UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

AMERICAN MEDICAL RESPONSE
AMUBLANCE SERVICE, Inc.,

Employer,

And **Case No. 28-RC-074676**

NATIONAL EMERGENCY MEDICAL
SERVICES ASSOCIATION (NEMSA),

Petitioner.
_____/

NATIONAL EMERGENCY MEDICAL SERVICES ASSOCIATION'S OPPOSITION TO EMPLOYER'S REQUEST FOR REVIEW OF REGIONAL DIRECTOR'S DECISION AND DIRECTION OF ELECTION

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INTRODUCTION

Petitioner, National Emergency Medical Services Association ("NEMSA"), by and through its undersigned legal counsel, timely files this statement in opposition to the Request for Review of the Regional Director's Decision and Direction of Election ("D&DE") filed by the Employer, American Medical Response Ambulance Service, Inc. ("AMR" or "Employer"). The National Labor Relations Board ("NLRB" or "Board") should deny AMR's request because no compelling reasons exist to grant review of the D&DE in accordance with NLRB Rules and Regulations. 29 CFR 102.67(c).

While AMR claims the Regional Director erred in finding that relief supervisors working in the Employer's Dona Ana County, New Mexico operation are not statutory supervisors under Section 2(11) of the Act, the Regional Director's determination is plainly supported by the record and entirely consistent with officially reported Board precedent. Moreover, AMR's contention that the Hearing Officer somehow prevented the Employer from introducing evidence showing that relief supervisors should be regarded as statutory supervisors is equally unavailing.

For the reasons set forth below, the Regional Director, as reflected in the D&DE and the record, properly determined that AMR's relief supervisors are not statutory supervisors and should be included in the bargaining unit. AMR's request for review should be summarily denied.

ARGUMENT

I. THE HEARING OFFICER DID NOT COMMIT PREJUDICAL ERROR BY DECLINING TO ACCEPT THE ADDITIONAL DOCUMENTS PRODUCED BY AMR.

AMR erroneously suggests the Hearing Officer improperly precluded the Employer from introducing additional evidence pertaining to the relief supervisors at issue in this case. There is

no indication, however, that AMR actually sought to introduce additional evidence relating to the amount of time relief supervisors purportedly engaged in supervisory duties beyond the documents it offered into evidence at the hearing. In fact, AMR repeatedly objected to the relevance of any evidence showing who performed supervisory duties and the amount of time spent performing such duties prior to October 2011. Indeed, even after the Hearing Officer narrowed the scope of his subpoena duces tecum to documents containing information for the "relevant period" dating back to January 1, 2010, AMR's legal counsel stated:

> Mr. Alaniz: "I mean, I'm not sure you want to discuss this on the record, but what does it have to do with something that happened in 2010 to the petition?" (Tr: 310:21-23)

Once the Hearing Officer explained how the information might relate to whether relief supervisors spent a regular, substantial portion of their time performing supervisory duties, or whether it was sporadic or insignificant, AMR's legal counsel still maintained that such information was irrelevant to the case:

> Mr. Alaniz: "But that has no relevance if that happened back in 2010." (Tr: 311: 1-8)

AMR ultimately took the following position with respect to the Hearing Officer's modified request for records:

> Mr. Alaniz: With the understanding that the Subpoena Duces Tecum has been limited in scope, the Employer wants to go on the record to repeat that its objection remains that the relevant period is not relevant. So we want to reserve our right to object to the relevant period being overly broad. However, we are going to undertake a good faith search to see which of these records are available. (Tr: 315:19-25)

AMR's right to present relevant evidence on the issues relating to the petition was not thwarted by the Hearing Officer. If AMR actually believed such information was important to its case, AMR had every opportunity to attempt to introduce the evidence during the hearing or

request that the record remain open for the Employer's post-hearing submission of exhibits. AMR did neither and cannot blame the Hearing Officer for its own decisions and inaction. Indeed, AMR plainly knew what evidence it intended to present as part of its case-in-chief and understood the nature and scope of the information sought by the subpoena on the first day of hearing:

> Mr. Alaniz: Well, we want to go on the record to state that many of the documents that were requested in the Subpoena Duces Tecum will be introduced in our case-in-chief through the use of exhibits. We're more than happy to share those exhibits with the Hearing Officer for review prior to the opening of the hearing, if that satisfies his request. (Tr: 13:9-14)

As the record reflects, AMR repeatedly claimed that any evidence showing the extent to which relief supervisors engaged in supervisory duties prior to October 2011 was irrelevant. While AMR now contends that documents it prepared in response to the subpoena duces tecum which allegedly show the extent to which relief supervisors performed supervisory functions for a two-year time period are relevant and should be included in the hearing record, AMR never intended to offer such evidence as part of its case-in-chief or in rebuttal, despite bearing the burden to prove that relief supervisors spend a regular and substantial portion of their work time performing supervisor functions. *Oakwood Healthcare, Inc.*, 348 NLRB 686, 698-99 (2006). It strains credulity to suggest that AMR was prejudiced by the omission of documents that it never considered relevant and only produced in response to a subpoena duces tecum after concluding the presentation of its case. Even after producing the documents, AMR expressly retained the right object to the "scope/time frame of the requests." (Ex. B to Employer's Request for Review)

AMR ignores the distinction between producing documents to another party in response to a subpoena duces tecum and the separate act of offering documents into evidence. The

Hearing Officer "left the hearing open for the limited purpose of permitting the Employer to produce additional documents pursuant to the subpoena I [the hearing officer] issued the Employer on February 24, 2012." (Ex. B to Employer's Request for Review) The record was not left open to permit AMR to introduce additional evidence to support its assertion that relief supervisors regularly engage in supervisory duties. Instead, the hearing was left open solely to afford the Hearing Officer an opportunity to receive and review records from AMR in response to the subpoena duces tecum and determine whether any of the additional information should be included in the hearing record. (Ex. B to Employer's Request for Review) Simply because AMR may have worked diligently to create documents in response to a subpoena duces tecum does not mean the documents are automatically admissible into evidence or become part of the hearing record. This is particularly true when the documents are merely compilations and summaries of other information without the raw data purportedly relied upon to create the documents.

Following AMR's production of additional documents in response to the Hearing Officer's subpoena duces tecum, NEMSA's legal counsel requested a telephone conference with AMR's legal counsel and the Hearing Officer concerning the documents. (Exhibit A to NEMSA's Statement in Opposition to Employer's Request for Review) Based on email responses from AMR's legal counsel, AMR was asked to produce the foundational raw data from which AMR created the documents it ultimately produced. While AMR's legal counsel indicated that the Employer would produce the foundational raw data if required to do so, it would only produce the information if the Region agreed to reimburse AMR for the cost of compiling the documents and further agreed to keep the hearing record open for a longer period. (Ex. A to NEMSA's Statement in Opposition to Employer's Request for Review) AMR

obviously had no intention of establishing a foundation for the documents or independently producing raw data from which the documents were purportedly created. NEMSA was opposed to keeping the record open any longer. (Ex. A to NEMSA's Statement in Opposition to Employer's Request for Review)

After the telephone conference with the parties on March 9, 2012, the Hearing Officer closed the hearing effective that day. (Exs. B and E to Employer's Request for Review) There is no indication the Hearing Officer closed the hearing retroactively as claimed by AMR. While the Hearing Officer's specific rationale for declining to accept the additional documents is not reflected in the record or Order Closing Hearing, there is also no indication that the Hearing Officer improperly refused a request from AMR to admit the additional documents into evidence or closed the record over objection from AMR. (Ex. B to Employer's Request for Review)

The Hearing Officer did not commit prejudicial error and his actions provide no basis for the Board to grant AMR's request for review of the D&DE.

II. THE REGIONAL DIRECTOR CORRECTLY CONCLUDED THAT RELIEF SUPERVISORS ARE NOT STATUTORY SUPERVISORS UNDER SECTION 2(11) OF THE ACT.

The Regional Director found that relief supervisors only serve in a supervisory role on a "sporadic and irregular basis," and do not spend a substantial portion of their work time performing supervisory functions. (D&DE, p. 9) While AMR claims the Regional Director's determination completely ignores the evidentiary record and resulted from the improper exclusion of certain documents, the Regional Director's decision is amply supported by the record and not clearly erroneous. 29 CFR §102.67(c)(2). The Regional Director correctly concluded, based on officially reported Board precedent, that relief supervisors are not statutory supervisors and that the relief supervisors at issue should be included in the bargaining unit.

A. The Record Supports the Regional Director's Determination that Relief Supervisors Perform Supervisory Functions on a Sporadic and Irregular Basis.

The Regional Director properly applied the *Oakwood* standard which considers whether an individual who performs supervisory functions on a part time basis spends a regular and substantial portion of his or her work time performing supervisory functions. *Oakwood*, 348 NLRB at 694. "Regular" means according to a pattern or schedule, as opposed to sporadic substitution. *Id.* As the Regional Director correctly found, "the record failed to demonstrate any established pattern or predicable schedule used by the Employer to assign relief supervisor shifts." (D&DE, p. 9) The absence of "an established pattern or a predictable schedule" for assigning relief supervisors is sufficient by itself to preclude a finding that relief supervisors are statutory supervisors under the Act. *Oakwood*, 348 NLRB at 699 ("In the absence of a sufficient showing of regularity for assigning the 'rotating' charge nurses, we need not decide whether these RNs possess the 'rotating' charge nurse duties for a 'substantial' part of their work time.")

In *Rhode Island Hospital*, 313 NLRB 343 (1993), the Board found laundry group leaders to be statutory supervisors based on their regular rotation as weekend supervisors. The Board noted that laundry group leaders worked a "scheduled rotation as a supervisor," which meant their performance of supervisory duties was regular and not sporadic. *Id.* at 349. In contrast, the Board concluded that lead offset printers who possessed supervisory authority and substituted for the department manager were not statutory supervisors. *Id.* at 348. According to the Board, "[t]he sporadic assumption of supervisory duties, e.g., during annual vacation periods or on other unscheduled occasions, is not sufficient to establish supervisory authority." *Id.*

Consistent with the Regional Director's determination, the record establishes that relief supervisors are full-time paramedics who typically serve as relief supervisors only when a regular operations supervisor is absent from work due to leave or illness. (Tr: 125:24-25, 126:1-3, 127:3-12; D&DE, pp. 9-10) Even when the regular operations supervisors are absent, relief supervisors are not assigned to cover the open shifts based on any type of established pattern or predictable schedule. Instead, relief supervisors are afforded the opportunity to volunteer to work the open supervisor shifts on an overtime basis when they are willing and available to do so. (Tr: 126:2-4)

AMR's attempt to distinguish relief supervisors from the rotating charge nurses in *Oakwood* is unavailing. As AMR correctly notes, there was no established pattern or predicable schedule for when and how often registered nurses would take turns as charge nurses. *Oakwood*, 348 NLRB at 699. This fact alone precluded a finding that registered nurses were statutory supervisors. *Id.* While a larger number of registered nurses could function as charge nurses on any given day compared to a small number of paramedics who can function as relief supervisors on any given day, this fact has nothing to do with whether either group of employees performs supervisory functions according to an established pattern or predictable schedule. In both cases, there is an identified or designated group of employees whom the employer regards as qualified and capable of substituting for a supervisor. The issue is not whether other paramedics outside the designated group of relief supervisors can perform supervisory functions, but whether the designated relief supervisors are assigned to perform supervisory functions according to an established pattern or predictable schedule. The record in this case demonstrates that relief supervisors serve in a supervisory role on a "sporadic and irregular basis" which precludes a finding that they are statutory supervisors.

AMR's discussion of *Canonsburg General Hospital Association*, 244 NLRB 899 (1979) is equally misplaced. In *Canonsburg*, the hospital employed full-time nursing supervisors, regular relief supervisors and acting relief supervisors. *Id.* at 899. The Board found that that the "regular relief supervisors" were statutory supervisors because they were regularly scheduled to work the two days every week that the full-time nursing supervisors were off. *Id.* The "acting relief supervisors" in *Canonsburg*, however, were full-time staff nurses who only performed supervisory functions "during vacations and at other times when a nursing supervisor or regular relief supervisor is not available." *Id.* Like the relief supervisors in this case, the acting relief supervisor in *Canonsburg* was regularly scheduled to perform non-supervisory functions and was pre-designated to substitute as a supervisor on a sporadic and irregular basis, which precluded a finding that the acting relief supervisor was a statutory supervisor.

Contrary to AMR's assertion, "the permanence of the Employer's designation of its relief supervisors" is of no consequence and does not distinguish AMR's relief supervisors from the rotating charge nurses in *Oakwood* or the acting relief supervisor in *Canonsburg*. Nowhere in *Canonsburg* does the Board describe the full-time nursing supervisors and regular relief supervisors as "permanent" positions or otherwise distinguish the "acting relief supervisors" as temporary or non-permanent designations. The characterization of the relief supervisors in this case as permanent in their positions is irrelevant. The question is whether the relief supervisors who perform supervisory functions on a part-time basis do so according to an established pattern or a predictable schedule. The fact that AMR has an ongoing or permanent need for relief supervisors to substitute for full-time operations supervisors when they are on leave or ill does not mean the relief supervisors fill the open shifts on anything other than a sporadic basis.

Moreover, the regularity of supervisory duties does not turn on the percentage of time an individual spends performing those duties. While there may be instances where an individual spends so much time performing supervisory duties that the performance of such duties cannot be regarded as sporadic, such facts do not exist in this case. *Oakwood* does not establish a rule that every employee who spends at least 10% to 15% of their total work time performing supervisory functions is *ipso facto* regularly engaged in the performance of such functions.

The Regional Director correctly applied the legal standard to the facts of this case and determined that relief supervisors do not perform supervisory functions according to any type of established pattern or predicable schedule. In the absence of a sufficient showing of regularity for assigning relief supervisors to work as operations supervisors, they are not statutory supervisors. *Oakwood*, 348 NLRB at 694. The Regional Director did not err in making this determination.

B. The Record Supports the Regional Director's Determination that Relief Supervisors Do Not Spend a Substantial Portion of their Work Time Performing Supervisory Functions.

Employees who perform supervisory functions according to an established pattern or a predictable schedule must also spend a substantial portion of their work time engaged in those supervisory functions to qualify as a statutory supervisor under the Act. *Oakwood*, 348 NLRB at 694. The Board has not adopted a strict numerical definition of substantiality. *Id.* While the Board has found that performing supervisory functions at least 10% to 15% of the time can, depending on the particular circumstances, satisfy the substantiality requirement for supervisory status, there is no universal standard.

The Regional Director found that relief supervisors spent approximately 8% to 18% of their total work hours from October 1, 2011 through December 31, 2011 performing supervisory

functions. (D&DE, p. 9) AMR's Operations Manager Joaquin Graham testified that the Dona Ana County operation had a vacant operations supervisor position until January 2012. (Tr: 127: 16-20) Brynn Quirico, who recently filled the operations supervisor position, testified that the operations supervisor position was vacant for at least eight of the past twelve months. (Tr: 528:11, 541:19-24) Quirico testified that when AMR is fully staffed with operations supervisors the opportunity for relief supervisors to work as operations supervisors is "pretty minimal," amounting to no more than one or two shifts per month. (Tr: 543:7-8) When AMR was without the one full-time operations supervisor, however, relief supervisors could work three or four shifts per month. (Tr: 544:3-6) The Regional Director noted that because AMR lacked the full complement of operations supervisors from October 1, 2011 through December 31, 2011, "there was a greater number of relief supervisor shifts available and required to be filled." (D&DE, p. 10) Consequently, the percentage of supervisory shifts worked by relief supervisors during that period was artificially inflated by as much as double the typical number of supervisory shifts worked by relief supervisors. This situation existed throughout most of 2011. (Tr: 541:19-24)

While AMR claims the exhibits it admitted into evidence establish that relief supervisors spend a substantial amount of time performing supervisory functions (Emp. Exs. 19-22), AMR's claim is premised on an assertion that any employee who performs supervisory duties at least 10% to 15% of the time is automatically a statutory supervisor. Again, however, there is no strict numerical definition of substantiality. Moreover, AMR's depiction of the exhibits it presented at the hearing indicate that the Employer focused solely on the number of supervisory shifts worked by individual relief supervisors as a percentage of their total shifts. (AMR's Request for Review, pp. 13 & 22) AMR's depiction does not consider the total hours worked by each individual during the specified time period or account for the fact that many of the

supervisory shifts worked by the relief supervisors were only 12 hour shifts or other shifts less than 24-hours. Comparing hours worked rather than shifts worked results in smaller percentages than those urged by AMR.

AMR's depiction of the exhibits is also misleading because it includes information covering the three month period from October 1, 2011 through December 31, 2011 for three relief supervisors (Gaskins, Edmonds and Quirico) while including information for Cevan Griffin through February 2, 2012. By including information after December 31, 2011 for only one relief supervisor and excluding similar information for the other relief supervisors, the Regional Director could easily conclude that the percentages urged by AMR are not determinative as to the amount of time relief supervisors spend performing supervisory duties, both before and after AMR finally attained a full complement of operations supervisors. Nothing required the Regional Director to accept AMR's characterization of the evidence on the issue of substantiality and merely because the Regional Director reached a different conclusion as to what AMR claims the evidence shows does not mean the Regional Director ignored the evidence as AMR contends.

The Regional Director was not required to ignore the sporadic nature of the supervisory work performed by relief supervisors, the fact that acting supervisors perform supervisory duties on an extra shift overtime basis, the extraordinary circumstances (the absence of a third operations supervisor) that inflated the amount of time relief supervisors spent performing supervisory duties, and his own analysis of the evidence showing the amount of time relief supervisors actually spent performing supervisory duties. Instead, the Regional Director specifically identified the material evidence in the record, analyzed that evidence in light of the applicable legal standard, and articulated his reasons for finding that relief supervisors do not

spend a substantial portion of their work time performing supervisory duties. Admitting additional documents without proper foundation that purportedly show that some relief supervisors worked a greater number of additional overtime hours as relief supervisors during the past two years would not change the analysis or the outcome of the case.

The Regional Director's determination that relief supervisors do not spend a substantial portion of their work time engaged in supervisory duties was not clearly erroneous and no grounds exist to exclude relief supervisors from the bargaining unit.

CONCLUSION

For the foregoing reasons, AMR's request that the Board review the Regional Director's Decision and Direction of Election should be denied and the relief supervisors should be included in the bargaining unit.

Dated: April 17, 2012

Respectfully submitted,

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National Emergency Medical Services Association

EXHIBIT A

RE: Response to Modified Subpoena Duces Tecum (B-571654)

Alaniz, Santiago [salaniz@laborlawyers.com]

Sent: Thursday, March 08, 2012 2:54 PM

To: Rubin, Mitchell S. [Mitchell.Rubin@nlrb.gov]; Matt Crosier

---

Mitch,

We've received no return call from schedule force. Regarding the duty roster (see Employer Exhibit #34 as an example), we would be willing to undertake the task of compiling all of these reports for a two year period if the Region is willing to reimburse the Employer's cost for undertaking this task. We will bring in a temp to gather this information since we don't have available personnel to undertake this task in addition to their everyday duties. Based on my conversation with the Employer, this task of compiling all this raw data would take at least a week (although we'd try to get it done sooner) as they would have to go back and do a history report of each day a duty roster was created and print them individually per day.

The duty roster would show who the supervisor was each day (this should match the raw data that I already provided you), which medic trucks each employee was assigned to, their post location, and their schedule. Again, these would be raw data duty rosters and we are not agreeing to do any analysis of these raw data documents. After receiving these documents, either the Region or the Union could go through them to come up with their own numbers, but that's out of my control.

Please let me know what the Region's perspective is on this. If we need to undertake this project, let me know immediately so that we can hire a temp and start this project. Obviously, this would leave the record open, and the Union has already made their position clear on this. Regarding schedule force, they're out of our control and I can't give you an estimate on how long they'd take.

Santiago "Jimmy" Alaniz
333 Clay Street
Suite 4000
Houston, TX 77002

Tel: (713) 292-5624

Fisher & Phillips LLP
www.laborlawyers.com

From: Rubin, Mitchell S. [mailto:Mitchell.Rubin@nlrb.gov]
Sent: Thursday, March 08, 2012 2:31 PM
To: 'Matt Crosier'; Alaniz, Santiago
Subject: RE: Response to Modified Subpoena Duces Tecum (B-571654)

I am available for a conference call. Are both of you available now? If not, how soon?

From: Matt Crosier [mailto:mcrosier@talbotlawgroup.com]
Sent: Thursday, March 08, 2012 1:23 PM
To: Alaniz, Santiago; Rubin, Mitchell S.
Subject: RE: Response to Modified Subpoena Duces Tecum (B-571654)

I am available for the remainder of the afternoon.

Matthew A. Crosier
Talbot Law Group
A Professional Corporation
105 E Street, Suite 2E
Davis, CA 95616
(530) 792-7211 voice
(530) 792-8891 fax

From: Alaniz, Santiago [salaniz@laborlawyers.com]
Sent: Thursday, March 08, 2012 12:03 PM
To: Rubin, Mitchell S.; Matt Crosier
Subject: RE: Response to Modified Subpoena Duces Tecum (B-571654)

Mitch.

I think we can wrap up our position now – I've checked with the Employer and the report that you're requesting is not a document they can create (this would have to go directly through schedule force and we don't control their schedule). The position history report is the Employer's position on who relief supervisors are, which was also on the record. If the Union wants to contest our position, they're welcome to in their brief.

Can we have one final call to wrap this up?

I'm available right now.

Jimmy

From: Rubin, Mitchell S. [mailto:Mitchell.Rubin@nlrb.gov]
Sent: Thursday, March 08, 2012 10:43 AM
To: 'Matt Crosier'; Alaniz, Santiago; Bernstein, Steve
Subject: RE: Response to Modified Subpoena Duces Tecum (B-571654)

I will call both of you at noon. Would you both be available on the land line phone numbers set out below, or, are you only reachable by cell phone? If you would like me to call you by cell phone please let me know what number to use.

Santiago "Jimmy" Alaniz
(713) 292-5624

Matthew A. Crosier
(30) 792-7211 voice

From: Matt Crosier [mailto:mcrosier@talbotlawgroup.com]
Sent: Thursday, March 08, 2012 9:33 AM
To: Rubin, Mitchell S.; Alaniz, Santiago; Bernstein, Steve
Subject: RE: Response to Modified Subpoena Duces Tecum (B-571654)

That is fine with me.

Matthew A. Crosier
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From: Rubin, Mitchell S. [Mitchell.Rubin@nlrb.gov]
Sent: Thursday, March 08, 2012 8:30 AM
To: Matt Crosier; Alaniz, Santiago; Bernstein, Steve
Subject: RE: Response to Modified Subpoena Duces Tecum (B-571654)

Gentlemen,

I suggest that we have a conference call at noon Phoenix time (Mountain Standard time) today
Would that work for both parties?

Mitch Rubin
Hearing Officer

From: Matt Crosier [mailto:mcrosier@talbotlawgroup.com]
Sent: Wednesday, March 07, 2012 7:01 PM
To: Alaniz, Santiago; Rubin, Mitchell S.; Bernstein, Steve
Subject: RE: Response to Modified Subpoena Duces Tecum (B-571654)

Gentlemen,

I would like to have a telephone conference concerning these documents as early as is practicable tomorrrow. Please let me know how you would like to proceed. Thank you.

Matthew A. Crosier
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A Professional Corporation
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attachments.

From: Alaniz, Santiago [salaniz@laborlawyers.com]
Sent: Wednesday, March 07, 2012 3:51 PM
To: Rubin, Mitchell S.; Matt Crosier; Bernstein, Steve
Subject: Response to Modified Subpoena Duces Tecum (B-571654)

Mitch,

This e-mail is in response to the modified subpoena duces tecum that was discussed last week on the record. The client has worked diligently to provide documents in response to request #2 and #8 as outlined in the modified subpoena and within the time frames set forth by the Hearing Officer. By providing these documents, the Employer is not waiving their objection to the scope/time frame of the requests. However, by providing these documents, the client is showing their good faith efforts in complying with the subpoena. As such, I'm attaching four documents that are responsive to the Hearing Officer's outstanding subpoena requests: (1) a report showing the hours that any individual worked as a operations supervisor and/or a relief supervisor during the period set out by the Hearing Officer (January 1, 2010 – February 12, 2012); (2) a raw data report showing which individual was assigned as the on-duty supervisor from January 1, 2010 – February 12, 2012 (yellow highlights indicate when an individual worked as a relief supervisor); (3) an employee history report showing the individuals' different positions during January 1, 2010 – February 12, 2012; and (4) a report showing the total supervisor shifts by employee from January 1, 2010 – February 12, 2012 that demonstrates that of all supervisor shifts during the period, 24.94% of them were worked by relief supervisors.

First, the first report goes to the question on how much time the relief supervisors spent engaging in supervisory duties. However, as you both know, some of these individuals engaged as both full-time ops supervisors and as relief supervisors during the relevant period as defined by the Hearing Officer. To accurately reflect the percentage of time that the relief supervisors spent engaging in supervisory duties, we compared hours as a relief supervisor vs. the hours that each individual worked when they were not acting as the relief supervisor. In other words, to come up with the percentage, you'd divide the hours that each individual spent as a relief supervisor with the hours where the individual was not acting as the relief supervisor (you don't take into account the time spent as a full-time supervisor).

Second, the second report is a raw data compilation showing who the on-duty supervisor was from January 1, 2010 – February 12, 2012 (relief supervisors were highlighted in yellow). This is a self explanatory report.

Third, the third report gives you a snapshot of what classifications each employee was in during January 1, 2010 – February 12, 2012. Please be advised that this report does not reflect which positions the individuals were working in prior to January 1, 2010 (outside the relevant period set by the Hearing Officer). For example, Cevan was working as a transport coordinator/relief supervisor from November 16, 2009 – March 21, 2011 when she went back to the field as a paramedic/relief supervisor (the March 21st date is reflected above because it's within the relevant time period as set by the Hearing Officer).

Finally, the last report is a report showing all the supervisory shifts that were worked by each individual during January 1, 2010 – February 12, 2012. This report reflects that of the 878 supervisory shift during this period, 219 of those were worked by relief supervisors (24.94%).

Please let me know if you'd like to discuss our response to the subpoena duces tecum. If we need to set up a call to discuss these documents tomorrow, please let me know so that I can plan accordingly.

Thanks.

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UNITED STATES OF AMERICA
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AMUBLANCE SERVICE, Inc.,

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NATIONAL EMERGENCY MEDICAL
SERVICES ASSOCIATION (NEMSA),

Petitioner.
_____/

CERTIFICATE OF SERVICE

I, Heidi Primack Talbot, certify that on April 16, 2012, I e-filed and served via email the National Emergency Medical Services Association's Opposition to Employer's Request for Review of Regional Director's Decision and Direction of Election to the following persons and email addresses:

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David Gobeo Esq.
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/s/ Heidi Primack Talbot