

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

METRO-WEST AMBULANCE SERVICES,  
INC.,

Cases 36-CA-10801  
36-CA-10802

and

TEAMSTERS JOINT COUNCIL #37,  
INTERNATIONAL BROTHERHOOD  
OF TEAMSTERS.

METRO-WEST AMBULANCE SERVICES,  
INC.,

Cases 36-CA-10835  
36-CA-10893  
19-CA-67859  
19-CA-69371

and

TEAMSTERS LOCAL #223,  
INTERNATIONAL BROTHERHOOD  
OF TEAMSTERS.

**METRO WEST AMBULANCE SERVICE, INC.'S ANSWERING BRIEF TO ACTING  
GENERAL COUNSEL'S LIMITED CROSS-EXCEPTIONS TO THE  
ADMINISTRATIVE LAW JUDGE'S DECISION OF NOVEMBER 9, 2012**

**I. INTRODUCTION**

Respondent Metro West Ambulance Service, Inc. ("Metro West") filed Exceptions and a supporting Brief in the instant matter, seeking to have the Board review and overturn portions of the Administrative Law Judge's (ALJ's) Decision issued on November 9, 2012 ("Decision"). The Acting General Counsel ("General Counsel") filed an Answering Brief to Metro West's Exceptions, and Metro West has filed a Reply Brief. The General Counsel has also filed Limited Cross-Exceptions to the ALJ's Decision. All positions in this regard have thus

been fully addressed by the parties, and Metro West submits this additional Answering Brief to address some but not all of the General Counsel's cross-exceptions.

## **II. FACTUAL BACKGROUND**

Headquartered in Hillsboro, Oregon, Metro West provides ambulance services throughout Washington County and the Portland metropolitan area. (Tr. 46, 482.) It holds the exclusive franchise agreement with Washington County for the provision of emergency ambulance services throughout the county. (Tr. 482; R. Ex. 12.) It also provides non-emergency ambulance services throughout the Portland metropolitan area and into the State of Washington. (Tr. 482-83.) It also provides wheelchair transportation services in the Portland metropolitan area and throughout the Pacific Northwest for customers who are confined to wheelchairs and need transportation to and from medical care appointments. (Tr. 483.) It also provides "stand-by" coverage for events such as Portland Trailblazers basketball games, concerts, bicycle races, and car races. (Tr. 483.) Metro West is owned by J.D. Fuiten and managed by Larry Boxman, who is its Vice President of Operations. (Tr. 482.) Metro West employs approximately 300 employees. (Tr. 483.)

Metro West is composed of several departments. The Ambulance Department is staffed with paramedics and emergency medical technicians ("EMT") (Tr. 484), who operate the Company's ambulances to provide both emergency and non-emergency services. (Tr. 483.) It is supervised by Ambulance Department Manager David Weeks, who reports to Larry Boxman. (Tr. 932.) There are several ambulance supervisors within the department, who report to David Weeks, including Kevin Riensche, Jan Lee, Jeff Mathia, and former supervisor Gregg James. (Tr. 933.) There are approximately 110 paramedics and EMTs working in the ambulance department. (Tr. 484.) The Wheelchair Department is staffed with EMTs who operate the

wheelchair vans to provide non-emergency transportation for Metro West's wheelchair-bound customers. (Tr. 483.) It is managed by Department Manager Brian Fairbanks, who reports to Larry Boxman. (Tr. 688.) There are two supervisors in the Wheelchair Department who report to David Weeks. (Tr. 689.) There are approximately 125 EMTs working in the wheelchair department. (Tr. 484.) The training department provides clinical and operational training for new employees and continuing training for existing employees. (Tr. 484.) It is supervised by Training Supervisor Sheri Snyder, who reports to Larry Boxman. (Tr. 735, 736; R. Ex. 21.) She is responsible for overseeing the training of all EMTs and paramedics at Metro West, and for the Company's quality improvement program. (Tr. 735.) She supervises the Field Training Offers. (Tr. 734.) The communications center, also referred to as the dispatch center, coordinates the field resources, i.e., the ambulances and wheelchair vans. (Tr. 483-84.) There are approximately 17 employees in the dispatch center. (Tr. 484.) The business office provides administrative and billing services for the Company, and the IT department provides IT services for the Company. (Tr. 483-84.)

The main difference between the EMTs and the paramedics working at Metro West is their level of education. (Tr. 485.) EMTs complete a six-month long program in which they are trained to deliver basic emergency medical services, such as CPR, "back boarding" for trauma patients, how to take a full assessment of a patient's condition, including blood pressure and vital signs, how to complete a chart, and how to work with difficult patients who may be experiencing psychological or emotional issues. (Tr. 485.) In the State of Oregon, EMTs do not have to work for any particular length of time as an EMT before they are eligible to apply to a paramedic program. (Tr. 485.) They simply need to have the EMT education. (Tr. 485.) EMTs at Metro West frequently progress to becoming fully-licensed paramedics; Metro West allows

the EMTs working in the Wheelchair Department to arrange their work schedules around their paramedic classes, and then guarantees that EMTs who complete their paramedic education will be provided with a three-month internship on an ambulance in order to complete their paramedic education and become fully-licensed paramedics. (Tr. 486-87.) At that point, they are guaranteed a position as a paramedic with Metro West and they transfer from the Wheelchair Department to the Ambulance Department. (Tr. 487.)

Paramedics must have at least an Associate's Degree. (Tr. 485.) Their education includes advanced level paramedic skills, such as the ability to administer medications, to perform defibrillation in case of cardiac arrest and minor surgical procedures, such as tracheal thyrotomies and chest decompressions. (Tr. 485.) Every ambulance that responds to a call at Metro West is staffed by crew composed of a senior paramedic and junior paramedic. (Tr. 529.) Metro West's franchise agreement with Washington County requires the presence of a senior paramedic on every ambulance. (Tr. 529; R. Ex. 12, p. 20 of 37.) The junior paramedic is either a lesser trained paramedic or an EMT. (Tr. 529; R. Ex. 11.) If it is an EMT, that EMT practices only within the scope of his or her training. (Tr. 529.) The junior paramedic is responsible on for his or her own performance on the ambulance. (Tr. 530.) The senior paramedic, on the other hand, is responsible not only for his own performance, but for the overall operations of the ambulance to which he is assigned, including the performance of the junior paramedic. (Tr. 530, 738; GC. Ex. 11.) The senior paramedic has had more training and is more experienced in both a clinical and leadership sense. (Tr. 529-30.) Before any employee can be promoted from junior to senior paramedic, he has to meet with Larry Boxman, because becoming a senior paramedic is essentially the first step in becoming part of the management team at Metro West. (Tr. 530.) Senior paramedics can also serve as preceptors at Metro West. (Tr. 487.) A preceptor is a senior

paramedic who has gone through some additional training to be able to train and evaluate students in the performance of clinical care in the field. (Tr. 487.)

Field Training Officers (“FTOs”) at Metro West also train and evaluate paramedics. (Tr. 488; GC Ex. 12.) They train and evaluate new paramedics at Metro West, not just for clinical competency but for all aspects of a paramedic’s performance. (Tr. 488.) They also train the EMTs who transfer from the wheelchair department to be paramedics in the ambulance department. (Tr. 737.) They also train senior paramedics to be able to respond appropriately in unusual or high-stress scenarios, and on Company policies and procedures. (Tr. 737.)

Since they train the Company’s paramedics, the FTOs are critical to its success and play an enormously important role at Metro West. (Tr. 739-40.) They are the “eyes and ears” of Metro West in the field, and the “face of Metro West” for new employees. (Tr. 740.) In that role, they are “expected to help create a good working environment for the new employees, teach them the fundamentals to become a part of the EMS [emergency medical services] team, and to set a good example of leadership for all at Metro West Ambulance.” (GC. Ex. 12.) They are expected to coach mentor both new paramedics and seasoned, senior paramedics. (Tr. 740; GC. Ex. 12.) They are expected to be able to answer any questions that new, junior, or senior paramedics might have. (Tr. 740.)

In order to fill this role for Metro West, the FTOs must themselves be outstanding paramedics. They are “the best or upper echelon in the company because of their knowledge, because of their training abilities.” (Tr. 740.) They are, as Larry Boxman referred to them, the “top gun” paramedics at Metro West. (Tr. 573.) In order to become an FTO, a paramedic must submit a letter of interest to Training Supervisor Snyder. (Tr. 741-42.) Snyder then contacts the

candidate's direct supervisor for a recommendation, and then the candidate must pass a panel interview process. (Tr. 741-42.) The panel is composed of Metro West's Medical Director, Washington County regulators, all of Metro West's management and supervisory staff, and FTOs who choose to participate. (Tr. 742.) If the panel decides that a second interview is warranted, the Medical Director and Snyder will conduct that second interview, sometimes with the participation of other management staff. (Tr. 742.) The candidate must then complete the Company's field training evaluation program, in which FTOs are trained on how to evaluate and interact with personnel in the field. (Tr. 740, 742.)

Trainees train with the FTOs for a two-month period. (Tr. 744.) During those two months, the FTOs evaluate their trainees using the "Observation Report and Standard Evaluation Guidelines" manual, which outlines various categories in which the trainees are to be evaluated and rated. (Tr. 189, 742-43; R. Ex. 1.) The trainees' performance in the various categories is rated using a numerical system, in which "1 – Unsatisfactory" is the lowest rating, and "5 – Superior" is the highest rating. (Tr. 743, 744; R. Ex. 1.) The FTOs document their evaluations on the "Daily Observation Report" attached to the Evaluation Guidelines; they are supposed to complete those reports on a daily basis and turn them into Sheri Snyder, who reviews and signs them, and then files them in her office. (Tr. 743-44, 759-60.) Once the trainees complete their training with the FTOs, they become junior paramedics in the ambulance department. (Tr. 746.) It is undisputed that in order for an FTO to adequately train new employees and evaluate they are performing at a superior level, the FTO himself must perform as a superior paramedic, and that Metro West expects all of its FTOs to be superior paramedics. (Tr. 189, 744.)

### III. GENERAL COUNSEL'S LIMITED CROSS-EXCEPTIONS

**A. Exception C.: Whether the ALJ Erred in Failing to Find that on April 8 and 14, 2011, Metro West Enforced Its "Employee Associations" Rule by Issuing Disciplinary Coaching Memoranda to Schlegel, Preston and Haslett for Wearing Union Pins. (GC Cross Exceptions, pgs. 2-3.)**

The ALJ correctly found that Metro West did not enforce its Employee Associations rule by issuing disciplinary coaching memoranda to paramedics Schlegel, Preston and Haslett. (ALJD 14:15-15:25; 45:36-47:40.) There was no evidence in this case that any employee was disciplined because he or she was wearing a Union pin. Although the General Counsel entered into evidence coaching memorandums that had been prepared for employees Travis Schlegel, Trish Preston and Peter Haslett (GC Exs. 2-4), she did not produce any evidence establishing the employees received those memorandums. In fact, both Schlegel and Preston testified that they had never been given their respective coaching memorandums. (Tr. 129: 7-13; 268:14-22.) Peter Haslett did not testify at hearing and no other witness testified that he had been given the coaching memorandum prepared for him.

**B. Exception G: Whether the ALJ Erred in her Findings, Conclusions, and Remedies for Issuance of October 26, 2011, Suspension to Travis Schlegel. (GC Cross Exceptions, pgs. 4-6.)**

The ALJ properly concluded that Metro West did not unlawfully suspend Schlegel on October 26, 2011. On October 25, 2011, supervisor Jeff Mathia transported a patient to St. Vincent's Hospital and arrived at 5:33 pm. (Tr. 903; R. Ex. 25, pgs. 40-42.) Upon arriving at St. Vincent's Hospital, Mathia saw Schlegel and Schlegel's junior partner, Brent Warberg, standing in the parking lot near their ambulance. *Id.* Mathia took his patient inside the hospital and turned over to hospital staff. *Id.* When Mathia returned to his ambulance approximately 10 minutes later, he saw Schlegel talking with some paramedics from AMR. (Tr. 903, R. Ex. 25, pgs. 40-43). Mathia's ambulance was now blocked in by Schlegel's and the

AMR crews' ambulances. (Tr. 903, R. Ex.25, pgs. 40-42.) Mathia asked Schlegel if he was going to be clearing, i.e., leaving. *Id.* Schlegel responded that they were there to pick up a patient in the Hospital. (Tr. 903; R. Ex. 25, p. 40.) Mathia asked Schlegel to move his ambulance so the supervisor could leave and Schlegel complied. (Tr. 903; R. Ex. 25, p. 40.) Mathia subsequently contacted dispatch and learned that Schlegel and Warberg's call was for a patient pickup "ASAP" (as soon as possible). (Tr. 903; R. Ex. 25, p. 40.)

Metro West investigated the matter and its investigation revealed the following: Schlegel and Warberg were dispatched to pick up the patient ASAP at 4:32 pm. (Tr. 903; R. Ex. 25, pgs. 40-42.) At the time, they were in the Gresham area.(R. Ex. 40.) The AVL in their vehicle indicated that it subsequently stopped near 181<sup>st</sup> and Glisan in Portland for 16 minutes. (R. Ex. 25, pgs. 40-42.) They had stopped to get some teriyaki for dinner. (Tr. 175.) Radio recordings were reviewed at the time of the stop and confirmed that Schlegel and Warberg failed to advise dispatch that they were stopping for food. (Tr. 903, R. Ex. 25, pgs. 40-42.) Schlegel testified that since Warberg was driving, it was his responsibility to notify dispatch that they were stopping for food. (Tr. 182.) The radio in the ambulance is located between the driver seat and the passenger seat and is easily accessible to both the driver and the passenger.

The AVL in their ambulance indicated that they arrived at St. Vincent's Hospital at 5:32 pm – an hour after being dispatched. (Tr. 903; R. Ex. 25, pgs. 40-42.) The radio recordings, however, indicated that Schlegel and Warberg arrived at 5:37 pm – four minutes after Mathia saw them when he arrived at St. Vincent's. (Tr. 903; R. Ex. 25, pgs. 40-42.)

Supervisor Jan Lee met with Schlegel on October 26, 2011, and interviewed him regarding the events of October 25. (Tr. 181-82; R. Ex. 25, pg. 43.) Schlegel told Lee that they had stopped to pick up food at a restaurant on Glisan on their way to St. Vincent's and that he

did not know if Warberg had notified dispatch of the stop. (R. Ex. 25, p. 43). Schlegel also said that he did not know whether they immediately contacted dispatch when they arrived at St. Vincent's because he could not remember. *Id.* At hearing, Schlegel testified that after he discovered that Warberg had not notified dispatch of their arrival, he either told Warberg to notify dispatch or he himself notified dispatch. (Tr. 182.) Schlegel was the senior paramedic on the call. (Tr. 641.) At hearing, he testified that Warberg was responsible for keeping in touch with dispatch because Warberg was driving the ambulance. Schlegel was the senior paramedic on the call. (Tr. 641.-42.)

During their October 26, 2011, meeting Lee explained to Schlegel that the situation was very serious because he had performance concerns with his failure to communicate with dispatch in the past. (R. Ex. 25, p. 43.) She sent Schlegel home for the night and told him that he would be paid for the night if their investigation indicated that Schlegel had done nothing wrong. (Tr. 182; R. Ex. 25, p. 43.)

In all, Schlegel and Warberg took three delays in responding to the ASAP call at St. Vincent's without notifying dispatch: stopping for food without notifying dispatch, arriving at the hospital without notifying dispatch, talking outside the hospital before going in to retrieve the patient without notifying dispatch. (Tr. 641, 903-04; R. Ex. 25, p. 43.) They created a roughly 30 minute delay in responding to the ASAP call. (Tr. 904; R. Ex. 25, pg. 41-42.)

At hearing, Schlegel tried claimed that his delay was immaterial because they were responding to a non-911 call to pick up a bariatric patient for transport home. (Tr. 640.) Boxman testified that there is no material difference between emergency and non-emergency calls for the crews. (Tr. 642-43.) Both require a commitment to the customer, in this case St. Vincent's hospital, and failure to respond to a call, especially an ASAP call, compromises Metro

West's customer service and can jeopardize its contracts with its customers. (Tr. 642-45.) In this particular case, the fact that Warberg and Schlegel kept a bariatric patient waiting for 30 minutes also meant that a bed in the hospital was taken up for an extra 30 minutes. (Tr. 644-45.) If a hospital does not have beds available for other patients it has to go on divert status, which means ambulances transporting patients will have to go to other hospitals that do have beds available. (Tr. 644-45.) That can mean a loss of revenue for both hospital. *Id.* Although Schlegel stated that in this regard, he did not know what the hospital's policy was, Boxman's unrebutted testimony was that an FTO at Metro West is expected to know and understand this diversion effect. (Tr. 645.)

Schlegel's employment was terminated. Both Kevin Riensche and David Weeks recommended to Larry Boxman that Schlegel's employment should be terminated. (R. Ex. 25.) This was actually the third time that they had recommended that Travis should be terminated. (R. Ex. 25.) Boxman had discussed the previous recommendations with Schlegel each time they were made, and previously decided not to terminate Schlegel because he was a long-term employee and Boxman hoped that he would improve his performance. (Tr. 640.) Boxman finally decided that Schlegel's employment should be terminated because Schlegel had shown no improvement over the last year, and with the St. Vincent's incident he had shown that he was repeatedly choosing to not notify dispatch, even though he was well aware that as the senior paramedic he was always responsible for communications with dispatch. (Tr. 641-42; R. Ex. 11.) Schlegel had even been reminded of that fact at the recent October 11, 2011, All Hands meeting, (R. Ex. 4), and by an operation update email sent to all employees on October 10, 2011. (R. Ex. 3.) Boxman therefore terminated Schlegel's employment on October 27, 2011. (Tr. 641.)

Metro West offered substantial evidence at hearing that Schlegel was not singled out in any way, since it has a well-established-practice of disciplining employees for issues similar to those for which Schlegel was disciplined, including failures to communicate with dispatch. (Tr. 272, 909-921, R. Ex. 5, 30, 31, 34; ALJD 43:11-23.)

Based on this overwhelming record evidence, the ALJ correctly found that Metro West did not violate the Act when it suspended Schlegel pending its proper and lawful investigation into his conduct on October 25. (ALJD 43:31-34.)

The General Counsel 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”. (GC Cross-Exception G.12, p. 4.) General Counsel objected to the admission of portions of R. Ex. 25, specifically Respondent’s Exhibit 25, pgs. 40-41. The ALJ admitted the exhibit with the caveat that “any hearsay statements will be evaluated and assessed the weight that they’re due.” (Tr. 996.) Weeks testified that he believed the incident report had been prepared by Mathia, and he and Riensche both testified that they received copies of this report from Mathia. (Tr. 902, 961; ALJD 20:21.) The entirety of Respondent’s Exhibit 25 was prepared by Supervisor Kevin Riensche, and consists of documents he relied upon in recommending to Boxman that Schlegel’s employment be terminated. (Tr. 867.)

The General Counsel also 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.” (GC Exceptions, G.14, p. 4.) General Counsel specifically

excepts to the ALJ's admission and reliance upon page 42 of Respondent's Exhibit 25, which is a timeline of events prepared by David Weeks. The ALJ observed that this timeline of events was prepared by Weeks based upon the information that Mathia had reported to him regarding Mathia's investigation into the events of October 25, and that Weeks also added information to the timeline based upon his own investigation. (ALJD 20:33-34; Tr. 961.) This portion of Respondent's Exhibit 25 therefore falls within the "present sense impression" exception to the hearsay rule. Furthermore, Weeks relied on this report in making his recommendation to terminate Schlegel's employment (Tr. 961), Boxman also relied upon it in making his decision to terminate Schlegel's employment (Tr. 637-39), and Weeks, *who prepared the timeline*, testified at hearing regarding the timeline (Tr. 961), providing General Counsel with ample evidence to cross-examine him regarding to the report. Furthermore, the ALJ noted that the report Schlegel's own account of the incidents occurring on October 25 tracked Metro West's account as documented in R. Ex. 25. (ALJD 20:19-31.) General Counsel's argument that the ALJ improperly admitted and relied on this timeline because it was prepared in anticipation of litigation is patently incorrect, and irrelevant since Weeks testified that he prepared this timeline to support his third recommendation to Boxman that Schlegel's employment be terminated and it was relied upon in making the decision to terminate Schlegel's employment. Thus, the ALJ's admission and reliance upon this portion of Respondent's Exhibit 25 was proper.

The General Counsel also excepts to the "ALJ's failure to consider evidence that discussions between paramedics employed by [Metro West] and paramedics employed by medical transportation service company American Medical Response at hospitals are a daily occurrence." (GC Exceptions G.13, p. 4.) The ALJ was correct in not relying on any such evidence since it is utterly irrelevant to the issue of whether Metro West unlawfully suspended

Schlegel on October 26, 2011. Schlegel was not suspended simply because he was engaging in discussions with paramedics from American Medical Response (“AMR”); he was suspended pending Metro West’s investigation into the fact that he admittedly caused an approximately 30 minute delay in picking up a patient from St. Vincent’s hospital on October 25. General Counsel did not offer any evidence that Metro West had tolerated such a delay caused by conversations Metro West paramedics had with AMR personnel. Simply put, Metro West paramedics may have been conversing freely with AMR paramedics, but there was no evidence any of those paramedics caused a 30 minute delay in patient pick-up because of those conversations.

**C. Exception H: Whether the ALJ Erred in her Rulings, Findings, Conclusions, and Remedies for Issuance of October 27, 2011, Corrective Action Memorandum to Brent Warberg. (GC Cross Exceptions, pgs. 6-7 .)**

The ALJ also correctly found that Metro West did not violate the Act by issuing a corrective action memorandum to Junior Paramedic Brent Warberg on October 27, as a result of the delays caused by Schlegel and Warberg in picking up the patient at St. Vincent’s Hospital on October 25. (ALJD 45:21-34.) Warberg was properly disciplined for this infraction, along with Schlegel. Metro West offered plenty of evidence that junior paramedics were disciplined along with the senior paramedics on their crews. (Tr. 915; R. Ex. 5, 27, 30, 31.) In addition, the General Counsel failed to establish that Warberg engaged in any union activity or that Metro West had any knowledge of that activity.

**IV. CONCLUSION**

With regard to the exceptions addressed herein, the ALJ’s Decision is clearly and fully supported by the record and the cited case law. The General Counsel raised no exception or argument warranting the Board overturning the ALJ’s well-reasoned Decision in this regard.

Respondent Metro West therefore respectfully requests the Board affirm the portions of the ALJ's Decision to which the General Counsel has taken exception as addressed herein.

DATED: February 1, 2013.

Respectfully Submitted,

BULLARD SMITH JERNSTEDT WILSON

By /s/ Jennifer A. Sabovik

Jennifer A. Sabovik

Attorneys for Respondent Metro West Ambulance Service, Inc.

CERTIFICATE OF SERVICE

I hereby certify that on February 1, 2013, I served a full, true and correct copy of the foregoing **METRO WEST AMBULANCE SERVICE, INC.’S ANSWERING BRIEF TO ACTING GENERAL COUNSEL’S LIMITED CROSS-EXCEPTIONS TO THE ADMINISTRATIVE LAW JUDGE’S DECISION** on the following persons via the methods indicated below:

Email: Rachel Harvey  
National Labor Relations Board  
Subregion 36  
601 SW Second Avenue, Suite 1910  
Portland, OR 97204-3170  
rachel.harvey@nlrb.gov

Email: Mark J. McPherson  
Lead Organizer  
Teamsters Joint Council #37  
1872 NE 162<sup>nd</sup> Ave  
Portland, OR 97204-3170  
mmacpherson@jcteamsters37.com

/s/ Jennifer A. Sabovik \_\_\_\_\_  
Jennifer A. Sabovik

Attorneys for Respondent Metro West Ambulance  
Service, Inc.