

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

<p>AMERICAN MEDICAL RESPONSE OF NEW HAVEN</p> <p style="text-align: right;">Employer</p> <p style="text-align: center;">and</p> <p>INTERNATIONAL ASSOCIATION OF EMTS AND PARAMEDICS/NAGE/SEIU LOCAL 5000</p> <p style="text-align: right;">Petitioner</p> <p style="text-align: center;">and</p> <p>NATIONAL EMERGENCY MEDICAL SERVICES ASSOCIATION</p> <p style="text-align: right;">Intervenor</p>	<p>Case 01-RC-102304</p>
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DECISION AND DIRECTION OF ELECTION

This case arises out of a petition filed under Section 9(c) of the National Labor Relations Act, as amended (the Act). Petitioner (NAGE) seeks to represent a unit, currently represented by the Intervenor (NEMSA), consisting of all EMT's, paramedics, and handivan drivers employed by the Employer (AMR) at or out of its New Haven, Connecticut facility. The sole issue in dispute is whether the petition was timely filed. AMR and NEMSA are parties to a collective-bargaining agreement (the contract) which was due to expire on January 22, 2013¹. On January 21, AMR and NEMSA extended the contract until July 21. On April 9, NAGE filed the instant petition during the 90 to 120 day period provided by the Act for the filing of petitions involving a health care institution. AMR and NAGE assert that AMR is a health care institution under Section 2(14) and that the petition is timely filed. Although prior to the hearing NEMSA would not agree that AMR is a health care institution under Section 2(14), it took no position on this issue at the hearing and did not file a post-hearing brief. For the reasons described below, I find that AMR is a health care institution under Section 2(14) and that the petition was timely filed.

¹ All dates are in 2013 unless specified otherwise.

The parties were provided an opportunity to present evidence on the issues raised by the petition at a hearing held before a hearing officer of the National Labor Relations Board (the Board). I have the authority to hear and decide this matter on behalf of the Board under Section 3(b) of the Act. I find that the hearing officer's rulings are free from prejudicial error and are affirmed; the Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction; the Petitioner is a labor organization within the meaning of the Act; and a question affecting commerce exists concerning the representation of certain employees of the Employer.

I. Facts

AMR, which provides ambulance services in the New Haven, Connecticut area, is contracted to respond to emergency calls received through the 911 public emergency answering system. It has 27 advanced life support (ALS) ambulances and 24 basic life support (BLS) ambulances, which are operated by 41 full-time and 61 part-time paramedics and 59 full-time and 178 part-time EMT's.² BLS service, which constitutes about one-third of AMR's transports, is generally provided by two EMTs, but can also be provided by a paramedic. ALS service, which constitutes another one-third of AMR's transports, is provided only by paramedics. AMR also performs an unspecified number of "critical care transports", which are performed by certain paramedics who have training beyond the normal paramedic training that enables them to administer more advanced drug and medical procedures.

EMTs do an initial assessment of the patient's vital signs and perform basic life support functions, including CPR, providing oxygen, and utilizing automated external defibrillators. Although Paramedics also perform these functions, their additional training, which EMT's do not receive, enables them to perform ALS assessments on patients and use independent judgment to determine the appropriate treatment to administer while transporting the patient to the hospital. In doing so, Paramedics provide treatment similar to that provided in a hospital emergency room. This includes such procedures as cardiac and EKG monitoring; starting intravenous (IV) and intraosseous (IO) lines; administering drugs, including narcotics, either orally, by injection, or intravenously; drawing blood; and providing advanced airway maintenance, including intubations and cricothyrotomys by which a tube is inserted into the patient's trachea. In performing these functions, the Paramedics are responsible for treating patients within the written protocols which are established for performing each of these functions.

The ALS and BLS ambulances are equipped differently. The ALS ambulances have an ALS gear bag, which contains a special set of equipment

² Although the unit also includes handivan (also known as chair car) drivers work who transport wheelchair confined patients for medical treatment, the record only reflects that there are a "small number" of such drivers.

that only paramedics can use. This includes certain levels of narcotics, intubation tube equipment and IV equipment. ALS ambulances also carry cardiac monitors, which provide EKG readings of the patient's heart, and IV pumps, which help regulate the flow of medication and fluids during transport. This equipment is the same as is found in hospital emergency rooms. The BLS ambulances equipment includes splints, bandages, burn gels, and an automatic external defibrillator.

II. Applicable Law

Section 2(14) of the Act defines a 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]." It is well-established that Congress intended that the term "health care institution" should be construed broadly. *Kirkville College of Osteopathic Medicine, Inc.*, 274 NLRB 794, 795 (1985). Although there are three reported Board cases that considered the issue of whether an ambulance service is a health care institution under Section 2(14), none of them directly decided or even analyzed that issue.

In *Albuquerque Ambulance Service*, 263 NLRB 1 (1982), enf. denied sub. nom. *Southwest Community Health Services v. NLRB*, 726 F.2d 611 (10th Cir. 1984), the Board, in ruling on a Motion for Summary Judgment in a test of certification case involving an ambulance company, rejected the company's assertion that the Regional Director's unit determination must be overturned because he did not properly consider the congressional admonition against the undue proliferation of bargaining units in the health care industry. In this regard, the Board noted that the Regional Director provided four reasons why his unit determination did not result in undue proliferation of bargaining units, including that respondent "is essentially involved in providing a service which is separate and apart from operations traditionally associated with the services provided by a hospital or health care institution", and that "the purposes and functions of the ambulance service are not directly related to the common health care purposes for which any hospital exists or the traditional health care functions which any hospital performs." Thus, neither the Regional Director nor the Board specifically found that the employer in that case was not a health care institution under Section 2(14), although the Regional Director's analysis, adopted by the Board, does provide a limited framework for analyzing the issue.

In *American Medical Response*, 335 NLRB 1176 (2001), an accretion case that appears to involve the same employer as in the instant case, similarly provides little to no help in deciding whether AMR is a health care institution. The employer in that case asserted that it "might be" a health care institution as defined in Section 2(14), and therefore should benefit from the congressional admonition against the undue proliferation of bargaining units in the health care field. In rejecting that assertion, the administrative law judge stated that "as the Board held in *Albuquerque Ambulance Service*, 263 NLRB 1 (1982), ambulance

services are merely engaged in the business of transporting patients to health care institutions, and are not themselves health care institutions as defined in the Act.” *Id.* at 1185. Although the employer in its answering brief disputed the judge’s finding that it was not a health care institution, the Board refused to pass on the issue because the employer had not filed exceptions to the judge’s finding. *Id.* at 1, fn. 1. Since the Board specifically refused to pass on the judge’s finding as well as his description of the holding in *Albuquerque Ambulance*, and noting the complete absence of any analysis of the issue by the judge, *American Medical Response* provides no help in deciding the issue in the instant case.

Similarly of no help is the Board’s decision in *Lifeline Mobile Medics, Inc.*, 308 NLRB 1068 (1992), a representation case involving the unit placement of office clericals in a unit of the employer’s emergency medical technicians. The Board at the outset of its decision noted that “[t]he Regional Director found that the Employer, an ambulance service, is a health care institution under Section 2(14) of the National Labor Relations Act”, then further noted in a footnote that “[n]o party has requested review of this finding.” *Id.* Because the Regional Director’s decision was not attached to the Board’s decision, *Lifeline* provides no guidance as to the basis for the Regional Director’s finding.

There are several cases where the Board has addressed the health care institution status of employers that provide services analogous to ambulance companies. In *Syracuse Region Blood Center*, 203 NLRB 72, 73 (1991), the Board held that a blood bank was a health care institution under Section 2(14) even though its performance of patient care procedures (therapeutic phlebotomies and aphaeresis procedures) over a 12-month period accounted for less than one percent of its total non-therapeutic procedures. Despite the low percentage, the Board reasoned that the employer nonetheless performed the therapeutic procedures with sufficient regularity and in a sufficiently large number and, as such, was “devoted to the care of sick . . . persons.” *Id.* at 73. In reaching this finding, the Board rejected a “percentage of the employer’s business standard” for determining whether a blood bank is a health care institution, noting that a part of an employer’s operations may have a substantial and regular impact on patient care even if that part makes up only a small percentage of the employer’s total business. *Id.* at 73. In a later case, *Dane County American Red Cross*, 224 NLRB 323 (1976), the Board held that a blood bank whose operations were limited to collecting, processing, and distributing blood products is not a health care institution under Section 2(14).

III. Analysis and Conclusion

Based upon the foregoing, I find that AMR is a health care institution under Section 2(14). In reaching this conclusion, I note that AMR provides much more than mere transportation services to patients. Rather, it provides critical medical care and life support services to patients in the course of transporting them to a hospital. Moreover, the medical services provided by AMR’s paramedics are the same types of advanced patient care services that are provided by the staff in hospital emergency rooms. Inasmuch as over one-third of

all patient transports made by AMR employees in the petitioned-for unit involve paramedics performing such advanced medical procedures, I further find that these procedures are performed with sufficient regularity and in a sufficiently large number that the Employer is properly viewed as an “institution devoted to the care of sick . . . persons” within the meaning of Section 2(14) of the Act. See *Syracuse Region Blood Center*, supra; *Kirkville College of Osteopathic Medicine, Inc.*, supra. Accordingly, I find that the petition in this case was timely filed, and that it is appropriate to direct an election at this time in the following unit:

All full-time and part-time paramedics, EMTs, and handivan drivers employed by the Employer at or out of its New Haven, Connecticut facility, but excluding mechanics, dispatchers, office clerical employees, guards, professional employees, and supervisors as defined by the Act.

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 EMTs and Paramedics/NAGE/SEIU Local 5000 or by National Emergency Medical Services Association. 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.

Voting Eligibility

Eligible to vote in the election are those in the unit who were employed during the payroll period ending immediately before 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.

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 7 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 whether there is 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 on or before August 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,³ by mail, or by facsimile transmission at 617-565-6725. 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. The burden of establishing the timely filing and receipt of the list will continue to be placed on the sending party.

Since 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 facsimile or e-mail, in which case no copies need be submitted. If you have any questions, please contact the Regional Office.

³ To file the eligibility list electronically, go to www.nlr.gov and select the E-Gov tab. Then click on the E-Filing link on the menu, and follow the detailed instructions.

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

DATED: July 29, 2013



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