

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

SEARS ROEBUCK & CO.,

Employer,

and

**INTERNATIONAL BROTHERHOOD OF
ELECTRICAL WORKERS, LOCAL 111,**

Union,

Case No. 27-RD-098712

and

SUSIE WAGNER,

Petitioner.

**EMPLOYER'S REQUEST FOR REVIEW OF REGIONAL DIRECTOR'S
ORDER DISMISSING PETITION**

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INTRODUCTION

Pursuant to Section 102.67 of the Board's Rules and Regulations, employer Sears, Roebuck and Co. (hereafter "Sears"), submits the following Request for Review of the Regional Director's Order Dismissing Petition, issued February 28, 2013, based on the conclusion that a tentative agreement signed on January 24, 2013 ("January Tentative Agreement") barred the decertification petition at issue. Review of the order is warranted because the Regional Director "depart[ed] from officially reported Board precedent" and because the Regional Director's conclusions on critical factual issues are clearly erroneous on the record, and these errors

prejudicially affected Sears' and the Petitioners' rights. Board's Rules and Regulations § 102.67(c)(1)(ii), (2).

First, a substantial question of law is presented by the Regional Director's conclusion that ratification is a condition precedent to an effective agreement that can serve as a contract bar only when the ratification condition is expressed in writing. This conclusion departed from officially reported Board precedent holding that oral statements and the conduct of the parties can create a ratification condition precedent to an effective agreement. *Observer-Dispatch*, 334 NLRB 1067, 1072 (2001). Under this officially reported Board precedent, the terms of the January Tentative Agreement, the statements of the Union officials, and the parties' course of dealing prove that the parties intended the January Tentative Agreement not to be effective until ratification; the Regional Director clearly erred in not so finding.

Second, the Regional Director departed from officially reported Board precedent in finding that the parties' signatures on the January Tentative Agreement satisfied the signature requirement of the contract bar doctrine. Officially reported Board precedent holds that to meet the "signature" requirement of the contract bar doctrine, the documents "must leave no doubt that they amount to an offer and an acceptance of th[e] terms through the parties' affixing of their signatures." *Seton Med. Ctr.*, 317 NLRB 87 (1995). Here, as of the date the petition was filed, the parties had signed only the January Tentative Agreement, which, because it was subject to ratification and not a binding agreement, did not "amount to an offer and an acceptance of th[e] terms through the parties' affixing of their signatures." Therefore, there was no signed actual agreement on the date of the petition, as required to constitute a contract bar.

Third, the Regional Director departed from officially reported Board precedent stating that to serve as a contract bar, an agreement must be substantially implemented. *St. Mary's*

Hosp., 317 NLRB 89 (1995). In fact, the Regional Director expressly recognized that only one of the January Tentative Agreement's many terms had been implemented as of the date the petition was filed. The Regional Director's analysis thus conceded that the January Tentative Agreement had not been *substantially* implemented on the date the petition was filed. It was therefore erroneous to hold that document constitutes a contract bar.

Finally, the Regional Director's dismissal of the petition hinders the bargaining unit members' rights under Section 7 of the National Labor Relations Act. Because the January Tentative Agreement was merely a contingent agreement that had not been substantially implemented, it does not stabilize labor relations sufficiently to outweigh the employees' Section 7 interests in having an election to determine whether they still wish IBEW Local 111 to be their bargaining representative.

All of these errors prejudicially affected Sears' and the Petitioner's rights. Review should be granted, the Regional Director's decision should be reversed, and the Petition should be processed.

STATEMENT OF FACTS

A. Sears' Product Repair Operations

Sears Product Repair Services ("PRS"), a division of Sears, provides in-home repair services on major-brand appliances, electronics, lawn and garden equipment and heating and cooling systems. The repair work is done by In-Home service technicians. This appeal concerns Sears' Denver PRS District (also known as District 8181) (the "District"), which covers most of Colorado and portions of Wyoming.

B. Organizing In The District

IBEW Local 111 ("Local 111" or "the Union") filed a representation petition to represent a unit of service technicians working in District 8181. After election, Local 111 was certified on November 16, 2011 as the representative of the bargaining unit defined in the Decision.

C. Overall Course Of Bargaining With Local 111

Local 111 contacted Sears with a request to bargain on January 20, 2012, and the parties commenced bargaining in March 2012. On October 25, 2012, the parties reached a tentative agreement that both parties understood was not yet a contract, but rather had to be ratified by the bargaining unit to be accepted by the Union. The parties signed a document memorializing that they had reached only a "Tentative Agreement" that was "FULLY RECOMMENDED FOR RATIFICATION" by both the Union's and the Employer's bargaining committees. *See* Exhibit A. Thus, the signatures on the document did not represent the acceptance of a contract by the Union; acceptance could and would occur only upon ratification. It was further understood that a final agreement would have to be signed after ratification.

On November 15, 2012, the Union informed Sears that the tentative agreement had not been ratified by the bargaining unit. The parties agreed to return to the bargaining table. On December 11, 2012, Union representative Michael Byrd sent Sears' representative Susan Rapp an e-mail that stated: "Attached is a copy of our proposed changes to the Tentative Agreement the employees rejected. They are bolded, underlined and in yellow. On January 22nd, I will be prepared to let the Company know what the employees brought to our attention at the ratification meetings." *See* Exhibit B.

The parties returned to the bargaining table on January 22-24, 2013, and negotiated changes to the prior tentative agreement that had been submitted for ratification. On January 24, 2013, they agreed to the January Tentative Agreement, that the parties again understood was not

a binding contract, but rather again was expressly contingent on ratification. The January Tentative Agreement explicitly provides that it is a "Tentative Agreement" on the bottom of each page. *See* Exhibit C. As in October, the only document that was signed on that date again merely provides that the parties had reached only a "Tentative Agreement" that had been "FULLY RECOMMENDED FOR RATIFICATION" by both bargaining committees. *See* Exhibit D. Thus, as in October, the signatures again did not represent the acceptance of a contract by the Union; acceptance could and would occur only upon ratification. It was further again understood that a final agreement would have to be signed after ratification.

Before submitting the January Tentative Agreement to the Unit for ratification, the Union sent a letter to the bargaining unit members.¹ That letter stated, in pertinent part: "Now it is for you to make the same determination as your Negotiations Committee and the Company have made, which is: **ACCEPT THE NEW TENTATIVE AGREEMENT?** or your only other option is to: **GO ON STRIKE?"** Exhibit E. That letter necessarily showed the Union's position that there was no binding agreement at that point, and no agreement absent ratification. Because the January Tentative Agreement contains a no strike clause (see Exhibit C at 3), the employees could strike only if there were no contract. By stating that the employees had the option to strike if they did not ratify the January Tentative Agreement, the Union confirmed that there was no binding contract unless and until the employees ratified the January Tentative Agreement, and the signatures on the January Tentative Agreement did not represent acceptance of a binding agreement.

The Union then submitted the January Tentative Agreement to the Unit for ratification. The Union notified Sears, orally, that ratification votes took place on February 11 and 15, 2013;

¹ A member of the bargaining unit voluntarily sent a copy of this letter to a District manager.

the Union notified Sears that the tentative agreement was ratified as of February 15, 2013. Exhibit G at 3.

D. The Petition And Regional Director's Decision

Petitioner Susie Wagner, a bargaining unit employee, filed a petition seeking a decertification election in the certified unit on February 20, 2013. Exhibit G at 3. Upon request by the Union, the Region issued an Order to Show Cause why the petition should not be dismissed because the January Tentative Agreement served as a contract bar. *See* Exhibit F. After receipt of briefs from the employer, the Union and the Petitioner, the Regional Director ruled on March 7, 2013 that the January Tentative Agreement served as a contract bar. *See* Exhibit G.

ARGUMENT

A. The Regional Director Erred In Determining That The January Tentative Agreement Constituted A Binding Contract That Barred A Decertification Petition And That The Signatures On That Document Satisfied The Contract Bar Doctrine.

1. The Regional Director Wrongly Concluded That An Express Ratification Term Was Necessary To Make Ratification A Condition Precedent For A Binding Contract.

The Regional Director departed from officially reported Board precedent by holding that ratification could be an express condition precedent to an effective agreement if and only if the January Tentative Agreement expressly stated in writing that ratification was required. Under officially reported Board precedent, ratification was an express condition precedent here, and the signatures on the January Tentative Agreement did not satisfy the signature requirement of the contract bar doctrine.

The Board has held that to constitute a contract bar, a contract must be an actual binding agreement, must contain substantial terms and conditions of employment, and must be

signed by both parties. *Seton Med. Ctr.*, 317 NLRB 87 (1995). Specifically, "the agreement must be signed by the parties prior to the filing of the petition that it would bar." *Id.* (emphasis added). But a signed tentative agreement that requires ratification as a condition precedent does not create a binding contract. *Santa Rosa Hosp.*, 272 NLRB 1004, 1006 (1984); *Observer-Dispatch*, 334 NLRB at 1072.

Sears presented substantial evidence, through the language of the October and January tentative agreements, statements of Union officials, and the parties' course of dealing, that ratification was an express condition precedent and that the signatures on the January Tentative Agreement did not express the parties' assent to a binding agreement. The Regional Director rejected this showing. The Regional Director cited *Appalachian Shale Products*, 121 NLRB No. 149 (1958) and *Merico, Inc.*, 207 NLRB 101 n. 2 (1973) for the proposition that ratification is a condition precedent to an effective agreement if and only if the ratification conditions are expressed in the written tentative agreement. Exhibit G at 5-6.

In so ruling, however, the Regional Director ignored officially reported Board precedent holding that ratification need only be an *express condition* of the contract under all the circumstances; the ratification condition precedent need not be expressly memorialized in its entirety in the written tentative agreement. *See, e.g., Hertz Corp.*, 304 NLRB 469, 472 (1991) (oral statements sufficient to create ratification condition rendering agreement ineffective until ratification). Thus, an oral agreement that ratification must occur, reinforced by the parties' use of the term "tentative" in the agreement that was signed, was held sufficient to make the agreement's effectiveness contingent upon ratification. *See Observer-Dispatch*, 334 NLRB at 1072 (holding that a union representative's oral statement conditioning "acceptance on his coworkers' ratification," along with the "tentative" language, was sufficient to require ratification

before the agreement was effective); *see also Transport Workers v. Hawaiian Airlines, Inc.*, 186 LRRM 2384 (D. Haw. 2009) (finding that a self-declared "tentative" agreement, orally agreed to be ratified, is subject to a ratification condition before it became a binding agreement).

Under the proper standard, ratification was a condition precedent to the existence of an actual agreement, and the signatures of the Union negotiators on the January Tentative Agreement did not represent acceptance of an offer. The ratification condition is referenced in multiple ways in the January Tentative Agreement itself. The document is referred to as a "Tentative Agreement" on every page. Exhibit C. The document the Union and Company negotiators actually signed again recites that the document is merely a tentative agreement and that their signatures reflect that the tentative agreement is merely "FULLY RECOMMENDED FOR RATIFICATION." Exhibit D. "[R]atification" is also referenced in agreement. *See Exhibits C.*²

The tentative nature of the January Tentative Agreement and the existence of the ratification condition precedent are confirmed by the letter that the Union sent to the Unit Members. *See Exhibit E.* That letter repeatedly states that the Union bargaining committee had merely recommended a tentative agreement for ratification; acceptance was contingent upon ratification. The ratification condition is confirmed by the statement in the letter that the employees had the choice to either ratify the January Tentative Agreement or strike; if ratification was not a precondition and the Agreement was already binding, such a statement would violate the no-strike clause in the Agreement. *See Exhibit D.* Thus, the Union bargaining

² Standing alone, this phrase is more than just ambiguous as to whether ratification is required. In light of the parties' course of dealing, and particularly the fact that after signing an identical document the parties returned to bargaining after ratification failed, the language can only be read as a ratification condition precedent.

committee's letter belies any claim that the Union had agreed to an enforceable contract by the bargaining committee's signatures on the January Tentative Agreement.

Finally, that the parties intended only to create a non-binding tentative agreement is shown by their prior conduct. On October 25, 2012, the parties had signed an identical cover document pledging to recommend a prior tentative agreement for ratification. *See Exhibit A.* But the parties plainly demonstrated their understanding that the Union bargaining committee's "affixing of their signatures" on the October 25 document did not amount to acceptance, because when the bargaining unit did not ratify the October tentative agreement, the parties then returned to the bargaining table and negotiated changes. Just as the Union's signatures on the October 25, 2012 cover sheet did not amount to acceptance of an agreement, their signatures on the January Tentative Agreement cover sheet similarly did not amount to an acceptance of the terms. Because no actual agreement had been signed as of the date the petition was filed, there is no contract that serves as a bar.

Thus, the ratification condition is evidenced in the language of the October and January tentative agreements, oral agreements between the parties, and the conduct of the parties, specifically the statements of the Union that demonstrate its understanding that ratification was a condition precedent. Under *Observer-Dispatch*, the January Tentative Agreement did not create a binding contract, but rather a conditional agreement contingent upon ratification. The Regional Director applied the wrong standard and clearly erred by concluding that the January Tentative Agreement was not contingent upon ratification. That error clearly prejudiced Sears, as it led the Regional Director to dismiss the petition based on a contract bar.

2. The Board Must Clarify Whether Parties' Signatures To A Contingent Agreement Raise A Contract Bar.

Under *Seton Medical Center*, "the single indispensable thread running through the Board's decisions on contract bar is that the documents relied on as manifesting the parties' agreement must clearly set out or refer to the terms of the agreement and must leave no doubt that they amount to an offer and an acceptance of those terms through the parties' affixing of their signatures." 317 NLRB 87 (citations and quotations omitted); *see also B.C. Acquisitions*, 307 NLRB 239 (1992) (the contract bar requires that the documents "clearly set out the terms of the agreement and must leave no doubt that [the parties' signatures] amount to an offer and an acceptance of those terms"). Where the parties agree to an offer contingent upon ratification, acceptance of the contract occurs at ratification. *Observer-Dispatch*, 334 NLRB at 1072.

The Regional Director relied on *Television Stations WVTM*, 250 NLRB 198 (1980) for the proposition that the Board does not require parties to "re-sign" a tentative or informal agreement after ratification. Exhibit G at 7. In some decisions, the Board has concluded that a contract bar is raised by a signed tentative agreement, after ratification. *See, e.g., Television Stations WVTM*, 250 NLRB 198; *St. Mary's Hosp.*, 317 NLRB 89. However, these decisions conflict with Board precedent limiting the contract bar to agreements in which the parties' signatures clearly represent acceptance of an offer. *See Seton Med. Ctr.*, 317 NLRB 87; *B.C. Acquisitions*, 307 NLRB 239. Insofar as the Board requires a written document on which the signatures evidence offer and acceptance, a signature on a contingent tentative agreement cannot raise a contract bar.

Here, as explained above, the parties signed a contingent offer that could only be accepted through ratification. Because the January Tentative Agreement required ratification, it did not reflect "an offer and an acceptance of those terms through the parties' affixing of their

signatures." Acceptance of the agreement by the Union was only possible through performance of the ratification condition. Consequently, the contingent agreement here fails to meet the *Seton Medical Center* requirement of a signed writing memorializing offer and acceptance before the petition was filed. The Regional Director erred by concluding that the signatures on a contingent offer raised a contract bar. The Board must clarify the law on whether parties' signatures on a merely tentative agreement subject to ratification can raise a contract bar.

B. Because The January Tentative Agreement Had Not Been Substantially Implemented, The Regional Director Erred By Dismissing The Decertification Petition.

The Regional Director departed from officially reported Board precedent by ignoring the requirement that a tentative agreement be substantially implemented to serve as a bar.

The Board has long provided that a contract cannot bar a decertification proceeding where the contract has not been implemented. *Tri-State Trans. Co.*, 179 NLRB 310, 311 (1969). While *Tri-State* addresses a different factual scenario than that provided here, the Board has cited *Tri-State* as creating a requirement that an agreement be substantially implemented to serve as a contract bar. *St. Mary's Hosp.*, 317 NLRB 89 (1995). In *St. Mary's Hospital*, the Board found a contract bar where "the Employer announced to its employees that the [union] and Employer had reached agreement for a new contract and the terms of the agreement were implemented in substantial part, if not in their entirety." *Id.*, n. 4. Relying on *Tri-State*, the Board explained that an agreement does not serve as a bar where the parties have not yet implemented the agreement's individual terms in "substantial part." *Id.* at 90. Consequently, the Board requires that a tentative agreement be implemented in substantial part to serve as a contract bar. *See id.*

The Regional Director distinguished *Tri-State* on its facts, but failed to address the implementation requirement as applied by the Board in *St. Mary's Hospital*. Exhibit G at 8. The

Regional Director failed to make a finding that the January Tentative Agreement had been implemented in substantial part. Instead, the Regional Director seemed to concede that the TA had not been substantially implemented, explaining that the January Tentative Agreement had "been ratified [only] days before the filing of the decertification petition." Exhibit G at 9. According to the Regional Director, because the January Tentative Agreement had recently been ratified, it had not been substantially implemented. The Regional Director then cited only one instance of implementation, the Territory Field Director's email implementing a "wage adjustment of \$.36 per hour." *Id.* The implementation of one term in a 22 page tentative agreement surely does not constitute implementation of the JANUARY TENTATIVE AGREEMENT's terms in "substantial part, if not in their entirety." *St. Mary's Hosp.*, 317 NLRB 89. Accordingly, the Regional Director erred by failing to apply the Board's officially-reported precedent: a contract cannot bar a decertification petition where its terms have not been substantially implemented. Because the tentative agreement had not been substantially implemented, it cannot bar the decertification petition.

C. The Regional Director's Dismissal Of The Petition Hinders The Rights Of The Bargaining Unit Members To Exercise Their Rights Under Section 7 Of The National Labor Relations Act.

The Board has long recognized that Section 7 of the National Labor Relations Act, 29 U.S.C. § 157, allows employees to refrain from engaging in concerted activity, and allows them to express their desire to refrain from engaging in concerted activity through a decertification petition. The contract bar doctrine is intended to identify circumstances in which concerns about stability of labor relations outweigh employees' Section 7 right to decertify an existing union. Here, the stability of labor relations side of the scale is empty. At the time the petition was filed, there was no signed document that manifested an actual agreement, and the agreement had not

been substantially implemented. Labor relations were not yet stabilized. In this circumstance, the Section 7 rights of employees that this Board has so championed in recent years (*see, e.g., Specialty Healthcare & Rehabilitation Center of Mobile*, 357 NLRB No. 83 (2011); *Banner Health System*, 358 NLRB No. 93 (2012) should prevail. Accordingly, the Board should reverse the Order Dismissing Petition and protect the rights of the Petitioner under the NLRA.

CONCLUSION

For the reasons set forth above, the Regional Director departed from officially reported Board precedent by finding that the January Tentative Agreement barred the decertification petition. Because the January Tentative Agreement was not a binding contract, the signatures did not satisfy the contract bar requirement, and it was not substantially implemented, it should not have been held to bar the decertification petition. As a result, the Board should grant review and reverse the Regional Director's Order Dismissing Petition.

Respectfully submitted,

Dated: March 21, 2013

/s/ Todd D. Steenson
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ADAM YOUNG
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UNITED STATES OF AMERICA
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TWENTY-SEVENTH REGION

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Union,

Case No. 27-RD-098712

and

SUSIE WAGNER,

Petitioner.

I, the undersigned attorney, being duly sworn, say that on March 21, 2013, I served the above-entitled document(s) by **email** and **regular mail** upon the following persons, addressed to them at the following addresses:

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Respectfully submitted,
Dated: March 21, 2013

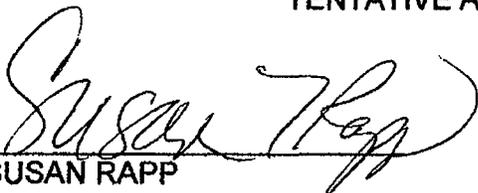
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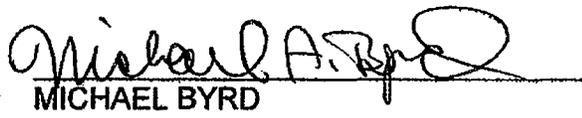
EXHIBIT A

Sears Denver/IBEW Local 111 Negotiations
Tentative Agreement
October 25, 2012

The parties agree that the attached document titled Tentative Agreement – Wages dated October 25, 2012, together with all other contract provisions that have been signed by the parties, comprise the full Tentative Agreement between the parties.

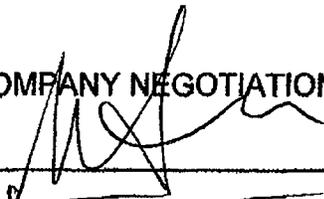
TENTATIVE AGREEMENT REACHED 10/25/12:

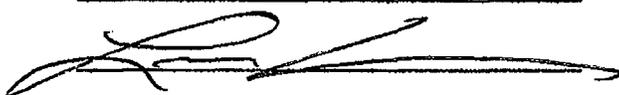

SUSAN RAPP
Director, Labor and Associate Relations
Sears


MICHAEL BYRD
Business Manager/Financial Secretary
IBEW, Local 111

FULLY RECOMMENDED FOR RATIFICATION:

COMPANY NEGOTIATION TEAM:





UNION NEGOTIATION TEAM:

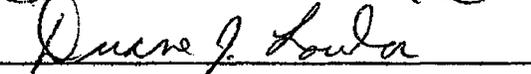




EXHIBIT B

From: Michael Byrd [<mailto:mab@ibew111.org>]
Sent: Tuesday, December 11, 2012 5:54 PM
To: Rapp, Susan
Subject: Tentative Agreement With Changes.doc

Susan

Attached is a copy of our proposed changes to the Tentative Agreement the employees rejected. They are bolded, underlined and in yellow.

On January 22nd, I will be prepared to let the Company know what the employees brought to our attention at the ratification meetings.

If you want to talk about any of this situation please don't hesitate to call. Remember 303 475 6940.

Thanks

Mike

This message, including any attachments, is the property of Sears Holdings Corporation and/or one of its subsidiaries. It is confidential and may contain proprietary or legally privileged information. If you are not the intended recipient, please delete it without reading the contents. Thank you.

EXHIBIT C

SEARS, ROEBUCK AND CO.

LOCAL MANAGEMENT

DENVER PRODUCT REPAIR SERVICES,

AND

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS

LOCAL 111

TERM:

February 15, 2013 through February 14, 2016

AGREEMENT

This Agreement is made and entered into this 15th day of February, 2013, by and between Sears, Roebuck and Co., Northglenn, CO. Product Repair Services District (herein after referred to as "Company" or "Sears") and the International Brotherhood of Electrical Workers Local 111 - AFL-CIO (herein after referred to as the "Union") establishing the rates of pay, hours of work and conditions of employment for the bargaining unit set forth below.

As a result of a series of conferences and collective bargaining between the management of Sears, Roebuck and Company and the International Brotherhood of Electrical Workers Local 111, the Company and the Union have reached the following Agreement:

ARTICLE I **RECOGNITION**

Section 1. Recognition

The Company recognizes the Union as the exclusive representative of all full-time and regular part-time technicians, support associates, customer service associates, shipping and receiving associates and support specialist II employees employed by the Employer in its District 8181; EXCLUDED: all gas repair center employees, office clerical employees, confidential employees, managerial employees, guards and supervisors as defined in the Act.

Section 2. Non-Discrimination

The Company and the Union agree there shall be no discrimination because of race, color, religion, creed, national origin, military or reserve status, disabled veterans or a veteran of the Vietnam era, age, sex, sexual preference or orientation, mental or physical disability or union affiliation or any other characteristic protected by law or activities in the application of any provisions of this Agreement.

It is expressly understood between the parties to this Agreement that actions taken in compliance with mandated Affirmative Action legal obligations imposed the Company by virtue of its status as a Government Contractor shall not constitute a violation of this Agreement

The use of sex designating pronouns in this Agreement shall not be deemed or construed as an expression of preference based on sex, and the provisions of this Agreement shall apply equally without regard to sex.

There shall be no discrimination on the part of the Company or the Union, or its officers, members, representatives or agent, against any employee of membership or non-membership in the Union.

No employee shall be subjected to prejudice or discrimination because of action taken by representatives or the Union in presenting grievances instituted for or by such employee under the provision of this Agreement.

Neither the Union, nor its officers, members, representatives or agents, will intimidate or coerce employees into joining or continuing their membership in the Union.

Section 3. Exclusive Representation

The Company agrees not to recognize, deal with or enter into contractual relations, either orally or written, with any other labor organization concerning rates of pay, hours, or other terms or conditions of employment for any technicians/associates covered by this Agreement.

Section 4. Notice of Representation

At the time of hiring the Company agrees to notify all technicians/associates covered by this agreement that the Union is the exclusive bargaining agent for technicians/associates in the classification of work in which the employee is being employed.

Section 5. Subcontracting

The right to transfer or subcontract any type of bargaining unit work shall be vested exclusively with the Company, provided as there are no qualified technicians/associates on layoff. The Company reserves the right to subcontract out work in nonproductive zip codes and capacity areas by industry, and when backlogs exceed three (3) days.

Section 6. Bargaining Unit Work

Work normally performed by bargaining unit employees may be performed by non-union employees so long as no member of the bargaining unit suffers an involuntary loss of regular hours of work.

ARTICLE II MANAGEMENT RIGHTS

Except as clearly and specifically limited by an express provision of this Agreement, the Company exclusively reserves and retains all of its inherent rights to manage and operate the business and to direct its work force in accordance with its own judgment and discretion.

Without limiting the generality of the foregoing, the management rights include, but are not limited to: the right to promulgate or modify reasonable rules or regulations, the right to hire, discipline, suspend, demote or discharge for cause; the right to promote, transfer or layoff employees for lack of work or for other legitimate reasons; the right to establish, administer, and revise the standards of work performance and technician/associate productivity and to establish, maintain, and revise training programs; the right to alter, limit or curtail operations or any part thereof, including the right to change, abolish or add new jobs, and to add, relocate, modify or close its operations, including any part, department, branch, scheduled group or geographical area thereof; to determine and modify the layout, machines, and equipment, as well as the processes, techniques, methods, materials and means to be used, in all aspects and phases of the business; to determine the size and composition of the workforce, including the number of full time and part time personnel; to determine when overtime work is needed and require bargaining unit work employees to perform such work and to enforce all such unit rules; to discontinue, transfer, or subcontract processes, operations, departments, branches, and geographical areas in whole or in part; to discontinue the performance by technicians/associates covered by the Agreement, and to contract out any and all such operations, departments, branches, and geographical areas; to transfer, sell and otherwise dispose of its business in whole or in part; to determine, and from time to time, re-determine, the number of hours per day or per week the operation shall be carried on; to select and to determine, and from time to time re-determine, the number and types of technicians/associates, as well as the skills and qualifications of those technicians/associates that are required; to establish or eliminate classifications; to assign work to such technicians/associates in accordance with the requirements determined by management; to establish and change work schedules and assignments, including but not limited to the routing of technicians/associates; to assign work and realign work categories to other business groups

outside of the collective bargaining unit; and further, to otherwise take such measures and actions as management may decide are necessary for the orderly or economical operation of the Company's business. It is understood that the exercise or non-exercise of rights, hereby retained by the Company shall not be deemed a waiver of any such rights or prevent the Company from exercising such rights in any way in the future.

ARTICLE III NO STRIKE – NO LOCKOUT

Section 1. The Company's decision to close down any location currently covered by this agreement, or any combination thereof, for business reasons shall not be construed to be a lockout. The Company agrees that so long as this Agreement is in effect and there has not been a breach of the remainder of this Article, there shall be no lockouts.

Section 2. It is therefore understood and agreed by the Union, its officers, agents, employees, representatives, stewards, members and all technicians/associates covered by this Agreement and the Company, that in the best interests of both parties, there shall be no strikes, slowdowns, sympathy strikes, work slowdown, work stoppages, interruption of production or suspension of work, refusals to perform work, boycotts, labor holidays other than those provided in this Agreement, continuous meetings or concerted mass sickness, picketing, or any other denial of services or any other activity which would interfere with the Company's operations in any manner or the provision of service to its customers or any other stoppages of work whatsoever during the period this Agreement is in force (hereinafter "work stoppage").

Section 3. The Union, its officers, agents, employees, representatives, stewards, members and all technicians/associates covered by this Agreement agree that if any acts, conduct or withholding of services prohibited by this Article occur or are threatened, they shall take all reasonable and necessary steps to prevent and stop any and all such interferences by persons subject to this Agreement. This includes, but is not limited to, acts which authorize, instigate, cause, aid, encourage, support or condone such conduct or threats of same.

Section 4. Any technician/associate subject to the terms of this Agreement who violates this Article may be terminated. Such termination may be subject to the grievance procedure.

ARTICLE IV DISCIPLINARY PROCEDURE

Section 1. Cause

- (a) Technicians/Associates may be disciplined and/or discharged for cause.
- (b) Employees may be subject to discipline or discharge without following the progressive disciplinary procedure set forth below, for serious violations of Company Policies, Procedures or Rules of Conduct, including but not limited to insubordination, including failure to obey a direct instruction of a supervisor, directing obscene and/or abusive language to a manager, supervisor, customer or fellow associate, immoral, indecent or violent conduct, dishonesty, including misrepresentation of facts in connection with any claim concerning employment or pay, theft of Company property, possession of illegal drugs or alcohol, being under the influence of illegal drugs or alcohol, or taking illegal drugs or drinking alcoholic beverages during working hours (working hours include breaks and meal periods) or on Company property, or being intoxicated on Company property, willful destruction of Company property or the property of another associate or customer, supplier or carrier serving the Company, unprovoked assault on any person during working hours or on Company premises or at customers home, intentionally driving a Company vehicle

without a valid drivers license, or a history of contributing to accidents while driving a Company vehicle.

Section 2. Discipline

Substandard performance or acts or omissions not warranting immediate discipline, up to and including discharge, may be handled through a schedule of progressive discipline as follows:

1st Interview

Interview and discussion conducted by the technician's/associate's direct supervisor or manager and a Union Representative with a verbal warning covering the discussion.

2nd Interview

Interview and discussion conducted by the technician's/associate's direct supervisor or manager and a Union Representative. This shall include a verbal and written memo covering the discussion.

3rd Interview

Interview and discussion conducted by the technician's/associate's direct supervisor or manager and a Union Representative. This shall include a verbal and written memo covering the discussion and a suspension from scheduled work up to five (5) days with out pay.

4th Interview

Termination.

Section 3. Substandard Performance

Technician's/Associates' performance will be evaluated by management each month, semi annually or annually depending upon their work classification through the Employee Performance Review process. Technicians/Associates whose performance is substandard will be subject to the above process with the understanding that improvement must be sustained for three (3) months.

ARTICLE V ATTENDANCE PROGRAM

A majority of technicians/associates are dedicated to their customers and their team of fellow technicians/associates and will make a good faith effort to be at work on time as scheduled. Technicians/Associates will abide by the terms of the National Sears Attendance Policy, which may be amended from time to time without further negotiations between the parties. Technicians/Associates will be informed of occurrences within seven (7) days of absence via SST or text message.

ARTICLE VI UNION REPRESENTATION

Section 1. Designation

The Union shall have the right to designate five (5) Stewards (one for the North, one for the

Metro, one for the South, one in Wyoming and one Chief Steward over all areas) and shall notify the Company who the Stewards are at all times.

Section 2. Conduct

1. Stewards will be authorized to investigate, process and adjust grievances. such activity shall be without pay and conducted on non-work time unless authorized by the District Service General Manager or their designee. In performing such activity, the steward shall conduct himself in such a manner as to cause a minimum of disruption of the Company's operation and service to its customers.
2. When authorized to conduct such activity during work time, stewards will not suffer any loss of pay. If more than one Steward is required, the Union will compensate any additional Stewards.

Section 3. Union Business Meetings

If the Union requests a shop steward time away from work to attend a conference or training opportunity offered by the Union, the request will be granted provided the duration does not exceed seven (7) consecutive days and proper notification is given to management. The request may be denied if it would have an adverse impact on customer service due to business needs. The time off will be unpaid and granted with no loss of seniority.

Section 4. Seniority List

There shall be separate seniority lists for the Full-time, Full-time Advantage, and Part-time Technicians/Associates by scheduled groups per Exhibit C. Updated seniority lists will be mailed to Technicians/Associates once a year each July and Technicians notified of said list via an SST message.

ARTICLE VII GRIEVANCE AND ARBITRATION PROCEDURE

Section 1. Grievance Procedure

A grievance is defined as any dispute arising under and during the term of this Agreement involving the application or interpretation of a specific provision of this Agreement or a claimed violation of a specific provision of this Agreement.

All grievances shall be processed in the following manner and every effort shall be made by the parties to secure the prompt disposition thereof.

Section 2. Grievance Steps

Step 1.

Any technician/associate having a grievance shall orally (documented) present the grievance to his supervisor or manager no later than seven (7) calendar days after the event giving rise to the grievance, or seven (7) calendar days after the technician/associate should reasonably have learned of the event giving rise to the grievance. The supervisor shall orally (documented) respond to the technician/associate not later than seven (7) calendar days thereafter.

Step 2.

If the supervisor or manager fails to respond or the grievance is not settled at Step 1, the technician/associate and/or his Steward, have five (5) calendar days to submit a written grievance to their supervisor or manager. Within five (5) calendar days of receipt of the grievance, the supervisor or manager shall give his written response to the grievant.

Step 3.

If the grievance is not settled in Step 2, the Union has ten (10) calendar days from receipt of the Step 2 answer to submit a written appeal to the District Service General Manager or their designated representative. Within ten (10) calendar days thereafter, a conference shall be held between the Company, the Steward at the affected location, and the business agent of the Union. The Company shall provide its written answer within ten (10) calendar days following such conference. The parties may by mutual agreement extend the response time, provided such extension is in writing and signed by both parties. The Third Step answer to the grievance shall be final and binding on the technician/associate, the Union and the Company unless timely appealed to arbitration in accordance with the procedures set forth in Step 4 below.

Step 4.

In the event the grievance is not settled at Step 3, either party may submit the grievance to binding arbitration within twenty one (21) calendar days of the written Step 3 response to the grievance by submitting such request in writing to the Federal Mediation and Conciliation Service (FMCS) with a copy to the other party. Failure to provide a copy of the request to the other party shall deem the matter waived for further processing. The parties will follow the procedures of the FMCS regarding the selection of an arbitrator through a panel(s) of arbitrators.

Section 3. Written Presentations

All grievances presented at Step 2 above shall state: The nature of the action giving rise to the grievance, the specific section of the contract violated, the names of the aggrieved technician(s)/associate(s); and the remedy sought. All grievances at Step 2 and appeals at Step 3 of the procedure set forth in this Agreement shall be signed and dated by the aggrieved associate and his Steward or Union official. All written answers submitted by the Company shall be signed and dated by a Company representative.

Section 4. Time Limitations

The time limitations set forth in this Article are of the essence of the Agreement. The Company shall accept no grievance unless it is submitted or appealed within the time limits set forth above in this Agreement. If the grievance is not timely submitted at Step 1 or Step 2, it shall be deemed waived. If the grievance is not timely appealed to Step 3, it shall be deemed to have been settled in accordance with the Company's Step 2 answer. If the Company fails to answer within the time limits set forth in this Agreement, the grievance shall be denied. The parties may mutually agree to extend the time limitations herein, provided such extension is in writing and signed by both parties.

Section 5. Arbitrator's Jurisdiction

The jurisdiction and authority of the Arbitrator and his opinion and award shall be confined exclusively to the interpretation and/or application of the express provision(s) of this Agreement. He shall have no authority to add to, detract from, alter, amend or modify any provision of this Agreement. The Arbitrator's written decision shall be due within sixty (60) days after all evidence including legal briefs, if any, are submitted.

The Arbitrator shall not hear or decide more than one (1) grievance without the mutual consent of the Company and the Union. The written award of the Arbitrator on the merits of any grievance adjudicated within his jurisdiction and authority shall be final and binding on the aggrieved employee, the Union and the Company. With respect to Arbitration involving the layoff, discipline or discharge of technicians/associates, the Arbitrator shall have the authority to order the payment of back wages and benefits the technician/associate would otherwise have received but for his discipline or discharge (less compensation, including Unemployment Compensation payments and other compensation earned elsewhere during the period attributable to the layoff, discipline or discharge in issue). The Arbitrator shall have no authority to award compensatory or punitive damages.

Section 6. Expenses/Fees

The expenses and fees of the Arbitrator for the arbitration, if any, shall be borne by the losing party as designated by the Arbitrator in the award. The expenses and fees of any room facilities for the arbitration, if any shall be borne equally by the parties. The cost of the transcript of the hearing, if any, shall be paid by the party ordering it, if both parties desire it, the cost shall be shared equally. Any party refusing to pay an equal share of the transcript will not be privy to a copy. Each party shall make arrangements for and pay the witnesses who are called by them, or any other expenses borne by either party.

ARTICLE VIII PROBATIONARY PERIOD

All newly hired associates, including full-time technicians/associates, full-time Advantage technicians/associates and part-time technicians/associates and any technicians/associates who are re-hired shall be considered as probationary technicians/associates for a period of one hundred twenty (120) calendar days of continuous service following their most recent or last date of hire. During this probationary period, such technicians/associates may be transferred, laid off or terminated at the sole discretion of the Company and they shall not have access to or rights under the grievance procedure.

Upon the hiring of any new technician/associate, notice of such hiring shall be promptly given to the Union and shall contain the name, classification and rate of pay of such newly hired technician/associate.

ARTICLE IX CLASSIFICATION OF TECHNICIANS/ASSOCIATES

Section 1. Full-Time Technicians/Associates

A full-time associate is an associate who has completed his probationary period and is scheduled to work up to 40 hours per week. The scheduled pay week shall begin on Sunday and end on Saturday.

Section 2. Full-Time Advantage Technicians/Associates

A full-time Advantage technician/associate is an technician/associate who has completed his probationary period and is scheduled to work thirty (30) hours or more in a workweek. At management's discretion, such technicians/associates may occasionally be scheduled up to forty (40) hours per week according to the needs of the business. The scheduled pay week shall begin on Sunday and end on Saturday.

Section 3. Part-time Technicians/Associates

A Part-time technician/associate is an technician/associate who has completed his probationary period and is scheduled to work up to twenty-nine (29) hours in a workweek. At management's discretion, such technicians/associates may occasionally be scheduled up to forty (40) hours per week according to the needs of the business. The scheduled pay week shall begin on Sunday and end on Saturday.

ARTICLE X HOURS OF WORK AND OVERTIME

Section 1. Hours of Work

A. Introduction. This Article is intended to set out the regular hours of work, to define how overtime is assigned and paid, and shall not be construed as a guarantee of any specified number of hours of work per day or per week. Technicians/associates will be paid for all hours actually worked. If it becomes necessary to institute a regular Sunday schedule for technicians/associates, the Company will notify the Union so the parties can bargain the affects.

B. Normal Work Week. A workweek shall normally consist of eight (8) hours a day, five (5) days a week, or forty (40) hours a week for full-time technicians/associates. The normal workweek shall be defined as Monday through Saturday. All technicians/associates will be expected to work Mondays or Saturdays (depending on their normal schedule) as designated by the Company, whether regular schedule or scheduled overtime. Full time Advantage technicians/associates and part time technicians/associates shall be scheduled various hours and days as necessary to support the needs of the business.

1. For technical operations there will be two groups, based on schedule groups, which will defined by the Company on the first of each month:
Group 1, which will consist of the top 40% technicians based on seniority in the schedule group, who will work a regular Monday through Friday schedule, unless a technician voluntarily agrees to opt out of this percentage; and
Group 2, which will consist of the bottom 60% technicians based on seniority in the schedule group, who will work a regular Tuesday through Saturday schedule.
2. For support operations, associates will be required to work various hours and days as necessary to support the needs of the business.
3. Trading of Shifts: Technicians/associates may choose to trade shifts by mutual agreement between employees and shall not be subject to overtime rates of pay (i.e., the trading of shifts will be done in such a manner so that costs to the Company will not be increased). Such trading of shifts shall be done within the same schedule group and both technicians/associates must have the same skill profile. In addition, the request shall be made at least two weeks prior to the beginning of the requested work week and requires the approval of management.

C. Changes. The Company retains the right to implement an alternative schedule other than the 8 hour 5 day schedule, to increase or decrease the required hours per day and per week, and to change the starting and/or stopping times of the work day, as well as the starting and/or stopping times of the workweek. The Company also retains the right to schedule full-time technicians/associates for less than a forty (40) hour week and for less than an eight (8) hour day as business needs dictate. Continued employment is dependent upon a technician/associate's availability to work the scheduled hours. In the event that weather conditions inhibit the ability to perform job functions or there is no additional work available individuals will be required to end the workday at the supervisor's direction.

Section 2. Overtime Pay

Overtime will be paid at the rate of time and one-half (1-1/2) the technician/associate's regular hourly rate for all hours worked in excess of forty (40) hours a week. Overtime shall not be paid more than once for the same hours worked. The Company will follow national policy as to whether paid time (but not worked) will count toward the calculation of overtime.

Section 3. Daily Unscheduled Overtime

- A. Daily unscheduled hours are those hours that may be required of technicians/associates in excess of their regularly scheduled hours and will result in overtime pay provided the technician/associate works more than forty (40) hours within the scheduled week.
- B. Technicians/Associates must contact their routing/technical manager with all potential reschedules by 2:00 p.m. (Mountain Time). The routing office or technical manager, after a discussion with the technician/associate, will make an attempt to meet the technician's/associate's needs. The routing office or technical manager will attempt to redistribute any remaining calls. If the routing office or technical manager is unable to meet the technician's/associate's needs, management will make the final decision whether to run the remaining calls, or to reschedule the remaining calls. If the technician/associate can arrive at the call before his/her scheduled ending time, the technician/associate must report to the call. In addition, should a customer refuse to be rescheduled, the technician/associate must report to the call. At no time shall a technician/associate be required to work more than eleven (11) hours in one day except in rural exception areas.

Section 4. Scheduled Overtime

Scheduled overtime hours are those hours in excess of forty (40) hours scheduled on the sixth and/or seventh consecutive work day within the technician's/associate's work week that are known and scheduled a day in advance. Scheduled overtime hours will be offered to the qualified technicians/associates as determined by the Company in the industry and geographical area needed. Such overtime will be communicated by SST or phone call with an answer due by close of business the same day; if a technician/associate fails to respond by SST or return phone call, they will be deemed to have accepted the overtime. If an insufficient number of technicians/associates accept overtime to meet the needs of the business, management will mandate by the inverse order of their seniority, the junior qualified technicians/associates to work such overtime, subject to violations of the National Attendance Policy currently in effect. Efforts will be made to accommodate technicians/associates with an emergency situation.

Section 5. Rest and Meal Periods

All technicians/associates shall receive a fifteen (15) minute paid rest period for each four (4) hours worked. Technicians/Associates working in excess of five (5) hours in one day are required to take an unpaid meal period. Meal periods will be one half (1/2) hour. The meal period must be started within five (5) hours of starting the day's schedule. Rest periods and unpaid meal periods will be taken at the appropriate times during the workday. Rest periods and/or unpaid meal period may not be taken at the beginning or end of the workday. Rest periods must not be taken in conjunction with the meal period. Should a technician/associate travel to a location to have their rest period or meal period, such time spent traveling is considered part of the rest or meal period, and is not compensated.

Section 6. Call In Hours

A minimum of three (3) hours pay or work shall be given any full-time, full-time advantage or part-time technician/associate called in to work, on a voluntary basis, at the Company's request. This minimum does not apply to any technician/associate who is unable, for personal reasons, to work the required minimum.

Section 7. Standby

The Company may create a Standby Schedule to cover immediate customer demands that occur on Mondays and Saturdays. The Company will make an annual Standby Schedule where technicians/associates may volunteer, based on seniority, for preferred standby days. The standby schedule will be reviewed every six (6) weeks for potential updates. Should a technician/associate volunteer for standby, they will receive one hour of premium pay (time and a half the technician's/associate's regular straight time rate) per day that they are scheduled on standby. This premium is paid whether or not work is performed. If the technician/associate is required to work, notice will be made by 9:00 a.m., and hours worked on that standby day are to be compensated at the overtime rate, regardless of whether such time is under or over 40 hours in the workweek.

ARTICLE XI SENIORITY

Section 1. Seniority Date

For the purpose of this article, seniority shall date from the technician's/associate's date of employment in his/her current bargaining unit position. Seniority shall be broken if the technician/associate quits, is laid off for a period in excess of six (6) months for Part-time technicians/associates with a year or more service or one (1) year for Full-time technicians/associates, fails to return to work upon recall from layoff, fails to return to work at the end of a company approved leave of absence, is absent for two (2) consecutive scheduled work days without notifying the Company unless an explanation satisfactory to the Company is given by the employee, or is discharged for cause.

Seniority shall be distinguished from "continuous service" and "adjusted service date" as used by the company. All company benefits and policies and eligibility therein shall be based on the technician's/associate's "adjusted service date" and/or "continuous service" with the Company.

Section 2. Principle of Seniority

The Company recognizes the principle of seniority in filling vacancies, scheduling, determining layoffs and reduced hours, recall and in making promotions by job class, location, scheduled group and capacity area. However, seniority will only govern where skill, ability and performance are substantially equal. Preference for promotion to all vacancies and new

positions will be given to employees currently in said location, by scheduled group and/or capacity area. Technician/Associates bidding for new positions must be qualified for the position to be given preference for the position over outside qualified candidates.

In the case of layoffs, the Company will ask for volunteers first. Notice of layoff will be given to the technicians/associates and the Union by the end of the business day on Thursday, prior to the week of the layoff.

Section 3. Posting

Job vacancies will be posted for a period of five (5) calendar days. An effort will be made to fill vacancies within fifteen (15) calendar days of date of posting. A posting can be removed anytime before it is filled and be declared null and void. It is agreed that during an technician's/associate's absence (i.e., short-term illness or vacation) the steward may sign said bid sheet for the absent technician/associate if the absent technician/associate has notified management in writing that said technician/associate is interested in the job.

Section 4. Awarding Bids

Technicians/Associates who are selected for promotion under the bidding procedures have one hundred twenty (120) calendar days to decide whether to remain on the new job or to return to their previous job. Management may, within the same one hundred twenty (120) day period, remove said technician/associate from the bid and return him or her to the original job.

Section 5. Part-time Laid Off First

In the event a layoff or reduction of hours becomes necessary, part-time technicians/associates will be laid off or reduced in hours before full-time technicians/associates to extent possible per the Company's determination while still maintaining adequate coverage for customer service.

Section 6. Bumping

Full-time technicians/associates subject to layoff in their scheduled group and capacity area may claim any remaining part-time hours in their scheduled group and capacity areas. Full-time technicians/associates who choose part-time employment will be eligible for benefits in accordance with Company policy for part-time status.

Section 7. Employment Opportunity

All technicians/associates will have the opportunity to cross-train in another category once they have proficiently exhibited ability in servicing a majority of the appliances in their present category. Appropriate technical courses must be successfully completed prior to any cross training.

Section 8. Recall Rights

a. No new hiring will be done in a work group or capacity area until all former technicians/associates in that work group or capacity area on layoff are notified first.

b. The Company will notify, by the quickest means available, any technician/associate recalled from layoff. Once notified, recalled technicians/associates drawing unemployment

compensation shall report back to work on the date requested but may not be required to return on the day notified unless sufficient notice was provided to work a complete schedule. Technicians/Associates on lay-off who are not drawing unemployment compensation may have up to ten (10) working days to report back to work. Such times may be extended with approval by management. The Company may assign less senior technicians/associates to perform the available work until such time as qualified technicians/associates on layoff return to work without violating the seniority list.

ARTICLE XII RATES OF PAY

Rates of pay are set forth in Exhibit "A".

ARTICLE XIII BENEFIT PROGRAM

Section 1.

The Company agrees that all eligible technicians/associates covered by this Agreement will be eligible to participate in the Company's benefit program as currently administered and periodically amended, unless a particular benefit is specifically modified in this Agreement. Should the Company, on a national basis, amend, modify or terminate these benefits, then such amendments, modifications or terminations shall be instituted with respect to technicians/associates covered by this Agreement. The Company agrees to notify the Union IBEW Local 111 of any subsequent amendments, modifications or terminations in the Company benefit program. The Company agrees not to change any national program that affects only the technicians/associates covered under this Agreement. If the Company decides to make such a change, said change will be negotiated with the Union before any such change is implemented.

Section 2. In the event the Company decides to conduct a layoff as that term is defined in the Company's National Program with respect to [name the program], the Company will notify the union. Upon request, the parties will bargain over whether a Service Allowance or Transition Pay will be granted and the extent of such allowance or pay, if any. Such bargaining will not constitute a reopening of the contract and will not exempt either party from the requirements of the No-strike/No-lockout clause.

Section 3. Personal Holidays Administration

If eligible, full-time technicians/associates must schedule personal holidays at the time vacation is scheduled. Personal holidays may only be changed by mutual agreement between the technician/associate and management at least two (2) weeks before the scheduled date. Full weeks of vacation take precedence over personal holidays within the full-time seniority list. Personal holidays must be taken within the fiscal year earned and may not be carried over into the next fiscal year.

Section 4. Call-In Pay

Full-time technicians/associates called in to work on any of the Company recognized legal holidays (New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day) shall be provided a minimum of three (3) hours pay or work at time and one-half their hourly rate in addition to their holiday pay.

Full-time technicians/associates will have priority in filling holiday schedules based on their seniority provided they have the ability to perform the work. Technicians/Associates working holiday schedules will receive holiday pay in accordance with this Section.

Section 5. Holiday Schedules Administration

If eligible, holiday schedules will be offered to full-time technicians/associates on the basis of seniority. In the event the Company is unable to fill the holiday schedules by voluntary means, qualified part-time technicians/associates shall be required to perform the holiday work in the inverse order of their seniority. In the event there are not enough part-time technicians/associates to fill holiday schedules, qualified full-time technicians/associates shall be required to fill said schedule in the inverse order of their seniority.

Part-time technicians/associates called to work on any of the Company recognized legal holidays (New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day) shall be provided a minimum of three (3) hours pay or work at time and one-half their hourly rate in addition to any holiday pay for which they might qualify.

Section 6. Vacation Administration

(a) If eligible, technicians/associates will be permitted to choose their vacation dates based on seniority by schedule group (Exhibit C). Vacation scheduling will be by seniority for each schedule group, with the most senior technician/associate picking all of his/her vacation, then proceeding to the next most senior technician/associate to pick all of his/her vacation, and so on. With the exception of the blackout periods contained in subsection (b) below, the maximum number of technicians/associates in the District off at any one time for a combination of vacation and personal holidays are dependent upon whether it is "Summer Prime Time," "Holiday Prime Time," or "Non Prime Time."

1. Summer Prime Time shall be defined as Memorial Day through Labor Day.
2. Holiday Prime Time shall be defined as the Week of Thanksgiving, the week after Thanksgiving, the week before Christmas, the week of Christmas, and the week after Christmas.
3. Non-Prime Time shall be defined as all other time except that listed as Summer Prime Time and/or Holiday Prime Time.

Allowances For 2013

Maximum Allowed Technicians Off Based on Schedule Group Size			
Schedule Group Size	Summer Prime	Holiday Prime*	Non-Prime
Up through 14	1	1	1
15 through 19	1	1	5
20 through 29	1	2	5
30 through 34	2	2	5
35 through 49	2	3	5
50 or more	3	4	5

*Cook/Dish technicians – 0 (zero) for all Schedule Group sizes

Allowances For 2014 and Beyond

Maximum Allowed Technicians Off Based on Schedule Group Size
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Schedule Group Size	Summer Prime	Holiday Prime	Non-Prime
Up through 14	1	1	1
15 through 19	2	2	5
20 through 29	2	3	5
30 through 34	3	3	5
35 through 49	3	3	5
50 or more	3	4	5

- (b) Black Out Periods. For the week that includes Memorial Day, lawn and garden technicians/associates will not be allowed to take vacation. For the month of July, all refrigeration technicians/associates (all technicians/associates profiled for refrigeration) will not be allowed to take vacations; however, refrigeration technicians/associates with more than 25 years of continuous service can request one day off (based on seniority, maximum one technician/associate a day) during the blackout period.
- (c) Full weeks of vacation shall take precedence over personal holidays and daily vacation requests.
- (d) Exceptions to the foregoing may be allowed with management approval.
- (e) The procedures for vacation selections shall be as follows. Vacation selection slips will be given to technicians/associates between October 1 and October 31. The slips must be returned to the Company within fifteen (15) days of issue. The Company will return the approval slips no later than December 15. If the technician/associate fails to return his slip within fifteen (15) days of the original issue date, the technician/associate shall have no right to bump a less senior technician's/associate's vacation request and may only take vacation time during the weeks available. A vacation chart shall be provided to each technician/associate by schedule group and the vacation days and personal holidays selected.
- (f) When a holiday falls within a technician's/associate's vacation period, an additional day of vacation will be granted. If the holiday falls during Prime Time the vacation day will be scheduled during Non-Prime Time season. The additional day of vacation may be scheduled at any time with management approval. Vacation days must be taken consecutively in weekly increments unless authorized by management.
- (g) Vacations will be scheduled by seniority in each schedule group. No technician/associate may take more than two (2) weeks of vacation during the prime vacation period. Exceptions to this may only be made with management approval. The two (2) week restriction will not apply outside the Prime Vacation period, except if more than one (1) technician/associate from each schedule group requests the same vacation time, approval must be obtained from management.
- (h) In scheduling vacations, full weeks of vacation will take precedence over personal holidays. Full-time vacations take precedence over part-time vacations.
- (i) When employment is terminated with the Company, a technician/associate shall be paid for vacation earned but not taken.
- (j) Technicians/Associates are required to use accrued personal holidays when they take an FMLA leave of absence.
- (k) Vacation requests that are authorized by management prior to the work week are considered "pre-approved." All pre-approved vacation time will be paid at the hours

requested up to eight (8) hours per day. Vacation requests that are authorized by management after the work week has begun will be subject to allocation based on hours actually worked, with total hours paid not to exceed forty (40) hours for the work week.

Section 7. Part-time Support Associates

Any part-time support associates who work forty (40) hours or more per week for sixteen (16) consecutive weeks will have the choice of becoming a full-time advantage associate.

ARTICLE XIV JOB DESCRIPTIONS

The Company agrees that all technicians/associates covered by this Agreement will be under the Company's national job descriptions as currently administered. Should the Company, on a national basis, amend, modify or terminate these job descriptions, and then such amendments, modifications or terminations shall be instituted with respect to technicians/associates covered by this Agreement. The Company agrees to notify the Union IBEW Local 111 of any subsequent amendments, modifications or terminations in the Company job descriptions. The Company agrees not to make any changes to the job descriptions where such changes would apply only to those technicians/associates covered under this Agreement without first giving notice and negotiating over such changes before they are implemented.

ARTICLE XV GENERAL CONDITIONS

Section 1. Safety

The parties recognize the importance of safety. The Company and the Union will cooperate in the objective of eliminating accidents and health hazards. The technician/associate has the right to decide whether or not the consumer domicile is suitable to perform the required repair as described on the Service Order. The Company shall make reasonable provisions and work rules for the health and safety of the technicians/associates. The Company, the Union and the technicians/associates recognize their obligations and/or rights under existing Federal and State laws with respect to safety and health matters.

Section 2. Tools

The Technician/Associate will provide their own hand tools, as outlined in Exhibit B, and the Company will provide specialty tools necessary in the performance of their work. Technicians/Associates are responsible to reasonably safeguard assigned tools, equipment and supplies from theft, loss and abuse. Misuse or abuse of all tools, equipment and supplies may be considered just cause for discipline, up to and including discharge. Lost tools will be the responsibility of the technician/associate to replace. The Company will replace all technician's/associate's personal hand tools that are worn or damaged as needed, but the amount is not to exceed \$150.00 each contract year.

Section 3. Uniforms

In activities where the Company requires the wearing of a uniform, the Company will supply such uniforms without cost to the technicians/associates. Additional clothing requirements that are not part of the uniform will be the responsibility of the technician/associate. All technicians/associates shall be required to wear the issued uniforms at all times (and only) while at work. The provisions of the Sears Style Manual, which may be amended from time to time, will apply to all of the technicians/associates.

Section 4. Background Checks and Driving Records

- (a)** Sears retains its right to perform a background check on a technician/associate at anytime during the course of employment. Technicians/Associates must sign the Employment Screening Release Form as a condition of their continued employment.
- (b)** If the results of the background check information received could have an adverse impact on the technician's/associate's employment status, the technician/associate will be supplied a copy of the report. The technician/associate will be afforded an opportunity to review the report to ensure that Sears has not received inaccurate or incomplete information. No final decision regarding the technician's/associate's employment will be made until at least five (5) business days after providing the report to the technician/associate. This will allow the technician/associate an opportunity to review and respond to the information and offer any information that he/she would like Sears to consider on his/her behalf.
- (c)** The Company retains the right to discipline, discharge or place on an unpaid leave of absence a technician/associate based upon information received from a background check.
- (d)** The Company retains the right to perform a driving record check on a technician/associate at anytime during the course of employment. At the minimum, driving records will be checked on an annual basis. The technician's/associate's driving record must be in compliance with the "Sears Product Repair Services Driver's Operating and Safety Manual," including but not limited to the MVR policy, as currently administered and periodically amended from time to time.

Section 5. Trucks

- (a)** The assignment of Company vehicles shall rest solely with the Company. Technicians/Associates eligible for the assignment of a Company vehicle must be in "tech routable" status. Technicians/Associates assigned vehicles shall not permit any unauthorized passengers access to the vehicle and shall keep the vehicle locked at all times when unattended. Any unauthorized use of Company owned vehicles may be cause for immediate termination.
- (b)** Each technician/associate assigned the use of a Company owned vehicle must return the vehicle to the Company designated area at the end of the day unless otherwise approved by management. Technicians/associates shall be required to: provide reasonable security, maintain the satisfactory appearance of the interior and exterior of the vehicle, maintain proper routine preventive maintenance schedules, and report to management the need for any non-routine mechanical maintenance. There shall be no smoking in Company vehicles. Company vehicles shall not be modified or equipped except as authorized by management. Tampering with monitoring devices attached to or associated with the truck, including but not limited to GPS communication devices or other asset tracking equipment, may be grounds for immediate termination of employment. Technicians/Associates may be required to return the Company owned vehicle prior to vacation or other leave of absence including but not limited to layoff. The Company will provide transportation for the drop off or the pick up of the vehicle.
- (c)** All technicians/associates driving Company vehicles are required to maintain and provide proof of a valid driver's license and to promptly report all traffic violations and the loss of driving privileges to management.

- (d) All maintenance of Company-owned vehicles shall be performed on Company time and at Company expenses. Normal preventive maintenance shall be performed in a regular schedule per the manufacturer's recommendations according to Company policy.
- (e) The operation of Company vehicles is subject to the "Sears Product Repair Services Driver's Operating and Safety Manual".

Section 6. Home Dispatch Program

All technicians/associates will participate on a voluntary basis in the national Home Dispatch Program, as currently stated in Company policy and from time to time amended.

Section 7. Scheduled Groups

The parties agree to the Scheduled Groups as set forth and incorporated herein as Exhibit "C".

Section 8. Meetings

Technicians/Associates required to attend Company meetings shall be paid in accordance with the terms of this Agreement including applicable overtime.

Technicians/Associates who attend Company investigatory meetings in their capacity as a union steward or union representative will be paid for such time at their straight time hourly wage.

ARTICLE XVI DRUG FREE WORK PLACE

Technicians/Associates are expected and required to report to work on time and in an appropriate mental and physical condition to work.

The unlawful manufacture, distribution, dispensation, possession or use of a controlled substance on Company premises or while conducting company business off company premises are prohibited. Violation of this policy may result in disciplinary action, up to and including termination.

Technicians/Associates must, as a condition of employment, abide by the terms of the current Sears Drug Free Workplace Policy, which may from time to time be amended without additional negotiation between the parties. Technicians/Associates must report any conviction for violating any federal, state or local law or regulation pertaining to the unlawful use of a controlled substance, whether occurring on or off Company premises or before or after conducting Company business. A report of the conviction must be made within five (5) days after the conviction.

ARTICLE XVII SAVINGS CLAUSE

In the event any provision of this Agreement shall be declared unlawful under any existing or future State or Federal Law, the provision declared illegal shall be considered null and void and the Employer and the Union will, within ten (10) days thereafter, meet for the purpose of negotiating changes made necessary by such State or Federal Law. The remainder of this Agreement shall remain in full force and effect.

ARTICLE XVIII COMPLETE AGREEMENT

It is agreed that during the negotiations leading to the execution of this Agreement, the parties have had full opportunity to submit all items appropriate for collective bargaining and that this Agreement incorporates the full and complete understanding between the parties, superseding and invalidating any prior practices or understandings, whether oral or written, not specifically provided for in this Agreement.

ARTICLE XIX TERMINATION CLAUSE

This Agreement shall remain in full force and effect through February 14, 2016, unless extended in writing by mutual agreement of the parties hereto.

Notice to renegotiate this Agreement shall be in writing and shall be given at least sixty (60) days prior to the above date by either of the parties to this Agreement. During the sixty-(60) day period, the parties shall meet for the purpose of negotiating a new Agreement concerning rates of pay, hours of work, and other conditions of employment.

Any notice given under this Agreement shall be by Certified Mail and, if by the Employer, be addressed to International Brotherhood of Electrical Workers Local Union 111, 5965 E. 39th Avenue, Denver, CO 80207 and, if by the Union, be addressed to Sears, Roebuck and Co., Labor Relations Department, 3333 Beverly Road, Hoffman Estates, IL 60179.

IN WITNESS THEREOF, WE, the undersigned duly authorized representatives of the parties, agree and acknowledge:

Sears, Roebuck & Company

IBEW Local 111

For The Company:

For The Union:

Susan Rapp

Michael Byrd

Angie Alvarado

Duane Lawlor

Luis Cardenas

Timio Archuleta

Rick Cook

Skip Murphy

EXHIBIT A – Wage Rates

1) Technical Workforce.

- a) Effective from November 23, 2012, technicians shall be compensated with their current base hourly rate (in effect at date of ratification) plus participation in the Service Quality Members Reward as follows:

Service Quality Member Rewards Pilot	Gold		Silver		Bronze		N/A
	Break Fix Tech	CE Tech	Break Fix Tech	CE Tech	Break Fix Tech	CE Tech	PM Tech
Recall % (3-Month Rolling)	<=5.50%	<=2.5%	> 5.50% and <= 7.00%	>2.5% and <=3.40%	> 7.00% and <= 8.4%	> 3.40% and <=4.25%	<=4.50%
Minimum Completed Calls (3-Mo)	180	120	180	120	180	120	300
CSAT Hurdle (VTP%, 3-Mo)	95%	95%	95%	95%	95%	95%	95%
Sears Paid (Call Close 30)	\$5.00	\$5.00	\$2.50	\$2.50	\$1.25	\$1.25	\$0.25
IW, PA (Call Close 10, 20, 50, Excludes PM Check)	\$3.00	\$3.00	\$1.50	\$1.50	\$0.75	\$0.75	\$0.25
PM Check (Not Created Same Day)	\$0.25	\$0.25	\$0.25	\$0.25	\$0.25	\$0.25	\$0.25
Declined Estimates (Call Close 38)	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00

Decommissions apply for all recall events.

- b) Wage Reopeners. As of January 15, 2014 and as of January 15, 2015, the Agreement will be reopened solely for the purpose of negotiating the wages or equivalent compensation to be paid to the bargaining unit technicians/associates in the second and third years of the Agreement, respectively. If the parties are unable to reach agreement on the wages or equivalent compensation to be paid to technicians/associates in the second and/or third year of the Agreement on or before February 15 of 2014 and/or February 15 of 2015, the parties will be exempted from the No-Strike, No Lockout Article of the parties' Agreement until such time as the parties reach agreement as to wages or equivalent compensation to be paid in the second and/or third years of the Agreement, provided that such economic weapons may be used solely with respect to the issue of wages or equivalent compensation to be paid technicians/associates during the second and/or third year of the Agreement and not to seek any other changes in the Agreement or the technicians'/associates' terms and conditions of employment. Once agreement is reached on wages or equivalent compensation to be paid in the second year of the Agreement, the parties shall be bound by the No-Strike, No Lockout Article of the parties' Agreement until February 15, 2015. Once agreement is reached on wages or equivalent compensation to be paid in the third year of the Agreement, the parties shall be bound by the No-Strike, No Lockout Article of the parties' Agreement until the date set forth in the Termination Clause.

- c) Incentives for sales of value added service products. Effective from the date of ratification for the term of this labor contract, technicians shall also be eligible for the following incentives based upon the sale of value added service products:

Technician PA	6% of PA Sale 2% of PA Sale if at or over \$4.00/call for the month 2% of PA Sale on renewal (expiring within 30 days)
Water Filter	\$4 FDA ("Fixed Dollar Amount") per filter sale
VASP Parts	\$1 FDA < \$20 \$3 FDA > \$20
Home Appliances	\$25 per appliance sale
HVAC Air Duct Cleaning	\$20 per referral sale
Dryer Vent Cleaning	\$10 per referral sale
Carpet, Upholstery & Tile Cleaning	\$10 per referral sale
Garage Door Sales/Installs	\$25 per referral sale
Garage Door Opener Installs	\$5 per referral sale
HVAC Appointments Conducted	\$25 per appointment
HVAC Installed Sales	\$75 per installed sale
Other Home Improvement Appointments Conducted	\$25 per appointment
Other Home Improvement Installed Sales	\$75 per installed sale
HVAC Integrated Districts Installs	6% of sale

- 2) Non-Technical Workforce.
- a. Effective February 15, 2013, all support associates will be given a wage adjustment of \$.36 per hour.
 - b. Effective the second pay period of February, 2014, support associates shall be compensated with a base hourly rate which may be adjusted based upon merit consistent with the Company's Annual Review process.
 - c. Effective the second pay period of February, 2015, support associates shall be compensated with a base hourly rate which may be adjusted based upon merit consistent with the Company's Annual Review process.
 - d. The start rate for support associates in the AO6 classification shall not be less than \$11.20/hour and in the MO5 classification shall not be less than \$10.80 per hour.
- 3) Promotional Increases. Technicians/Associates who are promoted from one classification to a higher classification shall receive a 4% increase to their current base rate of pay, effective upon completion of training.

EXHIBIT B – Tool List

1/4" Drive 1/2" Socket	Crescent wrench
1/4" Drive 1/4" Socket	Drill 3/8 " Corded
1/4" Drive 11/32" Socket	Drill Bit Set
1/4" Drive 3/16" Socket	Drop Light
1/4" Drive 3/8" Socket	Extension Cord 10' and 25'
1/4" Drive 5/16" Socket	File Set
1/4" Drive 7/16" Socket	Flashlight
1/4" Drive 7/32" Socket	Hacksaw
1/4" Drive 9/32" Socket	Hammer, 2 or 3Lb
1/4" Drive Extension 6"	Hammer, Ball Peen
1/4" Drive Ratchet	Heat Gun
1/4" to 3/8" Socket adapter	Inspection Mirror
3/8" Drive 15/16" Socket	Level 6"
3/8" Drive 1/2" Socket	Magnetic Nut Setters at least 1/4 & 5/16
3/8" Drive 11/16" Socket	Magnetic Pick -up tool
3/8" Drive 3/4" Socket	Magnetic tip screwdriver
3/8" Drive 3/8" Socket	Multimeter
3/8" Drive 5/8" Socket	Nut drivers 1/4" & 5/16"
3/8" Drive 7/16" Socket	Outlet tester
3/8" Drive 9/16" Socket	Pliers Regular
3/8" Drive Extension 6"	Pliers, Channel Locks (9.5")
3/8" Drive Ratchet	Pliers, Long nose/needle nose
Allen Key Set - Metric	Pliers, Side Cutting-wire cutters
Allen Key Set - SAE	Punch & Chisel Set
Combo Wrench 1/2	Putty Knife 1-1/4"
Combo Wrench 1/4	Screwdriver Flat-Blade Set
Combo Wrench 11/16	Screwdrivers Phillips #0, #1, #2
Combo Wrench 11/32	Screw gun
Combo Wrench 3/16	Tape Measure
Combo Wrench 3/4	Tool Bag
Combo Wrench 3/8	Torx Driver Set (Tamper Resistant / security)
Combo Wrench 5/16	Utility Knife
Combo Wrench 5/8	Vise Grips
Combo Wrench 7/16	Wire Strippers / Crimping tool
Combo Wrench 9/16	

EXHIBIT C – Scheduled Groups

The Company will allow all current Cook/Dish technicians/associates to be trained to be either a Laundry technician or a Refrigeration technician; and the Company will train all current Laundry, Refrigeration and HE technicians to be able to fully handle Cook/Dish service calls. It shall be a condition of employment for all technicians (except LG technicians) to be able to fully handle Cook/Dish service calls by January 1, 2014; exceptions to this requirement may be made in writing by mutual agreement of the parties. Where an exception is not made, adverse employment action will be in accordance with the principals of just cause.

Scheduled Groups (current through 2013)

Casper	Fort Collins	Denver Metro	Colorado Springs	Support
All Technicians	All Technicians	Laundry & HE	All Technicians	All Support
		Cook/Dish & LG		
		Ref/HVAC		

Scheduled Groups (2014 and beyond)

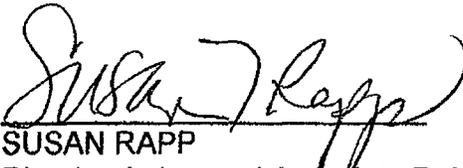
Casper	Fort Collins	Denver Metro	Colorado Springs	Support
All Technicians	All Technicians	Laundry & HE	All Technicians	All Support
		LG		
		Ref/HVAC		

EXHIBIT D

Sears Denver/IBEW Local 111 Negotiations
Tentative Agreement
January 24, 2013

The parties agree that the attached document titled "January Tentative Agreement -- January 24, 2013" comprises the full Tentative Agreement between the parties.

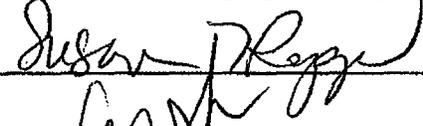
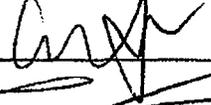
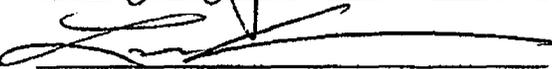
TENTATIVE AGREEMENT REACHED 1/24/13:


SUSAN RAPP
Director, Labor and Associate Relations
Sears

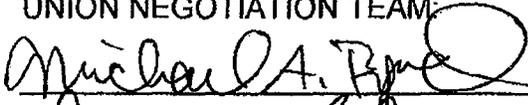

MICHAEL BYRD
Business Manager/Financial Secretary
IBEW, Local 111

FULLY RECOMMENDED FOR RATIFICATION:

COMPANY NEGOTIATION TEAM:

UNION NEGOTIATION TEAM:



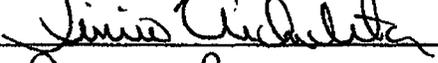
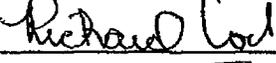




EXHIBIT E

TO: Employees of Sears District 8181

RE: Collective Bargaining Agreement Ratification Meetings and Dates

Dear Sisters and Brothers:

On Tuesday, January 22, 2013, Sears Representatives and IBEW, Local Union 111 Representatives (including Rick Cook and Skip Murphy), met to discuss the Collective Bargaining Agreement. The Union began by sharing with the Company the list of issues (2 pages) you brought forward at the ratification meetings in November 2012, showing your displeasure with the then Tentative Agreement.

The Union then presented the changes desired in the Tentative Agreement. I informed the Company these changes were necessary in order for the employees to consider voting in favor of the new Agreement. More specifically, these changes included:

1. New effective dates on the Collective Bargaining Agreement.
2. Managements Rights Clause (as was in the old Local Union 68 Agreement).
3. Hours of Work - removing the verblage, the Company could start a temporary Sunday Schedule.
4. A change to the days off so the employees would be able to alternate.
5. Remove the language concerning Trading of Shifts.
6. Remove the language that allowed the Company to change an agreed to schedule.
7. Added language that Techs guaranteeing time to stock vans rather than be released for the rest of the day if their work was complete.
8. Language to mandate the Company to reschedule calls, not the Techs.
9. 10 hour day maximum, and 11 hour maximum in the rural areas.
10. Proposal to increase the number of employees who can be off at one time on vacation and removes July from the Blackout Period.
11. Mandate the Company to purchase all hand tools.
12. Proposed a new wage scale with adjustments and hourly increases.

I believe these are the demands that were brought forward at the November 2012 meetings.

On Tuesday afternoon, the Company rejected the Union's proposal and countered with proposed changes they believed were needed in order for Management to consider accepting a Collective Bargaining Agreement with the Sears employees of District 8181.

These changes include:

1. One (1) year Agreement.
2. Company could subcontract the Bargaining Unit's work at any time under Managements Rights.
3. Company wanted to add to the first time dischargeable offenses: SHC Code of Conduct; In Home Tech Code of Conduct; Failing to conduct yourself in a reasonable and businesslike manner with customers, fellow associates and management; and Failure to follow processes that significantly impact the financial performance of the District.
4. Modify discipline levels from three steps to two steps prior to termination.
5. "Performance of Associates" stating: "Associates' performance will be evaluated by management as needed and determined by the Company depending upon their work classification through the Employee Performance Review or appropriate business evaluation process. Associates whose performance is substandard (below expectations) must make immediate improvement. If they fail to meet acceptable standards within two (2) months of notice of substandard performance or they fail to sustain improvement over the next twelve (12) month period, they will be terminated."
6. Delete reference that employees will make a "good faith effort" to be at work with "must be at work"
7. The Company would not be required to let the employees know when they received an occurrence.
8. Require mandatory overtime at any time.
9. Make "Stand By" mandatory.
10. Employees who bid on a new position would not have go back rights.
11. Employees would not receive Holiday pay if they missed the day before, or the day after a holiday.
12. Language where the Company would decide how many people could be off on vacation at one (1) time.
13. There would be mandatory "Home Dispatch."
14. Wages would be a set amount with pay and per complete:
 - T05: \$8.25/hr+\$4.00/cc
 - T06: \$9.00/hr+\$10.00/cc
 - T07: \$10/hr+\$12.00/cc
 - Same proposal for Support Staff

Basically, this proposal is a 1.5 million dollar per year loss to you as a group.

As you can see, your Negotiation Committee was at a great dilemma. We could see you (the employees) are now at risk. Do we fight for the proposal of October 25, 2012? Or, do we fight against the Company's Proposal of January 22, 2013? It is the belief of the Committee that if we stick to our guns and demanded the wishes of our newly proposed agreement, and tried to fight off what we could from on the Company's new proposal, one thing was for certain. "The Employees would have to **STRIKE** before any changes could be achieved." Your Negotiating Committee made the determination to fight for the October 25th Tentative Agreement, rather than put the employees in a position of **NO RETURN**. Therefore, your Committee on Wednesday, January 23rd, re-proposed the October 25th Tentative Agreement again to the Company with one (1) change. That change would be that the Company cannot make Sunday a

normal work day, even on a temporary basis, as was allowed in the October 25th Tentative Agreement. Your committee is recommending ratification of this agreement.

On Thursday, January 24, 2013, the Company, after much deliberation, determined it was better for the Employees and for the Company to agree to the October 25 Tentative Agreement with the Union's one (1) additional change concerning Sunday work. Basically, the Company agreed with our proposal from the day before.

I want each of you to understand how tough of an issue "wages" were in these negotiations. We know and understand some of you have not received a raise in several years. The Company was absolutely not willing to agree with any across the board increase or parity among the employees. The only way the Company would talk about wages, was wages would be tied to the number of completes, as you can see in their proposal.

You may, or may not, be aware that the new bargaining unit in Chicago just ratified a one (1) year agreement. It encompasses that they receive their present wages and a .5% bonus each quarter if they improve their net completes by one per day, or reach 5.7 net completes per day, and/or stay above the designated number of completes. Which means if someone makes \$20.00 per hour and their net completes stay above an average of more than one more net complete per day, they receive a .5% quarterly bonus or \$.10 per hour. To receive the next quarterly bonus they must prequalify, again.

The wage proposal for your consideration gives you an opportunity to help the Company make money, and also gives you, the employee; the opportunity to make more money on an individual basis with the "Rewards Program".

Now, it is for you to make the same determination as your Negotiations Committee and the Company have made, which is: ACCEPT THE NEW TENTATIVE AGREEMENT?

or

Your only other option is to: GO ON STRIKE?

I am sorry that I have to be so blatant in bringing these options to you, but these are the facts. Your committee is recommending ratification of this agreement.

THE CHOICE IS YOURS.

Therefore, at the scheduled ratification meetings outlined below, you will receive two (2) ballots:

- One ballot will be to vote either "For" or "Against" the January 25th proposed Tentative Agreement.
- The second ballot will be to vote either "For" or "Against" if you are in favor of giving your Committee the authorization to call for a strike.

Your Committee strongly recommends that you consider accepting the Union's/Company's proposed January 24, 2013 Tentative Agreement. We know the Company will not meet the demands we have presented to them prior to this agreement, and they made that very clear to us.

The following scheduled dates, times, and locations are meetings for you to cast your ballots:

- **CASPER** at Local 322 (691 English Drive) on Monday, February 11, 2013, at 7:00 pm, with Timio Archuleta.
- **COLORADO SPRINGS** at Local 113 (2150 Naegle Road) on Monday, February 11, 2013, at 7:00 pm, with Skip Murphy and myself.
- **LOVELAND** at Candlewood Suites (6046 E. Crossroads Blvd.) on Monday, February 11, 2013, at 7:00 pm, with Rick Cook and Duane Lawlor.
- **DENVER** at Local 111 (5965 E. 39th Ave.) on Friday, February 15, 2013, at 7:00 pm, with entire Negotiations Committee.

At each of these meetings, we will be giving a full review of the change to the newly proposed Collective Bargaining Agreement that you will be voting on with our view of how we got to this point. After which we will open it up to questions, and after discussions you will have the opportunity to vote on whether to "ACCEPT" or "REJECT" the proposed Agreement, and whether to vote "FOR" or "AGAINST" authorizing your Committee to call for a Strike. The ballots will be sealed at each site following the vote, and delivered to the Denver meeting. After the Denver meeting ALL BALLOTS will be counted and we will learn which choice you have selected as employees of Sears District 8181.

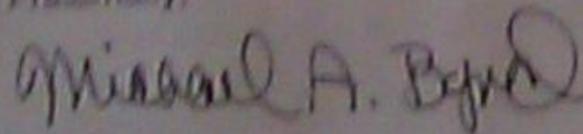
Please note that you can attend any of the meetings outlined above. However, you must be present to receive your ballots and vote on the options presented. Only active employees will be allowed to vote. If you know someone who did not receive this letter, please have them contact my Administrative Assistant Joan at (303) 398-7361 or (800) 824-5540, ext. 7361.

If the Bargaining Unit does not accept this proposal, I believe the Company will make their proposal from Tuesday, January 22nd their "Last, Best and Final Offer." This means you must either accept it, or choose to go on strike because it would be implemented regardless of your choice. At that point is not a choice it is a mandate.

You need to be present to have a say in your future. Don't allow someone else to make a decision for you that will affect you the rest of your life.

Your committee is recommending ratification of this agreement

Fraternaly,



Michael A. Byrd
Business Manager/Financial Secretary

MAB:jh/ds/opelu#5/af-cio

EXHIBIT F

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
TWENTY-SEVENTH REGION

SEARS ROEBUCK & CO.,

Employer,

and

**INTERNATIONAL BROTHERHOOD OF
ELECTRICAL WORKERS, LOCAL 111,**

Union,

Case No. 27-RD-098712

and

SUSIE WAGNER,

Petitioner.

ORDER TO SHOW CAUSE

On February 20, 2013, Petitioner filed a petition¹ in this matter seeking to decertify International Brotherhood of Electrical Workers, Local 111 (Union) as the exclusive bargaining representative for all “full and part time Service Technicians and Support Staff” that are employed by Sears Roebuck & Co. (Employer). The petition listed the Employer’s Northglenn, Colorado address. On November 16, 2011, a Certification of Representative issued in Case

¹ A copy of the petition is attached hereto as Attachment A.

27-RC-064682, certifying the Union as the exclusive collective-bargaining representative of the employees in the following unit (Unit):

All full-time and regular part-time technicians, support associates, customer service associates, shipping and receiving associates and support specialist II employees who are employed by the Employer in its District 8181; Excluding all over the counter (OTC) associates, gas repair employees, office clerical employees, confidential employees, managerial employees, guards and supervisors as defined in the Act.²

The Union has provided evidence that on about January 24, 2013, the Employer and the Union entered into a “Tentative Agreement” covering substantial terms and conditions of employment of the Unit.³ The Tentative Agreement (TA) states that it “comprises the full Tentative Agreement between the parties.” The TA includes provisions covering Union recognition, management rights, strikes and lockouts, disciplinary procedures, an attendance program, Union representation, grievance and arbitration procedures, probationary period, classification of technicians/associates, hours of work and overtime, seniority, rates of pay, benefits, job descriptions, general conditions, a drug-free workplace, and others.

The TA, which, by its own terms, was reached on January 24, 2013, is signed by representatives of the Employer and the Union. By its terms, the TA does not indicate that the validity of the TA is contingent upon any event or circumstance beyond the signatures of the

² Attached hereto as Attachment B is a copy of the Certification of Representative in Case 27-RC-064682. Pursuant to the Stipulated Election Agreement in Case 27-RC-064682, manual polling was conducted in Northglenn, Aurora and Littleton, Colorado. In addition, employees located in Casper, WY and vicinity, Colorado Springs, CO and vicinity, Fort Collins, CO and vicinity, and Evergreen, Henderson, Nederland and Brighton, CO, voted by mail. A copy of the Stipulated Election Agreement is attached hereto as Attachment C.

³ The Tentative Agreement is attached hereto as Attachment D.

parties. The TA states an effective date of February 15, 2013 and an end date of February 14, 2016. The Union contends that this TA covering the Unit employees was ratified by employees on February 15, 2013, and was in effect as on the date the petition in this matter was filed.

The evidence adduced during the investigation creates a question as to whether the TA entered into by the Employer and the Union on about January 24, 2013, is a bar to proceeding with the petition in this matter. *Appalachian Shale Products Co.*, 121 NLRB 1160 (1958).

In view of the above, **IT IS HEREBY ORDERED** that the parties in this matter shall have until **close of business Thursday, February 28, 2013** to show cause: (1) why the above-stated facts should not be accepted as accurate, and (2) why the petition in this matter should not be found to be barred by a contract. Specifically, the parties should address whether the TA signed by the Employer and the Union bars this decertification petition. *Seton Medical Center*, 317 NLRB 87 (1995); *St. Mary's Hospital and Medical Center*, 317 NLRB 89 (1995); *Television Station WTV*, 250 NLRB 198 (1980).

The parties shall file a written statement with the Regional Director, including supported factual statements and documents and detailed argument in support of their positions. The written statement should include a showing that it was served on all other parties. After receipt

of the submissions, the Region will determine if, based upon the evidence, a pre-election hearing will be held in this matter⁴ or whether the petition will be administratively dismissed on the basis of a contract bar.

DATED, at Denver, Colorado, this 22nd day of February 2013.

/s/ Wanda Pate Jones

Wanda Pate Jones, Regional Director
National Labor Relations Board, Region 27
Dominion Towers
600 17th Street, Ste. 700 N.
Denver, CO 80202-5433

⁴ The matter was set for a pre-election hearing to commence on March 1, 2013 in Denver, Colorado. The hearing is canceled as a result of the issuance of this order.

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 27**

SEARS ROEBUCK & CO

Employer

and

SUSIE DIANE WAGNER

Petitioner

Case 27-RD-098712

and

**INTERNATIONAL BROTHERHOOD OF ELECTRICAL
WORKERS, LOCAL 111**

Union

AFFIDAVIT OF SERVICE OF: ORDER TO SHOW CAUSE, dated February 22, 2013.

I, the undersigned employee of the National Labor Relations Board, being duly sworn, say that on **February 22, 2013**, I served the above-entitled document(s) by **regular mail** upon the following persons, addressed to them at the following addresses:

RICH NELSON
SEARS ROEBUCK & CO
930 E 104TH AVE
THORNTON, CO 80233-4303

TODD STEENSON , ESQ.
HOLLAND & KNIGHT
131 S DEARBORN ST STE 3000
CHICAGO, IL 60603-5550

SUSIE DIANE WAGNER
PO BOX 51511
CASPER, WY 82605-1511

JOE GOLDHAMMER , Legal Counsel
BUESCHER, GOLDHAMMER, KELMAN
& PERERA, PC
600 GRANT STREET, SUITE450
DENVER, CO 80203

INTERNATIONAL BROTHERHOOD OF
ELECTRICAL WORKERS, LOCAL 111
5965 E 39TH AVE
DENVER, CO 80207-1231

February 22, 2013

Sharon Macias, Designated Agent of
NLRB

Date

Name

/s/ Sharon Macias

Signature

EXHIBIT G

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
TWENTY-SEVENTH REGION

SEARS ROEBUCK & CO.,

Employer,

and

**INTERNATIONAL BROTHERHOOD OF
ELECTRICAL WORKERS, LOCAL 111,**

Union,

Case No. 27-RD-098712

and

SUSIE WAGNER,

Petitioner.

ORDER DISMISSING PETITION

On February 22, 2013, the undersigned issued an Order to Show Cause providing the parties an opportunity to present evidence or argument by close of business on February 28, 2013, as to why the petition should not be dismissed on the grounds that the "Tentative Agreement" (TA) entered into by the Union and Employer on January 24, 2013 is a contract that bars further processing of the petition. ¹

¹ A copy of the TA is attached to this Order as Attachment A.

Thereafter, the parties submitted their responses to the Order to Show Cause which I have carefully reviewed. Petitioner asserts that the petition should not be dismissed because it was difficult to collect signatures for the showing of interest due to the scope of the unit located in 37 cities in two states, and requested that the undersigned consider the dates on the showing of interest. The Employer cites various reasons why the TA should not serve as a contract bar, and the Union argues that the TA should serve as a contract bar. Based on the evidence adduced, I have concluded that the TA reached by the parties is a bar to the petition in this matter.

Background:

On November 16, 2011, the Union was certified as the exclusive collective-bargaining representative of certain employees of the Employer.² On February 20, 2013, Petitioner filed a petition in the above-referenced matter seeking a decertification election in the certified unit.

The parties commenced bargaining in March 2012, and after lengthy negotiations reached a TA on January 24, 2013. Before reaching the January 24, 2013 TA, the parties had submitted an earlier version of a tentative agreement to the membership for ratification in October 2012, which was rejected. Thereafter, the parties continued their negotiations and exchange of proposals to ultimately arrive at the January 24, 2013 TA. The January 24, 2013 TA was submitted to the membership for ratification with an explanation of how its terms differed from the terms of the previously rejected tentative agreement. The ratification vote was set for

² The Certification of Representative in Case 27-RC-064682 describes the represented unit of employees as: All full-time and regular part-time technicians, support associates, customer service associates, shipping and receiving associates and support specialist II employees who are employed by the Employer in its District 8181; Excluding all over the counter (OTC) associates, gas repair employees, office clerical employees, confidential employees, managerial employees, guards and supervisors as defined in the Act.

February 11 and 15, 2013.³ Ratification of the TA was achieved on February 15, 2013, and the Employer was subsequently notified of such by the Union.

Discussion:

For contract-bar purposes, the Board requires that the contract at issue be signed by both parties prior to the filing of the petition that it would bar. In addition to requiring that a contract be signed by both parties in order to serve as a bar to processing a petition, the Board requires that the contract contain substantial terms and conditions of employment sufficient to stabilize the parties' bargaining relationship. *Appalachian Shale Products Co.*, 121 NLRB 1160 (1958).

On February 27, 2013, Petitioner submitted a response to the Order to Show Cause. In her response, the Petitioner asserts that the process of collecting signatures in support of the petition was difficult due to the fact that employees in the unit are spread across 37 cities and towns in two states – Colorado and Wyoming. The Petitioner also requested that the Regional Director consider “the dates on the decertification petitions.” The relevant factor is whether a decertification petition was submitted to the Region prior to parties reaching an agreement that would serve as a bar to such a petition. As discussed *infra*, the TA asserted by the Union as a bar shows that it was signed by representatives of both parties on January 24, 2013, and it is uncontroverted that it was finally ratified by employees on February 15, 2013. The petition in this matter was filed on February 20, 2013, and the original showing of interest in support of the petition arrived shortly thereafter. Thus, and as discussed herein, the TA satisfies the Board's requirement that the contract be signed by both parties before the date that the petition is filed.

³ With its response to the Order to Show Cause, the Employer submitted a letter from the Union to an employee in the certified unit describing the new terms contained in the January 24, 2013 TA, and how the parties arrived at those terms after the October 2012 tentative agreement was rejected. The letter also noted the ratification vote dates and times and the issues on which the membership would be voting.

As noted above, in addition to requiring that a contract be signed by both parties in order to serve as a bar to processing a petition, the Board requires that the contract contain substantial terms and conditions of employment sufficient to stabilize the parties' bargaining relationship. *Appalachian Shale Products Co., supra*. On the first page of the TA, it states that the TA "comprises the full Tentative Agreement between the parties." On the second page, the TA states a term of February 15, 2013 through February 14, 2016. On the remaining pages, the TA contains provisions covering subjects including, but not limited to: Union recognition, management rights, strikes and lockouts, disciplinary procedures, an attendance program, Union representation, grievance and arbitration procedures, probationary period, classification of technicians/associates, hours of work and overtime, seniority, rates of pay, benefits, job descriptions, general conditions, and a provision promoting a drug-free workplace. With these provisions, the TA contains substantial terms and conditions of employment and, by its own terms, constitutes the complete agreement between the parties. See *Television Stations WVTM*, 250 NLRB 198, 199 (1980) (Board found that a series of initialed contract provisions covering the subjects of recognition, duration, nondiscrimination, rates of pay, working hours, grievance procedures, holidays, vacations, sick leave, strikes and lockouts, management rights and completeness of the agreement constitute substantial terms and conditions that "clearly define the rights and obligations of the parties").

The Employer also submitted a response to the Order to Show Cause on February 28, 2013. In its response, the Employer asserts several reasons as to why the TA should not serve as a bar to further processing of the petition. The Employer argues that ratification was a condition

precedent to the TA's validity as a contract and, therefore, the TA cannot serve as a bar.⁴ The Employer also asserts that the TA should not serve as a bar because it is not an "actual contract," but merely a tentative agreement recommended for ratification, and, because the Union signed the TA before it was ratified, the Union's signature does not constitute acceptance of the terms of the TA in satisfaction of the Board's signature requirement. The Employer also asserts that the parties intended to formally sign onto the terms and conditions contained in the TA after ratification and that this did not occur before the filing of the petition, therefore, the TA, with only signatures that pre-date ratification, cannot serve as a bar. Finally, the Employer argues that since the TA had not been substantially implemented at the time the petition was filed it cannot serve as a bar.

On the subject of ratification as a condition precedent to contract validity, the Board has clearly stated:

Where ratification is a condition precedent to contractual [sic] validity by express contractual [sic] provision, the contract will be ineffectual as a bar unless it is ratified prior to the filing of a petition, but if the contract itself contains no express provision for prior ratification, prior ratification will not be required as a condition precedent for the contract to constitute a bar.

Appalachian Shale Products Co., 121 NLRB 1160, 1163 (1958). Here, the TA does not contain any express provisions requiring ratification of the TA as a condition to it becoming a fully effective contract. The Employer relies on the cover page of the TA, which states that it is "FULLY RECOMMENDED FOR RATIFICATION" and is signed just below this line by members of the Employer's and Union's negotiating teams.⁵ This line on the cover page of the TA is at best ambiguous regarding whether ratification is *required*, versus merely recommended.

⁴ The Employer appears to argue that this is true regardless of whether the TA was ratified before the petition was filed.

⁵ Above this section of the cover page, under "TENTATIVE AGREEMENT REACHED 1/24/23," are the signatures of the Employer's Director, Labor and Associate Relations and the Union's Business Manager/Financial Secretary.

Here, the parties seem to have some mutual understanding that ratification was a condition to completing their agreement.⁶ However, the principle enunciated in *Appalachian Shale Products* “means that a condition of prior ratification must be expressed in the written instrument itself and cannot be established by parole or other extrinsic evidence.” *Merico, Inc.*, 207 NLRB 101, fn. 2 (1973). Whatever understanding the parties had regarding a ratification requirement is not clearly or unambiguously stated in the TA.

Even assuming *arguendo* that the cover page of the TA establishes that ratification is a condition precedent, the Employer does not dispute that the TA was in fact ratified, and thus, any condition was satisfied. A provision requiring ratification as a condition precedent only prohibits a contract from serving as a bar if the contract is not in fact ratified before the petition is filed. *Appalachian Shale Products Co.*, 121 NLRB at 1163. Here, in its response to the Order to Show Cause, the Employer states that “[a]ccording to oral notification from the Union, a ratification vote took place on February 11 and 15, 2013 and the tentative agreement was ratified on February 15, 2013.”⁷ Thus, the Employer concedes that the TA was ratified on February 15, 2013, before the petition was filed, and that the Employer was subsequently notified of the ratification. In these circumstances, any condition of ratification is met and does not prevent the TA from serving as a bar.

Regardless of whether the TA was actually ratified, the Employer appears to argue that the mere condition of ratification nullifies the parties’ January 24, 2013 signatures on the TA because the Union signed the TA before it fully accepted the terms, including by ratification.

⁶ The Union submitted a response to the Order to Show Cause on February 27, 2013, in which it states that parties signed the TA, “to be effective as the final collective bargaining agreement upon ratification by the unit on February 15, 2013.”

⁷ In its response to the Order to Show Cause, the Union also offers that the TA was fully ratified on February 15, 2013.

The Employer argues that the Union's signature does not represent the Union's full assent to the agreement and, therefore, its signature does not satisfy the Board's requirement in *Appalachian Shale Products*. The Employer further asserts that the parties intended to formally sign the agreement after ratification in order to make it effective.

Assuming again, and only for the sake of argument, that the TA does contain a ratification condition, this condition does not necessarily nullify the parties' signatures on the TA for purposes of contract bar. Even if the signatures on the TA were tentative signatures, pending ratification, the ratification was completed on February 15, 2013, before the petition was filed. Moreover, the Board does not automatically require that parties' re-sign a tentative or informal agreement after ratification in order for the tentative or informal agreement to serve as a bar. See *Television Stations WVTM*, 250 NLRB 198 (1980).

The Employer also asserts that the TA cannot serve as a contract bar because the agreement was never formally executed after ratification. The Board has found that an agreement is insufficient for contract bar purposes under circumstances where the parties did not intend for their agreement to be effective until a final formal document was executed and that event did not take place before a petition is filed. See *Brand Cheese*, 307 NLRB 239, 240 (1992) (Board found no contract bar where the parties consciously intended to prepare and execute a formal agreement, as opposed to relying on their informal agreements, and this was not accomplished before the petition was filed). Here, although the Employer asserts that the parties intended to formally execute the TA at some point, there is no evidence of this intent. There are no terms in the TA that require formal signatures after ratification. Moreover, even if the parties intended to sign the TA again after ratification, there is no evidence that the parties "conditioned the finality or effectiveness of their agreement upon such signing." See *St. Mary's Hospital*, 317

NLRB 89, 90 (1995) (Board denied the request for review of Regional Director's Decision and Order where the Regional Director found that, while the parties intended to prepare and execute a formal agreement, which they never did before the petition was filed, this did not prohibit their informal agreement from serving as a bar because the parties never conditioned the agreement's validity on formal signing). Here, there is no evidence to show that the parties intended to formally sign the TA, beyond the signatures executed on January 24, 2013, as a condition to the terms and conditions contained therein becoming effective. Compare *Brand Cheese*, 307 NLRB 239 (1992) (where the union wrote to the employer requesting that the employer draft the agreement for proofreading and signature and informed membership that the agreement would be drafted and formally signed, but that event did not take place before the petition was filed).

Finally, the Employer asserts that the TA cannot serve as a bar to the petition because its terms had not been substantially implemented before the petition was filed. The Employer incorrectly relies on *Tri-State Transportation Co., Inc.*, 179 NLRB 310, 311 (1969) to support its assertion. In that case, the issue was whether certain employees were already represented by a labor organization. The petitioner-union filed a petition to represent the employer's mechanics, mechanics' helpers, utility men, and several other classifications of employees. Two incumbent unions claimed to represent all petitioned-for classifications of employees and to have collective bargaining agreements with the employer that covered those employees, thereby barring the petition. The Board found that although one of the incumbent unions had a collective bargaining agreement with a scope encompassing mechanics, mechanics' helpers, and utility men, the terms of that agreement had never been applied to those classifications of employees until the petitioner sought to represent them. Therefore, the Board found that with respect to the mechanics, mechanics' helpers, and utility men, there was no "stabilizing labor agreement which

bars a representation election.” Id at 311. Thus, the Board looked to the application of the agreement in context of a representation petition only to see if the employees were already represented. This case is distinguishable. Here, in the context of the decertification petition, it is clear and undisputed that the Union represents employees in the certified unit and this has not been questioned; therefore, the Board’s analysis in *Tri-State Transportation Co.* is inapplicable.

Moreover, while the Employer asserts that the TA has not been substantially implemented, it had only been ratified days before the filing of the decertification petition in this matter. However, in its response to the Order to Show Cause, the Union provided evidence that on February 18, 2013, before the petition was filed, a Territory Field Director for the Employer sent an e-mail to the Union stating that “[a]s per contract agreement and [a]s per page 15 section 2” wages for seven support associates would be adjusted by \$.36 per hour. In the portion of the TA describing wage rates, it in fact states that “[e]ffective February 15, 2013, all support associates will be given a wage adjustment of \$.36 per hour.” Thus, the investigation shows that efforts were underway to implement the wage provisions of the TA almost immediately after the start date of February 15, 2013, and before the petition was filed on February 20, 2013. This evidence also underscores the other evidence described above that the TA was intended to be a complete and final agreement between the parties.

Based on the foregoing, further proceedings in this matter are not warranted and I am dismissing the petition. **IT IS HEREBY ORDERED** that the petition in this matter be, and is, dismissed.

RIGHT TO REQUEST REVIEW

Pursuant to Section 102.67 of the National Labor Relations Board's Rules and Regulations, you may obtain a review of this action by filing a request with the Executive Secretary, National Labor Relations Board, 1099 14th Street, N.W., Washington, D.C. 20570-0001. A request for review must be received by the Executive Secretary of the Board in Washington, DC, by close of business (**5 p.m. Eastern Time**) on **March 21, 2013**, unless filed electronically. If filed electronically, it will be considered timely if the transmission of the entire document through the Agency's website is **accomplished by no later than 11:59 p.m. Eastern Time on March 21, 2013**. The request for review must contain a complete statement of the facts and reasons on which it is based. **Consistent with the Agency's E-Government initiative, parties are encouraged, but not required, to file a request for review electronically.**⁸

Section 102.114 of the Board's Rules do not permit a request for review to be filed by facsimile transmission. A copy of the request for review must be served on each of the other parties to the

⁸ Filing a request for review electronically may be accomplished by using the Efiling system on the Agency's website at www.nlr.gov. Once the website is accessed, click on **E-File Documents**, enter the NLRB Case Number, and follow the detailed instructions. The responsibility for the receipt of the request for review rests exclusively with the sender. A failure to timely file the request for review will not be excused on the basis that the transmission could not be accomplished because the Agency's website was off line or unavailable for some other reason, absent a determination of technical failure of the site, with notice of such posted on the website.

Upon good cause shown, the Board may grant special permission for a longer period within which to file a request for review. A request for extension of time, which may also be filed electronically, should be submitted to the Executive Secretary in Washington, and a copy of such request for extension of time should be submitted to the Regional Director and to each of the other parties to this proceeding. A request for an extension of time must include a statement that a copy has been served on the Regional Director and on each of the other parties to this proceeding in the same manner or a faster manner as that utilized in filing the request with the Board.

proceeding, as well as on the undersigned, in accordance with the requirements of the Board's Rules and Regulations.

DATED at Denver, Colorado, this 7th day of March 2013.

A handwritten signature in cursive script that reads "Wanda Pate Jones". The signature is written in black ink and is positioned above a horizontal line.

Wanda Pate Jones, Regional Director
National Labor Relations Board, Region 27
Dominion Towers
600 17th Street, Ste. 700 N.
Denver, CO 80202-5433

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 27

SEARS ROEBUCK & CO

Employer

and

SUSIE DIANE WAGNER

Petitioner

Case 27-RD-098712

and

INTERNATIONAL BROTHERHOOD OF
ELECTRIAL WORKERS, LOCAL 111

Union

AFFIDAVIT OF SERVICE OF: Order Dismissing Petition, dated March 7, 2013.

I, the undersigned employee of the National Labor Relations Board, being duly sworn, say that on **March 7, 2013**, I served the above-entitled document(s) by **regular mail** upon the following persons, addressed to them at the following addresses:

RICH NELSON
SEARS ROEBUCK & CO
930 E 104TH AVE
THORNTON, CO 80233-4303

TODD STEENSON, ESQ.
HOLLAND & KNIGHT
131 S DEARBORN ST STE 3000
CHICAGO, IL 60603-5550

SUSIE DIANE WAGNER
PO BOX 51511
CASPER, WY 82605-1511

JOE GOLDHAMMER, LEGAL COUNSEL
BUESCHER, GOLDHAMMER, KELMAN
& PERERA, PC
600 GRANT STREET, SUITE450
DENVER, CO 80203

INTERNATIONAL BROTHERHOOD OF
ELECTRIAL WORKERS, LOCAL 111
5965 E 39TH AVE
DENVER, CO 80207-1231

March 7, 2013

Date

Sharon Macias, Designated Agent of NLRB

Name



Signature

Sears Denver/IBEW Local 111 Negotiations
Tentative Agreement
January 24, 2013

The parties agree that the attached document titled "January Tentative Agreement – January 24, 2013" comprises the full Tentative Agreement between the parties.

TENTATIVE AGREEMENT REACHED 1/24/13:



SUSAN RAPP
Director, Labor and Associate Relations
Sears

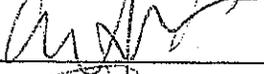


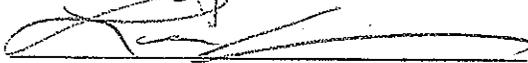
MICHAEL BYRD
Business Manager/Financial Secretary
IBEW, Local 111

FULLY RECOMMENDED FOR RATIFICATION:

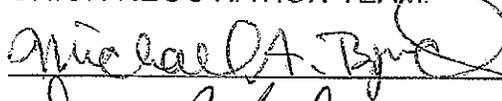
COMPANY NEGOTIATION TEAM:

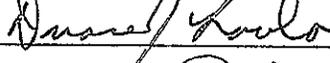




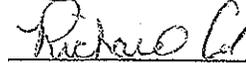


UNION NEGOTIATION TEAM:











AGREEMENT

This Agreement is made and entered into this 15th day of February, 2013, by and between Sears, Roebuck and Co., Northglenn, CO. Product Repair Services District (herein after referred to as "Company" or "Sears") and the International Brotherhood of Electrical Workers Local 111 - AFL-CIO (herein after referred to as the "Union") establishing the rates of pay, hours of work and conditions of employment for the bargaining unit set forth below.

As a result of a series of conferences and collective bargaining between the management of Sears, Roebuck and Company and the International Brotherhood of Electrical Workers Local 111, the Company and the Union have reached the following Agreement:

ARTICLE I RECOGNITION

Section 1. Recognition

The Company recognizes the Union as the exclusive representative of all full-time and regular part-time technicians, support associates, customer service associates, shipping and receiving associates and support specialist II employees employed by the Employer in its District 8181; EXCLUDED: all gas repair center employees, office clerical employees, confidential employees, managerial employees, guards and supervisors as defined in the Act.

Section 2. Non-Discrimination

The Company and the Union agree there shall be no discrimination because of race, color, religion, creed, national origin, military or reserve status, disabled veterans or a veteran of the Vietnam era, age, sex, sexual preference or orientation, mental or physical disability or union affiliation or any other characteristic protected by law or activities in the application of any provisions of this Agreement.

It is expressly understood between the parties to this Agreement that actions taken in compliance with mandated Affirmative Action legal obligations imposed the Company by virtue of its status as a Government Contractor shall not constitute a violation of this Agreement

The use of sex designating pronouns in this Agreement shall not be deemed or construed as an expression of preference based on sex, and the provisions of this Agreement shall apply equally without regard to sex.

There shall be no discrimination on the part of the Company or the Union, or its officers, members, representatives or agent, against any employee of membership or non-membership in the Union.

No employee shall be subjected to prejudice or discrimination because of action taken by representatives or the Union in presenting grievances instituted for or by such employee under the provision of this Agreement.

Neither the Union, nor its officers, members, representatives or agents, will intimidate or coerce employees into joining or continuing their membership in the Union.

outside of the collective bargaining unit; and further, to otherwise take such measures and actions as management may decide are necessary for the orderly or economical operation of the Company's business. It is understood that the exercise or non-exercise of rights, hereby retained by the Company shall not be deemed a waiver of any such rights or prevent the Company from exercising such rights in any way in the future.

ARTICLE III NO STRIKE -- NO LOCKOUT

Section 1. The Company's decision to close down any location currently covered by this agreement, or any combination thereof, for business reasons shall not be construed to be a lockout. The Company agrees that so long as this Agreement is in effect and there has not been a breach of the remainder of this Article, there shall be no lockouts.

Section 2. It is therefore understood and agreed by the Union, its officers, agents, employees, representatives, stewards, members and all technicians/associates covered by this Agreement and the Company, that in the best interests of both parties, there shall be no strikes, slowdowns, sympathy strikes, work slowdown, work stoppages, interruption of production or suspension of work, refusals to perform work, boycotts, labor holidays other than those provided in this Agreement, continuous meetings or concerted mass sickness, picketing, or any other denial of services or any other activity which would interfere with the Company's operations in any manner or the provision of service to its customers or any other stoppages of work whatsoever during the period this Agreement is in force (hereinafter "work stoppage").

Section 3. The Union, its officers, agents, employees, representatives, stewards, members and all technicians/associates covered by this Agreement agree that if any acts, conduct or withholding of services prohibited by this Article occur or are threatened, they shall take all reasonable and necessary steps to prevent and stop any and all such interferences by persons subject to this Agreement. This includes, but is not limited to, acts which authorize, instigate, cause, aid, encourage, support or condone such conduct or threats of same.

Section 4. Any technician/associate subject to the terms of this Agreement who violates this Article may be terminated. Such termination may be subject to the grievance procedure.

ARTICLE IV DISCIPLINARY PROCEDURE

Section 1. Cause

- (a) Technicians/Associates may be disciplined and/or discharged for cause.
- (b) Employees may be subject to discipline or discharge without following the progressive disciplinary procedure set forth below, for serious violations of Company Policies, Procedures or Rules of Conduct, including but not limited to insubordination, including failure to obey a direct instruction of a supervisor, directing obscene and/or abusive language to a manager, supervisor, customer or fellow associate, immoral, indecent or violent conduct, dishonesty, including misrepresentation of facts in connection with any claim concerning employment or pay, theft of Company property, possession of illegal drugs or alcohol, being under the influence of illegal drugs or alcohol, or taking illegal drugs or drinking alcoholic beverages during working hours (working hours include breaks and meal periods) or on Company property, or being intoxicated on Company property, willful destruction of Company property or the property of another associate or customer, supplier or carrier serving the Company, unprovoked assault on any person during working hours or on Company premises or at customers home, intentionally driving a Company vehicle

Metro, one for the South, one in Wyoming and one Chief Steward over all areas) and shall notify the Company who the Stewards are at all times.

Section 2. Conduct

1. Stewards will be authorized to investigate, process and adjust grievances. such activity shall be without pay and conducted on non-work time unless authorized by the District Service General Manager or their designee. In performing such activity, the steward shall conduct himself in such a manner as to cause a minimum of disruption of the Company's operation and service to its customers.
2. When authorized to conduct such activity during work time, stewards will not suffer any loss of pay. If more than one Steward is required, the Union will compensate any additional Stewards.

Section 3. Union Business Meetings

If the Union requests a shop steward time away from work to attend a conference or training opportunity offered by the Union, the request will be granted provided the duration does not exceed seven (7) consecutive days and proper notification is given to management. The request may be denied if it would have an adverse impact on customer service due to business needs. The time off will be unpaid and granted with no loss of seniority.

Section 4. Seniority List

There shall be separate seniority lists for the Full-time, Full-time Advantage, and Part-time Technicians/Associates by scheduled groups per Exhibit C. Updated seniority lists will be mailed to Technicians/Associates once a year each July and Technicians notified of said list via an SST message.

ARTICLE VII GRIEVANCE AND ARBITRATION PROCEDURE

Section 1. Grievance Procedure

A grievance is defined as any dispute arising under and during the term of this Agreement involving the application or interpretation of a specific provision of this Agreement or a claimed violation of a specific provision of this Agreement.

All grievances shall be processed in the following manner and every effort shall be made by the parties to secure the prompt disposition thereof.

Section 2. Grievance Steps

Step 1.

Any technician/associate having a grievance shall orally (documented) present the grievance to his supervisor or manager no later than seven (7) calendar days after the event giving rise to the grievance, or seven (7) calendar days after the technician/associate should reasonably have learned of the event giving rise to the grievance. The supervisor shall orally (documented) respond to the technician/associate not later than seven (7) calendar days thereafter.

Step 2.

The jurisdiction and authority of the Arbitrator and his opinion and award shall be confined exclusively to the interpretation and/or application of the express provision(s) of this Agreement. He shall have no authority to add to, detract from, alter, amend or modify any provision of this Agreement. The Arbitrator's written decision shall be due within sixty (60) days after all evidence including legal briefs, if any, are submitted.

The Arbitrator shall not hear or decide more than one (1) grievance without the mutual consent of the Company and the Union. The written award of the Arbitrator on the merits of any grievance adjudicated within his jurisdiction and authority shall be final and binding on the aggrieved employee, the Union and the Company. With respect to Arbitration involving the layoff, discipline or discharge of technicians/associates, the Arbitrator shall have the authority to order the payment of back wages and benefits the technician/associate would otherwise have received but for his discipline or discharge (less compensation, including Unemployment Compensation payments and other compensation earned elsewhere during the period attributable to the layoff, discipline or discharge in issue). The Arbitrator shall have no authority to award compensatory or punitive damages.

Section 6. Expenses/Fees

The expenses and fees of the Arbitrator for the arbitration, if any, shall be borne by the losing party as designated by the Arbitrator in the award. The expenses and fees of any room facilities for the arbitration, if any shall be borne equally by the parties. The cost of the transcript of the hearing, if any, shall be paid by the party ordering it, if both parties desire it, the cost shall be shared equally. Any party refusing to pay an equal share of the transcript will not be privy to a copy. Each party shall make arrangements for and pay the witnesses who are called by them, or any other expenses borne by either party.

ARTICLE VIII PROBATIONARY PERIOD

All newly hired associates, including full-time technicians/associates, full-time Advantage technicians/associates and part-time technicians/associates and any technicians/associates who are re-hired shall be considered as probationary technicians/associates for a period of one hundred twenty (120) calendar days of continuous service following their most recent or last date of hire. During this probationary period, such technicians/associates may be transferred, laid off or terminated at the sole discretion of the Company and they shall not have access to or rights under the grievance procedure.

Upon the hiring of any new technician/associate, notice of such hiring shall be promptly given to the Union and shall contain the name, classification and rate of pay of such newly hired technician/associate.

ARTICLE IX CLASSIFICATION OF TECHNICIANS/ASSOCIATES

Section 1. Full-Time Technicians/Associates

A full-time associate is an associate who has completed his probationary period and is scheduled to work up to 40 hours per week. The scheduled pay week shall begin on Sunday and end on Saturday.

Section 2. Full-Time Advantage Technicians/Associates

C. Changes. The Company retains the right to implement an alternative schedule other than the 8 hour 5 day schedule, to increase or decrease the required hours per day and per week, and to change the starting and/or stopping times of the work day, as well as the starting and/or stopping times of the workweek. The Company also retains the right to schedule full-time technicians/associates for less than a forty (40) hour week and for less than an eight (8) hour day as business needs dictate. Continued employment is dependent upon a technician/associate's availability to work the scheduled hours. In the event that weather conditions inhibit the ability to perform job functions or there is no additional work available individuals will be required to end the workday at the supervisor's direction.

Section 2. Overtime Pay

Overtime will be paid at the rate of time and one-half (1-1/2) the technician/associate's regular hourly rate for all hours worked in excess of forty (40) hours a week. Overtime shall not be paid more than once for the same hours worked. The Company will follow national policy as to whether paid time (but not worked) will count toward the calculation of overtime.

Section 3. Daily Unscheduled Overtime

- A. Daily unscheduled hours are those hours that may be required of technicians/associates in excess of their regularly scheduled hours and will result in overtime pay provided the technician/associate works more than forty (40) hours within the scheduled week.
- B. Technicians/Associates must contact their routing/technical manager with all potential reschedules by 2:00 p.m. (Mountain Time). The routing office or technical manager, after a discussion with the technician/associate, will make an attempt to meet the technician's/associate's needs. The routing office or technical manager will attempt to redistribute any remaining calls. If the routing office or technical manager is unable to meet the technician's/associate's needs, management will make the final decision whether to run the remaining calls, or to reschedule the remaining calls. If the technician/associate can arrive at the call before his/her scheduled ending time, the technician/associate must report to the call. In addition, should a customer refuse to be rescheduled, the technician/associate must report to the call. At no time shall a technician/associate be required to work more than eleven (11) hours in one day except in rural exception areas.

Section 4. Scheduled Overtime

Scheduled overtime hours are those hours in excess of forty (40) hours scheduled on the sixth and/or seventh consecutive work day within the technician's/associate's work week that are known and scheduled a day in advance. Scheduled overtime hours will be offered to the qualified technicians/associates as determined by the Company in the industry and geographical area needed. Such overtime will be communicated by SST or phone call with an answer due by close of business the same day; if a technician/associate fails to respond by SST or return phone call, they will be deemed to have accepted the overtime. If an insufficient number of technicians/associates accept overtime to meet the needs of the business, management will mandate by the inverse order of their seniority, the junior qualified technicians/associates to work such overtime, subject to violations of the National Attendance Policy currently in effect. Efforts will be made to accommodate technicians/associates with an emergency situation.

Section 5. Rest and Meal Periods

positions will be given to employees currently in said location, by scheduled group and/or capacity area. Technician/Associates bidding for new positions must be qualified for the position to be given preference for the position over outside qualified candidates.

In the case of layoffs, the Company will ask for volunteers first. Notice of layoff will be given to the technicians/associates and the Union by the end of the business day on Thursday, prior to the week of the layoff.

Section 3. Posting

Job vacancies will be posted for a period of five (5) calendar days. An effort will be made to fill vacancies within fifteen (15) calendar days of date of posting. A posting can be removed anytime before it is filled and be declared null and void. It is agreed that during an technician's/associate's absence (i.e., short-term illness or vacation) the steward may sign said bid sheet for the absent technician/associate if the absent technician/associate has notified management in writing that said technician/associate is interested in the job.

Section 4. Awarding Bids

Technicians/Associates who are selected for promotion under the bidding procedures have one hundred twenty (120) calendar days to decide whether to remain on the new job or to return to their previous job. Management may, within the same one hundred twenty (120) day period, remove said technician/associate from the bid and return him or her to the original job.

Section 5. Part-time Laid Off First

In the event a layoff or reduction of hours becomes necessary, part-time technicians/associates will be laid off or reduced in hours before full-time technicians/associates to extent possible per the Company's determination while still maintaining adequate coverage for customer service.

Section 6. Bumping

Full-time technicians/associates subject to layoff in their scheduled group and capacity area may claim any remaining part-time hours in their scheduled group and capacity areas. Full-time technicians/associates who choose part-time employment will be eligible for benefits in accordance with Company policy for part-time status.

Section 7. Employment Opportunity

All technicians/associates will have the opportunity to cross-train in another category once they have proficiently exhibited ability in servicing a majority of the appliances in their present category. Appropriate technical courses must be successfully completed prior to any cross training.

Section 8. Recall Rights

a. No new hiring will be done in a work group or capacity area until all former technicians/associates in that work group or capacity area on layoff are notified first.

b. The Company will notify, by the quickest means available, any technician/associate recalled from layoff. Once notified, recalled technicians/associates drawing unemployment

Full-time technicians/associates will have priority in filling holiday schedules based on their seniority provided they have the ability to perform the work. Technicians/Associates working holiday schedules will receive holiday pay in accordance with this Section.

Section 5. Holiday Schedules Administration

If eligible, holiday schedules will be offered to full-time technicians/associates on the basis of seniority. In the event the Company is unable to fill the holiday schedules by voluntary means, qualified part-time technicians/associates shall be required to perform the holiday work in the inverse order of their seniority. In the event there are not enough part-time technicians/associates to fill holiday schedules, qualified full-time technicians/associates shall be required to fill said schedule in the inverse order of their seniority.

Part-time technicians/associates called to work on any of the Company recognized legal holidays (New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day) shall be provided a minimum of three (3) hours pay or work at time and one-half their hourly rate in addition to any holiday pay for which they might qualify.

Section 6. Vacation Administration

- (a) If eligible, technicians/associates will be permitted to choose their vacation dates based on seniority by schedule group (Exhibit C). Vacation scheduling will be by seniority for each schedule group, with the most senior technician/associate picking all of his/her vacation, then proceeding to the next most senior technician/associate to pick all of his/her vacation, and so on. With the exception of the blackout periods contained in subsection (b) below, the maximum number of technicians/associates in the District off at any one time for a combination of vacation and personal holidays are dependent upon whether it is "Summer Prime Time," "Holiday Prime Time," or "Non Prime Time."
 - 1. Summer Prime Time shall be defined as Memorial Day through Labor Day.
 - 2. Holiday Prime Time shall be defined as the Week of Thanksgiving, the week after Thanksgiving, the week before Christmas, the week of Christmas, and the week after Christmas.
 - 3. Non-Prime Time shall be defined as all other time except that listed as Summer Prime Time and/or Holiday Prime Time.

Allowances For 2013

Maximum Allowed Technicians Off Based on Schedule Group Size			
Schedule Group Size	Summer Prime	Holiday Prime*	Non-Prime
Up through 14	1	1	1
15 through 19	1	1	5
20 through 29	1	2	5
30 through 34	2	2	5
35 through 49	2	3	5
50 or more	3	4	5

*Cook/Dish technicians – 0 (zero) for all Schedule Group sizes

Allowances For 2014 and Beyond

Maximum Allowed Technicians Off Based on Schedule Group Size
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requested up to eight (8) hours per day. Vacation requests that are authorized by management after the work week has begun will be subject to allocation based on hours actually worked, with total hours paid not to exceed forty (40) hours for the work week.

Section 7. Part-time Support Associates

Any part-time support associates who work forty (40) hours or more per week for sixteen (16) consecutive weeks will have the choice of becoming a full-time advantage associate.

ARTICLE XIV JOB DESCRIPTIONS

The Company agrees that all technicians/associates covered by this Agreement will be under the Company's national job descriptions as currently administered. Should the Company, on a national basis, amend, modify or terminate these job descriptions, and then such amendments, modifications or terminations shall be instituted with respect to technicians/associates covered by this Agreement. The Company agrees to notify the Union IBEW Local 111 of any subsequent amendments, modifications or terminations in the Company job descriptions. The Company agrees not to make any changes to the job descriptions where such changes would apply only to those technicians/associates covered under this Agreement without first giving notice and negotiating over such changes before they are implemented.

ARTICLE XV GENERAL CONDITIONS

Section 1. Safety

The parties recognize the importance of safety. The Company and the Union will cooperate in the objective of eliminating accidents and health hazards. The technician/associate has the right to decide whether or not the consumer domicile is suitable to perform the required repair as described on the Service Order. The Company shall make reasonable provisions and work rules for the health and safety of the technicians/associates. The Company, the Union and the technicians/associates recognize their obligations and/or rights under existing Federal and State laws with respect to safety and health matters.

Section 2. Tools

The Technician/Associate will provide their own hand tools, as outlined in Exhibit B, and the Company will provide specialty tools necessary in the performance of their work. Technicians/Associates are responsible to reasonably safeguard assigned tools, equipment and supplies from theft, loss and abuse. Misuse or abuse of all tools, equipment and supplies may be considered just cause for discipline, up to and including discharge. Lost tools will be the responsibility of the technician/associate to replace. The Company will replace all technician's/associate's personal hand tools that are worn or damaged as needed, but the amount is not to exceed \$150.00 each contract year.

Section 3. Uniforms

In activities where the Company requires the wearing of a uniform, the Company will supply such uniforms without cost to the technicians/associates. Additional clothing requirements that are not part of the uniform will be the responsibility of the technician/associate. All technicians/associates shall be required to wear the issued uniforms at all times (and only) while at work. The provisions of the Sears Style Manual, which may be amended from time to time, will apply to all of the technicians/associates.

- (d) All maintenance of Company-owned vehicles shall be performed on Company time and at Company expenses. Normal preventive maintenance shall be performed in a regular schedule per the manufacturer's recommendations according to Company policy.
- (e) The operation of Company vehicles is subject to the "Sears Product Repair Services Driver's Operating and Safety Manual".

Section 6. Home Dispatch Program

All technicians/associates will participate on a voluntary basis in the national Home Dispatch Program, as currently stated in Company policy and from time to time amended.

Section 7. Scheduled Groups

The parties agree to the Scheduled Groups as set forth and incorporated herein as Exhibit "C".

Section 8. Meetings

Technicians/Associates required to attend Company meetings shall be paid in accordance with the terms of this Agreement including applicable overtime.

Technicians/Associates who attend Company investigatory meetings in their capacity as a union steward or union representative will be paid for such time at their straight time hourly wage.

ARTICLE XVI DRUG FREE WORK PLACE

Technicians/Associates are expected and required to report to work on time and in an appropriate mental and physical condition to work.

The unlawful manufacture, distribution, dispensation, possession or use of a controlled substance on Company premises or while conducting company business off company premises are prohibited. Violation of this policy may result in disciplinary action, up to and including termination.

Technicians/Associates must, as a condition of employment, abide by the terms of the current Sears Drug Free Workplace Policy, which may from time to time be amended without additional negotiation between the parties. Technicians/Associates must report any conviction for violating any federal, state or local law or regulation pertaining to the unlawful use of a controlled substance, whether occurring on or off Company premises or before or after conducting Company business. A report of the conviction must be made within five (5) days after the conviction.

ARTICLE XVII SAVINGS CLAUSE

In the event any provision of this Agreement shall be declared unlawful under any existing or future State or Federal Law, the provision declared illegal shall be considered null and void and the Employer and the Union will, within ten (10) days thereafter, meet for the purpose of negotiating changes made necessary by such State or Federal Law. The remainder of this Agreement shall remain in full force and effect.

ARTICLE XVIII COMPLETE AGREEMENT

EXHIBIT A – Wage Rates

1) Technical Workforce.

- a) Effective from November 23, 2012, technicians shall be compensated with their current base hourly rate (in effect at date of ratification) plus participation in the Service Quality Members Reward as follows:

Service Quality Member Rewards Pilot	Gold		Silver		Bronze		N/A
	Break Fix Tech	CE Tech	Break Fix Tech	CE Tech	Break Fix Tech	CE Tech	PM Tech
Recall % (3-Month Rolling)	<=5.50%	<=2.5%	>5.50% and <=7.00%	>2.5% and <=3.40%			<=4.50%
Minimum Completed Calls (3-Mo)	180	120	180	120			300
CSAT Hurdle (VTP%, 3-Mo)	95%	95%	95%	95%			95%
Sears Paid (Call Close 30)	\$5.00	\$5.00	\$2.50	\$2.50			\$0.25
1W, PA (Call Close 10, 20, 50, Excludes PM Check)	\$3.00	\$3.00	\$1.50	\$1.50			\$0.25
PM Check (Not Created Same Day)	\$0.25	\$0.25	\$0.25	\$0.25			\$0.25
Declined Estimates (Call Close 38)	\$0.00	\$0.00	\$0.00	\$0.00			\$0.00

Decommissions apply for all recall events.

- b) Wage Reopeners. As of January 15, 2014 and as of January 15, 2015, the Agreement will be reopened solely for the purpose of negotiating the wages or equivalent compensation to be paid to the bargaining unit technicians/associates in the second and third years of the Agreement, respectively. If the parties are unable to reach agreement on the wages or equivalent compensation to be paid to technicians/associates in the second and/or third year of the Agreement on or before February 15 of 2014 and/or February 15 of 2015, the parties will be exempted from the No-Strike, No Lockout Article of the parties' Agreement until such time as the parties reach agreement as to wages or equivalent compensation to be paid in the second and/or third years of the Agreement, provided that such economic weapons may be used solely with respect to the issue of wages or equivalent compensation to be paid technicians/associates during the second and/or third year of the Agreement and not to seek any other changes in the Agreement or the technicians'/associates' terms and conditions of employment. Once agreement is reached on wages or equivalent compensation to be paid in the second year of the Agreement, the parties shall be bound by the No-Strike, No Lockout Article of the parties' Agreement until February 15, 2015. Once agreement is reached on wages or equivalent compensation to be paid in the third year of the Agreement, the parties shall be bound by the No-Strike, No Lockout Article of the parties' Agreement until the date set forth in the Termination Clause.

EXHIBIT B – Tool List

1/4" Drive 1/2" Socket	Crescent wrench
1/4" Drive 1/4" Socket	Drill 3/8 " Corded
1/4" Drive 11/32" Socket	Drill Bit Set
1/4" Drive 3/16" Socket	Drop Light
1/4" Drive 3/8" Socket	Extension Cord 10' and 25'
1/4" Drive 5/16" Socket	File Set
1/4" Drive 7/16" Socket	Flashlight
1/4" Drive 7/32" Socket	Hacksaw
1/4" Drive 9/32" Socket	Hammer, 2 or 3Lb
1/4" Drive Extension 6"	Hammer, Ball Peen
1/4" Drive Ratchet	Heat Gun
1/4" to 3/8" Socket adapter	Inspection Mirror
3/8" Drive 15/16" Socket	Level 6"
3/8" Drive 1/2" Socket	Magnetic Nut Setters at least 1/4 & 5/16
3/8" Drive 11/16" Socket	Magnetic Pick -up tool
3/8" Drive 3/4" Socket	Magnetic tip screwdriver
3/8" Drive 3/8" Socket	Multimeter
3/8" Drive 5/8" Socket	Nut drivers 1/4" & 5/16"
3/8" Drive 7/16" Socket	Outlet tester
3/8" Drive 9/16" Socket	Pliers Regular
3/8" Drive Extension 6"	Pliers, Channel Locks (9.5")
3/8" Drive Ratchet	Pliers, Long nose/needle nose
Allen Key Set - Metric	Pliers, Side Cutting-wire cutters
Allen Key Set - SAE	Punch & Chisel Set
Combo Wrench 1/2	Putty Knife 1-1/4"
Combo Wrench 1/4	Screwdriver Flat-Blade Set
Combo Wrench 11/16	Screwdrivers Phillips #0, #1, #2
Combo Wrench 11/32	Screw gun
Combo Wrench 3/16	Tape Measure
Combo Wrench 3/4	Tool Bag
Combo Wrench 3/8	Torx Driver Set (Tamper Resistant / security)
Combo Wrench 5/16	Utility Knife
Combo Wrench 5/8	Vise Grips
Combo Wrench 7/16	Wire Strippers / Crimping tool
Combo Wrench 9/16	