

GATEWAY TO THE NORTHWEST

**Fire Management Team
Meeting Regarding Negotiations**

Meeting Date & Time:	6/29/2016; 10:03am-12:20pm	
Attendee	Position	Company/Department
Scott Marotz	Professional Negotiator	
David Gates	Chief	Fire
Joyce Stroschein	CFO	Finance
Nichole Harms	HR Consultant	HR
Anne Butler	HR Interim Director	HR
Lynette Sampson	Legal Asst.	Legal
Ryan O’Hearn	President, IAFF 187	Fire
Curtis Smith	Negotiation member, IAFF 187	Fire
Andy Moldenhauer	Vice President, IAFF 187	Fire
David Scott	Negotiation member, IAFF 187	Fire
Eric Anderson	Negotiation member, IAFF 187	Fire
Tick Coward	Negotiation member, IAFF 187	Fire

Meeting Notes

<p><u>City of Pocatello and IAFF #187 Union Negotiation</u></p>	<ul style="list-style-type: none"> ▪ Meeting opened at 10:03 by Scott Marotz
<p><u>Session #1:</u></p>	<ul style="list-style-type: none"> ▪ S. Marotz started the discussion with Article 36- Procedural Agreement and distributed City’s first proposal, #C-1. S. Marotz indicated that as written the current Article 36 is not in compliance with the Idaho Open Meetings Law and should be amended. R. O’Hearn stated they had reviewed Article 36 and agreed. This item was discussed at the caucus break by the IAFF #187 team. Two (2) changes were made: 1 typo wherein “development” was changed to “develop” and changing the word “agreement” to “contract” on line 4 of the proposal. Tentative agreement was reached and the proposal signed by S. Marotz and R. O’Hearn. ▪ S. Marotz distributed his letter to R. O’Hearn dated June 14, 2016. ▪ Discussion took place regarding the exchange of proposals. R. O’Hearn stated that it has been standing practice to exchange proposals one at a time over the first three (3) sessions. It was agreed to follow this procedure. ▪ R. O’Hearn asked about Idaho Code 44-1808 regarding the limitation of presenting proposals with financial implications at this session. S. Marotz indicated that based on the statute, he can object to any and all proposals with financial implications. Discussion ensued regarding the appropriate

timeframe to submit their intent to negotiate so that financial considerations are open. After discussion, it was determined that April/May would be the best going forward.

- R. O’Hearn asked if the FOP Union was receiving wage adjustments during their contract negotiations. S. Marotz indicated that nothing had been agreed to; however, there were proposals regarding a change in the pay structure with the FOP Union which rolled longevity into base pay.
- S. Marotz addressed insurance. S. Marotz indicated that IAFF #187 is now back to being a part of the City’s insurance in light of the Open Meeting Violation which resulted in the voiding of the Fact Finding decision. J. Stroschein distributed a financial table demonstrating the dollar impact to the City of the Fire Department leaving the City’s insurance pool. S. Marotz explained that the cost increase/potential cost saving on the table is not all related to the general fund; J. Stroschein expounded on that topic. R. O’Hearn asked what the difference with Aetna was; N. Harms summarized the changes. Open enrollment dates were discussed; Aetna and NWFF Trust are both in August. N. Harms indicated that even if the Fire Department leaves the City’s insurance pool they must still attend open enrollment meetings for dental coverage. S. Marotz asked IAFF #187 representatives what their plan to make the City whole is if they leave; he tasked them with addressing the additional \$336,000 impact to the City should they leave.
- **Caucus from 10:55-11:45am**
- 11:45am: Resumed discussion about insurance. R. O’Hearn indicated they are seeking legal counsel regarding the City Council’s June 27, 2016 decision regarding the Fact Finding Open Meeting violation. R. O’Hearn asked J. Stroschein and N. Harms for insurance numbers and plan description. S. Marotz asked for the IAFF #187 numbers from the NWFF Trust. R. O’Hearn asked J. Stroschein for the dollar impact of the Fire Department leaving the pool to the general fund only.
- R. O’Hearn presented IAFF’s first proposal, #F-1 relating to Article 12, Extra Duty, Sections C and new D. R. O’Hearn indicated that the changes were to clarify language relating to out of town travel. S. Marotz stated that some of the new language is in contravention to FLSA in Section C. Discussion ensued regarding how pay for out of town travel would work and why the provision would only apply to training out of town vs in-town. R. O’Hearn stated that the language presented was developed in cooperation with Senior Staff. S. Marotz stated that determining what training is “mandatory” should rest with the Chief and not the Union. Discussion was held regarding “homework” as outlined in the new language. Discussion moved to what happens in the event the City pays for training and the employee fails to attend. Further negotiation will be necessary.
- S. Marotz presented #C-2, Article 27- Subsequent Contracts. R. O’Hearn asked why the removal of Binding Fact Finding was in the City’s best interest. S. Marotz indicated that this provision is unconstitutional as the City cannot delegate its duties to a 3rd party. Binding Fact Finding, unlike arbitration, does not give the City an opportunity for the decision to be tested by another means (i.e. court test). S. Marotz stated that his preference is mediation or arbitration. S. Marotz stated that arbitration is not used to establish contractual terms; it interprets the language of the

	<p>contract. R. O'Hearn indicated that this item would need to be discussed in caucus.</p> <ul style="list-style-type: none">▪ The schedule for the next 4 meetings was set: June 30, 2016 all day; July 1, 2016 from 11am-2:00pm; July 5, 2016 from 10am-12:00pm; July 6, 2016 all day.▪ Documents attached to the June 29, 2016 meeting minutes: Proposals C-1, C-2, C-3 F-1; S. Marotz letter to R. O'Hearn dated June 14, 2016; financial table of insurance changes presented by J. Stroschein.▪ Session #1 adjourned at 12:20pm
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By: 
Lynette Sampson, Legal Department

Approved as to Substance and Form:

By: 
Ryan O'Hearn, President
IAFF #187

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PROPOSAL # C-1

ARTICLE 36- PROCEDURAL AGREEMENT

1. PURPOSE: The parties ~~to this agreement hereby state as~~ hereby acknowledge and agree that the purpose of their negotiations ^{Contract} is to the development ~~ment~~ of a labor contract ~~agreement~~ which recognizes the duties, rights and obligations, as well as, the capabilities and needs of the respective parties throughout the term of the contract period with respect to the relationship between them as employer and employee. Each party agrees to bargain in good faith ~~with respect for the legitimate interest of the other,~~ keeping in mind the resulting consequences of the bargaining process and recognizing the restrictions and duties imposed on the Parties by Federal and Idaho statutes, rules and regulations. ~~This agreement is being written to enhance the previous workable negotiations and clarify the procedures used in negotiations.~~
2. LOCATION OF NEGOTIATIONS: Negotiations shall be conducted in the Municipal Building unless otherwise agreed. Should either party require that negotiations be moved to a neutral site outside the Municipal Building, concurrence by the other side shall be required and the cost of use of the alternate negotiating site shall be borne equally by both parties.
3. TIME OF NEGOTIATIONS: The dates and times of up to ten (10) initial sessions shall be submitted by the Chairman of the Management team to the Chairman of the Union team at the time the Management roster is submitted. The two chairmen shall work out any problems with the proposed schedule. More than ten (10) sessions may

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T.A. 6/29/16

1 be held if necessary and are to be set by mutual agreement of the chairman of each
2 bargaining team.

3 4. COMPENSATION: Members of the negotiating teams (both for the City and for the
4 Union) ~~agreed to herein shall be allowed to participate in the~~ mutually scheduled
5 negotiating sessions without loss of pay or benefits due to any such participation. On-
6 duty personnel shall receive their usual compensation. Off-duty personnel will
7 receive no compensation for negotiating sessions.

8 5. BARGAINING TEAM MEMBERSHIP: Respective bargaining committees shall be
9 determined each year with members listed in writing at the time of the first
10 notification of either party to the other of a desire to negotiate a new contract; the
11 party being notified shall have ten days in which to submit a list of its bargaining
12 committee members. ~~No other persons shall be allowed to participate, attend, or
13 witness a bargaining session without the mutual consent of the negotiating teams or
14 their respective chairman. Members of the negotiating teams may be permanently
15 replaced in the course of negotiations for good cause.~~

16 6. PRIVACY AND CONFIDENTIALITY: All negotiating sessions shall be held in
17 ~~open meeting private,~~ and all materials presented shall be considered public records.
18 ~~and discussions held shall be as strictly confidential as possible. Discussion of
19 negotiation issues with members of the respective bargaining units shall include
20 notice of the requirement of confidentiality of such discussions.~~

21 7. RECORDING RESTRICTIONS: Stenographic recording or audio recording of
22 negotiations shall be allowed. Both parties shall be given copies of any tape

1 recordings made. The dissemination of any minutes, notes, or recordings shall
2 conform to paragraph 8 below.

3 ~~8. PUBLIC INFORMATION: No information relating to the progress or substance of~~
4 ~~negotiations shall be released to the public or to the news media except by mutual~~
5 ~~consent of the parties, as defined in #6 above.~~

6 98. CAUCUSES: Caucuses shall be permitted at any time in the course of bargaining,
7 and the meeting location chosen shall provide adequate accommodation for private
8 caucuses for the negotiating teams.

9 ~~109.~~ TENTATIVE AGREEMENTS: Tentative agreements may be used to build the
10 framework of the prospective contract throughout the negotiating process. Although
11 issues tentatively agreed to may at any time be reopened for further negotiation, the
12 parties agree that such issues shall not be reopened for the purpose, and in the context
13 of, bargaining and negotiation on other subsequent issues. Tentative agreements shall
14 be recorded by a negotiator for each party initialing the contract language tentatively
15 agreed to. Notwithstanding the foregoing, nothing shall be considered conclusively
16 agreed upon until an agreement has been reached on all matters and issues between
17 the parties and the contract has been duly executed as provided in Paragraph No. ~~140.~~

18 ~~140.~~ AUTHORITY: Each party's negotiating team has authority to reach a tentative
19 agreement, but for any agreement to be executed and binding, it must be approved by
20 the City Council and ratified by the membership of the Union.

1 | 121. BARGAINING PROCESS: In the course of the bargaining process, negotiators
2 | for each party shall attempt to resolve non-economic issues as defined by both parties
3 | before considering economic issues.

4 | 132. DEADLINE FOR NEW ISSUES: The parties mutually agree that each party will
5 | make new contract demands and offer proposals on new bargaining subjects or issues
6 | for consideration in contract negotiations before or during the third negotiating
7 | session except by mutual agreement and unless limited by the contract. In the absence
8 | of any mutual agreement to the contrary, no new issues may be presented by either
9 | party after termination of the third negotiating session.

10 | 143. RATIFICATION EFFORT: Once a comprehensive settlement has been reached
11 | by the negotiating teams, each negotiating team agrees to make a good faith effort to
12 | obtain ratification of the tentative agreement by the party it represents.

13 | 154. STALEMATE RESOLUTION (PRELIMINARY IMPASSE): The parties will
14 | comply with Idaho Code §44-1805 which requires the parties to ~~go to~~ utilize Fact
15 | Finding if an agreement is not reached within thirty (30) days from the date of the
16 | initial bargaining session. Nothing shall prohibit the parties from continuing
17 | negotiations before, during, and after the Fact Finding hearing.

18 | 165. EXCEPTION BY MUTUAL AGREEMENT: The contents of this agreement
19 | shall serve to guide contract negotiations between the signatory parties unless mutual
20 | consent is given to deviate from its terms.



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Wes L. Scrivner, Of Counsel

June 14, 2016

Ryan O'Hearn
PO Box 65
Pocatello, Idaho 83204

Re: Response to request for negotiations.

Dear Mr. O'Hearn,

I have been retained to analyze the factors involved with the December 2015 determination of the Fact Finding Panel concerning the participation by IAFF Local # 187 in the City of Pocatello's medical coverage program provided to all city employees and, to the extent necessary, negotiate a replacement for the Collective Bargaining Agreement between the City and Local #187, which expires September 30, 2016, with respect to issues that can be negotiated.

By this letter, I acknowledge the receipt by Mayor Blad of your letter dated May 31, 2016 identifying Local #187's intent to negotiate pursuant to Idaho Code Section 44-1801, et seq. I also acknowledge receipt of the list of individuals that will comprise the Union's negotiating team. I am responding at this time in an effort to comply with the requirements of Article 27, Section 1 of the CBA and Idaho Code Section 44-1804. Those provisions however have different, and in some ways, conflicting requirements. That is especially true when the requirements of Article 36, Section 3 are taken into consideration. I am assuming that the provisions of Article 27 and Article 36 constitute a waiver of the strict application of Idaho Code Section 44-1804 and that we will be able to work together to schedule negotiation sessions once a decision is made to begin that process,

S.M. Utter

June 14, 2016

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thereby triggering the 30 day negotiation window provided in Idaho Code Section 44-1805.

It is clear to me that the issue of insurance will need to be revisited either as part of negotiations or by other means. The City now has the factual basis which proves that not including the fire personnel in the pool increases the premium by over \$250,000 and also increases the out-of-pocket costs to other city employees. As a consequence, the reason for the fact finders' decision no longer seems to be valid. In addition, I am of the opinion that the inclusion of "binding fact finding" in the CBA may not be enforceable which would make any decision by the fact finding panel a recommendation only, as contemplated by the terms of Idaho Code Section 44-1807. At the very least, the deletion of binding fact finding will be an issue which the City will bring to the table or test by other means.

There is also a definitive question concerning whether or not the decision concerning the insurance program made by the fact finding panel is void since the deliberations of the panel did not take place in open meeting. If the panel's decision is binding then the panel is acting in the capacity of negotiating and all of its actions are subject to Idaho Code Section 74-206A and a violation of those requirements may void the decision of the panel under Idaho Code Section 74-208. If that is in fact the case, then there will be a need to revisit the insurance program mandated by the fact finding panel. In the event that the fact finding panel's decision is deemed void the logical course would be to continue to provide insurance as it is currently provided to eliminate any possibility that there is a lapse in coverage for the members of your bargaining unit.

Thank you for referencing Article 27 of the CBA as a provision that relates to the requested negotiations. I have had an opportunity to review the CBA and there are several issues that cause me concern. The first is the CBA does not set out a clear time when the parties are to submit their proposals. I acknowledge that all proposals must be submitted by the end of the third negotiation session. Article 27, Section A implies that the Union is required to provide its proposals to the Mayor prior to June 1st, but that language is not specific about when and how that is to be done. There is nothing in the CBA concerning when the City is to present its proposals. What historically has been done on this issue and what is your intent concerning submittal of proposals?

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The second issue I have identified arises under the terms of Article 36. That procedural agreement sets out that the negotiations are not open. I think those provisions of the CBA run counter to Idaho's open meeting statutes and as such, are not enforceable. Since the negotiations must take place in an open meeting all correspondence is a public record and we will need to limit any substantive issue and/or procedural issue discussions to the times when we are in a properly noticed meeting. I realize this is a significant change to the normal negotiation process but it is critical that we conform to the legislatively enacted process no matter how cumbersome it may be.

The third significant issue involves the application of Idaho Code Section 44-1808. In order to bring proposals to the table requiring the appropriation of money the "bargaining agent" is required to request negotiations no less than 90 days prior to the last date that the City can appropriate money. I interpret that to mean the last date that the City can notice its budget. That is the date the budget is fixed and cannot be changed. Your notice, dated May 31, 2016, is therefore not timely which may prevent the Union from bring any proposals forward that pertain to the appropriation of money. This is clearly an issue we will need to discuss in the first negotiation session. We will also need to discuss what constitutes the mandatory scope of negotiations as set out in Idaho Code Section 44-1802. I do not think that "binding fact finding", as an example, falls within the definition of a term or condition of employment. As such it is not a mandatory item for negotiations and cannot be the basis of a claim of impasse thereby initiating the right to insist its inclusion in the CBA be determined by binding fact finding.

It is my understanding that your team is not available until the last week of June. I had an opportunity to review with the City's team the proposed dates you sent when your team will be available to begin and participate in negotiations. The first date on your list when all of our team can be present within the range of dates you proposed is June 29th. Thereafter, the City's team can be available on June 30th, July 1st, and July 5th-8th. Please let me know any conflict you and your team has with these potential dates. Once a definitive date is determined to begin negotiations we can schedule the same and prepare to present our respective initial proposals at the first session with the thought of reviewing and generally discussing all proposals presented by both parties at that time. We can also create a definitive schedule for additional negotiation sessions, based upon the nature and scope of the proposals, the time needed for each side to respond and prepare

June 14, 2016

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counter or alternative proposals and the dates we all have available over the 30 days subsequent to the first session.

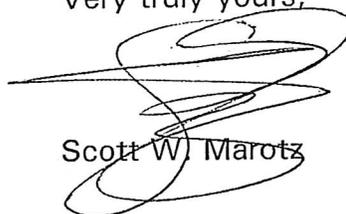
The City team will be comprised of Scott Marotz, lead negotiator, Lynette Sampson, Joyce Stroschein, Nicole Harms, and Anne Butler. There may also be times when Rich Diehl may join us at the table. The Mayor will not be sitting at the table as an official member of the negotiation team but may attend sessions if needed. David Gates also will not be an official member of the team sitting at the table but he will be serving in the capacity of an advisor and consultant and may at times be asked to present information to the parties at the table. It is anticipated that both Chief Gates and the Mayor will be participating in caucuses.

I can make arrangements to notice the 29th to discuss the issues set out above and a starting date for negotiations. Once a starting date is agreed upon the City can then notice the negotiation sessions as required by the open meeting statutes. Your initial letter and this letter will be attached to the minutes of the first session so we can keep track of the public records created during negotiations. I will also arrange for an individual to be present to take minutes at each session, as required by the open meeting statutes.

I will direct any correspondence or discussion concerning negotiations to you unless you provide me with an alternative person. I would appreciate you doing the same by sending everything to me. I will distribute the information to the appropriate person or persons at the city. The cumbersome aspect of doing negotiations under the open meeting statutes is that everything, to the extent possible, needs to be presented and discussed at the table. Sidebars or correspondence via email or other methods is not allowed unless the information is attached to the minutes.

I look forward to working with you and your team in resolving the existing procedural issues and to the extent negotiations are undertaken the required and agreed upon substantive issues that exist based upon the proposals made by the parties.

Very truly yours,

A handwritten signature in black ink, appearing to read "Scott W. Marotz", with a large, stylized flourish extending to the left.

Scott W. Marotz

June 14, 2016
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SWM/cjf

cc: Mayor Blad
David Gates
Lynette Sampson
Joyce Stroschein
Nicole Harms
Anne Butler
Rich Diehl

Review of City Wide Financial Impact of Rate Differences as a Result of Fire Included in the Pool and Fire Excluded from the Pool
As of June 28, 2016

	With Fire in Pool	Without Fire in Pool
Medical Employee and Children	\$ 343,209.36	\$ 360,715.68
Medical Employee and Child	\$ 264,475.68	\$ 277,966.08
Medical Employee and spouse	\$ 846,045.00	\$ 889,218.00
Medical employee only	\$ 722,428.32	\$ 759,291.72
Medical family	\$ 4,126,098.24	\$ 4,336,580.16
Medical HT emp & spouse	\$ 12,261.60	\$ 12,887.28
Medical HT employee only	\$ 2,933.40	\$ 3,083.04
Medical HT family	\$ 17,265.68	\$ 18,251.76
	\$ 6,334,717.28	\$ 6,657,993.72

This review includes all funds and divisions

Net Increase to cost based on the rate difference

\$ 323,276.44

Review of Financial Impact Excluding Fire and Ambulance Expense Amounts from the Review
As of June 28, 2016

	With Fire in Pool	Without Fire in Pool
Medical Employee and Children	\$ 290,407.92	\$ 305,220.96
Medical Employee and Child	\$ 236,139.00	\$ 248,184.00
Medical Employee and spouse	\$ 676,836.00	\$ 711,374.40
Medical employee only	\$ 639,707.52	\$ 672,349.92
Medical family	\$ 3,360,269.40	\$ 3,531,684.60
Medical HT emp & spouse	\$ 12,261.60	\$ 12,887.28
Medical HT employee only	\$ 2,933.40	\$ 3,083.04
Medical HT family	\$ 17,265.68	\$ 18,251.76
	\$ 5,235,820.52	\$ 5,503,035.96

This review includes all funds and divisions except Fire and Ambulance

Net Increase to cost for the City with Fire Leaving the Pool

\$ 267,215.44

1 | PROPOSAL #C. 2

2 | ARTICLE 27 - SUBSEQUENT CONTRACTS

3 | Section B. Submission of issues to Fact Finding Commission. In the event the
4 | bargaining agent and the corporate authorities are unable, within thirty (30) days from and
5 | including the date of their first meeting, to reach an agreement on a contract, any and all
6 | unresolved issues shall be submitted to a fact finding commission pursuant to the procedures
7 | outlined I.C. 44-1801 et seq. ~~and the commission's findings shall be binding on the parties.~~

8 |

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6.29.16

1 | PROPOSAL #C-3

2 | ARTICLE 27 - SUBSEQUENT CONTRACTS

3 | Section B. Submission of issues to Fact Finding Commission. In the event the
4 | bargaining agent and the corporate authorities are unable, within thirty (30) days from and
5 | including the date of their first meeting, to reach an agreement on a contract, any and all
6 | unresolved issues shall be submitted to a fact finding commission pursuant to the procedures
7 | outlined I.C. 44-1801 et seq. ~~and the commission's findings shall be binding on the parties.~~

8 |



POCATELLO FIRE FIGHTERS LOCAL #187 NEGOTIATION PROPOSAL # *Fire-1*

Proposal: The following changes to Article 12 – Extra Duty, Section C. Addition of Section D.

ARTICLE 12 - EXTRA DUTY

Section A. Any employee may be required by the City to work beyond his/her normal shift which shall be defined as outlined in Article 8 of the CBA for shift employees, and as agreed upon between employee and supervisor for day personnel. The City shall pay for overtime work at the rate of one and one-half the normal rate of pay, computed by dividing the employee's annual base salary by 2080 hours. Overtime will also be paid at one-half (.5) times the employee's negotiated rate of pay (annual base salary divided by 2080 hours) for hours actually worked over 68 in the nine (9) day work period established by the City. Firefighters on 24-hour shifts work an average of 72 hours every 9-day work period. Sick leave hours are not considered hours actually worked for payment of the (.5) "FLSA" overtime.

Section B. Compensatory time may be accumulated up to 240 hours in lieu of overtime pay and taken in two (2) or more hour increments as manpower allows. The employee may not combine overtime pay and compensatory time in the same pay period. When an employee is discharged, resigns, or retires, he/she shall receive pay in lieu of accrued comp-time per the following formula: $\text{Base pay}/2080 = \text{hourly rate} \times \text{number of accrued hours}$.

Section C. Any employee who is called back to work from off duty shall be paid at least two hours minimum at the employee's overtime rate. This shall also include schooling and training if an employee is assigned to attend. ~~However, if school or training is made available to personnel by bulletin and all tuition, travel expense, per diem and lodging expenses are assumed by the City, then no other overtime as required herein shall be paid.~~ Call back and overtime work shall be distributed equally to employees when at all feasible.

Section D. Out of Town Training - When an employee attends out of town training, the department will pay tuition, travel, lodging, per diem, and overtime for hours worked above 72 in an employee's FLSA period. If time off is given to facilitate attendance

of the training it shall be handled in the following manner: the employee's 24-hour shift shall be exchanged for up to 16 hours in 2 days (one of which shall be the original shift day). All time worked in excess of the 16 hours over 2 days shall be paid at the agreed upon extra duty rate. This shall include travel and homework time. Drive time will be counted as travel time for all occupants of the vehicle. *- Change over what FISA requires*

Homework, when specifically called out in the course syllabus, must be preapproved by the Chief or his designee. Homework that is not preapproved requires the instructor submit directly to the Chief or his designee an accounting of hours spent on the homework beyond the 8-hour class time. ~~Employees will be covered under worker's compensation when at out of town training that is compensated according to this article.~~ Out of town training shall not be mandatory, except as agreed upon between the Department and Union.