

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

AMERICAN MEDICAL RESPONSE WEST,

Respondent,

and

UNITED EMERGENCY MEDICAL  
SERVICE WORKERS, AFSCME LOCAL  
4911, AFL-CIO,

Charging Party.

Case Nos. 32-CA-147259  
32-CA-149437

**RESPONDENT AMERICAN MEDICAL RESPONSE WEST'S  
ANSWERING BRIEF TO COUNSEL FOR THE GENERAL COUNSEL'S  
LIMITED EXCEPTIONS TO THE ADMINISTRATIVE LAW JUDGE'S DECISION**

Submitted by:

DANIEL F. FEARS  
MATTHEW J. CUTE  
PAYNE & FEARS LLP  
4 Park Plaza, Suite 1100  
Irvine, California 92614  
Telephone: (949) 851-1100  
Fax: (949) 851-1212

Attorneys for Respondent  
American Medical Response West

**TABLE OF CONTENTS**

|                            | <b><u>Page</u></b> |
|----------------------------|--------------------|
| I. INTRODUCTION .....      | 1                  |
| II. SUMMARY OF FACTS ..... | 1                  |
| III. ARGUMENT .....        | 2                  |
| IV. CONCLUSION.....        | 4                  |

**TABLE OF AUTHORITIES**

| <b>CASES</b>   | <b>Page(s)</b> |
|--|----------------|
| <i>Anheuser-Busch, Inc.</i> ,<br>237 NLRB 982 (1978) ..... | 2, 3           |
| <i>Piedmont Gardens</i> ,<br>362 NLRB No. 139 (2015) ..... | 2              |

Pursuant to Section 102.46(d) of the National Labor Relations Board's Rules and Regulations, Respondent American Medical Response West ("AMR" or "the Company") submits this Answering Brief to Counsel for the General Counsel's Limited Exceptions to the Administrative Law Judge's Decision ("Decision") issued by the Honorable Eleanor Laws ("ALJ") on December 17, 2015.

## **I. INTRODUCTION**

The General Counsel erroneously asserts that the ALJ failed to make specific findings of fact and conclusions of law regarding whether AMR was required to provide certain witness names to the Charging Party, the United Emergency Medical Service Workers, AFSCME Local 4911, AFL-CIO ("the Union"). To the contrary, the ALJ's findings and conclusions are sufficiently clear, specific, and complete. Accordingly, AMR respectfully submits that the Board should dismiss the exceptions and simply adopt the ALJ's decision.<sup>1</sup>

## **II. SUMMARY OF FACTS**

The facts at issue are simple: AMR obtained witness statements in connection with its investigation of a report by AMR employee Tess Malinowski that she had been sexually harassed or touched inappropriately by a male field training officer, Tracy Perkin. Upon the Union's request, AMR provided the Union with the witness statements, but redacted the names of the witnesses on the statements to maintain confidentiality. (Tr. 31:12-32:9, 50:2-16, 172:1-11, 185:20-23; G.C. Exhs. 3 & 4).<sup>2</sup> The Union requested unredacted statements – i.e. statements that contained the employees' names – and has adamantly maintained that it would not be

---

<sup>1</sup> While the Company disagrees with the ALJ's findings and conclusions that AMR violated the Act in certain limited respects, the Company does not file exceptions.

<sup>2</sup> Citations to the transcript of the underlying hearing before the ALJ held on October 14, 2015, are referenced as "Tr." Citations to the General Counsel's exhibits are referenced as "G.C. Exh." Citations to the ALJ's Decision are referenced as "Decision \_."

satisfied with anything less than the unredacted statements. (Tr. 62:13-64:4; G.C. Exh. 5). AMR declined this request, as it concluded it was not obligated to provide such unredacted statements to the Union due to important confidentiality interests. (Tr. 41:1-5, 164:6-18; G.C. Exh. 5, p. 1).

### **III. ARGUMENT**

The General Counsel's limited exceptions are without merit, as the ALJ did not fail to make any necessary findings of fact and conclusions of law in this matter.

Counsel for the General Counsel offered evidence and argument to the ALJ that AMR was required to provide the Union with the unredacted witness statements that contained the employees' names, and that AMR violated Section 8(a)(1) and (5) of the National Labor Relations Act ("NLRA" or the "Act") by failing to provide the Union with unredacted statements. The ALJ correctly concluded this is not so. (Decision at p. 11:39-12:7). Under *Anheuser-Busch, Inc.*, 237 NLRB 982 (1978) and its progeny, the Company did not have a duty to furnish witness statements to the Union, whether redacted or not.<sup>3</sup> (*Id.*) The ALJ's findings of fact and conclusions of law in this regard are detailed, conformed to the evidence offered by the parties, and directly addressed the issues Counsel for the General Counsel presented to the ALJ.

Dissatisfied with this result, Counsel for the General Counsel now argues in its Brief in Support of Limited Exceptions that the ALJ should have found that AMR was obligated to provide the Union with a list of the witnesses AMR interviewed in connection with the Perkin investigation. This argument is entirely without merit.

---

<sup>3</sup> The exclusion of the duty to furnish witness statements established by the Board in *Anheuser-Busch* was abrogated in the Board's decision in *Piedmont Gardens*, 362 NLRB No. 139 (2015). But, as conceded by Counsel for the General Counsel before the ALJ and in its Exceptions, *Piedmont Gardens* does not apply retroactively, and *Anheuser-Busch* is the controlling authority on protected witness statements in the instant case. *Id.*, slip op. at 6.

*First*, Counsel made no such argument before the ALJ. The General Counsel’s case centered on the allegation that AMR was required to provide unredacted witness statements containing the witnesses’ names – not whether AMR was separately required to furnish the Union with a list of employee names of those who were interviewed in the investigation. The ALJ directly addressed the evidence and arguments that the General Counsel presented, and dismissed the allegation that AMR was required to provide unredacted witness statements containing the employee names. (Decision at p. 11:39-12:7). Thus, the ALJ did not fail to make findings of fact and conclusions of law as to the General Counsel’s allegations.

*Second*, even assuming *arguendo* that the ALJ did not make adequate findings and conclusions, the General Counsel did not present any evidence in the record that the Union actually requested of AMR a list of employee names who were interviewed in the Perkin investigation. Counsel argues that AMR was required to provide a list of names to the Union, citing *Anheuser-Busch, Inc.* at footnote 5, which states: “An employer does have a duty to furnish a union, upon request, the names of witnesses to an incident for which an employee was disciplined. However, the record clearly establishes that at all times material herein, the Union requested only that Respondent furnish the witness statements themselves.”<sup>4</sup> *Anheuser-Busch, Inc.*, 237 NLRB 982, 985 (1978) (emphasis added, internal citation omitted). But here, as in *Anheuser-Busch*, the record is devoid of evidence that the Union separately requested a list of

---

<sup>4</sup> Notably, Counsel for the General Counsel’s brief omits – without indication or explanation – the important words “upon request” from its quotation of footnote 5. (See CGC’s Brief at p. 3). Such omission is especially inexcusable here because the record does not support a finding that the Union specifically requested a list of employee names. Rather, the Union only requested that AMR provide it with the witness statements containing the employee names, which AMR (and Anheuser-Busch) were not required to provide under the Act. Apparently, the General Counsel is attempting to retroactively convert the Union’s inappropriate request for unredacted witness statements into a request for witness names.

witness names, and Counsel for the General Counsel points to none in its brief. Rather, as in *Anheuser-Busch*, the evidence shows that the Union requested that AMR furnish the witness statement themselves in unredacted form – not a list of witness names.

Accordingly, Counsel for the General Counsel has not shown that the ALJ failed to make necessary findings of fact and conclusions of law, and further, has not shown that AMR violated the Act with respect to witness names in the Perkin investigation. AMR complied with its obligations under the Act.

**IV. CONCLUSION**

AMR respectfully requests that the Board reject the General Counsel's exceptions, hold that AMR did not violate the Act with respect to witness names in the Perkin investigation, and adopt the ALJ's decision.

Dated this 28th day of January, 2016.

By: /s/ Daniel F. Fears

Daniel F. Fears  
PAYNE & FEARS LLP  
4 Park Plaza, Suite 1100  
Irvine, California 92614

Attorneys for Respondent  
AMERICAN MEDICAL RESPONSE WEST

**CERTIFICATE OF SERVICE**

Attorneys for Respondent hereby certify that a copy of Respondent's Answering Brief was electronically filed on January 28, 2016 using the National Labor Relations Board's E-Filing System, and was served via electronic mail on the following counsel and representatives:

National Labor Relations Board      *[Electronically Filed]*  
Office of the Executive Secretary

Counsel for the General Counsel      *[Via email]*  
Emily Erdman  
emily.erdman@nlrb.gov  
Noah Garber  
Noah.Garber@nlrb.gov

Counsel for Charging Party      *[Via email]*  
David A. Rosenfeld  
Manuel Boigues  
Alejandro Delgado  
Weinberg Roger & Rosenfeld  
drosenfeld@unioncounsel.net  
mboigues@unioncounsel.net  
ADelgado@unioncounsel.net  
1001 Marina Village Pkwy, Suite 200  
Alameda, CA 94501-6430

Dated this 28th day of January, 2016.

By: /s/ Daniel F. Fears

Daniel F. Fears  
PAYNE & FEARS LLP  
4 Park Plaza, Suite 1100  
Irvine, California 92614