

IN THE MATTER OF THE GRIEVANCE ARBITRATION BETWEEN

Dakota County Communications Center

EMPLOYER

and

BMS Case No. 12-PA-1169

Law Enforcement Labor Services, Inc.

UNION or "LELS"

ARBITRATOR: Richard J. Dunn

DATE AND PLACE OF HEARING: Dakota County Communications Center
Rosemount, Minnesota
February 12, 2013

DATE OF RECEIPT OF POST-HEARING BRIEFS: March 6, 2013

DATE OF AWARD: March 27, 2013

ADVOCATES

For the Union

Mr. Scott A. Higbee
Staff Attorney
Law Enforcement Labor Services, Inc.
327 York Avenue
St. Paul, MN 55130-4039

For the Employer

Mr. Kevin J. Rupp
Attorney
Rupp, Anderson, Squires, and Waldspurger, P.A.
Marquette Avenue South, Suite 1200
Minneapolis, MN 55402527

APPEARANCES

For the Union

Ms. Melinda Kaltenhauser, Dispatcher and Union Steward
Ms. Theresa Reyer, Dispatcher
Ms. Mary Siegler, Dispatcher and Union Steward

For the Employer

Ms. Diane Lind, Executive Director
Ms. Cheryl Pritzlaff, Operations Director

JURISDICTION

The parties to this arbitration are the Dakota County Communications Center or "Employer" and Law Enforcement Labor Services, Inc., "Union" or "LELS," who represents the employees classified as dispatchers by the Dakota County Communications Center. The parties are signatories to a Collective Bargaining Agreement ("CBA") with an effective term of January 1, 2012 to December 31, 2013 (Joint Exhibit One). Article 5, Section 5.1 of the CBA provides that discipline will be administered consistent with the principles of just cause and the well-being of the organization. (Id.) Article 6, Section 6.4 regarding the procedure of grievance resolution specifies: "A grievance not resolved in Step 2 may be appealed to arbitration within five (5) calendar days following the final Step 2 answer". Section 6.5 describes the arbitrator's authority as follows:

- a) The arbitrator has no right to amend, modify, nullify, ignore, add to or subtract from the terms and conditions of the AGREEMENT. The arbitrator may consider and decide

only the specific grievable issue(s) submitted in writing by the EMPLOYER and the UNION, and shall have no authority to make a decision on any other issue.

b) The arbitrator shall be without power to make decisions contrary to, or inconsistent with, or modifying or varying in any way the application of, laws, rules, or regulations having the force and effect of law as determined by courts of law. The decision shall be binding on both the EMPLOYER and the UNION and shall be based solely on the arbitrator's interpretation or application of the express terms of this AGREEMENT to the facts of the grievance presented.

On April 15, 2012 the Grievant, Ms. Theresa Reyer, was suspended for three (3) days without pay after the Employer maintained that she failed to appropriately ensure a medical response to a woman who was giving birth in a hotel room in Eagan, Minnesota on April 4, 2012.¹ The letter of suspension was sent by Ms. Cheryl Pritzlaff, who is the DCC Operations Director, to Ms. Reyer, and signed for acknowledgement by the Grievant with a date of April 14, 2012. (Employer Exhibit One, Tab 3) The LELS on April 18, 2012 filed a Step 2 Grievance Report. (Employer Exhibit One, Tab 2) A letter response on April 23, 2012 from DCC Executive Director Ms. Diane Lind stated that the grievance was upheld by the Employer based on the severity of the incident and prior disciplinary actions. (Employer Exhibit One, Tab 2) The LELS wrote to the Commissioner of the State Bureau of Mediation Services on May 2,

¹ The actual days for the suspension of the Grievant were scheduled for April 15, 16 and 17, 2012

2012 requesting a list of arbitrators, and the undersigned was selected to act as arbitrator in the case. (Id.)

The Union claims that just cause for the discipline did not exist under the unique circumstance of the call to DCC, and that the Grievant properly responded to the call. Therefore LELS seeks for the grievance to be sustained and the grievant made whole, stating: " That Ms Reyer be made whole in any and every way and any and all benefits denied or taken from her be reinstated, and the three days pay be reinstated and given back to her." (Employer Exhibit One, Tab 2)

I. ISSUE STATEMENT

The parties submitted the following issue statement to the undersigned:

"Whether Dakota Communications Center had just cause to issue the discipline to Dispatcher Theresa Reyer outlined in the memorandum dated April 15, 2012, and if not, what should be the remedy?"

The Arbitration hearing was held on February 12, 2013 at the Dakota County Communications Center. Both parties agreed that the case was properly before the arbitrator, and that there were no procedural issues. They agreed that this is a final and binding arbitration decision for both parties. The designated representatives of both parties received a full and fair hearing on February 23, 2013. Witnesses were sworn and cross-examined, and exhibits were received by the Arbitrator and entered into the record. Each representative filed a post-hearing brief on March 6, 2013. Thereafter the case was taken under advisement.

II. FACTS AND BACKGROUND

The Dakota County Communications Center (DCC) is a dispatch center that serves eleven (11) cities and Dakota County. It was created by a joint powers agreement in 2007. Ms. Diane Lind is the Executive Director of the DCC, having served in that capacity for two and one-half years. (Testimony of Ms. Lind) She reports to the Board of the DCC.

There is a two stage dispatch system at DCC, where a call taker gathers the initial information from the caller, records key information in the Computer Aided Dispatch (CAD) system, and then classifies the call according to DCC established classifications. The CAD system automatically tracks information, including address and phone number, and calls are assigned in order and the priority of the response is determined. Then by radio another dispatcher communicates with law enforcement officers, medics, and fire and rescue personnel depending on the classification of the call. (Testimony of Ms. Lind)

Ms. Cheryl Pritzlaff is the Operations Director of DCC. She is responsible for managing supervisors and IT staff, as well as serving as liaison to the police, fire and medical units of the member cities. (Testimony of Ms. Pritzlaff) She has worked as the Operations Director for two (2) years.

The Grievant has been employed as a dispatcher at DCC since 2007 when the Center opened. (Testimony of Ms. Lind and Ms. Reyer) Ms. Reyer had previous dispatch experience in the

Apple Valley police department. She completed training and certification in Emergency Medical Dispatch, and additional certification from the Minnesota Bureau of Criminal Apprehension for the criminal justice information system. (Testimony of Ms. Lind)

A copy of the Position Description for "Dispatcher" is included in Employer Exhibit One, Tab 23. This includes the essential duties and responsibilities; knowledge, skills and abilities; qualifications; and desirable qualifications for the position.

The scenario of this incident began at 12:36 am on April 4, 2012 when Ms. Reyer received a call from the St. Louis Park Dispatch. The dispatcher was relaying information from a Ms. Selena Graves who was on the line from Hopkins, Minnesota. Ms. Graves was calling 911 to inform the dispatcher that an acquaintance, Ms. Martinez, was going to give birth to a baby while in the bath tub at a hotel in Eagan., and she was relaying this information to the dispatcher with a serious concern for her to dispatch assistance to this woman in labor. Ms. Graves was unsure of the woman's full name during the call. (Testimony of Ms. Reyer, and Testimony of Ms. Pritzlaff)

The call was being rerouted from the St. Louis Park Dispatcher, which had received the phone call, to DCC after the St. Louis Park Dispatcher determined in what city the woman in labor was located. The St. Louis Park Dispatcher described what she knew during a one minute conversation with Ms. Reyer. Ms. Graves stated the name of the hotel and address in Eagan where the woman was located, namely the Homestead Village in Eagan, and also indicated that three children who were two (2), three (3) and five (5) years of age were with her. Ms. Graves

did not know Ms. Martinez's room number or phone number. Because Ms. Graves was not with the woman, there was incomplete information about the situation, including the full name of the woman in labor and the status of the birth. She thought her last name was Martinez. The two women had met on a bus. The woman was subsequently identified as Qetesh Selket Martinez.

Ms. Graves was asked by Ms. Reyer to call back after hanging up and referencing the phone number of Ms. Martinez. Ms. Reyer started the call as a "check the welfare" code while waiting for Ms. Graves to ascertain the hotel room number and call back to DCC. A "check the welfare" code triggers at DCC a level two priority non-medical response by a police officer. Within a minute Ms. Reyer upgraded the call to a level one priority. While waiting for the call from Ms. Graves, Ms. Reyer heard Law Dispatcher Brian Kluck at 12:41 am advising the responding officer at the scene of the hotel that medics had not been dispatched, and asked if the officer wanted them dispatched to the scene or have them "just stand by". (Testimony of Ms. Reyer) The officer stated "why don't we at least start them" (Audio tape played at the hearing describing the communications between Dispatcher Kluck and the officer). Mr. Kluck at 12:44 am dispatched the medics. (Employer Exhibit One, Tab 4)

Ms. Graves called Ms. Reyer back at 12:42 am and indicated that she had not reached Ms. Martinez, but had obtained her phone number from her own phone. Ms. Graves again expressed serious worry about the woman giving birth and pleaded for Ms. Reyer to send help. Ms. Reyer indicated to her that help was on the way. (Testimony of Ms. Reyer)

Ms. Reyer contacted the Homestead Village with the phone number to ascertain the room number for Ms. Martinez, and while talking with the Homestead Village employee, learned from the employee that the responding officer was at the front desk of the hotel. Ms. Reyer asked the employee to inform the officer of the room number. (Testimony of Ms. Reyer)

There was a detailed review at the hearing of the three-page log record of this incident, which recorded the transactions and who was involved at each stage, minute by minute. (Employer Exhibit One, Tab 4)

There was testimony at the hearing that there was uncertainty by the dispatchers and the police officer at the scene about several aspects of this call from Ms. Graves. The officer asked Dispatcher Kluck "if the RP knows the person or is this a random call?" There was also uncertainty about the status of the medical condition of the woman in labor and the baby. Ms. Reyer did not ask the Emergency Medical Dispatch (EMD) the six prescribed questions that direct the dispatchers to ask callers to collect information about the medical aspects of the situation. The EMD protocols generally assume the caller is present with the subject, and when this is not the case there was uncertainty as to whether the protocols would apply in this situation. Ms. Reyer testified that she assumed the answers to the protocol questions were unknown. (Testimony of Ms. Reyer)

Furthermore Ms. Reyer testified that "I did not know if I really believed what the mother was telling the caller". "I guess I did not believe the mother." (Testimony of Ms. Reyer) The letter from Ms. Lind to Mr. Jack Chambers, Business Agent, LELS, on April 23,

2012 also documented the following with regard to believability of the information called to the Grievant: " When asked why she classified this request for service as a priority 2 check the welfare, Theresa stated she did not believe the information provided by the caller." (Employer Exhibit One, Tab 2)

There was testimony by Ms. Pritzlaff that dispatchers have been trained to follow protocols for an appropriate response, following six questions for case entry - questions generated by the CAD system. (Testimony of Ms. Pritzlaff; Employer Exhibit One, Tab 6) All questions are to be asked in order. (Testimony of Ms. Lind.) Then the CAD system prompts the dispatcher with additional questions that apply to the specific situation such as the type of medical emergency. (Testimony of Ms. Pritzlaff) The training instructs the dispatchers to follow prompts exactly as written without exercising judgment as to which questions are most relevant to the situation. Ms. Reyer testified that she did not follow this question protocol because the caller was not with the subject woman giving birth, and therefore she would not know the answers to these questions in this situation.

There was testimony that DCC policy on dispatching in situations without complete information is "when in doubt, send them out". (Testimony of Ms. Lind; Employer Exhibit One, Tab 8 Sec. 2.11) Further testimony stated that when missing information, it is best to select a higher level of response. And dispatchers are not to make value judgments as to the honesty and integrity of the caller. (Testimony of Ms. Lind and Testimony of Ms. Pritzlaff)

During the hearing the parties reviewed several relevant policy and training materials regarding medical priority dispatch. This included the National Academy EMD Protocol six questions, and additional questions related to childbirth calls. (Employer Exhibit One, Tab 6, Tab 7) Relevant parts of the "Principles of Emergency Medical Dispatch", Third Edition, by Jeff J. Clawson, M.D. and Kate Boyd Dernocoeur, EMT-P were reviewed. (Employer Exhibit One, Tab 8) This review focused on page 2.3 regarding telephone interrogation where there are questions and uncertainty about a caller's honesty and integrity (" EMD's first rule of judgment: The EMD is never allowed to judge the integrity or honesty of the caller". "Even when a caller's honesty or integrity is questionable, the EMD must take the caller's information at face value and proceed accordingly.") And on page 2.11 regarding selecting a higher level of response if key information is missing, "When in doubt, send them out" ("Always err in the direction of the patient safety.")

III. POSITIONS OF THE PARTIES

A. Employer's Arguments

The Employer argues that Ms. Reyer does not gather adequate information and make sound dispatching decisions given her seven years of experience. The Employer contends that the three (3) day suspension is strongly supported by just cause related to the April 4, 2012 call and her history of progressive discipline. (Employer Post-hearing Brief, page 13) There was testimony and also descriptions in the Employer Post-hearing Brief of the following disciplinary history.

The history of disciplines of Ms. Reyer includes an oral reprimand on April 29, 2009 involving an eight-minute delay in dispatching rescue to a medical call on April 22, 2009, when she failed to document in the CAD system and follow through on requests for assistance. (Employer Exhibit One, Tab 10) Ms. Reyer did not grieve this disciplinary action.

Another disciplinary action was a written reprimand on September 23, 2009 for failing to enter appropriate address information in the CAD system on September 15, 2009, which Ms. Reyer acknowledged as an error and did not grieve. (Employer Exhibit One, Tab 11)

Ms. Reyer received an oral reprimand placed in her personnel file on March 8, 2011 for two (2) incidents, including one related to a fire dispatch delay on February 27, 2011 and a second incident when she incorrectly directed a medical call to Burnsville rather than Rosemount, resulting in a seven (7) minute delay on March 1, 2011. (Employer Exhibit One, Tab 12)

Another disciplinary action was an April 20, 2011 written reprimand placed in her personnel file, and a work plan written on April 26, 2011 for an April 10, 2011 call to DCC when Ms. Reyer failed to notify Allina and North Air Care for ambulance services, resulting in a five (5) minute delay in dispatching medical units for an injury accident on April 10, 2011. (Employer Exhibit One, Tabs 13 and 16) This discipline also included a work plan setting expectations as to the execution of assigned duties in her job, providing for meetings with her supervisor twice a month and prohibition of use of outside electronic devices that may distract the Grievant from performing her job (Employer Exhibit One, Tab 13) This disciplinary action was grieved by

Ms. Reyer, but the grievance was denied and Ms. Reyer did not appeal to arbitration. (Testimony of Ms. Pritzlaff and Testimony of Ms. Reyer) (Employer Exhibit One, Tab 14)

A two (2) day suspension without pay was issued on August 25, 2011 after Ms. Reyer left the dispatch floor on August 17, 2011 to make a personal call regarding a home pet situation, when she did not advise another dispatcher to monitor the radio, which is standard procedure. (Employer Exhibit One, Tab 18) In this incident, the radio was left unattended for fourteen (14) minutes, during which there were ten (10) unanswered radio transmissions and a fifteen (15) minute delay in a medical dispatch (Employer Exhibit One, Tab 18) This discipline was not grieved. Specific directives were stated in the August 25, 2011 memorandum outlining the discipline. The memorandum also contained the following notice as the last sentence in the memorandum: "Failure to follow directives or other policy violations in the future will be considered insubordination, and may be grounds for further disciplinary action, including additional unpaid suspension and/or termination of your employment". (Employer Exhibit One, Tab 18)

A three (3) day suspension without pay was issued on March 8, 2012 for failing to obtain the correct address for a call regarding a missing child on March 6, 2012. (Employer Exhibit One, Tab 19) The memorandum describing the discipline directed Ms. Reyer to actively listen and ask appropriate questions of callers to ensure the correct location of the incident. Again the memorandum notified the Grievant that failure to follow the directives or other policy violations in the future would be considered grounds for further disciplinary action, including additional unpaid suspensions or termination of employment. LELS on behalf of Ms. Reyer grieved this

discipline in a Step Two (2) Grievance Report filed on March 14, 2012. This discipline was upheld by DCC in a letter on March 21, 2012 although it was later on April 3, 2012 reduced to a two (2) day suspension with a work plan. (Employer Exhibit One, Tab 20, Tab 21 and Tab 22) The work plan also dated April 3, 2012 from Ms. Pritzlaff specified that weekly meetings should be held with Ms. Reyer's supervisor where audio from random calls were to be compared to Ms. Reyer's work product. Also the work plan documented Ms. Reyer's performance deficiencies and areas from her job description that needed improvement, including specific areas within call taking, basic information gathering, and dispatching. (Employer Exhibit One, Tab 22)

With regard to the April 4, 2012 incident, the Employer disciplined Ms. Reyer for failing to code the call immediately as a medical call after she was told by the caller that a woman was about to have a baby in a bath tub in a hotel. The Employer credits Dispatcher Kluck with changing the call at 12:44 am to a medical call, and claims that Ms. Reyer would not ever have changed this call to medical. This is indicative of her poor decision making, according to the post-hearing brief. (Employer Post-Hearing Brief, page 14) Both Ms. Reyer and Ms. Pritzlaff testified at the hearing that they had never heard of another call involving a childbirth that was not started as a medical call. (Testimony of Ms. Reyer, Testimony of Ms. Pritzlaff)

The Employer claims that Ms. Reyer failed to complete the most basic dispatching protocols in this emergency situation. Ms. Lind testified that quality assurance requires that all case entry questions be asked by the Dispatcher, regardless of whether the caller is with the person in need of services. The Employer objects that Ms. Reyer failed to ask any of the EMD questions of the caller, that "it never even crossed her mind." (Testimony of Ms. Reyer) Additionally the

Employer objects that although Mr. Reyer was aware of and trained in the childbirth protocol, she failed to ask Ms. Graves any of the protocol questions. Ms. Reyer's comment that the caller did not know the answers to these questions is claimed to be doubtful because she failed to ask any questions. (Employer Post-hearing Brief, page 15) The Employer also contends that the question of the room number was not an adequate explanation for not sending a medical response to the woman in labor, and that Ms. Reyer should have selected a higher level of response.

Another Employer rationale for the three (3) day suspension relates to the history of progressive discipline involving two (2) prior oral reprimands, two (2) prior written reprimands, and two (2) prior suspensions without pay because of inattention to details while on duty. The coaching and two (2) work plans were intended to correct deficiencies in her skills as a dispatcher (Employer Exhibit One, Tabs 10-22) The issues with regard to these disciplinary actions have involved serious life threatening incidents with significant delay in response time.

The Employer further notes that Ms. Reyer had notice of the possible consequences for future errors, including further disciplinary action for failures in performance. (Employer Exhibit One, Tab 18 and Tab 19)

With regard to the LELS sampling of phone calls that were designated as "check the welfare", the Employer retorts that none of the calls involved an imminent childbirth, and Ms. Reyer "hand-picked" the calls to print. The Employer Post-hearing Brief concludes on this point that

this sample has no relevance to the facts in this April 4, 2012 call. (Employer Post-Hearing Brief, page 18)

Another Employer point contends that the testimony regarding the reasonableness of Ms. Reyer's actions was not credible, and the LELS' excuses are not based in fact, common sense or the practical realities of dispatching. Calls for assistance are commonly made by individuals other than the person in need of services, especially in medical situations. Moreover, protocol questions should be asked by the Dispatcher without making value judgments about the honesty or integrity of the caller. (Testimony of Ms. Lind; Testimony of Ms. Pritzlaff, and Employer Post-hearing Brief, page 18) The Employer argues that it is a ridiculous justification not to send the medics when lacking a room number for the hotel where the woman was in labor. (Employer Post-hearing Brief, page 19) Additionally the Employer contends that it is routine for medics to be dispatched before all information has been obtained from a caller, and that such information can be obtained while medics are en route, or in other ways. Dispatchers are trained to select a higher level of response when information is missing. (Testimony of Ms. Lind; Employer Exhibit One, Tab 8, Section 2.11)

For these reasons, the Employer concludes that Ms. Reyer did not appropriately handle the call on April 4, 2012, and failed to take responsibility for her actions and her history of progressive discipline. Therefore the three (3) day suspension without pay is a reasonable sanction supported by just cause, and the grievance should be denied. (Employer Post-Hearing Brief, page 20)

B. LELS Arguments

LELS argues that there was not just cause for any discipline associated with the manner in which Ms. Reyer handled the call on April 4, 2012, and makes the following arguments in the post-hearing brief.

Ms. Reyer began the call as a "check welfare" because she had limited information about the woman in labor. She quickly upgraded the call from a level 2 to a level 1 response so as to dispatch an officer to the scene promptly. She overheard a conversation with Law Dispatcher Kluck who inquired of the officer on the scene whether he wanted medics started, and understood that medics would be started if the officer wanted them. (LELS Post-hearing Brief, page 4)

The argument is made that seven tests for just cause have been used by other arbitrators to determine the application of just cause under a collective bargaining agreement, and that by applying this analysis, it is established that just cause for the discipline of Ms. Reyer was not present.

The following test questions are cited with the intent that their answers improvement fairness of disciplinary processes:

1. NOTICE: Did the Employer give to the employee forewarning or foreknowledge of the possible or probable consequences of the employee's disciplinary conduct?

2. REASONABLE RULE OF ORDER: Was the Employer's rule or managerial order reasonably related to (a) the orderly, efficient, and safe operation of the Employer's business, and (b) the performance that the Employer might properly expect of the employee?
3. INVESTIGATION: Did the Employer, before administering the discipline to the employee, make an effort to discover whether the employee did in fact violate or disobey a rule or order of management?
4. FAIR INVESTIGATION: Was the Employer's investigation conducted fairly and objectively?
5. PROOF: At the investigation, did the "judge" obtain substantial evidence or proof that the employee was guilty as charged?
6. EQUAL TREATMENT: Has the Employer applied its rules, order and penalties even-handedly and without discrimination to all employees?
7. PENALTY: Was the degree of discipline administered by the Employer in a particular case reasonably related to (a) the seriousness of the employee's proven offense, and (b) the record of the employee in his service with the Employer?

LELS asserts that all seven questions would be answered negative. (LELS Post-hearing Brief, page 10) With regard to the Employer giving fair notice to immediately start a medical response, it is argued that DCC has not produced an articulated standard calling for the dispatcher to start a medical response and/or begin EMD questioning. Furthermore LELS argues that because the caller was not present with the subject woman in labor, none of the materials referenced during the hearing explain how such a situation is to be handled. The protocol questions, LELS argues,

assume the caller will be with the subject. It would have been time consuming to follow such a series of protocol questions which were not likely to develop any significant information. Thus they argue that Ms. Reyer was not under fair notice that she was expected to start a medical response or EMD questioning under these circumstances. (LELS Post-hearing Brief, page 11)

LELS also argues that previous disciplinary history of Ms. Reyer was not directly relevant to this incident where the circumstances would warrant an expectation to call a medical response immediately rather than a "welfare check". During the hearing, Ms. Reyer testified to other situations that she had researched where DCC dispatchers started calls as "check welfare" where medical issues were involved. Other dispatchers exercised discretion, it is argued, similar to the discretion the Grievant exercised in this call situation. Furthermore the previous disciplinary actions focused on inaccurate addresses and misdirecting a call, which was not the situation in this case. (Testimony of Ms. Reyer)

With regard to the just cause standard of the Employer conducting a fair investigation of the allegations of misconduct, LELS argues that DCC has no policy that Ms. Reyer failed to satisfy, and that DCC's investigation unfairly focused on Ms. Reyer but not on other employees such as the Law Dispatcher. It is argued that Law Dispatcher Kluck's response was identical to Ms. Reyer's response in this incident, and that he passed the option to commence the medics to the responding officer. Furthermore, LELS cites five other medical situations during 2012 where DCC dispatchers started the call as "check welfare". It is argued that this pattern is regular, and that medics are called only after other facts are developed. If DCC administrators were not

aware of this circumstance, that was evidence indicating shortcomings of its investigation of Ms. Reyer. (LELS Post-hearing Brief, pages 13-15)

Finally with regard to the standard of DCC not treating Ms. Reyer consistently with other employees, LELS argues again that other dispatchers have routinely begun calls as "check the welfare" where there are medical issues. Dispatcher Ms. Melinda Kaltenhauser testified that she would have handled the call the same way. (Testimony of Ms. Kaltenhauser) Furthermore, it is argued that when an employer establishes a rule but is lax in its enforcement, the implication is that it condones the conduct that the rule is intended to address, and that this amounts to a "negative notice" that such misconduct is acceptable. (LELS Post-hearing Brief, page 15-16)

In particular LELS objects to the different treatment between Dispatchers Reyer and Kluck with regard to the response, especially when at the hearing Mr. Kluck was "disingenuously praised" by Ms. Pritzlaff for correcting Ms. Reyer's "check welfare" call determination. (LELS Post-hearing Brief, page 6) Ms. Pritzlaff stated: "We were fortunate that the Law Dispatcher realized that this was more of a medical check welfare and he inquired from the officer about starting medics." (Testimony of Ms. Pritzlaff)

LELS at the hearing introduced into the record a copy of the DCC Yearly Employee Performance Appraisal for Ms. Reyer for the evaluation period from July 30, 2011 to July 21, 2012. This performance evaluation was completed by Ms. Doris Lake, who was the Supervisor of Mr. Reyer during that period of time. LELS introduced this performance evaluation document and argued that this documentation regarding Ms. Reyer's performance depicted her rating as

"average", "above average" or "superior" in the four major categories of responsibility, namely: call taking; dispatching; general skills, and abilities; and professionalism.

In conclusion LELS argues that all seven just cause questions are answered in the negative, that Ms. Reyer reasonably relied upon her discretion in responding to the call which was characterized by unique circumstances, and therefore DCC did not have just cause for the discipline issued to the Grievant. The circumstances warranted Ms. Reyer to locate Ms. Martinez rather than take time to ask all the EMD questions of the third party, Ms. Graves. (LELS Post-hearing Brief, page 17)

LELS asks that the Arbitrator direct the removal of the written reprimand from Ms. Reyer's file and award her three (3) days back pay. (Id.)

IV. DISCUSSION AND OPINION

The April 4, 2012 incident was serious and urgent for a woman in childbirth labor. Although the caller did not have the room number of the Eagan hotel and the full name of the woman in imminent childbirth, many callers to the dispatch centers are third parties assisting a person in need and unable to offer complete information. Time was of the essence for a woman in labor in a bath tub in a hotel room with only three young children present, and for her newborn. When the medics arrived, the baby had been born and was having difficulty breathing. The Grievant

had some doubt about the information from the caller. This was a case of "When in doubt, send them out", as called for by the "Principles of Emergency Medical Dispatch".

Moreover there is an extensive history of disciplinary actions for the incidents described above. This history, the work plans for improvement, the previous several notices of possible consequences of the need to respond properly and follow through on all requests for assistance, and the need to make sound judgments as a Dispatcher together go a considerable way to support this disciplinary action on April 15, 2012. Management has made a reasonable effort to deliver an orderly, responsive system at the Center to serve a variety of callers, and should expect employee performance consistent with the training and protocols to be a key part of that system.

The Employer made a reasonable effort to investigate the April 4, 2012 incident before administering the discipline on April 15, 2012. DCC management examined the documented time lapses during the incident, and reviewed relevant communications, including an audio tape recording the voice communications, and responses by the parties involved. The investigation was fair and objective with the evidence from the time log and audio tape. They offered substantial evidence to understand the incident and the Grievant's performance.

With regard to the record of the employee in service with DCC, Supervisor Lake completed the Yearly Employee Performance Appraisal for Ms. Reyer for the period July 30, 2011 to July 21, 2012. Ms. Lake rated her performance "average", "above average" or "superior" on numerous rating categories, and "satisfactory" overall. For example, on call taking EMD Protocol, she was rated "average", and the EMD calls were between 90 and 100 percent compliant in all categories.

Moreover, she was rated "average", "above average" or "superior" on performance dimensions related to Dispatching, General Skills and Professionalism, with an overall performance rating of "satisfactory". The supervisor added numerous positive comments about Ms. Reyers's performance during this period, while also commenting that the Grievant has "had struggles this year which has eroded your confidence." With regard to professionalism, the supervisor commented: "Theresa, it is important to note that throughout everything that occurred this year, you maintained a positive attitude towards your work and you were always professional with everyone you came into contact with, You just kept working on improving!"

A three sentence handwritten comment is at the bottom of this performance evaluation, which is signed by Ms Priztlaff and Ms. Lind respectively on July 23, 2012 and July 24, 2012, which dates occur after the Grievant and the Supervisor signed this document on July 21, 2012.. This comment reads: "It should also be noted that during this review period Theresa was suspended for 2 days on August 25th, for 3 days on March 8th, and for 3 days on April 15th. Based on her discipline history in the 12 month review period, I disagree with some of the supervisor's rating." Ms. Priztlaff and Ms. Lind did not specify which ratings they disagree with, nor did they further document their disagreements on this performance evaluation. These managers also did not rescind or overturn any part of the performance evaluation.

The Grievant also testified that she did not see this subsequently signed performance evaluation comment. (Testimony of Ms. Reyer) It would have been appropriate for management to share this commentary with the Grievant, particularly when the practice at DCC is to ask the employee to sign the completed appraisal, thereby acknowledging it has been reviewed by the employee.

The Employer argues that the three (3) day suspension is warranted based on Ms. Reyer's extensive history of progressive discipline. (Employer Post-hearing Brief, page 16) The Employer restates that in this history of progressive discipline, Ms. Reyer had two prior oral reprimands, two prior written reprimands and two prior suspensions without pay. The Employer specifically emphasizes that the Grievant "has struggled with the basic task of entering and verifying accurate information in the CAD system, resulting in significant delays in a number of potentially life threatening situation." (Employer Post-hearing Brief, page 16) Yet the DCC Yearly Employee Performance Appraisal supervisor who was in a position to observe the Grievant's regular performance and monitor performance metrics, rates the "call data entry" as "average" for the Center. Her EMD calls are between 90 and 100 percent compliant in all categories, according to the performance evaluation. The supervisor further notes that "Your times have increased slightly as you take extra care in gathering information. Keep up the hard work!" These comments do not characterize a Dispatcher who is unacceptably deficient in data entry, verifying accurate information or in the general performance of the duties of the Dispatcher position.

The Employer further argues that Ms. Reyer had notice of the possible consequences for future errors, and was directed to conform to the duties and responsibilities of a dispatcher as contained in the job description. Yet Supervisor Ms. Lake rated her overall performance as "satisfactory", and rated her as "average" on five (5) items, "above average" on six (6) items and "superior" on three (3) items among the fourteen (14) items where a five (5) point rating scale applied. None of the items were rated as "needs improvement" or "unacceptable" - not one.

The undersigned gives some weight to these performance evaluation ratings and comments of the direct supervisor of Ms. Reyer, while also acknowledging the rating disagreement by Ms. Pritzlaff and Ms. Lind. It would have been appropriate for DCC management to expand upon their disagreement with the ratings, other than to note three disciplinary actions during the performance period in a cursory handwritten note at the bottom of the performance evaluation. This is particularly relevant because the April 15, 2012 suspension was made in part by DCC management after considering a "pattern of significant errors made during other calls in deciding the form of discipline to impose in this case." (Testimony of Ms. Lind; Employer Post-hearing Brief, page 16) The extent of this pattern was not well documented, and appears not to be well established and consistent with the performance evaluation ratings and comments by the direct supervisor of the Grievant.

V. AWARD

For the reasons discussed above, the Employer's discipline of the Grievant is sustained in part and modified in part. A suspension of the Grievant was for just cause, but it has not been established that all the reasons for the discipline are fully descriptive of the Grievant's performance..

The Grievant has an extensive history of progressive discipline, including the above cited serious incidents and disciplinary actions. But the Employer disciplinary action in this incident was based not only on this history, but also on the "pattern of significant errors" . The Employer also

made statements that failure to conform to the duties and responsibilities of the Dispatcher as contained in the job description could be grounds for further disciplinary action. While there is this significant disciplinary history of the Grievant involving serious incidents, the DCC documented performance metrics and "satisfactory" or better ratings for her performance evaluation during this time period of July 30, 2011 to July 21, 2012 do not fully support the claim that there is a pattern of significant errors in this Dispatcher's numerous other calls, or her failure to conform to the duties and responsibilities of the Dispatcher position.

Accordingly, the discipline for the Grievant is reduced to a two-day suspension without pay, and the Employer is ordered to promptly remit payment for back pay for one (1) day of the previously issued three (3) day suspension without pay, and to make her whole for any employee benefits for that one day.

Issued and Ordered on the 28th day of March 2013

Richard J. Dunn, Labor Arbitrator