



# **COLLECTIVE BARGAINING AGREEMENT**

**Between**

**CITY OF MISHAWAKA, INDIANA**

**And**

**THE INTERNATIONAL BROTHERHOOD OF  
ELECTRICAL WORKERS, LOCAL #1392**

*Dated January 1, 2018 - December 31, 2020*

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## **ARTICLE 1: PARTIES TO WORKING AGREEMENT**

- A. This Agreement is entered into between the City of Mishawaka Utility Board on behalf of the City's municipally owned utility operation pursuant to the grant of statutory authority by IC Section 8-1.5-3-3, et seq. to the Utility Board to exercise general supervision over the City's municipally owned utilities and the International Brotherhood of Electrical Workers, Local #1392.
- B. The City of Mishawaka's Utility Board and Mishawaka Utilities shall hereinafter be referred to as the "Utility". The International Brotherhood of Electrical Workers, Local #1392 shall herein after be referred to as the "Union".
- C. It is the intent and purpose of this Agreement to assure a sound and mutually beneficial working relationship between the parties hereto, to provide an orderly means of resolving any differences which may arise, and to set forth herein the full and complete agreement between the parties as to non-economic working relationships.
- D. It is understood that economic terms and conditions will be the subject of a separate agreement.

## **ARTICLE 2: PERIOD OF AGREEMENT**

This agreement shall take effect January 1, 2018 and shall continue in full force and effect until December 31, 2020. This agreement shall remain in full force and effect until written notice of a desire to modify, cancel or terminate the Agreement is served by either party upon the other with at least sixty (60) days' notice.

## **ARTICLE 3: RECOGNITION**

- A. The Utility agrees to recognize Local #1392, the International Brotherhood of Electrical Workers as the exclusive representative and bargaining agent with respect to wages, hours and all other terms and conditions of employment of all probationary and regular Electric Division, Water Division, Wastewater Division, Metering Department and Business Office employees of the municipally owned Utility. Specifically excluded from this recognized unit, however, are all part-time employees, summer/seasonal help, temporary employees, technical employees, confidential employees, professional employees and management employees.
- B. The Utility retains the right to determine and designate which employees are part-time, summer/seasonal, temporary, technical, confidential, professional, and management employees. Such determination and designation shall be in conformity with the definitions in Article 5.

- C. The Utility agrees that employees outside of the bargaining unit shall not be assigned work performed by bargaining unit employees, except where provided in this agreement. This shall not be construed, however, in such a manner as to preclude training or work required in emergencies where qualified bargaining unit employees are unavailable for required work.

**ARTICLE 4: NON-DISCRIMINATION AND MUTUAL COOPERATION**

- A. The Utility will not in any manner discriminate against any employee because of his membership or official position in, or activity on behalf of the Union. The Union agrees that it will do everything within its power to cause and encourage the employee to furnish efficient work and services for the Utility and the citizens of the City of Mishawaka. The Utility and the Union, recognizing that service to the public is a mutual objective, affirm they will cooperate in all matters relating to labor-management relations.
- B. The Business Manager of the International Brotherhood of Electrical Workers, Local #1392, or his designee, shall be granted access to bargaining unit employees, on or off Utility or City premises, at reasonable times after receiving the approval of the Division Manager.
- C. It is hereby acknowledged that the Utility shall have the right to utilize personnel outside the bargaining unit for the purpose of facility or grounds maintenance, repair, and cleaning.

**ARTICLE 5: DEFINITIONS**

- A. *Bargain Collectively* - shall mean the performance of the mutual obligation of the employer through its designee and the designees of the exclusive representative to meet at reasonable times, including meetings in advance of the budget-making process and negotiate in good faith with respect to wages, hours and other terms and conditions of employment and the execution of a written contract incorporating any agreement reached if requested by either party, but such obligation does not compel either party to agree to a proposal or require the making of a concession.
- B. *Confidential Employee* - means an employee whose unrestricted access to confidential personnel files or whose functional responsibilities or knowledge in connection with the issues involved in dealings between the employer and its employees would make his membership in an employee organization incompatible with his official duties.
- C. *Grievance* - means any dispute, controversy or difference between the parties or the Utility and the employee or employees in the bargaining unit, concerning the meaning, interpretation or application of this Agreement.
- D. *Management* - means any individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward or discipline other employees, or responsibility to direct them or to adjust their grievances, or effectively recommend such action, if in connection with the foregoing, the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

- E. *Probationary Employee* - an employee hired for full-time employment who has not satisfactorily completed three (3) full months of continuous employment and who is not hired for specific jobs of limited duration. The Utility shall have the exclusive right to terminate probationary employees and such termination shall not be the subject of a grievance. The probationary period may be extended in individual instances by mutual consent of the parties.
- F. *Professional Employee* - means any employee engaged in work:
1. Predominantly intellectual and varied in character as opposed to routine mental, manual, mechanical, or physical work;
  2. Involving the consistent exercise of discretion and judgment in their performance;
  3. Of such a character that the output produced or the result accomplished cannot be standardized in relation to a fixed period of time;
  4. Requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study in an institution of higher learning, as distinguished from a general academic education or from an apprenticeship or from training in the performance of routine mental, manual or physical process.
- G. *Regular Employee* - an employee hired for full-time employment who has satisfactorily completed probationary employment and who is not hired for specific jobs of limited duration.
- H. *Strike* - means concerted failure to report for duty, willful absence from one's position, stoppage of work, slowdown, sit-down, sympathy strike or abstinence in whole or in part from the full, faithful and proper performance of the duties of employment, without the lawful approval of the employer or in any concerted manner interfering with the operation of the Utility as defined in Article 6 of this Agreement for any purpose.
- I. *Summer/Seasonal Help* - shall be construed as unskilled labor who shall work less than four (4) months in any given year. They shall not normally work call-outs. Their overtime, except in emergencies, shall be limited to one hour per occurrence.
- J. *Technical Employee* - means any employee engaged in work requiring knowledge and training in a specialized complex procedure or operation as opposed to routine mental, manual, mechanical or physical work.
- K. *Temporary Employee* - an employee hired for a specific job of limited duration not to exceed six (6) months of employment excepting for the temporary employee hired to replace a disabled employee for a more extended period, in the anticipation of the disabled employee ultimately returning to work.

## **ARTICLE 6: MANAGEMENT RIGHTS**

The Utility shall have the right to:

1. Direct the work of its employees;
2. Hire, promote, demote, transfer, assign, discharge, suspend, discipline and retain employees;
3. Suspend or discharge employees for proper cause;
4. Maintain the efficiency of operations;
5. Relieve employees from duties because of lack of work or for other legal and legitimate reasons;
6. Take actions as may be necessary to carry out the missions of the Utility in emergencies; and
7. Determine the methods, means, policies, personnel and equipment by which utility operations are to be conducted.

## **ARTICLE 7: UNION SECURITY AND DUES DEDUCTIONS**

- A. No unit employee shall be required to become a member of the Union as a condition of Employment or continued employment. The parties agree that there shall be no discrimination by either the Utility or the Union against any unit employees because of membership or non-membership in the Union.
- B. It is recognized and agreed that unit employees may or may not join the Union in accordance with the desires of an individual employee.
- C. It is further recognized that the Union, as the exclusive representative of all unit employees, regardless of whether or not individual employees are Union members, owes the same duty of representation to all unit employees and provides services to all unit employees: therefore, all unit employees shall, within ninety (90) days of the date of hire, pay a collective bargaining contract administration fee to the Union in an amount equal to the actual cost to the Union of its representation of all unit employees, but in no event to exceed the monthly dues assessment of Union members. The Union further agrees that no portion of non-union unit employee service fee assessments shall be used or expended for the support of political campaigns of individual, local, state or national political candidates for public office, nor shall any union dues be used for this purpose.

- D. The Utility shall deduct from the pay due all employees in the bargaining unit covered by this Agreement one month's union dues or service fee each alternate pay period not exceeding an amount certified by the Union and shall forward such dues and service fees to the Financial Secretary of the Union not later than the tenth (10th) day of the following month, providing the employee has signed a written wage assignment. Such wage assignment shall continue in effect for the duration of this contract or until receipt by the Utility of a written notice of revocation of such order by the employee. This section will comply and be in accordance with IC Section 8-1.5-3-3, et seq.
- E. The Utility shall not have liability to collect union dues or service fees for any month in which the employee in his last pay period received (after deduction) pay less than the amount of such dues or service fees.
- F. In the event an employee is receiving advance pay, union dues or service fees shall be deducted from that pay.
- G. Probationary employees shall not pay union dues or service fees until they become regular full-time employees.
- H. Unless the context indicates otherwise, the word "employee" or "employees", whichever used herein, shall mean and refer only to full-time regular and probationary employees now or hereafter in the employment of the Utility.
- I. It is agreed between the Utility and the Union that union dues and service fees shall be authorized only during the existence of this Agreement.

#### **ARTICLE 8: STRIKES**

- A. There shall be no strikes, as defined in Article 5 of this Agreement for any purpose.
- B. In the event of a violation of Section A of this Article, the grant of recognition to the exclusive representative shall automatically be withdrawn and no election by unit employees for a successor exclusive representative shall be held for six (6) months after de-certification of the employee organization, nor shall a dues deduction-service fee privilege exist unless and until a successor contract is executed.
- C. Any employee engaging in a work stoppage of any kind shall be dismissed immediately by the Utility.

## **ARTICLE 9: GRIEVANCE PROCEDURE**

- A. A grievance is any dispute, controversy, or difference between either the parties or the Utility and an employee or employees in the bargaining unit concerning the meaning, interpretation, or application of this Agreement; however it is agreed that a dispute, controversy or difference shall not be a grievance until it has first been discussed by the employee with his immediate supervisor without satisfactory adjustment. The procedure set forth herein shall be the sole and exclusive forum for the adjustment of disputes and differences arising under this Agreement.
- B. Grievances may be initiated by an employee or group of employees in the bargaining unit or the Union. If the Union initiates filing the grievance, it may skip the first two steps of the grievance procedure, and file the grievance directly to the third step of the procedure.
- C. Any grievance not initiated or appealed to the next step within the time limits specified will be considered settled on the basis of the last answer by the Utility. Time limits may be extended by mutual agreement of the parties.
- D. An employee presenting a grievance shall decide whether or not he wishes to be represented by a Union representative. The Union shall be notified in writing of all grievances filed where the employee does not seek Union representation. The employee may process his or her own grievance through the third step of the procedure; however, any settlement must be consistent with this Agreement and the Union shall be apprised in writing of the terms of the settlement. An employee choosing not to be represented by the Union shall not have the right to bring his or her grievance to arbitration without Union sanction.
- E. In no case shall there be a strike by any employee or group of employees as defined in Article 5, Section H over a grievable matter, either before a grievance is filed, while it is pending, or following its final settlement. Any such work stoppage shall be cause for immediate discharge as provided for by Article 8, Section C.
- F. Hearings and conferences held under this procedure shall be conducted at times set by the Utility representative involved, with preference given to scheduling said hearings and conferences during regular working hours. If such times are during the employee's and/or Union representative's normal working hours, they shall be compensated for the time spent by the Utility according to their normal rate of pay. If the times set are outside the normal working hours of the employee and/or the Union representative, they shall not be compensated by the Utility.
- G. Grievances will be processed in the following manner within the stated time limits except that grievances over discipline or discharge may be grieved under Section H of this Article.



1. *Step One:* The aggrieved employee or employees shall present a grievance informally to the foreman or immediate supervisor of the employee, to attempt to resolve the dispute. Or, as the employee or employees determine, he or they shall record their grievance on a grievance form and present it to their Union representative. The grievance shall set out the facts alleged, the Article and Section of the Working Agreement alleged to have been violated, the parties involved, and any other information deemed pertinent, and shall be signed and dated by the grievant and the Union representative (unless Union representation has been waived). If the grievance is presented to the Steward, he will then meet with the foreman or immediate supervisor of the employee in an attempt to settle the grievance and to sign a meeting confirmation. The grievance must be brought to the attention of the immediate management supervisor within five (5) working days of its occurrence or the grievance will be considered waived. The foreman or immediate supervisor shall provide a written answer to the grievance, within five (5) working days, not including the day of the meeting.
2. *Step Two:* If the grievance is not settled in Step One, it may be appealed in writing to the Division or Department Manager within five (5) working days after receipt of the Step One meeting confirmation, not including the date upon which the confirmation was signed. Where the grievance has been properly presented, the Division or Department Manager shall reply to the grievance in writing within five (5) working days of the date of receipt, not including the date of receipt. The Division or Department Manager will confer with the shop steward and the employee in an attempt to come to an agreement on a fair and appropriate adjustment of the grievance and to sign a meeting confirmation. In any hearing, the Division or Department Manager shall not be bound by the rules of evidence prevailing in the courts.
3. *Step Three:* If the grievance is not settled in Step Two, it may be appealed in writing to the General Manager within five (5) working days after the signing of the Step Two meeting confirmation, not including the date upon which the confirmation was signed. The grievance form and Division or Department Manager's answer shall be presented to the General Manager. Where the grievance has been properly presented, the General Manager shall reply to the grievance in writing within five (5) working days of the date of the hearing, not including the date of hearing. The General Manager will confer with the shop steward and the employee in an attempt to come to an agreement on a fair and appropriate adjustment of the grievance. In any hearing, the General Manager shall not be bound by the rules of evidence prevailing in the courts.
4. *Step Four:* If the grievance is not settled in Step Three, arbitration may be requested by the Union. Such request shall be made in writing to the Human Resources Director within five (5) working days of the Step Three response, not including the day the response was made. Upon receipt of the written request, the Human Resources Director and the Union representative shall attempt to select a mutually agreeable arbitrator. In the event an arbitrator cannot be selected by mutual

agreement within five (5) working days of the request for arbitration, not including the day of the request, the Federal Mediation and Conciliation Service shall be requested to submit a list of seven (7) names from which shall be selected an arbitrator. The arbitrator shall be selected from the list by the following procedure: the Union representative shall strike the first name from the list, next the Human Resources Director shall strike a name from the list, thereafter each shall strike a name alternatively until only one name is left. That person shall be the arbitrator. The arbitrator shall have the power and duty to:

- a. hold hearings or conferences on the grievance,
- b. make such investigations as are deemed necessary,
- c. make findings of fact,
- d. hear necessary evidence, accept records, or hear witnesses, and
- e. render an award on the grievance.

The arbitrator shall have no authority to delete from, add to, or modify any provision of this Working Agreement. For the purposes of arbitration, this Working Agreement is the sole and total Agreement between the parties and any arbitrator's award which references itself to or is based upon any law, rule, regulation, or past practice not explicitly found in this Working Agreement shall be null and void. The arbitrator shall make no decision which would order the Utility to perform an action which is inconsistent with the law or this Working Agreement. The decision rendered by the arbitrator shall be binding upon the parties to this Agreement. The cost and expense of any such arbitration shall be borne by the unsuccessful party.

- H. An employee or group of employees covered by this Agreement who has been subject to discipline resulting in suspension in excess of two (2) days or discharge who chooses to grieve such action may do so through an expedited procedure. The time limits in Section G of this Article for filing grievances will be applicable to this Section.
  1. The grievance is filed directly to Step Three of the grievance procedure. The grievance will be written and shall set out the facts alleged, the section of the Working Agreement alleged to have been violated, the parties involved, and any other information deemed pertinent, and will be signed by the Union's Business Manager or his designee, unless Union representation has been waived. The General Manager or his designee shall reply within ten (10) working days of the presentation, not including the date of presentation. The General Manager or his designee shall confer with involved management personnel, the shop steward, the employee, and the Union's Business Manager or said Manager's designee in an attempt to come to an agreement on a fair and appropriate adjustment of the grievance.

2. If the grievance is not settled at Step Three, arbitration may be requested by the Union, in the same manner as in Section G (4) of this Article. No transcripts will be made of the arbitration hearing, and briefs will be accepted by the arbitrator at his discretion. The arbitrator will issue an award only, without an opinion, within ten (10) days of the close of the arbitration hearing. Under this Agreement an award without an opinion shall consist of a summary statement by the arbitrator of no more than two (2) pages which briefly sets forth the basis of the award. An opinion shall follow within thirty (30) days.

#### **ARTICLE 10: DISCIPLINE AND DISCHARGE**

- A. No employee covered by this Working Agreement shall be subject to discipline or discharge except for good cause, provided, however, that this Article in no way limits the Utility's authority to lay off employees in conformity with Article 13.
- B. "Good Cause" shall include violations of work rules, regulations, or policies regularly established and enforced by the Utility.
- C. In the case of discharge, discipline resulting in loss of work, or issuance of letters of warning, the Utility shall give notice within five (5) working days thereof to the employee and the Union Business Manager who shall acknowledge, in writing, receipt of said notice within ten (10) working days of the date of his receipt of the notice from the Utility. Any objections shall be included in said acknowledgment and shall comply with the Article 9 Section G (1) detailed information requirement.
- D. Should the Union fail to object in writing to any discharge, discipline, or letter of warning within ten (10) days, as provided in Section C above, it will be presumed that the Union assents to such action, and such discharge, discipline or letter of warning shall not be subject to grievance. Further, should such discharge, discipline or letters of warning be at issue in subsequent proceedings, the Union cannot deny their validity.
- E. The Utility shall set reasonable work rules which are to be posted in each location. Any changes in the rules shall be posted no less than twenty-four (24) working hours in advance of their effective date and a copy shall be sent to the Union and to the Human Resources Director at the time when said rule is posted and prior to its effective date. These Work Rules will not be enforced in any arbitrary, capricious, or discriminatory manner.

#### **ARTICLE 11: SENIORITY**

- A. Seniority shall mean the status attained by length of continuous service within a seniority unit.
- B. Seniority shall not begin nor become effective during the probationary period.

- C. Probationary employees, upon successfully completing their probation, shall become regular employees and their seniority shall be computed as of the date of their initial hire as a probationary employee.
- D. Employees shall lose their seniority for the following reasons:
  - 1. Discharge if not reversed,
  - 2. Resignation,
  - 3. Unexcused failure to report to work; (a) when recalled from layoff, or (b) for three (3) consecutive working days without the permission of the Division or Department Manager,
  - 4. Failure to return to work after expiration of a formal leave of absence, without notification to the Utility,
  - 5. Retirement, or
  - 6. Layoff for a continuous period of one (1) year or more.
- E. The Utility shall maintain seniority rosters showing employees arranged according to seniority in each seniority unit. The seniority units shall be as follows:
  - 1. Electric Division
  - 2. Water Division
  - 3. Wastewater Division
  - 4. Business Office
  - 5. Metering Department
- F. Seniority shall apply to promotions, involuntary and voluntary transfers, the filling of newly-created jobs, the filling of vacancies, vacant shift assignments, vacations, and layoffs and recall if qualifications are sufficient. In determining the sufficiency of qualifications, the following factors shall apply:
  - 1. Skill, based on job descriptions and/or any pre-employment testing required of new employees.
  - 2. Efficiency
  - 3. Ability
  - 4. Knowledge

5. Training
  6. Physical Fitness, based on job descriptions and/or any pre-employment testing required of new employees.
- G. Seniority shall apply only within each employee's seniority unit, with the exception of Utilityman. The Utility agrees, however, to accept on condition, the principal of "Utility Wide Seniority" with regard to voluntary transfers and/or promotion. This status is to be considered at all times as secondary to seniority-unit status which is to remain primary. However, in the event a full-time position is not filled by a current member of the seniority unit after being posted, permanent full-time members of other seniority units shall be given preferential consideration over other applicants, provided that their past work record is satisfactory and provided they evidence the necessary skill, ability and experience to perform the requirements of the position.
- H. An employee who has been promoted to a management position, and any employee so promoted in the future, shall not forfeit any of his seniority in his regular unit and shall retain his seniority in that unit should he be permitted to return. The employee may be returned to his former job in the bargaining unit, at the request of the employee or the Utility, for any reason prior to completion of a ninety (90) day probation period in the management position.
- I. An employee who transfers from one seniority unit to another shall retain the seniority accrued in his prior seniority unit.
- J. Prior to transfer from one job classification to another, the Utility shall apprise the employee requesting transfer of all the required job-related qualifications for the job vacancy. Provided base qualifications are met, the Division Manager shall judge the candidate's job-related qualifications during a thirty-five (35) working day qualification period. The employee shall receive the rate of pay in the new job grade classification as posted. If an employee is disqualified by the Utility during the thirty-five (35) working day qualifying period, said employee may automatically return to his former job. However, if an employee elects to withdraw his bid during said period, he shall not be entitled to automatically return to his former job unless said withdrawal occurs during the first fifteen (15) working days of the qualification period. If the employee withdraws his bid after the first fifteen (15) working days of the qualification period and his former job has been filled, the employee may bump the junior employee in his original seniority unit, or he may choose to have the Utility assign him to any open job for which he qualifies within any of the five (5) seniority units. If an employee is returned for cause to his former and/or other job by the Utility, a written evaluation of his performance based on the aforementioned description of required job-related qualifications shall be given to the employee by the Division Manager. The disqualified employee shall have the right to have his evaluation reviewed by the grievance procedure. The required job-related qualifications shall not be subject to compromise. An employee who qualifies or is disqualified may not request transfer to another job classification for a period of twelve (12) months after the date of his transfer. This twelve (12) month restriction shall not apply to intra-seniority unit transfers.

- K. Utilityman Job Classification seniority shall apply to all job categories within the Water Department where the employee holds appropriate experience, certifications, and/or qualifications.

**ARTICLE 12: POSTING OF VACANCIES**

- A. In the event that there is a vacancy or a newly created job to be filled in a job classification covered by this Agreement, a notice to that effect, indicating the rate of pay range and specific work schedules and hours, shall be posted with the job description in all Utility working areas.
- B. Such notice shall be posted for five (5) working days (not including Saturdays, Sundays and Holidays). The date of the last day of filing applications shall be posted on such notice of the job vacancy.
- C. Employees shall apply for posted job vacancies on forms agreed upon by the Utility and the Union. The Union Business Manager shall be furnished a copy of all job vacancy notices and job bids. Employees who have exercised their voluntary transfer privilege during the preceding twelve (12) month period shall be ineligible to apply for a posted job vacancy until the expiration of said twelve (12) month period, subject to the provisions of Article 11, Section J of this Agreement.
- D. If no qualified employee is available through the posting procedure the Utility may hire new personnel. If a qualified or new employee is not used to fill the job vacancy or the vacancy is not filled for any reason, after the expiration of ninety (90) calendar days or more from the date of original notice, the job shall be re-posted or a new employee may be hired.
- E. In filling the job vacancies covered by this Agreement, seniority shall be applied as follows:
  - 1. Seniority unit seniority within a job category;
  - 2. Seniority unit seniority within the area where the vacancy exists,
  - 3. Seniority within the Utility
- F. No posting for jobs will be required for:
  - 1. Jobs resumed by an employee returning from military service;
  - 2. An employee returning from a disability due to illness or injury; or
  - 3. An employee returning from a leave of absence or vacation.
  - 4. Promoting employees from one grade level to another, subject to Article 33 Section B.

- G. If there is an apparent vacancy in a job classification covered by this Agreement, the Utility shall post such vacancy within two (2) weeks of the occurrence of said vacancy; or post that the vacancy will not be filled at this time.
- H. The Utility shall transfer the successful bidder within thirty (30) working days from the date the job is awarded.
- I. If a vacancy occurs due to a disqualification, that vacancy shall not be re-posted; the vacancy shall be filled from those who bid on the original vacancy. If there are no such other bidders, then the job may be re-posted or a new employee may be hired.

### **ARTICLE 13: LAYOFFS AND RECALLS**

- A. Layoff shall mean the separation of employees from the active work force due to lack of work or funds or to abolition of positions because of changes in organization.
- B. Order of layoff:
  - 1. Layoff shall be accomplished so that the remaining bargaining unit employees will be those with the skill, ability and experience to perform the duties remaining.
  - 2. Where not in conflict with the principle expressed in subsection (1) above, layoff shall further be accomplished in each seniority unit as follows:
    - a. contractors' employees shall be laid off first; then
    - b. temporary and part-time employees, then
    - c. probationary employees, then
    - d. permanent employees according to seniority.
- C. An employee notified of his layoff may, within three (3) days of such notification, request demotion in lieu of layoff. If there exists within the employee's seniority unit a job classification lower than the one the employee presently holds having duties which the employee is capable of performing and in which there are other employees with less seniority, then the affected employee shall be entitled to employment in the lower classification. The employee displaced and laid off in the lower classification shall be the one with the least seniority. Where the layoff process results in surplus employees in any given seniority unit, the Utility will attempt, where consistent with efficient operation, to place the laid off employees in vacant job classifications in other seniority units. Permanent employees will be given at least ten (10) working days' notice before being laid off.

- D. The General Manager or his designee may approve deviations from seniority in layoffs when seniority alone would result in retaining employees unable to maintain a satisfactory level of performance. In such cases, the affected employees shall be given written notice of the determination and the reasons therefore, as well as the opportunity for a formal hearing with Union representation following such notification. Unsatisfactory hearing determinations may be grieved directly to Step Four of the grievance procedure.
- E. Recall:
  - 1. Recall shall be accomplished so that the employees recalled shall be those with the skill, ability and experience necessary to perform the available work.
  - 2. Where not in conflict with the principle expressed in subsection (1) above, recall shall be by seniority.

**ARTICLE 14: HOURS AND OVERTIME, NON-SHIFT EMPLOYEES**

- A. For record purposes:
  - 1. The work week shall consist of seven (7) consecutive calendar days, beginning at 12:00 A.M. on Saturday and ending at midnight on Friday.
  - 2. The work day shall be a period of twenty-four (24) hours starting and ending at midnight.
- B. Employees shall normally be scheduled to work eight (8) hours during a work day and forty (40) hours during a work week. However, this provision shall not be construed as a guarantee of hours of work or pay.
- C. Regular work schedules within the work week are Monday through Friday. Regular work shifts within the work schedule are eight (8) consecutive hours, exclusive of the lunch period provided for in Article 22. Regular work shifts are:

Business Office	8:00 a.m. to 5:00 p.m.
All Other Divisions	7:30 a.m. to 4:00 p.m.

Deviation from the above regular schedules and shifts for current jobs may be arranged at any time between management, affected personnel and the Union. Senior employees will be given preference for any such deviation in the following order of priority: 1) classification, 2) work group, and 3) seniority unit (as defined in Article 11, Section E). Newly posted jobs may deviate from the above regular schedules and shifts.



D. Employees shall, as a condition of employment, make themselves reasonably available for overtime work. The Utility agrees to pay any employee overtime at the rate of one and one-half (1-1/2) times his regular straight time rate of pay for all hours worked outside of his assigned schedule and for all hours worked or paid in excess of forty (40) hours per week, except as otherwise provided herein.

1. Unless a higher rate is applicable, an employee shall be paid at one and one-half (1-1/2) times his regular straight time rate of pay for hours worked on his first scheduled day off within the work week.
2. An employee shall be paid double his regular straight time rate of pay for hours worked on his second scheduled day off within the work week.
3. When an employee works more than sixteen (16) hours within a twenty-four (24)-hour workday, he shall be paid at the rate of double his regular straight-time rate of pay for all such hours in excess of sixteen (16) hours. If an employee is called out within one (1) hour of the time he was released from work, the total paid working hours in such periods shall be considered in determining said sixteen (16) hours.
4. No employee shall receive overtime pay for both weekly and daily overtime for the same overtime work.
5. In no event shall an employee receive more than double his regular straight time rate for any hours worked.
6. All hours worked in support of Mutual Aid of other governmental entities or municipalities shall be paid at double the employee's regular rate of pay. The time paid at the double-time rate shall begin when the employee departs in a vehicle to travel to the affected area. For Mutual Aid work, the Utility will take volunteers. Management shall maintain a list of employees' accumulated Mutual Aid hours, first accepting for each project those volunteers with the fewest accumulated Mutual Aid hours.

Upon returning from a mutual aid assignment, each employee shall, if earned in accordance with Article 15 E., get an eight (8)-hour rest period prior to returning to work. If any part of this eight (8)-hour rest period falls within his regularly scheduled work day, he shall be paid for such part at his straight-time regular rate of pay (funded by the entity where the rest was earned).

- E. A non-shift employee filling in for a shift employee is considered a deviation from the above schedule. In such cases, “first and second days off” will not be considered for overtime purposes. Instead, the first eight (8) hours worked or paid beyond forty (40) in a work week, as defined above, will be paid at one and one-half (1-1/2) times his regular straight time rate of pay; all hours worked or paid beyond forty-eight (48) hours in a work week, as defined above, will be paid at double his regular straight time rate of pay. Such employees attain this schedule/pay status any time the employees fill in for less than a full shift work schedule. A non-shift employee filling in for a shift employee for a full shift work schedule shall be paid as a shift employee.
  
- F. An employee who is required to work sixteen (16) hours or more during any twenty-four (24)-hour period shall be entitled to an eight (8) hour rest period. The rest period shall begin at the earlier of the following: 1) when the employee is released from work, or 2) at the beginning of the next regularly scheduled day.  
  
 If any part of this eight (8) hour rest period falls within his regularly scheduled work day, he shall be paid for such part at his straight-time regular rate of pay. Should an employee be required to work any part of his eight (8) hour rest period which falls within his regularly scheduled shift, he shall receive in addition his straight-time regular rate for such hours worked. If, after an employee has worked sufficient hours to qualify for a rest period and is released, he shall have eight (8) hours off duty time prior to being required to return to work.
  
- G. Overtime work shall be distributed as equally as is possible among the employees performing the same type of work within each seniority unit. Overtime distribution schedules shall be negotiated individually in each seniority unit between the Manager and the Union steward.
  
- H. A record of the overtime hours offered and worked by each employee shall be maintained and posted monthly by each division or department at each location.

**ARTICLE 15: HOURS AND OVERTIME, SHIFT EMPLOYEES**

- A. For record purposes:
  - 1. The work week shall consist of seven (7) consecutive calendar days, beginning at 12:00 A.M. on **Saturday** and ending at midnight on **Friday**.
  - 2. The work day shall be a period of twenty-four (24) hours starting and ending at midnight.
  
- B. Employees shall normally be scheduled to work eight (8) hours during a work day and forty (40) hours during a work week. However, this provision shall not be construed as a guarantee of hours of work or pay.
  
- C. The Utility will establish regular shift schedules, normally:

First Shift      **12:00 A.M. to 8:00 P.M.**

Second Shift **8:00 A.M. to 4:00 P.M.**

Third Shift **4:00 P.M. to 12:00 A.M.**

- D. Employees shall, as a condition of employment, make themselves reasonably available for overtime work. The Utility agrees to pay any employee overtime at the rate of one and one-half (1-1/2) times his regular straight time rate of pay for all hours worked outside of his assigned schedule and for all hours worked or paid in excess of forty (40) hours per week, except as otherwise provided herein.
1. Unless a higher rate is applicable, an employee shall be paid at one and one-half (1-1/2) times his regular straight time rate of pay for hours worked on his first scheduled day off within the work week.
  2. An employee shall be paid double his regular straight time rate of pay for hours worked on his second scheduled day off within the work week.
  3. When an employee works more than sixteen (16) hours within a twenty-four (24)-hour workday, he shall be paid at the rate of double his regular straight-time rate of pay for all such hours in excess of sixteen (16) hours. If an employee is called out within one (1) hour of the time he was released from work, the total paid working hours in such periods shall be considered in determining said sixteen (16) hours.
  4. No employee shall receive overtime pay for both weekly and daily overtime for the same overtime work.
  5. In no event shall an employee receive more than double his regular straight time rate for any hours worked.
- E. An employee who is required to work sixteen (16) hours or more during any twenty-four (24) hour period shall be entitled to an eight (8) hour rest period. The rest period shall begin at the earlier of the following: 1) when the employee is released from work, or 2) at the beginning of the next regularly scheduled day.
- If any part of this eight (8) hour rest period falls within his regularly scheduled work day shift, he shall be paid for such part at his straight-time regular rate of pay. Should an employee be required to work any part of his eight (8) hour rest period which falls within his regularly scheduled shift, he shall receive in addition his straight-time regular rate for such hours worked. If, after an employee has worked sufficient hours to qualify for a rest period and is released, he shall have eight (8) hours off duty time prior to being required to return to work.
- F. For all shift jobs with assigned schedules including Saturdays, Sundays and holidays, schedules shall be rotated in such a manner so as to equalize such work as much as possible among the employees performing the same type of work within each Division.

- G. Shift workers who work first and third shifts shall receive a shift bonus, to be negotiated with wages and listed in the salary ordinance.
- H. Shift workers shall not be required to change shifts to cover a one-day absence of a fellow shift worker.
- I. Shift workers who have similar qualifications shall be allowed to exchange shifts with approval of the Division Manager.
- J. For those workers who have been assigned to the current 6-2 rotation, it is understood that this provision is not intended by either party to guarantee nor mandate continuation of the currently-configured six (6)-day, forty-eight (48)-hour shift work schedule rotation.

#### **ARTICLE 16: EMERGENCY CALL-OUT**

- A. The minimum time allowed for an emergency call outside of normal working hours covered by this contract shall be two (2) hours. If such two (2)-hour period extends beyond the beginning time of the employee's normal working day, the regular pay for hours worked on such day shall commence at the regular beginning time of such employee on that day.
- B. Regardless of the time worked by the employee or the number of times called during such two (2)-hour period, the compensation for such full period shall be limited to two (2) hours at the applicable overtime rate. In the event the time worked by the employee is less than two (2) hours during such call-out, the employee shall make himself available for the full two (2)-hour period.

#### **ARTICLE 17: INCLEMENT WEATHER**

- A. Employees who are unable to work outside because of inclement weather shall be provided other safe work or training.
- B. Inclement weather will be deemed to mean weather conditions that will make the work unsafe. It is understood and agreed that such determination shall be the right of the Department or Division Manager or General Manager.
- C. Emergency work shall be performed regardless of the weather conditions.

#### **ARTICLE 18: TEMPORARY ASSIGNMENTS**

- A. When bargaining unit employees are temporarily assigned jobs in a higher classification, they shall receive the rate of pay of that classification.
- B. An employee who is temporarily assigned a job with a lower rate of pay than his regular rate of pay shall receive his regular rate of pay.

- C. Temporary assignments shall not exceed forty-five (45) working days per year except when extended by mutual agreement.
- D. Work outside the bargaining unit can be arranged with agreement of the business managers and the affected employees under creation of a 3<sup>rd</sup> party MOU.

#### **ARTICLE 19: SAFETY**

- A. The Utility shall make every reasonable effort to provide safe working conditions for its employees and no employees shall be required to work with an unsafe workman or under unsafe conditions.
- B. Safety training meetings shall be conducted at each headquarters at least six (6) times during a calendar year, except in the Business Office where such meetings shall be conducted as necessary. All employees will be required to attend unless they are excused by their supervisor.
- C. A joint safety program shall function in each Division with a committee comprised of representatives from the Utility and the Union in each such Division.

#### **ARTICLE 20: EMPLOYEE TOOLS, EQUIPMENT, CLOTHING**

- A. The Utility shall furnish all tools, equipment and clothing (such as foul weather gear and hard hats) required for the job. Personal tools shall be provided by the employee. Such tools provided by the employee shall be replaced by the Utility upon receipt of the worn-out or broken tools as evidence of need of replacement. All such broken and worn-out tools will become the property of the Utility. Employees who are being provided with uniforms upon the execution of this Working Agreement will continue to be provided with eleven (11) of said properly fitted uniforms during the period of said Agreement. Size adjustments to uniforms may be allowed once during a twelve (12)-month period at Utility expense. Any additional size adjustments during that twelve (12)-month period will be at the employee's expense. Electric Division field employees' uniforms shall be of flame retarding material.
- B. All Job Descriptions which require approved safety shoes or boots to comply with OSHA Guide 1910.136, and in recognition of the fact that such protective footwear is required to be worn by certain employees on the job, but that those employees may choose to wear such safety shoes or boots off the job as well, Mishawaka Utilities will participate in the footwear required by this policy according to the following procedure:
  - 1. Employees will purchase footwear required by their job description from any supplier, so long as such footwear complies with ANSI Z41-1991, "American National Standard for Personal Protection – Protective Footwear".
  - 2. Employees shall submit an acceptable receipt of purchase, to be accompanied by a claim form signed by the Department Manager, certifying that the

purchased footwear is required by the job and suitable for it, according to the 1910 OSHA Guide

3. Mishawaka Utilities will reimburse employees for the purchase price of the footwear, but in no event will the reimbursement exceed three hundred dollars (\$300.00) every two years. Direct billing to the Company and subsequent employee payroll withholding will not be permitted.

#### **ARTICLE 21: BREAKS, MEALS AND CLEAN-UP TIME**

- A. Except as otherwise herein provided, all employees shall provide their own noon lunch. The unpaid lunch period shall be one-half (1/2) hour unless otherwise mutually agreed, except that Business Office employees shall be entitled to a one (1)-hour unpaid lunch period. The Utility may, at its discretion, require employees to eat in the vicinity of the job site or work activity near a suitable facility or allow employees to return to their respective headquarters for lunch. For the purpose of this Article a "suitable facility" is any facility with public washrooms. If employees are required to eat in the vicinity of the job site, the Utility will provide coolers with ice for worker-carried lunches.
- B. In the event an employee is called in to work more than two (2) hours before the start of his normal scheduled shift, or held over more than three (3) hours beyond the end of a normal scheduled shift, the Utility shall furnish a suitable meal to the employee, or reimburse him for the expense thereof, including gratuity. If an employee is called back within one (1) hour of having been released from work at the end of a normal work day, the Utility shall include the time during which the employee was punched out to determine the three (3) hour eligibility for meal reimbursement. No meals shall be provided for scheduled overtime, defined as any work scheduled with the employee not less than four (4) hours in advance.

However, Utility meal expense reimbursement to an employee shall not exceed seven dollars (\$7.00) for a meal eaten between 12:00 midnight and 6:00 p.m. or eleven dollars (\$11.00) for a meal eaten between 6:00 p.m. and 12:00 midnight.

- C. In the event an employee is called in for work outside of, but not immediately before his regularly scheduled shift, he shall be furnished a meal or be reimbursed for the expense of thereof for each six (6) hours of continuous work, as outlined in Section B of this Article.
- D. Whenever practical, actual meals should be provided at an authorized facility designated by the Utility to bill directly for employee meals. In recognition of the fact that circumstances sometimes prevent such practice, the Utility will reimburse employees for meals taken, subject to the limitations expressed in Section B of this Article. In lieu of meals to which employees are entitled but which are not actually taken, the Utility will pay the employee the reimbursable equivalent of that meal as defined in Section B of this Article.
- E. Employees shall be allowed ten (10) minutes clean-up time at the end of each work day or call-out period.

- F. Employees shall be allowed one (1) fifteen (15)-minute break during each four (4)-hour work segment, whether inside or outside his normal scheduled shift, at a reasonable time authorized by immediate management personnel. Breaks not so taken cannot accumulate from one four (4)-hour segment to the next. Nor will employees be allowed to take a break in advance of a given four (4)-hour segment, so as to result in one (1) thirty (30)-minute break daily. Breaks shall be taken at the job site for employees working away from respective headquarters, unless another break location is authorized by the Division Manager.

**ARTICLE 22: JURY OR MILITARY DUTY**

- A. When an employee is required to serve on a jury or is subpoenaed to be a witness, he shall not suffer loss of pay for such absence. The fees received for the above service shall be deducted from his regular pay and he shall report to normal work (if reasonable to do so) upon release from such service.
- B. When an employee is required to serve on Temporary Military Training Duty of fifteen (15) days or less in a calendar year the employee will be paid as if he had worked. The fee received will not be deducted from regular pay.
- C. Employees requesting leave pursuant to this Article shall notify management as soon as practical prior to the leave and shall submit applicable paperwork in a timely manner.

**ARTICLE 23: HOLIDAY PAY**

- A. All regular, full-time employees covered by this Agreement shall receive eight (8) hours at their regular rate of pay for the following holidays: New Year's Day, Good Friday, Memorial Day, Independence Day, Labor Day, Veterans Day, Thanksgiving Day and the Friday after Thanksgiving, the day before Christmas and Christmas Day, and two (2) personal holidays, which can be taken in full- or half-day increments subject to prior approval by the Department or Division Manager.

When such personal holiday picks are requested by employees before January 15 of each year for dates after January 15, seniority will determine which employees are granted or denied such future dates, based on Division or work group strength. In approving or denying such optional holiday requests after January 15, management can consider Division and work group strength, and grant or deny the holiday on a first-come, first-serve basis. Employees in their first year of employment will be paid for named holidays as they occur, but are not eligible for either of the two (2) personal holidays until they have been employed for six (6) months.

- B. Holidays will not accumulate or carry over from year to year, except if LTD leave at the end of a year would cause an employee to forfeit unused personal holidays, in which case unused personal holidays shall carry over to the new year. Such personal holidays shall be used at the termination of LTD leave, but shall be paid at the prior year's rate of pay.

- C. Employees who work on a scheduled holiday as defined in Section A of this Article shall receive double their regular rate of pay plus holiday pay for the day worked.
- D. Employees must work the scheduled day before and after a holiday in order to receive pay for the holiday unless the time off was scheduled at least twenty-four (24) hours prior to the start of the employee's shift on the last work day before the holiday or as approved by the Division Manager.
- E. When a holiday occurs on Sunday, the holiday will be observed on Monday. Except for New Year's Day, when a holiday occurs on Saturday, the holiday will be observed on Friday. When New Year's Day occurs on Saturday, it will be observed on Monday.
- F. Shift workers shall work holidays in accordance with their schedule unless requested to not work by the employer.

#### **ARTICLE 24: FUNERAL LEAVE**

- A. Full-time permanent employees shall be entitled to funeral leave as indicated:
  - (1) At time of death of an employee's wife, husband, child, mother, father, mother-in-law, father-in-law – a maximum of five (5) scheduled workdays. "Child" shall include stepchildren.
  - (2) At the time of death of an employee's brother or sister, brother-in-law, sister-in-law, son-in-law, daughter-in-law, grandchild or grandparent or spouse's grandparents – a maximum of three (3) scheduled workdays.
- B. Funeral leave days under (A1) above must be taken consecutively and must include the day of the funeral. Funeral leave days under (A2) and (A3) above must be taken between the date of death and the day following the funeral. Days of funeral leave shall be paid at the rate of eight (8) hours per day at the employee's regular straight time rate of pay. The days paid as funeral leave under this Article shall be only regular scheduled workdays.
- C. In cases of suspected abuse the Utility may require an employee to submit to the Human Resources Department, upon his return, proof of relationship and verification of the death of such relative. If the employee does not attend the funeral, he will not be entitled to any payment.
- D. The Utility shall pay an employee up to four (4) hours at his regular straight time rate for hours actually spent serving as a pall bearer for an employee or a retired Utility employee, provided proper advance notice is given to the Utility.
- E. In the case of an employee's death, the Utility may, at its discretion, grant a limited number of employees time off without loss of pay to attend the funeral.



- F. In the event of the death of an immediate family member as defined in Section A (1) or (2) while an employee is on vacation, funeral leave will commence as stated in Section B. Those vacation days replaced by funeral leave will be granted back to the employees earned vacation bank for use at a later time. The days of vacation replaced by funeral leave will only apply to regular scheduled workdays.

**ARTICLE 25: LEAVES OF ABSENCE**

- A. Employees may be granted an unpaid leave of absence for a period of six (6) months upon request to the Utility. Such leave is subject to the approval of the Utility and the Union and may be granted for any legitimate purpose other than engaging in other gainful employment. Extensions of leaves of absences may be granted by the Utility and the Union upon request.
- B. Any employee of the Utility (limited to one employee at any given time) who is elected to an office in the Local Union or is appointed to an office in the IBEW requiring his leave of absence from the Utility shall, with the approval of the Utility, be granted an unpaid leave for a period not to exceed four (4) years.

Any such employee returning to the Utility will be reinstated to his former position, provided he is physically able to perform the duties of that position and providing that a vacancy exists. If the vacancy has been filled, the employee shall have the right to be assigned to any open job for which he can qualify within any of the five (5) seniority units as described in Article 11, Section E.

- C. During leaves of absence described in Sections A or B above, employees on leave status shall not be paid and shall not accrue employee or pension benefits or seniority. Following the leave period, employees shall return with the seniority level attained at the time the leave began. If the employee wishes to participate in group benefit programs, he must reimburse the Utility for the total cost of such programs. In the event an employee has been granted a leave of absence and becomes disabled while on such leave of absence, he shall not be entitled to Long Term Disability benefit coverage.
- D. The Utility and the Union agree to comply with the FMLA policies established by the City of Mishawaka for all City employees.
- E. All leaves of absence shall be issued in writing and state the conditions thereof. Such notice shall be kept on file by the General Manager, with a copy furnished to the employee, the Human Resources Department and the Union.
- F. Bargaining unit employees may request unpaid time off with 24 hours' notice. All unpaid leave is at the sole discretion of Management.

**ARTICLE 26: VACATIONS**

- A. Employees will be granted vacation time away from work according to the following schedule:

Hiring date to December 31 <sup>st</sup> (first year)	0
1 year but less than 2 – one day awarded for each month worked with a maximum of 10	10
2 years but less than 5 years	10
5 years but less than 12 years	15
12 years but less than 17 years	20
17 years but less than 25 years	25
25 years but less than 31 years	30
One additional day for each year, starting with year 31	

The First Year is defined as that period of time from the date of hire to December 31<sup>st</sup> of the same year. When determining the number of years of service for vacation purposes, date of hire to December 31<sup>st</sup> of the first year will count as one full year.

- B. For non-shift employees, all vacation days may be taken in increments of at least one (1) full day with twenty-four (24) hours’ advance notice and approval by management. For shift employees, ten (10) such days may be taken per year and shall not be taken on Saturday, Sunday, or any day observed as a holiday in Article 24. Management reserves the right to limit the number of employees taking the same day(s) off. When two or more employees request the same day(s) off, management may limit the number of approvals, based on a first-come, first-served basis.

Remaining vacation days shall normally be taken in blocks of at least five (5) consecutive days, subject to the discretion of the Division or Department Manager. Shift workers shall take the number of consecutive vacation days as are normally worked in their assigned weekly schedule.

- C. Employees are encouraged to schedule their vacation periods by January 15 of each calendar year. If so requested, employees will be granted vacation time according to seniority within a work group subject to work group staffing requirements. Any vacation request submitted after January 15 will be granted on a first-come, first-served basis, with such request normally requiring thirty (30) days’ advance notice, and subject to work group staffing requirements.

An employee who elects not to take all of his vacation in one consecutive period shall retain seniority rights to only one consecutive period as his first choice. First choice shall be designated by the employee prior to January 15 in order to secure his seniority pick.

- D. All vacation days paid shall be on the basis of eight (8) hours of regular pay, excluding any shift bonus or crew leader pay (for other than grandfathered crew leaders).

- E. In the event an employee is on sick leave with pay at the beginning of his scheduled vacation leave, he shall be considered on sick leave. His vacation shall begin upon termination of his sick leave unless the employee and management agree to reschedule the vacation time to a later date, except as provided in Paragraph G, below.
- F. Vacations shall not be allowed to accumulate and carry over from one calendar year to the next except if LTD leave at the end of a year would cause an employee to forfeit unused vacation time, in which case all unused vacation time shall carry over to the new year. Such vacation time shall be used at the termination of LTD leave, but shall be paid at the prior year's rate of pay.
- G. In the event a regular employee's employment with the Utility is terminated, including termination due to death or retirement, he shall be entitled to pay in lieu of vacation leave for any vacation awarded but not yet taken during the calendar year of his termination.
- H. An employee who requests his vacation pay in advance shall make his request at least ten (10) days prior to the beginning of his vacation period. Such advance vacation pay shall be granted only if the vacation pay is for ten (10) or more work days.
- I. The Utility shall not buy back any unused vacation time from employees.

#### **ARTICLE 27: FLEXIBLE TIME OFF (FTO)**

- A. In recognition of the need for its employees to be away from work, the Utility agrees to establish and accrue a bank of time off for any personal needs such as personal or family illness, extension of contractual bereavement leave or vacations, or for any other purpose. Such bank may also be used to satisfy the five (5)-day waiting period for Long Term Disability Leave (LTD) described in Article 29. Such bank will not include personal holidays, bereavement leave (unless as an extension), jury or subpoenaed witness duty, LTD leave, leave of absence, or military leave.
- B. FTO accrual shall begin on the first day of employment for full-time employees and may be taken as accrued. Accruals shall be credited to each employee's account on the first day of each month for the prior month's service at the rate of one-half (½) day per month and continue at the same rate for each month of credited service.
- C. FTO days will continue to accrue as long as the employee remains in paid status, subject to the limitation listed in Section G of this Article.
- D. FTO days may be taken in full or half day increments. If becoming ill at work and leaving early, employees will be charged with one-half (½) FTO day if leaving after mid-shift and a full FTO day if leaving before mid-shift.

- E. Employees are expected to plan time off, setting aside some time in their personal bank for sickness. Employees are encouraged to keep a minimum of five (5) days in their bank at all times to provide for unexpected short-term sickness or for the required five (5)-day LTD waiting period. If all FTO days have been used for vacation or other personal use, any short-term illness will be an excused absence, but without pay. The Utility retains the right to limit, through its Work Rules, the number of excused absence occurrences as described in this Section.
- F. Employees should schedule FTO time at least twenty-four (24) hours in advance with the approval of a supervisor. The Utility recognizes, however, that there will be times, such as days an employee or a dependent is ill or a personal emergency arises that cannot be anticipated. In such cases, it is the responsibility of the employee to inform his supervisor as soon as possible prior to the beginning of a work day or shift of such absence and when the employee expects to be able to return to work.
- G. Employees may carry over accrued but unused FTO days from year to year but in no event can they accumulate more than twenty-five (25) FTO days.
- H. All FTO pay shall be on the basis of eight (8) hours of regular pay, excluding any shift bonus or crew leader pay (for other than grandfathered crew leaders).
- I. The Utility may buy back FTO days from any employee, up to a maximum of six (6) FTO days per year. It is the responsibility of the employee to make timely application to the General Manager for this buyback arrangement, if so desired. In any event, the Utility may not buy back an amount of FTO days which would reduce the employee's personal bank to less than five (5) days, except as provided in Section J of this Article.
- J. In the event a regular, full-time employee's service to the Utility is terminated, including termination due to death or retirement under the Utility's retirement plan, he shall be entitled to pay in lieu of FTO days for days due and not yet taken as of the date of such termination, including any FTO days carried over from prior years.

#### **ARTICLE 28: LONG-TERM DISABILITY (LTD) LEAVE**

- A. In recognition of the fact that employees may become disabled and may not be able to perform their normal duties, due to a long-term illness or injury (whether occupational or otherwise), the Utility hereby agrees to establish, beginning January 1, 1993, a Long-Term Disability (LTD) leave program for all regular, full-time employees.
- B. LTD leave will not begin until a five (5)-working day waiting period has elapsed. Employees must bridge this waiting period with any leave time available to them at the start of the leave period.

- C. The LTD leave period shall be for a maximum of fifty-two (52) weeks. While on leave, employees will be paid all or part of their regular pay, based on forty (40) hours of pay per week, exclusive of shift bonus or crew leader pay (for other than grandfathered crew leaders), according to the following schedule:

For each complete year of service, one (1) week LTD benefits at one hundred percent (100%) of pay, to a maximum of twenty-six (26) weeks, after the waiting period has expired.

Then, sixty-seven percent (67%) of pay through the twenty-sixth (26th) week following the waiting period.

Then, fifty percent (50%) of pay through the fifty-second (52nd) week following the waiting period.

Then, no benefit (0%).

The LTD benefit paid to an employee on LTD leave will be reduced or replaced entirely by any amount of Workers' Compensation or Social Security Disability pay received by the employee, including waiting period reimbursement. It is the employee's responsibility to make timely application for such benefits if physically possible and to submit applicable paperwork as soon as practical.

- D. The employee's seniority shall continue during LTD leave. However, any wage increases scheduled to occur during disability will not become effective until returning to work. Benefits, such as group medical and group life insurance, and FTO day accrual, will continue during LTD leave.
- E. The employee must provide medical documentation as to proof of his physical disability to qualify for LTD leave and proof of his ability to return to work following LTD leave. The Utility retains the right to request an independent medical examination by a physician of the Utility's choice. Additionally, the Utility may require subsequent proof of continued disability, obtained at Utility expense, at intervals of not less than two (2) months during a disability period. Failure to comply with this provision on a timely basis, or failure to return to work as soon as possible may result in termination.
- F. No employee will be entitled to LTD leave for a disability resulting from the use of alcohol or drugs, for injury during the commission of a crime, or for disabilities occurring in the course of employment for other than the Utility or for remuneration through self-employment, for injury occurring while performing any outside work for remuneration or profit, or while on official Leave of Absence, pursuant to Article 26.
- G. If the employee returns to work and becomes disabled again within six (6) months of returning from the same injury or illness, the disability is considered a continuation. In this event, no new waiting period will be required. The employee will resume the LTD schedule where he left off upon returning to work.

A new disability period, including the requirement for a waiting period, shall begin if the employee returns to work for at least six (6) months and becomes disabled again from the same injury or illness, or returns and becomes disabled due to an unrelated injury or illness.

- H. An employee returning to work following LTD leave shall return to his regular work, if so released by a physician. If requested by the physician, light work may be arranged by the Division Manager, if such light duty work is available and practical with reasonable accommodation.

An employee declared by a physician to be incapable of returning to his regular work may be placed in any available job covered by this Agreement for which the employee is declared by a physician to be physically fit, without regard to the seniority provisions of this Agreement.

An employee who has been retrogressed to another position under this Section shall retain his seniority in the job classification from which he was so retrogressed for a maximum period of two (2) years.

If the employee recovers from the disability during the period in which he has such retained seniority to the extent that the Utility considers him to be qualified to perform the normal duties of the classification from which he was removed due to the disability, or to any interim classification, this will be done provided his retained seniority is sufficient to displace other employees who occupy the job to which he is being restored. The Utility may require medical evidence of the extent of his recovery on which to base its consideration.

The employee's rate of pay following retrogression will be the greater of 1) the rate of pay for his new job classification, or 2) two-thirds (2/3) of his prior position's pay. In case of the latter, the employee shall remain at this rate of pay, without periodic negotiated increases, until the rate of pay for his new classification equals or exceeds his retrogression rate of pay.

#### **ARTICLE 29: HOSPITALIZATION AND MEDICAL INSURANCE**

Explanation and agreement with reference to the foregoing shall be by agreement of the parties during wage negotiations since this document is a Working Agreement and not intended to cover economic terms and conditions; however, such hospitalization and medical insurance shall be in conformity with that available to other employees of the municipality in which the Utility operates.

#### **ARTICLE 30: LIFE INSURANCE**

The Utility agrees to pay the entire cost of a \$15,000.00 life, accidental death and dismemberment insurance policy for each employee and retiree. Said policy shall be reduced to \$7,500.00 for all employees upon reaching the age of 65.

### **ARTICLE 31: RETIREMENT PLAN**

The present Retirement Plan shall be retained and fully funded by the Utility.

### **ARTICLE 32: TRAINING PROGRAM**

- A. A training program shall be established during regular working hours to the degree possible but not confined to regular working hours for skilled trades and crafts for the purpose of developing better-informed and qualified employees. Additional job-related training approved by the Division Manager may be available on non-working hours; tuition, books and required materials shall be paid for by the Utility if the employee completes and passes the course of study; however, there shall be no wages nor compensation paid for attendance at such courses, whether passed or not.
- B. Employees in a job classification which has more than one (1) grade level shall not be advanced to the next grade level until they have been evaluated. Such employees shall be evaluated at least as often as every 1,040 hours of work completed.
- C. An Apprenticeship, Safety and Training Program for Linemen has been established in the Electric Division and registered as No. 020-0529 with the U.S. Department of Labor, Bureau of Apprenticeship and Training. The Standards governing the administration of this program shall be part of this agreement.

### **ARTICLE 33: BULLETIN BOARDS**

The Utility shall provide space at each work headquarters for bulletin boards for the exclusive use of the Union, provided such bulletin boards shall not be used for the posting of any political announcements or information of any kind, nor shall they be used for the posting of any scandalous or defamatory matter.

### **ARTICLE 34: EMPLOYEE CLASSIFICATIONS, JOB DESCRIPTIONS**

- A. By the first day of February of each year, the Utility and the Union shall exchange lists of all bargaining unit employees. Said list shall show each employee's job classification and their pay rate. The Utility shall notify the Union of changes in employees' classification, pay, and shift to the degree they are able to do so.

- B. Employees shall be classified according to job titles. Each job title, including grade ranks, shall have a job description on file with the Union. Job descriptions may be changed from time to time. The Utility agrees to seek input from affected employees prior to such changes. However, final decisions regarding such changes will remain with management. Such changed job descriptions will be communicated to affected employees and the Union. When job vacancies are posted, the applicable current job description will be posted. Employee evaluations will include a discussion of the current job description. It is also understood and agreed that job descriptions will specify a job, not a shift, in the event the same job is performed on various shifts.
- C. The Utility will notify the IBEW office when a new Union employee is hired, giving the name, job title and beginning pay.

**ARTICLE 35: LONGEVITY BONUS PLAN**

The following longevity bonus will be provided to Utility employees according to the following terms. Said schedule is based upon years of service and does not have an upper limit. Longevity pay shall be distributed annually on the first pay day following each individual employee’s anniversary date as part of his regular paycheck.

Payments shall begin at year five at \$150.00 with \$80.00 added each year beginning with year six:

<b>Years of Service</b>	<b>Annual Increment</b>	<b>Bonus</b>
5		\$150.00
6	\$80.00	\$230.00
7	\$80.00	\$310.00
8	\$80.00	\$390.00
9	\$80.00	\$470.00
10	\$80.00	\$550.00

Any change negotiated in the previous schedule may not take effect until the beginning of the fiscal year following the effective date of the contract.

**ARTICLE 36: COMMERCIAL DRIVER'S LICENSE (CDL), PHYSICALS**

In recognition of the fact that a Commercial Driver’s License (CDL) is required by law for certain employees identified by job description in order for such employees to operate certain Utility vehicles, the Utility agrees to the following:

- A. For CDL renewals, the Utility will reimburse employees the difference between the cost of the license itself and the cost of a basic operator’s license.



- B. For employees holding a CDL, the cost of required physicals will be paid by the Utility, limited to one standard CDL physical exam every two years. Such physicals will be arranged by the Utility at a facility of its choice and billed directly to the Utility.
- C. The cost of any testing beyond the standard CDL physical exam provided in B, above, (skills test or follow-up medical tests or visits, for example) will be paid by the employee.
- D. None of the costs described in Sections A or B, above will be paid by the Utility for any employee holding or moving to a job which does not by job description require a CDL.
- E. The Utility cannot waive the CDL requirement for any employee working in or bidding into a job which requires a CDL. However, when bidding into a job which requires a CDL, the employee awarded the job may have up to 35 working days to obtain one. The Utility shall be under no obligation to provide CDL training for such employees.

**ARTICLE 37: DRUG-FREE WORKPLACE**

In recognition of the importance, both in human and economic terms, of alcohol and drug abuse, the Utility and the Union are committed to make every effort to have a drug- and alcohol-free workplace and workforce. Therefore, the Utility and the Union agree to comply with all reasonable drug and alcohol policies established by the City of Mishawaka for all City employees.

**ARTICLE 38: PAYROLL**

Employees will be paid bi-weekly in conformity with the payroll procedure in existence on the date of the execution of this Working Agreement. When and if the City should change to weekly pay, it will extend to the employees of the Utility the option of receiving weekly pay.

**ARTICLE 39: INDEMNIFICATION**

- A. *Claims and Judgment* - the Utility shall indemnify and save harmless any Utility employee from all legal claims, suits, cost and judgment arising out of the acts or omissions to act on the part of the Utility employee which arise out of and in the course of the performance of his duties as a Utility employee subject to the terms and conditions contained herein. Indemnity shall not be provided in the event any Utility employee willfully violates any legal order or direction of a superior, the rules and regulations of the Utility, or is guilty of gross negligence and/or of willful and/or wanton misconduct.
- B. *Executions of Judgments* - the Utility shall take such actions as it deems appropriate to forestall the execution of judgment against the Utility employee personally and if not withstanding such efforts by the Utility, the Utility will indemnify and hold harmless the Utility employee on any judgment covered under Section (A) of this Article subject to the terms and conditions contained herein.

C. *Trials:*

1. The Utility shall provide legal counsel of the Utility's choosing to any Utility employee against whom legal action has been commenced, within the coverage set forth in Section A of this Article.
2. The Utility employee shall have the option to retain his own attorney at his own personal expense to represent his interest in litigation without any effect upon the responsibilities of the Utility under this Article.

D. *Employee Responsibilities:*

1. As a condition precedent to the right of indemnification under this Article, any Utility employee desiring indemnification shall:
  - a. Tender in writing to the Utility's attorney a notice of its right to appear and to defend any litigation as may result in a judgment covered by this Article and grant to the City the right to make such investigation, negotiation and compromise or settlement of any such claim as the Utility shall deem appropriate.
  - b. Give written notice containing the particulars sufficient to identify the Utility employee involved and information as to the time, place and complete circumstances thereof to the attorney for the Utility as soon as is reasonably practical following a covered occurrence.
  - c. Forward immediately any and all suit papers, demands, notices, summons, complaint or other legal process received by such Utility employee or his representative to the attorney for the Utility.
  - d. Cooperate fully with the Utility in the entire conduct, defense, and/or compromise in settlement of any legal proceeding, and additionally grant to the Utility the right to free access and use of all hospital, medical, physician and/or other medical or dental provider with respect to records, reports, x-rays and all other material pertaining to the Utility employee's physical, mental and/or emotional condition in the conduct, defense and/or compromise and settlement of any legal proceedings hereunder.

**ARTICLE 40: SEXIST APOLOGIA**

Words used in this Agreement in the masculine gender shall also include the feminine.

## **ARTICLE 41: SUCCESSOR CLAUSE**

In the event the City should, during the term hereof, sell or otherwise transfer any of the Utilities covered by this Agreement, it is agreed that the provisions of this Agreement shall continue in full force and effect for the stated term hereof and shall be binding upon any successors, administrators, executors and assigns. The City acknowledges that any such transfer shall not affect its obligations to employees who have duly retired from employment under the terms of this Agreement during the stated term hereof (or a predecessor agreement between the parties hereto) prior to the effective date of any such transfer. The City shall give prior notice of the existence of this Agreement to any potential purchaser, lessee, assignee, etc. Such notice shall be in writing with a copy to the Union.

## **ARTICLE 42: ENTIRE AGREEMENT**

- A. The Utility and the Union shall not be bound by any arrangement, provision, practice or procedure not specifically stated in this Agreement. Arrangements, provisions, practices or procedures previously agreed to by the Utility and the Union, either formally or informally shall henceforth be void as of the date of the execution of this Working Agreement by the Utility and the Union, unless included herein.
- B. The Utility and the Union agree that this Agreement is intended to cover all matters affecting hours and terms and conditions of employment of the unit employees, and that neither the Utility nor the Union shall be required to negotiate any of the aforementioned, or any other subjects not specifically set forth in this Agreement, during the term of this Agreement.
- C. If any provision of this Agreement or the application thereof to any person or circumstances is adjudicated invalid by an appellate level court of the State of Indiana, such invalidity shall not affect the remaining provision or applications of this Agreement which can be given effect without the invalid provision or application and to this end the provisions of this Agreement are declared to be severable. If any portion of this Agreement is so held to be invalid, then the subject matter of said provision shall be renegotiated by the Utility and the Union. Said re-negotiation shall begin within thirty (30) days after the earlier of the expiration of the time for appealing the determination of invalidity or the mutual decision of the Utility and the Union not to pursue such an appeal. Renegotiated language shall be effective retroactively to the date of the determination of invalidity.
- D. The waiver or any breach or condition of this Agreement by either the Utility or the Union shall not constitute a precedent with respect to future enforcement of all the terms and conditions of this Agreement.
- E. Where this Agreement requires the appropriation of funds by the Common Council of the City of Mishawaka to effect the carrying out of any provision thereof, to that extent this Agreement is subject to such Council appropriation.

**SIGNATURES:**

The International Board of Electrical  
Workers, Local #1392, by its Negotiating  
Committee:

Mishawaka Utilities by its Negotiating  
Committee:

\_\_\_\_\_

Date

\_\_\_\_\_

Date

\_\_\_\_\_

Bill D. Scally, Business Manager

\_\_\_\_\_

James M. Schrader, General Manager

\_\_\_\_\_

Robert C. Bailey, Electric Division

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Geoffrey D. Spiess, Corporation Counsel

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Aaron W. DeCocker, Water Division

\_\_\_\_\_

Joseph P. Schrader, Electric Division

Approved by the Board of Utilities of the City of Mishawaka, Indiana, this \_\_\_\_ day of  
\_\_\_\_\_, 2017.

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Kenneth B. Prince, President

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Rebecca S. Miller, Vice President

\_\_\_\_\_

Ronald E. Watson, Member

ATTEST:

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Kari Meyers, Clerk of the Board