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**City of Las Cruces**<sup>®</sup>  
 PEOPLE HELPING PEOPLE

**Council Action and Executive Summary**

Item # 7      Ordinance/Resolution# 11-233

For Meeting of \_\_\_\_\_  
 (Ordinance First Reading Date)

For Meeting of June 6, 2011  
 (Adoption Date)

**TITLE:** A RESOLUTION APPROVING AMENDMENTS TO THE AGREEMENT BETWEEN THE UNITED STEEL, PAPER AND FORESTRY, RUBBER, MANUFACTURING, ENERGY, ALLIED INDUSTRIAL & SERVICE WORKERS INTERNATIONAL UNION (USW) AND THE CITY OF LAS CRUCES.

**PURPOSE(S) OF ACTION:**

Amend two (2) articles of the current collective bargaining agreement.

<b>COUNCIL DISTRICT: N/A</b>		
<b><u>Drafter/Staff Contact:</u></b> Andre Moquin	<b><u>Department/Section:</u></b> Human Resources	<b><u>Phone:</u></b> 528-3401
<b><u>City Manager Signature:</u></b>		

**BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS:**

In June 2010 Council approved the collective bargaining agreement (CBA) between the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial & Service Workers International Union (Blue Collar Union) and the City of Las Cruces (City). In concurrence with the Article 24 of the CBA, the parties entered into negotiations on March 31, 2011.

On May 6 2011 the parties reached agreement on all negotiated items which resulted in proposed changes to Article 7 Grievance Procedures, Article 21 Shift Preference, and Article 24 Pay Increase.

Changes to Article 7 reflect the addition of the Assistant City Manger's role in the grievance process. This will allow the Assistant City Manager to review and respond to grievances as part of the grievance process. (Exhibit A) Changes to Article 21 are comprised of the definition for shift premium eligibility for all those beginning after 2 p.m. Employees working these shifts will receive an additional forty five (.45) cents per hour. (Exhibit B)

Changes to Article 24 will result in a one and one half (1.5) percent increase to the wages of employees represented by the Blue Collar Union. (Exhibit C) The increase will be effective at the beginning of the first full pay period after Council approval (Sunday June 19, 2011). If approved, the estimated budgetary impact will be two hundred thousand (\$200,000) dollars.

(Continue on additional sheets as required)

**SUPPORT INFORMATION:**

1. Resolution.
2. Exhibit "A", Article 7. Grievance Procedures.
3. Exhibit "B", Article 21. Shift Preference.
4. Exhibit "C", Article 24. Pay Increase.

**SOURCE OF FUNDING:**

<b>Is this action already budgeted?</b>	Yes	<input checked="" type="checkbox"/>	See fund summary below
	No	<input type="checkbox"/>	If No, then check one below:
	<i>Budget Adjustment Attached</i>	<input type="checkbox"/>	Expense reallocated from: _____
	<input type="checkbox"/>	Proposed funding is from a new revenue source (i.e. grant; see details below)	
	<input type="checkbox"/>	Proposed funding is from fund balance in the Fund.	
<b>Does this action create any revenue?</b>	Yes	<input type="checkbox"/>	Funds will be deposited into this fund: in the amount of \$ _____ for FY ____.
	No	<input checked="" type="checkbox"/>	There is no new revenue generated by this action.

**BUDGET NARRATIVE**

Funding for this resolution will cover two (2) weeks of the current fiscal year and come from various accounts. A budget adjustment will be brought forward for FY 12 at the beginning of the fiscal year. Estimated cost \$200,000.

**FUND EXPENDITURE SUMMARY:**

Fund Name(s)	Account Number(s)	Expenditure Proposed	Available Budgeted Funds in Current FY	Remaining Funds	Purpose for Remaining Funds
Various	Various	Various	Various	Various	Various

**OPTIONS / ALTERNATIVES:**

1. Vote "Yes"; this will approve the negotiated changes to the Blue Collar Union Agreement.
2. Vote "No"; this will require the parties resume negotiations.

(Continue on additional sheets as required)

**REFERENCE INFORMATION:**

The resolution(s) and/or ordinance(s) listed below are only for reference and are not included as attachments or exhibits.

N/A

(Continue on additional sheets as required)

RESOLUTION NO. 11-233**A RESOLUTION APPROVING AMENDMENTS TO THE AGREEMENT BETWEEN THE UNITED STEEL, PAPER AND FORESTRY, RUBBER, MANUFACTURING, ENERGY, ALLIED INDUSTRIAL & SERVICE WORKERS INTERNATIONAL UNION (USW) AND THE CITY OF LAS CRUCES.**

The City Council is informed that:

**WHEREAS**, in June 2010 Council approved the collective bargaining agreement (CBA) between the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial & Service Workers International Union (Blue Collar Union) and the City of Las Cruces (City); and

**WHEREAS**, in concurrence with the Article 24 of the CBA, the parties entered into negotiations on March 31, 2011; and

**WHEREAS**, On May 6, 2011 the parties reached agreement on all negotiated items which resulted in proposed changes to Article 7 Grievance Procedures, Article 21 Shift Preference and Article 24 Pay Increase; and

**WHEREAS**, changes to Article 7 reflect the addition of the Assistant City Manger's role in the grievance process; and

**WHEREAS**, changes to Article 21 are comprised of a definition for shift premium eligibility for all those beginning after 2 p.m.; and

**WHEREAS**, changes to Article 24 will result in a one and one half (1.5) percent increase to the wages of employees represented by the Blue Collar Union.

**NOW, THEREFORE**, Be it resolved by the governing body of the City of Las Cruces:

(I)

THAT the changes to the CBA Articles 7, 21 and 24, attached herein as Exhibits A, B, and C are hereby approved.

(II)

THAT City staff is hereby authorized to do all deeds necessary in the accomplishment of the herein above.

DONE AND APPROVED this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

APPROVED:

(SEAL)

\_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
City Clerk

Moved by: \_\_\_\_\_

Seconded by: \_\_\_\_\_

VOTE:

Mayor Miyagishima:	_____
Councillor Silva:	_____
Councillor Connor:	_____
Councillor Pedroza:	_____
Councillor Small:	_____
Councillor Sorg:	_____
Councillor Thomas:	_____

APPROVED AS TO FORM:

  
\_\_\_\_\_  
City Attorney

## ARTICLE 7. GRIEVANCE PROCEDURE

### A. PURPOSE

The purpose of this grievance procedure shall be to secure, at the lowest administrative level, equitable resolutions to problems that may arise and are subject to review under this procedure. The parties, at any time during the grievance procedure or any steps involved in the procedure may schedule a meeting to discuss the grievance. There shall be no other grievance or appeal procedure for the employee in the bargaining unit other than that contained in this Article. By agreeing to this grievance procedure, the Union and the employees covered by this Agreement knowingly and completely waive any right they have or may had to raise a grievance, or otherwise challenge in any way, any action or inaction of the Employer regarding the terms and conditions of employment and other provisions contained in this Agreement. To the extent allowed by law, the Union and the bargaining unit employees waive the right to seek alternative remedies on any issue covered by this Agreement.

### B. DEFINITIONS

1. A "*grievance*" shall be defined as a dispute pertaining to a claim, which alleges a violation of this Agreement or an appeal of a disciplinary action, which results in a written reprimand, suspension without pay, demotion or termination.
2. A "*grievant*" shall be any employee, group of employees, or the Union.
3. "*Work Day*" shall mean Monday through Friday, not including holidays observed by the Employer.

### C. PROCEDURES

1. Failure of the grievant (Union or the employee) to properly follow the provisions of the "*Grievance Procedure*" shall result in the automatic forfeiture of the grievance with prejudice.
2. The number of days indicated at each level of this procedure shall be considered a maximum, and every effort shall be made to expedite the process.
3. If the Employer fails to comply with the time limit requirement as set forth under any of the steps, the grievance shall be considered automatically appealed to the next step.
4. If any grievance is not presented or arbitration is not requested within the time limits, and in accordance with the provisions of this Article, it shall be barred from consideration or action by and between the Union and the Employer.

5. The time limits set forth herein may be extended provided the extension has been mutually agreed upon by the parties in writing.
6. A grievance shall not be considered unless the grievant initiates the grievance no later than five (5) working days after the grievant knew, or reasonably should have known of the incident that precipitated the grievance.
7. There can be no amendments to a grievance after the five (5) working days set forth in C sub item 6 above.
8. Bargaining unit employees may not grieve promotions or non-selection for promotion.
9. The procedure for grieving a suspension or demotion shall be that set forth in Step 3 and shall be filed within five (5) working days of the employee receiving notice of discipline.
10. The procedure for grieving a termination shall be that procedure set forth in Step 4. The grievance concerning termination shall be filed with the City Manager within five (5) working days of the employee receiving notice of termination.
11. The grievant and/or the union may request a meeting before the written response from the Department Director and/or the City Manager is due.
12. Management responses to Union grievance requests shall be delivered in person. In cases where individual grievants are pursuing a grievance and are not available to receive a response in person, the response shall be delivered through registered mail, the date and time of mailing shall be considered the time of response for purpose of computing time limit requirements.

D. STEPS:

**STEP 1.** The grievant shall make a good faith effort to resolve the issue. A good faith effort shall consist of a face-to-face meeting between the grievant and the immediate supervisor directly with the objective of resolving the grievance. The supervisor shall attempt to resolve the matter and shall respond to the grievant within five (5) working days. The filing of a formal, written grievance shall not preclude continuing a good faith effort to resolve the grievance. The good faith effort does not extend the time limit(s) included in this procedure.

**STEP 2.** If the grievance is not settled at Step 1, it may be presented in writing by the Union Steward, Chairman of the Union Grievance Committee, union designee, or the employee to the Section Administrator within five (5) working days after the Step 1 response was due. The employee shall provide a copy of the grievance to the Union. To be considered, the grievance must be submitted within the established time limits and contain at a minimum what contract provision(s) of this Collective Bargaining Agreement is (are) believed to be violated; the facts constituting the violation; and the relief requested. The Section Administrator shall respond to the Union Steward, Chairman of the

Union Grievance Committee, union designee, or the employee within five (5) working days of receipt.

**STEP 3.** If the grievance still remains unadjusted, it may be presented in writing by the Union Steward, Grievance Committee Chairman or the employee to the Department Director within five (5) working days after the response of the Section Administrator. The Department Director shall respond in writing to the Union Steward, Grievance Committee Chairman or employee within five (5) working days of receipt.

**STEP 4.** If applicable, and the grievance still remains unadjusted, it may be presented in writing by the Union Steward, Grievance Committee Chairman or the employee to the Assistant City Manager within five (5) working days after the response of the Section Administrator or department Director. The Assistant City Manager shall respond in writing to the Union Steward, Grievance Committee Chairman or employee within five (5) working days of receipt.

**STEP 5.** If the grievance still remains unadjusted, it may be presented in writing by the Union Steward, Grievance Committee Chairman or employee to the City Manager, or designee, within five (5) working days after the response of the Department Director. The City Manager, or designee, shall respond in writing to the Union Steward, Grievance Committee Chairman or employee within ten (10) working days of receipt.

**STEP 6.** If the grievance is not resolved with the decision of the City Manager, either the Union or the Employer may request arbitration. In the event an individual employee requests arbitration, he/she must obtain the written approval of the Union to proceed. If the Union does not approve the employee's request, the decision of the City Manager is final and binding on the Union, the employee and the Employer. The party who requests arbitration must submit a request to the Federal Mediation and Conciliation Service within ten (10) working days of receipt of the City Manager's Step 4 response to the grievance. Failure to request arbitration within the ten (10) day time frame will render the grievance null and void.

The time limit in this Step may be extended by either party by mutual agreement in writing, not to exceed thirty (30) calendar days from the City Manager's response due date.

#### **E. ARBITRATION**

1. The arbitrator will be selected from a panel of seven (7) arbitrators requested from the Federal Mediation and Conciliation Service. Each party reserves the right to request additional panels. The moving party to the arbitration shall strike the first name from any panel. The parties shall alternatively strike names until there is one name remaining who shall be the arbitrator.
2. The arbitrator shall conduct the hearing as soon as possible.

3. The arbitrator's decision shall be in writing and shall include the decision, the rationale, and if appropriate, the relief. The arbitrator shall not have the authority to expand, or add to, the rights of employees or the Union under the terms of the Collective Bargaining Agreement.
4. The arbitrator's decision shall be final and binding on the parties and shall constitute an award within the meaning of the Uniform Arbitration Act. Reasons for appeals to court are set forth in the Uniform Arbitration Act.
5. The arbitrator's fees and costs shall be shared equally by the parties. All other expenses shall be assumed by the party incurring the costs, including the cost of witnesses. The parties may mutually agree to share the cost of providing a verbatim record of the proceedings.

#### F. MISCELLANEOUS

1. No reprisal or retaliation by any party shall be taken against any person who participates or is a witness in the proceeding of a grievance.
2. A grievant may be accompanied and/or represented by no more than two Union representatives at any hearing or meeting conducted under this procedure.
3. Any employee acting individually may present a grievance without the intervention of the Union provided the grievance has been processed in accordance with this procedure. Any adjustment made shall not specifically violate the provisions of this Collective Bargaining Agreement. At any grievance meeting held at Step 4 level or above, the Union has the right to be present and to make its views known.
4. A grievant shall not abuse legitimate grievance processes resulting in repeated unsubstantiated claims.
5. Employees providing false testimony in a grievance hearing or meeting may be subject to disciplinary action, up to and including termination.
6. All documents related to a grievance shall be maintained as a separate file from an employee's personnel file. This provision shall not apply to documents related to a grievance over a disciplinary action unless such documents are removed from an employee's personnel file as relief given in the disposition of a grievance.
7. All grievances and responses hereto shall be filed and processed in accordance with this Collective Bargaining Agreement.
8. The grievant and the Union's processing of the grievances shall be conducted on unpaid time unless otherwise agreed to by the parties.

**ARTICLE 21. SHIFT PREFERENCE**

When the Employer determines that work shifts are eligible for bidding, such bidding shall be based upon seniority. Employee seniority shall be calculated as continuous length of service in the classification and Section eligible for the bid.

An employee, a group of employees, or the Union may request a review by the Department Director of departmental shift bidding practices.

An employee regularly scheduled to begin their shift at or past 2 p.m. shall receive an additional forty-five (45) cents per hour for hours worked during these shifts. A shift is defined as eight (8) hours or more.

Qualifying workers will be determined by management with input from the Union.

**ARTICLE 24. PAY INCREASE**

- A. Effective on the first full pay period after adoption of this contract by the City council and ratification by Union membership, all eligible bargaining unit employees shall receive an increase to base wages of one and one half (1.5) percent.
- B. No earlier than one hundred and twenty (120) days prior to the second anniversary date of adoption, either party may notify the other in writing of its desire to re-open this Agreement, provided such re-opener shall be limited to Article 24 Pay Increase and one (1) other article. Upon such notice given, the duly authorized representatives of the parties shall meet for the purpose of negotiating with respect to said matters.
- C. There shall be no other increase during the term of this agreement.