

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF WISCONSIN

In re:

ARCHDIOCESE OF MILWAUKEE,

Debtor.

Case No. 11-20059-svk

Chapter 11

Hon. Susan V. Kelley

JOINT MOTION OF THE DEBTOR AND CEMETERY EMPLOYEES, LOCAL 113,
LABORERS INTERNATIONAL UNION OF AMERICA, AFL-CIO FOR AN ORDER
APPROVING CERTAIN MODIFICATIONS TO THEIR COLLECTIVE BARGAINING
AGREEMENT

The Cemetery Employees, Local 113, Laborers International Union of America, AFL-CIO ("Cemetery Union Employees") and the above-captioned debtor in possession ("Debtor" or "Archdiocese") hereby move the Court (the "Motion") for entry of an order approving certain modifications (the "Modifications") to their collective bargaining agreement.

The requested relief marks the culmination of consensual collective bargaining negotiations that began prior to the commencement of this case, and reflects the longstanding positive relationship between the Archdiocese and the Cemetery Union

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Employees. In support of this Motion, the Debtor and the Cemetery Union Employees respectfully state as follows:

Jurisdiction

1. This Court has jurisdiction over the Motion pursuant to 28 U.S.C. §§ 157, 1334. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2). Venue of this proceeding and the Motion is proper in this District pursuant to 28 U.S.C. §§ 1408, 1409.

2. The statutory predicates for the relief sought in the Motion are sections 105, 363 and 1113 of the Bankruptcy Code, 11 U.S.C. §§ 101-1532 (the "Bankruptcy Code").

Background

3. On January 4, 2011 (the "Petition Date"), the Debtor commenced its reorganization case (the "Reorganization Case") by filing a voluntary petition for relief under chapter 11 of the Bankruptcy Code.

4. The Debtor is continuing in possession of its property and is operating and managing its business, as a debtor-in-possession, pursuant to sections 1107 and 1108 of the Bankruptcy Code. No request has been made for the appointment of a trustee or an examiner.

5. On January 24, 2011, the Office of the United States Trustee (the "U.S. Trustee") appointed an official committee of unsecured creditors comprised entirely of Victims/Survivors (the "Committee").

6. For a description of the Debtor and its operations, the Debtor respectfully refers the Court and the parties in interest to the *Description of Debtor and Pre-filing History Affidavit of John J. Marek* (the "Marek History Affidavit") [Docket No. 6] which is incorporated herein by reference.¹

¹ Capitalized terms not defined herein shall have the same meaning ascribed to them in the Marek History Affidavit.

The Collective Bargaining Agreement

7. The Debtor employs in the aggregate approximately one hundred seventy-seven (177) employees, of whom approximately seventeen (17) are Cemetery Union Employees. The Cemetery Union Employees and their terms of employment are governed by the Labor Agreement between the Archdiocese of Milwaukee Catholic Cemeteries and the Cemetery Employees, Local 113, By the Laborers International Union of America dated April 1, 2008 (the "Collective Bargaining Agreement" or "CBA"). The CBA is attached as Exhibit B.

Relief Requested

8. For several months prior to the Petition Date, and subsequently thereto, the Debtor and the Cemetery Union Employees engaged in intensive negotiations regarding modifications to the CBA and terms for the Cemetery Union Employees' future employment.

9. These negotiations yielded the tentative agreement attached as Exhibit A, which describes the Modifications. The tentative agreement was unanimously approved by the Cemetery Union Employees bargaining team, and was ratified by the Cemetery Union Employees membership on March 21, 2011.

10. By this Motion, the Cemetery Union Employees and the Debtor request that the Court approve the Modifications to the CBA pursuant to sections 105, 363 and 1113 of the Bankruptcy Code. The Modifications, which are set forth in the attached Exhibit A, provide modest wage increases in 2012 and 2013, increased employee contributions to the Cemetery and Mausoleum Employees' Union Pension Plan, and a revised life insurance benefit. The Modifications also revise the Post-Accident Testing protocols and a portion of the Grievance Procedure. Finally, the Modifications extend the Collective Bargaining Agreement, as revised, to March 31, 2013. All of the remaining provisions in the CBA remain unchanged.

Basis for Relief

11. Whether modifications to a CBA are considered ordinary course transactions under section 363 of the Bankruptcy Code or whether court approval is required has generally been determined on a case-by-case basis, with different courts reaching different conclusions depending on the specific facts. See In re North Am. Royalties, Inc., 276 B.R. 587, 590-93 (Bankr. E.D. Tenn. 2002) (collecting and comparing cases, and concluding: "[Section 1113] makes no provision for approval or disapproval of an agreement between the debtor and the union. The lack of such a provision in § 1113 makes one point clear: § 1113 does not require the court to apply to an agreement the same standards it must apply when deciding whether to allow rejection.... Bildisco strongly suggests that the bankruptcy court should have a limited role in deciding whether to approve an agreement between the debtor and the union to modify, replace, or terminate a collective bargaining agreement."). See also In re The Leslie Fay Co., 168 B.R. 294, 302 (Bankr. S.D.N.Y. 1994) (citing In re Roth Am., Inc., 975 F.2d 949, 952 (3d Cir. 1992)), and holding that postpetition CBA modifications that settle prepetition claims and contain terms that significantly differed from prepetition agreement are outside of the ordinary course of business, and required notice and a hearing); In re UAL Corp., No. 02-48191 (Bankr. N.D. Ill. April 30, 2003) (order approving consensual modifications to debtors' CBAs under section 363 of the Bankruptcy Code). Regardless of whether approval is required under prevailing legal analyses, out of an abundance of caution, the Cemetery Union Employees and the Debtor ask the Court to approve the Modifications.

12. The standard under section 363 is whether the transaction is in the best interests of the estate. See In re Telephere Commc'ns, Inc., 179 B.R. 544, 553 (Bankr. N.D. Ill 1994); see also North Am. Royalties, 276 B.R. at 593 (standard for outside-the-ordinary course

modifications to CBA is whether they are justified by a sound business purpose). There can be no question that this standard is satisfied here.

13. Here, the Cemetery Union Employees and the Debtor worked cooperatively to modify the CBA, and avoid any disruption in the services provided at the Archdiocese's cemeteries. Given that the Debtor's business would be negatively impacted if the Modifications are not effectuated, and that the Debtor would likely experience severe employee attrition in such a circumstance, the Modifications draw an appropriate balance between the Debtor's needs and the rights of the employees.

14. The Cemetery Union Employees keep the Debtor's cemeteries operating, repair equipment and help support a vital ministry of the Archdiocese. The average length of employment for Cemetery Union Employees is sixteen (16) years. The continued employment of the Cemetery Union Employees, who have significant skills and institutional knowledge, is critical for all stakeholders in this case.

15. Finally, the proposed Modifications will facilitate a reorganization plan, while ensuring that the Cemetery Union Employees will enjoy continued employment. Accordingly, the Cemetery Union Employees and Debtor submit that Modifications are in the best interests of creditors.

Conclusion

16. Through an extensive and collaborative effort, the Debtor and the Cemetery Union Employees negotiated the Modifications, which, based on current conditions, equitably satisfy the Debtor's need for long-term employee stability and an increased sharing of the costs of providing pension benefits. The Debtor readily acknowledges that the Modifications represent sacrifices for the Cemetery Union Employees. The Debtor commends its employees

for recognizing that these sacrifices are necessary to enable the Debtor to reorganize. The Modifications are an important step forward in the Debtor's successful reorganization, to the benefit of all creditors and stakeholders, including the Cemetery Union Employees who will enjoy stable employment.

Notice

17. The Debtor will serve notice of this Motion on the Service List² and the Cemetery Union Employees. In light of the nature of the relief requested, the Cemetery Union Employees and the Debtor submit that no further notice is required.

No Prior Request

18. No prior motion for the relief requested herein has been made to this or any other Court.

WHEREFORE, the Cemetery Union Employees and the Debtor respectfully request that the Court enter an order (a) approving Exhibit A and authorizing the Debtor to implement the Modifications summarized therein and (b) granting such other and further relief as the Court deems appropriate.

² The term "Service List" shall have the same meaning ascribed to it in the Case Management Order [Docket No. 30].

Dated this 31st day of March, 2011.

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Exhibit A

**SUMMARY OF SETTLEMENT
BETWEEN
ARCHDIOCESE OF MILWAUKEE CATHOLIC CEMETERIES
AND
CEMETERY EMPLOYEES, LOCAL 113,
LABORERS INTERNATIONAL UNION OF AMERICA, AFL-CIO**

**Reached on
March 16, 2011**

1. Article IV, Wage Rates and Pay Dates, Section 4.01.

Increase in Foreman, Mechanic, General Laborer I and General Laborer II position wage rates as follows:

2011	\$0/hr. (wages only)	Additional \$0.10 on pension (total of \$0.10)
2012	\$0.10/hr. (wages only)	Additional \$0.10 on pension (total of \$0.20)
2013	\$0.25/hr. (wages only)	Additional \$0.10 on pension (total of \$0.35)

Increase in Seasonal employees' wage rates as follows:

2011	\$0/hr.
2012	\$0.10/hr.
2013	\$0.10/hr.

New Salary schedule as follows:

CLASSIFICATION	4/1/11	4/1/12	4/1/13
Foreman	\$23.36	\$23.46	\$23.71
Mechanic	\$22.91	\$23.01	\$23.26
General Laborer I	\$21.60	\$21.70	\$21.95
General Laborer II	\$15.84	\$15.94	\$16.19
Seasonal Laborer	\$9.15	\$9.25	\$9.35

Revise the last paragraph of Section 4.01 by deleting this paragraph and substituting the following paragraph:

For 2009-11, the pension contribution increased to \$1.22 per hour for each party, that is, the employee and the employer. The employees agree to contribute an additional ten cents (\$0.10) of their pay for each year of the contract as a payroll deduction and apply it toward the pension premium amount. Thus, over the three (3) year contract, thirty cents (\$0.30) will be added to pension by both parties as reflected in Article X – Pension Plan; and by the end of the contract (March 31, 2014), each party (applicable bargaining unit employees and employer) will be contributing \$1.52 per hour toward pension.

2. Revise Article IX as follows:

Change title of Article to “Medical/Dental/Life Insurance Plans.”

Add new Section 9.05 as follows:

Section 9.05 – LIFE INSURANCE – The Archdiocese will provide life insurance at the rate of an employee’s annual base salary rounded to

the nearest \$1,000, to a maximum of \$50,000. This benefit shall be provided after one (1) year of service for full-time employees only. The carrier shall be selected in the discretion of the Archdiocese.

3. Article X, Pension Plan. Revise the second sentence of the second paragraph of this Article as follows:

Participating Regular Employees and the Employer will contribute as follows: ~~Effective 7/1/2008, (\$0.82) each per hour; Effective 7/1/2009, \$1.02) each per hour; Effective 7/1/10, (\$1.22) each per hour;~~ **Effective April 1, 2011, (\$1.32) each per hour; Effective April 1, 2012, (\$1.42) each per hour; Effective April 1, 2013, (\$1.52) each per hour,** up to forty (40) hours per week, to a maximum of 2080 hours per year.

4. Article XV, Drug and Alcohol Testing, Post-Accident Testing. Revise this section of the Agreement by revising the first paragraph under "Post-Accident Testing" as follows:

An employee who was operating a vehicle or equipment who is involved in an accident, **or an incident which could have resulted in an accident,** shall be subject to post-accident alcohol and controlled substance testing as soon as practicable following the accident **or incident.**

5. Article XVI, Grievance Procedure. Revise paragraph C, Third Step, as follows:

If the difference is not resolved in the Second Step, the Regular or Seasonal Employee shall separately reduce their grievance to writing and deliver a copy to the Cemetery Superintendent within ~~twenty (20)~~ **ten (10)** working days from the date the difference first occurred. The Cemetery Superintendent, or his designee, shall make the Employer's answer known within ten (10) working days and deliver such reply in writing to the Regular or Seasonal Employee and the Union.

6. Article XIX, Separability Clause. Revise this Article as follows:

Any provisions of this agreement which may be in violation of any applicable Federal or State law shall not be effective and shall not be binding upon the parties hereto. In the event that any of the provisions of this agreement are held or constituted to be void, or in violation of any such laws, nevertheless the remainder of the agreement shall remain in force and effect, ~~unless the parts of the provisions so found to be void or in violation of any such laws are wholly inseparable from the remaining portion of the agreement and the parties will renegotiate the void or unlawful provisions of the Agreement.~~

7. Article XX, Duration of Agreement. Revise the first sentence of this Article as follows:

This Agreement shall be binding on the parties, their successors, their assigns, as of the date of the execution hereof, and shall continue in full force and effect until March 31, ~~2011~~ **2013**, and from year to year thereafter, unless terminated by written notice, given by either party to the other not less than thirty (30) days prior to the expiration date (March 31, ~~2011~~ **2013**) or any anniversary thereof.

8. All remaining items status quo.

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Exhibit B

LABOR AGREEMENT
BETWEEN THE
ARCHDIOCESE OF MILWAUKEE
CATHOLIC CEMETERIES
AND THE
CEMETERY EMPLOYEES, LOCAL 113,
BY THE LABORERS INTERNATIONAL UNION OF AMERICA, AFL-CIO

April 1, 2008 to March 31, 2011

INTRODUCTION

This Agreement entered into this 1st day of April, 2008, by and between the CEMETERY EMPLOYEES, LOCAL 113, THE LABORERS INTERNATIONAL UNION OF AMERICA, AFL-CIO, hereafter referred to as the "Union" and the ARCHDIOCESE OF MILWAUKEE, for and on behalf of the Catholic Cemeteries listed below, which are within its jurisdiction and which hereinafter collectively are referred to as "Employer:"

CALVARY CEMETERY
HOLY CROSS CEMETERY
HOLY TRINITY CEMETERY
MOUNT OLIVET CEMETERY
SAINT ADALBERT CEMETERY

The parties, in interests of harmonious labor relations, and in consideration of their mutual promises and undertakings, agree with each other as follows:

ARTICLE I - GENERAL PROVISIONS

Section 1.01. BARGAINING AGENT - The Employer recognizes the Union as the sole bargaining agent for its Regular and Seasonal Labor Employees (defined in Article II) at the Cemeteries enumerated above, all located in Milwaukee County, in the State of Wisconsin, in matters of wages, hours and working conditions.

Section 1.02. UNION MEMBERSHIP - All present and future Regular and Seasonal Labor Employees (defined in Article II) working in the Cemeteries enumerated above, shall within thirty (30) days of their hire, become members of the Union as a condition of continued employment.

Section 1.03. DUES DEDUCTION - The Employer agrees to deduct the initiation fee and the monthly membership dues from the wages of each Regular and Seasonal Employee (defined in Article II) in the amounts designated by the Union. All mechanics of this deduction system shall be in accordance with terms acceptable to the Employer. The Union shall indemnify and save the Employer harmless against any and all claims, demands, suits or other forms of liability that arise out of action taken or not taken by the Employer for the purpose of complying with this section.

ARTICLE II - EMPLOYEE CLASSIFICATIONS

Section 2.01. EMPLOYEE DEFINITION - For purposes of this Agreement, the Employer shall have Regular Employees and Seasonal Employees.

Section 2.02. REGULAR EMPLOYEES - A "Regular Employee" shall be referred to as an "employee" or "Regular Employee." Regular Employee shall refer to any employee in the classification of Mechanic, Foreman, General Laborer I and General Laborer II (as defined below) and may from time to time be classified as such by the Employer, in its discretion.

- A. Mechanic – A Regular Employee who has special education, training and/or skill in the repair and maintenance of all Cemetery vehicles and equipment.
- B. Foreman – A Regular Employee who has the skill and ability to and regularly manages Regular and Seasonal Employees (defined below) and their work.
- C. General Laborer I – A Regular Employee who has the skill and ability to and regularly "marks" and "lays out" graves and foundations, and/or regularly operates a backhoe, and/or has the skill and ability to and regularly performs crypt lettering and memorialization installation tasks.
- D. General Laborer II – A Regular Employee who performs any and all tasks associated with the grounds and buildings of the Cemetery, but shall not normally be able or required to perform the tasks associated with General Laborer I, Mechanic and/or Foreman.

Section 2.03. SEASONAL EMPLOYEES - A "Seasonal Employee" shall only be referred to as a "Seasonal Employee." Seasonal Employees are those hired by the Employer to compensate seasonally for workload variations and/or help with peak loads of Regular Employee work, and/or do any other work so long as such work is not inconsistent with safety or the provisions of this agreement. Seasonal Employees shall only be eligible for the benefits and provisions of this agreement that specifically reference Seasonal Employees.

Section 2.04. JOB ASSIGNMENTS – Regular or Seasonal Employees shall perform any and all work within the Cemeteries of the Employer where and when assigned.

ARTICLE III - WORK SCHEDULE

Section 3.01. NORMAL REGULAR EMPLOYEE WORK SCHEDULE - The normal workday and workweek for Regular Employees shall consist of eight (8) hours in a twenty-four (24) hour period, and a forty (40) hour week, commencing Monday morning and ending Friday afternoon.

Section 3.02. NORMAL SEASONAL EMPLOYEE WORK SCHEDULE - Subject to the provisions of Article III, Section 3.03 and 3.04, the normal work week for Seasonal Employees may include a forty (40) hour week, or may include a part-time, flexible schedule, as determined by the Employer.

Section 3.03. SEASONAL EMPLOYEE WORK YEAR - The Employer shall declare in writing at each cemetery the dates on which the general recall and separation of Seasonal Employees will be made. Said dates may vary from year to year based upon the weather and other factors, but shall be uniform at all five (5) cemeteries.

Section 3.04. SEASONAL EMPLOYEE OUT OF SEASON WORK - The Employer may recall a Seasonal Employee before the general recall date and/or retain him after the general separation date

of the declared seasonal year. The Employer may also require the Seasonal Employee to work in any unusual situation where he would not normally be scheduled to work. In all cases, the Employer's judgment as to the ability and qualifications of a Seasonal Employee shall govern and the Employer shall not be bound by seniority. Seasonal Employees called back prior to the general recall date or retained after the general separation date, shall be paid in accordance with Article IV Section 4.02-B.

Section 3.05. GENERAL AND SATURDAY OVERTIME WORK - The Employer shall, when in its sole judgment determines the need, designate Regular or Seasonal Employees to report for work beyond the normal work schedules outlined above. Any Regular or Seasonal Employee shall report as directed. Regular or Seasonal employees required to work Saturdays will be guaranteed a minimum of four (4) hours of overtime work at the rates defined in Article IV, Section 4.04 and will be required to start no later than 10:00 AM.

Section 3.05A. OVERTIME PREFERENCE - A Regular Employee shall have overtime preference over a Seasonal Employee only for duties and responsibilities not normally performed by the Seasonal Employee.

Section 3.06. REPORTING ABSENCES - Any Regular or Seasonal Employee unable to report for work as scheduled, for any reason, shall report their inability and reasons prior to 8:30 a.m. to their Superintendent or designee. Any Regular or Seasonal Employee unable to continue working after reporting, for any reason, shall report their inability and reasons immediately to their superintendent or designee. In either case, the Employer has the right to check the validity of the reason given for the Regular or Seasonal Employee's inability to work.

ARTICLE IV - WAGE RATES AND PAY DATES

Section 4.01. STRAIGHT TIME HOURLY WAGE RATES -

CLASSIFICATION	4/1/2007	4/1/2008	4/1/2009	4/1/2010
Foreman	\$21.69	\$22.23	\$22.79	\$23.36
Mechanic	\$21.27	\$21.80	\$22.35	\$22.91
General Laborer I	\$20.06	\$20.56	\$21.07	\$21.60
General Laborer II	\$14.70	\$15.07	\$15.45	\$15.84
Seasonal Laborer	\$8.50	\$8.71	\$8.93	\$9.15

*General Laborer II employees hired prior to 4/1/1999 will not earn below \$17.08 per hour.

The pension contribution of each employee shall be made as a deduction from the regular hourly rate by payroll reduction and is hereby authorized by each employee. That is, the straight time hourly rates referenced in the contract are reduced by the individual employees' pension contribution.

For 2007-2008, the pension contribution was sixty-two cents (\$0.62) per hour for each party, that is, the Employee and the Employer. ~~The Employees agree to contribute an additional twenty cents (\$0.20) of their pay for each year of the contract as a payroll deduction and put it toward pension. Thus, over the three (3) year contract, sixty cents (\$0.60) will be added to pension by both~~

parties as reflected by Article X – Pension Plan; and, by the end of the contract (March 31, 2011), each party (applicable bargaining unit employees and Employer) will be contributing \$1.22 per hour toward pension.

Section 4.02. SPECIAL SEASONAL EMPLOYEE WAGE RATES –

- A. When Seasonal Employees are assigned the tasks of Tamper Operation and/or Burial Assistance on a regular basis, General Laborer II straight time hourly wage rates shall be paid.
- B. Seasonal Employees recalled out of season as defined in Article 3, Section 3.04 shall be paid fifty cents (\$.50) per hour over the Seasonal Laborer rate defined in Article IV, Section 4.01.

Section 4.03. SPECIAL REMOVAL PREMIUM – A task premium of \$20.00 per each Regular or Seasonal Employee will be paid per removal operation. A task maximum of \$40.00 will be paid for each removal other than a grave to crypt or crypt to grave, which will pay a task maximum of \$80.00.

Section 4.04. OVERTIME HOURLY WAGE RATES –

- A. Regular and Seasonal Employees shall be paid one and one-half (1.5) times their straight hourly wage rate for all hours worked in excess of eight hours per day and all hours worked on Saturday, when called in. There will be no deduction for lunch on Saturday in exchange for Agreement that employees will work through lunch and not take a lunch on Saturday.
- B. Regular and Seasonal Employees shall be paid two (2) times their straight hourly wage rate for all hours worked on Sundays, when called in.

Section 4.05. PAY DATES - All wages will be paid on the 15th and the last day of the month, unless those days fall on a weekend or holiday, in which case wages shall be paid the day before the weekend or holiday. Pay shall be distributed during the normal working hours on the cemetery grounds or by direct deposit at the Regular or Seasonal Employee's choice.

ARTICLE V – VACATION

Section 5.01. REGULAR EMPLOYEE VACATION – Regular Employees shall be granted vacation in accordance with the following schedule:

1 year of service	1 week annual vacation
2 or more years of service	2 weeks annual vacation
5 or more years of service	3 weeks annual vacation
10 or more years of service	4 weeks annual vacation
26 or more years of service as of April 1, 1999	5 weeks annual vacation

- A. Seniority shall apply for selection of vacations, subject to the Employer's Vacation Selection Policy.
- B. Regular Employees will earn Vacation entitlement based upon the previous years employment. Vacations shall be calculated as of April 1 of each year on an April 1 through March 31 basis.

Section 5.01. REGULAR EMPLOYEE VACATION (Continued)

- C. Vacation pay shall be computed on the basis of a normal workday (8 hours) and a normal workweek (40 hours) at the Regular Employee's straight time hourly wage rate.
- D. All yearly vacation must be taken before April 1 of each year. All unused vacation will be lost.

Section 5.02. SEASONAL EMPLOYEE VACATION - A Seasonal Employee that has worked five (5) consecutive seasonal years with the Employer and who has worked 1,040 hours or more in the fifth (5th) year and each year thereafter, will receive one week of vacation pay based upon his straight time hourly wage rate. This vacation pay will be paid at the end of the seasonal year.

Section 5.03. VACATION FILL-IN - A General Laborer II will be paid the base rate for General Laborer I for vacation fill-in only, subject to the following conditions:

- 1. The fill-in is for vacation or sick leave only.
- 2. The fill-in is for a period of three (3) full days of vacation, or sick leave, or more.
- 3. The Archdiocese determines that a fill-in is required.
- 4. Fill-in compensation shall not exceed four (4) weeks in a calendar year.
- 5. Fill-in assignments shall be made by Archdiocese at their discretion.

ARTICLE VI- HOLIDAYS

Section 6.01. HOLIDAY PAY- All Regular and Seasonal Employees shall be paid their straight time hourly wage rate for eight (8) hours without working on the following full holidays: *New Year's Day, Labor Day, Memorial Day, Independence Day, Thanksgiving Day, and Christmas Day*. All Regular and Seasonal Employees shall be paid their straight time hourly wage rate for four (4) hours without working on the following half-holidays: *Good Friday, December 24, and December 31*.

- A. In addition to the Holiday Pay described above, Regular and Seasonal Employees shall be paid two (2) times their straight time hourly wage rate for all hours actually worked on full holidays.
- B. In addition to the Holiday Pay described above, Regular and Seasonal Employees shall be paid one and one-half (1.5) times their straight hourly wage rate for all hours actually worked on half-holidays.
- C. Holiday Pay described in this Section is subject to the qualifications described in Article VI, Sections 6.02 and 6.03.

Section 6.02. REGULAR EMPLOYEE HOLIDAY PAY QUALIFICATION - To qualify for holiday pay described in Article VI, Section 6.01:

- A. Regular Employees shall have worked the workday before and the workday after the holiday, unless excused by the Employer. If a Regular Employee who is scheduled to work on any holiday does not work as scheduled, unless excused by the Employer, the Regular Employee will not receive the holiday pay and may be subject to disciplinary action.
- B. Regular Employee is not on worker's compensation benefit at the time the holiday occurs.
- C. The Holiday must fall during the Normal Regular Employee Work Schedule as described in Article III, Section 3.01.

Section 6.03. SEASONAL EMPLOYEE HOLIDAY PAY QUALIFICATION - To qualify for holiday pay described in Article VI, Section 6.01:

- A. Seasonal Employee has completed five (5) consecutive seasons with the Employer; and,
- B. Seasonal Employee has worked 1,040 hours or more in the preceding seasonal year; and,
- C. Seasonal Employee is in active employment at the time the holiday occurs; and,
- D. Seasonal Employee has worked the day before and day after the holiday, unless excused by the Employer; and,
- E. The Holiday must fall during the Normal Regular Employee Work Schedule as described in Article III, Section 3.02.

ARTICLE VII - SICK AND EMERGENCY LEAVE

Section 7.01. SICK LEAVE - The Employer will pay Regular Employees who have completed one (1) year of continuous service twelve (12) days of sick leave per contract year. (April 1 - March 31) Sick leave absences shall comply with Article III, Section 3.06, regarding the reporting of absences. Sick leave may be accumulated from year to year to a maximum of sixty (60) days (480 hours).*** If a Regular Employee has not accrued the maximum sixty (60) days as of March 31 of each contract year, their sick leave balance shall be credited with up to twelve (12) days (96 hours). Termination of employment will not require the Employer to pay cumulative sick leave unless termination is due to retirement at age sixty-five (65) or older, in which case a maximum of thirty (30) days (240 hours) sick leave pay is allowed.

Section 7.02. EMERGENCY LEAVE - At the discretion and approval of the Employer, Regular Employees may use up to three (3) out of their twelve (12) sick leave days per contract year (April 1 - March 31) as Emergency Leave Days.

ARTICLE VIII - OTHER LEAVES OF ABSENCE

Section 8.01. BEREAVEMENT LEAVE - In the case of death in a Regular Employee's family, the Regular Employee will be given necessary time off, with pay, to arrange for and attend the funeral, not to exceed the following:

Parent, husband, wife, or child:	5 workdays off
Legal guardian, mother-in-law, or father-in-law:	3 workdays off
Brother, sister, brother-in-law, or sister-in-law:	2 workdays off
Grandparents of self or spouse:	1 workday off

Section 8.01. BEREAVEMENT LEAVE (Continued)

- A. Regular Employees are expected to notify their Superintendent or his designee prior to taking Bereavement Leave.
- B. The Superintendent or his designee may grant additional time off without pay to attend a funeral other than as provided above.
- C. Bereavement Leave will not apply when a Regular Employee is receiving any other form of compensation such as Worker's Compensation.
- D. Bereavement Leave will not apply if a Regular Employee does not miss work -- for example, an out-of-state funeral that the Regular Employee does not attend, or a funeral occurring on non-work days.

Section 8.02. JURY DUTY LEAVE AND COMPENSATION – A Regular Employee required to serve as a Juror during normal working hours, shall be compensated by the Employer for the difference between their Jury Duty pay (travel allowance excluded) and their regular weekly pay check based upon a forty (40) hour week calculated at their straight time hourly wage rate. Evidence of Jury Duty and pay received must be presented to the Employer. In the event of the release from Jury service on a regularly scheduled workday, the Regular Employee shall report to work for the balance of that workday.

Section 8.03. PERSONAL LEAVE - Applicable State and Federal Law shall govern Personal Leaves of Absence. An unpaid leave of absence not covered by State or Federal Law may be granted by the Employer upon written application by a Regular or Seasonal Employee.

Section 8.04. MILITARY SERVICE LEAVE - Any Regular or Seasonal Employee entering the Armed Forces of the United States shall be granted a Leave of Absence governed by applicable State and Federal Law.

ARTICLE IX – MEDICAL / DENTAL INSURANCE PLANS

Section 9.01. MEDICAL / DENTAL CO-PAY - The Employer will furnish a Group Medical and Dental Plan for Regular Employees after the completion of a six (6) month probationary period as described in Article XII, Section 12.04. The Regular Employee will pay the prevailing Employee portion as defined by the Employer's Parent Organization (The Archdiocese of Milwaukee) of the premium for any Medical and/or Dental Plan offered by the Employer, by payroll deduction. The Employer shall pay the remainder of the Medical and/Dental premium.

Section 9.02. CHANGE OF CARRIER - The Employer may change the insurance carrier or self-fund health care benefits as long as those benefits remain comparable with those provided by the Employer's Parent Organization (The Archdiocese of Milwaukee) to non-union personnel.

Section 9.03. NO CLAIM - Regular Employees that do not qualify, reject, or choose a less expensive Medical / Dental Insurance Plan, shall not make a claim against the Employer for additional compensation in lieu of the difference in the Employer's cost of the plan.

Section 9.04. CARRIER PROVISIONS - All Medical / Dental Coverage shall be subject to all provisions, contracts and policies of the insurance carrier.

ARTICLE X - PENSION PLAN

The parties shall continue in force the pension plan presently in existence, covering eligible Regular Employees as therein defined. All costs associated with maintaining the pension plan will be paid by the fund itself. Funding of the Pension Plan will be handled by the Archdiocese of Milwaukee for investment with overall Archdiocesan pension funds as follows:

The parties will fund the Pension Plan on a fifty-fifty (50-50) basis between participating Regular Employees and the Employer. Participating Regular Employees and the Employer will contribute as follows: Effective 7/1/2008, (\$0.82) each per hour; Effective 7/1/2009, (\$1.02) each per hour; Effective 7/1/2010, (\$1.22) each per hour; up to forty (40) hours per week, to a maximum of 2080 hours per year.

The pension contribution of each employee shall be made as a deduction from the regular hourly rate by payroll reduction and is hereby authorized by each employee. That is, the straight time hourly rates referenced in the contract are reduced by the individual employees' pension contribution.

Subject to confirmation from the current actuary for the Archdiocesan Cemeteries of Milwaukee Union Employees' Pension Plan (the "Plan"), the Plan shall be amended to adopt a service-based formula fundamentally similar to the formula currently offered under the Archdiocese's lay employee pension plan (1.35% *multiplied by* years of service *multiplied by* a participant's three highest consecutive years of service). Any such change shall be made effective July 1, 2008, and will apply to all union employees who are eligible to participate in the Plan, provided that employees who currently have more than 25 years of service as of July 1, 2008, shall receive a benefit that is equal to the greater of the benefit that they would have received under the current formula and the proposed new formula. The confirmation referenced in the first sentence of this paragraph refers to a confirmation that any proposed charges will not result in increased projected costs.

Pension Performance Review.

- 1) The performance of the Pension Plan shall be reviewed annually.
- 2) At the end of the 2008-2011 contract, the Plan shall be reviewed. Such review does not require (yet allows) the parties to make changes to the Plan including:

- A) As funds dictate, varying the multiplier in regard to the payout of benefits (performance)
- B) Moving the Pension Plan to an independent company/outside fund manager (without penalty)
- C) Naming a co-trustee
- D) The ability to hire an independent actuary

The administrative costs associated with the plan including, but not limited to, plan-related actuarial cost, amendments compliance and other related costs, will be borne by the plan itself rather than either party on an individual basis.

The Carrier or Actuarial Company shall make available, upon request from the Employer, data regarding the plan, which will be distributed at least once a year to participating Regular Employees.

ARTICLE XI – INDUSTRIAL ACCIDENTS

Section 11.01. SUPPLEMENTARY COMPENSATION FOR INDUSTRIAL ACCIDENTS – In the case of an industrial accident, a Regular Employee may elect to receive a full forty (40) hour's week's pay. This pay may consist of the Regular Employee's Worker's Compensation check and a payment by the Employer in the amount equal to the difference between the compensation check and a normal forty (40) hour week's pay calculated at the Regular Employee's straight time hourly wage rate. Such supplementary compensation shall apply only in cases of temporary, total disability and the Employer shall be liable for such supplementary payment only to the extent of the Regular Employee's unused, accumulated sick leave. Only the time paid by the Employer shall be charged against the sick leave of the Regular Employee.

Section 11.02. WAGE REIMBURSEMENT FOR INDUSTRIAL ACCIDENTS - The Employer will reimburse all Regular and Seasonal Employees for wages lost while receiving medical treatment for injuries sustained in and about the cemetery in the normal course of their employment. Reimbursement will be made up to the balance of pay the Regular or Seasonal Employee would have received on the day of the injury. Subsequent and additional time off may be covered by the Worker's Compensation Act of Wisconsin or other employee options such as Vacation, Sick, or Emergency Leave.

ARTICLE XII - SENIORITY

Section 12.01. SENIORITY APPLICATION – Subject to the provisions of this Article, seniority shall prevail in matters of layoffs, recalls and vacation selection for Regular Employees and layoffs and recalls for Seasonal Employees. In reducing the workforce because of lack of work or any other legitimate reason, the last Regular or Seasonal Employee hired (excluding the Mechanic or Foreman)

shall be the first laid off and the last recalled. In no case will a Regular Employee be laid off if any Seasonal Employee is working.

Section 12.02. SENIORITY DEFINITION – Seniority shall be defined as the period of continuous employment with the Employer, commencing with the Regular and Seasonal Employee's recognized date of hire. Continuous employment shall include periods of approved leave and seasonal layoffs.

Section 12.03. LOSS OF SENIORITY – A Regular or Seasonal Employee shall lose seniority and their employment relationship shall be terminated under any of the following circumstances:

- A. If the Regular or Seasonal Employee quits or retires.
- B. If the Regular or Seasonal Employee is discharged for just cause.
- C. If the Regular or Seasonal Employee fails to report to work for three (3) consecutive days without advising the Employer of their inability to report.
- D. If the Regular or Seasonal Employee fails to report to work within three (3) days after recall from layoff.
- E. If the Regular or Seasonal Employee is laid off for a period of two (2) years.

Section 12.04. REGULAR EMPLOYEE PROBATIONARY PERIOD – A Regular Employee shall serve a probationary period of six (6) months from the date of hire. During the probationary period, the Regular Employee shall have no seniority rights and be subject to dismissal for any reason without recourse to the grievance and/or arbitration procedure. Probationary, Regular Employees shall not be eligible to receive Medical / Dental Insurance benefits described in Article IX.

Section 12.05. SEASONAL EMPLOYEE PROBATIONARY PERIOD – A Seasonal Employee shall serve a probationary period of six (6) months from the date of hire. During the probationary period, the Seasonal Employee shall have no seniority rights and be subject to dismissal for any reason without recourse to the grievance and/or arbitration procedure.

Section 12.06. SENIORITY LISTS - The Employer shall maintain a seniority list. This list will be made available upon request.

ARTICLE XIII – EMPLOYER PEROGATIVES

The Employer possesses the sole right to operate the cemeteries. These rights include, but are not limited to, the following:

- A. To control, direct and maintain efficiency of all operations.
- B. To introduce new and improved methods or facilities, and/or to change existing methods or facilities.
- C. To establish reasonable work rules and schedules.
- D. To assign overtime in accordance with Article III – Section 3.05.
- E. To hire, promote, transfer, schedule and assign Regular and Seasonal Employees in positions within the Employer.

- F. To suspend, demote, discharge and take other disciplinary action, for just cause, against Regular and Seasonal employees consistent with the terms of this agreement.
- G. To layoff Regular and Seasonal Employees from their duties.
- H. To take whatever action is necessary to comply with State and Federal Law.
- I. To contract out for goods and services, as long as no Regular Employee is laid off directly as a result of the subcontracting.
- J. To determine the methods, means and number of Regular and/or Seasonal Employees needed to conduct any and all operations.
- K. To take whatever action is necessary to continue all operations in situations of emergency.

ARTICLE XIV - GENERAL RULES

Section 14.01. STORM GEAR - The Employer will maintain supplies of storm gear for Regular and Seasonal Employees, and will furnish replacement storm gear when worn storm gear is turned back to the Employer.

Section 14.02. UNIFORMS – Employer provided uniforms must be worn in accordance with the Employer’s Dress Code Policy. Cleaning of uniforms is the responsibility of the Regular and Seasonal Employee. Uniforms must be returned to the Employer upon permanent departure or dismissal of a Regular or Seasonal Employee.

Section 14.03. UNION REPRESENTATIVE ACCESS - Any authorized representative of the Union shall be entitled to access the premises of any Cemetery covered hereunder at and for reasonable times and time periods for the purpose of ascertaining whether the terms of this contract are being met. Such access shall be brought to the attention of the Employer and will in no way interfere with the work of the Regular and Seasonal Employees without permission from the Employer.

Section 14.04. LUNCH AND LOCKER ROOM - The Employer shall provide shelter and quarters in which Regular and Seasonal Employees may eat their noon lunch and/or or change clothes.

Section 14.05. SAFETY EQUIPMENT - The Employer shall make every effort to supply safety equipment. Regular and Seasonal Employees must comply with the use of such equipment.

Section 14.06. JOB POSTING - When the Archdiocese, in its discretion, determines that a vacancy exists that it wants to fill, a memo will be sent to employees with notification of the vacancy. This notice shall not limit the Archdiocese in who it selects for any vacancy.

Section 14.07. UNION REPRESENTATION - An employee may request union representation during a disciplinary investigation meeting or at a meeting at which discipline is imposed upon the employee provided the employee requests union representation at the meeting.

ARTICLE XV – DRUG AND ALCOHOL TESTING

ALCOHOL AND CONTROLLED SUBSTANCE TESTING

Each employee of the Milwaukee Archdiocese shall be subject to alcohol and controlled substance testing. An employee who has a confirmed positive test for controlled substances or an alcohol level exceeding the standards set forth below, shall be subject to discipline, up to and including termination. The Archdiocese, in its sole discretion, may allow an employee to return to work as outlined in this provision. All alcohol and controlled substances testing will comply with the procedures set forth herein.

SPLIT SAMPLE TESTING

All positive tests for drugs other than alcohol will be confirmed. Initial testing will be by immunoassay, with all confirmation testing being by gas chromatography/mass spectrometry. The laboratory performing all tests will be certified for Federal Workplace Drug Testing Programs by the Department of Health and Human Services – Substance Abuse and Mental Health Services Administration (SAMHSA). Chemicals to be tested for are marijuana, cocaine, opiate, phencyclidine, and amphetamines. Limits for each of the substances will be according to appropriate federal, state and DOT regulations as they are updated periodically.

RANDOM TESTING

No fewer than 25% of the employees in the bargaining unit shall undergo random controlled substances testing in each calendar year. The selection for random testing, the timing and frequency of random tests, and the number of employees to be tested on any given day shall be determined by the Archdiocese. The selection of employees for random testing shall be made by a scientifically valid method determined by the Archdiocese. Each employee shall have an equal chance of being selected for testing each time selections are made.

Random controlled substances tests shall be unannounced and shall be spread reasonably throughout the year.

An employee who is notified of selection for random controlled substances testing shall be required to proceed to the test site immediately as instructed. Failure to proceed immediately for testing shall be deemed a refusal to test.

REASONABLE SUSPICION TESTING

An employee shall promptly submit to an alcohol or controlled substances test whenever a supervisor has a reasonable suspicion to believe that the employee is under the influence of alcohol or a controlled substance.

A determination that a reasonable suspicion exists will be based on observations made during, or just preceding, the work day.

An employee who is notified of a determination of the need for reasonable suspicion testing shall be required to proceed to the test site immediately as instructed. Failure to proceed immediately for testing shall be deemed a refusal to test.

POST-ACCIDENT TESTING

An employee who was operating a vehicle or equipment who is involved in an accident shall be subject to post-accident alcohol and controlled substance testing as soon as practicable following the accident.

An employee subject to post-accident testing shall remain readily available for such testing or shall be deemed to have refused to submit to testing. Nothing herein shall be construed to require the delay of necessary medical attention or to prohibit the employee from leaving the scene of the accident for the period of time necessary to obtain assistance in responding to the accident, obtain/provide necessary medical treatment for injured people, or to obtain materials necessary to secure the accident site or to obtain necessary emergency medical care.

RETURN-TO-DUTY TESTING

If an employee has an alcohol test result indicating an alcohol concentration of 0.02 or greater, but less than 0.04, the employee shall be sent home for the remainder of the shift without pay, the employee shall be prohibited from performing duties for a minimum of 24 hours from the end of that shift.

An employee who has undergone an alcohol test with a result of 0.04 or greater, or who has tested "confirmed positive" for controlled substances, shall not be permitted to perform duties unless:

- a. The employee has been evaluated by a substance abuse professional who shall determine what assistance, if any, the employee needs in resolving problems associated with alcohol misuse and controlled substances use; and
- b. Following a determination by a substance abuse professional that the employee is in need of assistance in resolving problems associated with alcohol misuse and/or use of controlled substances, the employee has complied and remains in compliance with any and all prescribed or recommended rehabilitation and/or treatment programs; and
- c. The employee has undergone a return-to-duty alcohol test with a result indicating an alcohol concentration of 0.02 or less before returning to duty if the employee has violated the alcohol prohibitions; and

d. The employee has undergone a return-to-duty controlled substances test with a result indicating a verified negative result for controlled substances use if the employee has violated the controlled substances prohibitions; and

e. The employee shall be subject to such return-to-duty testing for both alcohol misuse and use of controlled substances if the substance abuse professional determines testing for both alcohol and controlled substances is recommended; and

f. The cost of return-to-duty testing shall be the responsibility of the employee. The employee shall not receive pay for time spent with return-to-duty testing. Return-to-duty testing must be done before an employee can return to work.

FOLLOW-UP TESTING

An employee who has undergone an alcohol test with a result of 0.04 or greater or who has tested "confirmed positive" for controlled substances, who is subject to, and has complied with, the return-to-duty testing provisions above, and who has been permitted to return to work shall be subject to the following:

a. The employee has been evaluated by a substance abuse professional who shall determine what assistance, if any, the employee needs in resolving problems associated with alcohol misuse and controlled substances use; and

b. The employee shall be subject to unannounced follow-up testing; and

c. The number and frequency of such tests shall be determined by the archdiocese, and shall consist of at least six, but no more than ten, tests in the first 12 months following the employee's return to duty; and

d. The cost of follow-up testing shall be the responsibility of the Archdiocese.

ARTICLE XVI - GRIEVANCE PROCEDURE

All differences between the Employer and its Regular and Seasonal Employees, and the Union, which represents them, are to be resolved as follows:

- A. **FIRST STEP:** Individual Regular and Seasonal Employees along with their supervisor and/or superintendent shall make an earnest effort to resolve any difference that may occur in their course of employment. In this step, the Union Representative shall participate at the invitation by the Regular or Seasonal Employee or the Employer. The purpose of this step is to make every effort to resolve the difference informally.
- B. **SECOND STEP:** If the difference is not resolved informally in the first step, a formal meeting with all parties involved along with the Director of Cemeteries, or his designee, will take place within ten (10) working days from the date the difference first occurred. As in step 1, the Union

Representative shall participate at the invitation by the Employee or the Employer. This step is designed to offer resolution without a formal written grievance.

- C. **THIRD STEP:** If the difference is not resolved in the Second Step, the Regular or Seasonal Employee shall separately reduce their grievance to writing and deliver a copy to the Cemetery Superintendent within twenty (20) working days from the date the difference first occurred. The Cemetery Superintendent, or his designee, shall make the Employer's answer known within ten (10) working days and deliver such reply in writing to the Regular or Seasonal Employee and the Union.
- D. **FOURTH STEP:** Failing agreement in the Third Step, each Regular or Seasonal Employee may, along with the Union Representative, individually file a written request for final and binding arbitration with the Director of Cemeteries or his designee. This request for arbitration shall be made within ten (10) working days of the written response of the Employer at the Third Step. Each Regular or Seasonal Employee with their Union Representative shall also individually submit a request to the Wisconsin Employment Relations Commission (WERC) for a list of five (5) WERC Arbitrators. If the list is unsatisfactory to either party, the parties reserve the right to request a list of five (5) Independent (non-WERC) Arbitrators. In either case, each party will have the right to strike two arbitrators, leaving one to settle the grievance dispute. If, unless agreed by both parties, each individual Regular or Seasonal Employee's grievance shall be heard at a separate arbitration hearing. The decision of the arbitrator shall be final and binding on both parties. All arbitration expenses will be equally divided between the Union and the Employer.

ARTICLE XVII - GENDER

Any reference herein to "him" or "he" shall apply equally to "her" or "she."

ARTICLE XVIII - NO STRIKE CLAUSE

Section 17.01. STRIKE PROHIBITED - Neither the Union, its Officers, Agents, Regular or Seasonal Employees, or any other Union Employee will instigate, promote, encourage, sponsor, engage in or condone any strike, picketing, slowdown, concerted work stoppage, sympathy strike or any other intentional interruption of work during the term of this Agreement.

Section 17.02. PICKET LINES - The Company shall not terminate a Regular or Seasonal Employee who honors a picket line of the Laborers International Union, AFL-CIO. This section shall not apply to a picket line that develops in a Strike or labor dispute involving this bargaining unit. (The Archdiocese of Milwaukee - Catholic Cemeteries and Cemetery Employees, Local 113 of the AFL-CIO)

ARTICLE XIX - SEPARABILITY CLAUSE

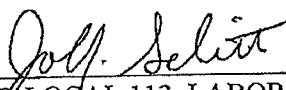
Any provisions of this agreement which may be in violation of any applicable Federal or State law shall not be effective and shall not be binding upon the parties hereto. In the event that any of the provisions of this agreement are held or constituted to be void, or to be in violation of any such laws, nevertheless the remainder of the agreement shall remain in force and effect, unless the parts of the

provisions so found to be void or in violation of any such laws are wholly inseparable from the remaining portion of this agreement.


ARTICLE XX- DURATION OF AGREEMENT

This Agreement shall be binding on the parties, their successors, their assigns, as of the date of the execution hereof, and shall continue in full force and effect until March 31, 2011, and from year to year thereafter, unless terminated by written notice, given by either party to the other not less than thirty (30) days prior to the expiration date (March 31, 2011) or any anniversary thereof. Since it is the intention of the parties to settle and determine, for the term of this Agreement, all matters constituting the proper subjects of collective bargaining between them it is expressly agreed that there shall be no reopening of this agreement for any matter pertaining to rates of pay, wages, hours of work, or other terms and conditions of employment or otherwise, during the terms of this agreement.

EXECUTED THIS 14 OF July, 2008, AT MILWAUKEE, WISCONSIN.



FOR LOCAL 113, LABORERS
INTERNATIONAL UNION OF
AMERICA, AFL-CIO



FOR ARCHDIOCESE OF MILWAUKEE
CATHOLIC CEMETERIES