

**FILED**

BEFORE THE  
LABOR AND INDUSTRIAL RELATIONS COMMISSION  
JEFFERSON CITY, MISSOURI

APR - 6 2011  
LABOR AND INDUSTRIAL  
RELATIONS COMMISSION

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In the Matter of:      Objection to Annual Wage Order No. 18, Issued in March 2011, as it Pertains to the Occupational Title of "Cement Mason" (Heavy) in Pulaski County, Within the Geographic Jurisdiction of Cement Masons Local Union No. 527.

On Behalf of:          Cement Masons Local Union No. 527,

Objector.

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**OBJECTION**

COMES NOW Cement Masons Local Union No. 527 (hereinafter "Objector") and files its Objection to Annual Wage Order No. 18 and states therefor as follows:

1.      Cement Masons Local Union No. 527 is an unincorporated association representing members who perform work in the construction trades and specifically under the Occupational Title of "Cement Mason" throughout the Eastern half of the State of Missouri of the type covered by Section 290.210 RSMo., et seq. (the "Missouri Prevailing Wage Law"). These individual Union members perform work of the type at issue in this Objection on a regular basis. Through well-established precedent, the Objector has historically been permitted to represent the interests of its members before the Labor and Industrial Relations Commission, as have other unincorporated associations, on matters of Objections to proposed Annual Wage Orders.

2.      A review of the applicable collective bargaining agreements, which must be considered pursuant to § 290.260 RSMo., and construction practices throughout the State of Missouri, and specifically within the objected to county which constitutes a portion of the geographic jurisdiction of Cement Masons Local Union No. 527, and of 8 C.S.R. §30-3.060,

promulgated pursuant to the Missouri Prevailing Wage Act, reveals that changes must be made in the Overtime Schedules and the Holiday Schedules (Building) to bring the proposed Annual Wage Order into conformity with the prevailing wage, general practice and collective bargaining agreement of Objectors. It is proposed that the following substitution be made to the Overtime Schedules of Annual Wage Order No. 18 for Building Construction for the objected to county:

**No. 23:** Means the regular workday shall consist of eight (8) consecutive hours, exclusive of a thirty (30) minute lunch period, with pay at the regular straight time hourly rate. The workday starts at 8:00 a.m., the quitting time shall be 4:30 p.m. All overtime Monday through Friday, and Saturdays shall be paid at the rate of time and one-half (1½). Double (2) time shall be paid for all work on Sundays and recognized holidays.

3. In addition, the same review reveals that a change must be made in the Holiday Schedule (Building) in this county. It is proposed that the following substitution be made to the Holiday Schedule of Annual Wage Order No. 18 for Building Construction for the objected to county:

**No. 5:** All work that shall be done on New Year's Day, Memorial Day, Fourth of July, Labor Day, Veteran's Day, Thanksgiving Day, and Christmas Day shall be paid at the double (2) time rate of pay.

4. The basis of this Objection is the apparently inadvertent application of the Overtime and Holiday Schedules for the Electrician Occupational Titles to the Cement Mason Occupational Title in proposed Annual Wage Order No. 18. The Overtime and Holiday provisions for the Electrician Occupational Titles do not apply to the Cement Mason Occupational Title.

5. The foregoing proposed changes to Annual Wage Order No. 18 are reflective of the Objector's collective bargaining agreement with signatory employers, which agreement prevails throughout the geographic jurisdiction at issue. *See*, Exhibit 1.

WHEREFORE, it is respectfully requested that the Labor and Industrial Relations Commission consider favorably the Objection of Objector and revise the Overtime Schedule and Holiday Schedule of Annual Wage Order No. 18 as to Building Construction in the subject county to reflect the practice, collective bargaining agreement and prevailing Practices throughout the jurisdiction in question, and for such other changes as are deemed appropriate.

Respectfully submitted,

BARTLEY GOFFSTEIN, L.L.C.

A handwritten signature in black ink, appearing to read 'J.R. Kimmey, III', is written over the typed name and the number '31148' in the contact information block.

JAMES R. KIMMEY, III, No. 31148  
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St. Louis, MO 63108  
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Attorneys for Objector

**CERTIFICATE OF SERVICE**

An original and two (2) copies of the foregoing were served by placing same in overnight Federal Express delivery on the Labor and Industrial Relations Commission, 3315 West Truman Boulevard, P. O. Box 599, Jefferson City, MO 65102-0599, and copies were served on the following individuals by placing same, postage prepaid, in the U. S. Mails this 6<sup>th</sup> day of April, 2011.

Carla Buschjost, Director  
Division of Labor Standards  
3315 West Truman Boulevard  
P. O. Box 449  
Jefferson City, MO 65102-0449

Sara Dick, Assistant Attorney General  
Office of the Attorney General  
Broadway State Office Building  
221 West High Street, 4th Floor  
P. O. Box 899  
Jefferson City, MO 65102-0899

Pamela Hofmann, Secretary  
Labor and Industrial Relations Commission  
3315 West Truman Blvd.  
Jefferson City, MO 65109-6805

A handwritten signature in black ink, appearing to be 'P. Hofmann', written over a horizontal line.

**CEMENT MASONS  
JOINT AGREEMENT**

Between **The BUILDERS' ASSOCIATION**, hereinafter referred to as the "Association", party of the first part, and the **CEMENT MASONS UNION NO. 527** of the **OPERATIVE PLASTERERS' AND CEMENT MASONS INTERNATIONAL ASSOCIATION, AFL-CIO**, hereinafter referred to as the "Union", party of the second part.

**ARTICLE I  
DECLARATION OF PRINCIPALS**

- That there shall be no restriction in the use of machinery or tools except as hereinafter provided.
  - That no person shall have the right to interfere with workmen during working hours except as hereinafter provided.
- That the use of apprentices shall not be prohibited.
  - That the foreman shall be selected by and be the agent of the employer.
  - That all workmen are at liberty to work for whomsoever they see fit except as hereinafter provided.
  - That all employers are at liberty to employ and discharge for cause whomsoever they see fit, through the foreman, or direct if there is no foreman in charge.
- That the Association recognizes the Union as the sole and exclusive bargaining representative of all employees in the employ of the Employer with respect to wages, hours and other terms and conditions of employment on any and all work described herein.

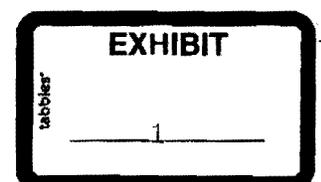
**ARTICLE II  
UNION SECURITY**

All employees covered by this Agreement shall on the 8th day after employment, or eight (8) days after the effective date of this Article, whichever is the latest, become and remain members of the Union in good standing.

The Employer will terminate the employment of any employee covered by this Agreement upon written demand of the Union, in the event such employee shall fail to comply with paragraph one of this Article, provided that membership in the Union was available to the employee on the same terms and conditions generally applicable to other members, and that membership was not denied or terminated for reasons other than the failure of the employee to tender the periodic dues and the initiation fees uniformly required as condition of acquiring or retaining membership. Such employee shall not be re-employed by the Employer until notified by the Union that the employee has paid any such initiation fees or dues then delinquent or unless such employee presents a work clearance from the Union to the Employer.

**ARTICLE III  
JURISDICTION OF AGREEMENT**

The jurisdiction of this Agreement shall extend to and include the counties of Crawford, Dent, Marion, Phelps, Pike, Pulaski, Ralls, Shannon and Texas in Missouri.



#### ARTICLE IV JURISDICTION

Nothing in this Agreement shall be construed to define or determine any craft or work jurisdiction or the recognition thereof by the Employer.

The Employer shall assign the work in a manner that is not contrary to decisions or agreements of record in accordance with the established practice in the local area of the majority of employers in the area.

If a jurisdictional dispute with any of the other crafts arises, it shall be settled first by and between the representatives of the organizations involved, and then if no agreement is reached, it will be referred to the international unions involved for settlement. Pending such decision, the craft performing the work at the time the dispute arises will continue in such capacity until a decision has been rendered as above provided, it being agreed that there shall be no stoppage or abandonment of work in regard to any jurisdictional dispute.

There shall be no stoppage of work because of a jurisdictional dispute and both Union and Employer agree to cooperate in any other orderly procedures toward adjustment of the dispute.

#### ARTICLE V WAGES

**Section 1.** The hourly scale of wages during the term of this Agreement shall be as follows:

	Effective 6-1-09
Journeyman	\$28.13
Foreman	Additional \$.25 per hour above journeyman rate
Cement Masons Trust Fund --	\$6.85
BCIAF Fund	<u>.10</u>
Total Fringe Benefits:	\$6.95

Effective June 1, 2010 an increase of one dollar and twenty cents (\$1.20) per hour shall be added to wages, or at the option of the Union and by written notice to the Association at least thirty (30) days prior to June 1, 2010, said increase may be applied wholly or in part to existing fringe benefit funds.

Effective June 1, 2011, an increase of one dollar and twenty cents (\$1.20) per hour shall be added to wages, or at the option of the Union and by written notice to the Association at least thirty (30) days prior to June 1, 2011, said increase may be applied wholly or in part to existing fringe benefit funds.

Three and one quarter percent (3 1/4%) of the Journeyman's rate and total package (including Welfare contributions) shall be withheld from the Employee's wages for Supplemental Dues. The amount of this portion of wages segregated for these purposes is part of wages and shall be so considered in computation of overtime pay, taxes, insurance and withholding.

Apprentice:	1st 6 months	- 50% of Journeyman rate
	2nd 6 months	- 55% of Journeyman rate
	2nd year	- 60% of Journeyman rate
	3rd year	- 80% of Journeyman rate

**Section 2.** It is agreed that a portion of the wage increases set out above may be apportioned to payments to a fringe benefit program.

**Section 3. FOREMAN.** When there are two (2) or more men on a job, one (1) shall be designated as foreman and shall receive the Foreman wage as set out above.

**Section 4. CEMENT MASONS FRINGE BENEFIT PROGRAM: WELFARE -  
INDUSTRY ADVANCEMENT**

(a) The Employer shall pay on all work Six Dollars and eighty-five cents (\$6.85) per hour for each hour worked (whether regular or overtime) by each employee covered by this Agreement to a Depository, or to such other fiduciary as shall from time to time be mutually agreed upon by the Union and the Associated General Contractors of St. Louis, each month this Agreement is in effect, which payments shall be made within twenty (20) days after the last day of the preceding month for the hours worked during said preceding month. Simultaneously with making said payment, the Employer shall also file a written report with the Depository setting forth the names, social security numbers and the hours worked by each employee for whom payments shall have been made during said period. Upon receipt of said payments, the Depository shall pay over said payments as follows:

Six dollars and eighty-five cents (**\$6.85**) of each hourly contribution into the Welfare Fund, to be used for the purposes set forth in the instrument creating said Fund executed by the Cement Masons' Local Union No. 527 of the Operative Plasterers' and Cement Masons' International Association, and the Associated General Contractors of St. Louis; and ten cents (**\$.10**) of each hourly contribution to The Builders' Association for the purposes of, and as set out in The Builders' Association "Building and Concrete Industry Advancement Fund".

(b) Written reports will be required of all Employers making payments as set out in all paragraphs of Section 4, and said reports will be due concurrently with the payment which in each and every instance shall be made within twenty (20) days after the last day of the preceding month for the hours worked during said preceding month. Said written reports shall contain such information as desired by, and be on a form approved by, the Health and Welfare Trustees and the Pension Trustees. These forms for the use of employers will be furnished by the Health and Welfare Trustees and the Pension Trustees.

(c) **DELINQUENCY CHARGES.** In the event the Employer fails to make prompt and timely reports as required, and payment of the contributions due as set out in paragraphs (a) and (b) above, following seventy-two (72) hours written notice by the Fund Trustees to such delinquent employer, the Union may order cessation of all work covered by employer on all jobs of employer until such reports are made and contributions are paid.

(d) The Union shall have the right at any time, notwithstanding the provisions of Article XIX or any other provisions of the Agreement, to call or incite, or engage in a strike or work stoppage against the Employer who fails or refuses fully and literally to comply with all provisions contained in this section of the Agreement.

(e) **COLLECTIONS.** It is recognized and acknowledged by all parties, including the participating employers, that the regular and prompt payment of contributions is essential to the maintenance of an employee benefit plan and that it would be extremely difficult, if not impractical, to fix the actual expense and damage to the plan which would result from the failure of an individual employer to pay the required contributions within the time provided. Therefore, if any individual employer shall fail to pay the required contributions, as set forth in paragraph (a) above, by the due date, such employer shall be liable, in addition, for liquidated damages of \$25.00 for each delinquency, or ten percent (10%) of the amount of the contributions which are owed, whichever is greater, and, in addition, the delinquent contributions shall bear interest at the rate of eight percent (8%) per annum from the due date until they are paid.

Further, in the event the Trustees place the account in the hands of legal counsel for collection, the delinquent employer shall be liable for reasonable attorneys' fees and for all reasonable costs incurred in the collection process, including court fees, audit fees, etc. Reasonable attorneys' fees shall mean: twenty percent (20%) in addition to the total amount collected (including liquidated damages and interest) if collection is effectuated prior to starting suit, or filing a lien, or institution of an arbitration, or other collection proceeding, and thirty-three and one-third percent (33-1/3%) of the total amount collected (including liquidated damages) if collection is effectuated after the commencement of suit or filing a lien or institution of an arbitration or other collection proceeding.

(f) **PAYROLL AUDITING.** The Trustees for the funds incorporated by reference in this Agreement have the authority to audit the appropriate records of any employer if they have evidence that an employer is not making proper and timely contributions to said Funds.

If an employer is a member of the Association, written notice by certified mail requesting an audit shall be given to the Association with a copy to the Employer. If Employer is not a member of the Association, written notice shall be given to the Employer.

(g) Self-employed persons, or person operating as individuals or partners, are not covered under the Welfare Plan and Pension Plan and such person or individuals are not required to contribute payments as set out in paragraph (a) above.

## **ARTICLE VI HIRING PROCEDURES**

A. **RIGHT TO HIRE.** The Employer shall have the right to employ or not to employ any qualified person it desires, including but not limited to, those offered by the Union as employees, and to discharge any employee for cause; provided, however, that the Employer, in the matter of hiring and firing, shall not discriminate in any way against members of the Union, nor against any employee or applicant for employment for his union sympathies, beliefs, or activities or race, creed, color, age or sex.

B. **HIRING PROCEDURES.** The Employer agrees that he will request referral of applicants from the Union for all job openings and vacancies except as provided in the following paragraphs of this Article.

C. The Union shall make such referrals on a non-discriminatory basis and shall have twenty-four (24) hours to fill the Employer's request for such applicants, and failing to do so within that period, the Employer may secure such workmen from any source available to him.

D. The Employer may employ one man or 25% of the employees on any job (whichever is the greater) without any restrictions.

E. In addition to the above 25%, the Employer may employ at any time any Cement Mason who has previously worked as a Cement Mason (a total of sixty percent [60%] of the working days for the preceding 12 months) in the area of this Agreement for any employers who are party to this Agreement, without prior Union notification or referral.

F. The Employer shall have the prerogative to refuse the referral of named individuals for cause.

G. The Employer reserves and shall have the right to accept or reject, to employ or not to employ, any persons referred by the Union, which referral shall be made non-discriminatory, or to discharge for cause any employee who has been accepted but who subsequently proves unsatisfactory to the Employer.

H. The Employer shall be the sole judge of, and have the right to determine the number of employees required on any job, or on any portion of the work being done by Employer. There shall be no limitation as to the amount of work a man shall perform. There shall be no restrictions as to the use of machinery, tools, or applicants.

#### **ARTICLE VII TYPE OF WORK**

The provisions of this Agreement shall apply to residential construction work, and to building construction work designated as commercial, which includes industrial and institutional construction, the wages for which are herein above set out and classified.

#### **ARTICLE VIII EMPLOYERS' RIGHTS**

It is mutually understood and agreed that the management of the Employer's jobs and the direction of his working foreman, including the right to hire, promote, discipline, or discharge any employee for cause, the right to transfer employees from job to job, and the right to release any employee because of lack of work or for other legitimate reasons, are vested exclusively in the Employer, subject only to the provisions of this Agreement.

#### **ARTICLE IX HOURS OF WORK**

The regular workday shall consist of eight (8) consecutive hours, exclusive of a thirty (30) minute lunch period, with pay at the regular straight time hourly rate. The workday starts at 8:00 A.M., the quitting time shall be 4:30 P.M.

#### **ARTICLE X STEWARDS**

The Steward, selected by the Business Representative, shall be selected from the employees on the job or in any event from employees of the Employer. The Employer shall be advised of such steward's name. Employees shall not be discharged because they are acting as or performing the duties of a Steward, but may be discharged for cause. Such cause shall be discussed with the Business Representative before discharge of the Steward.

## ARTICLE XI

Employees who are told to report for work shall receive two (2) hour's pay if they are unable to work through no fault of their own unless prevented from working because of inclement weather; if an employee works more than two (2) hours he shall be paid for four (4) hour's work unless prevented from working by inclement weather. Employees shall report for work each working day and receive not less than two (2) hour's pay except when the superintendent notifies the employee designated by the Union to be called not less than two (2) hours in advance of the regular starting time, that there will not be work on that day. All employees will contact the notified employee to ascertain if there will be work on that day. If the Employer requires the men to remain on the job during a stoppage of work, they must be paid continuous time.

## ARTICLE XII WORK RULES

**Section 1.** All overtime Monday through Friday, and Saturdays shall be paid at the rate of time and one-half. Double time shall be paid for all work on Sundays and holidays.

**Section 2.** July Fourth, Labor Day, Veterans' Day, Christmas Day, Thanksgiving Day, Decoration Day and New Year's Day shall be considered holidays. Any work performed on Sundays and holidays shall be considered double time.

**Section 3.** Any employee running a job with more than seven (7) employees shall not use tools.

**Section 4.** Stewards shall have ample time to examine cards during working hours.

**Section 5.** Employees are to be paid on Friday at 4:30 P.M. of each week by check, for all time worked through the preceding Wednesday. Such check shall have a stub showing the number of straight time hours, and the number of overtime hours. If the employees are compelled to wait after 4:30 P.M. Friday for their pay, they shall be entitled up to eight (8) hours straight time rate of pay for every twenty-four (24) hours waiting time, provided the delay is occasioned by the willful negligence of the employer or his agents.

If an employer lays off an employee he must pay him at once or give him work the next day. Failing to do either of the above, the Employer shall pay the employee up to eight (8) hours straight time rate of pay for every twenty-four (24) hours waiting time, provided the delay is occasioned by the willful negligence of the Employer or his agent. Employees that are discharged must be paid at once. However, if the employee quits of his own accord, his pay shall not be due until the next regular pay day.

If an employee is working for an employer on a one-day's stand basis, he shall be paid his eight (8) hours pay by 4:30 P.M. of that day or by mail the following day. If the finish requires overtime, employer shall be allowed to pay by mail the following day. This must be validated by postmark.

**Section 6.** The Foreman shall be the agent of his Employer and the Union recognizes the right of the Employer to delegate to his Foreman the right to employ or discharge any or all employees subject to the provisions of the Collective Bargaining Agreement. It shall be the function of the Foremen to tell the worker what to do, how to do it, and to see that the work is properly done. He shall be responsible for the placing of men, assigning their tasks, selecting proper material and tools, maintaining safe working conditions, and planning and effective, efficient execution of work.

**Section 7.** Employers must furnish drinking water of 40 degrees, locker for tools. Ice water must be available during warm weather, at least from May 1 to September 30. All drinking water shall be on job site no later than one (1) hour after the starting time.

**Section 8.** All employees must do their work in a workmanlike manner, and all employers must give the employees time to do a workmanlike job.

**Section 9.** When required to work beyond 6:00 P.M., finishers will receive pay for one-half (1/2) hour for supper above the total hours worked, unless given one-half (1/2) hour to eat.

**Section 10.** The amount of men required to complete the specified finish of floor work must be on the job at pouring time and the employer must furnish the Foreman enough employees so that upon completion of the work it will show it has been done in a workmanlike and credible manner. The Employer or the Foreman shall have the right to determine the necessary number of employees needed.

**Section 11.** The Business Agent shall have the privilege of visiting any job where employees are at work or where they are likely to be employed, providing he does not interfere with the men while they are at work.

**Section 12.** On jobs where admixes are used, Foreman shall be advised and mechanics shall not be held responsible for results other than the normal skill of mechanics in the trade,.

**Section 13.** Cement Masons shall furnish the following tools: Trowel, wood float, magnesium float, pointing trowel, suitable hand level, standard step tools, hammer, saw, rule, tape, side-edgers and center groover and string line. In the interest of better floors and quality workmanship, a cement mason will be allowed to use a trowel up to fourteen (14) inches in length to rub a floor in. No final finishing will be done with a trowel longer than twelve (12) inches in length).

**Section 14.** Cement Masons will be permitted, but will not be compelled, to furnish knee boards.

**Section 15.** The Union shall have the right to select a Steward from among the working employees on all jobs covered by this Agreement. The Union will notify the Employer's superintendent of the appointment. The Steward shall be subject to the same terms of employment as any other employee on the job and shall not be discriminated against by reason of the fact that he is serving as Steward. The Steward shall be a working employee, who shall, in addition to his regular work, be permitted to perform during working hours such of his duties as Steward, including the adjustment of grievances as cannot be performed at other times. The Union agrees that such duties shall be performed as expeditiously as possible. The Steward shall have the right to work overtime if any employees other than the Foreman work overtime, provided he is capable of performing work. In the event of reduction of the work force, the Steward may remain on the job as last man except for the Foreman, provided he is capable of performing the work involved. Stewards covered by this Agreement shall notify the Union office of their new location when transferred from one job to another.

In case a Steward is discharged, the Business Agent shall be notified at once and if he finds that the Steward was discharged for attending to his duties as Steward, the employer shall be in violation of this Agreement.

**Section 16.** All safety equipment, brushes, stones, rubber floats, bush hammers and all rubbing equipment shall be furnished by employer. Employees neglecting to use safety equipment when furnished, shall be subjected to discharge. All safety equipment furnished by the Employer shall be returned to the Employer at time of discharge or when no longer required on the job.

**Section 17.** No employee shall be required to transport any employer's equipment from job to job or from home to job.

**Section 18.** Floating and troweling of surfaces on the first operation may be done with troweling machine. The final operation shall be done by hand, but in case of emergency the floor may be finished with the machine.

**Section 19. LUNCH PERIOD.** The thirty (30) minute lunch period shall be between 11:30 A.M. and 1:00 P.M. Employee sent to lunch before or after the above designated hours, or so his lunch period extends to beyond 1:00 P.M., shall be paid one-half (1/2) hour at straight time for such lunch period. Sufficient number of Cement Masons must be kept through the lunch period to protect the quality of the floors in the opinion of the Foreman.

Employees required to work past 4:00 P.M. without an opportunity to eat lunch shall be paid one (1) additional hour at time and one-half.

**Section 20. TIME OFF FOR MEDICAL AID.** Any employee who, as a result of injuries received on the Employer's job, if required at any time to leave the job site on which he is then working in order to obtain medical examination, aid or treatment for such injuries, shall not have deducted from wages for such day any time spent in traveling to and from the place where such examination, aid or treatment is given, or in waiting for or receiving such examination, aid or treatment.

**Section 21. SWINGING SCAFFOLD.** Two (2) Cement Masons will be assigned to swinging scaffold work (does not include boatswain's chair).

### **ARTICLE XIII INSURANCE**

The Employer shall provide "Workmen's Compensation" insurance against injury and "Unemployment Compensation" protection for all employees even though not required to do so by Missouri state law.

The Employer shall furnish to the Union satisfactory evidence of his compliance with such provisions of this Section.

### **ARTICLE XIV JOB SECURITY**

**Section 1.** Solely to protect wage levels and fringe benefits of the employees covered hereunder, the Employer agrees that he will not subcontract on site construction work requiring labor for work covered hereunder except to subcontractors who agree in writing to pay to, and provide for their employees so engaged, wages and fringe benefits no less than those specified in this Agreement, including (a) straight time hourly wage rate, (b) premium rates, (c) overtime rates, (d) welfare, pension, or other fringe benefit contributions and other working conditions of this Agreement. The Employer agrees that it is in the best interest of job progress, profitability and efficiency to develop and encourage a uniform labor policy on any job.

In order to promote the proposal just set forth, the Employer agrees to furnish the Union with a list of all subcontractors at the time of a pre-job conference, or upon written request from the Union prior to said employer's commencing work on the job site.

**Section 2.** Employees shall work only for recognized and qualified contractors or employers who supply all materials and labor. Contractors shall not be permitted to contract for labor only except on structural slabs.

**ARTICLE XV  
EXONERATION AND RESTRICTION  
ON ASSOCIATION'S AND EMPLOYER'S LIABILITY**

The Union agrees to indemnify the Employer and hold the Employer harmless of any liability or claims in connection with the termination of the employment of an employee in compliance with the request of the Union.

The Union agrees to accept full responsibility for any complaint or charge against the Employer of discrimination by reason of race, creed, color, age, sex, or national origin or membership or non-membership in the Union when such action is due directly or indirectly to requirements or activities of the Union.

Should any provision of this Agreement be contrary to, or in violation of, any applicable existing or future law, then such provision in such event shall be void and of no force and effect, but all other provisions of this Agreement shall continue in full force and effect and be binding upon the parties. It is the intention of the parties to fully preserve the full force and effect of all provisions of this Agreement not contrary to law.

**ARTICLE XVI  
INTERNATIONAL UNION**

The OPERATIVE PLASTERERS' AND CEMENT MASONS' INTERNATIONAL ASSOCIATION, the parent body of the Union herein (hereinafter referred to as the "International"), its officers and agents, are not parties to this Agreement and assume (and shall have) no responsibility or liability thereunder; conversely, the International and its officers and agents shall have no right of redress hereunder against the Association or the Employer for breach hereof.

The International's approval of the form and substance of this Agreement shall not be construed to make the International, or its officers and agents, parties to this Agreement, but is understood by the parties hereto only to constitute the International's certification that this Agreement is not violative of the International's Constitution and Bylaws.

**ARTICLE XVII  
OTHER AGREEMENTS**

It is further agreed by the parties hereto that nothing in this Agreement shall preclude the making of agreements between the Union and individuals or firms who are not members of the Association. However, it is further agreed that the Association shall automatically be given the advantage of any lower rate of wages or better terms and working conditions than those resulting through this Agreement if obtained by any employer of members of the Union on similar work done within the jurisdiction of this Agreement.

The Union further agrees that it will secure a written contract from each employer who employs cement masons represented by the Union, and that such written contract will be either in the form of a stipulation (APPENDIX "A") by which the Employer agrees to be bound by the contract between the Association and the Union, unless notice not to be so bound shall be given both the Union and the Association sixty (60) days in advance of any contract termination date, or in a separately negotiated Agreement. The Union further agrees that it will forward a copy of each such stipulation, or of each such separately negotiated Agreement, to the Association.

### **ARTICLE XVIII NO STRIKE AND NO LOCKOUT CLAUSE**

Except as otherwise provided for in this Agreement, there shall be no lockouts by the Employer nor strikes by the Union during the term thereof. If any member or members of the Union, during the term of this Agreement, should engage in a stoppage of work without the authorization of the Union (commonly called a "wildcat strike"), only such member or members of the Union shall be held liable by the Employer in any such case the Union and its other members will not be held liable by the Employer, and the Union agrees to endeavor within twenty-four (24) hours after being so requested to furnish the Employer with an equal number of cement masons willing and able to carry on the interrupted work, but the Union shall in no way be liable to the Employer, in the event such replacement cement masons are not then available. Any employee voluntarily engaging in such "wildcat strike" shall be subject to discharge by the Employer.

### **ARTICLE XIX ARBITRATION**

The Union and the Association agree that during the term of this Agreement there shall be no strike, picketing, cessation of work or lockout, and that all disputes and grievances which cannot be adjusted between the parties shall be taken up between a representative of the Union and a representative of the Association. If the grievances cannot be settled satisfactorily after the five (5) days, it shall be referred to an Arbitration Board consisting of three (3) members appointed by the Association. If the Arbitration Board thus selected cannot agree upon a decision within fifteen (15) days, or such extension of time as the parties may mutually agree upon, they shall select an arbiter who will hand down a decision in writing after five (5) days. His decision shall be final and binding on both parties.

### **ARTICLE XX APPRENTICESHIP**

It is agreed by and between the parties hereto that they will each cooperate with the other in the establishment and maintenance of a Joint Apprenticeship Program which will be administered in accordance with the rules and regulations of the Bureau of Apprenticeship, U. S. Department of Labor. It is recognized by all parties concerned that the maintenance of an apprenticeship program for Cement Masons is an exceedingly difficult situation by reason of the nature of the trade, the high volume of small jobs, and the prevalence of small work crews. Therefore, in order to insure the continuance of this program, it is agreed by the parties hereto, and every employer who accepts this contract specifically agrees, that whenever the Joint Apprenticeship Committee has apprentices that they are unable to place through the normal procedures of the Committee that the Association will in its discretion have the authority to require any employer having cement masonry work to employ said apprentices.

### **ARTICLE XXI DISCRIMINATION**

The Employer and the Union Agree that they will not discriminate against any employee or applicant for employment because of race, creed, color or national origin, and that they will comply with all provisions of Executive Order 11246, the rules, regulations and relevant orders of the Committee on Equal Employment Opportunities established by the President of the United States, provided such rules are consistent with National Federal Labor Laws.

**CEMENT MASONS  
AMENDMENT NUMBER ONE**

The parties to the June 1, 2009 to May 31, 2012 Agreement between THE BUILDERS ASSOCIATION and the **CEMENT MASONS UNION NO. 527** of the **OPERATIVE PLASTERERS' AND CEMENT MASONS INTERNATIONAL ASSOCIATION, AFL-CIO** agree to amend ARTICLE V: WAGES to reflect the elimination of increases effective June 1, 2010 and June 1, 2011. These increases will not be implemented throughout the course of this contract. Effective June 1, 2010, wages and fringes will remain the same as June 1, 2009. In addition in ARTICLE V: language altering Apprentice language and Trainee language as follows:

**ARTICLE V  
WAGES**

**Section 1.** The hourly scale of wages during the term of this Agreement shall be as follows:

	<b>Effective 6-1-10</b>
Journeyman	\$28.13
Foreman	Additional \$.25 per hour above journeyman rate
Cement Masons Trust Fund -	\$6.85,
BCIAF Fund -	.10
Total Fringe Benefits:	<u>\$6.95</u>

Effective June 1, 2010, wages shall be frozen for all classifications.  
Effective June 1, 2011, wages shall be frozen for all classifications.

At any time during the term of this Agreement, the Union shall have the option to allocate from wages to the fringe benefit funds such additional amounts as it deems necessary. The Union shall also have the option to reallocate amounts contributed to the fringe benefit funds from one fund to another on a prospective basis.

Three and one quarter percent (3 1/4%) or \$1.10 per hour of the Journeyman's rate and total package (including Welfare contributions) shall be withheld from the Employee's wages for Supplemental Dues. The amount of this portion of wages segregated for these purposes is part of wages and shall be so considered in computation of overtime pay, taxes, insurance and withholding.

Apprentice:	1st 6 months	- 50% of Journeyman rate
	2nd 6 months	- 55% of Journeyman rate
	2nd year	- 60% of Journeyman rate
	3rd year	- 80% of Journeyman rate

Apprentices shall not receive pay for attending school.

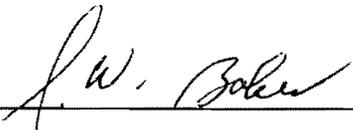
**Section 1a. Cement Mason Trainee:** The Employer may hire no more than (3) Cement Mason Trainees who shall be paid \$21.00 per hour plus the appropriate contribution into the Fringe Benefit Funds. There shall be no restrictions on the type of work to be performed by a Cement Mason Trainee. The Employer shall be limited to (3) Cement Mason Trainees with no more than (1) Cement Mason Trainee on a crew. A crew consists of two (2) or more journeymen.

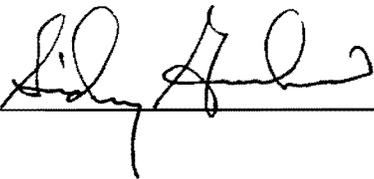
Any Cement Mason Trainee must, after twelve (12) months in the classification of Cement Mason Trainee for any signatory contractor, enter the Apprenticeship Program or be terminated. If the Employer recommends the Cement Mason Trainee be entered into the Apprenticeship Program, then the Union shall determine at what term the Cement Mason Trainee shall enter the Apprenticeship Program, but in no event shall the Cement Mason Trainee enter at less than a Second Term Trainee.

Executed this 9 day of June, 2010.

**THE BUILDERS' ASSOCIATION**

**THE CEMENT MASONS' LOCAL UNION NO.  
527 OF THE OPERATIVE PLASTERERS &  
CEMENT MASONS INTERNATIONAL  
ASSOCIATION, AFL-CIO**

  
\_\_\_\_\_

  
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**AFFIDAVIT**  
**OF**  
**SIDNEY GOEHRI**

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**RE: In the Matter of Objection Filed by Cement Masons Local Union No. 527 to Proposed Annual Wage Order No. 18 for the Occupational Title of "Cement Mason" in the Missouri County of Pulaski.**

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COMES NOW Affiant, Sidney Goehri, and being first duly sworn, deposes and states as follows:

**Q. State your name.**

*A. Sidney Goehri.*

**Q. State your business address.**

*A. 3341 Hollenberg Dr., Bridgeton, MO 63044.*

**Q. What is your occupation?**

*A. I am Business Manager of Cement Masons Local Union No. 527.*

**Q. Describe your duties as Business Manager.**

*A. I conduct the business of the Local Union and activities for the Union. Together with the Business Representatives, we ensure enforcement of applicable collective bargaining agreements and service those agreements. We also ensure the Union's continual compliance with the*

*International Constitution as well as with its Local Constitution and By-Laws. We also monitor compliance with the Prevailing Wage Act and participate in the annual survey of construction wage rates.*

**Q. Describe generally what work your members perform on construction jobs within the geographic jurisdiction serviced by the applicable collective bargaining agreements.**

*A. These members perform the work of Cement Mason, including work under the Occupational Title of "Cement Masons," in the locality at issue.*

**Q. Did the hours submitted by Local No. 527 and/or its signatory contractors prevail during the survey period for Annual Wage Order No. 18 in the county in question?**

*A. Yes.*

**Q. Do you believe there is an error in the Proposed Annual Wage Order No. 18 for Pulaski County with respect to the issue of Overtime Schedule for the Occupational Title of Cement Mason?**

*A. Yes, I believe that the Overtime Schedule should be revised to reflect the Union's collective bargaining agreement(s) in Pulaski County. It is the same Holiday Schedule as applies to Crawford, Dent, Marion, Phelps, Pike, Ralls, Shannon and Texas Counties. The Overtime Schedules should be revised as follows:*

**No. 23:** Means the regular workday shall consist of eight (8) consecutive hours, exclusive of a thirty (30) minute lunch period, with pay at the regular straight time hourly rate. The workday starts at 8:00 a.m., the quitting time shall be 4:30 p.m. All overtime Monday through Friday, and Saturdays shall be paid at the rate of time and one-half (1½). Double (2) time shall be paid for all work on Sundays and recognized holidays.

**Q. Is the Holiday Schedule for the Cement Mason Occupational Title correct?**

**A.** *No. Paragraph 3 of our Objection accurately reflects the Holiday provisions of the applicable collective bargaining agreement(s). It is the same Holiday Schedule as applies to Crawford, Dent, Marion, Phelps, Pike, Ralls, Shannon and Texas Counties. This Holiday Schedule should read:*

**No. 5:** All work that shall be done on New Year's Day, Memorial Day, Fourth of July, Labor Day, Veteran's Day, Thanksgiving Day, and Christmas Day shall be paid at the double (2) time rate of pay.

**Q: What is the basis for your conclusion that the Overtime Schedule and Holiday Schedule are inaccurate for Pulaski County?**

**A:** *In addition to the fact that the collectively bargained hourly wage and fringe benefit rates prevailed in Pulaski County for proposed Annual Wage Order No. 18, in reviewing the proposed Annual Wage Order, it was determined that Overtime Schedule 21 and Holiday Schedule 48, which apply to two Electrician Occupational Titles, appear to have been applied to the Cement Mason Occupational Title. Those Occupational*

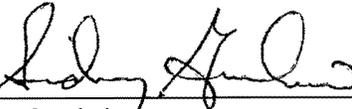
*Titles immediately follow the Cement Mason on the list and it is assumed  
that this error was inadvertent on the part of the Division.*

**FURTHER AFFIANT SAYETH NAUGHT.**

X   
\_\_\_\_\_  
Sidney Goehri

STATE OF MISSOURI                    )  
  ) SS.  
COUNTY OF ST. LOUIS            )

COMES NOW Sidney Goehri, the Affiant herein, being duly sworn upon his oath, deposes and states that the facts contained in the foregoing "Affidavit of Sidney Goehri" are true and correct to the best of his knowledge, information and belief.

X   
\_\_\_\_\_  
Sidney Goehri

Subscribed and sworn to before me, a Notary Public, this 4<sup>th</sup> day of April, 2011.

  
\_\_\_\_\_  
NOTARY PUBLIC

My Commission Expires:  
LINDA K. ULERY  
NOTARY PUBLIC-NOTARY SEAL  
STATE OF MISSOURI, ST. LOUIS COUNTY  
MY COMMISSION EXPIRES AUGUST 25, 2011  
COMMISSION #07538574