

# IBEW Local 684 Pension Trust (Part A)

## Amendment No. 5

Pursuant to Section 11.01 of the Plan the Trustees have the right from time to time to modify or amend the Plan in whole or in part. Subject to the right to amend the Plan the following amendments to the Plan are adopted effective January 1, 2007 or at such earlier time as may be required by law.

### **ARTICLE I, DEFINITIONS, Section 1.01 is amended by adding subsection B.**

#### **SECTION 1.01**

A. "Actuarial Equivalent" shall mean two benefits of equal actuarial present value based on the actuarial factors or assumptions specified in the provision in which the phrase is used or, if not otherwise specified, based on the assumptions described in section 1.02.

B. "Accrued Benefit" means the actuarial equivalent of the accrued benefit of each participant resulting from the combination past credited service benefit accruals and future credited service benefit accruals. Accrued Benefits shall not be subject to reduction by virtue of Plan amendment.

##### *(1) Protection of accrued benefits—*

(a) *General rule.* A plan amendment includes any changes to the terms of a plan, including changes resulting from a merger, consolidation, or transfer (as defined in section 414(l)) or a plan termination.

(b) The protection of section 411(d)(6) applies to a participant's entire accrued benefit under the plan as of the applicable amendment date, without regard to whether the entire accrued benefit was accrued before a participant's severance from employment or whether any portion was the result of an increase in the accrued benefit of the participant pursuant to a plan amendment adopted after the participant's severance from employment.

##### *(2) Plan provisions taken into account—*

(a) *Direct or indirect reduction in accrued benefit.* For purposes of determining whether a participant's accrued benefit is decreased, all of the amendments to the provisions of a plan affecting, directly or indirectly, the computation of accrued benefits are taken into account. Plan provisions indirectly affecting the computation of accrued benefits include, for example, provisions relating to years of service and compensation.

(b) *Amendments effective with the same applicable amendment date.* In determining whether a reduction in a participant's accrued benefit has occurred, all plan amendments with the

same applicable amendment date are treated as one amendment. Thus, if two amendments have the same applicable amendment date and one amendment, standing alone, increases participants' accrued benefits and the other amendment, standing alone, decreases participants' accrued benefits, the amendments are treated as one amendment and will only violate section 411(d)(6) if, for any participant, the net effect is to decrease participants' accrued benefit as of that applicable amendment date.

**ARTICLE I, DEFINITIONS, Section 1.08 is amended by adding subsections (I) and (ii) to the definition of "Compensation."**

Section 1.08. *"Compensation"* shall mean a Participant's earned income, wages, salaries, and fees for professional services, and other amounts received for personal services actually rendered in the course of employment with an Employer (including tips, bonuses, commissions and profit sharing). Compensation shall also include elective deferrals under Internal Revenue Code Sections 401(k), 402(e)(3), 402(h), 403(b), 457, and 408(p)(2)(A)(I), and under a savings incentive plan (SIMPLE) or Internal Revenue Code Section 125 cafeteria plan. For limitation years beginning on or after February 1, 2001, for purposes of applying the limitations described in the Plan, "Compensation" paid or made available during such limitation years shall include elective amounts that are not includable in the gross income of the Participant by reason of IRC §132(f)(4).

Compensation will not include the following:

- (1) Amounts realized from the exercise of a nonqualified stock option, or when restricted stock (or property) held by the Employee either becomes freely transferable or is no longer subject to a substantial risk of forfeiture; and
- (2) Amounts realized from the sale, exchange or other disposition of stock acquired under a qualified stock option.

Notwithstanding this provision, the annual compensation of each Participant taken into account under the Plan for any year shall not exceed the Annual Compensation Limit under IRC Section 401(a)(17). For Plan Years beginning on or after December 31, 2001, the Annual Compensation Limit is \$200,000, as adjusted by the Commissioner for increases in the cost of living in accordance with IRC Section 401(a)(17)(B).

(3) Compensation for a limitation year includes compensation paid by the later of (a) 2½ months after an employee's severance from employment with the employer maintaining the plan or (b) the end of the limitation year that includes the date of the employee's severance from employment with the employer maintaining the plan, if – (I) the payment is regular compensation for services during the employee's regular working hours, or compensation for services outside the employee's regular working hours (e.g., overtime or shift differential), commissions, bonuses, or other similar payments and the payment would have been paid to the employee prior to a severance from employment if the employee had continued in employment with the employer; or

(ii) the payment is for unused accrued bona fide sick, vacation, or other leave, but only if the employee would have been able to use the leave if the employee had continued in employment, and the plan provides that the payment is included in § 415(c)(3) compensation; or (iii) received by an employee pursuant to a nonqualified unfunded deferred compensation plan, but only if the payment would have been paid to the employee at the same time if the employee had continued in employment with the employer and only to the extent that the payment is includable in the employee's gross income, and the plan provides that the payment is included in § 415(c)(3) compensation. (§ 1.415(c)-2(e)(3)).

(4) The rule that otherwise excludes post-severance pay from compensation does not apply to (a) payments to an individual who does not currently perform services for the employer because of qualified military service or (b) to compensation paid to a participant who is permanently and totally disabled. (§ 1.415(c)-2(e)(4)).

**ARTICLE V, HUSBAND-AND-WIFE PENSION, Section 5.01 is amended by adding paragraph D.**

**Section 5.01. General.**

A. Upon retirement, the Husband-and-Wife Pension ("Joint and Survivor Annuity") provides a lifetime pension for a married Pensioner (a participant that has been married for the 12 months immediately prior to his or her annuity starting date or married for the 12 months immediately prior to his or her death, whichever is more favorable to the surviving spouse) who otherwise meets the eligibility requirements for any type of Pension under the provisions of Article III, plus a lifetime pension for his surviving Spouse, starting after the death of the Pensioner. In the event of death before retirement, the Husband-and-Wife Pension provides a lifetime pension to the surviving Spouse of a married Participant who is vested in accordance with Section 4.06.

B. The monthly amount to be paid to the surviving Spouse (the "automatic form") is one-half (50%) of the monthly amount which was payable or would have been payable to the deceased Pensioner or Participant. When a Husband-and-Wife Pension is in effect, the monthly amount of the Participant's pension is reduced from the full amount otherwise payable in accordance with the provisions of Section 5.05.

C. An unmarried Participant shall be provided a single life annuity as the automatic form of benefit unless he or she elects another form of benefit during the election period.

D. The surviving Spouse may also elect a 75% or 100% Joint & Survivor Annuity. The annuitant's (Participant/Pensioner) pension benefit will be actuarially reduced from the amount that would otherwise be paid in the form of a single life annuity if the pension benefit is paid in the form of a 50%, 75% or 100% Husband-and-Wife Pension.

**ARTICLE VIII, MAXIMUM BENEFITS, Section 8.01(a)(1) is amended by adding the following language:**

The provisions of this Section 8.01(a) (1) to the contrary notwithstanding, the annual compensation of each Participant taken into account under the Plan for any year shall not exceed the Annual Compensation Limit under IRC Section 401(a)(17), as defined herein. For Plan Years prior to February 1, 1996, and before December 31, 2001, the Annual Compensation Limit is \$200,000, as adjusted by the Commissioner for increases in the cost of living in accordance with Section 401(a)(17)(B) of the Internal Revenue Code. For Plan Years beginning on or after February 1, 1996, the Annual Compensation Limit is \$150,000, as adjusted by the Commissioner for increases in the cost of living in accordance with IRC Section 401(a)(17)(B). For Plan Years beginning on or after December 31, 2001, the Annual Compensation Limit is \$200,000, as adjusted by the Commissioner for increases in the cost of living in accordance with IRC Section 401(a)(17)(B). The dollar limitation in effect under section 415 (b)(1)(A) of the Code (\$90,000 for limitation years beginning prior to March 1, 2001 and \$160,000 after April 30, 2001) or its Actuarial Equivalent payable in a different form. For purposes of IRC Section 415 the limitation year shall be the Plan Year.

**ARTICLE IX, SPECIAL PROVISIONS FOR ELIGIBLE, ROLLOVER DISTRIBUTIONS is amended by adding Section 9.03:**

**SECTION 9.03 DIRECT ROLLOVERS OF PLAN DISTRIBUTIONS**

A. Elective transfer: If a participant elects a rollover distribution be paid directly to an eligible retirement plan and specifies the eligible retirement plan to which distribution is to be made in a form and at such time as the plan administrator may prescribe such distribution shall be made in the form of a direct trustee to trustee transfer to the eligible retirement plan so specified by the participant.

B. Mandatory distribution: Any mandatory distribution that the participant does not elect to receive directly, in excess of \$1,000, shall only be made to an individual retirement plan of a designated trustee or issuer. The plan shall notify the participant in writing either separately or as part of the notice under IRC 402(f) that the distribution may be transferred to another individual retirement plan.

**ARTICLE X, MISCELLANEOUS, is amended by adding Sections 10.8, 10.9 and 10.10 as follows:**

Section 10.8. To the extent required by law, the Plan shall comply with top heavy requirements of Internal Revenue Code section 416 and applicable regulations issued thereunder, including any requirements added as a result of EGTRRA (§613). Such provisions are incorporated herein by reference. This Plan is a multiemployer collectively bargained plan and as

such there are no key employees nor can it become top-heavy as the term is defined in the Internal Revenue Code. [Effective December 31, 2001]

Section 10.9. The Plan adopts the Applicable Interest Rate (AIR) provisions in IRC section 415(b)(2)(E)(ii) to any optional forms of benefits that are subject to IRC section 417 (3) (3).

Section 10.10. The Plan adopts the required distribution provisions of IRC section 401 (a) (9).

**ARTICLE XII (formerly Amendment No. 5 to the prior Plan and now included in the Restated Plan) is added as follows:**

**Article XII. MINIMUM DISTRIBUTION REQUIREMENTS.**

**Section 1. General Rules**

**1.1. Effective Date.** Unless an earlier effective date is specified in the adoption agreement, the provisions of this article will apply for purposes of determining required minimum distributions for calendar years beginning with the 2003 calendar year.

**1.2. Coordination with Minimum Distribution Requirements Previously in Effect.** If the adoption agreement specifies an effective date of this article that is earlier than calendar years beginning with the 2003 calendar year, required minimum distributions for 2002 under this article will be determined as follows. If the total amount of 2002 required minimum distributions under the plan made to the distributee prior to the effective date of this article equals or exceeds the required minimum distributions determined under this article, then no additional distributions will be required to be made for 2002 on or after such date to the distributee. If the total amount of 2002 required minimum distributions under the plan made to the distributee prior to the effective date of this article is less than the amount determined under this article, then required minimum distributions for 2002 on and after such date will be determined so that the total amount of required minimum distributions for 2002 made to the distributee will be the amount determined under this article.

**1.3. Precedence.** The requirements of this article will take precedence over any inconsistent provisions of the plan.

**1.4. Requirements of Treasury Regulations Incorporated.** All distributions required under this article will be determined and made in accordance with the Treasury regulations under section 401(a)(9) of the Internal Revenue Code.

**1.5. TEFRA Section 242(b)(2) Elections.** Notwithstanding the other provisions of this article, distributions may be made under a designation made before January 1, 1984, in

accordance with section 242(b)(2) of the Tax Equity and Fiscal Responsibility Act (TEFRA) and the provisions of the plan that relate to section 242(b)(2) of TEFRA.

## **Section 2. Time and Manner of Distribution.**

**2.1. Required Beginning Date.** The participant's entire interest will be distributed, or begin to be distributed, to the participant no later than the participant's required beginning date.

**2.2. Death of Participant Before Distributions Begin.** If the participant dies before distributions begin, the participant's entire interest will be distributed, or begin to be distributed, no later than as follows:

(a) If the participant's surviving spouse is the participant's sole designated beneficiary, then, except as provided in the adoption agreement, distributions to the surviving spouse will begin by December 31 of the calendar year immediately following the calendar year in which the participant died, or by December 31 of the calendar year in which the participant would have attained age 70½, if later.

(b) If the participant's surviving spouse is not the participant's sole designated beneficiary, then, except as provided in the adoption agreement, distributions to the designated beneficiary will begin by December 31 of the calendar year immediately following the calendar year in which the participant died.

© If there is no designated beneficiary as of September 30 of the year following the year of the participant's death, the participant's entire interest will be distributed by December 31 of the calendar year containing the fifth anniversary of the participant's death.

(d) If the participant's surviving spouse is the participant's sole designated beneficiary and the surviving spouse dies after the participant but before distributions to the surviving spouse begin, this section 2.2, other than section 2.2(a), will apply as if the surviving spouse were the participant. For purposes of this section 2.2 and section 4, unless section 2.2(d) applies, distributions are considered to begin on the participant's required beginning date. If section 2.2(d) applies, distributions are considered to begin on the date distributions are required to begin to the surviving spouse under section 2.2(a). If distributions under an annuity purchased from an insurance company irrevocably commence to the participant before the participant's required beginning date (or to the participant's surviving spouse before the date distributions are required to begin to the surviving spouse under section 2.2(a)), the date distributions are considered to begin is the date distributions actually commence.

**2.3. Forms of Distribution.** Unless the participant's interest is distributed in the form of an annuity purchased from an insurance company or in a single sum on or before the required beginning date, as of the first distribution calendar year distributions will be made in accordance with sections 3 and 4 of this article. If the participant's interest is distributed in the form of an

annuity purchased from an insurance company, distributions thereunder will be made in accordance with the requirements of section 401(a)(9) of the Code and the Treasury regulations.

### **Section 3. Required Minimum Distributions During Participant's Lifetime.**

**3.1. Amount of Required Minimum Distribution For Each Distribution Calendar Year.** During the participant's lifetime, the minimum amount that will be distributed for each distribution calendar year is the lesser of:

(a) the quotient obtained by dividing the participant's account balance by the distribution period in the Uniform Lifetime Table set forth in section 1.401(a)(9)-9 of the Treasury regulations, using the participant's age as of the participant's birthday in the distribution calendar year; or

(b) if the participant's sole designated beneficiary for the distribution calendar year is the participant's spouse, the quotient obtained by dividing the participant's account balance by the number in the Joint and Last Survivor Table set forth in section 1.401(a)(9)-9 of the Treasury regulations, using the participant's and spouse's attained ages as of the participant's and spouse's birthdays in the distribution calendar year.

**3.2. Lifetime Required Minimum Distributions Continue Through Year of Participant's Death.** Required minimum distributions will be determined under this section 3 beginning with the first distribution calendar year and up to and including the distribution calendar year that includes the participant's date of death

### **Section 4. Required Minimum Distributions After Participant's Death.**

#### **4.1. Death On or After Date Distributions Begin.**

(a) **Participant Survived by Designated Beneficiary.** If the participant dies on or after the date distributions begin and there is a designated beneficiary, the minimum amount that will be distributed for each distribution calendar year after the year of the participant's death is the quotient obtained by dividing the participant's account balance by the longer of the remaining life expectancy of the participant or the remaining life expectancy of the participant's designated beneficiary, determined as follows:

(1) The participant's remaining life expectancy is calculated using the age of the participant in the year of death, reduced by one for each subsequent year.

(2) If the participant's surviving spouse is the participant's sole designated beneficiary, the remaining life expectancy of the surviving spouse is calculated for each distribution calendar year after the year of the participant's death using the surviving spouse's age as of the spouse's birthday in that year. For distribution calendar years after the year of the surviving spouse's death, the remaining life expectancy of the surviving spouse is calculated using

the age of the surviving spouse as of the spouse's birthday in the calendar year of the spouse's death, reduced by one for each subsequent calendar year.

(3) If the participant's surviving spouse is not the participant's sole designated beneficiary, the designated beneficiary's remaining life expectancy is calculated using the age of the beneficiary in the year following the year of the participant's death, reduced by one for each subsequent year.

(b) No Designated Beneficiary. If the participant dies on or after the date distributions begin and there is no designated beneficiary as of September 30 of the year after the year of the participant's death, the minimum amount that will be distributed for each distribution calendar year after the year of the participant's death is the quotient obtained by dividing the participant's account balance by the participant's remaining life expectancy calculated using the age of the participant in the year of death, reduced by one for each subsequent year.

#### **4.2. Death Before Date Distributions Begin.**

(a) Participant Survived by Designated Beneficiary. Except as provided in the adoption agreement, if the participant dies before the date distributions begin and there is a designated beneficiary, the minimum amount that will be distributed for each distribution calendar year after the year of the participant's death is the quotient obtained by dividing the participant's account balance by the remaining life expectancy of the participant's designated beneficiary, determined as provided in section 4.1.

(b) No Designated Beneficiary. If the participant dies before the date distributions begin and there is no designated beneficiary as of September 30 of the year following the year of the participant's death, distribution of the participant's entire interest will be completed by December 31 of the calendar year containing the fifth anniversary of the participant's death.

(c) Death of Surviving Spouse Before Distributions to Surviving Spouse Are Required to Begin. If the participant dies before the date distributions begin, the participant's surviving spouse is the participant's sole designated beneficiary, and the surviving spouse dies before distributions are required to begin to the surviving spouse under section 2.2(a), this section 4.2 will apply as if the surviving spouse were the participant.

#### **Section 5. Definitions.**

**5.1. Designated beneficiary.** The individual who is designated as the beneficiary under the plan and is the designated beneficiary under section 401(a)(9) of the Internal Revenue Code and section 1.401(a)(9)-1, Q&A-4, of the Treasury regulations.

**5.2. Distribution calendar year.** A calendar year for which a minimum distribution is required. For distributions beginning before the participant's death, the first distribution calendar

year is the calendar year immediately preceding the calendar year which contains the participant's required beginning date. For distributions beginning after the participant's death, the first distribution calendar year is the calendar year in which distributions are required to begin under section 2.2. The required minimum distribution for the participant's first distribution calendar year will be made on or before the participant's required beginning date. The required minimum distribution for other distribution calendar years, including the required minimum distribution for the distribution calendar year in which the participant's required beginning date occurs, will be made on or before December 31 of that distribution calendar year.

**5.3. Life expectancy.** Life expectancy as computed by use of the Single Life Table in section 1.401(a)(9)-9 of the Treasury regulations.

**5.4. Participant's account balance.** The account balance as of the last valuation date in the calendar year immediately preceding the distribution calendar year (valuation calendar year) increased by the amount of any contributions made and allocated or forfeitures allocated to the account balance as of dates in the valuation calendar year after the valuation date and decreased by distributions made in the valuation calendar year after the valuation date. The account balance for the valuation calendar year includes any amounts rolled over or transferred to the plan either in the valuation calendar year or in the distribution calendar year if distributed or transferred in the valuation calendar year.

**5.4 Required Beginning Date.** The required beginning date shall be the date as specified in this Plan is required by the Internal Revenue Code.

DATED: October 27, 2009

  
Pete Halver - Management Trustee

DATED: October 27, 2009

  
Billy Powell - Labor Trustee (Chairman)