

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD**

DHP INCORPORATED, D/B/A)	
QUESTCARE EMS,)	
)	
Employer,)	
)	
and)	Case No. 9-RC-18353
)	
NATIONAL EMERGENCY MEDICAL)	
SERVICES ASSOCIATION (NEMSA),)	
)	
Petitioner.)	

**QUESTCARE EMS’ STATEMENT IN OPPOSITION
TO PETITIONER’S REQUEST FOR REVIEW**

COMES NOW, Questcare EMS (hereinafter sometimes referred to simply as the “Employer”), by its attorneys, and files this response to Petitioner’s Request for Review. The Petitioner’s Request for Review should be denied as the Regional Director did apply extant Board law in making his decision and did not make any factual errors in his decision.

Petitioner may disagree with the Regional Director’s application of *Harborside Healthcare, Inc.*, 343 NLRB 906 (2004) to the facts of the case, but there can be no dispute that the Regional Director applied *Harborside* and thus this is not a situation where a “substantial question of law or policy is raised because of (i) the absence of, or (ii) a departure from, officially reported Board precedent.” Rather, this is a case where the Regional Director directly relied on officially reported Board precedent. Accordingly, the Request for Review should be denied.

Petitioner also seeks Review from the Board purportedly because of its belief that the Regional Director based his decision on clearly erroneous facts. Such a contention must fail as it is wholly unsupported by the record. The Regional Director’s Decision is entirely based on the

facts adduced at hearing and is completely supported by the record. This is easily verified by a simple review of the Regional Director's Decision wherein he consistently cites to the record evidence. The Petitioner simply does not like the facts cited by the Regional Director and therefore argues they are erroneous. While the Petitioner may have adduced evidence contrary to the evidence relied on by the Regional Director, that does not make the facts relied on by the Regional Director clearly erroneous. Petitioner appears to argue not that the fact findings of the Regional Director were clearly erroneous, but rather that his conclusions regarding whether the conduct was objectionable and materially affected the outcome of the election are erroneous. Such a contention is not grounds for Requesting Review based on a decision on a substantial factual issue. Rather, that is a contention that the Regional Director failed to properly apply extant Board law, something he unquestionably did by applying the Board's analysis under *Harborside*.

I. CONCLUSION

WHEREFORE, for all of the reasons set forth herein, the Employer respectfully requests that the Board deny Petitioner's Request for Review.

Respectfully submitted,

THE LOWENBAUM PARTNERSHIP, L.L.C.

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Attorneys for Questcare EMS

Dated: December 9, 2011

CERTIFICATE OF SERVICE

I hereby certify that I have this 9th day of December, 2011, served a true and correct copy of the foregoing upon the following via E-Filing:

Lester A. Heltzer, Executive Secretary
National Labor Relations Board
1099 14th Street N.W.
Washington, D.C. 20570-0001

Gary W. Muffley, Regional Director
National Labor Relations Board
Region 9
3033 John Weld Peck Federal Building
550 Main Street
Cincinnati, Ohio 45202-3271

Additionally, I hereby certify that I have this 9th day of December, 2011, served a true and correct copy of the foregoing upon the following via e-mail:

Mr. Dan Thompson, Esq.
National EMS Association
11344 Coloma Road, Suite 145
Gold River, California 95670
Daniel@goyette-assoc.com

Additionally, I hereby certify that I have this 9th day of December, 2011, served a true and correct copy of the foregoing via Federal Express to the following:

Mr. Torren Colcord, President
National Emergency Medical Service Association (NEMSA)
4701 Sisk Road, Suite 102
Modesto, CA 95356-9320

John P. Hasman
