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In Re the Arbitration Between:

BMS File No. 15-PA-0729

BMS File No. 15-PA-0741

Lakes-Area Police Department,  
Chisago, Minnesota,

Employer,

**GRIEVANCE ARBITRATION  
OPINION AND AWARD**

and

Law Enforcement Labor Services, Inc.,  
St. Paul, Minnesota,

Union.

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1. Pursuant to **Article VII** of the collective bargaining agreement effective January 1, 2012 through December 31, 2014, the parties have brought the above captioned grievances to arbitration.
2. A grievance by Officer Chad Van Horn was submitted on August 13, 2014.
3. A grievance by Officer Cory Spencer was submitted on August 14, 2014.
4. James A. Lundberg was selected by the parties to be their neutral arbitrator from a list of arbitrators provided by the Minnesota Bureau of Mediation Services. The arbitrator was asked to hear both BMS File No. 15-PA-0729 and BMS File No. 15-PA-0741.
5. A hearing over both grievances was conducted on August 15, 2016 in Chisago City, Minnesota.
6. The parties agreed that there are no procedural issues to be resolved by the arbitrator and the grievance is before the arbitrator for a final and binding determination.

7. Closing arguments were submitted by letter brief on September 2, 2016 and the record was closed.

**APPEARANCES:**

**FOR THE EMPLOYER**

Marylee Abrams  
Abrams & Schmidt, LLC  
4707 Highway 61, Suite 226  
White Bear Lake, MN 55110

**FOR THE UNION**

Scott Higbee  
Law Enforcement Labor Services  
327 York Avenue  
St. Paul, MN 55130-4039

**ISSUE:**

**Employer's statement of the issue:**

*Did the Employer violate the labor agreement and past practice when it denied overtime compensation to Officer Spencer and Officer Van Horn for time worked during Karl Oskar Day in July of 2014?*

**Union's statement of the issue:**

*Whether the Employer violated the collective bargaining agreement by failing to pay grievant Chad Van Horn the over time rate for work performed on July 11, 2014 and grievant Corey Spencer for work performed on July 12, 2014 and, if so, what should be the remedy?*

**RELEVANT PROVISIONS FROM THE COLLECTIVE BARGAINING AGREEMENT:**

**ARTICLE III. DEFINITIONS**

*3.8 OVERTIME: Work performed at the express authorization of the Employer in excess of the Employee's scheduled shift.*

*3.9 SCHEDULED SHIFT: a consecutive hour work period including two rest breaks and a lunch break.*

## **ARTICLE V. EMPLOYER AUTHORITY**

*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 functions not specifically limited by the Agreement.*

*5.2 Any term and condition of employment not specifically established or modified by this Agreement shall remain solely within the discretion of the Employer, to modify, establish or eliminate.*

## **ARTICLE XII. OVERTIME**

*12.1 Overtime will be paid at the rate of time and one-half (1-1/2) for all hours worked over 171 in 28-day work period. All use of sick leave hours, vacation hours are to be considered hours worked in computing overtime. Employees have the option to choose to receive compensatory time, in lieu of overtime pay, at the rate of time and one-half (1-1/2) the employee's regular hourly rate of pay for all hours over 171 an hour per hour compensatory time off or pay for hours over regularly scheduled shift but less than 171.*

## **ARTICLE XIV. CALL BACK TIME**

*14.2 An employee who is called to duty during his/her scheduled off-duty time shall receive a minimum of three (3) hours pay at one and one-half (1-1/2) times the employee's base pay rate. ...*

**FACTUAL BACKGROUND:**

The Police Officers who work for the Lakes Area Police Department, a department serving the communities of Chisago City and Lindstrom, Minnesota, generally work a four-day on four-day off schedule involving fourteen (14) eleven (11) hour days and one additional fifteenth (15<sup>th</sup>) shift of at least eight hours, during a 28-day cycle. The fifteenth shift is used for a variety of activities. Most often the 15<sup>th</sup> shift is used as a training day. Some 15<sup>th</sup> shifts are used to serve warrants. On occasion the 15<sup>th</sup> shift is simply used as a clean-up day. The fifteenth shift is also used to staff the summer festival of Kark Oskar Days.

Karl Oskar Days in Chisago City is a three day, Friday through Sunday, festival that draws significant numbers of people to the community. The festival features a parade, exhibits, activities and concessions, including a beer garden. In order to maintain an orderly and safe environment during the festival, all Lakes Area Police Officers are assigned to work the festival.

Grievant Van Horn was hired by the Department in December of 2006 and Grievant Spencer became a full time Officer in 2007. Both Officers have been assigned work at Kark Oskar Days every year of their employment with the Lakes Area Police Department. It is undisputed that all Officers will be assigned work during Karl Oskar Days and no leave will be approved during the three days. The grievants testified that historically overtime wages have been paid for shifts worked on Karl Oskar Days.

The July 2014 work schedule was prepared and available to Officers in the normal course. Both of the grievants appear on the "B side" of the schedule. On June

28, 2014 the Deputy Chief of Police sent an e-mail to Officers of the Department which said the following:

*The July schedule is posted. As in years past, the KO<sup>1</sup> days will take the place of our usual training day. (For the B side). For A side we have a force on force training opportunity. It will be either July 15 or 16 0800-1300 hours with instructors from Chisago County SWAT. Please choose a date, let me know and I'll get you signed up. Let me know as soon as possible.*

*For the B side, we'll make sure you have the required 8 hours on the 12<sup>th</sup>. For the A side, you have the option of returning to the PD and working 2 hours after training.*

Following the Karl Oskar Days festival of 2014 both grievant's submitted time sheets that claimed overtime for hours worked, during the Kark Oskar Days festival. Officer Van Horn's time sheet claimed overtime for the eleven (11) hour shift on July 11, 2014. The time sheet also included a claim of eight (8) hours of "personal leave time". Officer Van Horn had not requested nor had he obtained prior approval of "personal leave time". Officer Van Horn did not note any reasons for the leave or the dates that he used the leave. Officer Van Horn was not paid for the eight hours of personal leave and he was paid straight time for his work on July 11, 2014, during the Karl Oskar day festival. Officer Spencer's time sheet claimed five (5) hours of vacation time that was not previously requested, was unapproved, and did not note the dates he used vacation time. The time sheet also claimed nine (9) hours of overtime pay for hours worked on Saturday, July 12, 2014. The Employer did not

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<sup>1</sup> Karl Oskar

pay for the five (5) hours of vacation claimed by Officer Spencer and the Employer paid straight time for the nine (9) hours Officer Spencer worked on July 12, 2014 at Kark Oskar Days.

By written notice dated August 13, 2014 the Union, on behalf of Officer Van Horn, submitted a grievance asking the Employer to pay overtime wages to Officer Van Horn for his work on July 11, 2014. The grievance alleges that the Employer violated the Labor Agreement by not paying Officer Van Horn overtime wages on July 11, 2014. The contract violations include but are not limited to **Article XII Overtime, Article XXIV Wages and past practice.**

By written notice dated August 14, 2014 the Union, on behalf of Officer Spencer, submitted a grievance asking the Employer to pay overtime wages to Officer Spencer for his work on July 12, 2014. The grievance alleges that the Employer violated the Labor Agreement by not paying Officer Spencer overtime wages on July 12, 2014. The contract violations include but are not limited to **Article XII Overtime, Article XXIV Wages and past practice.**

The Employer denied both grievances and the parties were unable to resolve the dispute through the grievance procedure. Hence, the grievances were submitted to arbitration for a final and binding determination.

**SUMMARY OF UNION'S POSITION:**

The Employer posted the July, 2014 work schedule for Lakes Area Officers in late June of 2014. Later on June 28, 2014 an e-mail was sent to Officers advising them that they would be working on Kark Oskar Days and the work at the festival, by the B side of the schedule, would substitute for the normal training day shift, the

15<sup>th</sup> Shift in the 28-day cycle. The actual Kark Oskar Days schedule was not posted, until July 5, 2014. The Union contends that due to the short notice the changes made to the original schedule on July 5, 2014 should fall within the meaning of **Article 3, 3.8 OVERTIME: Work performed at the express authorization of the Employee in excess of the Employee's scheduled shift.** The work performed by Officer Van Horn on July 11, 2014 was in excess of his previously scheduled shift and should have been paid at the overtime rate. The Employer did pay overtime for the hours Officer Van Horn worked on July 12, 2014. The hours Officer Spencer worked on July 12, 2014 were in excess of the hours of his previously scheduled shift and should have been paid at the overtime rate. Moreover, Officer Spencer was working a shift on July 12, 2014 during the Kark Oskar Days festival but was not paid at the overtime rate, while Officer Van Horn was paid at the overtime rate for his work on July 12, 2014 at the Kark Oskar Days.

The definition of overtime found at **Section 3.8** of the collective bargaining agreement must be given some meaning. In this case both grievants are asking for overtime compensation for work performed at the express authorization of the Employer and the work was in excess of the originally scheduled shifts. The employees are entitled to regard the shifts identified in the originally posted schedule, as their originally scheduled shifts. Once the Employer scheduled employees to work in excess of the schedule, the definition of overtime was satisfied.

A "special detail" is distinct from a regularly scheduled shift. Both grievants were given less than a week's notice of the actual times they would be working

special details at Kark Oskar Days. The special details should also be deemed to be work in excess of the originally scheduled shifts. In the past, the Officers had been paid overtime for special details during Kark Oskar Days. Finally, Officer Van Horn was paid at the overtime rate on July 12, 2014 and Officer Spencer should be treated the same.

The grievance should be upheld and the Officers should be paid at the overtime rate for their work during Kark Oskar Days 2014.

**SUMMARY OF EMPLOYER’S POSITION:**

The Employer relies upon the “plain language” of **Article XII, Section 12.1** of the collective bargaining agreement, which says “overtime will be paid at the rate of time and one half (1-1/2) for all hours worked over 171 in a 28-day period.” The agreed upon provision is clear and unambiguous. If an employee works more than 171 hours in a 28-day period, overtime at the agreed upon rate shall be paid. The overtime provision has been part of the collective bargaining agreement, since the first combined Lakes Area collective bargaining agreement was entered into in 2004.

Officer Spencer did not work more than 171 hours during the pay period in question in July of 2014. In fact, he added five (5) hours of unapproved vacation time in order to reach the hours necessary to reach the overtime threshold.<sup>2</sup> The vacation time was not “used” as required by **Section 12.1** of the contract. The overtime claim was properly denied and the Employer did not pay for the unapproved vacation hours.

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<sup>2</sup> The Officer padded his time sheet to reach the overtime threshold.

Officer Van Horn unilaterally listed eight hours of unapproved personal leave during the same pay period in July 2014. As with Officer Spencer, he did not work 171 hours during the pay period. The unapproved personal leave was inserted to reach the overtime threshold but denied by the Employer, because it was not previously requested, not approved and not used as required by **Section 12.1** of the contract. The overtime was denied because the grievant did not reach the 171 hour threshold. The personal leave time claimed was not paid as it was not approved nor was it used.

Both grievants testified that prior to the July 2014 pay period they had never padded their time sheets with unapproved leave time to reach 171 hours. Both Officers were ordered to never pad their time sheets in the future and have not done so, since July 2014. Also, the Union Steward was asked if he had ever put unapproved leave time on his time sheet in order to reach the overtime threshold. He testified that he had never put down unapproved leave on his time sheet.

Based upon the plain language of the collective bargaining agreement, the overtime requests should be denied.

The Union has not negotiated contractual provisions resulting in more employee control over work schedules. Traditionally, senior shift bidding and mandatory schedule posting requirements are incorporated into collective bargaining agreements to give employees some control over work schedules. The bargaining history of the parties reflects the fact that some controls have been

sought in the past but proposals were withdrawn from the bargaining table because the quid pro quo put forward by the Employer was not acceptable to the Union.<sup>3</sup>

The Employer applied the plain meaning of the overtime provisions found in the collective bargaining agreement to the claims of overtime made by the greivants and properly denied the claims.

The Employer asks that both grievances be denied.

**OPINION:**

The Employer has established by a preponderance of the credible evidence that both Officer Van Horn and Officer Spencer were paid in accordance with the terms and conditions of the collective bargaining agreement. **Article XII, Section 12.1** creates an overtime threshold of 171 hours within a 28-day period. Neither Officer Van Horn nor Officer Spencer reached the 171 hour threshold in July of 2014. In fact, Officer Van Horn's time card reflects 161.5 hours minus the 8 hours of unapproved personal time he claimed in the time period. Officer Van Horn worked 154.5 regular hours during the time period, which falls far short of the overtime threshold. Similarly, Officer Spencer did not work more than 171-hours during the relevant 28-day pay period. Officer Spencer's regular hours totaled 165, which is short of the overtime threshold. The shift Officer Spencer worked on July 12, 2014 was a Scheduled Shift. Officer Spencer was on notice that time during Kark Oskar Days would be used in lieu of training, the 15<sup>th</sup> Shift in the 28-day cycle. There is no contractual provision that supports the overtime claims.

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<sup>3</sup> The Employer insisted on more advance notice for changes sought by Officers as a quid pro quo for mandatory schedule posting.

The Officers in this case may have believed that it is the practice to pay overtime for work on Kark Oskar Days. However, no incidents of wages paid at the overtime rate for work on Kark Oskar Days solely because the work was performed on Kark Oskar Days were submitted into evidence. Prior overtime wage payments to officers, including the payment of overtime to Officer Van Horn for work on July 12, 2014<sup>4</sup>, fall within the terms of the collective bargaining agreement. There is no evidence of a past practice of compensating Lakes Area Police Officers at overtime rates, simply because they worked on Karl Oskar Days.

If the Officers genuinely believed that it was the practice of the Lakes Area Police Department to pay overtime wages for work solely because it was performed on Kark Oskar Days, there would have been no need for the Officers to pad their time sheets with unauthorized/unused leave time to reach the overtime threshold.

The collective bargaining agreement does not include a provision that allows employees to exercise any control over work schedules. There is no seniority shift – bidding provision. Also, there is no requirement, which designates when schedules must be posted. It is true that the specific schedules for Lakes Area Police Officers for the Kark Oskar Days festival in July of 2014 were posted only five (5) days before the event. However, in **Article V** of the collective bargaining agreement the Employer specifically retains the “full and unrestricted right” ... “to establish work schedules.” The collective bargaining agreement does not designate when a work schedule must be posted. Hence, the Union’s position that the work schedule posted on July, 2014 modified the employee schedule posted on June 28, 2014 and

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<sup>4</sup> Officer Van Horn’s work on July 12, 2014 was without standard breaks and fell within the overtime provisions of the contract.

authorized work in excess of the June 28, 2014 schedule is not supported by language in the collective bargaining agreement.

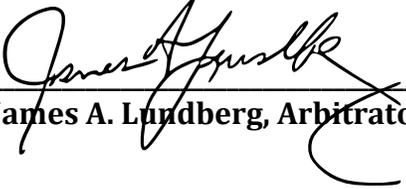
Based upon the plain meaning of the terms of the collective bargaining agreement the Employer did not violate the collective bargaining agreement, when it did not pay grievant Chad Van Horn's claim for overtime wages for hours worked on July 11, 2014 nor did the Employer violate the collective bargaining agreement, when it did not pay grievant Corey Spencer 's claim for the overtime wages for work performed on July 12, 2014.

**AWARD:**

***The arbitrator finds that based upon the plain meaning of the terms of the collective bargaining agreement:***

- 1. The Employer did not violate the collective bargaining agreement, when it did not pay grievant Chad Van Horn's claim for overtime wages for hours worked on July 11, 2014.***
- 2. The Employer did not violate the collective bargaining agreement, when it did not pay grievant Corey Spencer 's claim for the overtime wages for work performed on July 12, 2014.***
- 3. The grievance of Officer Chad Van Horn is hereby denied.***
- 4. The grievance of Officer Corey Spencer is hereby denied.***

**Dated: September 14, 2016**

  
**James A. Lundberg, Arbitrator**