

POLICY REGARDING EMPLOYER ACCOUNTS

Prepared for

THE BOARDS OF TRUSTEES

WISCONSIN LABORERS' HEALTH FUND AND

WISCONSIN LABORERS' PENSION FUND

Prepared By

BPA, INCORPORATED

Effective June 2, 2008

<u>Exhibit 0</u>	Labor Contract Language
<u>Exhibit 1</u>	Remittance Report Form
<u>Exhibit 2</u>	Notice to Employers - Liquidated Damages & Interest
<u>Exhibits 3 & 4</u>	Resolution to Adopt Damages & Interest
<u>Exhibits 5</u>	Hold Harmless Agreement and Affidavit from Employees

POLICY REGARDING EMPLOYER ACCOUNTS

INTRODUCTION

The Boards of Trustees of the Wisconsin Laborers Health and Pension Funds (hereinafter "Boards of Trustees") have, from time to time, established procedures and adopted regulations governing Employer accounts pursuant to authority in the appropriate section of the Trust Agreements and as beneficiaries of the applicable collective bargaining agreements.

The Trustees wish to consolidate and restate current practices and procedures to facilitate:

- : Annual review and evaluation;
- : Communication of practices and procedures to employers, bargaining units, union and employer representatives, administrative personnel and other interested parties; and
- : Uniform administration

The Boards of Trustees, therefore, adopt the following as a Policy Statement regarding payment of Employer contributions to the respective Trust Funds, effective January 1, 1986:

EMPLOYER ACCOUNTS COMMITTEE

The Boards of Trustees assign to the Employer Accounts Committee responsibility for:

- : Implementing the policy and practices described herein;
- : Supervising administrative staff and legal counsel in their Employer accounts functions;
- : Measuring the effectiveness of delinquency controls, collection practices, and recorded changes; and
- : Reporting results of its efforts and findings to the Boards of Trustees.

SECTION 1 -- WRITTEN AGREEMENT REQUIREMENTS

A. Need for a Written Agreement

The obligation of an Employer to contribute to these Funds is established by a properly executed labor agreement or Trustee-authorized participation agreement.

A labor agreement authorizes and requires contributions for bargaining unit Employees; and a participation agreement authorizes contributions for non-bargaining unit employees. The Trustees do not accept contributions unless there is evidence of a written agreement signed by the employer.

Contributions will be accepted under an expired labor agreement from a signatory employer until either (1) the employer has negotiated a new labor agreement with the Union, in which event contributions, if any, will be made in accordance with that new agreement; or (2) while the bargaining relationship between the employer and the Union continues and the parties continue to negotiate (regardless of the duration of such negotiations) and until either an "impasse" is reached (and the employer then puts into effect unilaterally his last proposal which does not include contributions to the Funds) or until the Union terminates its negotiations and ceases to have a collective bargaining relationship with such employer.

Since an employer normally continues to be obligated to contribute to the Funds after the expiration of the collective bargaining agreement under Sections 8(a) (5) and 8(d) of the National Labor Relations Act as explained in the preceding paragraph, the Funds will continue to accept contributions in accordance with the terms of the expired collective bargaining agreement. An employer, by contributing to the Funds after the expiration of a valid collective bargaining agreement, must continue to contribute on all of its bargaining unit employees pursuant to the terms of the expired agreement (including the payment of late payment and interest charges and attorney fees in the event the employer is found not to have paid pursuant to the terms of the expired agreement).

Suggested labor contract language is contained in the attached Exhibit 0. The definition of "Participating Employer" is included below.

The obligation of a Union to contribute to these Funds for its Employees is established by an executed participation agreement in a form provided by the Trustees.

When a collective bargaining agreement expires and an employer continues to contribute pursuant to the expired agreement, the Funds shall verify that the employer is making contributions on all employees in the bargaining unit at the applicable rate. If there appears to be any discrepancy in the payment, the matter will be referred to legal counsel for immediate collection.

B. Union Obligation for Meeting Written Agreement Requirements

Trustees consider it the obligation of the Union to provide them with information necessary to collect all monies due the Funds, including:

1. The name and address of each Employer signatory to a current labor

agreement (including firms party to an International Union Collective Bargaining Agreement obligating the Employer to contribute to these Funds);

2. The effective and termination dates of the contracts;
3. The effective dates of changing contribution rates and other pertinent changes, if any;
4. Subsequent changes in ownership or company name which may require new labor contracts or the assumption of existing contracts, if known;
5. Dates on which an Employer last worked in the jurisdiction of the Funds and the date on which an Employer resumed work in such jurisdiction, if known; and
6. Copies of the collective bargaining agreements signed by the employer, or copies of a signature page showing employer's signature and date of execution or copy of the letter or other written instrument executed by an authorized representative of the employer and the union under which the employer agrees to become a party to and be bound by a therein- described labor agreement.

C. Contributions Made by Non-Signed Employers

A Special Account shall be established for depositing contributions from employers when the Fund Office has no evidence that the employer is party to a current or recently expired collective bargaining agreement. Monies received from non-signed employers will be identified as such by the Administrative Manager and deposited to the Special Account. The Fund Office shall notify the appropriate Local Union Office of the non-signed employers' name, address, and work month for which the contributions were paid. If acceptable evidence of a signed agreement is not received by the Trustees at the Fund Office within six (6) months of receipt of the contribution, the Administrative Manager is directed and authorized to prepare a Special Account check for authorized signatures in an amount equal to the non-signed employer's contributions held in the Special Account and return such amount to that employer. Regarding Pension Fund contributions, during the time such contributions are in the Special Account, Employee and Participant accounts shall not be credited with, nor shall such contributions be used for, Participant vesting, Break in Service or Benefit Accrual Computation periods in the Pension Fund. (For Health Fund --- contributions, such contributions shall not be used for satisfying initial eligibility, maintaining eligibility or computing self-payments).

D. Satisfactory Forms of Proof of Participation

Satisfactory evidence that an Employer is party to an acceptable written agreement

includes:

1. A list of association members or other employers which have assigned bargaining rights to an employer association, received from the Union or the association, with an appropriate cover letter signed by an authorized representative of such association.
2. A photocopy of the signature page of the collective bargaining agreement, provided the employer name and address, and effective and termination dates are shown; and provided that the collective bargaining agreement is properly identified;
3. A signed copy of the collective bargaining agreement with language and provisions related to these Funds acceptable to the Trustees

Note: a letter signed by a union officer or business representative "naming employers which have signed contracts requiring contributions to these funds" is not favored because it does not provide assurance that supposedly delinquent contributions can be enforced in legal proceedings. The same comment also applies to Paragraph B.6. of Section 1.

E. Definition of "Delinquent Employer"

A participating Employer is considered to be delinquent in the event contributions in an amount required by the applicable labor agreement and reports in a form acceptable to the Trustees, have not been postmarked on or before the 15th day of each month following the month for which work was performed. As a matter of policy, the Employer Accounts Committee has adopted a grace period that contributions received no later than the 25th day of the month following the month for which work was performed will be accepted as timely.

- F. The Trustees may amend these rules or provide for payment by employers under alternate methods of payment, but any such alternate method of payment must be submitted to the Trustees in writing and must be approved before the payments are tendered to the Fund. If payment is made without prior Trustee approval, the payment will be assumed to be made under the terms of a valid collective bargaining agreement and the employer shall comply with all the terms of the agreement.

SECTION 2 - INSTRUCTIONS, PRE-LISTINGS AND INFORMATION TO EMPLOYERS

The following information and services are supplied to Employers to minimize error in reporting and to facilitate timely payments.

A. Instructions to Employers

Information is provided to Employers when a change in labor contract provisions occurs, or the Trustees adopt or modify Fund procedures affecting Employer reporting requirements.

B. Pre-listings

The Trustees, through the Fund Office, provide a monthly Pre-listing (i.e., pre-listed remittance report forms) for each Employer. The Pre-listing is distributed on the first day of the month or as reasonably soon thereafter as possible. Pre-listings list the Social Security Number, family name and initial of each Employee reported for the prior month. A copy of the current Pre-listing form is attached as Exhibit 1.

C. Additional Information

The Trustees, through the Fund Office, will furnish each Employer upon request with copies of the Trust Agreement, with instructions and with a sample of the Pre-listing.

SECTION 3 -- MONTHLY IDENTIFICATION OF AND CONTACT WITH DELINQUENT EMPLOYERS

A. Identification of Delinquent Employers

Employers who fail to pay contributions and file remittance reports by the due date shall be identified monthly by the Administrative Manager. A list of such Employers shall be prepared and distributed monthly to the audit staff and all Labor Trustees and Unions and to Management Trustees who request the information. The list shall also be distributed to collection counsel.

SECTION 4 -- LIQUIDATED DAMAGES, INTEREST AND COSTS OF COLLECTION

- A. Payments of employer contributions to the Wisconsin Laborers Funds are to be made in accordance with applicable written agreements. Unless otherwise prescribed in such written agreement, such payments shall be made by the 15th day of the month following the month in which the work is performed, or by such time as established by any policy, written or otherwise, regarding a "grace period," after which time the payments will be considered to be delinquent. See Trustee resolution

- Exhibits 3 and 4.

- B. If any Employer becomes delinquent in his contributions to the Fund, and in view of the fact that the anticipated and actual damages are difficult or incapable of accurate ascertainment in such event, such Employer may be assessed by the Trustees, or by the Employer Accounts Committee of the Trustees, liquidated damages in an amount not to exceed 20% of such delinquent contributions; provided, however, that the Trustees (or the Employer Accounts Committee of the Trustees) are authorized and have complete discretion to waive the payment of all or part of such liquidated damages in situations where it is determined by the Trustees or by the Employer Accounts Committee that (1) the delinquent Employer has had a past satisfactory timely payment record; (2) the delinquency was isolated and inadvertent; (3) the delinquency was of relatively short duration and the result of a bona fide breakdown of bookkeeping or data processing equipment; or (4) when other circumstances arise for which the trustees determine, in their reasoned judgment, that equitable considerations so require, provided further, that in the event there is a dispute concerning whether liquidated damages shall be waived in the case of a particular delinquency, and neither the Employer Accounts Committee nor the Trustees can agree as to whether liquidated damages should be waived or not, then such liquidated damages shall be determined to be waived.
- C. In addition, any such delinquent Employer shall be required to pay per month, on the unpaid and delinquent contributions, interest in the amount of 1 1/2% per month. However, in circumstances where a delinquent employer can prove, to the Trustees' satisfaction, that its delinquency was caused by a clerical error or mistake, the Trustees may require the Employer to pay per month, on the unpaid and delinquent contributions, interest in the amount of 1/2% per month.
- D. In the event that the Fund's Administrative Manager refers the delinquency to legal counsel for collection, then such Employer shall be obligated to pay, in addition to any such liquidated damages and interest charges, reasonable attorneys' fees and any other costs and expenses reasonably arising in connection with any collection action. The Employer Accounts Committee of the Boards of Trustees are authorized and have complete discretion to waive the requirement for payment of all or part of the reasonable attorneys' fees and costs incurred by the Funds.
- E. See Notice to Employers — Exhibit 2.
- F. Effective _____, the Employer Accounts Committee has the authority to waive liquidated damages once every five (5) calendar years for each Employer. In the event the Employer Accounts Committee waives liquidated damages for an Employer, said Employer shall be required to submit payment for its monthly contributions, as required by its collective bargaining agreement, participation agreement or other written agreement for the twelve (12) months

immediately subsequent to the Fund Office's communication of the waiver to the Employer. If the Employer fails to submit payment for its contributions, as required by the applicable collective bargaining agreement or participation agreement, the waiver provided by the Employer Accounts Committee shall be immediately revoked, the liquidated damages shall become immediately due, and the Employer shall be required to submit payment for all liquidated damages.

SECTION 5 -- PAYROLL AUDIT PROGRAM

A. Purpose

The Trustees, in order to determine that the Fund is receiving all the monies to which it is entitled and that the Participants are receiving all the credits to which they are entitled, adopted a Payroll Audit Program. Under that program, a payroll audit staff's goal is to audit contributing Employers no less than every 3 to 4 years and report audit findings to the Administrative Manager, Boards of Trustees and Employer Accounts Committee.

B. Additional Functions

The Payroll Audit Program is also intended to assist Employers and Employer personnel in understanding the Trustees' reporting procedures and the requirements applicable in the collective bargaining agreements as interpreted by the negotiating principals.

SECTION 6 -- FURTHER COLLECTION PROCEDURES

These further collection procedures are required by the Trustees to deal with delinquent Employers, including Employers who fail to pay audit deficiencies within the required time.

A. Schedules and Practices to be Maintained

1. After an active Employer's name appears as delinquent for three consecutive months, a special audit of the firm's payroll shall be scheduled to determine amounts owing.
2. Upon conclusion of the audit, the Audit Staff shall attempt to collect amounts due.
3. If no payment is received within 14 days of the date of the Funds' demand letter to the delinquent Employer, the case shall be referred to collection counsel. Prior to referring the case to collection counsel, however, the Trustees, through the Administrative Manager will make reasonable efforts to collect amounts due from delinquent Employers.

Files referred to collection counsel must include information on all amounts due from prior audits, all existing delinquencies, unpaid liquidated damages and unpaid Debit Memos.

4. If files referred to collection counsel require another audit before earlier amounts due are collected, the results of the subsequent, amended, or updated audit should be communicated to collection counsel at the conclusion of the audit and preparation of results.
5. All amounts due the Funds are to be included in the action against the Employer. Any added information should be furnished to collection counsel either before or at the same time as the new figures are sent to the Employer.

B. Other Authorized Procedures

The Trustees will utilize procedures authorized by U.S. Department of Labor under ERISA when such procedures are, in the Trustees' judgment, in the interests of the Participants and the Funds. Such procedures include reasonable, diligent and systematic steps for:

1. The review of employer contribution accounts, e.g., reports and questionnaires from Employers and field audits;
2. Collection of delinquent Employer contributions, e.g., the automatic contractual imposition on delinquent employers of charges for liquidated damages, interest, or plan expenses for collection of delinquent contributions, as outlined in Sections 4 and 6 of this Policy;
3. The placing of Employer contributions in Special Accounts prior to the date such contributions are due;
4. The institution of appropriate legal action to collect amounts owed the Funds.

Trustees' procedures will not affect Unions' rights and responsibilities to enforce their labor agreements.

SECTION 7 - REFUNDS OF "MISTAKEN" EMPLOYER CONTRIBUTIONS

Refund of "mistaken" contributions shall be governed by Section 403 (c) of ERISA.

A. Refunds of Incorrect Contributions

Overpayments by an Employer are routinely settled with a Credit Memo to the Employer by the Fund Office. In the event an Employer is unable to use a Credit Memo, a check is issued by the Trustees to the Employer.

SECTION 8 -- DISPUTES WITH EMPLOYERS REGARDING CONTRIBUTIONS
OWING TO THE FUND OR REGARDING COVERED WORK

- A. In the event an Employer claims that contributions are not due and payable (1) for certain claimed non-bargaining unit work performed by an Employee who, at other times, performs work which is covered by the labor agreement, or (2) for work performed by certain employees who are claimed to be non-bargaining unit employees, and if the employee in question agrees with the Employer's contention as to the work in dispute, then an appropriate release and hold harmless agreement shall be obtained from the affected employee wherein the employee verifies the Employer's claim and waives any rights or claims against the Trustees or the Funds with respect to the work at issue. A sample of an appropriate form is attached as Exhibit 5. Such disputes shall also be discussed with the Local Union having jurisdiction.
- B. In the event there should arise a dispute with an Employer involving such issues as (1) whether particular work, or a particular job classification, is covered by the applicable labor agreement, or (2) whether the work performed by an Employee is within the geographical coverage of a labor agreement requiring payment of contributions to the Funds, or (3) a dispute involving other bona fide labor relations issues, then the appropriate Local Union and Employer Association should promptly be notified in order that the labor relations dispute may be resolved under the grievance and arbitration procedures of the applicable labor agreement. In addition, there shall be notification sent to co-counsel of the Funds to facilitate advising of the Union and Management Trustees.

Exhibit 2

TO EMPLOYERS PARTICIPATING IN THE
WISCONSIN LABORERS HEALTH FUND
AND PENSION FUND

Re: Interest and liquidated damages to be assessed
upon delinquencies

In accordance with recent amendments to ERISA, in order to make it clear that contributions must be paid on time, the Trustees of the Wisconsin Laborers Health and Pension Funds have adopted resolutions providing interest to be assessed against delinquent contributions at the rate of 1 1/2% per month and, additionally, delinquencies will be subject to a charge of 20% as liquidated damages.

Payments are due on the 15th of the month for work performed in the previous month and interest and liquidated damages will be charged for any payments not received by said date.

Exhibit 3

Wisconsin Laborers' Health Fund

RESOLUTION ESTABLISHING POLICY CONCERNING THE PAYMENT OF INTEREST AND LIQUIDATED DAMAGES BY DELINQUENT EMPLOYERS

RESOLVED, that pursuant to authority contained in Section 4.6 of Article IV of the Trust Agreement, the Trustees do hereby adopt the following policy requiring the payment, by delinquent Employers, of interest, liquidated damages and attorney's fees:

"POLICY CONCERNING THE PAYMENT OF INTEREST, LIQUIDATED DAMAGES, ETC. BY DELINQUENT EMPLOYERS

1. 'Payments of Employer Contributions to the Wisconsin Laborers Health Fund are to be made in accordance with applicable written agreements. Unless otherwise prescribed in such written agreement, such payments shall be made on the 15th day of the month following the month in which the work is performed, or after such other time as may be prescribed in such written agreement, or by such time as established by any policy, written or otherwise, regarding a "grace period," after which time the payments will be considered to be delinquent.
2. "If any Employer becomes delinquent in its payments to the Fund, and in view of the fact that the anticipated and actual damages are difficult or incapable of accurate ascertainment in such event, such Employer may be assessed by the Trustees or the Employer Accounts Committee of the Trustees as liquidated damages, 20% of such delinquent payments; provided, however,

Exhibit 3

that the Trustees (or the Employer Accounts Committee of the Trustees) are authorized to waive the payment of all or part of such liquidated damages in situations where it is determined by the Trustees or by the Employer Accounts Committee (1) that the delinquent Employer has had a past satisfactory on-time payment record, (2) that the delinquency was isolated and inadvertent, (3) that the delinquency was of relatively short duration and the result of a bona fide breakdown of bookkeeping or data processing equipment, or (4) when other circumstances arise for which the trustees determine, in their reasoned judgment, that equitable considerations so require; provided further, that in the event there is a dispute concerning whether liquidated damages shall be waived in the case of a particular delinquency, and neither the Employer Accounts Committee nor the Trustees can agree as to whether such liquidated damages should be waived or not, then such liquidated damages shall be determined to be waived.

3. "In addition, any such delinquent Employer shall be required to pay interest at the maximum rate permitted by law, not to exceed 1 1/2% per month, on the unpaid and delinquent balance (including unpaid past-due liquidated damages, if any) owed.
4. "In the event that the Fund's Administrative Manager refers the delinquency to legal counsel for collection, then such liquidated damages and interest charges, reasonable attorney's fees and any other costs and expenses reasonably arising in connection with any collection action shall be paid by the

Exhibit 3

Employer.”

Exhibit 4

Wisconsin Laborers' Pension Fund

RESOLUTION ESTABLISHING POLICY CONCERNING
THE PAYMENT OF INTEREST AND LIQUIDATED
DAMAGES BY DELINQUENT EMPLOYERS

RESOLVED, that pursuant to authority contained in Section 4.5 of Article IV of the Trust Agreement, the Trustees do hereby adopt the following policy requiring the payment, by delinquent Employers, of interest, liquidated damages and attorney's fees:

"POLICY CONCERNING THE PAYMENT OF
INTEREST, LIQUIDATED DAMAGES, ETC.
BY DELINQUENT EMPLOYERS

1. 'Payments of Employer Contributions to the Wisconsin Laborers Pension Fund are to be made in accordance with applicable written agreements. Unless otherwise prescribed in such written agreement, such payments shall be made on the 15th day of the month following the month in which the work is performed, or after such other time as may be prescribed in such written agreement, or by such time as established by any policy, written or otherwise, regarding a "grace period," after which time the payments will be considered to be delinquent.
2. "If any Employer becomes delinquent in its payments to the Fund, and in view of the fact that the anticipated and actual damages are difficult or incapable of accurate ascertainment in such event, such Employer may be assessed by the Trustees or the Employer Accounts Committee of the Trustees as liquidated damages, 20% of such delinquent payments; provided, however,

Exhibit 4

that the Trustees (or the Employer Accounts Committee of the Trustees) are authorized to waive the payment of all or part of such liquidated damages in situations where it is determined by the Trustees or by the Employer Accounts Committee (1) that the delinquent Employer has had a past satisfactory on-time payment record, (2) that the delinquency was isolated and inadvertent, (3) that the delinquency was of relatively short duration and the result of a bona fide breakdown of bookkeeping or data processing equipment, or (4) when other circumstances arise for which the trustees determine, in their reasoned judgment, that equitable considerations so require; provided further, that in the event there is a dispute concerning whether liquidated damages shall be waived in the case of a particular delinquency, and neither the Employer Accounts Committee nor the Trustees can agree as to whether such liquidated damages should be waived or not, then such liquidated damages shall be determined to be waived.

3. "In addition, any such delinquent Employer shall be required to pay interest at the maximum rate permitted by law, not to exceed 1 1/2% per month, on the unpaid and delinquent balance (including unpaid past-due liquidated damages, if any) owed.
4. "In the event that the Fund's Administrative Manager refers the delinquency to legal counsel for collection, then such liquidated damages and interest charges, reasonable attorney's fees and any other costs and expenses reasonably arising in connection with any collection action shall be paid by the

Exhibit 4

Employer.”

Affidavit and Indemnification Agreement

State of Wisconsin)
) ss
_____ County)

I [Name], being duly sworn on oath, deposes and states that:

1. I am an employee of [Employer] and I make this Affidavit and Indemnification Agreement on behalf of the Company.

2. I worked for the Company during the work months [Month and Year] through [Month and Year].

3. During the above-referenced work months, I was performing work on projects bid by the Company while signatory to the Wisconsin Laborers' District Council.

4. During the above-referenced work months, it was my understanding that some of the reported hours I worked was not covered by the agreement with the Wisconsin Laborers' District Council ("Labor Agreement").

5. At no time during the above-referenced work months did I expect that I would be covered by the Wisconsin Laborers' Fringe Benefit Funds, including the Pension and Health Funds. I understood that the work I was performing did not entitle me to a benefit under either the Pension or Health Funds.

6. The total hours that I worked on these non-covered projects were [number] hours.

7. I recognize that if it is discovered that Pension or Health claims were paid on my behalf during this period of time, either the Company or myself will be responsible for repayment and indemnification to the Pension and/or Health Funds.

[Employee]

Subscribed and sworn to before me
this ____ day of _____, 201_.

Notary Public, Wisconsin
My Commission Expires: _____