

## VOLUNTARY ARBITRATION TRIBUNAL

---

In the matter of Arbitration between:  
**International Association of Firefighters, Local 1158**

and

**City of Clearwater, Florida**  
FMCS Case No. 05-59160

---

**Hearing Dates:** July 18 & 28, 2006

**Arbitrator:** Richard H. Potter

**Issue:** Was the Grievant, Michael Jones, discharged for cause?

**Appearances:**

**For the Union:**

Paul Donnelly	Counsel for the Union
Michael Jones	Grievant
David Hogan	Secretary-Treasurer, Local 1158
John Lee	President, Local 1158
Randall Bacher	Former Operations Division Chief, Clearwater Fire Department (CFD)
James Fogarty	Former Assistant Chief, Emergency Medical Services, CFD
Norman Jernigan	Lieutenant of Rescue, CFD
Thomas Stubblefield	Acting Fire Lieutenant, CFD & 911 Operator
Trevor Murray	Former Lead Medic, CFD

By agreement, the transcript of the testimony of the following witnesses in the May 23, 2006, arbitration of Trevor Murray's grievance was accepted into evidence as their testimony in this case:

Tracy Black	Officer, Clearwater Police Department
Wendy Cason	Lieutenant of Rescue, CFD
Gerard DeVivo	Paramedic, CFD
Larry Williams	Lieutenant of Rescue, CFD

**For the City:**

Gregory Hearing	Counsel for the City
Brian Ussery	Counsel for the City
Joseph Roseto	Director of Human Resources, Clearwater, FL
Jamie Geer	Chief, CFD
Allen Del Prete	Manager, Labor & Employee Relations, Clearwater, FL
David Lock	Quality Assurance Manager, Pinellas County Medical Director's Office (MDO)

**Relevant Contract or Rules Language:**

**Agreement Between City of Clearwater and IAFF, Local 1158**

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... 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 procedure and patient care."

**Pinellas County EMS Medical Operations Manual, 1.1.2005**

Section 3.1. Priority Dispatch and Response Modes

3.1K Cancellation Enroute: "An ALS Unit or BLS Unit, with a County Certified paramedic, must continue to the scene of every 911 request for service and determine the need for EMS first hand. Once the 911 system is activated for an EMS call, a County Certified Paramedic must investigate it. An EMS response shall not be cancelled by the general public or law enforcement..."

**Clearwater Performance and Behavior Management Program, Vol. I**

Appendix D: Citywide Standards. "Additionally, the following Citywide Standards represent integrity issues of such a serious nature that immediate termination may be recommended.

22. "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 the certification will seriously affect the employee's credibility and ability to perform satisfactorily."

**Background:**

At 5:27 A.M. on Saturday, March 26, 2005, the Pinellas County 911 Center received a call from an individual reporting she believed she had been raped while sleeping. The operator inquired if she needed an ambulance and she responded that she thought so, at which time the 911 Dispatcher sounded a loud tone and loudspeaker announcement at Advanced Life Support (ALS) Rescue Unit 49 (R49), which was the closest rescue unit to the caller. The 911

Dispatcher also notified the Clearwater Police Dispatcher, who separately dispatches police units.

R49 was staffed by Firefighter/Lead Medic Trevor Murray and Paramedic Michael Jones, who were sleeping at the time of the call and were nearing the end of their 24-hour shift that had begun at 8:00 A.M. the previous morning. By 5:29 A.M., Lead Medic Murray was at the truck, turned on the batteries and radio and answered the dispatch and was told by the 911 dispatcher of the call. He was informed that the caller had made previous similar calls. Murray replied that he was aware of previous calls and that R49 was responding. At 5:30 A.M., Murray told the Operator to have the Police Department call if R49 was needed and that R49 was "available" or ready to take another call.

Officer Tracy Black heard the police dispatcher dispatch a police unit that was close to the caller to respond to the call and, even though she was further away, volunteered to take the call. She testified she volunteered because the caller was well known and had sometimes made allegations that the male officers who had responded previously had assaulted her. After arriving on the scene and speaking with the caller, Officer Black called police dispatch and reported the CFD was not needed. After talking to the caller further she again called police dispatch and said the CFD was needed. Officer Black determined the caller was not a danger to herself or others, which is the criterion for involuntarily committing (or "Baker Acting") the individual to a mental health facility. However, after further discussion with Black, the caller herself decided she needed help and Black again contacted the police dispatcher and again reported the CFD was not needed and then transported the caller to a mental health facility. There was no evidence presented that R49 was informed of any of the communications between Officer Black and the Police Dispatcher.

On the following Monday, Division Chief of Operations, Randy Bacher, received a Quality Assistance Review (QAR) report from David Lock, the Quality Assistance Manager for the Pinellas County Medical Director's Office (MDO). The MDO has overall responsibility for emergency medical response for Pinellas County. QAR's (an estimated 800/year, according to Lock) are generated whenever there is an anomaly in service that MDO believes may impact quality of service. This QAR reported that R49 had failed to respond to a 911 dispatch for medical service. It also stated that Murray and Jones were placed on clinical suspension, meaning that they were prohibited from participating in patient care in any capacity in Pinellas County under the auspices of the County Medical Director. Although normally the rescue lieutenant responsible for the shift on which an incident occurs would be responsible for investigating a QAR, that person was away and because of the seriousness of the QAR, Bacher undertook the investigation himself.

Bacher conducted a formal investigation Wednesday, March 30, during which he interviewed Murray and Jones separately, in the presence of Union representatives. He also requested and received information from the

Clearwater Police Department about the caller, which turned out to be some 119 pages in length. During his interview, Murray was forthcoming about what happened and admitted that in retrospect he used poor judgment in not going to the caller's address. He reviewed with Bacher the history of the caller with regard to previous calls claiming she had been raped and the fact she normally refused treatment and transport to the hospital. He assumed full responsibility, as Lead Medic and indicated he had been the one communicating with the 911 Operator. In Jones' interview, he confirmed what Murray had said, and also indicated that he had interactions with the caller while serving as a paramedic in the county jail. While Murray was the Lead Medic, Jones accepted part of the responsibility for the non-response.

Following his interviews, Bacher discussed the matter with Fire District Chief Wili and Rescue Lieutenant Jernigan. They decided that, considering the unique circumstances and the forthrightness and remorse demonstrated by both men, a similar infraction would not happen again. Bacher instructed both men to undertake training on the Pinellas County Medical Operations Manual under the supervision of Rescue Lieutenant Jernigan, which is consistent with the Clearwater Performance and Behavior Management program, the discipline process adopted by the City. He placed notes in their files and instituted oversight by Lt. Jernigan and Chief Wili.

At the request of Chief Geer, Bacher gave his report of the investigation to the Chief, who personally interviewed Murray and Jones on April 5, about the incident. Geer determined that the offense was so serious with the potential liability to the City and the County Medical Director so great that the proper discipline should be termination. However, he testified that he withheld making a recommendation for termination because he didn't want to influence the separate and independent investigation being conducted by the MDO. In the meantime, however, he requested the Medical Director allow both to work as EMT's under the supervision of a Paramedic, which was done.

The MDO investigation culminated in a hearing on May 3, at which both Murray and Jones were called upon to testify and which was attended by both Chief Geer and Lt. Fogarty, the Rescue Lieutenant for their shift. On May 10, the Medical Director sent Chief Geer a letter informing him that the County Paramedic Certifications of Murray and Jones were being revoked indefinitely. Jones appealed the ruling of the MDO at a hearing conducted on October 6, 2005 before an administrative law judge from the State Division of Administrative Hearings. At the hearing, Jones represented himself and the MDO was represented by an attorney from Tampa. On March 13, 2006, the administrative law judge submitted his ruling upholding the MDO decision.

On May 6, 2005, the day following the MDO hearing, Chief Geer sent a recommendation to Joe Roseto, Director of Human Resources, to terminate the employment of both Murray and Jones. Roseto, in turn, recommended

termination to the City Manager, the only official in the City of Clearwater with authority to terminate City employees. On May 9, 2006, both men were given letters notifying them they would be terminated effective May 12, and a press release with that information was issued simultaneously. Jones had several people call Roseto on his behalf, but to no avail, and on May 12, both were terminated. Apparently, the practice in Clearwater is to allow employees who are notified of termination to resign before the effective date, but this wasn't communicated to Murray and Jones.

Jones appealed his termination and on July 12, 2005, Robert Brumback, the Clearwater Director of Solid Waste, acting as the City Manager's designee, conducted a hearing for the appeal. On August 9, 2005, Brumback issued his report of the hearing, upholding the termination.

Michael Jones, the grievant in the instant case, received his State EMT and Paramedic certifications in 1996 and 1998, respectively. Prior to being hired by the CFD in 1999, he worked as an EMT and Paramedic for Pasco County Fire and Rescue. He was hired as an EMT, was promoted to Paramedic and worked as a Lead Medic for approximately 1,000 hours while he was a Paramedic. Prior to this incident, he had not been disciplined and had received evaluations of "satisfactory," "highly satisfactory" and "outstanding." The Grievant is currently working as a Paramedic for the City of Zephyrhills, a nearby community.

#### **Positions of the Parties:**

The position of the City is that by failing to respond, the Grievant failed to provide the most fundamental responsibility of a paramedic which is to respond to emergency calls. Simply stated, that duty is, "They call, we go, no exceptions." The City maintains the paramedic has no discretion as to responding, s/he must simply respond. The mental state of the caller has no bearing on whether to respond. Indeed, a caller with mental problems may have an even greater need. The number of previous calls or even "false alarm" calls makes no difference, because the circumstances may be different this time and unless the paramedic goes to the patient, s/he will not be able to tell. By not responding, the Grievant jeopardized the emergency medical system by violating the trust the public has in the system.

The Union presents a multifaceted position. One theory it presented is that R49 was staging at the firehouse until the police had secured the scene. Second, the Union contends that to terminate the Grievant amounts to disparate treatment because previously, others with similar offenses, received lesser punishment. Third, the Grievant may be the victim of anti-union bias on the part of the Chief. Fourth, the Union maintains the punishment does not fit the crime, especially in view of the Grievant's long service and excellent record. Lastly, Lead Medic Murray was the one who communicated with the 911 Dispatcher and, as the person in charge, made the decision not to respond. The Grievant simply

followed his direction and, as a member of a paramilitary organization, wasn't in a position to challenge the leader. The Union may also be pursuing a claim of racial bias, but such claims are heard in another forum.

### **Discussion:**

"Staging" is a term used to describe the situation where rescue units are called to a scene that may be too dangerous or volatile for them to approach immediately. In that case, the unit proceeds to a location near the scene and waits, at the ready, for the police to secure or investigate and to notify the unit that it is safe to approach. In such instances, the unit "stages" in a location that is out of sight of the scene, but close enough to get to it quickly.

According to testimony, most of the dispatches in response to calls from this caller were for the police only. However, when the dispatch also included a rescue unit, it was the practice for the unit to stage because the caller often became agitated at the sight of the rescue unit.

The Union advanced the theory that R49 was actually staging at the fire house, which was, in Murray's estimation, only a minute or two from the caller's location at that time of day. However, all of the witnesses questioned about staging described staging locations as a block or two from the scene, while in the instant case, the scene was about 10 blocks away, according to Division Chief Bacher. In the only two instances that were presented where units had staged at the fire house, the scene was in sight of the fire house. Moreover, when a rescue unit arrives at a staging location, it reports to the 911 dispatcher that it is doing so, in order that the dispatcher may notify the police. R49 made no such report and instead, went "available," meaning it was ready to take another call. Units that are staged are not available to take another call as they are still on the original call. Murray seemed to acknowledge this himself when he testified that if he had said to the 911 Dispatcher that they were "staging" rather than that R49 was "available," "we wouldn't be here today." It's clear that R49 was not staging nor was its intent to stage on March 26.

Although there seem to have been no previous cases involving closely similar circumstances, the Union brought up two other incidents where a rescue unit failed to respond to a 911 call. One occurred on July 20, 1994 at 12:23 P.M., when a 911 dispatcher called R46 to respond to an emergency call. Although available, R26 did not respond, as directed by Lt. Hoffman, who was the Lieutenant in charge of R46. Instead, E46 and E27, the next closest units available, responded. Lt. Hoffman decided not to respond and instead attended a training exercise. At the time of that incident, rescue units were staffed by a Lieutenant and either an EMT or paramedic. At some point in time, that staffing pattern was changed to a lead medic and paramedic, but at the hearing no one was able to pinpoint when that change took place. In any case, Lt. Hoffman was given a one-day suspension, which was the penalty for Level 3, Offense No. 13

of the Guidelines for Disciplinary Action, then in effect. Offense No. 13 is "Mistake(s) due to carelessness which affect the safety of City personnel or the public, equipment, tools or property."

The second incident was one in which a rescue unit responded to a call, treated a patient and returned to the fire house. They then received a second call, identical to the first but refused to go, replying that they had already responded. Only after a third call did they realize they had treated a patient outside when the original call had been for a patient inside the building.

The City disputes that these incidents are similar. In the Hoffman case, although he made a serious error in proceeding to training rather than responding to an emergency call, Hoffman did call the dispatcher to have another unit cover for R46. In the instant case, R49 simply didn't go to the scene. In the second incident, it was an honest mistake by the individuals thinking they had completed the call, not a refusal to respond.

Gerald DiVivo, who testified in the Murray hearing (see witness note, above), related an incident where he failed to respond to a call. He testified that four or five years ago on a Saturday morning, the unit on which he was Acting Lead Medic responded to a 911 call and had been enroute when the dispatcher came on and told him that the police were on the scene, the unit was not needed and that they could cancel. A few hours later, he received a QAR and was counseled by a supervisor that the police department could not cancel a rescue unit (see Medical Operations Manual quote, above). In questioning DiVivo, the City pointed out that there is an exception to the prohibition against a rescue unit being cancelled by the police; when the police arrive at the scene first and cannot find a patient, the Rescue unit can accept a cancellation by the police. The City implied by its questions that perhaps that was the reason for the cancellation, but DiVivo didn't know the reason, and in any case, received a QAR and counseling.

The Union also brought up, through the testimony of James Fogarty, that as a result of the Chief's orders there were a number of incidents when 911 calls were not answered. This apparently happened several years ago during a hurricane. The Chief made the decision that the CFD would "stand down" due to the danger to units presented by the storm, even though surrounding jurisdictions were not standing down. Fogarty testified that he and others had strongly disagreed with that decision as the winds were not particularly strong at the time. He testified that they watched the monitors as a number of calls came in and were not responded to and that a call on behalf of at least one person resulted in her death. In rebuttal testimony, Chief Geer stated that he did indeed order the CFD to stand down, that he made the decision in consultation with the City Manager and other city officials and that the Clearwater Police Department also stood down.

There are, indeed, significant differences in the instant cast to the incidents cited by the Union; however, it does show that there are some exceptions to the "They call, we go, no exception," policy that the City and MDO's office portray as the rule.

The Union contention that the decision to terminate the Grievant was a result of Union animus on the part of Chief Geer was brought up through the testimony of Larry Williams, who testified in the Murray hearing. According to Williams, Chief Geer said that if "they (Murray and Jones) thought that the Union was going to save them their job, they were sadly mistaken." Williams went on to say that it was his impression the decision to terminate was influenced by the fact the two had Union representation. That was the only direct testimony on this issue.

It is certainly clear there is tension between the Chief and the Union. In response to the Arbitrator's question about why there was a press release about the termination, both the Chief and the HR Director indicated there was a lot of press interest in the CFD. Indeed, a reporter of the *St. Petersburg Times* attended the entire hearing and stated he was there because of the ongoing problems between the Chief and Union. A television crew showed up and televised a portion of the second day of hearing. The lead article in the *Clearwater Times*, a special edition of the *St. Petersburg Times*, on the day of the hearing told of a Florida State Public Relations Commission ruling on an unfair labor practice dispute between the Union and the CFD and of the negotiated settlement of another dispute. However, Williams' impression isn't proof, and that was the only evidence the Union offered with regard to this charge.

The provisions of the 2002-2003 Agreement (the latest Agreement provided to the Arbitrator) with regard to discipline are relatively short, no doubt because the discipline system is in large part outlined in the two Clearwater Performance & Behavior Management Program booklets. However, the Agreement does state, "All discipline shall be for just cause and consistent with due process."<sup>1</sup> Of course, like most contracts, this one fails to define "just cause."

Generally speaking, when arbitrators think of just cause, they think of the seven questions posed by Arbitrator Carroll Daugherty<sup>2</sup> and later fleshed out by Arbitrator Adolph Koven<sup>3</sup> in *Just Cause: The Seven Tests*. Both list as the seventh question or test, the penalty imposed, or in Koven's words, "Was the degree of discipline administered by the employer in a particular case reasonably related to (a) the seriousness of the employee's *proven* offense and (b) the record of the employee in his service with the employer?"<sup>4</sup>

---

<sup>1</sup> Agreement between the City of Clearwater and the International Association of Fire Fighters, Local 1158, 2002-2003, Article 6 – Performance and Discipline, p. 6

<sup>2</sup> *Enterprise Wire Co.* 46 LA 359, 363-364 (1966)

<sup>3</sup> Koven, Adolph M. and Susan Smith, *Just Cause: The Seven Tests*, 2<sup>nd</sup> Ed., Revised by Donald Farwell, The Bureau of National Affairs, Washington, D.C. (1992)

<sup>4</sup> *Ibid*, p.24

The Union went to great pains during the hearing to point out the number and nature of the 911 calls made by the caller both before and after the call in question. All told, there were 15 previous calls from this caller in which rescue units were dispatched and the police had received far more. Murray had received just two previous calls and Jones had received one, although he was familiar with the caller from his work at the Pinellas County jail, where he works part time. However, the caller was well known and the 911 Dispatcher noted there had been several previous calls with similar complaints. All this does provide a reasonable basis for Murray and Jones to believe that this call would result in finding the caller delusional again and refusing treatment or transport. The City's position is that regardless of how reasonable their beliefs as to the outcome of the call, their only duty is to respond to the patient to find out. The City also pointed out that there is a process for having the caller designated as "a system abuser," but neither they nor others had begun that process. Shortly after this incident, however, an order went out that the Rescue Lt. was to be notified and would go to the scene whenever a 911 call came from this person.

Despite the presentation by the Union, all witnesses for the City and the Union, including Murray and Jones, said they should have gone to the scene. The question now is how serious was the lapse. The position of the City is that this is among the most serious offenses that could be committed. David Lock from the MDO said he was unaware of any previous incident of units not responding and that the Medical Director considered this an act of "patient abandonment," which is "one of the most egregious acts a paramedic could ever do." Chief Geer testified that he believed this caller, if she so chose, could successfully sue the City and the MDO, resulting in a large monetary award.

Despite one's opinion of the financial liability the City might face in this case, there is no question that the failure to respond is a serious offense. Aside from the testimony of the witnesses, there is really no other reason for the existence of an emergency medical service than to respond to the calls of the public. The City makes a good argument that patients with mental problems, such as the caller, may be most in need of assistance. Indeed, they are some of the most isolated people in our society. The fact this incident didn't end with a bad result is really beside the point. This isn't a case of "no harm, no foul." The public must be confident that help will respond. Incidents such as this may shake that confidence.

The Union presented testimony that rescue units are not to treat rape victims other than to provide necessary emergency treatment (open airways, stop wounds from bleeding) in order to protect forensic evidence. But, of course, in this instance, they had no way of knowing the caller didn't need emergency treatment because they didn't respond.

The final argument the Union advanced was that by not responding, the Grievant was following orders of a superior.

At one time, the Agreement between the parties specified that each ALS unit was to be staffed by a Rescue Lt. and an EMT or Paramedic. During some previous negotiation (exactly which, none of the witnesses could recall) staffing was changed to include a Lead Medic and an EMT or Paramedic. Chief Geer testified such staffing was unique to CFD and he thought it was a stupid way of doing things since they had equal responsibilities, they should be equal positions. Other witnesses stated that no other department in the County had the position of Lead Medic. In any case, at the last contract negotiations, staffing was changed to include either two Paramedics or a Paramedic and an EMT.

The position of the City is that the responsibilities of the Lead Medic were to drive the vehicle, make sure the vehicle had all required supplies, write up the report and make the decision as to what medical care to provide the patient while on the scene. In all other respects, the City contends, the two positions are equal and have equal responsibilities, including the duty to respond. Under questioning from the Arbitrator, the Chief said the Paramedic should even respond by himself if the Lead Medic didn't want to go. The City also said that in this situation, Jones should have called the Lt. of Rescue or the Fire Lt., who was sleeping in the same building, or as a last resort, wake up one of the Firefighter/EMT's to accompany him while he made the call without the Lead Medic.

The Union's position is that the Lead Medic is a promotion position that requires an examination and that the Lead Medic is both more experienced and receives higher pay than a Paramedic. In a paramilitary organization such as the CFD, when Lead Medic Murray made the decision not to respond it was as though he was ordering R49 not to respond and Jones, although he had some questions about the decision, had no choice but to obey. Under cross examination, Jones repeated over and over, "I was following orders, I was following orders."

In the instant case, Murray didn't give an order to Jones. As he stated to Chief Bacher, to Chief Geer and in the hearing, "I made the decision." He was sitting in the driver's seat and was communicating with the 911 Dispatcher when he told the Dispatcher to have the Police Department notify him if they were needed. Jones apparently had some reservations about the decision, and had he been in Murray's position and been making the decision, he may have gone. However, he didn't feel it was such an outrageous or outlandish decision as to argue or to fight or go to a supervisor.

The question is what responsibility did Jones have? Certainly, if evidence had been offered that crews were explicitly told what responsibilities each member had when staffing was changed from Fire Lt. and Paramedic to Lead Medic and Paramedic, there would be no question, but none was offered. The Arbitrator asked what communication was given to the department when the latest change

was made, but got no answer. The assumption must be made that had such training been provided, it would have been offered into evidence.

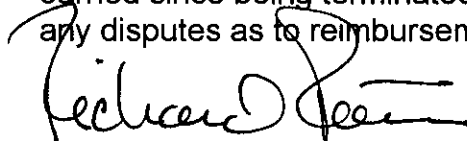
The question now becomes whether, in this situation, an individual should be expected to go over the head of the person appointed leader who is more experienced, of higher rank (and more highly paid) and with whom the individual must work in the future? Some would cite Nuremburg and say following orders is never an excuse. But this situation didn't involve orders of that magnitude. This decision was essentially, "we'll wait and see." It was wrong, and in retrospect, they both recognized it, but it was Murray's decision. Jones followed the decision of his Lead Medic, which was in retrospect, a bad decision. That is his offense and in the opinion of this Arbitrator it is not, in the words of Daugherty and Koven, reasonably related to the penalty of discharge.

The City pointed out through the testimony of Chief Geer and in its brief that without the certification of the MDO as an EMT or Paramedic, there is no place for the Grievant on the CFD. Since the CFD took on the responsibility of emergency medical response for the City of Clearwater, the only jobs available are for firefighters certified by the MDO, or who receive certification within 90 days of taking the job. There are seven individuals who are not certified who were grandfathered in 1988, but since 1988, no one who does not meet this criterion has been hired by the CFD.

However, James Fogarty, Former Assistant Chief of Emergency Medical Services for the CFD, testified that several members of the department had given up their paramedic certifications in order to avoid moving around to various rescue trucks. They also might give up their certifications to work on a truck company or technical rescue team. In short, there is a place for Jones. Obviously, the City will be better off if it can have him recertified as a Paramedic. To this end, it is hoped that it will support him in making a case to the State of Florida to retain his State certification and to the County Medical Director to regain his County certifications.

**Award:**

The Grievance is granted. The Grievant is to be reinstated and reimbursed for the straight time wages he lost, minus any unemployment benefits and wages he earned since being terminated. The Arbitrator will retain jurisdiction to adjudicate any disputes as to reimbursement or reinstatement.



Richard H. Potter

October 16, 2006