

CONNECTICUT STATE BOARD OF MEDIATION AND ARBITRATION
LABOR DEPARTMENT

38 WOLCOTT HILL ROAD
WETHERSFIELD, CONNECTICUT

Monday, December 06, 2010

TRANSMITTAL MEMORANDUM

Waterford, Town of
and
UPSEU/C.O.P.S.

Case # 2009-A-0201

Fortier, Harrison

08-16

RULING OF THE BOARD

Copies were sent to the following parties:

Barbara J. Resnick, Esquire

Ruben E. Acosta, Esquire

Thomas R. Gibbons, Esquire

David A. Ryan

Daniel M. Steward, First Selectman

Betty Kuehnel

Ronald E. Suraci, Exec. Director

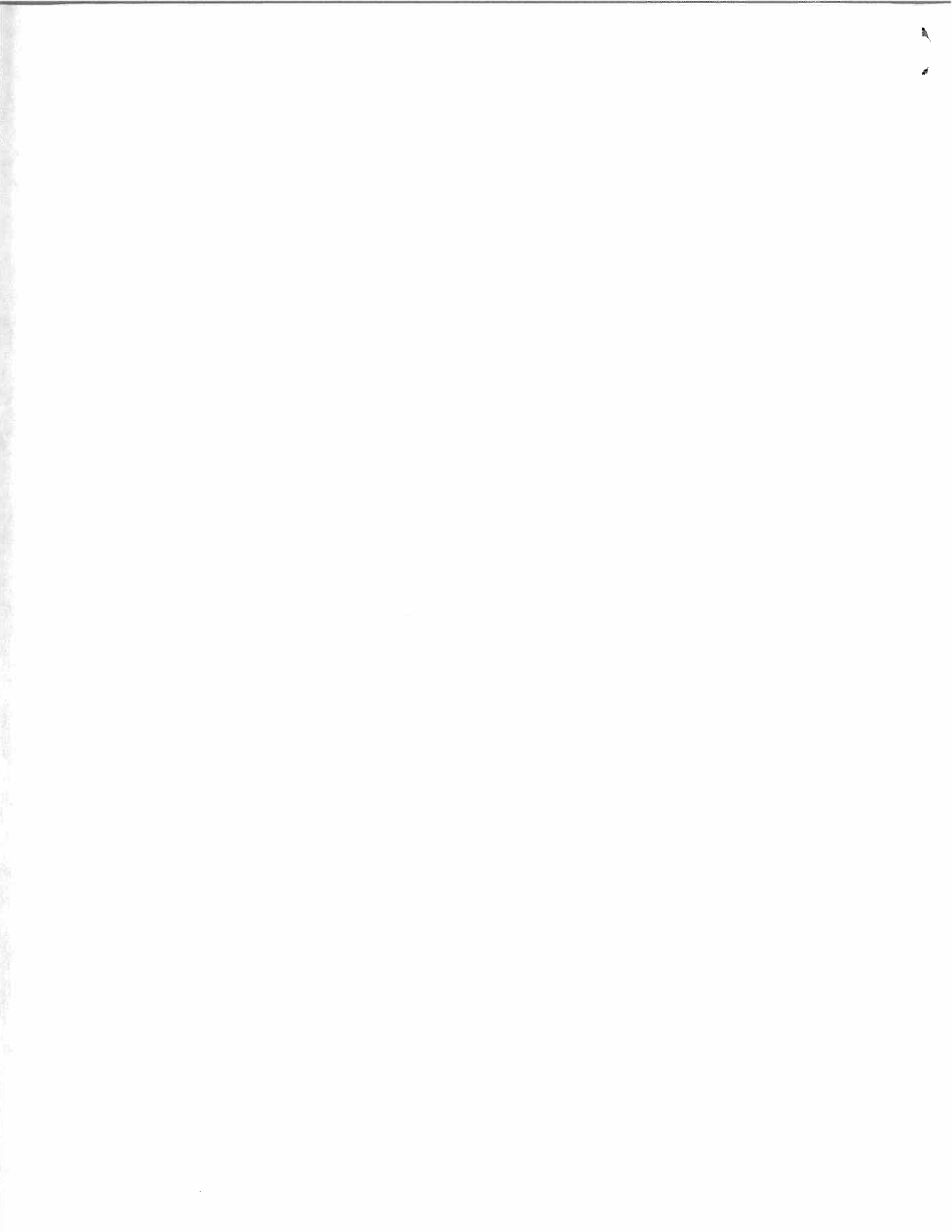
Town Clerk*

File

*When applicable, this transmittal is filed with the town clerk in accordance with Section 31-98, Chapter 560, of the Connecticut General Statutes.

CONTACT PERSON

Helen E. Roy



STATE OF CONNECTICUT

BOARD OF MEDIATION AND ARBITRATION

Matter of Arbitration :
: **Case No:** 2009-A-0201
Town of Waterford :
: **Hearing Date:** October 7, 2010
-and- :
: **Award Date:** December 6, 2010
U.P.S.E.U.-C.O.P.S. :

Award on Arbitrability

Arbitration Panel:

Ruben E. Acosta, Esq.	Public Member-Chair
Betty Kuehnel	Labor Member
David Ryan	Management Member

Representatives:

Thomas R. Gibbons, Esq., Jackson Lewis LLP
Barbara Resnick, Esq., Labor Representative

ISSUE

Is Case Number 2009-A-0201 arbitrable ?¹

PROCEDURAL HISTORY

A hearing was held on this matter on October 7, 2010 and both parties appeared to be heard. The Panel heard argument and received exhibits on the arbitrability of the matter and instructed the parties to submit briefs on the issue. Briefs were to be postmarked on November 12th and reply briefs were to be postmarked for November 26th. After meeting in executive session the Panel now issues this award on the submission.

FACTS

The Union grieved the Town's alleged failure to pay the Grievant a pro-rated share of the uniform allowance which full time employees receive pursuant to Article 14 of the parties collective bargaining agreement on or around August 2008. Joint Exhibit 1 The Town

¹ The Union asserts on its brief, for the first time, opposition to the defense claimed by the Town. Since the matter was not asserted at the hearing the Union's objection was waived.

denied the allowance because the Grievant was on terminal leave subsequent to his retirement and was a "Community Service Officer", who is neither recognized as a bargaining unit employee nor represented by the Union. **Joint Exhibit 3 - Side Letter**

The Grievant surrendered his police powers on or around April 2008 and went on Terminal Leave until August/September 2008. A plain reading of the language establishes that he was paid the allowance due for 2008 so his claim here is for 2009 which constitutes "the forthcoming year". There is no claim to the contrary before us. **Joint 1, Section 14.1**

RELEVANT CONTRACT LANGUAGE

Article 14 **Uniform and Clothing**

Section 14.1 All full time employees of the Waterford Police Department shall receive from the Town a uniform and clothing allowance of one thousand three hundred-fifty dollars (\$1,350.00 per annum. This amount will be paid at the same time as the paycheck reflecting the first pay period in August of the applicable contract year and reflects payment for the forthcoming year.

A. The uniform and clothing allowance will be increased to one thousand five hundred dollars (\$1,500.00) per year effective with the August 2010 payment.

Section 14.2

Any employee who separates from the Department during the period referred to above in Section One of this Article shall receive a pro-rata Uniform and Clothing Allowance for that year.

SIDE LETTER

In order to allow the current practice of officers being able to elect to utilize Terminal Leave to continue in a manner which will be consistent with the Award of the Connecticut State Board of Mediation and Arbitration in Case Number 2003-A-0707, the Town of Waterford and AFSCME Council 15, Local 1948 agree as follows:

Section 4b. As of the thirty-first day of their Terminal Leave the Town will allow the Terminal Leave Officer to serve in the Town's employ as a Community Service Office ("CSO") (portion omitted)

Section 5 The parties explicitly recognize that CSO's are not bargaining unit employees, do not perform bargaining unit work and the Union is not the exclusive collective bargaining representative.²

² The Union was not a signatory to this Letter and offered little or no documented history on the intent of this document. There was argument offered by the Union concerning the intent of the Side Letter which the Panel considers as inconsequential because it was not based on personal knowledge and was self serving at best.

DISCUSSION

After reviewing the entire record the Panel finds that a preponderance of the evidence establishes that Case Number 2009-A-0201 is not arbitrable. The record clearly shows that the Grievant is no longer an employee of the Town and lacks standing to grieve the Town's alleged denial of the uniform allowance.³

AWARD

In view of the above the Panel dismisses the Union's grievance.

STATE BOARD OF MEDIATION AND ARBITRATION

By Ruben E Acosta
Ruben E. Acosta, Esq.
Public Member and Chair

By Betty Kuehnel
Betty Kuehnel
Alternate Labor Member

By David Ryan
David Ryan
Permanent Management Member

³ Given the clear and explicit language in Joint 3, the Side Letter, and the Grievant's loss of police powers, it is doubtful that the Grievant could have prevailed on the merits as the CBA conditions the allowance on "full time" employment.

