

AGREEMENT

Between

PACIFIC RAIL SERVICES, L.L.C.

And

International Brotherhood of Boilermakers Local 104 AFL-CIO

For The Period

August 1, 2004 through July 31, 2007

This AGREEMENT entered into this 1st day of August, 2004 between PACIFIC RAIL SERVICES, L.L.C. hereafter referred to as “Employer” and Boilermakers Local Number 104, affiliated with the International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers AFL-CIO, hereafter referred to as “Union”.

WITNESSETH:

ARTICLE 1. PARTIES TO THE AGREEMENT

Section 1. The Employer is Pacific Rail Services, L.L.C. a Delaware Corporation which has become signatory to this Agreement as hereafter set forth.

Section 2. Employees Covered This Agreement shall apply to and cover all employees employed at the employers Yeon Street location in Portland Oregon. Office clericals, Guards and Supervisors as defined by the NLRA shall be excluded.

Section 3. Transfer of Company Title or Interest

- a. This Agreement and Supplemental Agreements hereto, shall be binding upon the parties hereto, their successors, administrators, executors and assigns. In the event an entire operation or any separable, independent segment thereof, or rights only, are sold, leased, transferred or taken over by sale, transfer, lease, assignment, receivership or bankruptcy proceedings, such operation or use of such rights shall continue to be subject to the terms and conditions of this Agreement. The Employer shall give notice of the existence of this Agreement to any purchaser, transferee, lessee, assignee, etc., of the operation covered by this Agreement or part thereof. The Union shall also be advised of the exact nature of this transaction, not including financial details. If the Employer extends his existing operating authority by purchase, lease or other method of acquisition, this Agreement shall apply to such extended operation.
- b. In the event the Employer fails to require the purchaser, the transferee or lessee to assume the obligations of this Agreement, the Employer (including partners thereof) shall be liable to the Union and to the employee covered for all damages sustained as a result of such failure to require assumption of the terms of this Agreement, but shall not be liable after the purchaser, the transferee or lessee has agreed to assume the obligations of this Agreement.
- c. When the signator to this Agreement purchases rights from another signator, the purchaser must accept the affected employees of the seller before hiring any new employees. The applicable layoff provisions of this Agreement shall apply. When rights are sold to a non-signator to this Agreement, and such purchaser is the sole bidder, the provisions of this Agreement shall not apply.

ARTICLE 2. SUPPLEMENTAL AGREEMENTS

Section 1. Any Employer who is or may become a party to this Agreement shall also become party to any one or more Supplemental Agreements. The Employer shall notify the Local Union involved specifying the Supplements and the employees covered thereunder.

ARTICLE 3. SCOPE OF AGREEMENTS

Section 1. Agreement The execution of this Agreement on the part of the Employer shall cover all operations of the Employer, which are covered by this Agreement, and shall have application to the work performed within the classifications defined and set forth in the Agreement.

Any Supplemental Agreements are subject to and controlled by the terms of this Agreement and referred to herein as "Supplemental Agreements".

ARTICLE 4. RECOGNITION, UNION SHOP AND CHECKOFF

Section 1. Recognition

- a. The employer recognizes that the Union is the exclusive representative of all employees in the classifications of work covered by this Agreement and Supplements thereto for the purposes of collective bargaining as provided by the National Labor relations Act.
- b. Employees included in the Bargaining Unit covered by this Agreement who are members of the respective Union as of the effective date of this Agreement shall, as a condition of employment, maintain their membership in the Union.
- c. Employees included in the Bargaining Unit covered by this Agreement who are not members of the respective Union as of the effective date of this Agreement, shall apply for membership in said Union on the thirty-first (31st) day after such effective date; and all Employees who are accepted into membership into the Union shall maintain their membership in the Union as a condition of his/her employment.
- d. Employees hired after the effective date of this Agreement shall apply for membership in the respective Union on the thirty-first (31st) day following the beginning of such employment, and all Employees who are accepted into membership in the Union shall maintain their membership in the Union as a condition of his/her employment.
- e. The Employer, upon written request of the Local Union, shall discharge any Employee within two (2) working days after receipt of such notice, who fails to tender the periodic dues and initiation fees uniformly required by the Union as a condition of acquiring or retaining membership in good standing in the Union.
- f. The Employer agrees to deduct from the wage of each Employee who completes a standard form furnished by the Union, his Union dues from his pay. The Employer shall remit the dues to the Financial Secretary of the Union or the appropriate trust.
- g. The Union and the Employee agree to indemnify and hold harmless the Employer from any and all claims, actions, and/or proceedings arising out of this dues deduction.
- h. Nothing contained in this section shall be construed as to require the Employer to violate applicable law.

Section 2. New Employees

- a. A new employee shall work under the provisions of this Agreement but shall be employed only on a ninety (90) calendar day trial basis within one hundred and twenty (120) calendar days, during which period he may be discharged without further recourse, provided, however, that the Employer may not discharge or discipline for the purpose of evading this Agreement or discriminating against Union members. After ninety (90) calendar days, the employee shall be placed on the regular seniority list.
- b. In the case of discipline within the ninety (90) calendar day period, the Employer shall notify the Local Union in writing.
- c. If employees are hired through an employment agency, the Employer is to pay the employment agency fee.

Section 3. Deductions

- a. The Employer agrees to deduct from the pay of all employees covered by this agreement the dues, initiation fees and/or uniform assessments of the Local Union having jurisdiction over such employees and agrees to remit to said Local Union all such deductions prior to the end of the month for which the deduction is made. Where laws require written authorization by the employee, the same is to be furnished in the form required.
- b. Where an employee who is on check off is not on the payroll during the week which the deduction is to be made or has no earnings or insufficient earnings during the week or is on leave of absence, the employee must make arrangements with the Union to pay such dues in advance.
- c. The Employer will recognize authorization for deductions from wages, if in compliance with state law, to be transmitted to the Union or to such other organizations as the Union may request. No such authorization shall be recognized if in violation of state or federal law. No deduction shall be made which is prohibited by applicable law.
- d. In the event that the employer has been determined to be in violation of this Section. The Union shall use Article Eight (8) of this agreement to settle the dispute. Errors or inadvertent omissions relating to individual employees shall not constitute a violation.

Section 4. Notification to the Union The following information will be given in writing by the Employer to the Union within seven (7) days from the date of hiring new employees:

- (1) Name
- (2) Home Address
- (3) Social Security Number
- (4) Date Employed

ARTICLE 5. MANAGEMENT RIGHTS

Employer retains the sole right to manage and operate its establishment. These rights include, but are not limited to, hiring, layoff, assigning, transferring, promoting, disciplining, terminating with just cause, establishing work schedules, issuing and enforcing work rules, changing methods of operation, ceasing operations and subcontracting. All rights and privileges belonging to the Employer, which are not restricted or abridged by this agreement, are reserved to the Employer. Failure to exercise these rights does not constitute a waiver of these rights. This shall not be construed as limiting the Union's rights under Article 8, Grievance Procedure.

ARTICLE 6. SENIORITY RIGHTS

Section 1. Seniority Seniority shall only be broken by discharge, voluntary quit, **absence due to illness or injury for more than one year**, or layoff that exceeds one year or as provided in any applicable provisions of the supplemental Agreements.

Section 2. Seniority Application

- (a) To Qualify for Seniority the first ninety (90) calendar days of employment shall be a probationary period. After qualifying for seniority, the employee's seniority date shall be first date of hire.
- (b) In the event an employee is not worked in his rightful position of seniority, he shall be compensated in the amount that was earned by the employee who has worked in his stead.

Where an employee has knowledge of a job assignment out of proper seniority prior to performance of such assignment, he shall bring it to the attention of his supervisor.

- (c) A separate seniority list will be compiled for each classification, this practice shall continue for the life of this Agreement unless otherwise mutually agreed to by the Employer and the Union.
- (d) The Employer shall post a seniority roster at least each six- (6) months and likewise shall mail to the Local Union at least once each six- (6) months, and shall maintain a seniority roster at the terminal. If any employee disputes his seniority position he must file an appropriate grievance within thirty (30) days of the posting.

Section 3. Layoff Should layoff become necessary, the last man on the seniority list shall be the first man laid off and qualified to do the work of the employee with lesser seniority. Seniority shall be broken by more than one (1) year layoff. Any regular employee permanently laid off due to lack of work shall be notified at the completion of the shift at the time the layoff is effective.

In the event any employee is on layoff, he will have preference to work in any classification in which he is qualified. Before the company hires additional

employees, employees with seniority will be given an opportunity to qualify as a “new hire”.

Section 4. Recall In case of recall, the employees are to be returned to employment in the reverse order in which they were laid off. In calling employees back, except in case of temporary employment, the employee shall be given ten (10) days written notice. In the event the employee fails to return with the above notice, he shall have lost all seniority rights.

Section 5. Advancement Employees with the longest period of service shall be given preference for advancement to the higher pay classifications as they become available, provided that such employees, in the judgment of the Employer, are qualified for the particular work assignment. Any difference of opinion, failing settlement, will be subject to the grievance procedure. In case of advancement, the employee shall be considered probationary for 30 calendar days. If the employee fails to complete the probationary period he shall be returned to his previous classification.

ARTICLE 7. MAINTENANCE OF CONDITIONS

Section 1. Reduction The Employer agrees that all conditions of employment in his individual operation relating to wages, hours of work, overtime differentials and general working conditions shall be maintained at not less than the highest standards in effect at the signing of this Agreement. If conditions change affecting the employee’s wages, hours of work, overtime differential or general working conditions, the Employer may exercise provisions in Article VI, Section 5, to permanently realign the employee into the proper classifications, conditions of employment or Supplement affecting his work pattern with prior notice to the employee. In no case shall an existing employee experience reductions.

If a bona fide or inadvertent error is made in applying the terms and/or conditions of this contract, the error shall be corrected immediately upon notice and retribution shall only be allowed for thirty (30) days prior to the discovery of the infraction.

Section 2. Uniforms and Personal Grooming Where the Employer requires uniforms or special working clothes, the Employer shall furnish it. The Employer shall also provide personal protective equipment and all other safety equipment required to handle harmful materials, in order to insure the safety of the employee. The Employer shall replace all clothing destroyed on the job. Lost clothing will be the responsibility of the employee. The employer currently provides a boot allowance of \$85.00 per year for each position that requires safety boots. However the Mechanics allowance shall be than one hundred and fifty (\$150) per year.

The Employer has the right to establish and maintain reasonable standards for wearing apparel and personal grooming. Conflicts will be subject to the grievance procedure.

Section 3. Reassignment of Work

- (a) Employees drawing a lower wage scale may be used temporarily at the option of the Employer for as higher class of work, provided they do not displace another employee. Such employee may be returned to the lower wage scale when returning to the lower class of work. Employees will be paid at the higher rate of pay only for the hours worked at the higher rate of pay.
- (b) Subject to written mutual consent, additional classifications may be mutually negotiated between the parties hereto, defining job duties and wage rates different from those specified in the Agreement.

Section 4. No Private Agreements The Employer agrees not to enter into any agreement or contract with his employees, individually or collectively, which in any way conflicts with the terms and provisions of this Agreement. Any such agreement shall be null and void

Section 5. New Equipment and Operations

- (a) Where new types of equipment and/or operations are utilized, and for which rates of pay are not established by this Agreement, are put into use after July 1, 2004, within operations covered by this Agreement, rates governing such operations shall be subject to negotiations between the parties. Rates agreed upon or awarded shall be effective as of the date the equipment is put into use.
- (b) It is recognized that changes in the operations of the Employer may occur during the life of this Agreement. Should this occur, the Employer will notify the Employees and the Union in advance of making the change.

Section 6. Meals The Employer shall grant and require only one (1) meal period during an eight- (8) hour shift. The period shall be of not less than one-half (1/2) hour or more than one (1) hour duration. The length and beginning time of the meal period may be changed from day to day but may not be changed after the meal period has begun. Employees who work more than eight (8) hours shall receive two (2) additional fifteen (15) minute breaks on the clock. Employees that exceed a twelve (12) hour shift shall be granted a thirty (30) minute meal period paid for by the employer. An additional fifteen (15) minute break shall apply for each two hours of work thereafter. If for any reason the employee does not take this meal, thirty (30) minutes pay at the applicable rate shall be added to their pay.

The Employer shall be required to furnish a clean adequate room at his place of business to be used for the purpose of rest periods and meals.

ARTICLE 8. GRIEVANCE PROCEDURES

All grievances that may arise in the shop, plant or yard of the Employer covered by this Agreement shall be given consideration as follows:

- (1) All grievances shall be handled by the Union or its authorized representative and the Employer or its authorized representative. (The Steward shall take the grievance to the terminal manager.)
- (2) In the event the grievance cannot be settled as above within ten (10) days after it arises, it shall be submitted in writing to the representative of the Union and the representative of the Employer for consideration and settlement. (The union official shall appeal in writing to the regional manager.)
- (3) All time limits specified in Section 9, 1 & 2 may be extended by mutual consent.
- (4) In the event the grievance cannot be settled as above provided, it shall be referred in writing to Arbitration. The Party desiring to arbitrate shall send a request by mail to the Director of time Federal Mediation and Conciliation Service requesting the Director to furnish a list of nine (9) arbiters. Each party shall have the right to strike a total of four (4) names from the list, and the right to strike first shall be determined by lot, or as otherwise agreed by the Parties, and each party shall alternately strike one (1) name. The name remaining on the list after each Party has stricken four (4) names shall be the impartial arbiter. The decision of the Arbitrator shall be final and binding on the Employer and the Union. (It is understood and agreed that questions involving changes in the terms and provisions of this agreement shall not be subject to the foregoing grievance procedure or to arbitration thereunder). Said decision shall be rendered in writing within ten (10) days from the time of reference to the Arbitrator; and shall specify whether or not it is retroactive and the effective date thereof.
- (5) The parties shall each pay half the arbiter's fee, and the cost of any hearing room. All other expenses including the cost of a Court Reporter shall be paid by the party incurring them. If a court reporter is used and both parties request transcripts, the cost of a court reporter will be split.

ARTICLE 9. PROTECTION OF RIGHTS

Section 1. Picket Lines It shall not be violation of this Agreement, and it shall not be cause for discharge or permanent replacement in the event an employee cannot safely enter upon property involved in a labor dispute.

ARTICLE 10. DISCHARGE OR SUSPENSION

Section 1. Warning Notice re: Complaint The Employer may discharge or suspend an employee for just cause, but no employee shall be discharged or suspended unless a written warning notice shall be previously have been given to such employee of a complaint against him concerning his work or conduct, except that no such prior warning shall be necessary if the cause for discharge or suspension is dishonesty, drinking related to his employment, job abandonment, Physical assault, Insubordination, Intentional safety violations, carrying unauthorized passengers, selling, transporting or use of illegal narcotics while in the employment of the Employer. It is recognized that an employee's driving record, where related to the job, and/or ability to perform work, are continuing conditions of qualification as a

satisfactory employee and are subject to the warning notice provisions of this Article. The above notification shall be given to the employee in person with a copy to the Local Union.

Section 2. Limitations The complaint specified in such prior warning notice must concern the same type of misconduct as the cause for discharge or suspension. No such warning notice shall remain in effect for a period of more than twelve (12) months. A copy of such warning notice shall be given to the Local Union involved.

Section 3. Right to Protest Warning Notice of Discharge An employee may request an investigation of his discharge or suspension or any warning notice and the Union shall have the right to protest any such discharge, suspension or warning notice. Any such protest shall be presented to the employer in writing within ten (10) days, exclusive of Saturdays Sundays and holidays, after the discharge, suspension or warning notice, and if not presented within such period, the right of protest shall be waived Upon the filing of any protest Article 8 of this agreement shall apply

Section 4. Written Notice of Termination The Employer shall give to a discharged employee a written notice of termination, with a copy to the Local Union involved in person or by registered or certified mail with a return receipt.

Section 5. No Discrimination No employee shall be discharged or discriminated against for Union activities or for upholding Union principles.

ARTICLE 11. TIME SHEETS, PAY PERIODS AND PAYDAYS

Section 1.

(a) **Pay Periods** All regular and regular extra employees covered by this Agreement shall be paid in full each week. Not more than seven (7) days pay shall be held on an employee, provided, however that present arrangements shall not be disturbed by this provision, except by mutual agreement. The regular work week shall be considered Monday thru Sunday

(b) **Regular Paydays** The Employer shall have a regularly designated payday for regular and regular extra employees in each of the various classifications and such payday shall not be changed without agreement of the Local Union.

(c) **Sunday or Holiday** When a regular designate payday falls on a Saturday, Sunday or a holiday, the pay checks for the employee not designated to work on such Saturday, Sunday or holiday shall be made available the previous day.

(d) **Pay Upon Termination** Upon discharge the Employer shall pay all money due to the employee **not later than the end of the next regularly scheduled payday.** Upon quitting, the Employer shall pay alimony due the employee on the payday in the week following such quitting, unless governed by more restrictive requirements of state law.

Section 2. Itemized Statement The Employer shall furnish each employee with an itemized statement of earnings and deductions, specifying mileage, hours paid, straight time and overtime, layover and subsistence pay, vacation pay, holiday pay, and other compensation payable to the employee, which is included in the check.

Section 3. Rejected Claims In case of time claimed by the employee, but disallowed by the Employer, a full detailed written explanation must be given the employee, with a copy to the Local Union involved.

Section 4. Payroll drafts issued shall be negotiable in the area in which issued.

Section 5. Federal and state income tax withholding on vacation pay shall not exceed the normal rate.

ARTICLE 12. COMPENSATION CLAIMS

Section 1. The Employer agrees to cooperate toward the prompt settlement of employee on-the-job injury claims when such claims are due and owing, as required by law. The Employer shall provide Worker's Compensation protection for all employees even though not required by state law.

Section 2. An employee who is injured on the job, and is sent home, or to a hospital, or who must obtain medical attention, shall receive pay at the applicable hourly rate for the balance of his regular shift on that day.

Section 3. If the employee is working away from his/her home terminal, the Employer shall provide transportation by bus, train, plane or automobile to his home terminal if and when directed by a doctor.
The Employer agrees to provide any employee injured locally, transportation at the time of injury from the job to the medial facility and return to the job, or to his home if required. In the event of a fatality, arising in the course of employment, while away from home terminal, the Employer shall return the deceased to his home at the point of domicile.

ARTICLE 13. MILITARY CLAUSE

Section 1. Employees enlisting or entering the military or naval service of the United States of America, pursuant to the provisions of USERRA Act of 1994, shall be granted all rights and privileges provided by the Act.

Section 2. All employees shall be granted a leave of absence in order to fulfill their obligations to serve in the military services of the United States, active or reserve, including any state or federal National Guard.

Section 3. Employees required to report for Active Duty Reserve, National Guard Duty, or annual Reserve Duty, after completing 90 days employment from date of hire, shall receive their regular hourly rate of pay not to exceed 120 hours in any twelve (12) month period. Evidence of service shall be presented to the Company.

ARTICLE 14. EQUIPMENT, ACCIDENTS, REPORTS

Section 1. The Employer shall not require employees to operate any vehicle that is not in safe operating condition as determined by the guidelines of the equipment manufacturer. It shall not be a violation of this Agreement where employees refused because not mechanically sound or properly equipped shall be appropriately tagged so that it cannot be used by other drivers until the maintenance department has adjusted the complaint.

- Section 2.** Under no circumstances will an employee be required or assigned to engage in any activity involving dangerous conditions of work or danger to person or property or in violation of any applicable statute or court order, or in violation of a Government regulation relating to safety of person or equipment.
- Section 3.** The term "dangerous conditions of work" does not relate to the type of cargo that is hauled or handled.
- Section 4.** Any employee involved in any accident shall immediately report said accident and any physical injury sustained. When required by his Employer, the employee, shall make out an accident report in writing on forms furnished by the Employer and shall turn in all available names and addresses of witnesses to the accident. Failure to comply with this provision shall result in disciplinary action up to and including discharge.
- Section 5.** Employees shall immediately, or at the end of their shift, report all defects of equipment. Such reports shall be made on a suitable form furnished by the Employer and shall be made in multiple copies, one copy to be retained by the employee. The Employer shall not ask or require any employee to take out equipment that has been reported by any either employee as being in unsafe operating condition until same has been approved as being safe by the mechanical department.
- Section 6.** When the occasion arises where an employee gives written report on forms in use by the Employer of a vehicle being in an unsafe working operating condition, and receive no consideration from the Employer, he shall take the matter up with the officers of the Union who will take the matter up with Employer.

ARTICLE 15. LEAVE OF ABSENCE

TIME-OFF FOR UNION ACTIVITY

Section 1.

- (a) No employee shall engage in any UNION activity, solicit membership or collect UNION dues during working time, except as otherwise provided for in this Agreement.
- (b) Upon written request by the UNION to an officer of the COMPANY, and with the approval of the COMPANY (which approval shall not be unreasonably withheld) an employee whose service can be spared by the COMPANY will be allowed time off, without pay, to attend to official business of the UNION, as it pertains to its relations with the COMPANY. Such written request will be provided at least three (3) days prior to the requested time off, when possible.
- (c) Any employee taking a full time position with The International Brotherhood of Boilermakers, Iron Shipbuilders, Blacksmiths, Forgers and Helpers, or its Local, affiliated with the AFL-CIO shall be granted a leave of absence if requested in writing and approved by the COMPANY. The term of such leave of absence requested shall be set forth in the written request. Such approval shall not be unreasonably withheld. The UNION shall pay the monthly health care costs at the customary COBRA rate for an employee on such leave of absence.
- (d) An employee on such leave of absence shall retain his/her seniority standing and shall have all time spent by him in such position added to his/her regular service with the department in which he/she was employed by the COMPANY at the time of taking such position, and shall upon

termination of his/her employment with the UNION, within the period of such leave of absence, be reinstated in his/her former wage rate classification and department in accordance with the Seniority provisions of the then existing Agreement between the COMPANY and the UNION which are not inconsistent with this section.

Section 2. Leave of Absence

- (a) Any employee desiring leave of absence from his employment shall secure written permission from both the Local Union and the Employer. Except as otherwise provided in this Article, the maximum leave of absence shall be six (6) months. During an approved leave of absence the employee shall not engage in gainful employment in the same industry, unless approved by the employer. During this leave of Absence, Health, Welfare and Pension contributions shall be the responsibility of the Local Union
- (b) An employee who is unable to work because of sickness or injury shall be deemed to be on leave of absence. Such leave shall not exceed one (1) year unless extended by written consent of the Local Union and the Employer, but in case of an employee injured on the job related illness covered by Worker's Compensation, then leave of absence is extended to the extent provided by state law.
- (c) A leave of absence as provided in this Section shall not result in the loss of seniority rights.
- (d) A leave of absence as provided in this Section shall not result in the loss of seniority rights. Time off in excess of ninety (90) days due to an approved leave of absence shall not be accumulated for vacation purposes. Any employee on leave of absence shall be entitled to pro rata vacation if he so requests from the Employer. Time off in excess of thirty (30) days due to an approved leave of absence for personal reasons shall not be accumulated for vacation purposes.

Section 3. Leave for Non-Covered Position An employee who is requested by the Employer to take a position not covered by this Agreement or by any other collective bargaining Agreement between the Employer and the Union shall be granted a leave of absence. The Employer shall give written notice of such leave to the employee with a copy to the Local Union prior to actual work on the requested position. Employees coming within the provisions of this Section shall continue to hold their seniority during the leave of absence period. The Leave of absence shall not exceed six (6) months

Section 4. Furlough Any employee not fully utilized may request and receive temporary furlough without loss of seniority.

Section 5. Holiday Pay While on Leave of Absence Employees who are serving their sixty (60) working day eligibility period are not entitled to holiday pay for holidays falling within such probationary period. Regular employees are entitled to holiday pay if the holiday falls within thirty (30) calendar days of absence due to illness or non-occupational injury, or within sixty (60) calendar days of absence due to an occupational injury. This does not apply to employees taking a leave of absence for full time employment with the Union. If during a leave of absence due to sickness or injury an employee becomes gainfully employed, the Employer will be relieved of responsibility for holiday and Health, Welfare and Pension Contributions.

Section 6. Membership During any leave of absence for furlough, the employee shall retain his membership in the Local Union.

ARTICLE 16. COMPANY RULES

The Union recognizes the right of the Employer to establish such written company rules as he may deem necessary provided that such rules are not in conflict with the terms and conditions of this Agreement, and further provided that no such company rules shall become effective without notification to the Local Union involved. Application of company rules shall apply equally to all members of the Local Union employed by the Company making the rules. Any controversy between the Employer and the Local Union as to whether or not a company rule is in conflict with the terms and provisions of this Agreement shall be considered a dispute subject to the disputes procedure set out in Article 8 of this Agreement.

ARTICLE 17. HEALTH AND WELFARE

Section 1. Effective September 20, 2004, the Employer shall pay seventy (70) percent of the Current Health Plan per month. This will consist of Dental, Vision, Health and Life, on behalf of each employee employed under this Agreement who have been compensated by the employer for not less than forty (40) hours during the previous calendar month. Each employee that chooses to participate in this plan will pay thirty percent (30%). The coverage will not change without mutual consent.

ARTICLE 18. PENSION

Section 1. Boilermakers Pension Fund- The COMPANY shall make a contribution of **Thirty Cents (\$0.30)** per hour to the **Boilermakers-Blacksmiths' National Pension Trust** for each compensable hour beginning with the effective date of this Agreement. An additional **Ten (\$0.10) Cents** per compensable hour paid increase shall be effective in each year thereafter during the term of this Agreement.

Section 2. The Employer will continue to provide a 401K Plan in which the Employer shall match contributions of Employees up to a maximum of five percent (5%) of gross earnings.

An Employee will be eligible for the 401K and pension plans when they have completed their probationary period

ARTICLE 19 VACATIONS

Section 1. Eligibility for Vacation

- (a) Employees covered by this Agreement who have completed one (1) year of service shall receive one (1) week of vacation with pay.
- (b) Employees who have completed two (2) years of service or more shall receive two (2) weeks of vacation with pay. A like vacation shall be given upon completion of each year of service through the fifth (5th) year of employment.
- (c) Employees who have completed five (5) years of services shall receive three (3) weeks of vacation with pay. A like vacation shall be given upon completion of each year of service through the tenth (10th) year of employment.
- (d) Employees who have completed ten (10) years or more of service shall receive four (4) weeks vacation with pay. A like vacation shall be given upon completion of each year of service through the fifteen (15th) year of employment.

Section 2. Vacation Pay – Lift Equipment Operator Vacation pay shall be computed at the

Lift Equipment Operator rate of pay for those employees who were paid as a lift equipment operator for One Hundred-percent (100%) or more of the total hours worked during the previous twelve month period.

Section 3. Pro Rata Vacation Any employee who quits or is terminated for any reason after nine (9) months shall receive pro rata vacation pay.

Vacation shall be paid at 1/52nd of the earnings from the previous year's W2 form or forty (40) hours, whichever is greater. The employees shall not be required to work the weekend before or after vacation unless they choose. The employee shall be totally responsible to make his option known to the company in writing prior to vacation.

Section 4. Holiday During Vacation If an employee's vacation period includes a holiday as specified in Article 20, he shall receive the specified holiday pay in addition to his vacation.

Section 5. No Gainful Employment At least one week of vacations must be taken each year and men on vacation shall not engage in gainful employment in this industry. Remainder of vacation accrued will automatically rolled over, not to exceed provisions set forth in Section five (5) of this article

Section 6. Unemployment Compensation If an employee's vacation period accrues or is payable during a period in which he is otherwise entitled to unemployment compensation, the employee's right to and payment for such vacation shall be deferred until after termination of the unemployment benefit period. The Employer waives the privilege of allocating vacation pay to past, present or future weeks of unemployment.

Section 7. Termination of Employment An employee who leaves the employment of the COMPANY for any reason or who dies, shall be paid for the balance of vacation which he/she has accrued at that time;

ARTICLE 20. HOLIDAYS

Section 1. The following shall be considered as holidays under this Agreement unless changed by State or Federal laws:

| | |
|---|--|
| New Year's Day (January 1 st) | Thanksgiving Day |
| Memorial Day | Christmas Eve (December 24 th) |
| Fourth of July | Christmas Day (December 25 th) |
| Labor Day | |
| Three (3) Personal Holidays | |

The employee will receive three personal holidays per contract year. Employee shall be required to give the Employer five (5) workdays notice prior to taking said holiday.

Section 2. All employees with seniority shall be paid for eight (8) hours on each of the above named holidays, the applicable straight time rate, when such men do not work, except

due to bona fide illness or injury or by mutual consent. Employees working ten (10) hour shift shall be paid ten (10) hours pay

Men required to work any Holiday, shall receive the rate of time and one half for all time worked in addition to the regular pay for the paid holiday, with a minimum of five (5) hours per call.

Section 3. An employee with seniority must work his last scheduled workday before the holiday and the first scheduled workday after the holiday to be entitled to the aforementioned holidays.

Section 4. Employees who are serving their ninety (90) working day probationary period are not entitled to holiday pay for holidays falling within such probationary period.

Section 5. Resignation shall terminate all subsequent holiday benefits.

ARTICLE 21. MOONLIGHTING

While no employee working elsewhere under the terms of this Agreement shall be discharged solely because of that employee's employment outside of scheduled working hours, such employment shall be a basis for discipline if it affects the employee's performance or attendance. Discipline for this reason shall be subject to the grievance procedure set forth in Article 8. above.

ARTICLE 22. UNION ACTIVITIES

Any employee member of the Union acting in any official capacity whatsoever shall not be discriminated against for his acts as such officer of the Union so long as such acts do not interfere with the conduct of the Employer's business, nor shall there be any discrimination against any employee because of Union membership or activities.

ARTICLE 23. INSPECTION PRIVILEGES

Authorized agents of the Union shall have access to the Employer's establishment during working hours for the purpose of adjusting disputes, investigating working conditions and collections of dues; provided, however, there is no interruption of the Employer's working schedule.

ARTICLE 24. SEPARATION OF EMPLOYMENT

Upon discharge the Employer shall pay all money due to the employee, within twenty four (24) hours. Upon quitting, the Employer shall pay all money due the employee on the payday in the week following the quitting.

ARTICLE 25. COMPETITIVE EQUITY

In the event the Employer part to this Agreement may require the services of employees coming under the jurisdiction of this Agreement in a manner and under conditions not provided for this Agreement, then and in such instances the Local Union and the Employer concerned may negotiate such matters for such specific purposes, subject to mutual consent.

ARTICLE 26. SEPARABILITY AND SAVINGS CLAUSE

If any Article or Section of this Agreement or any Supplements or riders thereto should be held invalid by operation of law or by any tribunal of competent jurisdiction, or if compliance with or enforcement of any Article or Section should be restrained by such tribunal pending of final determination as to its validity, the remainder of this Agreement and of any Supplements or 'riders thereto, or application of such Article or Section to persons or circumstances other than those as to which is has been held invalid or as to which compliance with or enforcement of has been restrained, shall not be affected thereby.

In the event that any Article or Section is held invalid or enforcement of or compliance with which has been restrained, as above set forth, the parties affected thereby shall enter into immediate collective bargaining negotiations after receipt of written notice of the desired amendments by either the Employer or the Union for the purpose of arriving at a mutually satisfactory replacement for such Article or Section during the period of invalidity or restraint. There shall be no limitations of time for such written notice. If the parties do not agree on a mutually satisfactory replacement within sixty (60) days after receipt of the stated written notice, either party shall be permitted all legal or economic recourse in support of its demands notwithstanding any provision of this Agreement to the contrary.

ARTICLE 27 STEWARDS

Section 1. The employer recognizes the right of the Union to designate job stewards and alternates from The Employer's seniority list. The authority of the stewards and alternates so designated by the Union shall be limited to, and shall not exceed, the following duties and activities:

- (a) The investigation and presentation of grievances with his Employer or designated company official in accordance with – the provisions of the collective bargaining agreement.
- (b) The collection of dues when authorized by appropriate Local Union action.
- (c) The transmission of such messages and information, which shall originate with, and is authorized by the Local Union or its officers, provided such messages and information:
 - (1) Have been reduced to writing, or
 - (2) If not reduced to writing, are of a routine nature and do not involve work stoppages, slow downs, refusal to handle goods, or any other interference with the Employer's business.

Section 2. Job stewards and alternates have no authority to take strike action, or any other action interrupting the Employer's business, except as authorized by official action of the Union. The Employer recognizes these limitations upon the authority of the job stewards and alternates, and shall not hold the Union liable for any unauthorized acts. The Employer is so recognizing such limitations shall have the authority to impose proper discipline, including discharge, in the event the shop steward has taken unauthorized strike action, slow down or work stoppage in violation of this Agreement.

Section 3. Stewards shall be permitted reasonable time to investigate, present and process grievances on the company property, without loss of time or pay during his regular working hours and without interrupting the Employer's operation. Stewards may call group meetings, where mutually agreed to by the local union and the employer, off the property during his regular schedule without loss of time or pay. Such time spent in handling grievance shall be considered working hours in computing daily and/or weekly overtime if within the regular work schedule of the steward.

Section 4. When the Union designates a job steward at an individual site of an Employer who has more than one site, the job steward shall be assigned to the same warehouse in which he was designated as a steward unless it is necessary for the job steward to exercise his seniority to retain his employment.

ARTICLE 28. FUNERAL LEAVE

Section 1. Regular employees shall be entitled to compensation under this Article. In the event of a death in the Family (father, mother, father or mother of spouse, wife, husband, brother, sister, son or daughter, or grandparents, an employee with seniority shall be entitled to be paid for three (3) days funeral leave which shall include the day prior to and the day of the funeral.

Section 2. The compensable day or days must fall on a regular scheduled workday or days. If there is a five (5) day lapse between death and funeral, then another day may be taken instead of the day before the funeral. The compensable days must be regularly scheduled workdays.

ARTICLE 29. EXAMINATIONS AND IDENTIFICATION FEES

Section 1. **Examinations** Physical, mental or other examinations required by a government body or the Employer shall be promptly complied with by all such employees, provided, however, the Employer shall pay for such examinations after the first qualifying examination. This does not apply to drivers or 'DOT license examinations. Routine examinations are to be taken at the employee's home terminal. Employees will not be required to take examinations during their working hours, without pay for time so consumed.

The Employer reserves the right to select its own medical examiner or physician, and the Union may, if it believes an injustice has been done an employee, have said employee re-examined at the Employees expense.

In the event of disagreements between the doctor selected by the Union, the Employer and Union doctors shall together select a third doctor within thirty (30) days whose opinion shall be final.

Section 2. Identification Should the Employer find it necessary to require employees to carry or record full personal identification, such requirement shall be complied with by the employees. The cost of such personal identification shall be borne by the Employer.

ARTICLE 30. JURY DUTY

Section 1. When an employee covered by this Agreement is called upon for jury service in any municipal, county, state, or federal court, he shall advise the Employer upon receipt of such call and if taken from his work for such service, shall be reimbursed as provided herein for any loss of wages while actually performing such service, provided he exhibits the Employer his properly endorsed check and permits the Employer to copy the check or voucher he received for such service. The amount the employee shall be reimbursed shall be determined by subtracting the amount received at his regular day's rate during the regular working days, eight (8) straight time hours per day, he missed while performing such service. To be entitled to such reimbursement, the employee who reports for jury duty and is excused must report immediately by telephone to his supervisor to determine if work is available for him. An employee on night shift shall be considered on day shift for the purposes of this provision.

Section 2. There shall be a total of ten (10) compensable jury duty days per contract year for regular employees. A compensable day must be a regularly scheduled workday during the week Monday through Friday.

Section 3. In case an employee shall be subpoenaed as a company witness he shall be reimbursed for all time lost and expenses incurred.

ARTICLE 31. NON-DISCRIMINATION

Section 1. The Employer and the Union agree not to discriminate against any individual with respect to his hiring, compensation, terms or conditions of employment because of such individual's race, color, religion, sex, or national origin, nor will they limit, segregate or classify employees any way to deprive any individual employee of employment opportunities because of his race, color, religion, age, sex, or national origin.

Section 2. Wherever this Agreement makes reference to an employee in the masculine gender, it shall be presumed to be equally applicable to the feminine gender.

ARTICLE 32

DRUG-FREE WORKPLACE EMPLOYEE TESTING

A. Reasonable Cause

1. Employees may be required to take a drug and/or alcohol-screening test if the COMPANY has reasonable cause to believe that the individual employee is under the influence of alcohol and/or drugs. Such test may include urinalysis for drugs, and blood sampling and/or breathalyzer for alcohol.

Reasonable cause for conducting a drug and/or alcohol-screening test shall include, but not limited to the following:

- (a) Whenever use of drugs or alcohol is reasonably suspected or considered to have possibly contributed to a workplace injury;
 - (b) Whenever a reportable accident or injury occurs;
 - (c) Patterns of excessive and/or habitual absenteeism or tardiness;
 - (d) An employee's physical appearance (glassy-eyed, slurred speech, odor of alcohol, etc.);
 - (e) Any unusual behavioral change exhibited by the employee, which might suggest the use of a prohibited substance.
2. Employees who refuse to be tested or otherwise refuse to cooperate in testing in accordance with paragraphs 2 and 3 above will be terminated. Employees who have previously completed a treatment program and later test positive under the limits of this Article will be terminated.
 3. COMPANY sponsorship of costs under the Health Care Plan which are associated with drug and/or alcohol treatment of an employee will be provided to an employee who has been a participant in such Plan for at least twelve (12) months, and will be limited to one set of such treatments for each such employee.
 4. An employee shall be permitted to take a leave of absence for the purpose of undergoing treatment pursuant to an approved program for alcoholism or drug use. The leave of absence must be requested prior to the commission of any act subject to disciplinary action.

B. Random Testing

1. At an interval to be determined by the Employer but not to exceed once per month, the company

may test up to Ten Percent of the workforce.

2. The method of selecting an employee will be mutually agreed to by the Union and the employer.
3. No employee will suffer loss of wages while undergoing such tests, and all costs involved in transportation to and from the collection site and all costs of examination and test shall be paid by the COMPANY.

TESTING PROCEDURE

1. All specimens will be taken from an employee at a suitable medical facility or physician's office selected by the COMPANY. The collection of any specimen will be conducted by an appropriate staff member of the medical facility. The testee will be required to sign a consent form prior to the collection of the specimen. Refusal of an employee to either sign a consent form or allow a specimen to be collected shall result in termination of employment.
2. In collecting of a specimen under the procedure contained herein, sufficient privacy will be provided to the employee to allow him/her an appropriate modicum of decency while nonetheless maintaining the integrity of the procedure.
3. The testing laboratory shall retain positive samples in accordance with NIDA Guidelines and standards. A portion of a positive specimen shall be made available to the employee for conducting independent confirmation testing by a laboratory chosen by the employee. The costs of such additional test shall be borne by the employee.
4. No employee will suffer loss of wages while undergoing such tests, and all costs involved in transportation to and from the collection site and all costs of examination and test shall be paid by the COMPANY.

Employees who are suspended pending receipt of results and who test negative shall be made whole.

5. Except as herein contained in this Appendix, nothing shall infringe on the employee's normal rights to privacy or job rights and security as set forth in the Collective Bargaining Agreement. The COMPANY assures that employees who have successfully completed participation in diagnosis, treatment and rehabilitation will not jeopardize their job security and/or promotional opportunities.

CHAIN OF CUSTODY

All blood and/or urine samples collected for drug or alcohol testing shall have an adequate chain of custody certification to insure that no tampering of the sample can occur.

CONFIDENTIALITY

All information obtained pursuant to this Appendix and all medical and testing information resulting therefrom shall be treated in a strictly confidential manner.

In the event that a grievance or any other legal proceeding involving the tested employee is brought by or involving the tested employee, such test results may be utilized in such proceedings, and the foregoing confidentiality requirements shall not apply.

TEST RESULTS

1. All drug test specimens identified as positive on~ the initial test shall be confirmed using the Gas Chromatography/Mass Spectrometry (GC/MS) techniques at the cut-off levels listed below for each drug:

| | <u>Screen/Confirmation</u> |
|-----------------------|----------------------------|
| Marijuana metabolites | 50/15 ng/ml. |
| Cocaine metabolites | 300/150 ng/ml. |
| Opiates | 300/300 ng/ml. |
| Phencyclidine (PCP) | 25/25 ng/ml. |
| Amphetamines | 1000/500 ng/ml. |
| Barbiturates | 200/500 ng/ml. |

Such cut-off levels are subject to change as federal, state or municipal law or regulations indicate.

2. A blood-alcohol level greater than .04 shall be deemed a positive test result for alcohol under the terms of this Appendix. Actions taken by the COMPANY as a result of such a positive result will be in accordance with the attached chart.

ARTICLE 33. DURATION

Section 1. This Agreement shall be in force and effect from August 1, 2004, to and including July 31, 2007, and shall continue from year to year thereafter unless written notice of desire to cancel or terminate the agreement is served by either party upon the other at least sixty (60) days prior to the date of expiration.

Section 2. Where no such cancellation or termination notice is served and the parties desire to continue said Agreement, but also desire to negotiate changes or revisions in this Agreement, either party may serve upon the other notice at least sixty (60) days prior to July 31, 2007, or July 31 of any subsequent contract year, advising that such party desires to revise or change terms or conditions of such Agreement.

ARTICLE 34. COMPENSATION

Section 1. Leadman Rate of Pay Employees designated, as shift Leadman shall receive four dollar (\$4.00) per hour above the lift equipment operator rate.

Section 2. Longevity Pay Employees that exceed ten (10) Years of continuous employment shall receive one dollar (\$1.00) per hour above their previous rate of pay. This provision will sunset on 7/1/05. After 7/1/05 employees that exceed ten (10) Years of continuous employment shall receive a one time incentive of five hundred (500) dollars or forty (40) hours of straight time pay, whichever is greater. This one time amount will be paid on a separate check.

Section 3. New Hire Rates of Pay The following shall be the progression scale for newly hired employees:

| | | | |
|--------------------|---------------|---------------|---------------|
| RAMP: | <u>8/1/04</u> | <u>8/1/05</u> | <u>8/1/06</u> |
| \$9.25 Pr. Hr Base | 9.53 | 9.82 | 10.16 |

\$.50 Per machine Pr. Hr. (Taylor, Hostler, Packer, Crane)
 \$4.00 Pr. Hr. Leadman

Ramp employees who work their first six months without an accident or injury shall receive and additional fifty (\$0.50) cents per hour above their previous rate.

| | | | |
|------------------|---------------|---------------|---------------|
| MECHANIC: | <u>8/1/04</u> | <u>8/1/05</u> | <u>8/1/06</u> |
| \$17.50 Base | \$17.94 | 18.39 | 18.94 |

\$1.00 lead mechanic

Mechanics holding a mechanics degree shall receive fifty (\$0.50)

GATE:

| | | | |
|-------------|---------------|---------------|---------------|
| \$8.25 Base | <u>8/1/04</u> | <u>8/1/05</u> | <u>8/1/06</u> |
| | \$8.50 | \$8.76 | \$9.07 |

\$.50 Pr. Hr yard
 \$1.00 Pr. Hr lead

CLERK:

(coordinator)

| | | | |
|---------------------|---------|---------|---------|
| \$13.15 Pr. Hr Base | \$13.48 | \$13.82 | \$14.23 |
|---------------------|---------|---------|---------|

| | | | |
|--|---------|---------|---------|
| CLERK Asst. \$10.00 Pr. Hr Base | \$10.30 | \$10.61 | \$10.98 |
|--|---------|---------|---------|

Employees earning more than the above hire in amounts shall receive increases as follows. Employees earning less than twelve dollars and seven cents (\$12.07) per hour shall receive a follows:

| | | |
|---------------|---------------|---------------|
| <u>8/1/04</u> | <u>8/1/05</u> | <u>8/1/06</u> |
| 3% | 3% | 3.5% |

Employees earning more than the above hire in amounts shall receive increases as follows. Employees earning more than twelve dollars and seven cents (\$12.07) per hour shall receive a follows:

| | | |
|---------------|---------------|---------------|
| <u>8/1/04</u> | <u>8/1/05</u> | <u>8/1/06</u> |
| 2.5% | 2.5% | 3.0% |

ARTICLE 35. WORKING CONDITIONS

Section 1. Call-Back Pay Any employee required to report back to work after more than one (1) hour after the completion of his day’s work or shift shall be guaranteed pay at the rate of time and One-half (1 ½) for all additional hours worked with a minimum guarantee of four (4) hours per call back.

Section 2. Hours of Work Eight (8) consecutive hours work with intervals for meals of not less than one-half (1/2) hour nor more than one hour shall constitute a day’s work. There shall be a flexible workweek that shall consist of any five (5) consecutive workdays out of seven (7) days covering the full roster. An employee with seniority shall receive a full day’s pay if put to work, or if not put to work after reporting shall be allowed one-half (1/2) day’s pay, unless notified the previous day that there would be no work.

Section 3. Overtime All work performed in excess of an Employee’s shift hours or work week hours shall constitute overtime work and shall be paid at the applicable overtime rate as set forth in this Article. For the eight (8) hour shifts, one and one half (1-1/2) times the regular rate of pay shall be paid for the first four (4) hours after the eight (8) hours per day. For the ten (10) hour shifts, one and one half (1-1/2) times the regular rate of pay shall be paid for the first two (2) hours after ten (10) hours per day. ALL WORK PERFORMED DAILY IN EXCESS OF 8 HRS (FOR AN 8 HOUR SHIFT), AND 10 HRS (FOR A 10 HR SHIFT), SHALL BE PAID AT THE OVERTIME RATE OF TIME AND A HALF. (1 ½)

The parties agree that senior employees shall be afforded the opportunity for overtime on a day to day basis when practical.

Section 4. Act of God The Parties agree that closure due to an act of God, or due to flood, inclement weather, derailments, etc. The employer shall make a reasonable effort to notify employees. However in the event an employee shows up for work, s/he will not be entitled to show up pay under this article.

DATED at Portland, Oregon, this _____ day of _____ 2004

FOR THE COMPANY:

Craig Zarzecki
Manager of Operations
Pacific Rail Services, LLC

FOR THE UNION:

David M. Bunch
International Representative
International Brotherhood of Boilermakers

Chuck Hughes
BM / ST Local 104
International Brotherhood of Boilermakers

| | | |
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