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Physicians & Surgeons Ambulance Service, Inc. d/b/a American Medical Response and Teamsters Local Union No. 507 a/w International Brotherhood of Teamsters. Case 8–CA–39333

April 29, 2011

DECISION AND ORDER

BY CHAIRMAN LIEBMAN AND MEMBERS PEARCE
AND HAYES

This is a refusal-to-bargain case in which the Respondent is contesting the Union’s certification as bargaining representative in the underlying representation proceeding. Pursuant to a charge filed on February 8, 2011, the Acting General Counsel issued the complaint on February 22, 2011, alleging that the Respondent has violated Section 8(a)(5) and (1) of the Act by refusing the Union’s request to bargain following the Union’s certification in Case 8–RC–17008. (Official notice is taken of the “record” in the representation proceeding as defined in the Board’s Rules and Regulations, Secs. 102.68 and 102.69(g); *Frontier Hotel*, 265 NLRB 343 (1982).) The Respondent filed an answer admitting in part and denying in part the allegations in the complaint, and asserting affirmative defenses.

On March 14, 2011, the Acting General Counsel filed a Motion for Summary Judgment. On March 17, 2011, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed a response.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

The Respondent admits its refusal to bargain, but contests the validity of the certification based on the Regional Director’s failure to grant a hearing on the Respondent’s objections.

All representation issues raised by the Respondent were or could have been litigated in the prior representation proceeding. The Respondent does not offer to adduce at a hearing any newly discovered and previously unavailable evidence, nor does it allege any special circumstances that would require the Board to reexamine the decision made in the representation proceeding. We therefore find that the Respondent has not raised any representation issue that is properly litigable in this un-

fair labor practice proceeding.¹ See *Pittsburgh Plate Glass Co. v. NLRB*, 313 U.S. 146, 162 (1941). Accordingly, we grant the Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times the Respondent, an Ohio corporation, with its principal facility located at 520 South Main Street, Suite 2438-B, Akron, Ohio 44311 and facilities located at Cleveland East, 26309 Miles Road, Suite 6, Warrensville Heights, Ohio 44128 and Cleveland West, 13929 West Parkway, Cleveland, Ohio 44135, has been engaged in the business of providing ambulance transport services. Annually, the Respondent, in conducting its business operations described above, derived gross revenues in excess of \$500,000, and purchased and received at its Akron, Ohio facility goods valued in excess of \$50,000 directly from points outside the State of Ohio.

We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that Teamsters Local Union No. 507 a/w International Brotherhood of Teamsters (the Union) is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. The Certification

Following the secret-ballot election held November 19, 2009, the Union was certified on November 30, 2010, as the exclusive collective-bargaining representative of the employees in the following appropriate unit:

All full-time and regular part-time wheelchair, EMT basic, EMT intermediate, and EMT paramedics employed at the Employer’s facilities located at Cleveland East 26309 Miles Road Suite 6, Warrensville Heights, Ohio, 44128 and Cleveland West 13929 West Parkway, Cleveland, Ohio, 44135 a/k/a Post 90 and Post 93, but excluding all supervisors, managerial, sales employees, professional and office clerical employees, and guards as defined by the Act.

The Union continues to be the exclusive collective-bargaining representative of the unit employees under Section 9(a) of the Act.

¹ Member Hayes would have granted review in the underlying representation proceeding. He agrees, however, that the Respondent has not raised any new matters that are properly litigable in this unfair labor practice case, and that summary judgment is appropriate.

B. Refusal to Bargain

About January 10, 2011, the Union requested that the Respondent bargain with it as the exclusive collective-bargaining representative of the unit employees, and, since about January 31, 2011, the Respondent has refused to do so. We find that this failure and refusal constitutes an unlawful failure and refusal to recognize and bargain with the Union in violation of Section 8(a)(5) and (1) of the Act.

CONCLUSION OF LAW

By failing and refusing since January 31, 2011, to recognize and bargain with the Union as the exclusive collective-bargaining representative of the employees in the appropriate unit, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has violated Section 8(a)(5) and (1) of the Act, we shall order it to cease and desist, to bargain on request with the Union, and, if an understanding is reached, to embody the understanding in a signed agreement.

To ensure that the employees are accorded the services of their selected bargaining agent for the period provided by law, we shall construe the initial period of the certification as beginning the date the Respondent begins to bargain in good faith with the Union. *Mar-Jac Poultry Co.*, 136 NLRB 785 (1962); *Lamar Hotel*, 140 NLRB 226, 229 (1962), *enfd.* 328 F.2d 600 (5th Cir. 1964), *cert. denied* 379 U.S. 817 (1964); *Burnett Construction Co.*, 149 NLRB 1419, 1421 (1964), *enfd.* 350 F.2d 57 (10th Cir. 1965).

ORDER

The National Labor Relations Board orders that the Respondent, Physicians & Surgeons Ambulance Service, Inc. d/b/a American Medical Response, Akron, Warrensville Heights, and Cleveland, Ohio, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to bargain with Teamsters Local Union No. 507 a/w International Brotherhood of Teamsters, as the exclusive collective-bargaining representative of the employees in the bargaining unit.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, recognize and bargain with the Union as the exclusive collective-bargaining representative of the employees in the following appropriate unit on terms and conditions of employment, and if an understanding is reached, embody the understanding in a signed agreement:

All full-time and regular part-time wheelchair, EMT basic, EMT intermediate, and EMT paramedics employed at the Employer's facilities located at Cleveland East 26309 Miles Road Suite 6, Warrensville Heights, Ohio, 44128 and Cleveland West 13929 West Parkway, Cleveland, Ohio, 44135 a/k/a Post 90 and Post 93, but excluding all supervisors, managerial, sales employees, professional and office clerical employees, and guards as defined by the Act.

(b) Within 14 days after service by the Region, post at its facilities in Akron, Warrensville Heights, and Cleveland, Ohio, copies of the attached notice marked "Appendix."² Copies of the notice, on forms provided by the Regional Director for Region 8, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means.³ Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed its facilities involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since January 31, 2011.

(c) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

² If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

³ For the reasons stated in his dissenting opinion decision in *J. Picini Flooring*, 356 NLRB No. 9 (2010), Member Hayes would not require electronic distribution of the notice.

Dated, Washington, D.C. April 29, 2011

 Wilma B. Liebman, Chairman

 Mark Gaston Pearce, Member

 Brian E. Hayes, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES
 POSTED BY ORDER OF THE
 NATIONAL LABOR RELATIONS BOARD
 An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

- Form, join, or assist a union
- Choose representatives to bargain with us on your behalf
- Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT fail and refuse to recognize and bargain with Teamsters Local Union No. 507 a/w International Brotherhood of Teamsters, as the exclusive collective-bargaining representative of the employees in the bargaining unit.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, recognize and bargain with the Union and put in writing and sign any agreement reached on terms and conditions of employment for our employees in the following bargaining unit:

All full-time and regular part-time wheelchair, EMT basic, EMT intermediate, and EMT paramedics employed at our facilities located at Cleveland East 26309 Miles Road Suite 6, Warrensville Heights, Ohio, 44128 and Cleveland West 13929 West Parkway, Cleveland, Ohio, 44135 a/k/a Post 90 and Post 93, but excluding all supervisors, managerial, sales employees, professional and office clerical employees, and guards as defined by the Act.

PHYSICIANS & SURGEONS AMBULANCE SERVICE, INC. D/B/A AMERICAN MEDICAL RESPONSE