

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 32**

(San Leandro, CA)

PARAMEDICS PLUS, LLC¹

Employer,

and

Case 32-RC-102941

NATIONAL ASSOCIATION OF
GOVERNMENT EMPLOYEES AFFILIATED
WITH SERVICE EMPLOYEES INTERNATIONAL
UNION, (SEIU/NAGE LOCAL 5000)²

Petitioner,

and

NATIONAL EMERGENCY MEDICAL
SERVICES ASSOCIATION (NEMSA)

Intervenor.

DECISION AND ORDER

Paramedics Plus, LLC (the Employer) is an ambulance service with an office located in San Leandro, California. The employees in the petitioned-for unit are currently represented by National Emergency Medical Services Association (the Intervenor), and National Association of Government Employees affiliated with Service Employees International Union, (SEIU/NAGE Local 5000) (the Petitioner) now seeks an election to represent those employees. The issue before me is whether the Employer is a

¹ The name of the Employer appears as amended in Board Exhibit 2.

² The name of the Petitioner appears as amended by the Petitioner at the hearing.

“health care institution” within the meaning of Section 2(14) of the Act, and as such, whether the petition was filed within the appropriate window period.

A hearing officer of the Board held a hearing in this matter, and the Intervenor and the Petitioner filed post-hearing briefs. I have considered the evidence and the arguments presented by the parties and, for the reasons discussed below, I conclude that the Employer is a health care institution. The petition, which was filed during the 90-day insulated period for health care institutions, is accordingly untimely and must be dismissed.

FACTS

The Employer provides ambulance services in Alameda County, California. The Employer is contracted to respond to emergency calls received through the 9-1-1 public emergency answering system, and responds to some 11,000 emergency calls a month. Approximately 70 percent of those calls involve patients requiring pre-hospital emergency medical care and transport to local hospitals.

The essential facts concerning the Employer’s operation are not in dispute. The Employer maintains about 57 advanced life support and 5 basic life support ambulances,³ and employs about 250 paramedics and 150 emergency medical technicians (EMTs) who staff those ambulances.⁴ Patient care provided by paramedics includes administering cardiopulmonary resuscitation (CPR); advanced airway management, including the use of endotracheal tubes and forced ventilation procedures; starting intravenous (IV) infusion

³ The distinction between “advanced life support” and “basic life support” is, generally, that basic life support does not involve the use of invasive medical interventions, such as the insertion of a breathing tube or the use of a cardiac monitor defibrillator.

⁴ While both paramedics and EMTs provide medical care to patients, paramedics have more advanced training and provide more advanced medical care than EMTs. The Employer’s ambulances are typically staffed with at least one paramedic, although its basic life support ambulances will occasionally be staffed with two EMTs.

lines; administering medications; performing cardiac monitoring and electrocardiograms (EKGs); and using defibrillators. Paramedics conduct initial assessments on patients and then follow established protocols and standing orders to provide necessary medical care while patients are transported to hospital emergency rooms. At times, very sick patients may require medical care that goes beyond standard protocols. Paramedics provide care in those instances under the guidance of attending emergency room physicians, with whom paramedics are in contact by cellular telephone. Paramedics also consult with attending emergency room physicians regarding the care of patients who refuse treatment against medical advice. Once patients are transported to a hospital and turned over to the care of emergency room personnel, paramedics provide “turnover” reports to those personnel regarding the patient’s condition and the medical care provided while the patient was in the Employer’s care.

The Employer and the Intervenor are parties to a valid collective-bargaining agreement effective by its terms from July 13, 2012, through June 30, 2013. On April 16, 2013, the Petitioner filed a petition seeking an election to oust the incumbent Intervenor and represent the Employer’s employees.

ANALYSIS

Section 2(14) of the Act defines the term “health care institution” as “any hospital, convalescent hospital, health maintenance organization, health clinic, nursing home, extended care facility, or other institution devoted to the care of sick, infirm, or aged person[s].” The precise issue of whether an ambulance service is a health care institution has not yet been decided by the Board.⁵ The Board has, however, generally

⁵ In *American Medical Response*, 335 NLRB 1176 (2001), the Board declined to address an administrative law judge’s finding that an ambulance company was not a health care institution within the meaning of Sec.

recognized the intent of Congress to construe the term “health care institution” broadly. *Kirksville College of Osteopathic Medicine, Inc.*, 274 NLRB 794, 795 (1985).

Here, it appears from the record that the Employer’s ambulance service is “devoted to the care of sick, inform, or aged persons” so as to fall within the literal language of Section 2(14) of the Act. In that regard, the Employer provides much more than mere transportation services to its patients. As explained above, the record establishes, and the Petitioner does not dispute, that the Employer provides critical medical care to patients on a regular basis. Indeed, the Employer’s sole purpose is to transport and provide life support to sick and injured patients until they can be transferred to the care of a hospital. Furthermore, the record establishes, and the Petitioner does not dispute, that the Employer’s paramedics perform some of the same types of advanced patient care as performed by staff in hospital emergency rooms. Compare *Virtua Health, Inc.*, 344 NLRB 604 (2005) (Board found a community of interest between ambulance paramedics and emergency room personnel, in part, because both groups of employees performed the same types of advanced patient care).

To be sure, the Employer’s operation is to stabilize and transport sick and injured patients so that they may be transferred to the permanent care of a hospital, and, as such, the Employer’s operation is not focused exclusively on medical care. However, the Board has found that an employer is a health care institution so long as it performs patient care functions with sufficient regularity and in a sufficiently large number, regardless of what percentage of the employer’s operations are spent on patient care. Thus, in *Syracuse*

2(14) of the Act because no exceptions had been filed to that finding. In *Lifeline Mobile Medics, Inc.*, 308 NLRB 1068 (1992), the Board did not pass on a regional director’s determination that an ambulance company was a health care institution within the meaning of Sec. 2(14) of the Act because no party requested review of that determination.

Region Blood Center, 302 NLRB 72 (1991), the Board found the blood bank involved in that case to be a health care institution within the meaning of Section 2(14) of the Act, notwithstanding the fact that the employer's primary function was the collection, processing, and distribution of blood. In finding the employer to be a health care institution, the Board noted that "a small fraction of the employer's activities" also included patient care-related functions such as patient pheresis and therapeutic phlebotomies, which the Board found to have been "performed with sufficient regularity and in a sufficiently large number... that the Employer is properly viewed to be 'devoted to the care of sick persons.'" 302 NLRB at 72-73. Here, the Employer's operations present an even stronger case for concluding that the Employer is a health care institution than in *Syracuse Regional Blood Center*, because the medical care the Employer provides to patients is a primary function of its daily operations, as opposed to being merely incidental to its transportation services.

While the Petitioner does not dispute that the Employer provides health care, it nonetheless maintains that the Employer is not a "health care institution" within the meaning of Section 2(14) of the Act because the Employer does not provide that care at "an actual facility where patients are admitted for treatment." However, there does not appear to be any basis in the Act for drawing a distinction between an employer that provides medical care to patients while en route to a hospital, as opposed to an employer that provides patient care at a stationary facility, which distinction, if drawn, would likely also mean the exclusion of other mobile health care providers, such as clinics on wheels.

Although Petitioner relies on *Albuquerque Ambulance Service*, 263 NLRB (1982), in support of its position, I find that case to be distinguishable. There, the Board

did not find that ambulance service providers are excluded from the statutory definition of a health care institution. Rather, the Board upheld a Regional Director's finding that ambulance service employees shared a separate and distinct community of interest from hospital employees. Moreover, it is not clear whether the employer in that case merely provided transportation services, or whether it provided advanced medical care to patients during transport, as does the Employer involved herein.

For the reasons explained above, I conclude that the Employer is a health care institution within the meaning of Section 2(14) of the Act.⁶ Any timely petition must therefore have been filed within the open period for health care institutions, namely, 90 to 120 days before the expiration of the contract. *Trinity Lutheran Hospital*, 218 NLRB 199 (1975). The petition in this matter was filed during the 90-day insulated period before the contract's expiration and is therefore untimely. Accordingly, the petition must be dismissed.

CONCLUSIONS AND FINDINGS

Based upon the entire record in this matter and in accordance with the discussion above, I conclude and find as follows:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. The parties stipulated, and I find, that the Employer is engaged in commerce within the meaning of the Act, and is subject to the jurisdiction of the Board.

⁶ I find unavailing the Petitioner's contention that any determination that the Employer is a health care institution should be applied prospectively. The Petitioner has pointed to no existing rule, legal precedent, or policy on which it has detrimentally relied, and my determination in this matter does not involve the creation of a new rule, policy, or legal standard. Accordingly, there is no reason for a prospective application of my determination that the Employer is a health care institution.

3. The parties stipulated, and I find, that the Petitioner is a labor organization within the meaning of the Act.

4. The parties stipulated, and I find, that the Intervenor is a labor organization within the meaning of the Act.

5. No 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.

ORDER

IT IS ORDERED that the petition is dismissed.

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, D.C. 20570-0001. This request must be received by the board in Washington by 5 p.m., EDT on **June 21, 2013**. This request may be filed electronically through E-Gov on the Agency's web site, www.nlr.gov,⁷ but may not be filed by facsimile.

Dated at Oakland, California, this 7th day of June, 2013.

/s/William A. Baudler
William A. Baudler
Regional Director
National Labor Relations Board, Region 32
1301 Clay Street, Suite 300N
Oakland, CA 94612-5211

⁷ 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. 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.