

STATE OF MINNESOTA
BUREAU OF MEDIATION SERVICES
IN THE MATTER OF INTEREST ARBITRATION

DAKOTA COMMUNICATIONS CENTER,

EMPLOYER

-and-

ARBITRATOR'S AWARD
BMS Case No. 10-PN-0769

LAW ENFORCEMENT LABOR SERVICES,

INC.,

UNION.

ARBITRATOR:	Rolland C. Toenges
DATE CERTIFIED TO ARBITRATION:	August 23, 2010
DATE ARBITRATOR NOTIFIED:	September 29, 2010
DATE OF HEARING:	December 9, 2010
DATE POST HEARING BRIEFS RECEIVED:	December 23, 2010
DATE OF AWARD:	January 20, 2011

ADVOCATES

FOR THE EMPLOYER:

Kevin J Rupp, Attorney
Ratwik, Roszak & Maloney, P.A.

Timothy A. Sullivan, Attorney
Ratwik, Roszak & Maloney, P.A.

FOR THE UNION:

Jack Chambers, Business Agent
Law Enforcement Services, Inc.

WITNESSES

Mary Siegler, Dispatcher/Stewart

Mindy Kaltenhauser, Dispatcher/
Stewart

ALSO PRESENT

Joe Lunch, County Administrator, DCC

Stacy Hansen, Dispatcher/Stewart

Diane Lind, Executive Director, DCC

Raymond Egan, Dispatcher/
Stewart

Tera Hahle, Dispatcher/Stewart

JURISDICTION

The instant matter came on for hearing pursuant to a determination by the Commissioner, Minnesota Bureau of Mediation Services (BMS), that the Parties had reached an impasse in their attempt to negotiate an agreement setting forth terms and conditions of employment for 2010 and 2011.

The Parties selected Rolland C. Toenges to arbitrate the issues in dispute and bring resolution to the matter.

Arbitration of the instant matter is being conducted in accordance with the provisions of the Minnesota Public Employment Labor Relations Act, as amended, 179A.01 – 179A.30 (PELRA). Under PELRA, 179A.16, the employees at issue are defined as “Essential Employees.” An impasse involving Essential Employees is required to be resolved via compulsory binding arbitration as Essential Employees are barred from conducting a work action.

A hearing was conducted on December 9, 2010 at the Dakota Communications Center, Rosemount, Minnesota. The Parties were afforded full opportunity to

present evidence, testimony and argument bearing on the matters at impasse. The witnesses were sworn under oath and subject to examination and cross-examination. There was no request for a stenographic record of the hearing.

The Parties filed post-hearing briefs that were received by the Arbitrator on December 23, 2010.

The Parties stipulated that the issues before the Arbitrator under subject to “conventional arbitration,” which means the Arbitrator has the authority to award the final position of either Party, or to fashion an award that the Arbitrator believes will best serve the mutual interest of the Parties.

BACKGROUND

The Dakota Communications Center (DCC) is a state-of-the-art 911 emergency dispatch center. It was constructed in 2007, by Dakota County, through a Joint Powers Agreement, for DCC Members to house the combined emergency dispatch services. It is centrally located to better serve Dakota County citizens.

The governance of the DCC is made up of one elected official from each of the DCC member communities. Among other things, the DCC Board is responsible for the operation and fiscal management of the DCC. An Executive Director, appointed by the DCC Board acts as the administrative head of the DCC.

The Executive Director, among other things, is responsible for the preparation and administration of the DCC budget. The DCC cost of operation is allocated to the DCC Member communities. Thus, the DCC operational costs, such as human service costs, are of particular concern to the DCC members as they may be consistent or inconsistent with each community’s own experience.

The DCC consolidated the dispatch operations of some twelve communities within Dakota County. Employees of these communities, who performed dispatch functions, were transferred to DCC and merged with employees who had been performing dispatch functions for Dakota County.

Initially, the 2007 DCC Human Resources Program was applied to dispatchers merged into the DCC. This Program included the DCC compensation philosophy and policy. The policy provided for the salary rate applied to employees coming into the DCC and for any salary progression thereafter. The employees received a 3% increase upon coming into the DCC, plus a merit adjustment. For employees coming into the DCC on January 1, 2007, their date of employment was to be the date employed in their DCC member community.

In early 2007, Law Enforcement Labor Services, Inc. (Union) petitioned the Minnesota Bureau of Mediation Services for a “Determination of Appropriate Unit and Certification as Exclusive Representative.” A representation election was conducted and Law Enforcement Labor Services, Inc. was certified as the Exclusive Representative of the following bargaining unit:

“All essential non-licensed employees of the Dakota Communication Center, Rosemount, Minnesota, who are public employees within the meaning of Minn. Stat. 179A.03, Subd. 14, excluding supervisory and confidential, and all other employees.”

The DCC and the Union then engaged in negotiations for a labor agreement. An agreement was reached on all terms and conditions, except the following:

1. Duration
2. Wages, 2008
3. Wages 2009
4. Wages 2010
5. Shift Differential
6. Uniform allowance
7. Working Alone Pay

Negotiations on the above issues were declared at impasse by the Commissioner, Bureau of Mediation Services and certified to arbitration. Arbitrator Richard John Miller issued an award on November 26, 2008. The award on the issues certified to arbitration was as follows:

- Duration – January 1, 2008 through December 31, 2009.
- Wage increase 2008 = 3%.
- Wage increase 2009 = 3%.
- Shift Differential = none.
- Uniform allowance = The DCC policy position awarded.

Inherent in the wage dispute was a philosophical difference about whether there should be a wage structure providing for a step matrix, as the Union proposed, or a merit system, as the DCC proposed. Arbitrator Miller's award was to apply the 3% increases to the existing wage rate then being received by each employee and leave resolution of the wage structure dispute to further negotiations between the Parties.

Arbitrator Miller further commented:

“If resolution over this issue cannot be accomplished by the parties during extensive negotiations over a lengthy period of time the parties' differences should then be addressed by an interest arbitrator . . . If all fails after extensive and lengthy negotiations, then this issue would be 'ripe' for interest arbitration.”

As can be noted in the issues certified for arbitration in the instant case, the Parties have not been able to resolve their differences through lengthy negotiations. Therefore, the matter of the wage structure is before the instant proceeding for resolution.

The dispute over the duration of the CBA was mutually resolved by the Parties prior to the arbitration hearing. Therefore, the term of the CBA will be January 1, 2010 through December 31, 2011.

ISSUES CERTIFIED AT IMPASSE

1. **Duration – Term of Agreement, Article 16.¹**
2. **Appendix A, 2010 – Across the Board, Appendix A**
 - **Wage Structure**
 - **Placement of Merged Dispatchers**
3. **Appendix A, 2011 – Across the Board, Appendix A**
 - **Wage Structure**
 - **Placement of Merged Dispatchers**
4. **Overtime – Language, Article 10.2**

FINAL POSITIONS OF THE PARTIES

UNION POSITION, ITEM #1:

Two years – 2010 & 2011

EMPLOYER POSITION, ITEM #1:

Two years – 2010 & 2011

It is noted that the Parties mutually agreed upon a two-year agreement prior to the arbitration hearing.

AWARD

ARTICLE 16.1. This AGREEMENT shall be effective as of January 1, 2010 and shall remain in full force and effect until the thirty-first day of December 2011.

UNION POSITION, ITEMS #2 & #3:

Across Board Wage increase 2010 = 0%

Across Board Wage increase 2011 = 2%²

¹ The Parties stipulated at the hearing that Issue #1, Duration, is no longer in dispute. The Parties are in agreement for a two-year duration, January 1, 2010 through December 31, 2011.

² NOTE: “The Union, in its amended position, is seeking a “0” wage increase for 2010 and 2011 plus a step wage matrix system rather than the DCC’s purposed merit type system.”

Wage Scale – DCC, for years 2010 and 2011 to be as follows:

	<u>2010</u>	<u>2011</u>
Start	\$18.89	\$19.27
6 months	\$19.45	\$29.84
1 year	\$20.42	\$20,83
2 years	\$21.44	\$21.87
3 years	\$22.51	\$22.96
4 years	\$23.64	\$24.11
5 years	\$24.82	\$25.32
6 years	\$26.06	\$26.58
7 years	\$27.36	\$27.91
8 years	\$28.49	\$29.06

Placement of Dispatchers on wage scale – see Appendix “A”

EMPLOYER POSITION, ITEMS #2 & #3:

For calendar years 2010 and 2011, the DCC “Compensation Plan and Policy” will apply, subject to Union rights to negotiation regarding the “General Adjustment” and the “Minimum Base Wage” and the “Maximum Base Wage” as specified in this Schedule A. The following principles will apply to the parties in setting wage rates for dispatchers:

SECTION 1. WAGE RANGE NEGOTIATIONS

- 1.1. Process:** The wage range established by Schedule A may be negotiated for a subsequent CBA in accordance with the PELRA and the then current CBA.
- 1.2. Current Contract:** For the collective bargaining agreement (CBA) covering the period from January 1, 2010 through December 31, 2011, the wage range will be a minimum of \$18.89 per hour (\$39,300.00 annually for a full-time employee) to \$28.49 per hour (\$59,300.00 annually for a full-time employee). The annual “Wage Structure” charts in Schedule A, Section 1, 4 below reflect this range.
- 1.3. Wages below the Range Minimum:** If wage ranges are adjusted at the beginning of a calendar year, employees paid compensation at rates less than the minimum of the new wage ranges, will be adjusted to the new range minimum.
- 1.4. Wage Range Structure:**

CALENDAR YEAR 2010

<u>POSITION</u>	<u>MINIMUM BASE WAGE</u>	<u>GENERAL WAGE ADJUSTMENT CALCULATION (CONTROL POINT)</u>	<u>MAXIMUM BASE WAGE</u>
Dispatcher	\$39,000.00 (\$18.89)	\$52,600.00 (\$25.29)	\$59,300.00 (\$28.49)

CALENDAR YEAR 2011

Dispatcher	\$39,300.00 (\$18.89)	\$52,600.00 (\$25.29)	\$59,300.00 (\$28.49)
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SECTION 2, NEGOTIATION OF MOVEMENT THROUGH WAGE STRUCTURE BY GENERAL WAGE ADJUSTMENT (GWA)

2.1. New Employee(s): The wage rate of a newly hired employee will be the "Minimum Base Wage," as specified in the wage range charts at Schedule A, Section 1.4 for the appropriate year, subject to the discretionary authority of the DCC to pay a higher rate within the wage range in order to attract a candidate.

2.2. Current Employees: Employees on the DCC payroll on January 1, of a calendar year will, effective that date receive a general adjustment to their wage rate as determined by the collective bargaining process under the PELRA, as amended, subject to the following:

2.2.1. The GWA will be calculated upon the "General Wage Adjustment Calculation Point" (GWACP) or "control point," which has been set for the "Wage Range Structure" for calendar years 2010 and 2011 at a point higher than the third quartile (Q-3) of wage rates actually paid.

2.2.2. In subsequent GWA negotiations, the GWACP or control point will be the Q-3 point.

2.2.3. The amount so calculated will be applied to each Dispatcher's wage rate for the applicable year of the adjustment, subject to the maximum as provided in Schedule A, Section 2.3.

2.3. Maximum: In the event the GWA would increase the wage of any employee beyond the "Maximum Base Wage" as specified in Schedule A, Section 1, only the amount up to the "Maximum Base Wage" will be added to the base wage for the affected employee(s) and any remainder will be paid as a lump sum.

2.4. GWA for 2010 and 2011

2.4.1. 2010 GWA: Zero percent (0%) calculated on the control point.

2.4.2. 2011 GWA: Zero percent (0%) calculated on the control point.

SECTION 3. MERIT ADJUSTMENT PROVIDING MOVEMENT THROUGH WAGE STRUCTURE

3.1. DCC Reservation of Management Discretion (M.S. 179A.07, Subd. 1): Beginning January 1, 2010, and for calendar years thereafter, employees on the DCC payroll may be eligible for a merit adjustment based on satisfactory or better performance, as described in DCC Policy, Section N, Wage and Salary Guidelines. The DCC reserves its discretionary management authority pursuant to the PELRA to evaluate, to allocate revenue or not for “Merit Adjustment” pay in any budgetary cycle and to amend Section N. Wage and Salary Guidelines.

3.2. Performance Based Increase: Performance based increases for which employees may be eligible will be provided on their anniversary date, subject to meeting established performance considerations under Section 3.1.

3.3. Calculation of Increase:

3.3.1. The performance based increase guidelines provides a percentage increase calculated on the applicable “Performance Wage Calculation Point” which is the same as the GWACP or control point specified in Schedule A, Sections 1 and 2.

3.3.2. Employees being paid within the wage range will have this amount added to their base wage.

3.3.3. For an employee whose wage is below the maximum base wage, but whose merit adjustment would result in a base wage above the range maximum, only the amount of the increase up to the range maximum will be added to base wage.

3.3.4. Employees whose performance review date is January 1, coinciding with the effective date of the general wage adjustment, will have the general wage adjustment calculated and applied first, and the performance increase calculated and applied second.

POSITIONS OF THE PARTIES

THE UNION SUPPORTS ITS POSITION WITH THE FOLLOWING:

- In the previous arbitration and in the instant, the Union received no information from the DCC that would resolve the problem of less experienced employees at a wage that is considerably higher than more experienced employees.
- The DCC continues to address only new hires (11 members) rather than the problem of wage disparity between employees hired at the same time but have less work experience but more in wages (39) members.
- Again in the instant arbitration, the DC offered no resolution to this [disparity] problem.
- The total cost of the Union's position (two-year) of \$145,368 is considerably less than the projected cost presented by The DCC of \$349,809 with overtime, which is a separate issue. The DCC cost is based on what the Union presented during mediation, not what is being presented in the instant arbitration.
- The Union's position is rationally based on appropriate considerations and should be awarded.
- Based on the current economic factors all state, county and city governments are facing, with little or no bright future in sight, the Union offered an amended wage plan that the Union believes is fair, resolves the disparity problem and will prove cost worthy now and in the future.
- Regarding internal equity, non-union employees received above the 3% mark for 2008 and 2009, which was above the 3% per year awarded by arbitrator Miller for Union employees.
- While not as dramatic of a change as recent years, the CPI has in fact risen and the Union's position will ensure wages keep pace with the rising cost of living.
- Regarding ability to pay, the DCC has adequate resources to support the Union's proposal, is in sound financial health, and has the ability to pay the Union's wage step proposal.
- A review of the DCC's financial statements show significant growth in its net assets, particularly unreserved funds that are available for spending at the DCC's discretion.

- The DCC has the funds available to transition the original and newly hired employees into the Union's Wage Step System.
- The employees were promised the [wage] disparity between experienced employees and less experienced employees would be taken care of. This has not occurred and it is almost four years later. The Union's position should be awarded.

THE DCC SUPPORTS ITS POSITION WITH THE FOLLOWING:

- The DCC does not have the ability to pay the increases sought by the Union.
- Internal equity favors the DCC proposal.
- External market comparisons demonstrate that the DCC proposals are well within the range of comparisons.
- Other economic factors, particularly the cost of living demonstrates that the DCC positions should be awarded.
- The DCC proposal is based upon the system utilized by Dakota County, an employer from where many of the current DCC dispatchers originated.
- The DCC proposal involves both general and merit based pay increases for employees demonstrating satisfactory or better performance.
- The DCC position of a "0" increase for 2010 and 2011 is consistent with the settlements within the appropriate comparison group.
- The DCC position of having discretionary authority to pay above the minimum starting rate is necessary to protect the DCC's ability to recruit qualified candidates.
- The DCC position allows all employees to receive a general adjustment to their wage rate as determined by the collective bargaining process. It also provides that if the increase would place an employee above the maximum of the wage schedule the employee would receive a lump sum payment for the difference.
- The DCC position provides a process for merit-based wage increases, subject to the DCC's rights under Minn. Stat. 179A.07, Subd. 1, to reserve its discretionary authority to evaluate, to allocate or not allocate revenue for such increases.

- The DCC position provides for semi annual and annual performance reviews to evaluate employee performance and to grant those with satisfactory or better performance a merit-base wage adjustment.
- The Union's position is incomplete and problematic –it is an outdated system incompatible with the modern forward-looking mission of the DCC.
- It is important to recognize and reward those employees who continue to perform their duties in an exemplary manner. The Union proposal fails to meet either of these goals.
- The Union's proposed step system creates a monster that must constantly be fed money. The Union's proposal establishes a system whereby employees are entitled to more money simply because they have survived another year.
- The Union's proposal provides no incentive for employees to improve performance or an incentive to improve the services the DCC provides.
- The DCC can no longer afford to pay its employees under such a system as the Union proposes, without having a significant impact on the services provided to the public.
- Further, the Union has proposed no specific language regulation the implementation of their step system. As such it is incomplete and should not be awarded for this reason alone.
 - There is no language whether the step system is based on continuous years of service or just years of service. For example, how is an employee who leaves and is later rehired credited with years of service?
 - There is no language on how part time service is to be credited.
 - There is no language when step movement is to take place such as on their employment anniversary date or on a common date of all employees.
 - There is no language on how step advancement is to be affected by significant leave of absence.
 - There is no language as to whether the DCC has any discretion in granting or not granting step increases.

- There is no language stating whether the DCC has any discretion for step placement of new hires.
- There is no language regarding how long the employees designated as frozen will continue to be frozen.
- The foregoing along with other glaring problems and inconsistencies in the Union proposals must be addressed.
- The Union's Exhibit #14, pages 11 and 12, confuses the question of when employees receive step advancements.
- The Union's proposal contains inconsistencies in the treatment of employees. While the general process shown is to move employees equally over a two-year period into a step commensurate with their years of service, however, the same process was not used for Tiffany Collins. The rate shown for Tiffany Collins corresponds with five years of service rather than four.
- The Union's proposal also applies increases at the six-month step unequally. Tori Boijrdages has an anniversary date of April 5, 2010, yet the Union proposal indicates she does not received any step adjustment until 2011, when she receives the same \$0.56 as all other employees with zero years of service. Further, the Union's proposal does not state when in 2011 she is to receive the increase.
- The Union's proposal does not show the concern with disparate pay for those employees toward the bottom of the seniority list as it is concerned with those at the top. The Union proposal would cause 27 out of 50 employees to earn the maximum wage by the end of 2011. Currently only five employees are at the maximum rate.
- An award in favor of the Union's proposal merely sends the Parties back to the bargaining table to try to resolve the significant issues left unresolved.
- There is an emerging trend in recent arbitration awards that the employer's ability to pay is no longer viewed literally by looking at the employer's balance sheet.³
- This is the standard codified in Minnesota Statutes section 179A.16, subd 7, which states: "In considering a dispute and issuing its decision the arbitrator or panel shall consider the statutory rights and obligations of public employers to efficiently manage and conduct their operations within the legal limitations surrounding the financing of these operations."

³ Cited is *City of Coon Rapids and LELS, Inc.* BMS Case No. 10-PN-0861, at pp. 25.

- In essence, the ability to pay factor should focus on the tough budgetary decisions that public entities face in these difficult economic times.
- It is undisputed that federal, state and local governments alike face daunting financial challenges.
- The purpose for which the DCC was created was to combine resources in order to provide an essential service in a more cost efficient manner. The DCC should not be forced to deviate from this mission in order to provide unsupportable wage increases.
- Simply put, the DCC and its members do not have the ability to pay for the Union's proposals.
- All of the DCC non-union employees have received a "0" percent increase for 2010 and 2011. Awarding the Unions unjustified increase would therefore be inequitable to the non-union employees of the DCC.
- In the previous arbitration Arbitrator Miller defined the appropriate external comparison group. A comparison of the DCC minimum rate (\$18.89) shows it slightly below the average of the comparison group. Although this may require some adjustment in the future, it is not expected to be an issue in the current labor market.
- A comparison of the DCC maximum rate (\$28.49) to the appropriate comparison group shows that the DCC rate compares very well. In fact, the DCC employees are paid higher at the maximum than every other comparison entity, except for the City of St. Paul where dispatchers are required to have an EMT-B and AMPDS-EMD certification.
- Aside from comparing the actual wage rate of each comparison group, it is also important to compare *when* these settlements were reached. A comparison reveals a mixture of increases and freezes with the key difference being *the time the contract was settled*. While earlier settled long term contracts show increases continuing into 2010, recently settled contracts are more likely to show a zero increase.
- A comparison of the wage current DCC employees are receiving to what they would be receiving, if they had stayed in the community where employed before coming to the DCC, shows that with only three exceptions, their DCC pay is equal or greater. The three employees paid less are currently paid only \$.02 less per hour.

- A comparison of wage increases received by the DCC employees shows that their wage increases have outpaced the CPI Index for the Minneapolis/St. Paul Area. For the period 2007 through the first half of 2010, the CPI Index increased by 6.7% while the wage rate for the DCC employees increased by a cumulative 9.27% during 2007, 2008 and 2009.
- If the U.S. Cities Average CPI index, as referenced by Arbitrator Miller, is used, the CPI figure adjusts the total increase from 6.7% to 7.1%, an increase of 0.4%. Using either CPI Index demonstrates that the DCC wage increases have outpaced increases in the CPI Index between 2007 and the first half of 2010, including no wage increase for 2010.
- Other considerations supporting the DCC position are that increases in Social Security benefits have been frozen as well as the wage of Federal employees for two years.
- The country's dire economic situation affects all levels of government and will require tough budgetary choices over the coming years.

DISCUSSION

As noted earlier, the Union Modified its position on wages to a "0%" adjustment for 2011. The Union retains its position for a step wage matrix system.

This means that the Parties are now in agreement that the minimum and maximum wage rates in effect during the 2009 contract year (\$18.89 per hour minimum - \$2849 per hour maximum) are to continue unchanged for the 2010 and 2011 contract years.

Although the Parties presented extensive evidence and argument concerning external market comparisons and economic factors, normally considered relevant in wage arbitration, the fact that the parties are now in agreement on the minimum and maximum wage for the duration of the 2010 through 2011 CBA, renders such information moot. What does continue to be relevant is the ability to pay and internal equity issues. No matter which pay system ultimately applies it will involve in range pay adjustments and issues of internal equity.

What remains in dispute is how movement within the salary range is to be handled and what is to be done about the disparity claimed by the Union, where employees with less experience are paid higher than employees with more experience. It is clear from the history of bargaining between the Parties that they have not been able to find a mutually acceptable compromise between their respective positions.

Both Parties come into the dispute with some history to support their respective position. The record shows the Union represented the DCC employees who were previously employed by Cities that are now members of the DCC. Although not specified in the record, it is assumed that the salary step plan being proposed by the Union is similar to those that were in place in these member cities.

The record also shows that from time of the DCC start up (January 1, 2007) until the parties implemented their January 1, 2008 through December 31, 2009 CBA, the merit plan proposed by the DCC was in effect for the employees at issue. Although not clear to the Arbitrator, it is likely that those employees who were previously employed by Dakota County were under a similar merit system.

The fact that the employees chose to form a collective bargaining unit, allowing them to negotiate a CBA, would indicate that the employees at issue were interested in negotiating an alternative to the DCC Merit Plan. It would not appear that a general wage increase was the prime issue, as the 3% increase plus a merit step provided to employees in 2007 by the DCC was competitive with the pattern at the time. Further, the Union's position in the 2008 arbitration was for the same 3% increase in 2008 and 2008.

This Arbitrator, having had the opportunity to administer and observe the workings of both step systems and merit systems for many years, is familiar with the strengths and weakness of each system. It is understandable why the parties have had such difficulty reaching agreement.

The step system proposed by the Union is very common in public agencies, particularly with employees represented by a union. It typically involves a pay range with a number of steps from which employees can progress from the minimum, or entry (hiring) rate, to the maximum rate, typically based on annual performance reviews showing satisfactory or better performance.

The theory behind the step system is that the pay range represents a learning curve from which an employee who starts with minimal knowledge and skill will progressively increase his/her knowledge and skill until the employee reaches the full performance level. Theoretically this will be at the same time the employee reaches the maximum wage rate.

Although the learning curve concept has validity, it is questionable whether progression from minimum job performance to full performance follows a straight linear line. It can be argued that the rate at which employees acquire knowledge and skill will be greater in the early years on the job than will be the case in later years. For example, would the typical dispatcher with four years experience have reached only 50% of the knowledge and skill required to be at full performance? For pay purposes, the step schedule proposed by the Union would not recognize the employee to be at full performance until reaching the eighth year.

The steps in the typical pay range are usually spread by a uniform percentage. For example, the Union's proposal establishes about a 5% spread between each step. Assuming an employee with four years experience has achieved 50% of the knowledge and skill required for full performance, the employee would be at the mid point (50%) in the salary range.

It might be argued that, even though the typical employee may reach full performance before reaching the maximum of the pay range, the opportunity to continue receiving a step increase can be a motivator for the employee to maintain a high level of performance.

As noted earlier the typical step system involves a number of salary steps between the minimum and maximum rate of the pay-range. Employees typically progress up each step on an annual basis until they reach the maximum rate, which is considered the full performance rate. To qualify for progression to the next step, an employee is typically required to demonstrate satisfactory or better performance. The employee's level of performance is determined by completion of a performance evaluation, usually completed by the immediate supervisor and approved by a higher-level manager.

Although it is most typical for employees to progress up the pay range one step at a time, there can be exceptions where an employee is advanced more than one step at a time, based on exemplary performance. Although it is debatable whether the employer has an inherent right to do this, some CBA's contain language specifically providing the employer this option.

In situations where an employee's performance is rated below satisfactory, it is typical for an improvement plan to be established and a follow-up evaluation conducted in three to six months. If satisfactory improvement has been made, the employee is advanced to the next step in the salary range. If not, either another opportunity is allowed for the employee to make the necessary improvement or action is taken to remove the employee or transfer the employee to a position where satisfactory performance can be achieved.

When general wage adjustments are negotiated, it is typical for the steps in the salary range to be adjusted by the same percentage as the minimum and maximum rates. This allows the steps in the pay range to maintain the same relationship to the minimum and maximum rates as well as to each other.

Merit systems, such as is being proposed by the DCC, are a more recent addition to the universe of public sector compensation and are most typically found in

compensation plans for professional, executive and administrative employees. Theoretically, the merit system is a better tie of pay to performance and will create a greater incentive for employees to excel.

The merit system also relies on performance evaluations as a means to measure job proficiency. Individual employee development plans, involving goals and objectives, are more often a part of merit pay systems. Although there are typically guidelines limiting the extent an employee can be advanced in salary, the merit systems usually allow management discretion in deciding when a salary adjustment will be made, if a salary adjustment will be made as well as the size of a salary adjustment

Under the merit system, employee compensation tends to be addressed more on an individual basis. For this reason the system works best where the amount of each employee's compensation is not a matter of public information. Employees knowing what each other is being paid can create an environment of employee dissatisfaction due to individual perception of the worth of others. Another source of employee dissatisfaction can be the uncertainty of not being sure if, when and to what extent their contribution will be recognized.

Although there are distinctive differences in the step and merit systems, there are also similarities. In the instant case an opportunity exists to fashion a system that incorporates the better features of each system.

AWARD

SCHEDULE "A", WAGES -2010 AND 2011:

SECTION I- EMPLOYEE WAGE SCHEDULE:

<u>Length of Employment</u>	<u>Rate Per Hour</u>
Start	\$18.89
6 months	\$19.45

1 year	\$20.42
2 years	\$21.44
3 years	\$22.51
4 years	\$23.64
5 years	\$24.82
6 years	\$26.06
7 years	\$27.36
8 years	\$28.49

SECTION II – TRANSITIONAL STEP ADJUSTMENTS:

The following rate shall be paid employees of record as of December 9, 2010. Employees hired subsequent to this date shall be paid in accordance with Section I and the terms and conditions set forth in Section III.

<u>EMPLOYEE</u>	<u>RATE EFFECTIVE</u> <u>1/1/2010</u>	<u>RATE EFFECTIVE⁴</u> <u>2011</u>
Meyer, Patricia	\$28.49	\$28.49
McQuoid, Heidi	28.49	28.49
Bodeen, Diane	28.49	28.49
Rinta, Karen	28.49	28.49
Reyer, Theresa	28.49	28.49
Molstad, M. Beth	27.95	28.49
German, Tiffany	27.95	28.49
Siegler, Mary	27.95	28.49
Bailey, Kellie	27.74	28.49
Anderson, Dawn	27.50	28.49
Hoffman, Kathryn	27.50	28.49
Kaltenhauser, Melinda	27.50	28.49
Eilers, Mary Jo	27.50	28.49
O'Brien, Jaynce	27.43	28.49

⁴ The implementation date of the 2011 adjustments shall be the beginning of the first full payroll period in March 2011.

Ryan, Victoria	27.43	28.49
Vivant, Holly	27.43	28.49
Anderson, Brent	27.43	28.49
Schrader, Karla	27.05	28.49
O'Laughlin, John	27.05	28.49
Bochniak, Lynann	27.02	28.49
Hale, Tera	27.02	28.49
Ryan, Cynthia	26.53	28.49
Messina, Gino	26.17	26.17
Kluck, Brian	25.63	28.49
Hansen, Stacey	25.63	28.49
Bultman, Kelly	25.47	27.36
Jermasek, Gina	25.23	26.06
Cemensky, Jolene	25.23	26.06
Robles, Rachel	25.09	26.06
Buran, Jennifer	25.08	26.06
Whebbe, Michael	24.84	28.49
Egan, Raymond	24.84	28.49
Hernandez, Rachel	24.62	24.82
Chilson, David	23.74	26.06
Krystosek, Kathy	23.74	26.06
Adamek, Stacie	23.73	23.73
Collins, Tffany	23.17	23.64 ⁵
LeTourneau, Anna	22.65	23.64
Senko, Anne	22.65	23.64
Houlehan, Kristeen	19.46	21.44
Kuykendall, Daniel	19.46	21.44
Evans, Becky	19.46	21.44
VanPutten, Jennifer	18.89	20.42
Zgoda, Jim	18.89	20.42
Smith, Pascale	18.89	20.42
Prail, Megan	18.89	20.42
Boijrdages, Tori	18.89	19.45
Chupurdia, Marnie	18.89	19.45
Eilers, Nicholas	18.89	19.45
Schoo, Andrew	18.89	19.45

⁵ The Union's proposal would have put the rate at \$24.82, which is a step higher than the employee's four years of service (four years = \$23.64).

SECTION III – IMPLEMENTATION:⁶

3.1. There shall be no change in rates paid to employees during 2010 and until implementation of the transition into steps within the pay range in March 2011.

3.2. The transition of employees into the appropriate salary step within the salary range shall be in accordance with Section II and is to take place effective the beginning of the first full payroll period in March 2011.

3.3. Following the transition into pay range steps as set forth in Section II, employees eligible for advancement to the next step within the pay range, based on their length of service, shall be so advanced on or about their anniversary date. If an employee's length of service anniversary date falls on or prior to the implementation date of Section II, the step adjustment shall be made on the same date as the Section II implementation date.

3.4. If an employee's anniversary date does not fall on the beginning of a payroll period, the step adjustment shall be implemented on the beginning of the first payroll period following the anniversary date. To be eligible for advancement to the next step, employees must have demonstrated satisfactory or better performance as shown in their performance evaluation.

3.5. No employee shall be paid higher than the maximum rate of the pay range as set forth in Section I. An employee being paid at a higher step in the pay range than is commensurate with his/her length of service shall not be

⁶ The Arbitrator has designated implementation of the step transition in Section II to occur the beginning of the first full pay period in March 2011. This will avoid the time and expense of computing retroactive adjustments and allow sufficient time to make the necessary entries in the payroll system before the rates go into effect.

eligible to advance to a higher step until his/her length of service meets the length of service requirement for that step.

3.6. An employee's length of service for the purpose of step advancement in the pay range shall be in accordance with the following terms and conditions, unless the Parties mutually agree otherwise.

3.6.1. An employee's length of service shall be based on the most recent date of hire by the DCC in the classification of Dispatcher. Fulltime employees shall have an additional year of service credited on each successive anniversary date following such date of hire.

3.6.2. For employees of record as of December 9, 2010, date of hire shall be based on the seniority date shown in Union Exhibit #14, as was entered during the hearing on December 9, 2010. Such service shall be considered as continuous service from the date of seniority through December 9, 2010.

3.6.3. Length of service for part time employees shall be pro-rated based on the ratio the part time employee's work schedule bears to the fulltime work schedule.

3.6.4. An employee's length of service shall not be interrupted *except* while on an unpaid leave of absence in excess of 30 days, or upon termination of employment.

3.6.5. A former employee who is re-employed within five (5) years of the date of termination may have prior service credit reinstated at the DCC's discretion.

3.7. It shall be the prerogative of the DCC to establish performance standards, evaluate employee performance based on those standards, determine the frequency of reviews and to rate the degree to which employees meet or exceed performance standards. If an employee disagrees with the DCC's evaluation, the employee may request a meeting with the DDC authority who approved the evaluation and may submit a written response to be made a part of the employees employment file.

3.8. It shall be the prerogative of the DCC to establish a hiring rate higher than the minimum pay rate set forth in Section I, when it deems necessary to recruit qualified employees. Prior to implementing such higher hiring rate, the DCC shall meet and confer with the Union regarding the effect such higher rated will have on the wage rate of existing employees and what, if any adjustments may be required to maintain an equitable pay relationship.

3.9. It shall be the prerogative of the DCC to adjust an employee pay rate within the pay range by more than one pay step when the DCC determines it is warranted based on an employee's exemplary performance. Prior to implementing such multiple step adjustment, the DCC shall notify the Union and make information available to the Union's, upon its request, describing the exemplary performance warranting the multiple step adjustment.

3.10. It shall be the prerogative of the DCC to hire a new employee, or transfer an employee from another jurisdiction at a step in the pay range higher than the entry step, based on prior qualifying dispatcher experience. The qualifying dispatcher experience shall equate to a length of service that equals or exceeds the length of service required for the step in which the new or transferred employee is placed.

3.11. Performance standards, performance evaluations, pay adjustments of more than one step and the employment of a dispatcher with prior qualifying

dispatching experience at above the minimum pay step, shall not be subject to the grievance procedure.

RATIONALE

All things considered in the instant situation, the Arbitrator finds the Union's step proposal the better compromise. It is more typical of the pay system used with public safety employees and likely most consistent with the system many employees experienced prior to coming into the DCC. The record shows employees at issue have had experience working under the DCC Merit System and have strongly rejected it, as evidenced by their organizational activity and refusal to accept it in two rounds of collective bargaining.

As noted earlier, both systems have strengths and weaknesses. The Arbitrator's award attempts to incorporate the strengths of both systems and minimize the weaknesses. While the Arbitrator's Award involves fixed step increases based on longevity, it also affords the DCC considerable authority and flexibility in advancing employees based on performance criteria and the opportunity to reward employees for exemplary performance.

Although the Arbitrator cannot accurately estimate the cost of the DCC proposal, it would appear the cost of the system awarded is only marginally higher and within the DCC's ability to pay. The Arbitrator cannot accurately cost the DCC merit system because of inability to determine how many merit increases would be granted and the amount of each. For rough estimate purposes, the Arbitrator used an average merit increase percentage of 3% for employees not at the top of the pay range.

The two-year cost of transition into the appropriate steps in the pay range, based on seniority dates, is estimated at approximately \$103,400.⁷ By implementing the

⁷ Cost calculations are based on a 2080-hour payroll year.

adjustments in March 2011, rather than January 2011, the cost is reduced from approximately \$127,000 to \$105,400 ($\$127,000 \times .83\% = \$105,410$).

After implementation of the step transition in 2011, there are some 23 employees that fall somewhere below the maximum rate in the pay range and, based on their seniority, will become eligible to advance to the next step. Assuming a step increase is granted to all 23 employees, the estimated cost is approximately \$22,100.⁸

When the above costs are compared to the annual base wage cost of the bargaining unit (Approximately \$2,625,979 in 2010 and \$2,625,979 in 2011 = \$4,982,264), the estimated two-year cost increase over the combined base wage cost in 2010 and 2011 ($\$105,410 + \$22,100 = \$127,510$) is approximately 2.6%.

Assuming no step transition and a merit step of 3% granted all employees eligible in 2010 and again in 2011, a rough estimate of the cost would be approximately \$68,000 or about 1.4% of the two year combined base wage cost.⁹ Based on the above estimates, the difference between the DCC proposal and the Union's proposal is approximately 1.2%.

As noted earlier, the Arbitrator cannot estimate the cost of the DCC proposed merit system with a great deal of confidence, because it is unknown how many merit steps would be granted and the amount of these merit steps. It seems questionable that merit steps in 3% increments would be the standard as it would take an employee with satisfactory performance some twelve (12) years to reach the maximum (full performance) rate in the pay range, using the DDC's Q-3 calculation base. If the merit steps averaged five (5) percent, the cost of the DCC merit system would be approximately \$95,200, which is more comparable to the estimated cost of the

⁸ The cost calculation is based on the monetary difference between the employee's current step and the step the employee would be entering, adjusted for the months during 2011 that the employee will receive the higher rate.

⁹ The cost calculation is based on a 3% increase in the employee's base pay, adjusted for the number of months the increase will be paid.

Union's step system (\$127,510 vs. \$95,200), a difference of less than one (1) percent.

The Union argues that the DCC has more than ample resources to fund the cost increase of its proposal, particularly considering that it withdrew its position for a two (2) percent across-the-board increase in 2011. The Union entered the DCC financial statements from 2009 showing the DCC to be in good financial health. The following statements appear in Union Exhibit #19, pages 3 and 6 of the DCC 2010 Budget:

"The 2008 actual operating costs and estimated 2009 operating cost are both significantly under budget. As such, the proposed 2010 and 2011 budget recommends appropriating the undersigned unreserved fund balance (approximately \$1.68 million) to minimize the member fees over a period of three years."

"The General Fund budget in 2011 is estimated to increase by \$293,384 (3.7%), over the proposed 2010 budget."

The DCC argues: "Simply put, the DCC and its members do not have the ability to pay for the Union's proposals. However, it is noted that when DCC made this statement, it was referring to its own estimate of the cost of the Union's earlier proposal of \$350,00, not the Union's amended proposal.

There is little doubt that the financial resources of most public agencies either are, or will be, experiencing stress due to the overall financial situation affecting local, state and federal government. In the instant case, the Arbitrator's award does not require any funding increase for wage rates in either 2010 or 2011. The increase in funding is for routine in range wage adjustments and a one-time transition of some employees into a pay step commensurate with their years of service.

The Arbitrator has considered the statutory right and obligation of the DCC to efficiently manage and conduct its operations within the legal limitations surrounding the financing of these operations and finds the cost of the award to be consistent with the DCC's statutory right and obligation.

Last to be addresses is the DCC final position titled: "Section 2. Negotiation of Movement Through Wage Structure by General Wage Adjustment (GWA)." ¹⁰ Section 2.2 Current Employees, essentially pertains to future contract negotiations. Being there is no general adjustment involved in the instant case, the positions set forth are not applicable to the instant case, but could be subjects for bargaining in future contract negotiations. Funding of step increases could also be a subject of bargaining in future contract negotiations

ITEM #4, OVERTIME LANGUAGE, ARTICLE 10.2:

UNION POSITION, ITEM #4:

10.2. Overtime will be distributed as equally as practicable irrespective of unit or seniority ranking: The DCC will utilize electronic communication to disseminate notice of opportunities for overtime assignment. Generally, an employee who responds to the e-mail notification with the least amount of overtime worked will be the first employee considered for the assignment of the overtime. The DCC's decision will not be subject to review through the grievance procedure. [The Union's position is to remove the emphasized language]

EMPLOYER POSITION, ITEM #4:

No Change.

DISCUSSION:

¹⁰ See page
8 of this award.

The Union supports its proposed change with the following:

- Union witness, Mary Siegler testified that she has been a dispatcher since February 11, 2000, and she is a Union Stewart. Siegler acknowledged that the existing language is the result of mutual agreement, but feels there is an inconsistency in the way the language is being interpreted. Siegler testified that Union Exhibits #21A & #21B show that the over time hours posted are not accurate. Employees who have worked more overtime hours were given overtime hours when other employees with less were not. Siegler testified that the CBA calls for overtime to be distributed equally, and if not, it is a violation of the CBA.
- On cross-examination Siegler acknowledged that the CBA language calls for overtime to be distributed as equally as practicable. Siegler testified that the word “practicable” should be replaced with “possible.” Siegler acknowledged that Union Exhibit #21B is not a full accounting of overtime as it only includes posted overtime and does not include sick call and short notice overtime. Siegler also acknowledged that there could be an error in the Exhibit due to transposing information from the daily records.
- On cross-examination Siegler testified that she wants a way to remedy mistakes – the DCC should develop a policy and follow it – I want to be able to grieve the policy and compliance with it. Siegler testified that she has had ongoing discussion with management on the overtime policy and a draft overtime policy is being discussed between the Union and Management.
- On re-direct, Siegler testified that taking out the language as proposed by the Union would not require overtime by seniority. Siegler testified that there are six supervisors and not all use the same procedure for assigning overtime.
- On cross-examination, Siegler acknowledged that deleting the phrase as proposed by the Union would make seniority irrelevant and that mandatory

(forced) overtime is based on seniority, so seniority does play a role under the existing CBA language.

- On re-direct, Siegler testified that taking out the language has the same value as leaving it in.
- Union Witness Mindy Kaltenhauser testified that she is a dispatcher and Union Stewart. Kaltenhauser testified that she was a dispatcher prior to the DCC merger and had overtime language prior to the merger that required it be granted strictly by seniority. Kaltenhauser testified that current supervisors don't distribute overtime equally – some follow seniority and some go to a person they know will take the overtime. Kaltenhauser testified that the Union and Management are trying to develop a policy that everyone can follow. Kaltenhauser testified that taking out the language, you are taking out seniority.

The Union argues that under the existing language it has nowhere to address overtime assignment issues with management, as the language is not subject to the grievance procedure. The Union argues that the DCC argument to make the change the Union wants would pit [Union] member against Union member is the same that would also occur with the DCC's proposed merit based wage plan.

The DCC proposes no change in the language. The DCC argues that it is the result of extensive negotiation between the Parties, and this issue was not part of the 2008 interest arbitration. The DCC argues that the distribution of overtime is complicated – some employees want as much overtime as possible while others may want little or no overtime. The DCC argues that this situation skews the data presented by the Union – if a senior employee does not want overtime and a less senior employee works as much as possible, it will appear as if overtime is being distributed in an inequitable manner.

The DCC argues that, due to different, changing and unpredictable circumstances, it may have very little notice of the need for overtime, and as such, the distribution of overtime necessarily involves the need for management discretion – the first and primary concern is ensuring that the DCC is properly staffed. The DCC argues that any obstacle that interferes with its ability to guarantee each shift will be covered places an unreasonable burden on the DCC to perform its essential public service.

The DCC argues that the Union's position is incomplete and leaves important questions unanswered, i.e. will seniority become the sole consideration or be one of many? The DCC argues that the Union proposal will allow any employee to file a grievance if he or she feels overtime was assigned inequitably and could lead to a rash of arbitrations.

The DCC argues that it is axiomatic in interest arbitration that such a significant change as is proposed by the Union is not awarded when no quid pro quo is provided – here the Union offers nothing.

The DCC argues that the inconsistencies claimed by the Union are being discussed between the Union and Management, and to this end, the parties are jointly working on an updated implementation policy pertaining to this exact issue. The DCC argues that this implementation policy has been all but finalized and there is no need for the Union to bring up concerns regarding the distribution of overtime.

AWARD

There shall be no change in the existing Overtime language of Article 10.2.

RATIONALE:

The existing language in Article 10.2 was reached by mutual agreement of the Parties and has been in existence for only one contract period. It is well known that under these circumstances arbitrators are reluctant to disturb contract language.

The Arbitrator is also persuaded by the complexities involved in staffing vacancies in an operation, such as the DCC, where it is critical to the public's safety and health that positions must be covered on a 24 hour per day, seven-day per week basis. Due to the variety of circumstances that require coverage and the number of supervisors that apply the policy, it is likely that no single method will work the same in all situations. Even with the best intentions and commitment to follow policy, there will likely be circumstances when an urgent need to find a replacement will require resort to the most expedient means possible.

The testimony of Union Witnesses Mary Siegler and Mindy Kaltenhauser indicates that the Parties are jointly working to resolve the concerns expressed by the Union. It is not surprising that the policy (DCC Exhibit #37), initially developed to implement the language of Article 10.2, will need some fine-tuning from time to time. The Evidence shows that the Parties are in fact doing this as evidenced by Ms. Kaltenhauser testimony that; "[the Parties] are trying to develop a policy that everyone can follow."

CONCLUSION

The Parties are commended on the professional and thorough manner with which they presented their respective cases. It has been a pleasure to be of assistance in resolving the disputed matters.

Issued this 20th day of January 2011 at Edina Minnesota.

ROLLAND C. TOENGES, ARBITRATOR