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In the Matter of the Arbitration  
of a Dispute Between

CITY OF LAKEVILLE

Class Action Grievance  
BMS No. 07-PA-0711

and

LAW ENFORCEMENT LABOR  
SERVICES INC., LOCAL 129

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APPEARANCES:

Campbell Knutson P.A., by Mr. Roger N. Knutson Esq., appearing on behalf of  
the City

Ms. Marylee Abrams, General Counsel, Law Enforcement Labor Services, Inc.,  
appearing on behalf of the Union

**ARBITRATION AWARD**

The City of Lakeville, hereinafter the City or Employer, and Law Enforcement Labor Services, Inc., Local 129, hereinafter Union, are parties to a collective bargaining agreement providing for the submission of grievances to final and binding arbitration before an arbitrator selected by them. A hearing in the captioned matter was held on February 26, 2008, in Lakeville, Minnesota. The parties filed post-hearing briefs the last of which was received by March 23, 2008.

ISSUE:

The parties were unable to stipulate to a statement of the issue to be resolved by the undersigned. The City proposed the following statement of the issue:

“Are Dakota County and Dakota County Communications Center two different employers?”

The Union proposed the following statement of the issue:

“Did the City of Lakeville violate the labor agreement when it invoked the severance clause?”

The undersigned frames the issue as being:

“Did the City violate the collective bargaining agreement when, after it agreed to join with 11 other communities and have its emergency dispatch services provided by the Dakota County Dispatch Communications Center (DCC) and terminated operation of its own dispatch center and its dispatchers, it invoked the severance clause language of the collective bargaining agreement in rolling over its terminated dispatchers’ accrued sick leave to the DCC? If so, what is the appropriate remedy?”

PERTINENT CONTRACT LANGUAGE:

ARTICLE IV: EMPLOYER SECURITY

5.1 The EMPLOYER retains the full and unrestricted right to operate and manage all manpower, facilities and equipment; to establish functions and programs; to set and amend budgets; to determine the utilization of technology; to establish and modify the organizational structure; to select, direct and determine the number of personnel; to establish work schedules and to perform any inherent managerial function not specifically limited by this AGREEMENT.

ARTICLE XXIII: VACATION SCHEDULE AND USE

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23.2 Each employee shall have vacation earned, computed on a bi-weekly basis, or every two weeks.

23.3 Employees shall accrue vacation during the first year of employment but not be eligible to use accrued vacation until completion of the first six months of employment.

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## ARTICLE XXVIII: SEVERANCE

28.1 Severance pay shall be paid to full-time employees based upon the following schedule:

After 5 years of full-time service, 35% of the employee's unused sick leave.

After 10 years of full-time service, 45% of the employee's unused sick leave.

After 15 years of full-time service, 55% of the employee's unused sick leave.

28.2 Only service with the City of Lakeville shall be counted towards the time required for a person to be eligible. Severance pay is to be based on the wage rate in effect on the date of termination. Employee must leave the service in good standing and give the employer two (2) weeks written notice of termination.

### BACKGROUND:

In 2003 Dakota County and its eleven largest cities formed a High Performance Partnership to study ways to create efficient and cost effective services. A steering committee was created and a consultant was hired. A final report was issued in July of 2004 which identified 20 areas of possible collaboration and six of those areas were identified as having high priority. One of the six areas identified was consolidation of the six dispatch centers existing in Dakota County. A study group was formed and in August 2005 that study group recommended that all local 911 emergency dispatch services in Dakota County be consolidated. As a consequence of that recommendation 11 Cities and Dakota County entered into a Joint Powers Agreement establishing the Dakota County Communications Center (DCC) effective January 1, 2007. The stated purpose of the DCC is

“To acquire and provide the facilities, infrastructure, hardware, software, services and other items necessary and appropriate for the establishment, operation and maintenance of a joint law enforcement, fire, EMS, and other emergency communications system for the mutual benefit of Members and people of Dakota County.”

The following cities and Dakota County comprise the membership of the DCC:

Apple Valley, Burnsville, Eagan, Farmington, Hastings, Inver Grove Heights, Lakeville, Mendota Heights, Rosemount, South Saint Paul, and West Saint Paul. One of the cities with a dispatch center had already agreed to join with Dakota County prior to the Joint Powers Agreement. The remaining five cities were charged with working out the conversion with the unions representing their employee dispatchers.

Between July and November of 2006 the DCC decided to accept the rollover of any existing employee fringe benefits if the City who was rolling over benefits to the DCC funded the rollover of those benefits. Also, the DCC needed to establish payroll and fiscal services and Lakeville made a proposal to the DCC to provide those services. Thereafter, the DCC and City entered into an agreement for the City to provide those services, which agreement was executed by October 2, 2006. Also, the Joint Powers Agreement between Lakeville and the DCC provided

“The parties agree the DCC, using its own employees, will operate the Lakeville Facility commencing at 12:01 AM on January 1, 2007. The DCC will continue to staff and operate this facility until county wide 911 dispatch facility located in Empire Township (the 'Empire Facility') is completed and the operations of the Lakeville Facility have been transferred to the Empire Facility. The estimated date to transfer these operations is November 1, 2007.”

Another provision of the Joint Powers Agreement pertaining to staffing provided

“DCC will pay all salaries, benefits, and other employee costs of the DCC employees assigned to the Lakeville Facility. DCC will hire, train, discipline and when necessary, terminate DCC employees.”

On September 20, 2006, Therkelsen wrote to the Lakeville dispatchers acknowledging receipt of their applications and stating “[I] welcome your decision to accept employment with the Dakota County Communications Center . . . .” On October 6, 2006, DCC Therkelsen, offered all Lakeville dispatchers employment with the DCC commencing January 1, 2007. Prior thereto, on August 17, 2006, the DCC Board of Directors met and adopted a benefit package. That package included among other things that

“Employees will be allowed to carry forward a maximum of 576 hours PTO.

An employee will be able to carry forward 576 hours of accumulated time from his/her previous employer. The previous employer will compensate the DCC for the cost of the time carried forward.”

On October 23, 2006 City Administrator, Mielke, wrote to Union Business Agent, Chambers, confirming what he already knew, that the Lakeville dispatch center will cease to exist at 12:00 p. m. December 31, 2006. In his letter Mielke stated

“Because DCC is a separate entity and will be a new employer, the Lakeville dispatchers will be laid off from their job at the City. On January 1, 2007, any dispatchers leaving the City in good standing will have the opportunity to become employees of the Dakota County Communications Center.”

Mielke went on to state in his letter that

“On October 13, 2006 we met to discuss current contract language. Specifically, the current contract states that unused vacation as well as severance will be cashed out at termination. The DCC has stated they will accept a rollover of up to 576 hours of equivalent leave time. In order to allow your group this opportunity, you are required to decide as a whole to convert hours rather than follow the contract.

In addition to the current benefits, you requested that we convert your sick leave balances at 100%. The possible impact of this conversion would cost the City more than \$75,000. This is an unfunded liability that the City cannot afford. Nor do we want to set a precedent for the future.

As an alternative, we’d like you to consider rollover of compensatory leave balances and holiday hours in addition to the vacation and equivalent sick leave balances. This would enable more junior employees an opportunity to enter the DCC with additional accrued hours. Again, the group would be required to decide as a whole to convert these balances.”

On December 26, 2006 Union representative Hansen notified Joosten, Human Resources Manager, and Mielke via e-mail

“This memo will serve as formal notification that:  
100% of the Lakeville Dispatchers voted, and wish to take advantage of the rollover opportunity per our contract severance clause in conjunction with the

DCC Board of Directors offer to carry over up to 576 hours of accumulated leave time.”

Thereafter, the City implemented the contract language of Article XXVIII, Severance in determining the amount of accrued sick leave to rollover to the DCC on behalf of each dispatcher. In addition to the sick leave, the City also transferred to the DCC as PTO (Paid Time Off) the full amount (100%) of any accrued comp time and holidays the dispatcher had on December 31, 2006.

On December 19, 2006, Hansen filed a class action grievance asserting:

“As a “Member” of the DCC, the City of Lakeville is still the employer of the dispatchers initiating this action and cannot invoke the severance Clause of Article 28, of the Local Agreement. Inappropriately invoking the Severance Clause of Article 28 of the Local Agreement constitutes unjust enrichment for the City of Lakeville.”

The Grievance was denied through all steps of the contractual grievance procedure and proceeded to arbitration.

The Union petitioned the Minnesota Bureau of Mediation Services on January 10, 2007 to represent “all essential non-licensed employees of the Dakota Communications Center”. A mail ballot election was conducted by the Bureau and on February 27, 2007 the Bureau certified the Union as the exclusive representative of the above described employees of the Dakota Communications Center.

#### DISCUSSION:

The obvious reason the grievance in this case was filed is because the City’s dispatchers had accrued 3238.81 hours of sick leave as of December 31, 2006 and 2119.31 of those hours were lost when the City of Lakeville ceased its emergency dispatch operation and joined with 11 other cities and Dakota County to form the DCC. On December 31, 2006 the City employed 9 dispatchers. At that time, five of those dispatchers (Kluck, Hansen, Larson, Cemensky, Adamek) had less than five years of service with the City and none of their accrued sick leave was transferred to the DCC. The other four dispatchers (Buls-Lake, Schrader, O’Laughlin, Ryan) had a combined total of 1240.23 hours of accrued sick leave that did not transfer to the DCC and was lost.

The grievance is footed in the belief that the City inappropriately invoked the severance clause language of the parties' collective bargaining agreement. The Union, in its appeal of the grievance to the 3<sup>rd</sup> step stated

“The administrative action to layoff and rehire the dispatchers is a thinly disguised ploy to deprive the dispatchers of their earned benefit. . . . The dispatchers have not been laid off. There has been no work force reduction. The City has not subcontracted the work to another agency. None of the dispatchers have been terminated and none have submitted a two (2) week written notice of termination. . . . none of the criteria have been met.”

The Union argues that the City did not lose its City status by combining with the other cities and Dakota County, just became part of a larger entity. And the Union also notes that the City provides payroll and accounting services to the DCC and contributes to the DCC's operational costs. It, therefore, contends that the City cannot selectively invoke the severance clause of the labor agreement. It also asserts that the City's arguments have changed over time. First, contending employees were being laid off and then later argued the severance clause was invoked because the employees were terminated. The Union contends these reasons do not explain the decision to permit rollover of vacation to the DCC while cashing out sick leave. The Union reasons that if it were a termination vacation would have been paid out and sick leave paid out according to the severance clause. However, it asserts that none of the employees submitted any notices of termination and thus there was no termination or severance of the employment relationship, which would allow for pay out of the sick leave in accordance with the severance article. Lastly, the Union argues that there is no contractual provision providing for rollover of accrued vacation to the DCC and the City's treatment of the vacation and sick leave hours leads to a nonsensical application of the contract.

The City argues that it terminated the employees effective December 31, 2006 and that they were hired by the DCC effective January 1, 2007. All of the dispatchers filed applications with the DCC for employment and were hired. On January 1, 2007 the dispatchers reported for work at City Police station as before, but they were no longer City employees. They reported to work at the same location because the City had entered into an agreement with the DCC permitting it to use the City's facility until the new DCC

facility that was under construction was completed. Also, after January 1st the dispatchers pay checks were issued by the City pursuant to an agreement with the DCC that the City would provide it with payroll and fiscal services. The City asserts that Lakeville and the DCC are separate employers and the dispatchers acknowledged that when they filed applications for and accepted employment with the DCC. They also acknowledged it when they reached agreement with the City to allow the rollover to the DCC of 576 leave hours accumulated leave while working for the City. Also, the LELS recognized the DCC as a separate employer when it petitioned the BMS to be the exclusive representative of the employees at the DCC, including former Lakeville dispatchers. And, the BMS recognized the DCC as a separate employer when it authorized an election and certified LELS as the exclusive representative of DCC dispatchers. Further, the City argues, quoting Public Employment Relations Act that the Act recognizes Joint Partnership Agreements as a separate employer:

“When two or more units of government subject to section 179A.01 to 179A.25 undertake a project or form a new agency under law authorizing common or joint action, the employer is the governing person or board of the created agency. The governing official or body of the cooperating governmental units shall be bound by an agreement entered into by the created agency according to sections 179A.01 to 179A.25.”

The City, therefore, insists that the DCC and it are separate employers.

In the undersigned’s opinion, there can be no question that the DCC is the employer of the aggrieved dispatchers and that the City of Lakeville ceased being their employer at 12:00 a. m on December 31, 2006. If there was any question that was the case it should have put to rest when the BMS certified LELS as the exclusive collective bargaining representative of the DCC dispatchers. Although not in evidence in this record, no doubt the grievants were eligible to vote in that mail ballot election because they were in fact employees of the DCC. Admittedly, the circumstances existing on or about January 1, 2007 surrounding the transition from a City of Lakeville dispatch center to a DCC dispatch center could have created confusion in the minds of the City dispatchers as to who their employer was because on January 1, 2007 they went to work at the Lakeville Police Station as they always had, and their checks were produced by the

City. Yet, the record evidence clearly establishes that the reason they continued to report for work at the Lakeville Police Station was because the City and DCC had entered into a agreement/contract that the DCC dispatch center would operate out of the City's police station until the new DCC dispatch under construction was completed. And, the reason they continued to be paid by the Lakeville payroll department was because the City also contracted with the DCC to provide it with payroll and other fiscal services. And finally, the Minnesota statues authorize the type of Joint Partnership Authority that resulted in the creation of the DCC as an employing entity. Thus, I am persuaded by the record evidence that starting on January 1, 2007 the DCC was the grievants' employer not the City of Lakeville.

The question that remains is did the City violate the parties' collective bargaining agreement in the manner in which it dealt with the dispatchers accrued sick leave. Because the City of Lakeville was not going to be the dispatchers employer after December 31, 2006 and it was no longer going to have an emergency dispatch service it was, so to speak, going out of business. Not unlike a county that decides it no longer is going to operate a nursing home and either closes the facility or secures someone else to assume operation of the facility. In this case, the DCC was taking over emergency dispatch services for the City and 10 other cities, six of which also had their own emergency dispatch services. The parties' collective bargaining agreement had no language dealing with successorship, which could have provided for just such a situation that occurred in this instance.

I agree with the Union that a careful reading of the language of Article 28, Severance reasonably leads to the conclusion that the drafters of that language were not intending it deal with the circumstance where the City was terminating the employment relationship. For example, the Severance clause language establishes an eligibility requirement that an employee must give two weeks notice of their intent to terminate their employment with the City. In this case, it was the City who was ending the employment relationship with its dispatchers. I would agree that the City's reference at one point to employees being laid off and later referring to them being terminated was imprecise as to what was to occur and no doubt contributed to the questions raised by employees in their grievance and presented in this case. But, notwithstanding those

confusing references, there can be no question but that the City effectively terminated the dispatchers' employment after entering into the Joint Partnership Agreement whereby effective January 1, 2007 the DCC would be taking over the emergency dispatch service previously provided by the City. So while the Union correctly argues that Article XXVIII, Severance was not applicable to the fact situation that existed, nevertheless, in the undersigned's opinion, the City it did not violate the labor agreement. That is so because it bargained with the Union and reached agreement regarding application of Article XXVIII, Severance in dealing with the employees' accrued sick leave balances.

On October 23, 2006 Mielke wrote to LELS representative Chambers and explained that the DCC had agreed to accept rollovers of up to 576 hours per employee of their existing leave balances, but indicated that the dispatchers would have to agree "as a whole to convert hours rather than follow the contract". He also stated in his letter that the Union had requested to convert sick leave balances at 100%, but that the estimated \$75,000 cost to do so was an unfunded liability the City could not afford and addition the City did not want to set a precedent. Mielke then proposed an alternative -

"On October 13, 2006 we met to discuss current contract language. Specifically, the current contract states that unused vacation as well as severance will be cashed out at termination. The DCC has stated they will accept a rollover of up to 576 hours of equivalent leave time. In order to allow your group this opportunity, you are required to decide as a whole to convert hours rather than follow the contract.

In addition to the current benefits, you requested that we convert your sick leave balances at 100%. The possible impact of this conversion would cost the City more than \$75,000. This is an unfunded liability that the City cannot afford. Nor do we want to set a precedent for the future.

As an alternative, we'd like you to consider

". . . rollover of compensatory leave balances and holiday hours in addition to the vacation and equivalent sick leave balances. This would enable more junior employees an opportunity to enter the DCC with additional accrued hours. Again, the group would be required to decide as a whole to convert these balances."

Mielke also stated that if the employees agreed to this proposal he asked Chambers to have the employees prioritize the order of conversion of those balances. Later, on December 21<sup>st</sup> Mielke reminded dispatchers of the conversion opportunity discussions that were held in October with their Union and said the City needed to be advised by December 31<sup>st</sup> if the employees wished to take advantage of that opportunity. Thereafter, on December 26<sup>th</sup> Union representative Hansen e-mailed Mielke and Joosten that “100% of the Lakeville Dispatchers voted, and wish to take advantage of the rollover opportunity per our contract severance clause”. In the undersigned’s opinion this series of communication between Mielke and Union representatives establishes that the parties bargained over and agreed that the Article XXVIII, Severance clause language would govern the rollover of dispatcher accrued sick leave to the DCC. Thus, the eligibility requirements of the severance clause would necessarily apply and employees with less than five years service would not be entitled to rollover any accrued sick leave hours and those employees with more than five years service would have their accrued sick leave hours rolled over in accordance with the formulas appearing in Article XXVIII. Consequently, when the employer invoked the Severance clause language to calculate the amount of accrued sick leave that would be rolled over it did not violate the contract because of the bargain it had reached with the Union. In other words, the employees and Union agreed that Article XXVIII, Severance of the collective bargaining agreement would be applied to this situation of the City terminating dispatchers when it ceased operation of its emergency dispatch service on December 31, 2006. In essence the Union now seeks to obtain through a grievance and arbitration the benefit of the proposal it made to the City in October which was rejected. It is also the case that this agreement benefited employees in that rather than paying them for the hours and the employees not having a PTO balance with the DCC their agreement entitled senior employees to carry over some of their accrued sick leave as PTO time and also allowed junior employees to carry over other leave balances, albeit not accrued sick leave.

The Union would have the undersigned ignore this bargained result because it was not an equitable/fair outcome in that the employees lost a considerable number of accrued sick leave hours. Several dispatchers testified to their conscientiousness over their years of employment with the City in not utilizing their accrued sick leave in situations when it

would have been appropriate to do so. They were concerned about creating an understaffed situation on a shift and came to work when it was not prudent to do so. Their reward is that now if they experience a serious health problem at the DCC making it impossible for them to work they have lost the protection of the benefit hours they were able to accrue by being very conscientious employees in their prior use of sick leave when employed by the City. Nonetheless, arbitrators are constrained to interpret and apply the collective bargaining agreement's language and not be influenced by our notions of equity and fairness if those notions aren't supported by the language of the collective bargaining agreement. Here, the Union's arguments find their support in equity considerations, but not the contract because the parties bargained and entered into a binding agreement that Article XXVIII, Severance would be applied/invoked in this situation. Notwithstanding that equity may support the employees claim, clearly, the contract and bargaining history do not do not.

Based upon the testimony, exhibits and argument the undersigned enters the following

### **AWARD**

The City did not violate the collective bargaining agreement when, after it agreed to join with 11 other communities and have its emergency dispatch services provided by the Dakota County Dispatch Communications Center (DCC) and terminated operation of its own dispatch center and its dispatchers, it invoked the severance clause language of the collective bargaining agreement in rolling over its terminated dispatchers' accrued sick leave to the DCC

Therefore, the grievance is denied.

Entered this 21st day of May 2008.

Thomas L. Yaeger  
Arbitrator