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UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
WASHINGTON, D.C.

AMR OF MARICOPA LLC,

 Petitioner,

 and

INDEPENDENT CERTIFIED EMERGENCY
PROFESSIONALS, NAGE/SEIU, LOCAL 1,

 Union,

 and

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

 Union,

 and

INTERNATIONAL ASSOCIATION OF
FIRE FIGHTERS LOCAL INDUSTRIAL 60

 Union.

CASE NO. 28-UC-223664

**PETITIONERS' REQUEST FOR
REVIEW OF REGIONAL DIRECTOR'S
DECISION**

AMERICAN MEDICAL RESPONSE OF
MARICOPA LLC dba AMR;
PROFESSIONAL MEDICAL TRANSPORT,
INC., dba PMT, LIFE LINE, and AMR; SW
GENERAL INC. dba SOUTHWEST
AMBULANCE and AMR,

 Petitioner,

CASE NO. 28-RM-234875

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and
INDEPENDENT CERTIFIED EMERGENCY
PROFESSIONALS, NAGE/SEIU, LOCAL 1,
Union,
and
AMERICAN FEDERATION OF STATE,
COUNTY AND MUNICIPAL EMPLOYEE,
LOCAL 2960, AFL-CIO
Union,
and
INTERNATIONAL ASSOCIATION OF
FIRE FIGHTERS LOCAL INDUSTRIAL 60
Union

Pursuant to Sections 102.67(c), (d), and (e) of the Board’s Rules and Regulations, 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, (collectively, “AMR”) hereby submit this Request for Review of the Regional
Director’s Decision (Exhibit “A”) in the above-captioned cases.

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1 **I. INTRODUCTION**

2
3 Through its UC and RM petitions, AMR requests Board intervention to impose order on an
4 arbitrary patchwork of three competing unions that exists today merely as a relic of corporate
5 acquisitions and a “no poaching” agreement among the Unions. Despite the fact that AMR’s
6 operations are formally divided between emergency medical services (“EMS”) and non-
7 emergency, inter-facility transfer (“IFT”) services, there are currently three overlapping bargaining
8 units — each represented by a different union — comprised of a hodgepodge of EMS and IFT
9 paramedics, EMTs, and/or nurses (“Medical Personnel”). These bargaining unit divisions make
10 no sense.

11
12 Accordingly, through its UC petition, AMR seeks to consolidate the three overlapping and
13 unmanageable bargaining units into two distinct bargaining units (IFT and EMS operations)
14 represented by two unions.

15
16 As an alternative, through its RM petition, AMR seeks to (1) consolidate for election the
17 three overlapping and unmanageable bargaining units of IFT employees based at Stations 1 and 3
18 into one distinct IFT bargaining unit, and (2) have a Board-conducted election to determine which
19 union the IFT employees want as their certified bargaining representative.

20
21 This consolidation — whether by means of a UC petition or an RM petition — is
22 warranted because the arbitrary division of virtually indistinguishable employees among three
23 different unions is untenable under established Board law. The current division between three
24 unions is based solely on the fact that these groups were previously working for competitor
25 companies that have since been acquired and are now wholly integrated under the common
26 control/ownership of AMR. There is no longer a separate identity amongst employees in each of
27 the IFT and EMS business units that would justify maintaining three separate bargaining units.
28 Rather, it is the proposed consolidated IFT and EMS units that each share an overwhelming

1 community of interest within their IFT or EMS occupations. Finally, on a practical level,
2 consolidation will benefit the employees, the employer, and — most importantly — the patients
3 that are served by AMR.

4 5 **II. SUMMARY OF ARGUMENT**

6
7 Notwithstanding the above, the Regional Director denied AMR’s UC and RM petitions for
8 two reasons, both of which are flawed.

9
10 First, he found that the three current bargaining units maintain separate group identities
11 and that the employees in the three units do not share an overwhelming community of interest. In
12 support of this conclusion, the Regional Director pointed to factors that he argued weigh against
13 finding a community of interest, including differences in benefits and seniority and the inability of
14 Medical Personnel to work in the same ambulances and on the same shifts as members of other
15 bargaining units. But what the Regional Director viewed as justifications for preserving the status
16 quo are in reality the symptoms of a fractured unit that stem directly from AMR’s current
17 obligation to bargain separately with the three preexisting unions. In nearly identical cases, the
18 Board has cautioned that relying on unit differences that result from collective bargaining to find
19 there is no community of interest is a “patent form of circular reasoning.” *Oxford Chems., Inc.*,
20 286 NLRB 187, 188 n.5 (1987) (“To adopt the judge’s analysis would amount to excluding Evans
21 on the basis that up to now she had been an excluded employee, a patent form of circular
22 reasoning.”).

23
24 The Regional Director also erred in his analysis of several other community of interest
25 factors, placing undue reliance on factors of minimal or no relevance to these petitions (*e.g.*,
26 interchange and bargaining history) and ignoring facts with regard to others (*e.g.*, supervision).
27 When all of the *appropriate* factors are considered, it is clear that the Medical Personnel across the
28 three bargaining units share an overwhelming community of interest.

1 Second, the Regional Director found that there was a contract bar to AMR’s petitions.
2 While he acknowledged that under established Board law a contract does not bar a petition when a
3 merger of two or more operations results in the creation of an entirely new operation, he found that
4 there was no merger because the bargaining units each retained a separate identity. But as
5 discussed above, the Regional Director’s determination is based on a faulty premise. Old union
6 lines have been broken down by the complete reorganization and consolidation of AMR’s
7 operations in Maricopa County, Arizona. Accordingly, there is no contract bar to AMR’s
8 petitions.

9
10 For the foregoing reasons, AMR respectfully requests that the Board grant its Request for
11 Review.

12
13 **III. STATEMENT OF FACTS**

14
15 **A. AMR Established and/or Acquired Several Companies in the Phoenix Area.**

16
17 AMR employs Medical Personnel in and around Maricopa County, Arizona who provide
18 two distinct types of medical transportation services: (1) EMS (emergency medical or 911
19 services), and (2) IFT (inter-facility transfers of non-emergency patients). EMS employees, as the
20 name suggests, respond to emergencies. They “operate in very specific communities” and
21 “respond to emergency 911 calls within the local jurisdiction of authority, so, i.e., the Chandler
22 Fire Department . . . et cetera.” (Kasprzyk, Tr. 51:19–25.) The IFT business, on the other hand,
23 “is primarily a non-emergency operating side of an ambulance business. They move patients to
24 and from facilities, patients . . . that are admitted in a facility that require transport to another
25 facility, typically either for a higher or lower level of care, depending where they are within their
26 realm of care. They primarily just manage convalescent type transportation.” (Kasprzyk, Tr.
27 39:5–12.)

28

1 Over the years, AMR has acquired other businesses providing the same general services.
2 In Maricopa County, AMR acquired or established three entities that provide medical
3 transportation services: (1) American Medical Response of Maricopa LLC dba AMR (“AMR
4 Maricopa”), (2) SW General Inc. dba Southwest Ambulance and AMR (“SWA”), and (3)
5 Professional Medical Transport, Inc. dba PMT, Life Line, and AMR (“PMT”) (collectively the
6 “Merged Entities”). (Kasprzyk, Tr. 25:18–26:4, 27:18–28:10.)
7

8 The acquisition history occurred as follows: Rural/Metro (“RM”), like AMR, provided
9 medical care and transportation services in Arizona and other areas. (Kasprzyk, Tr. 26:17–25,
10 27:16–17.) In 1997, RM purchased SWA, whose Medical Personnel were already organized in a
11 bargaining unit represented by IAFF. (Kasprzyk, Tr. 27:18–28:10, 29:11–20, 31:15–32:2.) RM
12 managed its business and SWA’s operation separately, with each company maintaining separate
13 identities and separate Arizona Certificates of Necessity (“CON”).¹ (Pet. Exh. 9.) In 2011, RM
14 purchased PMT, whose Medical Personnel were represented by ICEP. (Kasprzyk, Tr. 27:18–
15 28:10, 29:11–20, 31:15–32:2.) In 2015, AMR began its own operation in Maricopa County,
16 Arizona (AMR Maricopa), which competed against RM. (Kasprzyk, Tr. 26:10–16, 33:24–34:1.)
17 It obtained a CON for the same geographic area covered by both SWA and PMT. (Pet. Exh. 9.)
18 In late 2015, an AMR parent company, AMR Holdco, acquired RM, which brought SWA and
19 PMT under the AMR umbrella. (Kasprzyk, Tr. 26:17–27:17, 28:5–10, 81:6–10.) Prior to AMR
20 Holdco’s acquisition of RM, the Merged Entities were competitors. (Kasprzyk, Tr. 34:25–35:2;
21 Valentine, Tr. 174:17–24.)
22
23
24

25 ¹ Certificates of Necessity regulate ground ambulance service in Arizona. They describe
26 the geographic service area, level of service, hours of operation, response times, effective dates,
27 expiration dates, and any limiting or special provisions for emergency medical services in the
28 specific geographic area. A ground ambulance service that is awarded a CON must follow the
criteria in the certificate and operate in accordance with the statutes and rules by which it is
governed.

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B. Three Unions Represent Three Overlapping Groups of Employees.

As a result of the establishment and acquisition of the Merged Entities, three different unions currently represent three overlapping groups of employees who perform the same functions in the same geographic area. (Kasprzyk, Tr. 31:9–32:2.) The division of employees among the three different units is *completely arbitrary*:

- International Association of Firefighters, AFL-CIO, Local 60 (“IAFF”) represents 99 IFT employees and 305 EMS employees. (Pet. Exhs. 1, 6.) The applicable IAFF CBA provides that IAFF is “the sole bargaining agent of all full time and regular part-time EMTs, Paramedics, and Registered Nurses, but excluding on-call part-time employees ..., covering Maricopa County” The CBA covers the period from May 28, 2016 to June 30, 2019. Thus, this CBA will expire in about 2 months and purports to represent individuals within the Merged Entities who are represented by the other unions. (Pet. Exh. 3.)

- American Federation of State, County and Municipal Employees (“AFSCME”) represents 128 IFT employees and just 38 EMS employees. (Pet. Exhs. 1, 6.) The applicable AFSCME CBA provides that AFSCME is “the sole and exclusive bargaining representative for the work performed by all full-time and regular part-time Emergency Medical Technicians (EMTs), Paramedics, excluding all other employees” who work in Maricopa County. This CBA covers the period running from January 1, 2018 to March 31, 2022, and also purports to represent individuals represented by the other unions in the Merged Entities. (AFSCME Exh. 3.)

- Independent Certified Emergency Professionals, NAGE/SEIU, Local 1 (“ICEP”) represents 80 IFT employees and 77 EMS employees. (Pet. Exh. 1, 6.) The applicable ICEP CBA has already expired. It ran from September 5, 2015 to September 4, 2018,

1 and there has been no new Agreement reached. The ICEP CBA provided that ICEP
 2 was “the exclusive bargaining representatives for all regular full-time EMTs,
 3 paramedics, and nurses who work out of the Company’s facility located at 617 West
 4 Main St., Mesa, Arizona.” (Pet. Exh. 4.) The two other unions also represent
 5 paramedics, EMTs, and/or nurses at the same location, which is one of the two
 6 facilities at which AMR’s IFT employees are stationed. (Pet. Exh. 1.) Additionally,
 7 ICEP purports to represent EMTs, paramedics, and nurses working from the
 8 Company’s IFT Station 3 facility in Peoria, even though it is not in its CBA and the
 9 other two unions represent EMTs, paramedics and/or nurses at the Station 3 facility.
 10

11 In short, three unions claim to represent three overlapping units of IFT and EMS
 12 employees. None of the unions represent a majority of the IFT employees in the Merged Entities.
 13 (Pet. Exh. 1.)
 14

15 **C. AMR’s Consolidated and Reorganized Operations Brought All IFT and EMS**
 16 **Employees under Separate Management, Processes, and Work Locations.**
 17

18 After AMR acquired the Merged Entities, it began a years-long process of consolidating
 19 their operations. This process ran from February 2016 all the way through June 2018.²
 20 (Kasprzyk, Tr. 36:6–12.) This was an extensive corporate restructuring that involved “a series of
 21 integration components comprised of operations, fleet operations, equipment, billing, and every
 22 aspect of the organization; then, simultaneously, an administrative process with the Bureau³ to
 23

24 ² While there are still certain aspects of integration that continue, there is no longer any
 25 “formal integration process” and AMR’s operations “generally are aligned.” (Kasprzyk, Tr.
 145:10–15.)

26 ³ “Bureau” refers to the Arizona Department of Health Services, Bureau of Emergency
 27 Medical Services and Trauma System. Beginning in 2015, AMR sought approval from the State
 28 of Arizona to consolidate the CONs for the Merged Entities’ operations. (Kasprzyk, Tr. 36:15–18,
 66:13–67:8; Pet. Exhs. 9, 10.) Approximately one (1) year ago, the State granted final approval of
 the consolidated CONs. (Pet. Exhs. 11, 12.)

1 consolidate a number of Rural/Metro Certificates of Necessity in order to provide operational
2 clarity for the Bureau of EMS.” (Kasprzyk, Tr. 36:13–18.) The process also involved “changing
3 electronic training platforms, scheduling platforms, changing philosophy and size and scope of
4 dispatch, vehicles, how we equip them, duty office, uniform store, you name it, and none of it was
5 just a flip of a switch.” (Valentine, Tr. 266:25–267:4.) As John Valentine, Regional Director for
6 AMR, succinctly put it at the hearing on these consolidated matters, “you don’t take an aircraft
7 carrier and turn it around in 5 feet.” (Valentine, Tr. 266:16–17.)
8

9 Another aspect of this reorganization was a complete reconfiguration of AMR’s
10 management structure. Before the consolidation and reorganization, legacy managers from the
11 Merged Entities still oversaw small subdivisions of the overall operations. (Kasprzyk, Tr. 38:1–
12 14, 47:8–13.) In time, however, AMR eliminated these management positions and realigned them
13 such that today IFT operations are all overseen by one manager (Todd Jaramillo) at Stations 1 and
14 3, and EMS operations are predominantly overseen by a different manager (John Valentine).
15 (Kasprzyk, Tr. 38:7–22, 39:22–40:3, 83:9–10; Jaramillo, Tr. 335:9–21.) Like the rest of the
16 reorganization, restructuring management “was a lengthy integration process” that was not
17 completed until June 2018. (Kasprzyk, Tr. 38:23–25, 48:2, 142:22–145:15.)
18

19 In June 2018, AMR formally announced the consolidation and reorganization of the
20 operations of the Merged Entities. (Kasprzyk, Tr. 107:16–108:5, 145:21–146:11.) As of today,
21 all of its non-emergency, IFT Medical Personnel report to the same management and work out of
22 the same two buildings in Mesa and Peoria, Arizona, known as Station 1 and Station 3 (whereas
23 before this recent reorganization, IFT employees reported to various managers based on an
24 outdated corporate structure, and did not have centralized work locations). (Kasprzyk, Tr. 40:4–
25 12, 41:17–42:19, 47:8–48:2; Jaramillo, Tr. 335:22–25; Pet. Exhs. 1, 5.) IFT employees regardless
26 of bargaining unit are all engaged in the identical profession (within their respective job category).
27 (Kasprzyk, Tr. 42:20–24, 140:16–141:8; Valentine, Tr. 178:8–11, 997:7–15; Jaramillo, Tr. 338:5–
28 340:8, 341:4–343:7, 399:5–22; Mayer, Tr. 645:24–646:1.) IFT employees perform inter-facility

1 transfers of patients all over the Valley, regardless of union affiliation (i.e., AFSCME-represented
2 IFT employees perform work in the same geographic location as IAFF- and ICEP-represented IFT
3 employees). (Kasprzyk, Tr. 76:24–77:2; Jaramillo, Tr. 340:9–341:3, 487:6–13; Mayer, Tr. 648:5–
4 25.) In other words, all IFT employees are now performing the same, overlapping, non-
5 emergency medical care and transportation work shoulder-to-shoulder in the same geographic
6 area, out of the same facilities, supervised by the same IFT management, and are working under
7 the same work rules. Yet there are three unions representing this consolidated group of IFT
8 employees.

9
10 The same is true for all EMS employees, who also report to their own management and
11 provide the same emergency, 911 medical services out of the same locations throughout Maricopa
12 and Pinal counties (but *not* out of the two facilities where the IFT employees are based).
13 (Kasprzyk, Tr. 52:1–53:11, 55:24–56:8, 57:24–58:12; Valentine, Tr. 194:13–25; Pet. Exhs. 2, 5.)

14
15 AMR has also established uniform operating procedures that apply across all three
16 bargaining units. Aside from operational variances required by the three unions’ CBAs, Medical
17 Personnel are governed by the same overarching AMR operating rules and procedures, including
18 the comprehensive AMR Health, Safety and Risk Management Program Manual and the AMR
19 Employee Handbook. (Kasprzyk, Tr. 85:14–22; Jaramillo, Tr. 382:4–14, 382:25–383:7; Pet.
20 Exhs. 13 (Safety and Risk Manual), 14 (Employee Handbook).) Despite the different procedures
21 required by the CBAs, “the goal through the integration is to have one set of operational rules that
22 would apply to all covered interfacility employees.” (Kasprzyk, Tr. 85:16–18.)

23
24 **D. AMR’s Consolidated Operations Have Created Operational Challenges**
25 **Because of Legacy Union Bargaining Units and CBAs.**
26

27 Despite the reorganization, AMR still grapples with significant challenges, inefficiencies
28 and confusion because the Medical Personnel remain arbitrarily divided into three separate

1 “bargaining units” that provide the same services in the same general area, but have different
2 representation, and different CBAs with different terms and conditions of employment. These
3 inefficiencies are the symptoms of the problem AMR is seeking to correct, not, as the Regional
4 Director believed, reasons for maintaining this irrational and almost unworkable status quo.

5
6 Providing emergency and non-emergency medical services to the public requires precise
7 coordination between third-party medical facilities, patients, and AMR Management, Dispatch,
8 and Medical Personnel. Any inefficiency in this coordinated effort negatively impacts patient care
9 and health. (Jaramillo, Tr. 413:25–414:12.) Here, trying to manage and implement the terms of
10 three separate CBAs that cover the same groups of indistinguishable IFT employees on the one
11 hand, and the same groups of EMS employees on the other hand, generates many operational
12 challenges and inefficiencies.

13
14 For example, given that the Medical Personnel currently work as part of separate
15 bargaining units, AMR cannot simply interchange the Merged Entities’ employees when
16 necessary to provide the most efficient and highest level of medical care and patient
17 transportation. (Kasprzyk, Tr. 60:23–61:6, 84:6–11; Jaramillo Tr. 492:20–494:25.) Nor can they
18 fill open and available shifts in one historical unit with employees from another historical unit,
19 even though the work is the same and they share the same work locations and have the same
20 management. Indeed, because of legacy CBAs, if one AFSCME-represented paramedic is absent
21 from a two-person team operating an ambulance, an ICEP- or an IAFF-represented paramedic
22 cannot simply fill in; instead, the ambulance remains parked for the day, and there is one fewer
23 AMR unit in the field to respond to patient calls for medical care and transport. (Valentine, Tr.
24 180:18–20, 223:14–224:3; Jaramillo, Tr. 412:5–21, 415:15–416:1; Mayer, Tr. 639:23–641:24.)
25 As Todd Jaramillo, Regional Director for AMR, put it, “[Y]ou’ve got multiple folks, where either
26 a partner calls out or something happens, and you’ve got people sitting. You have resources in
27 front of you that you would like to use to fill the hole or fill the need, and you’re unable to do so.”
28

1 (Jaramillo Tr. 494:15–19.) This makes no sense, and does nothing to advance the interests of
2 patients, employees, or management.

3
4 Management also struggles to differentiate between the Merged Entities’ personnel
5 because such employees are wearing the same or similar uniforms, performing the same work,
6 and, with respect to IFT employees, operating out of the same two buildings. (Valentine, Tr.
7 179:20–180:16; Pet. Exh. 1.) Some unit members themselves are unsure to whom they should
8 report and jealousies have developed across union lines. (Valentine, Tr. 180:3–4, 195:21–196:2.)
9 On top of that, because of the arcane scheduling and staffing rules required by the conflicting
10 CBAs, unit members end up receiving fewer opportunities to pick up additional shifts. (Jaramillo,
11 Tr. 414:13–415:14.)

12
13 Moreover, there are significant operational headaches that have arisen. Conflicts and
14 inconsistencies with scheduling shifts and breaks, posting plans, seniority, PTO, special events
15 staffing, training, part-time staffing, chute time requirements, and even holidays have created
16 horrible inefficiencies in AMR’s operations. (Kasprzyk, Tr. 155:23–156:4; Valentine, Tr. 179:20–
17 180:16, 181:22–183:12; Jaramillo, Tr. 412:22–413:24, 416:2–419:13.) Even things as minor as
18 patient-size lift restrictions vary across bargaining units, creating confusion and delay. (Kasprzyk,
19 Tr. 163:15–164:6.)

20
21 Most importantly, these problems directly affect the care AMR can provide to its patients,
22 who are forced to wait for necessary services because outmoded and inconsistent collective
23 bargaining agreements prevent AMR from achieving optimal staffing and service with IFT
24 employees who are all in the same position working out of the same two locations . (Jaramillo, Tr.
25 414:1–12.)

26
27 In short, as Mr. Jaramillo put it, there are many benefits to be gained from clarification of
28 the bargaining units:

1 From an employee standpoint, maintaining and adding consistency
2 to the market to which everyone thoroughly understands their
3 responsibility, what they fall under as to requirements set forward
4 through policies, procedures, uniforms, standardization through
5 processes, would be beneficial. From an operations and
6 management standpoint, being able to utilize our resources
7 effectively and appropriately, to enhance the system, for the safety
8 and well-being of the community I think is vital. And I think too –
as we continue to move forward towards, you know, maximizing
efficiencies and streamlining processes, collectively everyone
would have a clear understanding and expectation as to where the
organization is going and what are the expectations.

9 (Jaramillo, Tr. 418:25–419:13.)

10
11 **IV. ARGUMENT**

12
13 **A. STANDARD OF REVIEW**

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15 The Board will grant a request for review upon one or more of the following grounds: (1)
16 that a substantial question of law or policy is raised because of (i) the absence of, or (ii) a
17 departure from, officially reported Board precedent; (2) that the Regional Director’s decision on a
18 substantial factual issue is clearly erroneous on the record and such error prejudicially affects the
19 rights of a party; (3) that the conduct of any hearing or any ruling made in connection with the
20 proceeding has resulted in prejudicial error; (4) that there are compelling reasons for
21 reconsideration of an important Board rule or policy. *See* 29 C.F.R. § 102.67(d).

22
23 **B. THE REGIONAL DIRECTOR ERRED IN FINDING THAT THE THREE**
24 **BARGAINING UNITS DO NOT SHARE AN OVERWHELMING**
25 **COMMUNITY OF INTEREST.**

26
27 The Regional Director found that the three current bargaining units maintain “a separate
28 group identity,” and that the employees in the three units do not share an overwhelming

1 community of interest with each other. (Slip op. at 20.) He is horribly wrong on both scores.
2

3 Contrary to the Regional Director’s conclusion, the three current bargaining units are
4 simply not appropriate under Board law. A bargaining unit is only appropriate where the group
5 “share[s] a community of interest **sufficiently distinct** from the interests of employees excluded
6 from the petitioned-for group to warrant a finding that the proposed group constitutes a separate
7 appropriate unit.” *PCC Structural, Inc.*, 365 NLRB No. 160, at *6 (2017) (emphasis added).
8 Factors relevant to determining whether employees share a community of interest include: “(1)
9 similarity in the scale and manner of determining the earnings; (2) similarity in employment
10 benefits, hours of work, and other terms and conditions of employment; (3) similarity in the kind
11 of work performed; (4) similarity in the qualifications, skills and training of the employees; (5)
12 frequency of contact or interchange among the employees; (6) geographic proximity; (7)
13 continuity or integration of production processes; (8) common supervision and determination of
14 labor-relations policy; (9) relationship to the administrative organization of the employer; (10)
15 history of collective bargaining; (11) desires of the affected employees; [and] (12) extent of union
16 organization.” *Nestle Dreyer’s Ice Cream Co. v. NLRB*, 821 F.3d 489, 495 (4th Cir. 2016); *see*
17 *also Frontier Tel. of Rochester*, 344 NLRB 1270, 1273 (2005) (identifying similar factors).
18

19 As explained below, these factors show that the three current bargaining units share an
20 overwhelming community of interest and do not have separate group identities warranting separate
21 units along legacy union lines. To the extent there are any separate communities of interest, it is
22 between the EMS and IFT employees.
23

24 **1. The Regional Director Misapplied the Community of Interest Test.**
25

26 Analyzing the above factors, the Regional Director found that employees in the three
27 bargaining units maintain separate group identities. While he agreed that certain factors suggest a
28 community of interest — (1) centralization of human resources control; (2) centralization of

1 management control; (3) similarity of skill and functions; and (4) common control of labor
2 relations — he ultimately concluded that these four factors were outweighed by other factors that
3 purportedly showed a continued differentiation among bargaining unit employees along legacy
4 union lines: (1) similarity of job duties before and after the corporate reorganization; (2) terms
5 and conditions of employment; (3) geographic proximity and physical contact; (4) supervision; (5)
6 employee interchange; and (6) bargaining history. (Slip op. at 20.) A closer analysis shows that
7 the Regional Director’s reliance on these factors is fatally flawed.

8
9 **(a) The Regional Director Engaged in a “Patent Form of Circular**
10 **Reasoning” When Analyzing Terms and Conditions of**
11 **Employment, Geographic Proximity/Physical Contact, and**
12 **Employee Interchange.**

13
14 To justify maintaining three separate bargaining units, the Regional Director pointed to
15 several community of interest factors, including terms and conditions of employment, geographic
16 proximity and physical contact, and employee interchange. But these factors are not reasons for
17 maintaining the status quo at all. On the contrary, they are symptoms of a fractured unit that
18 would not otherwise exist if the unit were whole, as it should be. The Regional Director’s analysis
19 essentially comes down to the flawed conclusion that the units should remain different because
20 they have always been different. That makes no sense.

21
22 Where differences between bargaining units are the necessary results of collective
23 bargaining, those differences “should not provide a separate basis” for finding that there is no
24 community of interest. *Oxford Chems., Inc.*, 286 NLRB 187, 188 n.5 (1987). The employer, after
25 all, is powerless to eliminate such differences since “[t]he law is well settled that an employer may
26 not change the terms and conditions of employment of represented employees without providing
27 their representative with prior notice and an opportunity to bargain over such changes.” *Naaco*
28 *Material Handling Grp.*, 359 NLRB 1192, 1199 (2013) (citing *NLRB v. Katz*, 369 U.S. 736, 747

1 (1962)). To find there is no community of interest because of factors that result directly from past
2 collective bargaining with legacy unions, and are therefore outside of the employer’s ability to
3 consolidate and integrate, is tantamount to “excluding employees on the basis that up to now they
4 had been excluded, a ‘patent form of circular reasoning.’” *Frontier Tel.*, 344 NLRB at 1273 n.12
5 (quoting *Oxford Chems.*, 286 NLRB at 188 n.5).

6
7 For example, the Regional Director noted that certain terms and conditions of employment
8 — such as benefits, pensions, and seniority — differ between the three bargaining units, and
9 therefore weigh against finding a community of interest. But the only reason there are differences
10 in terms and conditions of employment is because there are three separate bargaining units with
11 three different collective bargaining agreements. Had AMR attempted to unilaterally standardize
12 these terms and conditions across bargaining units, it would have committed a violation of the Act.
13 The varying terms and conditions of employment are the symptoms of the problem AMR is trying
14 to fix, not a justification for the status quo. Moreover, the differences in these terms and
15 conditions of employment are relatively minor. The employees are all performing the same job
16 duties and they all receive some form of comparable health care, pension and seniority benefits.

17
18 The same is true with respect to geographic proximity/physical contact and employee
19 interchange.⁴ The Regional Director explained that employees from different bargaining units do
20 _____

21 ⁴ The Board has recently explained that employee interchange is not nearly as important as
22 the Regional Director makes it out to be, particularly where a multi-location unit is sought. *See*
23 *Exemplar, Inc.*, 363 NLRB No. 157 (2016) (“We disagree with the Acting Regional Director’s
24 statement that the lack of employee interchange is a particular important factor that weighs
25 substantially against a finding that the employees in the two facilities share a community of
26 interest.”); *Multicare Health Sys.*, No. 19-RC-221006, 2019 WL 656287, at *1 n.1 (NLRB Jan. 18,
27 2019) (“[W]e do not rely on [the Regional Director’s] statement that the Board considers
28 functional integration and interchange to be ‘more important’ factors in assessing the propriety of
a petitioned-for unit.”). Rather, what is important here is that even though bargaining unit
employees cannot staff ambulances or bid on shifts across union lines, they are nonetheless doing
the *exact same* jobs, crisscrossing each other in the same *exact same* geographic region, and
housed at the *exact same* locations throughout Maricopa County. (Kasprzyk, Tr. 42:20–24, 52:1–
53:11, 55:24–56:8, 57:24–58:12, 76:24–77:2, 140:16–141:8; Valentine, Tr. 178:8–11, 194:13–25,
997:7–15; Jaramillo, Tr. 338:5–343:7, 399:5–22, 487:6–13; Mayer, Tr. 645:24–646:1, 648:5–25.)

1 not work in the same vehicles together, do not cover shifts for each other, and cannot bid for shifts
2 across bargaining units. But this separation along legacy union lines is the byproduct of
3 constraints placed on AMR by the three collective bargaining agreements and is one of the
4 inefficiencies that AMR is trying to correct by way of its petitions. (Valentine, Tr. 180:18–20,
5 223:14–224:3; Jaramillo, Tr. 412:5–21, 415:15–416:1; Mayer, Tr. 639:23–641:24.) Again, this is
6 a symptom of the problem, not a justification for it.

7
8 **(b) Supervision Weighs in Favor of Finding a Community of**
9 **Interest, Not Against.**
10

11 The Regional Director found that the factor of supervision weighs against finding a
12 community of interest because “[n]o Operations Manager has employees from different bargaining
13 units falling under them in the supervisor hierarchy.” (Slip op. at 20.) That is just incorrect. As
14 noted earlier in the Regional Director’s opinion, one Operations Supervisor has employees from
15 all three bargaining units under him. (Slip op. at 15) (Valentine, Tr. 291:21–25).

16
17 The Regional Director’s analysis also left out several relevant facts. The IFT
18 Administrative Supervisor supervises employees from all three bargaining units,⁵ (Valentine, Tr.
19 290:6–11), and the IFT Field Supervisors supervise all of the IFT employees from all three
20 bargaining units, (Valentine, Tr. 286:10–12). (Slip op. at 15.) The record also reveals that IFT
21 has six On Duty Supervisors at Stations 1 and 3 that supervise all of the IFT employees from all
22 three unions. (Jaramillo, Tr. 346:22–347:14.) Operations Managers, Administrative Supervisors,
23 Field Supervisors, and On Duty Supervisors all share in managing day-to-day operations. (Slip
24 op. at 15) (Kasprzyk, Tr. 102:3–13; Valentine, Tr. 289:18–20 (“[O]perations supervisor and
25 administrative supervisor are truly peers.”).) Indeed, AMR Regional Director John Valentine
26

27 _____
28 ⁵ The EMS Administrative Supervisor in the East Valley also oversees employees from
multiple bargaining units. (Valentine, Tr. 290:6–19.)

1 testified:

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[F]rom a leadership standpoint, if you look strictly at the interfacility role that comes out of those two stations, you have the same regional director, you have the same operations manager, admin[istrative] supe[rvisor], and then field supervision that are literally having employees from each bargaining unit asking them very specific, detailed questions about a host of things out of those CBAs. You name it: day-to-day operations, I need PTO. PTO is different. I need to bid to a different shift. Can I get a different style of boot? Can I wear this pin on my shirt? Can I wear this jacket? I mean, you can continue to go down a list of things. Training, how shifts are filled.

10 (Valentine, Tr. 220:1–12.) Given this undisputed evidence, it is a mystery why the Regional
11 Director believed that this factor somehow weighed against there being a community of interest.
12 It shows precisely the opposite.

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(c) Similarity of Job Functions Pre- and Post-Reorganization and Bargaining History Are Irrelevant to These Petitions.

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Another factor relied on by the Regional Director — similarity of job functions before and after the corporate reorganization — has no logical connection to a finding of a lack of a community of interest, and finds no support in the case law cited by the Regional Director. If anything, the fact that the employees in the Merged Entities are performing the same paramedic, EMT and nurse duties actually supports a finding that there is an overwhelming community of interest between these employees in these Merged Entities, not a lack of a community of interest.

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Finally, bargaining history does not weigh against there being a community of interest either. As the Regional Director noted, bargaining history is irrelevant where “the units no longer conform reasonably well to other standards of appropriateness.” *AC Mgmt., Inc.*, 335 NLRB 38, 39 (2001). The bargaining history is primarily a function of the pre-consolidation period in which these three units were not joined together under common ownership, management, human

1 resources and labor relations, and work stations. As explained in detail below, contrary to the
 2 Regional Director’s characterization, there has been much more than a mere “[c]hange in
 3 ownership,” and the three existing units are completely inappropriate under established Board law.
 4 Bargaining history alone cannot cure otherwise inappropriate units.

5
 6 **2. An Analysis of the Correct Community of Interest Factors Shows that**
 7 **IFT Employees Share a Distinct and Overwhelming Community of**
 8 **Interest.**
 9

10 When the factors that the Regional Director erroneously considered are set aside, it is
 11 evident that Medical Personnel, *regardless of union affiliation*, share an overwhelming community
 12 of interest. With respect to IFT employees, the commonalities are legion:

- 13 • Location: All IFT Medical Personnel are now located at the same two stations (Station
 14 1 and Station 3), in Mesa and Peoria, Arizona, regardless of bargaining unit.
 15 (Kasprzyk, Tr. 40:2–12, 41:17–42:19, 140:7–141:8; Mayer, Tr. 646:6–17; Pet. Exh. 1.)
 16 Station 1 has 67 IAFF employees, 56 ICEP employees, and 82 AFSCME employees,
 17 while Station 3 has 32 IAFF employees, 24 ICEP employees, and 46 AFSCME
 18 employees, all performing the same duties. (Pet. Exh. 1.)
- 19 • Management: As noted above, all IFT employees now report to the same On Duty
 20 Supervisors, Field Supervisors, and Administrative Supervisors. Moreover, all IFT-
 21 dedicated Medical Personnel report to the same Regional Director (Todd Jaramillo)
 22 and the same Operations Manager (Kyle Henson), who oversee all IFT operations.
 23 (Jaramillo, Tr. 345:18–346:16, 347:4–348:2, 404:18–24.)
- 24 • Service Area: All IFT Medical Personnel service the same geographic areas, which
 25 requires “mov[ing] through the entire county-wide system.” In other words, IFT
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employees, regardless of union affiliation, are crisscrossing Maricopa and Pinal counties: “any bargaining group can respond to any facility.” (Kasprzyk, Tr. 76:24–77:2; Jaramillo, Tr. 340:9–341:3, 487:6–13; Mayer, Tr. 648:5–25.)

- Duties: All IFT Medical Personnel perform the same day-to-day job functions, within their respective classification (i.e., paramedic, EMT, nurse). (Kasprzyk, Tr. 140:16–141:8; Valentine, Tr. 178:8–11, 997:7–15; Jaramillo, Tr. 338:5–340:8, 341:4–343:7, 399:5–22; Mayer, Tr. 645:24–646:1.) As a case in point, regardless of union affiliation, the duties described in employees’ offer letters are the same.⁶ (Pet. Exhs. 18 (AFSCME offer letter), 19 (ICEP offer letter), 20 (IAFF offer letter).) And even though EMT and paramedic jobs are posted separately for each of the three units, the job descriptions that are posted are identical. (Jaramillo, Tr. 342:3–343:7; Pet. Exhs. 7 (paramedic job description), 8 (EMT job description).)

- Operating Procedures: Aside from operational variances required by the three unions’ CBAs, IFT Medical Personnel are now governed by the same overarching AMR operating rules and procedures, including the comprehensive AMR Health, Safety and Risk Management Program Manual and the AMR Employee Handbook. (Kasprzyk, Tr. 85:14–22; Jaramillo, Tr. 382:4–14, 382:25–383:7; Pet. Exhs. 13 (Safety and Risk Manual), 14 (Employee Handbook).) Despite the different procedures required by the CBAs, “the goal through the integration is to have one set of operational rules that would apply to all covered interfacility employees.” (Kasprzyk, Tr. 85:16–18.)

- Training: All IFT Medical Personnel, regardless of union affiliation, are now given the same training. (Kasprzyk, Tr. 48:11–14; Jaramillo, Tr. 380:9–381:23, 402:23–404:17,

⁶ The only substantive difference in the offer letters pertains to minor differences in benefits mandated by the different CBAs.

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514:9–516:11; Garn, Tr. 979:5–13; Pet. Exh. 28.)

- Dispatch: All IFT Medical Personnel are now dispatched from the same dispatch center. (Jaramillo, Tr. 345:2–17, 419:24–421:2.)

- Job Application: All applicants seeking an IFT position now use the same application process. (Jaramillo, Tr. 395:22–397:2.)

- Ambulances: All IFT Medical Personnel now drive similarly branded ambulances: AFSCME and IAFF employees both use AMR-branded ambulances, and ICEP employees use Life Line-branded ambulances, a distinction that remains only because of the legacy union contracts. (Jaramillo, Tr. 348:8–349:7, 350:21–351:14, 352:1–6, 378:16–379:4; Mayer, Tr. 645:18–20; Pet. Exhs. 16, 17.)

- Uniforms: All IFT Medical Personnel now wear similar dark blue uniforms, with small variations between them that result from the different legacy CBAs. (Valentine, Tr. 211:7–213:1.)

- Equipment: Prior to the consolidation of the Merged Entities, each entity used different types of equipment; in order to establish uniformity, AMR invested “an enormous amount of capital” — approximately \$20 million — “to standardize equipment throughout the interfacility market regardless of . . . which union group you belong to. Everyone has the same equipment. They’re trained on the same equipment. It’s a uniform approach.” (Kasprzyk, Tr. 46:7–47:7; Jaramillo, Tr. 349:8–350:13, 495:12–498:9, 500:13–24; Mayer, Tr. 645:14–17.)

- Licenses/Certifications: All IFT Medical Personnel now work under the same licenses and certifications. (Kasprzyk, Tr. 72:8–13, 149:4–8; Valentine, Tr. 178:12–22;

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Jaramillo, Tr. 404:25–405:6; Mayer, Tr. 645:20–23.)

- Labor Relations/Human Resources: All IFT Medical Personnel now have the same AMR labor relations and human resources. (Valentine, Tr. 200:11–201:1, 246:5–19, 292:10–13, 308:2–6; Jaramillo, Tr. 405:7–14, 406:22–407:14.)
- Scheduling: All IFT Medical Personnel now have the same scheduling office and scheduling process (the TeleStaff portal). (Jaramillo, Tr. 407:15–408:6, 421:25–422:10.)
- Facilities: All IFT Medical Personnel now use the same parking lots, garage, and vehicle mechanics, and have equal access to Stations 1 and 3. (Jaramillo, Tr. 408:7–13, 408:21–409:4.)
- Call-In/Off Process: All IFT Medical Personnel now have the same process for calling in/off. (Jaramillo, Tr. 408:14–20.)
- Narcotics: All IFT Medical Personnel now have the same process and location for checking in/out narcotics. (Jaramillo, Tr. 409:5–410:5.)

3. **An Analysis of the Correct Community of Interest Factors Shows that EMS Employees Share a Distinct Community of Interest.**

Similarly, EMS employees, *regardless of union affiliation*, share an overwhelming and distinct community of interest.

- Location: EMS Medical Personnel are stationed together throughout Maricopa and Pinal counties at various fire stations, buildings, houses, complexes, and other

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facilities, and “operate in very specific communities.” (Kasprzyk, Tr. 51:19–53:11, 60:5–13; Pet. Exh. 6.) None are based at Stations 1 or 3 where the IFT Medical Personnel are stationed.

- Management: All EMS Medical Personnel report to the same Regional Director (John Valentine) who oversees EMS operations.⁷ (Kasprzyk, Tr. 56:12–14, 57:6–8; Valentine, Tr. 183:19–184:15.)

- Service Area: All EMS Medical Personnel service the same geographic areas, which generally involves providing services in a particular contracted area, but can also involve services across Maricopa County. (Kasprzyk, Tr. 54:3–9, 77:3–5; Valentine, Tr. 311:1–6.)

- Duties: All EMS Medical Personnel perform the same day-to-day job functions, within their respective classification (i.e., paramedic or EMT). “[B]roadly, they’re providing either basic life support or advanced life support care in conjunction with the local fire department for 911 calls for sick and injured individuals.” (Kasprzyk, Tr. 55:24–56:8; 57:24–58:12; Valentine, Tr. 194:13–25.)

- Operating Procedures: Aside from operational variances required by the three unions’ CBAs, EMS Medical Personnel are governed by the same overarching AMR operating rules and procedures, including the comprehensive AMR Health, Safety and Risk Management Program Manual and the AMR Employee Handbook. (Kasprzyk, Tr. 85:14–22; Jaramillo, Tr. 382:4–8, 382:25–383:7; Pet. Exhs. 13 (Safety and Risk

⁷ The one exception is the handful of EMS operations in Queen Creek and Gilbert, which are still overseen by Todd Jaramillo because of a need for regulatory consistency. (Kasprzyk, Tr. 82:22–83:1, 160:3–13.)

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Manual), 14 (Employee Handbook).)

- Training: All EMS Medical Personnel are given the same training. (Kasprzyk, Tr. 56:9–11; Garn, Tr. 979:5–13; Pet. Exh. 28.)
- Dispatch: All EMS Medical Personnel, regardless of union affiliation, are dispatched from the same dispatch centers and use the same dispatching programs. (Kasprzyk, Tr. 203:21–207:24.)
- Uniforms: All EMS Medical Personnel wear similar dark blue uniforms, with small variations between them that result from the different CBAs. (Valentine, Tr. 211:7–213:1.)
- Equipment: All EMS Medical Personnel use the same EMS equipment. (Kasprzyk, Tr. 56:15–16.)
- Licenses/Certifications: All EMS Medical Personnel work under the same licenses and certifications. (Kasprzyk, Tr. 149:4–8.)
- Labor Relations/Human Resources: All EMS Medical Personnel have the same labor relations and human resources. (Valentine, Tr. 200:11–201:1, 246:5–19, 292:10–13, 308:2–6.)

4. **IAFF Admitted in 2016 that AMR Medical Personnel Share an Overwhelming Community of Interest Despite Legacy Union Lines.**

There can really be no dispute that Medical Personnel within each of the IFT and EMS occupations share a community of interest and that the legacy union divisions are not appropriate

1 because at least one of the unions has expressly acknowledged as much before the Board.
 2 (Kasprzyk, Tr. 141:25–142:21; Valentine, Tr. 176:5–177:3.) In 2016 — *two years* before the
 3 consolidation and reorganization became fully effective — IAFF filed a UC petition (28-UC-
 4 178717) claiming representation of then-unrepresented employees of AMR Maricopa. IAFF first
 5 pursued voluntary recognition of the employees, sending a letter to AMR’s head of labor relations
 6 requesting that AMR recognize the unrepresented employees it was claiming. The letter
 7 explained:

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 9 As the Employer is actively consolidating the various brands (e.g.
 10 Southwest Ambulance, Rural Metro Ambulance, Tri-City Meds,
 11 etc.) into American Medical Response (“AMR”), the non-
 12 unionized workforce will share a community of interest with the
 13 certified Local I-60 bargaining unit which is indistinguishable in
 14 identity, and as a result is appropriate that the Local I-60’s unit be
 15 clarified to include this group.

16 (Pet. Exh. 21; Burkhart, Tr. 528:6–8, 530:1–533:1, 533:24–534:11, 685:4–686:9.) And this was
 17 before AMR Maricopa fully merged its operations under one roof with the RM legacy bargaining
 18 units. But once AFSCME, who at the same time was organizing AMR Maricopa paramedics and
 19 EMTs, objected, IAFF filed a UC petition seeking Board intervention. (Burkhart, Tr. 535:3–9;
 20 Pet. Exh. 22.) In its UC petition, IAFF represented that “[e]mployer has a non-unionized division
 21 without [sic] an indistinguishable identity [sic] from that of the unionized bargaining unit as the
 22 result.” (Pet. Exh. 22.)

23 IAFF ultimately dropped the UC petition after an AFL-CIO Article XX proceeding
 24 determined that IAFF should “stand down” and allow AFSCME to move forward with an RC
 25 petition and election for the unrepresented AMR of Maricopa employees. (Burkhart, Tr. 535:14–
 26 537:6; Pet. Exh. 27.) It should be emphasized, however, that the UC petition was *not* withdrawn
 27 based on any admission by IAFF that there was not a community of interest between the IAFF
 28 member employees and the unrepresented AMR Maricopa employees then based in Tempe.
 (Burkhart, Tr. 536:16–537:6.)

1 What is perhaps most striking is that IAFF’s UC petition was filed a full two years before
2 the consolidation and reorganization of AMR’s operations was fully effective; the company was
3 still actively in the process of restructuring and there was still substantial separation and division
4 of operations. (Valentine, Tr. 570:8–571:6.) Nevertheless, though the consolidation and
5 reorganization were not complete, IAFF *still* felt there was a sufficient community of interest to
6 justify an accretion.

7
8 In short, there is absolutely no basis for preserving the legacy union lines. Employees in
9 each of the three legacy units do not have any meaningful distinctions between them, let alone
10 communities of interest that are “sufficiently distinct” to warrant separate bargaining units.

11
12 **5. The EMS and IFT Units Each Have a Distinct Community of Interest,**
13 **Justifying Two Separate Bargaining Units.**

14
15 As noted, under established Board law, a bargaining unit is appropriate where the
16 employees “share a community of interest sufficiently distinct from the interests of employees
17 excluded from the petitioned-for group to warrant a finding that the proposed group constitutes a
18 separate appropriate unit.” *PCC Structural, Inc.*, 365 NLRB No. 160, at *6 (2017). Here,
19 employees in the IFT and EMS units unquestionably share *distinct* communities of interest.

20
21 After AMR consolidated the three separate entities at issue here (AMR Maricopa, SWA,
22 and PMT), but before the management reorganization that occurred in Spring 2018, Medical
23 Personnel performed both emergency and non-emergency services interchangeably. However, the
24 reorganization changed that. All Medical Personnel are now split into two primary groups: the
25 emergency care personnel and the non-emergency care personnel. The units are now completely
26 distinct:

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28 • Operational Separation: Aside from occasional crossover when extreme circumstances

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arise, IFT dedicated Medical Personnel from Stations 1 and 3 primarily perform IFT work, and EMS Medical Personnel primarily perform EMS work. (Kasprzyk, Tr. 115:15–23.)

- Management: IFT and EMS employees report to separate managers. IFT operations are predominantly overseen by one Regional Director (Todd Jaramillo), and EMS operations are predominantly overseen by a different Regional Director (John Valentine). (Kasprzyk, Tr. 40:2–12; Valentine, Tr. 183:13–18.) As explained by Glenn Kasprzyk, Regional Chief Operating Officer for Arizona and New Mexico at AMR: “The reason why there’s two [Regional Directors] is because you want operational consistency within that group. So as far as how we do the day-to-day work on an interfacility basis, you want to ensure that we’re doing the same work no matter who’s doing the work. They’re different because 911 operates differently than IFT. There’s different contractual arrangements. There’s different standards by community that exists. So in order to create the consistency amongst each side, you have to have one operational leader who understands that particular business vertically.” (Kasprzyk, Tr. 40:2–12, 159:17–160:2.)

- Duties: The duties of IFT and EMS Medical Personnel are different and require different skills. While IFT employees provide transitional care or movement of patients between facilities, EMS employees respond to emergencies in the field (e.g., 911 calls for sick or injured individuals). (Kasprzyk, Tr. 59:12–25; Jaramillo, Tr. 411:10–18.)

- Location: IFT and EMS Medical Personnel are housed in different facilities. All IFT-dedicated Medical Personnel are located at two stations (Station 1 and Station 3), in Mesa and Peoria, Arizona. EMS Medical Personnel, on the other hand, are stationed throughout the County at various fire stations, buildings, houses, complexes, and other

1 facilities, and “operate in very specific communities.” (Kasprzyk, Tr. 51:19–53:11,
 2 60:5–13; Jaramillo, Tr. 410:25–411:9; Pet. Exhs. 1, 5, 6.)

- 3
- 4 • Hiring: The hiring processes for IFT and EMS employees are separate. (Kasprzyk, Tr.
 5 79:14–24.)
- 6
- 7 • Training: IFT and EMS employees, because of their different duties, are given
 8 different training. (Kasprzyk, Tr. 48:15–49:7; Jaramillo, Tr. 410:22–25.)
- 9
- 10 • Equipment: IFT and EMS employees, again because of the differences in their duties,
 11 are required to carry different equipment, such as vents and pumps which are only used
 12 by IFT employees. (Jaramillo, Tr. 410:22–25.)
- 13
- 14 • Shift Structure: IFT and EMS employees also have different shift structures. For
 15 example, while EMS Medical Personnel primarily work 24-hour shifts, IFT Medical
 16 Personnel work 12-hour shifts or less. This difference in shift structure is a result of
 17 differences in call volume; while IFT work generally has a constant flow of requests
 18 for transportation, EMS work is more erratic with “ebbs and flows of being busy or
 19 not.” (Jaramillo, Tr. 411:18–412:4.)
- 20

21 In light of the substantial differences between the IFT and EMS units that have arisen since
 22 the reorganization of AMR’s operations in, IFT and EMS Medical Personnel have distinct
 23 communities of interest, and separate IFT and EMS bargaining units are warranted.

24

25 In sum, because (1) the existing three bargaining units are not appropriate under Board
 26 law, and (2) the IFT and EMS Medical Personnel each share distinct communities of interest,
 27 consolidation of the three existing bargaining units into two bargaining units is only proper. As
 28 explained below, AMR requests this consolidation alternatively through its UC petition and its

1 RM petition.⁸

2
 3 **C. THE REGIONAL DIRECTOR ERRED IN DENYING AMR’S UC**
 4 **PETITION**
 5

6 “The Board’s authority to define the appropriate bargaining unit is sufficiently broad to
 7 enable it to include new employees in an existing unit without holding an election when the
 8 requisite community of interests is present, and inclusion would result in a more efficient
 9 collective bargaining relationship.” *Westinghouse Elec. Corp. v. NLRB*, 440 F.2d 7, 10–11 (2d
 10 Cir. 1971). As the term itself implies, “[u]nit clarification . . . is appropriate for resolving
 11 ambiguities concerning the unit placement of individuals who, for example, come . . . within an
 12 existing classification which has undergone recent, substantial changes in [its] duties and
 13 responsibilities . . . so as to create a real doubt as to whether the individuals in such classification
 14 continue to fall within the category excluded or included that they occupied in the past.” *Union*
 15 *Electric Co.*, 217 NLRB 666, 667 (1975).
 16
 17
 18

19 ⁸ Contrary to the Regional Director’s conclusion, (slip op. at 22), this is not a case of
 20 “multi-employer” bargaining: “[I]n the traditional multi-employer bargaining situation, the
 21 employers are entirely independent businesses, with nothing in common except that they operate
 22 in the same industry. They are often in competition for work with each other, operate at separate
 23 locations on different work projects, and hire their own employees. . . . [T]he Board developed the
 24 consent requirement in such cases precisely because the employers at issue were physically and
 25 economically separate from each other, their operations were not intermingled, and their
 26 employees were not jointly controlled.” *Miller & Anderson, Inc.*, 364 NLRB No. 39, at *9 (2016).

27 That is plainly not the situation here. *See id.* (“In multi-employer bargaining, the unrelated
 28 employers on their own initiative decide to join an employer association and bargain through a
 mutually selected agent to match union strength and to avoid the competitive disadvantages
 resulting from nonuniform contractual terms.”). The above analysis plainly shows that the
 operations of AMR of Maricopa, PMT, and Southwest are fully integrated within the AMR family
 of companies. They have the same management, the same labor relations and human resources,
 the same operational guidelines, and work out of the same facilities. Accordingly, consent is not
 required, and the traditional community of interest factors are determinative of whether the
 proposed units are appropriate. *Id.* at *20.

1 The fundamental purpose of the accretion doctrine is to “preserve industrial stability by
2 allowing adjustments in bargaining units to conform to new industrial conditions without requiring
3 an adversary election every time new jobs are created or other alterations in industrial routine are
4 made.” *NLRB v. Stevens Ford, Inc.*, 773 F.2d 468, 473 (2d Cir. 1985). The Board may find that
5 employees who have traditionally been excluded from existing units can be added to such units
6 where the units have undergone a substantial change. *Bethlehem Steel Corp.*, 329 NLRB 243,
7 243–44 (1999). Acquisitions and reorganizations are common changes that justify consolidating
8 units that traditionally have been separate. *Rock-Tenn Co. v. United Paperworkers Union, Local*
9 *1106*, 274 NLRB 772 (1985) (both pre-acquisition factors and post-acquisition changes in plant
10 operation may combine to render an historical unit inappropriate.); *Banknote Corp. of Am. v.*
11 *NLRB*, 84 F.3d 637, 649 (2d Cir. 1996) (presumption in favor of historical units inappropriate
12 when there is evidence that units had been rendered obsolete by industry shifts or changes in the
13 operation of the predecessor).⁹

14
15 The Board’s decision in *U.S. West Communications, Inc.*, 310 NLRB 854 (1993), is
16 instructive.¹⁰ There, the employer and several predecessor companies had CBAs with two
17 separate unions (CWA and ORTT), which represented two separate bargaining units. *Id.* Just like
18 AMR here, “[t]he Employer filed [a] unit clarification petition seeking to accrete the employees
19 represented by ORTT into the unit of employees represented by CWA” because of “technological,
20 organization, and administrative changes.” *Id.* The Board agreed with the employer, finding that

21
22
23 ⁹ In dismissing AMR’s petition, the Regional Director explained: “What the
24 Petitioners/Employers seek here is not a clarification of a unit but a merger of existing units. A
25 UC petition is not a proper avenue to achieve that end.” (Slip op. at 22.) The above-cited
26 authority shows this conclusion is incorrect. In fact, the Regional Director himself cites to cases
27 wherein “the Board has used UC proceedings to determine that previously separate units have, by
28 the parties’ actions, been merged into a single appropriate unit.” (Slip op. at 18). *See Armco Steel*
Co., 312 NLRB 257, 259 (1993); *Green-Wood Cemetery*, 280 NLRB 1359 (1986).

¹⁰ The Regional Director rejected AMR’s reliance on *U.S. West Communications* because
AMR “fail[ed] to point to changes that have destroyed the separate group identity of the
bargaining units.” (Slip op. at 22.) As described above, the Regional Director’s misapplication of
the community of interest factors led to this erroneous conclusion.

1 “the significant changes occurring over the years have eliminated the basis on which the ORTT
2 represented unit was deemed to be an appropriate unit.” *Id.* at 855. The Board explained that after
3 years of corporate changes, “the two groups of employees often work side by side using the same
4 equipment performing similar tasks,” they “often work under common supervision, if not at the
5 first level, then at the second,” and they are “subject to common administrative and labor relations
6 policies and similar working conditions.” *Id.*; *see also Westinghouse*, 440 F.2d at 11 (finding
7 requisite community of interest where employees had “comparable earnings” and “same [work]
8 hours.”). Thus, due to corporate changes, the Board in *U.S. West Communications* consolidated
9 two separate units, represented by two unions, into one unit, represented by one union.

10
11 Like the bargaining units in *U.S. West Communications*, the three legacy units at issue here
12 have undergone drastic changes. At one time, the Merged Entities’ Medical Personnel were all
13 separate and distinct workforces, working at separate facilities and under separate management,
14 and responding interchangeably to all calls, both emergency and non-emergency. (*See supra*
15 Section III.A.) Medical Personnel at SWA, AMR, and PMT all had separate uniforms, worked at
16 separate facilities, and had separate management. (*Id.*) However, that “separateness” no longer
17 exists. Since then, AMR has substantially reorganized the Merged Entities’ operations. (*See*
18 *supra* Sections III.C, III.D.) With the creation of the IFT and EMS units, the Medical Personnel
19 no longer have separate identities along union lines that support the existence of three separate
20 units. (*See supra* Section IV.B.) The Merged Entities’ Medical Personnel now share the same
21 facilities and managers, and perform the same work, within their respective IFT and EMS
22 classifications. (*See supra* Section IV.B.)

23
24 The *only* thing that distinguishes the three units are the three legacy unions fighting now to
25 maintain their turf. And the only apparent justifications for this continued division are the legacy
26 contracts with the three unions and the “gentleperson’s agreement” between them that they will
27 not poach each other’s unit members. (Burkhart, Tr. 742:11–25, 779:4–20.) That is plainly not
28 sufficient to justify separate bargaining units. The lack of any relationship between the contours

1 of the existing units and any of the administrative or operational lines drawn by AMR renders the
2 three existing units entirely inappropriate under established Board law.¹¹ *See PCC Structural*,
3 *Inc.*, 365 NLRB No. 160, at *6 (2017).

4
5 As a result of AMR’s consolidation and reorganization, there is no longer any basis for the
6 three existing bargaining units since each unit does not have a community of interest “sufficiently
7 distinct” from the others.¹² However, with the establishment of the two separate work-units (one
8 responding to emergency calls and the other responding to non-emergency calls), there is a basis
9 for two units. *U.S. West Commc’ns, Inc.*, 310 NLRB at 854 (combining two bargaining units into
10 one where the employees “los[t] their separate identity” after corporate changes). As explained
11 above, employees in the IFT and EMS units *do* share “sufficiently distinct” communities of
12 interest warranting two separate bargaining units.

13
14 For the foregoing reasons, the Regional Director erred in dismissing AMR’s UC petition.
15 Specifically, the Regional Director should have created two bargaining units — EMS and IFT —
16 based on the above-described communities of interest they share. AMR proposed that IAFF
17 represent the EMS Medical Personnel based on the fact that IAFF represents 305 of 420 EMS
18 Medical Personnel (about 73%). AMR further proposed that AFSCME represent the Station 1 and
19 3 IFT Medical Personnel (Mesa and Peoria) because it currently represents more IFT Medical
20 Personnel than either of the other unions.

21
22
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24 _____
25 ¹¹ As such, the Regional Director’s statement that “[t]he accretion doctrine does not apply
26 where the employee group sought to be accreted may separately constitute an appropriate
bargaining unit” is inapposite. (Slip op. at 18).

27 ¹² While the unions have half-heartedly invoked the principle that “[t]he role of the Board
28 is to find ‘an appropriate unit’ and not necessarily ‘the most appropriate unit,’” based on the
foregoing, it is clear that the three separate units of employees doing the same thing for the same
controlling entity are not appropriate *at all*. *See RB Assocs., Inc.*, 324 NLRB 874, 877 (1997).

1 **D. THE REGIONAL DIRECTOR ERRED IN DENYING AMR’S RM**
2 **PETITION**

3
4 **1. In Accordance with Long-Standing Board Precedent, a Good Faith**
5 **Question Concerning Representation Exists Where Historically**
6 **Represented Bargaining Units Are Consolidated into a “New**
7 **Operation.”**

8
9 Under the plain language of Section 9(c)(1)(B) of the NLRA, an RM petition is appropriate
10 where an employer “alleg[es] that one or more individuals or labor organizations have presented to
11 [it] a claim to be recognized as the representative defined in section 9(a),” and where “a question
12 of representation” exists. AMR’s RM petition meets this pleading standard.

13
14 As to the claim for representation, the three separate CBA’s establish a claim by each
15 union to be the exclusive bargaining representative of the IFT employees. (Pet. Exhs. 3, 4;
16 AFSCME Exh. 3.) This alone supports AMR’s RM petition. *Johnson Bros. Furniture Co.*, 97
17 NLRB 246, 247 (1956) (“the unions, by their proposed contracts of August 13, demanded
18 recognition by the Employer as exclusive bargaining representatives.”). Moreover, the fact that
19 ICEP’s CBA with AMR has expired and that ICEP has requested a new contract purporting to
20 represent at least some of the employees in the consolidated group of employees who are also
21 represented by AFSCME and IAFF further confirms that the three unions are staking out
22 competing claims to representation and that a question concerning representation exists.¹³ (Bd.’s
23 Exh. 6, Exh. D.)

24
25 Additionally, as a matter of law, “to the extent the Union[s] continue[] to demand
26 recognition, this inescapably involves a claim for recognition as the representative of the

27 _____
28 ¹³ Additionally, as explained in Section IV.B.4 above, IAFF made a claim to representation through the UC petition it filed.

1 combined unit, which is the *only* bargaining unit that remains in existence because the prior unit
2 consisting of the previously represented [Medical Personnel] has been extinguished.” *ADT, LLC*,
3 365 NLRB No. 77 (2017) (Miscimarra, dissenting); *see also Boston Gas, Co.*, 221 NLRB 628
4 (1975) (granting RM petition over unions’ protest that they had only sought recognition of a
5 portion of the employees in the overall unit, “[s]ince there is no basis on which the employees who
6 are members of the separate Unions could be deemed to be appropriate separate units”).

7
8 Ample Board precedent also supports the existence of a questioning concerning
9 representation here. Employers may “obtain RM elections by demonstrating reasonable good-
10 faith uncertainty as to incumbent unions’ continued majority status.” *Levitz Furniture Co. of the*
11 *Pac., Inc.*, 333 NLRB 717 (2001). Here, because none of the unions represent a majority of the
12 recently unified IFT employees (99 are represented by IAFF, 80 are represented by ICEP, and 128
13 are represented by AFSCME), there is a reasonable good-faith question of representation
14 justifying AMR’s RM petition. (Pet. Exh. 1.) In short, an election is appropriate because no one
15 knows which union the collective group of IFT employees want as their bargaining representative.

16
17 Moreover, as the Board explicitly recognized in *Martin Marietta Co.*, 270 NLRB 821, 822
18 (1984), “[w]hen an employer merges two [or more] groups of employees who have been
19 **historically represented by different unions, a question concerning representation arises.**” And
20 where none of the unions predominates over the others, there is a good-faith uncertainty as to the
21 unions’ continued majority status *in the newly unified bargaining unit. Id.* To resolve the
22 “question concerning representation” and “good-faith uncertainty,” the Board should order an
23 election, like the one AMR is requesting here.

24
25 The Board typically begins its analysis by asking whether the historical units have become
26 so integrated as to create a “new operation” and thus a new, consolidated bargaining unit. *Id.*
27 Sufficient functional integration between the units will “obliterate” the old historical units and
28 create a “new operation consolidating . . . previously separate units of employees.” *Id.* If a “new

1 operation” has been created, and if none of the existing units has a “sufficiently predominant
2 majority” (like the three IFT units at issue here), then a “question of representation” exists and a
3 Board-ordered election is appropriate. *Id.*; *see also Massachusetts Elec. Co.*, 248 NLRB 155
4 (1980); *Boston Gas Co.*, 221 NLRB 628 (1975); *Westinghouse Elec. Corp.*, 144 NLRB 455
5 (1963).

6
7 For example, in *Martin Marietta*, the employer operated a facility quarrying and
8 manufacturing lime products, at which the employees were represented by a union. After the
9 company acquired an adjacent facility, whose employees were represented by a different union,
10 the employer physically consolidated its operations, placed employees under common
11 management and administration, and centralized control of labor relations. *See* 270 NLRB at 822.
12 The Board found that these circumstances justified granting the employer’s RM petition: “These
13 changed circumstances have obliterated the previous separate identities of the two units which
14 existed when each group worked for different employers at two distinct facilities.” *Id.* Because
15 neither of the historical units was “sufficiently predominant to remove the question concerning
16 overall representation,” a Board-ordered election was warranted. *Id.* (citing *Boston Gas Co.*, 221
17 NLRB at 628).

18
19 Similarly, in *Boston Gas Co.*, the employer acquired the operating facilities of two other
20 gas companies in Massachusetts and consolidated operations in a single location in Lynn,
21 Massachusetts. *See* 221 NLRB at 628. The employer continued to recognize the existing CBAs
22 covering the newly acquired employees, but filed an RM petition contending that a “question
23 concerning representation” existed justifying an election with the appropriate, consolidated unit at
24 the new facility in Lynn. *Id.* The unions objected, just like the unions here, arguing that there was
25 “no question concerning representation in that no demand ha[d] been made by either Union to
26 represent all of the inquiry center employees in a single unit.” *Id.*

1 The Board found that an election was appropriate. It noted that the Lynn facility was a
 2 “new operation” because “we have a situation in which employees historically represented by
 3 different labor organizations have been merged into a single work force in which they work side
 4 by side in similar job classifications performing like functions under common supervision.” *Id.* at
 5 628–29. The Board also found “no merit in the Unions’ contentions that there is no question
 6 concerning representation in that there has been no demand for representation by one Union in an
 7 overall unit. Both Unions claim to represent employees in the merged center. Since there is no
 8 basis on which the employees who are members of the separate Unions could be deemed to be
 9 appropriate separate units, all the customer inquiry employees in the center appropriately belonged
 10 in the same unit. There are, therefore, competing claims for representation in the unit which we
 11 are hereby finding appropriate.” *Id.* at 629.¹⁴

12
 13 Likewise, in *Massachusetts Electric Co.*, the Board granted the employer’s RM petition
 14 where “the merger and commingling of employees represented historically by different labor
 15 organizations, and covered under different collective-bargaining agreements” created a “question
 16 concerning representation” warranting an election in the two units proposed by the employer:
 17 “physical” and “clerical” employees. 248 NLRB at 157–58. The Board reached the same
 18 conclusion in *Westinghouse Elec. Corp.*, 144 NLRB at 455.

19
 20 In sum, case after case holds that an RM petition is appropriate where, as here, groups of
 21 historically represented bargaining unit members are consolidated into a single new operation.
 22
 23
 24
 25
 26

27 ¹⁴ To the extent the Regional Director denied AMR’s RM petition on the ground that none
 28 of the unions has expressly demanded to represent *all* of the employees in the IFT unit, (Slip Op.
 at 22), this argument is squarely foreclosed by *Boston Gas Co.*

1 As noted earlier, the *only* thing that distinguishes the three units are the three legacy
2 unions. A unit is only appropriate, however, where the group “share[s] a community of interest
3 sufficiently distinct from the interests of employees excluded from the petitioned-for group to
4 warrant a finding that the proposed group constitutes a separate appropriate unit.” *PCC*
5 *Structurals, Inc.*, 365 NLRB No. 160, at *6 (2017). There is simply no separate identity or
6 distinction amongst the IFT employees justifying three units, and a single unit is now “the sole
7 appropriate unit.” See *Martin Marietta*, 270 NLRB at 822 (ordering election in unit proposed by
8 employer in RM petition where “changed circumstances have obliterated the previous separate
9 identities of the two units which existed when each group worked for different employers at two
10 distinct facilities”); *Boston Gas Co.*, 221 NLRB at 628–29 (ordering election where “new
11 operation” was created by consolidation of historically represented employees such that they
12 “work[ed] side by side in similar job classifications performing like functions under common
13 supervision”).¹⁵

14
15
16 ¹⁵ The unions mistakenly relied below on *ADT, LLC v. Commc’n Workers of Am., Local*
17 *6215*, 365 NLRB No. 77 (2017), to challenge AMR’s petition. The case is inapposite. *ADT, LLC*
18 involved the merger of a group of represented employees with a group of unrepresented
19 employees. There was just one union at play, and the question presented to the Board was
20 whether, *in those circumstances*, the standard for an RM petition had been met. That is not the
21 situation presented here.

22 Unlike in *ADT, LLC*, this situation involves the consolidation of three separately
23 represented bargaining units, with three overlapping and competing unions, into a single group of
24 non-emergency IFT employees. Importantly, here there *are* competing claims to representation as
25 the recognition clauses in the respective unions’ CBAs overlap in the scope of employees they
26 seek to represent. In situations exactly like this one, the Board has consistently held that a
27 question concerning representation exists and that an RM petition is appropriate. See *Martin*
28 *Marietta Co.*, 270 NLRB at 822 (“When an employer merges two [or more] groups of employees
who have been historically represented by different unions, a question concerning representation
arises.” (emphasis added)); *Boston Gas Co.*, 221 NLRB at 628, *Massachusetts Electric Co.*, 248
NLRB at 155, and *Westinghouse Elec. Corp.*, 144 NLRB at 455 Accordingly, *ADT, LLC* does
not compel dismissal of the petition.

Finally, to the extent *ADT, LLC* mandates dismissal of AMR’s RM petition (which it does
not), Chairman Miscimarra’s dissent is far more persuasive and should reflect the position of the
Board. Where operational changes have made it such that there is only *one* appropriate bargaining
unit, if a union wishes to continue its representative status, this necessarily requires the union to
seek recognition on behalf of all employees in the unit. A union’s attempt to “represent [a] subset

1 For the foregoing reasons, the Regional Director erred in dismissing AMR’s RM petition.
2

3 **E. THE REGIONAL DIRECTOR ERRED IN FINDING A CONTRACT BAR**
4 **TO THE PETITIONS**
5

6 As an alternative basis for dismissing AMR’s petitions, the Regional Director held that the
7 petitions were untimely because they were filed during the term of AMR’s collective bargaining
8 agreements with AFSCME and with IAFF. Not so. The result urged by the Regional Director is
9 not only unworkable, but legally baseless.
10

11 The fundamental flaw in the Regional Director’s argument is that it focuses entirely on just
12 two CBAs, to the exclusion of the other union inextricably intertwined in the convoluted mess of
13 overlapping units that AMR seeks to fix. In essence, the Regional Director’s position is that if any
14 one of the three CBAs with AFSCME, IAFF, or ICEP is currently in force, AMR cannot seek an
15 election in a consolidated bargaining unit and must wait until all three of the CBAs are near
16 expiration or expired, simultaneously. This is an absurd argument. It is not at all reasonable to
17 expect AMR to wait for the stars to align and all three CBAs expire at the same time (which will
18 never happen based upon current expiration dates). Not surprisingly, none of the cases cited by
19 the Regional Director (or the unions) involved a situation in which multiple unions with
20 overlapping bargaining units that performed identical work had CBAs that expired at different
21 times.
22

23 The more sensible approach is the one taken by AMR here. The overhaul of AMR’s
24 operations was largely effectuated by June 2018. AMR then filed its UC petition the following
25

_____ of [employees] that it has historically represented . . . is tantamount to a disclaimer of interest in
26 representing the Employer’s [employees] because the prior bargaining unit has been
27 extinguished.” *ADT, LLC*, 365 NLRB No. 77 (Miscimarra, dissenting). The *ADT, LLC* majority’s
28 decision to allow the competing unions to continue to represent subsets of the one appropriate
bargaining unit is at odds with the policy and intent of the Act and contrary to long-established
Board precedent.

1 month, shortly before the next CBA — with ICEP — was set to expire in September 2018. *See*
2 *Peerless Publications, Inc.*, 190 NLRB 658 (1971) (an appropriate time to file a UC petition is
3 shortly before expiration of the current CBA). Thereafter, AMR filed the present RM petition for
4 an election in the IFT unit *before* a new contract with ICEP was agreed upon (negotiations are
5 ongoing). Importantly, the expired CBA with ICEP and current ICEP proposals purport to
6 represent at least some of the employees in the other bargaining units represented by AFSCME
7 and IAFF. (Bd.’s Exh. 6, Exh. D.) Moreover, the fact that IAFF’s CBA is about to expire further
8 highlights the timeliness of AMR’s RM petition.
9

10 Indeed, Board precedent squarely forecloses the Regional Director’s position. In *Martin*
11 *Marietta Co.*, 270 NLRB 821 (1984), the Board entertained an RM petition despite the pendency
12 of the unions’ CBAs, specifically noting that they “would not bar an election.” 270 NLRB at 822
13 (citing *Massachusetts Elec. Co.*, 248 NLRB 155, 157 (1980) (“Accordingly, the current contracts
14 between the Employer and the Unions are not a bar to the holding of elections in the units
15 described below.”)). Similarly, a pending CBA is not a bar to a UC petition where the
16 classifications at issue have undergone recent substantial changes. *See Holly Hill Fruit Prods.*,
17 256 NLRB 209 n.1 (1981) (“The Board has held that a unit may be clarified in the middle of a
18 contract term where, as here, the procedure is invoked to determine the unit placement of
19 employees performing a new operation.”); *Boston Cutting Die Co.*, 258 NLRB 771, 772 n.2
20 (1981); *Cincinnati Bell, Inc.*, 227 NLRB 1930, 1930 (1977).
21

22 The Regional Director also suggested that AMR’s petitions were untimely because AMR
23 failed to raise issues relating to the consolidation and reorganization during contract negotiations
24 with AFSCME in late 2017. This argument fails for two reasons. First, the consolidation and
25 reorganization were an ongoing process over the course of several years, which was not
26 formalized and effective until June 2018, months after the AFSCME contract was signed;
27 specifically, in the spring of 2018, AMR was still actively in the process of restructuring its
28 managerial and supervisory roles, a process that was not complete until the summer of 2018.

1 (Jaramillo, Tr. 593:17–596:20, 597:6–8.) Second, and more importantly, even if the consolidation
 2 had been ripe for discussion during negotiations with AFSCME, it does not matter anyway
 3 because there is nothing that AMR could have negotiated about with AFSCME alone to correct
 4 the problems posed by the three bargaining units.¹⁶ In other words, AMR and AFSCME could not
 5 have bargained about the appropriate units for Medical Personnel represented by IAFF and ICEP.
 6 The *only* way to achieve this result was through a UC petition or an RM petition filed after the
 7 reorganization was completed.

8
 9 The Board, by acknowledging that situations may change during the course of a contract,
 10 has rightly declined to hamstring employers by forcing them to wait out the term of a contract (or
 11 all contracts) to seek an election after it has consolidated its operations. This is exactly one of
 12 those situations. As a result of company acquisitions, the consolidation of operations and
 13 management, and a reorganization AMR’s businesses, the three current bargaining units cry out
 14 for clarification. Accordingly, AMR’s petitions were timely filed.¹⁷

15
 16 **V. CONCLUSION**

17
 18 As it made clear before the Regional Director, AMR has not filed these petitions out of any
 19 anti-union bias or with any agenda towards a particular union. AMR is completely neutral as to
 20 who the bargaining representatives are, as long as some modicum of rationality is imposed on the
 21 current mess so that it can efficiently and consistently use its personnel to provide the best care to
 22
 23

24 ¹⁶ Indeed, AMR would have had to “stall” its negotiations with AFSCME until the other
 25 two contracts had expired, and draw an 8(a)(5) charge, or file premature petitions. Instead, it filed
 26 its UC petition shortly after the most recent consolidation efforts, and prior to the expiration of the
 ICEP contract.

27 ¹⁷ Even if the petitions were untimely (which they were not), the proper procedure is for
 28 the Board to dismiss *without prejudice* to filing another petition at an appropriate time. *Consol.*
Papers, Inc. v. NLRB, 670 F.2d 754, 757 (7th Cir. 1982).

1 its patients.¹⁸

2
3 For the foregoing reasons, AMR requests that the Board grant its Request for Review and,
4 ultimately, its UC petition. Specifically, AMR requests two bargaining units — EMS and IFT —
5 based on the above-described overwhelming communities of interest they share. AMR proposes
6 that IAFF represent the EMS Medical Personnel based on the fact that IAFF represents 305 of 420
7 EMS Medical Personnel (about 73%). AMR further proposes that AFSCME represent the Station
8 1 and 3 IFT Medical Personnel (Mesa and Peoria) because it currently represents more IFT
9 Medical Personnel than either of the other unions.

10
11 If, however, the Board does not conclude that AFSCME should be the bargaining
12 representative of the Station 1 and 3 IFT unit without an election, AMR requests through its RM
13 petition that the Board consolidate for election the three overlapping and unmanageable bargaining
14 units of Station 1 and 3 IFT employees into one distinct IFT bargaining unit and conduct an
15 election to determine which union the IFT employees want to be their certified bargaining
16 representative.

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25 ¹⁸ As was acknowledged by Kevin Burkhart, President of IAFF Local I-60, any changes to
26 employee terms and conditions of employment, including benefits, that result from unit
27 clarification or consolidation and election will be subject to good faith negotiations between AMR
28 and the proper bargaining representative. (Burkhart, Tr. 798:3–799:19.) The unions’ contention
that any change in the bargaining units will necessarily result in decreased benefits or adverse
impacts on seniority to unit members is totally — and admittedly — speculative. (Weinberg, Tr.
894:25–896:2, 913:21–914:11; Garn, Tr. 982:19–983:13.)

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DATED: April 17, 2019

PAYNE & FEARS LLP

By: 

Daniel F. Fears

Attorneys for PETITIONER AMR

Request for Review (UC, RM Petition).docx

Exhibit “A”

**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,
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

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 though 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.

1 **CERTIFICATE OF SERVICE**

2 **AMR of Maricopa, LLC and ICEP/AFSCME/IAFF**
3 **Case No. 28-RM-234875**
4 **Case No. 28-UC-223664**
5 **National Labor Relations Board**

6 **STATE OF CALIFORNIA, COUNTY OF ORANGE**

7 At the time of service, I was over 18 years of age and not a party to this action. I am
8 employed in the County of Orange, State of California. My business address is 4 Park Plaza, Suite
9 1100, Irvine, CA 92614.

10 On April 17, 2019, I served true copies of the following document(s) described as on the
11 interested parties in this action as follows:

12 **SEE ATTACHED SERVICE LIST**

13 **BY MAIL:** I enclosed the document(s) in a sealed envelope or package addressed to the
14 persons at the addresses listed in the Service List and placed the envelope for collection and
15 mailing, following our ordinary business practices. I am readily familiar with Payne &
16 Fears LLP's practice for collecting and processing correspondence for mailing. On the same day
17 that correspondence is placed for collection and mailing, it is deposited in the ordinary course of
18 business with the United States Postal Service, in a sealed envelope with postage fully prepaid.

19 **BY E-MAIL OR ELECTRONIC TRANSMISSION:** I caused a copy of the
20 document(s) to be sent from e-mail address tconley@paynefears.com to the persons at the e-mail
21 addresses listed in the Service List. I did not receive, within a reasonable time after the
22 transmission, any electronic message or other indication that the transmission was unsuccessful.

23 I declare under penalty of perjury under the laws of the State of California that the
24 foregoing is true and correct.

25 Executed on April 17, 2019, at Irvine, California.

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28


Jennifer Hoke

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1 **AMR of Maricopa, LLC and ICEP/AFSCME/IAFF**
2 **Case No. 28-RM-234875**
3 **Case No. 28-UC-223664**
4 **National Labor Relations Board**

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