

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 28**

AMR OF MARICOPA, LLC

Employer/Petitioner

and

Case 28-UC-223664

**AMERICAN FEDERATION OF STATE,
COUNTY AND MUNICIPAL EMPLOYEES,
LOCAL 2960, AFL-CIO**

Union

and

**INTERNATIONAL ASSOCIATION OF FIRE
FIGHTERS, LOCAL I-60, AFL-CIO**

Union

and

**INDEPENDENT CERTIFIED EMERGENCY
PROFESSIONALS, LOCAL R12-170,
NATIONAL ASSOCIATION OF
GOVERNMENT EMPLOYEES, SERVICE
EMPLOYEES INTERNATIONAL UNION**

Union

**AMR OF MARICOPA, LLC d/b/a AMR;
PROFESSIONAL MEDICAL TRANSPORT,
INC. d/b/a PMT, LIFE LINE, and AMR; and
SW GENERAL, INC. d/b/a SOUTHWEST
AMBULANCE and AMR**

Employers/Petitioners

and

Case 28-RM-234875

**AMERICAN FEDERATION OF STATE,
COUNTY AND MUNICIPAL EMPLOYEES,
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**INDEPENDENT CERTIFIED EMERGENCY
PROFESSIONALS, LOCAL R12-170, NATIONAL
ASSOCIATION OF GOVERNMENT
EMPLOYEES, SERVICE EMPLOYEES
INTERNATIONAL UNION**

Union

DECISION AND ORDER

In Case 28-UC-223664, Petitioner/Employer AMR of Maricopa, LLC (AMR of Maricopa) seeks for three separate units of emergency medical service (EMS) and interfacility transfer employees (IFT) represented by American Federation of State, County and Municipal Employees, Local 2960, AFL-CIO (AFSCME, Local 2960), International Association of Fire Fighters Local Industrial 60 (IAFF, Local I-60), and Independent Certified Emergency Professionals, Local R12-170, National Association of Government Employees, Service Employees International Union (ICEP, Local R12-170) (collectively, the Unions), to be consolidated into one unit of EMS employees represented by IAFF, Local I-60 and one unit of IFT employees represented by AFSCME, Local 2960.

In Case 28-RM-234875, Petitioners/Employers AMR of Maricopa, d/b/a AMR; Professional Medical Transport, Inc. d/b/a PMT, Life Line, and AMR (PMT); and SW General, Inc. d/b/a Southwest Ambulance and AMR (SW General) seek, “in addition and/or in the alternative” to the action sought in Case 28-UC-223664, for the National Labor Relations Board (the Board) to consolidate the IFT employees in the units represented by the Unions into one unit and to conduct an election to determine which of the Unions will be the exclusive collective-bargaining representative of the combined IFT unit.

The Unions argue that the petitions must be dismissed because the alleged consolidation of operations cited as the basis for the petitions does not warrant the requested accretion or raise a question concerning representation because the three existing units retain separate identities

and communities of interest, and, even if the units did not retain separate identities and communities of interest, there would be a contract bar to the petitions.

A hearing officer of the Board held a hearing in this matter, and the parties orally argued their respective positions at the hearing and in post-hearing briefs. As explained below, based on the record and relevant legal precedent, I find that the alleged consolidation of operations cited as the basis for the petitions does not warrant the requested accretion or raise a question concerning representation because the three existing units retain separate identities and communities of interest, and, even if the units did not retain separate identities and communities of interest, there would be a contract bar to the petitions.

I. FACTS

AMR of Maricopa, SW General, and PMT provide 911 emergency medical services (EMS) to municipalities and interfacility transfer (IFT) services to medical providers. The petitions at issue are based on an alleged consolidation of the operations of AMR of Maricopa, SW General, and PMT in and around Maricopa County following the formation of AMR of Maricopa and the acquisition of SW General and PMT.

SW General and PMT were acquired by a medical transport provider called Rural/Metro in 1997 and 2011, respectively. AMR of Maricopa, which has AMR Holdco as its ultimate parent, started operating in Maricopa County, Arizona, in February 2015. AMR Holdco announced the acquisition of Rural/Metro in July 2015, and completed the acquisition in October 2015, thus also becoming the ultimate parent of SW General and PMT.

AFSCME, Local 2960 was certified to represent full-time and regular part-time emergency medical technicians (EMTs) and paramedics employed by AMR of Maricopa on August 25, 2016, soon after AMR of Maricopa started operating in Maricopa County in February 2015. IAFF, Local I-60 has represented full-time and regular part-time EMTs, paramedics, and registered nurses employed by SW General since 1991, before Rural/Metro purchased SW General.¹ ICEP, Local R12-170 has represented regular full-time EMT's, paramedics, and registered nurses employed by PMT, who work in and out of the facility located at 617 West Main St, Mesa, Arizona, since 2009, before Rural/Metro purchased PMT.

After AFSCME, Local 2960 was certified as the representative of AMR of Maricopa's employees on August 25, 2016, AFSCME, Local 2960 and AMR of Maricopa entered into a collective-bargaining agreement effective January 1, 2018 to March 31, 2022. The Vice President of Labor Relations of American Medical Response, Envision Healthcare Corp.; Regional Directors of AMR of Maricopa; and the Director of Labor Relations for Rural/Metro negotiated the agreement on behalf of AMR of Maricopa;² and the Local President, a Local

¹ The unit of employees represented by IAFF, Local I-60 includes some employees in Pima County, who the Petitioners/Employers contend should not be included the consolidated units they request.

² The Chief Operating Officer of AMR of Maricopa signed the collective bargaining agreements but denied being part of the negotiations.

Executive Board Member, and other local and international negotiators for AFSCME, Local 2960 negotiated the agreement on behalf of AFSCME, Local 2960. The agreement was negotiated between December 2016 and December 2017. AMR of Maricopa did not raise the alleged consolidation of the operations of AMR of Maricopa, SW General, and PMT or the desire to consolidate the units represented by the Unions during negotiations.

IAFF, Local I-60 and SW General are parties to a collective-bargaining agreement effective May 28, 2016 and June 30, 2019. The Vice President of Labor Relations of American Medical Response, Envision Healthcare Corp.; the Director of Labor Relations of Rural/Metro; Regional Directors of AMR of Maricopa; a Senior Vice President of Human Resources; and a Division Vice President of SW General negotiated the agreement on behalf of SW General; and the President of IAFF, Local I-60 negotiated the agreement on behalf of IAFF, Local I-60. The agreement was negotiated between February 2011 and April 2016. SW General did not raise the alleged consolidation of the operations of AMR of Maricopa, SW General, and PMT or the desire to consolidate the units represented by the Unions during negotiation of the collective-bargaining agreement.

ICEP, Local R12-170 and PMT are parties to a collective-bargaining agreement effective September 5, 2015 to September 4, 2018. The agreement was negotiated by representatives of ICEP, Local R12-170 and PMT prior to AMR Holdco's acquisition of PMT. Since September 2018, ICEP, Local R12-170 and PMT have been in negotiations for a successor collective-bargaining agreement.

Petitioners/Employers contend that the operations of AMR of Maricopa, SW General, and PMT have been integrated in various respects since the formation of AMR of Maricopa and acquisition of Rural/Metro in 2015 and the subsequent consolidation of these entities' Certificates of Necessities (CONs).

A CON is an operating license granting its holder the right to operate within a specified geographical area. Without a CON, an ambulance service company is unlikely to be awarded a contract for ambulance services by a municipality because the company would not be licensed to operate. Prior to being acquired by Petitioners/Employers, PMT and SW General Inc. held their own CONs. Starting in August 2015, Envision Healthcare Holdings, Inc., AMR Hold Co., Rang Merger Sub, Inc., and American Medical Response began the process of consolidating their CONs and the CONs of the ambulance companies they acquired by submitting requests with the Arizona Department of Health Services (DHS). Petitioners/Employers sought to consolidate six CONs into two.

Specifically, AMR Holdco and Envision Healthcare Corp. sought to consolidate: (1) the CONs of SW General,³ Southwest Ambulance of Casa Grande, Inc.,⁴ and AMR of Maricopa into

³ This CON listed SW General Inc. d/b/a Southwest Ambulance d/b/a American Medical Response d/b/a AMR as the operator.

⁴ This CON also listed as d/b/a's: Southwest Ambulance and Rescue of Arizona, American Medical Response, and AMR.

the CON of AMR of Maricopa; and (2) the CONs of PMT,⁵ Emergency Medical Transport, Inc.,⁶ Comtrans Ambulance Service, Inc.,⁷ and Southwest Ambulance of Casa Grande, Inc.⁸ into the CON held by PMT. Two separate letters dated December 5, 2016 sent by AMR of Maricopa's COO to the DHS noted that there would be "no financial impact nor any impact on patient care anticipated by the proposed" consolidations.

In January 2018, the DHS approved the consolidations. The resulting CONs are one held by AMR of Maricopa⁹ and one held by PMT.¹⁰ The CONs previously held by the entities that AMR Holdco acquired were eliminated. Additionally, both resulting CONs list as the type of service immediate response transports, interfacility transports, and convalescent transports and the type of operation as including both Advanced Life Support (ALS) and Basic Life Support (BLS). Both CONs list AMR's corporate address in Greenwood Village, Colorado as the legal address. None of the CONs have AMR Holdco on them.

The resulting CONs subsumed all of the previous CONs' areas of operations.¹¹ The PMT CON covers Maricopa County, except the geographical areas of the following CONs are excluded from the service area for 911 ambulance service: of the Buckeye Valley Rural Volunteer Fire District, the North County Fire & Medical District, the Daisy Mountain Fire District, the Town of Queen Creek, and all of Maricopa County for prescheduled interfacility and convalescent transports. The AMR of Maricopa CON coverage area includes Maricopa County, except the geographical areas of the following CONs are excluded from the service area for 911 ambulance service Buckeye Valley Rural Volunteer Fire District, the North County Fire & Medical District, the Daisy Mountain Fire District, the Sun Lakes Fire District. The AMR of Maricopa CON covers the portion of the service area described above that is in Pinal County including Queen Creek, Superstition Fire and Medical District, Florence Junction and the Sun Tan Valley for prescheduled, interfacility, and convalescent transport.

Petitioners/Employers sought consolidations of the CONs, among other reasons, to align brands with either rural or urban business units, to provide operational clarity to the DHS, to and to eliminate the previous Rural/Metro management and create a two Regional Director structure. Petitioners/Employers kept the "legacy" names to be able to bill for services. The consolidated

⁵ This CON listed as d/b/a's: PMT Ambulance and Life Line Ambulance.

⁶ This CON listed as d/b/a's: American Ambulance and Life Line Ambulance.

⁷ This CON listed as d/b/a's: Comtrans Ambulance Service, ProMed Transport, American Comtrans, and Life Line Ambulance

⁸ This CON listed as d/b/a's: Southwest Ambulance and Rescue of Arizona, American Medical Response, and AMR.

⁹ Listed as d/b/a's are: American Medical Response, AMR, SW General, Southwest Ambulance, Southwest Ambulance of Casa Grande Inc., and Southwest Ambulance and Rescue of Arizona.

¹⁰ Listed as d/b/a's are: PMT Ambulance, Life Line Ambulance, Comtrans Ambulance Service, Inc., Comtrans Ambulance Service, ProMed Transport, American Comtrans, American Medical Response, and AMR.

¹¹ The resulting CONs also set forth required response times, 911 and IFT arrival and travel times, and special provisions defining non-urgent and urgent transfers.

CONs did not result in any concrete changes to day-to-day operations. Also, as long as the employees met the required qualifications, nobody had to reapply for their positions, nor did anyone lose seniority, benefits, or pay as a result of the CON consolidations.

Petitioners/Employers get business through contracts with municipalities for EMS services and preferred provider and non-preferred agreements for IFT work. For EMS services, there are municipal contracts with cities, fire districts, and other political subdivisions, but not with counties.¹² Municipal contracts are structured differently and define the scope of services provided, training, vehicle and equipment requirements, response and arrival times, reimbursement structure, staffing, and station locations.¹³ EMS employees are assigned to a particular contract for operations within a municipality. Once finalized, the municipal contracts must be approved by the DHS. AMR Holdco assumed responsibility of performing the municipal contracts Rural/Metro, PMT and SW General. Most of the municipal contracts were acquired through the purchase of Rural/Metro. There are about eight municipal contracts for EMS work covering ICEP, Local R12-170, AFSCME, Local 2960, and IAFF, Local I-60.

For IFT work, AMR Holdco enters into preferred provider agreements with medical facilities, including hospitals and nursing homes. The agreements are in a standard AMR Holdco format. AMR Holdco is no longer extending contracts under the names of any entities other than AMR Holdco. Petitioners/Employers have hundreds of preferred provider agreements in Maricopa County. These contracts are facility specific rather than municipality specific. Due to governmental regulations, preferred provider agreements are not exclusive contracts. That is, Petitioners/Employer do not have preferred provider contracts to exclusively get the IFT work for a facility. The purpose of the preferred provider agreements is to get a billing discount with the DHS. As AMR Holdco's subsidiaries have different provider identification and tax ID numbers. Within each agreement AMR Holdco separates the CON numbers and attaches a billing schedule.

Petitioners/Employers operate two IFT stations: one in Mesa, Arizona (Station 1) and one in Peoria, Arizona (Station 3) (collectively, the Stations). Petitioners/Employers moved into the Stations in 2016. Approximately 205 bargaining unit employees deploy out of Station 1, including 67 represented by IAFF, Local I-60, 56 represented by ICEP, Local R12-170, and 82 represented by AFSCME, Local 2960. Approximately 102 bargaining unit employees deploy out of Station 3, including 32 represented by IAFF, Local I-60, 24 represented by ICEP, Local R12-170, and 46 represented by AFSCME, Local 2960. Petitioners/Employers operate two IFT stations due to the size of Maricopa County.

Station 1 also houses "fleet services" which serves as a vehicle service station that all the employees can use. Ambulances are serviced and maintained at Station 1. Moreover, EMTs,

¹² Municipal contracts include Sun City West, the City of El Mirage, the City of Glendale, the City of Goodyear, the City of Chandler, the City of Peoria, the City of Tempe, the City of Mesa, the Town of Gilbert, and the Town of Queen Creek.

¹³ The record contains no municipal contracts.

paramedics, and nurses use “blue rooms” in Stations 1 and 3 to check out drugs.¹⁴ EMTs do not check out narcotics but can check out other types of drugs. There are no differences in the way the EMTs, paramedics, and nurses from the three bargaining units at issue check out drugs.

Station 1 also serves as a companywide uniform shop and fleet shop, where employees can order uniforms and supplies or request maintenance of the ambulances.¹⁵ Each bargaining unit has its own code so that supplies can be accounted for. An employee has to submit paperwork to requisition supplies. To replace worn or damaged uniforms, employees must return the clothing to be replaced, submit paperwork, and get it signed. The employee must then take the signed paperwork to the uniform shop where personnel will process the order.

IFT employees do not stay all day at either Station 1 or Station 3 waiting for calls. Rather, those stations are where they start and end their work day. IFT ambulance crews typically spend up to 20 minutes at the beginning of their shift at Station 1 or Station 3 getting ready for their day. After arriving at either Station 1 or Station 3, the EMTs, paramedics, or nurses do a “drug checkoff” and “truck check off” then drive to their post which could be at any hospital in the area where there is a need. Once they leave their initial Station, they move throughout the system all day long, only returning to end their shift. Postings are based on operational needs.

Depending on the type of medical facility there may be different types of ambulance crews. For example, at larger hospitals, there could be a BLS ambulance crew (meaning two EMTs), an ALS ambulance crew (meaning a paramedic and a EMT) or a critical care unit (a Registered Nurse and an EMT). Crews from different bargaining units are posted in the same hospital. Also, paramedics and EMTs from other companies or from municipalities are also posted at the same hospitals.

Once posted at a hospital, the ambulance crew is responsible for calls in a specified geographical area. The IFT crews respond to calls and transports patients to and from medical facilities. Once the patient is dropped off, the crew fills out paperwork and then can either stay at where they dropped off the patient or more typically remain at their hospital posting. Before the end of their shift, each IFT crew must restock their ambulance. IFT crews typically spend up to 30 minutes at Station 1 or Station 3 at the end of their shift restocking their ambulance and filling out paperwork.

According to a Regional Director, Station 1 is a “well-oiled machine” and both Stations have ambulance units going in and out about 22 hours of the day. Other than differences based upon the different collective-bargaining agreements between units, there is no distinction “at-all” in what EMTs, paramedics, and nurses do on a day-to-day basis at the Stations.

EMS crews, by contrast, are posted at one of approximately 50 EMS stations throughout Maricopa County. An EMS station can be a fire station, a building, a house, or a complex. The

¹⁴ A “blue room” is an enclosed space monitored by security cameras and requiring a card entry.

¹⁵ A local of the International Brotherhood of Teamsters represents employees at the uniform and fleet shop.

EMS employees report to and start and end their shifts at their assigned station. Each station is staffed by employees within a particular bargaining group. Each EMS station is staffed by an ambulance crew from a particular bargaining unit from either IAFF, Local I-60, AFSCME, Local 2960, or ICEP, Local R12-170. EMS crews collaborate with municipalities and fire departments. Sometimes, an EMT or paramedic can be paired with a municipal or fire department partner. The EMS crews generally stay within their service areas, unless there is a system overload and an adjacent service area requires assistance from a neighboring area.

The amount of time that EMTs, paramedics, and nurses spend at their posts varies by day and by call volume. The organizational structure separating IFT/EMS operations has been in place since prior to the acquisition of Rural/Metro, PMT, and SW General by AMR Holdco. Petitioners/Employers also deploy EMTs and paramedics for special events, including medical standby services, walking teams, and ambulances. Special events include NASCAR races at the ISM Raceway,¹⁶ music festivals, baseball games, school events, and charity events. Both EMS and IFT employees, from the entire workforce, work special events.

Historically, IAFF, Local I-60 employees have staffed NASCAR races. IAFF, Local I-60 and SW General have a Memorandum of Understanding (MOU) covering staffing for special events providing that SW General will first attempt to fill positions with IAFF, Local I-60 bargaining unit employees before opening up to all employees. The past practice has been to have 7-8 ambulances, and walking crews, for the race.

Moreover, AMR of Maricopa has an agreement with the Arizona Diamondbacks to provide standby medical services¹⁷ at Chase Field.¹⁸ In turn, since December 2018, AMR of Maricopa has had a MOU with AFSCME, Local 2960 providing that AMR of Maricopa must first utilize part-time AFSCME, Local 2960 personnel then full-time AFSCME, Local 2960 personnel. The personnel can be either EMS or IFT employees. The Diamondbacks requested a consistent group of individuals. As there is large group of employees represented by AFSCME, Local 2960 who are not necessarily tied to a single event, this allows AMR of Maricopa to draw from a larger pool (whereas the IAFF, Local I-60 bargaining unit has been historically tied to other events).

There is a common dispatching center used across all three bargaining units. In the East Valley, EMS units are dispatched by Mesa Alarm through a radio system. That is, the EMS unit is alerted through that radio system and the crew communicates via a mobile computer terminal by pushing buttons. The EMS unit will also communicate with AMR of Maricopa's dispatch center in Glendale. In the West Valley, the Phoenix Fire Department's 911 center contacts AMR of Maricopa's Glendale communications center and informs them of a call. Once the call is received, the AMR dispatcher locates the closest ambulance unit and assigns the unit to the call.

¹⁶ ISM Raceway and NASCAR require track trained personnel, which is a training program offered once a year with limited slots.

¹⁷ The Phoenix Fire Department handles the transportation of patients.

¹⁸ The coverage area includes inside the venue and at specific distances outside the venue.

Crews also respond to communications from the Fire Departments. Essentially, EMS ambulance units are dual-dispatched. IFT units are dispatched solely through the Glendale communications center, which receives calls via cell phone or handheld devices.

Depending on the call algorithm and the nature of the call, the Glendale dispatch center will send the most appropriate unit to a call. Nevertheless, as different municipalities contract with either AMR of Maricopa, PMT, or SW General for EMS services, over 98% of the calls received by each entity are covered by the corresponding bargaining unit. That is, over 99% of the calls received by SW General are covered by IAFF, Local I-60, over 98% of the PMT calls are covered by ICEP, Local R12-170, and over 98% of the calls received by AMR of Maricopa are covered by AFSCME, Local 2960.

For IFT, the dispatching operations do not delineate between different bargaining units. That is, the closest most appropriate ambulance unit is dispatched. But if there is a call for a nurse ride then that call would go to either an IAFF, Local I-60 or ICEP, Local R12-170 ambulance unit because there are no nurses in the AFSCME, Local 2960 unit. Overall, in Maricopa County 23.6% of the IFT calls are handled by I-60 employees, 55.1% by AFSCME, Local 2960 employees, and 21.3% by ICEP, Local R12-170 employees. In Pinal County, 74.7% of the IFT calls received are handled by IAFF, Local I-60, 25% by AFSCME, Local 2960, and 0.4% by ICEP, Local R12-170.

Prior to its acquisition, Rural/Metro owned and operated the Glendale dispatch center, while AMR of Maricopa had a separate dispatching facility. AMR of Maricopa has been operating the Glendale dispatch center for about 2 years. About 90 employees work at the Glendale dispatch center. The Glendale dispatch center can see where all the ambulance units are located. At the Glendale dispatch center, there are several pods handling different aspects of dispatching. There is a pre-billing or pre-authorization pod that validates insurance. There is a call-taking pod that handles call inputting and then routes the call to the dispatch pod that will handle the calls, which may be broken down by geographic location. There is also a fire dispatch pod handling the Rural/Metro fire calls. There is an air division pod handling calls for air transport. All three bargaining units at issue use the same computer aided dispatch (CAD) software.

Under Rural/Metro, there was a Southwest Ambulance brand and a PMT brand. When AMR of Maricopa acquired Rural/Metro, the Rural/Metro line of business was rebranded as AMR; the Southwest Ambulance brand was rebranded as AMR; operations in Southwest Maricopa County, Pima County, and Pinal County continued to operate under the AMR brand; PMT and other AMR-affiliated companies in rural areas, including Prescott and Safford, were rebranded as Life Line (the name of a Prescott company also acquired by AMR Holdco affiliated companies); Rural/Metro fire operations continued to operate under the Rural/Metro brand; and Havasu City operations were branded River Medical.

AMR branded ambulances are utilized by employee of AMR of Maricopa represented by AFSCME, Local 2960 and employees of SW General represented by IAFF, Local I-60. Life Line branded ambulances are used by employees of PMT represented by ICEP, Local R12-170. Both

AMR and Life Line have Type 2 and Type 3 ambulances available. SW General and AMR of Maricopa employees only ride in AMR branded ambulances, while ICEP employees utilize only Life Line ambulances. AMR of Maricopa and SW General nurses ride in AMR branded Type 3 ambulances due to historical use. No nurses operate under the Life Line brand.

The brands on employee's uniforms also changed to reflect the restructuring of the brands. Life Line uniforms consist of a black pull over with red and lettering saying Life Line Ambulance and a white star of life on the back, or navy-blue t-shirts or polos, shorts, and brush pants. AMR uniforms consists of black-button down shirts with an "AMR" patch on the sleeve and a yellow and red operation patch.

Human resources management and labor relations were centralized between October 2015 and summer of 2018. Currently, labor relations are centrally controlled by AMR. There is a national Vice President of Labor Relations responsible for the labor relations of Petitioners/Employers. Likewise, human resource matters are handled centrally by an AMR human resources department. There is a national Senior Vice President of Human Resources AMR. There are no human resources generalists or support staff specifically assigned to perform services for a specific bargaining unit.

Similarly, there is a national AMR payroll department that handles payroll for all the bargaining units, with oversight by a national corporate finance department and the national human resources department. The payroll office is in Colorado and is led by an AMR Holdco senior director who cuts the checks. But locally, at least two AMR of Maricopa employees process payroll.

There is a national AMR employee handbook applicable to all employees regardless of bargaining representative. The latest version became effective in August 2018 and came out of corporate headquarters in Colorado. This national handbook is available online from the AMR website and employees must acknowledge receipt of the handbook. While there was testimony regarding local or company specific handbooks and specific operations manuals no such documents were introduced into evidence at the hearing.

For AFSCME, Local 2960 unit, the grievance arbitration procedure in the collective-bargaining agreement first requires the employee to attempt to informally resolve the issue with their immediate supervisor. The next step, step one, allows the employee or the union to submit a written grievance to the Operations Manager. If not resolved at step one, the Union can submit the written grievance to a Regional Director at Step two. Step three provides for non-binding mediation. Step four provides for arbitration of the grievance.

For IAFF, Local I-60, the grievance process begins at step one which allows the employee or the union to submit a written grievance to the Human Resources Manager with a copy to the Regional Director. The Human Resource Manager then directs the grievance to a General Manager. If not resolved, step two provides that the grievance is to be submitted to the Regional Director. Step three provides for non-binding mediation. Step four provides for arbitration of the grievance.

For ICEP, Local R12-170, step one provides for the submission of a written grievance to the Assistant General Manager of a designee. Step two provides for the submission of the grievance to the General Manager. Step three provides for arbitration. In the case of grievances alleging discharge without cause, step one provides for submitting a written grievance to the General Manager while step two provides for arbitration.

One of the two Regional Directors for AMR handles AFSCME, Local 2960 grievances. The other Regional Director handles ICEP, Local R12-170 and IAFF, Local I-60 grievances at the second step. At the final step, the grievances to the Chief Operating Officer of AMR of Maricopa.

Station 1 is about 35 miles away from Station 3.¹⁹ EMS stations are scattered throughout the Valley. As the list of EMS stations entered into the evidence at the hearing are lacking the name of the municipality, the record does not reflect the distance between EMS stations or between EMS stations and Stations 1 and 3.

Each bargaining unit has different wages, paid time off (PTO), seniority, shift bidding processes, and benefits depending on their respective collective-bargaining agreement. Each of the bargaining units earn different wage rates. AFSCME, Local 2960 paramedics earn an hourly wage rate ranging from \$22.88 to \$30.85. AFSCME, Local 296 EMTs earn an hourly wage rate ranging from \$18.03 to \$25.26. IAFF, Local I-60 paramedics earn an hourly wage rate ranging from \$18.03 to \$25.16, while EMTs earn between \$14.42 to \$19.73 an hour. ICEP, Local R12-170 paramedics earn between \$13.83 to \$25.67 an hour while EMTs earn between \$11.06 to \$20.56 an hour.

Moreover, each bargaining unit is eligible for different contractual benefits. AFSCME, Local 2960 bargaining unit employees can receive medical, dental, vision, long term disability, group term life and supplemental life, accidental death and dismemberment, short term disability, and liability insurance. AFSCME, Local 2960 bargaining unit employees can also receive flexible spending and health savings accounts and are eligible for a 401(k) plan. IAFF, Local I-60 bargaining unit employees are eligible for longevity pay, defined pension plan for individuals employed into a bargaining unit position before March 1, 2016, health insurance, and tuition reimbursement. ICEP, Local R12-170 bargaining unit employees are eligible for a 401(k) plan and tuition reimbursement.

Likewise, per the respective collective-bargaining agreements, each bargaining unit accrue paid time off (PTO) at different rates. For AFSCME, Local 2960, those with 0-5 years of

¹⁹ See

<https://www.google.com/maps/dir/9299+West+Olive+Avenue,+Peoria,+AZ/617+W+Main+St,+Mesa,+AZ+85201/@33.4754384,-112.1981923,11z/data=!3m1!4b1!4m13!4m12!1m5!1m1!!s0x872b41eb9cb1ac53:0xbd04f7273f11fbee!2m2!1d-112.2586579!2d33.5629068!1m5!1m1!!s0x872ba7ee2dd56fe1:0x64afc5d013e9a5cb!2m2!1d-111.8444226!2d33.4146075>. *Bud Antle, Inc.*, 359 NLRB 1257 n. 3 (2013), reaffd. 361 NLRB 873 (2014) (taking administrative notice of distances between cities based on Google Maps)

service accrue between 4.93 to 6.90 hours per pay period with a yearly max of between 208 to 291.20 hours. Those with 5-8 years of service accrue between 6.47 to 9.05 hours per pay period with a yearly max of between 248 and 347.20 hours. Those with 8 or more years of service accrue between 8 to 11.20 hours per pay period with a yearly max of between 288 hours to 403.20 hours. Only regular full-time bargaining unit employees can earn PTO. There is a maximum carryover of 300 hours from year to year. Employees can cash out unused PTO at the time of termination.

For IAFF, Local I-60, those with 0-1 year of experience accrue 1.539 hours of PTO per pay period with a yearly max of 56 hours. Those with 1-2 years of service accrue 3.078 hours of PTO per pay period with a yearly max of 112 hours. Those with 2-5 years of service accrue 4.616 hours of PTO per pay period with a yearly max of 168 hours. Those with 5-15 years of service accrue 6.154 hours of PTO per pay period with a yearly max of 224 hours. Those with 15 or more years of experience accrue 7.693 hours of PTO per pay period with a yearly max of 280 hours.

Finally, for ICEP, Local R12-170 those with 0-1 year of service accrue 2.308 hours of PTO per pay period with a yearly max of 60 hours. Those with 1-1.25 years of service accrue 4.308 hours of PTO per pay period with a yearly max of 140 hours. Those with 3-5 years of service accrue 5.231 hours of PTO per pay period with a yearly max of 170 hours. Those with 5 or more years of service accrue 6.461 hours of PTO per pay period with a yearly max of 200 hours.

Likewise, there is no common seniority list across bargaining unit. Rather, each bargaining unit has different seniority provisions in its collective-bargaining agreement. For the AFSCME, Local 2960 unit, seniority is calculated from the full-time or part-time employee's most recent date of hire with AMR of Maricopa. Part-time employees who become full-time employees are credited with fifty percent of their part-time seniority for the purposes of shift bidding, layoff, and recall. Employees who change job classifications are credited with fifty percent of their classification seniority in their previous classification, up to a maximum of 3 years, for the purposes of shift bidding in their new classification. Employees who were promoted or transferred into a non-bargaining unit position before July 1, 2015 retain their full seniority pursuant to the 2009-2012 collective bargaining agreement. Employees are recalled from layoffs based on seniority. Employees who transfer into the AFSCME, Local 2960 bargaining unit must serve 6 months of probation if they are full-time and 12 months or 1040 hours worked (but not less than 6 months) if they are part-time. AMR of Maricopa can extend probationary periods by 3 months.

For the IAFF, Local I-60 bargaining unit, seniority is calculated from the date the employee becomes a full-time or regular part-time employee in the bargaining unit. Employees who are promoted or transfer from a job classification in the bargaining unit, either before or after the collective-bargaining agreement's effective date, to a non-bargaining unit position, retain the seniority they had at the time of the promotion or transfer and continue to accumulate seniority while they are in such non-bargaining unit position. Upon return, employees may be placed in an open position as if their seniority with SW General had remained unbroken.

For the ICEP, Local R12-170 bargaining unit, seniority is calculated from the employee's most recent date in their current job classification. Employees transferring from another Rural/Metro or subsidiary location are credited with one half of their previous company seniority. Employees who "upgrade" their classification from EMT to paramedic carryover one half of their seniority.

Each bargaining unit has different "fractiles" depending on the applicable municipal contract. Fractiles are periods of time. For example, there is chute time (time from receiving call to when the wheels start rolling), in-service time or out-of-service time (time performing duties at Station), hospital clear time (time between arrival at hospital and release of patient and return to ambulance). Since the record contains no municipal contracts, specific timeframes are unknown.

Each bargaining unit also has different shift bidding processes. For the AFSCME, Local 2960 bargaining unit, employees have seven days from the bid posting date to bid for an available vacancy by submitting an electronic or in-person bid. The most senior qualified employee within the job classification is awarded the vacant position. Employees who accept a bid assignment are not eligible to bid for another assignment for 180 days. For the IAFF, Local I-60 bargaining unit, bids are awarded by a committee after the posted bid cycle ends. Full-time permanent shifts are awarded monthly. Shift bids must be submitted electronically. The committee awards shifts based on seniority within the bargaining unit. The ICEP, Local R12-170 bargaining unit shift bidding process is somewhat unclear. It appears that there is a company/union committee who handles shift bidding. Shift bids close ten days after posting. Employees who accept a bid assignment are not eligible to bid for another assignment for 120 days. Unlike those of AFSCME, Local 2960 and IAFF, Local I-60, the ICEP, Local R12-170's collective-bargaining agreement has jurisdiction-specific training requirements for shift bidding. Notably, employees cannot bid for shifts across bargaining units.

The function of EMTs, paramedics, and nurses is to take care of patients and transport them to or from medical facilities. The job skill expectations are the same across bargaining units, except for contractually required training. All of them receive the same type of training regardless of bargaining unit. EMTs, paramedics, and nurses operate within their state regulated scope of practice. That is, if they have the same level of state certification, they are engaging in the same basic functions. Moreover, there is no equipment assigned to a specific bargaining unit. EMS EMTs and paramedics respond to emergency 911 calls within their assigned jurisdiction, while IFT EMTs, paramedics, and nurses transport patients to and from medical facilities.

Employees work with employees in their own bargaining unit. Operationally, employees from different bargaining units see each other in passing, but not necessarily for a specific reason. Depending on the day and call volume, once employees performing IFT work, leave their initial Station, they move throughout the system all day long and only return to the Station to end their shift. Employees assigned to perform EMS work generally stay within their concentrated service area. Employees from different bargaining units do not work in the same vehicles together. Employees from different bargaining units who are assigned to perform IFT work could

be assigned to the same post, but employees performing EMS work remain within their service areas.

EMS employees are posted with employees from their own bargaining unit. That is, each EMS station is staffed by employees from either the AFSCME, Local 2960, IAFF, Local I-60, or ICEP, Local R12-170 bargaining unit. Each EMS station is staffed by an ambulance crew from a particular bargaining unit from either IAFF, Local I-60, ICEP, Local R12-170, or AFSCME, Local 2960. The EMS employees may interact with employees from other bargaining units at hospitals. EMS shifts can be 12, 18, or 24-hour shifts.

IFT employees report to either Station 1 or Station 3 and then deploy to a medical facility. They may interact with employees from other bargaining units at the Stations or at medical facilities. Employees from any of the three bargaining units can respond to any IFT facility. Typically, IFT employees work shifts of 12 hours or less. IFT employees typically handle 6-7 calls a day. Shifts alter about every half hour. Thus, ambulances come out of the Stations about every half hour. Daily, employees move between IFT and EMS positions, but only within their own bargaining unit. There is no inter-unit movement.

As discussed above, each bargaining unit has historically included both emergency and non-emergency EMS and IFT employees. Likewise, employees of each Employer/Petitioner have been represented in separate units, that is AFSCME, Local 2960, IAFF, Local I-60, ICEP, Local R12-170.

Between May 28, 2016 and April 2018, there was a restructuring of supervisory structure of the Employers/Petitioners. The names of the supervisor positions were changed, and those who held those position had to reapply for the “new” positions under the “new” supervisory structure. Two Regional Directors were hired first, then the Operations Managers were hired. In turn, the Operations Managers hired their Administrative Supervisors and Field Supervisors.

When the new consolidated CONS, the Petitioners/Employers aligned their operations under an EMS Regional Director and an IFT Regional Director structure. The person who would become the IFT Regional Director was hired in 2016, during the time consolidation was being sought. He initially assumed “some” of the IFT operations. He is listed at the manager of record for the State for the IFT operations. As of February 2018, the IFT Regional Director was overseeing the IFT operations. He is the Regional Director over all the AFSCME, Local 2960 employees.

Rural/Metro had existing managers overseeing its operations. Some managers left through attrition. When the consolidation was completed, the “legacy” Rural/Metro management structure was eliminated. AMR of Maricopa, Rural Metro, and SW General each had their own individual Operations Managers assigned to them in order to have someone who is familiar with the specific municipal contractual requirements to provide oversight.

The Regional Chief Operating Officer is at the top of the supervisory hierarchy at the Arizona level. One Regional Director oversees the EMS operations and another Regional

Director oversees the IFT operations.²⁰ The person who would become the EMS Regional Director was hired in 2008.²¹ The IFT Regional Director also supervises the Mesa, Gilbert, and Queen Creek 911 operations. The person who would become the IFT Regional Director was hired in 2016. At unspecified times, the Regional Director oversee each other's operations.

Under the Regional Director, there are Operations Managers, Administrative Supervisors, and Field Supervisors. Operations Managers are responsible for the "true" day-to-day operations of the area they are overseeing. Operations Managers do not assign shifts to employees. In turn, Administrative Supervisors and Field Supervisors report to the Operations Managers.

There are four EMS Operations Managers. Three have an Administrative Supervisor reporting to them. No EMS Operations Managers have employees from more than one bargaining unit fall under them in the supervisory hierarchy. There are two IFT Operations Managers. An Administrative Supervisor reports to them. One IFT Operations Manager has employees from all three bargaining units fall under him. No other IFT Operations Manager supervises employees from more than one bargaining unit. The IFT Administrative Supervisor supervises employees from all three bargaining units. In turn, three Field Supervisors²² from Station 1 and three Field Supervisors from Station 3 report to the IFT Operations Manager. The IFT Field Supervisors supervise employees from all three bargaining units. No Operations Manager supervises both EMS and IFT employees. There are no shared Field Supervisors or Operations Managers between employees in Maricopa County and employees in other counties.

There are three on-duty supervisors at Station 1 and three on-duty supervisors at Station 3. There is one Administrative Supervisor on duty per day at Station 1 and at Station 3. Field Supervisors cannot terminate or suspend employees, but can place employees on administrative leave.²³ Nevertheless, Field Supervisors can provide corrective frontline corrective action including coachings, counselings, or memos to file.

If an investigation results in finding wrong doing by an employee, an Administrative Supervisor investigates, and the human resources department and the Operations Manager review the investigation file and make a recommendation for corrective action. At times, there is then discussion with a union.

Minor discipline can be handled by the Operations Manager. If there is suspension, termination, or anything that involves pay, a Regional Director and the Regional Chief Operating Officer would need to be involved.

²⁰ The IFT Regional Director also oversees the Gilbert, Queen Creek, and Mesa EMS operations because of geographic proximity.

²¹ The job title changed, but "it's the same job."

²² Also known as "duty supervisors."

²³ Administrative leave is used for the purposes of allowing an investigation or to diffuse a potentially hostile situation.

Regional Directors are actively involved in discharge and suspension decisions. The Regional Chief Operating Officer is also made aware of the situation. Ultimately, however, the Regional Director makes the determination whether to suspend or terminate an employee.

Field Supervisors do not work in ambulances. Instead, they drive flag cars, SUVs, or another types of vehicles. They respond to major incidents and work with fire command. They provide day-to-day on-the-job supervision. They perform station rounds. They clear electronic patients records off the electronic platforms. They assist employees with their needs. If there are staffing issues, they can jump in an ambulance, as they are certified EMS providers. Field Supervisors work 10-day-a-month schedule called a Kelly shift schedule. IFT field supervisors supervise employees from all three bargaining units. No field supervisor supervises both EMS and IFT employees. Except for the Queen Creek and Gilbert 911 operations, no Field Supervisor supervises EMS employees from more than one bargaining unit.

Administrative Supervisors typically work 8 a.m. to 5 p.m. Monday-Friday. Their job is to assist the Operations Manager on day-to-day business. They are more likely to attend high-level meetings with fire departments on contract issues. They are involved in investigations and corrective action. Administrative Supervisors can also take over investigations from Field Supervisors. IFT Administrative Supervisors supervise employees from more than one bargaining unit. Except for the Queen Creek and Gilbert 911 operations, no Administrative Supervisors supervise EMS employees from more than one bargaining unit. No Administrative Supervisor supervises both EMS and IFT employees.

There is a specific manager who oversees special events. This manager is assigned to the IFT operations, but the manager oversees all of each of the bargaining unit EMTs and Paramedics when there is a special event. There could be a supervisor who acts as an intermediary to communicate to the special events manager. The IFT Regional Director oversees special events. During a mass casualty event, it is possible that a supervisor or a manager from one of respective EMS operations could be on the scene to provide direction and oversight. There have been no changes to the supervisory hierarchy since about February 26, 2018.

There is an unspecified amount of permanent interchange among the three existing bargaining units and bargaining units in other counties. The Petitioners/Employers, however, do not force transfers across bargaining units. Rather, employees desiring to do work that falls under another bargaining unit resign their positions then reapply for the other position. There is no temporary interchange among the three existing bargaining units. Employees work with employees within their own bargaining unit. There is no inter-unit pairing or inter-unit shift covering.

Daily, EMS employees perform IFT work, and vice versa. Nevertheless, the temporary interchange is between EMS and IFT positions within the existing bargaining units. Scheduling holes are filled from within bargaining units. That is, employees from different bargaining units do not cover each other's shifts.

About three or four times a month, IAFF, Local I-60 employees in Maricopa County cover EMS calls in Pinal County. But AFSCME, Local 2960 and ICEP, Local R12-170 bargaining unit employees cover EMS calls in Pinal County more often. Likewise, if an IFT call takes them outside Maricopa County, IFT employees do IFT transfers in Pinal county. A couple times a year, Maricopa County AFSCME, Local 2960 bargaining unit employees cover shifts in Prescott, Lake Havasu City, and Mohave County due to large special events or staffing shortages. Moreover, the past practice in the AFSCME, Local 2960 bargaining has been that employees work 6 months in IFT, in order to gain experience, then they can work EMS. AFSCME, Local 2960 bargaining unit employees can also bid back and forth between EMS and IFT. Likewise, ICEP, Local R12-170 bargaining unit EMS employees can bid for IFT jobs, but only within their respective bargaining unit.

There is a local AMR recruiter who recruits employees for all three bargaining units. The local recruiter is overseen by a national recruiter in Dallas who falls under the human resources division of AMR. Applicants are offered positions from a specific employing entity and the offer letters either have AMR of Maricopa, PMT, or SW General as the employer. Offers are tied to a specific bargaining unit. After hiring, employees from all three bargaining units train together except for a block of time set aside for union specific orientation during initial training. Later, during on-the-job training, a training called a preceptor rides along with the newly hired employees to assess performance and provide instruction and feedback. The preceptor is a fellow employee from the same bargaining unit as the employee being trained. There is no inter-unit use of preceptor.

All employees record their time by clocking in and out on TeleStaff, the time keeping software, either on their phones or on a computer. Employees at the Stations can use a physical biometric keypad at a kiosk to clock in and out. Moreover, employees of the three bargaining units are paid either by AMR of Maricopa, PMT, or SW General. The paychecks reflect the name of the employing entity.

Further, there is a Critical Incident Stress Management (CISM) team comprised of EMTs, paramedics from all three bargaining units, as well as operations managers, that provide support to employees after a critical call and to make sure they are capable of going back out in the field. Finally, there is a clinical services department headed by an AMR Holdco medical director and staffed by AMR Holdco employees.

II. ANALYSIS

A. The Bargaining Units Retain Separate Identities and Communities of Interest

1. Relevant Legal Authority

Unit clarification is appropriate for resolving ambiguities concerning the unit placement of individuals who come within a newly established classification of disputed unit placement or within an existing classification which has undergone recent substantial changes in the duties and

responsibilities of the employees in it so as to create a real doubt as to whether the individuals in such classification continue to fall within the category-excluded or included-that they occupied in the past. *Union Electric Co.*, 217 NLRB 666, 667 (1975). An accretion is the addition of a relatively small group of employees to an existing unit where these additional employees share a community of interest with the unit employees and have no separate identity. *Safety Carrier, Inc.*, 306 NLRB 960, 969 (1992); see also *Progressive Service Die Co.*, 323 NLRB 183, 186 (1997). Accretions to an established bargaining unit are additions to the unit and therefore are part of it. *United Parcel Service*, 325 NLRB 37 (1997). The accretion doctrine does not apply where the employee group sought to be accreted may separately constitute an appropriate bargaining unit. *Passavant Retirement & Health Center*, 313 NLRB 1216 (1994); *Passavant Retirement & Health Center*, 313 NLRB 1216, 1218 (1994); *Beverly Manor-San Francisco*, 322 NLRB 968, 972 (1997).

Although, for the purpose of promoting industrial stability, the Board will in some circumstances permit the accretion of employees into an existing bargaining unit without an election to conform to new industrial conditions, the Board applies this doctrine restrictively in order to protect the right of employees to free choice of their bargaining representative. *Frontier Telephone of Rochester, Inc.*, 344 NLRB 1270, 1271 (2005). Thus, the Board will permit an accretion “only where the employees sought to be added to an existing bargaining unit have little or no separate identity and share an overwhelming community of interest with the preexisting unit to which they are accreted.” *E.I. Du Pont de Nemours, Inc.*, 341 NLRB 607, 608 (2004), quoting *Ready Mix USA, Inc.*, 340 NLRB 946, 954 (2003). In determining whether employees share an overwhelming community of interest, the Board considers the following factors:

integration of operations, centralized control of management and labor relations, geographic proximity, similarity of terms and conditions of employment, similarity of skills and functions, physical contact among employees, collective bargaining history, degree of separate daily supervision, and degree of employee interchange.

Frontier Telephone at 1271 citing *E. I. Du Pont*, above at 608; *Compact Video Services*, 284 NLRB 117, 119 (1987). The factors of interchange and common supervision are “especially important.” *Towne Ford Sales*, 370 NLRB 311, 311-12 (1984). “[T]he absence of these two factors will ordinarily defeat a claim of lawful accretion.” *Frontier Telephone*, supra at 1271, n.7. Nevertheless, “[t]his is not to say that the presence of these factors will establish a claim of lawful accretion.” *Id.* Rather, “[T]he normal situation presents a variety of elements, some militating toward and some against accretion, so that a balancing of factors is necessary.” *Great Atlantic & Pacific Tea Co.*, 140 NLRB 1011, 1021 (1963). Accretion determinations are based on facts existing at the time of the accretion. *Frontier Telephone*, above at 1272, fn. 8.

UC petitions, although most frequently used to clarify unit placement issues, are also used to clarify unit scope issues. Thus, the Board has used UC proceedings to determine that previously separate units have, by the parties' actions, been merged into a single appropriate unit. *Armco Steel Co.*, 312 NLRB 257, 259 (1993) citing *Green-Wood Cemetery*, 280 NLRB 1359 (1986) (Board found that the parties' entire course of conduct following recognition of the office

clerical unit established an intent to merge the office clerical unit with the field employees unit and that that a single unit of both office clerical and field employees was appropriate). Similarly, the Board has clarified historical units into two or more appropriate units. See *Lennox Industries*, 308 NLRB 1237 (1992) (Board clarified the existing historical unit into two separate units because of the employer's restructuring of its operations); *Rock-Tenn Co.*, 274 NLRB 772 (1985) (historical unit was clarified into appropriate separate units at two plants because the historical unit no longer conformed to normal standards of appropriateness).

Moreover, it is axiomatic that parties to a collective-bargaining relationship may, by contract, bargaining history, and a course of conduct, merge existing certified units. See *Gibbs & Cox*, 280 NLRB 953 (1986); *White-Westinghouse Corp.*, 229 NLRB 667, 672 (1977); *General Electric Company*, 180 NLRB 1094, 1095 (1970); *Oil, Chemical and Atomic Workers, International Union, AFL-CIO v. N.L.R.B.*, 486 F.2d 1266, 1268 (D.C. Cir. 1973). In determining whether a merger has occurred, the Board considers the extent of changes in the operation following the transfer of employees to determine whether the units have lost their separate identities. *Manna Pro Partners, L.P.*, 304 NLRB 782 (1991) citing *Martin Marietta Co.*, 270 NLRB 821, 822 (1984). A merger of separately certified units destroys the separate identity of the individual units. *General Electric Co.*, above at 1095.

Further, to warrant processing an RM petition under Section 9(c)(1)(B), an employer must demonstrate both that the union has made a claim for recognition and, by objective considerations, that the employer has a “good-faith reasonable uncertainty (rather than disbelief)” as to the union’s continuing majority status in the unit it currently represents. *Levitz Furniture Co.*, 333 NLRB 717, 727 (2001); *Postal Service*, 256 NLRB 502, 503 (1981); *United States Gypsum Co.*, 157 NLRB 652, 656 (1966); CHM, Secs. 11003.1(b) and 11042. The burden is on the employer to demonstrate that a request for recognition has been made. *Brylane, L.P.*, 338 NLRB 538, 542 (2002). Reasonable good-faith uncertainty must be based on evidence that objectively and reliably indicates employee opposition to an incumbent union, and is not merely speculative. *Levitz Furniture Co.*, above at 729. Such evidence may include “antiunion petitions signed by unit employees and first hand statements by employees concerning personal opposition to an incumbent union.” *Id.* at 728. *Levitz* emphasizes, however, that all evidence should be taken into account which, viewed in its entirety, might establish uncertainty as to the union’s continued majority status. *Id.*; *ADT LLC*, 365 NLRB No. 77 (May 17, 2017).

In the absence of a demand for recognition, the Board will normally dismiss an RM petition on the ground that no question of representation exists. *ADT LLC*, above slip op at 5, citing *Postal Service*, above. See also *PMS Steel Construction*, 309 NLRB 1302, 1303 fn. 9 (1992); *Postal Service* 256 NLRB 502 (1981); *LTV Aerospace Corporation (Range Systems Division)*, 170 NLRB 200, 202 (1968); *Maclobe Lumber Company of Glen Cove, et al.*, 120 NLRB 320 (1958); *The Housatonic Public Service Company*, 111 NLRB 877 (1955).

Moreover, multiemployer bargaining requires the parties’ consent. The intention of the parties to be bound in their collective bargaining by group rather than individual action must be unequivocal. *Donaldson Traditional Interiors*, 345 NLRB 1298, 1299 (2005); *Hunts Point Recycling Corp.*, 301 NLRB 751, 752 (1991); *Artcraft Displays*, 262 NLRB 1233, 1236 (1982);

Kroger Co., 148 NLRB 569, 572–573 (1964); *Morgan Linen Service*, 131 NLRB 420, 422 (1961). Intent to be bound by joint bargaining is found where employers participate in meaningful multiemployer bargaining for a substantial period of time and there is a uniform adoption of the agreement resulting therefrom. *Arbor Construction Personnel, Inc.*, 343 NLRB 257 (2004); *Architectural Contractors Trade Assn.*, 343 NLRB 259 (2004); *Hi-Way Billboards*, 191 NLRB 244, 245 (1971); *American Publishing Corp.*, 121 NLRB 115, 122–123 (1958); *Krist Gradis*, 121 NLRB 601, 609–612 (1958).

2. Application

In this case, each current bargaining unit maintains a separate group identity and the employees in the three units do not share an overwhelming community of interest. Certain factors support finding an accretion in this case. Specifically, centralization of human resources control, centralization management control at the regional director level and above, similarity of skills and functions, and common control of labor relations. Nevertheless, overall the *Frontier Telephone* factors weigh against accretion.

The record shows that the employees represented by the different unions continue to perform the same functions after the corporate reorganization as prior to the reorganization. EMTs, paramedics, and nurses continue to perform the same functions as they did before AMR Holdco placed PMT, SW General, and AMR of Maricopa under its control. Therefore, this factor weighs against accretion.

The terms and conditions of employment likewise weigh against finding an accretion. Employees are paid by three different employers, have different health care benefits, and are eligible for different retirement plans and only IAFF, Local I-60 has a defined benefit pension plan, wear different uniforms and name tags identifying the employer. Notably, each bargaining unit has different seniority structures and rights tied to the respective collective bargaining agreement. Accordingly, I find that this factor does not support finding an accretion. See *Frontier Telephone of Rochester*, *supra*, at 1273; *Staten Island University Hospital*, *supra*, at 61 (no accretion where seniority and fringe benefits differed among nurses at two different sites who had been represented by two different unions); *Retail Clerks Local 588 (Raleys)*, 224 NLRB 1638, 1641 (1976), *enf. denied* 565 F.2d 769 (D.C. Cir. 1977). Similarly, the geographic proximity and physical contact among employees weigh against finding an accretion. Employees from different bargaining units do not work in the same vehicles together. Employees are paired with an employee from the same bargaining unit and are stationed across Maricopa County. Notably, the EMS employees are stationed only with employees from the same bargaining unit. While the Employer claims that there is employee contact at the Stations, as employees spend about 20-30 minutes at a Station to begin their day and about 15 minutes at the end of their day at a Station, such incidental and irregular physical contact does not support accretion. Therefore, these factors weigh against accretion.

Moreover, the factor of supervision weighs against finding accretion. No Operations Manager has employees from different bargaining units falling under them in the supervisor hierarchy. As Operations Managers are responsible for the “true” day-to-day operations of the

area they are overseeing, “this element is particularly significant, since the day-to-day problems and concerns among the employees at one location may not necessarily be shared by employees who are separately supervised at another location.” *Frontier Telephone*, above at 1272 (2005), citing *Towne Ford Sales*, above at 311-312 (1984); *Renzetti's Market*, 238 NLRB 174, 175 (1978). Therefore, I find that the critical factor of common supervision weighs against accretion.

I further find that interchange, the second critical factor, also weighs against accretion. The record shows that there is no temporary interchange across bargaining units. The Regional Chief Operating Officer and both Regional Directors testified that employees do not cover shifts for employees in other bargaining units and cannot bid for shifts across bargaining units. While some employees may transfer from a position falling under one bargaining unit to another position falling under one of the other two bargaining units, the Petitioners/Employers do not force employees to transfer. Rather, the employee would have to quit then be rehired for the other employer. The Board does not find evidence of one-way or permanent interchange to be particularly persuasive. *Lehigh Valley Hospital-Schuylkill South Jackson Street*, 367 NLRB No. 100, slip op at 8 (2019), citing *Dennison Mfg. Co.*, 296 NLRB 1034, 1037 (1989); *Safeway Stores, Inc.*, 276 NLRB 944, 949 (1985). Therefore, I find that the critical factor of interchange weighs across finding an accretion. See *Frontier Telephone* above at 1272-1273 (no accretion where employees sought to be accreted share “centralized” management with unit employees but were not supervised by the same first-level supervisors); *E.I. Du Pont*, above at 609 (employee not accreted into unit where employee was supervised on a day-to-day basis by a supervisor who did not supervise any unit employees).

Likewise, the factor of bargaining history weighs against accretion. “It is well established that the Board will not clarify an established bargaining unit by including employees who might otherwise be appropriately included in the unit if their job classifications were in existence at the time of the certification, recognition, or execution of a collective-bargaining agreement and if their duties have not undergone recent, substantial changes which create real doubt as to their unit replacement.” *A-1 Fire Protection*, 250 NLRB 217, 221 fn. 23 (1980). The Board’s longstanding policy is that “mere change in ownership should not uproot bargaining units that have enjoyed a history of collective bargaining unless the units no longer conform reasonably well to other standards of appropriateness.” *AC Mgmt., Inc.*, 335 NLRB 38, 39 (2001), citing *Indianapolis Mack Sales*, 288 NLRB 1123 fn. 5 (1988). The party challenging a historical unit bears the burden of showing that the unit is no longer appropriate. *Id.* The evidentiary burden is a heavy one. *Id.*, citing *Children's Hospital*, 312 NLRB 920, 929 (1993) (“‘compelling circumstances’ are required to overcome the significance of bargaining history”); *P.J. Dick Contracting*, 290 NLRB 150, 151 (1988) (“units with extensive bargaining history remain intact unless repugnant to Board policy”); *Trident Seafoods, Inc.*, 318 NLRB 738 (1995).

In this case, the record shows that the job duties of EMTs, paramedics, and nurses did not change in any significant measure between the time before AMR Holdco acquired PMT and SW General, and when it placed PMT, SW General and AMR of Maricopa under its ownership. Change in ownership does not destroy bargaining units that have an established history of collective bargaining unless the units no longer conform to other standards of appropriateness. *Deer Creek Elec., Inc.*, 362 NLRB No. 171 (2015); *Banknote Corp. of America*, 315 NLRB

1041, 1043 (1994), citing *Indianapolis Mack Sales & Service*, 288 NLRB 1123 fn. 5 (1988), *enfd.* 84 F.3d 637 (2d Cir. 1996). Petitioners/Employers have not met their heavy burden of showing that the existing units are not appropriate. Therefore, the factor of bargaining history weighs against accretion.

It is well established that the Board's unit clarification process is not appropriate for upsetting an agreement of a union and an employer or an established practice of such parties concerning unit placement of various individuals or classifications. *Batesville Casket Co.*, 283 NLRB 795, 796 (1987); *Union Electric Co.*, 217 NLRB 666 (1975); *Columbia Gas Transmission Corp.*, 213 NLRB 111 (1974). What the Petitioners/Employers seek here is not a clarification of a unit but a merger of existing units. A UC petition is not a proper avenue to achieve that end. *Nat'l Educ. Assn.*, 206 NLRB 893, 894 (1973). "The overriding policy of the [A]ct is in favor of the interest of employees to be represented by a representative of their own choosing for the purposes of collective bargaining." *Meijer, Inc. v. NLRB*, 564 F.2d 737, 743 (6th Cir. 1977). The case of *U.S. West Communications, Inc.*, 310 NLRB 854 (1993), is distinguishable. There, the Board focused on how technical changes destroyed the separate identity of a unit of long-distance toll transmission employees. Here, the Petitioners/Employers fail to point to changes that have destroyed the separate group identity of the bargaining units.

Moreover, the record does not reveal a demand for recognition by any of the unions to represent the employees of other bargaining units. While the Petitioners/Employers claim that the unions made such a demand for bargaining by virtue of the recognition clauses in their respective collective bargaining agreements, each clause only claims recognition for the employees of either PMT, SW General, or AMR of Maricopa. That is, the recognition clauses are employer specific. Further, the record is barren of any "good-faith reasonable uncertainty" by the Petitioners/Employers that the unions continuing majority status in the respective units they currently represent.

Finally, the employees in each of the three units are employed by three separate employing entities. Unless it were established that these entities constituted part of a single employer or single integrated enterprise or were joint employers, consolidation of the units would require the Unions' consent to bargaining on a multiemployer basis, and the Unions have not consented to such an arrangement.

For the foregoing reasons, I find that the alleged consolidation of operations cited as the basis for the petitions does not warrant the requested accretion or raise a question concerning representation because the three existing units retain separate identities and communities of interest.

**B. Even If the Units Did Not Retain Separate Identities and
Communities of Interest, There Would Be a Contract Bar to the
Petitions**

1. Relevant Legal Authority

The Board generally dismisses unit clarification petitions submitted during the term of a collective-bargaining agreement where the contract clearly defines the bargaining unit. *St. Francis Hosp.*, 282 NLRB 950, 951 (1987) citing *Wallace-Murray Corp.*, 192 NLRB 1090 (1971). To do otherwise, the Board has held, would be unnecessarily disruptive of an established bargaining relationship. *San Jose Mercury & San Jose News*, 200 NLRB 105 (1972); *Wallace-Murray*, above. The Board's rule is based on the rationale that entertaining a unit clarification petition during the term of a contract that clearly defines the bargaining unit is unnecessarily disruptive of the parties' collective-bargaining relationship. *Sonoco, Inc.*, 347 NLRB 421, 422 (2006). As stated in *Edison Sault Electric Co.*, 313 NLRB 753 (1994), "to permit clarification during the course of a contract would mean that one of the parties would be able to effect a change in the composition of the bargaining unit during the contract term after it agreed to the unit's definition."

Notwithstanding this general rule, the Board recognizes a limited exception in cases where parties cannot agree on whether to include or exclude a disputed classification "but do not wish to press the issue at the expense of reaching an agreement." *St. Francis Hospital*, above at 951. In such a case, the Board will process a unit clarification petition filed "shortly after" the contract is executed so long as the party filing the petition did not abandon its position in exchange for bargaining concessions. *Id.* at 951.

The Board has not established specific time limits with respect to the requirement that a unit clarification petition be filed "shortly after" the execution of the contract. Nevertheless, existing caselaw remains illustrative. See, e.g., *St. Francis Hospital*, above at 952 (UC petition filed 48 days after contract execution meets "shortly after" standard); *Goddard Riverside Community Center*, 351 NLRB 1234,1236 (2007) (7 days suffices); *WNYS-TV (WIXT)*, 239 NLRB 170 (1978) (51 days suffices); *Baltimore Sun Co.*, 296 NLRB 1023, 1024 (1989) (79 days suffices). Cf. *Dixie Elec. Membership Corp.*, 358 NLRB 1089, 1093, fn.14 (2012) (UC petition filing occurring between 121 and 143 days after contract execution "wildly surpasses the outer limits previously accepted by the Board").

Moreover, a contract does not bar an election when a merger of two or more operations results in the creation of an entirely new operation with major personnel changes. *New Jersey Natural Gas Co.*, 101 NLRB 251, 252 (1953); *General Extrusion Co.*, 121 NLRB 1165, 1167 (1958); *Kroger Co.*, 155 NLRB 546, 548–549 (1965); *General Electric Co.*, 170 NLRB 1272 (1968); *General Electric Co.*, 170 NLRB 1277 (1968); *General Electric Co.*, 185 NLRB 13 (1970). This is so even when the two groups to be merged are represented separately by different unions. *Panda Terminals*, 161 NLRB 1215, 1222–1223 (1966), *Massachusetts Electric Co.*, 248 NLRB 155, 155–157 (1980). In determining whether a merger has occurred, the Board considers the extent of changes in the operation following the transfer of employees to determine whether

the units have lost their separate identities. *Manna Pro Partners, L.P.*, 304 NLRB 782 (1991) citing *Martin Marietta*, above at 822.

2. Application

In this case, there is a contract bar to the petitions. First, the UC petition was filed during the terms of all three collective-bargaining agreements that clearly define the bargaining units. From the time when AMR Holdco started the process of acquisition in 2015 until the time when the petitions in this case were filed, the Petitioners/Employers did not notify the unions that they thought the current units were inappropriate. The topic of merger or consolidation of the units was not discussed during negotiations of the contracts, and none of the Petitioners/Employers reserved the right to file a petition to clarify the existing units. Nevertheless, AMR of Maricopa agreed to the current collective bargaining agreement in 2018, SW General agreed to the current collective bargaining agreement in 2016, and PMT agreed to the collective bargaining agreement in September 2015. The UC petition in this case was filed on July 13, 2018, while the RM petition was filed on January 29, 2019. Thus, both petitions were filed well outside the outer limits the Board has previously accepted. Finally, as discussed above the Petitioners/Employer have not established a merger of operations resulting in the creation of an entirely new operation so that the existing units have lost their separate identities

For the foregoing reasons, I find that even if the units did not retain separate identities and communities of interest, there would be a contract bar to the petitions.

III. CONCLUSION

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

1. The rulings at the hearing are free from prejudicial error and are hereby affirmed.
2. The Employers/Petitioners are engaged in commerce within the meaning of the Act.²⁴

²⁴ I find, based on the stipulations of the parties, that:

- (1) AMR of Maricopa, LLC, a Delaware limited liability company with an office and place of business in Mesa, Arizona, is engaged in the business of providing medical transportation services. During the 12-month period ending July 11, 2018, AMR of Maricopa, LLC, in conducting its business operations described above, derived gross revenues in excess of \$500,000 and purchased and received at its offices and places of business in Mesa, Arizona, goods valued in excess of \$50,000 directly from points located outside the State of Arizona.
- (2) SW General, Inc. d/b/a Southwest Ambulance, an Arizona corporation with an office and place of business in Mesa, Arizona, is engaged in the business of providing medical transportation services. During the 12-month period ending July 11, 2018, SW General, Inc. d/b/a Southwest Ambulance, in conducting its business operations described above, derived gross revenues in excess of \$500,000 and purchased and received at its offices and places of business in Mesa, Arizona, goods valued in excess of \$50,000 directly from points located outside the State of Arizona.

3. The Unions are labor organizations within the meaning of Section 2(5) of the Act.
4. The petitions must be dismissed because the alleged consolidation of operations cited as the basis for the petitions does not warrant the requested accretion or raise a question concerning representation because the three existing units retain separate identities and communities of interest, and, even if the units did not retain separate identities and communities of interest, there would be a contract bar to the petitions.

IV. ORDER

IT IS HEREBY ORDERED that the petitions in this matter are dismissed.

V. RIGHT TO REQUEST REVIEW

Pursuant to Section 102.67(c) of the Board's Rules and Regulations, you may obtain a review of this action by filing a request with the Executive Secretary of the National Labor Relations Board. The request for review must conform to the requirements of Section 102.67(d) and (e) of the Board's Rules and Regulations and must be filed by **April 17, 2019**.

A request for review may be E-Filed through the Agency's website but may not be filed by facsimile. To E-File the request for review, go to www.nlr.gov, select E-File Documents, enter the NLRB Case Number, and follow the detailed instructions. If not E-Filed, the request for review should be addressed to the Executive Secretary, National Labor Relations Board, 1015 Half Street SE, Washington, DC 20570-0001. A party filing a request for review must serve a copy of the request on the other parties and file a copy with the Regional Director. A certificate of service must be filed with the Board together with the request for review.

Dated at Phoenix, Arizona, this 3rd day of April 2019.

/s/ Cornele A. Overstreet

Cornele A. Overstreet, Regional Director

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- (3) Professional Medical Transport, Inc., an Arizona corporation with an office and place of business in Mesa, Arizona, is engaged in the business of providing medical transportation services. During the 12-month period ending July 11, 2018, Professional Medical Transport, Inc., in conducting its business operations described above, derived gross revenues in excess of \$500,000 and purchased and received at its offices and places of business in Mesa, Arizona, goods valued in excess of \$50,000 directly from points located outside the State of Arizona.