

AGREEMENT
BETWEEN
NEW YORK CITY TRANSIT AUTHORITY
AND
THE
TRANSIT SUPERVISORS ORGANIZATION
STATION SUPERVISORS, LEVEL II
EFFECTIVE
TO
SEPTEMBER 30, 2000

Agreement made as of the ____ day of June 1999 by and between the New York City Transit Authority (hereinafter referred to as the "Authority") and the Transit Supervisors Organization (hereinafter referred to as the "Union").

ARTICLE I - GENERAL

Section 1.1. Declaration of Purpose.

The Authority and the Union, in signing this Agreement, are governed by their mutual desires and obligations:

- (a) To assure to the people of the City of New York efficient, economical, safe and dependable transportation service.
- (b) To provide supervisory employees in titles represented by the Union with salary scales, hours, working conditions and grievance procedures.
- (c) To protect the interest of the public through a definite understanding of the respective rights, duties, privileges, responsibilities, and obligations of the Authority, the employees, and the Union.

Section 1.2. Recognition

The Authority recognizes the Union as the exclusive bargaining representative and the exclusive representative for the representing and processing of employee grievances for all Stations Supervisor Level II except those deemed to be confidential by PERB or excluded from the unit by agreement of the parties.

Section 1.3. Entire Agreement

This Agreement constitutes the sole and entire existing Agreement between the parties.

Section 1.4. Management Rights and Employee Rights

A. Management Rights

Without limitation upon the exercise of any of its statutory powers or responsibilities, the Authority shall have the unquestioned right to exercise all normally accepted management prerogatives, including the right to fix operating and personnel schedules, impose layoffs, determine work loads, arrange transfers, order new work assignments, and issue any other directives intended to carry out its managerial responsibility to operate the transit lines safely, efficiently, and economically.

B. Employee Rights

- 1) The Authority is committed to assuring that the dignity of each employee is respected at all times. Management shall treat employees fairly and reasonably, and shall assure that employees are not disciplined without proper cause, and that they are notified as expeditiously as reasonable with respect to any alleged violations charged by management.
- 2) The above policy shall be enforceable by the Union only in the following manner:
 - a. If the President of the Union has reason to believe that any employee has been treated in a manner inconsistent with this policy he/she may submit such a complaint to the Division Head. The allegation shall be investigated. Within two weeks, management shall submit to the Union a report stating its finding on the allegation and any proposed action.
 - b. If the Union is unsatisfied with the report on the proposed findings, it may submit the matter to the Authority's Vice President, Labor Relations. The decision of the Authority's Vice President, Labor Relations shall be issued to the union's President within thirty (30) days and shall be final and binding.

Section 1.5. Reciprocal Obligations

The Union fully accepts the Authority's basic right to manage the Transit properties and exercise the management prerogatives stated in Section 1.4 and in the law governing the Authority, and agrees to cooperate with the Authority in a joint effort to place and keep the transit system on a safe, efficient, and economical operating basis. The Authority recognizes that in the exercise of its rights and prerogatives to manage the transit properties, as set forth in Section 1.4 above, and in this Section, it will preserve the rights of the employees and/or their representatives through the legal and orderly processes provided for in Section 2.1 hereof.

Section 1.6. Wages

1) Salary Rates

The annual wage rates for employees represented by the Union shall be those set forth in Schedules A attached hereto.

2) Night Shift Differential

The present rate of night shift differential and the hours during which it applies shall continue.

Section 1.7. Health and Hospitalization Plan.

During the term of this Agreement the Authority will continue to provide Station Supervisors II with the same health benefits as are provided to other non-represented operating employees, subject to the same terms and conditions. Should the present benefits or terms and conditions be modified for employees covered by the non-represented operating employee benefit plan, the Authority's sole obligation shall be to advise the Union of such changes as they affect employees in the unit. If the Authority should change the non-represented health plan to include a premium contribution by employees, then it shall provide at least 60 days notice to the Union of said change and during this period the Union will have the right to discuss alternatives to the premium contributions.

Section 1.8. Agency Shop

1. The Authority shall deduct bi-weekly an agency shop fee from the wages of each employee who has been an employee for more than thirty days and who is not a member of the Union, in the same manner and in the same amount as Union dues are deducted pursuant to the Union dues deduction authorization in the form approved and accepted by the Authority.
2. Agency shop fees for weeks when an employee, who is not a member of the Union, is on vacation shall be deducted as are Union dues pursuant to Union dues deduction authorization.
3. The sum of the agency shop fees deducted in any month shall be transmitted by the Authority to the Treasurer-Administrator of the Union at the same time and subject to the same deduction of costs as are the Union dues deducted for such month.
4. Should the Union refuse to accept a Union dues deduction authorization from any employee, or should the Union expel an employee from membership, the Union shall so notify the Authority immediately and no agency shop fee shall be deducted from the wages of such employee.
5. In cases of unearned wages of employees refunded to appropriation accounts, and in cases of wages of employees transferred to "UNCLAIMED" accounts, necessary adjustments in agency shop fee accounts will be made by recovery from available unpaid Union agency shop fee fund balances and returned to the Controller.
6. The Union shall refund to the Authority any agency shop fees deducted and transmitted to the Union in error.
7. The Union affirms that it has established and is maintaining a procedure which provides for the refund, to any employee demanding the same, of any part of any agency shop fee which represents the employee's pro rated share of expenditures by the Union in aid of activities or causes of a political or ideological nature only

incidentally related to terms and conditions of employment. It is expressly agreed that in the event such procedure is disestablished, then this Article shall be null and void.

8. In the event that any provision of this Article is found to be invalid, such invalidity shall not impair the validity and enforceability of the remaining provisions of this Agreement.
9. The Union shall hold the Authority harmless from and indemnify it against any loss, cost or expense resulting from any claim, by whomever made, arising out of the use of agency shop fee deductions transmitted to it by the Authority in accordance with this Agreement or out of a failure or refusal of the Union to comply with the provisions hereof.

Section 1.9. No Strike Clause

During the term of this Agreement there shall be no strike, sit-down, slow-down, stoppage of work, or willful abstinence, in whole or in part, from the full, faithful, and proper performance of the duties of the employees authorized or sanctioned by the Union.

Section 1.10. Term of Agreement

This agreement shall be effective from the date of approval by the MTA Board through September 30, 2000.

To the extent that any of the provisions of this Agreement require approval of, or are subject to modification, by a federal or state agency pursuant to statute or regulations issued thereunder, they shall be subject to such approval or modification.

ARTICLE II. - TRANSIT AUTHORITY - GENERAL

Section 2.1. Grievance And Arbitration Procedures

The following grievance and arbitration procedure shall be effective upon final ratification of this agreement.

A. Definitions

1. A Contract Interpretation Grievance is hereby defined to be a complaint on the part of any covered employee or group of such employees that there has been on the part of Management, non-compliance with or a misinterpretation of any of the provisions of this Agreement or of any written rule, or Policy/Instruction of the Authority governing or affecting its employees. The Authority shall also have the right to file a complaint alleging a misinterpretation misapplication, breach or claim of a breach of the collective bargaining agreement or other written agreements entered into by the parties. A Contract Interpretation Grievance shall not include any claim subject to the Disciplinary Grievance Procedure.

2. A Disciplinary Grievance is hereby defined to be a complaint on the part of any covered employee that there has been a violation of the employee's contractual rights with respect to a disciplinary action of a reprimand, fine, suspension, demotion, and/or dismissal except that a "disciplinary grievance" shall not include the removal or other discipline of an employee during the initial 24 continuous months as a Stations Supervisor, Level II, or of a provisional, or temporary employee. A "disciplinary grievance" shall not include the movement of an employee from a Level II to a Level I assignment in accord with the assignment level procedures set forth below. This provision shall not be construed to deprive a provisional employee of his/her right to use this procedure prior to suspension or termination from his/her permanent title.

3. Employees may be reassigned from a Level II to a Level I position based upon annual or special evaluations subject to the procedures set forth herein.

B. Contract Interpretation Grievance Procedures

1. A Contract Interpretation Grievance which is filed with the statement of facts that alleges a complaint as defined by sub-section A, Paragraph 1 above but which fails to specifically cite what the alleged violation is shall be returned to the filing party for correcting and refiling. Refiling shall be within five (5) days and such grievance shall be deemed as filed effective on the original filing date, except that the time period for processing such grievance shall commence at refiling.

2. A grievance which is amended at any step to effectively change the subject of the complaint shall be refiled as a new grievance.

3. Contract interpretation grievances as defined in subsection A, Paragraph 1 above, shall be processed and settled in the following manner:

a. Step I

The Union shall be permitted within thirty (30) calendar days from the time a grievance arose to request in writing, by completing a form provided by the Authority, to be heard at the Departmental level by the Department Head or his/her designee. The grievance shall be scheduled to be heard within thirty (30) calendar days after receipt of the written request by the employee's Department Head or designee. The decision on the appeal will be rendered to the employee and his/her Union representative within fifteen (15) calendar days after the meeting.

Where three (3) or more employees in one department have a similar grievance, the Department Head or his/her designee shall order an informal hearing and render his/her decision within ten (10) days.

b. Step II

In the event that the matter is not satisfactorily adjusted with the Department Head, the Union may, within five (5) days after the receipt of written notification from the Department Head of his/her decision, submit the dispute in writing, by completing a form provided by the Authority, to the Authority's Senior Director, Labor Disputes Resolution or his/her designee. The appeal shall be scheduled to be heard within twenty-five (25) days after the receipt of the written request by the Senior Director, Labor Disputes Resolution or his/her designee. The Senior Director, Labor Disputes Resolution or designee shall, within twenty (20) days after such hearing is closed, render his/her decision in writing.

Where a grievance concerning three (3) or more employees in one department is processed through the expedited Step I procedure set forth above, an appeal by the Union to Step II shall be scheduled to be heard within ten (10) days after the receipt of the written request by the Senior Director, Labor Disputes Resolution or his/her designee, and a written decision shall be rendered to the Union within ten (10) days after the hearing is closed.

The Senior Director, Labor Disputes Resolution may, at any time, on his/her own motion review any decision at Step I, within a reasonable period after the Step I is issued and may overrule or modify said decision after first giving the employee or employees who are affected thereby, and his/her or their Union representative, an opportunity to be heard.

c. Impartial Arbitration

If the Union representative is not satisfied with the decision on the contract interpretation grievance at Step II of the grievance procedure, the Union grievance representative, may file with the Impartial Arbitrator at any time within fifteen (15) days after said decision has been made at Step II, a demand that the Impartial Arbitrator give his/her opinion and make his/her determination with respect to the said grievance. The Authority may also submit to the Impartial Arbitrator for his/her opinion and determination any complaint arising solely out of the interpretation, application, breach, or claim of breach, of the provisions of this Agreement. The Impartial Arbitrator shall fix a date for the hearing on at least fourteen (14) days notice to the Authority and to the employee or his/her representative, at which the employee, or his/her representative, and a representative of the Authority, shall be on hand to present both sides of the controversy.

At the request of the Impartial Arbitrator, such witnesses, records, and other documentary evidence as may be required, shall be produced.

All witnesses shall take an appropriate oath or affirmation prior to testifying.

When a written opinion and award is to be rendered, the Impartial Arbitrator shall mail a copy of his/her opinion and award to the Senior Director, Labor Disputes Resolution and to the Union within twenty (20) days after the close of the hearing before him. The determination of the Impartial Arbitrator upon matters within his/her jurisdiction, and submitted to him/her under and pursuant to the terms and conditions of this Agreement, shall be final and binding upon both parties.

The parties agree to utilize the services of George Nicolau as the impartial arbitrator. The costs of the arbitrator shall be equally split by the Authority and the Union.

If the office of Impartial Arbitrator should become vacant, the Authority and the Union will designate a new Arbitrator as soon as practicable. If the parties cannot agree on the designation of an arbitrator or if the office should become vacant the parties agree to utilize the procedures of the American Arbitration Association for the selection of an arbitrator.

d. Impartial Arbitrator

An Impartial Arbitrator, in rendering any opinion or determination, shall be strictly limited to the interpretation and application of the provisions of this Agreement, or of any written rule, or Policy/Instruction of the Authority governing or affecting employees, and he/she shall be

without any power or authority to add to, delete from, or modify any of the provisions of this Agreement, or of such rules or Policy/Instruction unless it contradicts this agreement. The Impartial Arbitrator shall not have the authority to render any opinion or make any recommendations:

1. inconsistent with or contrary to the provisions of the applicable Civil Service Laws and Regulations;
2. limiting or interfering in any way with the statutory powers, duties, and responsibilities of the Authority in operating, controlling, and directing the maintenance and operation of the transit facilities, or with the Authority's managerial responsibility to run the transit lines safely, efficiently and economically;
3. with respect to modification of any wage rates provided herein; or
4. with respect to any disciplinary grievance unless the parties have agreed that the arbitrator can hear such matters. (e.g. by designating the same impartial arbitrator to hear both contract and disciplinary grievances).

C. Disciplinary Grievance Procedures

1. It is understood that the right to discharge or discipline employees for cause and to maintain discipline and efficiency of employees is the responsibility of the Authority.

2. The disciplinary procedure set forth in this Section shall be in lieu of any other disciplinary procedure that may have previously applied to an employee covered by this Agreement including but not limited to the procedure specified in Sections 75 and 76 of the Civil Service Law and shall apply to all persons who but for this procedure would be subject to Sections 75 and 76 of the Civil Service Law. This procedure shall not apply to an employee who has not served a minimum of 24 continuous months of service in the Level II Station Supervisor position or to provisional, part-time or temporary employees.

3. In the Authority, no disciplinary proceeding shall be commenced more than thirty (30) working days after the employee's Responsibility Center Manager or Immediate Supervisor has knowledge of the alleged incompetency or misconduct complained of and described in the charges, provided, however, that such limitation shall not apply when the incompetency or misconduct complained of and described in the charges is the subject of an investigation or would, if proved in a Court of appropriate jurisdiction, constitute a crime.

Employee absences and Authority observed holidays shall be excluded from the thirty (30) working days.

4a. In the Authority, no warning, reprimand, suspension, or dismissal shall be entered on an employee's record or otherwise imposed until the completion of the disciplinary procedure set forth.

This provision shall not, however, foreclose pre-disciplinary suspension of an employee for reasons of serious misconduct detrimental to the operation of the Authority including but not limited to use of controlled substances, being under the influence of alcohol, fraud, theft of Authority property, assault upon another employee, gross insubordination, or a serious violation of the Authorities' EEO or sexual harassment policies.

b. The Authority shall make its best efforts to notify the Union on the day that an employee is pre-disciplinary suspended.

5. In a disciplinary grievance where an employee subject to the disciplinary grievance provisions herein has been suspended pending appeal under this procedure, such employee shall be restored to the payroll pending the finalization of the disciplinary case after the employee has been suspended from service for thirty (30) work days.

The thirty (30) days shall not include any time after an employee is notified of the decision at any of the steps until the Authority receives written notice of the appeal to the next step in the procedure nor any delay of a hearing or postponement brought about by the employee or his/her Union representative.

In no event shall this subsection entitle an employee to pay beyond the first scheduled hearing date before the arbitrator except where such hearing date is postponed at the request of the Authority. The thirty (30) days shall include any delay directly caused by such postponement. In addition, the Authority shall not be responsible for such pay where the arbitrator is not available during the 30 days.

The Authority may, in its discretion, waive any of the steps of the grievance procedure to ensure compliance with this subsection 5 provided it has complied in a timely manner with timely and reasonable union requests for information related to the case.

6. Disciplinary grievances as defined in subsection A, paragraph 2 above, shall be processed and settled in the following manner:

a. Step I

An employee or his/her Union representative shall be permitted within five (5) days from the time of notification of the disciplinary action to request in writing, by completing a form provided by the Authority, to be heard by the employee's Department Head or designee. The grievance shall be scheduled to be heard within fifteen (15) days after receipt of the written request by the employee's Department Head or designee. The employee may be accompanied at this meeting by his/her Union representative. The decision on the appeal will be rendered to the employee and his/her Union representative within ten (10) days after the meeting.

b. Step II

In the event that the matter is not satisfactorily adjusted with the Department Head, the Union may, within five (5) days after the receipt of written notification from the Department Head of his/her decision, submit the dispute in writing, by completing a form provided by the Authority, to the Authority's Senior Director, Labor Disputes Resolution or his/her designee. The appeal shall be heard within thirty (30) days after the receipt of the written request by the Senior Director, Labor Disputes Resolution or his/her designee. The Senior Director, Labor Disputes Resolution or designee shall within twenty (20) days after such hearing is closed, render his/her decision in writing.

c. Arbitration

In the event that the disciplinary grievance is not satisfactorily adjusted with the Authority's Senior Director, Labor Disputes Resolution or his/her designee at Step II, the Union may within five (5) days of notification of the decision, appeal in writing, by completing a form provided by the Authority.

The parties agree that George Nicolau will serve as impartial arbitrator for disciplinary grievances. Should, at any time during the term of this contract, of the impartial arbitrator be unable to serve, a replacement will be selected by mutual agreement of the parties to this Agreement.

The arbitration shall take place as soon as practicable at a date agreed upon by the parties. If a date is available and the Union refuses a reasonable arbitration date, the Authority shall accrue no back pay liability. Neither party may unreasonably withhold its agreement to arbitrate a given case.

The Union and the Authority shall be given an opportunity to be heard and to submit proof as may be desired to the arbitrator. No transcript of the arbitration hearing shall be required.

All witnesses shall take an appropriate oath or affirmation prior to testifying.

Within twenty (20) days after the closing of the hearing, the decision of the arbitrator, whether it be to sustain or to overrule or modify the decision made at a Step II hearing in the procedure, shall be issued. Such decision shall be final and binding. Such decision shall be mailed to the employee and his/her representative and to the Senior Director, Labor Disputes Resolution.

The arbitrator, in rendering any opinion or determination, shall be strictly limited to the interpretation and application of the provisions of this Agreement, or of any written rule, or Policy/ Instruction of the Authority

governing or affecting employees, and it shall be without any power or authority to add to, delete from, or modify any of the provisions of this Agreement, or of such rules, or Policy/Instructions. The arbitrator shall not have the authority to render any opinion or make any recommendations:

- (i) inconsistent with or contrary to the provisions of the applicable Civil Service Laws and Regulations;
- (ii) limiting or interfering in any way with the statutory powers, duties, and responsibilities of the Authority in operating, controlling, and directing the maintenance and operation of the transit facilities, or with the Authority's managerial responsibility to run the transit lines safely, efficiently and economically;
- (iii) with respect to modification of any wage rates provided herein.

If there is presented to the arbitrator for decision any charge which, if proved in Court, would constitute a felony, or any charge involving assault, theft of Authority property, intoxication, fraud, use of Controlled Substances, or chronic absenteeism the question to be determined by the arbitrator shall be with respect to the fact of such conduct. Where such charge is sustained by the arbitrator, the action by the Authority, based thereon, shall be affirmed and sustained.

All fees and expenses of the impartial arbitrator shall be divided equally between the Authority and the Union.

D. General Provisions

1. The Authority recognizes the Union as the exclusive representative for the presenting and processing of employee grievances.

2. It is agreed that neither the filing of any complaint, nor the pendency of any grievance, as provided in this Article shall prevent, delay, obstruct, or interfere with the right of the Authority to take the action complained of, subject, of course, to the final disposition of the complaint or the grievance as provided for herein.

3. At each step of the above contract interpretation grievance or disciplinary grievance procedure, management retains the right to increase, decrease or otherwise modify the decision made at the lower level.

4. By mutual agreement, on a case by case basis, the parties may agree to by-pass any step of this procedure.

5. In computing the time within which any action must be taken under the above procedure Saturdays, Sundays and holidays shall not be counted except where otherwise specified.

6. The time limitations provided in this Section shall be strictly adhered to by employees, by the Union and by the Authority. A grievance may be denied at any level because of failure to adhere to the time limitations. In any case where the Authority does not schedule a matter for hearing or render a decision within the prescribed time limits the grievance may be appealed to the next Step of the procedure.

E. Assignment Level Procedures

1. Level II Station Supervisors shall serve a 24-month probation during which they can be reassigned to a Level I position. The probationary period shall be automatically extended by any period of absence excluding vacation leave.
2. Employees who have served for less than 36 (thirty-six) months but more than 24 (twenty-four) months at Level II may be reduced to a Level I based upon their last performance evaluation, whether annual or special, provided such overall performance evaluation rating is unsatisfactory. A special evaluation may not serve as the basis of a reduction to a level I position if made less than six months after an annual evaluation. Where an employee has been reassigned to a Level I position the employee may claim that the evaluation upon which it is based is improper or incorrect and appeal such claim only to the Vice President of Labor Relations or the designated representative of the Vice President of Labor Relations, whose decision shall be final and binding.
3. Employees who have served for 36 (thirty-six) months at Level II may be reassigned to a Level I position based upon their last performance evaluation, whether annual or special, provided such overall performance evaluation rating is unsatisfactory. A special evaluation may not serve as the basis of a reassignment if made less than six months after an annual evaluation. Where an employee has been reassigned pursuant to this paragraph the Union may claim that the evaluation upon which it is based is improper or incorrect and appeal such claim under the grievance procedure of the Agreement. The Union shall have the burden of showing the arbitrator that the evaluation was improper and incorrect.
4. The salary rate of an employee reassigned to a level I position shall receive the rate of pay such employee would have been receiving had the employee served continuously in the Level I position.
5. These provisions shall not be applicable where the Authority seeks to reassign Level II's to Level I positions based upon a reorganization, reduction in force or budget cuts. Such a reassignment will be based upon inverse seniority in the Station Supervisor, Level II position. The Authority will give the Union a minimum of thirty-(30) calendar day notice prior to any such reassignment.

Section 2.2. Hours of Work

- (a) The working time of regularly assigned employees shall be scheduled and prescribed by their superiors, but the regularly scheduled hours of work for any employees shall not exceed forty (40) hours per week or eight (8) hours in any one day.
- (b) At least two (2) consecutive days' rest during each calendar week shall be allowed to each employee, except in emergencies or when service requirements prevent it.
- (c) Notwithstanding the establishment herein of a regular work week and regular workday, employees covered herein shall work either before or after their regular workday or on a holiday or on their regular days off when directed or assigned to do so.
- (d) An employee reporting late, because of an unusual interruption of service on the New York City Transit System shall suffer no loss of pay for time lost on that account, provided such interruption as the cause of his/her lateness is established to the satisfaction of his/her superior.

Section 2.3. Overtime and Overtime Control

- (a) Employees will be eligible to receive overtime pay after forty (40) hours actually worked in a work week. Any and all time not actually worked whether paid or not paid will not count toward the forty (40) hour period and employees are not eligible for overtime if they work more than eight hours in a given day. An employee must actually work more than 40 hours in a given work week in order to be eligible for overtime pay. Overtime pay will be paid at the rate of time and one-half of the employee's regular hourly rate of pay computed from the annual salary. Employees will continue to eat lunch during scheduled work time. Time taken for lunch will be considered time actually worked for purposes of overtime.
- (b) The Authority shall develop overtime controls to insure that no employee is required or allowed, except in the case of emergency, to perform overtime work in any month which would require him/her to exceed the rolling twelve-month earnings cap agreed upon by the parties. The rolling earnings cap includes all payroll codes and any payments made during the period. The parties agree that the rolling twelve-month earnings cap shall be \$85,000.
- (c) The effectiveness of the overtime controls so established will be reviewed periodically and the Authority shall have the right to deny further overtime work to any employees whose total pay received during the previous 12-month period exceeds the salary cap until such time as a subsequent monthly overtime report demonstrates that the employee no longer exceeds the aforementioned criterion.

- (d) The Authority will undertake reasonable efforts to identify projected overtime requirements and qualified volunteers who are willing to perform such overtime work. Preference will be given to qualified employees who volunteer for overtime work, subject to the provisions of this section. The Authority will also undertake reasonable efforts to identify, from time to time, those employees who are unable to work overtime, except in the case of emergency, for good and sufficient personal reasons. Employees who are unable to work overtime will not normally be required to perform overtime work.
- (e) If at any time the efforts of the Authority fail to yield sufficient qualified volunteers for overtime work, management shall have the option to cancel the work or assign the work to qualified employees on the basis of inverse seniority, not including those employees generally unable to work overtime as set forth above.

Section 2.4. Holidays

- (a) To the extent that it may be practicable, an employee will be released from work without loss of pay on the following holidays: New Year's Day, Dr. M.L. King's Birthday, President's Day, Memorial Day, Independence Day, Labor Day, Veteran's Day, Thanksgiving Day, Christmas Day, and the employee's birthday.
- (b) Where an employee is required to work on one of these holidays or when such holiday falls on one of his/her regularly scheduled days off, or during his/her vacation period, the employee will be paid eight (8) hours additional pay for the holiday unless he/she gives prompt notice before the holiday, that he/she wishes to exercise an option to accumulate an AVA instead of receiving the additional eight (8) hours pay.
- (c) The employee shall have the option of requesting and obtaining eight (8) hours pay in cash at his/her regular straight time rate for any AVA days he/she has accumulated. Such request shall be made on a form prepared by the Authority for the purpose. For pension purposes, the payment shall not be included in the final year's earnings, except for AVA days accrued in his/her final year.
- (d) An employee excused from work on one of the stated holidays shall be paid for that holiday only if he/she reported for work on the scheduled work day before and the scheduled work day after the holiday, unless he/she is prevented by bona fide illness or for good reason is excused from so reporting. With respect to holiday pay, where an employee is scheduled to work on any of the stated holidays and the first day of his/her absence, because of a claimed illness, falls on the holiday, he/she shall, upon submitting proof satisfactory to the department head, be granted holiday pay for the first day of such absence and shall not be paid sick leave.
- (e) An employee may elect to accumulate an AVA day only if he/she does not have a total of thirty-six (36) days of AVA's and/or OTO to his/her credit.

To accumulate an AVA day, the employee must give notice thereof in writing to his/her superior in advance of the holiday.

The particular day on which he/she is to be released from work to make use of any AVA credit must be agreed upon in advance by his/her superior.

Despite the fact that the letters "AVA" stand for the words "Additional Vacation Allowance", the so-called AVA days shall in no event be added to vacations or used in a group as a vacation period. The employee shall have the option of requesting and obtaining eight (8) hours pay in cash at his/her regular straight time rate for any AVA days he/she has accumulated. Such request shall be made on a form prepared by the Authority for that purpose. For pension purposes, the payment shall not be included in the final year's earnings, except for AVA days accrued in his/her final year.

- (f) An employee who is not released from duty by order of his/her superior on one of the stated holidays and who nevertheless absents himself from work shall forfeit his/her right to any pay for the said holiday or to any other day off in lieu thereof, except that this shall not be applicable to veterans (as defined in Section 63 of the Public Officers Law) in respect to Memorial Day or Veterans' Day.
- (g) None of the foregoing provisions in this Section shall be applicable in respect to any of the stated holidays to any employee who may have been continuously absent from duty for thirty days or more, except for absence during paid vacation immediately preceding such holiday. An employee who has performed no work for the Authority during a period of thirty days or more, except for absence during paid vacation immediately preceding a holiday shall not receive any pay for the holiday or be allowed another day off in lieu thereof.
- (h) Whenever, under the provisions of this Section, an employee may be entitled to another day off, without deduction in pay, in lieu of one of the stated holidays above specified, the particular day on which he/she is to be excused from duty must be determined by his/her superior, who as far as practicable, will consider the preferences of the employee.
- (i) The Authority shall grant, each January 1, a personal leave day to all employees, on condition that the Authority may limit the number of employees who may be off from work on any one day. The Authority may issue reasonable regulations regarding the use of such personal leave day.

Section 2.5. Allowances for Time When Employee Attends Hearing or Investigation

- (a) All employees will be required, when properly directed to do so, to report to court or to the claim or law department or to attend as witnesses at trial hearings or investigations and shall not lose any pay for such attendance except if it is a hearing or departmental investigation in regard to the employee's own malfeasance or neglect of duty.

- (b) Employees required to report on their days off will be permitted another day off with pay. Where the hearing or investigation occurs before or after the employee's regularly scheduled tour of duty he/she shall be paid in accordance with the overtime provisions set forth herein, if applicable. However, if it is a hearing or departmental investigation in regard to the employee's own malfeasance or neglect of duty, the employee will not be paid for the time in attendance.

Section 2.6. Payment Where Charges are Preferred Against Employees or an Investigation is Taking Place

If charges which are preferred against an employee are not sustained, the employee will be paid at his/her regular rate of pay for the time lost by reason of such charges. If the charges are sustained, the employee will not be paid for any time lost as a result of such charges.

If an employee loses time from work by reason of an investigation that does not result in disciplinary charges, the employee will be paid for any scheduled work time lost due to participation in the investigation.

Section 2.7 Leave of Absence for Death in Family

At the time of death in any employee's immediate family, he/she shall, upon submitting satisfactory evidence to the Department Head, be granted a leave of absence, with pay, on each such day, not to exceed three (3) working days. Such leave shall not be charged to any other allowance such as vacation, sick leave or holiday. "Immediate family" shall mean for this purpose, "a spouse; natural, foster, or step parent; mother-in-law, father-in-law; child, brother, sister; natural grandparent; and any person residing in the household". "Any person residing in the household" is to be interpreted as meaning a person related by family ties, with permanent residence in the household.

Section 2.8. Vacations

- (a) A vacation with pay will be granted each year to each employee as hereinafter provided, at such time within the year as the Authority shall fix and determine. The twelve month period within which such vacations will be granted and allocated is referred to in this Section as the vacation year. The vacation year will be either the calendar year, or a year commencing the first day of May in a calendar year and ending on the thirtieth day of April of the following calendar year, as the Authority may determine to be appropriate for the particular department or section of a department provided that the Authority gives the Union three months notice if it seeks to change the calendar year for any group of employees. Vacations may be spread over the entire twelve months of the vacation year whenever the Authority deems this advisable in the interest of efficiency or economy. The amount of vacation allotment in weeks or days will be computed on the basis of the time and duration of active employment prior to the beginning of the vacation year. For the purpose of this Section, periods of leave of absence without pay

for one month or more, except where such leave of absence shall have been for ordered military duty, shall not be deemed to be active employment.

(b) Each employee in an annually rated title subject to this Agreement, and in the representation unit represented by the Union, shall receive the following vacation:

1. If, at the beginning of his/her vacation year he/she shall have been actively in the employ of the Authority in connection with the maintenance and operation of any transit facility now forming part of the New York City Transit System for one (1) year, but not for more than three (3) years, but not for more than one (1) year in an annually rated title subject to Working Conditions, he/she shall be granted a vacation of two (2) weeks in each such vacation year.
2. If, at the beginning of his/her vacation year he/she shall have been actively in the employ of the Authority in connection with the maintenance and operation of any transit facility now forming part of the New York City Transit System for one (1) year but not for more than three (3) years, but shall have been actively employed for more than one (1) year in an annually rated title subject to this Agreement, he/she shall be granted a vacation of three (3) weeks in each such vacation year.
3. If, at the beginning of his/her vacation year he/she shall have been actively in the employ of the Authority in connection with the maintenance and operation of any transit facility now forming part of the New York City Transit System for more than three (3) years, he/she shall be granted a vacation of four (4) weeks in each such vacation year.
4. If, at the beginning of his/her vacation year he/she shall have been actively in the employ of the Authority in connection with the maintenance and operation of any transit facility now forming part of the New York City Transit System for more than ten (10) years in an annually rated title subject to this Agreement, or thus actively in the said employ for more than fifteen (15) years, he/she shall be granted a vacation of five (5) weeks in each such vacation year.

(c) An employee subject to this Agreement who, during the preceding vacation year, shall have been on leave of absence without pay, except ordered military duty, shall be granted a vacation with pay on the following basis:

1. An employee otherwise entitled to a vacation of two (2) weeks shall be granted a vacation with pay of one (1) day per month for each month or the major portion thereof he/she shall have worked during the preceding vacation year, but not more than two (2) weeks.
2. An employee otherwise entitled to a vacation of three (3) weeks shall be granted a vacation with pay of one and one-half (1-1/2) days per month for each month or the major portion thereof he/she shall have

worked during the preceding vacation year, but not more than three (3) weeks.

3. An employee otherwise entitled to a vacation of four (4) weeks shall be granted a vacation with pay of two (2) days per month for each month or the major portion thereof he/she shall have worked during the preceding vacation year, but not more than four (4) weeks.
 4. An employee otherwise entitled to a vacation of five (5) weeks shall be granted a vacation with pay of two and one-half (2-1/2) days per month for each month or major portion thereof he/she shall have worked during the preceding vacation year, but not more than five (5) weeks.
- (d) For the purpose of determining the length of active employment upon which is based the allowance provided in paragraphs (b) and (c) any leave of absence without pay and any break in service of less than one year, shall not be considered as interruptions in continuous employment, except however, that an employee who, for any reason, leaves the employ of the Authority and returns within one year, will be considered a new employee for the purpose of computing his/her vacation allowance as provided above during the vacation year immediately following the one in which he/she is reinstated.
- (e) Terminal vacation with pay shall be allowed any employee in an annually rated title subject to this Agreement and in the representation unit represented by the Union, in addition to any vacation due him/her under paragraphs (b) and (c) above, (A) where the employee's services are terminated or suspended through no fault of his/her own or because of his/her induction into the Armed Forces of the United States, or (B) where the employee, who is resigning or retiring of his/her own volition and not because of, or in anticipation of disciplinary action against, shall, prior to separation from service make a request therefor, such terminal vacation shall be computed as follows:
1. An employee otherwise entitled to a vacation of two (2) weeks shall be granted terminal vacation of one (1) day for each complete calendar month worked in that vacation year prior to the date of separation, but not exceeding two (2) weeks.
 2. An employee otherwise entitled to a vacation of three (3) weeks shall be granted terminal vacation of one and one-half (1-1/2) days for each complete calendar month worked in that vacation year prior to the date of separation, but not exceeding three (3) weeks.
 3. An employee otherwise entitled to a vacation of four (4) weeks shall be granted terminal vacation of two (2) days for each complete calendar month worked in that vacation year prior to the date of separation, but not exceeding four (4) weeks.

4. An employee otherwise entitled to a vacation of five (5) weeks shall be granted terminal vacation of two and one-half (2-1/2) days for each complete calendar month worked in that vacation year prior to the date of separation, but not exceeding five (5) weeks.
- (f) No additional vacation allowance or terminal vacation shall accrue to an employee for the period of such terminal vacation.

No terminal vacation shall be granted for sick leave with pay, vacation or overtime offset credits used immediately prior to any terminal vacation granted under this paragraph, except that an employee who retires under either the IRT, BMT or City pension plan shall be entitled to credit as time worked for each month or major portion of a month prior to his/her retirement while he/she is on regular vacation.

Terminal vacation shall be paid on the basis of eight (8) hours per day. No additional payment shall be made because of any run or tour in excess of eight (8) hours in a day by which an employee may have been paid prior to the period of terminal vacation.

No holiday pay shall be granted for any of the stated holidays provided under Section 8, which may fall within the period of such terminal vacation. An employee who has not worked during a vacation year shall not receive any terminal vacation if he/she is separated from the service during such year. The allowance of such terminal vacation shall be conditioned, however, upon an Agreement by the employee to whom it is granted that should he/she return to the service of the Authority before the end of the following vacation year, the number of terminal vacation days so allowed to him/her shall be deducted from any vacation he/she may be entitled to take in such following year after returning.

- (g) During the vacation period each employee will be allowed vacation pay equal to what he/she would have earned had he/she been working during that period on his/her regular work schedule. If entitled to shift differential same will be paid for vacation period. Overtime work planned ahead shall not be considered part of the employee's regular work schedule.
- (h) In the event of a change in the date of commencement of the vacation year for any department or section of a department or any class or group of employees, so that the vacation year shall commence on the first day of January instead of the first day of May, the allocations of vacation time that have been announced previous to such action by the Authority will remain unchanged, except for those whose allocated vacation time is within the first four months of the following calendar year. If such change should occur, a computation of vacation allowances within the new vacation year, based on the time of employment by the Authority up to the beginning of such year, will be made and published in the month of November, and a selection and allocation of vacation time during the next vacation year will be made in accordance with the usual methods and practices governing allocation of vacation time. Those employees who had previously

selected or had previously been allocated vacation time during the months of January, February, March or April, as their vacation time for the old vacation year which commenced the preceding May, will have a preferential right to hold and retain such allocations of vacation time for the vacation to be had in the new vacation year, if they so desire, but all those who do not make known such desire will participate in a new selection and allocation of vacation time for the new vacation year commencing the first day of January.

For all such allocations, the basic principle as to the length of vacation set forth in paragraphs (b) and (c) of this Section will govern vacation time allowable. No employee will be allowed two periods of vacation time in the same calendar year because of such change in the date of commencement of the vacation year, unless the Authority, upon a review of the facts in the particular case, determines that an exception should be made.

- (i) The annual vacation allowance will not be accruable and will not be carried over from one year to another except if the employee is hospitalized during a scheduled vacation.
- (j) An employee who is not working but who is being granted leave whether paid or unpaid will not be granted any vacation allowance during the continuance of such leave. He/she must be in active service, i.e. actually working, immediately preceding the period for which he/she is granted a vacation. In the event, however, that an employee is taken sick and on that account stops work before he/she has had his/her vacation for the vacation year in which the illness commences, he/she may elect subject to approval by the head of his/her department, to take such vacation as provided in Section 2.9 (q). When a leave of absence due to illness, begins in one vacation year and extends into the next succeeding vacation year, an employee may, subject to approval by the head of his/her department, elect to take the vacation due him/her in such later vacation year as provided in Section 2.9 (q). However, such election under this rule and under Section 2.9 (q), shall apply only to the complete vacation due the employee at the time of his/her request, and no grant shall be made of only a portion of a vacation allowance.
- (k) An employee who is dismissed on charges, or who resigns while on charges or in anticipation thereof, shall not have the date of termination of his/her employment postponed to allow him/her any vacation pay whatever whether he/she shall have previously had a vacation in that vacation year or not.
- (l) While a permanent employee is away in any year, on military duty, he/she will be treated as continuing in the employ of the Authority for the purpose of determining how much vacation he/she is entitled to take in the following vacation year should he/she return to the active service of the Authority during that year. Upon his/her return before the end of that year, he/she shall, to the extent that the time intervening between his/her return and the end of the year may permit, be entitled to take before the end of the vacation year such vacation as he/she would have been entitled to take in that year had he/she not been away on military leave, less such part thereof as he/she may have been allowed at

the time of his/her induction into the armed forces. He/she shall not, however, carry over to a subsequent vacation year a vacation which he/she may have missed because of being away on military leave of absence.

- (m) Employees may be granted advance payment of vacation allowance.
- (n) The use of any vacation allowance provided by this section shall not be anticipated unless authorized by the Authority.
- (o) An employee who, during the vacation year, is in service part of the time in a position to which this Agreement is not applicable and part of the time in a position to which it is applicable shall accrue annual leave allowances in accordance with the terms of this Agreement for each month during the major part of which he/she served in a position to which this Agreement is applicable, and shall accrue an annual leave allowance for each month during the major part of which he/she served in a position to which this Agreement is not applicable in accordance with the rules and regulations applicable to such other position.

An employee shall, in each vacation year, be granted his/her total accrued leave allowance regardless of the title in which he/she is serving at the time he/she takes his/her annual leave allowance.

- (p) Subject to the needs of the service, an employee may be allowed the option to use ten (10) of his/her vacation days each year as single personal leave days, subject to departmental regulations.

Section 2.9. Sick Leave

- (a) Subject to the limitations hereinafter set forth, the Authority will grant to every employee, who shall have been in its employ for at least one year, sick leave with pay on each working day when he/she is unfit for work on account of illness, up to a total in any one year, of twelve days. Unused sick leave may be carried over to a subsequent year.
- (b) Subject to the limitations hereinafter set forth, the Authority will grant to every employee in its employ less than one year, sick leave with pay on each working day when such employee is unfit for work on account of illness, up to a total of one day per calendar month during which, or the major part of which, the employee shall have been in such employ.
- (c) The term "year" as used in this Section, shall mean a period of twelve months beginning on the first day of May and ending on the following thirtieth day of April.

- (d) For the purpose of this Section, an employee shall not be deemed to have been in the employ of the Authority during a period of leave of absence without pay except where such leave of absence shall have been for ordered military duty.
- (e) For any day on which sick leave with pay is granted to an employee, the pay to be allowed him/her shall be the same as if he/she had worked in accordance with his/her regular work schedule for that particular day, as such schedule stood at the time of the commencement of his/her illness, but the term "regular work schedule" shall not be deemed to include any overtime work which may have been planned ahead.
- (f) Sick leave shall not run concurrently with vacation and will not be granted in respect to any of the ten (10) holidays specified in Section 2.5 or in respect of any day which is the employee's regular day off.
- (g) In order to be granted a paid or unpaid leave of absence on account of illness, an employee must file a written application therefor, on a form provided by the Authority, within three (3) days after his/her return to work, but this form may be filed during the period of his/her absence if such absence is for an extended period. The application for sick leave must include a true statement of the cause of the applicant's absence from work, including the nature of his/her illness or disability, and must be made to the Authority through the applicant's appropriate superior. If the application is for more than two (2) days, it must comply with the provisions of paragraph (i) of this section.
- (h) No sick leave will be granted for illness due to indulgence in alcoholic liquors or narcotics except as permitted by the Authority policy.
- (i) The burden of establishing that he/she was actually unfit for work on account of illness shall be upon the employee. Every application for sick leave, whether with or without pay, for more than two days, must be accompanied by medical proof satisfactory to the Authority and upon a form to be furnished by the Authority, setting forth the nature of the employee's illness and certifying that by reason of such illness the employee was unable to perform his/her duties for the period of the absence. This paragraph will not in any way relieve the employee from complying with paragraphs (k) and (l) of this section, as well as subdivision (c) of Rule 5 of the Authority's Rules and Regulations.
- (j) To be entitled to sick leave for any day on which he/she is absent from work because of illness, an employee, except where it is impossible to do so, must, at least one hour before the commencement of his/her scheduled tour of duty for that day, cause notice of the illness and of the place where he/she can be found during such illness, to be given by telephone, messenger, or otherwise, to his/her appropriate superior, and must also give notice to such superior of any subsequent change in the place where he/she can be found. Where it is impossible to give such notice within the time above prescribed, it shall be given as soon as circumstances permit. The failure to cause

such notice to be given shall deprive the employee of his/her right to be paid for such scheduled tour of duty and he/she shall not be entitled to pay for any subsequent tour of duty from which he/she absents himself unless at some time, not less than one hour prior to the commencement of such tour of duty, he/she shall have caused such notice to be given. The failure to cause notice to be given as herein provided shall not be excused unless the Authority is convinced that special circumstances made it impossible and is also convinced that notice was given as soon as the special circumstances permitted.

- (k) If a representative of the Authority calls at the place where the absent employee gave notice that he/she could be found during his/her illness, or in the absence of such notice, calls at the home of the absent employee and cannot find him/her, the absent employee will be deemed to be absent without leave. Such employee will not be granted sick leave and will be subject to appropriate disciplinary action.
- (l) When an employee is out sick and is visited by a doctor of the Authority who finds the employee able to work, there will be no deduction made for that day in the current pay period but the Authority may deny payment after review and deduct pay for such day in a subsequent pay period.
- (m) No sick leave with pay will be granted for less than one-quarter of a day at a time. An employee who under this Article is not entitled to sick leave with pay for the first working day in any period of leave of absence for illness and who works part of his/her scheduled tour of duty, but, because of such illness, does not work the balance thereof, and continues absent because of such illness beyond the start of his/her next regularly scheduled tour of duty, shall be granted sick leave with pay for that part of the second day of such absence which follows the equivalent time at which he/she ceased work on the day on which he/she became ill. In the event that a paid absence of less than one full day is to be charged against unused sick leave allowances, the following table of computation shall be used:

One-fourth (1/4) of a day if he/she was on duty more than 5 hours on the day during which his/her services were interrupted by illness;

One-half (1/2) of a day if he/she was on duty more than 3 hours but not more than 5 hours on such day;

Three-fourths (3/4) of a day if he/she was on duty as much as 1 hour, but not more than 3 hours, on such day;

One (1) full day if he/she was on duty less than 1 hour on such day.

If his/her work schedule on such day includes a paid meal period and he/she worked all of that part of his/her tour of duty which precedes his/her scheduled meal period,

or all of that part of his/her tour of duty which follows his/her scheduled meal period, the meal period will be treated as time on duty in determining the charge to be made against his/her sick leave allowance.

- (n) An employee who is found to be in violation of the rules set forth in this Article governing sick leave allowances shall, in addition to being subject to the denial of sick leave, also be subject to appropriate disciplinary action. Any serious violation, or persistent infractions, or a fraudulent claim for sick leave may result in dismissal from the service.
- (o) Time of absence from work while incapacitated by injury received in performance of duty will not be charged against the sick leave allowable under this Section.
- (p) No sick leave will be granted to an employee who is unfit for work on account of an accident incurred while working for an employer other than the Authority.
- (q) An employee who has exhausted all his/her sick leave allowances at full pay, may elect subject to the approval of the head of his/her department to use any current vacation or accrued AVA days to which he/she may be entitled, in their entirety. If such absence is expected to continue beyond the end of the vacation year, the employee's leave of absence with pay for illness shall be interrupted for a sufficient number of days so that he/she may be paid for any remaining current vacation before the expiration of the vacation year. The employee must provide adequate medical evidence to show that the entire period of absence including vacation and AVA days used under this paragraph was the result of one continuous absence.

Section 2.10. Injury on Duty

- (a) An employee incapacitated from performing any type of available work as a result of an accidental injury sustained in the course of his/her employment will be allowed, for such period or periods during such incapacity as the Authority may in each case determine, a differential payment which shall be sufficient to comprise, together with any Workers' Compensation payable to him/her under the provisions of the Workers' Compensation law an amount after taxes equal to his/her tax after wages for a forty (40) hour work week.

If the Workers' Compensation payment granted pursuant to law is equal to or greater than the amount the employee was receiving prior to the period of incapacity, after taxes, for a forty (40) hour work week, the employee shall not receive any differential payments. If the absence for which he/she is to be allowed pay as herein provided occurs two years or more after the date of the original accident, the allowance shall be based upon an amount equal to seventy (70) percent of his/her earnings on the date of the original accident as set forth herein.

- (b) In no case will an employee be granted the allowance above mentioned or be paid more than he/she is entitled to receive under Workers' Compensation Law unless he/she voluntarily, and without any additional allowance therefor, submits from time to time, as he/she may be requested, to physical examinations by the Authority's designated physician. Should he/she at any time after the Authority's determination to grant any allowance under the provisions of this Section, refuse to submit to examination by said designated physician or if, upon examination he/she is adjudged by such Medical Department or designated physician to be able to perform either his/her own work or lighter work which is offered to him/her and he/she should fail or refuse to perform the same, such refusal shall automatically effect a revocation of any and all allowances theretofore granted to him/her under this Section, and to the extent that the amount of any such allowance shall have already been paid to him/her it shall be treated as an advance payment of, and shall be deducted from, whatever monies may thereafter become due and payable to such employee.
- (c) If, as a result of an injury sustained in the course of his/her employment, an employee is adjudged by the Authority's designated physician to be disqualified for the work of his/her own position but qualified for lighter work in another position, and if he/she is assigned to and performs such lighter work he/she will be paid in accordance with Authority policy. The amount of any Workers' Compensation payable for the period or any part of the period during which he/she so works will be deducted from his/her pay for the work.
- (d) No increase, by way of increment or otherwise, shall be made in the rate of pay of any incapacitated employee during the period of his/her incapacity, or until he/she returns to work in the same position which he/she held prior to the period of incapacity, at which time his/her regular rate of pay will become what it would have been had he/she remained continuously in active service.

No differential pay shall be granted:

- (1) Unless the employee sustained an accidental injury while engaged in the performance of his/her assigned duty for the Transit Authority and such accidental injury was the direct cause of the employee's incapacity for work.
- (2) If the employee tests positive for alcohol, drugs or controlled substances which testing was initiated by the incident which caused the harm or the injury to the employee.
- (3) If the employee failed to report for any work within title when directed that they are medically qualified to perform.
- (4) If the employee does not give due notice of the accident or does not report to the Authority's designated physician(s) for examination or

re-examination when told to do so. This provision shall not be used to require an employee to report for examination at unreasonable times and frequency.

(e) When the question arises as to the granting of differential pay under this section to an employee who has been absent from work on account of injury in the course of his/her employment, the Director of Workers Compensation of the Authority or his/her designee shall certify that the following conditions have been met:

- 1) That the employee was actually performing work for the Authority at the time of the accident.
- 2) That the accidental injury is the direct cause of the employee's incapacity for work.
- 3) That the employee did not test positive for alcohol, drugs or controlled substances on tests initiated as a result of the incident.
- 4) That the employee gave due notice of the accident.
- 5) That the employee was duly examined by the Authority's designated physician after the accident.
- 6) That the employee did return for re-examination on every occasion when directed by the Authority or its designated physician.
- 7) That the employee did report for any work within title which he/she was deemed medically qualified to perform.

(e) In certifying that the conditions as aforesaid have been met the Director of Workers Compensation of the Authority or his/her designee in addition to using the information available to him/her from the files in his/her bureau may call upon the System Safety Department, the Medical Department, and any other bureau or department of the Authority to furnish in writing to the said Director of Workers Compensation such facts and information as he/she may deem necessary to properly make such certification. The Director of Workers Compensation or his/her designee may call for such facts and information and the System Safety Department, the Medical Department and all other bureaus and departments of the Authority shall furnish the facts and information so called for by said Director of Workers Compensation or his/her designee.

(f) Following certification of the above, the Director of Workers Compensation or his/her designee, shall have the power, subject to and in accordance with the provisions above set forth, to grant differential pay.

Section 2.11. Jury Duty

- (a) An employee required to perform jury duty which in any way interferes with his/her regular working hours will be granted a leave of absence with pay not to exceed eight (8) hours per day at the regular straight time pay rate, provided such employee endorses all checks received in payment for such jury service to the Authority.
- (b) Pay for such leave of absence for an employee shall be the same as if he/she had worked in accordance with his/her regular work schedule for each day included in such leave of absence. The term "regular work schedule" shall not be deemed to include any overtime work which may have been planned ahead.
- (c) Fees received for a jury duty performed by an employee during such employee's days off or vacation may be retained by the employee. When it is necessary for an employee to absent himself from any part of his/her work in order to qualify for jury duty, he/she will be granted a leave of absence with pay for such length of time as may be necessary for that purpose, not exceeding, however, four (4) hours.
- (d) An employee whose Jury Service Fees are in excess of his/her regular base earnings for the period of absence while on Jury Duty, will have such excess reimbursed to him/her. Jury service fees shall include travel allowances granted by City and State Courts, but shall not include travel allowance of other courts.
- (e) When an employee is required to be on Jury Duty, his/her Schedule Days Off shall be changed to Saturday and Sunday during the period of time he/she is on Jury Duty. In all other respects the controls and administration of Jury Duty shall continue.

Section 2.12. Leaves of Absence With Pay

- (a) Ordered Military Duty

Leaves of absence with or without pay, according to requirements of the law, will be granted to employees for the performance of ordered military or naval duty in accordance with the provisions of state statutes applicable thereto.

- (b) State Or National Conventions Of Veterans' Organizations:

- (1) A leave of absence with pay will be granted to an employee who is a member of a veteran's organization composed of veterans of wars in which the United States has participated and who has been designated as an official delegate to attend a state or national convention or encampment of such organization customarily held in the summer and fall of each year, commonly referred to as an annual convention.

- (2) Leave of absence with pay will be granted for the period of attendance at such state or national convention or encampment, including normal traveling time by rail to and from same provided the employee obtains and, upon his/her return, files with the Authority, through his/her department head, a certificate by the Secretary or other authorized official of the organization certifying that such employee was duly designated as an official delegate to said convention or encampment and as such delegate, was in attendance thereat for the specific period of time allowed, and further provided that such leave of absence may be granted without impairing the essential services of the transit system.
- (3) Leave of absence will not be granted where the employee desires to attend such convention in a capacity other than that of official delegate thereto.
- (4) An employee who is a member of more than one of said organizations shall be entitled to leave of absence as aforesaid to attend the state or national convention or encampment of only one such organization, to be designated by him/her.
- (5) Employees engaged in the operation of the New York City Transit System desiring such leave of absence must make application therefor on the proper form at least two (2) weeks in advance of the time when such leave is to take effect.
- (6) The appropriate Vice President is authorized to approve applications for leave of absence with pay submitted in compliance with the above rules.

Section 2.13. Expression of Preference for Assignment

The Authority shall have the right to assign employees represented by the Union. Employees represented by the Union will have the right to express preferences by seniority regarding tours, hours of work, location, and regular days off (RDO), but such expressed preferences shall not be binding on the Authority in any way. Within departmental work locations, employees shall have the right to pick vacation schedules on the basis of seniority, consistent with the needs of service. Management may fill non-field positions by posting notices and soliciting resumes. Such positions will not be posted on the preference selection.

Section 2.14 Leaves of Absence Not To Be Granted to Perform Work Outside the Authority's Employment

- (a) Leaves of absence will not ordinarily be granted to enable an employee to engage in other employment than that of the Authority. Proof of such other employment, without the consent of the Authority, during an employee's assigned working hours will be regarded as an abandonment by the employee of his/her position with the Authority and will be grounds for dismissal of the employee from the service of the Authority.
- (b) Likewise, if work performed for another employer outside of the time assigned to an employee for his/her work for the Authority causes him/her to be unfit for the efficient performance of his/her work for the Authority, this will constitute neglect of duty and delinquency and will be punishable by dismissal from the service of the Authority.

Section 2.15 Tuition Reimbursement

NYC Transit's tuition reimbursement program will continue to apply to the Level II title. Any change in policy to all those covered by the program will be noticed to the Union in writing.

Section 2.16

An employee who has been injured in the course of his/her employment and who is required to report for treatment by the Authority's Medical Staff or to attend hearings at the Workers' Compensation Board because of injuries to himself but not as a witness, during his/her time off between two tours of duty, will be allowed a maximum of three and one half (3 1/2) hours offset time for so reporting. If such an employee is required, while on duty to attend a hearing at the Workers' Compensation Board because of injuries to himself, but not as a witness, no deduction shall be made from his/her pay or time necessarily consumed for such hearing, provided, however, that such employee obtains an attendance slip from the Authority attorney which sets forth the time of arrival and time of departure from such hearing.

Section 2.17 Instructions

When an employee is required to report for staff meetings, schooling or other group instructions outside of his/her regularly scheduled tour of duty, he/she shall be allowed offset time equal to the number of hours actually spent in such meetings or class. Where such classes occur before or after the employees regularly scheduled tour of duty he/she shall be paid at straight time rather than as overtime or compensatory time. In any case where there is a substantial gap between the employee's tour of duty and his/her required attendance at staff meetings, schooling, or other group instruction outside of his/her tour of duty, the Union may discuss with management the question of additional offset time for the time intervening between the conclusion or start of the employee's tour of duty and the required attendance at staff meetings, schooling or other group instruction. However, when an employee who, because of errors and dereliction in the performance of his/her duties, is properly required in disciplinary proceedings to report for schooling or instruction, he/she shall receive no allowance therefor. An employee attending classes voluntarily for his/her own benefit will do so on his/her own time without any allowance.

Section 2.18 Transportation Pass

The transportation pass benefit will not be reduced.

Section 2.19 Union Bulletin Boards

The Union may post notices on bulletin boards in places and locations where notices usually are posted by the Employer for the employees to read. All notices shall be on Union stationary, and shall be used only to notify employees of matters pertaining to Union affairs. Upon request to the responsible official in charge of the work location, the Union may use Employer premises for informal meetings during employees' lunch hours, subject to availability of appropriate space and provided such meetings do not interfere with Authority business.

Section 2.20

No charge shall be made against pension credit for Union officers for time spent on unpaid Union business under the same conditions and requirements as exist for officers of Transport Workers Union, Local 100.

Section 2.21

The Authority will provide a \$50,000 payment to cover the death of an employee covered by the terms of this agreement occurring as a result of an assault or robbery in the line of duty.

The terms of the instant agreement are subject to ratification by the Union and approval by the MTA Board. The terms of this agreement shall go into effect prospectively commencing the day of approval by the MTA Board.

IT IS AGREED BY AND BETWEEN THE PARTIES THAT ANY PROVISION OF THIS AGREEMENT REQUIRING LEGISLATIVE ACTION TO PERMIT ITS IMPLEMENTATION BY AMENDMENT OF LAW OR BY PROVIDING ADDITIONAL FUNDS THEREFORE, SHALL NOT BECOME EFFECTIVE UNTIL THE APPROPRIATE LEGISLATIVE BODY HAS GIVEN APPROVAL. IT IS FURTHER AGREED THAT THE PARTIES WILL JOINTLY SEEK SUCH APPROVAL WHERE REQUIRED.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals as of the _____ day of June _____, 1999.

APPROVED AS TO FORM

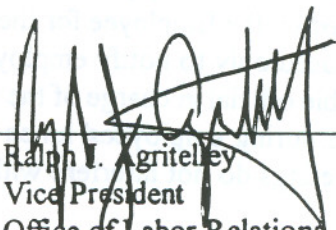
NEW YORK CITY TRANSIT AUTHORITY

By: _____
Martin Schnabel
Vice President and General Counsel

By: _____
Lawrence G. Reuter
President

Date: _____

Date: _____


By: 
Ralph L. Agriteley
Vice President
Office of Labor Relations

Date: _____

APPROVED AS TO FORM

TRANSIT SUPERVISORS ORGANIZATION

By: _____
David Rosen
General Counsel

By: 
Robert Romaine
President

Date: _____

Date: _____

APPENDIX A

Pay Schedules

Title

Station Supervisor II

10/1/96

Entrance	\$54,905
7 th	\$55,711
2 nd Year	\$59,378
3 rd Year	\$63,048

APPENDIX B-1

NEW YORK CITY TRANSIT AUTHORITY DRUGS AND CONTROLLED SUBSTANCES POLICY/INSTRUCTION

1.0 POLICY

- 1.1 It is the policy of the Authority to operate and maintain its transportation facilities in a safe and efficient manner and to provide a safe work environment for its passengers and employees. Possession or the use of Drugs and Controlled Substances that may prevent an employee of the Authority from performing the duties of his/her job safely and/or efficiently is prohibited. In addition, it is the policy of the Authority to provide eligible employees the opportunity to rehabilitate themselves by use of counseling services as provided in this policy.

2.0 PURPOSE

- 2.1 The purpose of this P/I is to set forth policies and the procedures concerning employee possession or use of Controlled Substances or Drugs, as defined in paragraph 4.0.

3.0 SCOPE

- 3.1 This P/I shall apply to all TSO represented employees.
- 3.2 Authority - For the purpose of this P/I shall mean the New York City Transit Authority, Manhattan and Bronx Surface Transit Operating Authority, Staten Island Rapid Transit Operating Authority and/or the South Brooklyn Railway Company.

4.0 DEFINITIONS

- 4.1 Controlled Substances - drugs or substances listed in Public Health Law Section 3306, including but not limited to marijuana (marijuana), heroin, LSD, concentrated cannabis or cannabinoids, hashish or hash oil, morphine or its derivatives, mescaline, peyote, phencyclidine (angel dust), opium, opiates, methadone, cocaine, quaaludes, amphetamines, seconal, codeine, phenobarbital, or valium.
- 4.2 Drug - Any substance which requires a prescription or other writing from a licensed physician or dentist for its use and which may impair an employee's ability to perform his/her job or whose use may pose a threat to the safety of others.
- 4.3 Marijuana - (Marijuana) - means all parts of the plant of the genus Cannabis, whether growing or not; the seeds thereof; the resin extracted from any part of the plant; and

every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds or resin. It does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination.

- 4.4 Medical Authorization - A prescription or other writing from a licensed physician or dentist for the use of a Drug in the course of medical treatment, including the use of methadone in a certified drug program.

5.0 REPORTING AND TESTING OF CONTROLLED SUBSTANCES, DRUGS AND MARIJUANA

Reporting

- 5.1 Each employee is under an affirmative obligation to report to the Authority's medical department his/her use or possession of any Controlled Substance or Drug. Each employee must also report the use of any other drug or substance, whether or not used pursuant to proper medical authorization, which may impair job performance or pose a hazard to the safety of others. Questions concerning the effect of a Drug on performance should be referred to the Authority's Medical Department.
- 5.2 Each employee shall provide evidence of medical authorization upon request. The failure to report the use of such Drugs or Controlled Substances to the Medical Department as described in 5.1 above, or the failure to provide evidence of medical authorization upon request will result in disciplinary action and may be deemed proper grounds for dismissal. The Medical Department shall notify the employee's Department Head as appropriate.
- 5.3 Employees of the Authority shall submit to Drug screening testing when ordered to do so in the following circumstances:
- 5.3.1 Back-to-work physical following extended illness, suspension or unauthorized absence, (21 or more days);
 - 5.3.2 Biannual and/or annual periodic physicals if applicable to the title;
 - 5.3.3 Physical examinations for promotion to a safety-sensitive position;
 - 5.3.4 When directed by members of supervision or management following any accident or unusual incident that occurs while on duty where it is reasonable to conclude that drug/alcohol use could have contributed to the accident or unusual incident, except that employees in the clerical unit shall only be tested following an incident where there is reasonable suspicion of drug use.

- 5.3.5 When a Drug or Controlled Substance has been identified in a prior test, and less than one year has elapsed since the employee's successful completion of the EAP, and, where applicable, the employee has been restored to duty;
- 5.3.6 When supervision or management has reason to believe that the employee is impaired by virtue of being under the influence of alcohol, Controlled Substances, including marijuana, Drugs or any other substance.
- 5.3.7 When the employee is classified as safety-sensitive and is selected pursuant to the random testing program.

6.0 USE OR POSSESSION OF CONTROLLED SUBSTANCES, DRUGS AND MARIJUANA

Use or possession of Controlled Substances, including marijuana, and/or Drugs is strictly prohibited.

- 6.1 Except as set forth in paragraph 6.7 inclusive use or possession of any Controlled Substance, as that term is defined in Section 4.0, DEFINITIONS, in violation of this P/I is strictly prohibited and will result in dismissal from service. Use or possession of any Drug, as that term is defined in Section 4.0, DEFINITIONS, in violation of this P/I is strictly prohibited and may result in dismissal from service.
- 6.2 Refusal to take such test(s) as provided for under paragraph 5.3 herein will be deemed an admission of improper use of Controlled Substances or Drugs and will result in dismissal from service. The provisions of Section 9.0 shall not apply to employees dismissed under this paragraph.

Refusal to take a random drug test is treated under Section 10.3.
- 6.3 Any employee voluntarily reporting his/her use of Drugs or Controlled Substances may be temporarily reassigned, transferred or placed on a leave in accordance with the Authority's restricted duty policy.
- 6.4 When the testing is positive for controlled substances or drugs, including marijuana, and the employee has less than one year of service, he/she shall be dismissed. The provisions of Section 9.0 shall not apply to employees dismissed under this paragraph.
- 6.5 When the testing is positive for drugs or controlled substances, excluding marijuana, for an employee with one or more years of service, the employee shall be dismissed.
- 6.6 An employee, with more than one (1) year of service, who tests positive for the first time for drugs or alcohol under the random drug testing program shall be treated in accordance with the provisions of Section 10.1.

- 6.7 When the testing is positive for marijuana for an employee with one (1) or more years of service, the employee will be referred to the Employee Assistance Program (EAP) and will be required to participate in counseling. Failure to participate in counseling shall result in dismissal. The provisions of Section 9.0 shall not apply to employees dismissed under this paragraph. In the event of an incident, the employee shall be disciplined for any misconduct or improper performance relating to the incident only, in accordance with existing rules, regulations and policies of the Authority.

An Employee who is referred to the EAP pursuant to this paragraph shall be relieved of his or her responsibilities and placed on no work status without pay. The employee may request use of accrued sick leave balances pursuant to the provisions of the collective bargaining agreement. EAP must certify, in writing, that the employee is drug free and eligible for restoration to duty. EAP will notify the Authorities, in writing, when the employee has completed its program. The employee must also prove that he or she is drug free (by means of an Authority administered urine test) before he or she is returned to duty.

- 6.8 If an employee who has tested positive for marijuana for the first time has been certified by EAP as drug free and if the Authority administers a drug test to the employee; the results from the test shall be obtained by the Authority within 72 hours. If the Authority fails to obtain a result, the employee shall be returned to pay status after 72 hours, pending receipt of test results, provided that the test result is negative.
- 6.9 When the testing is positive for marijuana for an employee with one (1) or more years of service, following an incident that resulted in harm or injury to any person where it is reasonable to conclude that drug usage could have contributed to the incident, the employee shall be dismissed. The provisions of Section 9.0 shall not apply to employees dismissed under this paragraph.
- 6.10 In the event that an employee tests positive for drugs, including marijuana, and/or alcohol a second time as a result of any alcohol and/or drug testing, including a random test, the employee shall be dismissed without restoration, except that when the second positive test occurs more than one year after the employee's restoration to duty following the first positive test, the employee will be eligible for restoration to an available, budgeted non-safety sensitive position if he/she again completes rehabilitation as described in section 8.0 and 9.0. The employee will be paid the applicable rate of the non-safety sensitive position as per the collective bargaining agreement. The employee will be reclassified and assigned to the non-safety sensitive position in accordance with the procedures defined in the restricted duty policy. Section 2.16 does not apply herein.
- 6.11 An employee who tests positive a third time shall be dismissed without the opportunity for restoration.

7.0 PROCEDURES FOR MAKING BLOOD OR URINE SAMPLES AVAILABLE FOR CONFIRMATION TESTING

Employees whose drug screening tests result in a positive finding shall have the option of having the results confirmed outside of the laboratories utilized by the Authority.

When an employee or his/her representative requests that a urine sample or a frozen blood sample be sent for confirmation testing outside of the laboratories utilized by the Authority, the following procedure shall apply:

- 7.1 The employee shall submit a written request to the Labor Disputes Resolution Section of the Labor Relations Department including the employee's name, pass number, the date on which the samples were given. An employee will be allowed five (5) weeks from the date the results of the initial tests are reported to the employee to request a confirmation retest from another laboratory.
- 7.2 Requests for confirmation of test results can only be honored if the employee chooses to give sufficient samples at the time of the original examination.
- 7.3 The employee may choose to send his/her sample to any one of the laboratories that appear on a list which is maintained by the Labor Disputes Resolution Section of the Labor Relations Department. Where an employee chooses to send his/her sample to a laboratory that does not appear on the above list, Section 7.7 shall not apply. However, the Authority shall receive a copy of the laboratory test results.
- 7.4 The selected laboratory shall be responsible for the pick-up and transport of the sample.
- 7.5 The selected laboratory shall fill out a chain of custody form which will be submitted with the test results.
- 7.6 The employee shall be solely responsible for the cost of transport and the cost of all laboratory tests requested. All arrangements for payment shall be made by the employee with the laboratory.
- 7.7 Laboratory test results shall be submitted to the Authority and the employee. Where the initial results rendered by the laboratory utilized by the Transit Authority are not confirmed, the Authority will not proceed with disciplinary action for Drug and/or Controlled Substance use.
- 7.8 For retesting by a second laboratory of all drugs and controlled substances subject to testing by the Authorities, the definition of a "negative retest result" shall be: a laboratory test using the same procedure as the initial laboratory's confirmation test (i.e., currently, a GCMS test) which reports that there is present less than one-half of the minimum quantitative cut-off level used by the initial laboratory to confirm that

a specimen has tested positive.

8.0 EMPLOYEE ASSISTANCE PROGRAM

- 8.1 The Employee Assistance Program shall provide assistance to employees who are referred to it as provided in this P/I. The EAP program will no longer service volunteers.
- 8.2 Employees referred to EAP programs under the provision of this policy must comply in all respects with the directions and program requirements of EAP or be subject to dismissal from service. The provisions of Section 9.0 shall not apply to employees dismissed under this paragraph.
- 8.3 Volunteers may utilize TWU's Union Assistance Program following the same procedures to obtain a leave of absence as other TWU members.
- 8.4 Where an employee who is required to participate in the Employee Assistance Program fails to comply with the requirements of the Employee Assistance Program, and the employee is working in a safety sensitive position, the Employee Assistance Program shall immediately notify the employee's Department Head to relieve the employee of his/her responsibilities and place him/her in a no pay status. The Employee Assistance Program shall then notify the director of the Union Assistance Program of the employee's non-compliance. The Union Assistance Program will have ten (10) working days in which to contact the employees and encourage him/her to comply with the requirements of the Employee Assistance Programs. If after ten (10) working days the employee has not complied, the Employee Assistance Program shall notify the employee's Department Head and the employee shall be dismissed.
- 8.5 If the employee is not complying with the requirements of the Employee Assistance Program and is not working or is not working in a safety sensitive position, the employee's Department Head will not be notified of the non-compliance until after the ten (10) days and only if the employee is still non-compliant.
- 8.6 It is understood that the employee must authorize the Employee Assistance Program, in writing, to notify the Union Assistance Program of his/her non-compliance in order for the Employee Assistance Program to be bound by the notice provisions of this agreement. Failure to provide such authorization will result in immediate notification of non-compliance to the Department Head.
- 8.7 It is further understood that the EAP will not unreasonably apply its non-compliance standards.

9.0 RESTORATIONS

An employee who has been dismissed from service under this policy, except where the

dismissal occurred while the employee was on probation or where restoration is not available under this policy, will be restored to duty if he or she (1) enrolls in a treatment program and is certified by such program or other medical authority as being free from use of Controlled Substances or Drugs as defined in Section 4.0 of this policy; or (2) submits other medical proof that he or she is not using Controlled Substances or Drugs as defined in Section 4.0 of this policy, satisfactory to the Authority.

Employees desiring to obtain counseling or treatment in a program or under medical authority not under the jurisdiction of the Authority must obtain prior approval to use such treatment program or medical authority. Treatment rendered under such approved program or medical authority must be reviewed and approved by the Authority's Medical Department prior to a recommendation of restoration to duty. Such program or medical authority must be licensed by the State of New York or equivalent licensing authority.

- 9.1 The restoration provisions of this policy instruction are not available to employees who are dismissed from service following detection of use of Controlled Substances or Drugs through testing precipitated by an incident/accident which resulted in harm or injury to any person where it is reasonable to conclude that drug use could have contributed to the accident.
- 9.2 In the absence of an incident which resulted in harm or injury to any person, employees who meet the requirements of Section 9.0 within the time limitations of paragraph 9.3 following the first instance of a positive drug test or second instance, to the extent permitted by 9.3 shall be restored to duty. The dismissal will be rescinded and the time elapsed since the employee's dismissal until the day of restoration will be registered as a suspension without pay.
- 9.3 Such restoration shall be considered no earlier than one (1) month nor later than one (1) year following such dismissal, except that an employee may be allowed more than one (1) year for rehabilitation and eligible for restoration if the employee has always remained compliant with the conditions of EAP and the treatment program.
- 9.4 After a positive finding for marijuana, where EAP does not certify that an employee is fit to perform full duty in his/her title, following one (1) year from the initial positive test for marijuana, the employee shall be dismissed, except that an employee may be allowed more than one (1) year for rehabilitation and be eligible for restoration if the employee has always remained compliant with the conditions of EAP and the treatment program. The restoration provisions of Section 9.0 shall not apply to employees dismissed under this paragraph.
- 9.5 When an employee reports to his/her department with an EAP restoration letter he/she must be returned to the payroll no later than ten (10) work days after such report except where an employee is to be placed in an available, budgeted non-safety-sensitive position pursuant to Section 6.9.
- 9.6 An employee who tests positive a third time for drugs or alcohol or any combination thereof, shall be dismissed without opportunity for restoration.

10.0 RANDOM DRUG TESTING

The following only applies to random drug testing:

- 10.1 No disciplinary action will be taken against an employee who tests positive for drugs or controlled substances including marijuana in a random test if (i) the employee has no record of prior positive drug and or alcohol tests at the Authority and (ii) the employee completes rehabilitation as herein described. The employee shall be referred to the Employee Assistance Program, relieved of his or her responsibilities, and given the opportunity for rehabilitation through that program. The employee will be in a no pay status, however, he/she will be permitted to use accrued leave balances during his/her participation in the Employee Assistance Program. Once the employee is certified as drug/alcohol free and otherwise eligible for restoration under section 9 of the policies, the employee will be restored to duty. The employee will be required to submit to an Authority-administered drug/alcohol test before he or she will be returned to duty.
- 10.2 Refusal to take a random drug/alcohol test as directed will be deemed an admission of improper use of controlled substances, drugs and alcohol and treated as if the employee had been found positive. In addition, the employee will be subject to appropriate discipline for failure to comply with a direct order for which the penalty may be dismissal.
- 10.3 Representatives of the Authority and the Union have met to discuss the method in which random testing will be conducted. The random testing will be conducted in a manner which accords with the appropriate standards of medical safety and which respects employee privacy and the standards of work-force fairness and decency, as well as the Authority's needs for efficiency in its operation. The method of random testing will require that the Authority develop a list of unique selected numbers (e.g. social security numbers) which pool of numbers will be used for random selection; avoidance of the use of actual employees names in the selection has the purpose of avoiding any suspicion of subjectivity in selection. The Authority will inform the union of selection methods to be used. It is understood that mobile vans may be used to facilitate the collection of test samples with minimal work disruption and to accommodate the work locations of employees.
- 10.4 Whenever it is feasible to do so during day time hours, the Authority will transport and escort employees to the testing site. The Authority will transport and escort employees who are required to report at night to the testing site. Employees who are not transported and escorted are required to report for testing to the appropriate medical assessment center or other appropriate testing site, as directed by supervision, as soon as possible via public transportation. Use of an employee's personal vehicle is prohibited unless the employee is escorted by supervision. Employees who report unreasonably late after they are directed for testing or who do not appear at all shall

be considered as having refused the test.

- 10.5 For purposes of meeting service to the public, absences created by random drug/alcohol testing will be filled as per current practice for filling any other open work.

APPENDIX B-2

NEW YORK CITY TRANSIT AUTHORITY ALCOHOL POLICY/INSTRUCTION

1.0 POLICY

- 1.1 It is the policy of the Authority to operate and maintain its transportation facilities in a safe and efficient manner and to provide a safe environment for its passengers and employees. Possession of an alcoholic beverage on Authority property or the consumption of an alcoholic beverage while on duty or at any time where there would be a threat of rendering an employee unfit to perform the duties of his/her job safely and/or efficiently is prohibited. In addition, it is the policy of the Authority to provide eligible employees the opportunity to rehabilitate themselves through the use of counseling services as provided in this policy.

2.0 PURPOSE

- 2.1 The purpose of this Authority P/I is to set forth policies and procedures concerning employee possession of alcoholic beverages on Authority property and consumption of alcoholic beverages on Authority property or at any time or place to the extent that there would be the threat of rendering an employee unfit to perform his/her duties.

3.0 SCOPE

- 3.1 This P/I shall apply to all TSO represented employees.
- 3.2 Authority - For the purpose of this P/I shall mean the New York City Transit Authority, Manhattan and Bronx Surface Transit Operating Authority, Staten Island Rapid Transit Operating Authority and/or the South Brooklyn Railway Company.

4.0 DEFINITIONS

- 4.1 Unfit due to indulgence in an alcoholic beverage (a positive finding) - A reading of .5mgm/cc or greater by a blood alcohol test or a refusal as per 5.2. below.
- 4.2 Property - For the purpose of this P/I shall mean the property of the New York City Transit Authority, Manhattan and Bronx Surface Transit Operating Authority, Staten Island Rapid Transit Operating Authority and/or the South Brooklyn Railway Company.

5.0 TESTING FOR USE OF ALCOHOLIC BEVERAGES

- 5.1 Employees of the Authority shall submit to alcohol testing in the following circumstances:
- 5.1.1 When directed by members of supervision or management following any accident or unusual incident that occurs while on duty where it is reasonable to conclude that drug/alcohol use could have contributed to the accident or unusual incident, except that employees in the clerical unit shall only be tested following an incident where there is reasonable suspicion of alcohol use.
 - 5.1.2 When supervision or management has reason to believe that the employee is impaired.
 - 5.1.3 When the employee is classified as safety-sensitive and is selected pursuant to the Random Testing Program.
 - 5.1.4 When an employee has tested positive for alcohol, whether in a random or other test, and has been restored to duty, he/she will be required to submit to a breath analysis test on an unannounced basis for a period of one year after successful completion of the Employee Assistance Program. If the breath analysis test indicates a reading or .02 mgm/cc or greater, the employee will be required to submit to a blood alcohol test.
- 5.2 Refusal to take such test(s) shall be deemed an admission of being unfit for duty and subject the employee to immediate suspension from duty and may be deemed grounds for dismissal. Refusal to take a random alcohol test is treated in accordance with Section 10.2.
- 5.3 The Authority shall utilize a breath analysis test to determine whether a blood alcohol test should be given. After a breath analysis test indicating a reading of less than .02 mgm/cc, there shall be no further testing. If the breath analysis test indicates a reading of .02 mgm/cc or greater the employee will be required to submit to a blood alcohol test. However, the employee may waive the blood alcohol test in which case the results of the breath analysis test will be construed as positive as defined by the policy.

6.0 CONSUMPTION OR POSSESSION OF ALCOHOLIC BEVERAGES

- 6.1 When someone is found "UNFIT DUE TO INDULGENCE IN AN ALCOHOLIC BEVERAGE" (a positive finding) and the employee has less than one (1) year of service, he/she shall be dismissed from service. The provisions of Section 9.0 shall not apply to employees dismissed under this paragraph.
- 6.2 When the blood alcohol finding is positive for an employee with one (1) or more years of service, in the absence of any in-service incident that resulted in harm or injury to any person where it is reasonable to conclude that alcohol/drug use could have contributed to the incident, the employee, in the first such instance, will be suspended

from duty for thirty (30) work days without pay. The employee will be referred to the Employee Assistance Program (EAP) and will be required to participate in counseling. Where EAP recommends restoration to full duty the employee shall be restored to duty following examination by the Authority's Medical Services Department, provided he/she has served the thirty (30) day suspension period.

- 6.3 When the blood alcohol finding is positive for an employee with one (1) or more years of service; following an incident that resulted in harm or injury to any person where it is reasonable to conclude that alcohol use could have contributed to the incident, the employee shall be dismissed. The provisions of Section 9.0 shall not apply to employees dismissed under this paragraph.
- 6.4 Employees covered by this P/I are covered by the provisions of the Authority's restricted duty policy. Employees who are referred to EAP pursuant to paragraph 6.2 may, where EAP recommends, be temporarily reassigned, placed on a leave or transferred in accordance with the restricted duty policy of the Authority. However, where the EAP does not certify that an employee is fit to perform full duty following one year from the initial positive finding for alcohol, the employee shall be dismissed. The provisions of paragraph 9.0 shall not apply to employees dismissed under this paragraph.

An employee will be allowed more than one (1) year for rehabilitation and eligible for restoration only if the employee has always remained in compliance.

- 6.5 Where an employee is suspended and referred to EAP pursuant to paragraph 6.2 of this policy and EAP reports that the employee has not satisfactorily met the requirements of the EAP program the employee shall be dismissed. The provisions of Section 9.0 shall not apply to employees dismissed under this paragraph. EAP will comply with the notification provisions of Section 8.5 and 8.6.
- 6.6 Where an employee is found to be in possession of an alcoholic beverage while on duty, the employee, in the first such instance, shall be suspended from duty for thirty (30) work days without pay and referred to EAP. If an employee is found to be in possession of an alcoholic beverage while on duty in a second such instance, the employee shall be dismissed.
- 6.7 An employee found in possession of an alcoholic beverage while on duty, who previously was found or subsequently is found positive for alcohol, shall be dismissed. An employee found positive for alcohol and in possession of an alcoholic beverage, in the context of the same factual circumstances, shall be subject to treatment or penalty hereunder as if solely found positive for alcohol.
- 6.8 In the event the employee tests positive for drugs and/or alcohol a second time as a result of any alcohol and/or drug testing, including a random test, the employee shall be dismissed, without restoration, except that when the second positive test occurs

more than one year after the employee's restoration to duty following the first positive test, the employee will be eligible for restoration to an available, budgeted non-safety sensitive position if he/she again completes rehabilitation as described in the Sections 8.0 and 9.0. The employee will be paid the applicable rate of the non-safety sensitive position as per the collective bargaining agreement. The employee will be reclassified and assigned to the non-safety sensitive position in accordance with the procedures defined in the restricted duty policy. Section 2.16 does not apply herein.

- 6.9 An employee who tests positive a third time for drugs or alcohol or any combination thereof shall be dismissed without opportunity for restoration.

7.0 PROCEDURES FOR MAKING BLOOD SAMPLES AVAILABLE FOR CONFIRMATION TESTING

- 7.1 Employees whose blood alcohol tests result in a positive finding shall have the option of having the results confirmed outside of the laboratories utilized by the Authority.
- 7.2 When an employee or his/her representative requests that a frozen blood sample be sent for confirmation testing outside of the laboratories utilized by the Authority, the following procedure shall apply:
- 7.2.1 The employee shall submit a written request to the Division of Labor Disputes Resolution of the Office of Labor Relations including the employee's name, pass number and the date on which the samples were given. Employees will be allowed five (5) weeks from the date the results of the initial tests are reported to the employee to request a confirmation retest from the other laboratory. Requests for confirmation of test results can only be honored if the employee chooses to give sufficient blood samples at the time the samples are given.
- 7.2.2 The employee may choose to send his/her sample to any one of the laboratories that appear on a list which is maintained by the Division of Labor Disputes Resolution of the Office of Labor Relations.
- 7.2.3 The selected laboratory shall be responsible for the pick-up and transport of the sample.
- 7.2.4 The selected laboratory shall fill out a chain of custody form which will be submitted with the test results to the Authority.
- 7.2.5 The employee shall be solely responsible for the cost of transport and the cost of all laboratory tests requested. All arrangements for payment shall be made by the employee with the laboratory.
- 7.2.6 Laboratory test results shall be submitted to the Authority and the employee. Where the positive results rendered by the first laboratory are not confirmed

by the second laboratory, the Authority will not proceed with disciplinary action for being unfit due to indulgence in an alcoholic beverage.

- 7.2.7 Where an employee chooses to send his/her sample to a laboratory that does not appear on the above list, Section 7.2.6 shall not apply. However, the Authority shall receive a copy of the laboratory test results.

8.0 EMPLOYEE ASSISTANCE PROGRAM

- 8.1 The Employee Assistance Program shall provide assistance to employees who are referred to it as provided in this P/I. The EAP program will no longer service volunteers.
- 8.2 EAP shall notify, in writing, the employee's Department Head or his designee immediately in all cases where an employee has failed to cooperate or satisfactorily meet the requirements of the EAP program in accordance with Paragraphs 8.5 and 8.6.
- 8.3 Employees referred to EAP programs under the provision of this policy must comply in all respects with the directions and program requirements of EAP or be subject to dismissal from service. The provisions of Section 9.0 shall not apply to employees dismissed under this paragraph.
- 8.4 Volunteers may utilize the services of TWU's Union Assistance Program following the same procedures to obtain a leave of absence as other TWU members.
- 8.5 Where an employee who is required to participate in the Employee Assistance Program fails to comply with the requirements of the Employee Assistance Program, and the employee is working in a safety sensitive position, the Employee Assistance Program shall immediately notify the employee's Department Head to relieve the employee of his/her responsibilities and place him/her in a no pay status. The Employee Assistance Program shall then notify the director of the Union Assistance Program of the employee's non-compliance. The Union Assistance Program will have ten (10) working days in which to contact the employee and encourage him/her to comply with the requirements of the Employee Assistance Program. If after ten (10) working days the employee has not complied, the Employee Assistance Program shall notify the employee's Department Head and the employee shall be dismissed.
- 8.6 If the employee is not complying with the requirements of the Employee Assistance Program and is not working or is not working in a safety sensitive position, the employee's Department Head will not be notified of the non-compliance until after the ten (10) days as mentioned in Section 8.5, and only if the employee is still non-compliant.
- 8.7 It is understood that the employee must authorize the Employee Assistance Program,

in writing, to notify the Union Assistance Program of his/her non-compliance in order for the Employee Assistance Program to be bound by the notice provisions of this agreement. Failure to provide such authorization will result in immediate notification of non-compliance to the Department Head.

9.0 RESTORATIONS

- 9.1 An employee who has been dismissed from service under this policy, except where the dismissal occurred while the employee was on probation or where restoration is not available under this policy, will be restored to duty pursuant to the terms of this policy if he or she (1) enrolls in a treatment program and is certified by such program or other medical authority as being free from misuse of alcoholic beverages, controlled substances or drugs; or (2) submits other medical proof satisfactory to the Authority that he or she is not misusing alcoholic beverages, controlled substances or drugs. Employees desiring to obtain counseling or treatment in a program or under medical authority not under the jurisdiction of the Authority must obtain approval to use such treatment program or medical authority. Treatment rendered under such approved program or medical authority must be reviewed and approved by the Authority's Medical Department prior to a recommendation of restoration to duty. Such program or medical authority must be licensed by the State of New York or equivalent licensing authority.
- 9.2 The restoration provisions of this policy instruction are not available to employees who are dismissed from service following detection of use of alcohol through testing precipitated by an incident which resulted in harm or injury to any person, where it is reasonable to conclude that alcohol use could have contributed to the incident.
- 9.3 After the first dismissal, in the absence of an accident or an incident which resulted in harm or injury to any person where it is reasonable to conclude that alcohol use could have contributed to the accident, employees who meet the requirements of Section 6.8 and 9.0 within the time limitations of paragraph 9.4 following the first dismissal for positive finding shall be restored to duty in accordance with the provisions of Section 6.8. The dismissal will be rescinded and the time elapsed since the employee's dismissal until the day of restoration will be registered as a suspension without pay.
- 9.4 Such restoration shall be considered no earlier than one (1) month nor later than one (1) year following such dismissal except that an employee may be considered for restoration after one (1) year only if the employee has always been compliant with the directives of EAP and the treatment program. An employee may be restored to duty under the provision of this section only once. A second dismissal will be final and will not be subject to such restoration.

An employee restored to duty under this provision will be required to serve a one (1) year probationary term from the date of restoration and will be restored to duty with

a warning, final and absolute, that any derelictions in the year following restoration will result in dismissal. This provision shall not limit the Authority from dismissing an employee for cause after the one year probationary period.

- 9.5 Employees dismissed for violating an Authority rule or regulation other than that involving use or possession of alcoholic beverages shall not be eligible for restoration under this P/I.
- 9.6 When an employee reports to his or her department with an EAP restoration letter, he or she must be returned to the payroll no later than ten (10) work days after such report except where an employee is to be placed in an available, budgeted, non-safety-sensitive position pursuant to Section 6.8.

10.0 RANDOM TESTING

The following shall only apply to random tests:

- 10.1 No disciplinary action will be taken against an employee who tests positive for alcohol in a random test if (i) the employee has no record of prior positive drug and/or alcohol tests at the Authority and (ii) the employee completes rehabilitation as herein described. The employee shall be referred to the Employee Assistance Program, relieved of his or her responsibilities, and given the opportunity for rehabilitation through that program. The employee will be "In a No Pay" status, however, he/she will be permitted to use accrued leave balances during his/her participation in the Employee Assistance Program. Once the employee is certified as drug/alcohol free and otherwise eligible for restoration under section 9 of the policies, the employee will be restored to duty. The employee will be required to submit to an Authority-administered drug/alcohol test before he or she will be returned to duty.
- 10.2 Refusal to take a random alcohol test as directed will be deemed an admission of improper use of alcohol and treated as if the employee had been found positive. In addition, the employee will be subject to appropriate discipline for failure to comply with a direct order for which the penalty may be dismissal. Employees who report unreasonably late after they are directed for testing or who do not appear at all shall be considered as having refused the test.
- 10.3 Representatives of the Authority and the Union have met to discuss the method in which random testing will be conducted. The random testing will be conducted in a manner which accords with the appropriate standards of medical safety and which respects employee privacy and the standards of work-place fairness and decency, as well as the Authority's needs for efficiency in its operation. The method of random testing will require that the Authority develop a list of unique selected numbers (e.g. social security numbers) which pool of numbers will be used for random selection; avoidance of the use of actual employees names in the selection has the purpose of avoiding any suspicion of subjectivity in selection. The Authority will inform the

union of selection methods to be used. It is understood that mobile vans may be used to facilitate the collection of test samples with minimal work disruption and to accommodate the work locations of employees.

10.4 Whenever it is feasible to do so during day time hours, the Authority will transport and escort employees to the testing site. The Authority will transport and escort employees who are required to report at night to the testing site. Employees who are not transported and escorted are required to report for testing to the appropriate medical assessment center or other appropriate testing site, as directed by supervision, as soon as possible via public transportation. Use of an employee's personal vehicle is prohibited unless the employee is escorted by supervision.

10.5 For purposes of meeting service to the public, absences created by random drug/alcohol testing will be filled as per current practice for filling any other open work.

10.6 An employee who is required to submit to a blood alcohol test following a breath analysis test will be relieved of his/her responsibilities pending the results of the blood alcohol test. Should the blood alcohol test result in a negative finding, the employee will be paid for the time held out of service as if he/she had worked.