

other on behalf of the grievant, Aaron M. Florin ("Florin"). The grievances allege that the Employer violated the labor agreement between the parties by disciplining the grievants without just cause. Post-hearing briefs were received by the arbitrator on January 14, 2008.

FACTS

The Employer (sometimes "ALF") is a joint powers board formed by the adjacent cities of Apple Valley, Lakeville and Farmington, Minnesota, for the purpose of operating an ambulance service in those cities, which are just south of Minneapolis and St. Paul. The Union is the collective bargaining representative of the non-supervisory employees of the Employer who are "public employees," as defined by the Minnesota Public Employment Labor Relations Act, including those who are classified as Ambulance Paramedics (hereafter, merely "Paramedics").

In August of 1988, the grievant, Brady, was first employed as a part-time Paramedic by one of the three cities that are predecessors of the Employer; in January of 1989, he became a full-time Paramedic. In early 2004, the grievant, Florin, was first employed by the Employer as a Paramedic with the status of a "casual employee," working sporadic part-time hours. In December of 2004, he became a full-time Paramedic, working as a "floater," i.e., one who has no fixed shift rotation, but fills in as needed for Paramedics who are absent because of illness, vacation or other cause.

On March 9, 2007, Thomas M. Kelley, the Administrator of the Employer, issued the following disciplinary memorandum to

Brady for conduct alleged to have occurred on March 1, 2007, when he and Florin were on duty as operators of "Medic 10," one of the three ambulances owned by the Employer:

Subject: Suspension Without Pay and Last Chance Agreement

Alleged Violations: Ambulance Regulation State Statutes 144E.101 and 144E.28; and ALF Ambulance paramedic responsibilities to respond to calls.

ALF has investigated the incident regarding your failure to respond to a call on March 1, 2007 at the Apple Valley Medical Center (AVMC). Per ALF policy, you were suspended without pay pending the investigation of allegations of misconduct. After a thorough review of all available information and in consultation with ALF's Medical Director and Human Resources Director (who also kept the Chair of the Executive Management Committee informed), it has been determined that your failure to respond to the 9-1-1 call warrants discipline as follows:

1. Suspension Without Pay: You will be suspended without pay for 30 days. Because you regularly work 24-hour shifts the calculation of your suspension will be based on a normal 40-hour work week. Therefore, you will be suspended without pay for 160 hrs (40 hrs per week X 4 weeks). You will be credited for the 72 hours you have already been suspended without pay, so the number of hours you have remaining as suspension without pay is 88 hours. When you will serve the remaining hours of the suspension will be determined after the Emergency Medical Services Regulatory Board (EMSRB) conducts its independent review of this incident as the result of that investigation could also impact your ability to work for ALF.
2. Last Chance Agreement: Due to the nature of this violation, effective immediately, you are hereby served a Last Chance Agreement for 12 months. During this 12 month period, if there are any same or similar violations on your part your employment will be terminated.
3. Ineligible for assignments including Field Training Officer and Lead Medic: You will not be eligible for any assignment designations including Field Training Officer or Lead Medic during the 12 month period of your Last Chance Agreement.

4. Upon completion of your suspension and during the period of your Last Chance Agreement, the ALF Medical Director is requiring that you meet with him to review and discuss your actions of March 1, 2007.

Per AFSCME Contract Article XVI you will not be eligible to accrue benefits during your period of suspension without pay. . . .

On the same day, March 9, 2007, Kelley issued a disciplinary memorandum to Florin. It is substantially the same as the one issued to Brady, except that the paragraph describing the suspension is altered slightly to reflect Florin's status as a floater, thus:

1. Suspension Without Pay: You will be suspended without pay for 30 days. Because your float schedule is irregular the calculation of your suspension will be based on a normal 40-hour work week. Therefore, you will be suspended without pay for 160 hrs (40 hrs per week X 4 weeks). When you will serve your suspension will be determined after the Emergency Medical Services Regulatory Board (EMSRB) conducts its independent review of this incident as the result of that investigation could also impact your ability to work for ALF.

On March 19, 2007, the Union brought grievances in behalf of the grievants, each of which alleges that the discipline imposed was without just cause. On March 29, 2007, the parties met to discuss the grievances, and on April 9, 2007, Kelley issued a Step 2 Grievance Response in each grievance. Kelley's response to Brady's grievance refused to change the discipline imposed, except that the requirement that Brady not be eligible to act as a "Lead Medic" for twelve months was withdrawn. Kelley's response to Florin's grievance refused to change the discipline imposed except 1) that the requirement that Florin not be eligible to act as a "Lead Medic" for twelve months was withdrawn, and 2) that Florin's suspension was reduced from 160

hours to 140 hours because he was junior to Brady at the time of the conduct for which they were disciplined.

Relevant parts of the Employer's position description for a Paramedic are set out below:

Position Summary: An Emergency Medical Technician - Paramedic responsible for the delivery of highly competent, advanced life support emergency medical care and treatment to all individuals. This position shall carry out assigned duties and tasks necessary to maintain and promote the service delivery capabilities of the ambulance service.

Essential Duties and Responsibilities include the following: Other duties may be assigned.

Possesses the medical knowledge and skills needed to maintain medical certification in order to respond to calls and treat patients in a variety of environment conditions when needed. Participates in the daily activities and programs of the ambulance service. Able to respond to emergency and non-emergency calls while on duty. Ensures timely and thorough completion of work tasks and projects as assigned by the Administrator, Paramedic Service Manager or Paramedic Supervisor. . . Follows and complies with all applicable regulations, mandates, patient care guidelines and policies as enacted over or by the ambulance service. . .

Work Environment: . . . The work environment is usually quiet but will include periods of moderate to high noise levels. The employee workspace may include the closed space associated with the driver's compartment and the transport area of an ambulance. The nature of the work will require the ability to perform on multiple shifts in daylight and darkness conditions and requires the ability to tolerate extended duty in normal outdoor climatic conditions, as well as duty in extremes of heat and cold common to Minnesota.

The weather was poor on March 1, 2007, with heavy snow falling early and more predicted for a substantial part of the day. At 7:00 a.m. on that day, Brady began a twenty-four hour shift -- the typical shift length for a full-time Paramedic. He was assigned to the Employer's Apple Valley Ambulance Station as

one of two Paramedics who, if called to service, would operate "Medic 10," the ambulance kept at that station. The Employer also maintains an ambulance station at Lakeville, where the ambulance referred to as "Medic 11" is stationed and at Farmington, where the ambulance referred to as "Medic 12" is stationed. During the evening hours of March 1, 2007, only Medic 10 and Medic 11 were in operation. The two Paramedics operating Medic 11, from the Lakeville Ambulance Station, were Kimberly Parent and James Levi.

Florin testified that he was at the Farmington Ambulance Station during the morning of March 1, 2007, assigned to Medic 12, and that while there he received an assignment to work with Brady at the Apple Valley Ambulance Station as the co-operator of Medic 10 -- the assignment to begin at 7:00 p.m. that evening and last through the end of Brady's shift at 7:00 a.m. on March 2, 2007.

Florin also testified that between 11:30 a.m. and noon on March 1, 2007, Brian D. Landhuis, the Employer's Paramedic Services Manager, telephoned him at the Farmington Ambulance Station and told him that in the evening when he was working at the Apple Valley Ambulance Station, he should "stay close to home" and "stay in the area" because of the poor weather, and that he should try to take patients to Fairview Ridges Hospital, which is about 3.5 miles from the Apple Valley Ambulance Station.

Landhuis testified that he thought this conversation with Florin had occurred in person at the Apple Valley Ambulance Station, that he told Florin to "stay close to home" because of

the weather, and to transport to Fairview Ridges Hospital unless a patient needed care from a specialty resource center. In his testimony, Landhuis gave as examples of such a center one that could provide cardiac catheterization services or treat extreme trauma. Landhuis testified that he telephoned Parent and gave her similar instructions for her and Levi, as they operated Medic 11. He did not give those instructions to Brady or Levi, but relied on Florin to tell Brady and Parent to tell Levi.

At about 7:00 p.m. on March 1, 2007, Florin arrived at the Apple Valley Ambulance Station (hereafter, merely the "Ambulance Station") to begin his work assignment with Brady. According to the account given by Brady in a report he made on the morning of March 2, 2007, at about 7:36 p.m. the Apple Valley 911 Dispatch Center (hereafter, "911 Dispatch") made a radio "page" to the Ambulance Station asking that Medic 10 respond to the Apple Valley Medical Center (hereafter, the "Medical Center") on a "routine transport" of a two year old child with respiratory problems -- from the Medical Center to Children's Hospital in St. Paul. The Medical Center is an urgent care center located about 1.5 miles from the Ambulance Station. It is staffed with emergency physicians and Registered Nurses.

When Brady and Florin heard this radio call from 911 Dispatch, Florin told Brady for the first time about his conversation with Landhuis that day. He testified that he told Brady that Landhuis had advised him to "try to remain in the area" and "to transport to Ridges when possible due to the inclement weather." Florin's report of the incident, also made on March

2, states that he told Brady that Landhuis' directive was to "stay within our service area and only to transport to the Ridges if a specialty resource center was not needed." Brady testified that Florin told him Landhuis' instructions were to "transport everyone only to Ridges." He also testified that Florin told him that Landhuis' reason for the instruction to transport only to Ridges was that he did not want ambulances to be tied up on any one call for a long time. Brady's written report of the incident does not say that Florin so described Landhuis' directive.

Several minutes after this radio page from 911 Dispatch to the Ambulance Station, the Medical Center called 911 Dispatch again and asked that the call for ambulance transport of the child be made "lights and sirens," thus upgrading the call from a routine "Code 2" call to an emergency "Code 3" call.

There is a conflict in the evidence whether Brady received the information that the call had been upgraded to Code 3. The evidence shows that 911 Dispatch made the following radio page to the Ambulance Station:

Female Dispatcher: 4900 [911 Dispatch] to Medic 10 on this page to the Medical Center, they've upgraded to Code 3 lights and sirens.

The evidence also shows that Brady called 911 Dispatch and asked the other Dispatcher on duty that night, a male, for the telephone number of the Medical Center, thus:

Brady: Hi, Medic 10.
Dispatcher: Hi.
Brady: Can you give me the phone number of the clinic [the Medical Center]?

Dispatcher: Sure, 952-432-6161 and did you copy the upgrade?
Brady: I copied that. We copied the call. Just stand by. I'm going to call them first. I'll let you know if we're going en route or not.
Dispatcher: All right. Cool.
Brady: Thanks. Bye.
Dispatcher: Bye.

No record is available of the hour and minute 1) when the radio page was made by the female Dispatcher, Patricia L. Meyer, to Medic 10 upgrading the call to Code 3, or 2) when the conversation, set out above, occurred between Brady and the male Dispatcher at 911 Dispatch. Brady testified that he was busy trying to contact the Medical Center and had difficulty doing so because the telephone number he was given, ending in 6161, was merely a recorded message line with a substantial menu of options. Brady testified that he did not hear the upgrade to Code 3.

The evidence shows that Brady called 911 Dispatch back after finding that the 6161 number was only a message line and that he had the following conversation with Meyer:

Dispatcher: Apple Valley Police. This is Pat.
Brady: Hi, Pat, Chuck calling from Medic 10.
Dispatcher: Yes.
Brady: I'm trying to get a hold of the clinic to tell them we're not available to go on that. We've been told not to do transfers tonight.
Dispatcher: Oh okay. You're not getting through?
Brady: No. I'm not getting through. Do you have another number I can call?
Dispatcher: [She gave him another telephone number, one ending in 4141.]
Brady: Okay, and if they call again for stuff like that, we're not available.
Dispatcher: Okay, okay.
Brady: Till 7 a.m. tomorrow.
Dispatcher: Until 7 a.m. okay.
Brady: I'm going to try calling them again.
Dispatcher: Okay, try that other number. Goodbye.

Brady also testified that while he was calling the 4141 line at the Medical Center, he received a call over a two-way radio from Parent, who had been monitoring 911 Dispatch from the Lakeville Station or from Medic 11. He testified that Parent asked him if he "copied the call," that he responded that he had and that he was not aware then that she asked if he had "copied the upgrade."

Parent testified that she was listening to the radio transmissions from 911 Dispatch to Brady (Medic 10) during the evening of March 1, that she heard the upgrade to Code 3 made by 911 Dispatch, that she called Brady and asked him if he had heard the upgrade to Code 3, that he responded that he had and that she thinks her conversation with Brady occurred after she heard 911 Dispatch make the upgrade to Code 3.

Parent also testified that Landhuis had called her earlier in the day and, referring to an ambulance (Medic 10) that had just returned from Abbott Hospital in Minneapolis, said, "no more going to Abbott; just stay in the area." She testified that Landhuis did not say "no transports" or "no transfers" and that she understood his instruction to mean that Fairview Ridges Hospital was the only place to go.

Carolyn K. Kerssen, a Registered Nurse at the Medical Center, testified that she was very concerned about the declining condition of the child, whose temperature rose to 104 degrees after he had a seizure and who was having difficulty breathing. She told 911 Dispatch that they (at the Medical Center) desperately needed an ambulance. After Brady obtained

the new telephone number for the Medical Center from 911 Dispatch, he called that number and spoke to Kerksen.

According to Brady's report, he told Kerksen that he was a Paramedic with ALF and that "they would need to call either Health East or Life Link III [private ambulance services] since we were unavailable for their transport." Kerksen testified that she asked, "can't you send us any help?" According to Kerksen, Brady was shouting and sarcastic and responded "what part of no don't you understand?" Kerksen testified that she made the original call to 911 Dispatch for an ambulance service from ALF because she thought it would be faster than a private ambulance service and that Life Link III can take up to forty-five minutes to arrive after a call for service is made. When Brady informed her that an ALF ambulance would not transport the child, she called Life Link III, and an ambulance from that service did transport the child to St. Paul Children's Hospital that night. The child recovered.

Brady testified that he did not shout at Kerksen -- that she may have mistaken his naturally loud voice as shouting. He testified that she persisted in asking for an ALF ambulance, that she became frustrated and that she asked, "don't you have anyone to send us?" He testified that he became frustrated and said, "I don't know what you don't understand or something like that."

Brady testified that he thought the call was a non-emergency Code 2 call, that he did not hear an upgrade to Code 3 and that, if he had known of the upgrade, he would have responded -- which testimony I interpret as meaning that he and

Florin would have driven Medic 10 to the Medical Center, as requested. Brady testified that, given his understanding of Landhuis' directive, he thought it would be better to have Medic 10 stay in the Apple Valley area than to take a routine case to St. Paul Children's Hospital, especially because the only other ALF ambulance in service, Medic 11, was at the Lakeville Station. Brady conceded that "at some point" Florin asked if they should get advice from an on-call supervisor, but he testified that he did not make such a call because he thought "this would be all over before a supervisor could respond." Brady and Florin responded to four calls that night, described as emergency calls in the Apple Valley area.

It is standard practice that the senior Paramedic of a two-person crew has authority to make decisions for the crew and that the senior Paramedic takes charge of radio and telephone communications.

Florin was in the doorway of the room at the Ambulance Station where Brady had the conversations described above. Florin testified that he did not hear an upgrade of the call to Code 3. He testified that he suggested that they contact an on-call supervisor if Brady had any questions about Landhuis' instructions to Florin earlier in the day.

Later in the evening of March 1, 2007, personnel at the Medical Center made vehement complaints about the lack of response made by the Ambulance Station, and, accordingly, the Employer began an investigation that eventually led to the grievants' discipline and to the grievances now before me.

As required by statute, Kelley reported the incident to the Minnesota Emergency Medical Services Regulatory Board (the "EMSRB"), the agency that licenses Paramedics. In November, 2007, after an investigation by a Complaint Panel of the EMSRB, the EMSRB entered into separate agreements with Brady and with Florin (each referred to in the agreement as "Respondent") for corrective action. Each agreement, after making findings of fact relating to the incident of March 1, 2007, states that the Complaint Panel "views the Respondent's conduct as inappropriate under Minn. Stat., Section 144E.28, Subd. 5, and Respondent agrees that the conduct cited above constitutes a reasonable basis in law and fact to justify corrective action under these statutes." Each agreement directs the Respondent to meet with ALF management for one hour to discuss appropriate interactions and responses relevant to the incident of March 1, 2007, a condition fulfilled by the grievants. Each agreement also states that it does not constitute disciplinary action by the EMSRB. The EMSRB imposed no restrictions on the grievants' licensure as Paramedics.

The evidence shows that, except for the incident of March 1, 2007, the grievants have excellent employment records.

DECISION

As I interpret the grievance process established by the labor agreement, the parties have agreed that this dispute is to be decided upon a hearing record made in arbitration and not through the procedures used by the EMSRB. Accordingly, I note that the findings of fact and rulings made in deciding these

grievances are made de novo, based upon the record produced at the hearing before me.

The parties agree that the issue to be decided in these grievances is whether the Employer had just cause to impose the discipline the grievants received on March 9, 2007.

The Employer argues that the primary duty of a Paramedic, one that is emphasized in their training, is to respond to a call for ambulance service and that the grievants failed to fulfill that responsibility. The Employer urges that, when 911 Dispatch called for the transport of a child from the Medical Center to St. Paul Children's Hospital, the grievants had a duty to respond -- at least by going to the Medical Center where they could have had a discussion with the physicians and nurses who were caring for the child, so that they could determine whether transport to Fairview Ridges Hospital would provide sufficient care for the child.

The Employer argues that the failure of the grievants to respond to the March 1, 2007, call was a serious violation of their duty -- one that might have resulted in serious adverse consequences to the child and liability to the Employer. The Employer argues that it considered discharging Brady because of the serious nature of his conduct, but reduced his discipline to a long suspension because of his good record.

The Union argues that, in the context of Landhuis' directive concerning the severe weather, the grievants acted reasonably, by suggesting to the Medical Center that a private ambulance service be called -- especially in the circumstance

that neither grievant heard 911 Dispatch announce the upgrade of the call from "routine Code 2" to "lights and sirens Code 3."

The Union urges that the grievants were following Landhuis' directive "to stay in the area" when they declined the transport from the Medical Center to St. Paul Children's Hospital. The Union argues that, if Brady was at fault in the manner in which he responded to the call, the fault was not deliberate, but was the result of error in the interpretation of Landhuis' directive and in failing to hear the upgrade to Code 3 by 911 Dispatch. In addition, the Union argues that the grievants have been amenable to correction of any error in their handling of the call, admitting to the EMSRB that their conduct was "inappropriate," and conceding that they were in error.

In behalf of Florin, the Union also argues that, because he was junior to Brady, he was subject to Brady's direction and had little if any ability to change what occurred. The Union argues that, in this circumstance of Florin's limited authority, he did what he could when he suggested to Brady that they call an on-call supervisor for instruction about their proper response to the call.

I interpret the evidence about Landhuis' severe weather directive as follows. Landhuis gave the directive to Florin and relied on Florin to relay it to Brady. Florin testified that Landhuis told him he should "stay close to home" and "stay in the area" and to transport to Fairview Ridges Hospital unless a patient needed care from a specialty resource center. Landhuis' testimony about that conversation is substantially the same,

except the he and Florin had different recollections whether it occurred in person or by telephone. The testimony of Parent about what directive Landhuis gave her regarding the operation of Medic 11 is similar -- that he said, "no more going to Abbott; just stay in the area," but did not say "no transports" or "no transfers." She understood his instruction to mean that Fairview Ridges Hospital was the only place to go.

This evidence does not support Brady's interpretation that, rather than respond to the call from the Medical Center for transport of the child to St. Paul Children's Hospital, he thought he was to reserve the services of Medic 10 for other calls for ambulance service in Apple Valley. Indeed, Brady did not mention that interpretation in his written report of the incident, and the accounts given by Florin in his written report and in his testimony do not support that interpretation.

This apparent misinterpretation of Landhuis' directive might have been corrected if Brady had taken Florin's suggestion that they contact an on-call supervisor for instructions. Brady's refusal to do so on the basis that it would have taken too much time seems inadequate. There is no supporting evidence to show that Brady's anticipation of a delayed response to such an inquiry was reasonable. The inquiry to the on-call supervisor could have been made as Medic 10 was en route to the Medical Center, where the grievants could have conferred with physicians caring for the child to determine whether transport to Fairview Ridges Hospital would provide sufficient care. Florin knew that Landhuis had directed him to transport to

Fairview Ridges Hospital -- about two miles from the Medical Center -- unless a specialty resource center was required, and, because Florin told Brady of Landhuis' directive, Brady knew it as well.

The Union argues that the grievants did not hear the upgrade to Code 3 made by 911 Dispatch. The evidence clearly shows that 911 Dispatch announced the upgrade to Code 3 over the radio several minutes after the first call for Code 2 service was made and that Parent heard the upgrade to Code 3 as she was monitoring the transmissions from 911 Dispatch. Both grievants testified that they did not hear the upgrade even though they heard the other transmissions from 911 Dispatch. When Brady first telephoned 911 Dispatch to obtain the phone number of the Medical Center, the male Dispatcher asked him, "did you copy the upgrade?" Brady responded:

I copied that. We copied the call. Just stand by. I'm going to call them first. I'll let you know if we're going en route or not.

Parent testified that, after she heard the upgrade to Code 3, she talked to Brady by two-way radio and asked him if he had heard the upgrade. She testified that he responded that he had. Brady testified, however, that he thought Parent had asked him if he had "copied the call," and that he was not aware at the time that she asked him if he had "copied the upgrade." Florin was standing in the doorway to the room where Brady was receiving and making these radio and telephone calls. Because Brady's calls to 911 Dispatch were by telephone and because Parent's call to Brady was by two-way radio, it appears that

Florin heard only Brady's side of these calls, as first the male Dispatcher and then Parent asked Brady if he had heard the upgrade.

This evidence indicates that 911 Dispatch did upgrade the call to Code 3 and that Brady knew of the upgrade, learning about it from its transmission by 911 Dispatch, from his telephone discussion with the male Dispatcher soon after that transmission and from his discussion with Parent by two-way radio at about the same time. The evidence that Florin knew of the upgrade is not as strong, but it appears that he too learned of the upgrade when 911 Dispatch sent it by radio transmission.

I make the following rulings. Brady, as the senior member of the Medic 10 two-person crew on March 1, 2007, was primarily responsible for its operations. In accord with the training of Paramedics, he should have responded to the 911 Dispatch call for ambulance service by leading the crew to the Medical Center. There, he could have ascertained whether its medical personnel would approve taking the child to Fairview Ridges Hospital rather than St. Paul Children's Hospital. That response was the proper response, in the circumstance of Landhuis' instruction to transport to Fairview Ridges Hospital unless a specialty resource center was needed. At the least, Brady should have taken Florin's suggestion that he call an on-call supervisor for instructions rather than refusing to respond to the Medical Center's call.

In these circumstances, I rule that the Employer had just cause to discipline Brady as it did on March 9, 2007. His

suspension for 160 hours is the equivalent of twenty eight-hour work days -- a long suspension, but, as the Employer argues, within the range of what is appropriate for conduct that damaged the Employer's reputation for reliable service and put the child's health at serious risk. The "last chance" warning is now moot, having expired on March 9, 2008.

I rule, however, that Florin's conduct was far less culpable than Brady's and that the Employer did not have just cause to discipline him as severely as it did on March 9, 2007. Under the Employer's practice, Brady was responsible for leading the operation of their two-person crew on the evening of March 1, 2007. The evidence shows that Brady, exercising his authority, took charge of communications with 911 Dispatch and with the Medical Center. He took effective control of the crew's operations, and he made the decision not to respond to the call for ambulance service. When Florin learned of Brady's decision, he suggested that they get instructions from an on-call supervisor, but Brady rejected that suggestion.

The Employer argues that Florin deserved the discipline he received because he should have been more assertive of his apparent concern about Brady's decision not to respond to the call. The evidence does not show that Florin or other junior Paramedics have been given instructions about how they should react when they have concerns about decisions made by a senior Paramedic.

I rule that the Employer did not have just cause to suspend Florin for 140 hours without pay, the equivalent of 17.5 eight-hour days, and I rule that, in the circumstance that Brady

had authority to lead the crew, Florin acted reasonably when, after learning of Brady's decision not to respond to the call, he suggested that they get advice from an on-call supervisor. Accordingly, I reduce Florin's suspension to a written warning -- one that should instruct him about the measures that should be taken by a junior Paramedic when he has concerns about the decision of a senior, lead Paramedic.

AWARD

The grievance of Brady is denied. The grievance of Florin is sustained. The Employer shall rescind his discipline, issued on March 9, 2007, and restore to him the pay and benefits he lost because of his disciplinary suspension, and in lieu of that discipline, the Employer shall issue a written warning to Florin instructing him in the action that is appropriate when a junior Paramedic has concerns about the decision of a senior, lead Paramedic.

March 19, 2008


Thomas P. Gallagher, Arbitrator