

AGREEMENT

BETWEEN

NAMDOR

RED APPLE

AND

SUPERMARKET'S ACQUISITION

SUPERMARKETS

AND

RETAIL, WHOLESALE, & CHAIN STORE FOOD

EMPLOYEES UNION

LOCAL 338

EFFECTIVE: OCTOBER 6, 2002

EXPIRATION: OCTOBER 7, 2006

COLLECTIVE BARGAINING AGREEMENT
BETWEEN WALDBAUM'S, INC. AND RETAIL,
WHOLESALE & CHAIN STORE FOOD EMPLOYEES
UNION LOCAL 338



Effective Date: October 6, 2002

Expiration Date: October 7, 2006

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ing types of business: banks, dry cleaners only, and individuals working in said leased space or concessions shall not be covered by the collective bargaining agreement between Local 338 and the Employer. Should control and operation of any such leased space or concession become the responsibility of the Employer, then Local 338 shall have jurisdiction over the Employees employed therein.

(c) The term «full time employee» as herein used means an employee working 30 hours or more within the regular work week.

(d) The term «part time employee» shall mean an employee working less than 30 hours within the regular work week.

(e) The term «employees» includes both full time and part time employees, except where otherwise expressly provided.

(f) The term «regular employee» means an employee who has completed his/her trial period.

ARTICLE 2
UNION RECOGNITION AND UNION SHOP

(a) The Employer recognizes the Union as the exclusive collective bargaining representative for all the Employer's employees covered by this Agreement.

(b) All present full time and part time employees who are members in good standing in the Union, shall, as a condition of continued employment, maintain membership in good standing in the Union during the life of this Agreement through regular payments to the Union of the periodic dues and the initiation fees uniformly required as a condition of acquiring and retaining membership. All new full time and part time employees, and all present full time and part time employees who are not members in good standing in the Union, shall, as a condition of continued employment, join the Union thirty days after the date of their employment or the effective date of this Agreement or the date of the execution of this Agreement, whichever is later, except that part time employees shall not be required to join the Union until they have completed their trial period and shall thereafter maintain membership in good standing in the Union during the life of this Agreement through regular payments to the Union of the periodic dues and initiation fees uniformly required as a condition of acquiring and retaining membership. The Union shall make membership in the Union available to all full time and part time employees covered by this Agreement on the same terms and conditions as are generally applicable to other members of the Union. Upon receipt of a written notice from the Union to the Employer that a full time or part time employee is not a member in good standing in the Union, as herein provided, such employee shall forthwith be discharged. Membership in good standing in the Union shall not be construed in violation of the provisions of applicable law.

ARTICLE 3
UNION CARD

The Union shall lend to the Employer a Union Store Card issued by the Union which shall remain the Union's property. The termination of this Agreement or any breach or violation of the provisions of this Agreement by the Employer shall be sufficient cause for the removal of said Card by the Union.

ARTICLE 4
TRIAL PERIOD AND TENURE OF EMPLOYMENT

(a) Full time employees not previously employed by the Employer shall be employed on trial for a period of thirty (30) calendar days. However, when a new store is opened by the Employer and for a period of sixty (60) days from the date of such opening, the trial period shall be sixty (60) days from the respective dates of hire for all new full time employees hired for such store; provided further, how-

AGREEMENT entered into as of October 6, 2002 between RETAIL, WHOLESALE, & CHAIN STORE FOOD EMPLOYEES UNION, LOCAL 338, affiliated with the Retail, Wholesale and Department Store Union, AFL-CIO (the Union), and WALDBAUM'S, INC. Hemlock Street & Boulevard Avenue, Central Islip, New York 11722 (the Employer), WHEREIN IT IS AGREED AS FOLLOWS:

ARTICLE 1
DEFINITION AND COVERAGE

(a) This agreement covers, and the term «employee» or «employees» as herein used includes all of the Employer's present and future full time and part time employees (other than store managers, butchers and meat wrappers) employed in all departments in all of the present and future supermarkets and stores operated by the Employer in the City of New York and the State of New York.

(b) The term «supermarket» or «supermarkets», «store» or «stores» as herein used includes supermarkets, stores, shops, concessions, leased departments and establishments contained herein.

Notwithstanding any language in the first paragraph of this section, the Employer shall have the right to lease space to a concession to operate the follow-

ever, that after such store has been open for sixty (60) days, any employee therein still on trial and any employee thereafter hired shall serve no more than a total aggregate trial period of thirty (30) days, including days of work prior to the time the new store was open for sixty (60) days. During such trial period, such employee on trial may be dismissed without notice or cause. Upon the expiration of such trial period or upon notice to the Union by the Employer to that effect prior to the expiration of such trial period, such newly employed employees shall automatically become and be deemed to be regular full time employees.

(b) All part time employees hired on or after 10/6/02 shall have a probationary period of sixty (60) calendar days. When a new store is opened, part-time employees who have not completed their trial period shall be subject to the same requirements as above stated in paragraph (a) for full time employees, but in addition, their trial period shall not be deemed completed until they have been employed ninety calendar days. Upon satisfactory completion, all terms and conditions of employment shall be retroactive to the sixtieth (60th) day as permitted by law.

(c) The Employer shall promptly notify the Union in writing when it has hired employees, furnishing the names and social security numbers of the employees hired and the date of their hiring.

(d) Regular full time employees working 40 hours weekly who are so employed at the date of the execution of this Agreement or who are so hired after the date of the execution of this Agreement shall be guaranteed 40 hours work weekly during the entire term of this Agreement, subject, however, to the provisions of this Article.

(e) The work week of regular full time employees working 30 hours or more weekly shall not be reduced without prior written notice to and the prior consent of the Union. The provisions of this paragraph shall not apply to those employees covered by paragraph (d) of this Article.

Regular part time employees except those who are available on a limited basis such as Friday night or Saturday, will be scheduled for no less than 16 hours on a regular and continuing basis and further provided that they are available to work the Employer's schedule and there is no drop in business.

(f) In the event of a continued decline in business, continued lack of work, or in the case of a store closing, the Employer may lay off regular full time employees and/or regular part time employees in inverse order of seniority provided a one (1) week written notice is given to the union and to the employee(s). The Employer shall, if possible, notify the union in writing two (2) weeks in advance of any store closing. In the case of a store closing, the same number of regular full time employees and the same number of regular part time employees as employed in the store being closed shall be laid off in accordance with the following layoff procedure.

Seniority shall be determined by continuous service in a job classification within a department on a bargaining unit-wide basis (company wide or by division where applicable).

A. Layoffs shall be by seniority based on the following:

1. *Job Classification:*

- a. Assistant Manager & Department Head
- b. Bookkeeper, Scanning Coordinator & Front-End Employee
- c. Receiving clerk
- d. Regular full time clerks
- e. Regular part time clerks

2. *Departments:*

- a. Front End
- b. Grocery
- c. Produce
- d. Deli - App.
- e. Dairy - Frozen
- f. Scratch Bakery

3. *Geographical Area Seniority:*

- Area A - 5 Boroughs of New York
- Area B - Nassau and Suffolk Counties
- Area C - Westchester County
- Area D - Rockland, Putnam, Orange, Dutchess, Sullivan and Ulster

Counties and other counties in the state of New York where applicable.

B. The least senior full time employee in each of the above job classifications in a department within a geographical area may exercise their seniority rights over the least senior similar classification in another geographical area.

C. The least senior Assistant Manager, Department Head, Bookkeeper, Scanning Coordinator, or Front-End Employee may exercise their seniority rights over the least senior full time clerk provided their seniority as a regular full time employee is greater than the person they are replacing.

D. For the purpose of this section, regular employees are employees who have completed their trial period. Probationary or temporary employees shall be laid off prior to regular full time and regular part time employees.

E. Seniority shall be established from the date of hire for regular full time employees hired as full time. The date of conversion to regular full time shall establish the full time seniority date in the instance of a regular part time employee promoted to regular full time.

F. The Employer shall recall laid-off and/or reduced regular employees before hiring new employees in the classification(s) laid-off or reduced. This recall shall last up to six (6) months from the date of lay off or reduction and shall be in inverse

order of seniority. Recalls shall be based on job classification and seniority. Furthermore, regular employees that opted for part time in lieu of a lay off, shall retain recall for up to twelve (12) months if they stay employed. Should a full time position in their job classification become available in their geographical area, they shall be offered same, if qualified, before the employer hires new employees.

Any employee who fails to report to work within one week after the date of mailing by registered mail of written notice of recall, except for justifiable excuse, shall be deemed to have waived his/her right to reemployment. Such notice shall be so sent to the last address on file with the employer.

G. Regular full time employees may exercise their seniority rights over regular part time employees by job classification in a department within their geographical area first, and then in the other geographical areas. Eligible full time employees electing not to be reduced to part time status shall be laid off. Full time employees accepting part time status to avoid a layoff shall be paid a rate of pay equal to their last part time rate plus all raises they would have received as a part time employee. If such reduced full time employee was never a part time employee, they shall receive their starting rate plus all subsequent raises they would have received as a part time employee.

H. Full time employees who have been transferred or promoted to another job classification shall retain seniority in their former job classifications in their former departments, and, if subject to such layoffs, shall be retransferred to their former job classifications and departments in accordance with their seniority in such former job classifications and departments.

(g) Before completion of their trial period, new employees may be dismissed without notice or cause and without consent of a representative of the Union. No regular employee shall be discharged except for just cause. In the event that a duly authorized representative of the Union shall not consent to the discharge, the dispute with respect to such discharge shall be submitted to arbitration and a final and binding decision by the American Arbitration Association or a mutually agreed upon panel.

(h) The Employer may summarily discharge an employee for drinking on the job, sale of drugs, or use of drugs on the job other than for medicinal purposes, dishonesty or physical assault on the job, willful sabotage of company property, subject, however, to the right to arbitrate hereunder whether such discharged was for just cause. The arbitrator shall be empowered to render such award as shall be just and reasonable in the premises.

(i) If an employee is suspended by the Employer, the Company Designee and the Union must meet within 7 work days from the time of the suspension to discuss the suspension. If no agreement is reached, the dispute may then be submitted to arbitration hereunder by either the Employer or the Union. Should the arbitrator decide that the suspension was not for just cause or that the length of suspension was too long, the Employer shall pay the employee for lost time as determined by the arbitrator.

(j) No employee shall be discharged for refusing to cross a legal picket line in front of his/her Employer's stores established by another Labor organization in a primary Labor dispute with the Employer or a subsidiary or an affiliate thereof, and the Union shall not be liable therefor.

## ARTICLE 5 HOURS OF WORK

(a) The maximum regular weekly hours of work for all employees shall be forty hours, divided into a work week of five days, Monday through Saturday.

(b) The maximum regular daily hours of work for all employees shall be eight hours.

(c) Work performed on Sunday shall not be part of the regular work week. The Employer agrees to give preference for Sunday work to regular employees covered by this Agreement.

(d) The hours of work of all employees shall be continuous.

(e) Any employee working at least eight hours on any day shall be entitled to one continuous hour for meals on such day. Any employee working at least five and one-half hours but less than eight hours on any day shall be entitled to one continuous meal period of thirty minutes on such day. Such meal times shall not be considered working hours.

(f) All full time employees shall be given two 15-minute rest periods daily, and all part time employees shall be given a 15 minute rest period for each 4 hours worked each day, but in no event more than 2 such periods in any such day. Such rest periods shall be considered working time.

(g) Full time employees working a 40-hour 5-day week may be required by the Employer to work a sixth day during the Monday through Saturday week; such sixth day must be at least a 4-hour work day. Employees shall work overtime as required by the Employer. The Employer shall give the employees affected 24 hours prior notice of work required on the sixth day of the week and 4 hours prior notice of all overtime work required on the same day.

(h) Any regular full time employee who works on a Sunday shall be scheduled for at least four (4) hours. Any regular full time employee who works on a Holiday shall be scheduled for eight (8) hours work provided the store is open for eight (8) hours and further provided the employee is available to work eight (8) hours.

(i) Any regular part time employee who works on a Sunday or holiday shall be scheduled for a minimum of four (4) hours work provided the employee is available to work.

(j) Daily hours (including Sunday) and daily start times shall be assigned to regular employees based upon the requirements of the business.

## ARTICLE 6 WAGES

The wage and related provisions for all employees covered by this Agreement are set forth in Appendix «A» hereto annexed and made a part hereof.

## ARTICLE 7 OVERTIME AND PREMIUM PAY

(a) Any work in excess of 8 hours in any day, or 40 hours in any week, and any work on Sunday or on any day of rest or on any holidays as herein provided, is and shall be considered overtime work. Overtime work shall be compensated at the rate of one and one-half times the regular hourly wage. On the holidays provided hereunder, such overtime pay shall be in addition to the pay herein provided for such holidays. Sunday work shall be compensated based on the following:

Full time (employed prior to January 1, 1990) or part time (employed prior to January 1, 1987) employees who received double time for all hours of work performed on Sunday shall receive a frozen premium rate which is equal to the hourly straight time rate of pay they were earning as of January 1, 1996. In addition to the frozen premium hourly rate of pay, they shall receive their regular hourly rate of pay for all hours of work performed on Sunday. As their regular hourly rate increases, the frozen premium remains the same. If their hourly rate decreases, their frozen premium hourly rate will be equal to the hourly rate entitled to had the decrease occurred on January 1, 1996. If their hourly rate increases as the result of a promotion to Assistant Manager or Dept. Head, their frozen premium hourly rate will be equal to the frozen premium hourly rate for that job classification on January 1, 1996.

All regular part time employees hired on or after January 1, 1987, shall receive one and one-half (1-1/2) times their regular rate of pay for work performed on Sundays. Full time employees hired on or after January 1, 1990, shall receive one and one-half (1-1/2) times their regular rate of pay for work performed on Sundays.

Full time employees paid double (2) time for Sunday work, if converted to Part time status, shall continue to be paid double (2) time. Part time employees paid double (2) time for Sunday work, if converted to Full time status, shall continue to be paid double time. Part time employees paid time and one-half (1-1/2) for Sunday work, if converted to Full time status prior to January 1, 1990, shall be paid double time. Part-time employees paid time and one-half (1-1/2) for Sunday work if converted to Full time after January 1, 1990, shall continue to be paid time and one-half (1-1/2) for Sunday work. Full time employees hired on or after January 1, 1990, who receive time and one-half (1-1/2) for Sunday work, if converted to Part time status, shall continue to be paid time and one-half (1-1/2) for Sunday work.

All regular Full time and regular part time employees shall be given a reasonable opportunity to work on Sundays on a rotating basis.

(b) Full time employees (other than Assistant Managers and Department Heads) reporting for work at 4 P.M. or later shall receive therefore, in addition to their regular hourly wage, premium pay of 10% of their regular hourly wage. Such premium pay shall be deemed part of their regular hourly wage with respect to applicable hours hereunder in calculation of overtime pay under the provisions of this Agreement. Such premium pay shall be paid only for the weeks when such employees work such late shift. There shall be no change from such late work shift during the work week. No employee shall be changed to such late shift without the consent of the Union. A \$50.00 per week cap shall apply to persons assigned to such shifts on or after October 1, 1995, except those who were hired prior to 10/1/95 and subsequently assigned to the night shift as a consequence of a lay off.

(c) Full time employees (other than Assistant Managers, Department Heads and employees covered by paragraph (b) of this Article) reporting for work on any day before 4 P.M., if required to work after 7 P.M. on any day, shall receive, in addition to their regular hourly wage, premium pay of \$1.00 per hour for all work after 7 P.M. on any day, except that for all hours worked in excess of 8 hours on any day, they shall be compensated at the overtime rate of one and one half times their regular hourly wage.

(d) All full time clerks hired after October 1, 1986, other than those working on a regular night pack out crew who are assigned to a late shift shall be paid \$2.00 per shift premium in addition to their regular pay. A late shift is one that commences at 12:00 noon or later.

(e) All regular part time employees assigned to a night pack out crew, shall receive a 10% premium for all hours worked. Regular part time employees who are not assigned to a night pack out crew shall receive a 10% premium for all hours worked after 12 AM (Midnight). In no event shall the weekly 10% premium exceed \$50.00 for a regular part time employee.

(f) Night differentials of 10% for eligible full time or part time employees will be included in sick pay, unused sick pay, holiday pay, personal pay, and vacation pay.

(g) There shall be no pyramiding or duplication of overtime and/or premium pay.

## ARTICLE 8 HOLIDAYS

(a) The following holidays shall be paid holidays for all regular full time employees, regardless of length of employment, and all regular part time employees employed 3 continuous months, or longer:

New Year's Day	Presidential Election Day
Memorial Day	Thanksgiving Day
Independence Day	Christmas Day
Labor Day	

(b) All regular full time employees who have completed their trial period prior to October 1, 1995, shall receive six additional paid personal holidays in each calendar year so that they shall receive twelve paid holidays in each calendar year,

and 13 paid holidays in years in which there is a Presidential Election. One of the paid personal holidays shall be the employee's birthday. In the event that any said employee's birthday falls on a Sunday, or his/her scheduled day off, or on one of the holidays listed in paragraph (a) of this Article, then said employee will be entitled to his/her scheduled work day immediately following or on a day mutually agreed to by the Employer and the Union. Regular full time employees shall be given 2 of such personal holidays during the first 6 months of the calendar year and 2 of such personal holidays during the second 6 months of the calendar year. The remaining personal holiday may be taken any time during the calendar year. These holidays may be taken at the employee's option, provided that 2 weeks advance notice is given to the Employer and that the personal holiday selected is not during a week in which another paid holiday occurs, and provided further that the Employer may refuse to grant the personal holiday on the date requested by such employee if the operation of the store will be disrupted. If the employee elects to observe a religious holiday, it will be counted as one of his/her personal holidays. An employee who selects a religious holiday shall be given preference for that day off.

All regular full time employees completing their trial period on or after October 1, 1995, shall receive two (2) Personal Holidays and one (1) Birthday in the calendar year after completing one (1) year employment; three (3) Personal Holidays and one (1) Birthday in the calendar year after completing two (2) years of employment; and five (5) Personal Holidays and one (1) Birthday in each calendar year after completing three (3) years of employment.

(c) All regular part time employees employed for 3 continuous months or longer shall be paid 4 hours' pay for each of the holidays listed in paragraph (a) of this Article thereafter occurring. All regular part time employees completing their trial period prior to October 1, 1995 and employed for 7 continuous months or longer shall thereafter receive three additional paid personal holidays yearly with four hours pay for each such day. One of the paid personal holidays shall be the employee's birthday. In the event that any said employee's birthday falls on a Sunday, or his/her scheduled day off, or on one of the holidays listed in paragraph (a) of this Article, then said employee will be entitled to his/her birthday holiday on the scheduled work day immediately following or on a day mutually agreed to by the Employer and the Union. Of the other two personal holidays to which a part time employee may be entitled, one shall be granted in the first 6 months of the calendar year and one shall be granted in the second six months of the calendar year. Subject to the foregoing, personal holidays may be taken at the employee's option, provided that 2 week's advance notice to the Employer is given, the personal holiday is not in a week in which another holiday occurs, and provided further that the Employer may refuse to grant the personal holiday on the date requested by the employee if the operation of the store will be disrupted.

All regular part time employees completing their trial period on or after October 1, 1995, shall receive one (1) Personal Holiday in the calendar year after completing one (1) year of employment; one (1) Personal Holiday and one (1) Birthday in the calendar year after completing two (2) years of employment; and two (2) Personal Holidays and one (1) Birthday in the calendar year after completing three (3) years of employment.

(d) In order to qualify for holiday pay, employees shall work their regularly scheduled day before the holiday and shall also work their regularly scheduled day following the holiday except for excused absence on either or both of such days, which excuse shall not be unreasonably denied.

(e) All hours worked by full time employees in excess of 32 hours during a week in which one of the personal or legal holidays fall will be paid for at the rate of one and one-half times the regular hourly rate.

(f) In the event that any regular full time employee leaves his/her position or is discharged or laid off without having received his/her named holiday pay up to that date, then such employee shall receive the balance of his/her named holiday pay up to that date. Such employee shall also receive personal holiday pay pro rated on the basis of one day for each two months work.

(g) In the event that any regular part time employee leaves his/her position or is discharged or laid off without having received his/her named holiday pay up to that date, then such employee shall receive the balance of his/her named holiday pay up to that date as well as personal holiday pay pro rated.

## ARTICLE 9 VACATIONS

(a) Regular full time employees completing their trial period on or after October 1, 1995, shall receive vacation based on the following:

- Employed less than 1 year but more than 7 months prior to 9/30=1 day per month up to a maximum of 5 days during their first year of employment with full pay in advance
- Employed 1 year prior to 9/30=1 week @ 40 hours vacation with full pay in advance employed less than 2 years prior to 9/30=Pro-rata vacation with full pay in advance
- Employed 2 years prior to 9/30=2 weeks @ 40 hours vacation with full pay in advance

(b) Regular full time employees regardless of when they have completed their trial period:

- Employed for seven years or more prior to 9/30=3 weeks @ 40 hours vacation, with full pay in advance
- Employed for ten years or more prior to 9/30=4 weeks @ 40 hours vacation with full pay in advance
- Employed for twenty-five years or more prior to 9/30=5 weeks @ 40 hours vacation with full pay in advance

(c) All regular part time employees completing their trial period on or after

October 1, 1995, shall receive vacation based on the following:

- Employed 800 hours or more prior to 9/30=20 hours with full pay in advance
  - Employed for 1 year or more having less than the required 800 hours prior to 9/30=Pro-rata (down from 20 hours) vacation with full pay in advance
  - Employed 2 years with less than 800 hours or more Prior to 9/30=Pro-rata (down from 40 hours) vacation with full pay in advance
  - Employed 2 years with 800 hours or more prior to 9/30=40 hours with full pay in advance
- (d) Regular part time employees regardless of when they have completed their trial period:
- Employed for seven years with 800 hours or more prior to 9/30=75 hours vacation with full pay in advance
  - Employed for ten years with 800 hours or more prior to 9/30=100 hours vacation with full pay in advance
  - Employed for twenty-five years with 800 hours or more prior to 9/30=125 hours vacation with full pay in advance
- (e) All regular full time employees working continuously a six day work week shall be paid vacation pay computed on the basis of their weekly earnings for such 6-day work week.
- (f) Regular full time employees regularly scheduled and working less than 40 hours weekly at any time during the year immediately prior to their vacation shall have their vacation pay based upon their average weekly straight time hours worked during such year.
- (g) For the purpose of computing an employee's length of employment hereunder, he/she shall be credited with his/her length of employment with the Employer, as well as with his/her length of employment with his/her prior employers whose business or stores have been purchased or in any way acquired, in whole or in part, directly or indirectly, by the Employer.
- (h) Vacations shall be given during June, July, August or September of each year of this Agreement; except that in the case of employees presently entitled to four or five weeks' vacation hereunder, three weeks of such vacation shall be continuous and shall be given during said months and the fourth and fifth weeks' vacation may be given at any time during the calendar year. The vacation period shall be fixed by the Employer and communicated to the Union and the employees at least four weeks in advance. Such assignment will be made with due consideration for the seniority of the employee.
- However, effective January 1st, 1985, employees first becoming eligible for more than 2 weeks' vacation may have such additional week or weeks scheduled by the Employer at a time outside of the June-September normal vacation period.
- (i) In the event that any full time employee who has been employed for six months or more leaves his/her position or is discharged or laid off prior to the vacation period for that year or during or after the vacation period but without having received his full vacation for that year, then, nevertheless, such employees shall receive his/her full pro rata vacation pay at the time he/she either leaves his/her position or is discharged or laid off. All full time employees laid off by the Employer before the completion of their six (6) month qualifying period shall receive proratable vacation for each month of continuous service rendered except those employees who have been discharged for good cause and/or voluntarily left their employment.
- (j) In the event that any holidays provided herein shall occur during an employee's vacation period, such employee's vacation period shall be increased, with full pay, to include an equivalent number of days to make up for such holidays.
- (k) Regular part time employees may work up to forty hours weekly during the months beginning May 15, June, July, August, through September 15 and during named holiday weeks, but shall nevertheless be considered part time employees while so working. The Employer shall, while they are so working, at its sole expense, without deductions from them, fully cover them under the New York State Disability Benefit Law.
- (l) All regular part time employees who have completed one (1) year of service or more shall receive their pro-rata vacation upon their termination of employment, except when discharged for just cause.

#### **ARTICLE 10 MANAGEMENT**

Subject to the provisions of this Agreement, the Employer has the right to establish policies and manage stores covered by this Agreement and direct the employees, including but not limited to, the right to hire, discharge for just cause, suspend for just cause (subject to authorization by the Employer's President or Vice President for Personnel and Industrial relations or their other specific designee), promote, demote, layoff, transfer and assign employees, to fix opening and closing store hours, to designate employees' working hours, maintain order and efficiency and supervise the employees.

#### **ARTICLE 11 NO INDIVIDUAL AGREEMENTS**

The Employer will not enter into individual agreement of any kind with an employee, not accept nor require any security of any kind from an employee.

#### **ARTICLE 12 CHECKOFF**

Under the written authorization of the employees in accordance with applicable

law, the Employer shall, on the first weekly pay day in each calendar month, deduct from the wages of each such employee a sum equal to such employee's Union dues, fees and assessments, and any other deduction to which the employee has voluntarily signed a check off card for, which the Employer shall pay over to the Union or its duly authorized representative, receiving the Union's receipt therefor. Such deductions must be paid over to the Union on or before the 20th day of each and every month, covering the amounts so deducted for that month.

#### **ARTICLE 13 EMPLOYMENT OF MINORS**

The Employer does hereby agree not to employ any minors which shall constitute a violation of any provisions of the State or Federal statutes in such cases made and provided.

The parties agree that, notwithstanding anything to the contrary contained in the collective bargaining agreement, part time employees under sixteen (16) years of age may be scheduled to work less than four (4) hours per day, but not less than three (3) hours per day, on those days and during those seasons (school year) when to do so would be a violation of law or regulation.

#### **ARTICLE 14 VISITS BY UNION REPRESENTATIVES**

The Business Agent or any authorized representative of the Union may visit the stores of the Employer at any time during business hours for the purpose of interviewing or observing the employees or for the purpose of conferring with the Employer. Business Agents may visit the stores during non-business hours; provided they inform management in advance of said visit.

#### **ARTICLE 15 MORE BENEFICIAL TERMS**

The Employer shall continue to grant its employees any and all terms and conditions previously granted by it more beneficial to its employees than those herein contained.

#### **ARTICLE 16 HEALTH AND WELFARE FUND RETIREMENT FUND AND DENTAL & LEGAL SERVICES FUND**

##### **(a) Health and Welfare Fund**

1. *Full time employees.* The Employer shall pay to the Local 338 Health and Welfare Fund for each of its regular full time employees covered by this Agreement the sum of \$192.00 per month effective October 1, 2002 through February 28, 2003; the sum of \$275.00 per month effective March 1, 2003 through December 31, 2003; the sum of \$280.00 per month effective January 1, 2004 through December 31, 2004; the sum of \$330.00 per month effective January 1, 2005 through December 31, 2005; the sum of \$360.00 per month effective January 1, 2006 through September 30, 2006 and the sum of \$329.00 per month effective October 1, 2006.

2. *Part time employees.* The Employer shall pay to the Local 338 Health and Welfare Fund for each of its regular part time employees covered by this Agreement the sum of \$35.00 per month; effective October 6, 2002 through February 28, 2003; the sum of \$92.00 per month effective March 1, 2003 through December 31, 2003; the sum of \$99.00 per month effective January 1, 2004 through December 31, 2004; the sum of \$105.00 per month effective January 1, 2005 through December 31, 2005; the sum of \$115.00 per month effective January 1, 2006 through September 30, 2006 and the sum of \$90.00 per month effective October 1, 2006.

##### **(b) Retirement Fund**

1. *Full time employees.* The Employer shall pay to the Local 338 Retirement Fund for each of its regular full time employees covered by this Agreement the sum of \$104.00 per month effective October 6, 2002 through December 31, 2002; the sum of \$120.00 per month effective January 1, 2003 through December 31, 2003; the sum of \$130.00 per month effective January 1, 2004 through December 31, 2004; the sum of \$150.00 per month effective January 1, 2005 through December 31, 2005 and the sum of \$155.00 per month effective January 1, 2006.

2. *Part time employees.* The Employer shall pay to the Local 338 Retirement Fund for each of its regular part time employees covered by this Agreement the sum of \$36.00 per month effective October 6, 2002 through December 31, 2002; the sum of \$45.00 per month effective January 1, 2003 through December 31, 2003; the sum of \$50.00 per month effective January 1, 2004 through December 31, 2004; the sum of \$55.00 per month effective January 1, 2005 through December 31, 2005 and the sum of \$60.00 per month effective January 1, 2006.

##### **(c) Dental and Legal Services Fund**

1. *Full time employees.* For the month of October 1, 2002 and the month of October 1, 2006 only, the Employer shall pay to the Local 338 Dental & Legal Services Fund for each of its regular full time employees covered by this Agreement the sum of \$31.00 per month. There shall be no other contributions

during the term of the Agreement.

2. *Part time employees.* For the month of October 1, 2002 and the month of October 1, 2006 only, the Employer shall pay to the Local 338 Dental & Legal Services Fund for each of its regular part time employees covered by this Agreement the sum of \$25.00 per month. There shall be no other contributions during the term of the Agreement.

(d) *Commencement of Payments.* All payments above provided to the Health and Welfare Fund, the Retirement Fund, and the Dental & Legal Services Fund, shall commence as follows:

1. In the case of regular full time employees payment shall commence with the first calendar month following the first month of employment.

2. If a full time employee is hired on or before the 15th of a month, he/she shall be deemed to have been employed for the entire month; if he/she is hired after the 15th of a month, he/she shall be deemed to have been hired on the first of the following month.

3. In the case of regular part time employees payments shall commence with the first calendar month after the employee has been employed for three (3) consecutive calendar months except as provided in Appendix «A» (gg). In the case of part time employees hired after January 1, 2003, the payments to the funds shall commence with the first calendar month after six (6) consecutive months of employment.

(e) *Payments during non-working periods.* In the event any regular employee shall not be working due to illness or disability, the Employer shall continue to make payments hereunder to the Local 338 Health and Welfare Fund, to the Local 338 Retirement Fund, and to the Local 338 Dental & Legal Services Fund for each such employee, but not for more than 13 weeks of illness or disability during any contract year of this Agreement.

(f) *Books and records.* The Union and said respective Funds shall have the right at all times to examine the Employer's books and records for the purpose of determining whether the Employer is complying with the provisions of this Agreement.

(g) *Disability Benefit Law.* The Employer shall, during the term of this Agreement, at its sole expense and without deduction from its part time employees, fully cover its part time employees under the New York State Disability Benefits Law.

(h) *Date of payments.* All payments due from the Employer to the Local 338 Health and Welfare Fund, the Local 338 Retirement Fund, and the Local 338 Dental & Legal Services Fund, must be paid on or before the 20th day of each and every month covering the amounts payable hereunder for the preceding months. All payments shall be without any deductions from employees.

(i) The Employer shall not be obligated to pay contributions to the funds at rates exceeding the rates agreed to in this Agreement.

#### **ARTICLE 17** **SICK LEAVE**

(a) In the first contract year of his/her full time employment each regular full time employee who has completed his/her trial period prior to October 1, 1995, and worked continuously for 3 months shall be entitled to receive a maximum of 9 days of sick leave with pay in each contract year provided that if the employee has not worked 12 months during his/her first contract year, sick leave will be prorated. In succeeding contract years the employee shall receive the full amount of sick leave above mentioned without pro ration. All unused sick leave shall be paid to eligible employees within 30 days of the end of the contract year. A contract year means the period October 1 to September 30.

All regular full time employees completing their trial period on or after October 1, 1995, shall receive sick days based on the following:

- After 3 continuous months of employment employee shall receive 1 day per month up to a maximum of 4 days in the first sick leave year, a maximum of 6 days in the second sick leave year, and a maximum of 9 days in the third sick leave year.

(b) Part time employees with one year of continuous service shall be entitled to three (3) scheduled days paid sick leave per year. A part time employee with two years of continuous service shall be entitled to four (4) scheduled days sick leave per year. A part time employee with three (3) years or more of continuous service shall be entitled to five (5) scheduled days paid sick leave per year. A part time employee with two (2) years or more of continuous service shall be paid for unused sick days at the end of each contract year, on the basis of four (4) hours pay for each unused day.

(c) An employee who is injured on the job and is directed by a medical doctor not to continue work shall be paid his usual day's wages at straight time for the day on which the injury occurred and such day shall not be considered sick leave.

(d) In the event an employee is terminated due to a lay off or retirement, such employee, if eligible, shall receive payment for unused sick leave on a pro-rata basis.

#### **ARTICLE 18** **FUNERAL LEAVE**

(a) Regular full time employees who, after 30 days of continuous employment, have a death in the immediate family, shall be entitled to three (3) working days off with pay for actual time lost. The «immediate family» shall be limited to the employee's father, mother, sister, brother, spouse, children, spouse's parent, and verified legal guardian.

(b) Regular part time employees who, after 30 days of continuous employment, have a death in the immediate family, shall be entitled to funeral leave as

provided for regular full time employees, but on a pro-rated basis. Such employees shall be compensated for actual time lost as set forth on the weekly work schedule.

(c) All employees after 30 days of employment shall be entitled to one day paid leave for a regularly scheduled work day lost to attend the funeral of an employee's grandparent or grandchild.

#### **ARTICLE 19** **JURY DUTY**

Any employee employed continuously for three months or longer who is required to perform jury duty shall be paid the difference between his/her regular straight time earnings and any payment paid for service as a juror not exceeding two weeks in any year (if Grand Jury, up to thirty (30) working days over the term of the Agreement); provided, however that the juror's fee earned by him on his/her regular day off shall be excluded in computing the pay to be granted him. The employee shall work on any of his/her regularly scheduled work days, when he/she is not required to serve on a jury.

#### **ARTICLE 20** **LEAVE OF ABSENCE**

(a) When a female employee with one year or more continuous employment leaves because of maternity, she will be granted a leave of absence without loss of seniority for a period not exceeding six months. This period of time shall not exceed three months prior to the birth of the child and three months after the birth. She shall give the Employer two weeks prior notice before taking such leave of absence. Upon request for reinstatement, which shall be no less than two weeks before she intends to return to work, she shall furnish a doctor's certificate showing she is able to perform the normal duties of her job. During the leave of absence, all fringe benefits, including time worked for vacation credit, will be forfeited.

The employer shall also comply with all State and Federal laws relating to Leaves of Absence, including it's policy on the Family Medical Leave Act. To the extent that a conflict exists between laws or among the laws and the contract terms, the provisions and interpretations most beneficial to the employees shall prevail.

(b) An employee absent from work due to illness or injury shall retain his/her seniority for a period not to exceed twelve (12) months.

(c) Any employee elected or appointed to a full time union office shall be granted a leave of absence without loss of seniority.

(d) For the purpose of computing eligible vacation and personal time, only time paid will be used to calculate time earned.

The amount of vacation and personal days an employee is entitled to shall be prorated against the amount of time off due to unpaid leave of absence, worker's compensation and disability.

#### **ARTICLE 21** **NO LIE DETECTOR TEST**

The Employer shall not require nor request its employees to submit to any lie detector tests.

#### **ARTICLE 22** **NO DISCRIMINATION**

The Employer shall not discriminate against any employee because of race, color, religion, sex, age or national origin.

#### **ARTICLE 23** **STORE LINEN**

The Employer shall, at its own cost and expense, furnish and launder the customary store coats, aprons, gowns and all apparel required by the Employer to be worn by any employee.

#### **ARTICLE 24** **TRANSFERS**

The Employer shall have the right to transfer any employee from one store to another, provided, however, that all transfers shall be limited to within a reasonable radius of the employee's home or last store location. In case of permanent transfers, one weeks' prior notice shall be given by the Employer to the employee and to the Union. Temporary transfers of one week or less of employees for the convenience of the Employer need not be reported by the Employer to the Union. In the event any employee is transferred from one store to another store, the Employer shall reimburse him for the additional fares, tolls and gasoline costs resulting from such transfer, unless such transfer results from a store closing, is in lieu of a layoff or is at the employee's request. However, an employee who accepts a promotion or a reclassification to full time status shall not be entitled to travel pay as a result of said promotion or reclassification upon his initial transfer, but shall be entitled to travel pay on all additional transfers in which increased travel costs occur. Should an employee move his or her residence, the Employer shall not be responsible for any additional cost.

#### **ARTICLE 25** **ARBITRATION**

(a) There shall be no strike or picketing by the Union or lockout by the Employer during the duration of this Agreement, except for and after the failure of the other party to submit to arbitration hereunder or to abide by and perform the decision or award of the arbitrator herein provided for.

(b) Should any dispute arise between the Employer and the Union or any employees concerning the interpretation or application of any of the terms and provisions of this Agreement, or any alleged breach of this Agreement, and the Employer and the Union shall be unable to adjust said dispute between themselves, the said dispute, at the request of either the Employer or the Union, shall be submitted to arbitration under auspices of and in accordance with the then rules of the American Arbitration Association or a mutually agreed upon panel. The decision or award of the arbitrator shall be final and binding and conclusive upon the Employer, the Union and the employees. The compensation of the Arbitrator, if any, shall be borne equally by the parties. No decision in arbitration shall constitute a precedent in any subsequent case, and each case shall be considered solely on its own merits and shall be based upon the terms of this Agreement.

(c) The sole remedy for any breach or threatened breach of this Agreement shall be arbitration as provided. Resort shall not be made to courts or government agencies except to compel arbitration or to enforce the arbitration award.

(d) A violation or breach of this Agreement by any employee or employees shall not be considered a violation or breach of this Agreement by the Union.

(e) A grievance by an employee against an Employer concerning disciplinary action, must be filed by the employee within fifteen (15) days after written notice by the Employer to the employee and to the Union of such discipline, otherwise the grievance shall be deemed to be waived. Any grievance other than for disciplinary action, must be filed in writing by the employee or the Union to the Employer within nine(9) months of the first grievous action, otherwise the grievance shall be deemed to be waived. Employee underpayment claims and Employer overpayment claims may not exceed nine (9) months.

(f) Notwithstanding, any other provisions herein the Union shall have the right to strike in the event that an Employer is delinquent in making contributions to an affiliated Fund in accordance with the terms of this Agreement.

**ARTICLE 26  
SEPARABILITY**

It is expressly understood and agreed between the parties hereto that the provisions of this Agreement shall be deemed to be independent of each other, and that if any provisions of this Agreement shall be judicially declared to be invalid because contrary to law, or shall otherwise become ineffective under any legally binding order or decision of any Court, Board or governmental agency, or by operation or law, the invalidity or ineffectiveness of such provision shall not invalidate any other provisions of this Agreement; it being the express intention of the parties hereto that all other provisions of this Agreement shall not be affected thereby, but shall continue in full force and effect for the period of this Agreement. It is further expressly understood and agreed that if any provision or the enforcement or performance of any provision of this Agreement shall at any time contrary to law, than such provision shall not be applicable except to the extent permitted by laws; and that if at any time thereafter such provision or its enforcement or performance shall no longer conflict with the law, then it shall be deemed restored in full force and effect as if it had never been in conflict with the law. It is the understanding and Agreement of the parties that the provisions of this Agreement are retroactive or effective as herein expressly provided except as prohibited by controlling law, in which event such respective provisions shall be retroactive to, and/or effective, when and to the extent permitted by controlling law.

**ARTICLE 27  
SHOP STEWARD**

(a) The Union may elect or appoint one Shop Steward within each store covered by this Agreement. There shall be no transfer of Shop Stewards without prior notification to the Union. The Employer shall be notified of the election or appointment of such Shop Stewards.

(b) The Employer will, with adequate notice from the Union, arrange for the Shop Steward from each store, to have a scheduled day off (not to exceed eight (8) hours), once each year with full pay for the purpose of attending the Union Shop Steward's Conference. Said Conference to be scheduled in a week other than a holiday week.

**ARTICLE 28  
BULLETIN BOARDS AND NOTICES**

The Company shall install a bulletin board for the use of regular union notices and appropriate business correspondence only, at a mutually convenient location within the store.

**ARTICLE 29  
401(K) PROGRAM**

The Company will make available to all eligible employees, a 401(K) savings plan. This plan is a non-matching company 401(K) plan. For eligibility and plan description, refer to the summary plan document.

The Company has the sole right to amend, modify or terminate the plan at its sole discretion.

**ARTICLE 30  
TERMINATION**

This Agreement shall be effective as of October 6, 2002 and shall terminate on October 7, 2006.

**ARTICLE 31  
SUCCESSORS AND ASSIGNS**

This Agreement shall inure to the benefit of, and be binding upon, the parties hereto their successors and assigns.

IN WITNESS WHEREOF, the parties hereto have caused there presents to be duly executed as of

Date: \_\_\_\_\_

\_\_\_\_\_  
WALDBAUM'S, INC.  
Employer

By \_\_\_\_\_  
Robert Panasuk  
Print Name  
\_\_\_\_\_  
President  
Title

By \_\_\_\_\_  
Lisa Annunziata  
Print Name  
\_\_\_\_\_  
Director Labor Relations  
Title

RETAIL, WHOLESALE & CHAIN STORE FOOD EMPLOYEES UNION  
LOCAL 338

By \_\_\_\_\_  
John R. Durso  
Print Name  
\_\_\_\_\_  
President  
Title

By \_\_\_\_\_  
John DeMartino  
Print Name  
\_\_\_\_\_  
Secretary/Treasurer  
Title

**APPENDIX «A»  
WAGE AND RELATED PROVISIONS**

(a) The minimum weekly wage for a 40 hour, 5 day work week for assistant managers shall be:

effective October 6, 2002	\$ 938.00
effective October 5, 2003	\$ 953.00
effective April 4, 2004	\$ 963.00
effective October 3, 2004	\$ 978.00
effective April 3, 2005	\$ 998.00
effective October 2, 2005	\$1,013.00
effective April 2, 2006	\$1,033.00

(b) The minimum weekly wage for a 40 hour, 5 day work week for grocery, produce, dairy-frozen food, appetizing, and delicatessen, scratch bakery and front end department heads designated by the Employer shall be:

effective October 6, 2002	\$ 912.00
effective October 5, 2003	\$ 927.00
effective April 4, 2004	\$ 937.00
effective October 3, 2004	\$ 952.00

effective April 3, 2005	\$ 972.00	\$ 9.01 - \$ 9.25	\$11.05
effective October 2, 2005	\$ 987.00	\$ 9.26 - \$ 9.50	\$11.30
effective April 2, 2006	\$1,007.00	\$ 9.51 - \$ 9.75	\$11.55
		\$ 9.76 - \$10.00	\$11.80
		\$10.01 - \$10.25	\$12.05
		\$10.26 - \$10.50	\$12.30
		\$10.51 - \$10.75	\$12.55
		\$10.76 - \$11.00	\$12.80
		\$11.01 - \$11.25	\$13.05
		\$11.26 - \$11.50	\$13.30
		\$11.51 or more	\$13.55

(c) The Employer will grant each assistant manager, and grocery, produce, dairy-frozen food, appetizing and delicatessen, scratch bakery and front end department heads the following applicable wage increases per week for a 40 hour, 5 day work week:

	Assistant Managers	Department Heads
effective October 6, 2002	\$20.00	\$20.00
effective October 5, 2003	\$15.00	\$15.00
effective April 4, 2004	\$10.00	\$10.00
effective October 3, 2004	\$15.00	\$15.00
effective April 3, 2005	\$20.00	\$20.00
effective October 2, 2005	\$15.00	\$15.00
effective April 2, 2006	\$20.00	\$20.00

(d) The Employer will grant each regular full time grocery, dairy-frozen food, produce, appetizing and delicatessen clerk and each scale attendant, cashier, porter, checker, store clerical, wrapper, baker, receiving clerk and miscellaneous employee who has completed his/her trial period prior to October 6, 2002, the following applicable wage increases per week for a 40 hour, 5 day work week:

effective October 6, 2002	\$20.00
effective October 5, 2003	\$15.00
effective April 4, 2004	\$10.00
effective October 3, 2004	\$15.00
effective April 3, 2005	\$15.00
effective October 2, 2005	\$10.00
effective April 2, 2006	\$20.00

(e) Minimum weekly wage for regular full time clerks who have completed their trial periods prior to October 6, 2002:

10/6/02	10/5/03	4/4/04	10/3/04	4/3/05	10/2/05	4/2/06
\$395	\$410	\$420	\$435	\$450	\$460	\$480

Minimum hourly rate for regular part time employees who have completed their trial period prior to October 6, 2002:

10/6/02	10/5/03	4/4/04	10/3/04	4/3/05	10/2/05	4/2/06
\$6.25	\$6.50	\$6.70	\$6.95	\$7.25	\$7.50	\$7.80

(f) Effective August 4, 2002, the minimum weekly wage for regular grocery, dairy-frozen food, produce and appetizing delicatessen clerks, and scale attendants, cashiers, porters, checkers, store clericals, wrappers, bakers & receiving clerks and miscellaneous employees for a 40 hour work week who had completed their trial periods on the same work week basis prior to October 6, 2002:

As of October 5, 2002:	Shall earn as of August 7, 2006:
\$400.00 or less per 40 hour week	\$505.00
\$401 - \$425	\$530.00
\$426 - \$450	\$555.00
\$451 - \$475	\$580.00
\$476 - \$500	\$605.00
\$501 - \$525	\$630.00
\$526 - \$550	\$655.00
\$551 - \$575	\$680.00
\$576 - \$600	\$705.00
\$601 - \$625	\$730.00
\$626 - \$650	\$755.00
\$651 - \$700	\$805.00
\$701 or more per 40 hour	\$840.00

(g) Assistant Managers and grocery, produce dairy-frozen food, appetizing-delicatessen department heads so employed prior to October 1, 1971 or January 2, 1972 (whichever is appropriate) shall each be guaranteed their overtime worked prior to October 1, 1971 or January 2, 1972 (whichever is appropriate) during the 5 day work week, but only up to 12 hours during such 5 day work week.

(h) The Employer will grant each regular part time employee who has completed his/her trial period prior to October 6, 2002, the following applicable wage increases per hour:

effective October 6, 2002	\$ .25
effective October 5, 2003	\$ .25
effective April 4, 2004	\$ .20
effective October 3, 2004	\$ .25
effective April 3, 2005	\$ .30
effective October 2, 2005	\$ .25
effective April 2, 2006	\$ .30

(i) Effective August 7, 2006, the minimum wage for regular part time employees who had completed their trial periods prior to October 6, 2002 and who are earning:

As of October 5, 2002:	Shall earn as of August 7, 2006:
\$ 6.25 or less per hour	\$ 8.05 per hour
\$ 6.26 - \$ 6.50	\$ 8.30
\$ 6.51 - \$ 6.75	\$ 8.55
\$ 6.76 - \$ 7.00	\$ 8.80
\$ 7.01 - \$ 7.25	\$ 9.05
\$ 7.26 - \$ 7.50	\$ 9.30
\$ 7.51 - \$ 7.75	\$ 9.55
\$ 7.76 - \$ 8.00	\$ 9.80
\$ 8.01 - \$ 8.25	\$10.05
\$ 8.26 - \$ 8.50	\$10.30
\$ 8.51 - \$ 8.75	\$10.55
\$ 8.76 - \$ 9.00	\$10.80

(j) Regular full time grocery, dairy-frozen food, produce and appetizing-delicatessen clerks, and scale attendants, cashiers, checkers, store clericals, bakers, receiving clerks and wrappers completing their trial period on or after October 6, 2002, and working a 40 hour, 5 day work week shall receive the following applicable minimum weekly wage for their classification subject, however, to the provisions of paragraph (l) of this Appendix:

	10/6/02	10/5/04	1/1/06
Step 1 After completion of trial period	\$400.00	\$425.00	\$450.00
Step 2 6 months after Step 1	\$420.00	\$445.00	\$470.00
Step 3 6 months after Step 2	\$440.00	\$465.00	\$490.00
Step 4 6 months after Step 3	\$460.00	\$485.00	\$510.00
Step 5 6 months after Step 4	\$480.00	\$505.00	\$530.00
Step 6 6 months after Step 5	\$500.00	\$525.00	\$550.00

(on 10/5/04 and 1/1/06 lateral adjustments are to be made)

(k) Regular part time employees (except service & specialty clerks) completing their trial period on or after October 6, 2002, shall receive the following applicable minimum hourly wages and increases after completing their trial periods:

Effective October 6, 2002	\$6.00 per hour
Effective October 5, 2004	\$6.25 per hour
Effective January 1, 2006	\$6.50 per hour

Regular part time service clerks and specialty clerks may be hired at the applicable minimum wage and receive \$.25 per hour upon the completion of their trial period.

Thereafter, all regular part time employees (including regular part time service clerks & specialty clerks) completing their trial period on or after October 6, 2002, shall receive a step wage increase of \$.20 per hour on the first full week of January and July each year, subject to the provisions of Paragraph (l) of this Appendix.

(l) All full and part time employees hired on or after the effective date of this Agreement shall receive their trainee progression increases in accordance with the following schedule:

(i) all employees arriving at Step 1 or a higher step in the months of May, June, July, August, September or October shall advance to Step 2 or their next scheduled succeeding wage step in the first full week of January;

(ii) all employees arriving at Step 1 or a higher step in the months of November, December, January, February, March or April shall advance to Step 2 or their next succeeding wage step in the first full week of July;

(iii) thereafter said employees shall advance to the next applicable succeeding wage step every six months until he/she reaches the applicable maximum of his/her trainee progression rate range, or if he/she has been hired at or above such maximum, he/she shall receive all subsequent wage increases for his/her classification under paragraph (d) or (h) of this Appendix.

(m) Any employee hired on or after the effective date of this Agreement at a rate equal to or in excess of the applicable trainee progression rate after completion of the trial period, must 6 months immediately following the completion of the trial period be at the rate equal to one wage step higher than the rate at which he/she was hired, subject, however, to the provisions of paragraph (l) of this Appendix. On each succeeding six month, said employee shall advance to the next wage step, until he reaches the applicable maximum of his/her trainee progression rate range. After attaining the maximum of his/her trainee progression rate range, or if he/she has been hired at or above such maximum, he/she shall receive all subsequent wage increases of his job classification under paragraph (d) or (g) of this Appendix.

(n) All employees shall in any event receive a minimum wage increase of \$.25 per hour after completion of the trial period.

In the event of an increase in Federal or State minimum wage requirements, the employer agrees to meet and discuss those rates impacted by the new minimum wage.

(o) Full time employees whose trial period is longer than thirty days under the provisions of this Agreement and who complete their trial period hereunder, shall receive their first trainee progression wage increases and/or other wage increases hereunder retroactive to the 31st day of their employment.

(p) The provisions of this Appendix relating to employees working a 40 hour week shall apply pro rata to employees working 30 hours or more weekly in the proportion that their weekly hours of work bear to 40 hours.

(q) In the event that an employee regularly employed part time changes to regular full time employment, then for purposes of computation of their wage and entitlements, they shall be credited with 50% of the length of his/her part-time employment. For seniority it is the date of part-time to full-time (the date of such transfer).

(r) Any employee designated by the Employer to relieve a store manager for one or more weeks shall be paid the applicable minimum wage for store managers hereunder.

(s) Any employee working a 40 hour work week designated by the Employer to work as a front end employee, scanning coordinator or bookkeeper shall be paid a \$15.00 bonus for a 40 hour work week above his/her otherwise applicable wage. Any regular part time employee designated by the Employer to work as a front end employee, scanning coordinator or bookkeeper shall be paid a \$.25 per hour bonus above his/her otherwise applicable wage.



(t) Any employee designated by the Employer to relieve a grocery, produce, dairy frozen food, appetizing or delicatessen department head or assistant manager for one or more weeks shall be paid a \$25.00 bonus for a 40 hour work week above his applicable wage.

(u) All employees shall receive their applicable wage increases hereunder or their applicable minimum wage scales hereunder, whichever is greater.

(v) Merit wage increases shall not be credited or charged against trainee progressions, anniversary or other wage increases hereunder until Step 6 is attained as listed under paragraph (j) of this Appendix.

(w) In no event shall the wages of any employee be decreased during the life of this Agreement. No employee shall in any event receive less than the applicable minimum wage herein provided for his/her classification. The minimum wage scale as herein fixed shall not be reduced during the life of this Agreement. In the event any employee classified as a porter or delivery man (where applicable) is required to work as a clerk, he/she shall be paid the entire day at the higher rate.

(x) Employees required to report for work on any day and who report for work on that day and who, through no fault of their own, are not permitted to work on that day, shall nevertheless, be paid their full day's pay for that day.

(y) The Employer shall pay each of its employees on a fixed day of each and every week, the wages due such employees for the previous week.

(z) Should an employee be promoted by the Employer to Department Head or Assistant Manager, and should the difference between such employee's wage for a 40 hour 5 day week in his/her old job classification and in his/her new job classification exceed \$25.00, such employee shall be paid the weekly wage hereunder for the higher job classification less such excess immediately upon such promotion, and shall be paid such excess starting with the satisfactory completion of a 60 day trial period in his new job classification. Employees promoted to Assistant Manager or Department Head shall receive their old rate plus \$25.00/40-Hour week for the 1st 60 calendar days of the promotion and then the applicable Assistant Manager or Department Head rate upon completion of the trial. Newly-hired Assistant Managers or Department Heads shall be employed on trial for a period of sixty (60) calendar days. During such trial period, such newly-hired employee may be dismissed without notice or cause.

(aa) Notwithstanding the provisions of Article 1 or any other provision of this Agreement, should the Employer employ any extra employee for an 8 hour day, the Employer shall pay to the respective Funds the respective amounts provided below with respect to each such employee for each such day:

Local 338 - Health and Welfare Fund	\$10.00
Local 338 - Retirement Fund	\$7.00
Local 338 - Dental and Legal Services Funds	\$5.00

(bb) Stores consistently having gross sales of \$200,000 or less per week need not designate Department Heads; excepting those Department Heads who were designated prior to October 1, 1989. Anyone designated after October 1, 1989 shall receive twenty-five dollars (\$25.00) per week in addition to their base weekly wage. This is not intended to affect department heads designated as such prior to October 1, 1992.

Stores consistently having gross sales of \$200,000 or less per week need not designate an Assistant Manager; excepting those Assistant Managers who were designated prior to October 1, 1995. Anyone designated after October 1, 1995 shall receive twenty-five dollars (\$25.00) per week in addition to their base (clerk) weekly wage or \$650.00 per forty hour work week, whichever is greater. This is not intended to affect Assistant Managers designated as such prior to October 1, 1995. If the Employer opts not to designate an Assistant manager in a store consistently having gross sales of \$200,000 or less per week, the Employer agrees not to assign a Co-manager to that same store.

All Department Heads and Assistant Managers appointed on or after 1/1/99 in stores doing an average weekly business of \$200,000 or more shall earn:

1. Upon completion of the trial period the Department Head shall receive \$700 for 40 hours work or an additional \$25.00, whichever is greater. The Assistant Manager, upon completion of the trial period, shall receive \$725 or an additional \$25.00, whichever is greater for a forty-hour week.

2. Thereafter, these individuals shall receive the applicable general wage increase applicable to the position.

3. All current Department Heads and Assistant Managers are grandfathered so that if they are reduced and subsequently re-appointed to the same position within 18 months, they would not have to serve a trial period. Any Department Head or Assistant Manager demoted on or after 10/4/98 and subsequently re-appointed to his/her prior position shall receive their former rate plus any applicable wage increases.

4. Effective 1/1/99, the position formerly recognized as Dairy/Frozen Department Head shall be known as Dairy/Frozen Lead Clerk in stores doing over \$200,000 per week or more. The functions of the Lead Clerk shall be those formerly done by the Department Manager. The Lead Clerk shall receive \$25.00/week (\$0.625 per hour) above his/her regular clerk's pay. All current Dairy/Frozen Department heads shall be grandfathered so that if they are reduced to a Clerk and re-appointed as a Lead Clerk in either the dairy or frozen department within 18 months shall not be required to serve a trial period. Upon re-appointment at any time, they shall return to their full Department Heads pay with all increases granted Department Heads in the time they were not an active Department Head. There shall be no fewer than one full time Dairy/Frozen Lead Clerk per store.

5. Effective 1/1/99, newly appointed night crew chiefs shall receive the clerk's rate plus a 10% night differential (not to exceed \$50) plus a premium of \$25.00/week (\$0.625 per hour).

6. Prior to any Department Head being demoted, the union shall be notified and there shall be a meeting with the union, the employer and the employee.

(cc) All working time shall be recorded by Assistant Managers and Department Heads. Permanent written records of all paid hours of employees, as required by ERISA, shall be maintained by the Employer and reported and made available to the Trustees of the Local 338 Retirement Fund.

(dd) All newly hired full time employees will receive credit of up to one (1) year's service for wages only if within the preceding twelve (12) months the prospective employees have worked in covered employment under Local 338 and have so noted on the application at the time of their employment.

(ee) A regular full time employee reduced to a regular part time employee shall receive a rate of pay equal to their last part time rate or their hire rate (rate of pay at time of employment) plus all subsequent part-time raises they would have been entitled to had they remained part time.

(ff) The Employer and the Union agree to establish a Joint Labor/Management Safety Committee. Also, the Employer agrees to participate in a committee consisting of Union Representatives and Company Management, which will meet, as needed, for the purpose of reviewing complaints and alleged non-compliance with this Collective Bargaining Agreement.

(gg) Effective January 1, 1996, the Employer may hire part time service clerks and part time specialty clerks subject to the following:

**PART TIME SERVICE CLERK**  
(In Stores Doing Over \$175,000 Per Week)

Duties: Bagging, Carrying out Orders, Bottle Refund Process, Cleaning Front End and Outside Store, Replenishing Front End Supplies, Parcel Pick Up, Sweep the Sales Floor, Clean up Spills, and Throw Backs.

**PART TIME SPECIALTY CLERKS**  
(In Stores Doing Over \$175,000 Per Week)

Duties: Front end candy, General Merchandise (such categories as Health & Beauty Aids, Greeting Cards, Magazines, Seasonal Merchandise, and Promotional Items), Stand Alone Departments (such as Photo Lab, or Gourmet Coffee Stand). The part time specialty clerk is not to replace the current full-time Health & Beauty Aid clerk.

**PROVISIONS THAT APPLY TO BOTH JOB CLASSIFICATIONS**

**Benefits:**

Health and Welfare and Dental and Legal Services Fund Contributions shall commence the first day of the calendar month after the Employee has been employed for six (6) consecutive calendar months.

Pension Fund contributions shall commence with the first day of the calendar month after the Employee has been employed for three (3) consecutive calendar months.

Same vacation, sick, holiday, premiums, and hours as a regular part time employee hired on or after October 4, 1998.

**Wages:**

See (k) and (l) of Appendix «A»

Service and Specialty Clerks shall be afforded special consideration for regular part time clerk positions. When/if a Service or Specialty Clerk is promoted to a regular part time clerk position, he/she shall be credited with fifty percent of the length of his/her Service/Specialty Clerk employment for wage purposes.

Limit to a combined maximum of ten (10) per store in stores consistently doing over \$175,000 per week.

When/if a Service/Specialty Clerk performs regular part time clerk functions he/she shall receive the applicable regular part time clerk rate.

AGREEMENT entered into as of October 6, 2002, between RETAIL, WHOLESALE, & CHAIN STORE FOOD EMPLOYEES UNION, LOCAL 338, affiliated with the Retail, Wholesale and Department Store Union, AFL-CIO (the Union), and

**RED APPLE**  
**NAMDOR**  
**AND**  
**SUPERMARKETS ACQUISITION SUPERMARKETS**  
**(Gristede's)**  
**823 11th Ave.**  
**New York, New York 10019**

(the Employer), WHEREIN IT IS AGREED AS FOLLOWS:

**ARTICLE 1**  
**DEFINITION AND COVERAGE**

A. This agreement covers, and the term "employee" or "employees" as herein used includes all of the Employees present and future full time and part time employees (other than store managers, butchers and meat wrappers) employed in all departments in all of the present and future supermarkets and stores operated by the Employer in the City of New York and the State of New York.

B. The term "supermarket" or "supermarkets", "store" or "stores" as herein used includes supermarkets, stores, shops, concessions, leased departments and establishments contained herein.

Notwithstanding any language in the first paragraph of this section, the employer shall have the right to lease space to a concession to operate the following types of businesses: banks and dry cleaners only, and individuals working in said leased space or concessions shall not be covered by the collective bargaining agreement between Local 338 and the Employer should control and operate any such leased space or concession become the responsibility of the Employer, then Local 338 shall have jurisdiction over the Employees employed therein.

C. The term "full time employee" as herein used means an employee working 30 hours or more within the regular work week.

D. The term "part time employee" shall mean an employee working less than 30 hours within the regular work week.

E. The term "employees" includes both full time and part time employees, except where otherwise expressly provided.

F. The term "regular employee" means an employee who has completed his/her trial period.

**ARTICLE 2**  
**UNION RECOGNITION AND UNION SHOP**

A. The Employer recognizes the Union as the exclusive collective bargaining representative for all the Employer's employees covered by this Agreement.

B. All present full time and part time employees who are members in good standing in the Union, shall, as a condition of continued employment, maintain membership in good standing in the Union during the life of this Agreement through regular payments to the Union of the periodic dues and the initiation fees uniformly required as a condition of acquiring and retaining membership. All new full time and part time employees, and all present

full time and part time employees who are not members in good standing in the Union, shall, as a condition of continued employment, join the Union thirty days after the date of their employment or the, effective date of this Agreement or the date of the execution of this Agreement, whichever is later, except that part time employees shall not be required to join the Union until they have completed their trial period and shall thereafter maintain membership in good standing in the Union during the life of this Agreement through regular payments to the Union of the periodic dues and initiation fees uniformly required as a condition of acquiring and retaining membership. The Union shall make membership in the Union available to all full time and part time employees covered by this Agreement on the same terms and conditions as are generally applicable to other members of the Union. Upon receipt of a written notice from the Union to the Employer that a full time or part time employee is not a member in good standing in the Union, as herein provided such employee shall forthwith be discharged. Membership in good standing in the Union shall not be construed in violation of the provisions of applicable law.

### **ARTICLE 3** **UNION CARD**

The Union shall lend to the Employer a Union Store Card issued by the Union which shall remain the Union's property. The termination of this Agreement or any breach or violation of the provisions of this Agreement by the Employer shall be sufficient cause for the removal of said Card by the Union.

### **ARTICLE 4** **TRIAL PERIOD AND TENURE OF EMPLOYMENT**

A. Full time employees not previously employed by the Employer shall be employed on trial for a period of 30 calendar days. However, when a new store is opened by the Employer and for a period of 60 days from the date of such opening, the trial period shall be 60 days from the respective dates of hire for all new full time employees hired for such store, provided further, however, that after such store has been open for 60 days, any employee therein still on trial and any employee thereafter hired shall serve no more than a total aggregate trial period of 30 days- including days of work prior to the time the new store was open for 60 days. During such trial period, such employee on trial may be dismissed without notice or cause. Upon the expiration of such trial period or upon notice to the Union by the Employer to that effect prior to the expiration of such trial period, such newly employed employees shall automatically become and be deemed to be regular full time employees.

B. Part time employees shall be on trial until they have been employed thirty (30) working days. When a new store is opened part-time employees who have not completed their trial period shall be subject to the same requirements as above stated in paragraph (a) for full-time employees, but in addition, their trial period shall not be deemed completed until they have been employed thirty (30) working days.

C. The Employer shall promptly notify the Union in writing when it has hired employees, furnishing the names and social security numbers of the employees hired and the date of their hiring.

D. Regular full time employees working 40 hours weekly who are so employed at the date of the execution of this Agreement or who are so hired after the date of the execution of this Agreement shall be guaranteed 40 hours work weekly during the entire term of this Agreement, subject, however, to the provisions of this Article.

E. The work week of regular full time employees working 30 hours or more weekly shall not be reduced without prior written notice to and the prior consent of the Union, The provisions of this paragraph shall not apply to those employees covered by paragraph (d) of this Article. Regular part-time employees except those who are available on a limited basis such as Friday night or Saturday will be scheduled for no less than (16) hours on a regular and continuing basis and further provided that they are available to work the Employees schedule and there is no drop in business.

F. In the event of a continued decline in business, continued lack of work, or in the case of a store closing, the Employer may lay off regular full time employees and/or regular part-time employees in inverse order of seniority provided a one (1) week written notice is given to the union and to the employee(s). The Employer shall, if possible, notify the union in writing two (2) weeks in advance of any store closing. In the case of a store closing, the same number of regular full-time employees and the same number of regular part-time employees as employed in the store being closed shall be laid off in accordance with the following layoff procedure.

Seniority shall be determined by continuous service in a job classification within a department on a bargaining unit-wide basis (company wide or by division where applicable).

A. Layoffs shall be by seniority based on the following:

1. Job Classification:

- a. Assistant Manager & Department Head
- b. Bookkeeper, Scanning Coordinator & Front-End Employee
- c. Regular full time clerks
- d. Regular part time clerks

2. Departments:

- a. Front End
- b. Grocery
- c. Produce
- d. Deli - App.
- e. Dairy - Frozen
- f. Scratch Bakery

3. Geographical Area Seniority:

Area A - 5 Boroughs of New York , Area B - Nassau and Suffolk Counties, Area C - Westchester County, Area D - Rockland, Putnam, Orange, Dutchess, Sullivan and Ulster Counties and other counties in the state of New York where applicable.

B. The least senior full time employee in each of the above job classifications in a department within a geographical area may exercise their seniority rights over the least senior similar classification in another geographical area.

C. The least senior Assistant Manager, Department Head, Bookkeeper, Scanning Coordinator, or Front-End Employee may exercise their seniority rights over the least senior full-time clerk provided their seniority as a regular full-time employee is greater than the person they are replacing.

D. For the purpose of this section, regular employees are employees who have completed their trial period. Probationary or temporary employees shall be laid off prior to regular full time and regular part time employees.

E. Seniority shall be established from the date of hire for regular full-time employees hired as full time. The date of conversion to regular full-time shall establish the full-time seniority date in the instance of a regular part-time employee promoted to regular full-time.

F. The Employer shall recall laid-off and/or reduced regular employees before hiring new employees in the classification(s) laid-off or reduced. This recall shall last up to six (6) months from the date of lay off or reduction and shall be in inverse order of seniority. Recalls shall be based on job classification and seniority. Furthermore, regular employees that opted for part-time in lieu of a lay off, shall retain recall for up to twelve (12) months if they stay employed. Should a full-time position in their job classification become available in their geographical area, they shall be offered same, if qualified, before the employer hires new employees.

Any employee who falls to report to work within one week after the date of mailing by registered mail of written notice of recall, except for justifiable excuse, shall be deemed to have waived his/her right to reemployment. Such notice shall be so sent to the last address on file with the employer.

G. Regular full time employees may exercise their seniority rights over regular part time employees by job classification in a department within their geographical area first, and then in other geographical areas. Eligible full time employees electing not to be reduced to part time status shall be laid off. Full time employees accepting part time status to avoid a layoff shall be paid a rate of pay equal to their last part time rate plus all raises they would have received as a part time employee. If such reduced full time employee was never a part time employee, they shall receive their starting rate plus all subsequent raises they would have received as a part time employee.

H. Full time employees who have been transferred or promoted to another job classification shall retain seniority in their former job classifications in their former departments, and, if subject to such layoffs, shall be retransferred to their former job classifications and departments in accordance with their seniority in such former job classifications and departments.

I. Before completion of their trial period, new employees may be dismissed without notice or cause and without consent of a representative of the Union. No regular employee shall be discharged except for just cause. In the event that a duly authorized representative of the Union shall not consent to the discharge, the dispute with respect to such discharge shall be submitted to arbitration and a final and binding decision by the New York State Mediation Board or the American Arbitration Association at the option of the Union.

J. The Employer may summarily discharge an employee for drinking on the job, sale of drugs, or use of drugs on the job other than for medicinal purposes, dishonesty or physical assault on the job, willful sabotage of

company property, subject, however, to the right to arbitrate hereunder whether such discharge was for just cause. The arbitrator shall be empowered to render such award as shall be just and reasonable in the premises.

K. If an employee is suspended by the Employer, the Employer's Labor Relations Director and the Union must meet within 3 work days from the time of the suspension to discuss the suspension. If no agreement is reached, the dispute may then be submitted to arbitration hereunder by either the Employer or the Union. Should the arbitrator decide that the suspension was not for just cause or that the length of suspension was too long, the Employer shall pay the employee for lost time as determined by the arbitrator.

L. No employee shall be discharged for refusing to cross a legal picket line in front of his/her Employees' stores established by another Labor organization in a primary Labor dispute with the Employer or a subsidiary or an affiliate thereof, and the Union shall not be liable therefore.

## **ARTICLE 5** **HOURS OF WORK**

A. The maximum regular weekly hours of work for all employees shall be forty hours, divided into a work week of five days, Monday through Saturday.

B. The maximum regular daily hours of work for all employees shall be eight hours.

C. Work performed on Sunday shall not be part of the regular work week. The Employer agrees to give preference for Sunday work to regular employees covered by this Agreement.

D. The hours of work of all employees shall be continuous.

E. Any Employee working at least eight hours on any day shall be entitled to one continuous hour for meals on such day. Any employee working at least six hours but less than eight hours on any day shall be entitled to one continuous meal period of thirty minutes on such day. Such meal times shall not be considered working hours.

F. All full time employees shall be given two 15-minute rest periods daily, and all part-time employees shall be given a 15 minute rest period for each 4 hours worked each day, but in no event more than 2 such periods in any such day. Such rest periods shall be considered working time.

G. Full time employees working a 40-hour 5-day week may be required by the Employer to work a sixth day during the Monday through Saturday week; such sixth day must be at least a 4-hour work day. Employees shall work overtime as required by the Employer. The Employer shall give the employees affected 24 hours prior notice of work required on the sixth day of the week and 4 hours prior notice of all overtime work required on the same day.

H. Any regular full-time employee who works on a Sunday shall be scheduled for at least four (4) hours. Any regular full-time employee who works on a Holiday shall be scheduled for eight (8) hours work provided the store is open for eight (8) hours and further provided the employee is available to work eight (8) hours.

I. Any regular part-time employee who works on a Sunday or holiday shall be scheduled for four (4) hours work provided the employee is available to work.

J. Daily hours (including Sunday) and daily start times shall be assigned to regular employees based upon the requirements of the business.

K. The Employer may introduce a four (4) ten (10) hour work week for full time employees on a voluntary basis. The Employer may have full discretion of the establishment and elimination of the new shift. Holiday pay and sick leave pay will reflect the ten (10) hour schedule. There shall also be an additional five (5) minutes added to the P.M. break for those employees working the four (4) ten (10) hour work week. These full time employees shall receive time and one half for all hours worked over forty (40) hours in a week or in excess of ten (10) hours in any day. In a Holiday week, full time employees shall receive time and one half after thirty (30) hours if they are on a four (4) day ten (10) hour work week. The introduction of this four (4) ten (10) hour shift does not affect the overtime provision for those employees working a five (5) day, eight (8) hour shift.

Should the employee who has agreed to work such four (4) day, ten (10) hour work week, decide that he/she wants to revert back to their original five(5) day, eight (8) hour work shift, they shall be allowed to do so without prejudice. This change shall take place within two weeks of notice to the Employer of such change.

## **ARTICLE 6** **WAGES**

The wage and related provisions for all employees covered by this Agreement are set forth in Appendix "A" hereto annexed and made a part hereof.

## **ARTICLE 7** **OVERTIME AND PREMIUM PAY**

A. Any work in excess of 8 hours in any day, or 40 hours in any week, and any work on Sunday or on any day of rest or on any holidays as herein provided, is and shall be considered overtime work. Overtime work shall be compensated at the rate of one and one-half times the regular hourly wage. On the holidays provided hereunder, such overtime pay shall be in addition to the pay herein provided for such holidays. Sunday work shall be compensated at twice the regular hourly rate of pay for all present regular Full and Part time employees. Part time employees hired on or after January 1, 1987, shall receive one and one-half (1 1/2) times their regular rate of pay for work performed on Sundays. Full time employees hired on or after January 1, 1990, shall receive one and one-half (1 1/2) times their regular rate of pay for work performed on Sundays.

Full Time or Part Time employees who receive double time for work performed on Sunday shall receive a frozen premium rate which is equal to the hourly straight time rate of pay they were earning as of January 1, 1996. In addition to the frozen premium hourly rate of pay, they shall receive their regular hourly rate of pay for each hours of work performed on Sunday. As their regular hourly rate increases, the frozen premium remains the same. If their hourly rate decreases, their frozen premium hourly rate will be equal to the hourly rate entitled to had the decrease occurred on January 1, 1996. If their hourly rate increases as the result of a promotion to

Assistant Manager or Dept. Head, their frozen premium hourly rate will be equal to the frozen premium hourly rate for that job classification on January 1, 1996.

Full time employees paid double (2) time for Sunday work, if converted to Part time status, shall continue to be paid double (2) time, Part time employees paid double (2) time for Sunday work, if converted to Full time status, shall continue to be paid double time. Part time employees paid time and one-half (1 1/2) for Sunday work, if converted to Full time status prior to January 1, 1990, shall be paid double time, Part-time employees paid time and one-half (1 1/2) for Sunday work if converted to Full time after January 1, 1990, shall continue to be paid time and one-half (1 1/2) for Sunday work. Full time employees hired on or after January 1, 1990, who receive time and one-half (1 1/2) for Sunday work, if converted to Part time status, shall continue to be paid time and one-half (1 1/2) for Sunday work.

All regular Full time and regular Part time employees shall be given a reasonable opportunity to work on Sundays on a rotating basis.

B. Full time employees (other than Assistant Managers and Department Heads) reporting for work at 4 P.M. or later shall receive therefore, in addition to their regular hourly wage, premium pay of 10% of their regular hourly wage. Such premium pay shall be deemed part of their regular hourly wage with respect to applicable hours hereunder in calculation of overtime pay under the provisions of this Agreement. Such premium pay shall be paid only for the weeks when such employees work such late shift. There shall be no change from such late work shift during the work week. No employee shall be changed to such late shift without the consent of the Union. A \$60.00 per week cap shall apply to persons assigned to such shifts on or after October 1, 1995.

C. Full time employees (other than Assistant Managers, Department Heads and employees covered by paragraph (b) of this Article) reporting for work on any day before 4 P.M., if required to work after 7 P.M. on any day, shall receive, in addition to their regular hourly wage, premium pay of \$1.00 per hour for all work after 7 P.M. on any day, except that for all hours worked in excess of 8 hours on any day, they shall be compensated at the overtime rate of one and one half times their regular hourly wage.

D. All full time clerks hired after October 1, 1986, other than those working on a regular night pack out crew who are assigned to a late shift shall be paid \$2.00 per shift premium in addition to their regular pay. A late shift is one that commences at 12:00 noon or later.

E. All regular part time employees assigned to a night pack out crew, shall receive a 10% premium for all hours worked. Regular part time employees who are not assigned to a night pack out crew shall receive a 10% premium for all hours worked after 12 AM (Midnight). In no event shall the weekly 10% premium exceed \$60.00 for a regular part time employee.

F. Night differentials of 10% for eligible full time or part time employees will be included in sick pay, unused sick pay, holiday pay, personal pay, and vacation pay.

G. There shall be no pyramiding or duplication of overtime and/or premium pay.

H. Before a night crew can be established the company must follow guidelines established in Appendix "A".



I. In the event there is a change in Sunday rate of pay for new part time employees in the stores covered by the Local 342-50 Collective Bargaining Agreement, Local 338 agrees to meet and discuss with those employers the changes that are negotiated pertaining to the Sunday rate of pay for new part time employees. Any change in the Sunday rate of pay is subject to a vote and ratification by the membership of Local 338 in each company.

**ARTICLE 8**  
**HOLIDAYS**

A. The following holidays shall be paid holidays for all regular full time employees, regardless of length of employment, and all regular part time employees employed for 3 continuous months, or longer:

New Years Day	Thanksgiving Day	Memorial Day
Christmas Day	Independence Day	Labor Day
Presidential Election Day		

B. All regular full-time employees who have completed their trial period prior to October 1, 1995, shall receive six additional paid personal holidays in each calendar year so that they shall receive twelve paid holidays in each calendar year, and 13 paid holidays in years in which there is a Presidential Election, One of the paid personal holidays shall be the employees' birthday. In the event that any said employee's birthday falls on a Sunday, or his/her scheduled day off, or on one of the holidays listed in paragraph (a) of this Article, then said employee will be entitled to his/her scheduled work day immediately following or on a day mutually agreed to by the Employer and the Union. Regular full time employees shall be given 2 of such personal holidays during the first 6 months of the calendar year and 2 of such personal holidays during the second 6 months of the calendar year. The remaining personal holiday may be taken any time during the calendar year. These holidays may be taken at the employee's option, provided that 2 weeks advance notice is given to the Employer and that the personal holiday selected is not during a week in which another paid holiday occurs, and provided further that the Employer may refuse to grant the personal holiday on the date requested by such employee if the operation of the store will be disrupted. If the employee elects to observe a religious holiday, it will be counted as one of his/her personal holidays. An employee who selects a religious holiday shall be given preference for that day off.

All regular full time employees completing their trial period on or after October 1, 1995, shall receive two (2) Personal Holidays and one (1) Birthday in the calendar year after completing one (1) year employment; three (3) Personal Holidays and one (1) Birthday in the calendar year after completing two (2) years of employment; and five (5) Personal Holidays and one (1) Birthday in each calendar year after completing three (3) years of employment.

C. All regular part time employees employed for 3 continuous months or longer shall be paid 4 hours pay for each of the holidays listed in paragraph (a) of this Article thereafter occurring. All regular part time employees completing their trial period prior to October 1, 1995 and employed for 7 continuous months or longer shall thereafter receive three additional paid personal holidays yearly with four hours pay for each such day. One of the paid personal holidays shall be the employee's birthday. In the event that any said employee's birthday falls on a Sunday, or his/her scheduled day off, or on one of the holidays listed in paragraph (a) of this Article, then said employee will be entitled to his/her birthday holiday on the scheduled work day immediately following or on a day mutually agreed to by the Employer and the Union. Of the other two personal holidays to which a part time employee may be entitled, one shall be granted in the first 6 months of the calendar year and one shall be granted in the second six months of the calendar year. Subject to the foregoing, personal holidays

may be taken at the employee's option, provided that 2 weeks advance notice to the Employer is given, the personal holiday is not in a week in which another holiday occurs, and provided further that the Employer may refuse to grant the personal holiday on the date requested by the employee if the operation of the store will be disrupted.

All regular part time employees completing their trial period on or after October 1, 1995, shall receive one (1) Personal Holiday in the calendar year after completing one (1) year of employment; one (1) Personal Holiday and one (1) Birthday in the calendar year after completing two (2) years of employment; and two (2) Personal Holidays and one (1) Birthday in the calendar year after completing three (3) years of employment.

D. In order to qualify for holiday pay, employees shall work their regularly scheduled day before the holiday and shall also work their regularly scheduled day following the holiday except for excused absence on either or both of such days, which excuse shall not be unreasonably denied.

E. All hours worked by full time employees in excess of 32 hours during a week in which one of the personal or legal holidays fall will be paid for at the rate of one and one-half times the regular hourly rate.

F. In the event that any regular full time employee leaves his/her position or is discharged or laid off without having received his/her pro-rata holidays for any year, then, nevertheless, such employee shall receive the balance of his/her pro-rata holiday pay at the time he/she either leaves his/her position or is discharged or laid off and shall receive personal holiday pay pro-rated on the basis of one day for each two months work.

G. In the event that any regular part time employee leaves his/her position or is discharged or laid off without having received his/her pro rata holidays for any year, then, nevertheless such employee shall receive the balance of his /her pro rata holiday pay at the time he/she either leaves his/her position or is discharged or laid off and shall receive personal holiday pay pro rata.

## **ARTICLE 9** **VACATION**

A. Regular full time employees completing their trial periods prior to October 1, 1995, employed for six months or more, but less than one year, prior to September 30<sup>th</sup> in any year of this Agreement, shall receive one continuous weeks vacation for six months' employment and one additional day's vacation for each months' employment in excess of six months, but not exceeding two weeks vacation, with full pay in advance in each such year of this Agreement.

B. Regular full time employees completing their trial period prior to October 1, 1995, employed for one year or more prior to September 30<sup>th</sup> in any year of this Agreement, shall receive two continuous weeks' vacation with full pay in advance in each year of this Agreement.

C. Regular full time employees completing their trial period on or after October 1, 1995, shall receive vacation based on the following:

employed less than 1 year but more than 7 months prior to 9/30 = 1 day per month up to a maximum of 5 days during their first year of employment. employed 1 year prior to 9/30 = 1 week vacation

employed less than two years prior to 9/30 = pro-rata vacation employed 2 years prior to 9/30 = 2 weeks vacation

D. All regular full time employees employed for seven years or more prior to September 30th in any year of this Agreement, shall receive three continuous weeks' vacation, with full pay in advance in each year of this Agreement.

E. All regular full time employees employed for ten years or more prior to September 30th in any year of this Agreement, shall receive four weeks' vacation with full pay in advance in each such year of this Agreement.

F. All regular full time employees employed for twenty five (25) years or more prior to September 30th in any year of this Agreement, shall receive five weeks' vacation with full pay in advance in each such year of this Agreement.

G. All regular full time employees working continuously a six day work week shall be paid vacation pay computed on the basis of their weekly earnings for such 6-day work week.

H. Regular full time employees regularly scheduled and working less than 40 hours weekly at any time during the year immediately prior to their vacation shall have their vacation pay based upon their average weekly straight time hours worked during such year.

I. For the purpose of computing an employee's length of employment hereunder, he/she shall be credited with his/her length of employment with the Employer, as well as with his/her length of employment with his/her prior employers whose business or stores have been purchased or in any way acquired, in whole or in part, directly or indirectly, by the Employer.

J. Vacations shall be given during June, July, August or September of each year of this Agreement; except that in the case of employees presently entitled to 4 or 5 weeks' vacation hereunder, three weeks of such vacation shall be continuous and shall be given during said months and the fourth and fifth weeks' vacation may be given at any time during the calendar year. The vacation period shall be fixed by the Employer and communicated to the Union and the employees at least four weeks in advance. Such assignment, will be made with due consideration for the seniority of the employee.

However, effective January 1, 1985, employees first becoming eligible for more than 2 weeks' vacation may have such additional week or weeks scheduled by the Employer at a time outside of the June-September normal vacation period.

K. In the event that any full time employee who has been employed for six months or more leaves his/her position or is discharged or laid off prior to the vacation period for that year or during or after the vacation period but without having received his full vacation for that year, then, nevertheless, such employees shall receive his/her full pro rata vacation pay at the time he/she either leaves his/her position or is discharged or laid off. All full time employees laid off by the Employer before the completion of their six (6) month qualifying period shall receive pro-rata vacation for each month of continuous service rendered except those employees who have been discharged for good cause and/or voluntarily left their employment.

L. In the event that any holidays provided herein shall occur during an employees vacation period, such employee's vacation period shall be increased, with full pay, to include an equivalent number of days to make up for such holidays.

## **PART-TIME**

A. All regular part time employees completing their trial period prior to October 1, 1995, working 800 hours or more in any yearly period prior to September 30th, shall receive 25 hours vacation pay in advance in each subsequent year of this Agreement. If such employee also worked 800 hours or more in any subsequent yearly period prior to September 30th, he/she shall receive 50 hours vacation pay in advance in each subsequent year of this Agreement. All regular part time employees completing their trial period on or after October 1, 1995, shall receive vacation based on the following:  
employed 800 hours by 9/30 = 20 hours employed 2 yrs & 800 hours by 9/30 = 40 hours

Regardless of when a regular part time employee completed their trial period, if he/she works 800 hours or more in 7 yearly periods prior to September 30th, he/she shall receive 75 hours vacation pay in advance in each subsequent year of this Agreement. If such employee also works 800 hours or more in 10 yearly periods prior to September 30th, he/she shall receive 100 hours vacation pay in advance in each subsequent year of this Agreement; If he/she works 800 hours or more in 25 yearly periods prior to September 30th, he/she shall receive 125 hours vacation pay in advance in each subsequent year of this Agreement. A regular part time employee who has been employed for 1 year or more having less than the required 800 hours shall receive vacation on a prorata basis.

B. For the purpose of computing an employee's length of employment hereunder, he/she shall be credited with his/her length of employment with the Employer, as well as with his/her length of employment with his/her prior employers whose business or stores have been purchased or in any way acquired, in whole or in part, directly or indirectly, by the Employer.

C. Vacations shall be given during June, July, August or September of each year of this Agreement; except that in the case of employees presently entitled to 4 or 5 weeks' vacation hereunder, three weeks of such vacation shall be continuous and shall be given during said months and the fourth and fifth weeks' vacation may be given at any time during the calendar year. The vacation period shall be fixed by the Employer and communicated to the Union and the employees at least four weeks in advance. Such assignment, will be made with due consideration for the seniority of the employee.

However, effective January 1, 1985, employees first becoming eligible for more than 2 weeks' vacation may have such additional week or weeks scheduled by the Employer at a time outside of the June-September normal vacation period.

D. Regular part time employees may work up to forty hours weekly during the months beginning May 15, June, July, August, through September 15 and during named holiday weeks, but shall nevertheless be considered part time employees while so working. The Employer shall, while they are so working, at its sole expense, without deductions from them, fully cover them under the New York State Disability Benefit Law.

E. All regular part time employees who have completed one (1) year of service or more shall receive their pro-rata vacation upon their termination of employment except when discharged for just cause.

## **ARTICLE 10** **MANAGEMENT**

Subject to the provisions of this Agreement, the Employer has the right to establish policies and manage stores covered by this Agreement and direct the employees, including but not limited to, the right to hire, discharge for just cause, suspend for just cause (subject to authorization by the Employers' President or Vice President for Personnel and Industrial Relations or their other specific designee), promote, demote, layoff, transfer and assign employees, to fix openings and closing store hours, to designate employees' working hours, maintain order and efficiency and supervise the employees.

## **ARTICLE 11** **NO INDIVIDUAL AGREEMENTS**

The Employer will not enter into individual agreement of any kind with an employee, not accept nor require any security of any kind from an employee.

## **ARTICLE 12** **CHECKOFF**

A. Under the written authorization of the employees in accordance with applicable law, the Employer shall, on the first weekly pay day in each calendar month, deduct from the wages of each such employee a sum equal to such employee's Union dues, fees and assessments, which the Employer shall pay over to the Union or its duly authorized representative, receiving the Union's receipt therefore, such deductions must be paid over to the Union on or before the 20th day of each and every month, covering the amounts so deducted for that month.

### **B. PAC CHECKOFF**

The employer agrees to deduct and transmit to the Treasurer of RWDSU Local 338 PAC the amount specified for each hour worked from the wages of those employees who **voluntarily** authorize such contributions on the forms shall occur monthly and shall be accompanied by a list of the names of those employees for whom such deductions have been made and the amount deducted for each such employee.

## **ARTICLE 13** **EMPLOYMENT OF MINORS**

The Employer does hereby agree not to employ any minors which shall constitute a violation of any provisions of the State or Federal statutes in such cases made and provided.

The parties agree that, notwithstanding anything to the contrary contained in the collective bargaining agreement, part time employees under sixteen (16) years of age may be scheduled to work less than four (4) hours per day, but not less than three (3) hours per day, on those days and during those seasons (school year) when to do so would be a violation of law or regulation.

## **ARTICLE 14** **VISITS BY UNION REPRESENTATIVES**

The Business Agent or any authorized representative of the Union may visit the stores of the Employer at any time during business hours for the purpose of interviewing or observing the employees or for the purpose of conferring with the Employer. Business Agents may visit the stores during non-business hours; provided they inform management in advance of said visit.

**ARTICLE 15**  
**SHOP STEWARDS**

The Union may elect or appoint one Shop Steward and alternate within each store covered by this agreement. There shall be no transfer of Shop Stewards unless written notice is given to the Union and the member two weeks in advance of such transfer. The Employer shall be notified of the election or appointment of such Shop Stewards.

The Employer will, with adequate notice, arrange for the Shop Steward, or alternate, from each store to have a scheduled day off (not to exceed eight (8) hours), once each year with full pay for the purpose of attending the Union Shop Stewards' Conference. Said conference to be scheduled in a week other than a holiday week.

**ARTICLE 16**  
**MORE BENEFICIAL TERMS**

The Employer shall continue to grant its employees any and all terms and conditions previously granted by it more beneficial to its employees than those herein contained.

**ARTICLE 17**  
**BULLETIN BOARDS AND NOTICES**

The Company shall install a bulletin board for the use of regular union notices at a mutually convenient location within the store. The Union will be advised, in advance of the distribution by the Employer, of any notice to its employees relative to conditions of employment. The Union will provide all such bulletin boards.

**ARTICLE 18**  
**HEALTH AND WELFARE FUND,**  
**RETIREMENT FUND,**  
**AND DENTAL AND LEGAL SERVICES FUND**

A. Health and Welfare Fund

1. Full-time employees. The Employer shall pay to the Local 338 Health and Welfare Fund for each of its regular full-time employees covered by this Agreement the monthly contribution of:

Effective Date:	<u>10/06/02</u>	<u>03/01/03</u>	<u>01/01/04</u>	<u>01/01/05</u>	<u>01/01/06</u>	<u>10/01/06</u>
Amount:	\$192	\$275	\$280	\$330	\$360	\$329

2. Part-time employees. The Employer shall pay to the Local 338 Health and Welfare Fund for each of its regular part-time employees covered by this Agreement the monthly contribution of:

Effective Date:	<u>10/06/02</u>	<u>03/01/03</u>	<u>1/01/04</u>	<u>1/01/05</u>	<u>1/01/06</u>	<u>10/01/06</u>
Amount:	\$35	\$92	\$99	\$105	\$115	\$90

B. Retirement Fund

1. Full-time employees. The Employer shall pay to the Local 338 Retirement Fund for each of its regular full-time employees covered by this Agreement the monthly contribution of:

Effective Date:	<u>10/06/02</u>	<u>1/01/03</u>	<u>1/01/04</u>	<u>1/01/05</u>	<u>1/01/06</u>
Amount:	\$104	\$120	\$130	\$150	\$155

A. Part-time employees. The Employer shall pay to the Local 338 Retirement Fund for each of its regular part-time employees covered by this Agreement the monthly contribution of:

Effective Date:	<u>10/06/02</u>	<u>1/01/03</u>	<u>1/01/04</u>	<u>1/01/05</u>	<u>1/01/06</u>
Amount:	\$36	\$45	\$50	\$55	\$60

C. Dental and Legal Services Fund

1. Full-time employees. Effective November 1, 2002, there shall be no contribution to the Dental and Legal Services Fund. Effective October 1, 2006, the Employer shall pay to the Local 338 Dental and Legal Services Fund for each of its regular full-time employees covered by this Agreement the sum of \$31.00 per month.

2. Part-time employees. Effective November 1, 2002, there shall be no contribution to the Dental and Legal Services Fund. Effective October 1, 2006, the Employer shall pay to the Local 338 Dental and Legal Services Fund for each of its regular part-time employees covered by this Agreement the sum of \$25.00 per month.

D. Commencement of Payments. All payments above provided to the Health and Welfare Fund, the Retirement Fund and the Dental and Legal Services Fund shall commence as follows:

1. In the case of regular full-time employees payment shall commence with the first calendar month following the first month of employment.

2. If a full-time employee is hired on or before the 15th of a month, he/she shall be deemed to have been employed for the entire month; if he/she is hired after the 15th of a month, he/she shall be deemed to have been hired on the first of the following month.

3a. In the case of regular part-time employees payments shall commence with the first calendar month after the employee has been employed for three (3) consecutive calendar months except as provided in Appendix "A" (gg).

3b. In the case of part-time employees hired after January 1, 2003, the payments to the Funds shall commence the first calendar month after six months of employment.

E. Payments during non-working periods. In the event any regular employee shall not be working due to illness or disability, the Employer shall continue to make payments hereunder to the Local 338 Health and Welfare Fund, to the Local 338 Retirement Fund, and to the Local 338 Dental Fund for each such employee, but not for more than 13 weeks of illness or disability during any contract year of this Agreement.

F. Books and records. The Union and said respective Funds shall have the right at all times to examine the Employees books and records for the purpose of determining whether the Employer is complying with the provisions of this Agreement.

G. Disability Benefit Law. The Employer shall, during the term of this Agreement, at its sole expense and without deduction from its part time employees, fully cover its part time employees under the New York State Disability Benefits Law.

H. Date of payments. All payments due from the Employer to the Local 338 Health and Welfare Fund, the Local 338 Retirement Fund, and the Local 338 Dental Fund, must be paid on or before the 20th day of each and every month covering the amounts payable hereunder for the preceding months. All payments shall be without any deductions from employees.

## **ARTICLE 19** **SICK LEAVE**

A. In the first contract year of his/her full time employment each regular full time employee who has completed his/her trial period prior to October 1, 1995, and worked continuously for 3 months shall be entitled to receive a maximum of 9 days of sick leave with pay in each contract year provided that if the employee has not worked 12 month during his/her first contract year, sick leave will be prorated. In **succeeding** contract years the employee shall receive the full amount of sick leave above mentioned without pro-ration. All unused sick leave shall be paid to eligible employees within 30 days of the end of the sick leave year. A sick leave year runs from the date of hire to the anniversary of the date of hire.

All regular full time employees completing their trial period on or after October 1, 1995, shall receive sick days based on the following: after 3 continuous months employment employee shall receive 1 day per month up to a maximum of 4 days in the first sick leave year, a maximum of 6 days in the second sick leave year, and a maximum of 9 days in the third sick leave year.

B. Part time employees with one year of continuous service shall be entitled to three (3) scheduled days paid sick leave per year. A part-time employee with two years of continuous service shall be entitled to four (4) scheduled days sick leave per year. A part time employee with three (3) years or more of continuous service shall be entitled to five (5) scheduled days paid sick leave per year. A part time employee with two (2) years or more of continuous service shall be paid for unused sick days at the end of each contract year, on the basis of four (4) hours pay for each unused day.

C. An employee who is injured on the job and is directed by a medical doctor not to continue work shall be paid his usual days wages at straight time for the day on which the injury occurred and such day shall not be considered sick leave.

D. In the event an employee is terminated due to a lay off or retirement, such employee, if eligible, shall receive payment for unused sick leave on a pro-rata basis.



**ARTICLE 20**  
**FUNERAL LEAVE**

- A. Regular full time employees who, after 30 days of continuous employment, have a death in the immediate family, shall be entitled to 3 working days off with pay for actual time lost. The "immediate family" shall be limited to the employee's father, mother, sister, brother, spouse, children, spouse's parent, and verified legal guardian.
- B. Regular part time employees who, after 30 days of continuous employment, have a death in the immediate family, shall be entitled to funeral leave as provided for regular full time employees, but on a pro-rated basis. Such employees shall be compensated for actual time lost as set forth on the weekly work schedule.
- C. All employees after 30 days of employment shall be entitled to one day paid leave for a regularly scheduled work day lost to attend the funeral of an employee's grandparent or grandchild.

**ARTICLE 21**  
**JURY DUTY**

Any employee employed continuously for three months or longer who is required to perform jury duty shall be paid the difference between his/her regular straight time earnings and any payment paid for service as a juror not exceeding two weeks in any year (if Grand Jury, up to thirty (30) working days over the term of the Agreement); provided, however that the jurors fee earned by him on his/her regular day off shall be excluded in computing the pay to be granted him. The employee shall work on any of his/her regularly scheduled work days, when he/she is not required to serve on a jury.

**ARTICLE 22**  
**LEAVE OF ABSENCE**

A. When a female employee with one year or more continuous employment leaves because of maternity, she will be granted a leave of absence without loss of seniority for a period not exceeding six months. She shall give the Employer two weeks prior notice before taking such leave of absence. Upon request for reinstatement, which shall be no less than two weeks before she intends to return to work, she shall furnish a doctor's certificate showing she is able to perform the normal duties of her job. During the leave of absence, all fringe benefits, including time worked for vacation credit, will be forfeited.

The employer shall also comply with all State and Federal laws relating to Leaves of Absence, including its policy on the Family Medical Leave Act. To the extent that a conflict exists between laws or among the laws and the contract terms, the provisions and interpretations most beneficial to the employees shall prevail.

B. An employee absent from work due to illness or injury shall retain his/her seniority for a period not to exceed twelve (12) months.

C. Temporary Union Leaves of Absence for all Full-time and Part-time employees shall be determined by the Union for up to Three (3) months or longer if the Union deems necessary. The purpose of this leave will be for Union activity. The employer will bear no financial burden in this program. (the union will be responsible for all contributions to the funds and for the salary for those individuals who are on temporary leave working with the union). There shall be a maximum of one member per store assigned to such leave.

Any employee elected or appointed to a full-time union office shall be granted a leave of absence without loss of seniority.

### **ARTICLE 23** **NO LIE DETECTOR TEST**

The Employer shall not require nor request its employees to submit to any lie detector tests.

### **ARTICLE 24** **NO DISCRIMINATION**

The Employer shall not discriminate against any employee because of race, color, religion, sex, age or national origin.

### **ARTICLE 25** **STORE LINEN**

The Employer shall, at its own cost and expense, furnish and launder the customary store coats, aprons, gowns and all apparel required by the Employer to be worn by any employee.

### **ARTICLE 26** **TRANSFERS**

The Employer shall have the right to transfer any employee from one store to another, provided, however, that all transfers shall be limited to within a reasonable radius of the employee's home or last store location. In case of permanent transfers, three work days' prior notice shall be given by the Employer to the employee and to the Union. Temporary transfers of one week or less of employees for the convenience of the Employer need not be reported by the Employer to the Union. In the event any employee is transferred from one store to another store, the Employer shall reimburse him for the additional fares, tolls and gasoline costs resulting from such transfer, unless such transfer results from a store closing, is in lieu of a layoff or is at the employee's request.

### **ARTICLE 27** **ARBITRATION**

A. There shall be no strike or picketing by the Union or lockout by the Employer during the duration of this Agreement, except for and after the failure of the other party to submit to arbitration hereunder or to abide by and perform the decision or award of the arbitrator herein provided for.

B. Should any dispute arise between the Employer and the Union or any employees concerning the interpretation or application of any of the terms and provisions of this Agreement, or any alleged breach of this

Agreement, and the Employer and the Union shall be unable to adjust said dispute between themselves, the said dispute, at the request of either the Employer or the Union, shall be submitted to arbitration under auspices of and in accordance with the then rules of the New York State Mediation Board or the American Arbitration Association at the option of the Union. The decision or award of the arbitrator shall be final and binding and conclusive upon the Employer, the Union and the employees. The compensation of the Arbitrator, if any, shall be borne equally by the parties. No decision in arbitration shall constitute a precedent in any subsequent case, and each case shall be considered solely on its own merits and shall be based upon the terms of this Agreement.

C. The sole remedy for any breach or threatened breach of this Agreement shall be arbitration as provided. Resort shall not be made to courts or government agencies except to compel arbitration or to enforce the arbitration award.

D. A violation or breach of this Agreement by any employee or employees shall not be considered a violation or breach of this Agreement by the Union.

E. A grievance by an employee against an Employer concerning disciplinary action, must be filed by the employee within fifteen (15) days after written notice by the Employer to the employee and to the Union of such discipline, otherwise the grievance shall be deemed to be waived.

F. Notwithstanding, any other provisions herein the Union shall have the right to strike in the event that an Employer is delinquent in making contributions to an affiliated Fund in accordance with the terms of this Agreement.

## **ARTICLE 28** **SEPARABILITY**

It is expressly understood and agreed between the parties hereto that the provisions of this Agreement shall be deemed to be independent of each other, and that if any provisions of this Agreement shall be judicially declared to be invalid because contrary to law, or shall otherwise become ineffective under any legally binding order or decision of any Court, Board or governmental agency, or by operation of law, the invalidity or ineffectiveness of such provision shall not invalidate any other provisions of this Agreement; it being the express intention of the parties hereto that all other provisions of this Agreement shall not be affected thereby, but shall continue in full force and effect for the period of this Agreement. It is further expressly understood and agreed that if any provision or the enforcement or performance of any provision of this Agreement shall at any time contrary to law, than such provision shall not be applicable except to the extent permitted by laws; and that if at any time thereafter such provision or its enforcement or performance shall no longer conflict with the law, then it shall be deemed restored in full force and effect as if it had never been in conflict with the law. It is the understanding and Agreement of the parties that the provisions of this Agreement are retroactive or effective as herein expressly provided except as prohibited by controlling law, in which event such respective provisions shall be retroactive to, and/or effective, when and to the extent permitted by controlling law.

## **ARTICLE 29** **TERMINATION.**

This Agreement shall be effective as of October 6, 2002 and shall terminate on October 7, 2006.

**ARTICLE 30**  
**SUCCESSORS AND ASSIGNS**

This Agreement shall inure to the benefit of, and be binding upon, the parties hereto their successors and assigns.

IN WITNESS WHEREOF, the parties hereto have caused their presents to be duly executed as of the day and year above -written

Employer

Print Name

Title

RETAIL WHOLESALE & CHAIN STORE FOOD EMPLOYEES UNION LOCAL 338

By

Print Name

Title

**APPENDIX "A"**  
**WAGE AND RELATED PROVISIONS**

A. The minimum weekly wage for a 40 hour, 5 day work week for Assistant Managers shall be:

	<u>10/6/02</u>	<u>10/5/03</u>	<u>4/4/04</u>	<u>10/3/04</u>	<u>4/3/05</u>	<u>10/2/05</u>	<u>4/2/06</u>
Assistant Managers	\$938	\$953	\$963	\$978	\$998	\$1,013	\$1,033

B. The minimum weekly wage for a 40 hour, 5 day work week for grocery, produce, scratch bakery, dairy-frozen food, appetizing and delicatessen department heads:

10/6/02 10/5/03 4/4/04 10/3/04 4/3/05 10/2/05 4/2/06

\$912 \$927 \$937 \$952 \$972 \$987 \$1,007

C. The Employer will grant each Assistant Manager, and grocery, produce, dairy-frozen food and appetizing and delicatessen department head the following applicable wage increases per week for a 40 hour, 5 day work week:

10/6/02 10/5/03 4/4/04 10/3/04 4/3/05 10/2/05 4/2/06

\$20.00 \$15.00 \$10.00 \$15.00 \$20.00 \$15.00 \$20.00

D. The Employer will grant each regular full time grocery, dairy-frozen food, produce, appetizing and delicatessen clerk and each scale attendant, cashier, porter, checker, store clerical, wrapper, baker, receiving clerk and miscellaneous employee who has completed his/her trial period prior to 10/06/02 the following applicable wage increases per week for a 40 hour, 5 day work week:

10/6/02 10/5/03 4/4/04 10/3/04 4/3/05 10/2/05 4/2/06

Full-time Clerks \$20.00 \$15.00 \$10.00 \$15.00 \$15.00 \$10.00 \$20.00

E. Minimum weekly wage for regular full time clerks who have completed their trial periods prior to 10/6/02:

10/6/02 10/5/03 4/4/04 10/3/04 4/3/05 10/2/05 4/2/06

\$395 \$410 \$420 \$435 \$450 \$460 \$480

Minimum hourly rate for regular part time employees who have completed their trial period prior to 10/5/02:

10/6/02 10/5/03 4/4/04 10/3/04 4/3/05 10/2/05 4/2/06

\$6.25 \$6.50 \$6.70 \$6.95 \$7.25 \$7.50 \$7.80

F. For all those full time clerks who have completed their trial period on or before 10/5/02 the minimum wage shall be as of August 7<sup>th</sup>, 2006:

<u>10/5/02</u>	<u>8/7/06</u>
\$400 or less per 40 hours.....	\$505
\$401- \$425.....	\$530
\$426 - \$450.....	\$555

\$451 - \$475.....	\$580
\$476 - \$500.....	\$605
\$501 - \$525.....	\$630
\$526 - \$550.....	\$655
\$551 - \$575.....	\$680
\$576 - \$600.....	\$705
\$601 - \$625.....	\$730
\$626 - \$650.....	\$755
\$651 - \$700.....	\$805
\$701 or more per 40 hour .....	\$840

G. Assistant Managers and grocery, produce dairy-frozen food, appetizing-delicatessen department heads so employed prior to October 1, 1971 or January 2, 1972 (whichever is appropriate) shall each be guaranteed their overtime worked prior to October 1, 1971 or January 2, 1972 (whichever is appropriate) during the 5 day work week, but only up to 12 hours during such 5 day work week.

H. The employer will grant each regular part time employee who has completed his/her trial period prior to October 6, 2002, the following applicable wage increases per hour:

	<u>10/6/02</u>	<u>10/5/02</u>	<u>4/4/02</u>	<u>10/3/04</u>	<u>4/3/05</u>	<u>10/2/05</u>	<u>4/2/06</u>
Part-time:	\$.25	\$.25	\$.20	\$.25	\$.30	\$.25	\$.30

I. All those part time employees who have completed their trial period on or before 10/5/02, the minimum wage shall be as of August 7, 2006:

6.25 or less per hour	8.05 per hour
6.26 – 6.50.....	.8.30
6.51 – 6.75.....	8.55
6.76 – 7.00.....	8.80
7.01 – 7.25.....	9.30
7.51 – 7.75.....	9.55
7.76 – 8.00.....	9.80
8.01 – 8.25.....	10.05
8.26 – 8.50.....	10.30
8.51 – 8.75.....	10.55
8.76 – 9.00.....	10.80
9.26 – 9.50.....	11.30
9.01 – 9.25.....	11.05
9.51 – 9.75.....	11.55
9.76 – 10.00.....	11.80
10.01 - 10.25.....	12.05
10.26 – 10.50.....	12.30
10.51 – 10.75.....	12.55
10.76 – 11.00.....	12.80

11.01 – 11.25.....	13.05
11.26 – 11.50.....	13.30
11.51 or more .....	13.55

J. Regular full time grocery, dairy-frozen food, produce and appetizing-delicatessen clerks, and scale attendants, cashiers, checkers, store clericals, bakers , receiving clerk and wrappers completing their trial period on or after October 6, 2002 and working a 40 hour, 5 day work week shall receive the following applicable minimum weekly wage for their classification subject, however, to the provisions of paragraph (I), Of this Appendix:

	<u>10/5/02</u>	<u>10/3/04</u>	<u>1/1/06</u>
<u>Hiring Rates:</u>			
Step 1- After completion of trial period	\$400	\$425	\$450
Step 2- 6 months after step 1	\$420	\$445	\$470
Step 3- 6 months after step 2	\$440	\$465	\$490
Step 4- 6 months after step 3	\$460	\$485	\$510
Step 5- 6 months after step 4	\$480	\$505	\$530
Step 6- 6 months after step 5	\$500	\$525	\$550

**New position: Full time trainee position:**

Newly hired (and new to the industry) full time employees shall for the first eighteen (18) months of employment be on a three (3) step program:

STEP 1: \$8.00 per hour while on a ninety (90) day trial

STEP 2: \$9.00 per hour for an additional ninety (90) days  
Contributions to all benefit funds shall commence with Step 2

STEP 3: \$10.00 per hour to the completion of the eighteenth (18<sup>th</sup>) month.

At the end of this eighteen month program the member will be a Full time employee with all benefits and salary level of a regular full time employee with eighteen months of service.

K. Regular part time employees (except service & specialty clerks) completing their trial period on or after October 6, 2002, shall receive the following applicable minimum hourly wages and increases after completing their trial periods:

Effective October 5, 2002	\$6.00 per hour
Effective October 3, 2004	\$6.25 per hour
Effective January 1, 2006	\$6.50 per hour

Thereafter, all regular part time employees completing their trial period on or after October 6, 2002, shall receive a step wage increase of \$.20 per hour on the first full week of January and July each year, subject to the provisions of Paragraph (1) of this Appendix.

L. All full and part time employees hired on or after the effective date of this Agreement shall receive their trainee progression increases in accordance with the following schedule:

(i) all employees arriving at Step 1 or a higher step in the months of May, June, July, August, September, or October shall advance to Step 2 or their next scheduled succeeding wage step in the first full week of January;

(ii) all employees arriving at Step 1 or a higher step in the months of November, December, January, February, March, or April shall advance to Step 2 or their next succeeding wage step in the first full week of July;

(iii) thereafter said employees shall advance to the next applicable succeeding wage step every six months until he/she reaches the applicable maximum of his/her trainee progression rate range, or if he/she has been hired at or above such maximum, he/she shall receive all subsequent wage increases for his/her classification under paragraph (d) or (h) of this Appendix.

M. Any employee hired on or after the effective date of this Agreement at a rate equal to or in excess of the applicable trainee progression rate after completion of the trial period, must 6 months immediately following the completion of the trial period be at the rate equal to one wage step higher than the rate at which he/she was hired, subject however, to the provisions of paragraph (1) of this Appendix. On each succeeding six month, said employee shall advance to the next wage step, until he reaches the applicable maximum of his/her trainee progression rate range. After attaining the maximum of his/her trainee progression rate range, or if he/she has been hired at or above such maximum, he/she shall receive all subsequent wage increases of his job classification under paragraph (d) or (g) of this Appendix.

N. All employees shall in any event receive a minimum wage increase of \$.25 per hour after completion of the trial period. In the event of an increase in Federal or State minimum wage requirements, the employer agrees to meet and discuss those rates impacted by the new minimum wage.

O. Full time employees whose trial period is longer than thirty days under the provisions of this Agreement and who complete their trial period hereunder, shall receive their first trainee progression wage increases and/or other wage increases hereunder retroactive to the 31st day of their employment.



P. The provisions of this Appendix relating to employees working a 40 hour week shall apply pro-rata to employees working 30 hours or more weekly in the proportion that their weekly hours of work bear to 40 hours.

Q. In the event that an employee regularly employed part time changes to regular full time employment, then for purposes of computation of their wages they shall be credited with 50% of the length of his/her part-time employment. For seniority it is the date of part time to full time (the date of such transfer). Should the employer choose to promote a part-time employee to full time status, skill and ability shall be the determining factor.

R. Any employee designated by the employer to relieve a store manager for one or more weeks shall be paid the applicable minimum wage for store managers hereunder.

S. Any employee working a 40 hour work week designated by the Employer to work as a front end employee, scanning coordinator or bookkeeper shall be paid a \$15.00 bonus for a 40 hour work week above his/her otherwise applicable wage. Any regular part time employee designated by the Employer to work as a front end employee, scanning coordinator or bookkeeper shall be paid a \$.25 per hour bonus above his/her otherwise applicable wage.

T. Any employee designated by the Employer to relieve a grocery, produce, dairy frozen food, appetizing or delicatessen department head or Assistant Manager for one or more weeks shall be paid a \$15.00 bonus for a 40 hour work week above his applicable wage.

U. All employees shall receive their applicable wage increases hereunder or their applicable minimum wage scale hereunder, whichever is greater.

V. Merit wage increases shall not be credited or charged against trainee progressions, anniversary or other wage increases hereunder until Step 6 is attained as listed under paragraph (j) of this Appendix.

W. In no event shall the wages of any employee be decreased during the life of this Agreement. No employee shall in any event receive less than the applicable minimum wage herein provided for his/her classification. The minimum wage scale as herein fixed shall not be reduced during the life of this Agreement. In the event any employee classified as a porter or delivery man (where applicable) is required to work as a clerk, he/she shall be paid the entire day at the higher rate.

X. Employees required to report for work on any day and who report for work on that day and who, through no fault of their own, are not permitted to work on that day, shall nevertheless, be paid their full days' pay for that day.

Y. The Employer shall pay each of its employees on a fixed day of each and every week, the wages due such employees for the previous week.

Z. Should an employee be promoted by the Employer to Department Head or Assistant Manager, and should the difference between such employee's wage for a 40 hour 5 day week in his/her old job classification and in his/her new job classification exceed \$25.00, such employee shall be paid the weekly wage hereunder for the higher job classification less such excess immediately upon such promotion, and shall be paid such excess starting with the satisfactory completion of a 60 day trial period in his new job classification. Employees promoted to Assistant Manager or Department Head shall receive their old rate plus \$25.00/40-Hour week for

the first 60 calendar days of the promotion and then the applicable Assistant Manager or Department Head rate upon completion of the trial. Newly-hired Assistant Managers or Department Heads shall be employed on trial for a period of sixty (60) calendar days. During such trial period, such newly-hired employee may be dismissed without notice or cause.

(aa) Notwithstanding the provisions of Article 1 or any other provision of this Agreement, should the Employer employ any extra employee for an 8 hour day, the Employer shall pay to the respective Funds the respective amounts provided below with respect to each such employee for each such day:

Local 338 - Health and Welfare Fund	\$10.00
Local 338 - Retirement Fund	\$ 7.00
Local 338 - Dental Fund	\$ 5.00

(bb) Stores consistently having gross sales of \$150,000 or less per week need not designate Department Heads; excepting those Department Heads who were designated prior to October 1, 1989. Anyone designated after October 1, 1989 shall receive fifteen dollars (\$15.00) per week in addition to their base weekly wage. This is not intended to affect department heads designated as such prior to October 1, 1992.

All Department Heads and Assistant Managers appointed on or after January 1, 1999 in stores doing an average weekly business of \$200,000 or more shall earn:

(1) Upon completion of the trial period the department head shall receive \$700.00 for 40 hours work or an additional \$25.00, whichever is greater. The Assistant Manager, upon completion of the trial period shall receive \$725.00 or an additional \$25.00, whichever is greater for a forty hour week. All Department Heads and Assistant Managers increases shall be added to the minimum hiring rates, at the time the increases take effect. The new minimum hiring rates for Department Heads and Assistant Managers shall increase in the same amounts and on the same dates as all contractual increases set forth in this APPENDIX.

(2) Thereafter, these individuals shall receive the applicable general wage increases applicable to the position.

(3) All current Department Heads and Assistant Managers are grandfathered so that if they are reduced and subsequently reappointed to the same position within 18 months, they would not have to serve a trial period. **Any Department Head or Assistant Manager demoted on or after 10/4/98 and subsequently reappointed to his/her prior position shall receive their former rate plus any applicable wage increases.**

(4) Effective January 1, 1999, the position formerly recognized as Dairy/Frozen Department Head shall be known as Dairy/Frozen Lead Clerk in stores doing \$200,000 per week or more. The function of the lead clerk shall be those formerly done by the Department Manager. The lead clerk shall receive \$25.00 per forty hour week (\$6.25 per hour ) above his regular clerks pay. All current Dairy/ Frozen Department Heads shall be grandfathered so that if they are reduced to a clerk and reappointed as a lead clerk in either dairy or frozen departments within eighteen months, they immediately without trial period, return to their full department heads pay, with all increases granted Department Heads while they were not active Department Heads. There shall be no fewer than one full time Dairy/Frozen lead clerk per store.

(5) Effective January 1, 1999 newly appointed night crew chiefs shall receive the clerk's rate plus a 10% night differential (not to exceed \$50.00), plus a premium of \$25.00 per week (\$0.625 per hour).

(6) Prior to any department head being demoted, the Union shall be notified and there shall be a meeting with the Union, the Employer and the Employee.

(cc) All working time shall be recorded by Assistant Managers and Department Heads. Permanent written records of all paid hours of employees, as required by ERISA, shall be maintained by the Employer and reported and made available to the Trustees of the Local 338 Retirement Fund.

(dd) All newly hired full time employees will receive credit of up to one (1) year's service for wages only if within the preceding twelve (12) months the prospective employees have **worked in covered employment under Local 338 and have so noted on the application** at the time of their employment.

(ee) A regular full time employee reduced to a regular part-time employee shall receive a rate of pay equal to their last part time rate or their hire rate (rate of pay at time of employment) plus all subsequent part time raises they would have been entitled to had they remained part time.

(ff) The Union understands the needs of the company to establish night crews in some locations. The Union will allow the company the right to establish such night crews if the following procedures are followed:

The Union is notified at least two weeks in advance, with the total amount of people required to man the shift (P.T & F.T), The company must first ask for volunteers, and then it may assign employees in the reverse order of seniority, If an employee opts to become a part timer in lieu of taking the night position, then that full time night position must be offered to an existing part time employee. If the person assigned to the night crew is assigned due to a store closing or to avoid a layoff then they shall receive a night premium of 10% weekly not to exceed \$60.00.

(gg) All part time employees who have completed their trial period and work in excess of twenty-nine (29) hours shall receive time and one half their regular hourly earnings for all hours up to and including thirty five hours. If hours worked exceed thirty five then all hours worked shall be paid at a rate of \$ 9.375 per hour or their current rate, whichever is greater. Effective 10/05/03 the new minimum rate shall be \$10.375 per hour. In the event any part timer works more than six (6) consecutive weeks in which he/she works over 29 hours, the employee will be reclassified to full time. Should any pattern contrary to the intent of this language occur it will be subject to arbitration.