

Food Agreement

Between

**United Food & Commercial Workers Union, CLC
Local 1179
Contra Costa County**

And

Diablo Foods



May 16, 2005 – December 1, 2007

**4121 ALHAMBRA AVENUE, MARTINEZ, CALIFORNIA, 94553
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**UNITED FOOD & COMMERCIAL WORKERS UNION,
LOCAL 1179, AFL-CIO
FOOD AGREEMENT
SEPTEMBER 12, 2004 – DECEMBER 1, 2007**

THIS AGREEMENT, entered into this 16th day of May, 2005, by and between **DIABLO FOODS, INC.**, a corporation, hereinafter called the Employer, and **UNITED FOOD & COMMERCIAL WORKERS UNION, LOCAL 1179**, 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 meat department employees and supervisors within the meaning of the National Labor Relations Act, as amended.
- 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** Supervisory functions;
 - 1.2.2** Such work as may be performed by employees working exclusively in the meat department and who are engaged in the handling, cutting, selling, processing, wrapping, or displaying of fresh, frozen or processed meats, poultry, fish and seafood products in said department;
 - 1.2.3** Work of employees heretofore expressly excluded from the provisions hereof by agreement of the parties; and
 - 1.2.4** Such work as is performed under Industry practice, prevailing and existing as of the date of ratification (Monday, May 16, 2005) of this Agreement, within the geographical jurisdiction for 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, Hispanic food merchandisers, beer merchandisers, and outside supplier or reset crew.
 - 1.2.5** 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.

- 1.2.6** 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:** It is agreed that in the event the Employer, after the execution of this Agreement, institutes a non-food or general merchandise classification or department, either directly or by department concession, or creates work of a non-food or general merchandise nature

as hereinafter defined, in any retail food store or stores within the geographical jurisdiction of this Agreement, then a non-food or general merchandise clerk classification and rates of pay therefore shall be established under the conditions hereinafter set forth.

DEFINITION OF A NON-FOOD OR GENERAL MERCHANDISE LEASED DEPARTMENT: Non-food or general merchandise leased departments shall consist of a physically separated and distinctly defined section of the food store where only non-food or general merchandise is displayed.

1.3.1 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 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-salesmen), plastic wrap, sandwich bags, plastic trash bags, aluminum foil, wax paper, paper bags, diapers, feminine hygiene items, gum, candy, and tobacco product in any location within the store except bakery products delivered and displayed by a driver-salesman, alcoholic beverages and magazines. Non-food or general merchandise work may include utility or cleaning work.

1.3.2 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.

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

1.3.3.1 GMC/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/Non-Food Clerk is an employee that has gained 7,800 hours experience in the retail food industry.

PREVIOUS EXPERIENCE: If an Experienced GMC/Non Food has been out of the industry between five (5) and ten (10) years, he will be allowed to start at the 5th Apprentice Clerk rate of pay.

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

If a person has been out of the industry for five (5) years or more, who has not reached Experience GMC/Non Food Clerk status, he will be allowed to start at the 1st Apprentice GMC/Non Food Clerk rate of pay.

- 1.3.4** 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.
- 1.3.5** 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 be laid off or have his hours reduced as a direct result of the expanded utilization of rack jobbers.
- 1.3.6 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.

- 1.3.7** 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.
- 1.3.8** 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: 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.

- 1.4 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:
- 1.4.1** That all such work shall be performed only by members of the appropriate unit as defined in Section 1.1 hereof; and
- 1.4.2** 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** 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 2.4.2 or Section 3.1 of this Agreement.
- 1.9 SALESMEN:** 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-salesman 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 of 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 the event that he does not work 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.

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.

1.12 ENFORCEMENT: In the event of a violation of Section 1.2.4, 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 a recognized charity mutually agreed to by the parties 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 a 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 NEW JOBS: 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 25, 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.

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 UNEMPLOYED LIST: The Union agrees to keep an up-to-date list of known unemployed clerks with an accurate record of their experience or training, and the Employer agrees to notify the Union of vacancies in positions or job openings within the classifications covered by this agreement in order that the unemployed clerks on the aforementioned list may be provided with a full opportunity to fill such vacancy. In filling vacancies the Employer shall give preference to applicants with previous employment experience in the industry in the area covered by this Agreement.

2.3 REGISTRATIONS: The Union agrees to accept registrations for employment upon each list so maintained, and to dispatch applicants for employment from said lists for vacancies or job openings with the Employer in accordance with his specification and this Agreement.

2.4 JOB REFERRAL AND NON-DISCRIMINATION:

2.4.1 The Union shall be allowed two (2) days, on which its office is open, to refer applicants. Selection by the Union of applicants for referral to jobs shall be on a non-discriminatory basis and shall not be based on, or in any way affected by, union membership, bylaws, rules, regulations, constitutional provisions, or any other aspect or obligation of union membership.

The Employer shall retain the right to reject any job applicant referred by the Union, provided such rejection is not in violation of this Agreement. The Union agrees that the Employer may employ persons from other sources when applicants satisfactory to the Employer are not available from the lists maintained by the Union.

2.4.2 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.

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

2.4.3 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.

2.5 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:

2.5.1 Promptly notify the Union of such employment in writing giving the date, place and job classification of the employment and the name, social security number, and address of the new employee and

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

2.5.3 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.

2.5.4 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.

2.6 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.

2.7 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 probationary period of sixty (60) calendar days for all employees. During the probationary period a probationer may be discharged without right of appeal except if such discharge is in violation of Section 2.4.2 or 3.1 of this Agreement.

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 that 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.

3.3.1 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.

3.3.2 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 Employee 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.

4.2 CLASSIFICATION: Seniority shall be by classification listed as follows in Section 1.3 and 9 hereof:

1. Managing Clerks
2. Senior Head Clerks and Senior Produce Clerks
3. Head Clerks
4. Experienced Food and Apprentice Clerks
5. Floor Clerks, Non-Food and General Merchandise Clerks
6. Courtesy Clerks- Subject to the restrictions of Section 9.1.5.4 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 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 apprentice 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: With respect to layoff, recall, and promotion, seniority shall be based upon the length of service with the Employer in the area covered by this Agreement; provided, where an employee is transferred by the Employer to such area from another area, the transferred employee shall retain all seniority rights with the Employer but shall not be entitled to exercise such rights, with respect to layoff, recall or promotion, until the expiration of six (6) months after the date of transfer, at which time his seniority shall be based upon the first day of employment by the Employer, regardless of area. However, during such period of six (6) months the transferred employee shall accrue seniority rights in the new area from the date of transfer and shall retain all seniority rights with respect to layoff, recall and promotion in the area from which he was transferred.

4.3.1 NECESSARY QUALIFICATIONS: 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 specialized skills and background.

4.3.2 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. No trial period shall be required. 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; however, regardless of any self-demotion permitted under the foregoing, the Employer may impose disciplinary action for conduct preceding an employee's decision to self-demote.

All permanent job vacancies, **except Courtesy Clerks**, shall be posted for a period of five (5) days. Those vacancies above journeyman Food Clerk shall be posted at each store of the Employer within the seniority areas as specified herein. Those vacancies below Journeyman Food Clerk shall be on a store-by-store basis. 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.

Non-Food and General Merchandise Clerks in each store who have worked in the Non-Food and General Merchandise Clerk classification for a period of two (2) full years and are desirous of promotion and are otherwise reasonably qualified for a promotional opportunity in accordance with this provision must file a semi-annual written request for promotion with the Store Manager during the first two (2) working weeks in January and July. In the event the Employer decides to promote an eligible Non-Food or General Merchandise Clerk within the store to fill the permanent job vacancy, then the selection of the employee to be promoted shall be in accordance with the provision set forth herein.

The Employer agrees to provide the Union with a list of employees, bimonthly, who have been promoted to positions above Experienced Clerk.

4.3.3 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. For purposes of this Section, a layoff is defined as being reduced to zero (0) hours.

4.3.4 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 telegram 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.

4.3.5 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:
- 4.4.1** Is discharged for just cause;
 - 4.4.2** Resigns or voluntarily quits;
 - 4.4.3** Is absent from work for six (6) consecutive months due to layoff;
 - 4.4.4** Is absent from work for more than thirty (30) days due to in death the immediate family;
 - 4.4.5** Fails to return to work upon completion of a leave of absence as defined in Section 5.14;
 - 4.4.6** Fails to report for work when recalled as provided in Section 4.3.3 of this Agreement.
- 4.5 SHIFT SELECTION:** The word "shifts" 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 shall include such factors as experience, job performance, aptitude, attendance, etc.
 - 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 semiannually. Such list shall be by seniority, listing the employee's date of hire, name, social security number, work location, classification, current rate of pay, and indicate if the employee is part-time or full-time.
- It is understood that part-time and full-time status shall be provided on these lists. 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.
- 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 Clerks may bid for full-time forty (40) hour job openings or part-time job openings with more hours excluding relief for vacations, illnesses, or other authorized absences within the employee's assigned store, based upon said employee's seniority, provided that he makes his desire for such work known, in writing, concurrently to the Union and to the store manager. Written requests must be made every six (6) months. Written requests may not be submitted outside the specified period. The time periods for requests shall be the first two (2) full working weeks in February and August. Lists are effective the first shift of the month following the request period.

The store manager shall immediately, upon receipt of said request, forward same to the offices designated by the Employer. The Employer shall thereupon place the name of the employee on a list maintained by the Company for such purpose. The names of the employees shall be placed upon the list according to seniority. A copy of said list shall be forwarded at the end of each request period to the Union.

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.

A vacancy created in an existing full-time classified journeyman food position, due to retirement, resignation or transfer will be filled from the full-time bid list.

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, of their desire for more hours and they shall be afforded such hours by seniority.

4.10.3 REMOVAL FROM LIST: Employees refusing an offer of full-time work, requesting part-time work after having been selected for full-time work, indicating their unavailability for continued full-time work, or refusing a job opening with more hours, shall not be entitled to exercise rights set forth above until the next request period.

4.10.4 REDUCTION IN HOURS AND LAYOFF: Reduction in employees' hours, due to lack of work, shall be accomplished by seniority and by classification on a store-by-store basis in the following manner:

4.10.4.1 Notwithstanding the above, before a full-time employee may be reduced in hours on a store-by-store basis, the Employer shall first reduce the hours of part-time employees in the store affected by the lack of work in the order of their seniority. Hours shall be afforded to part-time employees in the store affected by the lack of work in the their seniority by classification on a store-by-store basis. It is recognized that management has the right to establish such weekly work schedules to meet the requirements of the business.

4.10.4.2 To the extent further reductions of work hours are required in the affected store, the Employer shall reduce the hours of full-time employees by seniority and by classification. Any full-time employee whose working hours are reduced for more than three (3) weeks (not necessarily consecutive) in a nine (9) month period, commencing with the first week of reduced hours, shall have a one-time option during any said nine (9) month

period to request in writing, during the fourth (4th) week of reduced working hours or displace the least senior full-time employee in the same classification in the appropriate geographical seniority area. If the full-time employee chooses to replace the least senior full-time employee, his new store becomes his assigned store. Said employee shall be entitled to exercise the option right in this new assigned store in accordance with the procedure set forth herein.

The displace full-time employee shall have the right to exercise seniority to displace the least senior employee in the same classification in the geographical seniority area or to remain in his assigned store at the reduced hours in accordance with his seniority. If said employee displaces the least senior employee in the geographical seniority area, he shall be afforded hours in his assigned store by seniority by classification.

4.10.4.3 A full-time employee who has been involuntarily reduced to part-time and who chooses to remain in the affected store shall be placed at the top of the bid list referred to in Section 4.10.1 with respect to the affected store and shall have preference over those employees who have requested additional available hours pursuant to Section 4.10.2.

4.10.4.4 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 vacations, illnesses, other authorized absences, or business fluctuations.
- (2) An employee who becomes full-time from the bid list.

4.10.4.5 The aforementioned provisions shall not 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 hereof.

4.10.5 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.

4.10.6 WEEKLY GUARANTEE: Each part-time employee (excluding Courtesy Clerks) shall be scheduled for at least twenty-four (24) hours work in each week.

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

4.10.6.1 The store is normally open for business six (6) days or less in the workweek;

4.10.6.2 A week in which one of the holidays named in this Agreement falls;

4.10.6.3 Employees scheduled to work are absent without proper notice;

4.10.6.4 Work is not available due to Acts of God;

4.10.6.5 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;

4.10.6.6 An unanticipated, significant business fluctuation;

4.10.6.7 During the week an employee is recalled from layoff or returns from leave of absence.

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.

5.2 MILITARY SERVICE: The Employer agrees to comply with the terms of the Universal Military Training and Service Act, with reference to all provisions providing for the reemployment 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 checkstands.

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.

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.

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

5.7 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.

5.8 BULLETIN BOARD: The parties agree that the Union may put up bulletin boards in the stores so long as it comports with Albertson's Letter of Understanding with Local 839 and that the materials on these bulleting boards are consistent with Section 5.8. of Local 1179's contract regarding official union notices. 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.

5.9 UNION BUSINESS: The Employer recognizes the right of the Union to appoint store representatives. The Employer agrees to schedule up to three (3) store representatives, 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 pay period preceding, 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, provided that it does not exceed one (1) employee per store or two (2) meetings per year. 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 two (2) weeks 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.

The Employer recognizes the right of the Union to appoint store representatives. The Employer agrees to schedule up to three (3) store representatives, based on store size and volume, designated by the Union, a day off, at the employee's daily straight-time rate based on the average daily hours worked in the pay period preceding, 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".

Should an employee be notified, by a representative of management, that he will be subject to an investigative interview, by the Company, the employee shall be given an opportunity to speak briefly with the Store Representative, if the Store Representative is on duty. The Store Representative 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 investigative interview.

5.9.1 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 leave 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 or her job or a comparable position with no loss of seniority. He or she will not, however, be credited any hours with the Employer toward advancement in the wage as he or she 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 three (3) months up to an aggregate service period of twelve (12) months.

- 5.10 UNION EMBLEM:** In consideration of the performance of the covenants herein contained, the Union agrees to lend Union Store Cards and/or decals to the Employers entitled hereto under the rules governing Union Store Cards set forth in the Constitution of the United Food & Commercial Workers International Union. Employers who are entitled to Store Cards and/or Decals agree to accept and display them in a public space in their stores. It is understood that such Union Store Cards and/or Decals are issued by and remain the property of the United Food & Commercial Workers International Union, and the Employer agrees to surrender said Union Store Cards and/or Decals at the Union's request upon failure to observe the terms of this Agreement or the conditions under which said Store Cards and/or Decals are issued.
- 5.11 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.
- 5.12 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.
- 5.13 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.

Employees performing jury duty shall have their schedule changed so that their shift begins at the time of reporting for such jury duty.

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

It is understood that time spent in awaiting impaneling for jury service is to be considered covered time under this Provision.

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 do so report shall render null and void any claim for jury service for that day.

The rescheduled work shift, when combined with time spent for jury service or court appearances, is not to exceed a total of eight (8) hours when in reasonable control of the Employer.

Otherwise the overtime rate of time and one-half (1 1/2) shall apply for all time in excess of the combined total of eight (8) hours. The employee shall supply the Employer with verification of time spent and fees paid for jury duty services.

If an employee appears in Court or the Police Department on behalf of the Employer on his days off, he shall receive his basic straight-time rate of pay for the time spent in making such appearance; but such time shall not be considered as part of the workweek under the terms of this Agreement.

5.14 LEAVES OF ABSENCE: Leaves of absence shall be granted as follows:

5.14.1 SICKNESS AND NON-INDUSTRIAL INJURIES: Up to twelve (12) months after one year's employment.

5.14.2 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.

5.14.3 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.

5.14.4 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.

5.14.5 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.

5.15 FUNERAL LEAVES:

5.15.1 PART-TIME FUNERAL LEAVE: Part-time employees shall be entitled to funeral leave pay for the actual day of the funeral if scheduled to work on said day.

5.15.2 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:

5.15.2.1 The employee notified the Employer of the purpose of his absence on the first day of such absence;

5.15.2.2 The day of absence is one of the three days commencing with the day of such death or the day immediately following the day of such death;

5.15.2.3 The absence occurs on the day during which the employee would have worked but for the absence;

5.15.2.4 The day of absence is not later than the day of such funeral except where substantial travel time is required;

5.15.2.5 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.

For the purpose of subsection 5.15.1 and 5.15.2, 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 and stepchildren.

5.16 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.

5.17 DUES CHECKOFF:

5.17.1 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.

5.17.2. 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.

5.17.3 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.

5.18 POLITICAL CHECKOFF

5.18.1 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.

5.18.2 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.

5.18.3 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.

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 (1/2) 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). No employee shall be required or permitted to work a split shift.

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

HOLIDAY WORK WEEK: 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. Any employee working thirty-two (32) straight-time hours in a holiday week not including holiday work, shall receive not less than forty (40) hours' pay. At least two (2) of a full-time employee's days off shall be successive in stores operating six (6) or more days in a holiday week, unless an employee has Saturday and Sunday off prior to the holiday or Saturday and Sunday off following the holiday. Holiday pay for part-timers shall in all instances be prorated in accordance with Section 10.1.5.

Work shall not be performed without pay prior to the beginning of the scheduled working day. 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. It is understood that the checking of produce or shelf prices shall be considered as time worked.

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

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

6.2.1.1 Work in excess of eight (8) hours per day.

6.2.1.2 Work in excess of forty (40) hours per week.

6.2.1.3 Work on the sixth (6th) day worked in a calendar week.

6.2.1.4 Work on the fifth (5th) and sixth (6th) day worked in a week containing one of the holidays named in this agreement not including the holiday worked.

6.2.1.5 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.

6.2.1.6 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.

6.2.1.7 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.

6.2.1.8 Work performed within ten (10) hours from the time the last shift ended.

6.2.1.9 Work performed where a meal period is not afforded in conformity with Section 7.5.

6.2.2 DOUBLE THE STRAIGHT-TIME HOURLY RATE:

6.2.2.1 Work in excess of eight (8) hours on the sixth (6th) day worked in a calendar week.

6.2.2.2 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.

6.2.2.3 Work performed on the seventh (7th) day in a calendar week.

6.2.2.4 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 ratification date. For employees hired after ratification date (Monday, May 16, 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 dollar (\$1) per hour premium.

6.2.2.5 Work performed after five (5) hours on a Sunday until a meal period is taken.

6.2.2.6 Work performed on a Sunday until ten (10) hours between shifts has elapsed.

6.2.3 DOUBLE TIME AND ONE-QUARTER (2 ¼) THE STRAIGHT-TIME HOURLY RATE:

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

6.2.4 DOUBLE TIME AND ONE-HALF (2 ½) THE STRAIGHT-TIME HOURLY RATE:

6.2.4.1 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 1/2) the straight-time hourly rate and that on the sixth (6th) day worked, shall be paid for at the applicable overtime rate.

6.2.4.2 Work performed on Sunday, which is in excess of six (6) consecutive days by a six-day employee.

6.2.4.3 Work performed after five (5) hours until a meal period is taken on a holiday.

6.2.4.4 Work performed on a holiday until ten (10) hours between shifts has elapsed.

6.2.5 TRIPLE THE STRAIGHT-TIME HOURLY RATE:

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

6.2.6 TIME AND ONE-THIRD (1 1/3) THE STRAIGHT-TIME HOURLY RATE:

6.2.6.1 Work performed on Sunday shall be paid at a rate of one and one-third (1 1/3) times the straight time hourly rate. Courtesy Clerks hired after ratification (Monday, May 16, 2005) are not entitled to Sunday premium.

- 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 SCHEDULE

- 7.1 POSTING OF WORK SCHEDULE:** The Employer agrees to keep posted in each store a weekly schedule in ink of the working hours for all employees. Such schedule shall show the full name of each employee, the classification, starting time, meal time, quitting time and days off. It is further agreed that any change in this schedule must be made and the employee so notified no later than three (3) p.m. on Thursday of the week preceding the week in which the change is to become effective (emergency excepted). Such schedule shall be posted by three (3) p.m. on Thursday of the week preceding the week in which such schedules are to be effective on the Bulletin Board or at a place where all employees and representatives of the Union may observe same. If assignment of employees to schedules is inconsistent with the terms of Section 4.5, employees will have until 6:00 p.m. on Thursday (or 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. This change will become effective four weeks following ratification (Monday, May 16, 2005). 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.

Time worked by employees on the last shift during the period the store is open for business, for the purpose of serving customers in the store at the closing hour or performing other miscellaneous duties necessary in connection with the closing of the store, shall be properly scheduled in their straight-time shift.

- 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 (1 1/2) 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 HOLIDAY EVE:** No employee shall be required to work after 7:00 p.m. on Christmas Eve except those employees necessary to service the customers in the store at 7:00 p.m. and to properly close and secure the store. This shall not apply to employees in the Liquor Department where the Liquor Department may be isolated from the Grocery Department. The holiday premium of double-time shall not apply to any hours worked prior to 12:01 AM on the holiday.

On New Year's Eve, the store shall be staffed with volunteers between 7:00 p.m. and 12 midnight. If insufficient employees volunteer, assignment shall be by inverse seniority. The Employer will post a sign-up sheet for volunteers, in a conspicuous location at least two (2) weeks in advance of the New Year's Eve or Christmas Eve.

- 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. Any employee who is given a meal period prior to three (3) hours into his shift or works in excess of five (5) hours without a meal period shall receive time and one-half (1 1/2) for hours worked between the meal period and the completion of the third (3rd) hour or time and one-half (1 1/2) for hours worked in excess of five (5) hours until a meal period is given.

In accordance with state law the Employer may schedule up to a six (6) hour shift without a lunch period. If said scheduled shift is greater than five (5) hours, the overtime rate shall not apply and shall include two (2) unscheduled ten (10) minute breaks.

- 7.6 BREAK:** 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:** All employees who work forty (40) or more hours in a calendar week, when ordered to and do report for work and remain available for work, shall receive a full day's pay based on the established rate of pay for that day.

All employees who work less than forty (40) hours in a calendar week, when ordered to and do report for work and remain available for work shall receive at least four (4) hours' pay based on the established rate of pay for that day. Where school law conflicts with the four (4) hour daily guarantee on as school day, such employee shall be scheduled for not less than three (3) hours on such days. It is further agreed that students shall not replace non-student employees. All part-time employees shall be covered by all other provisions of this Agreement.

Part-time employees will not be used on Sundays and holidays except as needed and they shall not replace full-time employees on such days.

- 7.8 NIGHT PREMIUM:** All employees shall receive extra compensation, in addition to the regular scale herein set forth, of fifty cents (.50) per hour for all work performed between the hours of 7 PM and 7 AM. Courtesy Clerks shall received fifty cents (.50) per hour for work performed after 9 PM.

NIGHT PREMIUM – NON-FOOD/GENERAL MERCHANDISE CLERKS: All employees shall receive extra compensation in addition to the regular scale herein set forth of twenty-five cents (.25) per hour for all work performed between the hours of 7 p.m. and 7 a.m.

- 7.9 PREMIUM DAY:** Employees working any hours on a Sunday or a holiday shall be paid the premium pay as provided for in this Agreement for the hours worked between 12:01 a.m. and 12:00 Midnight on that day.

- 7.10 SEPARATE EMPLOYERS:** Any employee who works for another Employer in the retail food or liquor industry, on his day or days off shall be paid therefore at straight-time, overtime, or premium rates calculated as though he had worked that week for a single Employer. It is understood that if the employee is properly shown on the schedule, the overtime rates shall not be in effect until after the Union notifies the Employer that the employee in question is an employee of another Employer in the industry.

- 7.11 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** All classifications excluding Courtesy Clerks will receive a Non-contractual discretionary fund not to exceed twenty (20) cents per hour to be formalized thirty (30) days after ratification, which may be modified or discontinued at the Employer's discretion with prior notice to the Union.

SECTION 9. CLASSIFICATION 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:** 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:

- 9.1.2.1 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.

- 9.1.2.2 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.

- 9.1.2.3 HEAD CLERKS:**

9.1.2.3.1 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.

9.1.2.3.2 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.

In the interpretation of the preceding paragraph, it is agreed that any clerk who is engaged for four (4) hours or more per day in the Employer's receiving department and is in charge of and responsible for the receiving of merchandise shall be classified and paid as a Head Clerk.

9.1.2.3.3 Conducts the operation of the store in the temporary absence of the Managing Clerk, the Senior Head Clerk, or the owner, or is responsible for the opening or closing of a store.

9.1.2.3.4 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.

9.1.2.3.5 It is understood that the Employer may so arrange the employee's duties and work shifts in order that the number of Head Clerks may be minimized and further, that the mere occasional or incidental performance of any of the Head Clerk's duties shall not be construed as a basis for classifying and any employee as a Head Clerk. It is agreed, however, that in the absence of the Supervisory Store Manager, Managing Clerk, Senior Head Clerk or Owner, there shall be at least one (1) Head Clerk on the job at all times.

9.1.2.3.6 When a Clerk, who is not normally classified and paid as a Head Clerk on a weekly basis, performs the duties of a Head Clerk on a day in which either the regular Head Clerk, Senior Head Clerk, Supervisory Manager, Managing Clerk or Owner is absent, he shall receive the Head Clerk's rate of pay for the day.

9.1.3 EXPERIENCED FOOD CLERK: An Experienced Food Clerk is an employee who has gained 7,800 hours' experience in the retail food industry.

PREVIOUS EXPERIENCE: If an Experienced Food employee has been out of the industry between five (5) and ten (10) years, he will be allowed to start at the 6TH Apprentice Food Clerk rate of pay.

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

If a person has been out of the industry for five (5) years or more, who has not reached Experience Food Clerk status, he will be allowed to start at the 1st Apprentice Clerk rate of pay.

9.1.3.1 NEW EMPLOYEES: 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.

It is agreed the Union shall negotiate with the Employer, an appropriate rate, during the probationary period, for employees who have gained food store experience outside the jurisdiction of the Northern California United Food and Commercial Workers Unions. The appropriate Apprentice or Journeyman rate shall be determined by the parties according to the employee's comparable, previous experience.

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

9.1.4 APPRENTICE FOOD CLERK: An Apprentice Food Clerk is an employee who has had less than 7,800 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 experience. An Apprentice Food Clerk may perform the duties of any classification except Managing Clerk or Head Clerk.

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

9.1.5 COURTESY CLERKS:

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

A Courtesy Clerk may remove and return product from the shelf to the same location in order to clean shelving. The parties agree that they will meet and discuss any additional proposed Courtesy Clerk duties. In the event, Diablo Foods Courtesy Clerks may perform work as allowed by other Courtesy Clerks under the Safeway, Albertson's and Ralph's contract within the union's jurisdiction.

9.1.5.1.1 Bag or box the merchandise after it has been checked out and take it to the customer's vehicle.

9.1.5.1.2 Clean the checkstands and the area around the non-selling foyer or vestibule area between the front of the checkstands and the entrances and general cleaning throughout the sales floor area of the store, the dock, the break room and the restrooms.

9.1.5.1.3 Maintain the upkeep of the parking lot and areas around the perimeter of the store including landscaping. Collect and line up push carts and return them to the store from the parking lot.

9.1.5.1.4 Stock the bags in the checkstand.

9.1.5.1.5 Collect bottles, take them to the designated area and sort them. No more than one (1) Courtesy Clerk shall be scheduled for the duty of sorting bottles at any one time.

9.1.5.1.6 Post and remove display signs and decorations and put up shelf talkers. No more than one (1) Courtesy Clerk will be scheduled at any one time to place display signs on the sales floor area of the store, except that more than one (1) Courtesy Clerk may post and remove decorations.

9.1.5.1.7 In addition, he may clean up the checkstand; check prices; clean up spills; put away "go-backs"; collection, removal, and disposal of cardboard throughout the store; replenish bags from the backroom; and obtain product from the selling area requested by customers being checked out.

9.1.5.1.8 Courtesy Clerks shall not be allowed to work more than one (1) hour before the opening or one (1) hour after the closing of the store to the public.

9.1.5.2 DAILY GUARANTEE: 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.

9.1.5.3 WEEKLY 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.

9.1.5.4 NO REDUCTION: 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.

9.1.5.5 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.

9.1.5.6 PENALTY FOR VIOLATION: 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.

9.2 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.

9.3 STEP UP RULES MANAGING CLERKS, SENIOR HEAD CLERKS, HEAD CLERKS: The following rules are applicable at stores where Managing Clerks, Senior Head Clerks, Senior Produce Clerks, Head Clerks are employed.

9.3.1 MANAGING CLERKS, SENIOR HEAD CLERKS AND HEAD CLERKS:

9.3.1.1 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.

9.3.1.2 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.

9.3.1.3 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.

9.3.1.4 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.

9.3.2 SENIOR PRODUCE CLERKS:

9.3.2.1 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.

9.3.2.2 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.

9.3.2.3 It is understood by the parties that "small stores" should be exempt from the application of these rules. It should be noted that we have been unsuccessful in an effort to define a "small store." However, through agreement with various Local Unions or otherwise, certain Employers in this category have not been following the step-up rules and they shall continue to be exempt. Certain other Employers in this category have been following the step-up rules and they shall continue to adhere to the rules. In the event that the Union protests failure to adhere to these rules by companies who have not been following them, there should be a joint committee established to determine whether or not the Employer falls in the "small store" category. Likewise, for any Employer who has been following the rules, he may protest the application of those rules to his operation and this same joint committee shall endeavor to determine whether his operation falls in the "small store"

category. In the event a company who has not been following the rules is determined to be ineligible for the "small store" exemption, application of the rules shall be prospective only.

9.4 DEMONSTRATORS: 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 1.2 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 demonstrators 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, except Pension and Health and Welfare.

The hourly rates of pay for Demonstrators are as follows:

<u>Effective</u>	<u>Hourly</u> <u>Rate</u>	<u>Overtime</u> <u>Rate</u>	<u>Sunday</u> <u>Rate</u>
Sunday, Feb.13, 2005	\$11.75	\$17.625	\$15.663
Sunday, Dec. 6, 2006	\$12.00	\$18.00	\$16.00

9.5 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:

9.5.1 Mileage for the extra travel resulting from such assignment (or established bus or taxi fare if so designated by the Employer) according to the amount provided for under the Internal Revenue Service Regulations. Increase in the amount provided for under Internal Revenue Service Regulations shall be effective the date such increase is to be effective under the Internal Revenue Service Regulations or the week following notification to the Employer by the Union whichever is later.

9.5.2 Reasonable allowance for board and lodging when required to stay away from home overnight.

9.5.3 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.

9.6 TRANSPORTATION: Any employee who is required by the Employer to perform his or her regular duties in more than one store in any day, 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.

9.7 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.

9.7.1 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:

9.7.1.1 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.

9.7.1.2 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.

9.7.2 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.

9.8 REMOVAL OR TRANSFER OF WORK: 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 operation.

9.8.1 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.

9.8.2 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.

9.8.3 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.

9.8.4 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 time 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.

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. It is understood that the day of observance for Memorial Day shall be the dates established by federal statute.

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

10.1.2 WORK: In the event that employees shall be obligated to work on any of the open holidays, they shall be paid at the rate of double their straight-time rate of pay in addition to the normal holiday pay.

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.

EMPLOYEE'S BIRTHDAY: 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.

Employees hired on or after ratification (Monday, May 16, 2005) of this agreement shall be entitled to birthday holiday after one (1) year of employment.)

EMPLOYEE'S ANNIVERSARY DATE OF EMPLOYMENT AND FLOATING HOLIDAY: The Anniversary Date of Employment and the Floating Holiday shall be enjoyed by regular employees in accordance with the observance procedures governing the Employee's Birthday Holiday.

Employees hired on or after ratification (Monday, May 16, 2005) of this agreement shall be entitled to a floating holiday and anniversary holiday after the completion of three (3) years of employment.

HOLIDAYS: All earned personal holidays (i.e. birthday, anniversary, and floating holidays) not taken within a calendar year will be paid at termination or at the end of each calendar year, whichever occurs first for current employees.

ADDITIONAL HOLIDAYS: Employees with at least 25 years of service with the Employer will receive two (2) additional holidays. The one holiday will be earned June 1 and the second will be earned October 1 of each year.

10.1.3 PROBATIONARY EMPLOYEES: Probationary employees are not entitled to any paid holidays. Entitlement to birthday holiday shall commence with the employee's first birthday following the completion of six (6) months of employment with the Company. An employee shall not be entitled to the floating holiday until after the completion of six (6) months of employment.

10.1.4 VIOLATION: In the event any Employer violates this provision by allowing anyone to work in the store on Christmas Day, 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.

- 10.1.5** 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.
- 10.2 HOLIDAY WEEK:** Any employee who has reported for work on his scheduled working day immediately preceding 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 in 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 service with the Employer will receive two (2) additional holidays each year. 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** All employees 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. Such 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.

New employees hired after ratification (Monday, May 16, 2005) will receive one (1) week after one (1) year of employment; two (2) weeks after three (3) years of employment and then follow current vacation schedule.

- 11.2 ACCUMULATION:** Vacations may not be waived, nor may extra pay be received by any employee for work performed for the Employer during the employee's vacation period. Vacations may not be cumulative from year to year.

11.3 CONTINUITY: All loss from employment because of reasonable absence from work through sickness or other emergencies, or temporary layoff, not exceeding thirty (30) calendar days, shall be considered as time worked for the purpose of determining the length of employment.

11.4 PAY AND SPECIAL PROVISIONS: For the purpose of computing or prorating vacation earnings, 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, 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 MISCELLANEOUS PROVISIONS:

VACATION PAY: Parties agree that they will take the appropriate steps to wind down and terminate the Vacation Fund and that the Employers will continue to recognize and pay all industry-earned vacation benefits directly to employees as previously provided for in the Vacation Trust Fund after benefits from the Vacation Fund have been exhausted.

All employees taking scheduled vacation shall receive their vacation pay allowance on the pay check immediately preceding the employee's scheduled vacation. This change will take place when administratively feasible by the Company. 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.

However, if the selling or transferring Employer fails to comply, then the Employer who takes over or purchases the store shall assume the pro rata obligations.

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. If an employee fails to select his or her vacation by March 1st, that employee's vacation period will be assigned by the Employer. The Employer will post a copy of the final approved vacation dates.

11.8 SELECTION: The selection of vacations shall be on a store basis by seniority except:

11.8.1 The vacation of an employee shall not be changed if it was scheduled prior to his transfer from one store to another;

11.8.2 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 between March 1 and November 1 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. When a holiday falls during an employee's paid vacation, such employee shall receive an additional day's vacation with full pay.

After the completion of one (1) year of employment, if the employee is scheduled to take his time off prior to his anniversary date, then in that event a pro rata payment, based upon Company service shall be made at that time and the additional amount will be paid at the time of his anniversary date. As long as no weeks during the vacation period are blocked out, the Employer has the right to limit the number of employees on vacation at any given time.

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 of 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) week vacations 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. By mutual agreement, allowing employees who earn four (4) or five (5) weeks of vacation to convert one (1) week of vacation into five (5) days.

SECTION 12. HEALTH, WELFARE, AND 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 UFCW Bay Area Health & Welfare Trust 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 with hours worked in April 2005, payable in May 2005, the Employer agrees to contribute \$5.41 for all classifications under the term of this Agreement. This rate shall remain effective through the term of this Agreement.

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 20th 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 the 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.

12.3 BENEFITS: The trustees are authorized and directed to modify benefits, for both active employees and retirees, in the manner set forth in the Letter of Understanding and otherwise consistent with this Agreement. The Trustees shall implement and maintain over time a schedule of benefits and plan design, including a prudent operating reserve that can be supported by the applicable hourly contribution rate. These changes shall be made by the Trustees as soon as possible following ratification of this Agreement, except that plan changes for those hired prior to or on ratification shall become effective June 1, 2005.

Effective for all Employees hired after the ratification date of this Agreement, the Trustees shall establish a new Plan C. Plan C shall include the following attributes:

The initial eligibility rule will be modified to require 5 months of qualifying hours, of which the first two months must be met consecutively. Single coverage will begin the first day of the second month following the fifth month of qualifying hours.

- Plan C shall cover the employee only (no dependent coverage) during the first eighteen months of initial in Plan C. Dependents, as currently defined by the Plan, shall commence coverage under Plan C beginning with the 19th month of eligibility.
- Plan C employees (and their dependents) shall commence coverage under Plan B after the employee has completed 36 months of eligibility in Plan C.
- There shall be no HMO medical plan option under Plan C, endless the trustees agree to an acceptable plan design.
- Effective for all employees who are not participants in Plan A as of the ratification date of this Agreement, the period of required participation in Plan B (before becoming eligible for Plan A coverage) shall be increased from 24 months to 36 months.

The Plan's current monthly straight-time work hours requirements for each classification of employment, as they related to eligibility, shall continue to apply.

Effective June 1, 2005 and thereafter, any employer that desires to cover all of its employees under Plan A shall pay an employer contribution rate for those additional employees sufficient to cover the projected cost of that plan as determined by the co-consultants during the term of this Agreement.

12.5 INDUSTRY JOINT COMMITTEE: A committee consisting of Union Representatives and Employer Representatives shall be formed to recommend methods to provide benefits more efficiently and economically to the Plan participants and to discuss matters of mutual concern affecting the parties' contract and the retail food industry.

12.6 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.

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

12.8 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.

The Trustees are authorized and directed to require that retirees contribute \$70 per month per retiree toward the cost of retiree health care benefits. This provision shall not impact the retirees' cost for the self-pay retiree plan. Any retiree who does not make the required monthly premium shall lose coverage under the Plan in accordance with such rules and regulations adopted by the Trustees.

The retiree eligibility will be modified to require that a participant is eligible for retiree health and welfare if they meet the following:

- 15 years of credited service in the Bay Fund, or
- A combined 15 years of service with either the Bay Fund or Valley Fund, provided a majority of service (i.e. more than 7.5 years) was in the Bay Fund.

12.10 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.

12.11 ACTIVE DENTAL PLAN: The Trustees are authorized and directed to modify the dental plan, in addition to those changes set forth in the attached Benefit Summary for Plans A, B and C as follows:

- (a) Replace Delta Dental with the "UFCW Dental Plan" model that includes the retention of dental consultants to manage and review dental claims, or
- (b) Implement a dental PPO program (Delta Dental or any other qualified provider).

This change will become effective by July 1, 2005, or as soon possible thereafter. The purpose of this program is to achieve administrative cost efficiencies beyond the plan design changes outlined in the Benefit Summary.

12.12 TRANSFER OF PARTICIPANTS: Effective March 1, 2005, all participants in the UFCW Northern California and Employers Health and Welfare Trust Fund (herein "Valley Fund") who are members of UFCW Local 101 and 839 shall become participants of the UFCW Bay Area Health and Welfare Trust Fund (herein "Bay Fund"). These participants shall participate in the Bay Fund on the same basis as other participants, and Employers shall contribute to the Bay Fund on behalf as provided herein. The Trustees of the Bay Fund and Valley Fund are authorized and directed to effectuate this transfer in a manner consistent with the terms of this Agreement.

The Trustees of both the Bay Fund and Valley Fund are instructed to develop a plan and strategy to accomplish this transfer in a manner that is both fair and equitable to both plans and to the participants including if determined appropriate a transfer of assets and liabilities attributable to the transferred participants.

The transition of eligibility shall be handled in a manner that is seamless such that all transferred participants from the Valley Fund shall be eligible to participate in the Bay Fund in the same manner as though no transfer had occurred. No transferred participant shall lose eligibility they would have otherwise been entitled to receive in the absence of this transfer. Likewise, no participant will gain eligibility that they would not have otherwise if no transfer had occurred.

12.13 SECTION 125 FLEXIBLE SPENDING ACCOUNTS: The Trustees are authorized and directed to establish a study committee to review the legality, feasibility and desirability (including the administrative difficulties, expense and level of expected Employer participation) of setting up and maintaining an employee funded Section 125 Flexible Spending Accounts ("FSA"). If an FSA is determined to be legal, feasible and desirable in this context, the Trustees are further authorized and directed to establish such an arrangement and offer it to employees covered by this Agreement; provided that the FSA shall not be offered to employees of the Employer who is unwilling or unable to permit employee participation in the FSA.

12.14 MODIFICATIONS TO LOCAL 101'S NORTH COAST FOOD STORE CONTRACT AND LOCAL 839'S FOOD AGREEMENTS: Section 12 of Local 101's North Coast Food Store Contract and Local 839's Food Agreements shall be amended to provide for contributions being made to the UFCW Bay Area Health and Welfare Trust Fund, effective with March 2005 contributions based on February 2005 hours worked.

12.15 MODIFICATIONS TO THE TRUST AGREEMENT:

Indemnification: Limitation on Liability.

- (a) Neither the Trustees collectively nor any individual Trustee shall be liable personally to anyone for any action taken or omitted by any one or more of them, or by their agents or other representatives, in connection with the administration of the Trust Fund; provided, however, that nothing herein shall exempt the Trustees from liability arising out of their individual or collective acts done or suffered in violation of the duties and responsibilities imposed on Trustees by Title I, Part 4 of the Employee Retirement Income Security Act of 1974 ("ERISA").

- (b) The Trust Fund shall to the maximum extent permitted by law exonerate, reimburse, indemnify and hold harmless the Trustees, individually and collectively, against all claims, actions, suits, costs, damages, expenses, losses and liabilities arising from their acts or omissions as Trustees.
- (c) The Trustees shall have the power to and may in their discretion pay legal fees and other expenses of litigation incurred by any Trustee or Trustees in defending a civil or criminal action, suit or proceeding against him or them in advance of the final disposition of such action, suit or proceeding, and as such fees and expenses are incurred, on approval by the Trustees in each specific case if the Trustees determine that such Trustee or Trustees acted in good faith within what he or she reasonably believed to be the scope of his or her duties or authority, and upon receipt of an undertaking by or on behalf of the Trustee, to repay all amounts so advanced, unless it shall be ultimately determined that he or she is entitled to be indemnified by the Trust Fund as authorized in this Section 15.
- (d) If any of the foregoing provisions should be held by a court of competent jurisdiction to go beyond what is legally permissible, the provision at issue shall be enforced and applied to the maximum extent legally permissible, and the remaining provisions shall be given full effect insofar as the law permits, it being the intention of the Trustees that any invalid provisions be severable from the others.

E-Commerce & Fuel Station Addendum – No language changes except there will be no health and welfare contributions on e-commerce employee hired after ratification (Monday, May 16, 2005) for their first 12 months of employment.

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 Northern California Employers Joint Pension 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: Effective with hours worked June 2005 (or, if later, the first day of the month in which the benefit changes become effective, or if those changes become effective on a day other than the first day of the month, then the first day of the following month, this is referred to as the “contribution effective date”), the Employer agrees to contribute to the Trust Fund for the term of the Agreement based on the following rates:

- a. One dollar twenty-nine cents (\$1.29) per straight-time hour for the first twelve months following the contribution effective date for Clerks.
- b. One dollar and forty-two cents (\$1.42) per straight-time hour for the thirteenth (13th) month through the twenty-fourth (24th) month following the contribution effective date for Clerks.
- c. One dollar fifty-six cents (\$1.56) per straight-time hour for the twenty-fifth (25th) month following the contribution effective date for Clerks.

The seven (7) month deferral of contributions for accounting and actuarial purposes, first implemented for the Trust Fund’s 1999 fiscal year, continues to be in effect.

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 20th 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 (Monday, May 16, 2005) 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 June 1, 2005, future benefit accrual rates will be:

- a. For the first ten years of benefit credit the benefit accrual rate will be \$33.68.
- b. For all years of benefit credit after the first ten years the benefit accrual rate will be \$44.90.
- c. Other benefit accrual rates for lower contribution rates will be adjusted in a similar manner by the Trust Fund's Co-Consultants.

The Trustees shall implement and maintain over time a pension plan design that can be supported by the contribution rates called for in this Agreement. The Trustees are further authorized and directed to make necessary amendments to avoid any funding deficiencies

and otherwise in accordance with the provisions of any long-term funding policy for the plan, that may be adopted by the Trustees.

The Trust Fund shall prepare and distribute an ERISA Section 204(h) notice, and any other required notices and filings, to Trust Fund participants in order to implement the above referenced changes by June 1, 2005.

The following additional changes will be implemented for those employees who are hired on or after ratification (Monday, May 16, 2005) of this agreement (referred to as "New Hires"):

1. New Hires must be at least age 21 and have one year of service to meet the eligibility requirements for participation.
2. For New Hires, one year of service for eligibility purposes is defined to be at least 750 hours of service.
3. New Hires will be 100% vested after five (5) years of service.
4. New Hires will not be eligible for the Rule of 85 retirement benefits.
5. New Hires normal retirement age will be age 65.
6. New Hires early retirement eligibility will be age 55 with 5 years of service.
7. New Hires who retire early (prior to age 65) will have their accrued benefits reduced on an actuarial equivalence basis.

13.5.1 Consistent with federal, state and local laws, credit shall be granted for military service when an employee returns to covered employment in Northern California with a covered employer.

13.5.2 The level income option shall be available at retirement for employees who retire under the Rule of 85.

13.5.3 APPLICATION FOR EXTENDED AMORTIZATION EXTENSIONS UNDER INTERNAL REVENUE CODE SECTION 412(E):

The Trustees shall cause the Trust Fund to apply for an amortization extension under Internal Revenue Code § 412(e).

In the event that the application under the Internal Revenue Code § 412(e) is approved by the reviewing Government agency, the Trustees will adopt the following long term funding policy. In addition, the Trust Fund shall follow the recent guidance on how to submit an application for amortization extensions under Internal Revenue Code § 412(e) including future changes that the Board of Trustees will have to consider (specifically future contribution increases as negotiated from time to time, future benefit reductions or some combination of the two).

"UFCW" – Northern California Employers Joint Pension Trust Fund Long Term Funding Policy

The co-consultants will produce with the annual actuarial valuations a seven-year actuarial projection with the goal of identifying future funding deficiencies (defined as where the negotiated contributions are not enough to satisfy the minimum required contributions under Internal Revenue Code Section 412. These annual projections will be based on the following:

- *Projections will take into account only negotiated contributions.*
- *Using the assumptions and actuarial methods in the then current annual actuarial valuation as jointly agreed to by the Fund's co-consultants.*
- *No unanticipated actuarial gains or losses during the projection time period.*

If the annual projection indicates any future funding deficiencies during the seven-year projection, the Board of Trustees is authorized and directed to amend future benefit accruals (or any other non-protected benefits), effective immediately, in order to eliminate the projected future funding deficiencies.

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. When the Board of Trustees reduced benefits to eliminate the future funding deficiencies it shall take into account that these contribution credits will be taken as reductions in the negotiated contributions in the next 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 and the Co-Consultants will reflect this with the annual seven-year projections.

In the event that the application under Internal Revenue Code 412(e) is denied by the reviewing government agency, the Trustees shall not be required to adopt the above long term funding.

Any deadlocked Trustee motion relating to a reduction in benefits required under the long term funding policy shall be arbitrated on an expedited basis with the arbitration to take place no later than sixty (60) days following the Trust meeting in which the deadlock occurs.

- 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 the 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 LEGISLATION:** In the event of legislation requiring the restructuring of any of the essential elements of the Pension Plan including, but not limited to, the benefit formula, amortization period, actuarial assumptions, vesting, or administration of the benefits, the Trustees are instructed to immediately

comply with such legislation in adjusting the elements on a sound actuarial basis with no change in the existing Employer contribution rate.

13.11 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 have no obligation to contribute effective March 2005, hours (or, if later, the contribution effective date as described in Section 13.2).

13.12 OPERATIONAL PLAN RULES: The Trustees are instructed to follow these operational plan rules, and the Plan shall be amended as necessary to implement such rules:

- a. Where an employer is contributing at a rate that is less than the maximum allowed contribution level and later increases their contribution rate (but only up to the maximum contribution rate accepted by the pension fund), such increase will only increase future benefit accrual rates. Benefits accrued prior to the date that employer increases their pension contribution rate will not be affected, and will remain at the level based on the earlier employer contribution level.
- b. The Board of Trustees will instruct the co-consultants to look at situations such as but not limited to if an Employer attempts to decrease their contribution rate after a period of contribution suspension. Such review and approval shall include a consideration of whether the contribution rate is sufficient to support the benefits promised, as well as any subsidy or equity issues, all as may be identified by the co-consultants to the Fund.

13.13 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).

The Pension sections in the Memorandum of Agreement between Albertsons, Inc. and Safeway, Inc. and UFCW Locals 101, 120, 373R, 428, 648, 839, 870 and 1179 dated September 25, 2001, will be deleted in their entirety with the exception of the Gemco language. The associated side letter of agreement is also deleted in its entirety with the sole exception of item number 5 (Gemco).

The Employers agree to vote to approve the currently deadlocked motion with respect to reciprocity with the UFCW National Meat Plan.

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.

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 (SAFEWAY, ALBERTSON'S FORMERLY LUCKY STORES, AND RALPHS ONLY)

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 Refusal of any employee covered by the terms of this Agreement to pass through any lawful primary picket line, which has been sanctioned by the Central Labor Council of proper jurisdiction and/or the United Food and Commercial Workers International Union shall not constitute a violation of this

Agreement.

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 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.

- 18.2 DISCIPLINARY GRIEVANCES:** Pursuant to Section 3 of this Agreement, any employee who feels he has been unjustly discharged or suspended shall file a grievance with the Union and thereafter within ten (10) business days of notice of the disciplinary action, the Union, if it desires to proceed with the grievance, shall notify the Employer or its Representative that an Adjustment Board shall be convened to hear the grievance. Within twenty (20) business days (Monday - Friday, holidays excluded) thereafter, the Union and the Employer shall meet as a Board of Adjustment, consisting of two (2) representatives of the Employer and two (2) representatives of the Union in an effort to settle the matter. The convening of the Adjustment Board may be waived or this time limit may be extended by mutual agreement of the parties. If the matter is not adjusted and is impasse, the Union, if it so elects, within twenty (20) business days following the meeting of the Board of Adjustment shall proceed to arbitration. If the Employer fails to meet with the Union within the time limits herein specified, the grievance will be deemed substantiated and the employee shall be made whole. If the Union fails to comply with the time limits herein specified, such failure shall be deemed to be a conclusive waiver of the grievance. The request of either party to extend the time limit for the convening of the Board of Adjustment due to extenuating circumstances will not be unreasonably denied.

Following the completion of step one as contained in the Letter of Understanding referencing Section 18, the Union's request to hear a grievance through the Adjustment Board procedures may be denied by the Employer, and the Union may elect to proceed to arbitration. The Employer must notify the Union of such denial prior to the time limit or the extended time limit in which to convene Adjustment Boards as outlined in this Section. Adjustment Board requests will not be unreasonably denied. Notwithstanding, the Union may request FMCS to mediate any denials for Adjustment Boards by telephone conference or as agreed, and the parties agree to accept the FMCS advisory decision as binding. In making such determination, the mediator shall take into account the overall relationship of the parties as well as the facts of a specific case.

If the grievance is not adjusted and is impasse, the Union, if it so elects, within twenty (20) business days following the meeting of the Board of Adjustment of denial thereof, shall proceed to arbitration. The Union's intention to proceed to arbitration shall be communicated in writing to the Employer or its representative within the twenty (20) business day time limit specified above. For disciplinary cases only the following expedited procedure shall be utilized: A panel of arbitrators will be assigned by lot to each Union for a six (6) month period. At the expiration of each six-month period, the arbitrators will rotate in the following order: 101, 373R, 428, 648, 839, 870, 1179, and back to 101, etc. The arbitrators selected will provide the parties with all hearing dates in advance of each period of assignment.

The parties shall be allotted a minimum of twenty (20) days from the date of request to prepare the case for arbitration. Discharge cases will be heard first on the agenda followed by suspension cases based on the date of occurrence unless mutually agreed otherwise.

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 post hearing briefs.

18.3 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.

The parties shall have fifteen (15) business days in which to process and amicably adjust the dispute. By mutual agreement of the parties, the time periods provided herein may be extended.

If by the end of the period for amicable adjustment no resolution has been made of the dispute, there shall be fifteen (15) business days for the asserting party to request arbitration by an impartial arbitrator.

Within five (5) business days of the date arbitration has been requested, the parties shall move to select an arbitrator. Said selection shall be from the panel set forth above or shall be by mutual agreement. Should the parties fail to agree upon an arbitrator within the period herein provided, the arbitrator shall be chosen by lot from the panel named in Section 18.2 hereof. Failure of either party to meet within the time limits hereinabove specified, or failure to comply with the time limits, shall cause the dispute to be deemed substantiated or conclusively waived as the case may be. The request of either party to extend this time limit due to extenuating circumstances will not be unreasonably denied.

18.4 The parties may, by mutual agreement, proceed to FMCS to mediate unresolved disputes. The hearing shall take place within thirty (30) business days following the receipt of a written request from either party. Either party may request a reasonable extension of time. The mediator will render a non-binding oral opinion at the conclusion of the hearing.

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 of 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 or more than six (6) months immediately prior to the date of the Employer's receipt, or written notice from the Union, of such claim.

SECTION 19. PERIOD OF AGREEMENT

Except as otherwise indicated herein, this Agreement shall be effective September 12, 2004 and shall remain in full force and effect in all areas to and including, December 1, 2007, 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.

It is understood and agreed between the parties that all prior Agreements between them are hereby terminated and canceled, and that this Agreement supersedes and replaces all such prior Agreements.

This Agreement shall be binding upon heirs, executors and assigns of the parties hereto.

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.

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

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.

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

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.

Replace the mandatory Non-Food General Merchandise Head Clerk with a new classification of Combo Bakery/Deli Manager with a rate of pay of \$1.40 per hour above the Non-Food General Merchandise experienced rate of pay. In Combo Bakery/Delis where the manager is eligible for a bonus, there shall be a \$1.00 per hour credit against this premium.

VOLUNTARY BUYOUT: 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.2 LENGTH OF SERVICE WAGE ADJUSTMENTS:** The experience and length of service wage adjustments provided for under Appendix A shall be placed into effect the first (1st) workday of the first (1st) workweek immediately following the workweek in which the employee qualifies for a higher rate of pay.

- A.3 CONTRACT RATIFICATION BONUS:** Provided this offer is ratified by May 10, 2005, and the Union does not engage in any strike, picketing, consumer boycott or other economic action of any sort whatsoever against the Employer, a Ratification Bonus shall be paid as follows. All Bargaining unit employees hired prior to the ratification (Monday, May 16, 2005) in all classifications and on the payroll as of September 11, 2004, and actively employed on the date of payment of this bonus, shall receive a contract ratification bonus, as provided below:

All classifications except Courtesy Clerks and Utility Clerks shall receive twenty-five (25) cents per hour for which the employee was compensated for the fifty-two (52) calendar weeks preceding September 11, 2004.

Courtesy clerks and utility clerks shall receive fifteen (15) cents per hour for which the employee was compensated back to September 11, 2004.

This contract ratification bonus will be paid no later than thirty (30) days from the date of ratification (Monday, May 16, 2005) to employees who are actively employed on that date or thirty (30) days from when an employee returns to work from an approved leave of absence or layoff. Consistent with past practice, this bonus will not be calculated to include derived overtime.

This provision will apply to employees on approved leave of absence or layoff at the time of reinstatement who are actively employed at the time payment is due. This payment will also be made no later than thirty (30) days following the expiration of the employee's recall rights under the term of this Agreement.

LUMP SUM BONUS: For each bargaining unit employee on the payroll as of December 4, 2005, and actively employed on the date of payment of this bonus, shall receive a bonus as follows:

All classifications except Courtesy Clerks and Utility Clerks who are at the thereafter rate or above shall receive twenty-five (25) cents per hour for which the employee was compensated for the fifty-two (52) calendar weeks preceding December 4, 2005.

This lump sum bonus will be paid no later than thirty (30) days from December 4, 2005, to employees actively employed on that date or thirty (30) days from when an employee returns to work from an approved leave of absence or layoff. Consistent with past practice, this bonus will not be calculated to include derived overtime.

This provision will apply to employees on approved leave of absence or layoff at the time of reinstatement and actively employed at the time payment is due. This payment also will be made no later than thirty (30) days following the expiration of the employee's recall rights under the term of this Agreement.

WAGE INCREASES: Effective May 15, 2005, a twenty-five (25) cent wage increase to the journeyman/thereafter rates only for all classifications (Food/GMC/Meat) except no increase to the Courtesy Clerks and Utility Clerks.

Effective 30 days after ratification a contract bonus will be paid as follows: all bargaining unit employees hired prior to the ratification in all classification and on the payroll as of September 11, 2004, and actively employed on the date of payment of this bonus shall receive a contract ratification as provided below.

A.4 CONTRACT RATIFICATION BONUS: Provided this offer is ratified by May 10, 2005 and the Union does not engage in any strike, picketing, consumer boycott or other economic action of any sort whatsoever against the Employer, a Ratification Bonus shall be paid as follow. All Bargaining unit employees hired prior to the ratification in all classifications and on the payroll as of September 11, 2004 and actively employed on the date of payment of this bonus, shall receive a contract ratification bonus, as provided below.

APPENDIX B: NON FOOD 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.

PREMIUM EMPLOYEES: Employees receiving higher rates of pay than those set forth above, as of the effective date of this Agreement, shall be grandfathered and shall maintain their existing percentage differential to the Experienced Food Clerk rate.

NIGHT PREMIUM: All employees shall receive extra compensation in addition to the regular scale herein set forth of twenty-five cents (25 Cents) per hour for all work performed between the hours of 7:00 p.m. and 7:00 a.m.

Combo Bakery/Deli Managers with a rate of pay of \$1.40 per hour above the Non-Food/General Merchandise experienced rate of pay. In Combo Bakery/Delis where the manager is eligible for a bonus, there shall be a \$1.00 per hour credit against this premium.

The attached wage pages set forth the minimum scale of wages which shall be paid.

- B.2** The following minimum scale of wages shall be paid

APPENDIX C: FUEL STATION EMPLOYEES

The Master Food Agreement shall apply to fuel station employees except for the following modifications:

- C.1** There shall be one (1) exclusion from the bargaining unit for each fuel station operation.
- C.2 Health and Welfare:** For those employees in these respective bargaining units, health Plan B will apply to said employees for thirty-six (36) months of eligibility. During this time, the fuel station employee's health and welfare eligibility shall be at seventy-six hours per month. Employees who are promoted to other bargaining unit positions will be subject to Plan B rules until such time as they are eligible for Plan A coverage.
- C.3 Pension:** A pension contribution of \$.50 per straight time hour worked will be made on behalf of eligible fuel station employees. Fuel station employees will be entitled to an Individual Account Plan contribution in accordance with the new hire provision of Section 13.12 of the Agreement.
- C.4 Hours:** Part time fuel station employees shall be scheduled for at least twenty (20) hours per week.
- C.5 Wages:** The following wage rates shall apply to fuel station employees for the term of the contract.

1 st 520 hours	\$8.00
2 nd 520 hours	\$8.30
3 rd 520 hours	\$8.60
4 th 520 hours	\$9.00
5 th 520 hours	\$9.40
6 th 520 hours	\$9.90
7 th 520 hours	\$10.40
8 th 520 hours	\$11.00
Experienced rate	\$11.60

Zone B rates shall be reduced by thirty-cents (\$.30)

**APPENDIX D:
TORTILLERIA ADDENDUM
TO THE FOOD AGREEMENT FOR THE PERIOD**

SEPTEMBER 12, 2004 TO AND INCLUDING DECEMBER 1, 2007

All employees working in this classification shall be covered by all terms and conditions of the Food Agreement except for the following:

1. The hourly rate shall be the same pay scale as General Merchandise Clerks hired on or after March 3, 1983.
2. Section 4 of the Food Store Contract is modified to establish separate seniority for this classification.
3. Employees receiving higher rates of pay than those contained in this Addendum shall be grandfathered and shall receive all increases due during the life of this Agreement.

Food Agreement (Zone A) – Wage Rates –Current Employment

CLASSIFICATION	EFFECTIVE	
	First Sunday Following Ratification	First Sunday after 21 months following ratification
Managing Clerks	20.168	20.418
Senior Head and Senior Produce Clerks	19.627	19.877
Head Clerks	19.513	19.763
Food Clerks		
Experienced:	19.084	19.334
4 th 520 hours	14.607	14.607
3 rd 520 hours	12.889	12.889
2 nd 520 hours	11.170	11.170
1 st 520 hours	9.452	9.452
Combo Bakery/Deli Manager	14.605	14.855
Department Head Clerk (Optional)	13.605	13.855
GMC Non-Food		
Experienced:	13.205	13.455
7 th 520 hours	11.350	11.350
6 th 520 hours	10.907	10.907
5 th 520 hours	10.462	10.462
4 th 520 hours	10.019	10.019
3 rd 520 hours	9.476	9.476
2 nd 520 hours	9.082	9.082
1 st 520 hours	8.743	8.743
Fuel Station		
Experienced	11.60	11.85
8 th 1040 hours	11.00	11.00
7 th 1040 hours	10.40	10.40
6 th 1040 hours	9.90	9.90
5 th 1040 hours	9.40	9.40
4 th 1040 hours	9.00	9.00
3 rd 1040 hours	8.60	8.60
2 nd 1040 hours	8.30	8.30
1 st 520 hours	8.00	8.00
Courtesy Clerks		
Experienced	8.395	8.395

Food Agreement (Zone A) – Wage Rates –New Hires or Promoted

CLASSIFICATION	EFFECTIVE	
	First Sunday Following Ratification	First Sunday after 21 months following ratification
Managing Clerks	20.168	20.418
Senior Head and Senior Produce Clerks	19.627	19.877
Head Clerks	19.513	19.763
Food Clerks		
Experienced:	19.08	19.33
8 th 1040 hours	17.00	17.00
7 th 1040 hours	15.00	15.00
6 th 1040 hours	14.25	14.25
5 th 1040 hours	13.50	13.50
4 th 1040 hours	11.95	11.95
3 rd 1040 hours	10.00	10.00
2 nd 1040 hours	9.50	9.50
1 st 520 hours	9.00	9.00
Combo Bakery/Deli Mgr.	14.605	14.855
Department Head Clerk (Optional)	13.605	13.855
GMC Non-Food		
Experienced	13.205	13.455
8 th 1040 hours	11.75	11.75
7 th 1040 hours	10.60	10.60
6 th 1040 hours	10.10	10.10
5 th 1040 hours	9.70	9.70
4 th 1040 hours	9.40	9.40
3 rd 1040 hours	8.90	8.90
2 nd 1040 hours	8.60	8.60
1 st 520 hours	8.40	8.40
Fuel Station		
Experienced	11.60	11.85
8 th 1040 hours	10.80	10.80
7 th 1040 hours	10.20	10.20

LETTER OF UNDERSTANDING

In consideration of the terms and conditions set forth in this Tentative Agreement, including the Appendices hereto, the parties have agreed to settle and resolve all pending unfair labor practice charges arising out of the negotiation of a new collective bargaining agreement.

As part of this settlement, the parties hereby agree that any proposals made by either party which were withdrawn or modified in the course of these negotiations shall have no evidentiary value or shall not prejudice either party's position in any grievance or arbitration proceeding.

This Tentative Agreement represents the entire agreement of the parties with respect to the matters covered herein and shall be dispositive in the event of any conflict with any other written or oral understandings or agreements between the parties or other expressions of the parties' intent.

This Settlement is conditioned on the UFCW Locals recommending ratification of this Tentative Agreement and the Unions do not engage in any strike, picketing, consumer boycott or other economic action of any sort whatsoever against the Employers.

This Tentative Agreement, made and entered into this 23rd day of January, 2005, by and between UFCW Locals 101, 120, 373R, 428, 648, 839,870 and 1179 and Safeway, Albertsons and Ralphs Grocery Company shall be submitted and fully recommended for ratification and will be effective upon its ratification date.

/s/ Karen Casey, Albertsons
/s/ Frank Jorgensen, Safeway
/s/ Bruce Wright, Ralphs

/s/ Mike Borstel UFCW 101
/s/ Tim Hamann, UFCW 120
/s/ Linda Russell, UFCW 373R
/s/ Ron Lind, UFCW 428
/s/ Michael Sharpe, UFCW 648
/s/ John Briley, UFCW 839
/s/ Rich Benson, UFCW 870
/s/ Barbara Carpenter, UFCW 1179

LETTER OF UNDERSTANDING

Between

**UFCW LOCALS 101, 373R, 428, 648, 839, 870 and 1179 and
ALBERTSONS, INC., RALPHS GROCERY COMPANY, and SAFEWAY, INC.**

In the interests of developing a more effective and efficient process to avoid grievances and resolve a backlog of currently deadlocked grievances, the parties commit to the following phased approach:

Step One:

For the first twelve (12) months following ratification, the parties will continue to schedule Adjustment Boards pursuant to the Agreement. During this 12 month period, the parties will take appropriate steps, including scheduling additional meeting dates to work towards the reduction of the current backlog of pending grievances. The Federal Mediation and Conciliation Service (FMCS) may be utilized at the request of either party. For the purposes of this Letter of Understanding, the foregoing is referenced as step one. Notwithstanding the above, step one will not conclude until the disposition of all impasse grievances have been determined.

To facilitate settling disputes amicably, the parties agree to fully explore possible joint training assistance from FMCS.

Step Two:

Commencing at the conclusion of step one, the parties will commence meetings no less than once every three (3) months through the remainder of the Agreement. The purpose of such meetings is to further the mutual cooperation of the parties in matters related to Section 18. These meetings may be cancelled by mutual agreement of the parties. The FMCS will be requested to attend these meetings at the request of either or both parties.

The following individuals, or their designated representatives, will attend on behalf of their respective entities: Karen Casey (Albertsons); Frank Jorgensen (Safeway); Bruce Wright (Ralphs); for the Unions, the President of each Local or their designated representative.

/s/ Karen Casey
Albertsons

/s/ Bruce Wright
Ralphs Grocery Company

/s/ Frank Jorgensen
Safeway

/s/ Michael Sharpe
UFCW Local 648

/s/ Mike Borstel
UFCW Local 101

/s/ John F. Briley
UFCW Local 839

/s/ Richard Benson
UFCW Local 870

/s/ Ron Lind
UFCW Local 428

/s/ Linda Russell
UFCW Local 373R

/s/ Barbara Carpenter
UFCW Local 1179

Dated: 1/23/05

LETTER OF UNDERSTANDING
Between
UFCW LOCALS 101, 120, 373R, 428, 648, 839, 870 and 1179 and
ALERTSONS, INC., RALPHS GROCERY COMPANY, AND SAFEWAY, INC.

In settling routine disciplinary and non-disciplinary cases handled by Union staff, written settlement agreements when requested, will be written as simply as possible for lay persons to understand. In these cases, decisions regarding what are "routine" cases as to which simplified settlement agreements are appropriate, are within management's sole discretion.

/s/ Karen Casey
Albertsons

/s/ Bruce Wright
Ralphs Grocery Company

/s/ Frank Jorgensen
Safeway

/s/ Michael Sharpe
UFCW Local 648

/s/ Mike Borstel
UFCW Local 101

/s/ John F. Briley
UFCW Local 839

/s/ Tim Hamann
UFCW Local 120

/s/ Richard Benson
UFCW Local 870

/s/ Linda Russell
UFCW Local 373R

/a/ Barbara Carpenter
UFCW Local 1179

/s/ Ron Lind
UFCW Local 428

LETTER OF UNDERSTANDING – JANUARY 23, 2005

INITIAL BENEFIT PLAN DESIGN SUMMARIES

The Bargaining Parties agree that the attached benefit plan designs identified as Benefit Fund Appendices A, B, and C summarize the initial benefit plan designs that will become applicable to Active and Retired Employees for Plans A, B and C.

If the specified contribution is subsequently determined to be adequate to improve benefit levels (assuming the Plan will maintain prudent operating reserves), the Trustees are authorized to improve benefits. Furthermore, if the specified Employer contribution is subsequently determined to be insufficient to maintain the benefit levels outlined in the Benefit Fund Appendices A, B and C and a prudent operating reserve, the Trustees are authorized and directed to reduce benefits to the extent necessary. Any such benefit modifications may be rescinded by the Trustees, if and when, the financial position of the Fund improves to so allow. The Plan will cover all medically necessary treatment, subject to current plan exclusions.

Except for those changes described in, required by, or necessary to implement this Article, and subject to the right of the Trustees to amend, modify or eliminate any Plan benefit or feature at any time as provided herein, the existing Plan coverages shall initially be part of the new Plan design. This provision shall not be interpreted, applied or construed to: (a) create any expressed or implied obligation to maintain or preserve any benefit or plan feature under the Plan; (b) create any vested entitlement to any benefit or feature under the Plan; or (c) limit or restrict, directly or indirectly, the right of the Trustees to make changes in those benefits or features when they deem it necessary or appropriate under the Plan and/or as a matter of fiduciary duty.

Annual deductible and out-of-pocket limits shall be reduced proportionately with the number of months remaining in the calendar year at the time the benefit changes are implemented for Plans A and B (including retirees).

The current Retiree Health and Welfare eligibility rules shall be modified as follows: any employee who has had five consecutive calendar years with no reported hours shall, in addition to other requirements, be required to accrue at least 10 years of Credited Service under the Pension Plan after such absence, in order to be eligible for Retiree Health and Welfare.

/s/ Frank Jorgensen
Safeway, Inc.

/s/ Karen Casey
Albertsons, Inc.

/s/ Bruce Wright
Ralphs Grocery Company

/s/ Mike Borstel
UFCW Local 101

/s/ Tim Hamann
UFCW Local 120

/s/ Linda Russell
UFCW Local 373R

/s/ Ron Lind
UFCW Local 428

/s/ Michael Sharpe
UFCW Local 648

/s/ John F. Briley
UFCW Local 839

/s/ Richard Benson
UFCW Local 870

/s/ Barbara Carpenter
UFCW Local 1179

2004-2007 Contract Bargaining Notes

Section 2.1: The Companies will work with the Unions involving extenuating circumstances.

Section 4.7: Employers agree that Unions may post in the break rooms the seniority list already provided to them on a semi-annual basis.

**OFFICE ADDENDUM TO THE FOOD AGREEMENT
FOR THE PERIOD SEPTEMBER 12, 2004 TO
AND INCLUDING DECEMBER 1, 2007**

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 supplemental to the operation of the front end of the store.
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. In addition to the work in 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.
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 /s/ William F. Senn

David R. Cox William F. Senn

Food Employers Council, In UFCW International Region 14

On behalf of UFCW Locals 373, 428, 648, 775, 870, 1119 and 1179

LETTER OF UNDERSTANDING

This will confirm the understanding reached in negotiations with reference to the proper classification of employees working "cheese islands." Specifically, it is agreed that "cheese islands" involving merchandise that has been cut, wrapped, and priced upon the premises are "Service Delicatessens" within the meaning of Section 1.3.1 of the current Collective Bargaining Agreements.

/s/ David R. Cox/s/ Bill Senn
David R. Cox Bill Senn, on Behalf of the
Food Employers Council, Inc.
Bay Area Locals

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: Subsection 9.2 of the Master Food and Liquor Agreement

Gentlemen:

A Courtesy Clerk may by mutual agreement of the parties, be scheduled to work as an Apprentice Clerk or a Non-Food and General Merchandise Clerk providing said employee is paid for the entire shift at the higher rate of pay. Upon promotion, a Courtesy Clerk will be credited with the total number of hours worked in the higher classification.

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 (de minimus 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 Schedule 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

**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-1-2, 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

LETTER OF UNDERSTANDING
between
UFCW LOCAL 101, 120, 373R, 428, 588, 648, 839, 870, 1179 and 1288
and
DIABLO FOODS, INC.

May 16, 2005 through December 1, 2007

The Employers agree that Section 17.1 of the Collective Bargaining Agreement does not prevent the Union from assisting the employees covered by the Agreement from filing any state or federal lawsuit which is designed to enforce any state or federal employee protection law or laws. Further, the Employers agree that the Union can be party to such lawsuits. The Employers further agree that Section 17.1 of the Agreement does not prevent the Employees covered by the Agreement from personally boycotting and/or hand billing the Employer.

FOR UFCW LOCAL 1179:

FOR EMPLOYERS:

President

Diablo Foods, Inc.

Date

Date