



**COLLECTIVE BARGAINING  
AGREEMENT**

**WITH**



**OCTOBER 10, 2021 – APRIL 12, 2025**

***Dear Member:***

We are pleased to present you with your Union Contract which contains the provisions covering your working conditions. This contract is a result of over fifty years of effort on the part of our membership in negotiating improvements for themselves and their families. We encourage you to take the time to review this contract and keep it available for your reference.

This contract protects you on the job and outlines all the various provisions that apply to your working lives such as:

- \* Wages
- \* Hours of Work
- \* Vacations
- \* Seniority
- \* Health & Welfare
- \* Retirement Plans
- \* Grievance Procedure

If you ever have any questions or need to discuss a particular matter, always contact the Union so that we may give you proper guidance and direction.

In Solidarity,

UFCW Local 5

## TABLE OF CONTENTS

	<u>SECTION</u>	<u>PAGE</u>
Additional Hours	4.10.2	22
Adjustment Board and Arbitration	18	55
Apprentice Food Clerks	9.2.1	38
Bargaining Unit Work	1.3	8
Request for Full-Time	4.10.1	22
Bulletin Boards	5.9	26
Breaks	7.6	35
Classification of Employees	9	36
Contract Enforcement	16	54
Courtesy Clerks	9.3	38
Daily Guarantee	7.7	35
Demonstrators	9.5	41
Discharges and Layoffs	3	16
Dues Deduction	5.18	29
Employment and Union Membership	2	14
Enforcement	1.12	12
Extra Work	2.5	15
Floor Covering	5.4	25
Food-Non-Food-General	1.4	8
Free Time	16.3	54
Funeral Leaves	5.16	28
General Provisions	5	24
Good Friday	10.4	45
Health and Welfare	12	48
Holiday Eve	7.4	34
Holidays	10	43
Holiday Work Week	6.1.1	31
Hours (Guarantee)	4.10.5	23
Hours, Overtime and Sunday Pay	6	30
Industrial Injury	5.15.2	28
Job Injury (Wages)	5.12	27
Job Referral and Non-Discrimination	2.2	14
Jury Duty-Court Appearances	5.14	27
Leaves of Absence	5.15	28
Lie Detector Tests (Polygraphs)	3.5	17
Meal Period	7.5	34
Merchandise Definition	1.4.1	8

*Continued -----*

	<u>SECTION</u>	<u>PAGE</u>
Military Service	5.2	25
New Store	1.13	13
Night Premium	7.8	35
Non-Food - General Merchandise	1.4	8
Non-Food/GMC Definition	1.4.2	9
Overtime and Premium Wage Rates	6.2	31
Owners	1.8-1.9	12
Part-Time Employees (Request for Additional Hours)	4.10.2	22
Payroll Data	5.13	27
Pay Day and Deductions	5.8	26
Pensions	13	51
Period of Agreement	20	58
Posting Work Schedules	7.1	33
Probation Period	3.1	16
Promotion	4.3.1	19
Recognition and Contract Coverage	1	6
Recording Time	16.2	54
Reduction in Hours/Layoffs	4.10.3	23
Relief Work	4.6	21
Remodels/New Stores	1.13	13
Removal or Transfer of Work	9.8	42
Reasonable Suspicion	Exhibit C	78
Returned Checks	5.17	29
Safety Rules	5.1	24
Schedule Selection	4.5	21
Schedule Selection (Feller Arbitration Award)		76-77
Scheduled Work	6.4	33
Seniority	4	17
Seniority (List)	4.7	21
Seniority (Loss of)	4.4	20
Separability	19	57
Shift Interval	7.2	34
Sick Leave Benefits	12.9	50
Step Up Rules	9.4.1	40
Store Managers	1.6	11
Store Meetings - Charitable Drives	15	53
Store Visits	16	54
Strike and Lockouts	17	54
Sub-Contracting and Sub-Leasing	1.6	11
Side Letters		68-81

*Continued -----*

	<u>SECTION</u>	<u>PAGE</u>
SPUR	5.20	30
Termination	3.2	16
Temporary Assignment-Transfers	4.8	21
Transfers	4.9	22
Tools and Equipment	5.7	26
Travel Allowance	9.6	41
Uniforms	5.5	25
Union Business	5.10	26
Union Emblem	5.11	27
Vacations	11	45
Vacation Selection	11.8	47

**WAGE RATES:**

Food Rates	Appendix A	61
Non-Food Rates	Appendix B	63
Wage Claims	4.10.4 & 18.9	23 & 57
Wage Increases		60
Work Schedules and Premium Rates	7	33
Workday and Week	6.1	31
Work Performance	3.3	16

**GROCERY AGREEMENT**  
**BETWEEN**  
**UNITED FOOD & COMMERCIAL WORKERS UNION, LOCAL 5**  
**AND**  
**DIABLO FOODS SUPERMARKET**  
**OCTOBER 10, 2021 – April 12, 2025**

**THIS AGREEMENT**, effective upon this 10th day of October 2021, by and between **DIABLO FOODS SUPERMARKET, INC**, First Party, hereinafter called the Employer, and **UNITED FOOD & COMMERCIAL WORKERS UNION, LOCAL 5**, chartered by the United Food and Commercial Workers International Union, referred to hereinafter as "Union."

It is the intent and purpose of the Employer and the Union to promote and improve labor-management relations between them and to set forth herein the basic terms of agreement covering wages, hours, and conditions of employment to be observed.

**WITNESSETH:**

In consideration of mutual promises and agreements between the parties hereto, and in consideration of their mutual desires in promoting efficient conduct in business and in providing for the orderly settlement of disputes between them, the parties to this agreement agree as follows:

**SECTION 1 RECOGNITION AND CONTRACT COVERAGE**

**1.1 RECOGNITION:** The Employer hereby recognizes the Union as the sole collective bargaining agency for an appropriate unit consisting of all employees working in the Employer's retail food stores within the geographical jurisdiction of the Union except supervisors within the meaning of the National Labor Relations Act, as amended.

**JURISDICTION:** Contra Costa County.

**1.1.1** Once an Employer becomes subject to the terms and conditions of this Agreement such Employer thereafter shall continue to be subject to such terms regardless of any change in the nature of the entity by voluntary action or by operation of law including specifically reorganization as a partnership or corporation or any lease arrangement and including specifically operations conducted by Receiver, Board of Trade, or similar procedure.

**1.2 CLERK'S WORK:** The work covered by this Agreement shall be performed only by members of the appropriate unit as defined in Section 1 hereof and such work shall consist of all work and services connected with or incidental to the handling or selling of all merchandise offered for sale to the public in the Employer's retail food stores including the demonstration of such products, but excluding:

## 1.2.1

**RECOGNITION BY MAJORITY AUTHORIZATION/NEUTRALITY:** The parties hereby establish the following procedure for the purpose of ensuring an orderly environment for the exercise by the Employer's employees of their right under Section 7 of the National Labor Relations Act and to avoid picketing and/or other economic action directed at the Employer in the event the Union decides to conduct an organizing campaign at any operation at which the Union does not have representation rights.

The parties mutually recognize that national labor law guarantees employees the right to form or select any labor organization to act as the employees' exclusive bargaining representative for the purpose of collective bargaining with the Employer.

The Employer will take a neutral approach to unionization of employees. The Employer will not take action nor make any statement that will directly or indirectly state or imply any opposition by the employer to the selection by such employees of a collective bargaining agent.

Within ten (10) days following receipt of written notice of intent to organize certain employees, the Employer will furnish the Union with a complete list of such employees, including job classifications and departments. Within two (2) weeks thereafter, the Employer will furnish a second list of such employees to the Union, including the addresses and phone numbers of all employees. Thereafter, the Employer will provide updated lists as requested, but no more frequently than monthly.

The Union may request recognition as the exclusive collective bargaining agent for the employees in the traditional bargaining unit represented by the Union in the food industry. A disinterested, neutral party mutually satisfactory to the Employer and the Union will be selected to conduct a confidential review of employees' authorization cards and membership information submitted by the Union in support of its claim to represent a majority of the employees in the unit if either the Union or Employer so request. If a majority of employees within the unit has joined the Union or designated it as their exclusive collective bargaining representative, the Employer will recognize the Union as such representative of the employees and will extend to such employees this Collective Bargaining Agreement between the Union and the Employer together with any amendments agreed to by the parties. The Employer will not file a petition with the National Labor Relations Board for any election in connection with any demands for recognition provided for in this Agreement.

During the life of this Agreement, the Union will not engage in picketing or other economic activity at any operation covered by this Section, provided that if the Employer recognizes any other Union as the exclusive collective bargaining representative of employees in the unit, or any part thereof, traditionally represented by the Union, this paragraph shall terminate immediately and without notice.

The parties agree that any disputes over compliance with or the application of this Section, including claims of Union violation, shall be submitted to expedited arbitration using the expedited arbitration process set forth in this Agreement. The arbitrator shall have the authority to order the non-compliant party to comply

with this Section and to order such other remedies deemed necessary to effectuate the intent of this Section. The parties hereto consent to the entry of any order of the arbitrator as the order of judgment of the United States District Court, without notice.

**1.3 NON-FOODS AND GENERAL MERCHANDISE:** The work covered by this Agreement shall be performed only by members of the appropriate unit as defined in Section 1 hereof and such work shall consist of all work and services connected with or incidental to the handling or selling of all merchandise offered for sale to the public in the Employer's retail food stores including the demonstration of such products, but excluding:

**1.3.1 SUPERVISORY FUNCTIONS;**

**1.3.2** Work of employees heretofore expressly excluded from the provisions hereof by agreement of the parties;

**1.3.3** Such work as is performed under Industry practice, prevailing and existing as of June 13<sup>th</sup>, 2005, within the geographical jurisdiction of this Union by a driver/salesman engaged in servicing the retail food stores at the point of delivery, soft drink merchandisers, ice cream merchandisers, cookie/cracker merchandisers, chips/salty snacks merchandisers, frozen pizza merchandisers, Hispanic food merchandisers, beer merchandisers, an outside supplier or reset crew.

No change to current language based on the parties' agreement regarding the intent of the "prevailing and existing" language as outlined by the Company during these 2007 negotiations.

**1.3.4** Notwithstanding anything herein to the contrary, and except as modified by Section 1.14, each Employer may, at its discretion on a store-by-store basis, assign members of the bargaining unit to handle merchandise or products which are permitted by the terms of this Subsection to be handled by non-bargaining unit persons. After any such assignment to members of the bargaining unit, the Employer may, at its discretion, return to the former practice of utilizing the services of such non-bargaining unit persons.

**1.4 NON-FOODS AND GENERAL MERCHANDISE**

**1.4.1 DEFINITION OF FOOD AND NON-FOOD OR GENERAL MERCHANDISE:** In interpreting and applying all references to "non-food or general merchandise" in this Agreement, the following are the agreed upon definitions of food and non-food or general merchandise:

**FOOD MERCHANDISE:** Food merchandise shall consist of all foodstuffs, including pet food (excluding pet supplies), non-alcoholic beverages, nursery items, all household paper goods, excluding plastic wrap, sandwich bags, plastic trash bags, aluminum foil, wax paper, and paper bags and all household cleaning and laundry supplies excluding cleaning equipment. None of the named categories of food merchandise may be handled or sold by non-food or general merchandise clerks.



**NON-FOOD OR GENERAL MERCHANDISE:** Non-food and/or general merchandise shall consist of any merchandise other than that included in the definition of food merchandise. This includes delicatessen merchandise, health food merchandise, floral merchandise, and bakery merchandise (including checking in bakery driver-salesman, alcoholic beverages, magazines, diapers, feminine hygiene items, gum, candy and tobacco product in any location within the store). Non-food or general merchandise work may include utility or cleaning work.

**IN STORE PREPARED CUT FRUIT/VEGETABLE PROGRAM:** The implementation of the in-store prepared cut fruit and vegetable program is intended to create new hours of work in the store and not intended to reduce the hours of produce department or food clerk employees. No work performed within the produce department and/or by produce or food clerk employees will be significantly affected by the implementation of the addition of the In Store Prepared Cut Fruit/Vegetable Program.

**1.4.2 DEFINITION OF NON-FOOD OR GENERAL MERCHANDISE WORK:** All work and services connected with or incidental to the handling or selling of non-food or general merchandise offered for sale to the public shall be performed by a non-food or general merchandise clerk within the bargaining unit. A non-food or general merchandise clerk shall spend his time exclusively in the performance of work and services connected with or incidental to the handling or selling of the non-food or general merchandise offered for sale to the public. A non-food or general merchandise clerk (except utility or floor clerks) shall wear a distinctive uniform at all times.

Whenever an Employer utilizes a non-food or general merchandise clerk, there shall be up to one (1) full-time forty (40) hour per week employee so employed before additional persons are utilized.

**1.4.3 NON-FOOD OR GENERAL MERCHANDISE RATE OF PAY:** Appendix "B", which sets forth the job classification, minimum rates of pay, and other terms is incorporated herein as if set forth in full.

**1.4.3.1** General Merchandise Clerks/Non-Food Clerks shall receive credit for previous experience when going to work for a new Company as follows:

**GENERAL MERCHANDISE/NON-FOOD CLERK:** An experienced General Merchandise Clerk is an employee that has gained 5200 hours' experience in the retail food industry.

**PREVIOUS EXPERIENCE:** If an Experienced General Merchandise Clerk/Non-Food Clerk has been out of the industry no more than five (5) years, he will be allowed to start at the 4<sup>th</sup> step Apprentice Non-Food/General Merchandise Clerk rate of pay.

**1.4** A Non-Food/General Merchandise Head Clerk has the authority and responsibility of buying or selecting merchandise for a department, section or area, or directs other employees in the performance of their duties in such department, section or area. It is understood that the mere occasional or incidental performance of any of the Non-Food/General Merchandise Head Clerk's duties shall not be

construed as a basis for classifying any employee as a Non-Food/General Merchandise Head Clerk.

Notwithstanding the above, in the absence of a Deli Manager for a week or more, there shall be an employee designated to be in charge of the Deli and paid at the General Merchandise Head Clerk rate of pay, subject to the employee performing all of the essential functions of the job.

**1.4.1** The services offered by rack-jobbing concerns may be used without limitation for non-food or general merchandise as herein defined. It is agreed that no Non-Food Clerk on the payroll as of March 23, 1986 shall not laid off or have his hours reduced as a direct result of the expanded utilization of rack jobbers.

**1.4.2** **CONTRACT COVERAGE AND ENFORCEMENT:** All persons performing non-food or general merchandise work shall be covered by this Agreement, except only that a single owner or lessee of a non-food or general merchandise department shall be exempt.

Except for the Non-Food or General Merchandise Clerk's compensation, as hereinafter provided, all other terms of this Agreement shall be fully applicable to non-food or general merchandise clerks.

No employee shall suffer any reduction in pay as a direct result of this Agreement of the parties as to Non-Food or General Merchandise Clerks.

In the event the Employer fails to observe the terms of this section in any respect, the Union shall notify the Employer in writing of such violation, and it shall be corrected. Following such notice if the Employer again, within six (6) months, violates the terms hereof and it is so determined by the Adjustment Board or Arbitrator, then in such event, such Employer shall no longer be entitled to a non-food or general merchandise clerk classification and the food clerk rates shall thereafter become applicable to all non-food or general merchandise work in the Employer's store where the violation occurred.

**1.4.3** Employees who are performing work in the non-food or general merchandise category and who are classified as Food Clerks will not have their hours reduced or be laid off as a direct result of the introduction of this classification, nor will they be reclassified to a Non-Food or General Merchandise Clerk if the Employer chooses to have them continue performing such work.

Employees assigned to exclusively work health food merchandise prior to May 3, 1983, shall be grandfathered in their current classifications.

**1.4.4** With respect to the application of Section 4, Seniority, of this Agreement, employees designated as non-food or general merchandise clerks, or floor or utility clerks, will be treated as a separate, single classification. Except for layoffs and promotions, seniority for this classification shall be applied on a store-by-store basis. Employees so classified will be eligible for promotional opportunities and will be evaluated in accordance with the provisions of Sections 4.3.1. With respect to layoffs the seniority of employees in this classification within the Union's geographic seniority area shall be recognized; provided, however, that, in layoffs, said seniority shall be applied in a manner which recognizes the

qualifications required of employees in each of the following groups within this classification: office clerk whose work is not directly related to the check-stand operations or procedures, floral, bakery, delicatessen, floor-utility or non-food. Except as hereinabove specifically modified, all other terms of Section 4, Seniority, shall be fully applicable to employees in this classification.

- 1.5 SUBCONTRACTING AND SUB-LEASING:** It is recognized that the Employer and the Union have a common interest in protecting work opportunities for all employees covered by this Agreement. Therefore, except for work which is exclusively inventory or janitorial work (such as washing windows, washing or waxing floors and cleaning restrooms) or work hereinabove excluded, no work covered by this Agreement, as defined in Section 1.2 hereof, shall be performed under any sublease, subcontract, or other agreement unless the terms of said lease, contract, or other agreement specifically provide:
- 1.5.1** That all such work shall be performed only by members of the appropriate unit as defined in Section 1.1 hereof; and
- 1.5.2** That the Employer, party hereto, shall at all times hold and exercise full control of the terms and conditions of employment of all such employees pursuant to the terms of this Agreement.
- 1.5.3** It is recognized that if the terms of the Employer's lease, contract or other agreement obligates the lessee or other party, as the case may be, to pay the wages and observe the other terms and conditions of this Agreement, then the Union agrees that the sole and entire financial responsibility for meeting the costs of observance of this Agreement shall be upon said lessee or other party and not upon this Employer and that he shall be, and by these presents is, hereby released from any and all financial liability in connection therewith.
- 1.6 STORE MANAGERS AND ASSISTANT STORE MANAGERS:** None of the provisions of this Agreement need apply to one overall supervisory store manager, the assistant store manager, and in stores of 35,000 square feet or more, a second assistant store manager and their work in each retail food store in which an owner is not actively engaged on the premises. The store manager and assistant store managers shall not be restricted as to the amount of non-supervisory work they may perform. No assistant store manager shall be involuntarily reclassified as a direct result of this provision during the term of this agreement.
- 1.7 OWNERS:** There shall be not more than two (2) Employers in any store or group of stores having common ownership. In partnerships, "employer" as used in this Sub-Section means only bona fide partners who own an interest in the assets, and in the profits of the partnership. In corporations, "employer" as used in this Sub-Section means only two (2) officers of the corporation who own capital stock of the corporation. No more than two (2) shareholders of a corporation or more than two (2) bona fide partners shall be deemed or classified as an Employer within the meaning of this Agreement. Employers as thus defined may do such work as is necessary in the conduct of the business. All other persons performing work under the jurisdiction of the Union shall be members of the Union and shall be governed by the provisions of this Agreement.

**1.8 NEW OWNER:** This Agreement shall be binding upon the successors and assigns of the parties hereto. Except as set forth in Section 11, Vacations, during the life of this Agreement employee benefits provided for herein shall not be affected by the sale or transfer of the business for those employees who are retained by a new Employer for a period of more than sixty (60) calendar days. For employees who choose to be employed by such new owner, such sixty (60) calendar day period shall be considered a probationary period during which time employees may be terminated without recourse to the grievance procedure, unless such termination is in violation of Section 2.2 or Section 3.1 of this Agreement.

thereto the same as if the successor, lessee or transferee had been the Owner or Employer from the beginning. Before completion of any such transfer, the Employer shall give written notice to the buyer of the existence of this Agreement, furnishing the Buyer with a copy of this Agreement and call the Buyer's attention particularly to this Section concerning Transfer of Ownership. The Employer shall, upon request, furnish evidence of compliance.

**1.9 SALESMAN:**

The Employer assumes a particular responsibility to require observance of this Agreement on the part of book-salesmen. The Employer shall give to one clerk on each shift written authorization to request any book-salesmen performing work in violation of this Agreement to cease such work. If the book-salesmen does not comply with such request, then the authorized clerk shall report the matter to the Employer or store manager, who shall then cause the book-salesman to cease such work.

**1.10 TRAVELING CLERKS:** It is agreed by the Employer and the Union that employees may be assigned to work in two or more different stores located in the geographical jurisdiction of two or more local unions. Each such employee shall be covered by all the terms and conditions of the Agreement, which is in effect in the area in which he works the major portion of his time in any one area, then the Employer shall designate the area agreement under which he is working and shall give written notice of the area so designated to the Union

**1.11 INDIVIDUAL AGREEMENTS:** The Employer agrees that no Employee covered by this Agreement shall be compelled or allowed to enter into any individual contract or agreement with said Employer concerning wages, hours of work and/or working conditions that provides less benefits than the terms and provisions of this Agreement, except by written agreement of the Employer, the Employee and the Union.

**1.12 ENFORCEMENT:** In the event of a violation of Section 1.3.3, the Union shall notify the Store Manager and the Company's Labor Relations Department in writing of such violation, and it shall be corrected. If there are any further violations, by the same vendor/non-bargaining unit person, the store shall be liable in damages payable to the Employer/UFCW Joint Pension Plan in the amounts below for each proven violation, on a store-by-store basis:

**1.12 .1** At the time of the first violation, an amount equal to one (1) day's wages at the experienced clerk's rate plus health and welfare and pension contributions.

**1.12.2** At the time of the second violation, an amount equal to two (2) day's wages at the experienced clerk's rate plus health and welfare and pension contributions.

**1.12.3** An additional day's wages plus the equivalent health and welfare and pension contributions shall be added cumulatively for each subsequent violation.

**1.13** **NEW STORES AND REMODELS:** During any three (3) consecutive days preceding the reopening of an old food market or discount center of the Employer, which has been closed for remodeling for a period of thirty (30) days or less, upon prior notice to the Union, persons not in the bargaining unit may perform any work in such store.

Notwithstanding any language to the contrary contained in this Agreement between the parties, it is agreed that this Agreement shall have no application whatsoever to any new food market or discount center until fifteen (15) days following the opening to the public of any such new establishment. Neither shall this Agreement have any application whatsoever to any food market or discount center which is reopened after it has been closed for a period of more than thirty (30) days until the fifteenth (15th) day following the date of such reopening to the public.

The Employer shall staff such new or reopened food market with a combination of both current employees and new hires, in accordance with current industry practices of staffing such stores with a cadre of current employees possessing the necessary skills, ability and experience, plus sufficient new hires to meet staffing requirements. Employees, who are thus transferred, upon whom contributions are made to the various trust funds shall continue to have contributions to the several trust funds made on their behalf in the same manner and in the same amount per hour as such contributions were made prior to their transfer.

Notwithstanding anything in this Agreement to the contrary, it is agreed that when the remodeling of an existing location occurs without such store being closed, the Employer shall only be obligated to give the members of the bargaining unit employed by him in such store an opportunity to perform the work required for such remodeling at the applicable contract rate except that such opportunity to perform such work shall not include any overtime hours. When members of the bargaining unit within such store are not available for such work, such work may be performed by persons not in the bargaining unit.

Notwithstanding anything to the contrary contained in this Agreement between the parties, it is agreed and understood that the probationary period for any new hires in such new or reopened stores referred to above shall not begin until the fifteenth (15th) day following such opening or reopening of such stores to the public.

**1.14** In the event the Employer creates new jobs or job duties involving the handling or selling of merchandise not heretofore handled or sold by the Employer, such new work shall be deemed Clerks' work and performed by members of the bargaining unit, except that, for a temporary period of try-out and familiarization,

not to exceed six (6) months in each store following the introduction of such new category of merchandise, the Employer may contract for the performance for all or part of such work by non-bargaining unit persons. The wage rates and classification for such new jobs or job duties shall be subject to mutual agreement of the parties. In the event the parties are unable to agree on the above, disputed matters shall be processed in accordance with Section 18.3 of this Agreement.

- 1.15 RETAIL SALES MERCHANDISERS:** Employees working under subcontracts for merchandising services for PIA and BDI hired after March 23, 1986 shall be paid in accordance with Appendix B.

## **SECTION 2 EMPLOYMENT AND UNION MEMBERSHIP**

- 2.1 UNION SHOP:** On and after thirty (30) days of employment, or the date of execution of this Agreement, whichever is later, each employee shall become and remain a member of the Union as a condition of employment; provided, however, that the Employer shall not be obligated to discharge any employee in violation of the National Labor Relations Act, as amended. Upon written notification from the Union that an employee has failed to make timely tender to the Union of initiation fees and/or periodic dues, the Employer agrees to terminate said employee on the eighth (8th) day from such notice unless the Union notifies the Employer in writing that the employee has complied with the provisions hereof.

If the Union discovers within thirty (30) days after the discharge of an employee that the discharge was in error, the Union shall so advise the Employer, provide the Employer with bona fide evidence that the termination demand was improper and the Employer shall then reinstate the employee with full seniority on the first weekly schedule posted by the Employer after being so notified by the Union in writing. [Bargaining Note: The companies will work with the unions involving extenuating circumstances]

The Union agrees to indemnify and hold the Employer harmless in any and all claims and/or causes of action which arise out of or are in any way connected with the Employer's compliance with this provision.

## **2.2 JOB REFERRAL AND NON-DISCRIMINATION**

- 2.2.1** The Employer shall not discriminate against any person in regard to hire, tenure of employment or job status because of race, creed, religion, sexual orientation, color or national origin, nor shall age, disability unrelated to the job duties, veteran status or sex under any circumstances be a basis for rejection or termination of an otherwise qualified employee or applicant for employment.

The Union agrees to allow new employees to enter into separate voluntary agreements providing for arbitration of statutory discrimination claims and remedies not covered by the Collective Bargaining Agreement under current case law.

When used, the term "he" refers to human beings of either sex and is used only for grammatical simplicity.

**2.2.2** Disputes or disagreements arising out of this section shall be referred to the Adjustment Board and the Arbitration process as provided for in this Agreement.

**2.3** **OTHER HIRING:** Whenever new employees are hired for jobs covered by this Agreement, from sources other than the list maintained by the Union, or when employees are transferred to jobs covered by this Agreement from outside the jurisdiction of this Union, the Employer shall:

**2.3.1** Promptly notify the Union of such employment in writing providing the employee's name, resident address, hire or geographical transfer date, place of employment (store number), job classification, mobile cell phone number and email address (if provided by the employee) and social security number if the employee is a new hires.

**2.3.2** Promptly advise the employee of the terms and provisions of this Agreement and of his obligations hereunder and

**2.3.3** Direct the employee to report to the Union within seven (7) days from the time of employment to be advised of the terms and provisions of this Agreement and of his obligations hereunder, and to complete necessary applications, forms and papers for qualification under the Health and Welfare, and Pension Plans provided by this Agreement.

The Union agrees to provide the Employer with Union application forms and standard information concerning Union dues and initiation fees. When completing new employees' new hire paperwork, the Employer will provide each employee with such Union application forms and Union dues/initiation fee information for their completion and forwarding to the Union. The responsibility to complete and forward these forms to the Union shall continue to be the responsibility of the employee.

The Employer will also provide each new hire with the Health and Welfare Trust benefit application forms, if supplied by the Union. The responsibility to complete and forward these forms to the Union shall continue to be the responsibility of the employee.

**2.3.4** **EMPLOYMENT:** If the Employer obtains a new employee through a private employment agency or a private training school, he shall pay the employment agency fee, or any training fee paid by or required of the employee.

**2.4** **NEW EMPLOYEES:** The provisions of this Agreement shall apply to the employment of any person covered by this Agreement, while such person is not a member of the Union.

**2.5** **EXTRA WORK:** Employees on the payroll of the Employer will be given preference for additional straight-time work before any other person who has worked during the same week on another job outside the retail industry is hired for such work.

## SECTION 3 DISCHARGES AND LAYOFFS

- 3.1 The Employer shall not discharge or discriminate against any employee for upholding Union principles, for serving on a committee of the Union or any organization affiliated therewith, or for refusing to purchase stocks, bonds, securities, or any interest in the Employer's business should Employer be operating as an individual, firm, company, partnership, joint stock company or corporation.

**PROBATION** There shall be a sixty (60) day probationary period for all new employees, during which time they may be discharged for any reason except if such discharge is in violation of Section 2.2.2, or 3.1 of this Agreement. Following completion of such period, the employee shall become a regular employee for all purposes under this Agreement and his seniority shall date from the first day of employment.

- 3.2 **TERMINATION:** Except for reasons beyond the Employer's control, regular employees who work on three (3) days per week or more shall be given three (3) working days-notice of layoff, dismissal, or discharge, or the equivalent pay, except when such termination has been for cause, such as insubordination, disorderly or improper conduct, under circumstances requiring immediate termination. Employees who work on two (2) days per week shall be given two (2) working days-notice under like conditions. In all such cases the day on which such notice is given shall not be counted unless a notice is given before the day's work begins. (A regular employee is one who has been in the continuous employ of the Employer for a period of sixty (60) days or longer).

- 3.3 **WORK PERFORMANCE:** The Employer shall have the right to discharge any employee for just cause. If the employee feels he has been unjustly discharged, he shall have the right of appeal, in writing, to be submitted to the Employer through action of the Union within ten (10) business days after the date of said discharge.

Before a regular employee is discharged, suspended, or demoted for incompetence or failure to perform work as required, he shall receive a written warning (with a copy to the Union) and be given an opportunity to improve his work.

Notices and warnings shall become null and void after six (6) months from date of issue. Written warnings need not be processed beyond the union filing a grievance in order to preserve the union's right to challenge the warning if it is used as progressive discipline in the future.

Disciplinary suspensions issued as corrective action shall become null and void after twelve (12) months of active employment from the completion of such disciplinary suspension, excluding "last chance" or "in lieu of termination" discipline, under the following conditions:



1. Failure to perform job duties, or;
2. Failure to maintain work schedule

**3.3.1** Upon severance of employment of any employee, the Employer shall, within seven (7) calendar days thereafter, notify the Union of such resignation, layoff or discharge.

If the discharge is for cause, the Employer agrees to submit the reasons for discharge, upon request from the Union, as soon as practicable but no later than three (3) days prior to a duly convened Board of Adjustment.

**3.4** **RECORD:** Any employee who is terminated shall, upon request, be given a statement setting forth the date of hiring and the number of hours worked during his employment.

**3.5** **POLYGRAPHS:** No Employer shall demand or require any applicant for employment or prospective employment or any employee to submit to or take a polygraph, lie detector or similar test or examination as a condition of employment or continued employment.

**3.6** **COMPANY RULES:** In the event the Employer establishes rules for its employees, such rules shall be reasonable, not inconsistent with the terms of the Collective Bargaining Agreement, and shall be furnished to the Union upon request.

When Company rules are changed or modified, a copy of such changes shall be supplied to the Union within ten (10) days following the implementation of any changes or modifications. For the purpose of this Section, the changed or modified rules, which are to be provided to the Union, are those rules contained in the Employer handbook, which is typically distributed to newly hired employees. These rules include, but are not limited to, dress code, attendance, conduct at work, employee purchases, insubordination, tobacco and alcohol sales, harassment and other similar rules as set forth in the Employer's handbook.

Rules or policies promulgated by the Employer shall not be construed or enforced to unlawfully prohibit or restrict employee rights under Section 7 of the National Labor Relations Act, as amended, as they relate to this bargaining unit during the term of this Agreement.

#### **SECTION 4 SENIORITY**

**4.1** **DEFINITION:** Seniority shall mean continuous service with the Employer and no employee shall suffer loss of seniority by reason of approved leave as provided for in this Agreement.

The Employer and the Union will meet to realign the Local Union's seniority area as needed.

**4.2** **CLASSIFICATION:** Seniority shall be by classification listed as follows and in Section 9:

1. Managing Clerks
2. Senior Head Clerks and Senior Produce Clerks
3. Head Clerks
4. Experienced Food and Apprentice Clerks
5. Non-Food/General Merchandise Clerks, Apprentice Non-Food General Merchandise Clerks and Floor Clerks
6. Courtesy Clerks subject to the restrictions of Section 9.3 hereof; Seniority of Courtesy Clerks shall be on a store-by-store basis, except that Courtesy Clerks transferred to another location will carry Courtesy Clerk seniority with them to the new location.

In the event that an Apprentice Food Clerk, who had previously served as a Courtesy Clerk, is going to be laid off before the completion of the first 520 hours of the apprenticeship progression then in that event the Apprentice Clerk may step back temporarily into the Courtesy Clerk classification at the store in which they are currently working until recalled.

7. Employees employed in classifications covered by addendum agreements shall be deemed separate classifications.

#### 4.3

**APPLICATION:** Reduction in part-time hours due to lack of work and weekly business fluctuations causing decreases in hours are to be handled among part-time employees by seniority and by classification on a store-by-store basis as is presently done, pursuant to Section 4.10.3

In case of layoffs (i.e., reduction in the number of employees), Section 4.3.2 shall apply.

It is recognized that an Employer's business conditions may from time-to-time require the temporary reduction of the hours of full-time employees. No full-time employee in the store affected by the lack of work shall be reduced to fewer hours than those scheduled and/or worked by any part-time employee in the store. In order to effectuate the above, the Employer may make necessary operational transfers consistent with the provisions of Section 4.9. In this agreement, nothing contained in this Section shall affect the right of the Employer to transfer employees or the right of employees to request transfers pursuant to the provisions of Section 4.9.

A full-time employee subject to reduction in hours as set forth in the paragraph above shall be given a choice of replacing the least senior full-time employee in the geographical seniority area or accepting the temporary reduction in hours in his store. If the employee elects to accept the reduction in hours, he shall have first preference for all available additional hours in that store up to and including a full-time, forty (40) hour job opening. While such an employee is temporarily working less than forty (40) hours he shall retain his full-time designation for a period of six (6) months following the initial reduction.

**A REGULAR FULL-TIME EMPLOYEE is:**

1. One who is hired or designated by the Employer to a regular forty (40) hour job opening, excluding relief for vacation, illness, authorized absences, or weekly business fluctuations.
2. An employee who becomes full-time pursuant to Section 4.10.1.

**4.3.1**

**PROMOTION:** Determination of which employee is to be promoted will be based upon seniority and reasonable qualifications. Qualifications shall include such factors as experience, job performance, aptitude, attendance, etc. Where merit and ability are approximately equal, seniority shall control.

Where an employee who has been promoted is unable to perform the duties of the higher classification or is being laid off from a classification above Experienced Food Clerk, he shall have the right to be demoted to his former or equivalent position without loss of seniority, and his right to such employment shall not be jeopardized by reason of such demotion.

An employee selected for a promotion will serve a sixty (60) calendar day probationary period, excluding Meat Clerks promoted to Apprentice Meat Cutter which shall be thirty (30) days. During this sixty (60), or thirty (30) day probationary period for Meat Clerks promoted to Apprentice Meat Cutter, the Employer may disqualify the employee from the position if the employee fails to adequately perform the duties of the position; or the employee may decide to reject the position for any reason.

If there is a dispute over a disqualification, the dispute may be submitted to the grievance/arbitration procedure. If the employee is disqualified or rejects the position, they may return to their former classification and former rate of pay with no loss of seniority. Furthermore, any discipline for failure to perform work as required that was received during the probationary period would be rescinded. Following the disqualification or rejection, the employee may not bid for the same position for a period of six (6) months following the date of disqualification or rejection.

All permanent job vacancies except Courtesy Clerks shall be posted, at each store of the Employer within the seniority area specified herein, for a period of five (5) days. The job posting shall specify the job classification and location of the store where the permanent job vacancy exists. Any employee interested in the permanent job vacancy must complete a job bid form and return it to the Store Manager on or before the expiration of the posting period. In the event the Employer decides to promote an existing employee to fill the permanent job vacancy, then in that event the selection of the employee to be promoted shall be in accordance with the provision set forth herein.

Any successful bidder who thereafter declines the promotion or is unable to perform the duties of the job shall be ineligible for any subsequent promotional bid for a period of six (6) months.

All permanent job vacancies below the Experienced Food Clerk classification shall be handled on a store-by-store basis. The Employer agrees to provide the Union with a list of employees, bimonthly, who have been promoted to positions above Experienced Clerk. There shall be no reduction in pay when a Non-Food/General Merchandise Clerk or Addenda employee is promoted to an Apprentice Food Clerk vacancy.

**4.3.1.1 SELF-DEMOTION:** The Employer may impose disciplinary action for conduct preceding an employee's decision to self-demote or continue previous progressive discipline subsequent to self-demotion consistent with Section 3.3 of the Agreement.

Employee self-demotion is permitted as outlined above and the Employer will accommodate an employee self-demotion request within ninety (90) days of such request. If there are circumstances that do not allow this to be accomplished within ninety (90) days, the Employer will advise the employee and the Union of such reasons and their plans to complete the transition as soon as reasonably practical. The parties understand and agree that completing any self-demotion is contingent on the availability of a person to fill the vacant position.

**4.3.2 TEMPORARY LAYOFF:** In the reduction of the number of employees due to lack of work, the last employee hired in the classification shall be the first to be laid off and, in recall, the last employee laid off in the classification shall be the first recalled until the list of employees previously laid off has been exhausted.

**4.3.3 RECALL:** Employees who are laid off due to lack of work shall have seniority rights in recall for jobs subsequently available with the Employer prior to the hiring of new employees. Such employee shall concurrently be notified by telephone or certified mail, a copy of which shall be sent to the Union, and shall have three (3) days to report after receipt of a copy of such notice of recall by the Union.

**4.3.4** It is further understood that the employee will not be able to claim wages under the provisions of sub-section 4.3.3 hereof except for hours lost commencing with the weekly schedule immediately following the Union's notification to the Employer of the claim, and thereafter until resolved.

If the employee or the Union gives written notice to the Employer within seven (7) days of his notice of layoff, the above provisions do not apply.

**4.4 LOSS OF SENIORITY:** No employee shall suffer loss of seniority unless he:

1. Is discharged for just cause;
2. Resigns or voluntarily quits;
3. Is absent from work for six (6) consecutive months due to layoff;
4. Is absent from work for more than thirty (30) days due to death in the immediate family;

5. Fails to return to work upon completion of a leave of absence as defined in Section 5.15;
6. Fails to report for work when recalled as provided in Section 4.3.3 of this Agreement. N

**4.5 SCHEDULE SELECTION: (FOOD)** The word "schedule" is interpreted to mean the weekly work schedule, including work on premium days, early and late work schedules.

**4.5.1** It is recognized that management has the right to establish such weekly work schedules to meet the requirements of the business; provided, however, such right shall not be utilized in an arbitrary or capricious manner to deprive an employee of his ability to exercise his seniority right to select such work schedule.

**4.5.2** Employees may select such schedules according to seniority by classification, applied on a store basis, provided they possess the necessary qualifications for the schedules selected. Qualifications include such factors as experience, job performance, aptitude, attendance, etc. It is recognized that employees must possess the necessary qualifications to perform the work when asserting their seniority either into or out of the Employer's produce department, or for work assignments requiring special skills and background.

**4.5.3** It is understood part-time employees may not bid for the schedule of other employees.

**4.5.4** The Employer shall not recognize the schedule selection request of any employee if the granting of the request would place the Employer in a position of violating the contract or having to pay a penalty for improper scheduling of shift intervals, or consecutive workdays.

**4.6 RELIEF WORK:** Employees assigned to regular relief work may, after six (6) months on such work, request the Employer, in writing, to be assigned to work in one store. The rescheduling of such relief work shall be done within thirty (30) days and be based upon inverse seniority. This provision shall not apply to temporary relief work required as a result of illness, injury, vacation or other like temporary relief work.

**4.7 LISTS:** The Employer agrees to provide a seniority list of employees in January and July. Such list shall be by seniority, listing the employee's date of hire, name, work location, classification, current rate of pay, mobile cell phone number and email address (if provided by the employee) employee identification number, and indicate if the employee is part-time or full-time.

Upon request by the Union, the Employer will provide a legend of Company job titles and what classification they fall within the collective bargaining agreement.

The list may be posted by the Union on a semi-annual basis in the stores break room.

**4.8 TEMPORARY ASSIGNMENTS:** The Union will cooperate with the Employer in the scheduling of employees for temporary part-time or relief work outside the geographical jurisdiction of this Agreement. However, no employee shall be discriminated against for refusal to accept such assignment.

**4.9 TRANSFERS:** No employee shall be required to accept a permanent transfer outside the jurisdiction of this Local Union unless approved by the Union. Requests for transfers, within the union's territorial jurisdiction, so an employee may work nearer his home will be given proper consideration, and will not be refused arbitrarily. Similarly, an employee will not be arbitrarily or capriciously transferred. Management will give proper consideration to transfer requests.

**4.10 PART-TIME EMPLOYEES:**

**4.10.1 REQUEST FOR FULL-TIME WORK:** Part-time Experienced Food Clerks will be offered full-time forty (40) hour job openings or part-time job openings with more hours excluding relief for vacation, illnesses, or other authorized absences within the employee's seniority. A vacancy created in an existing full-time classified journeyman food position, due to retirement, resignation, termination, promotion to Head Clerk or above bargaining unit position or transfer will be filled in accordance with the procedures outlined in this Section.

It is agreed that when a full-time vacancy occurs as the result of the death of said employee the vacancy will be filled, similar to a retirement or voluntary resignation, or when the employee's last day of work was performed within an approved leave of absence outlined in Section 5.15.

**4.10.1.2** An employee will remain eligible until offered a full-time opening or b written notification of their desire to be removed from consideration.

Provided the Experienced Clerk possesses the necessary qualifications and has complied with the requirement above, he shall be offered any job opening, except as restricted by the above, which might occur within the employee's assigned store before any employee is hired into said store.

No employee will be transferred into or out of a store to circumvent the application of this Section. The aforementioned provisions shall not affect the right of the Employer to transfer employees or the right of employees to request a transfer pursuant to the provisions of Section 4.9. In the event a full-time forty (40) hour job becomes available in a store in which no employee is desirous of such full-time position, the most senior employee with the necessary qualifications, within the geographical jurisdiction of the Union shall be offered the job before any employee is hired in said store.

**4.10.2 REQUEST FOR ADDITIONAL HOURS:** Part-time employees may request additional available hours within their classification on a store-by-store basis provided they have the previously mentioned qualifications, are available for the hours, and have notified their store manager in writing, or electronically (e-mail) submitted when operationally feasible, of their desire for more hours and they shall be afforded such hours by seniority.

**4.10.3 REDUCTION IN HOURS AND LAYOFF:** Reduction in part-time employees' hours, due to lack of work, shall be accomplished by seniority and by classification on a store-by-store basis.

In the reduction of the number of employees due to lack of work, the least senior employee in the classification shall be the first to be laid off and, in recalling the most senior employee laid off in the classification shall be the first recalled until the list of employees previously laid off has been exhausted. Such employees shall be notified by telephone, or if not reached by telephone or certified mail, a copy of which shall be sent to the Union.

**4.10.4 WAGE CLAIMS:** It is understood that employees will not be able to claim wages under this interpretation, except for hours lost commencing with the weekly schedule immediately following the Union's written notification to the Employer of the claim and thereafter until resolved. If the employee or the Union gives written notice to the Employer within seven (7) days of his notice of layoff, the above provisions do not apply.

**4.10.5 WEEKLY GUARANTEE:** All part-time employees (excluding Courtesy Clerks) shall be scheduled for at least twenty-four (24) hours work in each week.

Each Courtesy Clerk shall be scheduled for at least sixteen (16) hours work in each week or as provided in Section 9.3.1.

The weekly guarantee shall not apply if one or more of the following conditions exist:

1. The store is normally open for business six (6) days or less in the workweek;
2. A week in which one of the holidays named in this Agreement falls;
3. Employees scheduled to work are absent without proper notice;
4. Work is not available due to Acts of God;
5. The part-time employee, the Employer and the Union agree that the employee may work less than twenty-four (24) hours per week or less than sixteen (16) hours per week if the employee is a Courtesy Clerk, or as provided in Section 9.3.1;
6. An unanticipated, significant business fluctuation;
7. During the week an employee is recalled from layoff or returns from leave of absence.

**4.10.6** Part-time experienced employees (excluding Courtesy Clerks) with fifteen (15) or more years of service with the Employer will be guaranteed twenty-eight (28) hours per week. This provision will become effective thirty (30) days after the

employee reaches their fifteen (15) year anniversary. If an employee does not desire the twenty-eight (28) hour guarantee they shall submit a written request to the Employer requesting instead to work no more than twenty four (24) hours per week.

- 4.11 Notwithstanding anything to the contrary contained in this Agreement, any employee can perform the work of a lower paid classification except that Non-Food and General Merchandise Clerks can only perform Courtesy Clerk duties.

**SECTION 5 GENERAL PROVISIONS**

- 5.1 **SAFETY RULES:** Safety rules pertaining to the conduct of employees shall be conspicuously posted by the Employer in his place of business, and the Employer shall maintain in his store, or place of business, a fully equipped first aid kit. Employees will be provided with appropriate safety training and/or necessary personal protective equipment when assigned to cleaning duties where such training or equipment is required by Federal and/or State Law.

- 5.1.1 **WORKING CONDITIONS AND SAFETY: (MEAT)** Adequate "First Aid Equipment" shall be furnished and maintained in the shop, in a place readily and conveniently accessible to the employees.

All first aid kits shall contain no cotton and be maintained so as to contain the following:

1.	50 Adhesive Bandages	1" x 3"
2.	2 rolls Adhesive Tape	2.5 yards
3.	25 Antibiotic Treatment Application	1/57 once
4.	50 Antiseptic Applications	1/57 once
5.	1 Breather Barrier	-----
6.	2 Burn Dressing Gel Soaked	4" x 4"
7.	25 Burn Treatment	1/32 once
8.	2 Cold Pack	-----
9.	2 Eye Coverings	-----
10.	Eye Wash	4 oz once
11.	1 First Aid Guide	-----
12.	10 Hand Sanitizer	.9 gram
13.	4 Pair Exam Gloves	-----
14.	2 Roller Bandage	2" x 4 yards
15.	1 Roller Bandage	3" x 4 yards
16.	1 Scissors	-----
17.	1 Splint	4" x 24"
18.	4 Sterile Pads	3" x 3"
19.	1 Tourniquet	-----
20.	4 Trauma Pads	5" x 9"
21.	2 Triangular Bandages	40" x 40" x 56"

Basic content Industrial Kit, add as necessary.

A suitable floor covering shall be placed over any concrete or concrete substitute floor behind the meat counter.



Working conditions which are injurious to the health or safety of the employees shall be directed to the attention of the Employer at which time the Employer shall immediately investigate the alleged condition, shall meet with representatives of the Union to discuss the alleged condition and shall immediately take the necessary steps and measures to correct such condition.

Employees who are assigned to continuous work in freezers will not be required to remain therein more than fifty (50) minutes out of each hour.

**5.2 MILITARY SERVICE:** The Employer agrees to comply with the terms of the Universal Military Training and Service Act and Reemployment Rights Act, with reference to all provisions providing for the re-employment of persons entering Military Service. These provisions shall be deemed a contractual obligation under the terms of this Agreement.

**5.3 BONDING:** Whenever the Employer requires the bonding of any employee or the carrying of any insurance for the indemnification of the Employer, premiums for the same shall be paid for by the Employer. No cash deposits, cash or real property bond, shall be required of any employee.

**5.4 FLOOR COVERING:** Wood or suitable floor-covering shall be provided for on all concrete floors behind check-stands.

**5.5 UNIFORMS:** Where the Employer desires the wearing of a uniform and/or head covering, the Employer shall furnish the same without cost to the employee. The Employer shall also provide for the maintenance of such wearing apparel. Provided, however, that if drip-dry uniforms are furnished by the Employer then the employee will maintain such uniforms.

Shirts and/or ties will be supplied only if the Employer specifies both the color and the specific style. Specific style shall be defined as collar style, sleeve length and fabric content. Once implemented, there shall be no change in color unless by mutual agreement.

**5.6 SPECIAL WEAR:** It is also understood if an employee is required by the Employer to purchase or rent a special costume or unusual clothing not part of his existing wardrobe, the Employer shall reimburse the employee for any reasonable and necessary cost involved; or furnish the required costume or unusual clothing to the employee without cost for the period of time the requirement is in effect.

Employees required to work in Refrigerated Rooms shall be permitted to wear slacks, sweaters, or other suitable clothing to adequately protect them from cold and dampness while working in such rooms.

The Employer shall provide rain jackets.

Employees will be allowed to wear appropriate clothing to protect from inclement weather in accordance with the Employer's dress code policy.

Employees who are required by the Employer to use clothing or boots other than those provided for in the paragraph below shall have such clothing or boots supplied by the Employer.

Employees required to work in and out of cutting rooms or coolers shall be permitted to wear slacks, sweaters, or other suitable clothing to adequately protect them from cold and dampness.

**5.7 TOOLS AND EQUIPMENT:** The Employer shall furnish all the required equipment and tools necessary for their employment, without cost to the employee.

**5.8 PAY DAY AND DEDUCTIONS:** Employees shall be paid at least once each week, within five (5) days after the termination of the week's work, and before his shift terminates on pay day except in extenuating circumstances and any holiday week when the above period shall be increased to six (6) days. The Employer shall furnish each employee with a weekly wage statement showing his name, hours of work, overtime if any, total wages paid and list of deductions made.

**5.9 BULLETIN BOARDS:** The Union may put up bulletin boards in the stores no larger than 36 inches in height and 30 inches in width. Such bulletin boards are to be placed in a conspicuous area of the store such as the lunch room or near time clocks, however, the Company may determine the final location. The Company has the sole discretion to determine whether any such materials are "detrimental" to the company's interest. Such notices shall contain only matters of official Union business and shall not be used as propaganda.

**5.10 UNION BUSINESS:** The Employer recognizes the right of the Union to appoint Shop Stewards. The Employer agrees to schedule up to three (3) Shop Stewards, based on store size and volume, designated by the Union, a day off, at the employees' daily straight-time rate based on the average daily hours worked in the preceding pay period, not to exceed eight (8) hours, to attend an annual education meeting. The parties agree that such time shall not be considered time worked for purposes of overtime, benefit contributions or other incidents of "time worked." In all such instances the Employer shall be notified not less than two (2) weeks in advance of such absence and the number of employees requesting such absences shall be so limited by the Union that it will not interfere unreasonably with the Employer's business.

The Employer agrees to schedule any employee who is an officer, or a representative of the Union, in any capacity of the Union, hours of work that will permit him to attend the meetings of the Union. The Employer further agrees that these representatives will not suffer any loss in their normal scheduled hours in the week that they attend said Union meetings. It being understood that in doing so, the Employer shall not be placed in a position of violating the contract or having to pay any penalty for improper scheduling. The Union agrees that it will give the Employer seven (7) days advance notice of the date and time of the meeting referred to above. This provision shall also apply to new members who are required to attend meetings for the purpose of completing their obligations as members of the Union.

Upon written request of the Union, employees shall be allowed time off without pay for the purpose of attending agreement negotiations, adjustment or arbitration Board hearings, or for other bona fide Union business including Union Executive Board meetings. In all such instances, the Employer shall be notified not less than three (3) days in advance of such absence and the number of employees requesting such absences shall be so limited by the Union that it will not interfere unreasonably with the Employer's business.

Should an employee be notified, by a representative of management, that he will be subject to an investigative interview, by the Employer, the employee shall be given an opportunity to speak briefly with the Shop Stewards, if the Shop Steward is on duty. The Shop Steward shall be given the opportunity of a brief, private meeting, with the employee to be interviewed, so that he may be informed of his right to request a Union Representative to be present during the interview.

- 5.11 UNION EMBLEM:** The Union agrees to issue Union Store Cards or window decals to the Employer under the rules governing Union Store Cards set forth by the U.F.C.W. Such Union Store Cards and decals are, and shall remain, the property of said U.F.C.W. and the Employer agrees to surrender said Union Store Cards or decals to an authorized representative of the Union on demand in the event of failure by the Employer to observe the terms of this Agreement or the conditions under which said Union Store Cards or decals are issued.

The Employer shall display such Union Store Cards or decals in conspicuous areas accessible to the public, in each establishment covered by this Agreement.

- 5.12 JOB INJURY:** When an employee is injured on the job and reports for medical care and it is certified that he is unable to continue work, he shall be paid the basic straight-time rate of pay for the hours not worked on the day of injury.

- 5.13 PAYROLL DATA:** In the event the Union has information that the Employer has violated provisions of this Agreement relating to rates of pay or the payment of health and welfare, pension and sick leave contributions, the Employer agrees to supply the Union with the necessary payroll data.

- 5.14 JURY DUTY or COURT APPEARANCES:** Employees required to perform jury duty or to appear in Court or the Police Department on behalf of their Employer, shall receive their regular straight-time pay during such jury duty or such appearances, less jury pay or witness fees received. It is understood that time spent in awaiting impaneling for jury service is to be considered covered time under this provision.

Employees regularly scheduled for night work shall be rescheduled to a day shift for the period of jury duty service.

Employees shall immediately report for work after being excused from jury duty service, provided there is sufficient time remaining on the daily work schedule to work at least half of the daily shift. Failure to so report shall render null and void any claim for jury service for that day.

- 5.15 LEAVES OF ABSENCE:** Leaves of absence shall be granted as follows:
- 5.15.1 SICKNESS AND NON-INDUSTRIAL INJURIES:**Up to twelve (12) months after one year's employment.
- 5.15.2 INDUSTRIAL INJURIES:** Up to twelve (12) months for any employee incurring an industrial injury after his first sixty (60) days of employment and who has less than three (3) years seniority at the time said leave of absence commences.
- Up to eighteen (18) months, for any employee who has three (3) or more year's seniority at the time said leave of absence commences.
- 5.15.3 PERSONAL LEAVES:** Leaves up to thirty (30) days after one (1) year of employment for compelling personal reasons to be agreed upon by the parties, such leaves shall be requested and granted in writing.
- At the end of any period of such leave of absence for illness or injury, an employee shall be restored to employment with the company with full seniority to a position comparable to the one he held immediately prior to such leave of absence.
- 5.15.4** The parties agree to comply with the Family Medical Leave Act (FMLA), and the Americans with Disabilities Act (ADA), and the equivalent State Acts and regulations.
- 5.16 FUNERAL LEAVE:**
- 5.16.1 PART-TIME FUNERAL LEAVE:** Part-time employees shall be entitled to two (2) additional unpaid days for funeral leave. Request for such paid leave after one (1) week from the date of the death will be granted up to sixty (60) days from death, but the request must be in writing.
- 5.16.2 FULL-TIME FUNERAL LEAVE:** When a regular full-time employee on the active payroll is absent from work for the purpose of arranging for or attending the funeral of a member of his immediate family as defined below, the Employer shall pay him for eight (8) hours at his regular rate of pay for each day of such absence up to a maximum of three (3) days, provided;
1. The employee notified the Employer of the purpose of his absence on the first day of such absence;
  2. Requests for such paid funeral leave entitlement after one (1) week from the date of death will be granted up to sixty (60) days from death, but the request must be in writing.
  3. The absence occurs on the day during which the employee would have worked but for the absence;
  4. The employee, when requested, furnishes proof satisfactory to the Employer of the death, his relationship to the deceased, the date of the funeral, and the employee's actual attendance at such funeral.

5. Employees also may request in writing, and have granted by the Employer, up to an additional thirty (30) day personal leave of absence pursuant the provisions of Section 5.15.3.
6. For the purpose of subsection 5.16.1 and 5.16.2, a member of the immediate family means the employee's spouse, child, mother, father, sister, brother, mother-in-law, father-in-law, grandparents and grandchildren, stepmother, stepfather, stepchildren and registered domestic partner.

A thirty (30) day leave of absence without pay shall be allowed where necessary in order to care for necessary details resulting from the death of a member of his immediate family as herein above defined; provided, further, that all leaves of absence granted in this Agreement shall be considered as part of the continuous service with the Employer.

**5.17 RETURNED CHECKS:** Where the Employer has a posted or published check-cashing policy, the employees shall conduct themselves accordingly, and when an employee follows such policy, he shall not be held financially responsible for returned checks, other than his own personal check, nor shall he be expected or required to locate the check-cashing customer.

**5.18 DUES CHECKOFF:** The Employer agrees to deduct uniform monthly dues, initiation fees, and assessments as determined by the Local Union on a regular basis, from the wages of employees in the bargaining unit who provide the Employer with a voluntary written authorization for such deductions. Such deductions, when authorized, will be transmitted to the office of the Local Union no later than the 15th day of the month following the month in which deductions are made. No deduction will be made from the wages of any employee until the Employer has received a signed copy of voluntary written authorization for such deductions.

Authorizations for deductions are to be entirely voluntary upon the part of each such individual employee. Authorizations shall be irrevocable for a period of one (1) year or until the termination of this Agreement, whichever occurs sooner. The authorization shall be automatically renewed or be irrevocable for successive periods of one (1) year each or for the period of each succeeding applicable Bargaining Agreement, whichever shall be shorter, unless written notice is given by the employee to the Employer and the Local Union not more than twenty (20) days and not less than ten (10) days prior to the expiration of each period of one (1) year or of each applicable Collective Bargaining Agreement.

The Union shall indemnify and hold the Employer harmless from any and all actions resulting from the implementation of this provision. However, mistakes by the Employer shall be immediately corrected by the Employer upon notification from the Union.

**5.19 POLITICAL CHECKOFF:** The Employer agrees to deduct political contributions monthly as determined by the Employer on a regular basis, from the wages of employees in the bargaining unit who provide the Employer with a voluntary

written authorization for such deductions. Such deductions, when authorized, will be transmitted to the office of the Local Union no later than the 15th day of the month following the month in which deductions are made. No deduction will be made from the wages of any employee until the Employer has received a signed copy of voluntary written authorization for such deductions.

Authorizations for deductions are to be entirely voluntary upon the part of each such individual employee unless written notice is given by the employee to the Employer and the Local Union not more than twenty (20) days and not less than ten (10) days prior to the expiration of the Collective Bargaining Agreement.

The Union shall indemnify and hold the Employer harmless from any and all actions resulting from the implementation of this provision. However, mistakes by the Employer shall be immediately corrected by the Employer upon notification from the Union.

**5.20 SPECIAL PROJECT UNION REPRESENTATIVE (SPUR):** The Union may select any employee(s) to be a SPUR. By mutual agreement, the selected employee(s) may serve as a SPUR for an initial period of up to six (6) months. Such leaves shall be requested and granted in writing. In the event the employee wishes to return to work prior to the scheduled end of the leave, the employer will be provided with at least two (2) weeks prior written notice. During the service period as a SPUR, the employee(s) will be considered to be on an approved personal leave of absence. After the service period ends, the employee(s) will be returned to his job or a comparable position with no loss of seniority. He will not, however, be credited any hours with the Employer toward advancement in the wage scale. He will be returned to the same wage as he made before becoming a SPUR and will be entitled to whatever benefits may be due under the terms of the documents and rules governing the applicable health and welfare and pension trusts.

All wages, benefits and the like during the service period will be the responsibility and sole obligation of the Union. The Employer will have no obligation for wages, benefits or the like during the service period. Additionally, the Union will provide workers compensation coverage for the SPUR and comply with all Federal, State and Local laws applicable to the employment of the SPUR.

The period of service of the SPUR may be renewed by mutual agreement for additional periods of three (3) months up to an aggregate service period of twelve (12) months.

## **SECTION 6 HOURS, OVERTIME AND SUNDAY PREMIUM PAY**

**PREAMBLE:** In the event the application of Federal Wage and Hour Law as applied to retailing conflicts with the intent of this Agreement, the Parties shall meet immediately to re-negotiate this Agreement in order to preserve the intended workweek and the rates pertaining thereto.

The industry recognizes the five (5) day, forty (40) hour week provisions except for layoffs and individual cutbacks due to lack of work, acts of God or circumstances beyond the control of the Employer. This section, however, does not impede the right of the Employer to use part-time help as needed.

- 6.1 BASIC WORK DAY AND WEEK:** Forty (40) hours, consisting of five (5) days of eight (8) hours each in a calendar week, Sunday through Saturday, shall constitute a week's work as provided in this entire section. Employees, other than those scheduled to work six (6) days in a week, shall receive two (2) days off, not necessarily consecutive, in each calendar week. A day's work shall consist of eight (8) hours within nine (9) consecutive hours with one (1) full-uninterrupted hour off for a meal. A one-half (½) hour lunch period for a crew, a shift of employees or an individual employee may be implemented by mutual agreement of the Employer and the employee(s).

A workweek consisting of four (4) ten (10) hour days may be implemented by mutual agreement of the parties.

- 6.1.1 HOLIDAY WORK WEEK:** For all full-time employees, thirty-two (32) hours, consisting of four (4), eight (8) hour days, exclusive of the holiday shall constitute a week's work in any week in which a holiday falls. Even if scheduled to work thirty-two (32) hours during the week of a holiday, part-time employee's holiday pay shall be prorated in accordance with Section 10.1.5. Part-time employees shall be scheduled to work at least their minimum hours of weekly work excluding pay for the holiday.

Work shall not be performed without pay prior to the beginning of the scheduled working day. It is understood that the checking of produce or shelf prices shall be considered as time worked. Work may be performed at the end of the working day in completing service to a customer, which commenced prior to the end of the working day.

- 6.2 OVERTIME AND PREMIUM WAGE RATES:** The overtime and premium wage rates of pay shall be as follows:

**TIME AND ONE-THIRD:**

Effective July 20<sup>th</sup>, 2022, work performed on Sunday shall be paid at the rate of One and one-third (1.333x) times the straight time hourly rate. Employees hired after July 20<sup>th</sup>, 2022, shall be paid their regular hourly rate on Sunday for work performed on Sunday.

**TIME-AND-ONE-HALF THE STRAIGHT-TIME HOURLY RATE:**

1. Work in excess of eight (8) hours per day.
2. Work in excess of forty (40) hours per week.
3. Work on the sixth (6<sup>th</sup>) day worked in a calendar week.

4. Work performed after the fifth (5th) consecutive day worked without reference to the calendar week by a normal five-day employee until consecutive days are broken by a day off except when the schedule of an employee who has had or who is to have two (2) consecutive days off is changed in accordance with this Agreement.
5. Work performed after the sixth (6th) consecutive day worked without reference to the calendar week by a normal six-day employee until consecutive days are broken by a day off, except when the schedule is being changed in accordance with this Agreement.
6. Work performed by a full-time employee called in to work on a scheduled day off and given shorter notice than required by the Agreement, but if such an employee works six (6) days during that calendar week, work performed on the scheduled day off shall be paid for at the employee's straight-time rate for that day and that on the sixth (6th) day worked shall be paid for at the overtime rate.
7. Work performed within ten (10) hours from the time the last shift ended.
8. Work performed where a meal period is not afforded in conformity with Section 7.5.

**DOUBLE THE STRAIGHT-TIME HOURLY RATE:**

1. Work in excess of eight (8) hours on the sixth (6th) day worked in a calendar week.
2. Work performed on Sunday, which is a day in excess of five (5) consecutive days by a scheduled five-day employee except when the schedule of said employee who has had or is to have two (2) consecutive days off is changed in accordance with this Agreement.
3. Work performed on the seventh (7th) day in a calendar week.
4. Work performed on a holiday in this Agreement (in addition to holiday pay if entitled) regardless of which day of the week the holiday falls, for employees hired prior to or on July 20<sup>th</sup>, 2022. For employees hired after July 20<sup>th</sup>, 2022, work performed on the holiday (in addition to holiday pay if entitled) will be paid at their straight-time hourly rate and an additional one (\$1) per hour premium.
5. Work performed after five (5) hours on a Sunday until a meal period is taken.
6. Work performed on a Sunday until ten (10) hours between shifts has elapsed.

**DOUBLE TIME AND ONE-QUARTER THE STRAIGHT-TIME HOURLY RATE:**

1. Work performed in excess of eight (8) hours on a Sunday.



**DOUBLE TIME AND ONE-HALF THE STRAIGHT-TIME HOURLY RATE:**

1. Work performed by a full-time employee on Sunday when Sunday was a scheduled day off and the employee was given shorter notice than that required by the agreement but if such an employee works six (6) days during that calendar week, work performed on that Sunday shall be paid at the rate of time-and-one half (1.333 x effective January 1, 2006) the straight-time hourly rate and that on the sixth (6th) day worked, shall be paid for at the applicable overtime rate.
2. Work performed on Sunday, which is in excess of six (6) consecutive days by a six-day employee.
3. Work performed after five (5) hours until a meal period is taken on a holiday.
4. Work performed on a holiday until ten (10) hours between shifts has elapsed.

**TRIPLE THE STRAIGHT-TIME HOURLY RATE:**

1. Work performed in excess of eight (8) hours on a holiday named in this Agreement.

**6.2.1 OVERTIME AND PREMIUM WAGE RATES:**

**6.3 CONSECUTIVE DAYS:** It is understood that consecutive days worked are interrupted by a holiday or a scheduled day off; and shall be considered to be interrupted when an employee is required to work on a holiday or when by reason of a bona fide emergency, an employee is required to work on his scheduled day off for which he has received the required premium pay for such work.

**6.4 SCHEDULED WORK:** Whenever an employee's schedule is not changed in accordance with the provisions of this Agreement and he is worked outside such schedule, then the hours so worked shall be paid for in accordance with the overtime provisions of this Agreement.

**6.5 NO COMPOUNDING OR PYRAMIDING:** There shall be no pyramiding of overtime and/or premiums and only the highest applicable rate shall apply.

**SECTION 7 WORK SCHEDULES AND PREMIUM RATES**

**7.1 POSTING OF WORK SCHEDULES:** The Employer agrees to keep-posted in each store a weekly schedule, in ink, of working hours for all employees. Such schedule shall show the full name of each employee, classification, starting time, meal period, finishing time and days off this schedule shall continue in effect until a new one is posted. The schedule shall contain the employee's full name and total weekly hours scheduled. A twenty-four (24) hour notice of any change in such schedule, other than meal period, shall be given by the Employer, except that in the case of a change in a day off, at least five (5) days advance notice shall be posted except in case of a bona fide emergency.

- 7.1.1 POSTING NOTICE:** Work schedules must be posted by 3 p.m. on Thursday of the week preceding the week in which such schedules are to be effective. If assignment of employees to schedules is inconsistent with the terms of Section 4.5, employees will have until 6 p.m. on Thursday (or three (3) hours after the schedule is posted) to bring such inconsistency to the store manager's attention and seek assignment in accordance with Section 4.5. When a senior employee obtains such a different schedule, then the displaced junior employee shall be assigned the senior employee's previously assigned schedule for the following week. If the schedule is not posted timely due to circumstances beyond the control of the person responsible for posting it, the untimely posting shall not be the basis of any monetary claims.
- 7.1.2 POSTING NOTICE:**
- 7.1.3** The Company recognizes the importance of posting the weekly schedule in a timely fashion. When any failure to timely post schedules is brought to the Company's attention, it will take appropriate and affirmative steps to assure compliance with the contract and to prevent reoccurrences and will inform the Union of the steps that it has taken.
- 7.2 SHIFT INTERVAL:** Except in bona fide emergencies, the minimum time off between shifts shall be ten (10) hours and employees called to work sooner than ten (10) hours from the end of their last work period shall be paid time and one-half (1½) the employee's straight time rate for all work performed up to the time said ten (10) hour period between shifts shall have elapsed.
- 7.3 SCHEDULED TO WORK A HOLIDAY:** Any employee, normally scheduled to work five (5) days, who is temporarily re-scheduled to work on a holiday shall be permitted to work his normal number of working days that week.
- 7.4 CHRISTMAS EVE:** No employee shall be required to work after 8:00 p.m. on Christmas Eve except those employees necessary to service the customers in the store at 8:00 p.m. and to properly close and secure the store.
- NEW YEAR'S EVE:** On New Year's Eve, the store shall be staffed with volunteers between 8:00 p.m. and 12 midnight. If insufficient employees volunteer, assignment shall be by inverse seniority within the store. The employer will post a sign-up sheet for volunteers, in a conspicuous location at least two weeks in advance of New Year's Eve or Christmas Eve.
- HOLIDAY EVE:** No employee shall be required to work after 8:00 p.m. on Christmas Eve and New Year's Eve. Between 8:00 p.m. and midnight on Christmas Eve or New Year's Eve, the store will be staffed with volunteers. If insufficient employees volunteer on New Year's Eve, assignment shall be by inverse seniority.
- 7.5 MEAL PERIOD:** Each employee shall be released from work for his meal period within five (5) hours, but no sooner than three (3) hours of the time of his reporting to work. One (1) full uninterrupted hour should be given as a meal period or one-half (½) uninterrupted hour shall be posted and given as a meal period with the

mutual agreement of the Employer and employee. No employee shall work longer than five (5) hours without a meal period except as provided in Section 7.5.2 of this Agreement. Employees working in excess of five (5) hours during an eight (8) hour shift without a meal period shall receive overtime compensation for all such work performed in excess of five (5) hours until released for a meal or relieved from duty. In addition, all non-meat employees shall receive time and one-half (1½) for hours worked between the meal period and the completion of the third (3<sup>rd</sup>) hour.

- 7.5.1** In accordance with state law, the Employer may schedule up to a six (6) hour shift without a meal period. If said scheduled shift is greater than five (5) hours, the overtime rate shall not apply and shall include two unscheduled ten-minute breaks.
- 7.6** **BREAKS:** No employee shall be denied the right to necessary or required relief. All employees shall be allowed an unscheduled ten (10) minute break in the first half of their shift prior to the meal period, and an unscheduled ten (10) minute break in the last half of their scheduled shift prior to quitting time.
- 7.7** **DAILY GUARANTEE:** Any full-time employee (one who is normally scheduled to work forty (40) hours or more per week) who is ordered to report for work shall be guaranteed not less than eight (8) hours' work. Any part-time employees except students and courtesy clerks who are ordered to report for work shall be guaranteed not less than four (4) hours' work. Bona fide students, who, by reason of attending scheduled classes, may not work four (4) hours, may be individually exempted from this provision by written agreement of the Employer, the Union and the employee involved.
- 7.7.1** **ALAMEDA AND CONTRA COSTA COUNTIES:** Any part-time employees hired prior to May 2, 1983, except students and Courtesy Clerks who are ordered to report for work shall be guaranteed not less than eight (8) hours' work.
- 7.7.2** Experienced Non-Food Clerks who have had the eight (8) hour guarantee shall continue to enjoy the eight (8) hour guarantee provided they were in the above classification working for an employer covered by this agreement on May 3, 1983. New hires shall have a four (4) hour guarantee.
- 7.7.3** Meat Clerks hired after 1/1/86 have a four (4) hour per day, 24 hour minimum per week guarantee.
- 7.8** **NIGHT PREMIUM:** All Food Clerks and General Merchandise Clerks, except Courtesy Clerks, shall receive extra compensation, in addition to the regular scale herein set forth, of sixty-five cents (\$.65) per hour for all work performed between the hours of 10 p.m. and 6 a.m.
- 7.9** **EMPLOYEES ON LAST SHIFT:** Employees on duty at the recognized hour of closing may be required to wait on all customers and perform other duties necessary to closing. Such employees shall be scheduled so that their shift ends at least fifteen (15) minutes after the recognized hour of closing.

## SECTION 8 WAGES:

- 8.1 The Appendixes set forth the minimum rates of pay, effective dates and other provisions and are incorporated herein as if set forth in full.
- 8.2 Non-contractual discretionary bonuses may be modified or discontinued at the Employer's discretion with prior notice to the Union. This exception does not apply to over scale wage rates.

## SECTION 9 CLASSIFICATIONS OF EMPLOYEES

- 9.1 For the purpose of this Agreement, the classification of employees is hereby defined as follows:
- 9.1.1 **MANAGING CLERKS:** Every store shall have a managing clerk unless the Employer, or a Supervisor within the meaning of the National Labor Relations Act, as amended, is actively engaged on the premises performing the work of the managing clerk. A managing clerk is an employee who has charge of and general supervision over not more than one store.

In the event the Employer or Supervisor is absent from the store for one or more eight (8) hour days in a week a clerk shall receive the wage scale of a managing clerk for said work.

- 9.1.2 **SENIOR HEAD CLERK, SENIOR PRODUCE CLERK AND HEAD CLERK(S):** These are non-supervisory employees who in addition to their duties of Clerk in the course and scope of their employment, perform one or more of the following duties:

**SENIOR HEAD CLERK:** This classification shall apply only to the Senior Head Clerk who acts as Assistant to the Managing Clerk or Owner and is commonly known as the "second man" in the store.

**SENIOR PRODUCE CLERK:** This classification shall apply to an employee who goes to the wholesale produce market to buy produce, or who is in charge of the produce section or department. This classification shall apply in all cases where an employee was classified as a Head Clerk in the Employer's produce departments or sections under the 1964-67 Collective Bargaining Agreement, but shall not be applicable to Produce Managers or Buyers employed under said contracts who shall not be reclassified and who shall receive the same wage increases over their present rates of pay as all other employees.

- 9.1.3 **HEAD MEAT CUTTER:** Stores shall have one Head Meat Cutter on duty each day whenever fresh meat is available for sale. Only a Journeyman Meat Cutter may perform the duties of a Head Meat Cutter. Except in markets operated by an Owner.
- 9.1.4 **HEAD CLERKS:** Acts as produce buyer at the store, or assists management in the operation of a Produce Section or Department; provided that where there is an employee in the department classified as a Senior Produce Clerk, this provision shall not require the classification of any other employee in the

department as a Head Clerk.

Is engaged the major part of his time in the receiving department of the Employer's establishment, and is in charge of and responsible for the receiving of merchandise.

Has the authority and responsibility of buying or selecting merchandise for a department, section or area, or directs other employees in the performance of their duties in such department, section or area.

- 9.1.5 NIGHT STOCKING HEAD CLERK:** In night stocking crews, a clerk shall be designated and paid as a head clerk to direct the work of the crew.

In every store having three or more full-time employees, where one or more of the employees perform the duties of head clerk, as a regular part of their employment, the Employer shall designate at least one of said employees to act as Head Clerk; provided, however, that the Employer may combine and rearrange the duties performed by his employees in order to minimize the number of Head Clerks required.

- 9.1.6 NON-FOOD/GENERAL MERCHANDISE HEAD CLERK** has the authority and responsibility of buying or selecting merchandise for a department, section or area, or directs other employees in the performance of their duties in such department, section or area. It is understood that the mere occasional or incidental performance of any of the Non-Food/General Merchandise Head Clerk's duties shall not be construed as a basis for classifying any employee as a Non-Food/General Merchandise Head Clerk.

- 9.1.6.1** In the absence of a Deli Manager for a week or more, there shall be an employee designated to be in charge of the Deli and paid at the Non-Food/GM Head Clerk rate of pay, subject to the employee performing all of the essential functions of the job.

- 9.1.7 ADDITIONAL DUTIES:** In the event that the Employer desires to assign additional non-supervisory duties and responsibilities to one of his employees over and above the normal duties and responsibilities of Head Clerk, then in such event the additional compensation to be paid such an employee shall be agreed upon between the Employer and the Union.

When an employee qualifies for or is held responsible for Senior or Head Clerk's duties, he shall receive the Senior or Head Clerk's pay for the entire shift.

It is understood that the mere occasional or incidental performance of any of the Head Clerk's duties shall not be considered as the basis for classifying any employee as Head Clerk.

- 9.2 EXPERIENCED FOOD CLERKS:** An Experienced Food Clerk is an employee who has gained 5720 hours experience in the retail food industry.

**PREVIOUS FOOD EXPERIENCE:** If an Experienced Food Clerk has been out of the industry no more than five (5) years, he will be allowed to start at the (7<sup>th</sup>) Apprentice Food Clerk rate of pay.

**PRIOR FOOD EXPERIENCE:** An employee who fails to accurately list, on an employment application, his approximate number of prior hours of experience in the Retail Food Industry and, as a result, is improperly classified by the Employer shall not be entitled to a retroactive wage adjustment if it is subsequently determined that a classification adjustment is warranted.

Notwithstanding the above, no such retroactive wage claim shall exceed ninety-one (91) days.

- 9.2.1 APPRENTICE FOOD CLERKS:** An Apprentice Food Clerk is an employee who has less than 5720 hours experience in the retail food industry. The Union agrees to negotiate with the Employer an appropriate rate, during the probationary period, for employees who have gained food store experience outside of the jurisdiction of the Northern California Retail Clerks Unions. The appropriate Apprentice or Experienced Food Clerk rate shall be determined by the parties according to the employee's comparable previous retail grocery store experience. An Apprentice Food Clerk below a sixth (6<sup>th</sup>) step may perform the duties of any classification except Managing Clerk or Head Clerk.

It shall be understood that Apprentices shall be guaranteed full training within the apprenticeship period, including thirteen (13) weeks' work at the check stand and at least thirteen (13) weeks' work in shelf stocking assignments.

- 9.2.2 NON-FOOD/GENERAL MERCHANDISE CLERK:** An Experienced Non-Food/GM Clerk is an employee that has gained 5200 hours' experience in the retail food industry.

**PREVIOUS EXPERIENCE:** If an Experienced Non-Food/GM Clerk has been out of the industry no more than five (5) years, such Clerk will be allowed to start at the 4th Apprentice Non-Food/GM Clerk rate of pay.

If an experienced Non-Food/GM Clerk has been out of the industry ten (10) or more years, he will be allowed to start at the 3rd Apprentice Non-Food/GM Clerk rate of pay.

- 9.2.3 GENERAL CLERK:** The position of General Clerk shall be used by the Employer in the same capacity as that of a Non-Food/GM Clerk but shall be prohibited from performing any duties in the Bakery or Deli. The Employer is limited to no more than two (2) General Clerks in any one store. No current Non-Food/GM Clerk shall suffer any loss of work hours as of May 12, 2020, as a result of the introduction of this classification.

- 9.3 COURTESY CLERKS:**

**DUTIES:** A Courtesy Clerk is an employee who may perform only the following duties:

1. Courtesy Clerks may not stock, prepare, or price merchandise (except carry-backs), operate cash registers, perform office work or break down loads. This is not intended to significantly change the duties performed by Courtesy Clerks.
2. The Employer agrees to specifically instruct each Courtesy Clerk upon his employment, in writing, that under no circumstances shall he be allowed to work more than one (1) hour after the closing of the store to the public or one (1) hour before the opening of the store or to receive, stock, display, check, mark, or perform any duties except those set forth above.

Courtesy Clerks shall be subject to all the provisions of this Agreement except that instead of the minimum work guarantee set forth in this Agreement, when scheduled or called in to work they shall be provided with at least two (2) hours' work on week days and four (4) hours' on Saturdays, Sundays or on Holidays as set forth in this Agreement.

- 9.3.1**      **GUARANTEE:** Each Courtesy Clerk shall be offered at least sixteen (16) hours work in each week. In the event said Courtesy Clerk cannot be scheduled to work or cannot work sixteen (16) hours in the week, he shall not work at all during that particular week. However, the Company may schedule the employee less than sixteen (16) hours per week only at the employee's voluntary request, provided such request is initiated in writing by the employee, signed by the employee and approved by the Employer. A copy of the employee's request will be kept at the store and made available to the Union upon request.

No more than eight (8) Courtesy Clerks per store will be allowed the exception each workweek.

- 9.3.2**      The employment or continuation of employment of a Courtesy Clerk shall not cause the replacement of an existing regular full-time or part-time clerk, or Apprentice Clerk, nor shall it cause a reduction in the number of hours of work of such clerks.

- 9.3.3**      **BADGES:** Courtesy Clerks shall wear badges on their person designating them as a Courtesy Clerk at all times during working hours, and their failure to wear such badge while working shall be considered a violation of these provisions. The Union will submit to the Employer and the employee involved a written warning and in the event of a second violation with the same Employer by the same employee, the Employer agrees to suspend said employee for six (6) calendar months following written notice from the Union to the employee and the Employer involved. If the Employer does not furnish the badges, the Union may furnish them.

- 9.3.4**      **VIOLATIONS:** The Employer agrees that Courtesy Clerks shall not perform duties other than those listed in the Collective Bargaining Agreement. In the event of a violation of this section, the Union shall notify the Employer in writing of such violation and it shall be corrected.

In the event any of the same persons are involved in a second violation within one (1) year from the first infraction, the person performing the work, unless

directed to do so by a person in charge, shall be suspended for one (1) week and the person who directed that the work be performed shall also be suspended for one (1) week or the sum of \$500 shall be paid into the Retail Clerks and Food Employers Pension Fund.

In the event of a third violation within one (1) year from the first infraction by any of the same persons, the person performing the work, unless directed to do so by a person in charge and the person directing that the work be performed will be suspended for one (1) month or the sum of \$1,500 will be paid into the Retail Clerks and Food Employers Pension Fund.

**9.4 TWO CLASSIFICATIONS:** Unless otherwise provided herein the Employer may require any employee to do work within the duties of any classification, in which event such employee shall be classified and paid for the entire shift under that classification which pays the highest wage. Except that where any employee of a higher classification is relieved for a meal period, or the mere occasional or incidental performance of the duties of a higher classification shall not be construed as entitling the employee to the pay of the higher classification.

**9.4.1 STEP UP RULES:** The following rules are applicable at stores where Managing Clerks, Senior Head Clerks, Senior Produce Clerks, and Head Clerks are employed.

**9.4.2 MANAGING CLERKS, SENIOR HEAD CLERKS AND HEAD CLERKS**

When the Managing Clerk is absent for one shift (8 within 9 hours) or more and the store is open beyond the hours during which the Senior Head Clerk (acting as Managing Clerk) is present, another regular employee on duty during such hours shall be paid at the Senior Head Clerk's rate for his entire shift, except that where there is a regularly employed Head Clerk (40 hours per week) in the store during such hours, he may continue to be paid at his regular Head Clerk's rate.

On the Senior Head Clerk's day or days off, another regular employee on duty during said days shall receive the Senior Head Clerk's rate for each such shift worked, except that where there is a regularly employed Head Clerk (40 hours per week) on duty in the store during said days he may continue to be paid at his regular Head Clerk's rate.

On any day when the store is open beyond the regular shifts (8 within 9 hours) of both the Managing Clerk and the Senior Head Clerk, another regular employee on duty during such hours shall receive the Senior Head Clerk's rate for his entire shift, except that where there is a regularly employed Head Clerk (40 hours per week) in the store during such hours he may continue to be paid at his regular Head Clerk's rate.

When the Senior Head Clerk is absent for any period because of illness, vacation or other reasons, another regular employee or a Head Clerk, as the case may be, shall be paid at the Senior Head Clerk's rate for all such time worked during the said absence of the Senior Head Clerk.



### 9.4.3 SENIOR PRODUCE CLERKS

On the Senior Produce Clerk's day or days off, another regular employee shall be paid at the Senior Produce Clerk's rate for all hours worked in the absence of the Senior Produce Clerk, except that if the Senior Produce Clerk has Sunday as a day off, no other employee on duty on Sunday need be paid at the Senior Produce Clerk's rate unless he performs the Senior Produce Clerk's duties on said day.

When the Senior Produce Clerk is absent for any period because of illness, vacation or other reasons, another regular employee shall be paid at the Senior Produce Clerk's rate for all such time worked during the said absence of the Senior Produce Clerk.

- 9.5 **DEMONSTRATORS (Also see Letter of Understanding page 83):** All work connected with or incidental to the demonstration of merchandise offered for sale in the Employer's retail store (except merchandise referred to in Section 1.3.3 hereof as being excluded from this Agreement) shall be covered by this Agreement, and all such work shall be performed only by members of the appropriate unit as defined in Section 1.1 hereof. It is understood that the handling of coupons is not demonstrator's work. No Demonstrator may perform such work in the Employer's retail store unless said Demonstrator is on the payroll of the Employer, and unless the Employer, at all times, holds and exercises full control of the terms and conditions of employment of any such Demonstrators while such work is being performed in the Employer's retail store. Demonstrators shall be covered by all the terms of this Agreement. However, the Employer is not required to make contributions to the health-and-welfare or Pension Trust Funds on behalf of Demonstrators.

Demonstrators shall receive the same increases over the life of this Agreement as applies to General Merchandise Clerks.

- 9.6 **TRAVEL ALLOWANCE:** An employee who is hired to work on a full-time basis in one store who is temporarily assigned to relief work in another store, shall be entitled to reimbursement for the following travel expenses:

1. Mileage for the extra travel resulting from such assignment (or established bus, ride share or taxi fare if so designated by the Employer) according to the amount provided for under the current Internal Revenue Service Regulations at the time of such assigned extra travel.
2. Reasonable allowance for board and lodging when required to stay away from home overnight; and
3. Necessary out-of-pocket expenses such as bridge tolls and parking fees.

The above provisions shall not apply to an employee who is hired for or regularly assigned to relief work or to work in different stores on different days of the week.

- 9.7 **TRANSPORTATION:** Any employee, who is required by the Employer to perform his regular duties in more than one store in any day or required by an Employer

to travel during the course of his workday, he shall receive payment at his regular rate of pay for the time of travel, shall be reimbursed for necessary out-of-pocket and mileage expenses, as provided for above. No such transfer shall be made in a manner to interfere with the lunch hour of the employee so transferred, and all time consumed in travel from one store to another shall constitute a part of the regular day's work of the employee.

- 9.8 TRANSFER OR REMOVAL OF WORK:** No work now being performed by employees in the unit covered by the collective bargaining agreement shall be transferred or removed from the unit without consultation and negotiation with the Union and unless the transfer or removal of such work is required for the purpose of promoting improved operating techniques, technological changes, automation or other factors connected with more efficient operations, as distinguished from reasons connected with securing the performance of such work at lower rates of pay or under less favorable employment conditions.

Where as a result of such consultation and negotiations it is determined that the transfer or removal of any work is justified upon the considerations set forth above, the parties shall seek to determine the extent of the work transferred or removed and the number of jobs or hours of work to be lost by the Union members affected. Based upon such findings the following remedies shall be applied:

Any employee losing hours of employment by reason of such transfer or removal of work shall either be compensated at his regular rate of pay for such hours, or he shall be given other comparable employment by the Employer in the area covered by this Agreement at compensation equal to that received by him prior to the work transfer. If the comparable employment is within the bargaining unit then he shall retain his seniority and other benefits under the contract.

The Employer shall attempt to provide any employee losing his job as a result of any such transfer or removal of work with other comparable employment in the area covered by this Agreement without loss of pay, status, seniority, or other benefits. Any employee not receiving such other employment shall receive one (1) week's severance pay for each year of service with the Employer, provided that if an employee receives such comparable employment outside the bargaining unit and does not remain in such employment for at least thirty (30) days he shall receive the full severance pay provided for herein.

Any employees who lose work or employment as a result of the failure of the Employer to observe the requirement provided for herein for consultation and negotiation concerning transfers or removals shall be entitled to full pay at their regular rate of pay for all such loss of work or employment.

- 9.9** Notwithstanding the above, it is agreed that should the Employer intend to institute electronic check-out systems which would have direct, material impact on employment covered by this Agreement, the Employer shall give the affected Union or Unions at least sixty (60) days' written, advance notice by certified or registered mail setting forth the nature of such intended changes and/or methods of operations.

- 9.9.1** Upon written request by the Union, negotiations shall commence with respect to

the following subjects: rates of pay for new jobs which might be created; transfer to comparable work, within or outside the bargaining unit or the disposition of displaced employees resulting from the institution of such new methods.

- 9.9.2** In the event the parties do not reach agreement within such period, then all unresolved issues as set forth above, shall be submitted to final and binding arbitration. It is not the intent of the parties that such negotiations or arbitrations will in any way jeopardize the efficiencies and increased productivity to be gained by the installation of such systems. The arbitrator shall be selected in accordance with the provisions of Section 18.
- 9.9.3** The parties further agree that the arbitrator's decision shall be final and binding, and that there will be no strikes, work stoppages, lockout, or economic action of any sort or form employed by either party in connection with or arising out of any dispute concerning or related in any way to the operation of this Section.
- 9.9.4** It is agreed and expected that the parties will exert every effort to accomplish the foregoing within the sixty (60) day allotted period, but failing to do so, shall not prohibit or in any way impede the Employer from installing or effectuating any such new methods, systems, or equipment upon the expiration of the allotted sixty (60) day period, unless such period is extended by mutual written agreement. The decision of the arbitrator or the parties shall be effective on or retroactive to the date such new methods are installed. The cost of the impartial arbitrator shall be borne equally by the parties.
- 9.9.5** **SELF-CHECKOUT:** The Employer may have a multi-unit self-checkout check-stand per store. If the Employer wants to introduce a second multi-unit self-checkout check stand, the parties agree to negotiate over the effects of the introduction of a second unit.

## **SECTION 10 HOLIDAYS:**

- 10.1** The following days shall be recognized as paid holidays: Employee's Birthday, New Year's Day, Memorial Day, Fourth of July, Labor Day, Thanksgiving Day, Christmas Day, employee's anniversary date of employment and a floating holiday. The anniversary date of employment holiday and the floating holiday shall be enjoyed by regular employees in accordance with the observance procedures governing the Employee's birthday holiday. Upon entitlement the floating holiday shall be taken by mutual agreement of the Employer and the employee.

For food employees hired on or prior to June 13, 2005 entitlement to the birthday holiday shall commence with the employee's first birthday following completion of six (6) months of employment with the Company. The employee shall not be entitled to the floating holiday until after the completion of six (6) months of employment.

Food employees hired on or after June 13, 2005 shall be entitled to the birthday holiday after one (1) year of employment, and a floating holiday and anniversary holiday after the completion of three (3) years of employment.

When the grocery department of the retail store is contractually required to be closed on any of the above holidays, the meat department shall also be closed.

**10.1.1 NO REQUIRED WORK:** No employee shall be required to work on Christmas Day.

**VIOLATIONS:** In the event any Employer violates this provision by requiring anyone to work in the store on Christmas Day that has not volunteered, the Union will be allowed to place pickets at that store as soon as possible and allow them to continue their activities for a maximum of three (3) days following each violation.

**10.1.2 WORK:** Work performed on a holiday in this Agreement (in addition to holiday pay if entitled) regardless of which day of the week the holiday falls will be paid two (2) times the regular rate of pay for employees hired prior to or on June 13, 2005 in the Food Agreement and prior to or on June 22, 2005 in the Meat Agreement. For Food employees hired after June 13, 2005 and Meat employees hired after June 22, 2005, work performed on the holiday (in addition to holiday pay if entitled) will be paid at their straight-time hourly rate and an additional one (\$1) per hour premium

If the Employer elects to open on New Year's Day, Labor Day, or Thanksgiving Day, the store shall be staffed first with volunteers. If more employees than are needed volunteer, assignment shall be by seniority. If an insufficient number of employee's volunteer, assignment shall be by inverse seniority.

**EMPLOYEE'S BIRTHDAY, ANNIVERSARY DATE AND FLOATING HOLIDAY:** Employees shall receive pay for said holiday as if worked. Each employee shall give his Employer notice of his birthday at least two (2) weeks prior to the week in which the birthday occurs.

Such birthday holiday shall be enjoyed by the employee on the actual day of his birthday or on another day mutually agreeable to the employee and the Employer.

If an employee's birthday falls on a day which is otherwise considered as a holiday, he shall receive an additional day off for the birthday in addition to the holiday on which it falls.

**10.1.3 PROBATIONARY EMPLOYEES:** Probationary employees are not entitled to any paid holidays.

**10.1.4 SUNDAY:** Whenever any of the holidays mentioned in this Agreement fall on Sunday, they shall be observed on the following Monday, except that any Christmas or New Year's Day or July 4<sup>th</sup>, that falls on a Sunday will be observed on the Sunday.

**10.1.5 PART-TIME EMPLOYEES:** Holiday pay for employees who work less than forty (40) hours shall be based on twenty percent (20%) of the employee's average hours worked per week in the six (6) weeks immediately preceding the holiday or the number of weeks worked if less than six (6), except that in computing pay for the New Year's holiday the same period of time used in computing pay for the

Christmas holiday shall be used.

For employees who have earned the holiday but have no hours in the six (6) weeks preceding the holiday week, holiday pay will be calculated based on twenty percent (20%) of the employee's average hours worked per week in the fifty-two (52) weeks immediately preceding the holiday.

- 10.2 HOLIDAY WEEK:** Any employee who has reported for work on his scheduled working day immediately preceding the holiday, on the holiday (if scheduled) and his scheduled working day immediately following a recognized holiday, except when permission to be absent has been granted by the Employer or when the absence is due to a bona fide illness of the employee, shall receive holiday pay at his regular rate of pay. It is understood that in order to qualify for holiday pay an employee must work at least one (1) workday during the week in which the holiday falls.
- 10.3 OTHER HOLIDAY OBSERVANCE:** Where the Employer closes his store to the public on any day of special religious significance, or on any legal holiday other than those listed above, it is understood that he shall reschedule his regular full-time employees to work their normal number of working hours that week.
- 10.4 GOOD FRIDAY:** Employees desiring time off on Good Friday to attend bona fide religious services shall request such time off at least two (2) weeks in advance. All such requests for time off shall be granted, provided that a sufficient number of qualified employees are still available to properly staff the store as determined by the Employer. If due to an excessive number of requests for time off it becomes necessary to require employees to work on Good Friday, such assignments shall be made by inverse seniority from among those employees requesting the time off who possess the qualifications necessary to perform the required work. An employee taking such time off will receive straight-time pay for scheduled working time during this period and shall not be required or permitted to make up such time off.
- 10.5** Employees with at least 25 years of continuous service with the Employer will receive two (2) additional holidays. The one holiday will be earned June 1 and the second will be earned on October 1 of each year.

## **SECTION 11 VACATIONS**

- 11.1** Food employees hired on or prior to June 13<sup>th</sup>, 2005, who work four (4) hours or more per week who have been in the service of the Employer for one (1) year, twelve (12) consecutive months, shall be granted a minimum of two (2) weeks' vacation annually with pay.
- Food Employees hired after June 13, 2005, will receive one (1) week after one (1) year of employment; and two (2) weeks after three (3) years of employment.
- 11.1.2** Employees who have been in the service of the Employer for five (5) years or more shall receive three (3) weeks' vacation annually with pay. Such employees who have been in the service of the Employer for fifteen (15) years or more shall receive four (4) weeks' vacation annually with pay. Such employees who have

been in the service of the Employer for twenty (20) years or more shall receive five (5) weeks' vacation annually with pay.

**11.1.3 INDUSTRY VACATION:** Employees hired after January 9, 2008, with over ten (10) years of industrial time will receive three (3) weeks of vacation after twelve (12) months of employment, four (4) weeks after five (5) years of employment with the Employer and five (5) weeks after ten (10) years with the Employer.

**11.2 CONTINUITY:** Paid absences from work, such as vacations, holidays and sick leave, shall be considered as time worked for the purpose of this Agreement, but shall not be deemed as time worked for purposes of computing overtime, unless otherwise provided in this Agreement.

**11.3 PAY AND SPECIAL PROVISIONS:** For the purpose of computing or prorating vacation earnings, two percent (2%) of the employee's earnings for the previous year equals one (1) weeks' vacation pay, four percent (4%) of the employee's earnings for the previous year equal two (2) weeks' vacation pay; six percent (6%) of the employee's earnings for the previous year equal three (3) weeks' vacation pay; eight percent (8%) of the employee's earnings for the previous year equal four (4) weeks' vacation pay and ten percent (10%) of the employee's earnings for the previous year equal five (5) weeks' vacation pay.

**NOTE:** Vacation pay shall be computed on the employee's W-2 form earnings for the prior calendar year from which it was earned, except the first year of employment it shall be computed on total earnings during the first anniversary year of employment and, when an employee terminates, it shall be computed on his earnings from the employee's anniversary date of employment to his termination date.

**11.5** Effective January 2, 2002, the parties agree that vacation pay shall be paid as the vacation is taken. Furthermore, all earned and unused vacation shall be paid out on the anniversary date of employment following the year it is earned.

**11.6 NEW EMPLOYER:** Vacation seniority, defined as the length of an employee's service, which determines the length of vacation to which he is entitled, shall not be affected by the sale or transfer of the store in which he works. Employees who continue in employment with a new Employer acquiring a store shall have their service prior to the time of acquisition credited by the new Employer.

The new Employer shall be obligated to make vacation payments after the acquisition in accordance with the employee's service with the new Employer.

The former Employer shall pay each of his employees earned vacation time prorated to the time of the sale or transfer of the business.

**11.7 SCHEDULE:** The Employer agrees to post the available vacation dates for each classification by January 1st of each year. If an employee fails to exercise his vacation selection right by February 1st, or has lost his prior selection by reason of less seniority, the employee may select from the remaining available periods. The selection of vacation periods must be completed by March 1st of each year. The Employer will post a copy of the final approved vacation dates.

The Employer shall reserve the right to designate the number of employees that may be on vacation at any time, but in no event less than one employee in any one week except as set forth herein. Notwithstanding the foregoing, the Employer may block out five (5) weeks each year with no more than one (1) week blocked out in any month.

If an employee fails to select his or her vacation by March 1st, that employee's vacation period will be assigned by the Employer.

**11.8 SELECTION:** The selection of vacations shall be on a store basis by seniority for both Food and Meat except:

1. The vacation of an employee shall not be changed if it was scheduled prior to his transfer from one store to another.
2. If an employee does not have a scheduled vacation at the time of such transfer, the scheduling of his vacation shall be based solely upon his seniority status in the store to which he is transferred.

**11.9 PERIOD:** Vacation periods shall be granted January 1<sup>st</sup> through December 31<sup>st</sup> of each year, or at other times if mutually agreeable to the Employer and employees affected, but in all cases at least ten (10) days' notice of the date of vacation shall be given each employee. As long as no weeks during the vacation period are blocked out, except for the week of, or the week prior, to New Year's Day, Fourth of July, Thanksgiving Day or Christmas Day, the Employer has the right to limit the number of employees on vacation at any given time. Whenever a holiday falls during a vacation period of an employee he shall have the option to be paid his holiday pay without an extra day off or to take an extra day off at another time agreeable to him and his Employer.

If the employee is scheduled to take his time off prior to his anniversary date, then in that event a pro rata payment shall be made at that time and the additional amount will be paid at the time of his anniversary date.

**11.10 PRO RATA:** Any employee who is discharged, laid off or who resigns after one (1) year or more of employment shall receive vacation wages prorated on the basis for the period worked at the time of said interruption or termination of employment.

**11.11 CONTINUOUS:** All vacations shall be taken in one continuous period. All employees entitled to a vacation shall receive their vacation pay allowance in advance immediately preceding the employee's vacation.

Employees, at their option, shall be entitled to an additional week's vacation without pay; in all such cases, however, the employee shall give the Employer at least ten (10) days' notice prior to leaving for the vacation.

**11.12 VARIATION:** Notwithstanding the above provisions employees entitled to three (3), four (4) or five (5) weeks' vacation shall be allowed to take them in one or two periods such as: two two-week periods; two-week and one-week periods; three-week and one-week periods; three-week and two-week periods; four-week and

one-week periods; provided such vacation schedule shall be approved by the Employer, the employee involved and the Union.

Employees who receive four (4) or more weeks of vacation shall have the option to schedule up to five (5) vacation days in single day increments subject to the Employer's scheduling needs.

## **SECTION 12 HEALTH AND WELFARE, SICK LEAVE:**

**12.1 EMPLOYER ACCEPTANCE:** The Employer agrees to accept and be bound fully by the terms of that certain Declaration of Trust dated April 17, 1974, as amended, providing for the Northern California Food Employers and Retail Clerks Unions Benefit Fund as the same may be applicable to the Welfare Plan therein provided for, and any amendments thereto. The Employer hereby acknowledges receipt of a copy of said Declaration of Trust.

**12.2 EMPLOYER CONTRIBUTIONS:** Effective upon ratification or renewal of the Collective Bargaining Agreement the Employer agrees to provide the same level of coverage and make the same contributions as is provided in the Major Employers' (Safeway/Save Mart/Raley's) UFCW Retail Grocery Agreement (Major Employers' Agreement) in effect at that time and in the future. The current benefit design is subject to change based on future contract changes in the Major Employers' Agreement and/or Trustee action. Any and all modifications in coverage, contribution rates, benefits, etc. adopted by the Board of Trustees of the Plan shall be effective on the same date(s) such modifications(s) become effective for all other employers in that plan design.

Effective December, 2023, payable in January 2024 the contribution rate will increase from six dollars ninety-five cents (\$6.95) for each hour worked to seven dollars thirty-five cents (\$7.35) for each hour worked.

**RETIREE HEALTH AND WELFARE:** The percent of Active Contribution used to fund the retiree benefits is and will continue to be sixteen percent (16%).

Such contributions shall be made on all straight-time hours worked, including Sundays, and/or hours compensated, such as vacations and holidays. Contributions shall be made on or before the 20<sup>th</sup> of the month for covered hours worked during the previous month. It is understood that the contributions required on behalf of any employee shall not exceed forty (40) straight-time hours per week or two thousand eighty (2,080) straight-time hours in any calendar year.

**12.3 PROMPT PAYMENT:** The parties recognize and acknowledge that the regular and prompt payment of Employer contributions to the Fund is essential to the maintenance of the Health & Welfare Plan, and inasmuch as beneficiaries under the Plan are entitled to benefits for the period of time that they may have worked while covered by the plan even though contribution have not been paid on their behalf by their Employer, that it would be extremely difficult, if not impractical to fix the actual expense and damage to the Fund and to the Plan which would result from the failure of an individual Employer to pay such monthly contributions in full within the time provided; therefore, the amount of damage to the Fund and Health and Welfare Plan resulting from any such failure shall be presumed to be the sum



of Twenty Dollars (\$20.00) per delinquency, or 10% of the amount of the contribution or contributions due, whichever is the greater, not to exceed the sum of One Hundred Dollars (\$100.00) per delinquency, which amount shall become due and payable to the Fund as liquidated damages and not as a penalty, upon the day immediately following the date upon which the contribution become delinquent, and shall be in addition to said delinquent contribution or contributions.

Notwithstanding the above, interest on unpaid contributions will accrue at the rate of 10% per annum, commencing with the first day of the month following the month in which the contribution is due. In addition, if legal action is pursued to collect delinquent contributions, the statutory provisions in ERISA will apply and liquidated damages shall be assessed in an amount equal to the greater of 20% of the unpaid contributions at the time the legal action is commenced or interest at the above rate on the unpaid contributions from the due date through the date the contributions are paid. The Trustees shall have the authority to adopt and to amend from time to time written Delinquency Collection Procedures which shall specify the interest, liquidated damages and other amounts to be assessed on any delinquency, and the procedures for collecting same and such Procedures shall be binding on the employer.

**12.4 HEALTH PLAN BENEFITS:** The schedule of benefits and plan design is contained in the Union and Employer Benefit Trust Fund Summary Plan Description document.

**12.5 LEGISLATION:** In the event of legislation providing health and welfare or sick leave benefits which are also provided for under this Agreement, Trustees are directed to amend the plan document immediately, deleting duplicated benefits. If by reason of the elimination of duplicated benefits there is a savings to the Employer and the Fund, after the cost thereof is set off against the cost required of the Employer to finance said benefits, the Trustees shall meet no later than thirty (30) days from the effective date of the legislation to determine how said savings shall be used by the Fund. If the Trustees fail to reach an agreement they shall proceed, under the Trust Agreement, to decide such deadlock within seventy-five (75) days of the effective date of the legislation. Any cost reductions to the Employer and the Fund attributable to a cost required of the employee under the legislation will be passed on to the employee through other health and welfare changes. In the event Medicare becomes secondary in the application of the retiree benefit plan the Trustees will take immediate and remedial action to protect the financial integrity of the Plan.

**12.6 COST CONTAINMENT:** The Trustees are authorized and directed to study and expand cost containment programs where appropriate, for both the active and retiree plans.

**12.7 RETIREE BENEFITS:** The Collective Bargaining parties recognize that Retiree Health and Welfare Benefits are not vested benefits. Pursuant to this Agreement, a contributing Employer's sole and only obligation is to contribute, during the term of this Agreement, the specific contributions required under this Agreement. Despite the adoption of a Plan of Benefits that may currently be available to Plan participants, the Employer's liability for any and all health and welfare benefits,

including Retiree Health and Welfare Benefits, shall be limited to the contribution specified in this Section, and for the period of this Agreement. The parties authorize and direct the Trustees of the Health and Welfare Plan to take the necessary action to assure compliance with the terms of this paragraph.

**12.8 BUSINESS EXPENSE:** It is understood that the provision for a Health and Welfare, Dental, Vision Care, Drug and Sick Leave Plan(s) is being entered into and continued upon the condition that all payments shall be deductible in the year in which the contribution is made as a business expense under the Internal Revenue Code as it presently exists or as it may be amended subsequent to the date of this Agreement and under any similar state revenue or tax laws.

**12.9 SICK LEAVE BENEFITS:** All employees who have been employed for a contributing employer shall be entitled to sick leave with pay. Sick leave for a full-time employee shall accrue at the rate of six hours per month, thereafter, not to exceed a maximum of three hundred and sixty (360) hours. Part-time employees will accumulate sick leave credits on a pro rata basis.

The Employer is agreeable to work with the Trust Fund in developing a system for reporting hours regarding accumulated sick leave and accumulated vacation for terminated employees.

**SICK LEAVE HOUR ACCRUAL:**

1. Employees accrue sick leave monthly as follows:
2. New employees will be eligible to use sick leave once they are eligible for health & welfare benefits.

Hours Worked	Sick Leave Accrual
Less than 64 hours	0
64 but less than 120 hours	3
120 hours or more	6

**SICK LEAVE PAYOUT:**

1. **Eligibility:** In order to be eligible for a sick leave payout, an employee must have the maximum of three hundred and sixty (360) hours accumulated sick leave as of December 31.
2. **Amount of Pay-Out:** Each employee who is eligible for a sick leave pay-out in accordance with paragraph (1) shall receive Four Hundred Dollars (\$400) less Ten Dollars (\$10) for each hour of sick leave used during that calendar year.

Payments shall be made as soon after the end of the calendar year as administratively feasible.

## SECTION 13 PENSION

**13.1 EMPLOYER ACCEPTANCE:** The Employer agrees to accept and be bound fully by the terms of that certain Declaration of Trust dated April 1, 1957, providing for the UFCW – Northern California Employers Joint Pension Trust Fund as the same may be applicable to the Pension Plan therein provided for, and any amendments thereto. Employer hereby acknowledges receipt of a copy of said Declaration of Trust.

**13.2 EMPLOYER CONTRIBUTIONS:** The Employer agrees to be bound by the terms of the Rehabilitation Plan's "Preferred Schedule" bargained by the Major Food Employers (Safeway/Save Mart/Raley's) and the Union or by Trustee action during the term of this successor agreement. The bargaining parties agree to continue the Pension Rehabilitation "Preferred Schedule" adopted by the Trustees of the Joint Pension Fund in July 2010 through the successor agreement term.

Notwithstanding the above, the Pension Rehabilitation Plan is modified during the life of the current October 10, 2021 through April 12, 2025 Agreement to required pension contributions at the rate of two dollars and ninety-four cents (\$2.94).

Such contributions shall be made on all straight-time hours worked by all employees covered by the Collective Bargaining Agreement, including Sundays, and/or all hours compensated, such as vacations and holidays. Contributions shall be made on or before the 20<sup>th</sup> of the month for covered hours worked during the preceding calendar month. It is understood that the contributions required on behalf of any employee shall not exceed forty (40) straight-time hours per week or two thousand and eighty (2,080) straight-time hours in any calendar year.

An employee shall receive both vesting and benefit accrual credit for all hours compensated (including those for which no contribution is due to the Trust) to a maximum of forty (40) hours per week and two thousand and eighty (2,080) hours per year. For employees who are hired on or after ratification of this agreement their benefit accrual credits will not begin until they have met the eligibility requirements described below.

In the event that the contributing Employers are required to make any additional contributions above the negotiated contribution rates in order to avoid funding deficiencies, the contributing Employers will receive a dollar for dollar credit for additional contributions in any subsequent plan year where there is sufficient excess funding exceeding the minimum funding level required to offset the additional contribution provided this offset does not create a minimum funding deficiency the following plan year. In other words the employer payments in excess of the negotiated contributions will create future contribution suspensions that will be taken as soon-as possible as long as the minimum funding concerns outlined above are met.

**13.3 TERMINAL VACATION PAY:** Upon retirement, no Trust Fund contributions will be required of the Employer on terminal vacation pay made to an employee at retirement. The employee's retirement benefits will not be delayed and he will receive credit for hours even though contributions are not required.

**13.4 PROMPT PAYMENT:** The parties recognize and acknowledge that the regular and prompt payment of Employer contributions to the Fund is essential to the maintenance of the Pension Plan, and inasmuch as beneficiaries under the Plan are entitled to pension benefits for the period of time that they may have worked while covered by the Plan even though contributions have not been paid on their behalf by their Employer, that it would be extremely difficult, if not impractical to fix the actual expense and damage to the Fund and to the Pension Plan which would result from the failure of an individual Employer to pay such monthly contributions in full within the time above provided; therefore, the amount of damage to the Fund and Pension Plan resulting from any such failure shall be presumed to be the sum of Twenty Dollars (\$20.00) per delinquency, or ten percent (10%) of the amount of the contribution or contributions due, whichever is the greater, not to exceed the sum of One Hundred Dollars (\$100.00) per delinquency, which amount shall become due and payable to the Fund as liquidated damages and not as a penalty, upon the day immediately following the date upon which the contributions become delinquent, and shall be in addition to said delinquent contribution or contributions.

**13.5 BENEFITS:** The Trustees are authorized and directed to modify benefits in accordance with the following provisions, and otherwise in accordance with the provisions of this Agreement:

Effective January 1, 2012 future benefit accrual rates will be:

1. For the first ten years of benefit credit the benefit accrual will be \$30.30.
2. For all years of benefit credit after the first ten years the benefit accrual rate will be \$40.41.
3. Other benefit accrual rates for lower contribution rates will be adjusted in a similar manner by the Trust Fund's co-consultants.

Effective for hours worked on and after January 1, 2012, future benefit accruals will be as set forth in the Preferred Schedule.

A detailed summary of pension benefits can be found in the Summary Plan Description available through the UFCW Employer Benefit Trust Fund or by contacting the Fund.

**13.6 OTHER PLANS:** The Employer retains the exclusive right to alter, amend, cancel, or terminate any presently existing Company sponsored Pension Plan or Employee Retirement Plan which existed prior to the establishment of then negotiated Pension Fund, provided that the effective date of such alteration, amendment, cancellation, or termination shall not occur prior to the acceptance of this Plan.

**13.7 REGULATIONS:** The Trust and the benefits to be provided from the Pension Trust Fund referred to here and all acts pursuant to this Agreement and pursuant to such Trust Agreement and Pension Plan shall conform in all respects to the requirements of the Treasury Department, Internal Revenue Service, and to any other applicable state or federal laws and regulations.

**13.8 BUSINESS EXPENSE:** It is understood that this provision for a Pension Plan is

being entered into upon the condition that all payments made by the Employer hereunder shall be deductible in the year in which the contribution is made as business expenses under the Internal Revenue Code as it presently exists or as it may be amended subsequent to the date of this Agreement and under any similar applicable state revenue or tax laws.

- 13.9**        **LIMITATION:** The Employer's sole and only obligation shall be limited to the contribution requirements outlined in Section 13.2.
- 13.10**       **DEFINED CONTRIBUTION PENSION PLAN:** The Trustees have established a Defined Contribution Pension Plan and Trust effective March 1, 1987, in addition to and supplemental to the Pension plan described in this Section. The Employer shall not have any obligation to contribute effective for July 2005 hours (or, if later, the contribution effective date as described in Section 13.2.
- 13.11**       **USE OF CONTRIBUTIONS:** The Employer contribution shall be for the sole purpose of providing the pension benefits and for the administration of said program. The Trustees are not authorized to use any of the contributions or Plan assets for benefit improvements or any other purpose except as specifically provided in this Section.
- 13.12**       **RE-EMPLOYMENT RULE:** The bargaining parties agree to direct the Trustees to amend the Pension Plan rules for re-employment and the suspension of benefits to be consistent with the rules in effect during the 1997 collective bargaining agreement (i.e., 63 hour rule).

#### **SECTION 14 FIELD ADMINISTRATION - TRUST FUNDS:**

- 14.1**        The unions have determined that they are no longer willing to provide administrative functions, as distinguished from the usual and normal union services, at union expense to persons covered by the terms of the various benefit plans provided for by the Collective Bargaining Agreement. It is agreed that the portion of these functions determined to be Trust Fund functions, are properly chargeable to the Trust Funds under which said plans are established and maintained.

All expenses of the sub-administrative offices shall be paid for by the respective funds according to the formula established by the parties pursuant to the 1974 Joint Study.

#### **SECTION 15 STORE MEETINGS AND CHARITABLE DRIVES:**

- 15.1**        Time spent in store meetings or in meetings called by the Employer before the commencement of the day's work or after the day's work shall be considered as time worked and shall be paid for in accordance with the provisions of this Agreement.
- 15.2**        All employee contributions to charity shall be voluntary.

## SECTION 16 CONTRACT ENFORCEMENT AND STORE VISITS

- 16.1 VISITS:** It is agreed by both parties hereto that the business representative of the Union shall have the right and shall be allowed by the Employer to visit any and all stores and shall have free access to the employees during such visits for the purpose of making inquiries from the employees relative to information concerning working conditions, complaints of members of the Union, and other matters pertaining to the enforcement of this Agreement, provided said investigation may be accomplished without interfering with the duties of the employees.

No employee shall be discriminated against for membership in or legal activity on behalf of the Union.

- 16.2 RECORDING TIME:** The parties agree to observe the following procedures in enforcing the terms of this Agreement with respect to authorized work and reporting of working time:

- 16.2.1** The Employer shall post the following notice in all stores: The law and the Union Agreement require that all time worked shall be recorded daily including starting and stopping time. All employees shall comply strictly with these requirements, and any employee failing to so comply shall be subject to discipline on the same basis as is followed with respect to any other violation of store rules or procedure.

- 16.2.2** The Union shall promptly report in writing to the Employer any observed violation by an employee of this reporting time provision or the working of unauthorized time and the Employer will take the necessary steps with the employee to correct such violation.

- 16.2.3** Upon notification by the Union of a second such violation by the same employee, the Employer shall pay to the Welfare Fund provided for herein an amount equal to the overtime pay due and payable to the employee. In such case the employee involved shall be subject to discharge, however, retaining his right to appeal any such discharge under the terms of this Agreement.

- 16.3 FREE TIME:** When an employee willfully violates the provisions of this Agreement by working free time without the knowledge of the Employer, after a second written notice by the Union of this employee's repeated contract violation, the Employer agrees to discharge said employee within seven (7) days after receiving written notice of such violation.

## SECTION 17 STRIKE OR LOCKOUT

- 17.1** During the life of the Agreement, the Union agrees not to engage in any stoppage of work. Furthermore, the Union and its representatives, including store representatives, agree not to boycott, handbill, publicly disparage or engage in any adverse economic action against the Employer's stores covered by this Agreement. This provision does not apply in any of the Employer's stores where the Union has not been recognized by the Employer as the employees' bargaining representative.

- 17.2** During the life of this Agreement the Employer agrees not to engage in any lockout.

- 17.3 Notwithstanding any other provisions of this Agreement to the contrary, it shall not be a violation of this Agreement for any person covered by this Agreement to refuse to cross any lawful primary picket line or to refuse to work behind any lawful primary picket line; and such refusal shall not constitute grounds for or cause for discharge, layoff, demotion, suspension, or any other disciplinary action.
- 17.4 There shall be no strikes, lockouts or other forms of work stoppage while any matter, dispute or grievance is under process of adjustment or arbitration as provided for herein.

## **SECTION 18 ADJUSTMENT AND ARBITRATION OF DISPUTES:**

- 18.1 For the purpose of this Agreement, a grievance is a dispute, difference of opinion, between the parties, and grievances of employees involving or arising out of the meaning, interpretation, application or alleged violation of this Agreement, including the arbitrability of all such matters. All grievances as defined are to be processed in accordance with the terms of the section.

The parties will share all factual details regarding a grievance (or pre-grievance issue) as early as possible in the dispute resolution process. All disputes that are resolved at store level shall be considered settled on a non-precedent setting basis, unless otherwise expressly stated in writing.

Grievances filed by the Union challenging any disciplinary suspension or discharge shall be made as soon as possible but shall only be recognized if submitted to the Employer in writing within ten (10) business days.

- 18.2 **Grievance Resolution Process:** Any dispute not settled by the parties within thirty (30) working days following the receipt of such written notice or such extended time as may be agreed upon by both parties, the following options to resolve the grievance will be utilized.

1. The parties will conduct a telephone conference. The conference shall take place as soon as practical, but no later than thirty (30) business days of the request. If the matter is not resolved, then the parties will move to a grievance meeting to be held within twenty (20) business days from the date of the telephone conference.
2. If after the completion of the grievance meeting the matter is unresolved, the moving party must notify the other party in writing, by facsimile or regular mail, within twenty (20) business days to commence selection of the arbitrator. Failure of the moving party to comply with the twenty (20) business day-time limit herein specified shall be deemed to be a conclusive waiver of the grievance.
3. Either party upon written communication within thirty (30) business days from the telephone conference may waive the grievance meeting and proceed directly to arbitration.
4. Arbitrator selection may be completed by mutual agreement, or as provided in Section 18.3 below. The decision of the Arbitrator shall be final and binding. The

Arbitrator will not have the authority to amend, modify, or alter the terms of this Agreement.

**18.3 Disciplinary Arbitration:** For disciplinary cases only (suspensions and terminations), the following expedited Arbitration procedure shall be utilized:

The bargaining parties will first attempt to select an Arbitrator by mutual agreement. Should the parties be unable to mutually agree on an Arbitrator then they shall request a panel of Arbitrators from the United States Federal Mediation and Conciliation Service (FMCS) and shall select an Arbitrator by the strike-off-method. The Arbitrator will provide dates for consideration that are within ninety (90) days of the request. If the Arbitrator is unable to do so, then the next Arbitrator will be selected for the date until a date is secured within ninety (90) days of the request.

If an Arbitrator has been selected and an arbitration date has been scheduled, but the grievance is resolved within two (2) weeks of the arbitration date, the next Arbitrator from the FMCS arbitration panel will be asked for his or her available dates consistent with the contractual timelines to hear the next deadlocked grievance proceeding to arbitration.

If an Arbitrator has been selected but no arbitration date has been scheduled or the grievance is resolved more than two (2) weeks prior to the arbitration date, the same Arbitrator will be asked for his or her available dates consistent with the contractual timelines to hear the next deadlocked grievance proceeding to arbitration. Selection of Arbitrators for subsequent deadlocked grievances will proceed as outlined above.

Each disciplinary case will be argued orally. Post hearing briefs may be filed by mutual agreement of the parties. Either party may request a court reporter at their expense; however, if mutually requested, the cost will be shared equally. Briefs are to be prepared and mailed within fifteen (15) business days from receipt of transcript with leave to extend by mutual agreement. A written opinion and award will be furnished by the arbitrator, within thirty (30) days of the close of the hearing or receipt of the post hearing briefs.

The award of the telephone conference, grievance meeting, or arbitrator shall be final and binding upon the Employer, the Union, and the employee.

**18.4 INTERPRETATION OR APPLICATION DISPUTES:** Disputes as to the interpretation or application of the agreement shall be taken up by the party asserting it with the other party within twenty (20) business days of the date the asserting party has knowledge thereof. Said grievance shall be in writing, specifying in detail the basis for the dispute, including the applicable section(s) of the Agreement involved, to the best knowledge of the asserting party.

Contractual interpretations disputes will be processed in accordance with the grievance resolution process. For contractual interpretation disputes which proceed to arbitration, the parties will mutually select an impartial Arbitrator. If the parties are unable to agree upon the selection of an Arbitrator, they shall request a panel of Arbitrators from the United States Federal Mediation and Conciliation Service and they shall select an Arbitrator from the panel by the strike-off method.



- 18.5 Each party shall in good faith divulge to the other party all available material facts at the time said party acquires knowledge thereof concerning the matter in dispute. Nothing contained herein shall require either party to supply documents which are irrelevant.
- 18.6 The award of the Arbitrator or the Adjustment Board shall be final and binding on the Employer, the Union and the Employee(s). The losing party shall pay the cost of the arbitrator. The parties agree that the Arbitrator has the authority to determine appropriate proration of the cost in the event of a split decision and award. The arbitrator should be made aware of the requirements of this provision at the conclusion of the arbitration hearing.
- 18.7 The Arbitrator shall not have the right to alter, amend, delete or add to any of the terms of this Agreement.
- 18.8 Interest at seven percent (7%) shall be payable on all money claims awarded by the Adjustment Board or by an Arbitrator, and such interest shall commence as of the date the complaint is first submitted to the Adjustment Board or when the parties meet to amicably adjust the dispute, whichever is applicable.
- 18.9 **CLAIMS:** In the case of a direct wage claim or a claim for contributions to employee benefit plans which does not involve an interpretation of any of the provisions of this Agreement, either party may submit such claim for settlement to either the grievance procedure provided for herein or to any other tribunal or agency which is authorized and empowered to effect such a settlement.

The Employer is not required to pay any wage claim or portion thereof retroactively for a period of more than ninety-one (91) days immediately prior to the date of the Employer's receipt, or written notice from the Union, of such claim. Where there is an automatic wage bracket adjustment (failure to progress the employee in classification in accordance with the hours worked formula of the contract) due under the terms of the Appendix, or promotions not processed due to clerical error, the period of adjustment shall be one (1) year from the date the grievance was filed in writing.

#### **SECTION 19 SEPARABILITY:**


The provisions of this Agreement are deemed to be separable to the extent that if and when a court of last resort adjudges any provision of this Agreement in its application between the Union and the undersigned Employer to be in conflict with any law, such decision shall not affect the validity of the remaining provisions of this Agreement, but such remaining provisions shall continue in full force and effect, provided further, that in the event any provision or provisions are so declared to be in conflict with a law, both parties shall meet within thirty (30) days for the purpose of renegotiation and agreement on provision or provisions so invalidated.

**SECTION 20: PERIOD OF AGREEMENT:**


EXCEPT as otherwise indicated herein, this Agreement shall be effective October 10, 2021 and shall remain in full force and effect in all areas to and including April 19th, 2025 and shall be considered as renewed from year to year thereafter unless either party hereto gives written notice to the other of its desire to have the same modified or terminated. Such notice shall be given at least sixty (60) days prior to such expiration date, during which period negotiations for a new Agreement shall be conducted, with all conditions agreed to by the parties to become effective on the first day of the week nearest the expiration date of this Agreement. If after opening, as provided herein, the parties fail to reach an agreement within the period so provided, then the provisions of Section 17 shall not be binding on either party.

**IN WITNESS WHEREOF, THE PARTIES** have hereunto set their hands the day and year first hereinabove written.

**FOR THE EMPLOYER,  
DIABLO FOOD MARKET;**

 2-3-23  
Dan Stokes Date

**FOR THE UNION,  
UFCW LOCAL 8;**

 2-2-23  
Oscar Orozco Date

**APPENDIX A**  
**FOOD RATES**

- A.1** Notwithstanding any schedule of minimum wages, employees now receiving a higher wage than that indicated in said schedule for the particular classification of work performed shall not have their wages reduced due to the signing and effect of this Agreement.
- The schedule of minimum wages shall be maintained by the parties hereto during the period of this Agreement, and the Employer shall and hereby agrees to pay wages in compliance therewith.
- The company retains the right to terminate any non-contractual benefit including but not limited to gain sharing, discounts, awards, bonuses. This provision does not apply to over-scale wage rates.
- A.2** **PREMIUM EMPLOYEES:** Premium wage employees shall maintain the same hourly differential which they received over and above the previous contract rate.
- A.3** **NIGHT PREMIUM:** All employees, except Courtesy Clerks, shall receive extra compensation, in addition to the regular scale herein set forth, of sixty-five cents (\$.65) per hour for all work performed between the hours of 10 p.m. and 6 a.m.
- A.4** **MINIMUM WAGE/PROGRESSIONS:** If minimum wage laws increase the minimum wage above step progressions, employees will be advanced to the next step progression above the minimum wage (excluding Courtesy Clerks). In the event of such advancement, the employee will begin to accrue hours at the new level starting with the date the new wage commences with no backfill of skipped hours in step progressions required.
- A.5** The experience and length of service wage adjustments provided for under Appendix A shall be placed into effect the first (1<sup>st</sup>) workday of the first (1<sup>st</sup>) workweek immediately following the workweek in which the employee qualifies for a higher rate of pay.
- A.6** **VOLUNTARY BUYOUT LANGUAGE:** The parties agree that the Employer may offer voluntary buyout opportunities to employees at any time(s) during the term of this agreement. In the event such voluntary buyouts are offered, the Employer agrees to provide thirty (30) days advance notice to the Union concerning the buyout components, the terms of the offer(s), and the timing of any offering(s), and to allow the Union to attend employee meetings regarding this issue.
- A.7** No employee shall earn less than twenty cents (\$.20) above either the California minimum wage rate or the municipal wage rate within the municipality in which the employee is employed.

## **Wage Increases:**

For all employees at the Experienced Rate of pay (top contractual rate and above) In classifications (excluding Courtesy Clerks) of **Head Clerk, Department Head, Food Clerk, and General Merchandise Clerk** shall receive the following wage increases. Effective the Sunday after ratification, \$1.75, effective 9/3/23 \$1.50, effective 12/1/24 \$1.00 to those employees at scale and above (\$4.25).

## **RATIFICATION BONUS PAYMENT:**

For all employees at the Experienced rate of pay (top contractual rate and above) in classifications of **Head Clerks, Department Heads, Food Clerks, and General Merchandise Clerks** who average between 32-40 hours a week for the eight (8) weeks prior to ratification shall receive a one-time lump sum bonus of \$1,500, for those who average 31 hours and below for the eight (8) weeks prior to ratification shall receive \$750.

**Courtesy Clerks** who average between 32 - 40 hours a week for the eight (8) weeks prior to ratification shall receive a one-time lump sum bonus of \$1,500, Courtesy Clerks that average 16 – 31 hours a week for the eight (8) weeks prior to ratification shall receive \$250.

Employees on a leave of absence are eligible for the bonus upon return from said leave of absence payable within 30 days of return.

All current probationary employees will receive the bonus within 30 days after passing their probation.

**APPENDIX A**  
**WAGE RATES FOR FOOD CLERKS AND COURTESY CLERKS**

CLASSIFICATIONS	Current Pay Rate	After Ratification \$1.75	Effective 9/3/23 \$1.50		Effective 12/1/24 \$1.00
Managing Clerk	\$25.510	\$27.260	\$28.760		\$29.760
Senior Head/Produce Head Clerk	\$24.970	\$26.720	\$28.220		\$29.220
Head Clerk	\$24.760	\$26.510	\$28.010		\$29.010
Experienced Food Clerk	\$24.230	\$25.980	\$27.480		\$28.480
<b>FOOD CLERK PROGRESSION STEPS</b>					
<ul style="list-style-type: none"> <li>FOOD CLERK TRANSITION – CURRENT APPRENTICE FOOD CLERKS WILL RECEIVE CREDIT FOR ALL HOURS WORKED IN THE FOOD CLERK CLASSIFICATION AND WILL BE TRANSITIONED INTO THE NEW STEP PROGRESSIONS.</li> </ul>		<b>New Progressions Steps Effective 7/20/22</b>			
			After Ratification \$1.75	Effective 9/3/23 \$1.50	Effective 12/1/24 \$1.00
		7 <sup>th</sup> 1040 hours	\$25.980	\$27.480	\$28.480
6 <sup>th</sup> 1040 hours	\$20.65	6 <sup>th</sup> 1040 hours	\$23.50	\$23.50	\$23.50
5 <sup>th</sup> 1040 hours	\$19.45	5 <sup>th</sup> 1040 hours	\$22.15	\$22.15	\$22.15
4 <sup>th</sup> 1040 hours	\$18.25	4 <sup>th</sup> 1040 hours	\$21.15	\$21.15	\$21.15
3 <sup>rd</sup> 1040 hours	\$17.25	3 <sup>rd</sup> 520 hours	\$20.65	\$20.65	\$20.65
2 <sup>nd</sup> 1040 hours	\$16.50	2 <sup>nd</sup> 520 hours	\$20.05	\$20.05	\$20.05
1 <sup>st</sup> 1040 hours	\$15.20	1 <sup>st</sup> 520 hours	\$19.45	\$19.45	\$19.45

<u>CLASSIFICATIONS</u>	<u>CURRENT</u>	<u>AFTER RATIFICATION</u> \$ .40	<u>EFFECTIVE 9/23/23</u> \$ .25	<u>EFFECTIVE 12/1/24</u> \$ .25
COURTESY CLERKS	\$15.10	\$15.50	\$15.75	\$16.00

**APPENDIX B**  
**DELI AND BAKERY**  
**NON-FOOD/GENERAL MERCHANDISE CLERK RATES**

**B.1** Notwithstanding any schedule of minimum wages, employees now receiving a higher wage than that indicated in said schedule for the particular classification of work performed shall not have their wages reduced due to the signing and effect of this Agreement.

The schedule of minimum wages shall be maintained by the parties hereto during the period of this Agreement, and the Employer shall and hereby agrees to pay wages in compliance therewith.

The company retains the right to terminate any non-contractual benefit including but not limited to gain sharing, discounts, awards, bonuses. This provision does not apply to over-scale wage rates.

**B.2** **PREMIUM EMPLOYEES:** Premium wage employees shall maintain the same hourly differential which they received over and above the previous contract rate.

**B.3** **NIGHT PREMIUM:** All employees, except Courtesy Clerks, shall receive extra compensation, in addition to the regular scale herein set forth, of sixty-five cents (\$.65) per hour for all work performed between the hours of 10 p.m. and 6 a.m.

**B.4** The experience and length of service wage adjustments provided for under Appendix A shall be placed into effect the first (1<sup>st</sup>) workday of the first (1<sup>st</sup>) workweek immediately following the workweek in which the employee qualifies for a higher rate of pay.

**B.6** **VOLUNTARY BUYOUT LANGUAGE:** The parties agree that the Employer may offer voluntary buyout opportunities to employees at any time(s) during the term of this agreement. In the event such voluntary buyouts are offered, the Employer agrees to provide thirty (30) days advance notice to the Union concerning the buyout components, the terms of the offer(s), and the timing of any offering(s), and to allow the Union to attend employee meetings regarding this issue.

**APPENDIX B**

**DELI AND BAKERY/GENERAL MERCHANDISE CLERK WAGE RATES**

<b>CLASSIFICATION</b>	<b>Current</b>	<b>After Ratification \$1.75</b>	<b>Effective 9/3/23 \$1.50</b>	<b>Effective 12/1/24 \$1.00</b>
<b>GM Head Clerk</b>	<b>\$18.61</b>	<b>\$20.36</b>	<b>\$21.86</b>	<b>\$22.86</b>
<b>Experienced GM Clerk</b>	<b>\$18.21</b>	<b>\$19.96</b>	<b>\$21.46</b>	<b>\$22.46</b>
<b>NON-FOOD/GM CLERKS PROGRESSION STEPS</b>				
<b>5<sup>th</sup> Step 1040 hours</b>	<b>\$17.21</b>	<b>\$18.50</b>	<b>\$19.00</b>	<b>\$19.50</b>
<b>4<sup>th</sup> Step 1040 hours</b>	<b>\$16.00</b>	<b>\$18.00</b>	<b>\$18.50</b>	<b>\$19.00</b>
<b>3<sup>rd</sup> Step 1040 hours</b>	<b>\$15.81</b>	<b>\$17.50</b>	<b>\$18.00</b>	<b>\$18.50</b>
<b>2<sup>nd</sup> Step 1040 hours</b>	<b>\$15.51</b>	<b>\$17.00</b>	<b>\$17.50</b>	<b>\$18.00</b>
<b>1<sup>st</sup> Step 1040 hours</b>	<b>\$15.20</b>	<b>\$16.50</b>	<b>\$17.00</b>	<b>\$17.50</b>

- GMC Transition – Current GM Clerks will transition into the new step progressions the Sunday after ratification (i.e., 1<sup>st</sup> step: \$15.20 moves to \$16.50) and will receive credit for all hours worked in the previous step for purposes of advancement in the new wage progression.



## APPENDIX C:

- C.4 VOLUNTARY BUYOUT LANGUAGE:** The parties agree that the Employer may offer voluntary buyout opportunities to employees at any time(s) during the term of this agreement. In the event such voluntary buyouts are offered, the Employer agrees to provide thirty (30) days advance notice to the Union concerning the buyout components, the terms of the offer(s), and the timing of any offering(s), and to allow the union to attend employee meetings regarding this issue.
- C.5** Where the basis for amounts paid over the wage rates provided in Appendix C have been specifically set forth in writing to the employee, they may be discontinued when the reason for their payments ceases to exist and the employee has been so advised in writing with a copy to the Union.
- C.6 NEW METHODS** It is agreed that should the Employer intend to initiate a major change in method of operation which is not presently in the industry within the area of operation covered by the affected Union that would result in a substantial change in the content of any job presently covered by this Agreement, the Employer shall give notice of the nature of such suggested new method to the affected Union, following which, the matter of job classifications, wages and/or other conditions and/or the disposition of employees potentially to be displaced shall then become a matter of negotiation with said affected Union for a period of forty-five (45) days.

Pending negotiations by the parties during the above-mentioned forty-five (45) day period, no change of operations as above set forth shall be placed into effect.

In the event the parties have not arrived at agreement within the above forty-five (45) day period, the Employer may elect to place such changed method of operation, as above defined, into effect, and all unresolved issues in regard to job classifications, wages, working conditions, and/or the disposition of displaced employees shall be submitted to final and binding arbitration in accordance with Section 18, Grievance and Arbitration.

The remedy, if any, shall be effective with the date of the arbitrator's award.

Any Employer that seeks to introduce "case ready" cuts of meat must notify the Union(s) in advance of a change in the method of operations and proceed in accordance with this Section of the Collective Bargaining Agreement.

## **ARBITRATION OF STATUTORY CLAIMS AND CLASS ACTION WAIVER**

This Memorandum of Understanding (MOU) is entered into and between Diablo Foods (Employer) and United Food and Commercial Workers Local 5 (Union) and supplements the current Collective Bargaining Agreement between the parties as follows:

All claims or disputes involving alleged violations of the Industrial Welfare Commission Wage Order 16, the California Labor Code, and the Fair Labor Standards Act, and all derivative claims under Cal. Business & Professions Code Section 17200, et. Seq., as well as for associated penalties, not otherwise covered by the Collective Bargaining Agreement, shall be subject to final and binding arbitration. Such claims shall be resolved exclusively through binding arbitration before an impartial arbitrator and shall not be brought in a court of law or before any administrative agency such as the California Labor Commissioner. All substantive and procedural right applicable to mandatory arbitration of statutory claims shall be observed in accordance with applicable law (e.g., the right to more than minimal discovery, payment of administrative costs and arbitration fees by the employer, a written award etc.) The arbitrator shall apply the applicable statute of limitations applicable to each claim and shall be authorized to award any and all remedies otherwise available by law.

Statutory claims described above shall be initiated by written notice by the aggrieved Employee to the Employer at its current business address within the statute of limitations period with a copy provided to the Union. Once a claim is filed, the Union the aggrieved Employee and Employer shall meet within thirty (30) calendar days, or other time as mutually agreed upon, to discuss and attempt to resolve the claim. Should the claim not be satisfactorily resolved to the satisfaction of the aggrieved employee within the foregoing time frame, the Employee may proceed directly to arbitration as provided in this MOU. In the event the Employer and Employee are unable to agree on the selection of an impartial arbitrator, the Employee or Union on behalf of the Employee or Employer may request a list of seven (7) impartial arbitrators from the Federal Mediation and Conciliation Service from which the Employee and Employer will alternatively strike with the arbitrator's fees and costs. Local 5 may participate in any such arbitration to protect its interests and Collective Bargaining Agreement.


The impartial arbitrator shall have the authority to consolidate individual statutory claims for hearing but shall not have the authority to fashion a proceeding as a class, collective or representative action or to award relief to a group or class of employees in on grievance or arbitration proceeding.

It is the intent of the parties that any claim initiated by the Union or an employee alleging a violation of the Collective Bargaining Agreement shall be handled in the normal course of the grievance and arbitration procedures as traditionally used by the parties. Nothing herein shall prohibit the Union from bringing a group or class claim based on a violation of the Collective Bargaining Agreement.

In a court of competent jurisdiction finds any term or clause in this Memorandum of Understanding to be invalid, unenforceable, or illegal, such a term or clause may be revised to the extent required according to the opinion of the court to render the Memorandum of Understanding enforceable or valid so as to preserve the agreement and intent to the fullest possible extent.

This Memorandum of Understanding shall be deemed effective on May 1, 2022 and shall continue in effect for any extensions modifications or renewals to the current Collective Bargaining Agreement between the parties or any successor agreement thereto unless otherwise amended or terminated by mutual agreement of the parties.

**On Behalf of:**  
**UFCW Local 5**

  
\_\_\_\_\_  
Oscar Orozco                      2-2-23  
Date


**On Behalf of:**  
**Diablo Foods**

 2-2-23  
\_\_\_\_\_  
Dan Stokes                      Date

**SIDE LETTER**  
**BETWEEN**  
**UFCW LOCAL 5**  
**AND**  
**DIABLO FOODS**

On or before May 1 2022, the parties will request the Trustees amend the Pension Rehabilitation Plan to suspend the contribution increases of \$0.122 cents per hour scheduled for 2022, 2023, and 2024.

On Behalf of:  
UFCW Local 5

  
\_\_\_\_\_  
Oscar Orozco                      2-2-23  
Date

On Behalf of:  
Diablo Foods

  
\_\_\_\_\_  
Dan Stokes                      2-2-23  
Date

**OFFICE ADDENDUM TO THE FOOD AGREEMENT  
FOR THE PERIOD MARCH 1, 1989 TO AND INCLUDING FEBRUARY 29, 1992**

The following rates of pay, classifications and exceptions shall prevail:

1. A separate classification of Store Office Clerk exists and applies to employees whose work is not directly connected to check stand operation or procedures.
2. The provisions of Section 2 pertaining to "job referral" and "other hiring" are inapplicable to this classification.
3. Section 4 modified to establish separate seniority for this classification.
4. Section 7.7 Daily Guarantee is modified to provide that the minimum four (4) hour daily guarantee shall apply except in those cases where it is operationally impractical. If the Employer establishes a Non-Food Department then each employee shall be offered at least twenty (20) hours work in each week. The employee may work in the Non-Food Department in order to meet the scheduling requirements.
5. It is understood that the above employees will only perform work and services in the office, which may include cashing customer checks, setting up tills, doing check runs and store reports, and handling lottery tickets. In addition to the work in the office, the above employees may also make "pulls" from the registers, delivering change to the registers and take register readings in connection with their bookkeeping duties. In the event the employer hires employees to perform additional duties, they will be paid in accordance with the Food Store Contract.
6. Employees hired by the Employer who have had previous experience will be given credit for such experience up to a maximum of twelve (12) months in determining their starting rate. To receive credit, experience must be approximately equal in skill, function and responsibility required. All part-time employees shall receive credit on their scale according to hours worked.
7. The hourly rate shall be the same pay scale as General Merchandise Clerks hired on or after May 3, 1983.

*/s/ DAVID R. COX*  
David R. Cox  
Food Employers Council, Inc.

*/s/ WILLIAM F. SENN*  
William F. Senn  
UFCW International Region 14  
On behalf of UFCW Locals 373, 428,  
648, 775, 870, 1119 and 1179

**FOOD EMPLOYERS COUNCIL, INC.  
Drawer 1298, 3685 Mt. Diablo Blvd.  
Lafayette, California 94549 (415) 284-9350**

April 30, 1989

Mr. William F. Senn  
UFCW International Region 14  
Spokesman for UFCW Locals 373, 428, 648,  
775, 870, 1119 and 1179  
One Sierragate Plaza, Suite 230-A  
Roseville, CA 95678

Re: April 30, 1989 Final Offer - Involving the Food Employers Council, Inc., On Behalf of Its Member Companies and United Food & Commercial Workers Union, Local 373, 428, 648, 775, 870, 1119 and 1179

Gentlemen:

This will confirm that the proposed modification in Section 1.3.1 of the Master Food Agreement involving "delicatessen merchandise" is not intended to and does not affect the status of traditional "peg board" sections of the store.

If you have any questions or require additional information, please contact this office.

Very truly yours,  
FOOD EMPLOYERS COUNCIL, INC.  
Northern California Division

*/s/ DAVID R. COX*  
David R. Cox  
Executive Director

WRV:bjr

**FOOD EMPLOYERS COUNCIL, INC.  
Drawer 1298, 3685 Mt. Diablo Blvd.  
Lafayette, California 94549 (415)284-9350**

April 30, 1989

Mr. William F. Senn  
UFCW International Region 14  
Spokesman for UFCW Locals 373, 428, 648,  
775, 870, 1119 and 1179  
One Sierragate Plaza, Suite 230-A  
Roseville, CA 95678

Re: Modification of Subsection 1.3.1 to Permit Non-Food and General Merchandise Clerks to Handle  
Candy, Gum and Tobacco

Gentlemen:

This will confirm that in applying the above-captioned modification to Subsection 1.3.1 of the Master Food and Liquor Agreement, a "lobby" shall be defined as the area of the store between the checkstands and the front wall of the store.

If the above accurately reflects your understanding of our agreement in this matter, please sign in the space provided below.

Very truly yours,  
FOOD EMPLOYERS COUNCIL, INC.  
Northern California Division

*/s/ DAVID R. COX*  
David R. Cox,  
Executive Director

WRV:DRC:bjr

Agreed to this 30th day of April, 1989.

*/s/ WILLIAM F. SENN*  
William F. Senn  
UFCW International Region 14  
On Behalf of UFCW Union Locals 373, 428, 648  
775, 870, 1119 and 1179

**FOOD EMPLOYERS COUNCIL, INC.  
2000 Crow Canyon Place, Suite 200  
San Ramon, California 94583 (510) 275-1750**

March 6, 1992

Mr. Joseph T. Hansen  
UFCW Regional Director  
3300 Douglas Boulevard, Suite 345  
Roseville, California 95661

Dear Mr. Hansen:

In the event that an Employer party to the Master Food Contract leases space in one of the Employer's stores to a separate party lessee; the product sold by the lessee is handled, displayed and sold within a distinct leased area separate from the Employer's merchandise; and said lessee does not sell items such as name-brand products in the same form as traditionally handled by bargaining unit employees (deminimus excepted); then the Union agrees that Sections 1.4 and 1.5 of the Master Food Agreement shall not in any way be applicable to said department.

Very truly yours,  
FOOD EMPLOYERS COUNCIL, INC.

*/s/ DAVID R. COX*  
David R. Cox  
Executive Director  
Northern California Division

DRC;jk

*/s/ JOSEPH T. HANSEN*  
Joseph T. Hansen,  
Regional Director  
On Behalf of UFCW Local Unions 115, 373, 428, 588,  
775, 839, 870, 1119, 1179, 1288 and 1532



**FOOD EMPLOYERS COUNCIL, INC.**  
**2000 Crow Canyon Place, Suite 200**  
**San Ramon, California 94583 (510) 275-1750**

March 7, 1992

Mr. Joseph T. Hansen  
UFCW Regional Director  
3300 Douglas Boulevard, Suite 345  
Roseville, California 95661

Dear Mr. Hansen:

This will confirm our agreement that shifts which begin during the last day of the work week defined in Subsection 6.1 of the Collective Bargaining Agreement and end during the first day of the next work week shall not result in the payment of any penalty or premium on the basis that the shift overlaps two separate work weeks.

Very truly yours,

FOOD EMPLOYERS COUNCIL, INC.

*/s/ DAVID R. COX*  
David R. Cox  
Executive Director  
Northern California Division

DRC;jk

*/s/ JOSEPH T. HANSEN*  
Joseph T. Hansen,  
Regional Director  
On Behalf of UFCW Local Unions 115, 373, 428, 588,  
775, 839, 870, 1119, 1179, 1288 and 1532

**LETTER OF UNDERSTANDING**

Food Employers Council, Inc. on behalf of its member Employers, and UFCW Locals 373, 428, 648, 775, 870, 1119 and 1179 agree that the correct interpretation and application of Shift Selection, Section 4.5.2, is that set forth at the first full paragraph on Page 9 and the paragraph which begins on Page 11 and concludes on Page 12 of the award of arbitration by David E. Feller in Retail Clerks Union, Local 17 and Safeway Stores, issued on November 8, 1979.

A copy of said language is attached hereto.

*/s/ DAVID R. COX*  
David R. Cox  
FOOD EMPLOYERS COUNCIL, INC.

UFCW - UNION LOCAL 373

UFCW - UNION LOCAL 428

UFCW - UNION LOCAL 648

UFCW - UNION LOCAL 775

UFCW - UNION LOCAL 870

UFCW - UNION LOCAL 1119

UFCW - UNION LOCAL 1179

DATED: 3/20/86

**LETTER OF UNDERSTANDING**  
**BETWEEN**  
**UFCW LOCAL 5**  
**AND**  
**DIABLO FOODS**  
**(Birthday, Anniversary and Floating Holidays)**

The parties agree to the following clarification of personal holiday entitlements:

Under Section 10.1 the earning of the Birthday and Anniversary holiday, the contract language states “---in accordance with the observance procedures governing the Employee’s birthday holiday,---” The parties agree this means that in order for an employee who is otherwise qualified to earn the Birthday or Anniversary holiday an employee must work a minimum of one day in the week the Birthday or Anniversary holiday falls or be on paid vacation during that week in order to be entitled to the holiday.

Under Section 10.1 regarding the Floating holiday, in order for an employee who is otherwise qualified to earn the Floating holiday an employee must work a minimum of one day on or after January 1<sup>st</sup> in order to be entitled to the holiday.

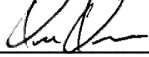
Under Section 10.5 the parties agree in order for an employee who is otherwise qualified to earn the 25-year floater on June 1 the employee must work at least one day in the 12-month period on or after June 1. The parties agree in order for an employee who is otherwise qualified to earn the second 25-year floater on October 1 must work at least one day in the 12-month period on or after October 1. If not taken, payout will be at the end of the following calendar year.

**FOR THE EMPLOYER,  
DIABLO FOODS;**

By 

Date 2-2-23

**FOR THE UNION,  
UFCW LOCAL 5;**

By 

Date 2-2-23

**EXHIBIT B  
EXCERPT FROM  
ARBITRATION AWARD  
BY  
DAVID E. FELLER  
ISSUED NOVEMBER 8, 1979**

**(Retail Clerks Union Local 17 and Safeway Stores)**

**(START OF PAGE 9 as typed)**

A journeyman clerk is, by definition, trained and qualified to perform in at least satisfactory fashion (although perhaps not in the best possible fashion) all of the duties of a journeyman clerk and there is, therefore, no reason to inquire at all into the qualifications of any other employee.

Acceptance of this position would essentially eliminate all of the factual issues in this case. I decline, however, to accept it. Although there is clearly a distinction between job assignments and shift assignments, it is nevertheless not true that there is no relationship between them. Nor can it be said, in the light of the agreement's language, that any journeyman is qualified by virtue of the fact that he is a journeyman to perform all of the work assigned to a journeyman, since the agreement clearly evinces a recognition that there are shift assignments which require particular qualifications. It does so in Section V-I-2, where the right to select a shift schedule is conditioned on the possession of "the necessary qualifications for the schedules selected." Indeed the notion that there may be a qualification for a particular shift is emphasized by the fact that the agreement goes on to specify that qualifications "shall include such factors as experience, job performance, aptitude, attendance, etc."

The problem which this case presents is that no such qualification requirement is specified with respect to the junior employee whom the agreement requires be placed on the shift of a senior employee who has exercised his seniority right to the junior employee's schedule. It is clear that the apparently mandatory requirement that the junior employee bumped off a schedule be given the schedule of the senior employee who bumped him was inserted in the agreement in order to prevent a chain reaction. If a bumped employee could exercise his seniority preference

**(END PAGE 9 as typed)**

**(START OF PAGE 11 as typed)**

employees, that qualification on the senior employee's right would possibly be more onerous than the one which the parties have inserted in the agreement. The Union's argument that shift schedules and job assignments are unrelated is not correct, but there clearly is a substantial difference between them. No employee has the right to insist on doing the same work which he previously did on his shift. So long as the work is properly within the journeyman clerk classification, management's right to direct the working forces clearly encompasses the right to assign and to reassign and to change assignments so long as the employee's right to the shift which he has selected is not violated. It follows that there is no requirement in the agreement that the junior employee, bumped as a result of a senior employee's exercise of his right to shift preference, be qualified to perform the work previously assigned to the senior

employee. The only requirement is that there be a reasonably practicable method of reassigning the work to some journeyman clerks so that the business of the Company can be performed. The Company is clearly correct when it says that once the weekly schedule has been posted it would violate the agreement if it changed the schedules of other employees in order to accommodate the shift schedule change requested by a senior employee. It is not correct, however, in assuming that this is necessarily the only way in which it can secure the satisfactory performance of the work previously performed by the senior employee, since it has the right to change the functions to which other employees are assigned within their scheduled shifts.

I conclude, then, that the right of a qualified senior employee to exercise his shift preference rights can be denied if, and only if, the employer can show that it is impossible to reassign the duties of other clerks within their posted schedules so that the work which the senior

**(END OF PAGE 11 as typed)**  
**(START OF PAGE 12 as typed)**

employee has performed on his previous shift will in fact be performed satisfactorily. Given the absolute nature of the language of the agreement, the burden of so showing must be placed upon the Company, and it is not met by simply showing that the junior employee who must be transferred to the senior employee's shift is himself or herself not capable of performing the work efficiently. It must be shown that no reassignment of job duties could result in the satisfactory performance of the work involved.

I also conclude that no such showing has been made in this case. It is conceded that there were other employees capable of taking care of the end displays. It is clear that there were other employees who were capable of doing the checking which the grievant was assigned to in the hours after 1 p.m. The Company has not met the burden of showing that it would have been impossible to rearrange the job duties of the clerks employed by the store in such a way that all of the functions performed by the grievant on his previous shifts could have been performed satisfactorily. Accordingly, I conclude that the substantive issue involved must be decided in favor of the Union.

With respect to remedy, I also conclude that the grievance must be granted. The language of Section VI-K is too clear to warrant what is in effect an amendment based upon proposals made by the Union. The agreement says, as plainly as language can, that when ever an employee's schedule is not changed in accordance with the provisions of this agreement and he has worked outside "such schedule" then the hours so worked shall be paid for at overtime rates. The words "such schedule" plainly mean the schedule which the employee has requested in his request for a change. The provision cannot be read as referring only to cases in which schedules are

**(END OF PAGE 12 as typed)**

**END OF EXCERPT**

**EXHIBIT C**  
**Company Drug & Alcohol Policy**

**I. Policy Statement**

Lunardi's Supermarkets, Inc., and Lunardi Foods (hereinafter called the "Employer" maintains zero tolerance for drug and alcohol abuse by its employees. Wherever the term "employee(s)" is used in this document, the term also includes "prospective employees". The use of any illegal drugs, intoxicants, or controlled substances is strictly prohibited. Illicit drug use and indiscriminate alcohol consumption puts everyone at risk and cannot be tolerated. In keeping with our efforts to promote health and safety and protect the interests of our employees, customers, and the Employer, we cannot allow anyone to use possess, sell, manufacture, purchase, or be under the influence of alcohol, illegal drugs, intoxicants, or controlled substances at any time on company premises, in company vehicles, or while on company business.

The following rules and standards of conduct apply to all employees. The following are strictly prohibited by the Employer.

- Possession, use, or being under the influence of alcohol, or an illegal drug, intoxicant, or controlled substance while on the job or on Company-owned or occupied premises.
- Driving a vehicle on Company business while under the influence of alcohol or an illegal drug, intoxicant, or controlled substance.
- Distributing, selling, manufacturing, or purchasing (or attempting to distribute, sell, manufacture, or purchase) an illegal drug, intoxicant, or controlled substance during working hours or while on Company-owned or occupied premises.
- Testing positive on a required or requested drug or alcohol test or screen.
- Refusing either to take or to release information regarding a required or requested drug or alcohol test of screen, and,
- Violating any Company rule or policy regarding alcohol or drug use.

**II. Definitions:** (For the purpose of this policy:)

- A. "Alcohol" includes Ethyl Alcohol or Ethanol. Alcohol is not limited to popularly recognized alcoholic beverages such as beer, wine, or liquor.
- B. "Illegal Drugs" means a controlled substance as defined by Section 802(6) of Title 21 of the United States Code, the possession of which is unlawful under Chapter 13 of the Title. The term "illegal drugs" does not mean the use of a controlled substance pursuant to valid prescription or other use authorized by law. However, if an employee is impaired in their ability to perform their work because of prescription drug use, this policy applies in the same manner as if the substance(s) were illegal.

- C. "Drug Test" means analysis of urine, blood, and/or breath sample for the presence of "illegal drugs" and/or prescription drugs that may impair an employee's ability to perform their work.
- D. "Employee" means all persons currently employed by the Employer as well as prospective employees.
- E. "Verified Positive Drug Test" means a test result that has been confirmed by an independent medical testing facility.

### **III. Rules**

The cooperation of all employees is required in order for our drug and alcohol policy to be successful, consequently the Employer requires that all employees follows these rules.

- A. Possession or storage of alcohol or drugs in company or personal vehicles or on company premises (including parking lots, and entry roads) is strictly prohibited. An employee will be considered in possession of drugs and alcohol if any of the above is discovered on the employee's person, in the employee's locker, office, personal work place equipment, lunch box, personal vehicle while on company property, or in a company vehicle or equipment which is in their custody.
- B. Employees are prohibited from being at work or operating company-provided vehicles or equipment under the influence of drugs or alcohol.
- C. Violation of this policy will subject an employee to termination.

### **IV. Standards: (Test)**

In order to ensure compliance with these rules, the Employer has established standards in the following areas.

- A. The Employer will require testing of any employee during their employment period when there is reasonable cause (see "Reasonable Cause/Reasonable Suspicion Testing" below) or other overt reason to believe that the employee is under the influence of drugs and/or alcohol.
- B. Prior to testing, applicant/employee will be given the option to report any medications which he/she has taken or is presently taking. Such information will be used for the purposes of discerning whether a positive test result is because of a lawful use of a medication.

### **V. Reasonable Cause/Reasonable Suspicion Testing**

Testing maybe be conducted upon reasonable suspicion that an employee is currently under the influence of, or impaired by, alcohol, a controlled substance or other drug. Reasonable suspicion exists when there is clear indication of impairment based on objective evidence and/or based on specific personal observation by a supervisor or another company management person who can attest to the appearance, behavior, speech, or breath odor of the employee. The supervisory employee will document his/her observations and reasons for requesting testing.

Those observations may include, but not limited to:

- Unsafe work habits or practices that endanger the employee, fellow employees, or customers.
- Abnormal work performance.
- Physical conditions and/or symptoms, such as unsteady balance, alcohol breath, glassy eyes, reddened eyes, unsteady gait, etc.
- Abnormal personal behavior and/or poor interpersonal relations on the job.
- Involvement in a workplace incident where the circumstances indicate the possibility that drugs and/or alcohol were a factor in the incident.
- A confirmed positive test shall be grounds for discipline up to and including termination.
- The Employer has provided management training to make supervisors aware of the above conditions.
- Refusal to take a drug or alcohol test under the conditions of this policy is grounds for termination of employment.

**A. Inspection Policy:** When there is reasonable cause to believe that an employee is in possession of a controlled substance or alcohol, the Employer reserves the right to request an inspection of any item(s) the employee has brought on company property, including employee vehicles parked on company property at any time.

Any employee who refuses to comply with the request for inspection of their personal property or vehicle, will be subject to termination of employment.

**B. Prescription Drugs:** The use of prescription drugs and/or over-the-counter drugs may also affect an employee's job performance. Any employee who is using prescription or over-the-counter drugs, that may impair his/her ability to safely perform the job or may affect the safety or well-being of others, must submit a written physician's statement that the prescription drug use will not affect job safety. The employee is not required to identify the medication or the underlying illness. Various federal, state, and local laws protect the rights of individuals with disabilities and others with regard to the confidentiality of medical information, medical treatment, and the use of prescription drugs and substances taken under medical supervision. Nothing contained in this policy is intended to violate or interfere with individual rights under these laws.

**C. Counseling:** The Employer views alcohol and drug abuse as treatable health problems. Any employee who voluntarily seeks help and undergoes treatment for alcohol and drug abuse prior to being required to undergo drug testing and prior to being involved in any substance-related misconduct, will not be subject to disciplinary action provided he/she remains drug or alcohol free and complies with the provisions of his/her employee assistance agreement. Employees who have a need are encouraged to seek assistance from either the Employer or medical benefit assistance programs before health, safety and



work performance are affected. Seeking assistance will not, however, relieve an employee of the obligations to comply with company policies, nor will it preclude the company from disciplining the employee for failure to comply with company policies.

- D. If testing is conducted based upon reasonable suspicion in accord with Lunardi's written policy and results in a positive test, that employee will be discharged. If, following discharge an employee seeks rehabilitation, Lunardi's may consider on a case-by-case basis, allowing that employee to return to work, Lunardi's decision in this regard will be guided by such factors as length of service, employee disciplinary record, employee's sincerity, and commitment in seeking rehabilitation, and the nature of conduct exhibited by the employee which immediately preceded the request by his/her supervisor to take a test. If conduct independent of being under the influence of drugs or alcohol was sufficient to warrant discharge, the employee will not be allowed to return to work.
- E. This understanding is entered into without limiting the right of the union to file grievances on a case-by-case basis regarding discipline issues where the union believes that, under the circumstances of that individual case, referral to rehabilitation and return to work is reasonable.



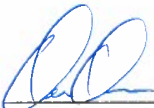
**LETTER OF UNDERSTANDING**  
**BETWEEN**  
**UNITED FOOD & COMMERCIAL WORKERS UNION LOCAL 5**  
**AND**  
**DIABLO FOODS**  
**(PREVIOUS EXPERIENCE GMC & FOOD CLERK)**

As a result of discussions between UNITED FOOD & COMMERCIAL WORKERS UNION LOCAL 5 and Diablo Foods, the parties agree to the following clarification on previous experience.

Under Section 1.3.3.1 **PREVIOUS EXPERIENCE (FOOD)** If an Experienced General Merchandise Clerk/Non Food Clerk has been out of the industry no more than five (5) years, he will be allowed to start at the (4<sup>th</sup>) step Apprentice Non Food/General Merchandise Clerk rate of pay.

Under Section 9.2 **PREVIOUS EXPERIENCE (FOOD)** If an Experienced Food Clerk has been out of the industry no more than five (5) years, he will be allowed to start at the (4<sup>th</sup>) Apprentice Food Clerk rate of pay.

FOR UFCW LOCAL 5:



Oscar Orozco  
North Bay Director

2-2-23  
Date

FOR DIABLO FOODS:



Dan Stokes

2-2-23  
Date

