

GODWIN
MORRIS
LAURENZI
BLOOMFIELD
P.C.

November 19, 2009

Councilman Bill Morrison
Committee Chairman
City of Memphis
125 North Main, Suite 514
Memphis, TN 38103

DEBORAH GODWIN
SAMUEL MORRIS*
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SPECIALIST BY
TENNESSEE COMMISSION
ON CONTINUING LEGAL
EDUCATION AND
SPECIALIZATION AND
NATIONAL BOARD OF
TRIAL ADVOCACY



RE: IBEW – MLGW Impasse – List of Economic Items

Dear Councilman Morrison:

This firm is legal counsel for IBEW 1288. I am writing in response to your November 18, 2009 “List of Economic items at impasse” letter. On behalf of IBEW 1288 (also referred to herein as the Union) we must respectfully disagree with the determination that the Union’s proposals under Articles 21 and 31 are non-economic items. It appears that this determination was made prior to the submission by the Union of its last best offer package of proposals to the Impasse Committee (which is actually not required until the 4th business day following receipt of the combined list of impasse items, however, IBEW’s last best offer is attached hereto) Ordinance No. 4245 §2-257 2(c). It further appears that MLGW (also referred to herein as the Division) submitted some sort of position statement or argument to which the Union has not been made privy. We seek the same opportunity to have our position considered.

The Union’s Article 21 proposal is an economic item proposal properly before the impasse committee.

The Impasse Ordinance clearly provides that “Insurance” is an economic item. Economic items are defined as “items such as wages, **insurance**, shift differential and other items which require the expenditure of Memphis Light, Gas & Water Division (the “Division”) funds to an identifiable portion of any recognized unit which economic items provide to those employees direct benefits except that economic items such as pension benefits and any item excluded by the Charter of the City of Memphis, or other state laws shall not be considered economic items.” Ordinance No. 4245, §2-257 1(a). (emphasis added)

The distinction between pension benefits which are specifically excluded from being negotiable economic items and the specific inclusion of insurance is telling. While the Union may not have negotiated regarding premium increases in the past, there is no legal prohibition from doing so at this time.

In your letter you cite Article 21 as stating that only the division of premium costs

may be subject to negotiation. That is so as the Article has existed. However, the Union's Article 21 proposal would modify the existing Article 21 and act as a condition or exception to the outlined procedure i.e. that there would be no increase in premium in the first year. The proposal is clearly intended to change Article 21. The proper time to change a provision is during negotiations for the MOU. It appears that MLGW had referenced a 2004 arbitration decision in support of its position. This arbitration decision is clearly not applicable here. The decision applied to the Union's attempt to negotiate insurance premiums during the pendency of the then existing MOU.

Further, the effect of an arbitrator's decision can be changed at negotiations time. In fact the Arbitrator recognized this and stated "By not changing the article that allowed unilateral premium increases, the new MOU ratified the existing practice". This is exactly what the Union is trying to do at this time; that is, stop the Division from unilaterally increasing the employees premium cost in the first year of the MOU. By doing so, MLGW would have to absorb any costs in excess of the employees' current contribution. It defies logic to say that this is not an economic item. To exclude the Union's Article 21 Proposal from the list of economic impasse items to be considered is, we believe, a violation of the Impasse Ordinance.

The Union's Article 31 proposal is an economic item.

The Union seeks to have its Officers attend Union Membership and Executive Board meetings on Division time as is done in other divisions of the City of Memphis. The Union presently reimburses the Division for the time that the officers spend in such meetings. To say that this is for the benefit of the Union and not the employees represented by the Union is a semantic argument. Even the Division in negotiations took the position that this was an economic item and that the Division would have to absorb the "cost". The Union Business Manger's salary is paid for by the Division. This has always been considered an economic item and was in fact obtained as a result of an impasse procedure. Why would the coverage of Officer Union time be treated differently than the salary of the Business Manager?

We believe that it would be improper and manifestly unfair to not allow the Union to support its proposals to both the Committee and the full Council. We request that you reconsider your position on this matter. If there is additional information that you believe may be of use to you or you would like to discuss this matter further, please let me know.

Sincerely,

GODWIN, MORRIS, LAURENZI &
BLOOMFIELD, PC

A handwritten signature in black ink, appearing to read "Deborah Godwin". The signature is fluid and cursive, with a large initial "D" and a long, sweeping tail.

DEBORAH GODWIN
Attorney at Law

DG/lkw

cc: Edmund Ford, Jr., Committee Member
Shea Flinn, Committee Member
William C. Boyd, Vice Chairman
Harold B. Collins, Chairman
Wanda Halbert, Council Member
Jim Strickland, Council Member
Barbara Swearingen Ware, Council Member
Joe Brown, Council Member
Janis Fullilove, Council Member
Myron Lowery, Council Member
Kemp Conrad, Council Member
Reid Hedgepeth, Council Member
Rick Thompson, IBEW Local 1288

IBEW Local 1288's
Last offer 10-30-
2009

**MEMORANDUM
of
UNDERSTANDING**

between

**MEMPHIS LIGHT, GAS AND WATER DIVISION
and
LOCAL UNION NO. 1288
of
INTERNATIONAL BROTHERHOOD
OF ELECTRICAL WORKERS**

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Union Counter Proposal

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ARTICLE 21

Insurance

The benefits presently enjoyed by employees covered by this Memorandum of Understanding shall not be reduced during the term of this Memorandum of Understanding.

Benefits provided and the division of premium costs will be negotiated at the same time as other economic factors during negotiations for a new term of the Memorandum of Understanding unless otherwise agreed upon.

Sixty (60) days before implementing a premium increase, the Division will meet with the Union for the purpose of discussing and/or agreeing to cost containment or other modifications that would decrease or eliminate the need for the increase.

The parties agree to form a joint Management-Union insurance committee to participate in the sharing of insurance information. The committee will review MLGW insurance programs in regard to trends in the industry, plan costs, and insurance education and communication processes. The focus of the Joint Insurance Committee will be to pursue cost containment measures while providing a quality health program for employees.

The committee will be considered of eight (8) employees with four (4) appointed by the Union and four (4) appointed by the Division. The committee will meet on a quarterly basis or more frequently by mutual consent.

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There will be no insurance premium increase for MLGW PPO for 2010.

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ARTICLE 22

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Work-Out-of-Classification

The Division shall make temporary assignments according to the requirements of the job and availability of personnel qualified to do the work.

Work-out-of-classification in occupational lines of progression above entry level will be offered to the qualified and available employee who is senior in occupational seniority in the next preceding classification or classifications in the line of progression who is in the crew or on the job site.

Work-out-of-classification in jobs not in occupational lines of progression will be offered to the senior qualified and available employee in the classification or classifications from which an employee will be selected. In these cases classification seniority will be utilized.

When employees are assigned or required to perform work which is not in their job description but which is usually performed by employees in a higher classification, they shall be paid out-of-classification at the appropriate rate.

In connection with the above, any problems which might arise concerning the question of insufficient work shall be dealt with on a case by case basis by referral to the Manager or Assistant Manager of Labor and Employee Relations and the Union Business Manager or Assistant Business Manager.

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Pay for work-out-of-classification shall be as follows:

- Employees assigned or required to work in a higher classification on a temporary basis for periods in excess of two (2) hours, either continuously or accrued in the regular workday, shall receive premium pay for all time worked in the higher classification as follows:

Work in non-supervisory classifications

Grades 1-5.....	\$.60 per hour
Grades 6-9.....	\$.70 per hour
Grades 10 & above	\$.80 per hour
Work in crew leader and supervisory classifications	\$ 1.00 per hour

- It is not the intention of the Division to assign employees to work-out-of-classification in higher classifications to nullify the need to promote employees to these higher classifications.
- While it is agreed that employees selected to work-out-of-classification must be qualified to perform the job, it is also agreed that the Division will make reasonable efforts to see that senior employees have the opportunity to become qualified to perform in more advanced positions.
- An employee assigned to work in a lower classification on a temporary basis shall receive his/her regular rate of pay during such assignment if such assignment is for the benefit of the Division. If for the benefit of the employee, he/she shall receive the rate of pay applicable to the classification which is next lower than his/her rate of pay in his/her old classification.
- An employee assigned to work in an equal classification on a temporary basis shall receive his/her regular rate of pay during such assignment.

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6. Temporary assignments may not be rotated for the purpose of depriving temporarily assigned employees of work-out-of-classification pay.

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~~Deleted: 8. If an employee works out of class for a period of ninety (90) days and this was not the result of another employees sickness or injury, then the division shall fill the position immediately.~~

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ARTICLE 27

Hours and Overtime

General:

1. **Scheduled Work Week.** A scheduled work week shall consist of five (5) consecutive days when possible, each workday shall normally be eight (8) consecutive hours, exclusive of time allowed for lunch. The work week may be any five (5) days in a calendar week.

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2. **Scheduled Days Off.** An employee's two (2) scheduled days off shall be consecutive when possible. For pay purposes, the determination of first and second days off shall depend upon the chronological order of occurrence of the two (2) scheduled days off as they are established within the calendar week, Sunday through Saturday.

3. **Break/Rest Period.**

Employees will be granted one paid break or rest period of not more than fifteen (15) minutes in each four (4) hour period of regular or overtime hours worked.

4. **Overtime Limit and Rest Periods.**

a. **General**

An employee will not normally be required or permitted to work more than sixteen (16) hours, either continuously or cumulatively, in a twenty-four (24) hour period. This twenty-four (24) hour period will begin at the starting time of any work period.

An employee may be released by his/her Supervisor from work for a rest period not otherwise provided for, as need dictates during the employee's regularly scheduled forty (40) hour work week, and shall be paid at his/her straight time rate for such regularly scheduled hours.

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b. **Distribution, or Operations Department Construction or Maintenance Crews**

Distribution, or Operations Department construction or maintenance crew members (not to include Electric Distribution Department trouble shooters) who have worked sixteen (16) consecutive hours will be granted a ten (10) hour off duty period. When needed, the employee may elect to return after eight (8) hours off duty; however, any remaining time worked within his/her earned rest period will be compensated at a double time rate. In case of an emergency, an employee may be authorized to continue to work beyond the sixteen (16) hour work period if the employee is physically able and willing to continue a job. However, the additional time after sixteen (16) hours shall not exceed two (2) hours.

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All emergency overtime of six (6) hours or longer, cumulative or continuous in the twelve (12) hours preceding a regular shift, shall be preceded by, or followed by, a continuous ten (10) hour off-duty period. Any hours in the rest period which overlap with the employee's regularly scheduled workday will be compensated at the straight time rate. Paid rest time shall be considered the same as time worked for the purpose of determining when overtime starts in a regularly scheduled workday.

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In the event an employee has not completed his/her ten (10) hour rest period, the employee shall not be required to report for his/her next regular work period until the ten (10) hours have elapsed. When needed, the employee may elect to return after eight (8) hours off duty; however, any remaining time worked within his/her earned rest period will be compensated at a double time rate.

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If there remain four (4) hours or less in the employee's regular work period at the end of the ten (10) hours rest period, the employee shall not be required to report for work unless the emergency still exists. If more than four (4) hours remain in the employee's regular work period at the end of his/her rest period the employee shall report to work.

5. **Overtime Policies and Committees.** Departments/Areas will form committees to develop overtime policies. Upon approval by the appropriate manager, copies will be forwarded to the Manager or Assistant Manager of Labor and Employee Relations and the Union Business Manager or Assistant Business Manager. Policies may be reviewed annually or upon request by either party. It is understood that nothing contained in these overtime policies will conflict with the Memorandum.

All policies will include provisions for the following:

1. Overtime hours to be converted to its straight time equivalent
2. Selection of planned overtime, emergency overtime and stand-by, as applicable
3. Employee review and/or confirmation of overtime lists prior to printing for distribution.

6. **Overtime Lists.** Current overtime lists will be posted on all bulletin boards.

7. **Saturday and Sunday Construction Work.** Construction Work performed on Saturday and Sunday will be kept to a minimum consistent with the requirements of serving the customers. It is not the intent of the Division to perform routine construction on Saturday and Sunday.

8. **Emergency Call-Outs.** The parties agree that those classifications necessary to perform the work shall be called out in emergencies.

In distribution, the low crew at the service center where the call originates will be called after 1:30 a.m. Monday through Friday.

Shift Work Schedules:

Employees covered by this section are those employees whose work hours are dictated by a shift work schedule.

1. In departments where prepared, work schedules shall be posted at least one (1) month in advance. The Department Manager and Area Steward shall have a mutually agreed upon schedule for shift work sign up approved initially by the Union Business Manager or Assistant Business Manager and the Manager or Assistant Manager of Labor and Employee Relations. Any temporary changes to the schedule shall be mutually agreed to by the Department Manager and Area Steward. Any permanent changes to the schedule shall be mutually agreed to by the Union Business Manager or Assistant Business Manager and the Manager or Assistant Manager of Labor and Employee Relations.
2. The Division will make all efforts to give a minimum of one (1) week's notice prior to any change in employee's work schedules. Changes made with less than four (4) calendar days notice should not be made to avoid working employees on overtime.
3. No employee should normally be scheduled to work more than eight (8) straight-time hours in any twenty-four (24) hour period but in no case shall an employee be scheduled to work more than eight (8) straight-time hours in any consecutive sixteen (16) hour period.
4. An employee's two (2) scheduled days off shall be

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- consecutive when possible.
5. Although it is recognized that the requirements of shift work may necessitate working more than five (5) straight-time days consecutively, all efforts should be made to avoid such scheduling.

Overtime Payment:

1. Time and one-half for all time worked in excess of eight (8) hours in one day or forty (40) hours in one (1) calendar week.
2. Time worked in excess of sixteen (16) hours in any twenty-four (24) hour period shall be paid at two (2) times the straight-time rate.
3. Whenever an employee is required to work on a holiday, the employee shall be paid two (2) times his/her regular rate of pay for such hours worked.
4. Employees will be eligible for double-time pay on one (1) day per calendar week except as provided for in 2 and 3 above.
 - a. An employee who is normally scheduled off on Sunday will be paid double-time or two (2) times his/her regular straight-time rate for any hours worked on Sunday. Any overtime on another day in the calendar week will be paid at one and one-half times his/her straight-time rate for the hours worked.
 - b. An employee who works on a shift crew in the Electric, Gas or Water Distribution departments will be paid double-time or two (2) times his/her regular straight-time rate for any hours worked on Sunday with the exception of a crew(s) whose second day off is Saturday. In such case, the double time day for this crew(s) will be Saturday. Any overtime on another day in the calendar week will be paid at one and one-half times his/her straight-time rate for the hours worked.
 - c. An employee who works a shift with off-days which do not include Sunday will be paid double-time or two (2) times his/her regular straight-time rate for any hours worked on his/her second off-day. Any overtime on another day in the calendar week will be paid at one and one-half times the employee's straight-time rate for the hours worked.
5. Overtime shall be distributed on an equitable basis among the employees of a given classification who normally perform the work in the department affected insofar as possible. Overtime lists will be utilized in making selections for employees to work overtime.
6. There shall be no duplicating or pyramiding of overtime.

Show-Up Time:

An employee who reports for work at his/her regularly assigned time and who has not been notified in advance not to report shall be paid a minimum of two hours straight time pay.

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Union Proposal

ARTICLE 31

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Authorized Leaves

A. Employees may be granted leaves of absence without pay of no more than five (5) working days upon written request endorsed by their Department Head and approved by their Vice-President. Employees may be granted leaves of absence without pay in excess of five (5) working days upon written request endorsed by their Department Head and approved by the Board.

An employee, but no more than one employee, who is elected or appointed to a position in the International, which requires his absence from duty with the Division, may be granted a leave of absence without pay for up to one (1) year, subject to the needs of the department.

An employee who is designated as a delegate to a conference or convention of the Union or an officer of the Union who may be required to transact business for the Union which temporarily requires his/her absence from duty, upon written application twenty-four (24) hours in advance, may be allowed necessary time off to transact such business without pay, if in the opinion of the Board such leave will not unduly interfere with progress of the work.

The Division agrees that requested attendance at the regularly scheduled Union Membership and Executive Board meeting, not to exceed one (1) each per month, will not be unreasonably withheld from the Union officers and Executive Board members. The Division agrees to continue such a member's pay while attending said Union meetings. This provision applies only to those such members who are on duty at the time said meeting is held. Such members are required to remain on duty until the scheduled start of said meeting with adequate travel time provided and return to duty immediately upon completion of said meeting. An elected Union Officer, upon request, agrees to attend meetings with Division officials on his personal time will be allowed to take a comparable amount of his regularly scheduled work time to attend Union monthly membership meetings and Executive Board meetings, subject to the needs of the department, as determined by the Department Manager. Time spent attending such Union monthly membership and Executive Board meetings shall be paid if the Officer has accumulated sufficient comparable time. The Union Officer must document his attendance and time spent at such meetings and promptly submit a copy of the documentation to supervision.

Up to four (4) members of the Union Negotiating Committee will be allowed time off with pay when negotiations occur during their regular working hours.

Employees on authorized leave shall continue to accrue seniority and may if they elect participate in the Division's insurance program at their own expense.

Sick leave and pension benefits accrued and not taken prior to the beginning of an authorized leave of absence shall be frozen and reinstated upon the employee's return to work.

The parties will comply with the Family and Medical Leave Act (FMLA).

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Employee may be granted up to two (2) hours off without loss of pay for essential personal business that cannot be postponed or rescheduled to the employee's own time subject to approval by the Supervisor. Time off for two (2) hours personal business will not be unreasonable denied.

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Union Counter Proposal

ARTICLE 36

Safety, Health

The Division shall make all appropriate provisions for the protection of the health and safety of its employees. The Union and the Division shall support all efforts to protect the employees from injury or damage to health while on the job.

As determined by Safety and Technical Training, suitable protective devices and equipment shall be provided to minimize and eliminate whenever practical the hazards inherent in utility work.

The Division will provide flame retardant clothing for employees whose jobs require them to perform work on or around

A. Energized high voltage equipment which could potentially expose them to high voltage arcs, as follows:

1. As determined by Safety and Technical Training on a case-by-case basis, flame retardant coveralls or flash jackets will be issued to employees whose potential exposure is infrequent. This clothing will be worn as required.
2. Employees whose potential exposure level is frequent or continuous will be provided a clothing allowance credit through a vendor approved by Safety and Technical Training to purchase flame retardant shirts/clothing. The clothing allowance credit will be administered on an annual basis and any unused credit will not carry over to a subsequent allowance period.

An initial start up clothing allowance credit will be in the amount of \$950.00 and a credit for subsequent years will be in the amount of \$750.00. Employees who are under the plan as January 1, 2010 will receive credit in the amount of \$750.00 for the next issuance of clothing. Employees who receive a clothing allowance credit will be required to wear flame retardant shirts in the performance of their duties.

B. Energized low voltage equipment which could potentially expose them to low voltage arcs will be provided appropriate flame retardant clothing in accordance with regulatory requirements as determined by Safety and Technical training.

Any employee who is issued flame retardant garments will be responsible for laundering those garments.

There shall be a Safety Committee upon which the Union and Management are equally represented. This Committee shall have the power to make recommendations to the Supervisor of Safety and Technical Training regarding safety rules, practices and procedures related to the employees' health and safety.

There shall be appointed one (1) each from the Union by the Union and Management by the Management to represent the Electric, Gas and Water Areas and one (1) each from the other departments combined to be appointed by their respective parties.

A Chairperson for the first six (6) months shall be chosen by the Union members and by the Division for the second six (6) months and so forth, alternating each six (6) months. All meetings shall be held on twenty-four (24) hours notice on call by the Acting Chairperson or any two (2) members of the Committee.

The Departmental Safety Committees shall furnish a copy of their monthly reports and minutes to the Joint Union-Management Safety Committee Upon request of the Joint Union-Management

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Safety Committee to the Supervisor of Safety and Technical Training, the Committee shall be furnished with the circumstances of fatal or near-fatal accidents. Reports on accidents will be sent to the Union Business Manager or Assistant Business Manager.

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Action on the recommendations of the Joint Union-Management Safety Committee, including recommendations that an Investigating Committee including one (1) Union and one (1) Management member of the Joint Union-Management Safety Committee among its members be formed to investigate a fatal or near-fatal accident, shall not be unreasonably withheld. Arbitrary disregard of recommendations of the Joint Union-Management Committee shall be subject to the Grievance and Arbitration Procedure of the Memorandum of Understanding.

Notices shall be posted on all bulletin boards informing employees of the members of the Joint Union-Management Safety Committee and the purpose of the Committee.

Prior to the issuance of any new safety policy or changes in existing policy, the Joint Union-Management Safety Committee will be informed of the new policy or change in this existing policy.

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A Joint Management-Union Operator Qualifications Committee will be established for the purpose of establishing requirements and administrative procedures regarding Operator Qualifications. All incidents involving Operator Qualifications shall be brought before the Joint Management-Union Operator Qualifications committee for recommendation to management

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This committee shall contain an equal number of Management and Bargaining Unit employees. All reports and minutes of the meetings shall be forwarded to the Manager of Human Resources and the Union Business Manager.¶
A Chairperson for the first six (6) months shall be chosen by the Union members and by the Division for the second six (6) months and so forth, alternating each six (6) months. All meetings shall be held on twenty four (24) hours notice by either party.¶
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Union Counter Proposal

ARTICLE 37

Holidays

The designated paid holidays of the Light, Gas and Water Division are: New Year's Day, Martin Luther King Day, Good Friday, ~~Martin Luther King Jr. Memorial day~~, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, Day after Thanksgiving Day, Christmas Eve, Christmas Day, and employee's birthday.

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The employee's birthday holiday is accrued each year on his/her birthday and will be taken within twelve months of that date. The birthday holiday will be scheduled in accordance with established vacation scheduling guidelines within each department. The holiday will be taken in eight (8) hour increments.

If work is performed on a holiday, it shall be paid for in accordance with the overtime provisions provided in this Agreement.

With the exception of birthday holidays, pay for holidays worked shall be in accordance with the following:

1. If a holiday set forth above falls on Saturday, those employees scheduled on a Monday through Friday shift shall be granted the preceding Friday as the holiday. If the holiday should fall on Sunday, then those employees on a Monday through Friday shift shall be granted the following Monday as the holiday. For all employees not on a Monday through Friday schedule, the calendar holiday shall be observed.
2. If an employee's regular off-day occurs on a holiday and the employee is not given an additional day off, the employee is entitled to double-time pay for his/her first regular work day, in addition to his/her regular pay for the holiday.
3. Employees will be paid at straight-time rate of pay for holidays not worked during a period of absence because of illness or accident, but such day will not be charged against sick leave.
4. No employee shall be paid overtime for a holiday that occurs during his/her vacation, but shall be entitled to an additional day of vacation in lieu of the holiday. This day should be taken at the beginning or end of the employee's regular vacation.

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ARTICLE 42 Salary Schedule

BARGAINING UNIT SALARY SCHEDULE (Hourly)

Effective January 1, 2010
0%*

The above 0% wage for 2010 includes the following provisions

- a. No insurance premium increase for the year 2010.
- b. Should any employee outside of the bargaining unit receive a pay raise for the year 2010, then all bargaining unit employees shall also receive the same percentage pay increase.

Effective January 1, 2011
2%

Effective January 1, 2012
Re-opener for both 2012 and 2013 on wages only, per Article 45

Effective January 1, 2013
Re-opener negotiated during the above

New salary scales to be published for each year of the Memorandum of Understanding.

Minimum time interval between Steps within Grades is one (1) year, with the following exceptions:

- A. In Grades 1 and 2 the minimum time interval between all Steps is six (6) months.
- B. The minimum time interval between Steps 1 and 2 of all Grades is six (6) months.
- C. The minimum time interval for a Utility Worker I to advance to a Utility Worker II is normally,
- D. No employee who receives a promotion shall not receive a decrease in pay. (clarification), (with the exception of apprenticeship programs)
- E. No employee who makes a lateral move/transfer shall receive a decrease in pay.

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ARTICLE 45

Term of Agreement

This Memorandum of Understanding shall take effect January 1, 2010, and shall remain in full force and effect until January 1, 2014, and shall be automatically renewed for yearly periods thereafter unless either party notifies the other in writing at least six (6) months prior to the expiration date of a desire to change or terminate this Memorandum of Understanding.

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When notice for change is given, the nature of the change desired must be specified in writing and until the parties have agreed upon such change the provisions of this Memorandum of Understanding shall remain in full force and effect. Other changes or necessary amendments so agreed upon shall supersede the affected portions of this Memorandum of Understanding in a manner and at a time agreeable to both parties. All changes must be in writing and signed by authorized representatives of the Division and the Union, and approved by the International Office of the Union.

It is understood by both parties that by mutual consent this Memorandum of Understanding can be changed at any time, however, any changes agreed to shall be reduced to writing and signed by both parties and approved in the same manner as this Memorandum of Understanding.

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