In Re the Arbitration Between:

The City of Minneapolis, Minnesota,

Employer,

and

GRIEVANCE ARBITRATION OPINION AND AWARD

Minnesota Teamsters Public & Law Enforcement Employee's Union, Local 320,

Union.

(Scheduling Grievance)

- Pursuant to **Article 7** of their collective bargaining agreement, the parties have brought the above captioned matter to arbitration.
- The parties agree that the matter is before the arbitrator for a final and binding determination.
- The grievance was submitted on December 30, 2013.
- The arbitration hearing was conducted on June 6, 2014,
- The parties submitted written briefs by e-mail transmission on June 27, 2014 and the record was closed.

APPEARANCES:

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FOR THE UNION
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ISSUES:

Whether the grievance was timely?

Whether the Employer violated Article 14, Section 14.01, when it changed the length of the shifts worked by 911 Supervisors from ten (10) hours to eight (8) hours?

RELEVANT CONTRACT PROVISIONS:

ARTICLE 3 – DEFINITIONS

WORKDAY: *The 24-hour period of time during which an employee is regularly scheduled to work an eight and one-quarter hour shift.* [1]

ARTICLE 7—EMPLOYEE RIGHTS- GRIEVANCE PROCEDURE

Section 7.01 – Definition of a Grievance

A grievance is defined as a dispute or disagreement as to the interpretation or application of the specific terms and conditions of employment in this Agreement.

Section 7.02- Union Representative

The Employer will recognize Union Officers and Union Stewards as the grievance representative of the bargaining unit having the duties and responsibilities established by the Article. The Union shall notify the Employer, in writing, of the names of such Union Representative and of their successor when so designated as provided by Section 6.02 of this Agreement.

Section 7.04 – Procedure

Grievances, as defined in Section 7.01, shall be resolved in conformance with the following procedure:

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[1] The parties stipulated that the definition should include ten hours shifts.

Subd. 1

Should a Union Representative, on behalf of an employee claim a violation concerning the interpretation or application of this Agreement, they shall, within twenty-one (21) calendar days after such alleged violation has occurred, present such grievance, in writing, to the Department Director and provide an informational copy to the Director of Employee Services. The Department Director will provide a written answer to such Step 1 grievance within twenty-one (21) calendar days after receipt and will also provide an informational copy of the answer to the Director of Employee Services. All grievances shall be placed in writing, setting forth the nature of the grievance, the facts on which it is based, the provision or provisions of the Agreement allegedly violated and the remedy requested. Any grievance not appealed in writing according to the timelines specified herein shall be considered waived.

ARTICLE 14- HOURS OF WORK AND OVERTIME

Section 14.01 – Work Schedules

The normal workday for all employees shall consist of shifts of eight and one-quarter (8 ¼) hours or ten (10) hours. The Employer reserves the right to modify the workday configurations after fourteen (14) days advance notice to the Union. The normal work period configuration shall be eighty (80) compensated hours in each bi-weekly pay period. Each full shift shall include lunch and rest periods as provided for in this Agreement. There shall be no split shifts.

Where other workday configurations are adopted by the Employer which deviates from that described above, the number of hours actually worked by affected employees shall, on the average, be equivalent to the number of hours actually worked by

employees under the normal workday/work period configuration described above. In no event, however, such as, for example, with respect to shift changes required by shift rotation, shall such equivalent work day/work period configuration require the payment of overtime.

FACTUAL BACKGROUND:

On October 21, 2013, the Employer delivered to each of the Minneapolis 911 Supervisors a Supervisor Schedule for the year 2014 by e-mail transmission. The 2014 Supervisor's Schedule reflected a change in shift duration from ten (10) hours in a twenty-four (24) hour period to eight hours (8) in a twenty-four (24) hour period. The grievant, Gregers Nelson, selected his schedule based upon seniority and did so before the 911 Operators bid on their schedules, as required by contract. At the time that Supervisors were bidding on schedules, the Union requested a meeting to discuss the new schedule.

A meeting was conducted on December 9, 2013. At the meeting the Union took the position that the collective bargaining agreement only provides for eight and one quarter (8-1/4) hour or ten (10) hour shifts. The Employer contended that it had the right to modify the workday configuration under **Section 14.01**. Hence, the Employer believed that it could schedule eight (8) hour shifts under the contract.

On December 30, 2013 the 911 Supervisors began working the schedule that included eight (8) hour shifts. Also, on December 30, 2013, Gregers Nelson, the Union Steward, filed the grievance alleging a violation of **Article 14** of the collective bargaining agreement.

The parties were unable to resolve the grievance and the dispute was brought to arbitration for a final and binding determination.

ISSUE NUMBER ONE: ***Whether the grievance was timely?***

The Employer argues that the grievance was not filed in a timely manner, as required by **Section 7.04, subd. 1** of the collective bargaining agreement. The Employer notified all 911 Supervisors of its' intent to schedule shifts of eight (8) hours for 2014 on October 21, 2013. If a contract violation occurred, the Union knew of the alleged violation on October 21, 2013. No grievance was submitted within the twenty-one (21) days following the October 21, 2013 occurrence. In fact, the grievance was not filed until December 30, 2013, which means that the grievance was waived.

The Union argues that the grievance was filed on the first day that Supervisors were required to work an eight (8) hour sift. The contract violation occurred on December 30, 2014, when Supervisors were required to work a shift not provided for in the collective bargaining agreement. Hence, the grievance was timely filed and the grievance is arbitrable.

Section 7.04, subd. 1 provides a period of twenty-one (21) days wherein a grievance may be brought over an alleged violation of either the interpretation or the application of the collective bargaining agreement. The grievance in this case was submitted on December 30, 2013 and claims that the imposition of eight (8) hour shifts for 911 Supervisors in 2014 violated **Section 14.01** of the collective bargaining agreement. December 30, 2014 was the first day the new eight (8) hour shifts went into effect. Simply stated, December 30, 2014 was the first day the eight

(8) hour shifts were "applied". Hence, the grievance was brought within twenty-one days of the application of schedules based upon eight (8) hour shifts, which allegedly violate **Section 14.01** of the collective bargaining agreement.

AWARD – Issue #1:

The grievance was initiated in a timely manner and is properly before the arbitrator for a final and binding determination.

ISSUE NUMBER TWO -- *Whether the Employer violated Article 14, Section 14.01, when it changed the length of the shifts worked by 911 Supervisors from ten (10) hours to eight (8) hours?*

SUMMARY OF UNION'S POSITION:

The parties negotiated specific language in the collective bargaining agreement at **Article 3** that defines a "workday" "The 24 hour period of time during which an employee is regularly scheduled to work an eight and one-quarter hour shift."[2] The specific language was negotiated in the first contract between the parties effective July 1, 2001 through June 30, 2003 and it has been unchanged through all successor agreements. The definition of a workday became a part of the collective bargaining agreement because "hours of employment" are a term and condition of employment and a mandatory subject of bargaining under **Minn. Stat. Section 179A.03, subd. 19; Section 179A.07, subd. 2(a)**. The hours of employment agreed upon by the parties through collective bargaining are shifts of either eight and one-quarter (8 1/4) hours or ten (10) hours in a twenty four (24) hour period. The collective bargaining agreement establishes two possible shift durations to 911

[2] The parties stipulated that the definition should include ten (10) hour shifts.

Supervisors may be assigned in a twenty-four (24) hour period. The collective bargaining agreement does not provide for eight (8) hour shifts.

The Union concedes that the City assigned ten (10) hour shifts to some employees before the parties incorporated ten (10) hour shifts into their agreement. However, the ten (10) hour shifts were voluntary not mandatory assignments. When the parties incorporated ten (10) hour shifts into the collective bargaining agreement, they merely adopted an existing practice.

The language of **Article 3** is clear and unambiguous and all of the terms used in the provision should be given meaning. In this case, the "workday" falls within a twenty-four (24) hour period, "during which" a shift takes place. The "workday" under this contract is specifically defined and does not mean simply the length of a shift. It is "the 24-hour period of time during which an employee is regularly scheduled to work an eight and one-quarter hour shift". [3]

The term "workday configurations" can only mean the arrangement (configuration) of twenty-four (24) hour periods during which an employee is regularly scheduled to work either an eight and one quarter (8 1/4) hour or ten (10) hour shift. The City's right to modify the work day configurations is limited to the arrangement of twenty-four hour periods and does not extend to the length of shifts.

The Union submits that the plain meaning of all of the terms incorporated into the relevant contract provisions supports their position and the grievance must be upheld.

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[3] The parties stipulated that the definition should include ten hours shifts.

The remedy sought by the Union is reinstatement of ten (10) hour shifts for the member of this bargaining unit or, in the alternative, eight and one quarter (8-1/4) hour shifts.

SUMMARY OF EMPLOYER'S POSITION:

The Employer argues that under the plain language of the contract it has the right to modify the work-day configuration under **Section 14.01**. The express language of the contract must be followed in this case.

The first sentence of **Section 14.01** describes a normal workday but is immediately modified by the second sentence, which gives the Employer the right to modify the workday configuration. The second paragraph also confirms the Employer's right to modify the workday configuration. It says: "where other workday configurations are adopted by the Employer which deviate[s] from that described above…" The use of the term "deviate[s]" demonstrates the Employer's right to make modifications to the workday. The words, "described above" is an explicit reference back to the first paragraph of **Section 14.01** and the description of a normal workday as shifts of "eight and one-quarter (8-1/4) hours and ten (10) hours." Reading **Section 14.01** in its entirety, preserves the Employer's right to modify the workday configuration.

The Management Rights Clause of the contract found at **Article 5, Section 5.03**, provides:

> *The union recognizes the right of the Employer to operate and manage its affairs in all respects in accordance with applicable laws and regulations of appropriate authorities. All rights and authority which the Employer has not*

officially abridged, delegated or modified by the express terms and provisions of this Agreement are retained by the Employer.

The Employer's right to alter the workday configuration is retained by the Employer unless it relinquished the right through express terms of the contract.

In the past, the Employer has modified the workday configuration. Between 2006 and 2010, the Employer posted 10-hour shifts and some Supervisors worked 10-hour days. The modifications to the workday were made, despite the fact that the collective bargaining agreement did not incorporate ten (10) hour shifts, until 2010. No grievances were filed between 2006 and 2010 over the workday changes. The Employer contends that the use of ten (10) hour shifts between 2006 and 2010 is an example of the Employer exercising its' right to modify the workday.

The Employer asks that the grievance be denied because the Union failed to meet its burden of proof and the collective bargaining agreement preserves the Employer's right to modify the workday configuration.

OPINION:

The parties defined "workday" in the collective bargaining agreement at **Article 3**. The "workday" is a twenty-four (24) hour period wherein an employee is regularly scheduled to work a shift. The two shifts identified in the contract are an eight and one-quarter hour shift and a ten-hour shift. Central to this review is the fact that the parties chose the term "shift" to describe the length of time that an employee works within a twenty-four hour period. In **Section 14.01** the term "shift" is also used to describe workday. Shifts of eight and one-quarter hour and ten hours comprise the normal workday. Shifts are to include lunch and rest periods and split

shifts are prohibited. Based upon the **Article 3** definition of "workday" as time when an employee is regularly scheduled to work a "shift" and the repeated use of the term "shift" by the parties in **Article 14, Section 14.01**, the arbitrator believes that the Employer would have reserved the right to modify "shift length" after fourteen days advance notice to the Union, if it intended to reserve such a right in the collective bargaining agreement. Instead, the Employer reserved the right to modify the "workday configurations."

The Union's argument that the Employer reserved the right to schedule workdays in different patterns or "workday configurations", e.g. four days on and three days off, relies upon the definition of workday found in the contract and the fact that the parties consistently used the word "shift" to describe the time being worked by an employee within a designated twenty four (24) hour period. In the definition of workday and throughout **Article 14**, the hours worked within a twenty-four hour period are consistently referred to as shifts not as "workday configurations". Hence, application of the definition of "workday" negotiated by the parties at **Article 3** of the collective bargaining agreement supports the Union's position that the Employer violated **Article 14, Section 14.01** of the collective bargaining agreement, when it changed the length of shifts worked by 911 Supervisors from ten (10) hours to eight (8) hours.

The Arbitrator's Authority is set forth at **Article 7, Section 7.06** and says:

> *The arbitrator shall have no right to amend, modify, nullify, ignore, add to or subtract from the terms and conditions of this Agreement.*

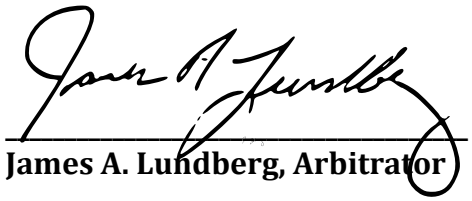
In this instance, the Arbitrator must apply the definition of "workday" negotiated by the parties and incorporated into their agreement. Making any addition to the definition or any modification of the definition would go beyond the Arbitrator's authority.

The remedy in this case is to change shift assignments for 911 Supervisors so that they conform to the terms of the collective bargaining agreement. However, **Article 7.06** prohibits the Arbitrator from "making any decision that is contrary to public policy." The safety of the community is tied directly to the work performed by 911 Supervisors. In order to assure that the remedy is carried out in a manner that is consistent with public safety, the Employer should be given ample time to adjust the schedules of 911 Supervisors so that the scheduling transition is seamless.

AWARD:

1. ***The Arbitrator finds that the Employer violated Article 14, Section 14.01 of the collective bargaining agreement, when it changed the length of shifts worked by 911 Supevisors from ten (10) hours to (8) hours.***
2. ***The grievance is upheld.***
3. ***The Employer is directed to change the scheduling of 911 Supervisors to conform with the terms of the collective bargaining agreement by scheduling their work in either eight and one-quarter (8 ¼) hour or ten (10) hour shifts, within sixty (60) days of the date of this award.***
4. ***The Arbitrator shall retain jurisdiction over the remedy for one hundred twenty (120) days from the date of this award.***

Dated: July 14, 2014



James A. Lundberg, Arbitrator