

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

METRO-WEST AMBULANCE SERVICE, INC.

and

Cases 36-CA-010801
36-CA-010802

TEAMSTERS JOINT COUNCIL #37,
INTERNATIONAL BROTHERHOOD OF
TEAMSTERS

METRO-WEST AMBULANCE SERVICE, INC.

and

Cases 36-CA-010835
36-CA-010893
19-CA-067859
19-CA-069371
19-CA-076875

TEAMSTERS LOCAL #223, INTERNATIONAL
BROTHERHOOD OF TEAMSTERS

**ACTING GENERAL COUNSEL'S LIMITED CROSS-EXCEPTIONS TO
ADMINISTRATIVE LAW JUDGE'S DECISION**

The Acting General Counsel (the "AGC") takes the following limited exceptions to the Decision of Administrative Law Judge Eleanor Laws (the "ALJ"), JD(SF)-50-12, dated November 9, 2012, in the above-captioned cases, pursuant to § 102.46 of the Rules and Regulations of the National Labor Relations Board (the "Board"):

A. Findings Concerning the Charging Parties

1. The AGC excepts to the ALJ's failure to name Charging Party Teamsters Local #223, International Brotherhood of Teamsters ("Local #223") as the Charging Party in Cases 36-CA-010835, 36-CA-010893, 19-CA-067859, 19-CA-069371, and 19-CA-076875, in the caption and the body of the Decision. (JD *i*, 1)

2. The AGC excepts to the ALJ's listing of "International Brotherhood of Teamsters, Joint Council No. 27" instead of Charging Party Teamsters Joint Council #37, International Brotherhood of Teamsters ("Joint Council #37") as the Charging Party in Cases 36-CA-010801 and 36-CA-010802 in the body of the Decision. (JD 1)

3. The AGC excepts to the ALJ's failure to explicitly find that Local #223 and Joint Council #37 (collectively, the "Union") are labor organizations within the meaning of § 2(5) of the National Labor Relations Act (the "Act"). (JD 1, 2:25-26)

B. Conclusions and Remedy for October 27, 2010, Suspension of Travis Schlegel

4. The AGC excepts to the ALJ's failure to include a finding that Respondent Metro-West Ambulance Service, Inc. ("Respondent") violated §§ 8(a)(1) and (3) of the Act by suspending employee Travis Schlegel ("Schlegel") in her conclusions of law, although she found that Respondent's suspension of Schlegel on October 27, 2010, violated §§ 8(a)(1) and (3) of the Act. (JD 28:43-29:4, 32:22-23, 34:17-20, 60:13-35)

5. The AGC excepts to the ALJ's failure to include in her recommended order a requirement that Respondent cease and desist from suspending employees for engaging in union or other protected, concerted activities, although she found that Respondent's suspension of Schlegel on October 27, 2010, violated §§ 8(a)(1) and (3) of the Act. (JD 28:43-29:4, 32:22-23, 34:17-20, 62:20-64:15)

C. Findings and Remedy for Enforcement of Rule to Prohibit Wearing Union Pins

6. The AGC excepts to the ALJ's failure to find that on April 8 and 14, 2011, Respondent, by supervisor Gregg James and vice president of operations Larry Boxman, enforced its "Employee Associations" rule to prohibit employees from wearing pins signifying

support for Joint Council #37 and/or Local #223 by instructing employees Trisha Preston (“Preston”) and Peter Haslett (“Haslett”) to remove such pins from their uniforms; issuing disciplinary coaching memoranda to Schlegel, Preston, and Haslett for wearing such pins; and threatening Haslett with discharge if he failed to remove such a pin from his uniform. (JD 14:15-15:25; 45:36-47:40)

7. The AGC excepts to the ALJ’s failure to include in her recommended order a requirement that Respondent remove from its files all references to the issuance of coaching memoranda and/or other discipline to Haslett, Preston, Schlegel, and any other employees for wearing pins signifying support for Joint Council #37 and/or Local #223, and inform them in writing that this has been done and that these actions will not be used against them in any way. (JD 62:15-64:15)

8. The AGC excepts to the ALJ’s failure to include in her recommended notice to employees a statement that Respondent will remove from its files all references to the issuance of coaching memoranda and/or other discipline to Haslett, Preston, Schlegel, and any other employees for wearing pins signifying support for Joint Council #37 and/or Local #223, and will notify them in writing that this has been done and that these actions will not be used against them in any way. (JD Appendix)

D. Finding Supporting ALJ’s Determination about Issuance of July 11, 2011, Performance Improvement Plan to Travis Schlegel

9. The AGC excepts to the ALJ’s failure to draw an adverse inference based on Respondent’s failure to produce accident reports in response to a subpoena duces tecum requiring it to do so. (JD 40:n. 49)

E. Finding Concerning Issuance of August 1, 2011, Corrective Action Memorandum to Travis Schlegel

10. The AGC excepts to the ALJ's failure to explicitly find in her decision and analysis that Respondent's issuance of an August 2011 corrective action memorandum to Schlegel violated § 8(a)(4) of the Act.

F. Dismissal of Withdrawn Complaint Paragraph Concerning Issuance of August 8, 2011, Corrective Action Plan to Travis Schlegel

11. The AGC excepts to the ALJ's dismissal of complaint paragraph 10(c), although the ALJ granted a motion to amend the complaint to remove that allegation at the hearing. (JD 41:7-8; Tr. 11:18-23)

G. Rulings, Findings, Conclusions, and Remedies for Issuance of October 26, 2011, Suspension to Travis Schlegel

12. The AGC excepts to the ALJ's admission of and reliance on an "Incident Report" that was not properly authenticated and that, even if authenticated, constituted an unreliable hearsay document prepared in anticipation of litigation, in support of her finding that Respondent did not unlawfully suspend Schlegel on October 26, 2011. (JD 20:19-31; Tr. 961:2-8, 995:18-996:11; R 25:40-41)

13. The AGC excepts to the ALJ's failure to consider evidence that discussions between paramedics employed by Respondent and paramedics employed by medical transportation service company American Medical Response at hospitals are a daily occurrence. (JD 20:1-21:30)

14. The AGC excepts to the ALJ's admission of and reliance on an unreliable hearsay timeline of events prepared by ambulance department manager David Weeks in anticipation of litigation, in support of her finding that Respondent did not unlawfully suspend Schlegel on October 26, 2011. (JD 20:33-40; Tr. 925:17-20; 961:9-17; 995:18-996:11; R 25:42)

15. The AGC excepts to the ALJ's finding that ambulance supervisor Jeff Mathia's investigation into the actions of Schlegel and employee Brent Warberg ("Warberg") on October 25, 2011, was justified. (JD 42:40-41, 42:n. 51, 45:28-30)

16. The AGC excepts to the ALJ's finding that employees were "recently" reminded to stay in touch with dispatch in an operations update. (JD 43:5-8)

17. The AGC excepts to the ALJ's finding that Respondent's legitimate investigation of Schlegel and Warberg revealed an infraction warranting discipline, consistent with how Respondent had disciplined other employees. (JD 45:28-30)

18. The AGC excepts to the ALJ's finding that the AGC failed to prove that Respondent's suspension of Schlegel on October 26, 2011, was pretext for retaliation. (JD 43:31-34)

19. The AGC excepts to the ALJ's finding that Respondent did not unlawfully suspend Schlegel on October 26, 2011. (JD 44:12-13, 45:27-28)

20. The AGC excepts to the ALJ's failure to include a finding that Respondent violated §§ 8(a)(1), (3), and (4) of the Act by suspending Schlegel in her conclusions of law. (JD 60:13-35)

21. The AGC excepts to the ALJ's failure to include in her recommended order a requirement that Respondent cease and desist from suspending employees for engaging in union or other protected, concerted activities, or for having unfair labor practice charges filed on their behalf. (JD 62:20-64:15)

22. The AGC excepts to the ALJ's failure to include in her recommended order a requirement that Respondent, within 14 days from the date of the Board's order, remove from its files all references to the suspension of Schlegel on October 26, 2011, and notify Schlegel in

writing that this has been done and that these actions will not be used against him in any way.
(JD 62:20-64:15)

23. The AGC excepts to the ALJ's failure to include in her recommended notice to employees a statement that Respondent will remove from its files all references to the suspension of Schlegel on October 26, 2011, and will notify Schlegel in writing that this has been done and that these actions will not be used against him in any way. (JD Appendix)

24. The AGC excepts to the ALJ's failure to include in her recommended notice to employees a statement that Respondent will pay Schlegel for the wages and other benefits he lost because Respondent suspended him on October 26, 2011. (JD Appendix)

H. Rulings, Findings, Conclusions, and Remedies for Issuance of October 27, 2011, Corrective Action Memorandum to Brent Warberg

25. The AGC excepts to the ALJ's finding that the AGC did not establish that Respondent issued employee Warberg a corrective action memorandum to cover up its discriminatory treatment of Schlegel. (JD 45:26-27)

26. The AGC excepts to the ALJ's finding that Respondent legitimately issued a corrective action memorandum to Warberg on October 25, 2011. (JD 45:30-32)

27. The AGC excepts to the ALJ's finding that the AGC has not proven that Respondent's issuance of a corrective action memorandum to Warberg was a pretext to justify disciplining Schlegel. (JD 45:32-34)

28. The AGC excepts to the ALJ's dismissal of complaint paragraph 12(a). (JD 45:33-34)

29. The AGC excepts to the ALJ's failure to include a finding that Respondent violated §§ 8(a)(1), (3), and (4) of the Act by issuing a corrective action memorandum to Warberg in her conclusions of law. (JD 60:13-35)

30. The AGC excepts to the ALJ's failure to include in her recommended order a requirement that Respondent cease and desist from disciplining employees to camouflage the discriminatory nature of actions taken against other employees because of their union membership or support, or for acting with other employees for their benefit or protection, or for filing unfair labor practice charges, giving affidavits to the National Labor Relations Board, or participating in a National Labor Relations Board proceeding. (JD 62:20-64:15)

31. The AGC excepts to the ALJ's failure to include in her recommended order a requirement that Respondent, within 14 days from the date of the Board's order, remove from its files all references to the issuance of a corrective action memorandum to Warberg on October 27, 2011, and notify Warberg in writing that this has been done and that these actions will not be used against him in any way. (JD 62:20-64:15)

32. The AGC excepts to the ALJ's failure to include in her recommended notice to employees a statement that Respondent will not discipline employees to camouflage the discriminatory nature of actions it has taken against their coworkers because of their union membership or support, or for acting with other employees for their benefit or protection, or for filing unfair labor practice charges, giving affidavits to the Board, or participating in a Board proceeding. (JD Appendix)

I. Remedy for Interrogation of Neil Lundin

33. The AGC excepts to the ALJ's failure to include in her recommended notice to employees a statement that Respondent will not ask employees about their support for a union, although she found that Respondent interrogated employee Neil Lundin about his union activities in violation of § 8(a)(1) of the Act. (JD 59:40-41, 60:20-26, Appendix)

J. Reimbursement of Excess Taxes and Submission of Appropriate Social Security Documentation for Travis Schlegel

34. The AGC excepts to the ALJ's failure to order, as part of the remedy for the suspensions and discharge of Schlegel, that Respondent reimburse Schlegel in amounts equal to the difference in taxes owed upon receipt of a lump-sum payment and taxes that would have been owed had there been no discrimination. (JD 61:42-62:9, 62:20-64:15)

35. The AGC excepts to the ALJ's failure to order, as part of the remedy for the suspensions and discharge of Schlegel, that Respondent submit appropriate documentation to the Social Security Administration so that when backpay is paid, it will be allocated to the appropriate periods. (JD 61:42-62:9, 62:20-64:1)

36. The AGC excepts to the ALJ's implicit finding that the parties did not brief or have the opportunity to brief the issue of the appropriateness of an order requiring (a) reimbursement of Schlegel in amounts equal to the difference in taxes owed upon receipt of a lump-sum payment and taxes that would have been owed had there been no discrimination, and (b) submission of appropriate documentation to the Social Security Administration so that when backpay is paid, it will be allocated to the appropriate periods. (JD 61:42-62:9, , 62:20-64:1)

DATED at Portland, Oregon this 18th day of January, 2013.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that a copy of the Acting General Counsel's Limited Cross-Exceptions to Administrative Law Judge's Decision in Cases 36-CA-010801, 36-CA-010802, 36-CA-010835, 36-CA-010793, 19-CA-067859, 19-CA-069371 and 19-CA-076875 was served by e-file and e-mail, as noted below, on the 18th day of January, 2013, on the following parties:

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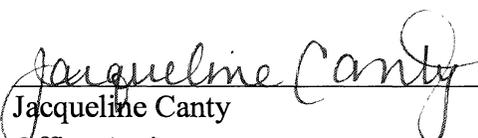
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