

## ***General Information***

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## INTRODUCTION

It is the intent of both parties that this Collective Agreement will promote harmonious relations between the Employer and its Employees by providing procedures to secure prompt disposition of grievances, to eliminate interruption of work, to promote co-operation, joint discussions and negotiations in matters relating to the efficient operation of the Employer.

### ARTICLE 1 - NO DISCRIMINATION

- 1.01** The Employer and the Union agree that there will be no intimidation, discrimination, interference, restraint or coercion exercised or practiced by either of them or other representatives or member because of an Employee's activity or lack of activity in the Union.
- 1.02** The Employer and the Union further agree that there will be no discrimination on grounds of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, age, marital status, family status, or handicap, as defined in Section 9(1) of The Ontario Human Rights Code (OHRC).
- 1.03** **Sexual Harassment**
- (a) All Employees covered by this Agreement have a right to freedom from harassment in the workplace because of sex by his/her Employer or another Employee. Harassment means engaging in a course of vexatious comment or conduct that is known or ought reasonably to be known to be unwelcome.
  - (b) Every Employee covered by this Agreement has a right to be free from:
    - (i) sexual solicitation or advance made by a person in a position to confer, grant or deny a benefit or advancement to the Employee where the person making the solicitation or advance knows or ought reasonably to know that it is unwelcome; or
    - (ii) a reprisal or a threat of reprisal for the rejection of a sexual solicitation or advance where the reprisal is made or threatened by a person in a position to confer, grant or deny a benefit or advancement to the Employee.
  - (c) The time limits set out in Article 6 do not apply to complaints under this Article, provided that the complaint is made within a reasonable time of the conduct complained of, having regard to all the circumstances.
  - (d) The time limits for the processing of a complaint or grievance under Article 6 of the Collective Agreement shall be suspended until the Employee is given notice in writing of the results of any investigation undertaken pursuant to the Employer's Harassment Policy.

- (e) Where a complaint under this Article is made against an Employee's Supervisor, or any person with supervisory responsibilities at a higher level over the Employee, any oral complaint or written grievance which is expressed in Article 6 to be presented to the Supervisor may be presented directly to the General Manager or the Director of Human Resources. It is agreed that the individual assigned to handle the complaint or grievance will not be a person who is the subject of the complaint giving rise to the grievance.
- (f) An Employee who makes a complaint under this Article may be accompanied and represented by an Employee Representative at the time of the discussion of the complaint, at each stage of the grievance procedure, and in the course of any investigation undertaken pursuant to the Employer's Harassment Policy.

**1.04** The Employer shall provide to the Union, a copy of its Harassment Policy. Amendments shall be provided when implemented.

## **ARTICLE 2 - RECOGNITION**

**2.01** The Employer recognizes the Union as the bargaining agent for all Employees of The Niagara Parks Commission employed as Servers in the City of Niagara Falls, save and except Supervisors, persons above the rank of Supervisor, Students and Employees in units for which any Trade Union held bargaining rights as of July 5, 1994.

**2.02** Employees covered by this Agreement shall retain bargaining unit status while in the employ of the Employer performing the duties outlined in the Server task list. This provision does not apply where an Employee voluntarily accepts a position excluded from the Bargaining Unit.

**2.03** It is recognized that management forms part of the overall team for the provision of quality service to all customers. However, such management Employees will not act in the normal capacity of a Server except in the following circumstances:

- (a) In the cases of emergency or instances beyond the control of the Employer;
- (b) Where a Server is unable to meet the demand of the Employer's clientele for prompt service. This shall not be intended as a means of displacing a Server of the Employer.

**2.04** Servers will only be required to perform duties specified in the Server Task List. This is to confirm that hostessing duties as well as buffet clean-ups and set-ups are not regular job functions for Servers. However, there will be occasions when Servers may be requested to perform these duties in order to ensure that quality service is not compromised.

## **ARTICLE 3 - UNION DUES**

**3.01** The Union steward in each restaurant shall be advised of the name of any new bargaining unit Employee. This shall be done upon their commencement of employment.

**3.02** The Employer agrees to deduct whatever sum that may be authorized by the Union Constitution or By-Laws of the local Union for union dues and initial fees from the pay of each Employee. Union dues shall be deducted from each bi-weekly pay period. The initial fees shall be deducted from the pay of new Employees on the basis of fifty (50%) of the total initial fee deducted from each of the first two (2) pay periods following their commencement of employment.

**3.03** The Union shall advise the Employer in writing of the amount of union dues and initial fees and changes from time to time that may occur.

**3.04** The sum deducted for union dues and initial fees shall be provided in a monthly report that shall include Employee name, address, phone number, social insurance number and the total amount deducted. This report shall be forwarded to the Union by the fifteenth of the month following the month in which the deductions are made. This shall be done through electronic transfer.

It is understood that it is the responsibility of each Server to inform the Human Resources Office of any changes, (e.g. name, address, telephone number, etc.).

**3.05** The Union agrees to indemnify and save the Employer harmless from any liability arising out of the operation of this Article.

#### **ARTICLE 4 - MANAGEMENT RIGHTS**

**4.01** The Union acknowledges that, except as specifically modified elsewhere in this Agreement, and without limiting the generality of the foregoing, it is the exclusive function of the Employer to:

- (a) Maintain order, discipline and efficiency;
- (b) Hire, discharge, classify, promote, retire, select, control, assign, layoff, recall, schedule and suspend or otherwise discipline Employees for just cause, subject to the right of an Employee to lodge a grievance in the manner and to the extent hereinafter provided;
- (c) Make, enforce and revise from time to time rules and regulations.
- (d) Manage the enterprise in which the Employer is engaged and without restricting the generality of the foregoing, the right to plan their operations, direct the work force, determine the number of personnel required from time to time, the number and location of offices and facilities, the services to be performed and the methods, procedures and equipment to be used in connection therewith;
- (e) Establish schedules of work, the extension, limitation, curtailment or cessation of operations and exercise all other rights and responsibilities of management.

## **ARTICLE 5 - UNION REPRESENTATION/UNION STEWARDS**

- 5.01** (a) The Employer, upon reasonable notification to the Director of Human Resources or delegate, permit reasonable access to designated areas of its premises by an accredited Union representative providing said access shall not interfere with the operations of the department concerned. Said access shall not interfere with service to guests.
- (b) The Union agrees that there will be no Union activities on the premises of the Employer, except as specifically referred to in this Agreement or in writing by the Employer.
- 5.02** The Employer acknowledges the Union's right to appoint or otherwise select Union Stewards to assist Employees in presenting their grievances to the representatives of the Employer. The restaurants shall be represented by the following: 2 Stewards at Table Rock, 1 Steward at Edgewater's Tap and Grill, 1 Steward at Whirlpool and 1 Steward at Legends on the Niagara.
- 5.03** No Employee or steward shall leave his/her work place to service a grievance or to meet in accordance with Article 5.01 until he/she has secured permission from his/her supervisor which shall not be unreasonably withheld. When resuming their normal work, they shall report to their supervisor. Such business shall be between the Employer and the Union and shall not interfere with the efficient operation of the department concerned.
- 5.04** The Employer agrees that there will be no recrimination practiced against Stewards for carrying out their approved function on behalf of the Union.
- 5.05** It is mutually agreed that Employees shall not be eligible to serve as Restaurant Stewards or members on any Union Committee established under this Collective Agreement until they have completed their probationary period.
- 5.06** The Union shall advise the Director of Human Resources of the Union Stewards together with the restaurants they are authorized to represent. The Employer shall advise the appropriate Supervisor.

## **ARTICLE 6 - GRIEVANCE PROCEDURE**

### **6.01 Complaint Stage**

It is the intent of this Agreement to adjust as quickly as possible, any complaints or differences between the parties arising from the interpretation, application, administration or alleged contravention of this Agreement, including any question as to whether a matter is arbitrable.

Any Employee who has a complaint or difference with the Employer shall first discuss the complaint or difference with his/her Supervisor within fifteen (15) days of first becoming aware of the complaint or difference. If any complaint or difference is not satisfactorily settled by the Supervisor within seven (7) days of the discussion, it may be processed within an additional ten (10) days in the following manner:

- 6.02**      **Step No. 1**  
The Employee may file a grievance with the Restaurant Manager. The Restaurant Manager shall give the Grievor a decision in writing within seven (7) days of the submission of the grievance.
- 6.03**      **Step No. 2**  
If the grievance is not resolved under Step No. 1, the Employee may file the grievance to the Director of Food Services or Director of Golf as applicable. The Director shall give the Grievor a decision within seven (7) days of the submission of the grievance.
- 6.04**      **Step No. 3**
- (a) If the grievance is not resolved under Step No. 2, the Employee may submit the grievance to the Director of Human Resources or a designee within seven (7) days of the date that the Grievor received the decision under Step No. 2. In the event that no decision in writing is received in accordance with the specified time limits in Step No. 2, the Grievor may submit the grievance to the Director of Human Resources or a designee within seven (7) days of the date that the Director of Food Services or Director of Golf was required to have his/her decision in writing in accordance with Step No. 2.
- (b) The Director of Human Resources or a designee shall hold a meeting with the Employee within fifteen (15) days of the receipt of the grievance and shall give the Grievor a decision in writing within seven (7) days of the meeting.
- 6.05**      If the Grievor is not satisfied with the decision of the Director of Human Resources or a designee, or does not receive the decision within the specified time, the Grievor may apply to the Grievance Settlement Board for a hearing of the grievance:
- (a) Within fifteen (15) days of the date the Grievor received the decision; or
- (b) Within fifteen (15) days of the specified time limit for receiving the decision.
- 6.06**      Upon submission of a written grievance at stage one (1) and thereafter, the Employee shall be accompanied and represented by an Employee representative at any grievance meeting.
- 6.07**      In Article 6 and 7 days shall include all days exclusive of Saturdays, Sundays and holidays stipulated in this Agreement.
- 6.08**      The time limits contained in the Article may be extended by Agreement of the parties in writing.
- 6.09**      Where a grievance is not processed within the time allowed, or has not been processed by the Employee within the time prescribed, it shall be deemed to have been withdrawn. Furthermore, where Article 6.01 has not been complied with, the grievance shall be considered void and returned to the Grievor.
- 6.10**      The Grievance Settlement Board shall have not jurisdiction to alter, change, amend or enlarge any provision of the Collective Agreement.
- 6.11**      Each of the parties hereto agree to pay their own expenses relating to appearances at the Grievance Settlement Board. The parties shall jointly bear the expenses of the

Grievance Settlement Board. In all cases the parties agree to make every reasonable attempt to work together in order to minimize such costs.

**6.12** The Employer agrees to forward replies relating to grievances to the Union by facsimile. It is understood that the failure of the Union to receive such documents will not nullify or void the action taken by the Employer.

**6.13** **Mediation/Arbitration**

The parties agree that the earliest resolution to matters giving rise to grievances is the desired result. To that end, the parties may decide to meet with an agreed-upon mediator/arbitrator in order to assist with the process. The bargaining agent and the Employer will each pay one half (½) of the cost of the mediation/arbitration.

**ARTICLE 7 - UNION POLICY GRIEVANCES AND MANAGEMENT GRIEVANCES**

**7.01** **Policy Grievances**

The Union shall have the right to file a grievance based on a difference arising directly with the Employer concerning the alleged violation of this Agreement. However, such grievance shall not include any matter upon which an Employee(s) is personally entitled to grieve and the regular grievance procedure shall not be thereby bypassed. Such grievance shall be presented in writing signed by the Union Representative or designate to the General Manager or the Director of Human Resources within thirty (30) days following the occurrence or origination of the circumstances giving rise to the grievance commencing at Step Two of the grievance procedure.

**7.02** **Management Grievances**

Any grievance initiated by the Employer shall be mailed to the Union. The conferring parties shall meet forthwith and in the event a settlement is not made to the mutual satisfaction of both parties, the matter may be referred to the Grievance Settlement Board.

**ARTICLE 8 - DISCIPLINE/DISCHARGE**

**8.01 (a)** Discipline notices issued to Employees shall set out reasons for the discipline. The Employee will be asked to sign a copy of a notice to acknowledge receipt. It is understood that any signature acknowledging receipt is not an admission of guilt. Employees who disagree with the discipline notice may submit a letter of disagreement to the Director of Human Resources and/or file a grievance. The letter of disagreement may be submitted within thirty (30) days of the date the notice was received and shall be filed in the Employee's file with the notice of discipline. The Union Steward in the appropriate location will be copied on all written disciplinary action and will forward a copy to the Union Office. Upon receipt, the Human Resources Office will forward a second copy of all written discipline to the Union Office by facsimile. It is understood that in the unlikely event the union does not receive such documentation, it will not nullify or void any action taken by the Employer.

**8.01 (b)** Any Employee who is to receive a disciplinary notice may request to be accompanied by a Shop Steward or Employee Representative who is at work at that time.

**8.01 (c) Letters in Human Resources Files**

Except in instances of workplace violence, harassment or pre-mediated theft, excluding those that were subject to a grievance that was upheld, all letters of reprimand, suspension or other disciplinary action will be deemed to be removed from the record of an Employee after two (2) years providing the record of the Employee has been clear of any similar offence during the two (2) years.

**8.02** The Employer agrees that Managers will not discipline Employees in public, neither in the presence of guests nor in the presence of uninvolved Employees. It is understood that it is not considered discipline where an Employee is receiving instruction on job functions.

**8.03 Discharge**

Both parties recognize that the purpose of a probationary period is so that the employer may assess the suitability of an Employee for continued employment. During the probationary period, the employer may release an Employee for reasons that are less serious or would not warrant the dismissal of a non-probationary Employee.

**8.04** Any Employee who is dismissed shall be entitled to file a grievance at Step 3 of the grievance procedure provided that the Employee does so within fifteen (15) days of the date of dismissal.

**8.05** The Employer shall notify the Union of all disciplinary terminations within twenty-four (24) hours.

**ARTICLE 9 - STRIKES AND LOCKOUTS**

**9.01** The Union undertakes and agrees that while this Agreement is in force, there shall be no strike. The Employer agrees that there will be no lockout while the Agreement is in force.

**ARTICLE 10 - SENIORITY**

**10.01** Seniority lists shall be posted and maintained on the bulletin boards in each restaurant covered by this Agreement. Seniority lists shall contain a Commission hire date and a restaurant seniority date column.

**10.02** Seniority lists will be maintained on the following basis:

- (a) Restaurant seniority date shall mean the length of service as a Server in the restaurant in which the Employee normally works. Servers who temporarily assist in a restaurant in which they do not normally work shall be at the bottom of the seniority list at those other restaurants. Except as provided in Article 10.04, an Employee's Commission hire date and restaurant seniority date shall remain unchanged during his/her lay-off period.
- (b) New Employees hired shall be considered probationary until they have successfully completed a period of 60 days worked after which time their seniority shall date back to the last date of hire as a Server.

- (c) An Employee's restaurant seniority date shall be shown as the original date of hire in the restaurant in which the Employee normally works. Employees who permanently transfer between restaurants shall carry their restaurant seniority date to the new restaurant.
- (d) Where an Employee performed work as a student prior to having union dues deducted, this time will not be included in the calculation of seniority date.
- (e) Where an Employee quits or is discharged and is later rehired, the Commission hire date and restaurant seniority date will be the most recent date he/she was rehired at The Niagara Parks Commission (after successful completion of the probationary period), unless such discharge is overturned through the grievance procedure.

### **10.03 Transfers**

- (a) An Employee who wishes to be considered for a vacancy within another restaurant covered by this Agreement shall apply in person at the Human Resources Office. Transfer requests are valid for one (1) season and must be renewed on a yearly basis. Servers may transfer to another restaurant only when a vacancy becomes available.
- (b) In filling positions in accordance with 10.03 (a), the following provisions shall apply:
  - (i) The employer shall give primary consideration to job performance, qualifications and ability to perform the required duties. Where job performance, qualifications and ability are relatively equal, seniority shall be the governing factor.
  - (ii) It is understood that Employees who are successful in their transfer requests will not lose their seniority as a result of the transfer.
  - (iii) The successful candidate for a transfer shall have a trial period of up to ten (10) working days for the purpose of assessing the Employees' skill and ability to perform the duties of the position. Should either party be dissatisfied during the trial period, the employee will be returned to his/her former position without loss of seniority.
- (c) (i) An Employee who wishes to be considered for a vacancy outside of the UNITE HERE bargaining unit shall apply in person to the Human Resources Office. Transfer requests are valid for one (1) season and must be renewed on a yearly basis. An Employee wishing to be considered for a transfer prior to the opening of the season, must apply before December 31 of the previous year.
- (ii) A Server who wishes to return to a position with UNITE HERE may put their name on the transfer list. Providing a position becomes available, and the request to return is within thirty (30) working days, the Server shall not lose their seniority with UNITE HERE.

### **10.04 Loss of Seniority**

Seniority shall be lost and employment deemed to be terminated if the Employee:

- (a) Voluntarily resigns (even when the Employee is subsequently rehired);
- (b) Is discharged for cause, unless such discharge is reversed through the grievance procedure;

- (c) Is laid off for a period in excess of eighteen (18) months;
- (d) Overstays a leave of absence without written consent of the Employer;
- (e) Utilizes a leave of absence for other than the reason for which such leave was granted;
- (f) Being laid off, fails to return to work within five (5) days of contact by telephone or receipt of a registered letter to the last recorded address with the Employer.
- (g) An Employee who is laid off for longer than normal due to delays in construction or renovation of an existing property will be offered the opportunity to work in alternate work locations if there is work available and the Employee meets the requirements of the position. Temporary transfers to a position outside of the UNITE HERE bargaining unit will be in accordance to the Employer's transfer policy. In these instances, Employees moving from one restaurant to another will be placed at the bottom of the seniority list.

## **ARTICLE 11 - LAY-OFFS**

- 11.01** (a) Where the Employer determines that the number of Employees must be reduced, lay-off in accordance with restaurant seniority shall be the guiding factor providing that the Employees not laid off are capable of performing the remaining work.

### **Early Lay-Off**

- (b) Where mutually agreeable by all parties involved, an Employee with greater seniority may apply for an early lay-off in lieu of a lower seniority Employee being laid off without the penalty of loss of seniority except as outlined in 10.04 providing;
- (i) They notify in writing the restaurant manager of his/her desire of early lay-off at least one (1) week prior to the lay-off taking effect, and
  - (ii) The date of the early lay-off is not prior to any lay-off date the Employer determines, and
  - (iii) The Employee, upon being granted an early lay-off date shall forfeit his/her right to notice of lay-off as outlined in Article 11.03.
- 11.02** (i) Recall from layoff at each individual restaurant shall be done in order of seniority.
- (ii) The Employer agrees that it is normal practice to complete the recall of Employees to the restaurants covered by this agreement prior to the hiring of new Employees. It is understood that there may be exceptions due to the training of new Employees, scheduling irregularities of in the event of an approved leave of absence.
- 11.03** Employees shall receive written notice of any lay-off one (1) week prior to the commencement of any lay-off. However, it is understood that where business requirements dictate, an Employee may be retained for a period of time following the date that the lay-off was to commence.
- 11.04** During an Employee's lay-off, it is his/her responsibility for advising the Restaurant

Manager with a copy to the Human Resources Office (in the manner established by the Employer) of his/her current phone number and address and is responsible for the accuracy and completeness of the information provided.

- 11.05** Notwithstanding anything in this Article, it shall not be considered a lay-off when an Employee is relieved of duty prior to the conclusion of their scheduled work day due to shortage of work.

## **ARTICLE 12 - SCHEDULING/REPORTING TIME PAY/JOB TRANSFER/BREAKS**

- 12.01** The Employer shall post work schedules of the Employees covered by this Agreement by Thursday for the week commencing the following Sunday.

- 12.02** Every reasonable effort shall be made to provide Employees with at least eight (8) hours between shifts. However, it is understood this provision does not apply to split shifts.

- 12.03** Employees shall not be scheduled for less than three (3) hours on a daily basis.

- 12.04** Nothing in this Article shall be construed as a guarantee of employment or a guarantee of hours. However, when developing work schedules at individual restaurants the following shall be practiced:

- (a) Seasonally, or as necessitated by business requirements, the Employer will identify the shifts available, e.g. breakfast/lunch, lunch only, lunch/dinner, and dinner only;
- (b) Servers shall inform the Employer of their preferred shifts and days off;
- (c) The Employer will schedule the Servers by seniority so that the more senior Employees will be given their preference of shifts and days off. Shift preferences will be subject to the following:

- 8 shifts maximum - all year
- 1 shift minimum\*\* - January to Easter
- 3 shifts minimum\*\* - rest of the year

\*\*It is understood that the minimum shifts are subject to the following conditions:

- (i) Servers who choose to work less than 24 hours a week on a continual basis (5 months or more) will be entitled to ½ of the uniform entitlement;
  - (ii) It is understood that should business demands require more Servers during these periods, Servers may be required to work additional shifts to accommodate these demands. Servers will be called in reverse order of seniority;
  - (iii) These minimums and maximums shall be in effect for the term of this agreement.
  - (iv) This in no way prohibits Employees from requesting seasonal voluntary lay-offs which will be approved subject to business demands.
- (d) Once preferences have been identified, they will remain in effect for the appropriate time period as outlined in (a) above;

- (e) Unless by mutual agreement, or at the request of the Employee, every reasonable effort will be made to provide two (2) consecutive days off each week;
- (f) Bargaining Unit Servers will be scheduled prior to the scheduling of non-bargaining unit Servers;
- (g) Any Server wishing to change a shift may do so by finding a replacement, providing that the change shall not result in overtime for another Employee and no overtime will be paid should an error occur as the result of the shift change. It is understood that the shift change could either be a trade of shift or a replacement. It is further understood that where another Server replaces a shift, the requesting Server will have less shifts for that week. In any event, Servers shall complete a "Request for Shift Change" Form and submit to the Employer for approval at least 24 hours in advance of the requested change. The Employee filling in on the scheduled shift shall assume the station that the Employee would have occupied had no change of shift occurred.

**12.05 Reporting Pay**

- (a) Where an Employee reports to work at his/her scheduled starting time and work is not available, the Employee shall receive two (2) hours pay at his/her basic hourly rate. This shall not apply where the Employee has been notified prior to the scheduled starting time that the Employee is not to report to work. In no case shall such payment exceed the number of hours scheduled.
- (b) When an Employee commences work at his/her scheduled starting time and is later instructed that work is not available, he/she shall receive a minimum of three (3) hours pay at his/her basic hourly rate. In no case shall such payment exceed the number of hours scheduled.

**12.06** The provision of Article 12.05 shall not apply in the event of a major plant breakdown, flood, electric stoppage, fire or circumstances beyond the control of the Employer.

**12.07 Breaks**

- (a) Employees will be granted an unpaid 30 minute meal break to be taken after each five (5) consecutive hours of work. If by mutual agreement, it is not possible to grant such time off for meals, pay for the 30 minutes lost will be given.
- (b) If requested, a short break to a maximum of five (5) minutes during each period of four (4) consecutive hours of work will be granted to Employees, providing customer service is not compromised and work stations are not left unattended.
- (c) Employees will be granted a minimum of one (1) hour between unscheduled double shifts except in circumstances beyond the control of the Employer.

**12.08** The Employer agrees that Servers who are scheduled to work for three (3) hours or more will be entitled to receive one (1) free staff meal per day.

All Servers covered by this Agreement will be charged a taxable benefit based on the value of the meal calculated at \$2.50 per meal for the duration of this Agreement. Entitlement to the staff meal shall be in accordance with Article 12.07. Meals shall be of a nutritional variety. Meal breaks will be taken during periods when customer service will not be compromised and work stations are not left unattended.

- 12.09** The parties agree that when, for business reasons, the Employer deems it necessary to relieve an Employee from duty prior to the end of their scheduled shift, the following procedures shall apply:
- (a) The Employer will ask for volunteers from the Servers that are on duty and/or working the subject function;
  - (b) If no volunteers are forthcoming, Servers shall be relieved in reverse order of seniority;
  - (c) It is understood that such relief shall not result in overtime being worked by another Server.

### **ARTICLE 13 - LEAVES OF ABSENCE**

- 13.01** This clause does not apply with respect to absences for medical reasons, or maternity, parental or adoptive leave.
- 13.02** It is recognized by both parties that the period between May 1<sup>st</sup> and Canadian Thanksgiving is a critical period of the Employer's operations. That being the case, requests for leaves of absence during this period should be held to a minimum.
- 13.03** A request for a leave of absence must be submitted in writing to the General Manager at least two (2) weeks prior to the desired date of commencement of such leave and must indicate the length of leave requested and the reason for requesting the leave. In the case of extreme emergency, the two week notice period may be waived.
- 13.04** All leaves of absence must be less than six (6) months duration. It is agreed that seniority shall be maintained during such approved leaves of absence.
- 13.05** Leave of absence without compensation may be granted by the Employer for legitimate personal reasons and such leave shall not be unreasonably withheld. Such leave shall not be used for the purposes of engaging in other employment.
- 13.06** The General Manager may grant an Employee leave of absence without compensation on religious grounds for the purpose of observing authorized religious holidays. Such leave shall not be unreasonably withheld.
- 13.07** Leave of absence with pay and without loss of credits shall be granted to one (1) member of the Union from each restaurant who participates in negotiations, up to the event of mediation. It is understood that payment shall be based on the Employees' base rate of pay.
- 13.08** Leave of absence without compensation may be granted to Employees to attend conventions, school and seminars conducted by the Union and shall not be unreasonably withheld.
- 13.09** Employees selected by the Union to attend Health and Safety meetings, Labour/Management meetings and any other meetings between the respective parties shall be compensated by the Employer for lost time from work. It is understood that payment shall be based on the employee's base rate of pay.

## **ARTICLE 14 - LEAVE OF ABSENCE - MATERNITY/PARENTAL/ADOPTION**

**14.01** Pregnancy Leave, Emergency Leave, Family Sick Leave, and Parental Leave shall be granted in accordance with Ontario's Employment Standards Act, 2000, S.O. 2000 Chapter 41.

## **ARTICLE 15 - PAID HOLIDAYS**

**15.01** For the purpose of this Article, the following holidays will apply:

- |                   |                      |
|-------------------|----------------------|
| (a) New Years Day | (e) Labour Day       |
| (b) Good Friday   | (f) Thanksgiving Day |
| (c) Victoria Day  | (g) Christmas Day    |
| (d) Canada Day    | (h) Boxing Day       |

**15.02** An Employee does not qualify for a paid holiday if the Employee:

- (a) Is employed for less than three (3) months;
- (b) Does not earn wages on twelve (12) days of the four (4) work weeks preceding the holiday;
- (c) Does not work his/her scheduled regular day of work preceding or following the holiday;
- (d) Having agreed to work on a public holiday, does not report for and perform the work without reasonable cause.

**However**, where an Employee has completed five (5) consecutive subsequent seasons of service, he/she will qualify in subsequent consecutive seasons for a paid holiday whether or not the Employee:

- (a) Is employed for less than 3 months, or
- (b) Earns wages in the twelve (12) days of the four (4) work weeks preceding the holiday.

For the purpose of this Article a season shall consist of at least one (1) day worked in a calendar year.

**15.03** When an Employee is required to work on a holiday as outlined in 15.01, he/she shall be paid one and one-half his/her regular hourly rate in addition to the Employee's regular wages for the scheduled shift of the paid holiday.

**15.04** An Employee who does not qualify for a paid holiday and who works the holiday shall be paid time and one-half his/her basic hourly rate for each hour worked on the holiday.

**15.05** For the purpose of determining designated holiday entitlements, a shift that does not commence and end on the designated holiday shall be considered as falling wholly within the calendar day in which the shift starts.

## **ARTICLE 16 - VACATION PAY/VACATION LEAVE**

**16.01** The Employment Standards Act will be followed for vacation pay benefits. However, where an Employee has completed thirteen (13) consecutive seasons of service, he/she will qualify in subsequent consecutive seasons for five (5) per cent vacation pay. In addition, where an Employee has completed eighteen (18) consecutive seasons of service, he/she will qualify in subsequent consecutive seasons for six (6) percent vacation pay.

For the purpose of this Article a season shall consist of at least one (1) day worked in a calendar year.

**16.02** The parties agree that the following will outline the vacation policy with respect to Servers at Table Rock Restaurant, Edgewaters Tap and Grill, Whirlpool Restaurant, and Legends on the Niagara Restaurant.

- (a) Servers will be entitled to vacation time off without pay as follows:
  - (i) Servers with more than one (1) year of service but less than fourteen (14) years of service will be entitled to three (3) weeks.
  - (ii) Servers with more than thirteen (13) years of service will be entitled to four (4) weeks.
- (b) Servers must apply in writing to the restaurant manager preferably two (2) weeks in advance of the date of commencement of the vacation requested.
- (c) During the summer months, one (1) server each week may be granted vacation. This in no way limits the granting of additional requests subject to operational requirements.
- (d) Vacations shall be granted on a first come, first served basis taking into consideration the operating requirements of the restaurant.
- (e) Vacation requests shall be limited to one calendar year in advance.

## **ARTICLE 17 - BEREAVEMENT LEAVE**

**17.01** An Employee who would otherwise have been at work shall be allowed up to three (3) days leave-of-absence with pay in the event of the death of his/her Spouse, Mother, Father, Mother-in-law, Father-in-law, Son, Daughter, Step-son, Step-daughter, Brother, Sister, Son-in-law, Daughter-in-law, Sister-in-law, Brother-in-law, Grandparent, Grandchild, Ward or Guardian.

**17.02** An Employee who would otherwise have been at work shall be allowed one (1) day leave of absence with pay in the event of the death and to attend the funeral of his/her aunt, uncle, niece or nephew.

**17.03** If additional leave is requested, the Employer will provide up to five (5) additional days leave without pay.

**17.04** The General Manager or a designee may grant an Employee leave of absence with pay for not more than three (3) days in a year upon special or compassionate grounds. Approval for this leave shall be based upon critical and extenuating circumstances.

#### **ARTICLE 18 - COURT DUTY**

**18.01** Where an Employee has been scheduled to work and is absent by reason of a summons to serve as a juror or a subpoena as a witness the Employee may:

- (a) Treat the absence as leave without pay and retain any fee received as a juror or witness; or
- (b) Treat the absence as leave with pay and pay to the Employer any fee received as a juror or witness.

**18.02** Employees must notify the Human Resources Director within three (3) days of receipt of notice of selection for jury duty or subpoena.

**18.03** Employees who are selected for jury duty or subpoenaed as a witness and who are scheduled to work on a shift on other than day shift shall be assigned the day shift for those days they are to serve. However, in no case shall the number of hours paid exceed the number of hours originally scheduled.

**18.04** In order to be eligible for such payments, the Employees must furnish a written statement from the proper public official showing the date(s) and time served, and the amount of pay received.

#### **ARTICLE 19 - BULLETIN BOARDS**

**19.01** Union notices that receive the prior approval of the Employer will be posted on notice boards of the Employer, provided such notices are of union meetings, elections, conventions or social events. Notices for posting shall be forwarded to the Human Resources Office for appropriate approval prior to posting.

**19.02** The Union will not distribute, post, cause or permit to be distributed or posted on the Employer's property, for or on its behalf, any pamphlets, advertising or political matter cards, notices or other kinds of written material except with the permission of the Employer.

#### **ARTICLE 20 - HOURS OF WORK AND OVERTIME**

**20.01** Hours of work shall be in accordance with the operating requirements of the Employer. It is understood that the hours of work shall be up to forty-four (44) hours per week.

- 20.02** Overtime shall be paid at time and one-half the base rate after the completion of forty-four (44) hours work in a work week.
- 20.03** When a situation arises where the Employer requires Employees to work beyond their scheduled shift, volunteers will be solicited. Where there are volunteers for the extra hours, such hours will be assigned based on seniority providing no overtime is incurred by the Employee. Where there are no volunteers, the hours will be assigned in reverse order of seniority. It is agreed that allowances will be made for Employees who cannot participate due to legitimate personal reasons. This procedure also applies in the scheduling of double shifts.

## **ARTICLE 21 - HEALTH AND SAFETY**

- 21.01** The Employer shall make provisions for the safety and health of its Employees during the hours of their employment. It is agreed that the Employer and the Union shall cooperate to the fullest extent possible in the prevention of accidents and in the reasonable promotion of safety and health of all Employees.

## **ARTICLE 22 - GENERAL**

- 22.01** **Uniforms**  
The Employer will provide the Servers covered by this Agreement with uniforms at no expense to the Employee under the following terms:

### **Per Season/Year**

#### **Edgewater Tap and Grill and Table Rock Restaurants**

##### **- Standard Issue**

- 2 blouses/shirts
- 2 skirts/pants
- 1 sweater - to be replaced as required
- Employees who are in the Banquet Pool shall receive one (1) formal uniform
- Employees who are regularly scheduled to a full work schedule shall receive an additional blouse/shirt upon request

#### **Whirlpool Restaurant and Legends Restaurant**

##### **- Standard Issue**

- 2 blouses/shirts
- 2 shorts/pants
- 1 sweater or sweatshirt - to be replaced as required
- Employees required to work banquets shall receive one (1) formal uniform
- Uniforms (other than formal uniforms) shall be returned after the end of the season/year before new uniforms may be issued
- In all cases, all uniforms are to be returned upon termination of employment

- 22.02** **Parking**  
**Whirlpool Restaurant and Legends Restaurant**  
Employees will have free use of designated parking areas on a year round basis.

### **Edgewaters Tap and Grill**

Parking shall be available free of charge on a first-come, first-served basis in the designated parking area. This is done on the understanding that employees shall continue to car pool as required.

### **Table Rock Restaurant**

The Falls Parking Lot shall be available to Employees free of charge as follows:

- Mid September until May 1 - unrestricted
- May 2 until Mid-June \* - weekdays only
- First Tuesday after Labour Day until Mid September \* - weekdays only
- At times when Employees are not permitted to park at Falls Parking Lot, accommodations shall be made at Fraser Hill Parking Lot
- The Falls Incline Railway and the People Mover buses may still be used for transportation to and from work during normal operating hours

\* Specific dates to be determined through an annual memo.

### **22.03 Work Stations**

Each restaurant floor is to be divided into a number of stations. Each meal period will have its own rotation. Work areas and/or stations shall be rotated on a fair basis. However, in the seating of customers it is recognized that the Employer will have to take into consideration the seating requests of such customers.

### **22.04 Walkouts**

Employees are responsible for presenting the cheque and collecting payment in accordance with the procedures as contained in the Server Task List. The Employer will not ask for payment from Servers for walkouts. It is recognized that any Server experiencing recurring walkouts will be subject to disciplinary action.

### **22.05 Gratuities**

- (a) Other than events with a pre-determined negotiated gratuity, gratuities shall remain the property of the Servers covered by this Collective Agreement and the student Servers. It is at the discretion of the Servers to tip other service staff as they see fit and tip paybacks shall not be compulsory. It is recognized that for events where there is a pre-determined negotiated gratuity, the amount of the gratuity will be fifteen percent (15%) of the total food and beverage charge prior to any applicable taxes, commencing January 1, 2005. Thirteen percent (13%) of the gratuity will be the property of the Servers and two percent (2%) will be the property of the Employer. It is understood that the portion paid to Supervisors will come from the Employer's share of the gratuity. It is further understood that the current practice for gratuity distribution for tours will remain unchanged.
- (b) For events with a pre-determined negotiated gratuity, the Servers' portion shall be divided among the Servers on a per hour basis for the hours worked for the function.
- (c) The employer agrees to make the following changes to customer receipts:
  - (i) The term "Service is not included" will be revised to "Tip not included in the charges above".
  - (ii) The term "Gratuity" will be revised to "Tip".

**22.06 Banquets and Functions**

- (a) Employees wishing to work banquets must register their names with their Restaurant Manager by November 1 of each year. Employees shall be scheduled to work banquets on a rotating basis. In the event that the Employer does not have enough staff at a particular restaurant to work the function, bargaining unit Employees from other restaurants who have indicated their desire to work banquets will be scheduled in accordance with their Niagara Parks Commission hire date. If additional staff are required, Employees from the restaurant in which the banquet is being held shall be scheduled in inverse order of seniority.
- (b) It is agreed and understood between the parties that the Whirlpool Restaurant have banquets as part of their regular business, therefore, Employees shall be scheduled to work in accordance with the scheduling requirements as contained in Article 12.
- (c) Where a restaurant provides a function at a location outside of the Employer's restaurants and where a Server is required, volunteers will be solicited based on restaurant seniority to serve at the function. A ten percent (10%) gratuity shall be paid based on the full value of the function.

**22.07 Supplies**

The Employer is committed to providing the best possible service to our customers. To that end, the Employer undertakes to make available to the Servers in our restaurants the appropriate supplies in order that they may provide optimum service.

**22.08** The Employer is willing to discuss any new voucher system with the bargaining unit. This does not include gift certificates.

**ARTICLE 23 - LABOUR/MANAGEMENT COMMITTEE**

**23.01** The Employer and the Union agree to the establishment of a Labour/Management Committee for the purpose of resolving issues relating to the work place. A Committee shall consist of three (3) members of management and a bargaining unit member from each restaurant covered by the Agreement.

The Labour/Management Committee shall meet when the either party requests a meeting. The scheduling of the meeting shall be at a time which is mutually convenient. Reasonable effort will be made to hold the meeting within one (1) week of the request provided that the customer and operational needs are not compromised.

**23.02** Where an issue arises where the location Steward requires the assistance of the Union, a representative from the Union Office will access the premises to attend scheduled Labour/Management Committee meetings. The union recognizes that in accessing the property, it will not interfere with the day to day operations.

## **ARTICLE 24 - RATES OF PAY**

<b>24.01</b>		<u>Base Rate</u>
	Effective Jan. 1, 2005	\$ 7.45
	Effective Jan. 1, 2006	\$ 7.65
	Effective Jan. 1, 2007	\$ 7.85

Servers who are assigned as server trainers will receive \$1.00 per hour above the base rate of pay for the time that they are training a new server.

## **ARTICLE 25 - PENSIONS**

**25.01** Employees are entitled to participate in the Ontario Government/OPSEU Pension Trust. It is recognized that the Employer is bound by the legislation governing the above Pension Plan.

## **ARTICLE 26 - MONETARY PAYMENT IN LIEU OF HEALTH AND WELFARE BENEFITS**

**26.01** Effective January 1, 2005, the Employer shall pay to each Employee a benefit allowance of \$1.20 per hour for all regular hours worked. Payment of the benefit allowance amount earned shall be paid to the employee in a lump sum in the first pay period of October of each year or upon termination of employment.

Effective December 31, 2004, the seasonal benefit plan will be discontinued. In discontinuing the plan, it is agreed that each active member of the plan will receive an amount of \$408.16, subject to applicable taxes required by law.

## **ARTICLE 27 - ATTENDANCE CREDITS**

**27.01** An Employee who is unable to attend to his/her duties due to sickness or injury that is not compensable under the Workplace Safety Insurance Board is entitled to a leave of absence with pay as follows:

- (a) Employees shall earn attendance credits of one (1) day for each of twenty-three (23) working days complete attendance to a maximum accumulation of eleven (11) days at any one time.
- (b) Attendance credits may only be used for income protection purposes in the event that an Employee is unable to attend to his/her duties by reason of illness or injury.

**27.02** Where a Server uses less than 50% (fifty percent) of attendance credits accumulated between January 1 and December 31 in each year, he/she may carry over fifty percent (50%) of unused credits into the next season up to a total banked accumulation of five (5) credits at any one time. Any credits in excess of the maximum will not be carried over or accumulated.

**27.03** After five (5) days absence caused by sickness, no leave with pay shall be allowed unless a certificate of a legally qualified medical practitioner is forwarded to the Restaurant Manager, certifying that the Employee is unable to attend to his/her official duties, including any medical restrictions which may be in place and the duration of such restrictions. Notwithstanding this provision, where it is suspected that there may be an abuse of sick leave, the Employee may be required to submit a medical certificate for a period of absence of less than five (5) days. The parties agree that an early return to work program is beneficial to both the Employee and the organization and agree to cooperate in achieving this outcome.

**ARTICLE 28 - CEASING OF OPERATIONS**

**28.01** In the event that the Employer permanently shuts down or ceases to operate any restaurant covered by this Agreement, the Union shall receive as much advance notice as possible but in any case shall be notified of the closure no less than ninety (90) days in advance of the proposed cessation of operations.

Employees laid off as a result of the above situation shall be subject to recall at any other restaurant covered by the Agreement, provided there is a vacancy at one of those restaurants. Employees will be offered the vacancy in order of seniority and will carry their restaurant seniority date to the new work location.

**28.02** Severance for permanent property closure shall be in accordance with the requirements of the Employment Standards Act.

**ARTICLE 29 - PRINTING OF COLLECTIVE AGREEMENT**

**29.01** The parties agree that the cost of printing the collective agreement shall be shared equally.

**ARTICLE 30 - PROFIT SHARING**

**30.01** Employees covered by this agreement will participate in a profit sharing plan based on gross food and beverage sales for the four (4) properties covered by the collective agreement. The profit sharing would be paid as follows:

<u>If Gross Food and Beverage Sales are:</u>	<u>Amount of Profit Sharing Per Employee</u>
\$8.75 Million - \$9.25 Million	\$100
\$9.251 Million - \$9.75 Million	\$200
\$9.751 Million and over	\$350

**ARTICLE 31 - TERM OF AGREEMENT**

**31.01** This Agreement will continue in effect from January 1, 2005 to December 31, 2007. The Agreement shall continue automatically thereafter for annual periods of one (1) year each unless either party notifies the other in writing that it wishes to amend this Agreement.

**Dated at Niagara Falls this \_\_\_\_\_ day of \_\_\_\_\_, 2004.**

**For The Employer**

**For the Union**

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**APPENDIX A**  
**LETTERS OF UNDERSTANDING**

**LETTER OF UNDERSTANDING #1**

January 1, 2005

Maureen Mossey  
Union Representative  
UNITE HERE Ontario Council, Local 75

Dear Maureen:

**RE: CARTS AT WHIRLPOOL AND LEGENDS GOLF COURSES**

Except in emergency circumstances, the operation of carts at Whirlpool and Legends Golf Courses will not be performed by an Employee who is in another bargaining unit.

Yours truly

**Dave Morris**  
**Senior Manager, Human Resources**

