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BC/9035

**COLLECTIVE
BARGAINING
AGREEMENT**

by and between the

TOWN OF BERNE

and the

**INTERNATIONAL UNION OF
OPERATING ENGINEERS
LOCAL 106**

For the period:

January 1, 2004 - December 31, 2006

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1 PREAMBLE

1.1 Collective Bargaining Agreement

1.1.1 Parties to Agreement: This Collective Bargaining Agreement is made by and between the Town of Berne, hereinafter referred to as the "Town" and/or the "Employer", a municipal corporation duly organized and operating under the laws of New York State with a principal office address of Town Hall, P.O. Box 57, Berne, New York 12023, and the International Union of Operating Engineers, Local 106, hereinafter referred to as the "Union", an employee representative duly organized and operating under the laws of New York State with a principal office located at 1284 Central Avenue, Albany, New York 12205. In consideration of the provisions set forth below, the parties hereto agree as follows.

1.1.2 Purpose of Agreement: The general purpose of this Collective Bargaining Agreement is to set forth terms and conditions of employment and to promote orderly and peaceful labor relations for the mutual interest of the Town, the employees and the Union. The parties recognize that the interest of the community and the job security of the employees depend upon the Town's success in establishing a proper service to the community. To these ends, the Town and the Union encourage to the fullest degree friendly and cooperative relations between the respective representatives at all levels and among all employees.

2 BARGAINING UNIT

2.1 Recognition

2.1.1 Recognition Clause: The Town hereby recognizes the International Union of Operating Engineers, Local 106, 1284 Central Avenue, Albany, NY 12205, as the sole and exclusive representative for the purpose of collective bargaining in respect to rates of pay, wages, hours of employment and other terms and conditions of employment for the term of this Collective Bargaining Agreement for all employees of the Town identified in 2.1.2 below.

2.1.2 Bargaining Unit: Included in the bargaining unit are all full-time employees of the Highway Department and the Transfer Station Operator. Excluded from the bargaining unit are the Superintendent of Highways, Deputy Superintendent of Highways, and all part-time employees, clerical employees, seasonal employees, and supplemental employees.

2.1.3 Seasonal Personnel: For the purpose of this Collective Bargaining Agreement, a “seasonal employee” shall mean and refer to someone employed to work for a given season for the purpose of mowing, collecting yard waste or other traditional summer duties, or to assist in snow removal. Seasonal personnel shall not assist in snow removal unless all bargaining unit employees have been offered the opportunity to work. Seasonal personnel shall not be eligible for benefits provided through this Collective Bargaining Agreement.

2.1.4 Supplemental Personnel: For the purpose of this Collective Bargaining Agreement, a “supplemental employee” shall mean and refer to someone who is called in to work on an as-needed basis. Supplemental personnel shall not be assigned to work unless all bargaining unit employees have been offered the opportunity to work. Supplemental personnel shall not be eligible for benefits provided through this Collective Bargaining Agreement.

2.1.5 Unit Clarification: Any disputes as to whether a new or substantially altered job title is encompassed within the scope of the existing bargaining unit shall be submitted immediately to the New York State Public Employment Relations Board in accordance with its rules and procedures.

3 MANAGEMENT RIGHTS

3.1 Management Rights

3.1.1 Management Rights Clause: The rights and responsibilities to operate and manage the business and affairs of the Town are vested exclusively in the Town and the Town not exercising any of these rights shall not be construed as a waiver of them. These rights and responsibilities include, by way of illustration and without being limited by past practice or otherwise, the right to: hire, assign, promote, transfer, layoff, evaluate, and discipline employees for just cause; select, test, train and determine the ability and qualifications of employees; determine, control and change work practices and schedules, work and shift assignments, hours of work, the size, composition and organization of the workforce, and job classifications, descriptions, content and standards; implement and comply with regulations and requirements issued by any government agency; make, modify and enforce reasonable rules of employee conduct and safety; determine, control and change the quality and nature of products, materials and services; introduce new or improved methods, equipment, techniques and processes; contract and subcontract for materials, services, supplies and equipment; and all other rights pertaining to the operation and management of the business and affairs of the Town unless expressly provided otherwise in this Collective Bargaining Agreement.

4 UNION RIGHTS

4.1 General Provisions

4.1.1 Union Rights Clause: The Town recognizes the rights of the public employees to be represented by the Union for the purpose of negotiating collectively with the Town in the determination of wages, hours and working conditions and the administration of grievances arising there under.

4.1.2 Notice of Disciplinary Action: The Town agrees to notify the Union as soon as possible in writing of any disciplinary action taken.

4.1.3 Employee Responsibilities: The Union agrees for its members that they will individually and collectively perform loyal and efficient work and services and that they will use their influence and best efforts to protect the property and interests of the Town, its good name and its services to the public.

4.2 Union Membership/Agency Shop

4.2.1 Union Membership: An employee who chooses to become a member of the Union shall sign an authorization card for dues deduction and submit it to the Union. Thereafter, the Union will forward the authorization to the Town and the Town shall deduct and remit the dues in accordance with 4.2.3, below.

4.2.2 Agency Shop: An employee who does not become a member of the Union by signing a membership card and an authorization card for dues deduction within thirty calendar days of the execution of this collective bargaining agreement or initial employment, as the case may be, or an employee who does not remain a member of the Union in good standing, shall be required to pay a service fee (agency shop fee) in an amount equivalent to the membership dues levied by the Union. The Town shall deduct and remit the service fee in accordance with 4.2.3, below.

4.2.3 Dues/Fees: The Town shall deduct membership dues or agency shop fees, as the case may be, from the pay of each employee each week and remit the sum to the Union. The amount to be deducted for union dues shall be one and one-half percent of the employee's gross wages.

4.2.4 Indemnification Clause: Executed copies of authorization cards will be kept on file by the Union and the Town. The Town assumes no obligation with respect to the obtaining of authorization cards, it being understood that this is a duty and obligation of the Union. Deductions shall be made in the first payroll period following the furnishing of authorization cards. The Union shall indemnify and save the Town harmless against any and all claims, demands, suits or other forms of liability that shall arise out of or by reason of action taken or not taken by the Town in reliance upon authorization cards furnished by the employees and/or Union.

4.3 Union Representation

4.3.1 Union Steward: The Union shall be permitted to appoint the Steward and one alternate to act in the absence of the Steward. Any Union Officer may act in the absence of the Steward.

4.3.2 Release Time: Only one representative designated by the Union (e.g. Union Steward, alternate Steward, or Union Officer) shall be allowed release time at any one time for the following activities: to investigate and present grievances; to attend grievance arbitration hearings; to participate in collective bargaining negotiations, or to attend conferences and hearings of the New York State Public Employment Relations Board. Such leave shall be without loss of pay or leave credits.

4.3.3 Requests for Release Time: Requests for the use of release time shall be made to the Superintendent of Highways or Town Supervisor as far in advance as possible. The Superintendent of Highways and the Town Supervisor shall have the sole discretion in granting release time; however, such requests shall not be unreasonably denied. An employee requesting such release time shall not leave the employee's worksite until the Superintendent of Highways or Town Supervisor has approved it.

4.3.4 Presentation of Grievances: The presentation of a grievance, as defined in 13.1.1 below, should not be disruptive and can only be presented by the Steward, alternate Steward, or Union representative.

4.4 Safety Committee

4.4.1 Purpose: There shall be a standing Safety Committee for the sole purpose of discussing safety and health matters that affect employees.

4.4.2 Committee Agenda: The Safety Committee may not negotiate terms and conditions of employment. The Town and the Union must submit issues for discussion, in writing, at least fourteen calendar days prior to the scheduled date of the meeting of the Safety Committee.

4.4.3 Frequency and Duration: The Town shall schedule a meeting of the Safety Committee within fourteen calendar days of receiving a written request from the Union. The meeting shall occur during regular business hours and shall not exceed one hour unless mutually agreed to by the parties.

4.4.4 Membership: The Superintendent of Highways shall serve as a member of the Safety Committee and serve as its chair. The Steward shall serve as a member of the Safety Committee.

4.5 Bulletin Boards and Meeting Rooms

4.5.1. Bulletin Boards: The Town will provide bulletin boards in each appropriate building which may be used by the Union for posting notices.

4.5.2 Meeting Rooms: The Union may use the Town's conference rooms or other designated rooms for meetings, provided the room is available. The Union shall obtain prior approval from the Town Supervisor. Approval shall not be unreasonably denied.

4.6 Access to Premises

4.6.1 Union Representatives: The Town agrees to permit representatives of the International Union and the Local Union to enter the premises of the Town, for individual discussion of working conditions with employees, provided such representatives do not unduly interfere with the performance of duties assigned to the employees. Such meeting will not occur for an unreasonable duration.

5 EMPLOYEE RIGHTS

5.1 Employee Status

5.1.1 Full-time: A full-time employee shall mean and refer to an employee who is regularly scheduled to work a minimum of forty hours per week.

5.1.2 Part-time: A part-time employee shall mean and refer to an employee who is regularly scheduled to work less than forty hours per week.

5.2 Pledge Against Discrimination and Coercion

5.2.1 Civil Rights: The provisions of this Collective Bargaining Agreement shall be applied equally to all employees in the bargaining unit without discrimination as to age, sex, marital status, race, color, creed, national origin or political affiliation. The Union shall share equally with the Town the responsibility for applying this provision of the Collective Bargaining Agreement.

5.2.2 Union Activity: The Town agrees not to interfere with the rights of employees to become members of the Union and there will be no discrimination, interference, restraint, or coercion by the Town or any Town representative against any employee because of any employee's activity in an official capacity on behalf of the Union.

5.3 Personnel File

5.3.1 Employee Access: An employee may review and copy the contents of the employee's own personnel file. The employee must make an appointment with the Superintendent of Highways. A person authorized by the Superintendent of Highways must be present when the employee inspects the file. The employee may not place any material in the file without the approval of the Superintendent of Highways.

5.3.2 Union Access: With the written consent of the employee, a representative of the Union shall be allowed to review and copy the contents of the employee's personnel file, with the exception of letters of reference.

5.3.3 Change in Status: An employee must immediately notify the Superintendent of Highways of a change of name, address, telephone number, personal status, number and age of dependents, beneficiary designations, and who to notify in case of emergency.

5.4 Seniority

5.4.1 Departmental Seniority: Seniority shall be determined by the employee's length of continuous service as a full-time employee in the Town of Berne Highway Department. For the purpose of calculating the length of service of a full-time employee, one year shall be credited for each year of service beginning on the employee's last date of hire. In the event two or more employees have the same length of service, the employee with the earliest day of hire shall have greater seniority. In the event two or more employees have the same date of hire, such employees shall have their individual seniority determined by lot.

5.4.2 Leave of Absence: An employee shall not accrue seniority while the employee is on an approved unpaid leave of absence or while the employee is in layoff status. Such leave shall not be considered as a break in “continuous service”, however, the employee’s anniversary date shall be extended for a period equivalent to the time of such leave.

5.4.3 Workers’ Compensation: An employee who is on an unpaid leave of absence due to a Workers’ Compensation claim shall continue to accrue seniority as if the employee was in regular pay status. Such leave shall not be considered as a break in “continuous service” and the employee’s anniversary date shall not be adjusted.

5.4.4 Loss of Seniority: An employee shall lose seniority for the following reasons only: 1) the employee quits; 2) the employee is discharged and the discharge is not reversed through the procedure set forth in this Collective Bargaining Agreement; 3) the employee does not return to work when recalled from layoff as set forth in the recall procedure (in appropriate cases, exception will be made); 4) the employee retires; or, 5) the employee is laid off for more than two consecutive years.

5.4.5 Seniority Lists: The seniority list of employees will show the names, job titles, and date of hire of all employees in the unit entitled to seniority. The Town will keep the seniority list up to date at all times and will provide the Steward with up to date copies upon request.

5.5 Layoff Procedure

5.5.1 Definition: The word “layoff” shall mean and refer to a reduction in the work force due to a decrease of work or for any other operational or financial reason.

5.5.2 First to be Laid Off: In the event of a reduction in the number of positions in a job title within the bargaining unit, the employee within the affected job title with the least seniority shall be the first to be laid off.

5.5.3 Notice of Layoff: The Town shall provide an employee who is to be laid off with written notice of the layoff at least ten workdays prior to the effective date of the layoff. If not, the Town shall pay the employee the equivalent of one day’s pay at the employee’s regular daily rate of pay for each day short of the ten workdays.

5.5.4 Bumping Rights: An employee who is laid off may displace (bump) an employee in an equal or lower job title within the bargaining unit, provided the employee has more service seniority than the employee being bumped and the employee is able to perform the work required without additional training.

5.5.5 Seasonal and Supplemental Personnel: Seasonal or supplemental personnel shall not be assigned to work while any bargaining unit employees are in layoff status.

5.6 Recall Procedure

5.6.1 Recall Rights: When the workforce in the bargaining unit is increased after a lay-off, employees will be recalled according to seniority, provided the employee meets the requirements of the job.

5.6.2 Notice of Recall: Notice of recall shall be sent to the employee at the employee's last known address by registered or certified mail. If the employee fails to report for work within ten workdays from the date the notice of recall was postmarked, the employee shall be considered a quit and the employee shall forfeit all future recall rights. Recall rights for an employee shall expire two years from the date of lay-off. Written notice of expiration of recall rights shall be sent to the employee at the employee's last known address by registered or certified mail.

6 VACANCIES & PROMOTIONS

6.1 Appointment to Vacancies

6.1.1 Selection of Applicants: In the event there is a vacancy in a new or existing job title, the position will be offered based on an applicant's seniority and ability. The Superintendent of Highways will determine whether a particular employee's ability is suitable for a new job opening or promotion. Such determination may be subject to the Grievance Procedure.

6.2 Probation (new hires)

6.2.1 Probationary Period: A newly hired employee shall be considered as a probationary employee for the first one hundred and eighty calendar days of employment. The probationary period shall be accumulated within not more than one year.

6.2.2 Union Representation: The Union shall represent probationary employees for the purpose of collective bargaining in respect to rates of pay, wages, hours of employment and other conditions of employment as set forth in 2.1.1 of this Collective Bargaining Agreement.

6.2.3 Failure to Successfully Complete Probationary Period: In the event a probationary employee's performance or conduct is not satisfactory, the Superintendent of Highways may dismiss the employee from employment at any time on or before completion of the probationary period. Such action shall not be subject to the Grievance Procedure or Disciplinary Procedure.

6.3 Probation (promotions and transfers)

6.3.1 Probationary Period: An employee who is promoted or transferred into a new position shall be placed on probation for a period of one-hundred and eighty calendar days. At any time during this period, the Superintendent of Highways may rescind the promotion or transfer and the employee shall be reinstated to the employee's previous position. Such action shall not be subject to the Grievance Procedure or Disciplinary Procedure. At any time during the probationary period, the employee may retreat to the employee's previous position.

6.4 Selection of Shifts

6.4.1 Shift Preference: Shift preference will be granted on the basis of seniority within the job classification. The transfer to the desired shift will be affected within thirty calendar days following the posting of the shift changes.

7 HOURS OF WORK

7.1 Work Schedule

7.1.1 Regular Workday: The Superintendent of Highways will establish an employee's scheduled work shift to meet the particular needs and requirements of the Highway Department. The regular hours of work each workday, with the exception of emergencies, shall be consecutive, except for interruptions for lunch periods. Once established, the beginning and ending of an employee's normal workday shall not be changed without an advance written notice of at least thirty calendar days.

7.1.2 Regular Workweek: The regular workweek shall be Monday through Friday, except as set forth in 7.1.3, below. However, the Town Supervisor will establish the regular workweek of the Transfer Station Operator to meet the particular needs and requirements of the Transfer Station.

7.1.3 Compressed Workweek: The Superintendent of Highways may schedule an employee to work four ten-hour days, Monday through Thursday, rather than five eight-hour days. During the period of this “compressed workweek”: an employee who takes a full day of sick leave will have ten hours (1 ¼ days) deducted from the employee’s sick leave credits; an employee who takes a full day of vacation leave will have ten hours (1 ¼ days) deducted from the employee’s vacation leave credits; an employee who takes personal leave will have ten hours (1 ¼ days) deducted from the employee’s personal leave credits; and, an employee who takes bereavement leave will have one day deducted from the maximum allotment. The exercise of this four ten-hour day option shall not establish any precedent or commitment to reinstate a compressed workweek at any time in the future.

7.1.4 Assignment to Work Additional Hours: The Superintendent of Highways may require an employee to work additional hours beyond the employee’s normal workday and workweek. An employee must receive prior approval from the Superintendent of Highways before working beyond the employee’s normal workday or workweek.

7.1.5 Equalization of Overtime: In the event there is an opportunity in a given title to work additional hours beyond the normal workday or workweek, the opportunity shall first be offered on a rotational basis to employees in that job title. In the event no employee volunteers, the work shall be assigned on a rotating basis to employees in that job title. In the event the Town makes an error in the assignment of additional hours, the Town shall offer the employee who should have been offered the additional hours the next opportunity to work additional hours.

7.2 Notification of Absence

7.2.1 Notification: In the event an employee is unable to report to work, the employee must personally notify the Superintendent of Highways each day of the absence and state the reason for the absence. In the event the absence was pre-authorized, this requirement will be waived. In the event the employee’s absence is necessitated by emergency, or the employee’s incapacitation, the employee’s designee shall contact the Superintendent of Highways as soon as possible after the regular starting time of the workday to inform the Superintendent of Highways of the employee’s whereabouts.

7.2.2 Absence Without Leave: An employee who is absent from work without giving proper notice or receiving proper authorization will be subject to appropriate disciplinary action.

7.2.3 Notification of Sick Leave: In the event an employee must take sick leave, the employee must personally notify the Superintendent of Highways at least one hour before the employee’s scheduled reporting time. Failure to give this notice will render the employee ineligible to use sick leave credits for the absence.

7.2.4 Early Departure: In the event an employee must leave work during the employee's workday, the employee must notify and receive the approval from the Superintendent of Highways prior to leaving.

7.3 Meal Period

7.3.1 Meal Period: All employees shall be entitled one thirty minute unpaid meal period at the midpoint of the workday. Unless otherwise directed by the Superintendent of Highways, an employee may normally leave the work-site during the meal period.

7.3.2 Overtime Meal Period: An employee who is required to work four hours of overtime following the employee's regular full day shall then be granted one-half hour off **with pay** for the purpose of eating, provided the employee will be required to return for additional overtime. A similar one-half hour off with pay shall be granted for each such four-hour period of overtime to be followed by additional overtime. Unless otherwise directed by the Superintendent of Highways, an employee may normally leave the work-site during the overtime meal period.

7.4 Break Period

7.4.1 Rest Breaks: All Employees shall receive a fifteen-minute rest period during each half shift, to be scheduled as close to the middle of each half shift as is practicable. Employees, who, for any reason, work beyond their regular quitting time into the next shift, shall receive at least a fifteen-minute rest period at the beginning of each next work shift, provided it is contemplated that the employee will work at least four hours. An employee who chooses not to take a rest break will not be entitled to leave before the normal quitting time and will not receive extra pay for the time worked.

7.4.2 Approval of Rest Breaks: Rest breaks must be approved by the Superintendent of Highways in accordance with the needs and requirements of the department. Unless otherwise directed by the Superintendent of Highways, all rest breaks must be taken at the worksite and may not exceed the time allowed.

7.5 Clean-Up

7.5.1 Clean-Up Time: Employees shall be granted a fifteen-minute personal clean up period prior to lunch and quitting time. An employee who chooses not to take this time to clean-up will not be entitled to leave before the normal quitting time and will not receive extra pay for the time worked.

8 COMPENSATION

8.1 Wages

8.1.1 Pay Schedule: The pay schedules set below shall be the applicable schedules for the period January 1, 2004 through December 31, 2006.

**January 1, 2004 through December 31, 2004
(3% increase)**

Job Title	Job Rate
MEO (Heavy)	\$15.42
Working Foreman	\$16.54

**January 1, 2005 through December 31, 2005
(3% increase)**

Job Title	Job Rate
MEO (Heavy)	\$15.88
Working Foreman	\$17.04

**January 1, 2006 through December 31, 2006
(3% increase)**

Job Title	Job Rate
MEO (Heavy)	\$16.36
Working Foreman	\$17.55

8.1.2 New Hire Rate: A newly hired employee shall receive one dollar below the job rate during the first six months of employment.

8.2 Premium Pay for Overtime

8.2.1 Authorization: An employee must receive prior approval from the Superintendent of Highways before working beyond the employee's normal workday or workweek.

8.2.2 Overtime Rate: An employee will be paid one and one-half times the employee's regular hourly rate of pay for all authorized time worked over eight hours in a given workday or forty hours in a given workweek. However, an employee assigned to work as the Transfer Station Operator on a Saturday will receive the overtime rate only for time worked over ten hours on a Saturday. During a "compressed workweek" an employee will be paid one and one-half times the employee's regular hourly rate of pay for all authorized time worked over ten hours in a given workday or forty hours in a given workweek. An employee will not have the option of receiving "compensatory time" in lieu of paid overtime.

8.2.3 Computation of Overtime: Overtime shall be computed on a fifteen-minute basis. For example: If an employee works seven minutes after the employee's regular shift, the employee will be paid the full fifteen minutes at the premium rate.

8.2.4 Credit for Paid Leave: Holidays, vacation leave, sick leave, personal leave, bereavement leave, and jury duty leave will be included as time worked in the computation of overtime. All military leave will not be included as time worked in the computation of overtime.

8.3 Weekend Pay

8.3.1 Premium Rate: An employee who is assigned to work on a Saturday or Sunday, except an employee assigned to work as the Transfer Station Operator, will receive one and one-half times the employee's regular hourly rate of pay for all authorized time worked.

8.4 Out-of-Title Pay

8.4.1 Authorization: The Superintendent of Highways may require an employee to work out-of-title. An employee must receive prior approval from the Superintendent of Highways before working in a higher graded title.

8.4.2 Compensation: In the event an employee is assigned to work in a higher graded title for at least a full eight-hour shift (in the event of a compressed workweek a full ten-hour shift), the employee will receive the rate of pay at the step in that pay grade just above the employee's current rate of pay.

8.5 Call-Out Pay

8.5.1 Compensation: An employee who is called out for emergency duty which is in addition to, and does not attach to, the employee's regular working hours, will receive premium pay at a rate of one and one half times the employee's regular rate of pay for a minimum of two hours or for the hours actually worked, whichever is greater. The hours actually worked shall commence from the time the employee receives the call to report to work, provided the employee's response is of a reasonable length.

8.6 Pay Period

8.6.1 Payroll Period: The payroll period will begin on Monday at 12:00:01 a.m. and end fourteen calendar days later on Sunday at 11:59:59 p.m.

8.6.2 Pay Date: Paychecks will be issued on the Thursday following the end of the payroll period. In the event the pay date is a designated holiday, paychecks will be distributed on the previous workday.

9 PAID LEAVE

9.1 Holidays

9.1.1 Designated Holidays: The following days are designated as "holidays":

- | | | |
|----------------------|---------------------------|----------------------|
| 1. New Year's Day | 2. Martin Luther King Day | 3. Presidents' Day |
| 4. Memorial Day | 5. Independence Day | 6. Labor Day |
| 7. Columbus Day | 8. Election Day | 9. Veterans' Day |
| 10. Thanksgiving Day | 11. Christmas Day | 12. Floating Holiday |

The floating holiday must be requested by the employee. The employee must receive prior approval from the Superintendent of Highways to take a floating holiday. The Superintendent of Highways will have discretion in the approval of floating holidays. In addition to the above list of paid holidays, the Friday after Thanksgiving and the day after Christmas will be paid holidays provided the Superintendent of Highways designates them as paid holidays. If the Superintendent of Highways nevertheless calls the employees to work for snow removal or other emergency conditions, the employees shall work the required hours during the regular workday at the regular rate of pay.

9.1.2 Holiday Occurs on Days Off: In the event a designated holiday occurs on a day for which an employee is not scheduled to work, the holiday for such employee will be observed either on the preceding scheduled day of work or on the succeeding scheduled day of work, as the case may be. For example, during a five-day workweek, if the holiday occurs on a Saturday, then the preceding Friday will be the paid holiday, however, during a “compressed workweek”, if the holiday occurs on either a Friday or a Saturday, then the preceding Thursday would be the paid holiday.

9.1.3 Holiday Pay: An employee who is not scheduled or required to work on any one of the above referenced holidays shall be paid for the day at the employee’s regular daily rate of pay; that is eight hours at the straight time rate or ten hours at the straight time rate if the employee is working a “compressed workweek” as set forth in 7.1.3, above.

9.1.4 Assigned to Work on a Holiday: Except as otherwise provided for in the case of snow removal or other emergency conditions under 9.1.1, above, an employee who does work on a designated holiday will be paid for all hours worked at one and one-half times the employee’s regular rate of pay plus “holiday pay”. However, an employee who does work on Thanksgiving Day or Christmas Day will be paid for all hours worked at two times the employee’s regular hourly rate, plus “holiday pay”.

9.1.5 Holiday During Scheduled Leave: In the event a designated holiday occurs on an employee’s normal workday and the employee is on paid vacation leave, paid sick leave, or paid bereavement leave, the employee will receive holiday pay for the day and the employee’s leave credits will not be charged for that day.

9.2 Vacation Leave

9.2.1 Allowance: An employee may take accrued paid vacation time, which shall accrue as follows starting from the date of hire. An employee may take vacation leave only after it has been credited.

AFTER COMPLETION OF:	CREDITS PER PAYPERIOD
6 months of continuous service	1.54 hours
1 year of continuous service	3.08 hours
2 years of continuous service	4.62 hours
4 years of continuous service	6.15 hours

9.2.2 Accrual During Leaves of Absence: An employee will be credited with vacation leave credits while on a paid leave of absence, but not while on an unpaid leave of absence, including an unpaid leave of absence due to a Workers’ Compensation claim.

9.2.3 Accumulation: An employee may accumulate vacation leave credits to a maximum of eighty hours. Any vacation credits in excess of eighty hours will be cancelled. However, in the event an employee is unable to take vacation leave due to no fault of the employee, the employee may “carry” the excess for ninety calendar days.

9.2.4 Scheduling: Vacation leave must be taken in full-day increments. Vacation will, as far as practicable, be granted at times most desired by employees and consistent with the staffing requirements of the Highway Department. All vacation time must be approved by the Superintendent of Highways. The Superintendent of Highways will have discretion in the approval of vacation leave. In the event more employees request vacation leave than minimum coverage permits, preference in the selection of a vacation period shall be given to the employee with the most departmental seniority.

9.2.5 Requirement to Work in an Emergency: An employee shall not be required to work while on vacation except in an emergency situation. An employee who is required to work on the employee's duly scheduled and approved vacation day or days shall be compensated at one and one-half times the employee's normal rate of pay. At the employee's option, the employee may work at the regular rate of pay and save the scheduled vacation time.

9.2.6 Termination of Employment: An employee, who resigns, retires, is laid off, or is terminated from employment for any other reason will receive payment for unused vacation leave to which the employee is properly entitled at the employee's then current rate of pay. However, in the event an employee who is to resign or retire fails to give written notice at least fourteen calendar days in advance of the last day of employment, the employee will have eighty hours of vacation credits deducted from the employee's vacation leave accumulation. In case of the death of an employee, the employee's estate will receive payment for all accumulated vacation leave to which the employee is properly entitled.

9.3 Sick Leave

9.3.1. Allowance: An employee will be credited with four hours of paid sick leave each pay period. An employee may take paid sick leave only after it has been credited.

9.3.2 New Employees: A newly hired employee will not be credited with sick leave credits prior to completing six months of continuous employment, at which time the employee will be credited with fifty-two hours of paid sick leave.

9.3.3 Accrual During Leaves of Absence: An employee will be credited with sick leave credits while on a paid leave of absence, but not while on an unpaid leave of absence, including an unpaid leave of absence due to a Workers' Compensation claim.

9.3.4 Accumulation: An employee may accumulate sick leave credits to a maximum of 680 hours (eighty-five eight-hour days). Any sick leave credits in excess of 680 hours will be cancelled.

9.3.5 Use of Sick Leave: Sick leave credits may be used in one-hour increments. Sick leave is provided to protect an employee against financial hardship during an illness or injury. Sick leave is an insurance benefit against financial loss not a leave benefit to which the employee is automatically entitled. An employee may use sick leave credits for personal illness or injury that inhibits the employee's work or for physician, chiropractor, osteopath or dentist appointments that cannot be scheduled during non-working hours.

9.3.6 Family Sick Leave: An employee may use sick leave credits for family illness or injury only if the employee must provide direct care to an immediate family member. For purposes of family sick leave, "immediate family member" will mean the employee's spouse, child, parent, sibling or grandchild.

9.3.7 Notification of Sick Leave: In the event an employee must take sick leave, the employee must personally notify the Superintendent of Highways at least one hour before the employee's scheduled reporting time. Failure to give this notice will render the employee ineligible to use sick leave credits for the absence. Absences necessitated by extenuating circumstances or emergency shall be reported to the Superintendent of Highways as soon as possible.

9.3.8 Medical Verification: The Town may require medical verification of an employee's absence if the Town perceives the employee is abusing sick leave, or has used an excessive amount of sick leave, or after an employee is absent for five consecutive workdays due to an illness or injury.

9.3.9 Abuse of Sick Leave: An employee who, after investigation, is found to have demonstrated a pattern of sick leave abuse or to have used an excessive amount of sick leave will be subject to appropriate disciplinary action.

9.3.10 Termination of Employment: An employee who resigns, retires, is laid off, or is terminated from employment due to disciplinary action will not receive payment for unused sick leave credits.

9.4 *Personal Leave*

9.4.1 Allowance: An employee will be credited with thirty-two hours (four eight-hour days) of paid personal leave each year. The employee may take personal leave only after it has been credited.

9.4.2 Date Credited: An employee will be credited on the first day of January of each year for the personal leave for the subsequent year.

9.4.3 New Employees: An employee who is hired after the first day of January in any given year will be credited with paid personal leave prorated by the number of months to be worked in the first calendar year of employment. Thereafter, the employee will be credited on the first day of January for the personal leave credits for the subsequent year.

9.4.4 Accumulation: An employee may not accumulate personal leave credits. Any personal leave credits remaining unused at close of business on December 31st will be converted to sick leave credits.

9.4.5 Scheduling: Personal leave credits may be used in one-hour increments. An employee must receive prior approval from the Superintendent of Highways to take personal leave. The request must be submitted to the Superintendent of Highways at least twenty-four hours in advance. In the event there is an unforeseen emergency, the requirement for advance notice will be waived. The Superintendent of Highways will have discretion in the approval of personal leave.

9.4.6 Termination of Employment: An employee who resigns, retires, is laid off, or is terminated from employment due to disciplinary action will not receive payment for unused personal leave.

9.5 Bereavement Leave

9.5.1 Immediate Family: In the event of a death of an employee's immediate family member, the employee may take a paid leave of absence for up to three consecutive scheduled workdays. Such leave will not be subtracted from any of the employee's leave credits. Bereavement leave may be extended at the discretion of the Superintendent of Highways.

9.5.2 Definition of Immediate Family: For the purposes of bereavement leave, immediate family shall be deemed to be spouse, child, step-child, parent, step-parent, sibling, grandparent, grandchild, spouse's parent, sibling's spouse, or spouse's sibling.

9.6 Jury Duty

9.6.1 Paid Leave of Absence: In the event an employee is required to perform jury duty on a day the employee is scheduled to work, the employee will receive a paid leave of absence. Such leave will not be subtracted from any of the employee's leave credits.

9.6.2 Notification of Jury Duty: When an employee receives notice to report for jury duty, the employee must immediately submit a copy of the notice to the Superintendent of Highways.

9.6.3 Return to Duty: In the event the employee is released from jury duty on a given day and there are four or more hours remaining in the employee's scheduled workday, the employee must report to work. The employee will be allotted time to return home and prepare for work.

9.7 Civic Duty

9.7.1 Court-Issued Subpoena: An employee who is required by law to appear before a Court as a witness to an accident or a crime and in which the employee is not personally involved as a plaintiff or defendant shall be granted leave with pay for the period necessary, provided that the employee is under the order of a Court-issued subpoena for such appearance.

9.7.2 Notification of Civic Duty: When an employee receives said subpoena, the employee must immediately submit a copy to the Superintendent of Highways.

9.7.3 Return to Duty: In the event the employee is released from court on a given day and there are four or more hours remaining in the employee's scheduled workday, the employee must report to work. The employee will be allotted time to return home and prepare for work.

10 UNPAID LEAVE

10.1 Extended Leave

10.1.1 General Terms: Subject to the approval of the Town Board, an unpaid leave of absence shall be available to an employee for personal reasons including, but not limited to, personal illness and family responsibilities.

10.1.2 Benefits: Disability benefits and accruals for leave benefits shall be suspended. An employee on an approved unpaid leave of absence due to a qualifying event as defined by the federal Family and Medical Leave Act will continue to receive medical insurance coverage for twelve calendar weeks as if the employee was still on active payroll, thereafter, the employee must pay the full premium in accordance with COBRA. An employee on an approved unpaid leave of absence for any other reason shall continue to be eligible for medical insurance coverage provided the employee pays the full premium.

10.1.2 Return: An employee returning to work from an unpaid leave must submit request to return to work, in writing, to the Superintendent of Highways at least seven calendar days in advance.

An employee who returns to work within twelve calendar weeks will be returned to the employee's previous position. In the event an employee returns to work after twelve calendar weeks and the employee's previous position is not available, the employee will be given the first position open in an equal or lower grade provided the employee is qualified to perform the job duties.

An employee who returns to the same job or pay grade will remain on the same step that the employee was on at the time the leave of absence began. In the event the employee returns to a job in a lower grade, the employee will receive the rate of pay at the maximum step in that pay grade OR the employee's former rate of pay, whichever is lesser.

An employee who fails to return from an unpaid leave of absence at the scheduled expiration date without giving proper notice or receiving proper authorization shall be conclusively presumed to have voluntarily resigned from employment.

10.1.3 Change in Status: If the reasons for the unpaid leave of absence changes, the employee must reapply or return to work.

11 INSURANCE

11.1 Medical Insurance

11.1.1 Coverage: The Town will make available the current medical insurance plan with expanded coverage for eye care and chiropractic care for each eligible employee and the employee's eligible family. Coverage will begin on the employee's first day of employment, provided the employee meets all eligibility requirements of the insurance plan and has completed the insurance application prior to the first day of employment. In no event shall the Town be required or obligated to pay or reimburse an employee or the employee's spouse or other dependent for any portion of any doctor's bill, hospital bill, prescription bill, x-ray bill, laboratory bill, procedure bill, or any other medical bill or expense that is not covered or reimbursed by the health insurance plan.

11.1.2 Change in Insurance Plans: The Town may change the insurance carrier and/or offer alternative plans in place of the current plan, provided the alternative plan's benefit structure is substantially equivalent to the current plan.

11.1.3 Premium Payment (employees hired before 2-1-98): The Town will pay the full premium for individual or family coverage, as the case may be, for each eligible employee hired before February 1, 1998. In addition, the Town will pay the first one hundred dollars of the employee's deductible each plan year.

11.1.4 Premium Payment (employees hired after 2-1-98): The Town will pay the full premium for individual coverage or eighty-five percent of the premium for family coverage, as the case may be, for each eligible employee hired on or after February 1, 1998. The employee's premium contribution of fifteen percent will be deducted from the employee's regular paycheck.

11.2 Vision Plan

11.2.1 Coverage: The Town will make available a vision plan for each eligible employee and the employee's eligible family. Coverage will begin on the employee's first day of employment, provided the employee meets all eligibility requirements of the plan and has completed the application prior to the first day of employment. In no event shall the Town be required or obligated to pay or reimburse an employee or the employee's spouse or other dependent for any portion of any bill or expense that is not covered or reimbursed by the vision plan.

11.2.2 Benefit Structure: There shall be an employee co-payment of twenty-five dollars. Service intervals are as follows:

Eye examination	12 months
Lenses	12 months
Frame	24 months

11.2.3 Change in Vision Plan: The Town may change the carrier and/or offer an alternative plan in place of the current plan, provided the alternative plan's benefit structure is substantially equivalent to the current plan.

11.2.4 Premium Payment: The Town will pay the full premium for individual or family coverage, as the case may be, for each eligible employee.

11.3 Flexible Spending Account

11.3.1 Eligibility: The Town will make available a Pre-Tax Contribution Program in accordance with Section 125 of the Internal Revenue Service Code to eligible employee, provided the employee meets all eligibility requirements for medical insurance.

11.4 Medical Insurance Buy-out

11.4.1 Eligibility: An employee who is eligible for medical insurance coverage made available through the Town may receive a cash buy-out in lieu of receiving medical insurance benefits. To be eligible for the medical insurance buy-out, the employee must provide documentation of comparable medical insurance coverage in a manner and form to be determined by the Town and sign an appropriate waiver of medical insurance coverage and waiver of liability to the Town.

11.4.2 Amount of Buy-Out: If the employee is eligible for individual coverage, the employee will receive an amount equivalent to twenty-five percent of the Town's annual premium contribution for individual coverage under the indemnity plan. If the employee is eligible for family coverage, the employee will receive an amount equivalent to twenty-five percent of the Town's annual premium contribution for family coverage under the indemnity plan.

11.4.3 Method of Payment: Partial payment of the buy-out ($1/26^{\text{th}}$ of the annual premium) will be made in the employee's regular biweekly paycheck for each pay-period the employee is eligible for the buy-out.

11.4.4 Reinstatement: In the event the employee loses coverage under the alternate insurance plan, the employee may resume coverage under one of the medical insurance plans made available through the Town. Coverage will begin on the first of the month immediately following the employee giving notice, provided the employee gives such notice at least five business days prior to the first of the month and meets all eligibility requirements of the insurance plan.

11.5 Workers' Compensation Insurance

11.5.1 Reporting of Injury: An employee should report an injury to the Superintendent of Highways within twenty-four hours of the occurrence in order to ensure prompt coverage of the claim. In the event the employee is unable to complete the forms due to the injury or illness, the Superintendent of Highways will complete and submit the required forms on behalf of the employee.

11.5.2 Use of Sick Leave Credits: An employee may draw from the employee's sick leave credits in conjunction with Workers' Compensation payments to equal, but not exceed, the employee's regular daily rate of pay. When the insurance company makes payment, the employee shall reimburse the Town for that portion of sick leave covered by insurance.

11.6 New York State Disability Insurance

11.6.1 Coverage: The Town will provide payment of disability benefits to each employee under the New York State Disability Law. No contributions to the cost of providing benefits shall be required from employees.

11.6.2 Use of Sick Leave Credits: An employee may draw from the employee's sick leave credits in conjunction with New York State Disability Insurance payments to equal, but not exceed, the employee's regular daily rate of pay. When the insurance company makes payment, the employee shall reimburse the Town for that portion of sick leave covered by insurance.

12 GENERAL PROVISIONS

12.1 Work Accouterments

12.1.1 Safety Equipment: The Town shall provide appropriate uniforms, rain gear, gloves, rubber boots, respiratory protection, safety glasses and necessary personal protective equipment for use by an employee while at work.

12.1.2 Work Shoes: The Town shall reimburse an employee up to a maximum of one hundred and fifty dollars (\$150.00) per year for work shoes/boots. The employee will choose the shoe/boot. All required corresponding receipts must be submitted to the Superintendent of Highways prior to reimbursement.

12.1.3 Eyeglass Replacement: An employee whose glasses are broken on the job through no negligence of the employee shall be entitled to a replacement allowance not to exceed two hundred and fifty dollars (\$250) per year. Incident reports must be filed and replacement approved in advance. All required corresponding receipts must be submitted to the Superintendent of Highways prior to reimbursement.

12.2 Commercial Driver's License

12.2.1 Requirement to Possess a Commercial Driver's License: An employee who operates a vehicle that requires a Commercial Driver's License (CDL) must maintain such license throughout employment.

12.2.2 Loss or Suspension of Commercial Driver's License: An employee who is required to possess a Commercial Driver's License in order to perform certain job duties and responsibilities must immediately notify the appropriate Superintendent of Highways in the event the employee's driver's license is suspended, revoked, or if the employee is otherwise disqualified from driving. The loss or suspension of the employee's driver's license may affect the employee's employment with the Town. In accordance with the federal Commercial Motor Vehicle Safety Act of 1986, an employee who is required to possess a Commercial Driver's License must notify the Superintendent of Highways within thirty calendar days of a conviction of any traffic violation (except parking) no matter where or what type of vehicle the employee was driving.

12.3 Limited Duty Program

12.3.1 Preamble: The purpose of this Limited Duty Program is to allow an employee who is temporarily partially disabled to return to work in an assignment that meets both the needs of the Town and the medical limitations of the employee. In the event an employee is unable to perform the full duties and responsibilities of the employee's regular position as set forth in the job description established by the Town, the Superintendent of Highways may, on a case-by-case basis, require such employee to return to work in a limited duty assignment. The exercise of this Limited Duty Program shall not establish any precedent or commitment to provide limited duty assignments to any other employee at any time in the future.

12.3.2 Eligibility: The employee must be classified as partially disabled at fifty percent or less by the insurance carrier **and** the employee must have a prognosis of full recovery within six months. For the purpose of this program, full recovery is defined as the ability to perform the full duties of the job the employee held when injured. These medical findings may occur as a result of an examination by a State Insurance Fund consulting physician or by a medical examination ordered by the Town. The Town shall determine what documentation will be acceptable for establishing the employee's eligibility and determining the employee's physical limitations. An employee who refuses to submit to a medical examination ordered by the Town will be subject to appropriate disciplinary action.

12.3.3 Limited Duty Assignment: The assignment may not necessarily correspond with the employee's regular job duties. The assignment may involve performing some duties of the employee's regular position, some duties of another position, or a combination of tasks from several positions. The assignment may be at a different work location and/or have a different schedule than the employee's regular position.

12.3.4 Wages and Benefits: While performing a limited duty assignment, the employee shall receive the employee's regular hourly rate of pay and receive those benefits provided to full-time employees set forth in this collective bargaining agreement.

12.3.5 Duration of Assignment: A limited duty assignment shall not exceed six months or the date of full recovery, whichever comes first. The Town may require a medical examination ordered by the Town as a condition of allowing the employee to return to full duties.

12.3.6 Refusal of Assignment: In the event the employee refuses a limited duty assignment, the employee will be referred to the Town's current insurance carrier for a benefit determination and may be subject to appropriate disciplinary action.

12.4 Snow Removal

12.4.1 Wing Operator: When weather conditions require a wing operator, the Superintendent of Highways will give such assignments proper consideration.

13 DUE PROCESS PROCEDURES

13.1 Grievance Procedure

13.1.1 Definition: For the purposes of this collective bargaining agreement, a grievance shall mean and refer to a claimed violation, misinterpretation or inequitable application of the expressed provisions of this collective bargaining agreement.

13.1.2 Formal Grievance: The Union may file a formal complaint on behalf of an aggrieved employee(s). The grievance shall specify the nature of the grievance, including the section of the collective bargaining agreement that was allegedly violated and a statement of facts, times and dates.

The grievance must be submitted, in writing, to the Superintendent of Highways within seven calendar days from knowledge of the occurrence, or when the Union should have had knowledge. Within seven calendar days after receiving the grievance, the Superintendent of Highways shall issue a written response to the grievance, which shall be given to the Steward and the aggrieved employee(s).

13.1.3 Step Two - Appeal: If the Union is not satisfied with the response to the grievance at Step One, the Union may submit the matter to the Town Supervisor. The appeal must be submitted, in writing, within seven calendar days from receiving the Step One response, or when the Step One response should have been received. Within seven calendar days after receiving the appeal, the Town Supervisor shall issue a written response to the grievance, which shall be given to the designated representative of the Union.

13.1.4 Step Three - Binding Arbitration: If the Union is not satisfied with the response to the grievance at Step Two, the Union may submit the matter to arbitration by filing a demand for arbitration with the Federal Mediation and Conciliation Services in accordance with its rules and regulations. The demand for arbitration must be filed within thirty calendar days from receiving the Step Two response or when the Step Two response should have been received.

The Town and the Union shall share the fees of the arbitrator equally. The conduct of the arbitration shall be under the exclusive jurisdiction and control of the arbitrator, which shall conform to applicable law. All decisions rendered by the arbitrator shall be final and binding upon all parties. No arbitrator functioning under these procedures shall have any power to amend, modify or delete any provisions of this collective bargaining agreement.

13.2 Disciplinary Procedure

13.2.1 Discipline for Just Cause: The Town shall not subject an employee who has completed probation, as defined in 6.2.1 above, to any disciplinary action or penalty except for just cause.

13.2.2 Notice of Discipline: The Town shall provide the employee with a written Notice of Discipline, which shall contain all charges and specifications and the penalty. Simultaneously, a copy of the notice shall be given to the Steward.

13.2.3 Disciplinary Hearing: If the Union disagrees with the disciplinary action, the Union may appeal the matter, in writing, to the Town Supervisor. The appeal must be submitted in writing, within seven calendar days from receiving the Notice of Discipline. Within seven calendar days after receiving the appeal, the Town Supervisor will meet with the disciplined employee and the designated representative of the Union. Within seven calendar days after said meeting, the Town Supervisor shall issue a written response, which shall be given to the designated representative of the Union.

13.2.4 Appeal of Disciplinary Action: If the Union is not satisfied with the response of the Town Supervisor, the Union may submit the matter to arbitration by filing a demand for arbitration with the Federal Mediation and Conciliation Services in accordance with its rules and regulations. The demand for arbitration must be filed within seven calendar days of receiving the response from the Town Supervisor or when the response should have been received.

The Town and the Union shall share the fees of the arbitrator equally. The conduct of the arbitration shall be under the exclusive jurisdiction and control of the arbitrator, which shall conform to applicable law. All decisions rendered by the arbitrator shall be final and binding upon all parties.

13.2.5 Civil Service Rights: The procedure set forth above shall serve as the only method of resolving challenges to disciplinary action and wholly replaces the statutory provisions set forth in Section 75 and Section 76 of New York State Civil Service Law.

13.2.6 Confidentiality: If the Town has reason to reprimand an employee, this shall, insofar as practicable, be done in a manner that will not embarrass the employee before another employee or the public.

14 EXECUTION OF AGREEMENT

14.1 Duration of Agreement

14.1.1 Duration: This collective bargaining agreement shall be effective from January 1, 2004 through December 31, 2006, unless otherwise agreed to by the parties.

14.2 Savings Clause

14.2.1 Should any of the provisions, portions or applications of this collective bargaining agreement be found to be invalid by any tribunal of competent jurisdiction, then the provisions, portions or applications specified in such decision shall be of no force and effect, but the remainder of this collective bargaining agreement shall continue to be in full force and effect.

14.2.2 Upon the issuance of such decision, the Town and the Union shall negotiate an adjustment in the affected provisions, portions or applications with the intention of affecting the purpose of the provisions, portions or applications.

14.3 Legislative Action

14.3.1 Taylor Law Requirement: 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 THE ADDITIONAL FUNDS THEREFORE, SHALL NOT BECOME EFFECTIVE UNTIL THE APPROPRIATE LEGISLATIVE BODY HAS GIVEN APPROVAL.

14.4 Execution of Agreement

IN WITNESS WHEREOF, the parties have caused this collective bargaining agreement to be signed by their respective representatives on January __, 2004.

TOWN OF BERNE

IUOE LOCAL 106

Kevin Crosier
Town Supervisor

Robert J. Jones
Business Manager/President

Michael A. Richardson
Labor Relations Consultant