UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 5

GRANTLEY FIRE AND EMS[1]

Employer

and Case 05-RD-113395

JOSEPH A. WILSON

Petitioner

and

TEAMSTERS LOCAL 776 A/W THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS[2]

Involved Party

DECISION AND DIRECTION OF ELECTION

I. Summary

Grantley Fire and EMS ("the Employer") is an ambulance service that provides basic life support to the citizens of Spring Garden Township, Pennsylvania, and surrounding areas. Based on a certification issued by the Pennsylvania Labor Relations Board, dated March 11, 2005, the Teamsters Local 776, affiliated with the International Brotherhood of Teamsters ("the Union") represents all full-time and regular part-time non-professional employees, including, but not limited to, emergency medical technicians ("EMTs").[3] Joseph A. Wilson, an individual, filed a

[1] The Employer's name appears as amended at the hearing.
[2] "The Involved Party's name appears as it appears in its collective-bargaining agreement with the Employer."
[3] There was no evidence presented during the hearing that the collective-bargaining unit contains any positions or employees besides EMTs.

petition under Section 9(c) of the National Labor Relations Act ("the Act"), as amended, to decertify the Union as the collective-bargaining representative of the EMTs.

The current collective-bargaining agreement covering the EMTs expires on January 3, 2014, at 11:59 p.m. The instant decertification petition was filed on September 16, 2013. The Petitioner and the Employer assert that the National Labor Relations Board ("the Board") has jurisdiction over the Employer and should therefore direct an election. The Union offered no position regarding jurisdiction because it failed to attend the pre-election hearing held on September 25, 2013.

In order to determine whether the Board can direct an election, it must first determine whether the decertification petition was timely filed. Whether the decertification petition was timely filed depends on a determination of whether the Employer is a "health care institution" according to Section 2(14) of the Act. Second, if the Employer is determined to be a health care institution, then the Employer must meet certain jurisdictional requirements.

I have carefully reviewed and considered the record evidence and the arguments of the parties at hearing.[4] Based on the following facts and analysis, I find that the Employer is a health care institution according to Section 2(14) of the Act; therefore, the Petitioner timely filed the instant petition. Further, I find that the Board has jurisdiction over the Employer. Accordingly, an election should be conducted.

Below, I have set forth the relevant evidence contained in the record, and an analysis of the applicable law. Following the evidence and legal analysis is my conclusion and order directing an election in this matter.

[4] Petitioner and the Employer agreed to waive the filing of post-hearing briefs.

II. Facts

a. EMTs

The Employer operates an ambulance service that provides basic life support in response to 911 emergency calls. The Employer was created by private citizens without government involvement. The government does not set employees' wages, nor does it appoint or select board members. The Employer employs approximately 14 EMTs and one Operations Manager. The EMTs are required to obtain several certifications including: EMT certification; CPR certification; and Hazmat certifications. Joseph Wilson, EMT, provided testimony regarding required EMT training. Wilson described how the training is focused heavily on patient assessment and understanding how to evaluate patients in order to assess ailments. Wilson explained that EMTs are educated in anatomy, human physiology, and interrelation of the body. Wilson explained the difference between EMT training and basic first aid classes. As an example, Wilson testified that a typical first aid class is such that a person is trained to see bleeding and then directly treat the bleeding. Wilson further testified that the EMT training is such that an EMT would be trained on the physiology behind what could happen as a result of bleeding (such as shock), and how to take and interpret certain signs and their effect on cardiac and respiratory health. Also, EMTs are trained in basic pharmacology so that a patient can inform an EMT of their medical history, and the responding EMT can then make certain deductions about the patient's health based on medicines prescribed to the patient.

The Employer operates two ambulances every 10 to 12 hour shift. Each ambulance has two EMTs, including the driver. Wilson estimated that an EMT will receive approximately three emergency calls per shift. All calls received by the Employer are 911 emergency calls. Wilson

stated that the typical calls include cardiac arrest, respiratory distress, psychiatric issues, childbirth, broken bones, or falls. In response to these calls, the EMTs will administer oxygen, assist a patient in taking medications, splinter broken bones or fractures, or deliver a child. However, EMTs do not themselves carry or proscribe medications, administer intravenous therapy, or provide advanced life support. Wilson provided testimony regarding the EMTs responsibilities when a patient requires advanced life care. He stated that an EMT, after assessing the patient, may determine that more advanced care is needed. When this occurs, the EMT will either call for paramedics or transport the patient to a hospital. When EMTs are not responding to calls or providing life support, they are at the station waiting to be called. While at the station, the EMTs will ensure that the ambulances are properly stocked or that the station is clean.

b. Commerce Facts

Employer exhibit 2 is the Employer's 2011 tax return. Line 9 of the 2011 tax return states that the Employer had service revenues of $ 533,129. Joseph Myers, Operations Manager, provided testimony that the 2012 revenues were slightly higher than 2011, and that 2013 revenues were equivalent to 2012 revenues. Using the 2011 tax return, Myers estimated that approximately 85% of the $533,129, which would be $453,160, is revenue from private insurance companies, Medicaid, and Medicare. The private insurers include Blue Cross and Blue Shield, Prudential, and State Farm. More specifically, Myers estimated that 45% of the $453,160, which would be $203,922, is from private insurers. The other $249,238 is from Medicaid and Medicare.[5]

[5] Myers testified to certain inflow and outflow of goods. For instance, Myers testified that the Employer purchases health, auto, and liability insurance in excess of $30,000 per year from Volunteer Fireman's Insurance Fund, who does business throughout the United States. Also, Myers testified that it has accrued legal fees within the last year in excess of $26,000 from the law firm of Jackson Lewis, LLP, which does business throughout the United States.

III. Analysis[6]

a. Section 2(14) of the Act

The opportunity to change or remove a bargaining representative during the term of an effective collective-bargaining agreement, known as the "open period," is a 30-day window that occurs as the contract comes to an end. *Trinity Lutheran Hospital*, 218 NLRB 199 (1975). In most industries, a petition filed more than 60 days, but less than 90 days, before the end of a contract is within the open period and is timely. *Leonard Wholesale Meats*, 136 NLRB 1000 (1962). However, in the health care industry, to be filed timely a petition must be filed not more than 120 days, but less than 90 days before the expiration of the contract.[7]

Section 2(14) of the Act, which defines the term "health care institution," states:

> (14) The term "health care institution" shall include any hospital, convalescent hospital, health maintenance organization, health clinic, nursing home, extended care facility, or other institution devoted to the care of the sick, infirm or aged person.

The Board has construed the term "health care institution" broadly, consistent with the intent of Congress. *Kirksville College*, 274 NLRB 794, 796 (1985). See also *Syracuse Region Blood Center*, 302 NLRB 72, 72-73 (1991), where the Board held, "the Employer's activities extend beyond the collection, processing, and distribution of blood; they also include patient pheresis and therapeutic phlebotomies, both of which indisputably involve patient care."

However, although the definition of "health care institution" has been broadly defined, the Board has not definitively stated whether an ambulance service that provides both some

[6] There was no evidence presented at hearing that the Employer is a government actor. Therefore I find that the Grantley Fire and EMS is an Employer according to Section 2(2) of the Act.
[7] The open period for health care institutions differs from the open period in most industries because the 1974 amendments to the Act addressing the health care industry contain different notice requirements for these institutions and the union that represent their employees. *Trinity Lutheran Hospital*, above.

degree of medical care to patients, but also transportation, constitutes a health care institution. The question has, however, been addressed in Regional Director and Administrative Law Judge decisions underlying cases before the Board on several occasions.

In *Mercy Flights, Inc.* No. 36-RD-1711 (2008), the ultimate issue before the Regional Director was whether an employer that operates an air and ground ambulance and medical transportation service, providing emergency medical response services and medical transportation, was a health care institution as defined by Section 2(14) of the Act. The Regional Director's decision provides a thorough analysis of the relevant decisions concerning ambulance services and whether they are health care institutions, and the confusion that still permeates the issue, including an analysis of *Albuquerque Ambulance Service*, 263 NLRB 1 (1982), enf. denied sub nom, *Southwest Community Health Services v. NLRB*, 726 F.2d 611 (10th Cir. 1984).

In *Albuquerque Ambulance Services*, the ultimate issue before the Board was the Regional Director's determination that a separate unit of ambulance service employees, including paramedics, EMTs, drivers, and dispatchers, was appropriate. *Id*. The Employer asserted that "the Regional Director had failed to specify the manner in which his unit determination 'implemented or reflected' the congressional admonition against undue proliferation of bargaining units in health care institutions." *Id*. at 2. The Board rejected the Employer's argument stating: first, that the Employer, as an ambulance service, provided a service "separate and apart from operations traditionally associated with service provided by a hospital or health care institution," and second "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." *Id*.

In *American Medical Response*, Inc., 335 NLRB 1176 (2001), an Administrative Law Judge found that an ambulance service is not a health care institution, citing to *Albuquerque Ambulance Service*, and stating an ambulance service is "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 1178. However, the ultimate issue determined by the Board concerned accretion, and not the Regional Director's determination regarding Section 2(14) of the Act. However, there have been cases where Regional Directors have made the opposite determination, finding that ambulance services are health care institutions. In *Lifeline Mobile Medics*, Inc., 308 NLRB 1068 (1992), the Regional Director determined an ambulance service to be a health care institution, but the Board never addressed the issue on review.

Ultimately, in *Mercy Flights Inc*., the Regional Director determined that the cases involving ambulance services do not provide clear direction. Left without clear precedent from previous decisions, the Regional Director relied on the language of Section 2(14) itself, guidance from the ambulance cases, and the underlying principles behind the definition of "health care institution" in making his determination that the Employer was in fact a health care institution. There was no request for Board review of the Regional Director's decision in *Mercy Flights, Inc*.

Like the Regional Director in *Mercy Flights Inc.*, I find that the facts of the instant case demonstrate an institution the main purpose of which is "the care of sick, infirm or aged." While transportation is some part of the Employer's mission, I find that emergency patient care is performed with enough regularity that the Employer is properly viewed to be "devoted to the care of sick…persons" within the meaning of Section 2(14) of the Act.

Wilson testified regarding the level of care the EMTs provide patients. It is difficult to classify services such as splintering broken bones, delivering babies, administering oxygen, and

making medical assessments as anything other than patient care. The EMTs' education and certification goes beyond first aid care and covers a wide range of topics from pharmacology to physiology. There is no dispute that there exists a line that once an EMT approaches, he/she must stop providing care and coordinate with paramedics. However, the existence of this line hardly negates the care provided by the EMTs. Lacking contrary direction from the Board, I find this evaluation and treatment to be the essence of the "care of the sick," and the Employer's primary function falls within the definition of a health care institution. Therefore, I find that the Employer is a health care institution as defined in Section 2(14) of the Act.[8]

Because the Employer is a health care institution, the instant petition was filed timely according to the Board's decision in *Trinity Lutheran Hospital*.

b. Jurisdictional Standard

The Board has set discretionary standards for those employers that qualify as health care institutions according to Section 2(14) of the Act. *See East Oakland Health Alliance*, 218 NLRB 1270 (1975). For nursing homes, visiting nurses' associations, and related facilities, the standard was set at $100,000 in gross revenues, and for hospitals and other institutions the standard is $250,000. *Id*. Where a health care institution derives revenues from federally supported health

[8] I note that "[a] petition filed untimely will be regarded as premature under this rule and may be dismissed unless ... (2) a hearing is directed despite the prematurity of the petition in order to resolve doubts as to the effectiveness of the contract as a bar, and the decision issues on or after the 90th day preceding the expiration date of the contract. *Deluxe Metal Furniture Co*., 121 NLRB 995, 999 (1958). Arguably, the Board's decision in *Deluxe Metal Furniture Co*. allows for this petition to be processed even if I determine that the Employer is not a health care institution according to Section 2(14) of the Act, so long as this decision were to issue sometime within the appropriate window period. By my calculation, the instant petition was filed on the 110th day before the expiration of the current collective-bargaining agreement between. Therefore, since the Employer is a health care institution, the petition was filed timely. However, due to the pre-election hearing held on September 25th and the shutdown of the Board which occurred from October 1st until October 16th, 2013, this decision will issue within the typical 60-90 period before the expiration of the contract. Therefore, the petition would be timely as of the date this decision is issued.

care programs, it can adequately demonstrate that its operations have a substantial effect on commerce, and establish the required statutory jurisdiction. *Id*.

The record contains evidence that the Employer accrued service revenues well over the required $250,000 for the years 2011, 2012, and 2013. Furthermore approximately $250,000 of the Employer's revenues comes from federally supported health programs, enough to demonstrate that the Employer's operations have a substantial effect on commerce. Therefore, I find that the Employer meets the specific jurisdictional standards identified by the Board in *East Oakland Health Alliance*.

IV. Conclusions and Findings

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

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are affirmed.
2. The Employer is an employer as defined in Section 2(2) of the Act and is engaged in commerce within the meaning of Section 2(6) and (7) of the Act, and it will effectuate the purposes of the Act to assert jurisdiction in this case.
3. The Teamsters Local 776, affiliated with the International Brotherhood of Teamsters is a labor organization within the meaning of Section 2(5) of the Act.
4. A 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.

5. The following employees of the Employer constitute a unit appropriate for the purpose of the collective bargaining within the meaning of Section 9(b) of the Act:

> All full-time and regular part-time nonprofessional employees including but not limited to emergency medical technicians; and excluding management level employees, supervisors, first-level supervisors, confidential employees and guards as defined in the Act.

V. 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 they wish to be represented for the purpose of collective bargaining by Teamsters Local 776 affiliated with the International Brotherhood of Teamsters. The date, time, and manner of the election (mail or manual) will be specified in the Notice of Election that the Regional Office will issue subsequent to this Decision.

A. 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 strikes, 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 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). This 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.). Upon receipt of the list, I will make it 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 5, Bank of America Center – Tower II, 100 South Charles Street, 6th Floor, Baltimore MD 21201, on or before **November 1, 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 by facsimile transmission at (410) 962-2198. Since the list will be made available to all parties to the election, please furnish a total of two copies, unless the list is submitted by facsimile, 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 a minimum of 3 working days prior to the date 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 non-posting of the election notice.

RIGHT TO REQUEST REVIEW

Right to Request Review: Pursuant to the provisions of Section 102.67 of the National Labor Relations Board's Rules and Regulations, Series 8, as amended, you may obtain review of this action by filing a request with the Executive Secretary, National Labor Relations Board, 1099 14th Street, N.W., Washington, DC 20570-0001. This request for review must contain a complete statement setting forth the facts and reasons on which it is based.

Procedures for Filing a Request for Review: Pursuant to the Board's Rules and Regulations, Sections 102.111 – 102.114, concerning the Service and Filing of Papers, the

request for review must be received by the Executive Secretary of the Board in Washington, DC by close of business on **November 8, 2013 at 5 p.m. (ET),** unless filed electronically. **Consistent with the Agency's E-Government initiative, parties are encouraged to file a request for review electronically.** If the request for review is filed electronically, it will be considered timely if the transmission of the entire document through the Agency's website is **accomplished by no later than 11:59 p.m. Eastern Time** on the due date. Please be advised that Section 102.114 of the Board's Rules and Regulations precludes acceptance of a request for review by facsimile transmission. Upon good cause shown, the Board may grant special permission for a longer period within which to file.[9] A copy of the request for review must be served on each of the other parties to the proceeding, as well as on the undersigned, in accordance with the requirements of the Board's Rules and Regulations.

Filing a request for review electronically may be accomplished by using the E-filing system on the Agency's website at www.nlrb.gov. Once the website is accessed, select **File Case Documents**, enter the NLRB Case Number, and follow the detailed instructions. The responsibility for the receipt of the request for review rests exclusively with the sender. A failure to timely file the request for review will not be excused on the basis that the transmission could

[9] A request for extension of time, which may also be filed electronically, should be submitted to the Executive Secretary in Washington, and a copy of such request for extension of time should be submitted to the Regional Director and to each of the other parties to this proceeding. A request for an extension of time must include a statement that a copy has been served on the Regional Director and on each of the other parties to this proceeding in the same manner or a faster manner as that utilized in filing the request with the Board.

not be accomplished because the Agency's website was off line or unavailable for some other reason, absent a determination of technical failure of the site, with notice of such posted on the website.

(SEAL)

/s/ Wayne R. Gold

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Dated: October 25, 2013