

AGREEMENT

Between

THE MASSACHUSETTS BAY COMMUTER RAILROAD COMPANY

And

Its Employees Represented By The

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

PREAMBLE

As used in this Agreement, position titles are deemed to be without gender and no position title shall be construed in any way to denote the gender of the occupant of the position or be used in any way so as to restrict access to the position by reason of sex. Neither party to this Agreement will discriminate against any employee with regard to race, color, religion, sex, national origin, age, handicap, or sexual orientation. Consideration of the qualifications of candidates for employment, promotion or transfer will be based on qualifications which are job related.

Rule 1 - SCOPE

The Rules contained in this Agreement shall govern the hours of service, rates of pay and working conditions of Maintenance of Way Department employees classified as B&B Foreman, Track Foreman, B&B Mechanic, Welder, Machine Operator and Trackman and of other employees of similar classifications

under the jurisdiction of the Maintenance of Way Department, except those employees who come within the scope of other existing agreements.

While it is not the intent of the parties to either diminish or enlarge the work being performed in the territory under this Agreement, the work generally recognized as work ordinarily performed by the Brotherhood of Maintenance of Way Employees as it has been performed traditionally in the past in this territory will continue to be performed by those employees.

Recognizing that it is extremely difficult to insure strict compliance to the agreements negotiated by other parties and for management to be fully aware of the intricacies of the past practice at each point, the parties have inserted the word "ordinarily" into the above paragraph. The use of the word ordinarily is designed to preclude Scope/Classification Rule based claims and or grievances which arise as a result of either the assignment of Maintenance of Way employees to perform work customarily performed by other crafts or the erroneous assignment of other crafts to perform work customarily performed by Maintenance of Way employees at that location.

It is understood that where specific work assignments result in employee grievances, the parties will endeavor to resolve the difficulties as promptly as possible by joint check between the Director-Labor Relations and the General Chairman, or their designated representatives as necessary. Failing to resolve the matter, it may be handled in accordance with the grievance procedure.

Rule 2 - RATES OF PAY

1. Employees covered by this Agreement (see Appendix L for a listing of positions) will be paid rates, as adjusted by Agreement dated July 1, 2003.

2. When an employee is temporarily assigned to a position in any job classification other than his regular assignment, he will be paid: if the temporary assignment is for four (4) hours or more on any day, at the rate of the position to which temporarily assigned for the entire day but not less than the rate of his regular assignment; if the temporary assignment is for less than four (4) hours he will be paid four (4) hours at the rate of the position to which temporarily assigned but not less

than the rate of his regular assignment.

Rule 3 - ENTRY RATES

(a) Effective July 1, 2003, the entry rate provisions of this agreement are as follows:

(1) For the first 12 calendar months of employment such employees will be paid 90% of the applicable rates of pay;

(2) For the second 12 calendar months of employment such employees will be paid 95% of the applicable rates of pay ;

(3) At the conclusion of the second period specified in (2.) above, employees will be paid at 100% of the applicable rates of pay.

(b) An employee will be credited with a "month of employment" if the employee retains seniority in that month.

(c) Employees who have had an employment relationship with the carrier and are rehired will be paid at established rates after completion of a total of twenty-four (24) months' combined service.

(d) Service in a craft not represented by the organization signatory hereto shall not be considered in determining periods of employment under this rule.

(e) Employees who have had a previous employment relationship with a carrier in a craft represented by the organization signatory hereto and are subsequently hired by this carrier shall be covered by this Article. However, such employees will receive credit toward completion of the twenty-four (24) month period for any month in which compensated service was performed in such craft provided that such compensated service last occurred within one year from the date of subsequent employment.

Rule 4 - APPLICATION FOR EMPLOYMENT

Applications for newly-hired employees shall be approved or disapproved within 90 calendar days after applicants begin work. If applications are not disapproved within the 90 calendar day period, the applications will be considered as having been approved. Applicants shall within 90 calendar days from date of employment, if requested, have returned to them all documents which have been

furnished to the Company. In the event an employee's application for employment is disapproved in accordance with the provisions of this rule, he shall be notified, in writing, by the Company of such disapproval.

Rule 5 - SENIORITY

1. Seniority of employees covered by this Agreement starts at the time and date their pay starts.

2. When two or more employees' pay starts at the same time and date, they shall be given a seniority rank based on the time and date of application for employment.

3. Seniority is confined to the Sub-Department in which employed. The Sub-Departments are as follows:

1. TRACK
2. BRIDGE AND BUILDING

4. Assignment to positions covered by this Agreement will be based on qualifications and seniority; qualifications being sufficient, seniority will govern.

Rule 6 - TERMINATION OF SENIORITY

1. The seniority of any employee whose seniority under an agreement with the BMW is established after the date of this Agreement, July 1, 2003, and who is furloughed for 365 consecutive days will be terminated if such employee has less than three (3) years of seniority.

2. The "365 consecutive days" shall exclude any period during which a furloughed employee receives compensation pursuant to an I.C.C. employee protection order or an employee protection agreement or arrangement.

3. Subject to MBCR's legal obligations, when hiring Maintenance of Way employees after July 1, 2003, it will give preference to Maintenance of Way employees of MBCR who have been furloughed and who apply for employment during such period of furlough and prior to termination of seniority, provided that such furloughed employees are able to meet the physical and other re-employment requirements of MBCR.

4. In order to be entitled to this preference, such employees must maintain an

application at a location designated by MBCR and keep their current address on record at such location. Failure to comply with these requirements shall constitute relinquishment of this right.

Rule 7 - SENIORITY ROSTERS

1. A seniority roster will be prepared for each Sub-Department and will be revised in January of each year. The rosters will show the name and date of entry of each employee into the service of the Company and each employee's seniority date in each class. Employees will be shown on the initial roster as agreed to by the parties. A copy of each roster will be posted on bulletin boards and mailed to the General Chairman.

2. Protest against the seniority date of any employee shown on a roster must be filed in writing within sixty (60) days from the date of posting. Where a seniority date is shown on a roster and no protest is filed within the sixty (60) days, the seniority date shall be considered the established date for subsequent rosters. Clerical or typographical errors are excepted from this provision and may be corrected at the time the rosters are revised.

Rule 8 - BULLETIN, ASSIGNMENT AND DISPLACEMENT

1. New positions or vacancies (except short vacancies of thirty (30) days or less) will be bulletined on bulletin boards on Wednesday. The bulletin shall include whether or not the position is permanent or temporary and the position title (including the type of equipment primarily operated, where applicable), rate of pay, headquarters, work week, rest days, tour of duty and assigned territory. Employees desiring bulletined positions must file written application with the Carrier official signatory to the bulletin within seven (7) days after the bulletin is posted and positions will be awarded to the senior qualified applicant effective not later than fourteen (14) days after the bulletin is closed. This rule shall not be construed so as to require the placing of employees on their awarded positions when properly qualified employees are not available at the time to fill their places, but physical transfers must be made within ten (10) days after effective date of award.

Short vacancies of thirty (30) days or less may be filled by any available qualified employee covered by this Agreement. However, if the employee assigned to a short vacancy under this paragraph is other than the senior employee, he may be displaced by a senior employee on written notice to the supervisory official, provided written notice is made within five (5) days after the position is first filled, or in accordance with paragraphs 3, 4, and 5 of this rule.

2. An employee, after being awarded a bulletined position or permitted to exercise displacement rights, will be allowed thirty (30) calendar days in which to demonstrate his ability to competently perform the job. An employee who fails to qualify within thirty (30) calendar days may return to his former position without loss of seniority, but will acquire no seniority dating on the position for which he failed to qualify if such position is in a higher classification.

3. An employee whose position is abolished may exercise his seniority to any position for which he is qualified held by a junior employee within seven (7) calendar days after the effective time and date of abolishment. An employee who is displaced may exercise his seniority to any position for which he is qualified held by a junior employee within seven (7) calendar days after the time and date of displacement. Displacements must occur prior to the start of the shift and an employee reporting to the supervisor in charge of the gang in which the displacement is to be made prior to shift start will be allowed a displacement on that date.

4. An employee whose regular position is abolished or who is displaced from his regular position while on leave of absence, sick leave, vacation or suspension may, within seven (7) calendar days after his return, exercise his seniority to any position for which he is qualified held by a junior employee.

5. An employee returning from a leave of absence, sick leave, vacation or suspension may return to this former position or, within seven (7) calendar days after his return, qualification being sufficient, may exercise his seniority to any position which was bulletined and assigned in his absence to a junior employee, or qualification being sufficient may displace any junior employee promoted during his absence.

RULE 9 - HOURS OF SERVICE

1. Except as provided herein or in Rule 29, employees will be assigned to positions scheduled to work eight (8) hours per day exclusive of meal periods, five (5) days per week with two (2) consecutive rest days. On positions the duties of which can reasonably be met in five (5) days, the rest days will be Saturday and Sunday.

2. Work weeks consisting of four (4) days of ten hours work per day, with three consecutive rest days, are permissible provided that there is one Saturday or Sunday rest day per week. When such a gang is established with Saturday or Sunday as a work day, employees filling positions in such gangs shall be paid an incentive allowance of \$1.00 per hour for all hours worked. The incentive allowance shall be considered separate and apart from the base rate of pay and shall not be subject to cost-of-living or general wage increases. This incentive allowance is not applicable

where such gang is established with Saturday and Sunday as rest days.

3. For vacation purposes or any other situation where work days are counted as accumulative days, employees working a four (4) ten (10) hour day work week, will be credited with working five (5) work days in that work week.

4. Holidays falling on the second or third work day of employees assigned to a four (4) ten (10) hour day work week, may, by agreement between the Chief Engineer and General Chairman, be changed to the first or fourth work day of the work week.

5. Where employees are working a four-day, ten-hour per day work week and a holiday falls on a work day in that work week, they shall be paid ten (10) hours holiday pay for that holiday providing the bridging requirements of the National Non-Operating Holiday Agreement are met.

RULE 10 - SHIFTS, STARTING TIME AND MEAL PERIODS

1. One, two or three shifts may be established where necessary to meet service requirements. The starting time of any shift or position may be changed on thirty-six (36) hours notice to the employee effected. Employees working single shifts regularly assigned exclusively to day service will start work between 6:00 a.m. and 8:00 a.m. The starting time for employees assigned to a second shift will be according to requirements. Where three shifts are regularly established no shift will have a starting time between 12:00 o'clock midnight and 6:00 a.m.

2. Meal period will be between the end of the fourth hour and beginning of the seventh hour after starting time. The meal period shall not be less than thirty (30) minutes nor more than one (1) hour. If the meal period is not afforded within the allowed or agreed time limit and is worked, it will be paid for at pro rata rate and thirty (30) minutes with pay in which to eat shall be afforded at the first opportunity starting not later than the beginning of the seventh hour after starting work. A second meal period of thirty (30) minutes with pay will be afforded at the first opportunity after the tenth hour of work. Thereafter, a meal period of thirty (30) minutes with pay shall be afforded at reasonable intervals. The second and subsequent meals shall be furnished by MBCR.

3. Except as provided in Rule 31, employees' time will begin and end at fixed assembling points such as toolhouses or shops

Rule 11 - OVERTIME

1. Time worked preceding or following and continuous with the employee's

assignment on regular eight-hour work periods shall be computed on the actual minute basis and paid for at the time and one-half rate, with double time on an actual minute basis after sixteen (16) hours of work in any twenty-four hour period (computed from the starting time of the employee's regular shift), except that overtime shall automatically cease and the pro rata rate shall apply at the starting time of the employee's next regular assigned work period.

2. Employees called to perform work not continuous with the regular work period will be allowed a minimum of two hours and forty minutes (2'40") at the time and one-half rate and, if held on duty in excess of two hours and forty minutes (2'40"), they will be paid on a minute basis at the time and one-half rate for all time worked.

3. Time worked on rest days and holidays will be paid for at the time and one-half rate with double time on an actual minute basis after sixteen (16) hours of work until relieved or until commencement of the employee's next regular assigned work period, whichever occurs first. Such continuous time worked after commencement of the next regular assigned work period shall be paid at the pro rata rate, pursuant to Section 1 of this Rule 11.

4. When necessary to work employees under this Rule, the senior available qualified employees will be called according to the following:

(a) Preference to overtime work on a regular work day which precedes or follows and is continuous with a regular assignment shall be to the senior available qualified employee of the gang or the employee assigned to that work.

(b) Preference to overtime work other than in (a.) above, shall be to the senior available qualified employee at the headquarters who ordinarily and customarily performs such work.

5. Employees will be compensated as if on continuous duty in all cases where the release from duty does not exceed one (1) hour.

6. In the application of this Rule to furloughed employees temporarily brought into service in emergencies, the starting time for such employees will be considered as the time they are required to report for work.

Rule 12 - REDUCING FORCES

1. Not less than five (5) working days' advance notice will be given to regularly assigned employees, not including casual employees or employees who are

substituting for regularly assigned employees, whose positions are to be abolished before reductions in force are made.

2. Advance notice before positions are temporarily abolished or forces are temporarily reduced is not required where a suspension of the Corporation's operation in whole or in part is due to a labor dispute between the Corporation and any of its employees.

3. Except as provided in the foregoing paragraph hereof, no advance notice to employees is required before temporarily abolishing positions or making temporary force reductions under emergency conditions, such as flood, snow storm, hurricane, tornado, earthquake, fire or a labor dispute other than as defined in the foregoing paragraph hereof, provided that such conditions result in suspension of the Corporation's operations in whole or in part. Such temporary force reductions will be confined solely to those work locations directly affected by any suspension of operations. Notwithstanding the foregoing, any employee who is affected by such an emergency force reductions and reports for work for his position without having been previously notified not to report, shall receive four (4) hours' pay at the applicable rate for his position. If an employee works any portion of the day, he will be paid in accordance with existing rules.

RULE 13 - RETURNING FROM FURLOUGH

1. When the Carrier recalls furloughed employees to service, furloughed employees having seniority in the class will be recalled from furlough in seniority order.

2. An employee who fails to return to service within ten (10) days from date notification-of-recall has been mailed to his last recorded address for a position or vacancy of thirty (30) days or more duration will forfeit all seniority under this Agreement.

Forfeiture of seniority under this Rule will not apply:

(a) When an employee, within thirty (30) days from date of notification-of-recall, furnishes evidence satisfactory to the officer signatory to notification that failure to respond within ten (10) days was due to conditions beyond his control. Such evidence will be made available to the representative.

3. Furloughed employees may exercise seniority to displace junior employees awarded new positions or recalled to service within fifteen (15) days from the date such

junior employees start work on such new positions. Employees desiring to exercise seniority as set forth here must notify the Foreman or supervisory officer in charge not less than twenty-four (24) hours in advance of the starting time of the gang in which they desire to make displacement.

Rule 14 - GRIEVANCES

1. All claims or grievances other than those involving Discipline must be presented in writing by, or on behalf, of the employee(s) involved, to the designated officer within sixty (60) days from the date of the occurrence on which the claim or grievance is based. Should any such claim or grievance be disallowed, the designated officer shall, within sixty (60) days from the date same is filed, notify whoever filed the claim or grievance (the employee or the representative) in writing of the reasons for such disallowance. If not so notified, the claim or grievance shall be allowed as presented.

2. If a disallowed claim or grievance is to be appealed, such appeal must be in writing and must be made within sixty (60) calendar days from receipt of Notice of Disallowance to the Director-Labor Relations. Failing to comply with this provision, the claim or grievance shall be considered closed. If the Director to whom the appeal is made fails to render a decision in writing within sixty (60) calendar days of date of appeal or date of conference, whichever is later, the claim or grievance shall be allowed as presented.

3. A claim or grievance that is disallowed after appeal to the Director of Labor Relations may be referred to a tribunal established under the provision of the Railway Labor Act, provided such proceedings are initiated within 185 days from the date of the decision of the Director of Labor Relations.

4. The time limits set forth in this Rule may be extended by mutual agreement. When U.S. Mail is used, the postmark will govern in determining compliance with the various time limits outlined in this Rule.

5. Claims or grievances which are allowed or barred on account of failure to comply with the time limits set forth in this Rule shall not constitute a precedent or waiver of contention by either party as to other claims or grievances.

6. This Rule recognizes the right of duly accredited representatives to file and prosecute claims and grievances for and on behalf of the employees.

Rule 15 - DISCIPLINE

1. An employee who has been in service more than ninety (90) calendar days shall not be disciplined or dismissed without a fair and impartial investigation, unless such employee shall accept such dismissal or other discipline in writing and waive formal investigation. The employee may be held out of service pending such investigation only if his retention in service could be detrimental to himself, another person, or the Company.

An employee held out of service pursuant to this rule shall remain under pay as though he were in actual service on his regular position unless medically disqualified. Compensation under this rule shall continue until the decision is rendered following the trial/investigation, except that if the employee or his duly accredited representative requests a postponement of the employee's trial/investigation, the employee will not be compensated for the period of such postponement.

In the event of such a postponement, the Company shall attempt to reschedule the trial/investigation to commence within fifteen (15) days of the postponement. If the trial/investigation cannot be rescheduled within that time, through no fault of the employee or his representative, compensation will again be paid after the fifteen (15) day period.

2. An employee and his representative shall be given written notice in advance of the investigation, such notice to set forth the specific charge or charges against him. No charge shall be made that involves any offense of which the Company has had actual knowledge thirty (30) calendar days or more, except where a civil action or criminal proceeding results from the offense, in which event the charge may be made within thirty (30) days of the final judgement. The investigation shall be held at the city of employment within ten (10) calendar days of the date when notified of the offenses or held from service (A hearing may be postponed for a valid reason for a reasonable period of time at the request of the Company, the employee or the employee's union representative.)

The Company must supply the Organization, five (5) days prior to the hearing, all documents to be used in any investigation.

At such investigation, the employee may be assisted by his duly accredited representative. A decision will be rendered by the investigating officer within ten (10) calendar days after completion of investigation.

3. An employee dissatisfied with the decision shall have the right to appeal to the Director -Labor Relations, and a conference shall be granted, provided written request is made to such officer within thirty (30) calendar days of the date of receipt of the transcript. A decision will be rendered by the Director -Labor Relations within thirty (30) calendar days from the date the appeal is received or the day of conference, whichever is applicable.

An employee who has been assessed discipline of dismissal following an investigation shall have the right to appeal, either in person or through their duly accredited representative, directly to the Director-Labor Relations and a conference shall be granted, provided written request is made to such officer within fifteen (15) days from the date of the notice of discipline. The appeal conference will be scheduled to be held within thirty (30) days of the date of appeal. A decision on the appeal will be rendered within thirty (30) days of the date of conference.

4. Any appeal from the decision of the Director- Labor Relations must be made to a proper tribunal, as established under the provisions of the Railway Labor Act within 185 days of the date of such decision. Notification to the Director- Labor Relations, within ninety (90) calendar days from date of his decision, of intent to appeal shall be considered as timely when such appeal is to be heard by a tribunal established under the Railway Labor Act.

5. A copy of the investigation transcript together with copy of any documents placed in the record at the investigation shall be promptly furnished the employee and his representative. When a notation is made against the record of an employee, he will be furnished a copy.

6. If the final decision decrees that the charges against the employee are not sustained, the record shall be cleared of the charge. If held out of service (suspended or dismissed) the employee shall be reinstated and compensated for all time lost, less the amount he earned while out of service.

7. The time limits of this Rule shall not apply to requests for leniency.

8. The time limits set forth in this Rule may be extended by mutual agreement. When the U.S. Mail is used, the postmark will govern in determining compliance with the various time limits outlined in this Rule.

Rule 16 - ABSENCE FROM WORK

1. No employee shall absent himself from his assigned position for any cause without first obtaining permission from his supervisor. In case of sickness or emergency he shall, as soon as possible, notify his supervisor or other person in authority when his supervisor cannot be located.

2. An employee who absents himself from work for ten (10) days without notifying the Company shall be considered as having resigned from the service and shall be removed from the seniority roster unless he furnished satisfactory evidence of physical disability. Should a dispute arise as to whether or not satisfactory evidence of physical disability has been furnished and the employee makes a written request for an investigation within five (5) days after notice in writing of his removal from the seniority roster, an investigation on the issue as to whether or not satisfactory evidence of physical disability has been furnished will be held in accordance with Rule 15.

Rule 17 - JURY DUTY

1. When a regularly assigned employee is summoned for jury duty and is required to lose time from his assignment as a result thereof, he shall be paid for actual time lost with a maximum of a basic day's pay at the straight time rate of his position for each day lost less the amount allowed him for jury service for each day, excepting allowances paid by the court for meals, lodging or transportation, subject to the following qualification requirements and limitations:

(a) An employee must exercise any right he may have to secure exemption from jury duty and will be excused from service when necessary without loss of pay to apply for such exemption.

(b) An employee must furnish the Company with a statement from the court of jury allowances paid and the days on which jury duty was performed.

(c) The number of days for which jury duty shall be paid is limited to a maximum for sixty (60) days in any calendar year.

(d) No jury pay will be allowed for any day as to which the employee is entitled to vacation or holiday pay.

(e) When an employee is excused from Company service on account of jury duty, the Company shall have the option of determining whether or not the employee's regular position shall be blanked, notwithstanding the provisions of any other rules.

Rule 18 - VACATION

The December 17, 1941, Nonoperating National Vacation Agreement, together with amendments and interpretations, is adopted as the MBCR-Brotherhood of Maintenance of Way Employees Vacation Agreement. (See Appendix C)

Prior continuous railroad service of employees accepting MBCR employment in this craft and class, who are affected by an assumption of function, will be credited for such prior service to determine length of vacation.

Employees shall be permitted to take one week of their vacation allowance per year in less than 40 hour increments, provided that such vacation days will be scheduled in accordance with existing rules on MBCR, applicable to the scheduling of personal leave.

Rule 19 - HOLIDAYS

The current National Holiday Agreement, generally applicable to railroad employees represented by the BMW, will be applied to employees covered by this Agreement. The following serves as an example:

1. (a) Subject to the qualifying requirements applicable to regularly assigned employees contained in paragraph (b) hereof, each regularly assigned employee shall receive eight (8) hours' pay at the straight time rate of the position to which assigned for each of the holidays below.

New Year's Day	Labor Day
Washington's Birthday	Veteran's Day
Good Friday	Thanksgiving Day
Memorial Day	Christmas Eve
Fourth of July	Christmas
	Personal Holiday *

* Such day will be selected by the employee, consistent with the requirements of service, upon 48 hours' advance notice to the Company. The "personal holiday" request must be made before October 12 of each year. Failing to do so, such "personal holiday" will be assigned by management.

Subject to the applicable qualifying requirements in paragraph (b) hereof, other than regularly assigned employees shall be eligible for the paid holidays for pay in lieu thereof, provided (1) compensation for service paid him by the Company

is credited to eleven (11) or more of the thirty (30) days immediately preceding the holiday and (2) he has had a seniority date for at least sixty (60) days or has sixty (60) days of continuous active service preceding the holiday beginning with the first day of compensated service, provided employment was not terminated prior to the holiday by resignation, for cause, retirement death, non-compliance with the union shop agreement, or disapproval of application for employment.

(b) A regularly assigned employee shall qualify for the holiday pay provided in paragraph (a) hereof if compensation paid him by the Company is credited to the workdays immediately preceding and following such holiday. If the holiday falls on the last day of a regularly assigned employee's workweek, the first workday following the rest days shall be considered the workday immediately following the holiday. If the holiday falls on the first workday of his workweek, the last workday of the preceding workweek shall be considered the workday immediately preceding the holiday.

All others for whom holiday pay is provided in paragraph (a) hereof shall qualify for such holiday pay if on the day preceding and the day following the holiday they satisfy one or the other of the following conditions:

- (i) Compensation for service paid by the Company is credited; or
- (ii) Such employee is available for service.

Note: "Available" as used in subsection (ii) above is interpreted to mean that an employee is available unless he lays off of his own accord or does not respond to a call, pursuant to the rules of the applicable agreement, for service.

(c) When any of the holidays enumerated below, or the day observed, falls during an employee's vacation period, he shall, in addition to his vacation compensation, receive the holiday pay provided for in paragraph (a) of this Rule provided he meets the qualification requirements specified. The "workdays" and "days" immediately preceding and following the vacation period shall be considered the "workdays" and "days" preceding and following the holiday for such qualification purposes. An employee's vacation period will not be extended by reason of any of the eleven (11) recognized holidays, or the day observed.

(d) Special qualifying provision for employees qualifying for both the Christmas Eve and Christmas Day holiday:

An employee who meets all other qualifying requirements will qualify for holiday pay for both Christmas Eve and Christmas Day if on the

"workday" or the "day", as the case may be, immediately preceding the Christmas Eve holiday he fulfills the qualifying requirements applicable to the "workday" or the "day" before the holiday and on the "workday" or the "day", as the case may be, immediately following the Christmas Day holiday he fulfills the qualifying requirements applicable to the "workday" or the "day" after the holiday.

An employee who does not qualify for holiday pay for both Christmas Eve and Christmas Day may qualify for holiday pay for either Christmas Eve or Christmas Day under the provisions applicable to holidays generally.

(e) Under no circumstance will an employee be allowed more than one (1) overtime payment for service performed by him in a holiday which is also a work day, a rest day and/or a vacation day.

2. In situations where personal leave days are taken either immediately preceding or following a holiday, the work day (or day, in the case of an other than regularly assigned employee) immediately preceding or following the personal leave day is considered as the qualifying day for holiday purposes.

3. In all states where proclamations of national and state holidays do not coincide, employees covered by our Agreement will observe holidays designated by the Federal Government. Such holidays as designated by the Federal Government will take precedence over holidays enumerated by the state.

RULE 20 - PERSONAL LEAVE

1. A maximum of two (2) days of personal leave will be provided on the following basis:

(a) Employees who have met the qualifying vacation requirements during eight calendar years under vacation rules shall be entitled to one day of personal leave in subsequent calendar years.

(b) Employees who have met the qualifying vacation requirements during seventeen calendar years under vacation rules shall be entitled to two days of personal leave in subsequent calendar years.

2. Personal leave days may be taken upon 48-hours advance notice from the employee to the proper company officer, provided however such days may be taken only when consistent with the requirements of the company's service. It is not

intended that this condition prevent an eligible employee from receiving personal leave days except where the request for leave is so late in a calendar year that service requirements prevent the employee's utilization of any personal leave days before the end of that year.

3. Personal leave days will be paid for at the regular rate of the employee's position or the protected rate, whichever is higher.

4. The personal leave days shall be forfeited if not taken during each calendar year. The company shall have the option to fill or not fill the position of an employee who is absent on a personal leave day. If the vacant position is filled, the rules of the agreement applicable thereto will apply. The company will have the right to distribute work on a position vacated among employees covered by the agreement.

5. When personal leave days are taken either immediately preceding or following a holiday, the work day (or day, in the case of an other than regularly assigned employee) immediately preceding or following the personal leave day is considered as the qualifying day for holiday purposes.

Rule 21 - HEALTH AND WELFARE

Benefit levels and other health and welfare provisions including, but not limited to those relating to eligibility and delivery of medical services, that are substantially equivalent to those in effect on June 30, 2003, will be provided by MBCR.

Rule 22 - SUPPLEMENTAL SICKNESS BENEFITS

MBCR will provide a "Supplemental Sickness Benefit Plan" substantially equivalent to the plan in effect on June 30, 2004. Benefits under this plan will become effective July 1, 2003.

Rule 23 - UNION SHOP & DUES DEDUCTION

The Union Shop and Dues Deduction provisions as set forth in Appendix A are incorporated in and made a part of this Agreement.

Rule 24 - CONTRACTING OUT

1. In the event the Carrier plans to contract out work within the scope of the schedule agreement, the Chief Engineer shall notify the General Chairman in writing as far in advance of the date of the contracting transaction as is practicable and in any event not less than 15 days prior thereto.

2. If the General Chairman requests a meeting to discuss matters relating to the said contracting transaction, the Chief Engineer or his representative shall promptly meet with him for that purpose. The Chief Engineer or his representative and the General Chairman or his representative shall make a good faith attempt to reach an understanding concerning said contracting, but if no understanding is reached the Chief Engineer may nevertheless proceed with said contracting, and the General Chairman may file and progress claims in connection therewith.

3. Nothing in this Rule shall affect the existing rights of either party in connection with contracting out. Its purpose is to require the Carrier to give advance notice and, if requested, to meet with the General Chairman to discuss and if possible reach an understanding in connection therewith.

4. MBCR may not contract out work normally performed by an employee in the bargaining unit covered by this contract if contracting out results in the layoff of an employee in the bargaining unit.

Rule 25 - EMPLOYEE INFORMATION

1. Commencing July 2003, the Company will provide the General Chairman with a list of employees who are hired or terminated, their home addresses, and Employee numbers, if available, otherwise the employees' identification numbers. This information will be limited to the employees covered by this agreement. The data will be supplied within thirty (30) days after the end of the month in which the employee is hired or terminated. Where the Corporation can not meet the thirty (30) day requirement, the matter will be worked out with the General Chairman.

2. In regard to additional information concerning employees the Organization represents, the parties are mindful of the recommendation of Emergency Board No. 211 that such general information pertaining to the employment status of the Organization's members should be provided and the Carrier commits itself to providing information on a periodic basis.

3. The employee information specifically referred to in the Emergency Board recommendation that is determined to be readily accessible through the Carrier's

data processing system will be provided to the Organization beginning July 1, 2003, or as soon thereafter as reasonable. It is understood that the Carrier will not be required to establish a new data collection system solely for the purpose of complying with this Rule.

Rule 26 - BEREAVEMENT LEAVE

Bereavement leave, not in excess of three calendar days, following the date of death will be allowed in case of death of an employee's brother, sister, parent, child, spouse or spouse's parent. In such cases a minimum basic day's pay at the rate of the last service rendered will be allowed for the number of working days lost during bereavement leave. Employees involved will make provision for taking leave with their supervising officials in the usual manner. Any restrictions against blanking jobs or realigning forces will not be applicable when an employee is absent under this provision. (See Appendix D).

Rule 27 - APPOINTMENT TO OFFICIAL OR SUPERVISORY POSITIONS - RETENTION OF SENIORITY

(1) Employees who are presently or subsequently appointed to supervisory or official positions not subject to the application or exercise of seniority under this Agreement shall retain all their seniority rights and shall continue to accumulate seniority provided they pay a fee no greater than the current dues and assessments being paid by Carrier's employees covered by this Agreement.

(2) In the event an employee fails to comply with (1) above, the duly accredited representative shall so notify the Director of Labor Relations and the employee. Within thirty (30) days after receipt of a subsequent notification from the Director-Labor Relations the employee will forfeit his seniority unless the employee involved remits all monies due the union.

(3) Employees appointed to position covered by paragraph (1) of this Rule who are subsequently removed from such positions by the Company (other than through dismissal for cause) may displace any employee with less seniority or may bid on a bulletined vacancy on the seniority roster from which promoted.

(4) Employees appointed to positions covered by paragraph (1) of this Rule who voluntarily demote themselves may bid on any advertised position thereafter, but may not displace any regular assigned employee.

(5) The Carrier shall provide the Organization the name and address of all employees who appear on any roster covered by the scope of this Agreement and who hold an official or supervisory position with MBCR within thirty (30) days of the execution of this agreement or, in the case of employees not presently holding supervisory or official positions with MBCR, within, thirty (30) days of appointment to a supervisory or official position.

(6) Employees accepting positions under the jurisdiction of other Union agreements who desire to retain their BMW seniority shall pay a retention fee in accordance with the procedures specified in (1) above.

Rule 28 - HEADQUARTERS

1. Each designated Headquarters will be supplied with lockers, washing and toilet facilities, proper heating, electrical fixtures, table and benches and will be maintained in a clean and sanitary condition.

2. Prior to the opening of any new headquarters facility established by the Carrier, the General Chairman or his designated representative will be afforded the opportunity to inspect such new facility with the Chief Engineer or his designated representative.

Rule 29 - DISTRICT UNITS

I. DISTRICT UNITS

MBCR may establish one or more of the following District Units not assigned fixed headquarters to work over the Seniority District.

1. Tie Installation Unit
2. Surfacing Unit
3. Mechanical Brush Gang
4. Rail Laying Gang
5. Undercutting Gang

6. Welding/Joint Elimination
7. Switch and Rail Renewal
8. Bridge and Building Construction Unit

Auxiliary forces that may work in conjunction with the above units:

1. Crossing Gang
2. Material Distribution Gang

II. NOTICE TO BE GIVEN

When MBCR intends to establish a district unit, it shall give at least thirty (30) days written notice thereof to the General Chairman, such notice to contain information relative to the following:

1. Type of production unit.
2. Description of territory over which it is programmed to work.
3. Length of time production gang will operate.
4. Number of positions in each classification assigned to the unit.
5. Work week
6. Hours of assignment.

III. ASSIGNMENT TO POSITIONS

1. MBCR will bulletin all positions in the unit to the involved seniority district in accordance with the bulletining rules of the Agreement.

2. Assignment will be made in accordance with the assignment and bulletining rules of the Agreement.

3. Vacancies in the units subsequent to its establishment will be advertised to the involved seniority district in accordance with the bulletining rules.

IV. INCENTIVE ALLOWANCE

1. Under the circumstances provided in V. 4. an incentive allowance of 65¢ per hour for all hours worked will be applicable to members of District Units. The incentive allowance shall be considered separate and apart from the basic rate of pay and shall not be subject to general wage increases.

V. WORK WEEK

1. The normal work week for employees assigned to positions in units established pursuant to this Agreement, will consist of five (5) days of eight (8) straight time hours each, with two (2) consecutive rest days. An original determination of whether a unit is to be established for five (5) or four (4) ten-hour days with three (3) consecutive rest days shall be made in the notice given to the General Chairman pursuant to II above. When it is known in advance that a five (5) day week will not be practicable and feasible for the duration of the unit, those times will be specified in such notice. At all other times, the Chief Engineer may change the work week from five (5) days to four (4) days, or vice versa, upon at least five (5) days written notice to the involved employees and the General Chairman, except that such changes may be made in less than five (5) days upon concurrence of the General Chairman.

2. Where the Company believes an operational requirement exists that the work week of a District Unit include Saturday and/or Sunday then MBCR will notify the General Chairman in accordance with II.(5) above, fully explaining the operational requirement. Should the General Chairman disagree, a meeting will be promptly held for the purpose of reaching an agreement on the dispute. The district Unit shall not commence until such meeting is held, or until thirty (30) days from date of notification pursuant to II.(5). Agreement for such work week shall not unreasonably be withheld.

If the parties remain in disagreement, MBCR may nevertheless put the assignments into effect, subject to the right of the employees to process the disputes as a grievance or claim under the rules agreement, and in such proceedings, the burden will be on MBCR to prove that the operational requirements exist.

3. Starting times other than those found in Rule 10 shall be permissible in District Units. However, District Units shall not have a starting time between 12:00 o'clock midnight and 6:00 AM (5:00 AM from May 1 through September 30). The Chief Engineer may change starting times upon at least five (5) days written notice to the involved employees, except that such changes may be made in less than five (5) days upon concurrence of the General Chairman. Employees whose starting times

are changed more than one (1) hour may elect to exercise their seniority in accordance with Rule 8.

4. When either or both of the conditions in (2) and (3) above are applicable to a District Unit, the incentive allowance in IV is applicable to that District Unit.

VI. TRAVEL ALLOWANCE

1. Employees assigned to positions in District Units established pursuant to this Agreement, will be allowed a travel allowance of:

(a) \$12.50 for each week end trip from their homes to the headquarters point, including the initial trip in establishing the District Unit.

(b) \$12.50 for each week end trip from the headquarters point to their homes, including the final trip after termination of the District Unit.

However, an employee assigned to a unit working a four (4) day week shall forfeit twenty-five percent (25%) [twenty percent (20%) when working a five (5) day week] of such travel allowance for each day of the work week on which compensation paid him by MBCR for service performed has not been credited. Compensation referred to in this section is understood to include that received for holidays under Article II of the Agreement of August 21, 1954 as amended.

2. The payment referred to in Section (a) hereof, is to cover any expenses these employees may incur while making such week end trips and is in lieu of all other compensation said employees may be entitled to under the provisions of any other agreement, practice or working condition for such week ends.

3. The provisions of this Section are not applicable to trips made by employees to and from their homes on legal holidays.

4. Each employee assigned to a position in a District Unit established under this Agreement will receive, in addition to regular earnings, a per diem allowance of \$29.50 per day for each working day in which he performs compensated service. This allowance is in lieu of any other allowance or provisions by rule, custom or practice relating to travel time, transportation, meals or lodging, however established.

5. Should the headquarters for a particular gang change more than 70

miles from the point originally established, the per diem allowance provided for in Section VI, Paragraph 4 above, will cease and the following will apply:

Employees are entitled to lodging and meals. MBCR may substitute a \$29.50 per diem allowance in lieu of meals for each work day that covered employees perform compensated service, when MBCR provides lodging.

VII. HEADQUARTERS

1. The locations of headquarters points for District Units established under this Agreement, will be established by mutual agreement between the General Chairman and the Chief Engineer or Deputy Chief Engineer. Headquarters points may be changed upon thirty-six (36) hours advance notice posted with copy to the General Chairman.

VIII. ACCUMULATIVE WORK DAYS FOR VACATION ENTITLEMENT AND HOLIDAYS

1. For vacation purposes or any other situation where work days are counted as accumulative days, employees working a four (4) ten (10) hour day work week will be credited with working five (5) work days in that work week.

2. Holidays falling on the second or third work day of employees assigned to a four (4) ten (10) hour work week, may by agreement between the Chief Engineer and General Chairman, be changed to the first or fourth work day of the work week.

3. Where employees are working a four-day, ten-hour per day work week and a holiday falls on a work day in that work week, they shall be paid ten (10) hours holiday pay for that holiday providing the bridging requirements of the National Non-Operating Holiday Agreement are met.

IX. DAYS REFERRED TO - MEANING OF

The days referred to in this Agreement mean calendar days.

Rule 30 - WORKING LESS THAN FULL DAY WHEN WEATHER CONDITIONS PREVENT WORK BEING PERFORMED

1. When the foreman and supervisor in charge agree in writing that weather conditions prevent work being performed, employees in the below listed gangs of twelve (12) or more reporting at their regular starting time and place for the day's work will be allowed a minimum of four (4) hours [five (5) hours for four (4) day gangs]; if held on duty beyond four (4) hours [five (5) hours for four (4) day gangs], they will be paid on a minute basis.

(1) Track Welding (Aluminothermic)

(2) Mechanical Surfacing

(3) Gangs where the nature of the work being performed is such that adverse weather conditions would present an extraordinary safety concern.

(a) Applicable gangs under (3) above shall be by agreement between the appropriate General Chairman and appropriate Chief Engineer. Concurrence will not be unreasonably withheld nor delayed.

2. The Carrier shall not combine gangs to create units of twelve (12) or more so that this rule can be invoked. Gangs of twelve (12) or more that normally do not work as a unit are not intended to be covered by this Rule.

3. The allowance provided by this rule shall not be used as a basis for determining whether the weather conditions permit work to be performed.

4. Any positions subject to the application of this Rule will have that notification stated on the job advertisement.

5. The Carrier will provide foul weather gear when appropriate.

6. The Carrier must comply with Rule 8 for any position in a gang not filled for that position to be counted toward gang strength.

RAIN/WEATHER FORM
(Application of Rule 30)

We have mutually discussed the conditions of Rule 30 of the current MBCR/BMWE Agreement and feel that the weather conditions prohibit our gang from performing their assigned duties for this date.

Consequently, all members of _____ which has

an authorized force of twelve (12) or more members, will be released from duty as ____
____ (AM) (PM) with _____ hours of compensated time this date _____
_____.

M/W FOREMAN GANG NO. DATE SUPERVISOR DATE

We have mutually discussed and agreed to this release.

Rule 31 - MBCR/LABOR PRODUCTIVITY COUNCIL

The BMW and MBCR may establish a joint labor/management productivity council. The Council's purpose is to achieve real, measurable cost savings through a joint process yielding benchmarks for productivity increases and strategies to achieve them.

The Council would be based on a structure of mutual representation and consensual decision-making similar to the MBCR/BMW Safety Program. The BMW and management shall each designate employee representatives in writing, and may revoke such designations at any time. Employee representatives designated by the BMW shall be reimbursed in accordance with the schedule agreement. All costs of the Council shall be borne by MBCR.

The Council will select a mutually agreed-upon third party—government, private sector business, non-profit or otherwise—to help develop benchmarks and evaluate labor and management's progress toward measurable goals.

Benchmarking and goal setting are not new to the transportation industry—and especially not new to railroads. In fact, MBCR already has the facility to collect and compare work performance.

The process would provide a forum for discussion to encourage labor participation in job scheduling and design, and other logistics. Similar work-teams are used in the auto industry and other businesses to co-engineer projects and work processes.

The Council will work to identify possible steps for improvement in such areas as:

1. Organization and execution of proposed capital construction projects.
2. Effective use of new technology.
3. Current and proposed modes of work organization and methods.
4. Training.
5. Issues of workplace quality of life and fair treatment.

Possible specific cost reduction or revenue improvement targets/goals include, for example:

1. Reducing costs related to injuries.
2. Effective use of materials and reduction of wastage.
3. Reducing other costs associated with job planning and execution.
4. Increasing productivity in core activities such as tie installation, track construction and renewal, bridge reconstruction, catenary inspection, etc.
5. Increasing revenue through on-time performance.

Contracting-In. It is anticipated that productivity enhancements will permit additional MBCR work to be performed and increase crew availability of contracting-out to other railroads (commuter and freight), thereby growing revenue.

Distribution of Benefit Savings. As productivity enhancement targets are established in all areas, periodic reviews of benchmarked activities shall evaluate progress toward those goals and the value of increased efficiencies and savings to MBCR's bottom line. Savings of up to \$3.0 million annually would primarily benefit MBCR's bottom line. (Employees shall receive 20 percent of the benefits of the savings, while the company receives 80 percent.) However, if the total annual savings exceeds \$3.0 million per year, 50 percent of those savings shall be paid to employees as a bonus above normal wages and payments.

Rule 32 - TRAVEL TIME

Except as otherwise provided, the following rule will apply .

1. An employee waiting, or traveling by direction of MBCR by passenger train, motor car or any other method of transportation, will be allowed straight time

for actual time waiting and/or traveling during or outside of the regularly assigned hours.

2. When authorized to use their personal vehicle, the employee will receive the standard MBCR/IRS authorized mileage reimbursement.

3. This rule does not apply to employees waiting or traveling in the exercise of their seniority rights.

Rule 33 - MILITARY TRAINING

When employees assigned to regular positions who are members of the Reserves or National Guard are required to be absent from work for the purpose of their annual training exercise, they shall be paid the actual time lost during their regular work days or work weeks (maximum of eight (8) hours pay at the straight time rate of their positions for each day lost). Compensation received by the employees for other than meals, lodging or transportation, shall be remitted to the Corporation. Such employees must furnish the Company with a statement signed by their Commanding Officer for compensation paid and the days on which such military training service was performed.

Rule 34 - LEAVE OF ABSENCE

1. An employee given a leave of absence will retain and accumulate seniority during the period of such leave of absence.

2. Employees who are granted leaves of absence to serve as the accredited representatives of the Brotherhood of Maintenance of Way Employees will:

(a) Retain and continue to accumulate seniority in the classes or grades in which they have seniority at the time they were granted leave of absence to the same extent as would be the case if they were in active service.

(b) Acquire and accumulate seniority in higher classes or grades in which advertised positions are awarded to junior employees due to the absence of the accredited representative on leave of absence.

(c) An employee on a leave of absence as a full time union representative of the BMWU on or after July 1, 1988 will be credited for time on the leave of absence as

continuous service for the length of his/her vacation entitlement.

3. Except when his seniority is protected by an Agreement, in writing, between the Chief Engineer and the General Chairman, an employee absent on leave who engages in outside employment shall automatically forfeit all seniority under this Agreement.

Rule 35 - SAFETY

The System Safety Agreement, as set forth in Appendix H , will be applicable to employees covered by this Agreement.

Rule 36 - OFF-THE-TRACK ACCIDENTS

The benefits and protection provided under the terms and provisions of the agreement covering accidents involving off-the-track vehicles authorized by Railroad to transport employees entered into at Washington, D.C. on February 10, 1971, and effective May 1, 1971, together the amendments and interpretations made or agreed upon by proper authority from time to time, including the changes in benefit levels as set forth in Article X of the September 26, 1996, NCCC/BMWE agreement, will be applied to employees of the Corporation and will be considered part of this Agreement to the same extent it would be if the Corporation were a party to that agreement. Benefits under this Rule 36 will be paid for covered accidents occurring on or after July 1, 2003.

Rule 37 - SPECIAL ACCOUNTS

Within six months from the date of this agreement, MBCR will establish flexible spending accounts for dependent care and health care. The plans will be in accordance with the IRS regulations and applicable laws.

Rule 38 - AMERICANS WITH DISABILITIES ACT

The Company and Union recognize that legal obligations exist under the Americans with Disabilities Act (ADA) to make reasonable accommodations for certain employees with disabilities. The parties agree to cooperate with respect to

making such accommodations.

Rule 39 - RETIREMENT SAVINGS PLAN

MBCR will establish a 401(k) tax-deferred retirement savings plan for its eligible employees represented by the Union signatory below, subject to the following provisions:

1. The plan will be effective July 1, 2003, or as soon thereafter as possible. Eligible employees may make contributions as provided in the Plan through payroll deduction.
2. An eligible employee is an active employee who has completed one year of service as defined in the Plan.
3. Participation in the Plan by any eligible employee shall be voluntary.
4. There will be no contributions to the Plan by MBCR.
5. MBCR will take such actions as may be prudent or required by law to maintain the tax qualified status of the Plan.

UNION SHOP-DUES DEDUCTION

UNION SHOP

1. In accordance with and subject to the terms and conditions hereinafter set forth, all employes of the Corporation now or hereafter subject to the rules and working conditions agreement between the parties hereto shall, as a condition of their continued employment subject to such agreement, become members of the union party to this agreement representing their crafts or classes within sixty (60) calendar days of the date they first perform compensated service as such employes after the effective date of this agreement, and thereafter shall maintain membership in good standing in such union; except that such membership shall not be required of any individual until he has performed thirty (30) days of such compensated service within a period of twelve (12) consecutive calendar months. Nothing in this agreement shall alter, enlarge or otherwise change the coverage of the present or future rules and working conditions agreement.

2(a). Employes who have secured seniority under the rules and working conditions agreement and who are subsequently regularly assigned or transferred to full-time employment not covered by such agreement or are furloughed on account of force reduction will not be required to maintain membership as provided in Section 1 of this agreement so long as they remain in such other employment

or furloughed as herein provided, but they may do so at their option. Should such employes return to any service covered by the said rules and working conditions agreement they shall, as a condition of their continued employment subject to such agreement, be required to become and remain members in good standing in the union within thirty (30) days from date of their return to such service.

(b). The seniority status and rights of employes granted leave of absence to serve in the Armed Forces shall not be terminated by reason of any of the provisions of this agreement but such employes shall, upon resumption of employment, be governed by Section 1 of this agreement.

3. Nothing in this agreement shall require an employe to become or to remain a member of the union if such membership is not available to such employe upon the same terms and conditions as are generally applicable to any other members, or if the membership of such employe is denied or terminated for any reason other than the failure of the employe to tender the periodic dues, initiation fees, and assessments (not including fines and penalties) uniformly required as a condition of acquiring or maintaining membership. For purposes of this Section, dues, fees, and assessments shall be deemed to be "uniformly required" if they are required of all employes in the same status at the same time in the union.

4(a). The Corporation will furnish to the union information with respect to the employment status of employes represented by it, and which information is pertinent to the administration of this agreement. The union will notify the Corporation in writing of any employe who by reason of failure to comply with the terms of this agreement is not entitled to continue in employment. Upon receipt of such notice, the Corporation will, as promptly as possible but within ten (10) calendar days of such receipt, so notify the employe concerned in writing by certified mail, return receipt requested, or by personal delivery evidenced by receipt.

Copy of such notice shall be given the union. Any employe so notified who disputes the fact that he has failed to comply with the terms of this agreement, shall, within a period of ten (10) calendar days from the date of such notice, request the Corporation in writing to accord him a hearing which shall be held as soon as possible and within ten (10) calendar days of receipt of request therefor. Notice of the date set for hearing shall be promptly given the employe in writing by certified mail, return receipt requested, or by personal delivery evidenced by receipt.

Copy of notice of such hearing shall be given to the union and the union shall attend and participate in the hearing. The receipt by the Corporation of a request for a hearing shall operate to stay action on the termination of employment until the hearing is held and the decision of the Corporation is rendered. In the event the employe concerned fails to request a hearing as provided herein, the Corporation shall proceed to terminate his employment and seniority not later than thirty (30) calendar days from receipt

of the above described notice from the union, unless the Corporation and the union agree otherwise in writing.

(b). The Corporation shall determine on the basis of the evidence produced at the hearing whether or not the employe has complied with the terms of this agreement, and shall render a decision accordingly. Such decision shall be rendered within ten (10) calendar days of the hearing date and the employe and the union shall be promptly advised thereof. If the decision is that the employe has not complied with the terms of this agreement, his employment and seniority shall be terminated within ten (10) calendar days of said decision, unless the Corporation and the union agree otherwise in writing. If the decision of the Corporation is not satisfactory to the employe or the union, it may be appealed directly to the highest officer of the Corporation designated to handle such appeals. Such appeals shall be taken within ten (10) calendar days of the date of the decision appealed from, and if taken, shall operate to stay action on the termination of employment, until the decision on appeal is rendered. The Corporation shall promptly notify the other party in writing of any such appeal. The decision on such appeal is that the employe has not complied with the terms of this agreement, his employment and seniority shall be terminated within ten (10) calendar days of the date of said decision unless the Corporation and the union agree otherwise in writing. Such decision on appeal shall be final and binding unless within ten (10) calendar days thereof the union

or the employe involved requests the selection of a neutral person to decide the dispute as provided in Section 4(c) below. Any request for selection of a neutral person as provided in Section 4(c) below shall operate to stay action on the termination of seniority and employment until not more than ten (10) calendar days from the date decision is rendered by the neutral person.

(c). If within ten (10) calendar days after the date of a decision on appeal by the highest officer of the Corporation designated to handle appeals under this agreement the union or the employe involved requests such highest officer in writing that a neutral person be appointed to decide the dispute, a neutral person to act as sole arbitrator to decide the dispute shall be selected by the highest officer of the Corporation designated to handle appeals under this agreement or his designated representative, the Chief Executive of the union or his designated representative. If they are unable to agree upon the selection of a neutral person, any one of them may request the Chairman of the National Mediation Board in writing to appoint such a neutral person. The Corporation, the union and the employe involved shall have the right to appear and present evidence at a hearing before such neutral person. Any decision by such neutral person shall be made within thirty (30) calendar days from the date of receipt of the request for his appointment and shall be final and binding upon the parties. The Corporation, the employe and the union shall be promptly advised thereof in writing. If the position of the employe is sustained, such fees, salary and expenses shall be borne

in equal shares by the Corporation and the union. If the position of the employe is not sustained, such fees, salary and expenses shall be borne in equal shares by the Corporation and the union and the employe.

(d). Time limits specified in this Section may be extended in individual cases by written agreement of the Corporation and the union.

(e). The union shall notify the Corporation in writing of the title(s) and address(es) of its officers and representatives who are authorized to serve and receive notices described in this Section. The Corporation shall notify the union of the title(s) and address(es) of its officers or representatives who are authorized to receive the notices described in this Section.

5. The Corporation shall not be required to terminate the employment of any employe until such time as the services of a qualified replacement are available. The determination of whether a qualified replacement is available shall be made jointly by the designated representative of the Corporation and the designated representative of the union. The Corporation, may not, however, retain any employe in service under the provisions of this paragraph for a period in excess of ninety (90) calendar days from the date of the union's original notice or sixty (60) calendar days from the date of the last decision rendered in accordance with Section 4 above. Employes whose service is extended under

the provisions of this Section shall not, during such extension, retain or acquire any seniority rights.

6. An employe whose employment and seniority is terminated pursuant to the provisions of this agreement shall have no time or money claim by reason thereof.

7. In the event that seniority and employment under the rules and working conditions agreement is terminated by the Corporation under the provisions of this agreement, and such termination of seniority and employment is subsequently determined to be improper, unlawful, or unenforceable, the union shall indemnify and save harmless the Corporation against any and all liability arising as the result of such improper, unlawful, or unenforceable termination of seniority and employment; provided, however, that this sentence shall not apply to any case in which the Corporation is the plaintiff or the moving party in the action in which the aforesaid determination is made or in which case the Corporation acts in collusion with any employe; provided further, that the aforementioned liability shall not extend to the expense to the Corporation in defending suits by employes whose seniority and employment are terminated by the Corporation under the provisions of this agreement.

DUES DEDUCTION

8(a). Subject to the terms and conditions hereinafter set forth, the Corporation will deduct from the wages of employes,

membership dues, fees and assessments (excluding fines and penalties) whenever applicable each week which are uniformly required as a condition of acquiring or retaining membership in the union upon written and unrevoked authorization of the employe on the form (Individual Authorization Form - Attachment "A") agreed upon by the parties hereto, a copy of which is attached and made a part of this Appendix A.

(b). The designated representative of the union shall promptly notify in writing the Officer or Officers designated by the Corporation of any special assessments or changes in amounts of fees or dues, and shall also furnish to such designated Officer or Officers of the Corporation, the individual authorization forms as provided for herein.

9(a). Individual authorizations to be effective for a particular week must be in the possession of the Corporation not later than the twentieth (20th) day of the month preceding the week in which such deductions are to be made.

(b). The designated representative of the union shall furnish to the Corporation an initial statement in alphabetical order, showing the employe's name, lodge number, Social Security number and amount to be deducted, such statement to be furnished together with individual authorization forms to cover, not later than the twentieth (20th) days of the month preceding the month in which the deductions become effective. Subsequent weekly deductions will be based on the initial statement, plus a monthly statement showing additions or deletions, furnished in the same manner as the initial statement required hereby.

10. Said deductions will be made from wages earned each week and shall be remitted by check to the Officer designated by the union not later than the end of the month in which deductions are made, accompanied by a list in alphabetical order showing the name of each employe for whom a deduction was made, his lodge number, Social Security number and the amount of the deduction and the total amount of money deducted. If the earnings of the employe is insufficient in the week in which deductions are made to permit the full amount of the deduction, no deduction will be made for that week. In the event of any excess or shortage in said deductions for an individual employe, said excess or shortage will be subject to adjustment by the union and the individual employe.

11. The following payroll deductions will have priority over the deductions covered by this Agreement:

Federal, state and local taxes.

Other deductions required by law and court orders.

Amounts due Corporation.

12. The deductions provided for herein shall not be effective with respect to any individual employe until the Corporation has been furnished with written authorization of assignment of wages of such weekly membership dues, initiation fees, reinstatement fees, and assessments. Such assignment shall be revocable in writing after the expiration of one year, or upon termination of this Agreement.

13. Responsibility of the Corporation under this arrangement shall be limited to remitting to the union the amount

actually deducted from wages of employes pursuant hereto and the Corporation shall not be responsible financially or otherwise for failure to make deductions or for improper or inaccurate deductions. Any question arising as to the correctness of the amount deducted shall be handled between the employe involved and the union, and any complaints against the Corporation in connection therewith shall be handled by the union on behalf of the employes concerned.

14. The union shall indemnify and save harmless the Corporation from and against any and all claims, demands, liability, losses or damage resulting from the entering into this Agreement or arising or growing out of any dispute or litigation from any deductions made by the Corporation pursuant to this Agreement; except for remitting to the union the monies deducted pursuant to this Agreement; provided, however that this sentence shall not apply to any case in which the Corporation is the plaintiff or the moving party in the action or in which case the Corporation acts in collusion with any employe; provided further, that the aforementioned liability shall not extend to the expense of the Corporation in defending suites by employes as a result of the Corporation's action under this Agreement.

15. In the event of a change in representation of employes now represented by the union this Agreement shall be automatically terminated as of the date official notification is received from the National Mediation Board of such change in representation.

ATTACHMENT A

INDIVIDUAL AUTHORIZATION FORM

FOR DEDUCTION OF FEES, DUES AND ASSESSMENTS

I hereby assign to the Brotherhood of Maintenance of Way Employes that part of my wages necessary to pay my weekly union dues as reported to the Massachusetts Bay Commuter Railroad Company by the General Chairman of the Brotherhood of Maintenance of Way Employes as provided under the Dues Deduction provisions of the Agreement entered into by and between the Corporation and the Organization, effective July 1, 2003, and I hereby authorize the Corporation to deduct from my wages all such sums and pay them over to the union as provided for in the said Agreement.

This authorization may be revoked by the undersigned in writing after the expiration of one (1) year or upon the termination date of the Union Shop-Dues Deduction provisions of said Agreement, or upon the termination date of the said Agreement, whichever occurs sooner.

TYPE OR PRINT IN INK

NAME _____
 LAST FIRST MIDDLE INITIAL

HOME ADDRESS _____
 STREET AND NUMBER

 CITY OR TOWN STATE ZIP CODE

DATE _____

EMPLOYEE IDENTIFICATION NO. _____

SOCIAL SECURITY NO. _____

Phone Number _____

LOCATION _____

SIGNATURE _____

LODGE NO. _____

APPENDIX "B"

ADDENDUM TO DUES DEDUCTION AGREEMENT

between

MASSACHUSETTS BAY COMMUTER RAILROAD COMPANY

and

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

In conformity with the provisions of the Voluntary Payroll Deduction of Political Contributions Agreement effective July 1, 2003 the parties hereby amend the Dues Deduction Agreement of July 1, 2003, to the extent necessary to provide for the deduction of employees' voluntary political contributions on the following terms and bases:

1(a) Subject to the terms and conditions hereinafter set forth, the Carrier will deduct from the wages of employees voluntary political contributions upon their written authorization in the form (individual authorization form) agreed upon by the parties hereto, a copy of which is attached, designated "Attachment A" and made a part hereof.

(b) Voluntary political contributions will be made monthly from the compensation of employees who have executed a written authorization providing for such deductions. The first such deduction will be made in the month following the month in which the authorization is received.

Such authorization will remain in effect for a minimum of twelve (12) months and thereafter until canceled by thirty (30) days' advance written notice from the employee to the Brotherhood and the Carrier by Registered

Mail. Changes in the amount to be deducted will be limited to one change in each 12-month period, and any change will coincide with a date on which dues deduction amounts may be changed under the dues deduction agreement.

2. The General Chairman or his designated representative shall furnish the Carrier with copy to the appropriate units of the Brotherhood, an initial statement by lodges, in alphabetical order and certified by him, showing the amounts of deductions to be made from each employee, such statement to be furnished together with individual authorization forms to cover, and payroll deductions of such amounts will commence in the month immediately following. Subsequent monthly deductions will be based on the initial statement plus a monthly statement showing additions and/or deletions furnished in the same manner as the initial statement required hereinabove.

3. Monthly voluntary political contribution deductions will be made from wages at the same time that membership dues are deducted from the employee's paycheck.

4. Concurrent with making remittance to the Organization of monthly membership dues, the Carrier will make separate remittance of voluntary political contributions to the Treasurer, Maintenance of Way Political League, together with a list prepared in accordance with the requirements of the Dues Deduction Agreement pertaining to the remittance of monthly membership dues, with a copy to the General Chairman.

5. The requirements of this agreement shall not be effective with respect

to any individual employee until the employer has been furnished with a written authorization of assignment of wages of such monthly voluntary political contribution.

FOR:

BROTHERHOOD OF MAINTENANCE
OF WAY EMPLOYES

FOR:

MASSACHUSETTS BAY COMMUTER
RAILROAD COMPANY

_____/s/_____

_____/s/_____

ATTACHMENT A

INDIVIDUAL AUTHORIZATION FORM

Voluntary Payroll Deductions
Maintenance of Way Political League

To _____

Space for label showing name, address, System Board
and local lodge number.

_____ _____
Department Work Location

I hereby authorize and direct my employer _____ to deduct from my pay the sum of \$ _____ for each month in which compensation is due me, and to forward that amount to the Treasurer, Maintenance of Way Political League. This authorization is voluntarily made on the specific understanding that the signing of this authorization and the making of payments to the Maintenance of Way Political League are conditions of membership in the Union or of employment with the Carrier; that the Maintenance of Way Political League will use the money it receives to make political contributions and expenditures in connection with Federal, State and Local elections.

It is understood that this authorization will remain in effect for a minimum of 12 months and, thereafter, I may revoke this authorization at any time by giving the Carrier and the Organization 30 days' advance written notice of my desire to do so.

Signed at _____
this _____ day of _____, 19__

(personal signature)

Social Security Number

Synthesis of Nonoperating (M of W) National Vacation
Agreements

APPENDIX "C"

VACATIONS

The following represents a synthesis in one document, for the convenience of the parties, of the current provisions of the December 17, 1941, National Vacation Agreement and amendments thereto provided in the various national agreements, with appropriate source identifications.

This is intended as a guide and is not to be construed as constituting a separate agreement between the parties. If any dispute arises as to the proper interpretation or application of any provisions, the terms of the appropriate vacation agreement shall govern.

- - - - -

1 (a) An annual vacation of five (5) consecutive work days with pay will be granted to each employee covered by this Agreement who renders compensated service on not less than one hundred twenty (120) days during the preceding calendar year.

(Art. II - VACATIONS - Section 1(a) - 1/13/67 Agreement and
Art. IV - VACATIONS - Section 1(a) - 2/10/71 Agreement)

(b) An annual vacation of ten (10) consecutive work days with pay will be granted to each employee covered by this Agreement who renders compensated service on not less than one hundred ten (110) days during the preceding calendar year and who has two (2) or more years of continuous service and who, during such period of continuous service renders compensated service on not less than one hundred ten (110) days (133 days in the years 1950 - 1959 inclusive, 151 days in 1949 and 160 days in each of such years prior to 1949) in each of two (2) of such years, not necessarily consecutive.

(Art. II-VACATIONS-Section 1(b)-5/17/68 Agreement and
Art. IV-VACATIONS-Section 1(b)-2/10/71 Agreement)

(c) An annual vacation of fifteen (15) consecutive work days with pay will be granted to each employee covered by this Agreement who renders compensated service on not less than one hundred (100) days during the preceding calendar year and who has eight (8) or more years of continuous service and who, during such period of continuous service renders compensated service and not less than one hundred (100) days (133 days in the years 1950-1959 inclusive, 151 days in 1949 and 160 days in each of such years prior to 1949) in each of eight (8) of such years, not necessarily consecutive.

(Art. II-VACATIONS-Section 1(c)-1/13/67 Agreement and
Art. IV-VACATIONS-Section 1(c)-2/10/71 Agreement
Art. III-VACATIONS-Section 1(c)-3/10/78 Agreement
Art. III-VACATIONS-Section 1(c)-11/21/81 Agreement)

(d) An annual vacation of twenty (20) consecutive work days with pay will be granted to each employee covered by this Agreement who renders compensated service on not less than one hundred (100) days during the

preceding calendar year and who has seventeen (17) or more years of continuous service and who during such period of continuous service renders compensated service on not less than one hundred (100) days (133 days in the years 1950-1959 inclusive, 151 days in 1949 and 160 days in each of such years prior to 1949) in each of seventeen (17) of such years, not necessarily consecutive.

(Art.II-VACATIONS-Section 1(d)-1/13/67 Agreement and
Art.IV-VACATIONS-Section 1(d)-2/10/71 Agreement
Art.III-VACATIONS-Section 1(d)-3/10/78 Agreement
Art.III-VACATIONS-Section 1(d)-11/12/81 Agreement)

(e) Effective with the calendar year 1973, an annual vacation of twenty-five (25) consecutive work days with pay will be granted to each employee covered by this Agreement who renders compensated service on not less than one hundred (100) days during the preceding calendar year and who has twenty-five (25) or more years of continuous service and who, during such period of continuous service renders compensated service on not less than one hundred (100) days (133 days in the years 1950-1959 inclusive, 151 days in 1949 and 160 days in each of such years prior to 1949) in each of twenty-five (25) of such years, not necessarily consecutive.

(Art.IV-VACATIONS-Section 1(e)-2/10/71 Agreement)

(f) Paragraphs (a), (b), (c), (d) and (e) hereof shall be construed to grant to weekly and monthly rated employees, whose rates contemplate more than five days of service each week, vacations of one, two, three, four or five work weeks.

(Art.II-VACATIONS-Section 1(e)-1/13/67 Agreement and
Art.IV-VACATIONS-Section 1(f)-2/10/71 Agreement)

(g) Service rendered under agreements between a carrier and one or more of the Non-Operating Organizations parties to the General Agreement of August 21, 1954, or to the General Agreement of August 19, 1960, shall be counted in computing days of compensated service and years of continuous service for vacation qualifying purposes under this Agreement.

(Art.II-VACATIONS-Section 1(f)-1/13/67 Agreement and
Art.IV-VACATIONS-Section 1(g)-2/10/71 Agreement)

(h) Calendar days in each current qualifying year on which an employee renders no service because of his own sickness or because of his own injury shall be included in computing days of compensated service and years of continuous service for vacation qualifying purposes on the basis of a maximum of ten (10) such days for an employee with less than three (3) years of service; a maximum of twenty (20) such days for an employee with three (3) but less than fifteen (15) years of service; and a maximum of thirty (30) such days for an employee with fifteen (15) or more years of service with the employing carrier.

(Art.II-VACATIONS-Section 1(g)-1/13/67 Agreement and

Art.IV-VACATIONS-Section 1(h)-2/10/71 Agreement)

(i) In instances where employees who have become members of the Armed Forces of the United States return to the service of the employing carrier in accordance with the Military Selective Service Act of 1967, as amended, the time spent by such employees in the Armed Forces subsequent to their employment by the employing carrier will be credited as qualifying service in determining the length of vacations for which they may qualify upon their return to the service of the employing carrier.

(Art.IV-VACATIONS-Section 1(i)-2/10/71 Agreement)

(j) Effective January 1, 1973, in instances where an employee who has become a member of the Armed Forces of the United States returns to the service of the employing carrier in accordance with the Military Selective Service Act of 1967, as amended, and in the calendar year preceding his return to railroad service had rendered no compensated service or had rendered compensated service on fewer days than are required to qualify for a vacation in the calendar year of his return to railroad service, but could qualify for a vacation in the year of his return to railroad service if he had combined for qualifying purposes days on which he was in railroad service in such preceding calendar year with days in such year on which he was in the Armed Forces, he will be granted, in the calendar year of his return to railroad service, a vacation of such length as he could so qualify for under paragraphs (a), (b), (c), (d) or (e) and (i) hereof.

(Art.IV-VACATIONS-Section 1(j)-5/21/71 Memorandum of Agreement)

(k) Effective January 1, 1973, in instances where an employee who has become a member of the Armed Forces of the United States returns to the service of the employing carrier in accordance with the Military Selective Service Act of 1967, as amended, and in the calendar year of his return to railroad service renders compensated service on fewer days than are required to qualify for a vacation in the following calendar year, but could qualify for a vacation in such following calendar year if he had combined for qualifying purposes days on which he was in railroad service in the year of his return with days in such years on which he was in the Armed Forces, he will be granted, in such following calendar year, a vacation of such length as he could so qualify for under paragraphs (a), (b), (c), (d) or (e) and (i) hereof.

(Section 1(k) - 5/21/71 Memorandum of Agreement)

(l) An employee who is laid off and has no seniority date and no rights to accumulate seniority, who renders compensated service on not less than one hundred twenty (120) days in a calendar year and who returns to service in the following year for the same carrier will be granted the vacation in the year of his return. In the event such an employee does not return to service in the following year for the same carrier he will be compensated in lieu of the vacation he has qualified for provided he files written request therefor to his employing officer, a copy of such request to be furnished to his local or general chairman.

(Art.II-VACATIONS-Section 1(i)-1/13/67 Agreement and
Art.IV-VACATIONS-Section 1(l)-2/10/71 Agreement)

2. Insofar as applicable to the employees covered by this agreement who are also to the Vacation Agreement of December 17, 1941, as amended, Article 2 of such agreement is hereby canceled.

(Art.II-VACATIONS-Section 2 - 5/17/68 Agreement)

3. The terms of this agreement shall not be construed to deprive an employee of such additional vacation days as he may be entitled to receive under any existing rule, understanding or custom, which additional vacation days shall be accorded under and in accordance with the terms of such existing rule, understanding or custom.

(Section 3 - 12/17/41 Agreement)

An employee's vacation period will not be extended by reason of any of the eleven recognized holidays (New Year's Day, Washington's Birthday, Good Friday, Memorial Day, Fourth of July, Labor Day, Veteran's Day, Thanksgiving Day, Christmas Eve, Christmas Day, Personal Holiday) or any day which by agreement has been substituted or is observed in place of any of the eleven holidays enumerated above, or any holiday which by local agreement has been substituted therefor, falling within his vacation period.

(Art.IV-VACATIONS-Section 3 - 2/10/71 Agreement)

4(a) Vacations may be taken from January 1st to December 31st and due regard consistent with requirements of service shall be given to the desires and preferences of the employees in seniority order when fixing the dates for their vacations.

The local committee of each organization signatory hereto and the representatives of the Carrier will cooperate in assigning vacation dates.

(b) The management may, upon reasonable notice (of thirty (30) days or more if possible, but in no event less than fifteen (15) days require all or any number of employees in any plant, operation, or facility, who are entitled to vacations to take vacations at the same time.

The local committee of each organization affected signatory hereto and the proper representative of the carrier will cooperate in the assignment of remaining forces.

(Section 4(a) and (b) - 12/17/41 Agreement)

5. Each employee who is entitled to vacation shall take same at the time assigned, and, while it is intended that the vacation date designated will be adhered to so far as practicable, the management shall have the right to defer same provided the employee so affected is given as much as advance notice as possible; not less than ten days' notice shall be given except when emergency conditions prevent. If it becomes necessary

to advance the designated date, at least thirty days' notice will be given affected employee.

If a carrier finds that it cannot release an employee for a vacation during the calendar year because of the requirements of the service, then such employee shall be paid in lieu of the vacation, the allowance hereinafter provided.

(Section 5 - 12/17/41 Agreement)

Such employee shall be paid the time and one-half rate for work performed during his vacation period in addition to his regular vacation pay.

NOTE: This provision does not supersede provisions of the individual collective agreements that require payment of double time under specified conditions.

(Art.I-VACATIONS-Section 4 - 8/21/54 Agreement)

6. The carriers will provide vacation relief workers but the vacation system shall not be used as a device to make unnecessary jobs for other workers. Where a vacation relief worker is not needed in a given instance and if failure to provide a vacation relief worker does not burden those employees remaining on the job, or burden the employee after his return from vacation, the carrier shall not be required to provide such relief worker.

(Section 6 - 12/17/41 Agreement)

7. Allowances for each day for which an employee is entitled to a vacation with pay will be calculated on the following basis:

(a) An employee having a regular assignment will be paid while on vacation the daily compensation paid by the carrier for such assignment.

(b) An employee paid a daily rate to cover all services rendered, including overtime, shall have no deduction made from his established daily rate on account of vacation allowances made pursuant to this agreement.

(c) An employee paid a weekly or monthly rate shall have no deduction made from his compensation on account of vacation allowances made pursuant to this agreement.

(d) An employee working on a piece-work on tonnage basis will be paid on the basis of the average earnings per day for the last two semi-monthly periods preceding the vacation, during which two periods such employee worked on as many as sixteen (16) different days.

(e) An employee not covered by paragraphs (a), (b), (c) or (d) of this section will be paid on the basis of the average daily straight time compensation earned in the last pay period preceding the vacation during which he performed service.

(Section 7 - 12/17/41 Agreement)

8. The vacation provided for in this Agreement shall be considered to have been earned when the employee has qualified under Article 1 hereof.

If an employee's employment status is terminated for any reason, whatsoever, including but not limited to retirement, resignation, discharge, non-compliance with a union-shop agreement, or failure to return after furlough he shall at the time of such termination be granted full vacation pay earned up to the time he leaves the service including pay for vacation earned in the preceding year or years and not yet granted, and the vacation for the succeeding year if the employee has qualified therefor under Article 1. If an employee thus entitled to vacation or vacation pay shall die the vacation pay earned and not received shall be paid to such beneficiary as may have been designated, or in the absence of such designation, the surviving spouse or children or his estate, in that order of preference.

(Art.IV-VACATIONS-Section 2 - 8/19/60 Agreement)

9. Vacations shall not be accumulated or carried over from one vacation year to another.

(Section 9 - 12/17/41 Agreement)

10.(a) An employee designated to fill an assignment of another employee on vacation will be paid the rate of such assignment or the rate of his own assignment, whichever is greater; provided that if the assignment is filled by a regularly assigned vacation relief employee, such employee shall receive the rate of the relief position. If an employee receiving graded rates, based upon length of service and experience, is designated to fill an assignment of another employee in the same occupational classification receiving such graded rates who is on vacation, the rate of the relieving employee will be paid.

(b) Where work of vacationing employees is distributed among two or more employees, such employees will be paid their own respective rates. However, not more than the equivalent of twenty-five per cent of the work load of a given vacationing employee can be distributed among fellow employees without the hiring of a relief worker unless a larger distribution of the work load is agreed to by the proper local union committee or official.

(c) No employee will be paid less than his own normal compensation for the hours of his own assignment because of vacations to other employees.

(Section 10 - 12/17/41 Agreement)

11. While the intention of this agreement is that the vacation period will be continuous, the vacation may, at the request of an employee, be given in installments if the management consents thereto.

(Section 11 - 12/17/41 Agreement)

12. (a) Except as otherwise provided in this agreement a carrier shall not be required to assume greater expense because of granting a vacation than would be incurred if an employee were not granted a vacation and was paid in lieu therefor under the provision hereof. However, if a relief worker necessarily is put to substantial extra expense over and above that which the regular employee on vacation would incur if he had remained on the job, the relief worker shall be compensated in accordance with existing regular relief rules.

(b) As employees exercising their vacation privileges will be compensated under this agreement during their absence on vacation, retaining their other rights as if they had remained at work, such absences from duty will not constitute "vacancies" in their positions under any agreement.

When the position of a vacationing employee is to be filled and regular relief employee is not utilized, effort will be made to observe the principle of seniority.

(c) A person other than a regularly assigned relief employee temporarily hired solely for vacation relief purposes will not establish seniority rights unless so used more than 60 days in a calendar year. If a person so hired under the terms hereof acquires seniority rights, such rights will date from the day of original entry into service unless otherwise provided in existing agreements.

(Section 12 - 12/17/41 Agreement)

13. The parties hereto having in mind conditions which exist or may arise on individual carriers in making provisions for vacations with pay agree that the duly authorized representatives of the employees, who are parties to one agreement, and the proper officer of the carrier may make changes in the working rules or enter into additional written understandings to implement the purposes of this agreement, provided that such changes or understandings shall not be inconsistent with this agreement.

(Section 13 - 12/17/41 Agreement)

14. Any dispute or controversy arising out of the interpretation or application of any of the provisions of this agreement shall be referred for decision to a committee, the carrier members of which shall be the Carriers' Conference Committees signatory hereto, or their successors; and the employee members of which shall be the Chief Executive of the Fourteen Organizations, or their representatives, or their successors.

Interpretations or applications agreed upon by the Carrier members and employee members of such committee shall be final and binding upon the parties to such dispute or controversy.

This section is not intended by the parties as a waiver of any of their rights provided in the Railway Labor Act as amended, in the event committee provided in this section fails to dispose of any dispute or controversy.

(Section 14 - 12/17/41 Agreement)

Effective January 1, 1973, Section 15 is amended and will read as follows:

15. Except as otherwise provided herein, this Agreement shall be

effective as of January 1, 1973, and shall be incorporated in existing agreements as a supplement thereto and shall be in full force and effect for a period of one (1) year from January 1, 1973, and continue in effect thereafter, subject to not less than seven (7) months' notice in writing (which notice may be served in 1973 or in any subsequent year) by any carrier or organization party thereto, of desire to change this agreement as of the end of the year in which the notice is served. Such notice shall specify the changes desired and the recipient of such notice shall then have a period of thirty (30) days from the date of the receipt of such notice within which to serve notice specifying changes which it or they desire to make. Thereupon such

proposals of the respective parties shall thereafter be negotiated and progressed concurrently to a conclusion.

(Art.IV-VACATIONS-Section 2 - 2/10/71 Agreement)

Except to the extent that articles of the Vacation Agreement of December 17, 1941, are changed by this Agreement, the said agreement and the interpretations thereof and of the Supplemental Agreement of February 23, 1945, as made by the parties, dated June 10, 1942, July 20, 1942, and July 18, 1945, and by Referee Morse in his award of November 12, 1942, shall remain in full force and effect.

In Section 1 and 2 of this Agreement certain words and phrases which appear in the Vacation Agreement of December 17, 1941, and in the Supplemental Agreement of February 23, 1945, are used. The said interpretations which defined such words and phrases referred to above as they appear in said Agreements shall apply in construing them as they appear in Sections 1 and 2 hereof.

(Art.1-VACATIONS-Section 6 - 8/21/54 Agreement)

APPENDIX "D"

AGREED UPON INTERPRETATIONS - BEREAVEMENT LEAVE

Q-1. How are the three calendar days to be determined?

A-1. An employee will have the following options in deciding when to take bereavement leave:

- a) three consecutive calendar days, commencing with the day of death, when the death occurs prior to the time an employee is scheduled to report for duty;
- b) three consecutive calendar days, ending the day of the funeral service; or
- c) three consecutive calendar days, ending the day following the funeral service.

Q-2. Does the three (3) calendar days allowance pertain to each separate instance, or do the three (3) calendar days refer to a total of all instances?

A-2. Three days for each separate death; however, there is no pyramiding where a second death occurs within the three-day period covered by the first death.

EXAMPLE: Employee has a work week of Monday to Friday - off-days of Saturday and Sunday. His mother dies on Monday and his father dies on Tuesday. At a maximum, the employee would be eligible for bereavement leave on Tuesday, Wednesday, Thursday and Friday.

Q-3. Will a day on which a basic day's pay is allowed account bereavement leave serve as a qualifying day for holiday day purposes?

A-3. No, however, the parties are in accord that bereavement leave non-availability should be considered the same as vacation non-availability and that the first work day preceding or following the employee's bereavement leave, as the case may be, should be considered as the qualifying day for holiday purposes.

Q-4. Would an employee be entitled to bereavement leave in connection with the death of a half-brother or half-sister, stepbrother or stepsister, stepparents or step-children?

A-4. Yes as to half-brothers or half-sisters; no as to stepbrother or stepsister, stepparents or stepchildren. However, the rule is applicable to a family relationship covered by the rule through the legal adoption process.

OCCUPATIONAL HEALTH WORK RELATED INJURY PROJECT - RIGHT CARE DAY ONE

Appendix "E"

JOINTNESS PRINCIPLE

The company and union recognize that MBCR'S success is dependent on delivering quality service to the traveling public. It is the mutual goal of the parties to promote quality service in every phase of MBCR's operations. To meet this goal, the company and union pledge to cooperate in endeavors which promote quantity and quality of work; safety and efficiency of operation and harmonious work relationships.

The parties recognize that a joint approach involving employees and supervisors at the local level is essential to delivering quality customer service and improving the effectiveness of MBCR's performance. Local supervisors and employees are encouraged to implement cooperative

approaches, including quality circles, to improve our operation and quality of customer service.

The company and union recognize that quality offers the greatest opportunity for the success and security of MBCR and its employees. To this end, the parties commit to make quality the performance standard for all employees.

APPENDIX F

MBTA AGREEMENTS

December 15, 1986

Mr. J. P. Cassese, General Chairman
Brotherhood of Maintenance
of Way Employes
1165 Marlgress Road, Suite B
Cherry Hill, NJ 08003

Dear Sir:

This will confirm that during discussions that lead to the MBTA Implementing Agreement dated December 6, 1986, it was agreed that the following rates would be applicable on the MBTA Commuter Railroad for the positions indicated.

TRACK FOREMAN	\$12.1400 per hour
I & R FOREMAN	12.1400 per hour
WELDING FOREMAN	12.2300 per hour
ASSISTANT TRACK FOREMAN	11.5800 per hour
B&B MECHANIC FOREMAN	12.4300 per hour
B&B MECHANIC	11.4200 per hour
TRACKMAN	10.2600 per hour
WELDER	11.7000 per hour
M.O. "A" RATE	11.9900 per hour
M.O. "B" RATE	11.4100 per hour
M.O. "C" RATE	11.2200 per hour
TRUCK DRIVER "B"	10.5000 per hour
TRUCK DRIVER "A"	11.4200 per hour
DRAWBRIDGE OPERATOR	10.9410 per hour
WATCHMAN/HIWAY	10.2600 per hour

Very truly yours,

/s/

W. O. Cole
Director-Labor Relations

cc: W. E. LaRue

APPENDIX G

February 13, 1987

Mr. J. P. Cassese, General Chairman
Brotherhood of Maintenance of Way Employes
1165 Marlkrass Road, Suite B
Cherry Hill, NJ 08003

Dear Sir:

This letter has reference to our discussions concerning the Carrier's requirements for operation of the MBTA Commuter Railroad as they relate to certain Truck Driver positions.

During the above discussion, the Carrier expressed a requirement to being up to and including three (3) Truck Driver positions between the hours of 12:00 o'clock midnight and 6:00 AM.

This will confirm our agreement to the establishment of such positions and the exception of them from Rule "G". The Carrier will provide an incentive allowance of .65 per hour for all hours worked by incumbents of those positions in addition to their basic rate of pay. This incentive allowance shall be considered separate and apart from the basic rate of pay and shall not be subject to general wage increases.

If the foregoing accurately reflects our understanding, please sign where indicated below.

Very truly yours,

/s/

L. C. Hriczak
Director-Labor Relations

I CONCUR:

/s/

J. P. Cassese
General Chairman

APPENDIX H

NATIONAL DENTAL PLAN

Employees represented by the Brotherhood of Maintenance of Way Employees will receive benefits substantially equivalent to those contained in the Railroad Employees' National Dental Plan agreement, dated March 1, 1976, as amended. That plan is

administered by the Aetna Insurance Company.

Benefit levels agreed to in the agreement between the National Carriers Conference Committee and the Brotherhood of Maintenance of Way Employes, dated July 29, 1991, imposed pursuant to Public Law 102-29, will be applicable.

APPENDIX I

SYSTEM SAFETY AGREEMENT

AGREEMENT

BETWEEN THE

MASSACHUSETTS BAY COMMUTER RAILROAD COMPANY

AND

THE BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

MBCR and the Brotherhood of Maintenance of Way Employees are committed to a safe and healthful work environment, free from intimidation and harassment, that meets or, where possible, exceeds all applicable Local, State and Federal Safety standards and to ensuring compliance with MBCR's Safety Rules. In recognition of the importance of equal partnership in this process, MBCR and the BMWE agree to the following:

I. Distribution of Safety Related Information to Employees

A. It is the desire of MBCR and the BMWE to use their best efforts to quickly and efficiently communicate safety related information to all involved and affected employees. To fulfill this goal, the parties agree to utilize the following procedures:

1. Safety related information shall be provided, as quickly as possible, to a designated officer of the MBCR Safety Department for review and distribution as appropriate.
2. The MBCR Safety Department shall transmit necessary safety advisories to safety officials, Division Engineers, District Work Gangs and other appropriate officers by the fastest most appropriate means possible.
3. The Division Engineer shall be responsible for transmitting such safety advisories by the most appropriate means that will ensure such advisories are posted as soon as practicable at all Division Headquarters where affected employees report for duty and that copies are provided to first line supervisors. Copies of such advisories shall also be provided to the Division Engineer's staff, local safety officers and the duly accredited representatives of the BMWE as soon as possible.
4. First Line Supervisory personnel shall be responsible for discussing urgent safety advisories during daily job briefings with employees. Other safety related advisories or information issued shall be discussed at the next available employee safety meeting.

B. MBCR shall issue instructions to appropriate supervisors to ensure

compliance with the above procedures.

II. New Hire Training

A. Providing sufficient field and classroom training is critical to the safety of employees and MBCR's operation. Prior to beginning work in the craft, or as soon thereafter as practicable, new employees shall receive training in areas such as the following:

- * Company Orientation
- * Management Presentation
- * Hazard Communications (Right to Know)
- * Protective Equipment (Personal)
- * STOP for Employees (Safety Training Observance Program)
- * PAT - Individual (Protection Against Trains)
- * Safety Rule Orientation
- * AMT-2 Electrical Operating Instructions (where applicable)
- * Introduction to the Department
- * Introduction to the Work Site
- * Lockout Tagout Awareness - Phase 1
- * Department Training

NOTE: The parties recognize that employees may be hired on an individual or emergency basis and that advance training may not be possible due to the length and scheduling requirements of the program. In these cases, MBCR shall schedule a training program for such employees at the earliest possible time, not to exceed sixty (60) days from their date entered service, unless otherwise agreed to by the parties. Notwithstanding the above, no employee shall be permitted or required to perform any work in the craft before receiving training on Protection Against Trains and AMT-2 awareness.

B. An outline of the New Hire Training Program to be followed in the initial training provided under paragraph "A" above, is included as Attachment 1 to this agreement. The length or content of the new hire training program shall not be changed without advance approval of the Safety Advisory Committee.

C. New employees shall be paid at the applicable pro-rata rate for time spent in training outlined above.

III. General Training

A. All employees who work on or near tracks or along the right of way shall be provided annual training on Rules governing Protection Against Trains.

B. All employees who work in electrified territory shall receive training on AMT-2 - Electrical Operating Instructions, every two

years.

C. Employees shall be trained and qualified on CPR annually.

D. Safety Training will be available in areas such as:

- * Personal Protective Equipment
- * HAZ-COM
- * Respiratory
- * Lead
- * Asbestos
- * Hearing
- * Confined Space
- * Fall Protection
- * Operating Rules
- * Lockout/Tagout
- * Other training that may be offered by MBCR, generated by the Safety Advisory Committee or required by law.

E. MBCR shall insure that all training required by applicable law or company policy is available and provided to affected employees.

F. Employees participating in training under this Article shall be paid for time spent in such training in accordance with the applicable schedule agreement.

IV. Ability To Request Safety Training

A. All employees shall be permitted to request training in any area relevant to their craft in which training is available. The employee shall make their request known by completing the Application for Safety Training and submitting such request to their immediate supervisor. A sample Application for Safety Training Form is included as Attachment 2 to this agreement.

NOTE: The phrase "relevant to their craft" as used in this paragraph, means safety training for any position for which an employee has seniority or can acquire new seniority under the schedule agreement.

B. The employees immediate supervisor shall respond to a request for Safety Training within ten (10) days of receipt by either granting the training or declining the request. If the request is declined, a reason shall be provided on the Application for Safety Training.

C. An employee who disputes the reason for denial of training shall specifically advise the supervisor of the basis for the request for such training. If the employee and the supervisor are unable to resolve the issue, the dispute shall be resolved through the "Procedures for Resolution of Work Place Safety Training" included as Attachment 3 to this agreement.

V. Work Place Safety

MBCR and the BMWWE agree to use their best efforts to ensure that all applicable local, state, and federal laws or regulations, and MBCR safety rules are properly applied. It shall not be a violation of this agreement or any company rule for employees to refuse to start work, return to work, or continue working when any condition exists that violates an applicable local, state or federal law or regulation or MBCR Safety Rule or procedure. Employees exercising their right under this Article shall be governed by Attachment 4 to this agreement, "Procedures for Resolution of Work Place Safety Issues".

VI. Accident/Injury Reporting and Investigation

- A. Employees must immediately report any job related injury or illness to their immediate supervisor. MBCR will insure that medical attention is immediately made available to the employee. After receiving or declining medical attention the employee must complete MBCR Form 260 - "MBCR Injury/Illness Report", which shall fulfill MBCR's initial reporting requirements. A copy of Form MBCR 260 is included as Attachment 5 to this agreement. The content of this Form may only be changed following review of such changes by the Safety Advisory Committee. Employees may request that their completed initial statement (MBCR 260-2) be reviewed by a representative of the BMWWE prior to signing. However, such request may not unduly delay the submission of the report or the subsequent investigation of the circumstances involved in the incident.
- B. All employees will be provided with a copy of the MBCR Guide to Handling Occupational Injuries and Illnesses and training on this guide. A copy of this Guide is included as Attachment 6 to this agreement.
- C. All reported injuries by employees covered by this agreement will be investigated by a joint team consisting of the following:
 - * Management Officer and/or Supervisor in Charge
 - * BMWWE Safety Committee Member
 - * Foreman in Charge
 - * Technical Support as deemed appropriate by the team

Note: When directly involved in the incident under investigation, the Foreman in Charge shall be replaced by the BMWWE Safety Liaison or other employee as designated by the BMWWE who is immediately available and qualified to participate in such investigation.

In the event circumstances do not permit full staffing of the joint team outlined above without causing undue delay in the investigation of the incident, a team consisting of one supervisory employee and one employee, appointed by a duly accredited representative of the BMWWE, will be considered sufficient to conduct the investigation.

The investigating team will complete the MBCR Investigation Committee Report, a copy of which is included as Attachment 7 to this agreement.

The completed report will be provided to the appropriate management officials with a copy to the BMW Safety Liaison or his designated safety committee member having jurisdiction over the work area and to members of the Safety Advisory Committee. Reference to violations of safety rules or procedures in investigation reports is not intended to serve as discipline, nor shall such references negate the application of the discipline and investigation rules of the scheduled agreement.

- D. Employees involved in investigation of injuries and illnesses will be trained in accident investigation techniques.
- E. Time spent by BMW employees on investigations under this Article shall be paid in accordance with regular pay rules.

VII. Employee Safety Committees

- A. MBCR shall establish safety committees covering all BMW employees. These committees shall have jurisdiction over specific territories or work functions and shall be comprised of a proportionate number of employees of the various crafts in each designated work area. Each safety committee shall have a chairperson who shall be elected by the committee.
- B. The BMW General Chairman will notify MBCR of the employees who shall represent their craft on each safety committee. Should MBCR oppose an appointment, the parties shall promptly meet to review and resolve the matter. If unable to reach agreement, the employee shall be appointed for a probationary period of three (3) months, following which the employee's safety committee performance shall be reviewed by the BMW and appropriate Engineering Department representatives of the Safety Advisory Committee, and a determination made as to permanent appointment.
- C. All employees appointed to safety committees will be trained in injury prevention and on accident investigation techniques. Other training for safety committee members will be provided as approved by the Safety Advisory Committee.
- D. Safety committees will meet regularly regarding safety related issues. They will facilitate the distribution and discussion of safety alerts within work groups under their jurisdiction. When a safety issue arises, the safety committee chairperson will notify management of the issue and the committee will promptly arrange to meet with local management to address the matter.
- E. If a safety committee and the local management are unable to resolve a safety related issue, either party shall forward the issue to the BMW Safety Liaison having jurisdiction or the appropriate department head. The BMW Safety Liaison and appropriate department head shall promptly meet to resolve the issue. If a resolution cannot be

reached, the matter shall be forwarded to the Safety Advisory Committee for review.

- F. Employees participating on Safety committees who are required to lose time from their assignments as a result of such participation shall be paid not less than the earnings of their regular positions. All other time spent in the performance of safety committee work shall be paid at the straight time rate of their regular position. In all possible cases, safety meetings will be held during regular working hours. If required and authorized by management to perform safety committee work on a scheduled rest day, the employee shall be paid as provided in Rule 11 of the Agreement.

VIII. Safety Liaisons

- A. MBCR shall establish 2 full time BMW Safety Liaison positions with responsibility for safety related matters involving employees within their specific territory or work functions

The number and jurisdiction of any additional full time safety liaisons shall be determined by the Chief Engineer in consultation with the BMW General Chairman.

- B. The General Chairman will notify MBCR of their recommended candidates for full time BMW safety liaisons. Such candidates will be appointed to the positions unless MBCR, based on the employee's prior safety and performance record, does not concur with the recommendation. In such cases, the parties shall meet to review and resolve the issue. If unable to reach agreement, the employee shall be appointed for a probationary period of six (6) months, following which the employee's performance as a Safety Liaison shall be reviewed by the appropriate BMW and Engineering Department representatives of the Safety Advisory Committee, and a determination made as to permanent appointment.
- C. Employees appointed as full time BMW Safety Liaisons shall serve for a period of two years. A schedule for the term of each BMW Safety Liaison shall be determined by the General Chairman and the Chief Engineer. Upon the expiration of the term, the Full Time BMW Safety Liaisons may be re-appointed by agreement of the parties. Should either party seek to discontinue the term of a Full Time BMW Safety Liaison prior to the expiration of such term, the matter shall be referred to the Safety Advisory Committee for determination and appropriate action.
- D. Full time BMW Safety Liaisons shall report to a management officer designated by MBCR and shall be paid at the highest hourly rate of a foreman in the Sub-Department from which the appointee was assigned. The Chief Engineer and General Chairmen shall jointly determine the headquarters for each full time BMW Safety Liaison.
- E. BMW Safety Liaisons will be trained in injury prevention and accident

investigation techniques and provided other training as approved or recommended by the Safety Advisory Committee.

F. The responsibilities of Full Time BMW Safety Liaisons shall include:

- * Coordinate efforts of safety committee members;
- * Act as liaison between labor and management on safety issues;
- * Identify and coordinate necessary safety training;
- * Monitor current safety rules and regulations for proper application;
- * Job site inspections, including recommending appropriate corrective action if applicable local, state or federal laws or regulations or company safety rules are being violated;
- * Review accident investigations to facilitate recommendations on improved safety performance
- * Participate in accident investigations as required;
- * Participate in field safety activities and provide advice regarding improved safety performance;
- * Determine, through regular supervision and field inspections that employees are complying with safe work practices;
- * Provide training when qualified and designated by the Safety Advisory Committee on specific training issues;
- * Work within the framework of the MBCR System Safety Program;

IX. Safety Advisory Committee

- A. An Engineering Department Safety Advisory Committee shall be established to monitor general safety performance and the activities of safety committees, as well as to resolve disputes on safety related issues and other matters specifically referred to them under the terms of this agreement. The Committee shall consist of the BMW General Chairman having jurisdiction on MBCR or their designated representatives, the Chief Engineers of Track and Structures or their designated representatives and, a representative of MBCR's Safety Department. The Safety Advisory Committee shall offer other labor organizations representing employees in the Engineering Department the opportunity to participate on the Committee to ensure that safety concerns and issues involving all employees can be addressed.
- B. The committee shall meet on a regular basis on dates and at locations mutually agreed upon by the Committee, but not less than quarterly, unless it is mutually agreed by the members to cancel a meeting. A Chairperson and a Recorder shall be selected by the Committee at their first meeting.

C. The Safety Advisory Committee shall be responsible for:

- * Reviewing investigation reports of occupational injuries and illnesses;
- * Recommending safety training programs for Safety Officers, Safety Committee Members and employees in general;
- * Making recommendations to reduce occupational injuries and illnesses;
- * Reviewing and attempting to resolve complaints presented to the committee on safety related matters or the application of this agreement;
- * Developing and implementing policies for the proper application of this agreement;
- * Recommending to the General Chairman and the Director-Labor Relations changes to the agreement that will improve safety;

D. Decisions on safety related matters referred to the Advisory Committee shall be made through consensus of all members present or represented. Safety related matters involving only BMW employees and matters involving the application of this agreement shall be handled exclusively by the BMW and MBCR Representatives of the Safety Advisory Committee, unless the parties agree otherwise.

X. Effects Of This Agreement

- A. Nothing in this agreement is intended to modify any existing rights under Rule 14 of the BMW Agreement.
- B. This agreement shall not serve as the basis for liability on the Brotherhood of Maintenance of Way Employees to any employee in the event of injury or illness. However, MBCR is not obligated under any circumstances to hold harmless or repay the BMW for any liability they may otherwise incur in connection with this agreement.
- C. Nothing in this agreement is intended to enlarge in any manner the rights of employees under any statutes or common law. Employees and MBCR shall not offer any provision of this agreement as evidence in any action brought by any employee against MBCR under the Federal Employers' Liability Act, other statutes or the common law. Any document or information generated as a result of the provisions of this agreement shall be distributed only in conjunction with the administrative or disciplinary process under the parties' collective bargaining agreement or as required by law. Except as provided above, any violation of this confidentiality provision may be grounds for disciplinary action.

XI. Moratorium

- A. Either party may cancel this agreement, in whole or in part, by providing sixty (60) days advance written notice of such intent.

During the sixty (60) day period, the parties will meet in an effort to resolve the dispute. If a mutually acceptable resolution cannot be reached during such period, the agreement or part thereof shall be canceled as outlined in the notice unless the parties agree otherwise.

- B. If this agreement is canceled either in whole or in part, either party shall have the right to serve and progress notice, in accordance with the provisions of the Railway Labor Act, on the specific issue(s) regardless of any other moratorium provisions that may exist between the parties.
- C. The Protection Against Trains Agreement, dated March 12, 1993 and signed on April 16, 1993, is hereby made a part of this agreement and modified to be subject to the moratorium provisions of this article.

ATTACHMENT No. 1

OUTLINE
NEW HIRE TRAINING

DAY 1

- * Company Orientation
- * Management Presentation
- * Protection Against Trains

DAY 2

- * Personal Protective Equipment
- * Safety Rule Orientation
- * TLM/Tie Gang/Surfacing Gang Performance

DAY 3

- * Introduction to AMT-2 - Electrical Operating Instructions
- * Confined Space Awareness
- * Lock Out/Tag Out Awareness

DAY 4

- * Job Briefing
- * Introduction to S.T.O.P. (Safety Training Observation Program)
- * HAZMAT Training

DAY 5

- * Basic First Aid Training
- * Introduction to Fall Protection

DAY 6

- * Protection Against Trains - Follow Up
- * Field Visit - Work Site Observation

DAY 7, 8 and 9 (Field Training)

- * Work Site Training
 - Blue Flag Protection
 - Respirator Training
 - Introduction to Department Tools
 - Work on Sidings/Yards - Tools
 - Track Structure
 - Classroom Instruction/Review as needed

DAY 10

- * General Review

ATTACHMENT No. 2

APPLICATION FOR SAFETY TRAINING
(MUST BE SUBMITTED IN DUPLICATE)

NAME: _____ **DATE:** _____

SOCIAL SECURITY NUMBER: _____

JOB TITLE: _____ **GANG NUMBER:** _____ **GANG**

TYPE: _____ **HEADQUARTERS:** _____ **SERVICE**

DATE: _____ **TOUR OF DUTY:** _____ **BUSINESS**

ADDRESS **HOME ADDRESS**

STREET: _____ **STREET:** _____

CITY: _____ **CITY:** _____

STATE: _____ **STATE:** _____

ZIP CODE: _____ **ZIP CODE:** _____

PHONE #: _____ **PHONE #:** _____

FAX #: _____ FAX #: _____

APPLICATION FOR

TO: (NAME) _____ TITLE: _____

APPLYING FOR THE FOLLOWING TRAINING:

JUSTIFICATION FOR TRAINING REQUEST: _____

EMPLOYEE SIGNATURE: _____

TO BE FILLED OUT BY SUPERVISOR:

NAME: _____ PHONE#: _____

TITLE: _____ DATE: _____

APPROVED:

DATE AVAILABLE: _____ CLASS TITLE: _____

DISAPPROVED:

REASON: _____

SUPERVISOR SIGNATURE: _____ DATE: _____

ATTACHMENT No. 3

PROCEDURES FOR RESOLUTION
OF WORK PLACE SAFETY TRAINING

- A. Employee who desire specific safety training shall submitted their request on the appropriate form to their immediate supervisor. If the request is approved, the employee shall be advised of the anticipated date for attendance at such training. If the request is disapproved, the employee shall be advised of the reasons for such disapproval.
- B. If a disapproval of an application for safety training is disputed, the employee must specifically advise the supervisor of the concern and need for such training. If the dispute cannot be resolved through communication between the employee and immediate supervisor, the employee may advance the application to the appropriate Assistant Division Engineer for resolution.
- C. If a dispute regarding disapproval of an application for safety training cannot be resolved by the employee and the Assistant Division Engineer, the matter shall be referred to a Safety Dispute Panel for prompt review and resolution.
- D. The Safety Dispute Panel shall consist of:

- * A BMW Representative of the involved Safety Committee
- * The BMW General Chairman designated representative
- * The Assistant Chief Engineer having jurisdiction

- E. The panel will examine disputes referred to it for resolution including review of documentation and other information needed to make a determination. The panel will provide written findings regarding their determination which shall be binding on the parties.
- F. The final determination of the panel shall be provided to the involved individuals (employee and supervisor) and to the appropriate Division Engineer.
- G. Abuse or misapplication of the provisions of this agreement governing requests for safety training shall be referred to the Safety Dispute panel for investigation. The panel shall recommend actions to address such matters to the Safety Advisory Committee.
- H. The rights and obligations of this procedure apply equally to management and agreement covered personnel.

ATTACHMENT No. 4

PROCEDURES FOR RESOLUTION OF WORK PLACE SAFETY ISSUES

It is the right of employees to:

- * Ensure applicable local, state and federal laws, regulations and company safety rules are applied on all job sites;
 - * Ensure that prior to commencing work, the work unit discusses all aspects of the work to be performed and the methods by which such work will be safely accomplished.
- A. Prior to beginning each assignment, the employee in charge will meet with all employees to review job requirements. All safety aspects of the job to be performed will be discussed. Employees shall participate in such discussions and have the right to raise concerns and specifically request that safety rules be properly applied. Two-way communication is essential and encouraged. If conditions change after work commences, it is understood the safety aspects may need to be reconsidered.
 - B. Should there be a dispute on the application of safety rules, employees must specifically state their concerns. The employee in charge will discuss appropriate actions to resolve such concerns. If no resolution can be found, the employee(s) who dispute the application will have the right to not commence the assignment, without fear of retribution or retaliation. The next level of supervision shall immediately be contacted to mediate and resolve the dispute. Disputes which cannot be resolved shall be documented as to time, location, persons involved and the rules and applications at issue, and referred to the Safety Dispute Panel for prompt review and resolution.

- C. The Safety Dispute Panel shall consist of the following:
- * A BMW Representative of the involved Safety Committee
 - * The BMW General Chairman
 - * The Assistant Chief Engineer having jurisdiction
- D. The panel will examine disputes referred to it for resolution including review of documentation and other information needed to make a determination. The panel will provide the employee and supervisor written findings regarding their determination which shall be binding on the parties. A copy shall also be provided the Division Engineers.
- E. Abuse or misapplication of the work place safety provisions of this agreement shall be referred to the Safety Dispute panel for investigation. The panel shall recommend actions to address such matters to the Safety Advisory Committee.
- F. The rights and obligations of this procedure apply equally to management and agreement covered personnel.

ATTACHMENT No. 6 - Guide To Handling Injuries

SIDE LETTER NO. 1

This refers to our discussions regarding the joint accident investigation committees provided for in Paragraph C of Article VI of the MBCR BMW Safety Agreement.

The intent of the investigations referred to in the agreement is to identify the cause of accidents and develop ways of preventing recurrence. As discussed, the above provision is a joint initiative, intended to improve the quality of accident investigations and ultimately, enhance the safety of employees, which will not be served by an adversarial approach to the process.

Accordingly, it is agreed that our initiative on the accident investigation committee process shall be reviewed at six month intervals to identify problems in areas such as committee participation, reporting quality/accuracy and value of committee recommendations. These reviews shall be conducted by a panel consisting of a representative of the Engineering Department, a representative of the Safety Department and two (2) representatives of the BMW. The panel shall, based on their review, make recommendations on changes in areas such as:

- * the composition of the investigating teams;
- * the quality of final reports;
- * investigation forms and processes;
- * training on accident investigation techniques.

Changes recommended by the panel and adopted by amendment to the agreement or modification to MBCR policy or programs, shall then be monitored by the panel to determine the effectiveness of such changes.

It is understood that this review process is not intended to negate the rights of either party under the moratorium provisions of the agreement.

If the above properly reflects our understanding, please sign below.

SIDE LETTER NO. 2

This refers to our discussions regarding the appointment of BMW safety committee members and BMW safety liaisons under Articles VII and VIII of the MBCR BMW Safety Agreement.

The parties recognize that safety committees are currently in operation throughout the MBCR system and that BMW employees are participating on those committees. The intent of Article VII of the agreement is to review the jurisdiction of each safety committee to ensure all employee work groups are involved and for the BMW General Chairman on those committees as set forth in paragraph B of that Article. To facilitate this process, within fifteen days following the date of this agreement, MBCR shall provide the organization a listing of all safety committees on which BMW employees participate, including identification of the jurisdiction of such committees and the BMW participants. The parties shall meet as necessary to ensure that all committees and participants are identified and to make any necessary adjustments in the jurisdiction or number of safety committees. As designations of safety committee representatives are made by the BMW, they shall replace existing BMW employees on all safety committees.

APPENDIX J
AGREEMENT
BETWEEN
MASSACHUSETTS BAY COMMUTER RAILROAD COMPANY
AND
BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

PREVENTION PROGRAM COMPANION AGREEMENT

MBCR and the Brotherhood of Maintenance of Way Employees jointly recognize that safety is the paramount concern and, further, that an alcohol and drug free environment is an essential element in maintaining a safe work place, agree to the following to ensure the utmost

compliance with Rule G:

1. An employee charged with violating Rule G will be eligible to enroll in the Employee Assistance Program (EAP), and will not be disciplined (other than loss of pay for time held out of service) for the Rule G violation provided:
 - a. The employee has had no Rule G violation on his or her record for at least ten (10) years; and
 - b. The employee has not participated in the Rule G EAP for at least ten (10) years; and
 - c. The incident giving rise to the Rule G charge did not involve significant rule violations other than Rule G; and
 - d. Waives investigation of the Rule G charge.
- e. 2. The employee must contact the EAP counselor within 5 working days of electing to participate in the EAP.
3. After being contacted, the EAP Counselor shall evaluate the employee to determine whether or not the employee may safely be returned to service and the course of treatment which the employee should follow.
4. If the evaluation indicates that the employee may safely be returned to service, he or she will be returned to service on a probationary basis for a period of two years and will be subject to periodic alcohol and/or drug tests during that time as determined by and only under the direction of the EAP Counselor. Following

return to service, the employee must follow the course of treatment established by the counselor during the probationary period.

5. If the evaluation indicates that the employee may not safely be returned to service, he or she will be given a leave of absence until subsequent evaluation(s) indicate that it is safe to return the employee to service on a probationary basis as described in paragraph 4 above.
6. If, at any time during the 24-month probationary period, the employee fails to follow the course of treatment established by the EAP Counselor or fails a periodic alcohol and/or drug test required by the Counselor, MBCR will remove the employee from the EAP. If the employee has been returned to service, MBCR will, remove the employee from service and the employee will be subject to an investigation in accordance with Rule 15 and subject to dismissal.
7. An employee may withdraw from the EAP at any time by notifying, in writing, the EAP Counselor and the MBCR Officer who signed the Rule G charge. If the employee has been returned to service, MBCR will remove the employee from service and the employee will be subject to an investigation in accordance with Rule 15 and subject to dismissal.
8. If the employee successfully completes the EAP Program, a notation to that effect will be placed on the employee's personnel record and the employee's probationary status will terminate.
9. No claims will be progressed by or on behalf of the employee on time lost as result of the

incident leading to the employee's participating in the Rule G Employee Assistance Program.

10. This Agreement is effective _____ and may be terminated by either party upon service of five day's written notice upon the other party.

**FOR THE BROTHERHOOD OF
MAINTENANCE OF WAY
EMPLOYES**

**FOR THE MASSACHUSETTS BAY
COMMUTER RAILROAD COMPANY**

APPENDIX K

AGREEMENT

BETWEEN

MASSACHUSETTS BAY COMMUTER RAILROAD COMPANY

AND

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

RULE "G" BYPASS AGREEMENT

The parties to this agreement recognize that the use of alcohol and/or drugs is a serious problem within the railroad industry. MBCR and the Brotherhood of Maintenance of Way Employees in an effort to help the apparent Rule "G" violator retain an employment relationship and seek rehabilitation, jointly consider a change in the Rule "G" policy desirable. The objective of this Agreement is to encourage mutual cooperation between labor and management in addressing alcohol and drug use problems in the railroad industry

2. Once an employee has been relieved from service under paragraph (1), he or she must contact MBCR's Employee Assistance Program (EAP) Counselor within five (5) working days of the removal from service. If the employee contacts the EAP Counselor and accepts counseling, he will be paid for the full tour of duty as a result of his or her removal from service.
3. If the employee does not comply with the requirements set forth in paragraph (2), and the EAP Counselor determines that the employee is not in need of counseling, the employee will be returned to service not later than forty-eight (48) hours unless a physical examination is required. There will be no claim progressed for any time lost as a result of the removal from service other than as provided in paragraph (2) unless the forty-eight (48) hours for return to service is exceeded.

4. If the employee does comply with the requirements set forth in paragraph (2), and the EAP Counselor determines that the employee is in need of employee assistance, and the employee accepts counseling, then the employee will be returned to service upon a favorable recommendation from the EAP Counselor. Successful completion of a physical examination will be required if the employee has been off more than 30 days. In addition, the employee will be subject to such continuing review and testing as deemed appropriate by and only under the direction of the EAP Counselor for up to two years to ensure the effectiveness of treatment. If a subsequent test conducted at the discretion of the EAP Counselor is positive, the employee will be removed from service and required to reenter treatment or counseling, and will again be subject to continuing review and testing for a two-year period commencing upon the completion of treatment. An employee will be permitted no more than two reentries after the initial enrollment in EAP. There will be no claim progressed for any time lost as a result of the removal from service other than as provided in paragraph (2).

5. If the employee does not comply with the requirements set forth in paragraph (2) or does not accept counseling as provided in paragraph (4), he must lay off and, if he so desires, may request a formal investigation. Such request must be made within five (5) working days of the day removed from service. If the employee does not request an investigation and is off, he must request a leave of absence prior to the expiration of fifteen (15) calendar days. One 45-day leave of absence will be granted. If at the end of the period, the employee still has not contacted the EAP Counselor or does not accept counseling, if required, all regular rules of the

agreements will apply.

6. The employee(s) who originated the action as provided in paragraph (1) will not be called as a witness(s) if a formal investigation is held.

7. This Agreement will apply one time within ten (10) years to each employee covered by this Agreement. Thereafter, all regular rules of the Agreements will apply.

8. The rules of the Agreements between the MBCR and the Brotherhood of Maintenance of Way Employees are modified as provided by this Agreement.

9. If and when disagreements arise as a result of interpretations of the foregoing agreement, a committee elected by the General Chairman of the Brotherhood of Maintenance of Way Employees and the Manager of Labor Relations of MBCR will meet as expeditiously as is practicable to resolve any matters in dispute.

10. This Agreement is effective and may be terminated by either party upon service of five (5) days written notice upon the other party.

**FOR:THE BROTHERHOOD OF
MAINTENANCE OF WAY
EMPLOYEES**

**FOR: THE MASSACHUSETTS BAY
COMMUTER RAILROAD COMPANY**

During the negotiation of the Operation RedBlock Agreements it was understood that MBCR would compensate in pay or "makeup" hours members of the Prevention Teams for time lost on their assignment while involved Company sponsored Operation RedBlock training. Employees who attend this training on their day off will be paid eight hours at the straight time rate. Union and local management will cooperate in scheduling assignments to allow members of the Prevention Teams to attend training sessions.

During the period an employee is out of service in a recovery program under the terms of the Bypass or Companion Agreement, he/she will be allowed to rearrange his or her vacation and any personal days due to coincide with the treatment program.

—

For the purpose of the application of Section 7 of the Bypass Agreement and the Companion Agreement, any participation in the EAP program as a Rule G violation prior to July 1, 2003 will not be considered in determining eligibility for entry into the program under the agreement signed this date.

If you agree, indicate your concurrence by signing in the space provided below.

APPENDIX L

EMPLOYEE CLASSIFICATIONS

**Track Foreman
I & R Foreman
Welding Foreman
Assistant Track Foreman
B&B Mechanic Foreman
B&B Mechanic
Trackman
Welder
Work Equipment Operator
Machine Operator "A"
Machine Operator "B"
Machine Operator "C"
Truck Driver "A"
Truck Driver "B"
Drawbridge Operator
Watchman/Hiway**

