

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 28**

**AMERICAN MEDICAL RESPONSE
AMBULANCE SERVICE, INC.¹**

Employer

and

Case 28-RC-074676

**NATIONAL EMERGENCY MEDICAL
SERVICES ASSOCIATION**

Petitioner

DECISION AND DIRECTION OF ELECTION

National Emergency Medical Services Association (Petitioner) seeks to represent a wall-to-wall unit comprised of all full-time and regular part-time emergency medical technicians (EMTs), paramedics, field training officers, relief supervisors, mechanics, vehicle service technicians (VSTs), clerks, and billers employed by American Medical Response Ambulance Service, Inc. (Employer) at its Dona Ana County, New Mexico facilities. The unit proposed by the Petitioner would include approximately 80 employees. Contrary to the Petitioner, the Employer contends that its field training officers, mechanics, VSTs, clerks, and billers lack a community of interest with its EMTs and paramedics and should be excluded from the petitioned-for unit. The Employer further contends that its lead clerk and biller should be excluded from the unit because they are confidential employees. Finally, the Employer asserts that relief supervisors are statutory supervisors within the meaning of Section 2(11) of the Act and must also be excluded. Based on the record as a whole and for the reasons more fully discussed below, I find that the petitioned-for wall-to-wall unit is an appropriate unit and shall direct an election in that unit with the agreed-upon exclusions. The record fails to establish that the Employer's lead clerk or biller are confidential employees, or that the relief supervisors are supervisors within the meaning of Section 2(11) of the Act, or that either group should otherwise be excluded from the unit.

DECISION

1. Hearing and Procedures. The Hearing Officer's rulings made at the hearing are free from prejudicial error and are affirmed.

2. Jurisdiction. At the hearing, the parties stipulated, and I find, that the Employer, a Delaware corporation with an office and place of business in Las Cruces, New

¹ The Employer's name appears as amended at hearing.

Mexico, is engaged in the business of providing medical transportation services. During the 12-month period preceding the hearing, the Employer, in conducting its business operations, purchased and received at its Las Cruces, New Mexico facilities goods valued in excess of \$50,000 directly from points outside the State of New Mexico and derived gross revenues in excess of \$500,000. I find that the Employer is engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and that the Board's exercise of jurisdiction in this matter will accomplish the purposes of the Act.

3. Labor Organization Status and Claim of Representation. The parties stipulated, and I find, that the Petitioner is a labor organization within the meaning of Section 2(5) of the Act and claims to represent certain employees of the Employer.

4. Statutory Question. As more fully set forth below, a question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

5. Unit Finding. This case presents the issue of whether the Dona Ana County employees petitioned for by the Petitioner constitute an appropriate unit, or whether the Employer's field training officers, mechanics, vehicle service technicians (VSTs), clerks, and billers lack a community of interest with its EMTs and paramedics such that they should be excluded from the petitioned-for unit. An additional issue presented is whether the Employer's lead clerk and/or biller should be excluded from the petitioned-for unit because they are confidential employees. Finally, this case presents the issue of whether the Employer's relief supervisors are statutory supervisors within the meaning of Section 2(11) of the Act. To provide context for my discussion of these issues, I will provide the record facts regarding the Employer's operations; the Employer's management structure; and the job duties and functions of the Employer's job classifications, including those at issue. I will then discuss the case law and analysis that support my conclusions that the petitioned-for employees constitute an appropriate unit; that the Employer's lead clerk and biller are not confidential employees; and that the Employer's relief supervisors are not statutory supervisors. I note that there is no history of collective bargaining affecting any of the employees involved in this proceeding, and that the Petitioner has agreed to proceed to an election in any unit found appropriate.

A. The Employer's Dona Ana County Operations

1. Organizational Structure

The Employer provides medical transportation services, both 911 and non-emergency transport, in 48 states, including as the exclusive ambulance service provider in Dona Ana County, New Mexico. The Employer operates on a 24/7 basis with its operations in Dona Ana County comprised of approximately 85% emergency calls and 15% non-emergency, or scheduled, transport. The Employer has seven posts, or stations, within Dona Ana County, including its operational headquarters, which is located at Post 7 in Las Cruces, New Mexico. In addition to transport units stationed there, Post 7 houses the Employer's main warehouse, where supplies and equipment are stored; vehicle maintenance garage and shop, where the

mechanics perform vehicle maintenance and service; classrooms, where orientation and training is performed; and general/operations offices, including offices for the Employer's operations supervisors, Operations Manager, clerks, billers, and visiting personnel, such as human resources staff and the Employer's General Manager, whose office is located in Arizona. The Employer's remaining six posts are scattered throughout Dona Ana County.

The Employer's approximately 50 full-time EMTs and paramedics are assigned to specific posts. In addition, the Employer employs approximately 25 part-time EMTs and paramedics. With the exception of the Operations Manager, all of the Employer's employees in Dona Ana County are classified as non-exempt and paid on an hourly basis. All full-time employees receive medical, dental, vision, 401(k), and employee assistance program benefits. Upon hire, all employees receive new hire orientation, which consists of one day with human resources staff. Additionally, field employees, who consist of EMTs and paramedics, are required to attend two days of clinical classroom orientation, which includes an emergency vehicle operator course and a physical agility test.

2. Supervisory Structure

John Valentine is the General Manager of the Employer's operations, and his offices are located in Lake Havasu City, Arizona. Joaquin Graham is the Employer's Operations Manager, the highest ranking official working for the Employer in Dona Ana County, and is officed at Post 7 in Las Cruces. Graham has held the position of Operations Manager since 2008, and is responsible for overseeing the Employer's day-to-day operations in Dona Ana County, including strategic planning, contractual obligations, budgetary responsibilities and authority, vehicle maintenance, and supplies. Three operations supervisors, Milissa James (James), Marc Lopez (Lopez), and Brynn Quirico (Quirico), report directly to Graham. The parties stipulated, the record reflects, and I find that General Manager Valentine, Operations Manager Graham, and the three operations supervisors, James, Lopez, and Quirico, are all supervisors within the meaning of the Act, and should be excluded from the unit found appropriate.

In addition, the Employer employs one biller (also referred to as a billing coordinator), one clerk (who has been designated as lead clerk), two mechanics, and one VST, all of whom work at Post 7 and report directly to Graham. The field employees report to the operations supervisors or the on-duty supervisor on a day-to-day basis. The Employer also has two EMTs or paramedics who are additionally classified as field training officers and conduct hands-on field training for newly-hired field employees.

B. The Employer's Job Classifications

1. Undisputed Job Classifications

Although the parties have stipulated, the record shows, and I have found that the operations supervisors are statutory supervisors and thus excluded from the petitioned-for unit, because the relief supervisors at issue in this case, as described in greater detail below, serve as operations supervisors when acting as such, it is necessary to discuss the relevant job

functions and duties of the Employer's operations supervisors. Similarly, although the parties have stipulated to the inclusion of all full-time and regular part-time EMTs and paramedics, a brief description of those job classifications is necessary to understanding the issues raised by the disputed field training officer and relief supervisor classifications discussed below.

a. Operations Supervisors

Operations supervisors are responsible for the day-to-day oversight of ambulances and their crews, including responsibility for staffing, addressing internal and external issues and concerns, resolving complaints, and generally ensuring that ambulances are getting where they need to be in a timely and safe fashion. Operations supervisors work 24-hour shifts on a modified Kelly schedule, which has been described as 24 hours on, 24 hours off, 24 hours on, followed by four days off.

Operations supervisors have authority to discipline, and to recommend discipline of, employees, including suspension, corrective action, and counseling. Although operations supervisors can recommend discharge, they do not possess independent authority to discharge an employee, nor does Graham, the Operations Manager. All recommendations for discharge must be approved by General Manager Valentine and the Employer's Human Resources department in Texas.

Operations supervisors attend on a regular basis supervisor meetings, which currently are held every other week and conducted by Graham. While required to be trained and licensed as paramedics, operations supervisors are not assigned to ambulances. They generally perform their daily job duties by use of a designated supervisor's vehicle, which is a Chevy Tahoe prominently marked "Supervisor" across the top of the front windshield. Those duties do sometimes require that they respond to emergencies by meeting with customers, transporting and delivering equipment and supplies to ambulances, and acting as first responders in crisis situations. In addition, operations supervisors wear a white polo shirt embroidered "Supervisor" as part of their required uniform. They also wear badges identifying themselves as "Supervisor." Operations supervisors can and do occasionally pick up overtime shifts as paramedics.

The Employer currently employs the three operations supervisors discussed above. They are classified as non-exempt employees and are paid on an hourly basis at rates ranging between \$14.91 and \$16.75 per hour.

b. EMTs and Paramedics

The Employer's field employees consist of full-time and part-time EMTs and paramedics. EMTs are licensed and certified by the State of New Mexico at three levels: basic, intermediate, and paramedic. EMT basics and EMT intermediates are required to have EMT training and certification from the State of New Mexico and be certified in Basic Cardiac Life Support. EMT intermediates have a slightly broader scope of practice than EMT basics, including having the ability to start intravenous therapy and administer additional medications beyond that permitted of EMT basics. EMT paramedics, which are commonly

referred to simply as paramedics or medics, must be licensed as paramedics by the State of New Mexico as well as possess additional certifications, including Advanced Cardiac Life Support and Pre-Hospital Trauma Life Support.

All EMTs and paramedics wear a uniform consisting of a navy blue shirt or a light blue button-down shirt with navy blue pants. Full-time EMTs and paramedics are assigned to specific posts, work in 12-hour shifts, and clock in and out via a telephone system directly from their assigned posts. They wear badges that identify themselves by name, rank, licensure level, and current position. In addition, patches on their shirts indicate their level of licensure.

All EMTs and paramedics are classified as non-exempt and paid on an hourly basis. The pay rate for EMT basics ranges from \$7.68 to \$10.98 per hour; for EMT intermediates, from \$8.83 to \$19.10 per hour; and for paramedics, from \$10.71 to \$18.09 per hour.

2. Disputed Job Classifications

As stated above, the Employer contends that certain job classifications, including relief supervisors, field training officers, billing coordinators, clerk and lead clerks, mechanics, and vehicle service technicians (VSTs), are for various reasons not appropriately included in the unit of EMTs and paramedics.

a. Relief Supervisors

The Employer is required by its contract with Dona Ana County to have a supervisor on duty at all times, and that supervisor must be available to respond to provide assistance and support during crisis situations. In other words, the on-duty supervisor cannot simultaneously be scheduled on duty on an ambulance. Therefore, when one or more of its three operations supervisors is absent due to illness or scheduled leave, the Employer's relief supervisors step in to act as operations supervisor on a per-shift basis. The Employer's two designated relief supervisors are full-time paramedics who work as such, but also act as operations supervisors from time to time as needed in the absence of a regular, full-time operations supervisor. During the last quarter of 2011, the Employer employed four paramedics as relief supervisors. The record reflects that these four individuals worked anywhere from approximately 8% to 18% of their total hours as relief supervisors.

Graham testified that if an operations supervisor calls in sick, his practice is to contact the relief supervisors and ask if either is willing to act as supervisor for the shift. It is generally not mandatory that the relief supervisor take the opening, but they can be obligated to accept an assignment if no other supervisor is available or willing. In addition, if the Employer is at full staffing levels for operations supervisors, and none has scheduled leave that would create open shifts for relief supervisor opportunities, the Employer maintains a program by which operations supervisors can take up to 24 hours per month of paid administrative leave to work on administrative matters in order to permit relief supervisors the opportunity to obtain additional shifts. However, based on staffing levels over the past year, it has not been common for that program to be utilized.

The record shows that relief supervisors, when acting as the on-duty supervisor, perform the same functions and duties, and possess the same authority and responsibilities, as operations supervisors. Relief supervisors are paid an additional five percent differential over their normal hourly rate for serving as relief supervisors, and they receive this differential for all hours worked, whether as paramedics or as relief supervisors. The pay rate for the Employer's current relief supervisors ranges from \$14.53 to \$19.50 per hour.

When working as relief supervisors, employees are required to wear the standard supervisor uniform and drive the designated supervisor's vehicle. However, the employees' badges do not reflect a position of "Relief Supervisor." Rather, the badges continue to reflect that the employees are employed in the job classification of "paramedic." Although encouraged to do so, relief supervisors are not required to attend regular supervisor meetings, and the record shows that portions of the supervisor meetings are limited to operations supervisors and not open to relief supervisors. Although operations supervisors receive company-issued cell phones and radios, relief supervisors do not. Relief supervisors also do not have access to Oracle, which is the software program used by the Employer to maintain its personnel database, including employee job classifications, changes in personnel status, and performance evaluations.

b. Field Training Officers

The Employer employs two field employees – one EMT and one paramedic – with the additional designation of field training officer. Field training officers conduct on-the-job training to newly-hired EMTs and paramedics, including instructing new employees on operational and patient care matters as well as company rules and policies. Field training officers typically are assigned a new employee to "shadow" them throughout their shift, or for multiple shifts depending on the new employee's experience level. At the end of the training period, the field training officer completes an evaluation, which is turned into the Clinical Education Specialist. If the field training officer indicates any areas of deficiency, the new employee may be assigned to another field training officer for additional training.

Field training officers perform their regular job duties as EMTs or paramedics during their assigned shifts, including when they are working as field training officers. During those shifts, in addition to performing their regular job duties, they explain those duties to the new employee assigned to them as well as observe the new employee providing patient care services and driving the ambulance. The record shows that no specific additional training is offered by the Employer for employees serving as field training officers. Field training officers are paid an additional five percent differential above their base hourly rate to serve as field training officers. The pay rate for the Employer's field training officers ranges between \$12.94 and \$18.77 per hour.

c. Billing Coordinator

The Employer currently employs a single biller, or billing coordinator, Kathleen Sutter. As billing coordinator, Sutter's job duties are to review completed patient care reports

for accuracy as they relate to billing. In other words, before the Employer can properly bill patients and insurance companies for the services it provides, Sutter must ensure that all the necessary documents and paperwork have been included and properly completed.

Sutter shares an office with the lead clerk at Post 7 and works Monday through Friday, 8:00 a.m. to 5:00 p.m. Sutter is classified as a non-exempt employee and is paid an hourly rate of \$16.05. Sutter reports directly to Graham and is not required to wear a particular uniform as part of her job.

d. Clerk/Lead Clerk

The Employer currently employs a single clerk, who is classified as lead clerk, Stephanie Andavazo. Andavazo was employed as a clerk from approximately June 2008 to March 2011, at which time she was promoted to lead clerk, during which time her job duties included payroll and billing. Specifically, Andavazo is tasked with obtaining patient information, including social security numbers, phone numbers, addresses, insurance information, etc., in order to ensure that patient care reports are completed. Andavazo is also responsible to ensure that employees have properly clocked in and out in order to finalize their timesheets for payroll processing. Andavazo also creates employee badges.

As lead clerk, a position she has held since approximately March 2011, Andavazo provides assistance to human resources by receiving and submitting documents related to employee leave requests, updated certifications, and changes to direct deposit. Andavazo also approves shift trades for field crews via Schedule Force and confirms whether employees have sufficient paid time off for leave requests.

Andavazo shares an office with Sutter at Post 7 and works Monday through Friday, 8:00 a.m. to 5:00 p.m. Andavazo is classified as a non-exempt employee and is paid an hourly rate of \$13.84. Andavazo reports directly to Graham and is not required to wear a particular uniform as part of her job. As lead clerk, Andavazo was required to sign a confidentiality agreement in which she agreed not to disclose or discuss information related to employee wages; employee discipline, demotions transfers, and terminations; and other personal data regarding employees, including phone numbers, addresses, and social security numbers. Andavazo does not participate in or attend supervisor meetings.

e. Mechanics

The Employer currently employs two mechanics, who are responsible for vehicle maintenance and service, minor equipment repairs, and radio installations.

The Employer's mechanics work in the shop at Post 7 and work Monday through Friday, 8:00 a.m. to 5:00 p.m. Mechanics are classified as non-exempt employees and are paid on an hourly basis ranging between \$16.00 and \$22.17. The mechanics' uniforms consist of a long-sleeved blue button-down shirt and Dickies-style work pants. The Employer's mechanics report directly to Graham.

f. Vehicle Service Technician

The Employer currently employs a single vehicle service technician, or VST, Jeff Wyche. Wyche's job duties are to perform inventory, order and restock supplies, and ensure that outlying stations are properly stocked with inventory by conducting regular deliveries to those locations. Wyche is also responsible for processing invoices for accounts payable and for ordering employee uniforms.

Wyche performs most of his job duties in the shop at Post 7 but is also responsible to deliver supplies to each station on a weekly basis. Wyche works Monday through Friday, 8:00 a.m. to 5:00 p.m. Wyche is classified as a non-exempt employee and is paid an hourly rate of \$20.15. Wyche's uniform consists of a dark blue or grey polo shirt. Wyche reports directly to Graham.

C. Legal Analysis and Determination

1. Relief Supervisors Are Not Statutory Supervisors

The Employer contends that its relief supervisors are statutory supervisors and thus excluded from the protections of the Act. For the reasons set forth below, I disagree.

Section 2(11) of the Act defines "supervisor" as:

any individual having the authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

Thus, individuals are statutory supervisors if (1) they hold the authority to engage in any one of the supervisory functions (e.g., "assign" or "responsibly to direct") listed in Section 2(11); (2) their "exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment"; and (3) their authority is held "in the interest of the employer." *NLRB v. Kentucky River Community Care*, 532 U.S. 706, 713 (2001). Supervisory status may be shown if the putative supervisor has the authority either to perform a supervisory function or to effectively recommend the same. In determining supervisory status, the Board has instructed that "the burden of proving supervisory status rests on the party asserting that such status exists." *Dean & Deluca New York, Inc.*, 338 NLRB 1046, 1047 (2003); accord *Kentucky River*, 532 U.S. at 711-12 (deferring to existing Board precedent allocating burden of proof to party asserting that supervisory status exists). The party seeking to prove supervisory status must demonstrate it by a preponderance of the evidence. *Dean & Deluca*, 338 NLRB at 1047; *Bethany Medical Center*, 328 NLRB 1094, 1103 (1999).

Further, where an individual is engaged a part of the time as a supervisor and the rest of the time as a unit employee, the legal standard for a supervisory determination is whether the individual spends a regular and substantial portion of his or her work time performing supervisory functions. *Oakwood Healthcare, Inc.*, 348 NLRB 686, 694 (2006). The burden is on the party asserting supervisory status to prove regularity and substantiality, i.e., that the relief supervisors spend a regular and substantial portion of his or her work time performing supervisory functions. *Id.* at 698-99. Under the Board's standard, "regular" means according to a pattern or schedule, as opposed to sporadic and irregular substitution. *Id.* at 694; see also *Canonsburg General Hosp. Ass'n*, 244 NLRB 899, 899 (1979). The Board has not adopted a strict numerical definition of substantiality. *Oakwood Healthcare*, 348 NLRB at 694.

Here, the record establishes that relief supervisors perform the same functions as operations supervisors when they are acting as the on-duty supervisor, including assigning and directing work, scheduling employees, and issuing and effectively recommending discipline, such that they would fulfill the indicia of statutory supervisors under Section 2(11) of the Act. However, based on a lack of evidence that relief supervisors serve in that role on anything other than a sporadic and irregular basis, I find that the relief supervisors do not spend a regular and substantial portion of their work time performing supervisory functions and, thus, are not statutory supervisors.

The Employer presented evidence demonstrating the number of hours worked by four individuals serving as relief supervisors for a three-month period of time, October 1, 2011 through December 31, 2011. This brief snapshot establishes that relief supervisors worked anywhere from approximately 8% to 18% of their total hours as relief supervisors during which they performed supervisory functions. However, the record fails to demonstrate any established pattern or predictable schedule used by the Employer to assign relief supervisor shifts.

In *Oakwood Healthcare*, after first concluding that permanent charge nurses who served in a supervisory capacity on a regular and full-time basis were statutory supervisors, the Board considered the issue of whether the employer's rotating charge nurses, or nurses serving in a charge nurse position on a nonpermanent basis, should be excluded from the unit. There, the Board examined the evidence offered by the employer and concluded as follows:

The record reveals that none of the units involved have an established pattern or predictable schedule for when and how often RNs take turns in working as charge nurses. In those units where the RNs decide among themselves who will serve as charge nurses, the record does not demonstrate any pattern for these selections. In those units where the managers are in charge of making assignments, the managers likewise to not use any particular system or order for assigning charge nurses.

348 NLRB at 699.

Here, the record establishes that the relief supervisors, who are employed as full-time

paramedics, typically serve as relief supervisors only when a regular operations supervisor is absent from work due to leave or illness. Although the Employer maintains a program by which relief supervisors can request that operations supervisors perform administrative projects in order to allow relief supervisors additional supervisory shifts, even when the operations supervisors are otherwise available to perform their regular duties, the Employer admits that that program has been used very infrequently. Even in the absence of operations supervisors, relief supervisors are assigned to cover those shifts on any type of established pattern or predictable schedule. Rather, the record establishes only that relief supervisors fill in for individual shifts in the absence of operations supervisors on an irregular and sporadic basis, as they are willing and available to do so.

In addition, the record fails to establish that relief supervisors spend a substantial portion of their work time performing supervisory duties. As previously stated, the evidence offered by the Employer demonstrates that during the fourth quarter of 2011, the four paramedics serving as relief supervisors spent between approximately 8 and 18 percent of their total work time as relief supervisors. The record also indicates that the Employer was not fully staffed at three operations supervisors during this time, such that there was a greater number of relief supervisor shifts available and required to be filled. Moreover, even when an operations supervisor is unavailable for a prolonged period of time, such as existed at various times during 2011, the Employer does not assign a relief supervisor to take over that position on a semi-permanent basis. Rather, as previously noted, relief supervisors cover open shifts as they are willing and available to do so.

Accordingly, I conclude that the Employer's relief supervisors do not spend a regular and substantial portion of their work time performing supervisory functions and, thus, are not statutory supervisors. See *Canonsburg General Hosp. Ass'n.*, 244 NLRB at 900 (Board found that individual acting as relief supervisor for 23 days in a six-month period, or 17.4% of her total working time, did not spend a substantial or significant portion of her working time as a supervisor because her principal substitution for the regular supervisors occurring during their vacation time and otherwise was sporadic and irregular). See also *Carlisle Engineered Products, Inc.*, 330 NLRB 1359, 1361 (2000) (Board concluded that processors substituting for statutory supervisors for one shift on Saturdays and Sundays and for a one-week slowdown period each year was "too insubstantial to transfer what are otherwise rank-and-file employees into statutory supervisors"); *Hexacomb Corp.*, 313 NLRB 983, 984 (1994) (foremen/assistant supervisors substituting for statutory supervisors only when the supervisors are sick or on leave, approximately 8-10 percent of the time, is irregular and sporadic and therefore insufficient to establish supervisory authority).

2. Lead Clerk and Biller Are Not Confidential Employees

The Employer contends that its lead clerk, Stephanie Andavazo, and its biller, Kathleen Sutter, are confidential employees and should thus be excluded from the petitioned-for unit. For the reasons set forth below, I disagree.

The Supreme Court has upheld the Board's use of a "labor nexus" test to exclude from collective-bargaining units only those employees who "assist and act in a confidential

capacity to persons who formulate, determine, and effectuate management policies in the field of labor relations” as confidential employees. *NLRB v. Hendricks County Rural Elec. Membership Corp.*, 454 U.S. 170, 173, 176, 102 S. Ct. 216 (1981). In *Hendricks*, the Court rejected the claim that all employees with access to confidential business information are considered “confidential” employees. *Id.* at 176-77. More specifically, it is well-established that access to personnel files or other human resources information is insufficient to establish confidential status. See *RCA Communications*, 154 NLRB 34, 37 (1965).

Here, the record shows that neither Andavazo nor Sutter assists or acts in a confidential capacity to persons who formulate, determine, and effectuate management policies in the field of labor relations. While Andavazo and/or Sutter may have access to employee personnel and payroll information, that is insufficient to establish confidential status. Further, even if there were evidence that Andavazo and/or Sutter assist or act in a confidential capacity to Graham, the record fails to show that Graham is presently involved in formulating, determining, and effectuating management policies in the field of labor relations. Accordingly, I find that the Employer’s lead clerk and biller are not confidential employees, and I shall include them in the unit found appropriate herein. See *ITT Grinnell*, 253 NLRB 584, 585-86 (1980) (speculation that an individual may participate in future labor relations matters is insufficient grounds for exclusion of that individual’s secretary as a confidential employee). See also *Waste Management de Puerto Rico*, 339 NLRB 262, 262 n. 2 (2003) (Board affirmed administrative law judge’s conclusion that even if employee worked on labor relations issues, there was no evidence that she did so on a regular basis and was therefore not a confidential employee); *Chrysler Corp.*, 173 NLRB 1046, 1047 (1969) (superintendents’ clerks, who assisted superintendents engaged in advisory labor relations policymaking, were found not to be confidential employees even though they performed clerical work for the superintendents, attended meetings where they were instructed as to the company’s new collective-bargaining agreement provisions, and occasionally typed superintendents’ recommendations to the labor relations department with respect to matters that were the subject of collective bargaining).

3. The Petitioned-For Wall-to-Wall Unit is An Appropriate Unit

Pursuant to Section 9(b) of the Act, it is necessary for me to determine whether the bargaining unit described in the Petitioner’s petition is appropriate. As the Board has often stated, “[t]here is nothing in the statute which requires that the unit for bargaining be the *only* appropriate unit, or the *ultimate* unit, or the *most* appropriate unit; the Act only requires that the unit be ‘appropriate.’” *Overnite Transportation Co.*, 322 NLRB 723, 723 (1996) (emphasis in original), reaffirmed in *Specialty Healthcare*, 357 NLRB No. 83 (August 26, 2011).

When a petitioner seeks to represent a wall-to-wall, or plant-wide, unit of employees, as Petitioner seeks here, Board law holds that such a unit of employees is presumptively appropriate and that a community of interest inherently exists among such employees. *Kalamazoo Paper Box Corp.*, 136 NLRB 134, 136 (1962). The burden then is on the employer to rebut the presumptive appropriateness of such a unit by showing that the interests

of a given classification are so disparate from those of other employees that they cannot be represented in the same unit. *Airco, Inc.*, 273 NLRB 348, 349 (1984).

Here, the Employer has failed to rebut the presumption that the petitioned-for unit is an appropriate unit by showing that the interests of the clerks, billers, mechanics, VSTs, and field training officers are so disparate from those of the EMTs and paramedics that they cannot be represented in the same unit. With regard to the field training officers, the record plainly establishes that they are simply EMTs and paramedics holding an additional designation of field training officer when assigned a new employee for orientation. The job duties performed by field training officers are essentially identical to those performed by EMTs and paramedics.

With regard to the remaining job classifications, despite that the skills and training required of the positions of clerks, billers, mechanics, and VSTs may differ from those required of EMTs and paramedics, the Employer has not met its burden to show that the interests are so disparate that the petitioned-for unit is not appropriate. To the contrary, the record establishes that the clerks, billers, mechanics, and VSTs have interaction with the EMTs and paramedics in the course of performing their duties. For example, the Employer's billing coordinator regularly communicates with such employees in the course of performing her job duties to obtain missing information on documentation before that documentation can be submitted for billing. Similarly, the Employer's clerk regularly communicates with employees regarding timesheet or paycheck issues and is also responsible for preparing employees' badges. Mechanics interact with EMTs and paramedics any time an ambulance experiences mechanical problems, and those interactions can take by radio or in person and can occur in the field or at the Employer's stations. The Employer also presented evidence that its VST conducts regular, weekly visits to each of the Employer's posts to deliver supplies and equipment, where he would have occasion to interact and communicate with the EMTs and paramedics stationed at those posts.

In addition, although some EMTs and paramedics are stationed at other posts in Dona Ana County, many of the Employer's EMTs and paramedics are stationed at Post 7, where the Employer's billers, clerks, mechanics, and VSTs work, and the employees have interaction with one another at that location. The record also shows that field employees occasionally share meals with other Post 7 employees, such as the mechanics, both in the common break room/kitchen at Post 7, which is available to all employees, and at off-site locations.

Finally, the record establishes that the Employer's classifications are functionally integrated with one another such that there is an inherent community of interest among all of the classifications with regard to the provision of services that forms the basis for the Employer's operations. See *IBC of Pennsylvania*, 356 NLRB No. 168, 2011 (May 31, 2011) (Board reversed finding that the employer's drivers and yard jockeys could not appropriately be included in a single unit with the employer's production and warehouse employees as requested by the petitioner, concluding that there was an inherent community of interest between the groups of employees in relation to the flow of materials into and out of the plant such that a plant-wide unit was appropriate). See also *Airco*, 273 NLRB at 349 (finding plant-wide unit of drivers, mechanics, and operators appropriate despite evidence that each group

“has very little in common with either of the other two” and the groups shared “little contact”); *Marks Oxygen Co. of Alabama*, 147 NLRB 228, 230 (1964) (plant-wide unit of truck drivers and plant employees was appropriate even where evidence demonstrated that truck drivers did most or all of their work away from the plant).

Accordingly, I find that the petitioned-for wall-to-wall unit of the Employer’s billers, clerks, mechanics, VSTs, field training officers, EMTs, and paramedics share an inherent community of interest and that the Employer has failed to rebut the presumption that they constitute an appropriate unit.

4. Formula for Part-Time Employees for Purposes of Voting

In determining the eligibility of irregular part-time employees for purposes of voting in an election, the Board typically uses a formula it first applied in *May Department Stores Company*, 175 NLRB 514 (1969), and *Allied Stores of Ohio, Inc.*, 175 NLRB 966 (1969), and reiterated in *Davison-Paxon Company*, 185 NLRB 21 (1970), that provides that employees who regularly average four hours or more per week for the last quarter prior to the eligibility date have a sufficient community of interest for inclusion in the unit and may vote in the election (commonly referred to as the *Davison-Paxon* formula).

The Employer asserts that the *Davison-Paxon* formula is appropriate to determine the eligibility of part-time employees in this matter, while the Petitioner urges the use of whatever formula is most inclusive of part-time employees. In *Marquette General Hospital*, 218 NLRB 713, 714 (1975), the Board set forth a formula which was designed to apply in circumstances where, as here, there is a significant disparity in the number of hours worked by part-time employees. See also *Crittenton Hospital*, 328 NLRB 879 (1999). The *Marquette* formula provides that part-time employees who work a minimum of 120 hours in either of the two 3-month periods immediately preceding the direction of election are eligible to vote.

The record contains printouts of hours worked by part-time employees (EMTs and paramedics) during the last two quarters of 2011. Although the printouts do not themselves reflect the job classifications of each individual listed, such data was adduced by cross-referencing the printouts with other employee lists in evidence. The printouts simply show the number of total regular and overtime hours worked by each part-time employee during the applicable quarter. The total number of part-time employees on each printout is 27, of which 6 work as EMT basics, 8 as EMT intermediates, and the remaining 13 as paramedics. Of the 27 part-time employees, 9 worked fewer than 52 total hours (thus averaging fewer than 4 hours per week) during third quarter 2011, and 12 worked fewer than 52 total hours during fourth quarter 2011. In third quarter 2011, 18 of the 27 part-time employees worked more than 52 total hours, with 2 employees working between 52 and 100 hours; 4 employees working between 100 and 300 hours; 5 employees working between 300 and 500 hours; and 7 employees working in excess of 500 total hours. In fourth quarter 2011, 15 of the 27 part-time employees worked more than 52 total hours, with 2 employees working between 52 and 100 hours; 4 employees working between 100 and 300 hours; 4 employees working between 300 and 500 hours; and 5 employees working in excess of 500 total hours.

As set forth above, the part-time employees in this case appear to have a significant disparity in hours worked based on hours worked during the last two 12-week quarters of 2011, which is the only evidence of part-time hours contained in the record. Accordingly, I conclude that the eligibility formula set forth in *Marquette* more closely reflects the circumstances in the instant matter and should be applied here. Thus, part-time EMTs and paramedics who have worked a minimum of 120 hours in either of the two 3-month periods immediately preceding the date of issuance of this Decision and Direction of Election shall be eligible to vote. This formula determines voting eligibility but does not affect unit inclusion. *Marquette*, supra at 713.

Based on the foregoing and the stipulations of the parties at the hearing, I find that the following employees of the Employer constitute a unit appropriate for collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time emergency medical technicians (EMTs), paramedics, field training officers, relief supervisors, mechanics, vehicle service technicians (VSTs), clerks, and billers employed by the Employer at its Dona Ana County, New Mexico facilities, but excluding all other employees, guards, and supervisors as defined in the Act.

There are approximately 80 employees in the unit found appropriate herein.

DIRECTION OF ELECTION

I direct that an election by secret ballot be conducted in the above unit at a time and place that will be set forth in the notice of election that will issue soon, subject to the Board's Rules and Regulations.² The employees who are eligible to vote are those in the unit who are employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Part-time EMTs and paramedics who have worked a minimum of 120 hours in either of the two 3-month periods immediately preceding the date of issuance of this Decision and Direction of Election shall be eligible to vote. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced, are also eligible to vote. In addition, in an economic strike which commenced less

² Employers shall post copies of the Board's official Notice of Election in conspicuous places at least three full working days prior to 12:01 a.m. of the day of the election. The notices shall remain posted until the end of the election. The term "working day" shall mean an entire 24-hour period excluding Saturday, Sundays, and holidays. A party shall be estopped from objecting to non-posting of notices if it is responsible for the non-posting. An employer shall be conclusively deemed to have received copies of the election notice for posting unless it notifies the Regional Office at least five days prior to the commencement of the election that it has not received copies of the election notice. Section 103.20 (c) of the Board's Rules is interpreted as requiring an employer to notify the Regional Office at least five full working days prior to 12:01 a.m. of the day of the election that it has not received copies of the election notice. Failure to post the election notices as required herein shall be grounds for setting aside the election whenever proper and timely objections are filed under the provisions of Section 102.69(a).

than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements, are eligible to vote. Also eligible are those in military services of the United States Government, but only if they appear in person at the polls. Employees in the unit are ineligible to vote if they have quit or been discharged for cause since the designated payroll period; if they engaged in a strike and have been discharged for cause since the strike began and have not been rehired or reinstated before the election date; and, if they have engaged in an economic strike which began more than 12 months before the election date and who have been permanently replaced. All eligible employees shall vote whether or not they desire to be represented for collective-bargaining purposes by:

NATIONAL EMERGENCY MEDICAL SERVICES ASSOCIATION

LIST OF VOTERS

In order to ensure that all eligible voters have the opportunity to be informed of the issues before they vote, all parties in the election should have access to a list of voters and their addresses that may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company*, 394 U.S. 759 (1969). Accordingly, I am directing that within **seven (7) days** of the date of this Decision, the Employer file with the undersigned two (2) copies of election eligibility lists containing the full names and addresses of all eligible voters. The undersigned will make this list available to all parties to the election. *North Macon Health Care Facility*, 315 NLRB 359 (1994). In order to be timely filed, the undersigned must receive the list at the National Labor Relations Board Resident Office, 421 Gold Avenue, Suite 310, PO Box 567, Albuquerque, New Mexico, 87103-0567, on or before **March 28 2012**. No extension of time to file this list shall be granted except in extraordinary circumstances. The filing of a request for review shall not excuse the requirements to furnish this list.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, DC 20570-0001. This request must be received by the Board in Washington by **April 4, 2012**. The request may be filed electronically through the Agency's website, www.nlr.gov³, but may not be filed by facsimile.

Dated at Phoenix, Arizona, this 21st day of March 2012.

/s/ Cornele A. Overstreet
Cornele A. Overstreet, Regional Director
National Labor Relations Board
Region 28
2600 North Central Avenue, Suite 1400
Phoenix, AZ 85004

³ To file the request for review electronically, go to www.nlr.gov, click on **File Case Documents**, enter the NLRB Case Number, and follow the detailed instructions. Guidance for electronic filing is contained in the attachment supplied with the Regional Office's initial correspondence on this matter and is also located on the Agency's website, www.nlr.gov.