

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

FIRST RESPONDER EMS-SACRAMENTO, INC.

Employer

and

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

Petitioner

Case 20-RC-106571

and

AMERICAN FEDERATION OF STATE, COUNTY,
AND MUNICIPAL EMPLOYEES, UNITED EMS
WORKERS, AFL-CIO,¹

Cross-Petitioner

and

NATIONAL EMERGENCY MEDICAL SERVICES
ASSOCIATION (NEMSA),

Intervenor/Incumbent

DECISION AND DIRECTION OF ELECTION

First Responder EMS-Sacramento, Inc.(Employer) is a corporation providing emergency and non-emergency medical transportation services with a principal place of business in Sacramento, California. National Association of Government Employees affiliated with Service Employees International Union (SEIU/NAGE Local 5000) (Petitioner) seeks to represent nonprofessional employees (emergency medical technicians (EMTs), paramedics, wheelchair van drivers and gurney van drivers), and professional employees (registered nurses (RNs)) of the Employer in its Sacramento County operations in either a single

¹ The Hearing Officer amended the record without objection to include Cross-Petitioner's name, which inadvertently had been omitted from the formal documents.

unit or in two separate units, which the parties have stipulated to be appropriate units. Cross-Petitioner, American Federation of State, City and Municipal Employees, United EMS Workers, AFL-CIO (AFSCME) and Intervenor-Incumbent, National Emergency Medical Services Association (NEMSA), likewise seek to represent employees in the same units.² As discussed below, the record supports that the RNs employed by the Employer are professional employees entitled to a *Sonotone*³ election, and that the stipulated units are appropriate for collective-bargaining purposes. Together, the petitioned-for units include about 160 employees.

The only issue⁴ is NEMSA's contention that Petitioner failed to correctly and completely identify its name on its petition by failing to include a reference to International Association of EMTs and Paramedics (IAEP). NEMSA contends that Petitioner did so in order to confuse and mislead voters into believing that Petitioner is a different labor organization than IAEP. NEMSA urges me to identify IAEP on the election ballot. Petitioner takes a contrary view, arguing that its name on the petition is correct and is consistent with its name as set forth in its Constitution & Bylaws; that IAEP is merely an internal division of Petitioner; and that whether IAEP is identified on a representation petition is purely an internal matter to be decided by Petitioner. The Employer and AFSCME take no position on this issue.

In support of its contention, NEMSA cites Section 11086.1 of the Board's Case Handling Manual requiring petitioners to use their correct and complete names on petitions. It also introduced into evidence the Constitution & By-Laws

² See footnote 12 below.

³ *Sonotone Corp.*, 90 NLRB 1236 (1950).

⁴ All parties took positions as to whether the election should be conducted by mail or manual ballot, but were advised by the Hearing Officer that the manner of the election is an administrative determination not subject to litigation absent a showing of abuse of discretion. See *Ceva Logistics, US*, 357 NLRB No. 60 (2011); *Sutter West Bay Hospitals*, 357 NLRB No. 21 (2011); *San Diego Gas & Electric*, 325 NLRB 1143 (1998); *Manchester Knitted Fashions*, 108 NLRB 1366 (1954). I shall carefully consider the parties' respective positions before

of Petitioner, adopted at Petitioner's 2010 Convention. Article 1, Section 1 of this document states: "This organization shall be known as the National Association of Government Employees affiliated with Service Employees International Union and may also be referred to as SEIU/NAGE Local 5000, NAGE, or the National Union." Article III Section 1 provides that Petitioner "shall be organized for purposes of identification by Local Units," and that Petitioner's National Executive Board may establish Local Units and designate the divisions under which they shall be assigned. Article III Section 2 provides that "Locals consisting of personnel employed as EMTs, paramedics, and other related emergency response employees shall have a Division known as the International Association of EMTs and Paramedics (IAEP)."

NEMSA also entered into evidence several print outs from a website of the National Association of Government Employees SEIU/NAGE; a representation petition in Case 1-RC-102303, dated April 9, 2013, filed by "International Association of EMTs and Paramedics/NAGE/SEIU Local 5000;" and an Order Scheduling Hearing for the same case. The petition in Case 1-RC-102303 is signed by Phillip Petit, identified as the National Director of the petitioning union in that case; Petit also signed the petition in the instant case as the National Director of Petitioner. In its brief, NEMSA asserts that Petitioner has filed several petitions in other NLRB cases during the past several years using the name IAEP, and that IAEP has been the name used for Petitioner in several unfair labor practice cases. Lastly, NEMSA presented testimony by a National Labor Representative of the National Association of Government Employees, Jason Herring, who testified that he is under the supervision of Petit, and that the words "NAGE EMS division" had been omitted from his business cards about a month prior to the hearing.

After carefully considering NEMSA's evidence and arguments and those of Petitioner, I have decided to reject NEMSA's request that Petitioner be identified as IAEP or that IAEP be included as part of Petitioner's name on the

making my determination in this regard, and shall promptly notify all parties about my decision.

ballot. Petitioner's name on the petition is consistent with Article I Section 1 of its Constitution & Bylaws. Article III Section 2 shows that IAEP is a division of Petitioner representing emergency service workers, but does not otherwise appear supportive of NEMSA's argument that IAEP must be included in Petitioner's name on the ballot. Nor do I find persuasive the website print outs; petitions or unfair labor practices filed in other NLRB cases identifying IAEP as a party; or the testimony of Jason Herring. In sum, Petitioner's evidence fails to establish that Petitioner misidentified itself; attempted to or in fact did confuse or mislead employees in the bargaining unit(s) as to its identity; or that employees who vote in the election will thus be confused as to Petitioner's true identity.⁵

CONCLUSIONS AND FINDINGS

Based upon the record,⁶ I conclude and find as follows:

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

2) The parties stipulated, and I find, that 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.

3) The parties stipulated, and I find, that the Petitioner, AFSCME and NEMSA are labor organizations within the meaning of Section 2(5) of the Act.

⁵ In reaching this decision, I have considered NEMSA's reliance on the Board's decision in *Humane Society for Seattle/King County*, 356 NLRB No. 13 (2010), but I find that matter distinguishable. In *Humane Society*, the Board overturned an election based on the following factors: there was a strong showing of employee confusion over the actual identity of the organization seeking representative status; the identity of the organization was of particular importance to a group of voters; the labor organization prevailed in the election by only two votes; and the confusion was created by the labor organization's own conduct. Unlike the situation in *Humane Society*, and as indicated above, in the instant case, there has been no similar showing of voter confusion or likely confusion about the entity that will represent employees if Petitioner wins the election, evidence that Petitioner is engaging in conduct designed to confuse them, or indication that Petitioner's identity is of particular importance to any group of voters.

⁶ I include in the record, as Board Exhibit 5, the Certification of Representative in *First Responder EMS-Sacramento, Inc.*, Case 20-RC-18335 (March 29, 2011), referenced below, and I am attaching it to my decision.

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.⁷

5) **Unit Findings.** I find that the RNs are professional employees under Section 2(12) of the Act who must be accorded a *Sonotone* election.⁸ The parties have stipulated,⁹ and I find, that the professional and nonprofessional employees both separately and/or collectively share a substantial community of interest and constitute appropriate units for collective-bargaining purposes.¹⁰

⁷ The parties stipulated, and I find, that no contract bars this proceeding.

⁸ The RNs are licensed by the State of California and provide specialty and critical care directly to patients, which cannot be provided by the Employer's other nonprofessional employees. Based on the nature of the RNs' work, and the licensing and skills required to perform their work, the RNs clearly are professional employees under Section 2(12) of the Act who must be accorded a *Sonotone* election, and who may be represented in an appropriate professional unit separate from a unit of the Employer's nonprofessional employees if they so choose. See *Sonotone, supra; Centralia Convalescent Center*, 295 NLRB 42 (1989), citing *Mercy Hospitals of Sacramento, Inc.*, 217 NLRB 765 (1975).

⁹ Specifically, the parties stipulated that the following units, either separately and/or collectively, share a substantial community of interest and constitute an appropriate unit or units:

Professional Unit

All regular full-time, regular part-time and per diem registered nurses employed by and working in and out of the Employer's Sacramento, California operations; excluding guards, office and clerical employees, dispatchers, call takers, confidential employees, managerial employees, supervisors and other employees as defined by the Act as amended.

Non-Professional Unit

All regular full-time, regular part-time and per diem employees, including EMTs, paramedics, wheelchair van drivers, and gurney van drivers, employed and working in and out of the Employer's Sacramento County operations; excluding guards, office and clerical employees, dispatchers, call takers, confidential employees, managerial employees, supervisors and other employees as defined by the Act as amended.

¹⁰ I take administrative notice that on March 29, 2011, NEMSA was certified in *First Responder EMS-Sacramento County*, Case 20-RC-18335, as the exclusive collective-bargaining representative of the following unit:

All full-time and regular part-time and per diem Emergency Medical Technicians, Paramedics, Wheelchair Drivers, and Gurney Van Drivers employed by the Employer in Sacramento County, California; excluding all Dispatchers, Call Takers, Vehicle Service Technicians, Registered Nurses, as well as all Guards, Office and Clerical Employees, Confidential Employees, Managerial Employees, and Supervisors as defined by the Act.

If the RNs vote in the *Sonotone* election to be represented as part of a single unit with the employees in the non-professional unit, I find that the resulting unit would constitute an appropriate unit. If, on the other hand, the RNs vote to be represented in a separate unit, I find that such a separate unit would also be an appropriate unit. My determination of the appropriate unit or units in this case will thus ultimately be determined by the outcome of the *Sonotone* election to be conducted under the procedures set forth below:

The Employer and NEMSA have been parties to a collective-bargaining agreement (Agreement) covering the employees in the certified unit, as well as a unit of RNs recognized as a result of a card check conducted pursuant to a Recognition Agreement between the Employer and NEMSA. The Agreement covering both units was effective February 23, 2012 to February 23, 2013, and was extended to June 30, 2013. The Agreement states in relevant part that:

The Employer recognizes [NEMSA] as the exclusive-collective bargaining representative for the following bargaining units as defined under NLRB case number 20-RC-18335:

All full time and regular part time and per diem Emergency Medical Technicians and Paramedics, Wheelchair Drivers and Gurney Van Drivers employed by [the Employer] in Sacramento County, California.

All full-time and regular part-time and per diem Registered Nurses employed by [the Employer] in Sacramento County, per the terms and conditions of the Recognition Agreement seen as Attachment "B" of this agreement.

Excluding all guards, office and clerical employees, confidential employees, managerial employees, and supervisors employed by the Employer in Sacramento County, California as defined by the National Labor Relations Act, as amended.

Despite the reference in the above language of the Agreement to "units" certified in Case 20-RC-18335, the RNs were not in the unit certified in Case 20-RC-18335, but rather were included under the Agreement as a result of a card check and Recognition Agreement.

Based on the above certification and history of collective-bargaining in the stipulated units, as well as the common work locations, working conditions, supervision and frequent contact among both professional and nonprofessional employees, it is evident that the employees in the stipulated units share a substantial community of interest and thus constitute an appropriate unit or units. See *Trident Seafoods, Inc v. NLRB*, 101 F3d 111, 114 (D.C. Cir. 1996): ("Under existing Board precedents, there is a strong presumption favoring the maintenance of historically recognized bargaining units. The Board "is reluctant to disturb units established by collective bargaining so long as those units are not repugnant to Board policy or so constituted as to hamper employees in fully exercising rights guaranteed by the Act." *NLRB v. Marin Operating, Inc.*, 822 F.2d 890, 893 (9th Cir.1987) (quoting *Buffalo Broadcasting Co.*, 242 N.L.R.B. 1105, 1106 n. 2 (1979)).")

The following employees constitute the proper Voting Groups for conducting a *Sonotone* election in this case:

VOTING GROUP A-PROFESSIONAL EMPLOYEES

All full-time and regular part-time and per diem registered nurses employed by the Employer in Sacramento County, California; excluding all nonprofessional employees, emergency medical technicians, paramedics, wheelchair van drivers, gurney van drivers dispatchers, call takers, vehicle service technicians, office and clerical employees, confidential employees, managerial employees, guards and supervisors as defined by the Act.

VOTING GROUP B-NON-PROFESSIONAL EMPLOYEES

All full-time and regular part-time and per diem emergency medical technicians, paramedics, wheelchair van drivers, and gurney van drivers employed by the Employer in Sacramento County, California; excluding all professional employees, registered nurses, dispatchers, call takers, vehicle service technicians, office and clerical employees, confidential employees, managerial employees, guards and supervisors as defined by the Act.

The professional employees in Voting Group A will be asked two questions:

(1) Do you desire to be included with the employees in Voting Group B in a single unit for the purposes of collective bargaining?

(2) By which of the following unions, if any, do you wish to be represented for the purposes of collective bargaining?

National Association of Government Employees
Affiliated with Service Employees International Union
(SEIU/NAGE Local 5000)

or

American Federation of State, City and Municipal Employees,
United EMS Workers, AFL-CIO

or

National Emergency Medical Services Association (NEMSA)

or

By No Union

If a majority of the employees in Voting Group A vote “yes” to the first question, indicating their desire to be included in a unit with the employees in Voting Group B, they will be so included. Their vote on the second question will then be counted with the votes of the employees in Voting Group B to decide which union, if any, shall be the representative of the entire combined unit. If, on the other hand, the professional employees in Voting Group A do not vote for inclusion in the unit of nonprofessional employees in Voting Group B, the votes of the professional employees on the second question will be counted separately to determine which labor organization, if any, shall be their representative in a separate unit of professional employees. Similarly, the votes of the nonprofessional employees in Voting Group B will be counted separately to decide which labor organization, if any, shall be their representative in a separate unit of nonprofessional employees.

My unit determination is thus based, in part, on the results of the vote by the professional employees in Voting Group A. However, I make the following findings with regard to what constitutes an appropriate unit or units¹¹ in this case depending on the results of the vote of the professional employees:

1. If a majority of the professional employees in Voting Group A vote for inclusion in the unit with nonprofessional employees in Voting Group B, I find that the following unit is an appropriate unit for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time and per diem registered nurses, emergency medical technicians, paramedics, wheelchair van drivers, and gurney van drivers employed by the Employer in Sacramento County, California; excluding dispatchers, call takers, vehicle service technicians, office and clerical employees,

¹¹ The units found appropriate, as set forth below, reflect some changes from the language of the parties' stipulation regarding appropriate units. These modifications are made in part because of adjustments necessary for the *Sonotone* election process, and also to conform the unit descriptions more closely to the language of the Certification of Representative in Case 20-RC-18335, and of the Agreement.

confidential employees, managerial employees, guards and supervisors as defined by the Act.

2. If a majority of the professional employees in Voting Group A do not vote for inclusion in the unit with nonprofessional employees in Voting Group B, I find that the following two groups of employees will constitute separate units appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

UNIT A

All full-time and regular part-time and per diem registered nurses employed by the Employer in Sacramento County, California; excluding all nonprofessional employees, emergency medical technicians, paramedics, wheelchair van drivers, gurney van drivers dispatchers, call takers, vehicle service technicians, office and clerical employees, confidential employees, managerial employees, guards and supervisors as defined by the Act.

UNIT B

All full-time and regular part-time and per diem emergency medical technicians, paramedics, wheelchair van drivers, and gurney van drivers employed by the Employer in Sacramento County, California; excluding all professional employees, registered nurses, dispatchers, call takers, vehicle service technicians, office and clerical employees, confidential employees, managerial employees, guards and supervisors as defined by the Act.

DIRECTION OF ELECTION¹²

The National Labor Relations Board will conduct a secret ballot election in the above voting groups at a time and place to be set forth in the notice of

¹² At the hearing, the Hearing Officer asked each participating labor organization if it was willing to represent the professional and nonprofessional employees in either a combined unit or in separate units. Petitioner and AFSCME responded affirmatively but the record shows that NEMSA answered "no" to this question. In order to ensure that the actual intent of the parties is followed, I hereby advise each labor organization that if it is unwilling to represent the nonprofessional and professional employees in either a single unit or in two separate units, it must notify me of its desire not to be included on the ballot for this purpose within seven days of the issuance of this Decision. Otherwise, the ballot will reflect the willingness of **all** of the participating labor organizations to represent the professional and nonprofessional employees in either a single unit or in two separate units.

election to be issued by the undersigned, subject to the Board's Rules and Regulations.

A. Voting Eligibility

Eligible to vote in the election are those in the unit who were employed during the payroll period that ended immediately prior to the date of this Decision, 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 July 5, 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,¹³ 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 three full days, not including weekend days or holidays, 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 five 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

¹³ 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

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 20570-0001. This request must be received by the Board in Washington by **July 12, 2013**. The request may be filed electronically through the Agency's web site, www.nlr.gov,¹⁴ but may not be filed by facsimile.

DATED AT San Francisco, California, this 28th day of June 2013.

/s/ J.F. Frankl

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

¹⁴ 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

<p>FIRST RESPONDER EMS-SACRAMENTO, INC. Employer</p> <p>and</p> <p>NATIONAL EMERGENCY MEDICAL SERVICES ASSOCIATION (NEMSA) Petitioner</p>	<p>TYPE OF ELECTION (CHECK ONE)</p> <p><input type="checkbox"/> CONSENT</p> <p><input checked="" type="checkbox"/> STIPULATED</p> <p><input type="checkbox"/> RD DIRECTED</p> <p><input type="checkbox"/> BOARD DIRECTED</p> <p>CASE 20-RC-18335</p>
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(ALSO CHECK BOX
BELOW WHEN
APPROPRIATE)

8(B)(7)

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 EMERGENCY MEDICAL SERVICES 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 and per diem Emergency Medical Technicians, Paramedics, Wheelchair Drivers, and Gurney Van Drivers employed by the Employer in Sacramento County, California; excluding all Dispatchers, Call Takers, Vehicle Service Technicians, Registered Nurses, as well as all Guards, Office and Clerical Employees, Confidential Employees, Managerial Employees, and Supervisors as defined by the Act.



Signed at San Francisco, California

On the 29th day of

March, 2011

Regional Director, Region 20
National Labor Relations Board