

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 20

AMERICAN MEDICAL RESPONSE, INC.

Employer

and

INTERNATIONAL ASSOCIATION OF FIRE FIGHTERS
LOCAL 2400,

Case 20-RC-102329

Petitioner

and

NATIONAL EMERGENCY MEDICAL SERVICES ASSOCIATION

Intervenor/Incumbent

DECISION AND DIRECTION OF ELECTION

International Association of Fire Fighters, Local 2400 (Petitioner) has filed a petition seeking to represent a unit of employees employed by American Medical Response (Employer). National Medical Emergency Services Association (NEMSA), the Intervenor/Incumbent, contends the petition should be dismissed, or at least stayed. I have considered the evidence and arguments raised by the parties and based on the record as a whole, as explained below, I will direct an election in the following appropriate unit:

All full-time and regular part-time paramedics employed by the Employer in San Mateo County, California; excluding all other employees, guards and supervisors as defined in the Act.

FACTS AND DISCUSSION

The Employer provides emergency and non-emergency medical transport services in numerous counties throughout Northern California, including in San Mateo County.¹ NEMSA has represented Employer's paramedics in the Employer's San Mateo County operations since 2004, when NEMSA was certified by the Board.² The most recent collective-bargaining agreement (Agreement) covering this certified unit, which is the bargaining unit covered by the instant petition,³ was effective January 1, 2010, to December 31, 2012.⁴

NEMSA argues that the petition should not be processed for three reasons.

First, NEMSA posits that NEMSA and Petitioner are parties to a valid no-raid agreement that precludes Petitioner from filing the petition. In the alternative, NEMSA

¹ The Employer's operations at other locations have been described in prior cases before the Board and this office. See, *AMR Inc.*, 344 NLRB 1406 (2005), and my Decision and Direction of Election in *American Medical Response West*, 20-RC-066407 (December 27, 2011).

² I take administrative notice that NEMSA was certified in Cases 20-RC-17944 & 20-RD-2384 on August 23, 2004, as the exclusive collective-bargaining representative of employees in the following unit: "All full-time and regular part-time paramedics employed by the Employer in San Mateo County, California; excluding all other employees, guards and supervisors as defined by the Act." I have included in the record a copy of the certification as Board Exhibit 8, and also attach a copy hereto.

³ By its petition, Petitioner seeks to represent employees in a unit comprised of "all paramedics of Employer; excluding EMTs, VSTs and administrative/supervisory/managerial staff." There are about 79 paramedics in the petitioned-for unit.

⁴ NEMSA's Executive Director, Torren Colcord, testified that the Agreement was extended through June 30, 2013, but did not produce the extension agreement. In this circumstance, it is impossible to judge whether the purported extension would meet either of the criteria set forth in *Southwestern Portland Cement Co.*, 126 NLRB 931 (1960). In any event, no party contends that there is a contract that bars the petition.

claims that it is a member of the San Mateo County Central Labor Council (AFL-CIO) and thus, like Petitioner, is affiliated with the AFL-CIO.

As to the purported no-raid agreement, NEMSA's Executive Director, Torren Colcord, asserted its existence at the hearing. Colcord conceded, however, that NEMSA has no copy of the asserted agreement; he has never seen it; and he was not directly involved in its negotiation. Rather, Colcord's assertion that such an agreement exists is supported solely by hearsay testimony.⁵ Petitioner's Vice President, Tom Neylan, denied the existence of a no-raid agreement between Petitioner and NEMSA. Thus, the record plainly does not support a finding that such an agreement exists. Accordingly, I decline to dismiss the petition or to grant a stay based on NEMSA's no-raid assertion.

NEMSA also argues that it is protected from raiding by Petitioner by virtue of NEMSA's membership in the San Mateo Central Labor Council (AFL-CIO) (Council) and Petitioner's affiliation with the AFL-CIO, so that the Board's policy to defer to no-raid procedures should apply. It is true that under the Board's Casehandling Manual Sections 11017 through 11019, the Board may authorize its Regional Directors to stay the processing of a representation petition for 30 days during the pendency of a no-raid

⁵ In this regard, the record includes affiliation and servicing agreements between NEMSA and the National Association of Government Employees/SEIU Local 5000 (NAGE). According to Colcord, pursuant to the servicing agreement, sometime between July and October 2012, NEMSA's Labor Relations Representative for Northern California, Dary Sardad, negotiated a no-raid agreement with Petitioner on behalf of NEMSA and reported this to Colcord. A portion of an email dated September 14, 2012, from Sardad to Petitioner, was read into the record in which Sardad appears to assert the existence of a no-raid agreement. The email was not introduced into the record and the portion of it read into the record does not document a no-raid agreement between the parties. According to Colcord, Sardad has refused to cooperate with NEMSA in these proceedings. NEMSA subpoenaed Sardad shortly before the hearing but he did not appear.

proceeding under the AFL-CIO procedure or a similar procedure. I find, however, that NEMSA's assertion regarding affiliation is insufficient to support dismissing this petition or granting a 30-day stay of this proceeding. Petitioner does not contest its own affiliation with the AFL-CIO. However, the only documentation offered by NEMSA in support of its asserted affiliation with the AFL-CIO is a September 18, 2012, letter attached to its post-hearing brief, from the San Mateo County Central Labor Council AFL-CIO, welcoming NEMSA as a new member of the Council. NEMSA requests that I reopen the record to include this document as an exhibit to establish the existence of a no-raid agreement under Article XX of the AFL-CIO Constitution applicable to the parties herein. I decline to do so given that the letter does not provide direct evidence of NEMSA's current affiliation with the AFL-CIO and the applicability of Article XX procedures to this situation. Neither is there evidence that NEMSA had initiated a proceeding under Article XX at the time of the hearing. Accordingly, I decline to dismiss the petition or to stay the processing of the petition based upon NEMSA's argument that Article XX applies.

Secondly, NEMSA argues that the petition should be dismissed because it is not supported by a valid showing of interest. It has long been established that the determination of whether a sufficient showing of interest exists is an administrative matter and it is not litigable by the parties. See *Pacific Coast M.S. Industrial. Co.*, 355 NLRB 1422, 1442 (2010), citing *O.D. Jennings & Co.*, 68 NLRB 516, 518 (1946); *River City Elevator Co.*, 339 NLRB 616 (2003); *ABC Vending Corp.*, 107 NLRB 957, 957-958 fn. 1 (1954); *Borden Co.*, 101 NLRB 203, 203 fn. 3 (1952). The Region has

administratively investigated and determined that the showing of interest herein is sufficient to support the petition. I therefore reject NEMSA's argument in this regard.

Third, NEMSA argues that the petition must be dismissed because the certified historical unit includes part-time employees and International Association of Firefighters' (IAFF) by-laws preclude Petitioner from representing part-time employees. I find this argument to be without merit. IAFF is not the petitioner herein and Petitioner has represented that it is able and willing to represent all of the paramedics employed by the Employer.⁶

Appropriate Unit. No party contends that the certified historical unit is not an appropriate unit nor does the record include any evidence to warrant such a conclusion. I therefore find that the following certified historical unit is an appropriate unit for purposes of collective bargaining in this proceeding:

All full-time and regular part-time paramedics employed by the Employer in San Mateo County, California; excluding all other employees, guards and supervisors as defined in the Act.

CONCLUSIONS AND FINDINGS

Based upon the record, I conclude and find as follows:

1) The Hearing Officer's rulings made at the hearing are free from prejudicial error and are affirmed.⁷

⁶ If Petitioner decides that it is unwilling or unable to represent employees in the unit found appropriate herein, Petitioner may request withdrawal of the petition within ten days of the issuance of this Decision.

⁷ The record reflects that Employer received proper timely notification of the hearing conducted in this case but no representative of Employer appeared at the hearing. I find no

2) The Employer is an employer as defined in Section 2(2) of the Act, and is engaged in commerce within the meaning of Sections 2(6) and (7) of the Act, and it will effectuate the purposes of the Act to assert jurisdiction in this case.⁸

3) The Petitioner and NEMSA are labor organizations within the meaning of the Act.⁹

4) A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Sections 2(6) and (7) of the Act.¹⁰

5) The following employees of the Employer constitute an appropriate unit for the purposes of collective-bargaining within the meaning of the Act:

All full-time and regular part-time paramedics employed by the Employer in San Mateo County, California; excluding all other employees, guards and supervisors as defined in the Act.

error was committed by proceeding with the hearing in the absence of an Employer representative.

⁸ The Board may assert jurisdiction over the Employer in order to oversee the unit it has certified. Further, as noted above, the Board and the Region have previously asserted jurisdiction over the Employer.

⁹ Both Neylan and Colcord testified that employees participate in Petitioner and NEMSA, respectively, and that each union exists for the purpose in whole or in part of representing employees with respect to their wages, hours and working conditions. The existence of the Board certification and the Agreement further support a finding that NEMSA qualifies as a labor organization under the Act. Accordingly, I find that both Petitioner and NEMSA are labor organizations within the meaning of Section 2(5) of the Act.

¹⁰ As indicated above, no party asserts that a contract bars the petition, and I have rejected NEMSA's arguments for dismissing the petition or ordering a stay in these proceedings.

DIRECTION OF ELECTION

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. The employees will vote whether or not they wish to be represented for purposes of collective bargaining by International Association of Fire Fighters, Local 2400 or by National Emergency Medical Services Association **or** by no labor organization.

The date, time and place of the election will be specified in the notice of election that the Board's Regional Office will issue subsequent to this Decision.

A. Voting Eligibility

Eligible to vote in the election are those in the unit found appropriate who are employed during the designated payroll period for eligibility, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. 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 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. Unit employees in the military services of the United States may vote if they appear in person at the polls.

Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the

election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

B. Employer to Submit List of Eligible Voters

To ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses, which 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, it is hereby directed that within seven days of the date of this Decision, the Employer must submit to the Regional Office an election eligibility list, containing the full names and addresses of all the eligible voters. *North Macon Health Care Facility*, 315 NLRB 359, 361 (1994). The list must be of sufficiently large type to be clearly legible. To speed both preliminary checking and the voting process, the names on the list should be alphabetized (overall or by department, etc.). This list may initially be used by me to assist in determining an adequate showing of interest. I shall, in turn, make the list available to all parties to the election.

To be timely filed, the list must be received in the Regional Office, National Labor Relations Board, Region 20, 901 Market Street, Suite 400, San Francisco, CA 94103, on or **before May 15, 2013**. No extension of time to file this list will be granted except in extraordinary circumstances, nor will the filing of a request for review affect the requirement to file this list. Failure to comply with this requirement will be grounds for setting aside the election whenever proper objections are filed. The list may be submitted to the Regional Office by electronic filing through the Agency's website,

www.nlr.gov,¹¹ by mail, or by facsimile transmission at (415)356-5156. The burden of establishing the timely filing and receipt of the list will continue to be placed on the sending party.

Because the list will be made available to all parties to the election, please furnish a total of two copies of the list, unless the list is submitted by electronic filing, facsimile or e-mail, in which case no copies need be submitted. If you have any questions, please contact the Regional Office.

C. Notice of Posting Obligations

According to Section 103.20 of the Board's Rules and Regulations, the Employer must post the Notices to Election provided by the Board in areas conspicuous to potential voters for at least 3 working days prior to 12:01 a.m. of the day of the election. Failure to follow the posting requirement may result in additional litigation if proper objections to the election are filed. Section 103.20(c) requires an employer to notify the Board at least 5 full working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. *Club Demonstration Services*, 317 NLRB 349 (1995). Failure to do so estops employers from filing objections based on nonposting of the election notice.

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-

¹¹ To file the eligibility list electronically, go to the Agency's website at www.nlr.gov, select *File Case Documents*, enter the NLRB Case Number, and follow the detailed instructions.

0001. This request must be received by the Board in Washington by **May 22, 2013**. The request may be filed electronically through the Agency's web site, www.nlr.gov,¹² but may not be filed by facsimile.

DATED AT San Francisco, California, this 8th day of May 2013.



Joseph F. Frankl, Regional Director
National Labor Relations Board, Region 20
901 Market Street, Suite 400
San Francisco, California 94103-1735

¹² To file the request for review electronically, go to www.nlr.gov, select **File Case Documents**, enter the NLRB Case Number, and follow the detailed instructions.

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

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| AMERICAN MEDICAL RESPONSE | Employer |
| and | |
| NATIONAL EMS ASSOCIATION (NEMSA) | RC Petitioner |
| and | |
| SEIU, LOCAL 250, HEALTH CARE WORKERS UNION | Intervenor |
| and | |
| AMERICAN MEDICAL RESPONSE | Employer |
| and | |
| ERIC STEPHENS, An Individual | RD Petitioner |
| and | |
| SEIU, LOCAL 250, HEALTH CARE WORKERS UNION | Union |

TYPE OF ELECTION
(CHECK ONE)

- CONSENT
- STIPULATED
- RD DIRECTED
- BOARD DIRECTED

(ALSO CHECK BOX
BELOW WHEN
APPROPRIATE)

8(B)(7)

CASE 20-RC-17944
20-RD-2384

CERTIFICATION OF REPRESENTATIVE

An election has been conducted under the Board's Rules and Regulations. The Tally of Ballots shows that a collective-bargaining representative has been selected. No timely objections have been filed.

As authorized by the National Labor Relations Board, it is certified that a majority of the valid ballots have been cast for

NATIONAL EMS ASSOCIATION (NEMSA)

and that it is the exclusive collective-bargaining representative of the employees in the following appropriate unit.

UNIT:

All full-time and regular part-time paramedics employed by the Employer in San Mateo County, California; excluding all other employees, guards and supervisors as defined in the Act.



Signed at San Francisco, California

On the 23rd day of

August, 2004

Acting Regional Director, Region 20
National Labor Relations Board

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