

**BAKERY AND CANDY STORE AGREEMENT
(Peter ' s Bakery)**

UNITED FOOD & COMMERCIAL WORKERS, LOCAL 428

November 1, 2004 - December 1, 2007

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BAKERY AND CANDY STORE AGREEMENT

UNITED FOOD & COMMERCIAL WORKERS LOCAL 428

November 1, 2004 - December 1, 2007

THIS AGREEMENT, entered into by and between **PETER ' S BAKERY**, First Party, hereinafter called the "Employer", and **UNITED FOOD & COMMERCIAL WORKERS, LOCAL 428**, affiliated with the Central Labor Council of Santa Clara and San Mateo Counties, the Change to Win Federation through the United Food & Commercial Workers International Union, Second Party, hereinafter called the 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 the premises and of the respective promises and Agreements and covenants of the above-mentioned parties hereto, they do hereby mutually 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 bakery stores within the geographical jurisdiction of the Union in Santa Clara County, Menlo Park, East and North Palo Alto, California except as set forth below.

1.2 Common Ownership:

There shall be not more than two (2) Employers in any store or group of stores having common ownership. In partnerships, "Employer" in this section means only bona fide partners who own an interest in the assets and in the profits of the partnership. In corporations, "Employer" in this section means only two (2) officers of the corporation who own capital stock of the corporation. No shareholder 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 any work of clerks under the jurisdiction of the Union shall be members of the Union and shall be governed by the provisions of this Agreement.

1.3 New Owner:

This Agreement shall be binding upon the successors and assigns of the parties hereto. During the life of this Agreement, the employee benefits provided for herein shall not be affected by the sale or transfer of the business, providing the employee, or employees, are retained in

employment by the new Employer for a period of more than thirty (30) days.

1.3 Individual Agreement:

The Employer agrees that no employee 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. It is understood and agreed that the wages and other conditions of employment provided in this Agreement are minimal.

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 within seven (7) days from such notice.

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/her 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, color, national origin or sexual preference, nor shall age or sex under any circumstances be a basis for rejection or termination of an otherwise qualified employee or applicant for employment.

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, the Employer shall:

2.5.1 Promptly notify the Union of such employment in writing on forms provided by the Union, giving the date, place and job classification of the employment, and the name, address and telephone number of the new employee; and

2.5.2 Promptly advise the new employee of the terms and provisions of this Agreement and of his/her obligation hereunder; and

2.5.3 Direct the new employee to report to the Union within forty-eight (48) hours from the time of employment to be advised of the terms and provisions of this Agreement and of his/her 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 he/she shall pay the agency fee.

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.

2.8 Shop Steward:

The Union may designate one employee as the Union Shop Steward. The Steward shall not be allowed to conduct union business while on company time except for instances of an incidental nature.

SECTION 3. DISCHARGES AND LAYOFFS

3.1 The Employer shall not discharge or discriminate against an 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.

3.1.1 Probation:

There shall be a probationary period of sixty (60) days during which a new employee may be discharged without right of appeal except if such discharge is in violation of Sections 2.4 and 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 ninety (90) 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/she has been unjustly discharged, he/she shall have the right of appeal in writing to the Adjustment Board through action of the Union within ten (10) days after receipt by the Union of notice of said discharge.

3.3.1 Before an employee is discharged for incompetency or failure to perform work as required, he/she shall receive a written warning (with a copy to the Union) and be given an opportunity to improve his/her work.

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 discharge is for cause, the Employer agrees to submit the reasons therefore to the Union upon request.

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/her employment.

3.5 Wages Due:

The Employer agrees to adhere to the provisions of the California Labor Code concerning payment of monies due employees who are terminated.

3.6 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.

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 4. hereof:

1. Managing Clerks
2. Head Clerks
3. Journeymen, Apprentice Clerks

4.3 Temporary Layoff:

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

4.4 Recall:

The Employer agrees to notify the employee and the Union by telephone of such recall and the Union shall be allowed one (1) day (24 hours) on which the office is open to notify such employees of recall to the job.

4.5 Loss Of Seniority:

No employee shall suffer loss of seniority unless he/she:

1. Is discharged for just cause;
2. Resigns or voluntarily quits;
3. Is absent from work for six (6) consecutive months due to layoff;
4. Fails to return to work upon completion of a leave of absence as defined

in Section 5.15;

5. Fails to report for work when recalled as provided in Section 4.4 of this Agreement.

4.6 Selection:

The selection of vacations shall be on a store basis except:

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

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/her place of business, and the Employer shall maintain in his/her store, or other 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 re-employment of persons entering Military Service. These provisions shall be deemed a contractual obligation under the terms of this Agreement.

5.3 Bonding:

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

5.4 Floor Covering:

Wood or suitable floor covering shall be provided for on all concrete floors behind checkstands.

5.5 Uniforms And Clothing Allowance:

- 5.5.1 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.
- 5.5.2 If uniforms are not required then the Employer will provide a clothing allowance of twenty-five dollars (\$25.00) to all employees on the payroll on each

anniversary date of the Agreement.

5.6 Tools And Equipment:

The Employer shall furnish all the required equipment and tools necessary for the 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/her shift terminates on pay day. The Employer shall furnish each employee with a weekly wage statement showing his/her name, hours of work, overtime if any, total wages paid and list of deductions.

5.8 Board And Room:

When meals or lodging are furnished by the Employer, the said Employer and the Union will negotiate an amendment to this Collective Bargaining Agreement in which an agreed evaluation shall be placed upon the said meals or lodging or both.

5.9 Union Business:

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

5.10 Union Emblem:

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

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

5.11 Job Injury:

When an employee is injured on the job and reports for medical care and it is certified that he/she is unable to continue work, he/she 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 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. Notwithstanding the scheduling provisions provided for in this Agreement, the Employer may reschedule an employee performing jury duty or making such appearances as referred to above, during store operation hours, so as to avoid or minimize payment of wages for such periods of jury duty or appearances. 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/her days off, he/she shall receive his/her basic straight time rate of pay for the time spent in making such appearances; but such time shall not be considered as part of the work week under the terms of this Agreement.

5.14 Transfers:

Any employee may refuse a transfer from the jurisdiction of this Local Union to another.

5.15 Leaves Of Absence:

Leaves of absence shall be granted as follows:

5.15.1 Sickness And Non-Industrial Injuries:

Up to six (6) months after one year's employment.

5.15.2 Industrial Injuries:

Up to one year, subject to review by the parties after one year, for any employee incurring an industrial injury after his/her first 30 days of employment.

5.15.3 Personal Leaves:

Leaves up to thirty (30) days after one (1) year of employment for compelling personal reasons to be agreed upon by the parties, such leaves shall be requested and granted in writing.

5.15.4 Pregnancy:

A pregnancy leave shall commence upon certification from the employee's physician that she should discontinue working because of such pregnancy.

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/she held immediately prior to such leave of absence.

The foregoing notwithstanding no employee shall suffer loss of seniority because of absence, due to illness of ten (10) working days or less.

5.16 Funeral Leaves:

When a 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/her immediate family, as defined below, the Employer shall pay him/her for eight (8) hours at his/her regular rate of pay for each day of such absence up to a maximum of three (3) days, provided:

- 5.16.1 The employee notified the Employer of the purpose of his/her absence on the first day of such absence;
- 5.16.2 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.
- 5.16.3 The absence occurs on the day during which the employee would have worked but for the absence;
- 5.16.4 The day of absence is not later than the day of such funeral except where substantial travel time is required;
- 5.16.5 The employee, when requested, furnishes proof satisfactory to the Employer of the death, his/her relationship to the deceased, the date of the funeral, and the employee's actual attendance at such funeral.

For the purpose of this subsection, a member of the immediate family means the employee's spouse, child, mother, father, sister, brother, mother-in-law, father-in-law, stepfather, stepmother, stepchildren, grandparents and grandchildren.

- 5.16.6 Probationary employees are not entitled to funeral leave for the period of their probation.

5.17 Promotion:

Determination of which employee is to be promoted will be based upon seniority provided the employee with the highest seniority has the qualifications necessary for the job. 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, he/she shall have the right to be demoted to his/her former or equivalent position without loss of seniority, and his/her right to such employment shall not be jeopardized by reason of such demotion.

5.18 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/she shall not be held financially responsible for returned checks other than his/her own personal check, nor shall he/she be expected or required to locate the check-cashing customer.

SECTION 6. HOURS, OVERTIME AND SUNDAY PREMIUM PAY

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. Each part-time employee will be scheduled for a minimum of twenty (20) hours of work per week.

6.2 Overtime Rates For Days in Calendar Week And Holiday Weeks:

Overtime at the rate of one and one-half (1-1/2) times the employee's straight time rate shall be paid for all work performed in excess of eight (8) hours per day or on the sixth (6th) day worked in a calendar week or on the fifth (5th) and sixth (6th) day worked in a week containing one of the holidays named in this Agreement, not counting a holiday worked.

6.3 Sunday Premium And Seventh (7th) Day:

All work performed on Sunday except as provided in paragraphs 6.7 and 6.8 of this Section, shall be paid at the rate of time and one-half (1-1/2) the employee's regular straight time rate. All work performed on the seventh (7th) day worked in a calendar week shall be paid for at double (2) the employee's regular straight time rate, provided that no employee shall be required to work seven (7) days in a calendar week nor in excess of eight (8) hours per day except in an emergency or with the permission of the Union.

6.4 Overtime Rate For More Than Five (5) Consecutive Days:

All employees normally working a five (5) day workweek shall receive time and one-half (1-1/2) for work performed after their fifth (5th) consecutive work day without reference to the calendar week until consecutive work 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.

6.5 Overtime Rate For More Than Six (6) Consecutive Days:

All employees normally working a six (6) day workweek shall receive time and one-half (1-1/2) for work performed after their sixth (6th) consecutive work day without reference to the calendar week until consecutive days are broken by a day off, except when their schedule is being changed in accordance with this Agreement.

6.6 Unscheduled Worked:

Work performed outside of an employee's scheduled eight (8) hour day of work shall be paid for

at the overtime provisions in accordance with this Agreement.

6.7 Scheduled Day Off Guarantee and Overtime Rate:

Employees called in to work on a scheduled day off and given shorter notice than that required by this Agreement shall receive a minimum of eight (8) hours work or eight (8) hours pay on that day at the rate of two and one-quarter (2-1/4) times the employee's regular straight time rate if the day is Sunday, or at time and one-half (1-1/2) if it is a day other than Sunday, 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 regular rate for that day and that on the sixth (6th) day worked shall be paid for at the overtime rate.

6.8 Overtime Sunday Premium Rate For the Sixth (6th) Or Seventh (7th) Consecutive Days:

The rate of pay for work performed on a Sunday which is a day worked in excess of five (5) consecutive days by a scheduled five (5) day employee shall be double (2) the employee's regular straight time rate. For work performed in excess of six (6) consecutive days by a six (6) day employee the rate shall be two and one-half (2-1/2) times the employee's regular straight time rate.

6.9 Day And Week Limitation:

No employee shall be allowed to work beyond eight (8) hours per day or work seven (7) days in a calendar week, except in an emergency or with the permission of the Union.

SECTION 7. WORK SCHEDULE AND PREMIUM RATES

7.1 Posting Of Work Schedules:

The Employer agrees to post a weekly schedule of working hours specifying the starting and finishing times, meal periods and days off, and this schedule shall continue in effect until a new one is posted. A twenty-four (24) hour notice of any change in such schedule, other than meal period, shall be given by the Employer, except that in the case of a change in a day off, at least five (5) days advance notice shall be posted.

Posting Notice:

The five (5) days notice to an employee referred to above shall mean notice prior to his/her meal period on the fifth (5th) day before the day off which is to be changed. In any event, work schedules must be posted by Friday at 12:00 noon of the week preceding the week in which such schedules are to be effective.

7.2 Shift Interval:

At least ten (10) hours shall elapse between the termination of the shift of any employee and the commencement of his/her next shift.

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 rescheduled to work on a holiday shall be permitted to work his/her normal number of working days that week.

7.4 Holiday Eve:

No employee shall be permitted to work after 7:00 p.m. on Christmas Eve and New Year' s Eve.

7.5 Meal Period:

Each employee shall be released from work for his/her meal period within five (5) hours of time of his/her reporting for work. Any employee who works in excess of five (5) hours without a meal period shall receive overtime compensation for all such work performed in excess of five (5) hours.

7.5.1 In accordance with State law the Employer may schedule a six (6) hour shift without a lunch period. Said six (6) hour shift shall not be subject to the overtime rate and shall include two (2) unscheduled ten (10) minute breaks.

7.6 Straight Shift:

Where one employee works a straight shift, such employee shall eat on the job where necessary, a one-half (1/2) hour meal period may be arranged with the consent of the Union.

7.7 Relief:

The Employer shall authorize and permit employees to take relief periods which insofar as practicable, shall be in the middle of each work period. The authorized relief period shall be at the rate of ten (10) minutes per four (4) hours of work. No employee shall be denied the right to necessary or required relief.

7.8 Daily Guarantee:

Any full time employee (one who is normally scheduled to work forty (40) hours or more per week) who is ordered to report for work shall be guaranteed not less than eight (8) hours work. Any part time employee who is ordered to report for work shall be guaranteed not less than four (4) hours work. Bona fide students, who, by reason of attending scheduled classes, may not work four (4) hours, may be individually excepted from this provision by agreement of the Employer, the Union and the employee involved.

7.9 Short Hour Premium:

A premium of ten (10) cents per hour will be paid to all employees who are hired or scheduled to

work less than forty (40) hours work in any calendar week.

Short hour premium shall not apply to new hires after November 1, 1982. Current employees requesting less than forty (40) hours per week shall not be eligible for the short hour premium.

7.10 Employees On Last Shift:

Employees who work on the last shift during the period the store is open for business shall be properly scheduled to serve customers and perform other miscellaneous duties in connection with the closing of the store.

7.11 Night Premium:

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

7.12 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.

7.13 Probation Of Overtime:

It is further agreed that no employee shall be required to work in excess of eight (8) hours on any premium day.

7.14 Separate Employers:

Any employee who works for another Employer in this industry, on his/her day or days off shall be paid therefore at straight time, overtime or premium rates calculated as though he/she 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.

SECTION 8. WAGES

8.1 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 following minimum wages shall be paid effective January 2, 2005:

Step 1 - 700 hours	\$8.09
Step 2 - 700 hours	\$9.44

Step 3 - 520 hours	\$10.78
Step 4 - 520 hours	\$12.13
Journeyman	\$13.48
Head Clerk	\$13.68
Managing Clerk	\$13.99

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 or department shall have a managing clerk at all times unless the Employer 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 or department; or attends to and is responsible for the proper checking and collection of the cash and receipts or the ordering of merchandise at the said store or department; or is generally recognized as the nominal head or foreman thereof. The mere occasional or incidental performance of the duties of a managing clerk under direction or instruction shall not be construed as the basis for classifying an employee as a managing clerk.

9.1.2 Head Clerks:

A Head Clerk is an employee who, in addition to his/her duties of clerk in the course and scope of his/her employment, performs one or more of the following:

9.1.2.1 Acts as a buyer;

9.1.2.2 Supervises the conduct of the store or department in the absence of the managing clerk or the owner, or is responsible for the opening or closing of a store or department.

9.1.2.3 In every store or department having three or more full-time employees, except where a managing clerk is one duty, the Employer shall classify and pay at least one of said employees as a Head Clerk.

9.1.3 Journeyman Clerks:

A Journeyman Clerk is an employee who has had more than fourteen (14) months experience in the retail bakery and/or confectionery industry.

9.1.4 Previous Experience:

If a Journeyman employee has been out of the industry between five and ten years, he/she will be allowed to start at the Second Apprentice Clerk's rate of pay.

If a Journeyman employee has been out of the industry ten or more years, he/she will be allowed to start at the First Apprentice Clerks' rate of pay.

9.1.5 Apprentice Clerks:

An Apprentice Clerk is an employee who has had less than fourteen (14) months experience in the retail bakery and/or confectionery industry under any of the above classifications, irrespective of where such experience may have been had.

9.1.6 Summer Relief Clerk:

The employer may use this classification, for summer relief only, during June, July and August. The pay rate is set at 1st Apprentice rate, less Health & Welfare and pension contributions, or the legal minimum wage, whichever is greater. The employer is obligated to pay full Health & Welfare and pension contributions to the Trust Fund. Any summer relief clerks retained after August 31 of each year will be placed at the appropriate pay rate and given credit for all hours worked.

It is understood that regular employees will not suffer any reduction in hours as a result of this classification. Regular part-time employees desiring additional available hours during June, July and August must notify the employer in May of each year, and they shall be given any available hours prior to use of this classification.

9.2 Limited Clerk:

Any employee whose earning capacity is limited because of a physical or mental handicap, or other infirmity, may be employed on suitable work at a wage agreeable to the Employer, employee and Union.

9.3 Transportation:

Any employee who is required by the Employer to perform his/her regular duties in more than one store in any day, shall be paid his/her actual transportation expense between stores. 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.

9.4 Two Classifications:

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 under that classification which pays the highest wage during the day or week he/she performs such higher classified work, except where any employee of a higher classification is relieved for a meal period; and provided, further, that 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.

SECTION 10. HOLIDAYS

10.1 The following days shall be recognized as paid holidays:

Employee's Birthday
New Year's Day
Washington's Birthday
Memorial Day
Fourth of July
Labor Day
Veteran's Day
Thanksgiving Day
Christmas Day

It is understood that the day of observance for Washington's Birthday, Memorial Day and Veterans's Day shall be those dates established by federal statute.

Employees' Birthday: Upon agreement between the Employer, the employees and the Union, the Employer may designate December 26 of each year as the employees' birthday

10.1.1 No Work:

No employee shall be permitted to work on any of the following holidays: New Year's Day, Labor Day, Thanksgiving Day and Christmas Day.

10.1.2 Work:

In the event that employees shall be obligated to work on any of the following holidays, they shall be paid at the rate of double (2) their straight time rate of pay in addition to the normal holiday pay: Washington's Birthday, Memorial Day, Fourth of July and Veteran's Day.

10.1.3 Sunday:

Whenever any of the holidays mentioned in this Agreement fall on Sunday, they shall be observed on the following Monday.

10.1.4 Eligibility:

Employees working more than sixteen (16) hours per week who do not work on a holiday are entitled to holiday pay and double (2) time in addition thereto for work on any holiday. Employees working sixteen (16) hours or less per week who have a holiday falling on their normal scheduled days of work, may be rescheduled by the Employer so as not to receive less than their regular weekly pay; such employees who work on any holiday will receive their regular pay and double (2) time in addition thereto.

10.1.5 Part-Time Employees:

Holiday pay for employees who work less than forty (40) hours shall be based on

twenty percent (20%) of the employee's average hours worked per week in the six (6) weeks immediately preceding the holiday or the number of weeks worked if less than six (6), except that in computing pay for the New Year's holiday the same period of time used in computing pay for the Christmas holiday shall be used.

10.1.6 **New Employee:**

A new employee who is hired in a holiday week to work more than sixteen (16) hours that week, whose employment commences on the day before or the day following the holiday or who works four (4) days in a holiday week shall also receive holiday pay. It is understood that no employee shall receive holiday pay from more than one Employer for the same holiday.

10.1.7 **Washington's Birthday And Veteran's Day:**

Notwithstanding the above, in the event the employer obtains the following modifications in its other Collective Bargaining Agreements, then this section shall become applicable. Replace Washington's Birthday with the employees anniversary date. Replace Veterans Day with a floating holiday. An employee must have more than six (6) months seniority to be eligible for the floating holiday, and observance will take place on a day mutually agreeable to the employer and the employee.

10.2 **Holiday Week:**

Any employee who has reported for work on his/her scheduled working day immediately preceding and his/her 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/her regular rate of pay. It is understood that in order to qualify for holiday pay an employee must work at least one (1) work day during the week in which the holiday falls.

10.3 **Other Holiday Observances:**

Where the Employer closes his/her store to the public on any other religious or legal holiday, except Easter, voluntarily or by law, the Employer agrees that the employee shall not suffer a reduction in pay on account of such closing.

10.4 **Employee's Birthday:**

Employees shall receive pay for said holiday as if worked. Each employee shall give his/her Employer notice of his/her 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/her 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/she shall receive an additional day off for the birthday in addition to the holiday on which it falls.

It is understood that probationary employees are not entitled to "employee's birthday" holiday unless the employees complete the probationary period. If they complete the probationary period, they are entitled to another day off with pay, in lieu of the holiday, at a time mutually agreeable to the Employer and the employee.

SECTION 11. VACATIONS

11.1 All employees 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.

11.2 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.

11.3 Pay And Special Provisions:

Vacation pay shall be computed by taking the vacation time earned per Section 11.1 times the current hourly wage rate in effect at the time vacation is taken. Part-time employees will receive vacation pay in proportion to their average time worked during the twelve (12) months prior to taking vacation. When an employee terminates, it shall be computed on the vacation time earned from the employees anniversary date of employment to his/her termination date times the hourly wage rate in effect on the date of termination.

11.4 Seniority Preference:

Senior employees shall be entitled to preference in choice of vacation periods by seniority within each classification.

11.5 Schedule:

The Employer agrees to post available vacation dates for each classification by January 1st of each year. If an employee fails to exercise their vacation selection by February 1st, or lost their selection by reason of less seniority, the employee may select from the remaining available periods. Vacation selection must be completed by March 1st. If an employee fails to select his/her vacation by March 1st, that employee's vacation period may be assigned by the Employer.

Employees who receive four or more weeks of vacation shall have the option to schedule up to five vacation days in single day increments subject to the employer's scheduling needs. Employees desiring to schedule a single day vacation must give the Employer two weeks advance notice. The employer will cooperate with employees who wish to combine vacation days with regular days off to create three days off in a row.

11.6 Variation:

Notwithstanding the provisions of Section 11.9 herein, the employees entitled to three (3) or four (4) 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; provided such vacation schedule shall be approved by the Employer, the employee involved and the Union.

11.7 Period:

Vacation periods shall be granted between January 1 and October 1 of each year, or at other times if mutually agreeable to the Employer and the 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.

11.8 Pro-Rata:

Any employee who is discharged, laid off or who resigns after six (6) months 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.

11.9 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 paid vacation.

SECTION 12. HEALTH AND WELFARE AND SICK LEAVE

12.1 The Employer agrees to accept and be fully bound by the terms of that certain Declaration of Trust dated April 17, 1974 as amended providing for the Northern California Food Employers and Retail Clerks Unions Benefit Fund, as the same may be applicable to the benefits hereinafter specifically provided, and any amendments thereto. The Employer also agrees to accept and be fully bound by the rules and regulations established from time to time by the Trustees under said Declaration of Trust, as the same may be applicable to said benefits.

12.2 Employer Contributions:

The Employer agrees to pay the rate required to maintain the Health and Welfare Plan known as and defined by the Trustees as Grocery Plan IV, with the benefit modifications approved by the Trustees, plus three (3) months of reserves.

The above constitutes the Employer's sole and only obligation for contributions to the Health and Welfare Plan during the term of this Agreement.

Such contributions shall be made on all straight-time hours worked, including Sundays, and/or compensated for, 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. Except as modified by section 12.2.1, it is understood that the contributions required on behalf of any employee shall not exceed forty (40) straight-time hours per week or 2080 straight-time hours in any calendar year.

12.3 The Employer's contribution shall be capped as follows:

\$5.20 per hour effective upon ratification
\$5.41 per hour effective 1-1-06
\$5.42 per hour effective 1-1-07

In the event that the cost of the plan exceeds the capped rate, the difference shall be paid by the employees. In the event that the cost of Plan IV exceeds \$5.42 per hour or if it is modified or eliminated, the parties shall retain the option to open the Agreement to discuss other health benefit options.

12.4 The failure of the Employer without legal justification to make the hereinabove required contributions shall cause him/her to be liable under this Agreement and to his/her eligible employees individually for any benefits available to his/her employees pursuant to the terms of subsection 12.3 hereof, but not received by them, by reason of the Employer's aforesaid failure to make the said contributions on behalf of said employees.

12.5 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 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 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 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 Plan resulting from any such failure shall be presumed to be the sum of \$20.00 per delinquency, or ten percent (10%) of the amount of the contributions due, whichever is the greater, not to exceed the sum of \$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.

12.6 The Trustees are directed to modify the eligibility rules to provide that if an employee's employment is terminated, eligibility shall cease at the end of the month following the month in which the employee's employment is terminated and no self payment shall be allowed thereafter. This modification in the eligibility and self-pay rules shall not apply (and current rules shall apply) in the following cases.

- (a) The employee is on disability or Workers' Compensation leave of absence or establishes a disability or Workers' Compensation claim with an effective date prior to the expiration of the one (1) month eligibility extension.
- (b) The employee is re-employed or reinstated by a contributing employer prior to the one (1) month eligibility extension.

(c) The employee is laid off.

Such an employee who has more than three (3) years continuous eligibility, shall be allowed to pay such premiums for six (6) months.

12.7 Health Plan Benefits:

The benefits in effect as of December 31, 1979, under the aforesaid Declaration of Trust and as supplemented and amended by the trustees and their professional advisors shall become a part of this Agreement for all eligible employees, their dependents, Pensioners, their spouse and/or their surviving spouse.

Retirees and their spouses shall receive all of the benefits of the plan, including prescription drug benefits, but they shall not receive life insurance, maternity benefits, vision and dental care, and the expanded physical examination.

Provide all benefits on a non-insured, self-administered basis.

12.8 Sick Leave Benefits:

All employees who have been employed for a period of six (6) months shall be entitled to thirty-six (36) hours of sick leave with pay. Unused sick leave shall accrue at the rate of six (6) hours per month thereafter not to exceed a maximum of three hundred and sixty (360) hours.

12.8.1 Sick Leave Pay-Out:

1. **Eligibility:**

In order to be eligible for a sick leave pay-out, an employee must have the maximum of 360 hours accumulated sick leave as of December 31.

2. **Amount of pay-out:**

Each employee who is eligible for a sick leave pay-out in accordance with paragraph (1) shall receive \$300 less \$10 for each hour of sick leave used during the calendar year.

12.9 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 Section 12.2 and for the period of this Agreement. The parties authorize and direct the Trustees of the Health and Welfare Plan to take the necessary action to assure compliance with the terms of this paragraph.

12.10 Mobility:

If an employee leaves employment with an Employer in the area covered by the Sick Leave Plan established herein and secures employment with another Employer, said employee shall retain his Sick Leave credits accrued by reason of his prior employment.

SECTION 13. PENSIONS

13.1 Employer Acceptance:

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

13.2 Employer Contributions:

Effective with hours worked July, 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 and twenty-nine cents (\$1.29) per straight-time hour for the first twelve months following the contribution effective date.
- 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.
- c. One dollar and fifty-six cents (\$1.56) per straight-time hour for the twenty-fifth (25th) month following the contribution effective date.

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 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 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 \$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 \$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.

13.4 Regulations:

The Trust and the benefits to be provided from the Pension Trust Fund hereinabove referred to 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, Bureau of Internal Revenue, and to any other applicable State or Federal laws and regulations.

13.5 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 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.

13.6 Limitations:

The liability of the Employer shall be limited to the payment of the contribution required by the terms of this Agreement.

13.7 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 of this agreement (referred to as "New Hires"):

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

13.8 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 changes in the existing Employer contribution rate.

13.9 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/she will receive credit for hours even though contributions are not required.

13.10 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).

Trust In the event that the application under 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 Fund shall follow the recent guidance on how 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 reduces 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.”

13.11 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.

13.12 Re-employment Rule

The bargaining parties agree to direct the Trustees to amend the Pension Plan rules for re-employment and the suspension of benefits to be consistent with the rules in effect during the 1997 collective bargaining agreement (i.e., 63 hour rule).

SECTION 14. STORE MEETINGS AND CHARITABLE DRIVES

- 14.1** 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.

SECTION 15. CONTRACT ENFORCEMENT AND STORE VISITS

15.1 Visits:

It is agreed by both parties hereto that the business representatives 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.

SECTION 16. STRIKE OR LOCKOUT

- 16.1** Refusal of an employee covered by the terms of this Agreement to pass through any picket line which has been sanctioned by the Central Labor Council of proper jurisdiction shall not constitute a violation of this Agreement.
- 16.2** During the life of this Agreement the Union and the Employer agree not to engage in any strike or lockout as long as the other party has not repeated an act held by an Adjustment Board or arbitrator to be a violation of this Agreement or the other party is not in undisputed violation of a provision of the Agreement where no question of interpretation is involved.

SECTION 17. ADJUSTMENT AND ARBITRATION OF DISPUTES

- 17.1** Upon the request of either party hereto, a Board of Adjustment shall be created, to be composed of two (2) representatives of each party to this Agreement, for the purpose of passing on all claims, disputes and grievances arising between the parties during the terms of this Agreement over the construction and application of this Agreement, or relating to working conditions arising out of this Agreement, when such cannot be settled directly between the Union and the particular Employer involved. Said Board shall meet for consideration of any such matter referred to it within seven (7) calendar days subsequent to a request therefore by either party. If the Board cannot agree on such question referred to it within seven (7) calendar days, it shall then choose a disinterested person to act as an impartial Arbitrator. If the parties do not agree on an Arbitrator within five (5) days, they shall obtain a list of five (5) Arbitrators from the United States Mediation and Conciliation Service, and an Arbitrator shall be selected therefrom by the strike-off method within seventy-two (72) hours upon demand.
- 17.2** The Arbitrator shall not have the right to alter, amend, delete or add to any of the terms of this Agreement.
- 17.3** Any expense jointly incurred in the course of arbitration shall be borne one-half (1/2) by the Union and one-half (1/2) by the Employer party to said arbitration.
- 17.4** If either party fails or refuses (1) to constitute a Board of Adjustment, as required by Subsection 17.1 hereof; (2) to observe the time limits provided in Subsection 17.1 hereof for the consideration of complaints by the Adjustment Board or the submission thereof to arbitration; (3) or to select an arbitrator within a reasonable time after the Adjustment Board has failed to agree on any question referred to it; then in any such event the other party shall be free to proceed to arbitration, whether or not the other party chooses to participate; provided, however, that prior written notice of such intent is given to the other party. In any case, where one party proceeds to arbitration without the participation of the other party, as herein provided, the Arbitrator shall be selected by the participating party from a panel furnished by the United States Federal Mediation and Conciliation Service, and any award rendered by an arbitrator so selected shall be final and binding upon both parties.
- 17.5** 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.
- 17.6** **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 time limit on wage claims is limited to six (6) months from the date the grievance is first submitted.

SECTION 18. SEPARABILITY CLAUSE

The provisions of this Agreement are deemed to be separable to the extent that if and when a court of last resort adjudges any provisions of this Agreement in its application between the Union and the undersigned Employer to be in conflict with any law, such decision shall not affect the validity of the remaining provisions of this Agreement, but such remaining provisions shall continue in full force and

effect, provided further that in the event any provision or provisions are so declared to be in conflict with a law, both parties shall meet immediately for the purpose of re-negotiation and agreement on provision or provisions so invalidated.

SECTION 19. ENTIRE AGREEMENT

Unless otherwise provided for in writing between parties, this Agreement constitutes the sole and entire existing Agreement between the parties and supersedes all prior Agreements, commitments and practices, whether oral or written, between the Employer and the Union, or the Employer and any of the covered employees, except as incorporated herein in writing, and expresses all contractual obligations of and restrictions imposed on the Employer and the Union. Section headings are descriptive only and shall not be used to add to, detract from or interpret in any manner the meaning of any provision of this Agreement.

SECTION 20. PERIOD OF AGREEMENT

This Agreement shall be in full force and effect from November 1, 2004 up to and including December 1, 2007 subject to written notice by either of the parties to the other sixty (60) days prior to the anniversary date of a desire to re-open this Agreement.

In the event that notice to amend this Agreement is not served by either party sixty (60) days prior to the expiration date of this Agreement, and changes submitted in accordance with the thirty (30) days provision mentioned above, this Agreement shall be deemed to be renewed from year to year thereafter, subject to sixty (60) days written notice prior to the 31st day of May of each year of a desire to amend this Agreement.

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

UNITED FOOD & COMMERCIAL WORKERS LOCAL 428

PETER'S BAKERY

BY

BY

DATE: _____

DATE: _____