

**THE MATTER OF ARBITRATION BETWEEN**

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<b>IAEP Local 167,</b>		)	
		)	
	<b>Union,</b>	)	
		)	
<b>and</b>		)	<b>SEIBEN DISCHARGE</b>
		)	<b>GRIEVANCE</b>
		)	
		)	
<b>ALLINA MEDICAL</b>		)	
<b>TRANSPORTATION,</b>		)	
		)	
	<b>Employer.</b>	)	
		)	
<hr/>		)	<b>FMCS CASE NO: 110831-03902-3</b>

Arbitrator: Stephen F. Befort

Hearing Date: February 26, 2013

Post-hearing briefs received: April 11, 2013

Date of Decision: April 30, 2013

**APPEARANCES**

For the Union: Raymond Schultz

For the Employer: Lee A. Lastovich  
Alyssa M. Toft

**INTRODUCTION**

The International Association of EMTs and Paramedics, Local 167 (Union), as exclusive representative, brings this grievance claiming that Allina Medical Transportation (Employer) violated the parties' collective bargaining agreement by discharging Dennis Sieben without just cause. The Employer maintains that the discharge was supported by just cause due to the grievant's failure to activate the lights and sirens on an ambulance while responding to a Code 3

medical emergency. The grievance proceeded to an arbitration hearing at which the parties were afforded the opportunity to present evidence through the testimony of witnesses and the introduction of exhibits.

## **ISSUES**

Did the Employer have just cause to discharge the grievant? If not, what is the appropriate remedy?

## **RELEVANT CONTRACT LANGUAGE**

### **ARTICLE 10** **DISCIPLINE**

Occasionally disciplinary action may be warranted to correct an employee's behavior, however, no employee shall be disciplined or discharged without just cause. In order to ensure that any discipline imposed is neither arbitrary nor capricious, the following principles will guide management's investigation and decision to issue discipline:

#### 10.1 Just Cause:

10.1.1 Was the rule/work order, the standard of conduct, or the performance expectation reasonable?

10.1.2 Was the employee given adequate notice that the conduct or performance was inadequate or, because the conduct was so egregious, should the employee have known without being given notice that it was unacceptable?

10.1.3 Was sufficient investigation made?

10.1.4 Was the investigation thorough and unbiased?

10.1.5 Was there sufficient proof of misconduct or of the employee's failure to meet performance standards?

10.1.6 Did the employee receive equitable treatment as to other similarly situated employees?

10.1.7 Is the considered corrective action appropriate?

\* \* \*

10.3 A manager may take the following actions when employees are not meeting the established performance or conduct standards: verbal coaching, verbal warning, written warnings, final written warning/suspension (with or without pay) or termination.

10.3.1 These actions do not constitute an exhaustive list of possible actions and may be taken in any order.

10.3.2 Some of the above disciplinary actions may be skipped or may not occur in the disciplinary process.

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**ARTICLE 22**  
**RULES AND POLICIES**

22.4 It is the responsibility of each employee to know and understand all policies.

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**ARTICLE 29**  
**SAFETY**

29.3 It shall also be the responsibility of all employees to cooperate in programs to promote safety to themselves and to the public, including . . . compliance with rules promulgated to promote safety.

**FACTUAL BACKGROUND**

The Employer is a company that provides emergency medical services in the Twin Cities metropolitan area. These services include ambulance response to 911 emergency calls. Dennis Sieben, the grievant, has worked for the Employer as a paramedic since 1989. His duties include driving an ambulance and providing medical assistance.

A 911 call, in general, is initially directed to a law enforcement agency and then forwarded, if appropriate, to an emergency services dispatcher. When 911 calls are forwarded to the Employer, the dispatcher enters the call information into a computer system that determines a

response strategy based upon the severity of the situation and the geographical proximity of potential responders.

A routine “Code 2” call, which does not require the immediate intervention of medical assistance, generally results in the dispatch of a Basic Life Support (BLS) unit. A BLS crew provides medical transport, but no emergency medical services. A BLS unit provides swift transport, but does not take the emergency steps of activating the ambulance’s lights and sirens.

A more severe “Code 3” call generally results in the dispatch of an Advanced Life Support (ALS) unit. An ALS crew can provide medical services and administer drugs. The Employer’s policy in the event of a Code 3 call to an ALS unit requires a lights and sirens response. The objective of such a response is to clear the lanes of traffic to enable a more expeditious transport.

On February 2, 2011, Allina dispatcher Jessica Rodriguez received a 911 emergency call. The call requested assistance for a young woman at Bethel College who had collapsed and was unresponsive. Rodriguez dispatched two crews to this emergency. The first was a BLS crew in close proximity. The second was an ALS crew somewhat further away. The latter crew was staffed by the grievant, as driver, and Phil Niemczyk as the passenger/medical assistant.

Due to the serious nature of the emergency, Rodriguez notified the ALS crew that this was a Code 3 situation. She communicated this information in three ways: 1) via the computer screen in the ambulance, 2) via “tones” over the radio, and 3) via the employees’ pagers.

The parties agree that, despite of the Code 3 directive, Mr. Sieben drove the ALS ambulance to the target location without activating the lights and sirens. As a result, Mr. Sieben drove the ambulance at a normal rate of speed and arrived at the scene in approximately 20 minutes.

Mr. Sieben and Mr. Niemczyk, in their respective testimony, provided differing descriptions of their trip to Bethel College. Mr. Niemczyk testified that he raised the issue of the Code 3 directive on three occasions during the drive and urged a lights and sirens response, but that Mr. Sieben stonewalled these suggestions and continued to drive at a non-emergency rate of speed.

Mr. Sieben testified that he initially was confused about whether the call required a Code 3 response, and he denied that Mr. Niemczyk urged him to activate the vehicle's lights and sirens. Later during the hearing, however, Mr. Sieben testified that he understood that the dispatch was a Code 3 call because of the "tones" from the radio contact, and that he had made a mistake in not activating the lights and sirens in responding to the emergency call.

Upon arrival at Bethel College, the grievant and Mr. Niemczyk were met by Adry McConnell, a member of the earlier arriving BLS crew who was annoyed because he had been unable to contact the ALS crew to determine the latter's estimated time of arrival. Niemczyk asked McConnell whether the BLS crew had contacted dispatch to slow down the ALS response to "routine," but McConnell responded that he had not made such a request. Niemczyk subsequently contacted dispatcher Rodriguez to confirm that the call was Code 3 in nature, and Rodriguez replied in the affirmative.

Both Niemczyk and McConnell reported the incident to Manager Mark Dascalos. The Employer initiated an investigation which included an interview of the grievant. During the interview, Mr. Sieben acknowledged that the call in question was a Code 3, but he offered no explanation for not activating lights and sirens. The Employer also reviewed Mr. Sieben's prior disciplinary record which included a verbal warning and a written warning for failing to follow procedures in communicating patient names and dates of birth.

The Employer terminated Mr. Sieben on March 16, 2011. The termination memorandum of that date asserted that “. . . Mr. Sieben, by his own actions and admission did in fact imperil potentially the life of a patient by not responding in the appropriate manner.”

At the arbitration hearing, the Union questioned Mr. Niemczyk concerning why he did not activate the lights and sirens if he thought that was important. Mr. Niemczyk testified that the controls for the lights and siren are located near the driver’s right knee, and that the driver is the crew member who normally operates the lights and sirens. He acknowledged, however, that he could have activated those devices by leaning over the driver.

## **DISCUSSION AND OPINION**

In accordance with the terms of the parties’ collective bargaining agreement, the Employer bears the burden of establishing that it had just cause to support its disciplinary decision. This inquiry typically involves two distinct steps. The first step concerns whether the Employer has submitted sufficient proof that the employee actually engaged in the alleged misconduct or other behavior warranting discipline. If that proof is established, the remaining question is whether the level of discipline imposed is appropriate in light of all of the relevant circumstances. *See* Elkouri & Elkouri, *HOW ARBITRATION WORKS* 948 (6<sup>th</sup> ed. 2003). Each of these steps is discussed below.

### **The Alleged Misconduct**

The misconduct alleged by the Employer is that Mr. Sieben failed to respond to a Code 3 emergency call by activating lights and sirens as required by Employer policy to facilitate an expeditious response. The Union does not deny this charge. Although the grievant expressed some confusion with respect to the nature of the call during his testimony at the hearing, he subsequently acknowledged that the call was a Code 3 request and that he made a mistake in not

responding to that call with a lights and sirens response. Accordingly, the only matter at issue in this case is whether discharge is an appropriate remedy for this infraction.

### **The Appropriate Remedy**

The Employer's argument in support of termination was summarized at the hearing by the testimony of Director of Operations Kevin Miller. He testified that the grievant's conduct constituted an egregious violation of the Employer's Code of Conduct that put public safety in jeopardy. In particular, Miller testified that the young woman's condition at Bethel College was potentially life threatening and that Mr. Sieben's lackadaisical response placed her safety and well-being at unnecessary risk.

The Union, on the other hand, contends that discharge is too severe of a sanction in the context of this case and asserts three arguments in support of that contention. The first two arguments may be considered in tandem.

The Union first points to Mr. Sieben's long and satisfactory work record. He has worked as an ambulance driver with the Employer for more than 22 years. During that time, he has experienced only two minor disciplinary infractions, neither of which involved a threat to patient safety.

Second, the Union argues that Mr. Sieben's misstep was not intentional and did not involve an act of moral turpitude. The Union maintains that the grievant's conduct cannot be equated with more serious acts such as theft, violence, or dishonesty that warrant the ultimate penalty of discharge upon an initial occurrence. As such, the Union claims that a lesser form of discipline, such as a suspension, is appropriate in this case.

Both of these contentions have some merit. The grievant has a good work record, and the misconduct alleged is not a classic basis for an immediate termination. Nevertheless, these

defenses fall short of the mark in this context. Of crucial importance is the fact that Mr. Sieben's misconduct goes to the core of his public safety job duties. His job requires the prompt transport of citizens threatened with medical emergencies. Just as an employer would not be expected to excuse a police officer who declines to pursue a dangerous criminal or a firefighter who declines to enter a burning building, an employer should not be expected to excuse an ambulance driver who declines to respond to a 911 call in an expeditious manner. That duty is the essence of an ambulance driver's job, and its non-performance, even if not pre-meditated, carries the risk of considerable societal harm.

As a third defense, the Union argues that the Employer's discharge decision constitutes disparate treatment. The Union maintains that Mr. Niemczyk could have activated the ambulance lights and sirens, but that he did not do so. Since the Employer imposed no discipline on Mr. Niemczyk for this failure, the Union argues that it is inequitable to impose the ultimate sanction of dismissal on his fellow crew member.

The problem with this line of argument is that Mr. Sieben and Mr. Niemczyk are not similarly situated. The driver of an ambulance vehicle is the crew member generally responsible for activating the lights and sirens as may be necessary. Mr. Niemczyk testified that he requested the grievant on three occasions to shift into a lights and sirens response mode, but that the grievant ignored those requests. While Niemczyk could have physically leaned over Sieben to switch on the lights and sirens, such a move would have been extremely awkward in a crew environment. In addition, it is doubtful that such a move would have accomplished anything positive since it would not have compelled Sieben to drive in a more expeditious manner.

In the end, it is clear that Mr. Niemczyk was upset by the crew's deficient response to the Code 3 call. He questioned McConnell and Rodriguez to make sure that the call had not been

downgraded from a Code 3 status. And, he reported his concerns about the adequacy of the response to management. Mr. Sieben did not express similar concerns about the adequacy of their response to the Code 3 call.

In sum, I find that the Employer has adequately established the existence of just cause to support the discharge remedy.

### **AWARD**

The grievance is denied.

Dated: April 30, 2013

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Stephen F. Befort  
Arbitrator