

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 21

RURAL METRO SAN DIEGO, INC.¹

Employer

And

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

Petitioner

And

NATIONAL EMERGENCY MEDICAL
SERVICES ASSOCIATION (NEMSA)³

Intervenor

Case 21-RC-123522

DECISION AND DIRECTION OF ELECTION

Petitioner seeks to represent a unit of paramedics, field trainers, and emergency medical technicians employed by the Employer in or out of its facility located at 10405 San Diego Mission Road, San Diego, California, and deployed throughout San Diego County. Intervenor, which currently represents the employees in the petitioned-for unit, contends that the petition should be dismissed because its collective-bargaining agreement with the Employer acts as a contract bar. Based on the record and relevant

¹ The Employer's name appears as amended at the hearing.

² The Petitioner's name appears as amended at the hearing.

³ The Intervenor's name appears as amended at the hearing.

Board cases, I find the collective-bargaining agreement between Intervenor and the Employer does not serve as a bar to this petition for the reasons set forth below.⁴

Under Section 3(b) of the Act, I have the authority to hear and decide this matter on behalf of the National Labor Relations Board. Upon the entire record in this proceeding, I find:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction herein.⁵

3. Petitioner and Intervenor are labor organizations 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. I begin this decision by summarizing the relevant facts and the parties' positions. I will then apply the relevant Board precedent to the evidence in this matter to explain my conclusion that the collective-bargaining agreement between Intervenor and the Employer should not act as a contract bar to the instant petition.

⁴ Briefs in this matter were due on March 24, 2014; only Petitioner and Intervenor filed briefs.

⁵ The Employer, Rural Metro San Diego, Inc., is a California corporation with a principal office and place of business located at 10405 San Diego Mission Road, Suite 200, San Diego, California, with additional facilities located throughout San Diego County, where it is engaged in the business of providing emergency and non-emergency medical and ambulance services. During the past 12 months, a representative period, the Employer, during the course and conduct of its business operations described above, derived gross revenues in excess of \$500,000 and during that same representative period, purchased and received at its San Diego, California facility goods valued in excess of \$50,000 directly from suppliers located outside the State of California.

FACTS AND POSITIONS

The Employer employs paramedics, field trainers, and emergency medical technicians at a number of facilities throughout San Diego County, California and provides emergency and non-emergency medical and ambulance services 24 hours a day and seven days a week. No other evidence was introduced at the hearing regarding the Employer's operations.

Intervenor was certified on February 8, 2010 as the result of an election held in Case 21-RC-21170. Since that time, Intervenor has been the exclusive representative of all full-time and regular part-time paramedics, field trainers, and emergency medical technicians employed by the Employer in or out of its facility located at 10405 San Diego Mission Road, San Diego, California, and deployed throughout San Diego County; excluding all other employees, guards, managers, professional employees, and supervisors as defined by the National Labor Relations Act.

On the cover page of the most recent collective-bargaining agreement between Intervenor and the Employer, the duration of the agreement is listed as being effective from September 16, 2011 to October 31, 2014. However, Article 25 of the same agreement lists the duration of the agreement as being effective from October 1, 2011 through midnight on June 30, 2014.

On March 3, 2014, Petitioner filed the petition in the instant case, believing it was timely during the Board's 120 to 90-day period preceding an expiration of a collective-bargaining agreement for health care institutions, using June 30, 2014 as the expiration date of the agreement. *Trinity Lutheran Hospital*, 218 NLRB 199 (1975). Intervenor

contends that Petitioner's petition is barred by the collective-bargaining agreement between it and the Employer because the agreement actually expires on October 31, 2014.⁶ The Employer did not take a position in this matter.

BOARD LAW AND ITS APPLICATION TO THE FACTS

The Board established the contract bar doctrine to achieve "a finer balance between the statutory policies of stability in labor relations and the exercise of free choice in the selection or change of bargaining representatives." *Appalachian Shale Products Co.*, 121 NLRB 1160, 1161 (1958). Based on this intent, the Board has required that in order to act as a bar to a petition, "a collective bargaining agreement must contain substantial terms and conditions of employment deemed sufficient to stabilize the bargaining relationship." *Madelaine Chocolate Novelty, Inc.*, 333 NLRB 1312, 1312 (2001). The effective dates and the expiration date of the contract are such "substantial terms" and a contract will not serve as a bar to a petition if there is a conflict among its various effective dates, as such conflicts make it impossible for third-parties to discern the appropriate time to file a representation petition. *South Mountain Healthcare & Rehabilitation Center*, 344 NLRB 375, 375 (2005). See also *Cooper Tire & Rubber Co.*, 181 NLRB 509 (1970). If the effective and expiration dates of an agreement are not apparent from the face of the agreement, without resort to parole evidence, such agreement will not serve as a bar. *South Mountain*, supra at 375.

The collective-bargaining agreement between Intervenor and the Employer has two conflicting expiration dates, which makes it impossible to ascertain whether the

⁶Intervenor also contends, absent dismissal, the petition should be suspended to allow for the operation of a "no-raid" agreement. Intervenor's suspension request was already denied by the Regional Director of Region 21 by letter dated March 17, 2014.

agreement expires on October 31, 2014 as the cover page indicates, or on June 30, 2014 as Article 25 of the agreement indicates. Since it is not apparent from the face of the collective-bargaining agreement between Intervenor and the Employer what the actual expiration date is, I find that it does not contain substantial terms and conditions of employment (specifically, an expiration date) sufficient to stabilize the bargaining relationship and absent these terms, it cannot serve as a bar to a petition.⁷

DIRECTION OF ELECTION

The following employees of Rural Metro San Diego, Inc. constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time paramedics, field trainers, and emergency medical technicians employed by the Employer in or out of its facility located at 10405 San Diego Mission Road, San Diego, California, and deployed throughout San Diego County; excluding all other employees, guards, managers, professional employees, and supervisors as defined by the National Labor Relations Act.

An election by secret ballot will be conducted by the Regional Director of Region 21 among the employees in the unit found appropriate at the time and place set forth in the Notice of Election to be issued subsequently, subject to the Board's Rules and Regulations.

⁷ In its brief, Intervenor contends Petitioner failed to establish its burden that the Employer is a healthcare institution under the Act. Intervenor raised this issue because health care establishments have different windows of time for the filing of petitions than non-healthcare institutions. Since I am finding that the collective-bargaining agreement between Intervenor and the Employer contains conflicting expiration dates and therefore, does not act as a contract bar, the issue of whether or not the Employer is a healthcare institution is moot.

A. Voting Eligibility

Eligible to vote are those in the unit who were employed during the payroll period ending immediately preceding 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 an 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. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are persons who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced.⁸

⁸ To ensure that all eligible voters 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 that may be used to communicate with them. *Excelsior Underwear Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Co.*, 394 U.S. 759 (1969). Accordingly, it is directed that two copies of an election eligibility list containing the full names and addresses of all the eligible voters must be filed by the Employer with the Region 21 Regional Director within seven (7) days of the date of this Decision and Direction of Election. *North Macon Health Care Facility*, 315 NLRB 359 (1994). The Regional Director for Region 21 shall make the list available to all parties to the election. In order to be timely filed, this list must be received in the Regional Office located at 888 South Figueroa Street, 9th Floor, Los Angeles, California, 90017 on or before close of business **April 7, 2014**. No extension of time to file this list may be granted by the Regional Director except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the filing of such list. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed.

Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by **National Association of Government Employees affiliated with Service Employees International Union (SEIU/NAGE Local 5000)** or **National Emergency Medical Services Association (NEMSA)** or not at all.

B. Employer to Submit List of Eligible Voters

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.

RIGHT TO REQUEST REVIEW

Procedures for Filing Request for Review: A request for review must be received by the Executive Secretary of the Board in Washington, D.C., by close of business (**5:00 p.m. Eastern Time**) on **April 14, 2014**, unless filed electronically. If 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 April 14, 2014**. **Consistent with the Agency's E-Government initiative, parties are encouraged, but not required, to file a request for review electronically.** Section 102.114 of the Board's Rules do not permit a request for review to be filed by facsimile transmission. 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.nlr.gov. Once the website is accessed, click on **File Case Documents**, enter the NLRB Case Number, and follow the detailed

instructions. The responsibility for the receipt of the request for review will not be excused on the basis that the transmission could 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.

Upon good cause shown, the Board may grant special permission for a longer period within which to file a request for review. A request for an extension of time, which may also be filed electronically, should be submitted to the Executive Secretary in Washington, D.C., and a copy of such request for extension of the 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.

Signed at Minneapolis, Minnesota, this 31st day of March, 2014.

/s/Marlin Osthus

Marlin Osthus, Acting Regional Director for
National Labor Relations Board – Region 21
330 South Second Avenue, Suite 790
Minneapolis, Minnesota 55401