

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 9

In the Matter of

MERCURY AMBULANCE, INC.  
D/B/A RURAL METRO

Employer

and

Case 9-RC-122685

NATIONAL EMS ASSOCIATION

Petitioner

REPORT ON OBJECTIONS TO ELECTION,  
ORDER DIRECTING HEARING  
AND  
NOTICE OF HEARING

Pursuant to the provisions of a *Stipulated Election Agreement* that I approved on February 26, 2014, an election by secret ballot was conducted on March 31, 2014, among certain employees <sup>1/</sup> of the Employer to determine whether such employees desired to be represented by the Petitioner for the purposes of collective bargaining.

Upon the conclusion of the election, a tally of ballots was made available to the parties in accordance with the Rules and Regulations of the National Labor Relations Board, herein called the Rules and the Board, respectively, which disclosed the following results:

Approximate number of eligible voters.....	50
Number of void ballots.....	0
Number of votes cast for Petitioner.....	21
Number of votes cast against the participating labor organization.....	23
Valid votes counted.....	44
Challenged ballots.....	0
Valid votes counted plus challenged ballots.....	44

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<sup>1/</sup> The appropriate bargaining unit set forth in the Agreement is: "All full-time and regular part-time EMTs, paramedics and mechanics employed by the Employer at or deployed from its facility located at 1135 Versailles Road, Lexington, Kentucky, excluding all other employees and all professional employees, guards and supervisors as defined in the Act."

On April 7, 2014, the Petitioner timely filed National Emergency Medical Services Association's Objections to the Election, herein called the Objections and attached hereto as Exhibit A. A copy of the Objections was duly served on the Employer in conformity with the Rules.

Pursuant to the provisions of Section 102.69 of the Rules, an investigation of the issues raised by the Objections was conducted under my direction and supervision and after carefully considering the results thereof, I make the following report.

### THE OBJECTIONS

#### OBJECTION 1:

In support of this Objection, the Petitioner provided evidence that during the critical period,<sup>2/</sup> Employer agents, including Employer Manager Bryan Poer, allegedly informed unit employees that raises were in the works, but would not be given unless the Petitioner was gone in an effort to induce employees to vote against the Petitioner. The Petitioner argues that this conduct has the tendency to interfere with employees' freedom of choice and/or affected the outcome of the election.

The Employer denies that it engaged in any objectionable conduct as alleged by the Petitioner.

In view of the conflicting evidence and position of the parties, I conclude that Objection 1 raises substantial and material issues of fact and law affecting the results of the election which can best be resolved by the conduct of a hearing.

#### OBJECTION 2:

In support of this Objection, the Petitioner provided evidence that during the critical period, Employer agents, including Employer Counsel Robert Coyle, allegedly informed unit employees during mandatory meetings held by the Employer that the Employer's sole obligation under the law was only to be present at bargaining, that the Employer would refuse to bargain beyond being present and that joining a union to improve wages, hours or working conditions would be futile. The Petitioner argues that this conduct has the tendency to interfere with the employees' freedom of choice and/or affected the outcome of the election.

The Employer denies that it engaged in any objectionable conduct as alleged by the Petitioner.

In view of the conflicting evidence and position of the parties, I conclude that Objection 2 raises substantial and material issues of fact and law affecting the results of the election which can best be resolved by the conduct of a hearing.

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<sup>2/</sup> The critical period in this matter is the period from February 18, 2014, the date the petition was filed, through March 31, 2014, the date the election was concluded. *Goodyear Tire and Rubber Co.*, 138 NLRB 453 (1962).

### OBJECTION 3:

In support of this Objection, the Petitioner provided evidence that during the critical period, Employer agents, including Employer Counsel Robert Coyle, allegedly informed unit employees during mandatory meetings held by the Employer that as the Employer's chief negotiator, he would refuse to agree to continue employees' existing working terms and conditions, including current work schedules and assignment of overtime hours and that the Employer would also institute harsh mandatory overtime rules and other unpleasant working conditions. The Petitioner argues that this conduct had the tendency to interfere with the employees' freedom of choice and/or affected the outcome of the election.

The Employer denies that it engaged in any objectionable conduct as alleged by the Petitioner.

In view of the conflicting evidence and position of the parties, I conclude that Objection 3 raises substantial and material issues of fact and law affecting the results of the election which can best be resolved by the conduct of a hearing.

### OBJECTION 4:

In support of this Objection, the Petitioner provided evidence that during the critical period, Employer agents, including Employer Counsel Robert Coyle, allegedly informed unit employees during mandatory meetings held by the Employer that the Employer would be required to add taxes to the amount of union dues, making the amount that employees would be paying for union dues much higher than the dues themselves and that employees would have an additional taxable income. The Petitioner argues that this conduct has the tendency to interfere with the employees' freedom of choice and/or affected the outcome of the election.

The Employer denies that it engaged in any objectionable conduct as alleged by the Petitioner.

In view of the conflicting evidence and position of the parties, I conclude that Objection 4 raises substantial and material issues of fact and law affecting the results of the election which can best be resolved by the conduct of a hearing.

### OBJECTION 5:

In support of this Objection, the Petitioner provided evidence that during the critical period, Employer agents, including Employer Counsel Robert Coyle, and Employer Manager Bryan Poer, allegedly informed unit employees that employees' regular pay increases and related evaluations would not occur because of the Petitioner. The Petitioner argues that this conduct has the tendency to interfere with the employees' freedom of choice and/or affected the outcome of the election.

The Employer denies that it engaged in any objectionable conduct as alleged by the Petitioner.

In view of the conflicting evidence and position of the parties, I conclude that Objection 5 raises substantial and material issues of fact and law affecting the results of the election which can best be resolved by the conduct of a hearing.

OBJECTION 6:

In support of this Objection, the Petitioner provided evidence that during the critical period, the Employer, through various agents, allegedly engaged in surveillance of unit employees' attendance or non-attendance at anti-union meetings through video recordings and written documents. The Petitioner argues that this conduct created fear of discipline and reprisals among unit employees and has the tendency to interfere with the employees' freedom of choice and/or affected the outcome of the election.

The Employer denies that it engaged in any objectionable conduct as alleged by the Petitioner.

In view of the conflicting evidence and position of the parties, I conclude that Objection 6 raises substantial and material issues of fact and law affecting the results of the election which can best be resolved by the conduct of a hearing.

OBJECTION 7:

In support of this Objection, the Petitioner provided evidence that during the critical period, the Employer allegedly ordered both on-duty and off-duty unit employees into the facility, including employees who were at home, to attend a minimum of eight mandatory anti-union meetings held by the Employer. The Petitioner contends that these meetings were called for no other employment-related purpose and that if the employees did not attend these mandatory meetings, they were allegedly subject to being disciplined. The Petitioner argues that this conduct had the tendency to interfere with the employees' freedom of choice and/or affected the outcome of the election.

The Employer denies that it engaged in any objectionable conduct as alleged by the Petitioner.

In view of the conflicting evidence and position of the parties, I conclude that Objection 7 raises substantial and material issues of fact and law affecting the results of the election which can best be resolved by the conduct of a hearing.

OBJECTION 8:

In support of this Objection, the Petitioner provided evidence that during the critical period, the Employer, by its agents, allegedly paid unit employees significant monetary amounts not related to the actual time they spent to attend the multiple Employer-held anti-union meetings and to vote in the upcoming election. The Petitioner argues that this conduct had the tendency to interfere with the employees' freedom of choice and/or affected the outcome of the election.

The Employer denies that it engaged in any objectionable conduct as alleged by the Petitioner.

In view of the conflicting evidence and position of the parties, I conclude that Objection 8 raises substantial and material issues of fact and law affecting the results of the election which can best be resolved by the conduct of a hearing.

OBJECTION 9:

In support of this Objection, the Petitioner provided evidence that during the election polling periods, <sup>3/</sup> the Employer allegedly conducted video surveillance, including live feed and video recordings, of each unit employee as they voted. The Petitioner argues that this conduct created an atmosphere of intimidation and coercion and has the tendency to interfere with the employees' freedom of choice and/or affected the outcome of the election.

The Employer denies that it engaged in any objectionable conduct as alleged by the Petitioner.

In view of the conflicting evidence and position of the parties, I conclude that Objection 9 raises substantial and material issues of fact and law affecting the results of the election which can best be resolved by the conduct of a hearing.

OBJECTION 10:

In support of this Objection, the Petitioner provided evidence that during the election polling periods, the Employer allegedly kept a list of employees who voted by utilizing surveillance video and employee payroll records.

The Employer denies that it engaged in any objectionable conduct as alleged by the Petitioner.

In view of the conflicting evidence and position of the parties, I conclude that Objection 10 raises substantial and material issues of fact and law affecting the results of the election which can best be resolved by the conduct of a hearing.

OBJECTION 11:

In support of this Objection, the Petitioner provided evidence that during the election polling periods, the Employer allegedly utilized the acting on-duty manager, who was wearing a management uniform, as its election observer. The Petitioner argues that this conduct has a tendency to interfere with the employees' freedom of choice and/or affected the outcome of the election.

The Employer denies that it engaged in any objectionable conduct as alleged by the Petitioner.

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<sup>3/</sup> The Stipulated Election Agreement provided that the election polls would be open from 7 a.m. to 9 a.m. and from 7 p.m. to 9 p.m. on March 31, 2014.

In view of the conflicting evidence and position of the parties, I conclude that Objection 11 raises substantial and material issues of fact and law affecting the results of the election which can best be resolved by the conduct of a hearing.

OBJECTION 12:

In support of this Objection, the Petitioner provided no additional evidence that the Employer has interfered with, restrained and coerced employees in the exercise of their Section 7 rights or has interfered with their ability to exercise a free and reasoned choice in the election but relies solely on the evidence presented in support of its other objections.

The Employer denies that it engaged in any objectionable conduct as alleged by the Petitioner.

In view of the conflicting evidence and position of the parties, I conclude that Objection 12 raises substantial and material issues of fact and law affecting the results of the election which can best be resolved by the conduct of a hearing.

CONCLUSIONS AND RECOMMENDATIONS

For the reasons discussed above, I conclude that the Petitioner's Objections 1 through 12, raise substantial and material issues of fact and law affecting the results of the election which can best be resolved by the conduct of a hearing.

ORDER DIRECTING HEARING  
AND  
NOTICE OF HEARING

IT IS HEREBY ORDERED, pursuant to Section 102.69(d) of the Board's Rules, that a hearing be conducted before a duly designated hearing officer to resolve issues raised by Petitioner's Objections 1 through 12.

IT IS FURTHER ORDERED that the hearing officer designated for the purpose of conducting the hearing shall prepare and cause to be served upon the parties a report containing resolutions of credibility of witnesses, findings of fact and recommendations to the Board as to the disposition of said issues. Exceptions, if any, to the hearing officer's report should be filed with the Board in accordance with Section 102.69(f) of the Board's Rules.

YOU ARE HEREBY NOTIFIED that at 11:00 a.m., on May 2, 2014, and continuing on May 5, 2014 and day to day thereafter until conclusion, in the Hearing Room, Region 9, National Labor Relations Board, 3003 John Weld Peck Federal Building, 550 Main Street, Cincinnati, Ohio, a hearing will be conducted before a hearing officer to be designated by the undersigned

on the issues raised by Petitioner's Objections 1 through 12, at which time and place the parties may appear in person or otherwise, submit evidence and be heard on the issues.

Dated at Cincinnati, Ohio this 22nd<sup>t</sup> day of April 2014.

  
Gary W. Muffley, Regional Director  
Region 9, National Labor Relations Board  
3003 John Weld Peck Federal Building  
550 Main Street  
Cincinnati, Ohio 45202-3271