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In the Matter of the  
INTEREST ARBITRATION

between

Village of Dobbs Ferry

and the

Dobbs Ferry Police Association, Inc.

PUBLIC EMPLOYMENT RELATIONS BOARD  
Case No. IA88-7; M88-004

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APPEARANCES

The Arbitration Panel:

Judith A. La Manna, Esq.  
Public Panel Member and Chair

Ernest R. Stolzer, Esq.  
Rains & Pogrebin, P.C.  
Employer Panel Member

Raymond G. Kruse, Esq.  
Kruse and McNamara  
Employee Organization Panel Member

Presenting, For the Village: Richard G. Kass, Esq.  
Rains & Pogrebin, P.C.

Presenting, For the Association: Maureen McNamara, Esq.  
Kruse and McNamara

The Village of Dobbs Ferry occupies 2.4 square miles in Westchester County and has a population of approximately 10,000 residents. There are twenty-two (22) persons in this fully paid Dobbs Ferry Police Force; 21 persons are bargaining unit members. Only the Police Chief is not in the bargaining unit.

11/11/88  
ARBITRATION

AWARD

The most recent contract between the Village of Dobbs Ferry (Village) and the Dobbs Ferry Police Association, Inc. (Association) ran from June 1, 1985 through May 31, 1988. J.10 In April of 1988, following contract negotiations, a mediator was appointed by the Public Employment Relations Board (PERB). The parties were unable to resolve the contract through mediation.

On or about May 17, 1988 the Association petitioned PERB for interest arbitration and the appointment of a public arbitration panel in the matter of the contract impasse between the parties, pursuant to Section 209 (4)b of the New York State Civil Service Law (NYSCSL). J.3

On or about May 31, the Village filed its response to the above-noted petition and advised in it that an improper practice charge had been filed by the Village pursuant to Section 205.6 of PERB's Rules of Procedure. J.4

#### IMPROPER PRACTICE CHARGE

The Village has asserted that in negotiations it had proposed to delete three contract provisions it had identified as non-mandatory subjects of bargaining, indicating that it considered the pursuit of same to impasse an improper practice. J.6.

Under Section 205.6 (c) of PERB's Rules of Procedure

"the public arbitration panel shall not make any award on issues, the arbitrability of which is the subject of an improper practice charge, until final determination thereof by the Board or withdrawal of the charge; the panel may make an award on other issues."

PERB issued its decision (Case No. U-10198) dated February 6, 1989, from which the Association has appealed.

#### INTEREST ARBITRATION

By letter dated July 27, 1988, and pursuant to Section 209.4 NYSCSL, PERB notified the above noted individuals of their appointment to service as a public arbitration panel on the matter herein. J.5. The Panel was charged with making a just and reasonable determination to resolve the impasse encountered by the parties in their efforts to negotiate a successor agreement, and, in particular, to consider comparative wage, hour and condition of employment information in comparable communities; the interests and welfare of the public; the financial ability of the public employer to pay; and other appropriate comparisons to other trades or professions and the terms of past collective bargaining agreements between the parties, all consistent with the provisions of Section 209.4 (C)(v)(a-d) of the NYSCSL.

The Panel convened and conducted three (3) days of hearing (October 24, 25, November 30, 1988), at which time the parties were afforded full opportunity to set forth their positions and supporting evidence and to examine and cross-examine witnesses.

Appearances are noted above. During the course of the hearings and the submission of briefs, a rebuttal brief, a surrebuttal brief and other related correspondence, a total of well over 700 pages of documents, exhibits and narrative were presented for review by the Arbitration Panel.

This Arbitration Panel held two telephone conference calls and met in executive session on March 8 and 24, 1989. On all occasions and in all material, the parties were clear, thorough and articulate in their presentations of this often complex and detailed material and are to be complimented on same. Also, much time was spent by the Panel and by this Public Panel Member and Chair in review of the considerable information and material presented by the parties in support of their positions, as well as in deliberations over those issues. The parties are thanked for their cooperation throughout this process.

This opinion and award was drafted by the Panel Chair, Judith A. La Manna, Esq.. She is solely responsible for the language selected.

#### ITEMS IN DISPUTE AND AWARD SUMMARY

The items, below listed by category heading and reference to contract article, are those items which were addressed by the parties to this impasse and, except for items 5, 15, and part of 12, are those items which were reviewed and decided by this arbitration panel.

1. Management rights - Article 3. This proposal is rejected.
2. Wages - Article 4, Sections 1, 2. Two year contract. Salary increases of 6% and 5.75%, no other changes.

3. Annual stipend - Article 5, Sections 2, 3. Increase in the stipend by \$50 in each year of the contract. Payment of full year of stipend on proof of certification.
4. Longevity - Article 6, Section 1. Increase in longevity table by \$50 on each step in each year of the contract.
5. Job description - Article 7, Section 2 = (IP) = NO ACTION
6. Overtime - Article 8, Section 1, 3 (NEW). All proposals are rejected.
7. Holidays - Article 9, Sections 1, 3, 4, 5. Add one holiday, effective June 1, 1989; all other proposals rejected.
8. Vacations - Article 10, Sections 1, 3. All proposals are rejected.
9. Personal leave with pay - Article 11, Sections 1, 3, 4. All proposals are rejected.
10. Sick Leave - Article 13, Sections 1, 2, 3, and 2 NEW Sections. Change reporting requirement under Section 2; all other proposals are rejected.
11. Uniforms - Article 14, Sections 2, 4 and NEW Section. Increase the uniform allowance by \$50 in each year of the contract; effective June 1, 1989, increase maximum liabilities on personal property to \$75 and eye glasses to \$90; fix date in Section 4; all other proposals are rejected.
12. Welfare benefits - Article 15, Sections 1, 2, 2A (IP). Increase Village contribution by \$25/50 toward dental in first year and by \$25/25 in second year; all other proposals are rejected. Section 2A = (IP) = NO ACTION
13. Safety (adequate equipment) - Article 17, Section 2 (NEW). This proposal is rejected.
14. Schedules - Article 20. This proposal is rejected.
15. Firearms - Article 21 = (IP) = NO ACTION
16. Grievance and Arbitration - Article 23. This proposal is rejected.
17. Duration - Article 24. Two year contract.
18. Discharge and Discipline - (NEW) This proposal is rejected.

**Item 1. Management Rights (Article 3)**

The Village seeks to delete the second sentence of the present Management Rights language, claiming it is a non-mandatory subject of bargaining.

**Finding:** The Village presented no substantive argument as to the necessity of a change in the present contract language.

Accordingly, we reject this proposal.

**Item 2. Wages (Article 4)**

The Village made no salary offer, although it indicated in executive session that wage increases of 5% - 6% fall within the settlements in the area generally, and would be appropriate. The Association seeks a one year contract with a wage increase equivalent to 10%, the deletion of the "Post 9/1/85 hiring" distinction and a change in the level differential between:

- P.O. Detective from 11% to 15% above first grade patrol,
- Sergeant from 11% to 15% above first grade patrol,
- Lieutenant from 10% above first grade patrol to 15% above Sergeant

In addition, the Association wants a NEW night differential of 6% for work between 4:00 p.m. and 12:00 p.m. and of 7% for work between 12:00 p.m. and 8:00 am. (3)

**Finding:** An enormous amount of information was presented by both the Village and the Association relative to the surrounding area police department settlements of Villages, Cities, Towns, and the overall County contracts. In addition, evidence was presented on cost of living indicators such as housing in the immediate area. The demonstration as to why the "post 9/1/85 hiring" distinction needed to be removed and the argument as to the inclusion of an evening and night pay differential was made in general comparison to other areas. Pay differentials in other contracts as between job titles were not inconsistent with those in this contract and wage settlements and contracts generally fell in the 5% to 6% range for police contracts.

We order that there be a two year collective bargaining Agreement to be effective June 1, 1988 through May 31, 1990 (see Item 17 - Duration, for further discussion). We further order that there shall be salary increases of 6% the first year of this contract, retroactive to June 1, 1988 and of 5.75% effective June 1, 1989. We specifically reject all other proposals in this area. We note that other financial improvements to the officers' position are to be found elsewhere in this Award.

**Item 3. Annual Stipend (Article 5)**

**A. Section 2**

The Association seeks a change in the present annual stipend of \$200 for Emergency Medical Technicians (EMT) and/or K-9 Handler to 5% above 1st grade or \$1200.

**B. Section 3**

The Association seeks a change in the language of this section to avoid a delay in the payment of the stipend as of the time the paperwork or certification is received by the Department to a date retroactive to the date of certification.

**Finding:** Over half the members of this unit (eleven members) have EMT and/or K-9 Handler training, training that needs to be updated annually and which is valuable to the department and the community. The present stipend is somewhat lower than that paid in comparable communities. Certification is required annually and officers should not have to forego payment for any time they were appropriately certified.

We order, therefore, an increase to the annual stipend of \$50 in the first contract year and of another \$50 in the second contract year. Further, we order that the full annual stipend payment be made as of the date certification proof is submitted to the Chief, or as soon thereafter as is practicable.

**Item 4. Longevity (Article 6)**

The Association seeks to increase longevity payment by \$200 each year, to be applied to the present yearly longevity table based on 5 year increments, beginning the fifth year of employment through year 25. It also seeks to change the effective date from June 1, 1985 to June 1, 1988.

**Finding:** The evidence suggests that some increase in this area is an appropriate reflection of the area settlements. Traditionally the employer sees such payment as an incentive for employee retention, as it works to the benefit of all concerned.

Accordingly, we order that the amount of \$50 be added to each step of the present longevity table in the first year of the contract and that \$50 be added to each step of the longevity table in the second year of this contract.

Item 6. Overtime (Article 8)

A. Section 1

The Association seeks contract language to assure overtime payment after scheduled tour and to also assure that there will be no tour changes to avoid overtime. The Village feels that the present language covers the matter without need of change. In addition, it cannot agree to not change tours, as tour changes are made to accommodate to scheduling and are not intended to avoid overtime.

B. Section 3 (NEW)

The Association seeks the payment of overtime, at employee option, either at 1 1/2 times pay or in compensatory time at the same rates (as if paid). The Village indicates time off would create more scheduling and coverage problems, at an indeterminable cost to the Village.

**Finding:** The language on scheduling of overtime seems to adequately cover both the Association's concern and what it was intended to cover. It is not likely that a unit of this size could accommodate to the creative approach suggested by the Association as to overtime options. In all, neither party has offered evidence sufficient to cause a change in the present overtime provisions of this Agreement. While the Association seeks additional time off for officers, the Village has legitimate coverage and scheduling concerns.

We therefore reject all proposals on this matter.

**Item 7. Holidays (Article 9)**

**A. Section 1**

The Association seeks to increase the number of paid holidays from 11 to 13, worked or not.

**B. Section 3**

The Association wants the Village to provide 1 1/2 additional days pay for all unit members who work on Christmas, New Years, Thanksgiving, Easter, Memorial Day and Veteran's Day (change), which are the superholidays under this contract. The Village wants to reduce the number of superholidays. .

**C. Section 4**

As to pay for work on a holiday, the Association looks to change from the present practice of an additional two times pay for overtime worked on a holiday, to an additional two times pay for ALL work performed on a holiday, regular or overtime. The Village seeks to delete this section entirely.

**D. Section 5**

The Association wants a change in requesting time off for a holiday time off from a policy of "by mutual agreement with the Chief" (except for superholidays) to "not to be unreasonably withheld" for all (proposed) 13 holidays.

**Finding:** We order that one holiday be added to this contract, to be effective June 1, 1989, the exact day to be determined by the parties. This increase reflects contracts in the general area, to some extent and it is also a way of providing extra income to the officers generally. We see the payment of superholidays as enjoyed by some police departments, but in various configurations, and do not believe it warrants increase here.

We reject all proposals under this article except that ordered to increase paid holidays by one.

**Item 8. Vacations (Article 10)**

**A. Section 1**

The present vacation accrual table is a ten step approach with increases at years 1, 2, 5, 6, 7, 8, 9, 10, 15, 20. The Village seeks to eliminate several of scheduled year allotment increases of that table and the Association wants to collapse the present vacation accrual table to accrue more time at earlier years of employment.

**B. Section 3**

The Association wants to change the minimum entitlement for Sergeant and Lieutenant, regardless of years of service, from 20 to 25.

**Finding:** The present table is at or very close to the county average. Minimum entitlements follow the same comparisons. No compelling evidence has been cited by either party to cause a change in these present entitlements.

Therefore all vacation proposals are rejected.

**Item 9. Personal leave with pay (Article 11)**

**A. Section 1**

The present contract requirement of 6 personal days off is for three days with valid excuse and three days without excuse. The Village seeks to delete Section 1 and reduce personal leave days to four days, all for stated personal reasons which would be restricted to personal business purposes and which could not be used to extend a vacation or holiday. The Association wants to change the present language to provide for all six days to be taken without excuse.

**B. Section 3**

The Village wants to change the advance request time for personal leave time from 72 hours to seven days prior to the requested time off, with a statement of the specific reason for the personal leave day.

**C. Section 4**

The Village wants to change this section to provide for conversion of unused personal leave to sick leave accumulation on May 31 each year rather than continue the present language which allows the employee the option of conversion or lump sum payment for unused personal leave.

**Finding:** In essence, no arguments were made or evidence shown to cause a change in the present personal leave and related contract language. The lump sum payment option operates to give officers additional compensation and the fact there is an option works to the benefit of both Village and officers. Evidence is, for example, that in 1987 all the officers that had personal leave balances opted for cash payment.

We reject all proposals on personal leave.

Item 10. Sick Leave (Article 13)

A. Section 1

The Village wants to delete the present contract provision that starts new employees with a sick leave bank of twelve working days. The Association is proposing an increase in the rate of sick leave accumulation from 1 day/month (twelve days/year) to 1 1/2 days/month (eighteen days/year), with make-up for certain identified employees.

B. Section 2

The Association wants to delete the requirement that employees confined at home because of disability who have refused light duty must report to the desk officer if they leave home at any time.

C. Section 3

The Association wants cash payment of accumulated sick leave at prevailing daily rate at retirement.

D. (NEW)

The Association proposes that infectious disease shall be deemed to be job related, for appropriate compensation to the officer.

E. (NEW)

The Association wants to add a new maternity leave section calling for a medically established, "no work date" to trigger use of sick leave and other accruals and allowing for a leave without pay for a maximum of one year.

**Finding:** The present allotment of sick leave time is not out of line with comparable units. Cash payment for all accumulated sick leave is almost inestimable in cost. The remaining two proposals require more legal analysis before put to any valid consideration. There is, however, some rationale that finds the present practice under Article 13, Section 2, objectionable.

Accordingly we order that employees who are confined to home because of disability who refuse light work are to report to the desk officer if they leave home only during their specified tour. All other proposals on Article 13 by both parties are expressly rejected.

**Item 11. Uniforms (Article 14)**

**A. Section 2**

The Association seeks to increase the annual uniform and/or maintenance allowance to police officers from \$475 to \$600 and to change the date it is paid in lump sum from July 1 to June 1 annually. The Village sees the date change as administratively undesirable.

**B. Section 4**

The Association wants to eliminate the effective date of the present section, for contract clarity, and to delete the Village's maximum liabilities, Section 4 (a). The Village insists on the necessity of liability maximums.

**C. (NEW)**

The Association wants protection, if there is a change in uniform or equipment by the Department, that the the initial purchase of same shall be paid by the Village.

**Finding:** It would be unrealistic to ignore the increase in cost of upkeep and replacement of various uniform items. Accordingly, we order an increase in the contract uniform allowance by \$50 in the first year of this contract and by an additional \$50 the second contract year. There is to be no change in the date the uniform allowance is paid.

We order the necessary date change in Section 4 of this Article. We also order an increase in the reimbursement maximum for personal property to \$75 and for eye glasses to \$90. All other proposals for uniform and/or equipment are rejected.

**Item 12. Welfare Benefits (Article 15)**

**A. Section 1**

The Village seeks to delete Section 1 and to require an employee contribution of 75% of the annual premium cost for active unit employees.

In addition, the Village wants to modify the present contract language providing for employer change of carriers (comparable coverage), after consultation with the Association, to add a provision for arbitration of any dispute over comparability prior to the change.

Also, the Village wants to change this contract to exclude from coverage those employees who have a spouse with a comparable or better plan than that of the Village.

**B. Section 2**

The Association wants to change Section 2 to have the Village pay the full cost of the Dental benefit, change the benefit to the Deluxe plan, for employees and their dependent's and to delete Section (2)(a).

**Finding:** Health insurance cost is a factor in almost every contract negotiation today. It would be incomprehensible to not acknowledge the reality that the costs in this area are increasing. However, the Village did not present sufficient evidence to support their proposal for 75% employee payment toward health insurance. Indeed, there presently is language in the contract to allow the Employer to change insurances to comparable coverage, albeit with consultation with the Association, so as to achieve lower cost. Further, the Village presented no real support of its more creative proposal to exclude employees with otherwise covered spouses. As to Dental coverage, the Panel recognizes that some increase in contribution is in order, given the overall financial package of this contract.

We order, then, that the Employer is to contribute an additional \$25/year toward individual coverage and \$50/year toward family coverage for the Dental benefit in the first contract year and the Employer is to increase its contribution by another \$25/25 in the second contract year. All other proposals in this area are rejected.

**Item 13. Safety (adequate equipment) (Article 17)**

**A. Section 2 (NEW)**

The Association seeks to change the title to Safety and to add a new Section (2) to provide for a stipend of an additional 1/2 days' pay for any shift on which an officer is assigned to a road patrol of less than 3 uniformed officers.

**Finding:** The Association presented no evidence to show that the increased pay would contribute to employee safety.

We therefore reject this proposal.

**Item 14. Schedules (Article 20)**

The Association wants to reduce the maximum work days per year from 255.7 to 232 and to make related shift rotation and scheduling changes. The Village says it cannot operate on a lesser schedule with the present manpower.

**Finding:** The Association proposal would force additional manpower at an almost indeterminable cost to the Village. The Village insists that the present system provides sufficient coverage to this community while accommodating employee needs with internal flexibilities. The Association complains that the present schedule and scheduling changes make it difficult for officers to secure additional employment necessary to supplement their income. However, we see this item as too considerable an issue to impose on the parties by interest arbitration, involving as it does complexities in tours and rotations.

We therefore reject any schedule change proposal.

**Item 16. Grievance and Arbitration (Article 23)**

The Association wants to increase the time for filing a grievance from 10 to 30 days of occurrence, under Section 2 of this Article.

**Finding:** There has been no evidence presented that officers are presently harmed by the time frames contained in the current collective bargaining Agreement.

Therefore, we reject this proposal.

**Item 17. Duration (Article 24)**

**Finding:** We order a two year contract (see wages area) for the period June 1, 1988 through May 31, 1990. We do this for the very obvious reason that the time spent on this present deliberation and process has been considerable, taking the parties almost to the end of what would have been the first contract year. A one year agreement, then, would place the parties into a negotiation posture immediately upon receipt of this Award, without some repose, which would be stressful to the relationship of the parties and detrimental to the process generally.

**Item 18. Discharge and Discipline (NEW)**

The Association seeks the addition of a Discipline and Discharge Article to the contract.

**Finding:** This item is also too considerable to be imposed on the parties by interest arbitration. In addition, there was little or no evidence presented to support the absolute necessity of inclusion of this item.

We therefore reject this proposal fully.

The Awards on the various proposals are set forth in detail above. Unless specifically indicated to the contrary, all provisions are to be retroactive to June 1, 1988. Those proposals not awarded or discussed in this Award are rejected. All other provisions and language contained in the prior collective bargaining Agreement (Joint 10, dated June 1, 1985 through May 31, 1988) are hereby continued, except as specifically modified in this Award. Those items under appeal from an improper practice charge as discussed above are not dealt with herein, are not continued by this Award, and are not otherwise part of this Award.

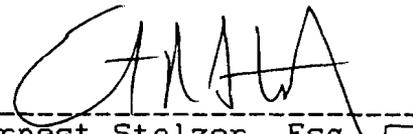
Concur X  
Dissent \_\_\_\_\_

Date 6/20/89

  
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Judith A. La Manna, Esq.  
Public Panel Member and Chair

Concur X  
Dissent \_\_\_\_\_

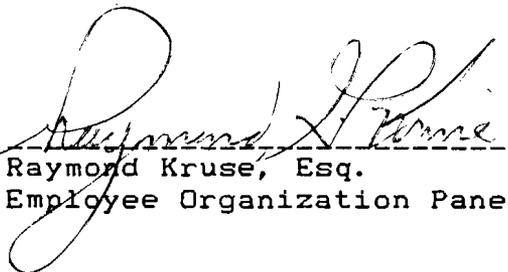
Date 8/9/89

  
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Ernest Stolzer, Esq.  
Employer Panel Member

Concur \_\_\_\_\_  
Dissent attached

Date \_\_\_\_\_

(8/7/89)  
(see history)

  
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Raymond Kruse, Esq.  
Employee Organization Panel Member

State of NEW YORK )  
County of Onondaga ) SS.:

On this 20<sup>th</sup> day of June, 1989, before me personally came

Judith A. LaManna

to me known and known to be the individual described in the forgoing instrument, and she acknowledged to me that she executed same.

J. S. McCarty Notary Public  
Comm exp. 1/21/91

State of NEW YORK )  
County of Rockland ) SS.:

On this 7<sup>th</sup> day of August, 1989, before me personally came

Raymond B. Kline

to me known and known to be the individual described in the forgoing instrument, and he acknowledged to me that he executed same.

Charlotte Malowitz Notary Public

CHARLOTTE MALOWITZ  
Notary Public, State of New York  
No. 7686300  
Qualified in Rockland County  
Term Expires May 31, 1990

State of NEW YORK )  
County of Nassau ) SS.:

On this 9<sup>th</sup> day of August, 1989, before me personally came

Ernest Stolzer

to me known and known to be the individual described in the forgoing instrument, and he acknowledged to me that he executed same.

David S. Goodman Notary Public

DAVID S. GOODMAN  
NOTARY PUBLIC, State of New York  
No. 4902015  
Qualified in Nassau County  
Commission Expires July 27, 1989

POSITION OF THE EMPLOYEE ORGANIZATION PANEL MEMBER

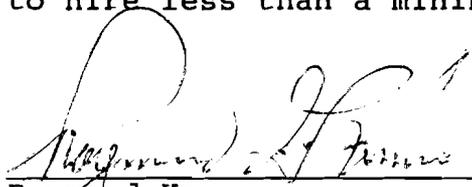
The Employee Organization Panel Member dissents as to wages and work schedule.

The proposed Award would give Dobbs Ferry Police Officers salary increases of 6% and 5.75%, respectively, in each of the two years of a new contract. The rationale for this which is set forth in the finding is that "...wage settlements and contracts generally fell in the 5% to 6% range for police contracts." This erroneous conclusion appears to have been based upon the premise that the Village "...indicated in Executive Session that wage increases of 5% - 6% fall within the settlements in the area generally, and would be appropriate." Whatever the Village may have "indicated" in Executive Session, such indications, when not presented as evidence during the course of the hearings, cannot be used as the basis for findings by this panel. No such conclusion could have been reached from the evidence actually submitted in the hearings. It is totally improper for arbitrators to use as the basis of an award, evidence which was not submitted during the course of the hearings. The evidence which is before the panel shows that settlements in 1988 ranged between 5% and 7% and that the settlements in 1989 ranged between 5 1/2 % and 6 1/2%. (This is exclusive of Yonkers, which had a low wage increase per se, but was given, simultaneously, an extraordinary longevity clause that gives as much as 9% of salary per annum.)

The conclusions reached in reference to rank differential and in reference to the post September 1 hiring distinction appear also to have been based upon evidence not submitted in the hearing.

Work schedule is a mandatory subject of bargaining. If a prospective neutral panel member feels that he or she is unwilling or unable to deal with any generic mandatory subject of bargaining, he or she should make such facts known to prospective parties prior to selection and acceptance of appointment. Obviously, many other arbitrators, to date, have not considered the mandatory subject of work schedule "too considerable an issue to deal with". It would be a cop-out for this Panel to attempt to avoid its statutory obligations with the rationale that the issue is "too considerable" for their action. The costs of work schedule changes are as determinable as are holiday and vacation changes. They should be dealt with by this Panel and this Panel is in a position to reach a determination in this area. The Association amply demonstrated, through its evidence, that Dobbs Ferry Police Officers have the highest number of work days per year in the County, the lowest police to population ratio, and an enormous number of ad hoc work schedule changes which are being continually imposed by the Village

because they have chosen to hire less than a minimal number of employees.



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Raymond Kruse  
Employee Organization Panel Member