

AGREEMENT

BETWEEN:

M.R. SMITH LIMITED

AND:

INTERNATIONAL UNION OF OPERATING ENGINEERS

LOCAL 115

June 20, 2003 – June 19, 2007

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AGREEMENT

BY AND BETWEEN:

M.R. SMITH LTD.

AND:

INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 115

ARTICLE 1 – PURPOSE

1.01 The purpose of this Agreement is to maintain a harmonious relationship between the Employer and its employees, to provide an amicable method for the prompt and equitable disposition of settling differences and misunderstandings which might arise, to further to the fullest extent possible the efficiency and economy of the operation, quality of work done, the continuous improvement by all proper and reasonable means of the productivity of an employee, and protection of property; and to elevate the industry to the highest possible degree.

The Agreement recognizes the competitive nature of the business. Continued success for the Employer and continued employment for Union members will require a cost efficient operation and highest quality work and service.

It is recognized by this Agreement to be the duty of the Employer and the Union to cooperate fully for the advancement of the aforesaid conditions.

For the purposes of this Agreement, the masculine shall be considered to include the feminine and the singular to include the plural.

ARTICLE 2 – BARGAINING AGENT RECOGNITION

2.01 The Employer recognizes the Union as the sole representative of and bargaining agent for all employees employed in each and any classification contained in this Collective Agreement and who work at and from 3100 Underhill Avenue, Burnaby and 17546 – 57th Avenue, Cloverdale, BC.

ARTICLE 3 – EMPLOYER'S RIGHTS

3.01 The Union agrees that it is the exclusive right of the Employer to manage his enterprise without limiting the foregoing.

a) To conduct and determine the nature of his business in all respects, including the right to manage the jobs, locate, extend, curtail or cease operations, to assign work, to determine the tools and equipment to be used and dispatched to judge the qualifications, skill and ability of employees accordingly, and to maintain order, discipline and efficiency not in conflict with articles of this Collective Agreement.

- b) To hire, discharge, classify, transfer, promote, demote, lay-off, suspend or otherwise discipline an employee. However, this clause shall not deprive an employee of the right to exercise the Grievance Procedure as outlined in this Collective Agreement.
- 3.02 The Union agrees that it is the exclusive right of the Employer to make and alter, from time to time, and enforce rules of conduct and procedure to be observed by the employees.
- 3.03 The Employer recognizes that the exercise of its Employer's rights will not conflict with the terms of this Agreement. There shall be no subcontracting of the bargaining unit's work except as is specifically referenced in this Collective Agreement.
- 3.04 Force Majeure – In circumstances of force majeure, limited to the discontinuance of operations due to freeze-up, excessive snow, flood, earthquake and explosions and collapse of equipment and buildings, those provisions of the Collective Agreement penalizing the Employer, either monetarily or otherwise will not be effective for the duration of the force majeure.

The parties recognize that there may be incidents of force majeure, which prevent or curtail business operations other than those listed in this provision. If there are such incidents of force majeure which prevent or curtail business operations and could not have been avoided by due consideration of the Employer, the parties will by mutual agreement add such act of God or event to this clause.

- 3.05 It is agreed and understood that having a valid driving license (appropriate for the type of vehicle) is a condition of employment. For Fuel Truck Drivers, authorization to pick up fuel from terminals and Canadian Petroleum Products Institute's Drivers Certification are conditions of employment and must be maintained.

Revocation of any of these rights or failure to maintain or renew may be subject to discipline. Should an employee suffer the revocation of any of these rights, he must apply for a leave of absence.

Furthermore, information concerning customer prices, storage, driving routes, equipment and computer figuration, accounting systems, prospective customers and delivery costs are confidential and disclosure of these to agents, representatives or employees of competitors shall constitute grounds for discipline.

- 3.06 The Employer may contract out Cardlock Maintenance work when there are no qualified employees available at regular rates of pay (no overtime) and/or the affected employee is working in a higher rated hourly position.

It is understood by the Employer that when there is a reduction of bargaining unit work, the Cardlock Maintenance position shall be filled by bargaining unit personnel. No available, qualified employee in the bargaining unit will be laid off as a direct result of contracting out.

ARTICLE 4 – UNION SECURITY

- 4.01 Each employee covered by this Agreement shall, as a condition of employment and/or continued employment, become and remain a member in good standing of the Union. Should an employee, at any time, cease to be a member in good standing of the Union, the

Employer shall, upon notification in writing from the Union, discharge such employee forthwith. In the event the Employer is requested by the Union to discharge employees pursuant to this Article, the Union agrees to indemnify the Employer in the event of subsequent proceedings being brought against the Employer for such discharge.

4.02 The Employer shall hand each new employee a Union membership card and dues deduction card. The employee shall complete said cards and return them to the Employer. The Employer shall submit the Union membership card to the Union, and shall retain the dues deduction card on the employee's file.

4.03 The Employer shall deduct such fees and dues as provided by the Union on the first (1st) pay period of the month and submit said monies to the Union before the twenty-fifth (25th) day of the month in which said monies were deducted. The Union shall indemnify the Employer for such remissions and deductions when in accordance with Union instructions.

The Employer will specify the amount of the initiation fee in the said remissions and deductions.

4.04 Upon receiving one (1) month's notice from the Union, by registered mail, of a change in the fees and dues charged by the Union to its members, the Employer shall make deductions in accordance to the notice, effective the date given. The Union will indemnify the Employer for all such deductions and remissions when in accordance with Union instructions.

4.05 The Employer shall submit a check-off list containing the names and social insurance numbers of each employee and the monies applicable to each employee as described in Article 3.03 above.

4.06 It shall not be a violation of this Collective Agreement or cause for discipline for any employee who, in performance of his duties, refuses to circumvent or cross a picket line recognized by the Union, or to refuse to perform any or all duties arising from the Employer's discretion to circumvent a picket line.

4.07 Persons excluded from the bargaining unit may perform bargaining unit work when: instructing employees, training employees, providing assistance to customers or their representatives, or when an emergency situation arises. An emergency situation shall be described as a situation affecting the safety of personnel and/or equipment and/or the environment.

ARTICLE 5 – HOURS OF WORK AND SHIFTS

5.01 The standard working shift for all posted employees shall be:

(a) eight (8) hours work within eight and one-half (8½) consecutive hours and shall be worked in five (5) posted consecutive days of the week, or

(b) ten (10) hours work within ten and one-half (10½) consecutive hours and shall be worked in four (4) posted days of the week with a minimum of two (2) consecutive days off.

(It is understood and agreed by the parties that there shall be a minimum of two [2] employees having three [3] consecutive days off and their schedule shall either be Monday to Thursday or Tuesday to Friday.)

- 5.02 Posted employees who report for work at the request of the Employer, shall be paid a minimum of:
- (a) When working an eight (8) hour shift:
 - (i) a minimum of four (4) hours at the regular rate of pay on straight time days.
 - (ii) a minimum of four (4) hours at the overtime rate of pay on sixth (6th) and seventh (7th) consecutive day of work and/or General Holidays.
 - (b) When working a ten (10) hour shift:
 - (i) a minimum of five (5) hours at the regular rate of pay.
 - (ii) a minimum of five (5) hours at the overtime rate of pay on any of their days off and/or General Holidays.
- 5.03 The Employer shall post as many "posted shifts" as required to carry out its business.
- 5.04 Employees who are required to perform work of any kind during their lunch period shall be deemed to be working and shall be paid for their lunch period.
- 5.05 Employees shall receive one (1) paid fifteen (15) minute break during the employee's regular shift. An employee may elect to combine these breaks.
- 5.06 A schedule shall be posted on the Bulletin Board on the Employer's premises. This schedule shall contain the name of each posted employee, his starting and quitting times and his days off each week.
- 5.07 Where an employee is scheduled to report for work and is directed by the Employer to report at an earlier time and the employee arrives as directed and is then told to start at a later time instead, the employee shall be paid from the time he reported for work originally directed by the Employer.
- 5.08 The day shall commence at 12:01 a.m. and end at 12:00 midnight.
- 5.09 For posted employees, the work week shall start on the first scheduled day of their week.
- 5.10 A shift commencing on one (1) day and continuing into the next day, shall be considered as work performed on the day on which the shift commences.
- 5.11 An employee shall have at least eight (8) consecutive hours rest after he has completed a shift. If an employee is called into work without having had eight (8) consecutive hours rest, he shall be paid at the overtime rate of pay until he has had the said eight (8) consecutive hours rest.

- 5.12 When an employee who is regularly scheduled to work forty (40) hours in a work week finds that, as a result of shift changes caused by lay-offs and/or job postings, he is unable to obtain eighty (80) hours of regularly scheduled work within a two (2) week period, such employee may, at his sole discretion, waive his consecutive days off to maintain an eighty (80) hour pay period.

Such arrangement shall be by mutual consent and in writing.

5.13 Shifts

Day Shift: The day shift shall be described as the first (1st) shift of the day and such shift shall be scheduled to start between the hours of 5:00 a.m. and 11:59 a.m.

Afternoon Shift: The afternoon shift shall be described as the second (2nd) shift of the day and such shift shall be scheduled to start between the hours of 12:00 noon and 8:59 p.m.

Graveyard Shift: The graveyard shift shall be described as the third (3rd) shift of the day and such shift shall be scheduled to start between the hours of 9:00 p.m. and 4:59 a.m.

ARTICLE 6 – OVERTIME RATES AND PREMIUM RATES

6.01 Overtime

- (a) All posted employees working the eight (8) hour shift shall be paid one and one-half (1½) times their hourly rate of pay for all hours in excess of eight (8) hours on any one day and for all hours worked on their scheduled days off.
- (b) All posted employees working the ten (10) hour shift shall be paid one and one-half (1½) times their hourly rate of pay for all hours in excess of ten (10) hours on any one day and for all hours worked on their scheduled days off.
- 6.02 All employees shall be paid two (2) times their hourly rate of pay for all hours worked in excess of forty-eight (48) hours in a week.
- 6.03 For all hours worked on a Sunday, on a General and/or Proclaimed holiday named in Article 8.01, an employee shall be paid one and one-half (1½) times his regular rate of pay. The employee shall have the option of being paid all wages for the day or receiving another day off with pay to be taken at a mutually agreed to time. The lieu day must be taken within six (6) months of the holiday.
- 6.04 All overtime shall be mutually agreed between the employee and the Employer. All overtime shall be on a voluntary basis and refusal to work overtime shall not be a violation of this Agreement. The parties agree however, where someone must work overtime and there are no volunteers, the work will be assigned to the least senior employee qualified to do the work. Such employee must perform the work.
- 6.05 Subject to Article 13.08, all scheduled overtime shall be in accordance with this Collective Agreement. All scheduled overtime, including call out shall be allocated on a seniority basis, subject to the Employer's right to use the lowest premium rate available.

ARTICLE 7 – CLASSIFICATIONS AND WAGE RATES

7.01

Classification	20 Jun 2003	20 Dec 2003	20 Jun 2004	20 Dec 2004
Tanker Driver (Class 1 with Air)	\$22.50	\$22.75	\$23.25	\$23.50
Package Driver 1 (Class 5 with Air)	\$17.50	\$17.75	\$18.25	\$18.50
Package Driver 2 (Class 5 w/o Air)	\$15.50	\$15.75	\$16.25	\$16.50
Cardlock Maintenance	\$13.50	\$13.75	\$14.00	\$14.25

Classification	20 Jun 2005	20 Dec 2005	20 Jun 2006	20 Dec 2006
Tanker Driver (Class 1 with Air)	\$24.00	\$24.25	\$24.75	\$25.00
Package Driver 1 (Class 5 with Air)	\$19.00	\$19.25	\$19.75	\$20.00
Package Driver 2 (Class 5 w/o Air)	\$17.00	\$17.25	\$17.75	\$18.00
Cardlock Maintenance	\$14.50	\$14.75	\$15.00	\$15.25

Note:

1. If a Tanker Driver is required to drive a Package Truck, he shall be paid three dollars (\$3.00) per hour over the Package Driver rate.

Probationary Rate

The probationary rate, applicable to New Hires and employees new to a classification, shall be one dollar (\$1.00) per hour less than the full rate for the duration of the probationary period (first 45 working days as per Article 10.01) after which the full rate applies.

7.02 In the event the Employer creates a new classification during the term of this Agreement, the job duties, wage rates and/or benefits shall be negotiated immediately and shall be added to this Agreement by amendments. If the parties are unable to agree on the matters involved, then either party may proceed to the Grievance Procedures and Arbitration, as described in Article 14 of this Collective Agreement.

7.03 The Employer shall pay each employee every two (2) weeks on a Friday, all wages due, up to and including the previous Sunday. A separate detailed statement showing all hours worked daily, rate of pay and an itemized list of deductions, shall be given each employee each and every pay day. In the event of Friday being a holiday, payment of wages shall be made the day previous.

- 7.04 All pay will be paid either by cheque in an envelope or by electronic transfer to the employee's bank account; the method is at the discretion of the Employer.
- 7.05 Where the employee terminates his employment, the Employer shall pay to the employee all wages earned and all holiday pay earned by the employee within seven (7) calendar days of termination.
- 7.06 Where the employee is terminated by the Employer, the Employer shall pay to the employee all wages and earned holiday pay, on the day of termination. If termination occurs at times, other than office hours, the Employer shall pay the terminated employee on the next office working day.
- 7.07 At the time of termination, the employee shall receive his Record of Work.

ARTICLE 8 – GENERAL HOLIDAYS

- 8.01 The following General Holidays shall be recognized by the Employer:

NEW YEARS DAY	LABOUR DAY
GOOD FRIDAY	THANKSGIVING DAY
VICTORIA DAY	REMEMBRANCE DAY
CANADA DAY	CHRISTMAS DAY
BC DAY	BOXING DAY
"FLOATING" DAY	

and all other holidays which may hereafter be required to be observed under the Statutes of Canada and/or the Province of British Columbia.

The Floating Day is to be taken by the employee on a day previously agreed to by the Employer.

- 8.02 Employees who have established seniority in accordance with Article 10 and who have worked the last working shift scheduled by the Employer within fifteen (15) days previous to the General and/or Proclaimed Holiday and who work the first (1st) working day scheduled by the Employer within fifteen (15) days following the General or Proclaimed Holiday, shall receive their regular day's wages for such holiday and be entitled to take the day off.
- 8.03 Where a General or Proclaimed holiday falls during an employee's regular work week, the day(s) shall be deemed to be a day worked and included as such when calculating all overtime.
- 8.04 In the event of a General or Proclaimed Holiday falling on employees regular day off, the Employer shall allow employees their first scheduled working day as a day off in lieu of the General Holiday.
- 8.05 In the event a General and/or Proclaimed holiday falls during an employee's annual vacation, he shall receive his last scheduled work day(s) preceding his annual vacation as additional day(s) off with pay or his first scheduled work day(s) following his annual vacation as additional day(s) off with pay.

ARTICLE 9 – ANNUAL VACATIONS

- 9.01 Employees who have not completed one (1) years' employment, shall be paid vacation pay based on four percent (4%) of his total earnings previous to June 1st and may take one (1) week's vacation.
- 9.02 Employees who have completed one (1) year's employment on their anniversary date of any year shall receive and take a vacation of two (2) weeks with pay based on four percent (4%) of total earnings for the past year and each year thereafter, EXCEPT:
- 9.03 Employees who have completed three (3) years of employment on their anniversary date shall receive and take a vacation of three (3) weeks with pay based on six percent (6%) of his total earnings for the past year and each year thereafter, EXCEPT:
- 9.04 Employees who have completed seven (7) years of employment on their anniversary day shall receive and take vacation of four (4) weeks with pay based upon eight percent (8%) of his total earnings for the past year and each year thereafter, EXCEPT:
- 9.05 Employees who have completed twelve (12) years of employment on their anniversary date shall receive and take vacation of five (5) weeks with pay based upon ten percent (10%) of his total earnings for the past year and each year thereafter.
- 9.06 The Employer shall post a vacation schedule sheet on the employee's bulletin board no later than October 31st of each year and the employees shall post their desired vacation period on the schedule no later than December 14th. On or after December 15th, the Employer shall confirm vacation periods on an individual basis, by seniority, to be completed no later than December 31st.
- Failure of an employee to choose a vacation period during the interview shall result in being given the choice of openings existing after December 31st.
- 9.07 The period from May 15th inclusive to September 15th shall be considered as "Prime Vacation Time" and any vacation taken during this period shall be a maximum of two (2) weeks per employee.
- An employee may choose to take his vacation period in one continuous period at any time other than "Prime Vacation Time" as described herein.
- 9.08 The period of time taken by an employee for annual vacation shall be scheduled in accordance with his regularly scheduled work week.
- 9.09 All annual vacations shall be taken within the twelve (12) month period commencing from their anniversary date.
- 9.10 Any employee wishing to change his vacation schedule may do so subject to availability and mutual agreement between the parties.
- 9.11 The term "gross earnings" as used for the calculation of vacation pay, as described within this Collective Agreement, shall include all earnings in the entitlement years described above, including annual vacation pay which the employee received during the entitlement year.

ARTICLE 10 – SENIORITY/LEAVE OF ABSENCE/BEREAVEMENT/JURY DUTY

- 10.01 (a) All new employees shall serve a probationary period of forty-five (45) working days within a ninety (90) calendar day period. Should an employee be laid off or unavailable during this period, his probationary period shall cease to run. A probationary employee may be dismissed at any time during this period at the Employer's discretion.
- (b) A probationary employee shall not exercise seniority rights during the "probationary period". However, upon successful completion of the probationary period, the employee's seniority shall date from the day of hire.
- (c) Within the probationary employee group, the principle of "last on first off" shall apply in the event of a reduction of the work force, qualifications considered.
- 10.02 A Seniority List shall be posted by the Employer on the bulletin board quarterly showing the seniority of each employee up to his last working day of the completed quarter. The Union shall also be supplied with a seniority list.
- 10.03 In the event of lay-offs due to the reduction of the working forces, the Employer shall lay-off the employee with the least seniority, qualifications, skill and ability considered. That is, the employee with the least seniority shall be the first (1st) to be laid off and the last to be rehired provided he is qualified to do the work. Lay-offs shall not be used for discipline or discharge purposes.
- 10.04 When vacancies occur, the Employer shall rehire laid off employees according to their seniority with the Employer, beginning with the most senior qualified employee and proceeding in turn thereafter.
- 10.05 An employee who has been laid-off and fails to return to work within forty-eight (48) hours after receiving written notice at the address provided to the Employer, shall lose his seniority and shall be terminated. Written notice shall be by "registered mail". It shall be the responsibility of the employee who is laid-off to leave a current address and telephone number with the Employer as to where he may be contacted. The Employer shall also provide a copy of such notice to the Union when the forty-eight (48) hour notification is issued.
- 10.06 An employee whose lay-off exceeds nine (9) months shall lose his seniority and be terminated. An employee, who has been terminated in this manner, shall have all monies owing paid to him and he shall be supplied with a Record of Work (if not done previously).
- 10.07 Seniority shall continue when an employee is off work due to illness or non-occupational injury for a total period that the employee is covered through group coverage of weekly indemnity, and unemployment insurance sick leave benefits, and any other wage replacement plan that may be in effect.
- 10.08 Seniority shall continue when an employee is off work due to an injury received on the job. The employee shall retain his last post position accepted by him; however, he shall retain all rights to apply for any job vacancies, provided that his application for a vacancy is received within the seven (7) days prescribed in the particular job posting. The Employer

shall contact all employees to whom this Article applies to advise them of any relevant vacancies and the time within which applications must be received.

- 10.09 When an employee suffers from an occupational injury and/or occupational illness, he shall resume his regular duties when he receives clearance to return to work by his doctor and/or the Workers' Compensation Board. Where the employee is advised by the doctor and/or Workers' Compensation Board that he should have a different type of work load, the Employer shall endeavour to facilitate this condition of employment, if the Employer has such work available. The employee shall not suffer any loss of seniority and/or benefits.
- 10.10 When an employee incurs a compensable injury and/or illness as covered by the WCB, the Employer shall pay the employee all wages for all regular scheduled hours on the day of injury and/or illness.
- 10.11 When an employee who has been off work due to illness, non-occupational or occupational injury, and has not returned to work after either exhausting the wage replacement coverage benefit or, in the event of a compensable injury, fails to return to work after receiving clearance to return to work by the Compensation Board, then, it shall be the sole responsibility of that employee to notify the Employer of the situation preventing him from returning to work.
- 10.12 Employees returning to work after an absence and/or illness of four (4) days or longer, or after repeated absences for illness shall, upon request by the Employer, provide to the Employer, a medical certificate completed by a licensed medical practitioner establishing that the employee is fit for work.

Leave of Absence/Bereavement/Jury Duty

- 10.13 Seniority shall continue during a leave of absence granted by the Employer for a period of three (3) months and may be extended by mutual agreement by the parties. A leave of absence shall be requested in writing by the employee and the leave of absence shall be granted in writing by the Employer. Such leave shall not be unreasonably withheld having consideration for the Employer's operational requirements.
- 10.14 Bereavement Leave

When a death occurs to a member of an employee's immediate family, the employee shall be granted, upon request, a three (3) day leave of absence. An employee shall be compensated at his regular straight time hourly rate of pay for actual hours lost from his regular schedule. Members of the employee's immediate family are defined as the employee's spouse, mother, father, sons, daughters, brothers, sisters and grandparents. Granting of bereavement leave for relatives or dependents other than those described shall be at the discretion of the Employer. Stepmother and stepfather shall be deemed as mother and father.

In addition, if the employee is notified of the death while he is working, he shall be excused from and paid for the balance of that working shift and such time will not be charged against the three (3) days of leave.

10.15 Jury Duty

The Employer shall grant a leave of absence to employees who serve as jurors or witnesses in a court action, provided such court action is not occasioned by the employee's private affairs.

An employee, who is summoned to appear for an action (as described above) as juror or witness shall receive his regular wages during such period, providing such time is on his regularly scheduled work day and/or days. The employee shall assign all monies received by him for such duties to the Employer except travel expenses and meal allowances not paid for by the Employer. The maximum extent of the compensation shall be fifteen (15) work days.

ARTICLE 11 – GENERAL

11.01 There shall be no discrimination against any employee for being an Officer, Shop Steward or Committee person of the Union.

11.02 Shop Stewards shall be recognized by the Employer, and shall be given reasonable time to carry out their duties. The Shop Steward shall advise their immediate supervisor when requiring time to carry out his duties. The Union agrees to notify the Employer, in writing, of the name of each Shop Steward, in each department.

11.03 The Employer shall allow time off work, with full pay, to a maximum of sixteen (16) hours per contract for one (1) employee who is serving on a Union Committee for the purpose of negotiating with the Employer.

11.04 The Employer shall allow time off work, without pay, to any person who is serving as a Union Delegate to any conference or function, provided all requests for time off are reasonable and do not interfere with the proper operations of the Employer. There shall be no more than one (1) employee for such conference or function off at any one (1) time.

11.05 Union notice boards shall be provided for Driver personnel. Such boards are to be used for notices pertaining to the Union employees only.

11.06 Representatives of the Union, after notifying the Employer, shall have access to the Employer's premises, during working hours, to carry out the business of the Union in respect to the operation of this Agreement.

11.07 No employee shall be asked, and no employee shall offer to make, a written or verbal agreement and/or contract with the Employer inconsistent with or in variance with the terms of this Agreement.

11.08 The Employer shall supply uniforms and gloves to driving employees. Uniforms, which will be replaced every two (2) years, shall consist of three (3) pairs of pants, four (4) shirts and two (2) jackets (winter/summer). In the alternative, three (3) sets of coveralls will be provided. Driving employees will wear, launder and reasonably maintain their uniforms.

11.09 Where any question arises as to special clothing for any unusual work condition, or wet gear and rubber footwear, the Employer shall make such clothing or gear available as the situation warrants.

- 11.10 Boot Allowance: Employees required to wear safety boots shall receive one hundred and fifty dollars (\$150.00) per year upon presentation of receipts to the Company.
- 11.11 The Employer will sell to each and every employee fuel at the same price Imperial Oil charges the Employer.

ARTICLE 12 – INTERVIEWS, ACCIDENTS & DISCIPLINE

- 12.01 The Company has the right to discipline and discharge for just cause. In instances of discharge, the Business Representative must be notified and in the event of the filing of a grievance for discharge, it shall begin at Step 3 of the Grievance Procedure; other disciplinary action will be taken after discussion with the employee and other relevant individuals.
- 12.02 Whenever an employee is required to attend a fact finding or investigation with respect to his work, his conduct, an accident or any other matter which could give rise to discipline, a Shop Steward of the employee's choice must be in attendance. It is agreed that time is of the essence.
- 12.03 All discipline must be issued within two (2) business days of the fact finding/investigation.
- 12.04 An employee shall be given a copy of the fact finding upon request.
- 12.05 All disciplinary action may be subject to the grievance and arbitration procedure.

ARTICLE 13 – JOB VACANCIES, POSTINGS AND OVERTIME/GENERAL HOLIDAY POSTINGS

- 13.01 A job vacancy shall be a position within the Bargaining Unit that requires an employee to work on a continuing basis.

All postings shall include the classification, the hours of the shift and the days of the week.

- 13.02 Where a vacancy or a new posting occurs because of changed business requirements, the Employer shall "post" a "notice" indicating the classification, rate of pay, the hours of the shift and the days of the week. This "notice" shall be posted for seven (7) days. Employees on annual vacation, Workers' Compensation benefits and/or sick benefits during this entire seven (7) days shall be given the opportunity to apply for this posting. During the seven (7) day period that the "notice" is posted, applicants shall be afforded the opportunity to meet with the supervisor to determine the general nature of the work and the equipment to be used.
- 13.03 The Employer shall give seven (7) days' notice to cancel a posting.
- 13.04 Seniority shall be the governing factor in fulfilling job vacancies. Successful applicants shall be those who possess the qualifications, skill and ability to perform the work to be done.

In the event a senior employee is not successful, the Employer shall advise the Union of the decision prior to filling the job vacancy.

13.05 An employee transferring from one classification to another classification shall be given an additional probationary period of thirty (30) working days. If, after designated training, the employee is found unacceptable for the position, or wishes to return to his last position held, then the employee shall be given the opportunity to return to his last position held without any loss of seniority.

13.06 In the event of a reduction of postings, an employee shall have the right to either:

- (a) exercise his seniority within the seniority list, qualifications, skill and ability considered; or
- (b) be placed on a recall list.

13.07 GENERAL, PROCLAIMED HOLIDAYS AND/OR OVERTIME POSTINGS

Where the Employer decides to schedule overtime or requires employees to work on a General or Proclaimed Holiday(s), employees whose names appear on the list provided for in Article 13.08 shall be offered this work in accordance with seniority.

If the Employer decides to schedule overtime other than on a General or Proclaimed Holiday, employees whose names appear on the list provided for in Article 13.08 shall be offered this work in accordance with seniority.

For overtime that may occur at the end of a shift, the employee truck driver directly affected shall be offered the first opportunity to work the overtime. If he refuses, other drivers on that shift shall be offered the overtime in accordance with seniority.

13.08 Where an employee wishes to apply for overtime, he shall sign the list posted by the Employer. Should the employee wish to remove his name from the list, he shall remove his name and sign it from this list. The employee should also ensure the Employer has an up to date phone number where he may be contacted.

ARTICLE 14 – GRIEVANCE PROCEDURE AND ARBITRATION

14.01 The procedure for resolving differences between the parties bound by this Agreement concerning its interpretation, application, operation or any violations thereof shall be as follows:

- (a) All differences must first be raised verbally between the employee and the employee's supervisor. These individuals shall meet promptly to resolve the grievance. If the grievance cannot be resolved, the employee shall file the grievance in writing within seven (7) working days. The written grievance shall include the description of the differences and, if possible, the parts of the Agreement that are alleged to have been violated and the remedy sought. This time limit is mandatory and if it is not complied with (provided it has not been waived by the parties) the grievance shall be deemed to be abandoned.
- (b) The employee's Department Head, the employee and Shop Steward shall meet promptly to endeavour to resolve the grievance. If they are unable to resolve the grievance within five (5) days of its being filed, the grievance will automatically be referred to the Divisional Manager.

(c) The Agency Manager or his designate in the event that he is absent, and a Representative of the Union, shall meet promptly to endeavour to resolve the grievance. If they are unable to resolve the grievance within ten (10) days of its being referred to the Agency Manager, it shall automatically be referred to an Arbitration Board under Article 14.02.

14.02 Any grievance and/or dispute between the Employer and the Union and/or employees, involving the interpretation, application or any alleged violations of this Agreement, may be referred by either party to a Board of Arbitration.

14.03 Where the parties elect to proceed to Arbitration, the Arbitration Board, consisting of one (1) representative selected by the Employer, and one (1) representative selected by the Union, shall be appointed within five (5) days after written request has been received. If either party fails to appoint or select its representative within the time specified herein, the other party may appeal to the Labour Relations Board to make the appointment.

The two (2) arbitrators selected shall meet, within forty-eight (48) hours after appointment, and shall select a Chairman of the Arbitration Board. If they are unable to agree upon the selection of a Chairman within twenty-four (24) hours, either of them may then request the Labour Relations Board to appoint a Chairman.

14.04 The Arbitration Board shall not have power to change, modify, extend or amend this Agreement or to award costs or damages against either party.

The Arbitration Board shall have the power to order, if it deems proper that any employee who has been wrongfully suspended, discharged or otherwise disciplined, shall be reinstated without loss of pay and with any other benefit under this Agreement which he may have lost. A majority decision of the board shall constitute the award. The decision of the board shall be binding on both parties.

14.05 Each party shall pay its own costs and fees and the expenses of its representatives and witnesses. The fees and expenses of the Chairman shall be shared equally between the parties.

14.06 By mutual agreement by both the Union and the Employer, a single arbitrator may be selected to resolve the dispute in accordance with Article 14.03.

14.07 The Employer and the Union may mutually agree in writing to waive any of the time limits set out in this Article.

14.08 It is understood that the Employer may file a grievance with the Union and that if such complaint is not settled to the satisfaction of the parties concerned, it may be treated as a grievance and referred to arbitration in the same way as a grievance of an employee.

ARTICLE 15 – SAFETY

15.01 The Employer agrees to cover all employees with the provisions of the Workers' Compensation Act.

- 15.02 It is the desire of both parties to this Agreement to maintain the highest standard of safety. No employee shall be required to, and no employee shall be asked to perform work in a hazardous manner or operate any faulty equipment.
- 15.03 All unsafe working conditions and/or equipment shall be reported promptly to the Employer by the employee and the Employer shall correct each defect forthwith. The Employer shall not require employees to take out on the streets any vehicle that is not in safe operating condition until such vehicle has been repaired.
- 15.04 A Safety Committee, comprising of at least two (2) employees and two (2) representatives of the Employer, shall be appointed by their respective groups to ensure safe working conditions and habits and to investigate accidents as to their cause and make recommendations to the Employer regarding unsafe conditions and faulty equipment. The committee shall not have authority or power to act in any manner that will conflict with the provisions of this Agreement. The committee shall meet with such frequency as is deemed necessary and appropriate by the Workers' Compensation Board.

ARTICLE 16 – HEALTH AND WELFARE

- 16.01 All employees shall be covered by the M.R. Smith Limited Health and Welfare Plan which shall be provided by the Employer for the benefit of the employees covered by this Agreement. This Plan shall also cover the employees with the Medical Services Plan (BC Medical Plan).
- 16.02 The Employer shall contribute one hundred percent (100%) toward the cost of providing dental coverage (excluding orthodontics), extended health care and BC Medical coverage on behalf of each employee covered by this agreement. For the period of this agreement, the cost of life insurance, A.D.D., and wage indemnity portion of the M.R. Smith Limited Health and Welfare Plan shall be borne solely by the employee.
- 16.03 The Employer shall submit the contributions for all employees to an authorized agency acting on behalf of the Health and Welfare Plans each and every month as required by the plan carrier.
- 16.04 The Employer shall supply the Union with a copy of the Health and Welfare Benefits package in force at the date of signing. These benefits shall form part of this Collective Agreement and shall remain in full force and effect unless varied by mutual agreement.

ARTICLE 17 –PENSION PLAN

- 17.01 The Employer shall make a contribution of one hundred and twenty-five dollars (\$125.00) per month for each and every month thereafter on behalf of each regularly employed employee within the bargaining unit, within this Agreement, to the Operating Engineers' Pension Plan.

Commencing June 20, 2004, the contribution shall be one hundred fifty dollars (\$150.00).

Commencing June 20, 2005, the contribution shall be one hundred seventy-five dollars (\$175.00)

Commencing June 20, 2006, the contribution shall be two hundred dollars (\$200.00).

17.02 The Employer is required to report on forms provided by the Operating Engineers' Pension Plan Office.

Contributions must be forwarded by the Employer to the Operating Engineers' Pension Plan by the fifteenth (15th) day of the month following that which contributions cover.

17.03 The Pension Plan Auditor may inspect, during regular business hours, the Employer's record of time worked by the employees and contributions made to the Plan.

ARTICLE 18 – SEVERANCE AND LAY-OFF PAY

18.01 In the event of an amalgamation, permanent closure of a location, or a department thereof, or automation causing an employee to lose his employment with the Company, the Company hereby agrees to serve “notice” to the employee at a rate of two (2) weeks “notice” after two (2) years of service and an additional week for each year of service up to a maximum of eight (8) weeks. Failure to provide “notice” as per these terms, Company agrees to pay severance pay in the amount of one (1) week of pay for every year of service up to a maximum of eight (8) weeks’ pay.

ARTICLE 19 – OVERTIME BANKING

19.01 On July 1 and January 1 of each year, employees will opt in writing either to bank their overtime for the next six (6) months or to be paid out with regular pay. All requested banked overtime pay shall be paid by separate cheque. If notice is not given to the Employer, overtime will not be banked.

19.02 Employees may bank all or a portion of their overtime.

19.03 Banked overtime may be taken as paid time off at a time mutually agreed between the Employer and the employee.

19.04 Banked overtime pay not taken as paid time off will be paid out:

- a) at the time the employee decides to no longer bank the overtime; or
- b) on July 1 and January 1 of each year; or
- c) upon request by the employee with three days notice.

ARTICLE 20 – LIFE OF AGREEMENT AND RENEWAL

20.01 This Agreement shall become effective as of the twentieth (20th) day of June 2003 and shall remain in full force and effect until the nineteenth (19th) day of June 2007 and each succeeding nineteenth (19th) day of June thereafter unless written notice is served on the one (1) Party by the other Party to commence negotiations for a new Collective Agreement to supercede this Collective Agreement within the four (4) month period prior to the nineteenth (19th) day of June 2007 or the nineteenth (19th) day of June in any year thereafter.

20.02 The Parties hereby agree to exclude the operation of Section 50 (2) and (3) of the Labour Relations Code.

20.03 In the event that one (1) Party serves notice on the other Party to commence negotiations for a new Collective Agreement, the provisions of this Agreement shall remain in full force and effect until a new Agreement has been executed.

20.04 Strikes and Lockouts

- (a) The Union shall not sanction any strike, stoppage or cessation of work or picketing, for the duration of this Collective Agreement, and there shall be no deliberate interference with the operations of the Employer.
- (b) On expiration of this Collective Agreement there shall be no strike action as long as meaningful negotiations are continuing.
- (c) There shall be no lock-out or collective action by the Employer.

Signed this ____ day of _____, 2003.

M.R. SMITH LIMITED

INTERNATIONAL UNION OF OPERATING
ENGINEERS – LOCAL 115

LETTER OF UNDERSTANDING

BY AND BETWEEN:

M.R. SMITH LTD.

AND:

INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 115

Below listed are the Company's and the Union's agreed definitions of qualifications, skill and ability.

1. "Qualifications" – The possession of a valid and appropriate license to operate the vehicle or equipment used in the performance of the job;
2. "Skill" – The demonstrated (through training and testing administered by the company) competence and proficiency in the performance of the duties required in the job including the operation of any vehicle or equipment used in the performance of the job;
3. "Ability" – The physical and mental capability to perform the duties required in the job.

Signed this _____ day of _____, 2003.

M.R. SMITH LTD.

INTERNATIONAL UNION OF OPERATING
ENGINEERS - LOCAL 115

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