

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES
NEW YORK BRANCH OFFICE**

**AMERICAN MEDICAL RESPONSE
AMBULANCE SERVICE, INC.**

and

Case No. 28-CA-128440

**NATIONAL EMERGENCY MEDICAL
SERVICES ASSOCIATION**

*Carlos Torrejon, Esq. and David Garza, Esq., Counsel for the General Counsel.
Daniel Fears, Esq., Payne & Fears, Counsel for the Respondent.*

DECISION

Statement of the Case

Joel P. Biblowitz, Administrative Law Judge: This case was heard by me on December 2, 2014 in Las Cruces, New Mexico. The Complaint herein, which issued on June 30, 2014¹ and was based upon an unfair labor practice charge and an amended charge filed on May 9 and June 30 by National Emergency Medical Services Association, herein called the Union, alleges that on about March 26, American Medical Response Ambulance Service, Inc., herein called Respondent, implemented a policy whereby employees in the unit had to complete a Corporate Integrity Agreement (CIA), General Compliance Training, which relates to wages, hours and other terms and conditions of employment of the unit, and is a mandatory subject of bargaining. The Complaint further alleges that it did so without prior notice to the Union and without affording the Union an opportunity to bargain with respect to the effects of this conduct, even though the Union has been the exclusive collective bargaining representative of the unit employees since 2012.

I. Jurisdiction and Labor Organization Status

Respondent admits, and I find, that it has been an employer engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act and that the Union has been a labor organization within the meaning of Section 2(5) of the Act.

II. The Facts

The Respondent, which has been in existence since about 1991, provides emergency and non-emergency ambulance transportation to communities, hospitals and physicians' offices and treats patients in the emergency mode either through 911 or by helping to coordinate the transportation of the patients between healthcare facilities. The Respondent employs sixty to eighty eight paramedics and Emergency Medical Technicians (EMTs) at the Las Cruces facility and between five hundred to eight hundred nationwide, all of whom are required to take the CIA training annually, which takes about one hour. The Respondent has an agreement with the Office of Inspector General of the Department of Health and Human Services which requires all

¹ Unless indicated otherwise, all dates referred to herein relate to the year 2014.

of its covered employees to take the CIA training on a yearly basis. Joaquin Graham, the general manager of the Respondent's Las Cruces facility, testified that since about 2007, the Respondent has sent yearly letters to its paramedics and EMTs reminding them that they have to take this training course, as well as the deadline for taking the training. The Union was
5 certified as the collective bargaining representative of the Respondent's paramedics, EMTs, and other employees in May 2012.

On March 26, all managers were sent an email saying that the CIA Compliance Training was available on line for completion by all employees and that the managers should distribute the announcement immediately to the employees in order for the employees to begin working on the training course. Relevant to the allegations herein, the email also states: "The deadline for all employees to complete the annual training is **May 20, 2014**. AMR/EVHC will again impose unpaid administrative leave on any employee who has not completed the training two weeks prior to the deadline (**May 6, 2014**). Further, any employee who does not complete the training by May 20, 2014 will no longer be eligible for employment." Graham testified that the Respondent instituted the deadline for employees to complete the training two weeks prior to the Federal Government's deadline and that employees who did not complete the training by that time would not be scheduled to work until they completed the training. He testified that if a company employee covered by the agreement with the government, fails to take the CIA
10 training in a timely manner, the company is in violation of its agreement with the Department of Health and Human Services and would be subject to severe penalties, including, possibly not being able to be reimbursed by Medicare. That is the significance of the two week "buffer zone." He testified further that in a meeting in June or July 2013 with Torren Colcord, executive director of the Union, and Angela Moran, Union Steward, the parties discussed "...each and every single part of the corporate integrity agreement, and the deadlines for unpaid administrative leave and the final deadline," with both deadlines discussed.
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The tentative contract agreed to by the parties, but not yet ratified by the membership, states:
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Employees are required to complete one (1) hour of general compliance training annually on-line. Current employees must complete all general compliance training by the date designated by the Employer each year unless excused from completion because of approved leaves of absence. Those who do not complete the training by the date designated by the Employer will be subject to immediate suspension and/or termination.
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Moran, who has been employed by the Respondent as a paramedic since 2007, testified that the CIA training is mandatory and employees are notified every year of the training deadline about a month earlier, and if an employees fail to complete the training prior to the deadline, he/she will be removed from the truck and be on unpaid administrative leave until the training is successfully completed. The only difference in the notices given by Respondent is that prior to 2014, the notice stated only the deadline for completing the training, while the 2014 notice gave the Respondent's deadline with the Federal Government, May 20, as well.
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Colcord testified that Moran forwarded the email that she received setting forth the deadlines for CIA training in 2014 and: "I did not know that there were two deadlines with respect to this training for the employees, nor did I know of two deadlines with respect to AMR and the government." He testified further that the Union had not been notified of (what he referred to as) "two weeks punishment" nor had there been any bargaining about this subject. On cross examination, he testified that he was aware that the paramedics and EMT employees are required to undergo annual training, including CIA training, and that the Respondent notifies
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the employees each year of the deadline for completing this training. He was then asked if he understood that employees who failed or refused to complete this training by the required date would be placed on administrative leave. He answered, “No, that’s not correct” and “I did not know the level of punishment. That was not negotiated.” When asked whether the email that Moran forwarded to him states that employees who did not complete the training by the required date would go on administrative leave, he testified that’s what the email says, but “...I was not aware of the specific punishment that would happen if they didn’t complete the mandatory training.” I then asked Colcord what would happen to an employee who failed to complete the CIA training by the required date: would he/she continue to be a paid employee. He answered that although the employee would be taken off the schedule, he didn’t know what their employment status would be. When asked by Counsel for the General Counsel whether there was any importance between the two stated deadlines, he testified that there is a discipline and economic component for administrative leave without pay and that the memo says that if they don’t complete the training by the required dates, that they are terminated.

Graham testified that since about 2007, the Respondent has notified each of its paramedics and EMTs that they have to complete their CIA training by a set date, and if they fail to do so, they will be placed on unpaid administrative leave. On February 13, 2012, an email was sent to Respondent’s managers, including Graham regarding “Brooklyn CIA Training Notification.” He testified that even though it was called Brooklyn CIA Training it covered all Respondent’s employees nationwide: “So in 2012 the Brooklyn operation drove the training. So the same training that we got in 2007, same training in ’08, ’09, ’10, ’11, ’12, ’13 and ’14, but it was being driven ...this year by the operation in Brooklyn.” This email states:

Due to the fact that the Brooklyn CIA became effective in May 2011, the deadline to complete the annual training this year is **May 20, 2012**. AMR will again impose unpaid administrative leave on any employee who has not completed the training two weeks prior to the deadline (**May 6, 2012**). Further, any employee who does not complete the training by May 20, 2012 will no longer be eligible for employment. [Emphasis supplied]

And he testified that no employee was placed on unpaid administrative leave in 2014 for failing to take the CIA training.

Graham further testified that in 2013, the general manager at the Las Cruces facility had been frustrated with a number of employees who waited to the last minute before taking the training and the Respondent issued them memos to file as a reminder to take the training in a timely manner. During contract negotiations in about June or July 2013 Colcord asked to speak to them about these memos to file alleging that they were disciplinary action. He testified that at this meeting he told Colcord, “...exactly how the process was for that year, how it was for the prior years, and how it’s going to be for the subsequent years, and that...we’d established a deadline two weeks prior to the federally imposed deadline on AMR, we notify the employees of that deadline, we notify them that they will be placed on administrative leave...until they complete the training.”

III. Analysis

The Complaint alleges that beginning in about March 26, 2014, Respondent implemented a policy requiring employees in the unit to complete the CIA training, a mandatory subject of bargaining, and did so without prior notice to the Union and without affording the Union an opportunity to bargain with respect to the effects of this policy, in violation of Section 8(a)(1)(5) of the Act. This specific allegation clearly has no merit as the uncontradicted evidence establishes that the Respondent has required its EMTs and paramedics to take this training

since about 2007, not only in Las Cruces, but nationwide. Further, this training requirement was not established by the Respondent, but was mandated by the Federal Government. What Counsel for the General Counsel appeared to be alleging, is that by unilaterally implementing a disciplinary policy of imposing up to a two week unpaid administrative leave on its unit employees without first affording the Union an opportunity to bargain about the effects of this decision, the Respondent unilaterally changed the past practice in violation of Section 8(a)(5) of the Act. In support of this argument, Counsel for the General Counsel cites *Kajima Engineering and Construction, Inc.*, 331 NLRB 1604 (2000) where the employer was found to have violated Section 8(a)(5) of the Act by laying off employees due to the lack of work without giving the union notice of these layoffs and without giving the union an opportunity to bargain about the layoffs and the effects of the layoffs. However, in *Kajima*, the evidence established that prior to the layoffs in question, the employer had a consistent practice of transferring employees to other jobs, rather than laying them off. However, subsequently, the employer's business contracted and there was, apparently, no place to transfer the employees to, so they were laid off, rather than being transferred, without any bargaining with the union.

In contrast to the situation in *Kajima*, there has been no change in the Respondent practice as it relates to the required CIA training. Since about 2007, the Respondent has notified its paramedics and EMTs that they are required to take the training prior to a set date (in 2004, May 6) and failure to take the training by the required date would result in unpaid administrative leave of up to two weeks. The only change from past practice was that the 2014 notification also specifically stated that the Respondent's deadline with the government in 2014 was May 20, although the 2012 notification to managers also gave both dates. This "change" was inconsequential and had no effect upon either the employees or the Union.

Additionally, Graham testified that the subject of the training and possible discipline for those failing to take the training in a timely manner was discussed with Colcord in negotiations in June or July 2013 and I credit his testimony over that of Colcord, whose testimony I found, at times, to be not believable. When he was questioned about the result of an employee failing to take the training in a timely manner, he was not entirely forthright in his answers when he answered that he was not certain what would happen with the employee. It appears to me that as federal guidelines require that CIA training be completed by a certain date, an employee at the Las Cruces facility who failed to take the CIA training by May 6 would be off the truck and on administrative leave.

Because the Respondent has maintained the same procedure regarding CIA training since about 2007, requiring employees to take the training by a set date, usually May 6 or May 7, or be placed on administrative leave, and had the same rule in effect in 2014, I find that the Respondent did not violate Section 8(a)(5)(1) of the Act and recommend that the Complaint be dismissed.

Conclusions of Law

1. American Medical Response Ambulance Service, Inc. has been an employer engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act.

2. National Emergency Medical Services Association has been a labor organization within the meaning of Section 2(5) of the Act.

3. The Respondent did not violate Section 8(a)(5)(1) of the Act as alleged in the Complaint.

On these findings of fact, conclusions of law and based on the entire record, I hereby issue the following recommended²

ORDER

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It is recommended that the Complaint be dismissed in its entirety.

Dated, Washington, D.C. January 22, 2015

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Joel P. Biblowitz
Administrative Law Judge

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² If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

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