

IN THE MATTER OF ARBITRATION
BEFORE
MARTIN O. HOLLAND
ARBITRATOR

City of Clearwater,)	
Employer,)	FMCS # 05-58832
)	
and)	
)	Trevor Murray's Discharge
Clearwater Firefighters Association, Inc.)	
IAFF, Local #1158,)	
Union.)	September 15, 2006

Opinion and Award

Advocates:

Employer: Gregory A. Hearing, Esq., Thompson, Sizemore & Gonzalez

Union: Paul A. Donnelly, Esq., Donnelly & Gross P.A.

Summary

On March 26, 2005, the Grievant, lead paramedic on Rescue 49 (R49) Clearwater Fire and Rescue (CFR), was assigned an emergency call to a well-known system abuser.¹ The system abuser is mentally ill and requested medical attention for an alleged rape. She was known to call in numerous false incidents over the past three years. The Grievant advised the dispatcher to let the Clearwater Police Department (CPD) handle the situation and have the police advise if medical care is necessary.² The Grievant remained in the firehouse, up and available for calls. Initially, the Division Chief of Operations, Randy Bacher, conducted a Quality Assurance Review for the CFR and as requested by the Office of the Medical Director. Bacher found the Grievant made a mistake in judgment, was honest about his actions, and the Grievant agreed to counseling and corrective

¹ The term "system abuser" was used by Division Chief of Operations, Randy Bacher, in his March 29, 2005 notes in his formal investigation into Quality Assurance Review file #05-175. Union Exhibit #4

² The CPD provided 119 pages of documentation regarding 15 false incidents in the past three years on this system abuser. The abuser moved to Clearwater in 2003.

behavior. Subsequently, Fire Chief Geer found the Grievant violated a cardinal rule of the fire department and the Pinellas County Medical Operations Manual (MOMs) by not responding to the emergency call and recommended his discharge to the City Manager. Due to the media interest in this case, the City issued a press release and press conference on May 9, 2005 to announce its decision to terminate the crew of R49. The City discharged Grievant on May 12, 2005. A timely grievance was filed and pursued to arbitration through the FMCS procedure. On May 23, 2006, an eleven (11) hour transcribed hearing was conducted and the parties filed briefs on July 31, 2006. On August 24, 2006, the arbitrator allowed the Union's motion to supplement the record adding the testimony of EMS Chief Fogarty and rebuttal testimony by Chief Geer. The EMS Chief's testimony was from a related arbitration hearing for paramedic Michael Jones who was also discharged in this same incident. Fogarty's testimony was given telephonically as he now works in EMS for the State of Washington. The arbitrator finds the Grievant's discharge must be reversed for several reasons. First, the Grievant's alleged offense was, at best, a poor judgment decision and not just cause for termination. Secondly, the City violated due process in their decision to discharge the Grievant. Third, the City failed to identify an obvious system abuser and institute a protocol for handling such a well-known abuser. Fourth, the City can accommodate the Grievant while he seeks to reinstate his Pinellas County paramedic certificate. The Grievant shall be made whole with full backpay and seniority. Further, Grievant will continue at his pre-discharge pay level for one year while he seeks reinstatement of his Pinellas County paramedic certification. If after one year the Grievant has not secured his County paramedic certificate, the employer may utilize the Collective Bargaining Agreement

(CBA) procedure to adjust the pay level to the appropriate pay for like firefighters or EMTs.

Statement of the Issue

Whether the City had “just cause” to discharge Murray, and, if not, what is the appropriate remedy?

Applicable Provisions of the Collective Bargaining Agreement and City Policies

A. The Collective Bargaining Agreement

Article 3 – City’s Management Rights

Section 1. Management Rights

Except as expressly limited by any provision of this Agreement, the City reserves and retains exclusively all of its normal and inherent rights with respect to the management of its operations, whether exercised or not, including, but not limited to, its rights to determine, and from time to time redetermine, the number, location and type of its various operations, functions and services; the methods, procedures and policies to be employed; to discontinue the conduct of any operations, functions or services, in whole or in part; to transfer its operations, functions or services from or to, either in whole or in part, any of its departments or other divisions; to select and direct the working force in accordance with requirements determined by the City; to create, modify or discontinue job classifications; to establish and change working rules and regulations; to establish and change work schedules and assignments; to transfer, promote or demote employees; to lay off, furlough, terminate or otherwise relieve employees from work for lack of work, lack of funds, or other legitimate reason; to suspend, discharge or otherwise discipline employees for proper cause; to alter or vary past practices and otherwise to take such measures as the City may determine to be necessary to the orderly and efficient operation of its various operations, functions and/or services.

Article 4 – Grievance Procedure

Section 3. In the event that the grievance is still unresolved, the matter may be submitted to final and binding arbitration as provided in this section.

A. Within 10 work days of the decision of the City Manager, the aggrieved party shall notify the City Manager of his/her intent to arbitrate. Concurrently, said party shall request from the Federal Mediation and Conciliation Service a list of seven names of qualified arbitrators. After the receipt of such a list, representatives of the parties shall

meet and each party shall strike three names. A flip of the coin shall determine who shall strike the first name, and then the other party shall strike a name. The process shall then be repeated until one name remains and the remaining name shall be the arbitrator selected and notified of his/her selection as arbitrator. As promptly as can be arranged, the arbitration hearing shall be held. Each party shall pay its own expense for its representative, counsel and witnesses. The charges of the arbitrator shall be shared equally by the City and the aggrieved party. The decision of the arbitrator shall be final and binding on both parties, except that either party may seek review as provided by law. The arbitrator shall have no power to add to, subtract from, modify or alter the terms of this Agreement.

B. Copies of the decision of the arbitrator made in accordance with the jurisdiction and authority of this Agreement shall be furnished to both parties within 30 calendar days from the close of the hearing or as otherwise agreed to by both parties.

Article 11 – Performance and Discipline

The City and the Union agree that any system of discipline or performance management should be continually reviewed for its effectiveness. The system may be modified from time to time to better meet the needs of the employees and the City. Any changes will be consistent with sound personnel practices. All discipline will be for just cause and consistent with due process. Employees have the right to Union representation any time they believe a meeting may lead to disciplinary action.

The City-wide and Fire Department standards shall be in writing. The Union will provide input as the standards are developed and/or modified. If the Union refuses to participate or provide input, the City and the Fire Department maintain the right to change the process. The City recognizes that members of the Fire Department are protected by the “Firefighter Bill of Rights” and any disciplinary action will conform to the guidelines of that law.

Article 23 – EMS Classifications

Section 1. The paramedic classifications of Firefighter/Paramedic, Firefighter/Lead Medic, and Fire Lieutenant Rescue/Paramedic are employees within the City’s Fire Department who are appointed by the Department to perform emergency medical services in an emergency medical services program and who have successfully completed and passed a Paramedic training program recognized by the Department and approved by Florida Statute and the Pinellas County Medical Director’s office. A Firefighter/Lead Medic is a classification which is responsible for maintaining EMS equipment and is designated in charge of an ALS Unit in the area of medical procedures and patient care.

Section 2. Should the City cease to operate emergency medical services, those employees classified as Firefighter/Paramedic, Firefighter/Lead Medic, or Fire Lieutenant

Rescue/Paramedic shall continue to be employed by the City on the same basis as any other employee in the bargaining unit, provided that employees who are demoted shall have their compensation fixed at the same step in the respective range as that which they are assigned in their classification prior to demotion.

Section 4. EMS Status

1. The Fire Department and all bargaining unit members shall comply with Florida Statutes and the Pinellas County EMS Rules and Regulations regarding Quality Assurance and ACLS and BTLS certification. The decisions of the County Medical Director in such matters shall not be subject to the City grievance procedure but shall be addressed through the appropriate appeals procedure.

2. The demotion of a Firefighter/Paramedic, Firefighter/Lead Medic, or Fire Lieutenant Rescue/Paramedic shall not be subject to the contractual grievance procedure or Civil Service appeal procedure when the demotion is based upon clinical or ethical issues in the judgment of the Fire Chief and staff and/or the office of the Medical Director of Pinellas County and as defined in the County Rules and Regulations governing EMS.

3. The demotion of Firefighter/Paramedic, Firefighter/Lead Medic, or Fire Lieutenant Rescue/Paramedic shall not be subject to the contractual grievance procedure or Civil Service appeal procedure when the demotion is based upon the judgment of the Department that the removed Firefighter/Paramedic, Firefighter/Lead Medic, or Fire Lieutenant Rescue/Paramedic was not performing to the standards desired by the Department or the Pinellas County Medical Director.

4. The demotion of a Firefighter/Paramedic, Firefighter/Lead Medic, or Fire Lieutenant Rescue/Paramedic shall be subject to the contractual grievance procedure or the Civil Service appeal procedure only if such demotion is the result of a disciplinary action.

5. The Arbitrator shall not have the power to substitute his/her judgment for that of the Department or the Medical Director with whom Firefighter/Paramedics, Firefighter/Lead Medics, and Fire Lieutenant Rescue/Paramedics work in relation to performance of employees to the standards of excellence desired by the City or the Medical Director.

Section 5. The parties agreed that Firefighter/Paramedics, Firefighter/Lead Medics, and Fire Lieutenant Rescue/Paramedics are healthcare professionals but shall not be considered "professional" employees within the meaning of the Florida Public Employees Relations Act.

B. Other City Policies

1. City of Clearwater Performance and Behavior Management Program Citywide Standards

The Citywide Standards listed below apply to all City of Clearwater employees.

- We will raise the standard of excellence and continuously learn and make improvements.
- We will let our supervisor know immediately of situations or incidents, which may affect our employment or may impact the City's image.
- We will perform our work assignments and comply with written or verbal instructions from the supervisory or management group.
- We will follow all City policies and procedures.
- We will produce quality products and excellent services.

Additionally, the following Citywide Standards represent Integrity issues of such a serious nature that immediate termination may be recommended.

- De-certification or other action by a regulatory group or other licensing authority for violation of the profession's standards, where the position requires such certification or where loss of certification will seriously affect the employee's credibility and ability to perform satisfactorily.

Fire and Rescue Department Standards

Personal Responsibility

- It will be the professional responsibility of all employees to:
 - follow the Standard Operation Procedures
- Employees should show pride in their jobs by:
 - Providing prompt and safe emergency responses

Integrity

- Employees will continually exhibit the following personal traits:
 - Be honest, trustworthy, fair, ethical, courteous, positive, and open minded.
- Professional conduct will be shown by all employees as they:
 - Are sensitive and compassionate to the citizen's and coworkers' needs.
- Employees will represent the Department and the City by:
 - Being professional at all levels at all times.
 - Maintaining high levels of customer service.

2. City of Clearwater Civil Service Rules, Chapter 13

Sec. 3. Reasons for Suspension, Demotion, and Dismissal. – Whenever practical, employees will be given reasonable opportunity to bring their performance and/or behavior up to acceptable standards pursuant to the procedures and rules of the City's performance and behavioral management programs. However, employees may be subject to disciplinary action up to and including immediate dismissal for the following acts, including but not limited to specifically cited examples:

(b) Failure to perform satisfactorily within established guidelines

(h) Commitment of or participation in an activity or action which undermines public confidence or otherwise significantly impairs the employee's ability to perform his/her job productively;

(i) Conduct unbecoming a City employee defined as scandalous or disgraceful while on or off duty where such conduct tends to embarrass the City or bring its service into public disrepute

(j) Endangerment of the health and/or welfare of self, fellow workers, and/or citizens, or placement of the City in an extremely liable position

(n) Violation or failure to obey and lawful policy, regulations, and/or reasonable direction made and given by a supervisor or other authority when such violations or failure to comply is insubordination or a serious breach of discipline.

3. Clearwater Fire and Rescue Standard Department Policies

104P.1 – Priorities

- Responding to all calls for emergency assistance in a safe manner with minimal scramble and response time.

104P.2 Performance Expectations

- Clearwater Fire and Rescue employees shall support and exhibit the organization's expectations and standards. These expectations and standard will be clearly defined for employees in the Performance & Behavioral Management Program (PBMP), Standard Department Policies (SDP), Standard Operating Guidelines (SOG), the Agreement between the City of Clearwater and the International Association of Firefighters, AFL-CIO Local 1158.
- All Clearwater Fire and Rescue personnel shall:
- Familiarize themselves with, and conform to, the regulations, policies, practices, and procedures of the department.
- Commit to the highest standards of personal and professional integrity;
- Strive to set the highest standards of excellence for fire, rescue, life safety, and fire administration services.
- Be held personally accountable for the actions they take in meeting the customer service needs of the City and the community the organization serves.

Background Facts

On May 12, 2005, the City of Clearwater (City) terminated the employment of the Grievant, Trevor Murray (Grievant or Murray), because of his deliberate failure to

respond to the scene of a 911 dispatch call for emergency medical service on the morning of March 26, 2005. The City claims Murray's failure was in direct contradiction of his duties as Firefighter/Lead Medic for Clearwater Fire & Rescue. The City also claims Murray's failure violated numerous City and Department policies, including the Citywide standards listed in the City's Performance and Behavior Management Program Manual (PBMP) regarding personal responsibility and integrity, Chapter 13 Section 3 of the City Civil Services Rules, and Section 104P of the Clearwater Fire and Rescue Standard Department Policies. In addition, Murray's failure violated Section 3.1k of the Pinellas County Medical Operations Manual (MOMs) which ultimately resulted in the revocation of Grievant's Pinellas County paramedic certification. The City further claims, since certification by the Pinellas County Office of the Medical Director (OMD) is a condition of employment with Clearwater Fire & Rescue, Grievant Murray is no longer qualified for employment with the City under the CBA.

The Grievant, with the Clearwater Firefighters Association Inc., IAFF Local 1158 (Union), filed a timely grievance pursuant to a Collective Bargaining Agreement (CBA) enforced for the year 2005. The Union argues several defenses to reverse the City's discharge action. At hearing, the City witnesses were the Pinellas County OMD Quality Assurance Manager, David Lock, Officer Tracie Black from the Clearwater Police Department, Fire Chief Jamie Geer, and the City's Human Resources Director, Joseph Roseto. After the City rested, the Union called former Division Chief of Operations Randy Bacher, Lieutenant of Rescue Norman Jernigan, Lieutenant of Rescue Wendy Sue Cason, Paramedic Gerard DeVivo, Lieutenant Larry Williams, Local 1158 President John

Lee, and Grievant Trevor Murray. On August 24, 2006, the arbitrator allowed a supplemental record of the testimony of a Chief Fogarty and rebuttal testimony by Chief Geer. In addition, the parties moved the following exhibits into evidence:

Joint Exhibit 1	Collective Bargaining Agreement between the City and the Union
Joint Exhibit 2	Grievance and the City's Response
Joint Exhibit 3	Performance and Behavior Management Program
City Exhibit 1	MOMs Protocol
City Exhibit 2	Clinical Suspension Letter from Lock 3/28/05 to Chief Bacher
City Exhibit 3	Rules and Regulations of the Pinellas County Emergency Medical Services System
City Exhibit 4	Letter from Dr. Romig dated May 10, 2005, certificate revoked indefinitely
City Exhibit 5	Patient Care Record dated 3/26/05
City Exhibit 6	Trip Details dated 3/26/05
City Exhibit 7	Letter from Chief Geer dated 3/29/05
City Exhibit 8	Class Definition of Firefighter-Lead Medic
City Exhibit 9	Recommendation for Termination
City Exhibit 10	Report of Time Sequence
City Exhibit 11	Termination and Dismissal Notice
City Exhibit 12	Extract of City Civil Service Rules
City Exhibit 13	Training Verification Form
Union Exhibit 1	Call Requesting Cover Company
Union Exhibit 2	E-mail from Bacher dated 5/15/05
Union Exhibit 3	Notice of Investigation
Union Exhibit 4	Packet Regarding Investigation
Union Exhibit 5	Omitted
Union Exhibit 6	Wendy Cason, April 20, 2005, E-mail
Union Exhibit 7	Copy of E-mail
Union Exhibit 8	Notes from Call
Union Exhibit 9	Logbook of District Chiefs
Union Exhibit 10	Notice of Suspension
Union Exhibit 11	Reprimand
Union Exhibit 12	E-mail from Chief Geer dated 6/24/05
Union Exhibit 13	Certification
Union Exhibit 14	Letters of Recommendation
Union Exhibit 15	Personnel Action Sheets
Union Exhibit 16	Performance Evaluations
Union Exhibit 17	Commendations
Union Exhibit 18	Letter from Hillsborough Community College
Union Exhibit 19	Police Reports
Union Exhibit 20	CFD Patient Run Reports
Union Exhibit 21	Public Criminal Record
Union Exhibit 22	Florida Unemployment Compensation Determination

Facts of the Case

The Grievant was employed by the City of Clearwater Fire and Rescue as a Firefighter on July 24, 1995. Murray was required to become a Pinellas County certified paramedic during the first year of employment. Pinellas County accepts the paramedic license issued by the State of Florida under the authority of Florida Statute, Chapter 401. In addition, Pinellas County requires its own certification for paramedics. The certification to perform medical service in the county is through the Pinellas County Office of the Medical Director (OMD). Pinellas County patient care is given in accordance with the Medical Operations Manual or MOMs. Even further, the OMD issues rules and regulations covering paramedic medical issues and protocol but also disciplinary issues under a “just cause” standard. Pinellas County Ordinance 88-12 as amended. The City requires all employees to be subject to its Performance and Behavior Management Program (PBMP), which is a citywide standard for good performance. The PBMP also prescribes specific standards to all fire and rescue employees. The City’s Civil Service Rules apply for disciplinary action including discharge for enumerated infractions. Finally, Murray, as a bargaining unit member, is subject to the CBA, which incorporates by reference the Florida Statutes, the Pinellas County EMS Rules and Regulations, MOMs and Quality Assurance Reviews and ACLS Certification. Grievant was promoted to the position of Firefighter/Lead Medic on February 26, 2000. During the Grievant’s ten (10) years of employment, he was, by all accounts, an excellent employee with letters from various medical professionals, grateful citizens and even the previous Fire Chief. Fire Chief Geer was hired in September 2004 from another municipality. The Grievant was a leader and role model for other firefighters and his employment record is clear of

any past discipline. The Record shows 80 percent (80%) of CFR calls are EMS related and fire and other emergencies makeup the balance. As a Firefighter/Lead Medic, Murray was responsible for providing firefighting, rescue, hazmat, first aid, cardiopulmonary resuscitation services, and prompt paramedical attention at emergency scenes for the purpose of managing and stabilizing the critically ill and injured. Sunstar Ambulance Service, staffed with its own county certified paramedics, provides transportation of the ill or injured countywide. On March 26, 2005, Grievant was assigned to Rescue 49 with junior paramedic, Michael Jones. Rescue 49 responds to emergency calls for EMS services, car accidents, building fires, hazardous material incidents, and a multitude of other services such as severe weather, dangerous conditions, gas leaks, building collapse, and fire prevention or education.

Pinellas County Medical Director, Dr. Laurie A. Romig, acts as the clinical supervisor for all paramedics and emergency medical technicians (EMTs) in Pinellas County. Pinellas County 911 Emergency Call Center receives 180,000 emergency 911 EMS calls per year. EMS calls and police calls makeup the majority of 911 calls but building fires or other emergency calls are common. The calls are received by dispatchers who take information about the emergency and then dispatch the appropriate units. The 911 dispatchers are subject to MOMs and OMD Rules and Regulations. MOMs 3.1a states in part: "The Emergency Medical Dispatcher (EMD) plays a key decision making role in determining EMS response." The Medical Director is responsible and accountable for the oversight of medical dispatch, dispatchers, practices and protocols. The units assigned for this incident the morning of March 26, 2005 included the City of Clearwater

Police Department, Fire Department and Sunstar Ambulance Service. Factually, on March 26, 2005, at 05:27 a.m., a female caller to the 911-dispatch center reported she believed that she had been raped while sleeping and requested medical attention. Clearwater Police were dispatched because rape is a criminal act. Clearwater Fire and Rescue, Rescue 49, was dispatched because it may be a medical emergency and they were the closest paramedic unit. Sunstar ambulance service was dispatched because they are paramedics with the usual transport duties of medical patients to the nearest or appropriate hospitals. Rescue 49 and Sunstar are classified as ALS units because they operate with certified paramedics as opposed to BLS units, which operate with EMTs. MOMs, at 3.1k, require that “[a]n ALS unit or a BLS unit with a Pinellas County Certified Paramedic must continue to the scene of every 911 request for service and determine the need for EMS firsthand. Once the 911 system is activated for an EMS call, a County Certified paramedic must investigate it.” The City argues: “There are no exceptions to the requirements of MOMs protocol 3.1k”.

The employees involved in this response immediately recognized the female frequent caller, later to be known as “the special case in Rescue 49’s District”. The dispatcher, police and R49 recognized the system abuser’s address, which was a single-family residence. In fact, since moving to Clearwater in 2003, she has made fifteen (15) similar calls requesting police and EMS intervention. Grievant had two (2) previous experiences with the caller, the last on January 15, 2005. The system abuser was recognized for her repeated call pattern of allegedly being raped by prominent people. A review of previous Pinellas County EMS Patient Care Reports show multiple patient refusals, police and/or

Sunstar response cancellations to R49, and several occasions where R49 staged until a cancellation from police. Union Exhibit #20 The system abuser would typically request police documentation of her emergency call, usually refuse EMS services and transport, but on a few occasions would allow the police, under the Baker Act, to transport her to a psychiatric hospital for commitment or allow Sunstar to transport her to a medical hospital. The Baker Act is significant for police transport of mentally ill patients to institutions without EMS intervention. See, The Florida Mental Health Act (The Baker Act) Indeed, many States have enacted laws similar to the Baker Act for the sole purpose of allowing police to handle mentally ill patients. See, Torrey E. Fuller, *Out of the Shadows: Confronting America's Mental Illness Crisis* (1997) In Florida, law enforcement officers respond to people with mental illness who are in crisis by having them assessed under the State's Mental Health Treatment Law, the Baker Act. In 2000, there were 34% more Baker Act cases (80,869) than DUI arrests (60,337). Florida law enforcement officers alone initiate nearly 100 Baker Act cases each day. This is comparable to the number of aggravated assault arrests for the state in 2000 (111 per day) and 40% more than the arrests for burglary (71 per day). See, Briefing Paper, Feb. 2005, www.psychhlaws.org/briefingpapers/BP16.htm Admittedly, Fire Chief Geer testified he was not aware this caller was a system abuser and no one told him about this problem caller before March 26, 2005. In fact, Chief Geer believed 15 calls over 3 years were not significant. However, the records from Clearwater Police Department, the CFR patient care reports and the 911-call center documents, show the system abuser's past activities are significant. Specifically, Officer Tracie Black testified she took the March 26, 2005 call from a male police officer who was originally assigned the call by 911. Officer

Black testified male police officers were often the next target of the system abuser's allegations of abuse. Indeed, a previous police report states this system abuser accused a male police officer as the actual sexual abuser. Accordingly, Officer Black cancelled the male officer's response and volunteered for the call. Officer Black was on the scene at 05:34 a.m. The 911 dispatcher informed Rescue 49 and Murray in no uncertain terms that this was the repeat caller with the same alleged rape call. Sunstar Ambulance was dispatched under the same MOMs protocol of 3.1k but at 05:32 a.m. the 911 dispatcher canceled R49 with "FD call closed". Officer Black testified Sunstar Ambulance never arrived and Black transported the abuser to Morton Plant Hospital at 05:40. Black advised the system abuser/mentally ill person to commit herself voluntarily under the Baker Act. Black reported an all clear at 05:40 a.m. The OMD did not pursue any discipline against the Sunstar paramedics or the 911 dispatcher who cancelled FD's response. Nevertheless, the record shows this system abuser continued making new calls for emergency help for rape, starting April 10, 2005, within just fifteen (15) days of the above incident and many times thereafter. However, the CPD, CFR and Sunstar were now better prepared for this caller. In July 2005, a new protocol was developed for this system abuser. The Clearwater Fire & Rescue and the OMD issued new guidelines for the "Special Case in R49 District". Specifically, Dr. Romig advised her online medical control staff by stating:

"This memo is to inform you that you may receive what might be considered to be unusual OLMC contacts from Clearwater units for a frequent caller patient in Station 49's area. This patient calls 911 'to file police reports' and sometimes also causes EMS to be dispatched as well, either by specific request or at PD's request. Complaints usually refer to an offense that may have occurred to her while she was sleeping, but she also will occasionally voice other physical complaints. She has also been known to make allegations against various officials, though none so far that I'm aware of against EMS personnel. Currently, any EMS response to this person automatically triggers

notification of the Clearwater EMS Coordinator, our office and Craig Hare. This person does often refuse transport; all refusals are automatically being treated as high risk refusals, which is why you may receive on-line consults. My suggestion is that you consult with the EMS personnel on-scene (who know her well) to determine whether the patient has any signs of physical injury and whether her behavior is any different from usual. She is very often too agitated to either cooperate with a Cognitive Exam and will also often refuse to sign a refusal. I think that the best we can do is try to assure that she has no acute medical complaints and that her mental status is as usual, to document the interaction via taped consult, and to provide ambulance transport if she requests. If there is any question about acute changes in her mental or physical status or her being a new threat to herself or others, we should handle as usual, with PD assistance if necessary.

We are approaching this problem from several other directions as well. We will be working with the patient's physician, a psychiatrist, to determine whether competency (or lack thereof).

For all involved, I suggest that we do everything that we can to continue to assure that this person's privacy is not violated. Therefore, I would NOT transmit the person's name or address over the radio (and I am not including the information in this message for the same reasons). We could identify the person as the "Station 49 Area Special Case" patient (assuming we have no others in that area) or something similar. Any further verification of patient identity can be handled off the radio. This is probably a good practice for any other "Special Case" patients that surface in other areas.

If you wish further details or clarification, please don't hesitate to contact me.

On July 14, 2005, CFD Lieutenant James B. Bronson advised the relevant fire personnel about the "station 49 area special case" stating:

"Below you will find the text email from Dr. Romig addressed to the On-line Medical Control Staff and myself regarding the situation for a patient in Station 49's area. Please take note that the patient's name and address is being left out for privacy reasons and you are expected to refer to this patient during your on-line high risk refusal as "Station 49 area special case". Continue to take the patient's name, address, medical history, etc., on the written Pinellas County EMS run report, but do not include any personal information over the radio during your consult. We are currently trying to address this situation with the patient's physician and other avenues to resolve it in a timely fashion. In speaking with Dr. Romig about this issue today, we do not believe law enforcement will be able to pursue 9-1-1 abuse charges because she has a diagnosed medical condition and her actions are a part of that condition. Please understand we are working through the legal matters to hopefully resolve this situation and to get the patient the medical care that is needed. If you should have any questions regarding this matter, please feel free to contact your LR or myself."

The Grievant did not have the benefit of these subsequent advisories because he was terminated in May 2005. Additionally, EMS systems in many other parts of this nation have provided answers and action plans for the mentally ill and system abusers. Now, Pinellas County, OMD, the dispatchers and police/fire are moving towards a Crisis Intervention Team (CIT) response, which many states and cities have already adopted. Dupont, Randolph and Cochran, Police Response to Mental Health Emergencies – Barriers to Change. J AM Acad. Psychiatry Law 28:338 (2000) CITs are specially trained police, responding and transporting the mentally ill. *Id.* Also see, Psychiatric News March 3, 2006, Rich Daly, Vol. 41, Number 5, 2006. American Psychiatric Association. In reality, laws such as the Baker Act have provided solutions to emergency response calls to the mentally ill, system abuser and issues such as in this case.

Discussion

The Grievant was terminated on May 12, 2005 for the incident of March 26, 2005. The CBA gives the Grievant the right to challenge that discharge, under a just cause standard, by a neutral arbitrator chosen by the parties. Arbitrators over the past 60 years have defined the concept of “just cause” in various ways. In Florida, the appropriate burden of proof to be applied in a public employment discharge case is a preponderance of the evidence. Dalem v. Department of Corrections, 720 So 2d 575, 577 (Fla. 4th DCA 1998) In Dacco, Inc., Arbitrator Shieber reasoned, “Just cause might be best described as that cause which given the totality of circumstances, enables an impartial observer to determine that the adverse action taken against the employee is, in all respects, a reasonable assertion of authority designed to meet legitimate management objectives.”

Shieber further reasoned under this analysis, “the employer must prove that the Grievant’s misconduct occurred, and the penalty imposed is in all respects, just”. Dacco, Inc., 114 LA 517 (2000) Management must act in good faith upon a fair investigation and fix a penalty not inconsistent with that imposed in other like cases. Stockham Pipe Fitting Co., 1 LA 160 (McCoy 1945) Arbitrators have fashioned an “industrial due process” doctrine in labor arbitration. Lincoln Lutheran of Racine, Wisc., 113 LA 72 (Kessler, 1999) Arbitrators will examine the employer’s investigation for good faith and fairness. Id. Arbitrators may consider mitigation factors such as good employment record, length of service and the circumstances of the misconduct. Food & Commercial Workers Local 7 v. King Soopers, Inc., 222 F 3d 1223, 164 LLRM 2970 (10th Cir. 2000) The Supreme Court has repeatedly upheld the broad arbitral discretion to review the reasonableness of the penalty imposed by the employer. The Supreme Court’s rationale in Paperworkers v. Misco, Inc., that the arbitrator is to bring his informed judgment to bear in order to reach a fair solution of a problem, especially when it comes to formulating remedies is appropriate in this case. 484 U.S. 29, 41 (1987) The arbitrator must draw the essence of his decision from the CBA agreement. Id., citing Steelworkers v. Enterprise Wheel & Car Corp., 363 U.S. 593 (1960) Further, the Grievant must know the rules to guide his actions. McQuay International, 1999 WL 908632 at 27 (Howell, 1999) Specifically, what did Murray understand when the 911 dispatcher addressed R49 at 05:30 a.m. on March 26, 2005 is an issue that must be ascertained. Here, the Union was recognized as the exclusive bargaining representative in accordance with Chapter 447, Florida Statute as amended in 1975. Grievant is a member of the bargaining unit. Subsequently, the Florida legislature enacted Florida Statute, Chapter 401.25 and 401.265

as amended. The parties incorporated by references to external law in their CBA. Arbitrators are to consider external laws, and to construe a CBA in harmony with external laws whenever possible. William Pean School Dist. PA., 99 LA 815 (Zirkel, 1992) Under the circumstances of this case, Chapter 401.265 of the Florida Statutes grants statutory authority to Pinellas County's Medical Director to adopt and enforce rules necessary to administer this section. On March 28, 2005, a Quality Assurance Review (QAR) investigation was requested by the OMD through notice to Chief Bacher.

City Exhibit #2 Bacher explained the CFR performs its own QAR independent of the OMD. Bacher performed both QARs. Further, the CFR will cooperate with the QAR of the OMD by providing relevant documents or witnesses. Fire Chief Geer was informed that the investigation by Chief Bacher was related to QAR #05-175 of the OMD and a QAR by the CFR was ongoing. Chief Bacher's formal investigation report was very favorable to the Grievant. Bacher's interview notes and subsequent report on the Grievant must be part of the investigation's due process.

Union Exhibit #4 Chief Bacher identified a minor infraction by the Grievant due to the unusual circumstances of the 911 dispatcher and the system abuser. Union Exhibit #4 It appears Chief Geer not only disapproved of Chief Bacher's investigation, but also omitted the documents from the disciplinary file when it was submitted to the City Manager's Office. In this case, Joseph Roseto acted as the City's Manager Designee for the termination decision. Joseph Roseto's ultimate decision to terminate was made without the Grievant's full disciplinary file. Mr. Roseto admitted he was not given any mitigating documents or records. Roseto admitted he did not listen to the 911 recording prior to Grievant's discharge or consider if

the caller was a system abuser. Rather, Mr. Roseto did testify that he had his staff further investigate but he accepted Chief Geer's explanation and recommendation for discharge.

Opinion

A. **The penalty was not just.**

The facts and circumstances surrounding the R49 incident on March 26, 2005 are not as simple as Chief Geer portrays. Grievant was told specific information from a 911 dispatcher that caused confusion and inaction by the Grievant. A nearly verbatim transcript of the dialogue between Grievant and the 911 dispatcher shows significant uncertainty of how to handle this system abuser's call. The 911 tape of March 26, 2005 states in part:

Bravo Operator (Radio Operator): Rescue 49 responding?

Rescue 49 (Murray): 49.

Bravo Operator (Radio Operator): Understood Rescue 49 responding. This will be for a female patient, eh, she woke up, found her front door was open, she believed she was raped. Uh, multiple priors for this address, in fact, we have two for the exact same battery victim – slash – rape back in January. No known perp at the location. PD does have the call.

Rescue 49 (Murray): Acknowledged PD has the call. We've been on this patient for multiple times for these claims. Go ahead and, uh, let PD go ahead and respond and have them call us back out as needed.

Rescue 49 (Murray): Show us available.

Bravo Operator (Radio Operator): Understood Rescue 49. I'll show you available.

I believe the dispatcher gave a confusing and misinforming emergency dispatch. First, it is clear the CPD was already dispatched to the scene of the alleged rape before the dispatcher's exchange with the Grievant. Grievant's first reaction, like mine, was CPD was already on the scene twice before with the same spurious call. When the dispatcher said "multiple priors for this address", we now know, by CPD documents, the abuser

made 15 false calls in the past three years. Union Exhibit #19 One false call was on January 15, 2005 when Grievant responded. The abuser also called three times in February 2005, on the 1st, 12th and 25th. Union Exhibit #19 The dispatcher said, "in fact, we have two for the exact same battery victim". The Grievant could reasonably believe if the police were there twice before without EMS assistance, why would R49 be needed this time. I understand the dispatcher was trying to give the prior information to aid R49, but the dispatcher caused confusion as to the need for this emergency call. Significantly, I believe anyone responsible for the discipline of the Grievant must consider the exact words used for the dispatch. Mr. Roseto did not hear the 911 tape and he did not consider the issue of a system abuser should have been realized. Obviously, Grievant should have just responded to a staging area, waited for the police to handle and cancelled R49's call. Grievant would not have seen the caller unless the police requested assistance and cleared the incident for R49's arrival. Alternatively, Grievant could have staged in the firehouse by telling the 911 dispatcher R49 is staging in the firehouse and have the police cancel our call or call for EMS assistance. Rather, the Grievant told the 911 dispatcher, and for that matter, anyone who listens to 911 calls, that police can handle and have police advise if R49 is needed. Further, Grievant went "available" so that if a true emergency comes in to 911, R49 would be ready for such duty. Grievant's poor judgment was not responding to a staging location even if in the firehouse itself. Does Grievant's poor judgment, under these circumstances, warrant a discharge? No. After all, Grievant had been an excellent employee for ten (10) years. Simple management coaching could correct Grievant's poor judgment. Chief Bacher realized the proper solution but his report apparently was replaced with Chief Geer's report. Compare Union Exhibit #4 to City Exhibit #9

Further, the subsequent actions of the 911 dispatcher caused further confusion. The 911 dispatchers are governed by the same MOMs protocols. MOMs 3.1a states in part: The Emergency Medical Dispatch (EMD) plays a key decision making roll in determining EMS response. Here, the 911 dispatcher **agrees** with the Grievant that R49 is not needed and the 911 dispatcher goes on to “FD call closed” at 05:32. City Exhibit #6 Sunstar ambulance never made it to the incident. All three – the dispatcher, R49 and Sunstar, circumvented the MOMs protocol of 3.1k. Why? The answer was evident. The call was going to be handled by the police and in fact, Officer Black did utilize the Baker Act to transport the mentally ill person to Morton Plant Hospital, psychiatric unit, at 05:40. Union Exhibit #19 Accordingly, I find the Grievant may have used poor judgment the morning of March 26, 2005, but Grievant was honest, forthright and immediately admitted his mistake. I agree with Chief Bacher’s initial report. Union Exhibit #4 Further, the 911 dispatcher was at least partially to blame for the confusion that morning. The 911 dispatcher was uncertain, resulting in the actions taken by the Grievant. In conclusion, Grievant’s poor judgment under these circumstances does not justify or warrant discharge. The penalty was not just. Riley Stoker Corp., 7 LA 764 (Platt, 1997)

In summary, when an employee receives a dispatched call from the 911 center that is confusing and loaded with uncertainty, the employee has to determine the best course of action to resolve the situation. Management, in the 911 center, OMD, CPD or CFR could have easily identified this person as a system abuser long ago, but management left it to the employees to figure out a response plan. Grievant may have believed the call was false due to the dispatcher’s uncertainty and made a judgment call on how to handle his

response. The Grievant did not use malice or disregard for the call, but used past knowledge of the situation and the dispatcher's information to determine his readiness would be best served at the firehouse since the police were already responding to the scene. It appears no supervisors were monitoring the CFR radio dispatch to advise otherwise. Apparently, there was no supervisor in the firehouse. Grievant used poor judgment in his choice not to respond, but he should not be discharged. Dacco, Inc., 114 LA 517 (2000), Stockham Pipefitters Co., 1 LA 160 (1945), Paperworkers v. Misco, Inc., 484 U.S. 29 (1987)

B. The City failed to provide due process.

The City has a duty to act within basic notions of fairness and due process. The City must conduct reasonable inquiry or investigation before assessing punishment. Southern Frozen Foods, 107 LA 1030 (Giblin, 1996) Arbitrator Calhoun described the employer's duty as:

“Procedural fairness requires an employer to conduct a full and fair investigation of the circumstances surrounding an employee's conduct and to provide an opportunity for him to offer denials, explanations or justifications that are relevant before the employer makes its final decision before its position becomes polarized.” Shaefer's Ambulance Serv., 104 LA 481 (1995)

I understand the CFR has not made a contested discharge since 1997 and Chief Geer was hired in 2004 from the Franklin Tennessee Fire Department. The discharge of this Grievant is the labor equivalent of capital punishment. The Grievant, after ten years of excellent service to the City, cannot just move and resume his paramedic career. The Grievant's ten years of seniority, pension credits and paramedic license is forfeited in Pinellas County. The City Manager or his designee ultimately decides the City's procedure for suspension or discharge of a fire department employee. If the City

Manager or his designee is to make the ultimate decision then they must have the complete disciplinary file. In this case, it appears Chief Geer decided to conduct his own investigation when he apparently felt (his number 3 in command) Chief Bacher, was too favorable towards the Grievant. Improperly, Geer withheld the 911-dispatch tape of the incident of March 26, 2005. Chief Geer may have also withheld substantial CPD documentation, which documented an abuse pattern of fifteen (15) previous calls. In one of those calls, the abuser accused a CPD officer of sexual abuse. Union Exhibit #19 In many of those calls, the CPD documented unfounded accusations of rape. Union Exhibit #19 In many of those calls the CPD documented service refusals by the abuser and the abuser's desire to simply want a police report. Union Exhibit # 19 In many of these calls the CPD documented the abuser's desire to have a "save" rape test performed but the CPD refused as unfounded. Union Exhibit #19 Finally, Chief Geer apparently withheld the entire Bacher formal investigation. Union Exhibit #4 Chief Bacher's report was dated March 29, 2005, it included the CPD documents, and his interview notes of both the Grievant and paramedic Michael Jones. Apparently, the City Manager's Office or Mr. Roseto was never provided the Bacher report or CPD documents. Union Exhibit #4 and #19 Due Process requires otherwise. Shaefer's Ambulance Service, 104 LA 481 (Calhoun, 1995)

The Fire Department, despite its substantial number of employees, does not have a written policy or procedure to investigate an alleged infraction of its rules or policy. Initially, Chief Bacher received the QAR from the OMD. Bacher believed it was his duty to start a formal investigation into the R49 incident of March 26, 2005. Union Exhibit #4

Bacher's report to Chief Geer is the type of evidence and report that cannot be expunged from a disciplinary file merely because Geer disagrees. Chief Bacher's formal investigation states:

Summary-Formal Investigation-QAR#05-175

This QAR was generated in reference to Incident #5035224 which occurred on 3/26/05 at 0526. R49 was dispatched to (address omitted) for an alleged sexual assault. The crew consisted of Lead Medic Trevor Murray and Paramedic Mike Jones from the Clearwater Fire and Rescue "B" shift. Following pre-arrival exchange, R49 "B" opted to cancel their response prompting this review.

Due to the serious nature of the circumstances involved and subsequent clinical suspension, a formal investigation process was instituted by Division Chief Bacher to gather additional facts while complying with Florida State Statutes. This investigation was held in Division Chief Bacher's office on 3/29/05. Union representatives and the employees' supervisory personnel were present throughout the interviews.

The initial interview was held with Lead Medic Trevor Murray and commenced at 1004 hours. L/M Murray recalled the incident and explained his actions in detail. Being very familiar with the address and the occupant's history, L/M Murray requested prior incident information regarding the occupant, which included an extensive psychiatric past. The occupant is always very confrontational and has often made false allegations against EMS and law enforcement personnel. Based on this typical behavior, L/M Murray and crews from other shifts would always stage for PD to protect them from her forward nature. He also advised that PD had developed a similar approach requiring 2 officers to respond whenever dispatched to this address. L/M Murray also explained her lengthy PD background. He also explained that he recalled only entering her residence once as she always would come out to confront them, sometimes when staged a block or two away. With this staging practice and several prior unsubstantiated assault claims, L/M Murray asked Dispatch to advise PD to call EMS if necessary and then went available. His intentions were to be available for any emergency call in their area. In retrospect, and with sincere remorse, he admitted utilizing poor judgment and expressed his intent to never jeopardize patient care. L/M Murray also assumed full responsibility for his decision, as he was the Lead Medic driving the rescue vehicle and communicating with Dispatch

Follow up discussion identified that L/M Murray had worked 52 hours of overtime within the past 2 weeks pay period. His response history was also discussed with no previous response issues noted. It was also noted that L/M Murray has consistently provided excellent coverage within his assigned response territory, often canceling other ALS units responding into his territory as he cleared from other calls. A recent commendation was also shared which heralded L/M Murray for exceptional patient care.

Division Chief Bacher reviewed the availability of employee counseling services should there be any underlying personal issues not discussed that might benefit from these services.

Paramedic Mike Jones' interview began at 1031 hours and included a similar and consistent explanation. P/M Jones explained the familiarity with the address and occupant and the lengthy history of previous calls with L/M Murray on this individual. His discussion of her behavior was comparable to that described in L/M Murray's interview, citing serious psychiatric problems and a history of false allegations. P/M Jones also indicated additional interaction with this individual through his part time employment at the County Jail. Although P/M Jones was not serving as the Lead Medic, he assumed some error in judgment for not discussing L/M Murray's decision to go available.

Additional discussion included the amount of overtime P/M Jones has worked recently (typically about 24 hours per pay period), no previous history of response problems and his recent commendation for exceptional care. The availability of employee counseling was also shared with P/M Jones should he have any underlying issues not discussed.

Clearwater PD was contacted to research their history with this address/occupant. Attached is the 119 page document outlining PD's involvement since February 2004.

Following the interviews, Division Chief Bacher, District Chief Willi and Rescue Lieutenant Jernigan discussed all the circumstances involved to determine a course of action to eliminate reoccurrence. Considering the unique circumstances involved and the honesty and sincere remorse of both L/M Murray and P/M Jones, there is no indication that there was malicious intent to do harm or to avoid work. They both admitted errors in judgment, understand the liabilities and potential negative outcomes of that decision, and affirmed that this situation would not recur regardless of circumstance.

The following actions were taken consistent with the Performance and Behavior Management Program identified as the disciplinary tool in the employees' collective bargaining agreement. Immediate training and remediation to review the MOMS protocols governing emergency medical responses, duty to act and protocol disagreement procedures has been conducted. Written documentation has been placed in the employees' files per PBMP policy with continuous oversight via the respective Rescue Lieutenant and District Chief. Some negative impact may be realized to employee benefits due to the clinical suspension of their paramedic status with significant implications should the suspended status be of long duration

This summary has been prepared by Division Chief Bacher. I am confident that these actions will immediately alter employee behaviors and will result in no future recurrence.

*Division Chief of Operations Randy Bacher
Clearwater Fire and Rescue Department*

Joseph Roseto, Clearwater's Director of Human Resources, acted for the City Manager. T-170 (T= hearing transcript w/pg #) Roseto testified the most compelling perspective for him was from Fire Chief Geer. T-183 Mr. Roseto testified that Human Resources did not conduct an investigation of its own. T-166 Rather, Chief Geer's investigation was turned over to a Mr. Delprete to research the circumstances surrounding the situation and then advise Mr. Roseto. At hearing, Roseto was asked: "Did you see from a Human Resources perspective any mitigating factors that warranted against termination in this case? The answer was, "No, none at all." T-179 However, Roseto then admits he never heard the 911 tape until the hearing. T-188 In contrast, I believe the 911 tape is significant evidence of mitigation. Roseto then went on to explain that he had extensive conversations with Chief Geer regarding Geer's documents and he never felt a need to listen to the 911 call or dispatch. T-189 Accordingly, the issue now becomes how much influence Chief Geer exercised in the disciplinary process. Geer interviewed the Grievant on April 5, 2005. Geer spent ten (10) minutes and asked only five (5) questions. T-132 Did Chief Geer also influence the OMD investigation? The Record shows Chief Geer and OMD conducted a joint interview of the Grievant on May 3, 2005. However, this arbitration does not concern the OMD meeting or investigation.

Amazingly, Chief Geer's memorandum to Mr. Roseto on May 6, 2005 contained four (4) sentences of conclusionary facts to support the Chief's decision to recommended Murray's discharge. City Exhibit #9 Chief Geer wrote:

"I am recommending termination for FF/LM Trevor Murray and FF/PM Mike Jones. As the Rescue 49 crew, March 26, 2005, they deliberately failed to respond to a dispatch for medical assistance at 0526 hours, incident # 5035224. Both employees have admitted

that they never left the station to respond. This action constitutes gross negligence and dereliction of duty.”

I would find it shocking if Chief Geer did not present the CPD records, the 911-dispatch tape or previous patient care reports that would flag the system abuser issue for mitigation. Of course, Chief Geer could have submitted all the reports and Mr. Roseto felt they were immaterial to the issue and investigation.

On May 9, 2005, Mr. Roseto accepted and acted upon Chief Geer’s recommendation for termination as follows:

“On March 26, 2005 at 0526 hours, you deliberately failed to respond to a 911 dispatch call for medical service. You acknowledged that you did receive the call for assistance and deliberately failed to respond. You did not consult with or obtain approval from a supervisor prior to or after making this decision. You subsequently admitted to the Fire Chief and the County Medical Director that you never left the station in response to this call for service.

The above offense represents a safety issue of such serious nature that immediate termination is warranted”.

Again, on May 9, 2005, the City issued a press release and a press conference to announce these terminations. However, I find Mr. Roseto failed to consider the entire disciplinary file for the Grievant’s termination. First, the 119 pages of CPD documents referenced in Chief Bacher’s report were either totally ignored or Mr. Roseto never received them from Chief Geer. Secondly, Roseto never was provided the tape of the 911 dispatch, which shows the dispatcher’s uncertainty. Thirdly, Roseto was never apprised the caller might have been a system abuser with a long history of unfounded complaints. Fourth, Roseto, apparently, was never given Chief Bacher’s report of March 29, 2005 where the CPD records and the issue of system abusers were introduced as

mitigating factors. When the City failed to consider favorable evidence, which undermines or mitigates the City's decision to terminate the Grievant, I find basic notions of fairness and due process were not afforded the Grievant. Shaefer's Ambulance Serv., 104 LA 481 (Calhoun, 1995) The Grievant's termination was improper.

**C. The City failed to identify an obvious system abuser
and mitigating circumstances**

The Grievant had two prior calls to the "special case in Rescue 49 District". The last response of Grievant was on January 15, 2005. The Grievant's Patient Care Reports state:

"sexual assaulted, depression, post traumatic stress disorder 40 y/o W F c/o being sexually assaulted by John Ashcroft, the Attorney General, the reason for his early retirement. Pt was confused ABC intact Pt stated mild rectum pain small amount of blood. Vitals WNL Pt to MPH for further exam." Union Exhibit #20

On March 26, 2005, Officer Tracie Black reported that she arrived at the "special case" scene where the mentally ill system abuser stated she was sodomized at 0300 hours but she was asleep while she was being attacked. She had a name of her attacker but she was not awake so she did not see him commit the crime. Black observed the bed for blood and/or fluids but the abuser admitted there was none. In response, the abuser believed she was sodomized because of anal pain. Black transported the mentally ill system abuser to Morton Plant Hospital. Union Exhibit #19

Previously, on February 25, 2005, police handled another call to the "special case" where the police officer wrote: "Upon arrival I met with (her) who makes numerous false calls about sexual type incidents. . . . She reported (he) had raped her in the past. I gave her a report number, which she always requests and completed a report per policy." Union

Exhibit #19 On February 1, 2005, police responded to the “special case” where she alleged she was “sexually battered by an unknown subject”. She was unable to provide any facts but she requested a “save” exam so she could solve her past sexual batteries. The police cleared the call as unfounded but she called CFR for transport to Morton Plant Hospital for a “save” exam. A CPD sergeant was called to the scene and he determined the save exam would not be conducted due to the nature of this call and Crisis Intervention would not be notified. The CPD sergeant found: “This incident is unfounded.” Union Exhibit #19 While there are “numerous” other pre-March 26, 2005 examples of this system abuser’s calls, she still continued to call 911 just 15 days later, on April 10, 2005, to report the same alleged rape and need for medical care. The police found: “No evidence of a rape was present and due to the large number of similar complaints from this person, no further investigation should be made.” Union Exhibit #19 In my opinion, this evidence of system abuse must be considered and known to the City. Chief Geer explained the Grievant could have flagged this person as a system abuser before March 26, 2005. However, I believe the 911 center and CPD had all the information on the numerous calls and they failed to identify this abuse and implement immediate measures.

On April 20, 23, 24 and May 12, 2005, the “special case” reported a rape by other persons. She wanted to go to the hospital. CFR responded each time and Sunstar transported to Morton Plant Hospital. Union Exhibit #19 I find it irresponsible Chief Geer and Roseto were apparently unaware of the ongoing problem of the mentally ill system abuser. Where was the due process investigation to show just cause?

Grievant was still on the payroll while the “special case” continued to call and unique protocol by the CFR and OMD were being developed for the “special case”. Union Exhibit #7 The City investigation by Mr. Roseto should have seen these unique protocols and asked if they are punishing good employees for a system abuser. Why wasn’t Mr. Roseto advised of these mitigating circumstances? On April 20, 2005, a fire lieutenant advised all fire department shifts of the chronic 911 abuser in this case and warned of the “high risk refusal” problem. Union Exhibit #6 Subsequently, the CFR and the OMD created a special response for the EMS units in July of 2005. See Union Exhibit #7 Why would the Grievant be terminated in May 2005 when he did not have the benefit of the special response to “the special case in Rescue 49 district”. Arbitrators may consider mitigation factors such as good employment records, length of service and the circumstances of the misconduct. Food & Commercial Workers Local 7 v. King Soopers, Inc., 222 F 3d 1223, 164 LLRM 2970 (10th Cir. 2000) I find the City failed to identify a system abuser which provided mitigating circumstances for the Grievant to sustain his grievance.

**D. The City can accommodate the Grievant while he seeks to
reinstate his Pinellas County Paramedic Certificate**

I have no authority to reinstate the Grievant’s Pinellas County paramedic certificate or to influence the OMD. The CBA is the limit of my jurisdiction. I am aware the CFR still has the firefighter classification for those who never sought EMT or a paramedic certificate from the State of Florida. On March 29, 2005, Chief Geer asked for an accommodation of the OMD for the Grievant to continue to work as an EMT employee and where Grievant would not be in charge of any ALS units in the CFR. The OMD

allowed the accommodation from March 29, 2005 to May 10, 2005 for the Grievant to work as an EMT on a BLS unit. When the OMD “revoked indefinitely” the Grievant’s Pinellas County certificate, the OMD’s decision stated the Grievant could appeal, and further, the OMD would report to the appropriate state department under Florida State Statute (FSS) 401.411 and 401.414 for further investigation of this infraction. Apparently, the Florida state regulator took no action and the Grievant has his current state paramedic certificate in good standing. In fact, Grievant has been teaching EMT and paramedic classes in a neighboring county with a letter of acclaim from that community college. Union Exhibit #18 I do not know if the OMD saw the extensive file of the CPD response to this system abuser before March 26, 2005 or if the OMD heard the 911 dispatch to R49 on March 26, 2005. I do know that, on or about July 14, 2005, Dr. Romig issued an email to her staff to explain the special case in R49’s district. Further, the OMD must know the Baker Act and the fact that the system abuser was voluntarily transported by the police to a hospital at 05:40 hours that morning. Many states such as Texas and Tennessee utilize the laws, as the Baker Act, to send specially trained police officers known as Crisis Intervention Teams (CIT) to the mentally ill and/or system abusers, to make the initial decision for medical and/or voluntary commitment. See Psychiatric News, March 3, 2006, Volume 41, #5 pg 8 by Rich Daly. Police Learn Better Response to People with Mental Illness. The arbitrator’s review of articles on this subject manifests a growing problem for EMS systems and in the end a growing expense for the taxpayer. Id. Common sense is needed and full utilization of laws such as the Baker Act.

The Grievant was hired in 1995 when the City required new employees to gain the Pinellas County certified paramedic status “within first year of employment”. City Exhibit #8 On May 10, 2005, Laurie A. Romig, Medical Director for Pinellas County, issued a “revoked indefinitely” decision for the Grievant’s certification as a paramedic in Pinellas County. City Exhibit #4 The Medical Director’s decision was for a violation of Section V, subsection 3.K “For other just cause, including unbecoming behavior or unprofessional conduct reflecting a poor system image.” The Medical Director’s decision was issued one day after the City and Chief Geer issued its press release and conducted its press conference for the Grievant’s termination. Previously, the Medical Director and Chief Geer conducted an interview of the Grievant on May 3, 2005. Admittedly, I have no knowledge of the OMD’s reasons for issuing her decision nor do I have any knowledge of what evidence was presented into the OMD hearing process. However, I find significant that FS 401.411(3) states:

“(3) one year after the revocation of a license or certificate application may be made to the department for reinstatement, and the department may authorize reinstatement.”

I further reviewed the Pinellas County OMD Rules and Regulations concerning just cause revocation. I find no barriers for the Grievant to ask for reinstatement of his certification from the OMD especially after one year. It could be the OMD may review this Award and realize some mitigating factors should be considered. The OMD may determine the “revoked indefinitely” decision means never will the Grievant work as a paramedic in Pinellas County. I assume however, the OMD has only the powers granted by the statute and then by the ordinances in Pinellas County. The OMD can reinstate the Grievant’s certificate, upon request, at any time for good cause or after one year following

FS401.411(3). Clearly, the Grievant does have a right to seek his reinstatement. It would seem illogical that the OMD may revoke a paramedic certificate forever or beyond the one-year period as specified in FS 401.411(3). Licenses or certificates of professional people are considered property rights protected by the United States Constitution. Clearly, the reinstatement of a paramedic's license can be considered by the OMD. Again, the parties CBA incorporates by reference the FS 401 and 447 et. seg. While I will use the CBA as the basis or essence for the Award here, I can consider external law and interpret this CBA in harmony with the relevant Florida statutes and the MOMs and Rules and Regulations of the OMD. Steelworkers v. Enterprise Wheel & Car Corp., 363 U.S. 593, 46 LRRM 2423, 34 LA 569 (1960) cited with approval in Paperworkers v. Misco Inc., 484 U.S. 89, 126 LRRM 3113 (1987) cited with approval in Eastern Associated Coal Corp. v Mineworkers District 17, 531 U.S. 57, 165 LRRM 2865 (2000)

Article 23, Section 4E specifies the arbitrator shall not have the power to substitute his judgment for that of the Department or the Medical Director with whom Firefighter/Lead Medics work in relation to performance of employees to the standards of excellence desired by the City or the Medical Director. However, this arbitrator has the authority to determine just cause and whether the discipline is consistent with due process. Article 6 Further, Article 23 Section 7, allows the Fire Chief to determine when a Firefighter/ Lead Medic is eligible to transfer temporarily from an ALS unit without loss of pay or a demotion for the purpose of employee development. The City of Clearwater, Class title, Firefighter/Lead Medic provides for the duties, essential functions and minimum qualification requirements. City Exhibit #8 Specifically, the City requires the "Ability to

become Pinellas County certified paramedic within first year of employment.” I have decided the Grievant was terminated without just cause. The CBA gives the arbitrator the authority to reinstate the Grievant with full back pay. I am concerned the City, through its press releases and Chief Geer’s presence at the OMD investigation, may have caused an overreaction by the OMD on the Grievant’s alleged misconduct. As I previously explained, the Grievant may have used poor judgment but the overwhelming mitigating circumstances caused this arbitrator to reinstate the Grievant with full back pay. Accordingly, I find support in the CBA and CFR job description to allow Grievant, for one year after rehire, to seek reinstatement of his paramedic certificate in Pinellas County. I believe during any delay up to one year, the City can accommodate the Grievant to work as a firefighter or seek an agreement with the OMD for the Grievant to work as an EMT on a BLS unit. The Grievant can be fully utilized as a paramedic/firefighter at any time if the OMD agrees to reinstate his certificate. I believe the City should support the Grievant’s request for a quick reinstatement of his Pinellas County certificate. Even if the OMD refuses to reinstate the Grievant, he can work as a firefighter, in fire prevention, as a truck operator or other positions in CFR. If after one year the OMD does not reinstate, the Grievant may be demoted pursuant to the CBA and Management Rights, Article 3.

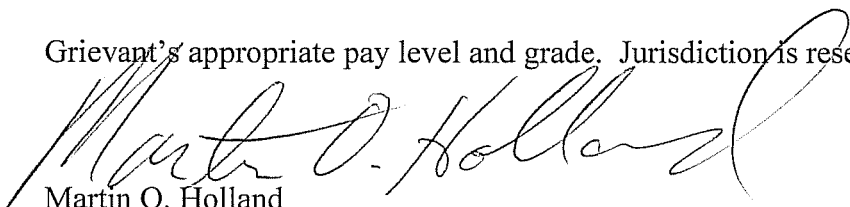
I took notice the CBA allows for demotions in Article 3 Section 1, Management Rights. Article 23, Section 4 related to the demotion of a Lead Medic under specific situations from the OMD or CFR. However, the CBA is silent upon the factual circumstances

presented in this case. Accordingly, the CBA sections above may provide guidance if after one-year the Grievant's Pinellas County Paramedic Certificate is not reinstated.

I find the CBA allows the Grievant to be returned to work even without a current Pinellas County certificate. Various CFR work positions are available to the Grievant. The CFR may seek an accommodation as formulated in March 29, 2005 by Chief Geer. City Exhibit #7 The City will continue to pay Grievant at his preexisting pay level and grade of Lead/Medic or now "Fire Medic" for one year from his date of rehire. The City is instructed to support the Grievant in his request for reinstatement to the OMD. If after one year the Grievant is not reinstated by the OMD, the City will utilize the CBA to adjust the Grievant's pay level and grade to the appropriate level under the circumstances.

Award

The grievance is sustained. The Grievant shall be made whole with full back pay and seniority. The Union's request for interest is denied. The City is instructed to support the Grievant's request for reinstatement with the OMD in Pinellas County. The Grievant will maintain his preexisting pay level and grade improved by any general wage increases during the interval of May 12, 2005 to present. If after one year, the OMD does not reinstate the Grievant's paramedic certificate, the CBA may be utilized to adjust the Grievant's appropriate pay level and grade. Jurisdiction is reserved.


Martin O. Holland
Arbitrator

Dated September 15, 2006