

2. If, fifteen (15) days before the expiration of this agreement, the parties shall not have been able to agree upon the terms of their new agreement, both parties will thereupon confer with the New York State Employment Relations Board for the purpose of conciliating their differences.

## **ARTICLE XI**

### **Employer Fund Contributions**

1. **Health and Benefits:** (a) Effective January 1, 2004, the Employer shall contribute \$3.19 per hour for each hour paid to an employee (except for sickness contributions and benefits) covered by this agreement to the Local 94-94A-94B Health and Benefit Fund for coverage of the employee and his/her dependent family with welfare benefits provided through said Fund.

In addition to the above contribution, the Employer shall make a one-time payment of

\$300.00 per employee to the Local 94 Health Fund on or before March 31, 2004.

(b) Effective January 1, 2005, the Employer shall contribute \$3.59 per hour for each hour paid to an employee (except for sickness contributions and benefits) covered by this agreement to the Local 94-94A-94B Health and Benefit Fund for coverage of the employee and his/her dependent family with welfare benefits provided through said Fund.

(c) Effective January 1, 2006, the Employer shall contribute \$4.00 per hour for each hour paid to an employee (except for sickness contributions and benefits) covered by this agreement to the Local 94-94A-94B Health and Benefit Fund for coverage of the employee and his/her dependent family with welfare benefits provided through said Fund.

(d) If, as of January 1, 2005 or thereafter, the Trustees find the payment provided herein insufficient to maintain the benefits then in existence based on the contribution rate, they may, provided benefits added during the term of this agreement were actuarially sound, in such emergency situations before the termination of this agreement require negotiation between the parties in order to determine the amount needed to continue and maintain such benefits. Failure of the parties to agree upon the payment of such amounts shall be resolved through grievance and/ or arbitration.

**2. Pension:** (a) Effective January 1, 2004, the Employer shall contribute \$2.45 per hour for each hour paid to an employee (except for sickness contributions and benefits) covered by this agreement to the Central Pension Fund of the International Union of Operating Engineers and Participating Employers for retirement benefits for the employee.

(b) Effective January 1, 2005, the Employer shall contribute \$2.55 per hour for each hour paid to an employee (except for sickness contributions and benefits) covered by this agreement to the Central Pension Fund of the International Union of Operating Engineers and Participating Employers for retirement benefits for the employee.

(c) Effective January 1, 2006, the Employer shall contribute \$2.65 per hour for each hour paid to an employee (except for sickness contributions and benefits) covered by this agreement to the Central Pension Fund of the International Union of Operating Engineers and Participating Employers for retirement benefits for the employee.

3. The above provisions relating to Health and Benefit and Pension contributions will not apply in cases where the Employer presently provides benefits determined by the Trustees of the Welfare or Pension Funds to be at least equivalent of those provided by such Funds. The discretion of the Trustees as to such equivalency shall not be arbitrable under this agreement.

4. **Annuity** (a) Effective January 1, 2004, the Employer shall contribute \$2.70 per hour for each hour paid to an employee (except for sick pay contributions and benefits) covered by this agreement to the Local 94-94A-94B Annuity Fund.

(b) Effective January 1, 2005, the Employer shall contribute \$2.80 per hour for each hour paid to an employee (except for sick pay contributions and benefits) covered by this agreement to the Local 94-94A-94B Annuity Fund.

(c) Effective January 1, 2006, the Employer shall contribute \$2.90 per hour for each hour paid to an employee (except for sick pay contributions and benefits) covered by this agreement to the Local 94-94A-94B Annuity Fund.

5. The Employer shall continue to contribute to the Pension, Health Benefit, Annuity, Sick Pay and Training funds during the illness or injury of a regular full time employee who has been employed within the bargaining unit covered by this or a predecessor agreement on the basis of one (1) month's contribution for each year of service within the industry with a minimum of 400 hours and a maximum of 800 hours contribution.

6. **Sick Pay:** (a) For employees who are paid for 100 hours or more during any calendar month, and who have been employed with substantial continuity for one year or more in any building signatory to this agreement (whether a member of the R.A.B. or not), the Employer shall effective

January 1, 2004, contribute one dollar and sixteen cents (\$1.16) per hour for engineers and eighty-nine cents (\$.89) per hour for helpers for each hour paid during such calendar month.

Effective January 1, 2005, the Employer shall contribute one dollar and ten cents (\$1.10) per hour for engineers and eighty one cents (\$.81) per hour for helpers for each hour paid during the calendar month.

Effective January 1, 2006, the Employer shall contribute one dollar and four cents (\$1.04) per hour for engineers and seventy-five (\$.75) per hour for helpers for each hour paid during the calendar month.

For employees in pay scales other than scale helpers or engineers the contribution rate for sick pay shall be computed on the following basis:

For 2004

$$\text{(Hourly Rate X 8 hours } \div \text{ 173-.10) =}$$

Hourly Sick Pay Contribution

For 2005

$$\text{(Hourly Rate X 8 hours } \div \text{ 173-.20) =}$$

Hourly Sick Pay Contribution

For 2006

$$\text{(Hourly Rate X 8 hours } \div \text{ 173-.30) =}$$

Hourly Sick Pay Contribution

No contribution shall be made for employees who do not receive pay for at least 100 hours during any calendar month.

(b) An employee who is absent from work by reason of illness shall be entitled to draw eight hours pay for each full day of work absent from the job due to illness up to the number of paid hours credited to his account. Benefits from such fund shall be payable to the employee in accordance with the rules and regulations of the Fund.

(c) Employees with unused sick pay credit at the end of each calendar year may carry said credit forward to the following year.

(d) Sick pay contributions and benefits shall not be considered hours paid for the purposes of fringe benefit contributions.

(e) If an employee changes his employment during a calendar month, the Employer on whose payroll he is carried on the last day of the month shall be responsible to pay the sick pay contribution for that month to which the employee is entitled. Hours worked for all employers during that month shall be counted toward the required 100 hours. The responsibility of a current Employer for sick pay shall continue regardless of the number of times an employee with sufficient seniority changes jobs.

**7. Training:** (a) Effective January 1, 2004, the Employer shall contribute the amount of \$.21 per hour paid per employee (except for sick pay contributions and benefits) covered by this agreement of the Local 94-94A-94B Training Fund which shall be payable on the same sched-



ule as Health Fund Contributions.

The contribution to the Training Fund may be increased, effective January 1, 2005, by up to .02 per hour and/or effective January 1, 2006, or thereafter, by up to .02 per hour in the event that the Trustees of said Fund agree that such amounts are necessary for the continuation of operations of the Training Program.

(b) Employees newly hired in the industry shall be required to attend and participate in the Training Program. Such employees shall have a starting rate of pay of seventy-five percent (75%) of the then current Helper minimum rate. Such starting rate shall be increased by five percent (5%) for each six (6) months of employment, provided that such employee successfully continues in the Training Program, until such employee reaches the contract minimum rate.

(i.e.,)

after 6 months = 80% of helpers rate  
after 12 months = 85% of helpers rate  
after 18 months = 90% of helpers rate  
after 24 months = 95% of helpers rate  
after 30 months = 100% of helpers rate

(c) Any employee who leaves or is terminated from the Training Program shall be terminated by the Employer. Such employees shall not have recourse to the Grievance and Arbitration provisions of the contract with respect to such termination.

(d) The parties hereto and the Training Program shall establish criteria for admission to the program and criteria for advanced standing in the program. If employees are granted advanced standing, their wage rate shall reflect such advanced standing.

(e) The duration of the Training Program shall be set by the Trustees of the Training Fund.

(f) There shall be established a procedure for a pre-employment physical examination program for all newly hired employees. Such examination shall include but not be limited to urine and blood tests. The test results must be submitted to the Training Fund for evaluation as to the eligibility of an employee to participate in the Training Program. The RAB and the Union shall determine the methodology for such pre-employment physicals.

(g) Employees who are hired as summer helpers between the period of April 15 through October 15 shall be paid seventy-five percent (75%) of the regular helper rate and shall not be entitled to any benefit fund contributions. If such summer helpers are continued beyond October 15 as regular employees, they shall receive benefit fund contributions as of October 15 and time credit toward the 30 month start rate in paragraph (b), above, from the date of employment as a summer helper for that year.

8. Contributions to the Health and Benefit, Pension, Annuity, Training and Sick Pay Funds shall be made on a monthly basis and shall be paid by the end of the succeeding month. The Employer agrees to use the lawful forms supplied by the Union.

9. If the Employer fails to make the required payments to any of the Funds, as set forth above, or fails to file required reports, the Trustees may, in their sole and absolute discretion, take any action necessary, including, but not limited to, immediate arbitration and suits at law, to enforce such payments and reports, and in any such action or proceeding shall be entitled to receive interest at the rate of 1.5% per month and liquidated damages at the rate of 1% per month ( total of 2.5% per month) on unpaid contributions, except that interest only shall be charged for defaults of less than 30 days, including any and all expenses of collection, such as counsel fees, arbitrator's costs, arbitration fees and court costs.

## **ARTICLE XII**

### **General Clauses**

1. **Disability Benefits Law:** (a) The Employer agrees to cover the employees under the New York State Disability Benefits Law on a non-contributory basis, whether or not such coverage is required by law.

(b) The Employer will cooperate with employees in the processing of their claims and any viola-

tion by the Employer, including but not limited to the posting of notices or furnishing of forms, shall be subject to grievance and arbitration.

**2. Unemployment Insurance Law:** The employer agrees to cover the Employees under the New York State Unemployment Insurance Law, whether or not such coverage is required by law.

**3. Vacations:** (a) Every employee employed with substantial continuity in any building signatory shall receive each year a vacation with pay as follows (where an employer transfers an employee from another building and the employee agrees to such transfer, length of service for the purpose of vacation entitlement shall be measured as length of service with the employer):

Employees who have worked for:

6 months . . . . .	3 days
1 year . . . . .	10 days
5 years . . . . .	15 days
15 years. . . . .	20 days
21 years . . . . .	21 days
22 years . . . . .	22 days
23 years . . . . .	23 days
24 years . . . . .	24 days
25 years . . . . .	25 days

(b) Length of employment for the purpose of the foregoing schedule shall be computed on the basis of the amount of vacation that an employee would be entitled to on September 15 of the year in which the vacation is given. Only actual

working days shall count as part of the allowed vacation and regular days off and holidays falling during the employee's vacation period, the employee shall receive an additional day's pay therefore or, at the option of the Employer, an extra day off within ten (10) days immediately preceding or succeeding his vacation period.

(c) Vacation wages shall be paid at the rate of pay in effect when the vacation is given and paid prior to the vacation period unless otherwise requested by the employee.

(d) Employees are entitled to actual vacations and no employee shall be required to accept money in lieu of his vacation.

(e) The vacation period shall be May 1, through April 30, each year.

(f) Employees shall be entitled to take vacation at any time during the year provided such vacation time is compatible with the proper operation of the building and no more than two (2) weeks may be taken between April 15 and October 15.

If an employee is to be denied a vacation during the April 15 and October 15 period because of lack of compatibility with the operation of the building, the Employer shall inform the employee and the Union no later than April 15 or two (2) weeks after the vacation request. Such denial shall be subject to grievance and arbitration.

(g) Choice of vacation periods shall be according to building seniority in the job classification.

(h) Any employee leaving his job for any reason shall be entitled to a vacation accrual allowance computed on his/her length of service as provided in the vacation schedule set forth above based on the elapsed period from the previous September 16th (or from the date of employment if later employed) to the date of his/her leaving; provided, however, that any employee who has received a vacation during the previous year and who leaves his/her job after April 15th under circumstances which entitle him/her to vacation accrual rights, shall be entitled to full vacation accrual allowances instead of on the basis of the elapsed period from the previous September 16th.

Any employee who is employed more than six (6) months but less than one year as of the date of termination shall receive three (3) days vacation pay, unless already taken.

(i) No employee who leaves his/her position of his/her own accord shall be entitled to his/her accrued vacation credit unless he/she gives two week's termination notice to the Employer, in writing.

(j) The Employer will pay an accumulated unpaid vacation to the designated beneficiary or the estate of a deceased employee.

**4. Transferring Employees:** (a) An employee who has been employed with substantial conti-

nunity for one (1) year or more in any building signatory to this agreement (whether a member of the R.A.B. or not) will receive credit for one (1) year's service for the purpose of computing vacation pay eligibility in the event that such employee changes his/her employment to a different building. An employee who has been employed with substantial continuity for five (5) years or more in any building signatory to this agreement (whether a member of the R.A.B. or not) will receive credit for five (5) years' service for the purpose of computing vacation pay eligibility in the event that such employee changes his/her employment to a different building. Provided, however that if an employee changes his/her job on or after April 15th, of any calendar year, with proper termination notice, the original employer shall be responsible for the payment of a full year's vacation.

(b) An employee who has been employed with substantial continuity for one (1) year or more in any building signatory to this agreement (whether a member of the R.A.B. or not) who changes employment to a different building, will receive credit for one (1) year's service for the purpose of determining eligibility for a medical check-up leave.

(c) For the purposes of this Article, "substantial continuity" shall mean less than one month's break in continued service for each two (2) years of continued membership in the Union. This rule

will be waived in the event of a break in service caused by illness covered by Disability Benefits, accident covered under Workers Compensation Insurance, or provided the employee is receiving Unemployment Compensation.

**5. Leave of Absence:** (a) Once during the term of this agreement upon written application to the Employer and the Union, a regular full-time employee who has been employed in the building for five (5) years or more shall be granted a leave of absence not to exceed six (6) months, subject to an extension for a period not to exceed six (6) months, in case of bona fide illness or injury, whether or not covered by the New York State Workers Compensation Law. When such employee is physically and mentally able to resume work, he/she shall on one (1) week's prior written notice to the Employer, be then employed, with no loss of seniority.

(b) Once every five (5) years, upon six (6) weeks' written application to the Employer, a regular full-time employee who has been employed in the building for five (5) years or more shall be granted a leave of absence for personal reasons not to exceed two (2) months. Upon the employee's return to work, he shall be reemployed with no loss of seniority. Personal leave of absence shall not be used for the purpose of seeking or engaging in other employment and any employee so doing will be subject to termination.



**6. Holidays:** (a) The following is the schedule of holidays:

2004:

New Year's Day (Jan.1)	Labor Day (Sept. 6)
Memorial Day (May 31)	Thanksgiving Day (Nov. 25)
Independence Day (July 5)	Christmas Day (Dec. 24)

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2005:

New Year's Day (Dec. 31)	Labor Day (Sep. 5)
Memorial Day (May 30)	Thanksgiving Day (Nov. 24)
Independence Day (July 4)	Christmas Day (Dec.26)

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2006:

New Year's Day (Jan. 2)	Labor Day (Sept. 4)
Memorial Day (May 29)	Thanksgiving Day (Nov. 23)
Independence Day (July 4)	Christmas Day (Dec. 25)

In addition, there shall be six (6) floating holidays per year. Said holiday may be taken by an employee upon ten (10) days' notice to the Employer provided that no more than one (1) employee per building takes off on a particular day as the floating holiday. In buildings employ-

ing more than twelve (12) members of Local 94-94A-94B, more than one employee may take a floating holiday on a particular day provided that employee selections do not result in a reduction of Local 94-94A-94B employees below 75% of the normal work staff, by classification.

(b) Employees shall receive idle pay at their regular straight-time hourly rates for the normal eight (8) hour working day not worked. Any employee who is required to work on a holiday shall receive in addition to the idle pay above mentioned, premium pay at the rate of time and one half his regular straight time hourly rate of pay for each hour worked, with a minimum of four (4) hours' premium pay. Any employee who is required to work on a holiday beyond eight (8) hours shall continue to receive the compensation above provided for holiday pay, namely idle pay at his/her regular straight-time hourly rate plus premium pay at time and one half his/her regular straight-time rate.

(c) Any regular full-time employee who shall be ill during the period in which a contract holiday falls shall be entitled to holiday pay or corresponding time off if he/she worked at least one (1) regular scheduled day during his/her five (5) working days immediately preceding or succeeding the holiday.

(d) Any regular full-time employee whose regular day off, or one of whose regular days off falls

on a holiday, shall receive an additional days' pay there-for, or at the option of the Employer, shall receive an extra work day off within ten (10) days immediately preceding or succeeding the holiday. If the employee receives an extra day off before the holiday and his/her employment is terminated for any reason whatever, he/she shall not be required to compensate the Employer for that day.

(e) Employees newly hired in the industry, during their first year of employment, shall receive floating holidays based on an accrual of one (1) holiday for each three (3) months of employment and three (3) holidays in the last quarter of the calendar year.

(f) Employees with substantial continuity in the industry who change employers will be paid for all accrued, unused floating holidays by their terminating Employer, based on the schedule in the preceding paragraph.

(g) The Employer on whose payroll an employee is on the last day of the calendar quarter shall be responsible for the payment of the accrued, unused floating holiday for such quarter.

(h) It is the intention of the parties that employees with substantial continuity in the industry shall receive six (6) floating holidays, but no more than six (6) floating holidays in each calendar year.

(i) Employees who have not used their floating holidays by the end of the calendar year shall

be paid one (1) days' pay for each unused day at the rate in effect for the year in which the holiday was earned.

(j) Payment for unused floating holidays shall be made as soon as possible after December 31.

**7. Election Day:** Employees who are eligible to vote shall be permitted two (2) hours off to vote on Election Day if they are unable to vote during non-working hours. Employees shall give legal notice of such intention and such hours are to be designated by the Employer, while the polls are open.

**8. Family Death:** A regular full-time employee with at least one (1) year of employment in the industry shall be granted bereavement leave following the death of his parent, brother, sister, spouse, child, father-in-law or mother-in-law, or grandparent and shall be paid his regular straight-time wages for any of such three (3) days on which he was regularly scheduled to work, or entitled to holiday pay. Such leave shall be either (i) the day of the funeral and the two days immediately preceding the funeral, or (ii) the day of the funeral and the two days immediately following the funeral, at the option of the employee.

**9. Medical Check-Up:** Every regular full-time employee employed in the industry for at least one (1) year shall be entitled, upon one (1) week's notice to the Employer, to take one (1) day off in each calendar year at straight time pay to

visit a diagnostic clinic operated by the Welfare Fund under which he/she is covered or, if none, to visit such other clinic or physician of his/her choice for reason of medical check-up. To receive payment for such day, the employee shall exhibit a signed statement from the clinic or physician. If the examining physician requires a follow-up visit, in writing, the employee shall be entitled to an additional day off at straight time rates.

**10. Reducing Force:** In reducing force, Employers are required, in addition to their accrued vacation credits and termination pay, if any, to give employees who have been employed for one (1) year at least two (2) weeks notice of lay-off or discharge, or in lieu thereof, an additional two (2) weeks pay. In addition, except for normal or routine reduction, the Union and the RAB shall be given at least one (1) week's advance written notice.

**11. Jury Duty:** An employee performing jury duty shall receive his full pay less jury duty compensation, not more than once in any two (2) year period.

**12. Termination Pay:** (a) In case of termination of employment because of the employee's physical or mental inability to perform his or her duties or from reduction of force, the employee shall receive, in addition to accrued vacation credits, termination pay according to the employee's years of service in the building

on the following basis:

Employees with

5 and less than 10 years . . . .	1 weeks' pay
10 and less than 12 years. . . .	2 weeks' pay
12 and less than 15 years . . . .	3 weeks' pay
15 and less than 17 years. . . .	6 weeks' pay
17 and less than 20 years. . . .	7 weeks' pay
20 and less than 25 years . . . .	8 weeks' pay
25 years or more. . . . .	10 weeks' pay

(b) An employee who is physically or mentally unable to perform his or her duties may resign and receive the above termination pay provided the employee submits satisfactory evidence of such inability. In the event the Employer does not deem the evidence satisfactory, such question may be submitted to grievance and arbitration.

(c) The right to accept termination pay and resign where there has been a reduction in force shall be determined by seniority, i.e. in the event of a reduction of force, notice is to be posted in the engine room prior to the effective date. If no senior employee wishes to exercise his/her rights under this provision, the least senior employee or employees shall be terminated.

**13. Change of Employer:** In the event of a change of Employers in a building the RAB shall use its best efforts to have the succeeding employer join the RAB and become bound to the terms of this agreement.

The Employer shall, if possible, give the

Union at least twenty (20) days advance notice of any change of Employer in the building.

In the event an Employer terminates an employee or employees as a direct result of the sale or transfer of a building and has not required the purchaser or transferee to hire the existing employees and continue the wages, terms and conditions in effect at the time of said sale or transfer, the terminated employee(s) shall receive from such terminating Employer severance pay in the amount of three (3) month's pay, along with Annuity Fund and Pension Fund contributions, in addition to any other accrued payments due under this Agreement. The terminating employer shall also cover terminated employees under the Health Fund for up to three (3) months at 40 hours per week or until such employee obtains coverage from a new job, whichever is less.

14. **Pyramiding:** In no event shall there be any pyramiding of overtime pay, holiday pay or any other premium pay. Where more than one of the aforesaid overtime, holiday or other premium pay are applicable, then compensation shall be computed on the basis giving the greater amount.

15. **Trial Period:** All newly hired employees in the industry shall have a thirty (30) day trial period.

16. **Seniority:** (a) The Employer agrees in principle that senior employees may pick their shifts provided it is practical or possible without

impairing the efficiency of the work or the operation of the building.

(b) Choice of vacations shall be granted on the basis of seniority.

(c) For the purpose of lay-offs, decrease of the working force and recall to work of employees who have been laid off, consideration shall be given to the employee's length of service in the particular classification of work and to the employee's ability to perform the work involved. Where factors other than length of service are relatively equal, an employee with the greatest length of service shall be given preference.

**17. Sanitary Arrangements:** Adequate sanitary arrangements for employee shall be maintained in every building, and an individual locker and key thereto and rest room key, where rest room is provided, shall be furnished by the Employer for the use of every employee. Soap, towels and washing facilities shall be supplied by the Employer for all employees.

**18. Uniforms and Other Apparel:** Uniforms and/or overalls, where necessary for the job, shall be supplied and maintained by the Employer. In addition the Employer will pay to the employees within ten (10) days of receipt of proof of purchase of safety shoes that meet the American National Standards Institute Code Z-41, up to \$100.00 per year for such shoes. The Employer may require the employee to wear said work shoes after payment.



19. **First Aid Kit:** An adequate and complete first aid kit shall be supplied and maintained by the Employer in a place readily available to all Employees.

20. **Bulletin Board:** A bulletin board shall be furnished by the Employer for Union announcements and notices of meetings.

21. **Emergency Calls:** (a) When on emergency call, employees shall be reimbursed for all loss of personal effects on such call.

(b) Loss of personal effects on such call shall include losses while traveling to and from such emergency call in excess of insured losses.

22. **Union Insignia:** Employees may wear the Union insignia while on duty.

23. **Fire Safety Plan:** Employees who serve as fire safety directors shall be paid the sum of \$15.00 per week in addition to their normal wage for performing such duties and holding a certificate of qualification from the New York City Fire Department. If any employee currently performs such duty and receives a differential of more than \$15.00 per week, said employee shall continue to receive the higher amount. Employees who serve as fire safety directors shall do so on a voluntary basis and not as a condition of employment. The Union and the Employer shall cooperate in attempting to achieve the needs of the job site.

24. **Employment and Discrimination:** (a) No employee shall be employed through fee

charging agencies except where the Employer shall pay the full amount of the fee.

(b) There shall be no discrimination against any present or future employee by reason of race, creed, color, age, disability, national origin, sex, union membership or any characteristic protected by law, including, but not limited to, claims made pursuant to Title VII of the Civil Rights Act, the Americans with Disabilities Act, the Age Discrimination in Employment Act, the New York State Human Rights Law, the New York City Human Rights Code, or any other similar laws, rules or regulations. All claims alleging illegal discrimination under any of the above authorities shall be subject to the Agreement's grievance and Arbitration procedure as the final, binding, sole and exclusive remedy for such violations, and employees covered by this Agreement shall not file suit or seek relief in any other forum. This provision shall apply to allegations arising out of events occurring before and/or after the effective date of this Agreement. Arbitrators shall apply applicable law as it would be applied by the appropriate court in rendering decisions on discrimination claims.

25. **Tools:** All tools, uniforms or other apparel necessary for the job shall be furnished by the employer.

Employees shall be responsible for the loss of any hand tools issued to them by the Employer, provided that the Employer provides a secured

locker facility for the storage of such tools between use.

**26. Hazardous Work:** (a) Where a claim is made that work is hazardous, determination of the question shall be left to the Chief Engineer or Management Representative and Shop Steward of the building and, in the event they fail to agree, the matter shall be determined through the grievance and arbitration procedures. The Union and the RAB shall appoint an equal number of representatives, between six and ten in total, to a Labor Management Committee, which shall be known as the "Industrial Safety Committee".

(b) In accordance with the requirement of the Occupational Safety and Health Act of 1970, it shall be the exclusive responsibility of the Employer to insure the safety of its employees and compliance by them with any safety rules contained herein or established by the Employer. Nothing in this agreement will make the Union liable to any employees or to any other persons in the event that injury or accident occurs.

**27. Legal Assistance:** The Employer shall supply legal assistance where required to employees who are served with summons regarding building violations.

**28. Family and Medical Leave Act:** The parties agree to comply with the Family and Medical Leave Act to the extent required by law. Leaves

under this Agreement and/or the Family and Medical Leave Act shall not pyramid.

29. **Job Definitions:** (a) *Chief Engineer:* To direct the operation of employees in the bargaining unit in the performance of their duties. This does not preclude the Chief Engineer from standing watch and performing manual duties consistent with the work performed by the employees under his direction.

(b) *Assistant Chief Engineer:* To assist the Chief Engineer in the performance of his duties.

(c) *Engineer:* Operating, maintaining and repairing heating, ventilating and air conditioning equipment and other equipment incidental to the operation of the building as directed by management.

(d) *Mechanic:* By training and experience possesses a certain amount of mechanical technical skill that enables him to function independently of an engineer more than 50% of his time.

(e) *Helpers:* Assist the engineer and/or mechanic in the performance of their duties.

(f) The above classifications are intended to describe the existing practices in the industry.

In witness whereof, the parties have hereto set their hands and seals.

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INTERNATIONAL UNION OF  
OPERATING ENGINEERS,  
LOCAL 94-94A-94B, AFL-CIO

By: MICHAEL A. CARNEY  
President and Business Manager

REALTY ADVISORY BOARD ON  
LABOR RELATONS, INC.

By: JAMES F. BERG  
President

Dated: January 13, 2004