BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between	
PIERCE COUNTY SHERIFF'S DEPARTMENT EMPLOYEES UNION - TEAMSTERS LOCAL 662	Case 82 No. 44387 MA-6281
and	
PIERCE COUNTY (SHERIFF'S DEPARTMENT)	

Appearances:

Ms. Christel Jorgensen, Business Agent, General Teamsters Union Local 662, on behalf of the Pierce County Sheriff's Department Employees Union.

Weld, Riley, Prenn & Ricci, Attorneys at Law, by Mr. Richard J. Ricci, on behalf of Pierce County.

ARBITRATION AWARD

General Teamsters Union Local 662, hereinafter the Union, requested that the Wisconsin Employment Relations Commission appoint a staff arbitrator to hear and decide the instant dispute between the Union and Pierce County, hereinafter the County, in accordance with the grievance and arbitration procedures contained in the parties' labor agreement. The County subsequently concurred in the request and the undersigned was appointed to arbitrate in the dispute. A hearing was held before the undersigned on October 23, 1990, in Ellsworth, Wisconsin. There was no stenographic transcript made of the hearing and the parties submitted post-hearing briefs in the matter by November 9, 1990. Based upon the evidence and the arguments of the parties, the undersigned makes and issues the following Award.

ISSUES

The parties were unable to stipulate to a statement of the issue and agreed to have the Arbitrator frame the issue.

The Union would state the issue as being:

> Did the Employer have just cause to suspend Deputy Sheriff Douglas Sjostrom for three (3) days without pay? If not, what is the appropriate remedy?

The Employer would state the issue as follows:

> Did the County violate the Collective Bargaining Agreement when it disciplined the grievant for failing to respond to an emergency call? If so, what is the appropriate remedy?

The Arbitrator concludes that the issue to be decided may be stated as follows:

> Did the County violate the parties' Collective Bargaining Agreement by suspending the Grievant, Douglas Sjostrom, for three days without pay for his actions on July 7, 1990? If so, what is the appropriate remedy?

CONTRACT PROVISIONS

The following provisions of the parties' 1989-1990 Agreement have been cited:

ARTICLE 3

MANAGEMENT RIGHTS

> Except as otherwise set forth in this Agreement, it shall be the exclusive function of the Employer to hire, direct and control the work force, take disciplinary action for just cause, assign work and schedule hours of the work force.

. . .

ARTICLE 9

DISCHARGE - DEMOTION OR SUSPENSION

Section 1. Employees will not be discharged, demoted or suspended without just cause. The provisions of Section 0 of the "Policies for Pierce County Sheriff's Department" are incorporated in this Article 9.

Section 2. Employees charged with conduct not serious enough to warrant a discharge shall be given a written warning before further disciplinary action shall be taken.

. . .

BACKGROUND

Douglas Sjostrom, hereinafter the Grievant, has been employed by the Pierce County Sheriff's Department since January of 1980 during which time he served in the position of dispatcher/jailor for eight years and two years as patrolman, and at the time of the incident in question was in the position of dispatcher/jailor. The Grievant has also been certified as an Emergency Medical Technician (EMT) for 13 years.

On July 7, 1990, while the Grievant was on duty as a dispatcher, an accident was reported and the Grievant dispatched a squad car (Patrolman Gunderson) to the scene of the accident and an ambulance was also dispatched. After arriving at the scene of the accident the patrolman radioed in the location of the accident and subsequently also radioed in the extent of the injuries as best he knew them. Subsequently, assistance was requested from the Ellsworth Fire Department and a second ambulance was also requested. Approximately eight minutes after arriving at the scene of the accident the patrolman radioed in that the EMT was requesting that an air ambulance (helicopter) be dispatched to meet them at St. John's Hospital. There was a brief intermission and then the Grievant radioed back to Patrolman Gunderson that he felt the EMT had over-stepped his bounds and he would not dispatch an air ambulance to the hospital. Approximately five minutes later the patrolman again radioed in and said that the EMT service again requested an air ambulance and another dispatcher on duty, Stockwell, then dispatched the air ambulance to meet the EMTs at the hospital. The EMTs that had requested the air ambulance had been in communication with St. John's Hospital; however, the Grievant was not privy to the conversations between the EMTs and the hospital.

The Sheriff monitored the radio calls between the Grievant and Patrolman Gunderson on his scanner at home. The Sheriff did not try to call the Department, but did subsequently speak to the Undersheriff, Dispatcher Stockwell, Patrolman Gunderson and the Grievant regarding the matter. On July 9, 1990 the Sheriff received a letter from the Director of the Ellsworth Area Ambulance Service complaining about the Grievant's refusal to dispatch the air ambulance to the hospital as the EMT's had requested. By the following letter of July 12, 1990, received by the Grievant on July 15, 1990, the Sheriff notified the Grievant that he was being given a three-day suspension:

Douglas Sjostrom
Deputy Sheriff
Pierce County Sheriff's Dept.

RE: NOTICE OF SUSPENSION

Dear Deputy Sjostrom,

On Saturday, July 7, 1990, at approximately 1:35 P.M. the Ellsworth Area Ambulance was at the scene of a personal injury accident. Officer Gunderson was at the scene and was requested by the Ellsworth Area Ambulance Service to have our dispatch call Life Link III Air Ambulance and have them go to St. John's Hospital in Red Wing, Minnesota. Your response to Officer Gunderson was that you were not going to call the helicopter because you felt they were over stepping their bounds.

Your failure to immediately act upon the emergency request of Officer Gunderson was a neglect of your duties as a dispatcher for my department. I cannot and will not tolerate this type of action by a dispatcher.

After a thorough investigation of this incident, I have determined that your behavior requires three days off without pay. The three days will be July 24, 25, 26, 1990. During these three days, you will not act or perform any duties as a Deputy Sheriff.

In the future you will respond positively to all requests from field officers and other emergency personnel as requested. If you have a problem with their request, you will bring it to the attention of a supervisor at a later date.

Respectfully,

James W. Hines /s/

James W. Hines
Pierce County Sheriff

cc: Union Stewards
Supervisory Personnel
Payroll Clerk
File

By letter of July 16, 1990 the Sheriff notified the Grievant that he had a right to a hearing on his suspension and such a hearing was held.

The Grievant subsequently served a three-day suspension for his refusal to dispatch the air ambulance on July 7, 1990. The suspension was grieved. The parties were unable to resolve their dispute and proceeded to arbitration before the undersigned.

POSITIONS OF THE PARTIES

COUNTY:

The County makes a number of arguments in support of its position that it did not violate the parties' Agreement by suspending the Grievant for three days without pay. First, the County notes that under Article 3 of the Agreement, it is stated that "it shall be the exclusive function of the Employer to hire, direct and control the work force, take disciplinary action for just cause, . . ." and that under Article 9 it is provided that employes shall not be suspended without just cause. The County asserts that the infraction in this case was so serious in nature that the "7-Step just cause standard" is not applicable. Rather, the burden here is on the Union to show that the County's actions were arbitrary or capricious. The County contends that its action in disciplining the Grievant was in no way arbitrary, made in bad faith or clearly wrong. The Grievant was disciplined for failing to abide by the County's policy of immediate dispatch in a life and death situation.

The County rejects the argument that the Grievant was improperly disciplined on the basis that there was no specific written policy dealing with the dispatch of helicopter emergency services. It asserts that, because of the absence of a rule to the contrary, the request for a helicopter should have been treated in exactly the same manner as any other emergency request, i.e., an immediate response dispatching the requested emergency services pursuant to the job duties and policies laid out in the dispatcher position description. Since the Grievant consciously refused to carry out the very basic duty of his position to respond to an emergency request, he was properly suspended without pay. The position description for radio dispatcher/jailor includes the following:

A. Taking and relaying messages and dispatching personnel and equipment by radio communication in response to crimes, accidents, fires, medical and other emergencies and requests . . .

A. 1 Operates and maintains a radio and telecommunication system with mobile patrols, municipalities and other emergency agencies on a county wide basis.

. . .

A. 4 Answers incoming calls, dispatching County and Municipal squads.

. . .

A. 8 Dispatches officers and other emergency personnel to emergency situations.

(Emphasis added)

The County contends that the above does in fact address the dispatching of "emergency personnel to emergency situations." The dispatching of the helicopter requested on the day in question falls under that category. The

record indicates that there has never been an exception to the above stated dispatch policy. In prior instances where an air ambulance was requested the County has followed that immediate response policy.

While the Grievant testified that he had been an EMT for 13 years and that it was his understanding that a request for a helicopter could only be made by a doctor and that helicopter transport could only be dispatched to the scene of an accident, the Union failed to prove that the Grievant had ever been informed of such a policy or that he had received training to that effect. In that regard, the County cites the testimony of the Grievant's former instructor from the area technical institute that specific training relative to emergency air transport was never part of the curriculum of any of his classes and had never been discussed. The County asserts that its policy is that dispatchers dispatch and that there are no exceptions to that policy for air transport or any other emergency situation. The County is not required to have a specific policy dealing with each different emergency situation. The County has a clear general policy that dispatchers are to respond without question to emergency requests and there is no exception to that policy. That this is clearly understood by the other dispatchers is evidenced by the testimony of Captain Gulbranson that other dispatchers have provided immediate response to air transport requests in the past which had not come directly from doctors, and by the fact that when the second request came in on July 7 the other dispatcher on duty immediately dispatched the helicopter ambulance as requested. In that same regard, the fact that the Grievant did not see the "Ellsworth Area Ambulance Service Helicopter Policy" is totally irrelevant. Since he was aware of the County policy to respond to all emergencies without question, the Grievant should not have relied on his own judgment. A dispatcher's duty is to respond, not to evaluate. Here the Grievant was disciplined because he did not respond to the request.

The County argues that even if the Grievant believed that the request for an air ambulance was unreasonable, it was his duty to respond to the request first and address his concerns later. The County argues that the Grievant's statement that he did not dispatch the requested helicopter because he felt the EMT was "overstepping his bounds" is incorrect, since the EMT at the scene had full authority to request the air ambulance pursuant to the "Ellsworth Area Ambulance Service Helicopter Policy." Regardless of whether or not the EMT had overstepped his bounds, it was not for the Grievant to decide. His duty was to dispatch the requested emergency service and not to evaluate its appropriateness. In addition, the Grievant conceded that he was not privy to the discussions between the EMTs and the hospital. Thus, the Grievant was simply guessing as to both the proper procedure and as to whether or not the EMT had spoken to a doctor with regard to the request. The County also asserts that even though the Grievant was an experienced EMT he was at the time on duty as a dispatcher for Pierce County and, therefore, his training as a dispatcher and the applicable policy should have controlled. Lastly in this regard, the County asserts that even if an employe believes that a rule is unreasonable, the employe must "work now, and grieve later." Here, whether or not the EMT was exceeding his authority in making the request, the Grievant's duty was to dispatch the emergency personnel requested and not to second guess the EMT.

The County also contends that this three-day suspension was appropriate even if the Grievant felt he had acted in good faith. The County asserts that while it is not attempting to prove the Grievant acted out of malice or willful wrong doing, and despite whatever good faith motives he may have had, the fact remains that he failed to carry out an established policy in an emergency situation, choosing instead to rely on his own judgment. Under the circumstances, where a victim was close to death, the Grievant cannot be allowed to utilize his own judgment and must instead be required to follow the procedure in every instance. The County has the authority and the responsibility to enforce discipline in such an instance and though the Grievant may regret his actions, that does not alleviate the need for appropriate discipline.

The County asserts that given the seriousness of the infraction, that alone warrants the discipline imposed. The facts are undisputed that the Grievant refused to dispatch the requested air ambulance to aid a critically injured victim and the failure to do so was such a serious infraction of a basic duty that the discipline imposed is certainly warranted. A three-day suspension may be considered lenient under the circumstances and arbitral authority suggests that a discharge may have been appropriate for such a serious infraction. In this case, the Grievant's good record prior to the incident was considered in deciding upon a three-day suspension rather than a discharge. Finally in this regard, the County asserts that had it not disciplined the Grievant, it could have opened itself to liability for compensatory and punitive damages. Citing, Archie v. City of Racine, 826 F.2d 480 (7th Circuit, 1987); and Human Services Board Serving Lincoln, Langlade and Marathon Counties (Arbitrator Houlihan). For all of the above reasons the County concludes that the seven standards of just cause do not apply in this case and that the Union has failed to show that the County's action was arbitrary or caprious.

The County next contends that even if the just cause standard is applied

in this case, the suspension meets that standard. First, the seven step test established by Arbitrator Daugherty does not require that all seven steps be applied in each and every situation. Even Arbitrator Daugherty recognized that the standards cannot be applied blindly to all situations: "Frequently, of course, the facts are such that the guidelines cannot be applied with slide rule precision." Citing, Grief Brothers Cooperage Corporation, 42 LA 555 (1964). Even if the seven steps are applied, the County's action met all of those steps. The Grievant was given a copy of his position description that lists the dispatcher's duty to "dispatch emergency personnel to emergency situations." By signing that document the Grievant stated that he understood his respons-ibility to perform that duty and that failure to perform would result in disciplinary action. Thus, he was forewarned of any possible or probable disciplinary consequences of his conduct. Further, failure to perform a basic, fundamental aspect of his duties was such a grave offense that he could reasonably be expected to know that such conduct would result in discipline. Also, there can be no doubt that the County's rule to respond without question to all emergencies is reasonably related to the orderly, efficient and safe operation of the employer's business. The County determined whether the Grievant violated the policy in this regard via the Sheriff's monitoring the calls and responses on his scanner. The County's investigation of the matter was fair and objective in that the Grievant was afforded an open session hearing pursuant to Section 19.85(1)(b), Wis. Stats., at which he was given the opportunity to tell his side of the story. There is also no dispute in this case that the Grievant in fact failed to dispatch the requested air ambulance and so the Grievant is guilty of the charge against him. The County did not discriminate as to the Grievant. The testimony indicates that this is a case of first impression in the County and that this is the only instance where a dispatcher has ever failed to respond to an emergency request. In the other instances where an air ambulance was requested without a doctor being on hand the dispatchers properly followed the County's policy and dispatched the requested emergency vehicle. With regard to the seventh step, the County asserts that the degree of discipline was reasonably related to the seriousness of the offense considering the past record of the employe. The County considered the Grievant's good record and weighed that factor heavily in its decision to impose a three-day suspension rather than discharging the Grievant. The County cites arbitral precedent for the proposition that the discipline imposed must be upheld and not modified since it did not abuse its discretion in suspending the Grievant and the suspension was not arbitrary or caprious. Thus, the County concludes that even if the just cause standard is applied in this case, the County has met that standard and its decision to impose a three-day suspension should be upheld.

UNION:

The Union characterizes the County's position as being that: "Dispatching an air ambulance is a routine matter just as answering the telephone and in the absence of a policy treating the dispatching of an air ambulance different than answering the telephone Deputy Sjostrom should have dispatched the air ambulance as requested." The Union takes the position that dispatching an air ambulance is not comparable to the task of answering the telephone, nor can it be assumed to be covered by the job description. The job description shows that answering the telephone as part of a dispatcher's job that occurs very frequently; however, the testimony in this case made it very clear that dispatching an air ambulance does not occur very frequently. The Grievant testified that he had dispatched an air ambulance only a few times in the past and then only to the accident scene and never to the hospital, while Captain Gulbranson testified that an air ambulance had been dispatched a few times in the past and he was not sure whether it was to the scene or to the hospital. The Union contends that dispatching an air ambulance is not something that falls under the generality of a job description. To the contrary, it is a task that warrants a policy which should be provided to all employes of a department that must deal with the type of phone calls and requests that the Grievant had to deal with on the day in question. There is no such policy in the Pierce County Sheriff's Department. The "Helicopter Protocol" of the Ellsworth Area Ambulance Service and the Emergency Helicopter Transportation Services Agreement with Life Link III, exhibits introduced by the County, had never been seen by the Sheriff, Gulbranson, the Grievant, the Grievant's supervisor or by the other dispatcher, Stockwell. Thus, the Union contends that their existence does not constitute a policy until it is shared with the department employes.

The Union asserts that the Grievant has been a ten year employe of the Department with a good record and has never been disciplined. He also has been a certified EMT for the past 13 years. Under the circumstances in this case and in the absence of a departmental policy, the Grievant used his best judgment which was based on what he had learned during his EMT training. The Union cites the testimony of the former EMT instructor for the Grievant as supporting the Grievant's conclusion that a request to dispatch an air ambulance to a hospital should come from the physician and not from an EMT. The Grievant made clear that if the air ambulance would have been requested to

the accident scene, there would have been no question as to whether to dispatch it and that if a policy had existed, he would have followed that policy. Since no policy did exist the Grievant was required to use his own judgment and EMT training to make the decision.

The Union concludes that the Grievant received the three-day suspension due to the fact that he used his judgment in a case where he had no handbook, department policy or anything else available to guide him. It asserts that the issue is not whether his judgment was correct, but whether or not the Grievant should be punished for using his judgment in the absence of a departmental policy. The Union asserts that the proper outcome in this matter should have been the issuing of a departmental policy with regard to dispatching air ambulances in the future. The Union contends that there was no just cause to discipline the Grievant since there were no rules or standards issued that the Grievant could have followed and his conduct does not fall under the premise of having been so clearly wrong that no reference was necessary, rather, it was based on what he had been taught and there was no malicious intent to harm.

Lastly, the Union cites Article 9, Section 2, of the Agreement as stating that a written warning shall be given for conduct not serious enough to warrant a discharge. The Union takes the position that if the Arbitrator upholds just cause for discipline, it must be reduced to a written warning under that provision.

As a remedy, the Union requests that the Grievant be made whole economically and that his file be cleared of all references to this discipline.

DISCUSSION

The evidence in this case indicates that on July 7, 1990 the Grievant was on duty as a dispatcher in the Pierce County Sheriff's Department and that he received a request from EMTs at the scene, via the patrolman, that an air ambulance be dispatched to meet them at the hospital where they would be transporting the accident victim. The Grievant refused the request based on his understanding that it was for a doctor, and not an EMT, to decide whether to request that an air ambulance be dispatched to the hospital, as opposed to a request to dispatch an air ambulance to the scene of the accident. The Grievant conceded that he was not privy to any communications between the EMTs at the scene of the accident and the hospital where the victim was to be transported.

The position description for a radio dispatcher/jailor includes the following:

> Goals and Worker Activities
>
> A. Taking and relaying messages and dispatching personnel and equipment by radio communication in response to crimes, accidents, fires, medical and other emergencies and requests and assisting the Sheriff with clerical tasks.
>
> . . .
>
> A. 8 Dispatches officers and other emergency personnel to emergency situations.

There is no specific departmental policy dealing with the dispatching of air ambulances. There have been several instances in the past where air ambulances have been dispatched and in the instant situation when the second request came over the radio the other dispatcher on duty, Stockwell, dispatched the air ambulance to the hospital as requested.

While a specific policy dealing with the dispatching of air ambulances might be helpful, the Arbitrator does not find the instant situation to be so unique as to require a specific policy to guide the conduct of the employe. The evidence indicates that air ambulances have been dispatched in the past and there is no indication that the requests were ever questioned or denied. There is also no evidence that the Grievant was acting maliciously when he denied the request, rather, the evidence indicates that he was acting in the manner he felt appropriate given his EMT training. The problem with that is the Grievant was not in the role of the EMT in this situation, but was the dispatcher whose duty it was to dispatch the requested emergency service. The correctness of a request for an air ambulance to meet the EMTs and victim at the hospital is a problem for the EMTs to be concerned with, and not the Grievant. This is especially so since the Grievant conceded that he was not privy to any communications between the EMTs and the physician at the hospital. Hence, he had no way of knowing if the request for an air ambulance had originally come from the physician or the EMTs at the scene of the accident.

For the above reasons the Arbitrator concludes that there was cause for

discipline in this instance. However, the Union has cited Article 9, Section 2, of the Agreement as limiting any discipline in this situation to a written warning. That provision provides as follows:

ARTICLE 9

DISCHARGE - DEMOTION OR SUSPENSION

. . .

Section 2. Employees charged with conduct not serious enough to warrant a discharge shall be given a written warning before further disciplinary action shall be taken.

. . .

The County does not address this language of the Agreement, but contends instead that there was just cause for the three-day suspension. The evidence indicates that the Grievant was given the suspension, as opposed to more serious dis-cipline, i.e., discharge, due to his heretofore clean record and the fact that he is considered a good employe. In other words, the County considered that the Grievant's "conduct (was) not serious enough to warrant a discharge . . . ." The language of Article 9, Section 2, of the parties' Agreement is clear and unambiguous that in such a situation a written warning will be issued "before further disciplinary action shall be taken." Given that clear wording in the Agreement, the Arbitrator concludes that there being just cause for discipline, the discipline that should have been imposed was a written warning. On that basis, the County is being directed to rescind the suspension and to issue a written warning in its place.

Based on the foregoing, the evidence and the arguments of the parties, the Arbitrator makes and issues the following

AWARD

That the County is directed to reduce the suspension to a written warning for the Grievant's conduct on July 7, 1990 in refusing to dispatch the air ambulance as requested, and to make him whole for any lost pay and/or other benefits that he would have been entitled to under the Agreement, but for the three-day suspension without pay.

Dated at Madison, Wisconsin this 27th day of February, 1991.

By _____
David E. Shaw, Arbitrator