

State of New York  
Public Employment Relations Board

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In the Matter of the Interest Arbitration between:

United Public Service Employees Union (Police Unit)  
Petitioner

-and-

The Town of Windham, New York  
Respondent

PERB Case # IA2009-004; M2008-290

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Before: The Public Arbitration Panel

Sumner Shapiro, Public Member and Chairperson  
Elayne G. Gold, Esq., Public Employer Member  
Gary M. Hickey, Employee Organization Member

## **I. INTRODUCTION**

This document constitutes the Opinion and Award of a Public Arbitration Panel designated by the New York State Public Employment Relations Board (PERB) pursuant to NYS Civil Service Law, Section 209.4 on June 18, 2009. The Petitioner is the United Public Service Employees Union (Police Unit) which is hereinafter referred to variously as; "the Union", "the Employees", "the Officers" or "the UPSEU." The Respondent is the Town of Windham, New York which is hereinafter referred to variously as; "the Town", "the Employer", "the Board", "Windham", or "the Respondent". The Union was certified as Bargaining Agent by PERB on June 25, 2007 and the parties entered into negotiations to implement an initial Collective Bargaining Agreement (CBA) on September 19, 2007. These negotiations were conducted over a period of time without achieving accord and impasse was declared on January 28, 2009 when mediation efforts commenced. The parties were unable to reach a consensus and the Union submitted a Demand for Interest Arbitration on May 11, 2009 culminating in the designation of the above named panel on June 17, 2009. The parties did however continue to seek accord prior to commencing a hearing but their efforts were thwarted by among other things the untimely death of the Town's Supervisor who was a significant member of the Respondent's negotiating team. Subsequently a hearing was conducted at the Windham Town Hall on July 15, 2010. The panel was further delayed awaiting PERB's resolution of Town Improper Practices charges issued by ALJ Poland on September 22, 2010. The mandatory jurisdiction of this panel is to set the terms of the initial CBA for the years commencing January 1, 2009 and January 1, 2010 respectively. In the course of the Panel's deliberations the parties authorized extension of its jurisdiction to encompass the two subsequent calendar years; namely, the years commencing January 1, 2011 and January 1, 2012 respectively (Appendices I and II hereto).

In the hearing before the panel the parties were afforded unfettered opportunity to provide documentary and testimonial evidence, to examine and cross-examine witnesses, and to offer arguments in support of their respective positions. Neither party questioned the conduct or duration of the hearing at the conclusion of which they opted to submit and directly exchange post hearing briefs which obligation was timely met on August 30, 2010.

Attendance and Appearances

For the Union

Jack F. Rogers Labor Relations Representative United Public Service Employees Union	Union Advocate
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Edward J. Fennell Financial Consultant	Witness
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Greg D. Thorp Patrolman Windham Police Department	Witness
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For the Town of Windham

Dionne A. Wheatley, Esq Roemer Wallens Gold & Mineaux	Employer Counsel
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Stephen J. Walker Supervisor, Town of Windham	Attending
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Cynthia Nelson Bookkeeper to the Supervisor Town of Windham	Witness
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Daniel Frank Interim County Administrator Greene County	Witness
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Exhibits

Union Exhibits

U 1 Union Opening Statement summarizing history of negotiations, newspaper reports, and proposed Collective Bargaining Agreement (CBA)

- U 2 UPSEU response to Improper Practice (I P) charges. Cover letter to Honorable Gregory Poland, Regional Director, PERB by Gary Hickey, Executive V P, Dated July 8, 2010, seven pages
- U 3 Employer Brief relating to Scope Charge in I P (Exhibit U2). Cover letter to Gregory Poland by Roemer Wallens Gold & Mineaux by Elayne G. Gold, dated July 9, 2010, 34 pages
- U 4 Text of narrative statement of Greg Thorp before panel on July 15, 2010, four pages
- U 5 Ability to Pay exhibits consisting of:  
 Annual Financial Report for Year ending 12/31/09  
 Budget for calendar 2010  
 History of Revenues Actual versus Estimates 2006-2010  
 Local Government Snapshot NYS Comptroller, June 2010  
 by Witness Edward J Fennell, UPSEU Financial Consultant

Employer Exhibits

- E1 Employer Binder consisting of 27 Exhibits consisting of:  
 Proposals Status  
 Town Board Resolution #29 of 2009  
 Police Personnel Data Sheet/Salary cost 2006-2010  
 Police Personnel Hours Worked 2009/2010  
 Town of Windham State Aide Per Capita 2007-2010  
 Town of Windham Payments to New York State Police and Fire Retirement 2007-2009  
 Town of Windham Health and Dental Insurance Rates 2006-2010 and Costs 2009-2010  
 Town of Windham Building Permits 2006-2010  
 Town of Windham Unappropriated Fund Balance 2006-2010  
 Town of Windham Delinquent Tax History 2004-2009  
 Unpaid Town and Green County Taxes 2007-2009  
 Town of Windham Tax Rate Comparisons 2007-2010  
 Town of Windham Mortgage Tax History 2007-2010  
 Town of Windham Full-Time Benefit Schedule  
 Town of Windham Employee Salary History 2000-2010  
 Town of Windham Payroll Analysis 2006-2010  
 Town of Windham Labor Costs Analysis 2006-2010  
 Town of Windham Police Department Budget Costs 2006-2010  
 Town of Windham Analysis of Union's Proposals  
 Compensation Article 7, Section A  
 Longevity Article 7, Section D  
 Health Insurance Article 8  
 Shift Differential Article 11  
 Vacation Article 12

Uniform Maintenance Costs of Union Proposal,  
 Article 20, Section A2  
 Town of Windham Highway Uniform Allowance Costs 2009  
 Town of Windham Debt Schedule 2010-2025  
 Town of Windham 2008 Final Budget  
 Town of Windham 2009 Final Budget  
 Town of Windham 2010 Final Budget  
 Town of Windham Annual Financial Report December 31, 2009  
 and 2008  
 Town of Windham Comparability Study  
 Town of Windham Analysis of UPSEU Proposals by Daniel Frank

E 2 Power Point screens presented by Witness Daniel Frank, Consultant to Town of Windham, 14 pages

Items Before Panel

(AIIIp2,3) Article 4-Union Rights, Sections A and D  
 (AIIIp3) Article 5-Grievance Arbitration  
 (AIIIp5) Article 6-Disciplinary Action  
 (AIIIp6) Article 7-Compensation, Sections A, B, C, D, F  
 (AIIIp8) Article 8-Health Insurance, Sections A, B, C, D  
 (AIIIp9) Article 11-Work Schedule, Sections A, B, C, D, E, F  
 (AIIIp10) Article 12-Vacation, Section A, B, C, B  
 (AIIIp10,11) Article 13-Sick Leave, Sections A, C, E, F  
 (AIIIp11) Article 14-Personal Leave, Sections A, B, C  
 (AIIIp11) Article 15-Bereavement Leave  
 (AIIIp12) Article 16-Jury Duty  
 (AIIIp12) Article 17-Holidays  
 (AIIIp12) Article 18-Seniority  
 (AIIIp12,13) Article 19-Job Security, Sections A, B  
 (AIIIp13) Article 20-Working Conditions, Sections A 1, A 2  
 (AIIIp14) Article 21-Retirement  
 (AIIIp14) Article 22-Indemnification

In addition the Panel reviewed the entire proposed CBA to ensure the propriety and accuracy of all provisions of this maiden CBA.

**II. PANEL COMMENTS AND OPINION**

This matter encompasses some properties which if not unique are unusual and relevant. Firstly, it is involved with formulating the first CBA between an established employee organization and a small town with no prior collective bargaining experience. Its experience is limited to the present impasse with the Windham Police Department bargaining unit. This is also in this specific employment an initial experience for the Union's members as well. We infer that this gives rise to a measure of caution and restrained flexibility. Secondly, the bargaining unit itself consists of nominally 10 people nine of whom are part-timers who in the last full calendar year, 2009, worked an average of nominally 350 hours. This, not surprisingly, has impacted on past practices in

determining direct compensation and fringe entitlements. It also influences determination of comparable established practice. The parties have extensively researched what each identifies as comparables and the panel is indebted to them for their remarkable exhibits and presentations which have been valuable aids in adjudicating this matter. In recognizing the contributions facilitating the panel's deliberations it is appropriate also to pay tribute to the party designated panel colleagues who after lengthy executive discussions concurred in balancing conflicting positions to arrive at a nearly unanimous award albeit often reluctantly and without detectible enthusiasm. The panel was unable to bridge the gap on two items; namely, Article 11, Section D, Shift Differential (A III p 9) and Article 12, Vacation Leave (A III p 10) where Arbitrator Gold maintained her dissent. In this document, non-concurrence is intended to be synonymous with dissent. Opposition to the Shift Differential providing a one dollar per hour shift premium for night shift service built on the contention that these shifts are manned by part time officers who elect, and arguably prefer, to work those hours. Mr. Hickey, the Union designee argued that the lesser desirability of night shifts conventionally merits premium pay. The argument that Part-time officers prefer these shifts is speculative but assuming arguendo that to be the case, we think it nonetheless true that the Town is what is widely accepted to be premium service and the employee should not be deprived of appropriate compensation merely because she or he enjoys the job. On this basis we opted to support the Union position over Ms. Gold's unyielding opposition. Consequently Article 11, Section D (A III p9) was adopted by a 2 to 1 vote.

In the matter of Vacation Leave the Employer strenuously opposed vacation pay for Part-time officers and Arbitrator Hickey equally vehemently contended workers normally earn, in each hour worked, direct monetary and proportional fringe benefits and are absolutely entitled to pro rata vacation time. This Chairman viewed neither of these provisions as so onerous as to forestall implementation of the laboriously crafted agreements on all other, and mostly more significant issues. While we denied the Union proposal to enrich full time vacation schedules we concluded the weight of evidence supported Part-time officers entitlements when they have worked a minimum of 520 hours in each of the three preceding calendar years. Article 12 (A IIIp10) was adopted by the 2 to 1 vote of the Chairperson and Mr. Hickey.

The Panel broadly divided the issues into two categories; namely, (1) economic matters and (2) management prerogatives and union and member entitlements. In addressing the economic concerns our focus was on comparable practice and ability to pay. We have considered the Union citation of assets available in the Unallocated Fund Balance as well as the Town's contention that it has been deceptively enriched by nonrecurring revenues. On balance we concluded the Employer's ability to pay is sufficient for it to meet the levels of prevailing comparable practice. We judge the compensation levels and effective dates awarded in Article 7, Compensation (A IIIp 6) to meet that standard. The increases going forward in the present calendar year and the next are necessarily based upon the Panel's forecasts. Our expectation is a modestly recovering economy and equally modestly rising compensation levels. In our view Windham arguably is capable of compliance in the event of any likely deviation from our economic projection.

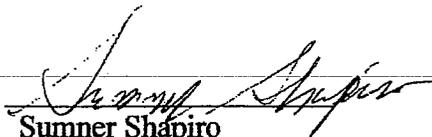
This Panel has considered and addressed every proposal placed before it by the parties and its determinations are explicitly expressed in Panel Appendix III of this document.

**III. AWARD**

Slingerlands, New York  
January 17, 2011

Respectfully submitted

State of New York )  
County of Albany )

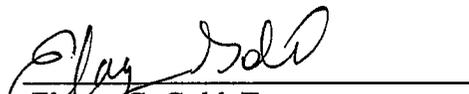
  
Summer Shapiro  
Chairperson

Sworn to me this 14 day of January, 2011

  
Notary Public

KATHLEEN A. WHIMPLE  
Notary Public, State of New York  
No. 01WH6000631  
Qualified in Schenectady County  
Commission Expires December 22, 2013

Concurring Except for Article 11, Section D  
and Article 12, Section A, Part-time Entitlement

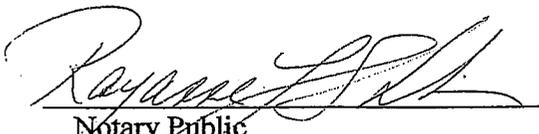
  
Elayne G. Gold, Esq.  
Public Employer Panel Member

  
Notary Public

RAYANNE L. SHEEHAN  
Notary Public, State of New York  
Qualified in Schenectady County  
No. 5039263  
Commission Expires February 13, 2015

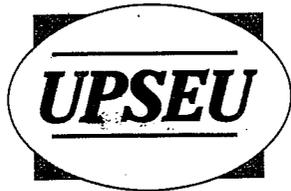
Concurring Except for Article 12, Section A  
Full Time Schedule Provision

  
Gary M. Hickey  
Employee Organization Panel Member

  
Notary Public

RAYANNE L. SHEEHAN  
Notary Public, State of New York  
Qualified in Schenectady County  
No. 5039263  
Commission Expires February 13, 2015

**PANEL APPENDIX I**  
**UNITED PUBLIC SERVICE EMPLOYEES UNION**



**COALITION OF PUBLIC SAFETY DIVISION**

21 Aviation Road · Albany · NY · 12205

1-888-735-1140 · Fax: 518-464-1116

www.upseu.org



January 10, 2011

**PANEL APPENDIX I**

Sumner Shapiro  
27 Hickory Drive  
Slingerlands, NY 12159

RE: PERB Case No. IA2009-004 UPSEU and Town of Windham

Dear Chairperson Shapiro:

Whereas §209.4 (c)(vi) of the Taylor Law may provide that an interest arbitration panel's award not exceed a period of two (2) years, subsequent litigation determined that there is no prohibition against the parties agreeing to extend the panel's jurisdiction beyond the two (2) years (12 PERB 3085 Town of Haverstraw, 13 PERB 7008 (NY Supreme Court, Rockland County 1980), affirmed 14 PERB 7028 (NY Supreme Court, Appellate Division, 2<sup>nd</sup> Dept. 1981).

United Public Service Employees Union has hereby agreed to authorize the Interest Arbitration panel to extend it's jurisdiction to four (4) years, basically applying two (2) years retroactive and two (2) years prospective. We believe the extension provides the parties the time necessary to foster an amicable labor management relationship.

Thank you and the panel for your efforts. If you have any questions, please do not hesitate to contact me.

Sincerely,

A handwritten signature in cursive script that reads "Jack F. Rogers".

Jack F. Rogers  
Labor Relations Representative

pc: Gary M. Hickey, Executive Vice President/Regional Director  
Elayne Gold, Esq.

LET9084.GMH/jcp

HEADQUARTERS

3555 Veterans Highway · Suite H · Ronkonkoma · NY · 11779 · 800-833-3688 · Fax: 631-738-7236



# PANEL APPENDIX II

## TOWN OF WINDHAM

371 State Route 296  
P.O. BOX 96  
HENSONVILLE, NY 12439  
(518) 734-4170 Fax (518) 734-6058

STEPHEN J. WALKER, SUPERVISOR  
ROBERT J. PELHAM, COUNCILMAN  
KARL GONZALEZ, COUNCILMAN

WAYNE E. VAN VALIN, COUNCILMAN  
DONALD E. MURRAY, COUNCILMAN  
CAROLYN J. GARVEY, TOWN CLERK

January 14, 2011

Sumner Shapiro, Arbitrator  
The Beverwyck  
27 Hickory Drive  
Slingerlands, New York 12159

Re: PERB Case No.: 1A2009-004  
Town of Windham and UPSEU (Police Unit)

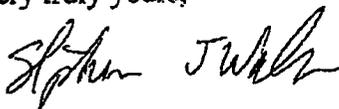
Dear Arbitrator Shapiro:

I write on behalf of the Town of Windham, New York, with connection to the above referenced Interest Arbitration Award. The Town Board authorizes the Public Arbitration Panel to assume Interest Arbitration jurisdiction covering a four (4) year collective bargaining term for January 1, 2009 through December 31, 2012.

We understand that the general jurisdiction of an Interest Arbitration Panel, in accordance with Civil Service Law Section 209.4(c)(vi), may not exceed two (2) years. However, this is a first time collective bargaining agreement and the Town Board is amenable to giving the Panel the extended two (2) year jurisdiction it needs to resolve the issues outstanding between the parties for this first time contract.

Should you need anything further, please call upon us.

Very truly yours,



Stephen Walker, Town Supervisor

cc Elayne G. Gold, Town Panel member

Gary Hickey, UPSEU Panel member

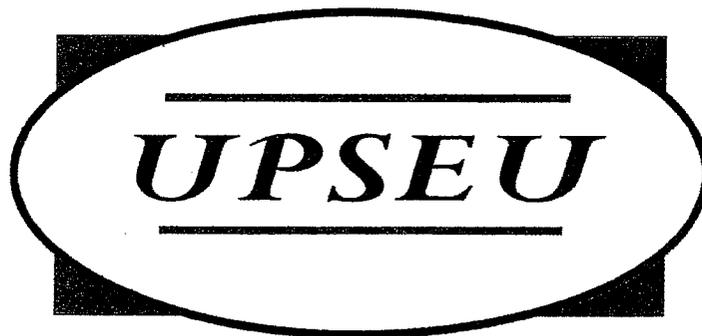
PANEL APPENDIX III

# COLLECTIVE BARGAINING AGREEMENT

*By and Between*

**TOWN OF WINDHAM**

*and*



UNITED PUBLIC SERVICE EMPLOYEES UNION  
January 1, 2009 - December 31, 2012

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## **PARTIES TO THE AGREEMENT**

This Agreement is by and between United Public Service Employees Union, hereinafter referred to as the "UNION or UPSEU" having its principal offices in the State of New York, and Town of Windham, hereinafter referred to as the "TOWN or EMPLOYER" located at P.O. Box 96, Hensonville, NY 12439, in the State of New York, as awarded by the Interest Arbitration Panel (PERB Case No. IA2009-004).

### **ARTICLE 1 WITNESSETH**

WHEREAS, the Union has been designated by a majority of the employees of the Town in the bargaining unit as their sole collective bargaining agent with respect to wages, hours and other conditions of employment, and;

WHEREAS, it is recognized that the efficient and orderly method of establishing and maintaining peaceful and harmonious labor relations and of dealing with problems and controversies arising out of employment is through negotiations and agreement in accordance with the Public Employees Fair Employment Act (Article XIV of the New York State Civil Service Law).

NOW THEREFORE, in consideration of the mutual promises herein contained, the parties agree as follows:

### **ARTICLE 2 RECOGNITION**

Section A The Town recognizes the June 25, 2007 PERB certified (C-5693), Union as the sole and exclusive representative for all Town of Windham Police Officers including Sergeants and Patrolman for the purpose of collective negotiations, for all terms and conditions of employment and the administration of grievances for the term of this Agreement.

Section B Except as expressly limited by other provisions of this Agreement, all the authority, rights and responsibilities possessed by the Town are retained by it, including, but not limited to, the right to determine the mission, purposes, objectives and policies of the Town: to determine the facility, methods, means and number of personnel required for conducting Town programs; to administer the Civil Service System, including the examination, selection, recruitment, hiring, appraisal, training, retention, promotion, assignment or transfer of employees pursuant to law; to direct, deploy and utilize the work force; to establish the specifications for each class of positions and to classify or reclassify and to allocate or reallocate new or existing positions in accordance with the law, and to discipline or discharge employees in accordance with the law and the provisions of this Agreement.

**ARTICLE 3  
DUES AND AGENCY FEES**

Section A The Town shall deduct from the wages of all employees in the unit and remit to United Public Service Employees Union (UPSEU) regular membership dues and other authorized UPSEU deductions for those employees who have signed the appropriate payroll deduction authorization(s) permitting such deductions and no other employee organization (union) shall be accorded such payroll deduction privilege. Such dues and agency fees shall be remitted to:

United Public Service Employees Union  
3555 Veterans Highway, Suite H  
Ronkonkoma, NY 11779

Section B The Town shall deduct from the wages of employees in the bargaining unit who are not members of UPSEU an amount of money equivalent to the dues levied by UPSEU and shall transmit the sum deducted to UPSEU. Such agency fee deduction shall be made in the same procedure and manner as the regular dues deductions.

Section C In the event an action or proceeding is commenced in a court of competent jurisdiction or before an administrative agency regarding such agency fee, the Union agrees to indemnify and save harmless the Town from and against the cost of such action or proceeding and to pay any judgement entered against the Town in such action or proceeding and to pay all costs upon demand the costs of complying with any interim order or final judgement that may be entered therein, reimbursement for expert witness fees, attorneys fees, arbitration fees, and all court costs and filing fees incurred by the Town.

Section D The Town agrees to provide payroll deductions for Union sponsored insurance programs provided that such deduction is not in excess of the employees gross salary and further provided the employee has signed the appropriate payroll deduction authorization.

Section E The Town shall forthwith give the Union a list containing the names of employees covered by this Agreement, their categories, wages and dates of hire and shall thereafter promptly furnish, upon written request, the names, home addresses, dates of hire, categories, and wages of all new employees in the bargaining unit.

**ARTICLE 4  
UNION RIGHTS**

Section A The Town agrees that the Union shall have the sole and exclusive right to designate its own representatives, direct and manage its own affairs, and have exclusive access to employees during working hours (with prior notice and approval of the Police Chief, Police Commission and/or his/its

designee, which shall not be unreasonably denied), to process grievances, disciplines, and discuss labor management issues, provided that such access does not interrupt the performance of normal duties and responsibilities of employees. Every effort will be made to hold such work interruptions to a minimum.

Section B The Town shall provide an exclusive UPSEU bulletin board at the Police Department.

Section C Employees shall have the right to be free of restraint, discrimination, reprisal or coercion while engaged in union activities as provided through New York Civil Service Law.

Section D The Town shall grant a total of eight (8) hours, per year, of employee organization leave (not chargeable to any other leave accruals) to the shop steward or one designee, for official union business other than procedures under the grievance procedure (Article 5). The shop steward shall be granted a reasonable amount of time off to represent other employees at grievances that have not been resolved by the Town. Such time shall be granted without change to any other leave accrual. The Union shall notify the Town at least annually of the name(s) of the Union Steward(s)/Officer(s).

## ARTICLE 5 GRIEVANCE AND ARBITRATION

Section A PURPOSE:

It is the policy of the parties that all grievances be resolved at the earliest possible step of the grievance procedure. Both parties recognize that the procedure must be available without any fear of discrimination because of its use. Settlements at any step of the grievance procedure shall bind the parties to the settlement but shall not be precedent setting in a later grievance proceeding. Further, any and all settlements must be in writing and must be signed by all necessary parties, including the grievant(s). Time limits contained herein may be extended by mutual consent of the parties.

Section B. DEFINITIONS:

1. A **grievance** is a dispute concerning the application and/or the interpretation of a specific provision of the agreement and shall be subject to all steps of this grievance and arbitration procedure.
2. A **grievant** is an employee or group of employees who submit a grievance, or on whose behalf it is submitted by the Union.
3. A **day** means a business day, Monday through Friday, excluding holidays.

4. Chief shall mean Police Chief, Police Commission and/or his/its designee.

Section C PROCEDURE:

The employee shall present his/her grievance within thirty (30) days after the date on which the action or omission giving rise to the grievance occurred. Before the submission of a written grievance, the aggrieved party or the shop steward should attempt to resolve the grievance orally with the Police Chief, Police Commission and/or his/its designee.

STEP 1

If the grievance is not resolved informally, it shall be reduced to writing and submitted to the Police Chief, Police Commission and/or his/its designee. The grievant shall identify the Article of the Contract that has been violated and the remedy sought.

The Police Chief, Police Commission and/or his/its designee shall meet with the employee, the shop steward and the Union representative within seven (7) days of the submission of the grievance. The Police Chief, Police Commission and/or his/its designee shall render a decision in writing no later than fourteen (14) days after the meeting. Failure to submit a written determination within the designated time frame shall be deemed an automatic denial of grievance. In the absence of the Police Chief, Police Commission and/or his/its designee a formal grievance shall be filed at Step 2.

STEP 2

If the grievant or the Union is not satisfied with the response, he/she may appeal the decision within fourteen (14) days to the Town Board. The Town Board shall review all documents and render a decision no later than fourteen (14) days after submission of the grievance. Failure to submit a written determination within the designated time frame shall be deemed an automatic denial of the grievance.

STEP 3

If the Union is not satisfied with the Town Board's response, or if no response is received within the fourteen (14) day time limit, the Union may submit the grievance to the Public Employment Relations Board (PERB) for binding arbitration in accordance with its rules and procedures.

The Arbitrator's decision shall be in writing and shall be final and binding on both parties. The Arbitrator shall have no power to alter, add to, or detract from this Agreement.

The cost for the services of the Arbitrator shall be paid equally by the Town and the Union.

**ARTICLE 6  
DISCIPLINE**

**Section A DISCIPLINARY ACTION**

1. Prior to any disciplinary interrogation, the employee shall be advised he/she is the subject of an investigation and/or target of discipline shall be given written notice of his/her right to Union representation.
2. No employee shall be disciplined except for just cause. Such employee shall be served with written Notice of Charges and Specifications supporting said charges. Simultaneously, a copy of this Notice shall be sent to the Union.
3. No disciplinary action shall be commenced more than twelve (12) months after the Town Board has knowledge of the alleged acts of incompetency or misconduct which would be giving rise to the disciplinary action. Such limitations shall not apply when the subject matter of the charges, if proven in a court of appropriate and competent jurisdiction, constitutes a crime.

**Section B PROCEDURE**

1. Any employee of the Police Department, after service of the Notice of Discipline, shall have the right to demand a public hearing and shall have the right to be represented by his/her Union or independent counsel. The election as to whether or not to be represented by his/her Union or independent counsel must be made at the time of filing of the Answer.
2. Any Answer to the Charges must be served no less than eight (8) calendar days after receipt of the Notice of Discipline.
3. The penalty which may be imposed by the Town Board shall consist of a Letter of Reprimand, a suspension without pay, a demotion in title and grade or discharge.
4. The Town Board reserves the right to impose the penalty immediately upon service of the Notice of Discipline.

**Section C APPEAL FROM DISCIPLINARY ACTION**

1. If the employee disagrees with the implemented penalty, the Union, on behalf of the employee, may appeal the matter directly to arbitration by filing a Demand for Arbitration with the New York State Public Employment Relations Board (PERB), in accordance with PERB's Rules and Procedures. The Demand for Arbitration in a disciplinary matter must be filed and served upon the Town Board (through the office of the Town Supervisor) within seven (7) business days from the employee receiving the Notice of Discipline.

2. The parties will mutually select an Arbitrator in accordance with PERB's Rules and Regulations.
3. The decision of the Arbitrator shall be final and binding upon all parties to the disciplinary action, including the Town, the Union and the employee.
4. The expenses of the Arbitrator will be shared equally by the parties; all other expenses that are unique to the respective party will be paid for by that party.

**Section D PART-TIME EMPLOYEES**

1. For a part-time employee, a suspension would constitute removal from any assigned shift or the employee would not be scheduled for a stated period of time as indicated specifically in the Notice of Discipline.
2. A non-competitive class or other part-time employee does not have any disciplinary protection unless the non-competitive class employee has five (5) years of Town service.

**Section E STATUTORY REPLACEMENT**

This negotiated disciplinary procedure specifically and completely replaces Section 75 and 76 of the Civil Service Law as well as Section 155 of the New York State Town Law.

**ARTICLE 7  
COMPENSATION**

**Section A Full-time patrolmen shall receive the following compensation:**

Effective September 1, 2009	\$17.00 per hour
Effective June 1, 2010	\$17.50 per hour
Effective April 1, 2011	\$17.85 per hour
Effective January 1, 2012	\$18.35 per hour

**Part-time patrolmen shall receive the following compensation:**

Effective September 1, 2009	\$14.65 per hour
Effective June 1, 2010	\$15.00 per hour
Effective April 1, 2011	\$15.35 per hour
Effective January 1, 2012	\$15.75 per hour

Sergeants shall receive \$1.00 per hour more than the hourly rate in effect for full-time patrolmen.

Section B OVERTIME

1. All hours worked in excess of forty (40) hours per week, shall be paid at the rate of one and one-half times (1 ½x) the employee's hourly pay. The Police Chief, Police Commission and/or his/its designee must pre-approve such overtime work.
2. The Town will endeavor to divide extra work (after the schedule is posted) equally among the officers, based on availability; paid at the appropriate rate of pay.
3. PREMIUM PAY - One and one-half (1 ½ ) times the regular hourly wage plus regular time; therefore, two and one-half (2 ½ x) times the regular hourly wage. "Premium Pay" shall be paid to employees after sixteen (16) straight uninterrupted hours of work, provided, however, the Police Chief, Police Commission and/or his/its designee must approve the work beyond sixteen (16) hours.
4. All paid leave shall be considered as time worked for the purpose of computing overtime.

Section C CALL-IN

1. An officer called in, at any time by Police Chief, Police Commission and/or his/its designee, shall be paid for a minimum of three (3) hours at the straight time rate, regardless of the duration of the job. Such call-ins shall be pursuant to the procedure defined in Article 7, Section B2. Call-ins will include all unscheduled work, court appearance or special detail.
2. Employees asked to work beyond their shift will be paid at the overtime rate. The "Call-in" provision will not apply.

Section D New officers shall serve a probationary period pursuant to Greene County Civil Service rules and/or Town Policy, as applicable, after which said officer shall be eligible for benefits as specifically described herein.

Section E An employee who engages as an instructor of Firearms and/or General Topics Instruction shall receive premium pay (1.5x hourly rate) for those hours actually performing those duties, with the prior approval of the Police Chief, Police Commission and/or his/its designee.

Section F An employee required to attend re-certification classes and/or training shall be paid as though he/she is on a normal work day. The Town Board must approve such attendance.

**ARTICLE 8  
HEALTH INSURANCE**

Section A The Town will provide all police officers and their dependents with the current health insurance plan or a reasonable equivalent. A full-time officer will contribute twenty-five percent (25%) toward the applicable premium. A part-time officer can join current health insurance plan at the cost of 100% of the premium. In the event the insurer makes changes to the health insurance plan, said changes are outside the Town's control and carry no liability to the Town. In the event the Town elects to change insurance plan(s), the new plan(s) must be a reasonable equivalent.

Section B The Town shall provide to all full-time officers the current vision plan and dental plan at a cost to the full-time employee of twenty-five percent (25%) of the premium, if any is offered to other full-time Town employees. In the event the insurer makes changes to the health insurance plan, said changes are outside the Town's control and carry no liability to the Town. In the event the Town elects to change insurance plan(s), the new plan(s) must be a reasonable equivalent.

**ARTICLE 9  
TIME RECORDS**

Section A Time sheets as supplied by the Town Clerk shall be submitted each pay period checked and approved by the Police Chief, Police Commission and/or his/its designee indicating the hours worked, the days off, labeled as to whether they are sick, personal, vacation or bereavement time. Any overtime worked will also be indicated on the time sheet.

Section B No time record will be altered by management without written notice to, and approval by, the employee.

**ARTICLE 10  
PAY DAY**

Section A Assuming employees submit the requisite paperwork detailing time and attendance, then the salaries and wages of employees shall be paid on a regular basis, minimum monthly.

Section B Each paycheck shall contain the accrued balances for sick leave, personal leave, and vacation leave, if applicable.

**ARTICLE 11  
WORK SCHEDULE**

Section A The scheduled workday shall be no less than eight (8) hours and no more than twelve (12) hours, including the meal period. However, the parties recognize that there may be times when the workday may be less than eight (8) hours. An officer shall respond to any call during his/her meal period, if required.

Section B The work schedule for full-time officers shall be forty (40) hours per week. The work schedule for part-time officers shall generally not exceed twenty (20) hours per week. Officers shall not be removed from their respective work schedule except as set forth herein. Officers retain the right to "mutually switch/swap" a tour of duty with prior approval of the Police Chief, Police Commission and/or his/its designee provided the switch/swap does not create overtime.

Section C The tours of duty and workdays to which police officers are assigned shall be stated on the monthly posted Department work schedule. Officers must submit their availability to the Police Chief, Police Commission and/or his/its designee by the 10<sup>th</sup> of the month. Failure of submit availability by the 10<sup>th</sup> will result in scheduling in the sole discretion of the Police Chief, Police Commissioner and/or his/its designee.

The schedule shall be posted by the Police Chief, Police Commission and/or his/its designee no later than the 20<sup>th</sup> day of the prior month.

Section D An officer who works a second or third shift on any day of the week shall be paid a night differential of \$1.00 over and above that employees' hourly rate. When differential periods overlap, only one differential of \$1.00 per hour shall be paid.

Section E Under no circumstances shall the work schedule be used for disciplinary purposes, and any and all differences with regard to the existing work schedule may be subject to the grievance procedure of this collective bargaining agreement. However, a change in the work schedule as a result of a disciplinary settlement will not be in violation of this provision.

Section F All regularly scheduled shifts vacated shall be filled pursuant to Article 7, Section B.2.

**ARTICLE 12  
VACATION LEAVE**

Section A Full-time officers shall earn vacation leave credits in accordance with the following schedule:

<u>At the completion of:</u>	<u>Vacation:</u>
1 - 5 years	40 hours
6 - 10 years	80 hours
11 - 15 years	120 hours
16 - 20 years	200 hours

Part-time officers who have worked 520 hours in each of the three (3) preceding years shall earn prorated vacation leave credits in accordance with the above schedule.

Section B Vacation leave requests from employees are to be made to the Police Chief, Police Commission and/or his/its designee. Vacation leave accruals can be used in increments of four (4) hours. Vacation leave requests shall be responded to within two (2) weeks from the date of such request and shall not be unreasonably denied.

Section C Holidays occurring during the specified vacation period shall be added to the vacation period on the first working day or taken at another time as approved by the Police Chief, Police Commission and/or his/its designee. Seniority shall prevail in vacation choice.

Section D If upon separation from service an officer has accumulated vacation leave on the books, the Town will pay to that employee the current daily rate of pay for all accumulated vacation days.

Section E Vacation leave may not be carried-over into the next year unless the Town denies employees request to use vacation leave.

**ARTICLE 13  
SICK LEAVE**

Section A Full-time officers shall be credited sick leave at the following rate, eligible after one (1) month of employment: effective January 1, 2010 forty (40) hours per year and effective January 1, 2012 eighty (80) hours per year.

Accumulated sick leave credits shall be used only for an employee's personal or family (parents, children, spouse, sibling) illness. Sick leave will be accumulated while an employee is in a pay status. All full-time officers will be permitted sick leave accumulation of a maximum of eighty (80) hours.

Section B Employees are responsible for reporting the use of sick leave. Advance notification shall be given whenever possible. Employees must give notification of their absence no later than one hour before the normal

starting time of their shift. If no such notification is given, the use of sick leave will be denied and will not be paid for the day.

Section C After more than three (3) consecutive days of absence on sick leave, the Town may require medical certification of the employee's illness. However, if there is a suspicion of sick leave abuse, the Police Chief, Police Commission and/hor his/its designee may direct an employee to obtain a doctor's certificate.

Section D When an employee is eligible for worker's compensation because of disability, he/she shall elect in writing to the Town Board whether or not he/she desires to have sick leave with pay (to the extent that there exists sick leave accumulation) during the period in which he/she will receive compensation. If he/she elects to take sick leave with pay during disability, up to and not exceeding accumulated unused sick time, he/she will be paid for the difference between the compensation paid and his/her regular rate of pay as sick leave allows. The dollar amount paid as the difference will be adjusted to hours, days or weeks and deducted from his/her accumulated unused sick time. Such election must be made within thirty (30) days after the period of disability starts.

#### **ARTICLE 14 PERSONAL LEAVE**

Section A Full-time officers shall be credited on their anniversary date each year with sixteen (16) hours of personal leave; effective January 1, 2011 twenty-four (24) hours. Personal leave may be taken in less than four (4) hour increments with the approval of the Police Chief, Police Commission and/or his/its designee. Such leave shall not be cumulative.

Section B A request for a personal day should be made to the Police Chief, Police Commission and/or his/its designee as soon as the employee knows he/she wishes to take a personal day. Permission to take such days will not be unreasonably denied and the Police Chief, Police Commission and/or his/its designee may not inquire as to the nature of the business the employee wished to conduct on such personal day(s).

Section C Personal leave shall not be used to extend a vacation period without the prior written authorization of the Police Chief, Police Commission and/or his/its designee.

#### **ARTICLE 15 BEREAVEMENT LEAVE**

Full-time officers will be entitled to up to twenty-four (24) hours of paid bereavement leave upon the death of an immediate family member. Immediate family member is defined as: Father, Mother, Spouse, Sibling, Son or Daughter. Grandparent, Grandchild, step relations of above will entitle the full-time officer one (1) day of paid bereavement leave. In cases of extenuating circumstances, the Town may grant, at its discretion, additional leave. Such extensions would not be precedent-setting.

**ARTICLE 16  
JURY DUTY**

Full-time officers required to appear or serve on a jury will be allowed to perform that service without losing benefit time or salary from his/her regular salary. When an officer receives notice to report for jury duty, the officer must submit a copy to the Police Chief, Police Commission and/or his/its designee. Upon completion of jury duty, the officer shall submit verification of dates and times of such service.

**ARTICLE 17  
HOLIDAYS**

The Town will observe the following paid holidays:

New Year's Day  
Martin Luther King, Jr. Day  
President's Day  
Memorial Day  
Fourth of July  
Labor Day  
Columbus Day  
Veteran's Day  
Election Day  
Thanksgiving Day  
Christmas Day

Full-time employees who do not work on the above listed holidays shall be compensated at eight (8) hours pay at the employees straight time hourly rate. Full-time or part-time employees who work on the actual holiday shall be compensated at time and one half (1 ½) the employees straight time hourly rate for all hours worked. Full-time employees who work on the holiday shall receive another day off with pay; to be used by the employee's next anniversary date.

**ARTICLE 18  
SENIORITY**

Seniority, by job title, shall be defined as the length of service with the Town from the employees first date of hire in the Police Department. There shall be three (3) seniority lists: Sergeants, Full-time Officers, Part-time Officers. Employees who are re-hired within twelve (12) months of separation of employment from the Town shall be re-hired at their previous wage rate and shall retain their previous seniority.

**ARTICLE 19  
JOB SECURITY**

Section A If a lay-off or reduction in force occurs, part-time officers will be laid off in reverse order of seniority. All probationary, temporary and casual employees will be laid-off before any regular employee of the Town is laid off.

Section B In the event a lay-off is ordered, an affected employee shall receive, as a minimum, two (2) weeks notice in writing of proposed lay-off.

## ARTICLE 20 WORKING CONDITIONS

### Section A EQUIPMENT

All equipment, as determined by the Town Board, to perform his/her duties will be provided to each officer at no cost to the officer. The Town in its sole discretion may authorize the purchase of any additional uniform and/or equipment item(s) at the request of the officer, to the Chief of Police.

1. Newly hired Officers as well as all current employees will receive the initial issue uniform and mandated equipment:

1 Hat	1 baton	1 flashlight	1 bullet proof vest
1 hat shield	1 badge	1 pair collar brass	1 holster
1 hat braid	1 tie	2 L/S shirts	1 whistle
2 pairs of pants	1 tie bar	2 S/S shirts	1 speed strike plate
1 handcuffs	2 name tags	1 breast shield	

2. Effective February 1, 2011, Officers shall receive \$ .25 per hour for uniform maintenance based on actual hours worked. The Town, at its option, may adopt a quartermaster system. Should it do so, the uniform maintenance allowance shall terminate upon implementation of same.
3. All issued equipment shall be replaced on a normal wear and tear basis by the Town, at no cost to the employee. Uniforms and related apparel torn or damaged in the line of duty as determined by the Police Chief, Police Commission and/or his/its designee shall be replaced by the Town at no expense to the employee. Any employee's personal property that is damaged or destroyed in the line of duty, after evaluation, on a case by case basis, shall be replaced or repaired at the expense of the Town, with a cap of \$100.
4. The Town shall purchase body armor vests at no expense to the officer. Vest replacement will be determined by the expiration date assigned by the manufacturer.
5. The Town shall provide any equipment necessary for any training required by the Town of Windham Police Department.

### Section B PERSONNEL FILES

Officers shall be given copies of and shall be requested to initial all documents prior to including such in his/her personnel file. Officers have the right to provide a response to any document(s) which the employee contests as unfair or incorrect. Officers have the right to inspect their

personnel file upon reasonable notice in the presence of the Town Supervisor or designee. The Town shall provide a copy of any document(s) requested by the employee. The personnel file maintained at the Town Hall shall be the official file for each employee.

## **ARTICLE 21 RETIREMENT**

### **Section A NEW YORK STATE RETIREMENT PLAN**

The Town shall participate in the "Non-Contributory Twenty (20) year retirement plan, Section 384-d of the New York State and Local Police and Fire Retirement System."

### **Section B COST OF PLAN**

The total cost of the plan shall be borne by the Town except as required by law.

## **ARTICLE 22 INDEMNIFICATION**

The Town will abide by the provisions of General Municipal Law Section 50.j.1.

## **ARTICLE 23 MANDATED PROVISION OF LAW**

IT IS AGREED BY AND BETWEEN THE PARTIES THAT ANY PROVISION OF THIS AGREEMENT REQUIRING LEGISLATIVE ACTION TO PERMIT ITS IMPLEMENTATION BY AMENDMENT OF LAW OR BY PROVIDING THE ADDITIONAL FUNDS THEREFOR, SHALL NOT BECOME EFFECTIVE UNTIL THE APPROPRIATE LEGISLATIVE BODY HAS GIVEN APPROVAL.

## **ARTICLE 24 SEPARABILITY**

Section A In the event that any provisions of the Agreement shall at any time be declared invalid by a court of competent jurisdiction or through government regulation or decrees, such decision shall not affect any of the other provisions of this Agreement, it being the express intention of the parties hereto that all other provisions not declared invalid shall remain in full force and effect.

Section B Any article or provision in this Agreement construed to be in violation of the New York State Civil Service Law shall be deemed to be excised from this Agreement.

**ARTICLE 25  
DURATION / SIGNATURE PAGE**

This Agreement shall be in effect from January 1, 2009 through December 31, 2012.

TOWN OF WINDHAM

UNITED PUBLIC SERVICE  
EMPLOYEES UNION

\_\_\_\_\_  
Hon. Stephen J. Walker, Supervisor

\_\_\_\_\_  
Kevin E. Boyle, Jr., President

\_\_\_\_\_  
Date

\_\_\_\_\_  
Gary M. Hickey, Executive Vice  
President/Regional Director

\_\_\_\_\_  
Jack F. Rogers  
Labor Relations Representative

Negotiating Committee:  
  
\_\_\_\_\_  
  
\_\_\_\_\_

\_\_\_\_\_  
Date