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Title: **Engineering & Building Construction Agreement and International Union of Operating Engineers (IUOE), AFL-CIO, Locals 138, 138A, 138B (2001)**

K#: **8731**

Employer Name: **Engineering & Building Construction Agreement**

Location: **NY Long Island**

Union: **International Union of Operating Engineers (IUOE), AFL-CIO**

Local: **138, 138A, 138B**

SIC: **1611**

NAICS: **23731**

Sector: **P**

Number of Workers: **1000**

Effective Date: **06/01/01**

Expiration Date: **05/31/04**

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K 8731  
1,000 worksheets  
33-pgs.

INTERNATIONAL UNION OF OPERATING ENGINEERS

# LOCAL UNION 138, 138A AND 138B

NASSAU AND SUFFOLK COUNTIES

NEW YORK

GAZZA BOULEVARD • FARMINGDALE, NEW YORK

TELEPHONE (631) 694-2480

TELECOPIER (631) 753-6760

## AGREEMENT COVERING WAGES AND WORKING CONDITIONS

EFFECTIVE DATE: JUNE 1, 2000 THROUGH MAY 31, 2004

THIS AGREEMENT, made this \_\_\_\_\_ day of \_\_\_\_\_ Two thousand and \_\_\_\_\_  
(20 \_\_\_\_\_) between \_\_\_\_\_ having principal offices at \_\_\_\_\_  
\_\_\_\_\_ hereinafter designated as the party of the first  
part, Contractor, and/or Employer; and the INTERNATIONAL UNION OF OPERATING ENGINEERS,  
LOCAL 138, 138A and 138B, affiliated with the AFL-CIO, Washington, D.C. hereinafter designated as the party of  
the second party, Union, and/or Local 138, 138A and 138B.

### WITNESSETH

THIS AGREEMENT is entered into to prevent strikes and lockouts, to facilitate peaceful adjustment of grievances and disputes between Employer and Employee, to prevent waste, unnecessary and avoidable delays resulting in additional cost and expense to the Employer, loss of wages to the Employee, to enable the Employer to secure at all times sufficient forces of skilled workmen; to provide as far as possible for the continuous employment of Labor, to provide that employment hereunder shall be in accordance with conditions and at wages herein agreed upon, and by reason of this Agreement and the purpose and intent thereof, to bring about stable conditions in the industry, keep costs of work in the industry as low as possible consistent with fair wages and proper working conditions, as provided hereunder; and further to establish and set up the necessary procedure for amicable adjustment of all disputes or questions that may arise between the parties hereto, so that the foregoing purposes may be brought about and accomplished.

### ARTICLE I

**Section 1.** There shall be no limitations as to the amount of work a man shall perform during his working day; it being understood that the workman shall perform a fair and honest day's work.

**Section 2. Union Security.** All present employees who are members of the Union herein on the effective date of this subsection or on the date of execution of this Agreement, whichever is the later, shall remain members of that Union in good standing as a condition of employment. All present employees who are not members of the Union and all employees who are hired hereafter shall become and remain members in good standing of the Union as a condition of employment on and after the 8th day following the beginning of their employment, or on and after the 8th day following the effective date of this subsection, or the execution date of this Agreement, whichever is the later.

An employee who has failed to acquire, or thereafter maintain, membership in the Union, or his good standing, as herein provided, shall be terminated three (3) working days after the Employer receives written notice from an authorized representative of the Local Union, certifying that membership has been, and is continuing to be, offered to such employee on the same basis as all other members. It is further understood that the employee shall be given notice from the Employer as to his failure to maintain membership in the Union and shall be given an opportunity to make all dues or initiation fee payments.

**Section 3.** The Employers that are signatory to this contract agree to abide by the "Dispatching Procedure" of the Union, as established pursuant to a stipulation with the National Labor Relations Board dated September 17, 1971, and to apply the provisions of Article 1, Section 2, and Article IV, Section 10 to all employees which are dispatched thereunder.

### ARTICLE II

This Agreement is entered into this \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_\_\_, by and between the \_\_\_\_\_ as party of the first part and the INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 138, 138A and 138B, parties of the second part.

### ARTICLE III

THIS AGREEMENT covers all work to be done by the party of the first part in NASSAU and SUFFOLK COUNTIES.

The Employer recognizes and acknowledges that Local 138, 138A and 138B is the sole and exclusive representative of all employees in the classifications of work covered by this Agreement and all other work considered as Operating Engineers work for the purpose of collective bargaining as provided by the National Labor Relations Act.

### ARTICLE IV

It is hereby agreed that ENGINEERING CONSTRUCTION WORK is a specialized branch of Contracting Work, separate and distinct from BUILDING WORK.

NOW, THEREFORE, in consideration of the mutual covenants and conditions herein contained, and of the sum of One Dollar (\$1.00) by each of the parties hereto to the other in hand paid, the receipt of which is hereby acknowledged.

**Section 1.** It is recognized that the skills of all employees covered by this Agreement, including but not limited to the engineer, maintenance engineer, junior engineers, fireman, apprentice engineer, shop mechanic, and shop mechanic helper, require intensive training. Accordingly, the Employer agrees to abide exclusively by the legal hiring hall and referral procedure established by collective bargaining as defined in Article I, Section 3.

**Section 1-A.** It is further agreed that such employment shall be under the terms, conditions and rate of wages hereinafter provided, which terms, conditions and rates of wages have been arrived at and determined through bona fide collective bargaining between both parties to this Agreement.

**Section 1-B.** The "Dispatching Procedure" referred to in Article I, Section 3, shall be incorporated as part of this Agreement.

**Section 2.** It is agreed that the Employer (the party of the first part) is hereby obligated to make contributions to the Local 138, 138A and 138B I.U.O.E. Welfare Fund (and Supplemental Unemployment, Vacation & Annuity "B" Accounts), Pension & Retirement Benefit Fund, Apprenticeship Training Fund, Annuity Fund and Legal Fund ("Funds"), and/or their successor Funds, including but not limited to, the Central Pension Fund, of a sum of money equal to an agreed upon amount, on behalf of those of its employees who are covered by and entitled to the benefits of this Agreement. The amounts of such contributions shall be as set forth in the Wage and Benefit Schedule appended to this Agreement. Vacation, Annuity "B" and Annuity Fund contributions will be paid at the double time rate for all overtime hours paid. Contributions to the Welfare Fund (including the Supplemental Unemployment Account), the Apprenticeship Training Fund, and the Legal Fund shall be on straight time hours only. Until May 31, 2001, contributions to the Pension & Retirement Benefit Fund shall be paid on the basis of the straight time rate for regular hours and time-and-one-half for over time hours. Effective June 1, 2001, pension contributions shall be at the straight time rate. Payments to the Union for Dues Checkoff (as required by Article IV, Section 10 of this Agreement) and for voluntary Political Action Contributions to the Local 138 Federal and/or State PAC shall be on all hours, paid at the straight time rate and the remaining amount shall be paid to the Employee in the wage envelope.

Payment on behalf of an employee covered by this Agreement to the Local 138 Funds and to the Union for Dues Checkoff (as required by Article IV, Section 10 of this Agreement), in the DOPS Fund and for voluntary Political Action Contributions to the Local 138 Federal and/or State PAC, shall be by the purchase of a Consolidated Stamp, payable to the "Local 138 Clearance Account-Stamp Fund". Payments are to be made by cash or check and should be paid on all hours paid. Said stamps are to be placed in the employee's weekly pay envelope and shall be remitted to the Funds by the employees at such times as may be designated.

If a check is returned for insufficient funds or any other reason, the Employer will be required thereafter to pay all contributions to the Local 138 Clearance Account-Stamp Fund by certified or bank check, or by cash.

The Trust Agreements governing the various Trust Funds to which the foregoing contributions are to be made shall be a part of this Agreement, with the same force and effect as if fully incorporated herein, and an Employer not previously bound to said Trust Agreements, hereby agrees that upon the execution of this Agreement, it shall be deemed party to said Trust Agreement.

**Section 2-A.** The terms and conditions of this Article IV shall be binding upon its employers who rent construction equipment listed herein or of the kind usually operated by the members of the Union as follows:

In all instances and upon the full wages earned by employees supplied to the lessor of the equipment through the hiring hall, at the lessor's request.

In all instances in which the employee is expected to pick up the machine to deliver the same to a job site or is to return said machine from the job site to the lessor's yard or to another job site.

In all instances in which the operator reports to the job site with the machine.

In all instances in which the employee reports to the lessor as a result of having filed in the hiring hall an "Out of Work" card, requesting recall.

In all instances in which the lessor obtains the operator regardless of the course.

**Section 2-B. Bonding:** In such circumstances where there has been an audit of an Employer, and no deficiency has been found within (6) six months preceding the execution of this Agreement, an Employer who is a member in good standing of the Long Island Contractors Association or the Building Contractors Association shall not be required to be bonded.

In such circumstances where there has been no such audit, or where the Trustees, in their discretion, have determined, either by an audit conducted by the Fringe Benefit Funds' auditors or otherwise, that an Employer has underpaid fringe benefits or where the Employer has not been previously signatory to a collective bargaining agreement, the Employer shall be bonded in sufficient amounts that guarantee all fringe benefits and shall post a bond in the sum of \$100,000.00. The Union and/or Fund Trustees reserve the right to impose a higher bonding requirement based on the projected work on a particular job or the projected work of the Employer generally.

Employers shall be bonded in sufficient amounts to guarantee all fringe benefits, if found to be delinquent.

If an Employer is unable to secure bonding, monies equivalent to the amount of the bonding originally required shall be deposited with the Funds.

**Section 2-C.** It is further agreed that the Employer and/or Employers who rent equipment, shall assume full responsibility in reference to New York State Vehicle and Traffic Laws, under Section 385 and any and all County Laws, with regard to mobile and portable equipment set forth in this Agreement. The Employer shall pay all fines and loss of wages for appearances for or in reference to incidents incurred in or on behalf of the Employer.

**Section 2-D.** Failure or refusal to purchase a Consolidated Stamp, to pay Fund contributions, or to comply with the provisions of this Agreement shall constitute a breach of this Agreement by the defaulting Employer, and the Union, without further notice, reserves the right to forthwith withdraw employees from jobs of the Employer until compliance herewith, or take such other action as it deems necessary, any terms of this Agreement to the contrary notwithstanding.

In the event work is halted for the reason of the failure of the Employer, contractor or subcontractor to maintain its payments of any monies to the Funds, or its other obligations under this Agreement, the employees who are taken off the job shall be paid retroactively for any time lost during the aforementioned period before payment is made to the Funds or compliance with the Agreement is satisfied, and the employees return to the job.

**Section 2-E.** Employers delinquent in the payment of required monies to the Funds shall be liable for immediate payment of all delinquencies, interest on the unpaid amount until all such amounts shall be paid, the cost of legal fees reasonably incurred in collecting the delinquent payments and all damages as provided for by the applicable Trust Agreement. For the purpose of this provision, interest will be computed at the prime rate.

**Section 2-F.** The Union and/or Local 138 Funds shall have the right to audit all books and records of the Employer to insure compliance with the terms of this Agreement.

**Section 2-G.** Each Employer shall maintain payroll and related records relating to its employees for a minimum of six (6) years. Such documents and records shall include all information that relates to service for, or other employment relationship with, the Employer on at least a quarterly basis and that is relevant to a determination of the benefit entitlements of any of the Employer's employees who meet the Local 138 Fringe Benefit Plans' requirements for eligibility to participate in the Local 138 Fringe Benefit Plans (including any requirement regarding service in a job classification covered by this Agreement) whether or not such employee performs service in a job classification covered under the Agreement during any quarterly period, and any of the Employer's employees who perform service in a job classification covered by this Agreement during any quarterly period, whether or not any such employee has met the Local 138 Fringe Benefit Plans' requirements for eligibility to participate in the Local 138 Fringe Benefit Plans during such quarterly period.

Any officer, director, shareholder and/or managerial representative of a Signatory Employer, either in their corporate or individual capacity, (herein defined as an owner/operator-employer/principal) who himself performs the functions of an operating engineer in covered employment within the geographic jurisdiction of the Local Union, shall be required to comply with all of the terms and conditions of this Collective Bargaining Agreement, including, but not limited to, the payment of fringe benefit contributions to be made on his behalf.

By working in covered employment, each aforementioned owner/operator-employer/principal waives any claim or demand that he/she is not covered under the provisions of the Collective Bargaining Agreement.

Each owner/operator-employer/principal shall comply with the terms of the Dispatching Procedure set forth in the Collective Bargaining Agreement. When an owner/operator-employer/principal ceases operating a piece or pieces of equipment, he/she shall promptly file an Out-of-Work Card with the Union in accordance with the Dispatching Procedure.

Should an owner/operator-employer/principal fail to file an Out-of-Work Card, such owner/operator-employer/principal shall be presumed to be working and shall be responsible and obligated to purchase fringe benefit stamps for forty (40) hours each work week. Should an owner/operator-employer/principal be found to be operating a piece of equipment at a time when he/she has filed an Out-of-Work card, such owner/operator-employer/principal shall be obligated to purchase fringe benefit stamps from the date he/she filed an Out-of-Work Card at the rate of forty hours per week.

The Union and/or Funds will be entitled to require any individual to execute those documents that are necessary to implement this provision.

**Section 3.** Authorized representatives of the Union shall have access to the Employer's premises for the purpose of adjusting disputes, investigating working conditions and safety disputes, interviewing Employers, and employees, and ascertaining that the Agreement is being adhered to, provided that there is no interruption of an Employer's working schedule (except as otherwise provided herein).

**Section 4.** When an employee believes that a work assignment is contrary to the terms of this Agreement, he may immediately request the Union's lead engineer, who with the supervisor or other Company representatives, shall attempt to resolve the matter in question, before the assignment continues.

**Section 5.** The Employer agrees to respect the jurisdictional rules of the Union and shall not direct or require their employees or persons other than the employees in the bargaining units here involved, to perform work which is recognized as the work of the employees in said units.

**Section 6.** The party of the first part agrees to work all his usable equipment before hiring or contracting for outside equipment of the same type and size. Assignments, number and choice of equipment remain at the discretion of the Employer.

The party of the first part shall be defined to include any employer having common ownership, control of labor relations, etc. with the party of the first part. Upon request by the Union, the Employer shall provide information regarding the terms of any contract for using any outside equipment and leasing. Such arrangements shall not be used to deprive employees covered by this Agreement of employment or as a subterfuge to avoid the provisions of this Agreement.

**Section 7.** It is agreed that if the party of the first part operates an engine or machine without the services of an engineer or junior engineer, he shall pay an engineer or junior engineer from the time such engine or machine is started. In such circumstances, an engineer or junior engineer shall receive a full day's pay, eight (8) hours.

**Section 8.** Intermittent time is defined as from the start to the finish of the job for forty (40) hours. If the employee is laid off and rehired, within the forty (40) hour period or five (5) working days, he shall receive the wages due for such time between the hiring and rehiring.

If a machine any employee is assigned to is used by any other individual during the week on the same job site, the employee assigned shall be paid for all time.

The provision for penalty pay hereunder shall be suspended between November 1, and April 30.

**Section 9.** During the period of December 1 to April 30, the Employer shall have the option not to commence work, and employ engineers for that day for weather-related reasons. If an employee does not commence work after reporting for work, the Employer shall pay the employee two (2) hours of reporting pay and fringe benefits. If the operator commences work, he is paid for the full day, including grease time (if applicable).

#### **Section 10. DUES CHECK-OFF**

The Employer agrees to deduct from the wages of each employee covered by this Agreement working under any of the classifications as set forth in Article VIII, Section 1, Article IX, Section 1, and Article X, Section 1 herein and in the territorial jurisdiction of Local 138, 138A and 138B, and to pay to said Local 138, 138A and 138B after proper execution by each employee of an authorization form, the dues, and other uniform assessments of the Union, as a condition of continued employment which sums shall constitute a part of said employee's Local 138, 138A and 138B Union dues. Dues Check-Off payments required by this section are to be included as part of Consolidated Stamp payable to the Local 138 Clearance Account - Stamp Fund, as required by Article IV, Section 2 of this Agreement. Local 138, 138A and 138B agrees to indemnify and to hold harmless the Employer from any and all claims, actions and/or proceedings arising out of said Dues Check-Off.

#### **Section 11. HOLD HARMLESS CLAUSE**

The Employer shall provide for public liability insurance to cover its employees covered hereunder against liability incurred in the operation of any construction equipment operated by the employee during the course of his employment or in furtherance of the Employer's business, in the same amounts for which the Employer is covered but not less than \$200,000 for one person and \$500,000 for one accident.

Any person, firm or corporation whose business it is to own construction equipment listed herein and to put said equipment out for hire with operator or crew, shall provide said insurance coverage in the same manner as though said person, firm or corporation were the Employer of said operator or crew.

In the event that the Employer or the owner of the rented equipment shall fail to provide the necessary public liability insurance covering the operator or crew of the equipment, then and in that event, the Employer or owner shall hold the operator or crew harmless to the extent of protection that could have been afforded by a standard New York liability insurance policy which shall include legal expenses, lost wages, and traveling expenses incidental to the defense by the operator or crew of any action brought against said person by his operation of the said equipment.

The Employer shall pay or reimburse the employee in full for all fines which result from defective equipment or for any statute or administrative regulation that is applicable to the vehicle in issue.

Whenever an employee is fined or penalized because of circumstances beyond the control of the employee, the Employer shall pay all costs and damages assessed against the employee including bail bonds, legal fees, fines or lost earning opportunity that the employee may suffer. All fines must be paid by the Employer on or before the date returnable and the employee must be furnished with a receipt evidencing payment of such fine by the Employer. The employer may exercise its right to contest this citation and shall indemnify the employee for any cost and damages resulting from this decision to contest the citation.

If the employee is required to appear in a court outside of the normal working hours in the above referenced cases, he shall be paid 8 hours pay at the straight time rate. It shall be the responsibility of the Employee to turn over to the job supervisor any citation within 24 hours of receipt. Failure to turn in the citation will relieve the Employer of any responsibility to pay for the court appearance, or any other costs. The job supervisor shall provide an appropriate written receipt to the Employee.

The Employer shall not discharge or discipline an employee or refuse to hire an employee on the basis of violations or tickets received by the employee due to the Employer's actions.

The employee shall authorize the Employer's legal representative to represent him and appear on his behalf concerning all administrative and/or court proceedings involving vehicular violations, environmental violations, etc., involving vehicles owned or leased by the Employer. The Employer shall compensate the employee for the time lost from work if the Employer directs the employee to appear as a witness for the Employer or if the employee is individually named in the administrative and/or court procedures.

**Section 11-A.** The Union agrees to furnish employees upon twenty-four (24) hours notice pursuant to the dispatching procedure. So long as the Union is able to furnish employees in the classification requested, the Employer may not hire employees from any other source. Any dispute regarding an employee's ability to perform a job shall be resolved, such resolution to be approved by the Business Manager prior to the termination by the Employer of that employee.

**Section 12.** It is the responsibility of the Employer to insure the safety and health of the employees referred to it. Nothing in this Agreement shall make the Union liable to any employees or to any other persons in the event an injury occurs. The Employer agrees that the Union will not be held responsible for the acts or failure to act, of those it refers.

**Section 13.** The Employer hereby agrees that in order to protect and preserve the work opportunities of the employees covered under this Agreement, it shall not establish or participate in any double-breasted operation within the geographic jurisdiction of Local 138, if operating engineers work is to be performed within said jurisdiction.

## ARTICLE V

**Section 1.** Termination: THIS AGREEMENT shall continue in effect from the date of the signatures by both parties hereto, which date is the first hereinbefore mentioned, until the termination date of this Agreement.

**Section 2.** This Agreement shall be in full force and effect from June 1, 2000, to and including May 31, 2004 and shall continue from year to year thereafter unless written notice of desire to cancel, modify or terminate the Agreement is served by either party upon the other at least sixty (60) days prior to date of expiration or any annual anniversary date thereafter.

**Section 3.** The Employer will not unilaterally subcontract out work or fail and/or refuse to follow the Union's dispatching procedure in order to avoid compliance with this Agreement.

## ARTICLE VI

**Section 1.** It is agreed that for the purpose of settling any dispute between the parties herein as to any claim or violation of this Agreement, or any dispute that may arise in connection therewith, or for construing the terms and provisions hereof, the matter shall be taken up by the Employer with the Union. In the event that no amicable agreement can be reached, it may then be placed before a Joint Panel comprised of an equal number of Union and Long Island Contractors' Association or Building Contractors Association representatives, as the case may be, whose decision shall be final and binding.

Joint Panel Sessions shall be scheduled within a reasonable period of time from the date of a request presented by a representative of the Union and/or by a representative of the Long Island Contractors Association and/or the Building Contractors Association.

Prior to the submission of the dispute to the Joint Panel for resolution, the Employer shall desist from the violation of the Agreement claimed by the Union.

In the event that the Panel deadlocks and cannot reach a decision as to the issue submitted, the matter shall be promptly submitted to an arbitrator agreed upon by the parties.



**Section 2.** All Employers, parties to this Agreement shall be bound by the Dispatching Procedure provided for in the Stipulation between the NLRB and the Union, which is incorporated in this Agreement.

**Section 3.** It shall not be a violation of this Agreement, and it shall not be cause for discharge or disciplinary action in the event an employee refuses to enter upon any property involved in a primary labor dispute, or refuses to go through or work behind any primary picket line.

**Section 4. Protection of Conditions.** The Employer agrees that all conditions of employment 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 time of the signing of this Agreement, and the conditions of employment shall be improved wherever specific provisions for improvement are made elsewhere in this Agreement. This provision does not give the Employer the right to impose or continue wages, hours, and working conditions less than those contained in the Agreement. The Employer agrees to recognize those practices which have been established by the Union with respect to manning of jobs, including subcontracting of work.

**Section 5. Extra Contract 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, and shall be subject to production upon request of the Union.

**Section 6-A.** The Employer shall not discharge an employee without just cause. In all cases involving the discharge of an employee, the Employer must immediately notify the employee in writing of his discharge and the reason therefore. Such written notice shall also be given to the Lead Engineer, and a copy mailed or delivered to the Local Union office within one (1) working day from the time of the discharge. This provision shall not apply where an engineer is laid off because of completion of the job.

**Section 6-B.** In respect to the discharge, the Employer must give at least one (1) prior warning notice of the specific complaint or grounds for discharge against such employee in writing, and a copy of the same to the Union and the Lead Engineer.

**Section 7.** If any Article or Section of this Agreement hereto should be held invalid by operation of law or by any court or administrative agency, or if compliance with or enforcement of any Article or section should be restrained by such tribunals pending a final determination as to its validity, the remainder of this Agreement, or the application of such Article or Section to persons or circumstances other than those as to which it has been held invalid or as to 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 provisions of this Agreement to the contrary.

**Section 8.** There shall be no discrimination in the referral of, or in the terms and conditions of employees covered by this Agreement on the basis of race, creed, color, national origin, sex, age, handicap, marital status, sexual orientation or affectional preference, or disability except as otherwise provided by law.

**Section 9. Shop Steward Clause:**

A Shop Steward shall be appointed to each job site by the Local Union to see that the conditions of the Agreement are not violated by either the Employer or employees. In case of slack season, the Shop Steward shall be the second man to go to work and the last man laid off. The slack season shall be deemed to run from December 1st through April 30th. Under no circumstances shall the Shop Steward be discriminated against.

The Shop Steward shall receive one dollar (\$1.00) per hour in addition to his/her regular rate of pay.

The authority of the Shop Steward designated by the Union shall be limited to and shall not exceed, the following duties and activities.

The investigation and presentation of grievances and complaints in accordance with the provisions of the Collective Bargaining Agreement, including but not limited to, issues relating to payment of wages, fringe benefits and compliance with the Collective Bargaining Agreement.

The transmission of such messages and information which shall originate with, and are authorized by the Local Union or its officers, provided such message and information (a) have been reduced to writing, or (b) if not reduced to writing, are of a routine nature and do not involve work stoppages, slowdowns, refusals to handle work or any other interference with the Employer's business.

Stewards shall have no authority to take strike action, or any other unauthorized action interrupting the Employer's business.

The Employer recognizes the aforementioned limitations upon the authority of the Shop Steward and shall not hold the Union liable for any unauthorized acts unless the Union fails to use reasonable efforts to require the Shop Steward to cease improper action.

The Employer in so recognizing such limitations shall have the authority to impose discipline, including discharge, in the event the Shop Steward has taken unauthorized strike action, slowdown or work stoppage in violation of this Agreement.

The Shop Steward shall be entitled to a reasonable period of time per day to conduct his/her Shop Steward duties.

A Shop Steward shall have no jurisdiction over a company lead engineer.

This Shop Steward provision shall apply where the Union determines that a lead engineer is not applicable to the Employer's job site.

Upon a determination by the Union that the Employer has substantially undermined the payment of wages, and/or fringe benefit contributions, and that it would be in the best interest of the bargaining unit to appoint an operating engineer as Shop Steward from outside the bargaining unit, the Union may appoint such individual as Shop Steward, until it determines that substantial compliance with the conditions in the Collective Bargaining Agreement have been restored.

## ARTICLE VII

**Section 1. ENGINEERING CONSTRUCTION WORK** referred to in this Agreement is herewith defined as all HEAVY CONSTRUCTION WORK performed by the party of the first part.

**Section 2. BUILDING CONSTRUCTION** is herewith defined as to include any and all building construction in and around buildings, where a building permit is necessary from the community.

### SUBDIVISION A

#### ENGINEERING CONSTRUCTION DIVISION

#### (HEAVY AND HIGHWAY)

## ARTICLE VIII

### Section 1. WAGES

Attached hereto is SCHEDULE A, which schedule is made a part of this Agreement. Said schedule sets forth the wage rate of the various classifications of employees.

### Section 2. CONDITIONS

(a) The Lead Engineer shall operate a machine in emergencies only, and then only, until such time as the services of an operating engineer can be obtained.

(b) Whenever an engineer, fireman or apprentice engineer is employed intermittently to operate a machine, he shall do such work during the period when his machine cannot be operated as may be determined by the Lead Engineer.

(c) Engineers employed on scoops, carry-alls, scrapers, power graders, trench machines, roller, travel loader, finishing machines, bulldozers, tractors, and all singly operating machines shall report to work one-half (1/2) hour before the regular starting time for greasing and shall be paid for such greasing at the rate of double time for this one-half (1/2) hour (as designated in wage schedules).

Employees who receive grease time shall begin working as soon as greasing is finished. There shall be no grease time on governmental (state, county and municipal) jobs with restricted work hours written into the specifications; in such circumstances, greasing may commence at any time during the work day.

(d) Crews employed on all steam shovels and steam rigs shall report for work one (1) hour before the regular starting time to raise steam and grease engines, et cetera, and shall be paid for such greasing at rate of double time for this hour.

(d-1) Crews shall be employed on the Maxim or CMI when used as a paver for fine grade work. When a Maxim or CMI unit is used as the second machine, it shall be manned by one (1) engineer and two (2) oilers.

(d-2) When a vibratory hammer is being used for driving piles or sheeting and the controls are operated by the engineer on the crane and the generator or compressor is mounted on the crane or rig, the engineer shall receive one (1) hours pay payable at premium time, per day, in addition to the rates listed. In addition, the oiler shall be paid generator or compressor pay.

If the console is operated on the ground level, separate from the crane or rig, then the console will be operated by the engineer, in addition to the crew and generator or compressor operator.

(e) No assignee for work shall be subject or compelled to undergo a physical examination in order to be employed, except to the extent required by applicable Federal, State or Local Governmental Statute or regulations (for example hazmat jobs).

(f) Rain Gear will be supplied by the man (member).

(g) In the event of any sympathetic stoppage of work caused by any union or unions connected with the AFL-CIO, the party of the first part may pay off its straight time employees at the end of the work day on which the stoppage occurs and will not have to pay these employees for any time during the period of such stoppage.

(h) All wages payable under this Agreement shall become due and payable on the job every week. No more than three (3) days' pay shall be held back. If, for any reason, the Employer terminates the services of any member working under this Agreement, the accrued wages and fringe benefits shall be paid to him at the time of the termination of his employment, otherwise, if the member is directed to report at the Employer's office for payment, he shall be entitled to receive payment at double time for every hour consumed in traveling to and waiting at such office for payment, deducting therefrom such time as may be a regular part of such days' work. If payment is not received at the office, as directed, such member shall report on the next working day at such office, unless specifically directed to report on the job and shall continue to do this each day until he has been paid, and during waiting time he shall be entitled to a full day's pay for each day that he reports at the office or job. If any member shall of his own volition leave the services of his Employer, then the Employer may retain his wages until the next pay day.

(i) Engineers, junior engineers, firemen and oilers are permitted to work in the shop and do the work prescribed by the Employer at a reduced rate, to be known as the shop rate, which is attached hereto in Schedule A, and overtime, at the rate of time and one-half; but in the event that a machine breaks down on the job, the job wages must be paid, and the men operating the machines must do their own repairs whether in the shop or on the job.

(j) All power drive machines, regardless of power and regardless of the sources of power, shall be operated by an engineer or junior engineer, however, operators shall not be required on bending machines, and the first piece of the following three (3) pieces working on a job: small generator, vibrator, small pumps (three (3) inches and under).

(k) Junior engineers, or oilers shall be employed on all gasoline, electric, oil or air operated shovels, draglines, backhoes (115,000 pounds or more), keystones, truck cranes, asphalt-spreading machines, cranes, road paving machines and concrete pumps, mobile or piston type, multi-conveyors, crane cars twenty (20) tons and over, crane cars truck mounted, and all truck mounted booms, and their duties shall be to assist the engineer in oiling and greasing and repairing of all machinery and giving signals whenever necessary. Oilers shall not be required on:

1. Rough Terrain cherrypickers up to and including fifty (50) tons; and
2. Crawler Back Hoes, up to and including 115,000 lbs.

(k-1) Oilers shall be employed on all dual purpose transit mix plants (screening and loading) in addition to the engineer.

(K-2) Oilers on truck cranes, having a boom length of 100 feet or over, shall receive an additional twenty-five (25¢) cents per hour.

(1) Wellpoints:

(1) Three (3) pumps within one thousand (1,000) feet.

(2) One (1) Engineer for each shift.

(3) Installation of conventional wellpoint systems will require a minimum of a four (4) man crew - three (3) men and one (1) foreman to install and dismantle.

(4) On turbine pump systems, the number of men to install and dismantle shall be determined by the size of the pipe.

(5) Engineers will be employed on each system necessary for jacking pits that cross railroad tracks, limited access highways, parkways, expressways and turnpikes.

(6) Where a rotary drill is used solely for the installation of well casings in a well system, there shall be a working crew of four (4) men - two (2) maintenance men, one (1) oiler and one (1) engineer driller.

(7) Installment of submersible pumps - shall require use of a four (4) man crew - consisting of three (3) men and one (1) foreman in the installation gang.

(8) It shall be left to the discretion of the Business Manager, to determine when four (4), six (6) hour shifts are necessary on pump systems working seven (7) days a week due to a work shortage.

(1) The holiday to be observed and considered paid holidays under this Agreement shall be as follows: NEW YEAR'S DAY, LINCOLN'S BIRTHDAY, PRESIDENT'S DAY, GOOD FRIDAY, MEMORIAL DAY, INDEPENDENCE DAY, LABOR DAY, VETERAN'S DAY, THANKSGIVING DAY, and CHRISTMAS DAY; or days celebrated as such, and all Saturdays and Sundays. All work performed on such days shall be paid at the rate of double time. If the designated holiday falls on a Saturday, it will be celebrated on the preceding Friday provided, however, employees who work on such day will be paid at the rate of double time. If the designated holiday falls on a Sunday, it will be celebrated on the succeeding Monday. Engineers, maintenance engineers, junior engineers, firemen and oilers ordered to report for work on such days shall receive not less than two (2) days' pay.

(m-1) Holiday pay is defined as follows: An employee must be employed on the day before the holiday and the day after the holiday to receive pay for the holiday, if not working on the holiday.

(m-2) If employee works intermittently in a calendar week in which a holiday falls, he shall receive two (2) hours pay extra per day, but not to exceed (8) hours pay for holiday compensation.

(m) The engineer's week begins on the day when he reports for work.

(n) Any part of the one-half (1/2) hour overtime constitutes one-half (1/2) hour and shall be computed at the double time rate (one (1) hour's pay and applicable fringe benefits).

(o) It is agreed that shift work shall be governed by the following rules. On jobs where there is more than one (1) shift and a relief engineer has not been ordered to work, the following shift or any part thereof shall be paid at the rate of double time, but if the relief engineer fails to report for work, then the engineer on duty at that time shall continue to work the next shift and the rate shall be single time. It is also agreed that where two (2) or three (3) shifts are employed, that a shift will be made every two (2) weeks, changing from the day shift to the night shift, between the members of the Union.

(p-1) On one (1) shift, when working through lunch, from eight (8:00) a.m. to four-thirty (4:30) p.m., the operator shall receive one-half (1/2) hour at the double time rate (one (1) hour's pay and applicable fringe benefits). This shall be the primary shift. Any work performed on other than an eight (8:00) a.m. to four-thirty (4:30) p.m. shift ("day shift") where there is no day shift shall be paid for at the double time rate. This shall not apply to New York State D.O.T. and other governmental-mandated night work. It is agreed that night shift is not off-shift work.

(p) On a two (2) shift job, an engineer, junior engineer, foreman or oiler shall be subject to the time allotted for lunch in accordance with the custom of the trade he is then working with.

(q) When three (3) shifts are employed, each shift will work seven and one-half (7-1/2) hours, but will be paid for eight (8) hours, one-half (1/2) hour being allowed for mealtime, except that engineers employed in power plants will partake of their meals during their eight (8) hour-shift.

(r) A week shall start at 12:01 a.m. on Monday and end at 12:00 midnight on Friday. All work performed over the eight (8) hour day in a forty (40) hour week shall be paid for at the rate of double time. A workday shall be eight (8) hours.

(s) It is agreed that on Saturday, Sunday, or a holiday, if an engineer is notified and reports for work, regardless of whether or not his services are needed, he shall receive two (2) days' pay. In case an engineer is not ordered out on a Saturday, Sunday, or a holiday, and his engine or machine is operated by another engineer, he, as well as the man who operated the engine or machine, shall be paid for two days' pay. It is further agreed that these conditions for Saturday, Sunday and holiday work shall also apply to firemen, junior engineers, maintenance engineers and oilers.

(t) It is agreed that engineers and firemen ordered out to do repair work and wash out boilers on a Saturday, Sunday, or a holiday shall receive two (2) days' pay. It is also agreed that an engineer shall not be requested to work with other than a junior engineer, fireman or oiler on the machines or engines he operates.

(u) On jobs where a Lead Engineer is not employed, repairs shall be done by the crew on their own machines.

(v) The party of the second part agrees that its members shall not leave a job without providing a capable substitute.

(w) Maintenance engineers shall be employed to do all temporary pipe fitting, repairing and maintaining of all equipment under the supervision of the Lead Engineer.

(x) Where five (5) or more Operating Engineers are employed on one (1) shift on one contract, there shall be one (1) Lead Engineer, employed by the General Contractor for that contract during the period of the employment of the five (5) or more engineers; said Lead Engineer shall be designated by the Business Manager of the Union and he shall be employed to do all temporary pipefitting, repairing and maintenance of all equipment with the help of the maintenance men. In any case of emergency, he shall be used to operate equipment.

(y-1) If a total of five (5) or more Operating Engineers who are under the jurisdiction of Local 138, 138A and 138B as set forth in Article X, Section Y of this Agreement are employed by a Contractor, or any combinations of Contractors on the same job, a Lead Engineer must be employed by the Owner-Builder, or any of its representatives (see also Y-2). The Employer covered by this Agreement herein agrees not to proceed with any of its work, which is under the jurisdiction of Local 138, 138A and 138B, until said Owner, Builder, Owner-Builder, or any of its representatives or employees assumes the compensation, in writing, for said Lead Engineer. The word "JOB" as used herein means a site and/or portion thereof upon which a planned improvement will be constructed. It is understood that, as a precondition for work to be performed, the various PRIME CONTRACTORS, shall pay their proportionate share of the expense of the Lead Engineer to his Employer, and in case of breach of this provision, each other entity shall be jointly and severally liable for payment.

(y-2) A Lead Engineer as designated by the Business Manager shall be required on all jobs in excess of two (2) million dollars. The Lead Engineer shall operate equipment until there are five (5) engineers working on the job. Any contractor that has a combination of a total of twelve (12) or more engineers shall employ a Lead Engineer, who will be designated by the Business Manager of the Union, except where subject to the five (5) man rule. There is no requirement for a Lead Engineer on a job if the Employer employs a company Lead Engineer twelve (12) months a year.

(y) Eight (8) hours shall constitute a day's work, to start at eight (8:00) a.m. and end at five (5:00) p.m. with one (1) unpaid hour for lunch. A flexible starting time between seven (7:00) a.m. and eight (8:00) a.m. shall be allowed. Starts shall be by the equipment, not the job. The Employer shall have the right to schedule lunch such that lunch begins at any time after four (4) hours worked, and is completed before five (5) hours into the shift. Lunch may be changed by mutual consent to one-half (1/2) hour, and quitting time would then be adjusted accordingly. There shall be floating starts in non-construction plants between six (6:00) a.m. and eight (8:00) a.m. Floating start on the half hour.

(z-1) On cranes using clam shell buckets, the engineer shall receive twenty-five (25¢) cents per hour additional over the listed rates.

Truck and crawler cranes having long boom lengths and crane cars and boom trucks including cherry-pickers shall be governed by the following and shall be paid to the engineer over the scheduled rates, per hour in addition to the rate listed:

Boom Lengths of 100 ft. (including jib) but less than 150 ft. - \$0.50

Boom Lengths of 150 ft. (including jib) but less than 250 ft. - \$0.75

Boom Lengths of 250 ft. (including jib) but less than 350 ft. - \$1.00

Boom Lengths of 350 ft. or more (including jib) - \$1.50

(z-2) On front end loaders with bucket capacity of ten (10) yards and over, the operator shall receive twenty-five (25¢) cents per hour over the rate.

(z-3) The multi small equipment operator shall cover any combination of four (4) pieces of equipment such as small generator, vibrator, bending machine and small gasoline pump up to three (3) inches.

(z-4) Snow: A shift will start when a man arrives on the job, and he will be guaranteed eight (8) hours pay from when he starts, Saturdays, Sundays, and holidays will be paid at the rate of double time.

(z-5) All road tolls shall be paid by the contractor.

(z-6) Whenever an employee is dispatched to an Employer, that Employer, even if a rental outfit or vendor, shall be held responsible for the payment of wages and fringe benefits, for example, in the case of long boom, or intermittent time.

(z-7) A small milling machine shall be manned by one (1) engineer, and a large milling machine (for example, with a conveyor belt) shall require one (1) engineer and one (1) oiler.

(z-8) The following pay shall be applicable for every hour an operating engineer is required by governmental regulations, and does wear special equipment for hazmat or any hazardous work at the below designated level:

Level "C" - \$1.50 per hour above rate

Level "B" - \$2.50 per hour above rate

Level "A" - \$3.50 per hour above rate

(z-9) An Employer shall be permitted to change an employee's equipment assignment at the discretion of the Business Manager or the Lead Engineer.

(z-10) There shall be a pre-job conference on all jobs. The pre-job conference shall be held before the start of construction.

(z-11) For projects of \$500,000 or less, when equipment is working on a barge, a maximum of two (2) operators shall cover equipment, including, but not limited to, compressors on the barge. In the event that more than two (2) pieces of equipment are operated on the barge, each of the two (2) operators shall receive a premium of one (1) hour's pay per day.

(z-12) The employer shall provide protection from the weather on three sides of each piece of equipment that is readily susceptible to such modification.

(z-13) Engineers shall cover all the temporary heat (defined as portable heating devices that provide heat in designated areas); all ground heat, including boiler (defined as portable heating devices intended to heat surfaces and area (excluding Salamanders); and hepa negative air pressure filtering equipment (defined as machines and/or equipment that supply negative air pressure in working areas).

(z-14) Engineers shall assemble crane when working with other than iron workers, boiler makers and dock builders.

(z-15) Climb time - when an operator is required to climb less than one hundred (100) feet to the cab of a mounted crane, he shall receive fifteen (15) minutes of premium pay in the morning and fifteen (15) minutes of premium pay in the afternoon. When an operator is required to climb one hundred (100) feet or more to the cab of a mounted crane, he shall receive thirty (30) minutes of premium pay in the morning and thirty (30) minutes of premium pay in the afternoon.

(z-16) On the first tower crane and/or crane on pedestal on a job site, there shall be an engineer and an oiler. On the second tower crane and each additional tower crane on a job site, there shall be an engineer, oiler and maintenance man.

(z-17) When work is ordinarily performed on normal shifts on a job site (i.e., eight (8:00) a.m. to five (5:00) p.m.) and a crew, because of owner requirements is directed to work other than a normal shift, such employee should be paid at the double time premium rate for working such off shift.

**SUBDIVISION B**  
**SHOPMEN**  
**ARTICLE IX**

**Section 1. WAGES**

(a) Attached hereto is Schedule A, which schedule is made a part of this Agreement. Said Schedule sets forth the wage rate of the various classifications of employees.

**Section 2. CONDITIONS**

(a) Shopmen are not permitted to do repair work on the job, without the consent of the party of the second part.

(b) The holidays to be observed and considered paid holidays under this Agreement shall be as follows: NEW YEAR'S DAY, LINCOLN'S BIRTHDAY, PRESIDENT'S DAY, MEMORIAL DAY, GOOD FRIDAY, INDEPENDENCE DAY, LABOR DAY, THANKSGIVING DAY, VETERANS DAY and CHRISTMAS DAY or days celebrated as such, and all Saturdays and Sundays. Engineers, maintenance engineers, firemen, junior engineers and oilers ordered to report to work on such days shall not receive less than double time. If the designated holiday falls on a Saturday, it will be celebrated on the preceding Friday provided, however, employees who work on such day will be paid at the rate of double time. If the designated holiday falls on a Sunday, it will be celebrated on the succeeding Monday. Shopmen working on SATURDAYS shall be paid the rate of time and one-half; however, Shopmen working on SUNDAYS and HOLIDAYS shall be paid at the rate of double time.

(c) *Holiday pay is defined as follows: An employee must be employed on the day before the holiday and the day after the holiday to receive pay for the holiday, if not working on the holiday.*

(1) If an employee works intermittently or is employed in a calendar week in which a holiday falls, he shall receive two (2) hours pay extra per day, but not to exceed eight (8) hours pay for holiday compensation.

(d) It is hereby agreed that whenever mechanics and helpers are employed in the shop, they shall not interfere with the engineers, junior engineers, firemen, maintenance men or oilers, who may be selected by the Employer to do repair work on any machine in the shop.

(e) A week shall start at 12:01 a.m. on Monday and end at 12:00 midnight Friday. All work performed over the eight (8) hour day in a forty (40) hour week and all Saturdays shall be paid for at the rate of time and one-half. A workday shall be eight (8) hours.

(f) Eight (8) hours shall constitute a day's work, to start at eight (8:00) a.m. and end at five (5:00) p.m. with one (1) unpaid hour for lunch. A flexible start time between seven (7:00) a.m. and eight (8:00) a.m. shall be allowed. The Employer shall have the right to schedule lunch such that lunch begins at any time after four (4) hours worked, and is completed before five (5) hours into the shift. Lunch may be changed by mutual consent to one-half (1/2) hour, and quitting time would then be adjusted accordingly.

(g) Where shift work is necessary for mechanics in the shop, the second and third shift shall receive incentive pay in the amount of ten (10%) percent additional over the rate for such night work.

(h) The contractor shall supply tools over three-quarter (3/4") drive sockets, one and one-quarter (1-1/4") open-end wrenches and any other special tools.

(i) The contractor shall have insurance to protect against the loss of tools stolen from the Engineer, while in the employ of the contractor and while said tools are kept on the contractor's premises.

(j) All employees shall supply the Employer with an inventory list of all his tools used in the Shop.

## **SUBDIVISION C BUILDING CONSTRUCTION DIVISION**

### **ARTICLE X**

#### **Section 1. WAGES**

Attached hereto is Schedule B, which is made part of this Agreement. Said Schedule sets forth the wage rate of the various classifications of employees.

#### **Section 2. CONDITIONS**

(a) Engineers, while at work, shall be protected by their Employer from falling objects and shall be given protection from the weather on three (3) sides when working with building tradesmen.

(b) On gasoline machines operated from December 1 to April 1 in any year, the engineers shall receive one (1) hour additional pay when working with the building tradesmen, in order to be ready to start at the designated starting time.

(c) Lead Engineers shall operate a machine in emergencies only and then only until such time as the services of an operating engineer can be obtained.

(d) Whenever an engineer, fireman or apprentice engineer is employed intermittently to operate a machine, he shall do such other work during the period when his machine cannot operate, as may be determined by the Lead Engineer.

(e) Engineers employed on scoops, carry-alls, scrapers, power graders, trench machines, roller, travel loader, tractor, finishing machines, bulldozers and all singly operating machines shall report to work one-half (1/2) hour before the regular starting time for greasing and shall be paid for such greasing at the rate of double time for this one-half (1/2) hour.

Employees who receive grease time shall begin working as soon as greasing is finished.

(f) Crews employed on all steam shovels and steam rigs shall report for work one (1) hour before the regular starting time to raise steam and grease engines, et cetera, and shall be paid for such greasing at the rate of double time for this hour.

(f-1) Where a vibratory hammer is being used for driving plies or sheeting and the controls are operated by the engineer on the crane and the generator or compressor is mounted on the crane or rig, the engineer shall receive one (1) hours pay payable at premium time, per day, in addition to the rates listed. In addition, the oiler shall be paid generator or compressor pay.

If the console is operated on the ground level, separate from the crane or rig, then the console will be operated by an engineer, in addition to the crew and generator or compressor operator.

(f-2) Crews shall be employed on the Maxim or CMI when used as paver or for fine grade work. When a Maxim or CMI unit is used as the second machine, it shall be manned by one (1) Engineer and two (2) oilers.

(f-3) On front end loaders with bucket capacity of ten (10) yards and over, the operator shall receive twenty-five (25¢) cents per hour over the rate.

(g) No assignee for work shall be subject or compelled to undergo a physical examination in order to be employed, unless required by Federal, State or Local statute or regulation.

(h) In the event of any sympathetic stoppage of work caused by any union connected with the AFL-CIO, the part of the first part may pay off its straight time employees at the end of the work day on which the stoppage occurs, and will not have to pay these employees for any time during the period of such stoppage.



(i) All wages payable under this Agreement shall become due and payable on the job every week. Not more than three (3) days' pay shall be held back. If, for any reason, the Employer terminates the service of any member working under this Agreement, the accrued wages and fringe benefits shall be paid to him at the time of the termination of his employment, otherwise, if a member is directed to report at Employer's office for payment, he shall be entitled to receive payment at double time for every hour consumed in traveling to and waiting at such office for payment, deducting therefrom such time as may be a regular part of such day's work. If payment is not received at the office, as directed, such member shall report on the next working day at such office, unless specifically directed to report on the job and shall continue to do this each day until he has been paid and during such waiting time, shall be entitled to a full day's pay for each day he reports at the office or job. If any member shall, of his own volition leave the services of his employer, then the Employer may retain his wages until the next pay day.

(j) All power driven machines, regardless of motor power, or sources of power, shall be operated by an engineer. Operators shall not be required on bending machines and spray fire protection. An operator shall not be required for the first piece of the following four (4) pieces of equipment working on a job: small generator, vibrator, small pump (three (3) inches and under) and scissor lift.

(k) Junior engineers, or oilers shall be employed on all gasoline, electric, oil or air operated shovels, draglines, backhoes (115,000 pounds or more), keystones, truck cranes, asphalt-spreading machines, cranes, road paving machines and concrete pumps, mobile or piston type, multi-conveyors, crane cars twenty (20) tons and over, crane cars truck mounted, and all truck mounted booms, and their duties shall be to assist the engineer in oiling and greasing and repairing of all machinery and giving signals whenever necessary. Oilers shall not be required on:

1. Rough Terrain Cherry picker up to and including fifty (50) tons; and
2. Crawler Backhoe, up to and including 115,000 lbs.

(k-1) Oilers on truck cranes with boom lengths of 100 ft. and over shall receive twenty-five (25¢) cents additional over rates listed.

(1) Wellpoints:

- (1) Four (4) pumps in battery.
- (2) One (1) engineer for each shift.
- (3) Installation of conventional wellpoint systems will require a minimum of a four (4) man crew - three (3) men and one (1) foreman to install and dismantle.
- (4) On turbine pump systems, the number of men to install and dismantle shall be determined by the size of the pipe.
- (5) Engineers will be employed on each system necessary for jacking pits that cross railroad tracks, limited access highways, parkways, expressways and turnpikes.
- (6) It shall be left to the discretion of the Business Manager, to determine when four (4) six (6) hour shifts, are necessary on pump systems working seven (7) days a week due to a shortage of work.
- (7) Installation of submersible pumps - shall require use of a four (4) man crew - consisting of three (3) men and one (1) foreman in installation gang.
- (8) Where a rotary drill is used solely for the installation of well casings in a well system, there shall be a working crew of four (4) men - two (2) maintenance men, one (1) oiler and one (1) engineer driller.

(m) The holidays to be observed and considered paid holidays under this Agreement shall be as follows: NEW YEAR'S DAY, LINCOLN'S BIRTHDAY, PRESIDENT'S DAY, GOOD FRIDAY, MEMORIAL DAY, INDEPENDENCE DAY, LABOR DAY, COLUMBUS DAY, VETERAN'S DAY, THANKSGIVING DAY, FRIDAY AFTER THANKSGIVING DAY, and CHRISTMAS DAY or days celebrated as such, and all Saturdays and Sundays. All work performed on such days shall be paid at the rate of double time. If the designated holiday falls on a Saturday, it will be celebrated on the preceding Friday provided, however, employees who work on such day will be paid at the rate of double time. If the designated holiday falls on a Sunday, it will be celebrated on the succeeding Monday. Engineers, maintenance engineers, junior engineers, firemen and oilers ordered to report for work on such days shall not receive less than two (2) days' pay.

(m-1) Holiday pay is defined as follows: An employee must be employed on the day before the holiday and the day after the holiday to receive pay for the holiday, if not working on the holiday.

(m-2) If the employee works intermittently in a calendar week in which a holiday falls, he shall receive two (2) hours' pay extra per day, but not to exceed eight (8) hours' pay for the holiday compensation.

(n) The engineer's week begins on the day when he reports to work.

(o) Any part of the one-half (1/2) hour overtime constitutes one (1) hour and shall be computed at the double time rate (one (1) hour's pay and applicable fringe benefits).

(p) It is agreed that shift work shall be governed by the following rules. On jobs where there is more than one (1) shift and a relief engineer has not been ordered to work, the following shift or any part thereof shall be paid at the rate of double time, but if the relief engineer fails to report for work, then the member on duty at any time shall continue to work out the next shift and the rate shall be single time. It is also agreed that where two (2) or three (3) shifts are employed, that a shift will be made every two (2) weeks, changing the day shift to the night shift between the members of the Union.

(p-1) On one (1) shift when working through lunch from eight (8:00) a.m. to four-thirty (4:30) p.m., the operator shall receive one-half (1/2) hour at the double time rate and fringe benefits. This shall be the primary shift. Any work performed on other than an eight (8:00) a.m. to four-thirty (4:30) p.m. shift ("day shift"), where there is no day shift, shall be paid for at the double time rate. This shall not apply to New York State DOT or other governmental-mandated night work.

(q) On a two (2) shift job, an engineer, junior engineer, fireman or oiler shall be subject to the time allotted for lunch in accordance with the custom of the trade with which he is then working.

(r) When three (3) shifts are employed, each shift shall work seven and one-half (7-1/2) hours, but will be paid for eight (8) hours, one-half (1/2) hour being allowed for meal time except that engineers employed in power plants will partake of their meals during the eight (8) hour shift.

(s) It is agreed that on Saturday, Sunday or a holiday, if an engineer is notified and reports for work, regardless of whether or not his services are needed, he shall receive two (2) days' pay. In case an engineer is not ordered out on a Saturday, Sunday, or a holiday, and his engine or machine is operated by another engineer, he, as well as the man who operated the engine or machine, shall be paid for two (2) days' pay. It is further agreed that these conditions for Saturday, Sunday and holiday work shall also apply to junior engineers, maintenance engineers, firemen and oilers.

(t) It is agreed that engineers and firemen ordered out to do repair work and wash out boilers on a Saturday, Sunday or a holiday shall receive two (2) days pay. It is also agreed that an engineer shall not be requested to work with other than a junior engineer, fireman or oiler on the machines or engines he operates.

(u) On jobs where a Lead Engineer is not employed, repairs shall be done by the crew on their own machines.

(v) The Union agrees to furnish employees upon twenty-four (24) hours notice pursuant to the dispatching procedure. So long as the Union is able to furnish employees in the classification requested, the Employer may not hire employees from any other source. Any dispute regarding an employee's ability to perform a job shall be resolved, such resolution to be approved by the Business Manager, prior to the termination by the Employer of that employee.

(w) The party of the second part agrees that its members shall not leave a job without providing a capable substitute.

(x) It is optional with the Employer whether or not the employee shall be hired at a straight weekly rate, or on a three (3) day minimum, and if so employed on a three (3) day minimum, then if the employee works four (4) days, he shall be paid for five (5) days working with building tradesmen. (This clause however, shall apply to hod hoist or any machine replacing the hod hoist and handling building materials only.)

(x-1) Multi-Hoisting-Hod Hoist:

When an Employer directs an engineer to hoist any material other than his or his subcontractors, said engineer's rate shall be paid at multi-hoisting rate. Same conditions shall prevail for multi-hoisting as prevail for hod hoist.

(y) Maintenance Engineers shall be employed to do all temporary pipe fitting, repairing and maintaining of all equipment under the supervision of the Lead Engineer.

(y-1) Multi small equipment operator shall cover any combination of four (4) pieces of equipment, such as small generator, vibrator, bending machine, small pump up to three (3) inches.

(z) If a total of four (4) or more Operating Engineers who are under the jurisdiction of Local 138, 138A and 138B as set forth in Article X, Section Z of this Agreement are employed by a Contractor, or any combination of Contractors on the same job, a Lead Engineer to be designated by the Business Manager of the Union, must be employed by the Owner, Builder, Construction Manager or any of its representatives. The Employer covered by this Agreement herein agrees not to proceed with any of its work, which is under the jurisdiction of Local 138, 138A and 138B, until said Owner, Builder, Owner-Builder, Construction Manager or any of its representatives, employs and assumes the compensation for said Lead Engineer. The word "JOB" as used herein means a site and/or portion thereof upon which a planned improvement will be constructed. It is understood that, as a precondition for work to be performed, the various PRIME CONTRACTORS, shall pay their proportionate share of the expense of the Lead Engineer to his Employer, and in case of breach of this provision, each entity shall be jointly and severally liable for payment in case of breach of contract.

(z-1) All engineers employed either by the General or Prime Contractor, Owner, Builder, Owner-Builder, Construction Manager, any of its representatives, any of its subcontractors, or engineers employed to operate equipment used, rented or otherwise by any of the Employers shall be counted towards the employment of Lead Engineers by the Prime or General Contractor, Owner, Builder, Owner-Builder, Construction Manager or any of its representatives.

(z-2) The equipment that will not count towards having a Lead Engineer on the job shall include the following:

Multi small equipment operator

Oilers

Dual manned Equipment - only operator counts

Small generators

Small pumps

Scissor lifts

Spray fire proofing

Lead Engineer will cover temporary heat during the day shift (regular working day) Monday through Friday (one (1) two (2) or three (3) shifts). The second and/or third shift Monday through Friday will be covered by employees dispatched by the Union. Where four (4) shifts are involved in a seven (7) day per week basis, all shifts will be covered by employees dispatched by the Union and in accordance with the provisions of section (z-7) of this Agreement.

However, the Lead Engineer shall not replace an engineer already assigned to temporary heat.

If no temporary heat, the Lead Engineer must operate first piece of the following equipment:

Small generator

Small pump

Scissor lift

Spray fire proofing

The initial condition for the employment of a Lead Engineer must be met for three (3) days in a calendar week. The Lead Engineer shall continue to be employed so long as the minimum manning requirements (four (4) employees) are met.

The Lead Engineer will receive overtime if two (2) or more engineers are working overtime or when a crane is working overtime.

(z-3) A week shall start at 12:01 a.m. on Monday and end at 12:00 midnight on Friday. All work performed over the eight (8) hour day in a forty (40) hour week shall be paid for at the rate of double time. A workday shall be eight (8) hours.

(z-4) Eight (8) hours shall constitute a day's work to start at eight (8:00) a.m. and end at five (5:00) p.m. with one (1) unpaid hour for lunch. A flexible start between seven (7:00) a.m. and eight (8:00) a.m. shall be allowed. Starts shall be by equipment not the job. The Employer shall have the right to schedule lunch such that lunch begins at any time after four (4) hours worked, and is completed before five (5) hours into the shift. If lunch is changed by mutual consent to one-half (1/2) hour, and quitting time would then be adjusted accordingly.

When employed on brick masonry on request, the engineer shall start ten (10) minutes before eight (8:00) a.m. and may quit ten (10) minutes before quitting time.

(z-5) On cranes using clam shell buckets, the engineer shall receive twenty-five (25¢) cents per hour additional over the listed rates.

Truck and crawler cranes having long boom lengths and crane cars and boom trucks including cherry-pickers shall be governed by the following and shall be paid to the engineer over the scheduled rates, per hour in addition to the rate listed:

Boom Lengths of 100 ft. (including jib) but less than 150 ft. - \$0.50

Boom Lengths of 150 ft. (including jib) but less than 250 ft. - \$0.75

Boom Lengths of 250 ft. (including jib) but less than 350 ft. - \$1.00

Boom Lengths of 350 ft. or more (including jib) - \$1.50

(z-6) It is hereby agreed that where boilers and/or furnaces are used for furnishing temporary heat, in buildings under construction, or where temporary boilers are installed outside the building under construction, whether they be high or low pressure, shall be operated by an engineer.

(z-7) It is hereby agreed that where portable mechanical heaters are used for furnishing temporary heat, one (1) Engineer shall be used in the operation of one (1) to five (5) such heaters. Every multiple of five (5) heaters or part thereof shall require one (1) engineer, additional.

(z-8) Engineers employed on a continuous seven (7) day basis on temporary heat, shall operate on shifts of six (6) hours each, four (4) shifts, starting at twelve (12) o'clock midnight. All overtime (over forty (40) hour week) shall be paid at the rate of time and one-half (1/2), except holidays, which shall be paid at double-time rate.

(z-9) A maintenance Engineer shall be employed on all power buggies, when more than one (1) is used and shall cover up to five (5). More than five (5) shall require another maintenance Engineer.

(z-10) In the event helicopters are employed for hoisting, transporting, setting of construction and building equipment and/or materials, an engineer (qualified) shall be employed, the rate of pay to be determined by the lifting capacity.

(z-11) On motorized scaffolds - when used for hoisting one (1) maintenance man will cover up to three (3) machines.

(z-12) Whenever an employee is dispatched to an Employer, that Employer, even if a rental outfit or vendor, shall be responsible for the payment of wages and fringe benefits, for example, in the case of long boom, or intermittent time.

(z-13) A small milling machine shall be manned by one (1) engineer, and a large milling machine (for example, with a conveyor belt) shall require one (1) engineer and one (1) oiler.

(z-14) The following pay shall be applicable for every hour an operating engineer is required by government regulations and does wear special equipment for hazmat or hazardous work at the below designated level:

Level "C" - \$1.50 per hour above rate

Level "B" - \$2.50 per hour above rate

Level "A" - \$3.50 per hour above rate

(z-15) An Employer shall be permitted to change an employee's equipment assignment at the discretion of the Business Manager or the Lead Engineer.

(z-16) There shall be a pre-job conference on all jobs. The pre-job conference shall be held before the start of construction.

This Agreement and all of its terms and provisions are based on an effort and in the spirit to bring about more equitable conditions in the construction industry, and the language herein shall not be construed as evading the principles or intention of this Agreement.

(z-17) Signatory Employers to this Agreement having a company-wide lead engineer may utilize as many pieces of equipment as may be necessary without having a lead engineer assigned to the job site until such time as a second piece of equipment is brought to the job site by another contractor not having a company-wide lead engineer. At such time, a lead engineer must be appointed to the job site. Such lead engineer shall be assigned to said second contractor's payroll and no payroll costs of said lead engineer shall be charged to the Signatory Employer's company having a company-wide lead engineer. Until a lead engineer is assigned to the job-site, the second man on the job shall be assigned by the Union as the Job Shop Steward.

(z-18) Local 138 shall cover all temporary heat and ground heat, such terms as previously defined in this Agreement.

(z-19) Engineers shall assemble crane when working with other than iron workers, boiler makers and dock builders.

(z-20) Climb time - when an operator is required to climb less than one hundred (100) feet to the cab of a mounted crane, he shall receive fifteen (15) minutes of premium pay in the morning and fifteen (15) minutes of premium pay in the afternoon. When an operator is required to climb one hundred (100) feet or more to the cab of a mounted crane, he shall receive thirty (30) minutes of premium pay in the morning and thirty (30) minutes of premium pay in the afternoon.

(z-21) On the first tower crane and/or crane on pedestal on a job site, there shall be an engineer and an oiler. On the second tower crane and each additional tower crane on a job site, there shall be an engineer, oiler and maintenance man.

(z-22) When work is ordinarily performed on normal shifts on a job site (i.e., eight (8:00) a.m. to five (5:00) p.m.) and a crew, because of owner requirements is directed to work other than a normal shift, such employee shall be paid at the double time premium rate for working such off shift.

(z-23) With respect to multi-hoist work, where work is performed at the direction of a general contractor, construction manager, or any other person with responsibility on the job, coverage shall include manning the inside elevator.

## ARTICLE XI

The terms, covenants and conditions of this Agreement shall be binding upon all Subcontractors at the site to whom the party of the first part may have sublet all or part of any contract entered into by any of the Contractors of the party of the first part:

All construction site work performed by the Contractors or Subcontractors and all services rendered for the Contractors or Subcontractors shall be rendered in accordance with the provisions of this Agreement and by parties to this Agreement.

If a Contractor, Subcontractor or Employer shall subcontract construction site work covered by this Agreement, provision shall be made in any contract for compliance by such Subcontractors with the full terms of this Agreement.

A Contractor, Employer or Subcontractor shall be financially responsible for all fringe benefit contributions to any Funds provided for by this Agreement which are required to be paid either by it, or by its Subcontractor, or the Subcontractor of its Subcontractor for work performed on the Contractor's job or projects.

In the event an Employer, Contractor or Subcontractor subcontracts to any delinquent Subcontractor, as defined in the applicable Trust Agreement, the Employer, Contractor or Subcontractor shall be liable for all accrued delinquencies.

This contract covers Engineers Construction Work, Building Work, and Shopwork, and scale of wages and working conditions applicable to the heavy construction industry are set forth in subdivision A of this contract, the scale of wages and working conditions applicable to shopmen are set forth in Subdivision B of this contract, and the scale of wages working conditions applicable to the building industry are set forth in Subdivision C of this contract, all of which represent a part and parcel of this Agreement.

Each signatory employer having a job within the geographic jurisdiction of Local 138, shall prior to the commencement of such job furnish the names of all subcontractors employing operating engineers on such jobs to Local 138 on forms supplied by the Union before such subcontractors start work.

When a Signatory Employer secures work within the Union's jurisdiction, the Employer shall be required to meet with the Union for the purpose of a pre-job conference at least two (2) weeks prior to starting work on the job. The purpose of the pre-job conference shall include, but not be limited to, determining the job specifications, identifying any subcontractors on the job, discussing job opportunities and the manning of the job.

If the Employer wishes to ascertain whether any such subcontractor on the particular job site is delinquent, a representative of the Employer shall contact the Union representative, in writing, and request such advice.

At the request of the Employer, the Fringe Benefits Fund, or their designated representative, shall promptly advise the Employer, in writing, as to whether any such subcontractor is in fact delinquent in connection with their contributions to the Local Union's benefit funds.

At the request of the Employer, Union or the Fringe Benefit Funds, or their designated representative, who shall promptly advise the Employer, in writing, as to whether any such subcontractor is in fact delinquent in connection with their contributions to the Local Union's benefit funds.

At the request of the Union or the Fringe Benefit Funds, or their designated representative, the Employer shall make available all payroll records with respect to its subcontractors so that a determination may be made promptly, whether the subcontractor is delinquent on the job site.

Prior to final payment to subcontractors on the job, the subcontractor shall provide, and the Employer shall endorse, a lien waiver form (in a form to be acceptable by the Union), and an accurate manpower report, to an authorized representative of the Union.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be signed by their duly authorized representatives and affixed hereto the seals of their respective organizations and the day and year first above written.

FOR THE INTERNATIONAL UNION OF OPERATING ENGINEERS LOCAL 138, 138A AND 138B, AFL-CIO

By \_\_\_\_\_

President  
Local 138, 138A and 138B, IUOE

Recording Corresponding Secretary  
Local 138, 138A and 138B, IUOE

FOR THE ASSOCIATION/EMPLOYER:

\_\_\_\_\_  
Name of Employer (Please Print)

\_\_\_\_\_  
Signature of Principal

\_\_\_\_\_  
Street Address of Employer

\_\_\_\_\_  
Print Principal's Name and Title

\_\_\_\_\_  
City, State and Zip Code

\_\_\_\_\_  
Employer's Social Security No./EIN. No.

\_\_\_\_\_  
Telephone Number of Employer

\_\_\_\_\_  
Worker's Compensation Carrier

\_\_\_\_\_  
Fax Number of Employer

\_\_\_\_\_  
Worker's Compensation Policy No.

Date: \_\_\_\_\_

**DISPATCHING PROCEDURE  
OF  
LOCAL 138, 138A, 138B  
INTERNATIONAL UNION OF  
OPERATING ENGINEERS  
FARMINGDALE, NEW YORK**

In order to administer the referral system in a fair and equitable manner, having in mind the complex and varied classifications of work and machines engaged in the hoisting and portable branches of Local 138, 138A, 138B and to establish records and procedures which will be adequate to disclose fully the basis on which each referral is made the following rules entitled "DISPATCHING PROCEDURE" are promulgated.

**I. "INDUSTRY SENIORITY DATE" - DEFINITIONS**

A) Referral of qualified applicants will be based on the principle of "Industry Seniority Date " which has been defined as follows:

The term "Industry Seniority Date" shall mean the first date of regular employment of a job applicant within the geographical jurisdiction of the Union, in a job classification covered by the working agreement of the Union, subject to investigation by the Union, and to the uniform procedures and statements required under Paragraph 3(a) and (b) of Appendix A referred to in the *Stipulation between the National Labor Relations Board and the Union dated September 17, 1971*. However, in the absence of other evidence, the date of the first regular employment in the industry may be presumptively established as of the date of the employee's initiation into Local 138, 138A or 138B or as of the date of the first payment of a permit or service fee to Local 138, 138A or 138B.

B) It is not the intent of the Union and its members that the foregoing definition of the term "Industry Seniority Date" shall apply to the Pension and Retirement Fund or any other plan or fund with which the Union is concerned.

**II. SENIORITY - HOW ESTABLISHED**

A) An employee using the hiring hall shall establish his "Industry Seniority Date" by submitting written acceptable proof of employment in the industry in a job classification covered by the Collective Bargaining Agreement of Local 138, 138A, or Local 138B, within the geographical area of Nassau or Suffolk County as defined in paragraph 1, above, Industry Seniority, thus established begins with the first date of actual employment.

B) All job applicants who have been referred to employment in the industry through the Union's referral system since January 1, 1971 shall be notified once, in writing by registered or certified mail, at their last known addresses, of their respective Industry Seniority Dates, as these dates appear in the records and files of the Union.

C) Any person seeking to establish an earlier Industry Seniority Date shall initiate his claim in writing to the Union by registered or certified mail within thirty (30) days of receipt by him of the Notification of Industry Seniority Date, referred to in subparagraph (b) above. Failure to initiate such a claim within the prescribed period will determine the Industry Seniority Date found by the Union to be the correct date.

D) To establish an Industry Seniority Date earlier than that stated in the Notification of Industry Seniority Date referred to in subparagraph (b) above, the job applicant shall submit proof in writing of employment, as of such earlier date, within the geographical jurisdiction of the Union, in a job classification covered by the Collective Bargaining Agreement of the Union. The proofs submitted shall be subject to investigation by the Union.

E) The Union shall send notice in writing to an applicant claiming an earlier Industry Seniority Date, within sixty (60) days of the filing of his claim, that such claim has been accepted or denied.



F). Any person aggrieved by the Union's determination of his Industry Seniority Date, pursuant to subparagraphs B, C, D or E above may file an appeal therefrom to the Executive Board of the Union within thirty (30) days of receipt by him from the Union of Notification of Industry Seniority Date. The decision and determination of the Executive Board shall be given to the applicant by registered or certified letter addressed to him at his last known home address.

G) Employees who work within the territorial jurisdiction of the Union in a job classification covered by the Collective Bargaining Agreement of the Union for the first time subsequent to January 1, 1973 shall have their Industry Seniority Date determined by the date of such initial employment. The employee shall submit written proof of such employment to the Union and the procedures set forth above shall then apply.

H) The Union shall not disallow the Industry Seniority Date claimed by any job applicant of his out-of-work card except by written notice once by registered or certified mail to said applicant, whereupon the procedures set forth in subparagraphs C, D, E, and F shall apply.

### **III. FACTORS AFFECTING INDUSTRY SENIORITY DATE**

#### **A) SERVICE IN ARMED SERVICES OF U.S.**

Industry Seniority Date, once established, shall not be affected by service by a member or employee in the Armed Services of the United States for a period of up to three (3) years. Voluntary service in the Armed Services of the United States beyond a period of three (3) years shall be evidence of the member's intent to withdraw from the industry covered by the Union and all rights of industry seniority shall cease and determine.

#### **B) ILLNESS OR DISABILITY**

Illness and disability of a nature that will prevent the employee from engaging in the work covered by the Union shall not affect the Industry Seniority Date unless return to employment in some category of the Union's jurisdiction if not made within a period of two (2) years following the initial date of illness or disability. Following such period of two (2) years and the employee has not resumed work, when work is available, the rights under the industry seniority date shall cease and determine.

#### **C) WITHDRAWAL FROM THE INDUSTRY**

An employee who absents himself from the work jurisdiction of the Union for any reason (other than illness or disability) for a period extending beyond twelve (12) months shall be deemed to have withdrawn from the industry and his Industry Seniority Date will come to an end and be zero. Such employee shall not again be entitled to his original Industry Seniority Date. If he should choose to resume employment in the trade, a new Industry Seniority Date shall be assigned to him to commence from the date he again is employed in the industry by an employer who is in Collective Bargaining Agreement with the Union in the counties of Nassau or Suffolk. Withdrawal from the industry as used herein, shall include working at another trade, operating one's own business (except as an owner-operator in the industry covered by the Union.) application for and approval of retirement, annuity or related benefits under the Local 138, 138A and 138B I.U.O.E. Fringe Benefit Funds, or any similar action constituting a voluntary withdrawal from the work jurisdiction of the Union, in which event industry seniority rights shall not be retained after the date of withdrawal becomes effective.

#### **IV) FACTORS OTHER THAN INDUSTRY SENIORITY DATE TO BE CONSIDERED IN MAKING JOB REFERRALS**

Although Industry Seniority Date shall be the prime factor in making referrals, emergency conditions may at times dictate the immediate referral of a person not entitled to referral on the basis of Seniority. The Dispatcher shall consider such factors as an Employer's request for immediate coverage of a job where an accident occurred, and a person in the referral office or residing nearby the job site in question may be dispatched to cover the emergency for a period not to extend beyond one (1) day. A leaking valve of escaping gas condition may also warrant immediate coverage of the job to save life or property. An employee calling in sick may have his machine covered by the dispatch of a person for the balance of the day if he is readily accessible and available over the person who would be entitled to referral on the basis of seniority. A good faith request of an Employer requiring special skills of an employee will also be considered in making a dispatch of this nature. An Employer calling in for a job requisition toward the close of the day may be accommodated by the dispatch of a person who can reach the job site promptly and be paid for the day, provided that the man with the highest industry seniority date is dispatched the next day. Due note of the reason for the extraordinary referral will be made on the Out-of-Work card and referral form to reflect the emergency referral, having in mind the factor of safety to the individual and the community and the accommodation of the Employer and the exigencies of the job. In all such instances the man with the highest industry seniority date will be dispatched by the next day or shift, if more than one (1) shift is in progress.

#### **V) OUT-OF-WORK CARD**

##### **A) GENERAL RULES**

Out-of-Work cards shall be furnished by the Union bearing the classifications to types of equipment operated by operating engineers, oilers, and firemen in the construction industry. Green cards shall be for "Engineers" and white cards shall be for "Oilers" and "Firemen". Out-of-Work cards shall remain valid for a period of thirty (30) days from the date appearing on said card. Thereafter, a new Out-of-Work card must be filed. Failure to file a new Out-of-Work Card after the expiration of thirty (30) days will be presumptive evidence that the man is working or that he does not choose to be referred.

These cards shall have printed thereon the names of the machines customarily operated and used in the work of the Union.

##### **B) EMPLOYEE'S DUTIES IN FILING OUT-OF-WORK CARDS**

When an employee becomes unemployed he shall fill out an Out-of-Work card with his name, address and telephone number and sign the same. He shall check off the machine or machines he is capable of operating and to which he wishes to be assigned when referred for employment. A man checking off a machine he is unable to operate, as evidenced by a complaint from an Employer, or proof of negligence or damage to the machine, equipment, material or personal injury to himself or another, will not be referred to operate such or similar machine because of an "unsafe condition." The employee will be informed forthwith of this decision by the dispatcher or other representative of the Union and referral to such or similar machine will be deferred pending proof of the employee's competency. Upon appeal by the aggrieved employee, the Executive Board shall appoint a committee of three (3) senior operators of the machine in question to test the ability of the person sought to be referred and the decision of the Committee will be accepted by the Union as final. Appeal from the Committee's decision to the Executive Board of the Union, shall be filed by the aggrieved employee within fifteen (15) days of the date the member is informed of the Committee's decision.

##### **C) RECEIPT OF OUT-OF-WORK CARDS BY THE UNION**

Upon receipt of the Out-of-Work card duly signed and dated by the employee, indicating that the employee is out of work and is seeking employment in the classifications of work checked off, the card shall be promptly time stamped and dated with an electric clock in the referral office, when delivered in person or by U.S. Mail. A chronological number shall also be affixed indicating the order in which the card was received for the particular day. The man's industry seniority date shall also be placed on the card and the active cards shall all be held in a drawer or compartment in the successive order of highest industry seniority, awaiting use for referral.

#### **D) REFERRAL PROCEDURES**

An employee with the highest industry seniority date shall be referred to the first available job requisition in any of the job categories he has checked off and is capable of operating. The dispatcher shall call the man at his home or at the telephone number he has placed on his card and shall make appropriate notations if the man is referred, giving the date and time of the day. If for some reason, the name is not referred, the appropriate reason shall be checked off in the box on the Out-of-Work card, such as "Not at Home", "Job Too Distant", "Disabled or Sick", "Refused Job", "Can Not Operate", "No Transportation", "No State or City License", "No Driver's License", as the case may be. When the dispatcher has determined that the person with the highest industry seniority date is unable to be referred for any of the above or other reasons including safety, he shall record such determination on the Out-of-Work card of the senior employee thus passed over and he shall then call the person with the next highest industry seniority date and continue with such procedure until the job is filled.

Applicants with the highest industry seniority declining a job offer for any reason, when made in the regular course of referral shall be placed at the bottom of the list for the day that the job offer was declined.

#### **E) "RECALL" CARDS AND PROCEDURES**

An employee, when laid off by a particular Employer, may choose not to be included in the regular job referral procedure and may prefer instead to resume his former work with his last employer whenever such former work is made available to him by the Employer. In this case, the employer shall mark his Out-of-Work Card "Recall". The Dispatcher, upon seeing the card marked RECALL shall place the card among other "recall cards" in a separate drawer or compartment and await the requisition by the Employer of the person on "recall" in the job category he last worked for said Employer. In order for the employee to be granted the rights accruing under the principle of "recall", the Employer must specifically request the employee by his name such as "Jim Brown" and for work on the kind of machine Jim Brown last worked for said Employer such as "front end loader". Absent these two (2) specific requests or identifications, the rights of "recall" will not be honored and the man with the highest industry seniority date will be referred. A person on "recall" will continue to remain on recall and not subject to referral in the regular manner until he makes known in writing that he wishes to be taken off recall by signing and dating his Out-of-Work card to this effect.

In all instances, an Employer requesting an employee listed on "Recall" must do so through the referral system and not by personal communication with the employee sought.

#### **VI. JOB REQUISITIONS**

A) An Employer desiring an employee to operate his machine will call into the referral office, giving his name and the name of the company and the location of the job and date and time when the employee is to commence work. Any other particular that will enable the Dispatcher to promptly and safely dispatch a qualified man from the group with the highest seniority date will be noted. Such particulars given by the Employer shall be of an objective nature with regard to safety, etc. and shall not be given to enable the Employer to select a particular employee who is not otherwise entitled to referral on the basis of the highest industry seniority date, unless the man is on "Recall" as noted above. The information called in by the Employer shall be recorded by the person receiving the call into the requisition book directly and forthwith. Only if a very high volume of requisitions are called in within a very short period of time or in some other reasonable circumstances, the information received by the person answering the phone concerning a job requisition may be initially recorded on a separate paper, but such information shall be inserted into the requisition ledger as reasonably soon thereafter as possible and the original notes shall be retained as part of the transaction.

B) The ledger containing the job requisition and job referral forms shall be consecutively numbered with preprinted numbers. The person who actually received the job requisition and the person who actually referred the job applicant shall initial the form, subject to the circumstances in paragraph A above.

C) Whenever job requisitions are received or job referrals are made away from the hiring hall and/or outside the usual hiring hall hours, the transactions shall be recorded on a separate sheet of paper by the Union agent in accordance with the foregoing rules. Such information shall be recorded in the permanent, bound requisition and/or referral ledgers as reasonably soon thereafter as possible and the original record shall be retained as part of the transaction.

All entries made in the permanent, bound ledgers pursuant to paragraphs A, B, and C by one agent or employee of the Union on behalf of another shall bear the name of the person receiving the requisition or making the referral and the name or initial of the person physically making the record in the permanent, bound ledger.

D) Location of the job to which the applicant is to be referred will be noted in a space provided for in the job requisition and referral forms. The date and time of referral, description of the machine to be operated as well as the name of the person referred shall appear on the referral form.

The job requisition and referral forms shall be contained in a fixed or permanent ledger and shall be printed in three (3) colors viz; white, blue and pink. The white referral form shall be given to the person referred if he is personally available at the time of referral. If he is referred by a telephone call to his home the white copy is not given to him. The pink copy shall be stapled on top of the man's Out-of-Work Card upon completing of referral and these combined records shall be filed in sequence according to the number of the Out-of-Work Card, which is the number required to be entered on the job referral form. The blue copy shall remain in the permanent ledger.

## **VII. APPEAL PROCEDURE**

In the event that an employee believes himself aggrieved by failing to be referred in accordance with his Industry Seniority, qualifications and availability he shall forthwith file his grievance with the Appeals Committee, care of Local 138, International Union of Operating Engineers, Gazza Boulevard, Farmingdale, Long Island, New York. The Appeals Committee shall consist of three (3) members, one (1) appointed by the Union and one (1) appointed by the employee from among any of the Employers having contractual relations with the Union directly or through an Employer association, and one (1) neutral member appointed by both of these members. In the event the Union Member and Employer Member are unable to agree upon a neutral member, the Trustees of the Welfare Fund shall appoint such neutral member to the Appeals Committee. The Appeals Committee shall make a final and binding decision upon the Union and the employee shall be notified of the decision of the Appeals Committee in five (5) days.

## **VIII. PUBLICATION POSTING AND INSPECTION**

A) This Dispatching Procedure will be posted conspicuously at all times in the Referral Office of the Union and in other rooms and areas of the Union's premises where job applicants gather while awaiting referral to jobs. A copy of the Dispatching Procedure and any amendments thereto, shall be delivered or mailed to each Employer under contract to the Union. This Dispatching Procedure will also be printed once a year in the "Local 138 News" and a copy shall be sent to the Regional Director of the National Labor Relations Board for Region 29.

B) All records and forms shall conform to the published dispatching procedure. Representatives of the National Labor Relations Board shall be given the opportunity of inspecting said records at reasonable business hours and for this purpose the records shall be preserved for a period of not exceeding three (3) years, following which the records may be disposed of or destroyed in the discretion of the Union.

## **IX. AMENDMENTS OF DISPATCHING PROCEDURE**

Amendments or revision of this Dispatching Procedure shall be effective only upon publication as follows:

- (1) by publication in Local 138 News, and
- (2) by posting in the Referral Office of the Union and in other rooms and areas of the Union's premises where job applicants gather while awaiting referral to job, and
- (3) by letter, by registered or certified mail, to the Director of Region 29, National Labor Relations Board.

## **X. AMENDMENT TO DISPATCHING PROCEDURE**

The Union, in recognition of its obligation to provide meaningful on-the-job training for those participants in its Apprentice Training Program, shall endeavor to refer said participants to jobs so as to allow full opportunity for a maximum number of apprentices, regardless of their industry seniority date. Such referrals shall be made in a nondiscriminatory manner and with the sole objective of assisting an apprentice in fulfilling the qualifications necessary to become a journeyman operating engineer. Apprentices shall be utilized on a job in accordance with existing practices and shall not replace any engineer operating equipment.

**Existing practices** are defined as those practices under which Apprentices are now utilized by contractors who have Collective Bargaining Agreements with Local 138, 138A, 138B. Where a machine requires one operator, the Apprentice is dispatched as a second person on that piece of machinery, on a dual manned machine, the Apprentice shall be dispatched to work on the machine as the third person. The responsibility for training said Apprentice(s) shall be shared by the Lead Engineer, if one is present on the job site and/or the Journeyman Operator.

## **XI. RETIREE REFERRAL LIST**

Referral of retirees, i.e., individuals who are presently on retirement pay status, may be allowed from a separate referral list under the following limited circumstances:

1. Referrals must be on a rotation basis.
2. Referrals of retirees would be made only after available referrals from the regular list are completely exhausted.
3. No retiree can work more than 39-1/2 hours in a calendar month.
4. If an active member becomes available for referral, he/she will replace the retired individual.
5. There will be no right of recall regarding retiree referral.

LOCAL 138, 138A AND 138B  
INTERNATIONAL UNION OF OPERATING  
ENGINEERS, AFL-CIO  
GAZZA BOULEVARD  
FARMINGDALE, LONG ISLAND, N.Y.

BY \_\_\_\_\_

JAMES J. DUFFY, SR.  
Business Manager

## Machines & Manning Requirements

### A-Rates

Machine	Engineer	Oiler	Maintenance Man	Oiler's Pay Rate
Asphalt Spreader	X	X		E-Rate
Backhoe Crawler (360° over 115,000 LBS)	X	X		C-Rate
Backhoe Crawler (360° up to 115,000 LBS*)	X			
Barrier Machine			2	
Boiler (thermoplastic)	X			
Cherry picker (over 50 tons)	X	X		E-Rate
CMI or maxim Spreader	X			
Directional Boring	X			
Concrete Pump	X	X		C-Rate
Grader*	X			
Gradall	X	X		C-Rate
Hydraulic Cherry picker/Crane (2 Seats)	X	X		C-Rate
Hoist, 3 Drum or Multi-Platform	X			
Laser Screed	X			
Loading Machine (Bucket) cap of 10 Yds or Over*	X			
Micro-Trap, with compressor (negative Air Machine)	X			
Milling Machine, Large	X	X		E-Rate
Pipeline Welder	X			
Plant Engineer*	X			
Power Winch, Stone Setting/Structural Steel	X			
Power Winch, Truck Mounted/Stone Steel	X			
Powerhouse	X			
Scoop, Carry-All, Scraper in Tandem*	X			
Sideboom Tractor*	X			
Special Track Alignment Machine*	X			
Stone Spreader, Self-Propelled*	X			
Tank Work*	X			
Tree Grapple	X			

Notes: \* Denotes Grease Time

## Machines & Manning Requirements

### B-Rates

Machine	Engineer	Oiler	Maintenance Man	Oiler's Pay Rate
Backhoe (other than 360° degrees)*	X			
Belt Screte	X			
Bulldozer*	X			
Boring Machine/Auger	X			
Boom Truck	X			
Cherry picker, (up to 50 tons)	X			
Conveyor, Multi	X	X		E-Rate
Dinky Locomotive	X			
Drill Rig for Dowels	X			
Fork Lift*	X			
Hoist, 2 Drum	X			
Loading Machine*	X			
Loading Machine, Front End*	X			
Mulch Machine, Machine Fed		X		
Post Hole-Auger	X	X		E-Rate
Power Winch, Other than Stone Setting/ Structural Steel	X			
Pump, Hydraulic, With Boring Machine	X			
Roller, Asphalt•	X			
Scoop, Carry-All, Scraper*	X			
Skid Loader/Skid Steer*	X			
Trenching Machine*	X			
Vermeer Cutter*	X			
Work Boat	X			

Notes:

\* Denotes Grease Time

## Machines & Manning Requirements

### C-Rates

Machine	Engineer	Oiler	Maintenance Man	Oiler's Pay Rate
Concrete Finishing Machine*	X			
Concrete Spreader	X			
Conveyer	X			
Curb Machine, Asphalt or Concrete*	X			
Curing Machine	X			
Fireman	X			
Hoist, 1 Drum	X			
Maintenance Engineer (Small Equipment)	X			
Maintenance Engineer (welding and burning)	X			
Maintenance Engineer, Well Point	X			
Mechanic, Field Man	X			
Milling Machine, Small*	X			
Pulvi Mixer*	X			
Pump, 4 inches or over	X			
Pump, Hydraulic	X			
Pump, Jet	X			
Pump Submersible (second pump-up to 3")	X			
Roller, Dirt*	X			
Ridge Cutter*	X			
Vac-All	X			
Shotblaster	X			
Striping Machine	X			
Interior Hoist (building)	X			

Notes:

\* Denotes Grease Time



## Machines & Manning Requirements

### D-Rates

Machine	Engineer	Oiler	Maintenance Man	Oiler's Pay Rate
Concrete Breaker*		X		D-Rate
Concrete Saw or Cutter		X		D-Rate
Fork Life, Walk behind, Power Operated*	X			
Generator	X			
Hydra Hammer*	X			
Mechanical, Compactors, Hand Operated (forward & reverse)		X		D-Rate
Oiler, Truck Crane (\$.25/hour additional pay for boom length 100 ft. or more)		X		D-Rate
Pin Puller	X			
Portable Heaters	X			
Power Broom*		X		D-Rate
Power Buggies (L138 Gets 2nd Power Buggie)		X		D-Rate
Pump, Double Action Diaphragm	X			

Notes:

\* Denotes Grease Time

## Machines & Manning Requirements

### E-Rates

Machine	Engineer	Oiler	Maintenance Man	Oiler's Pay Rate
Batching Plant, on Site of Job	X			
Compressor	X			
Compressor, Structural Steel	X			
Compressor, 2 or more in Battery	X			
Generator, Small		X		E-Rate
Grinder		X		E-Rate
Ground Heater/Boilers	X			
Power Grinder		X		E-Rate
Micro-Trap (Negative Air Machine)	X			
Mixer, with Skip*	X			
Mixer, 2 small with or without Skip*	X			
Mulch Machine, Hand Fed		X		E-Rate
Oiler		X		E-Rate
Pipeline Welder Helper		X		E-Rate
Power Washer	X			
Pump, Up to 3 inches (second pump)	X			
Pump, Gypsum	X			
Pump single action diaphragm (1" to 3") (second machine)	X			
Root Cutter		X		E-Rate
Stump Chipper		X		E-Rate
Track Tamper	2			
Tractor, Caterpillar or Wheel*		X		E-Rate
Trench Machine, Hand*		X		E-Rate
Welding Machine	X			
Welding Machine, Pile Work	X			
Welding Machine, Structural Steel	X			
Work Boat, Deckhand	X			

Notes:

\* Denotes Grease Time