

1 UNITED STATES OF AMERICA
2 BEFORE THE NATIONAL LABOR RELATIONS BOARD
3 WASHINGTON, D.C.
4

5 AMR OF MARICOPA LLC,

6 Petitioner,

7 and

8 INDEPENDENT CERTIFIED EMERGENCY
9 PROFESSIONALS, NAGE/SEIU, LOCAL 1,
10 Union,

and

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

Union,

14 and

15 INTERNATIONAL ASSOCIATION OF
16 FIRE FIGHTERS LOCAL INDUSTRIAL 60

17 Union.

CASE NO. 28-UC-223664

**AFSCME Local 2960's Opposition
to Petitioners' Request for Review**

CASE NO. 28-RM-234875

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

22 Petitioner,

23 and

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

26 Union,

27 and

28 AMERICAN FEDERATION OF STATE,

1 COUNTY AND MUNICIPAL EMPLOYEE,
2 LOCAL 2960, AFL-CIO

3 Union,

4 and

5 INTERNATIONAL ASSOCIATION OF
6 FIRE FIGHTERS LOCAL INDUSTRIAL 60

7 Union

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9 The Petitioners fail to establish any grounds for overturning the Regional
10 Director’s well-reasoned decision, much less the “compelling reasons” required under 29
11 C.F.R. § 102.67(d).¹ AMR asserted that the basis for their petitions, a purported
12 consolidation of operations and certificates of necessity mandated by the Arizona
13 Department of Health Services, gave rise to grounds for an accretion or questions
14 concerning representation. The Regional Director found the facts did not support AMR’s
15 assertions and dismissed the UC and RM petitions. Nonetheless, without challenging the
16 Regional Director’s factual findings on these issues, AMR continues to urge that their
17 Petitions have merit. *See* AMR Request for Review (hereafter “RFR”), at pp. 6-7. There
18 is nothing erroneous about the Regional Director’s factual or legal findings.
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21 The problems AMR complains of are problems of its own making. AMR companies
22 agreed to three separate contracts with three separate bargaining units, including one
23 effective January 1, 2018 (well after AMR’s alleged changes were underway) through
24 March 31, 2022. If it felt the bargaining unit composition was improper or operational
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28 ¹ Petitioners are collectively referred to as “AMR” herein unless the context indicates otherwise.

1 needs had changed, AMR could have and should have brought those issues to the table. It
2 never did. There was no requirement for AMR to ask for and enter into a four-year contract
3 when it clearly knew all the circumstances they attempted to raise in these petitions. After
4 five days of testimony, introduction of more than 30 exhibits and consideration of the
5 parties' post-hearing briefs the Regional Director correctly concluded that AMR had not
6 met their burden on the petitions and that in any event, there is a contract bar. The Regional
7 Director held:
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10 [B]ased on the record and relevant legal precedent, I find that the alleged
11 consolidation of operations cited as the basis for the petitions does not
12 warrant the requested accretion or raise a question concerning representation
13 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.

14 Regional Director's Decision and Order dated April 3, 2019 ("Order"), at p. 3.

15 **FACTS**

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17 The Board will search in vain in AMR's brief for any facts AMR contends were
18 erroneous or raised a substantial contested issue. While effectively conceding the
19 correctness of the Regional Director's factual findings, AMR claims that the bargaining
20 units in this case are somehow "arbitrary." Far from being arbitrary, there are three separate
21 and distinct entity employers operating with historically separate bargaining units as
22 follows:
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- 24 1) SWA (Southwest Ambulance), which is the "Employer" under the recognition
25 clause of the May 28, 2016 - June 30, 2019 collective bargaining agreement with IAFF
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Local I-60;²

2) PMT (Professional Medical Transport), which is the “Employer” under the recognition clause of the September 5, 2015 - September 4, 2018 collective bargaining agreement with ICEP and which is doing business under a Lifeline brand logo³; and

3) AMR of Maricopa, LLC, which is the “Employer” under the recognition clause of the January 1, 2018 - March 31, 2022 collective bargaining agreement with AFSCME Local 2960.⁴

Order, at pp. 3-4.

As set forth in the Order, despite apparent ownership by a holding company (“Holdco”), there is no dispute that the three employers (i.e., SWA, PMT and AMR of Maricopa) for the three bargaining units continue to have separate identities and operate separately in numerous relevant respects. *See, e.g.*, Order, at pp. 5-6; Transcript of

² IAFF Local I-60 is the Local I-60, International Association of Fire Fighters, AFL-CIO, Pet. Ex. 3, at p. 6 (“This agreement is entered into by and between SOUTHWEST AMBULANCE hereinafter referred to as the ‘EMPLOYER’ OR ‘COMPANY’ and the United Emergency Medical Professionals of Arizona, d/b/a LOCAL# I-60, INTERNATIONAL ASSOCIATION OF FIRE FIGHTERS, AFL-CIO, hereinafter referred to as the ‘UNION’... The Company recognizes the United Emergency Medical Professionals of Arizona, d/b/a International Association of Fire Fighters (IAFF) Local I-60 as the sole bargaining agent....”).

³ICEP is the Independent Certified Emergency Professionals, NAGE/SEIU, Local 1. See Pet Ex. 4, at p. 7 (“Professional Medical Transport (‘PMT’ or ‘Company’) recognizes the Union as the exclusive bargaining representatives....”).

⁴AFSCME Local 2960 is the American Federation of State, County and Municipal Employees, AFSCME, Local 2960, AFL-CIO. *See* Ex. 3, at p. 1 (“This Agreement is made and entered into by and between American Medical Response of Maricopa L.L.C., (“Employer” or “Company”) and the American Federation of State, County and Municipal Employees, AFSCME, Local 2960, AFL-CIO, (“Union”) (collectively, “the Parties”)... The Employer recognizes the EMS Workers United, AFSCME Local 2960, AFL-CIO as the sole and exclusive bargaining representative....”).

1 Proceedings (“TR”), at p. 25:18-23. For example, the three employers have separate
2 required licensing under the Centers for Medicare and Medicaid Services. Tr. p. 28:11 -
3 p. 29:1. The employees are paid separately from each of the three separate employers. *See*
4 Tr. p. 133:21 - p. 134:10; Tr. p. 878:24 - p. 879:1; ICEP Ex. 1. The three separate
5 employers also have their own tax ID numbers and different business identification
6 numbers. Tr. p. 134:7-10. Each of the employers has their own contracts with customers
7 and municipalities and each of the employers maintains separate preferred provider
8 agreements with hospitals and other facilities and continue to hold themselves out as
9 distinct businesses. Tr. p. 134:11 - p. 135:16.
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12 The Regional Director also rejected that the consolidation of required certificates
13 of necessity (“CONs”) was somehow relevant to this inquiry. All ambulance companies,
14 including the AMR of Maricopa, SWA and PMT companies at issue here, are required to
15 operate under CONs issued by Arizona Department of Health Services (“DHS”). In 2015,
16 AMR of Maricopa received its certificate and began operating. Order, at p. 3. Also in
17 2015, Holdco acquired Rural/Metro Corporation and its subsidiaries including two of
18 these employers, SWA and PMT. Order, at p. 3; Tr: 66:13-67:5. The record establishes
19 that the consolidation of the certificates was the result of DHS’s concern about the
20 financial viability of SWA and PMT given that the predecessor had been in bankruptcy.
21 *Id.* It had nothing to do with the integration or changes in the operations of the employers
22 vis a vis the employees. *Id. See* Order, at pp. 5-6. The AMR of Maricopa and SWA
23 certificates were consolidated in January 2018. Even after the consolidation of two of the
24 three certificates, PMT still operates under its own certificates. Order, at p. 5.
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1 The process for obtaining the consolidated certificates was well under way during
2 the bargaining between AFSCME Local 2960 and AMR of Maricopa and was completed
3 before AMR executed a four-year contract with AFSCME Local 2960. Contrary to
4 AMR’s arguments at the hearing, the evidence showed nothing changed in the “day to
5 day” operations as a result of the consolidation of the certificates, Order pp. 5-6; Tr. p.
6 66:9-11. The bargaining units for the various entities continue to operate separately and
7 the employees continue in the same jobs and under the same supervision as before the
8 consolidation of the certificates and purported consolidations of operations. *See, e.g.*,
9 Order, at pp. 20-22.

12 Virtually all of the other evidence offered by AMR at the hearing in support of its
13 argument that there had been recent changes in operations, like the consolidation of
14 CONS, predated AMR of Maricopa’s CBA with AFSCME Local 2960 and did not
15 significantly change the identities of the companies or bargaining units. For example,
16 Petitioners contend there were changes in management structure. RFR, at p. 7. However,
17 they do not challenge the Regional Director’s factual finding that “There have been no
18 changes to the supervisory hierarchy since about February 26, 2018 and no substantive
19 changes to the location and the manner in which the bargaining unit employees work.”
20 Order, at p. 15 *See also* Tr. p. 311:8-14 - p. 313:13. By way of further example, there was
21 no evidence offered regarding temporary interchange among the three existing bargaining
22 units. Order, at p. 16. To the contrary, the evidence conclusive established that there had
23 been no interchanges. *Id.* Further, on a daily basis, “EMS employees perform IFT work,
24 and vice versa.” *Id.* p. 16.

1 **The Regional Director Correctly Found a Contract Bar to the Petitions**

2 AMR agrees that “[t]he law is well settled that an employer may not change the
3 terms and conditions of employment of represented employees without providing their
4 representative with prior notice and an opportunity to bargain over such changes.” *Naaco*
5 *Material Handling Grp.*, 359 NLRB 1192, 1199 (2013) (citing *NLRB v. Katz*, 369 U.S.
6 736, 747 (1962)) (RFR, at pp. 13-14). However, AMR seeks to violate this bedrock
7 principle by upending the collective bargaining agreements they negotiated and agreed to.
8 Board precedent does not permit such a result.
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11 Contrary to AMR’s arguments, the Regional Director’s finding of a contract bar is
12 entirely consistent with Board precedent and the facts of this case. AFSCME Local 2960
13 and AMR of Maricopa entered into a collective bargaining agreement effective January 1,
14 2018 to March 31, 2022. There is no dispute that prior to agreeing to a four- year contract
15 with AFSCME Local 2960, the employer never raised its claim that AFSCME Local
16 2960’s bargaining unit should be dismantled or consolidated with another unit. Order, at p.
17 3.⁵
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20 The Regional Director correctly held, in line with decades of Board precedent, that
21 the petitions were barred by the existing collective bargaining agreements. The Regional
22 Director explained his decision as follows:

23 First, the UC petition was filed during the terms of all three collective-
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25 ⁵ SWA’s collective bargaining agreement with IAFF Local I-60 is effective from
26 May 28, 2016 through June 30, 2019. Order, at p. 4. PMT’s collective bargaining
27 agreement with ICEP is effective September 5, 2015 to September 4, 2018. *Id.* ICEP and
28 PMT have been in negotiations since September 2018 for a successor collective bargaining
agreement. *Id.*

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

17 The Regional Director's decision is in line with Board precedent that has held repeatedly
18 that "[a]n employer cannot file a petition while a contract to which it is a party is in effect."
19 *In Re Shaws Supermarkets, Inc.*, 350 NLRB 585, 588 (2007). The Board has explained the
20 contract bar rule as follows:

21 [A] union's acceptance of an employer's outstanding contract offer precludes
22 the employer from raising a good-faith doubt of the union's majority status
23 based on events occurring *after* acceptance. ...This rule is based on the fact
24 that before or at the time the contract was formed no one had questioned the
25 majority status of the union and the consequent validity of the agreement. As
26 the Supreme Court reasoned in *Fall River*, this rule promotes industrial peace
27 and labor relations stability by enabling a union to concentrate on obtaining
28 and fairly administering its collective-bargaining agreements without the
concern that, absent immediate results, it will lose majority support and be
decertified.

Auciello Iron Works, Inc., 317 NLRB 364, 368 (1995) (citations omitted).

Although, AMR attempts to argue without any support (as they did at the hearing
and to the Regional Director in their written closing argument) that it is somehow "absurd"
to expect AMR to live up to the four-year bargaining agreement it freely negotiated, this

1 argument lacks any factual or legal support. No one forced on AMR any particular terms
2 and conditions of employment nor required a specific contract term. Nothing prevented
3 AMR from raising or preserving its rights to raise and negotiate merger and consolidation
4 issues if it felt its ongoing reorganization efforts warranted changes in the bargaining units.
5 For example, AMR could have negotiated a provision for a contract re-opener at any time,
6 including when the other two collective bargaining agreements expired. AMR also could
7 have negotiated an agreement with AFSCME Local 2960 that expired at or close to the
8 time when the other two agreements expired. However, it was AMR that requested and
9 obtained a four-year collective bargaining agreement with AFSCME Local 2960 and it was
10 AMR that signed that agreement in February 2018. In fact, during negotiations, AMR
11 explained to AFSCME Local 2960 that it wanted the four-year term because it would make
12 it easier for AMR to negotiate with the other two bargaining units. Tr. p. 855:6-16.

16 As the Regional Director discussed in the Order, AMR also could have preserved
17 the issue in its collective bargaining negotiations but did nothing of the kind:

18 the Board recognizes a limited exception in cases where parties cannot agree
19 on whether to include or exclude a disputed classification “but do not wish
20 to press the issue at the expense of reaching an agreement.” *St. Francis
21 Hospital*, above at 951. In such a case, the Board will process a unit
22 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.

23 Order, at p. 23 (citing and quoting *St. Francis Hosp.*, 282 NLRB 950, 951 (1987)). It is
24 undisputed that AMR never raised or preserved any issue concerning merger or
25 consolidation of bargaining units even though changes in operations and consolidation they
26 rely on began long before the AFSCME Local 2960 collective bargaining agreement was
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1 executed and both its RM and UC petitions “were filed well outside the outer limits the
2 Board has previously accepted.” Order, at p. 24.

3 **The Regional Director Correctly Applied Board Precedent to the Facts**

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5 It is Defendants’ “heavy burden” to show that community of interest criteria and
6 changed circumstances somehow justified their petitions. The Regional Director reviewed
7 the relevant case law cited by the parties and correctly determined that based on the facts
8 and law, AMR had not shown that their purported changes and consolidation warranted
9 merger or consolidation of historically separate bargaining units through accretion or
10 through an RM Petition. The Regional Director determined that:

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12 In this case, each current bargaining unit maintains a separate group identity
13 and the employees in the three units do not share an overwhelming
14 community of interest. Certain factors support finding an accretion in this
15 case. Specifically, centralization of human resources control, centralization
16 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.

17 Order, at p. 20. Contrary to AMR’s assertion, the long list of factors amply supported the
18 Regional Director’s conclusion. See Order, at pp. 20-22.

19
20 The Board repeatedly holds that where historically separate bargaining units retain
21 their separate identities and continue to constitute appropriate bargaining units, the Board
22 will continue to find separate representation appropriate, even if it would not have found
23 separate units appropriate in the context of a new certification. *See, e.g., Trident Seafoods,*
24 *Inc.*, 318 NLRB 738 (1995) (citations omitted). *See also ADT, LLC v. Commc’n Workers*
25 *of Am., Local 6215*, 365 NLRB No. 77 (2017), where the petitioner did not meet its heavy
26 burden to show that the certified bargaining units are no longer appropriate.
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1 AMR makes the unsupported argument that the Regional Director should somehow
2 have distinguished – and then disregarded – unit differences and community of interest
3 criteria that result from negotiated collective bargaining agreements. RFR, at p. 2.
4 However, if there are differences that are embodied in collective bargaining agreements,
5 those are differences of AMR’s own making. AMR’s subsidiary companies freely entered
6 into those agreements, with the latest one signed in February 2018 with an effective date
7 of January 1, 2018 and expiring on March 31, 2022. Although AMR relies heavily on the
8 exception to the contract bar that was raised in *Martin Marietta*, the Regional Director
9 found the facts of that case distinguishable. In making the argument that community of
10 interest criteria that stem from different collective bargaining agreements should be
11 disregarded or are somehow irrelevant, AMR overlooks the fact that *Martin Marietta*
12 discussed traditional community of interest criteria in the context of multiple bargaining
13 units with separate collective bargaining agreements without distinguishing which factors
14 were the result of negotiations and which, if any, were not. Unlike in *Martin Marietta*, here
15 the Regional Director found numerous differences among the bargaining units including,
16 *inter alia*: 1) different working conditions; 2) different seniority systems; 3) different
17 wages; 4) different shift bidding processes, 5) different benefits; and 6) different grievance
18 mechanisms. Compare Order with *Martin Marietta Co.*, 270 NLRB 821, 822 (1984).
19 Nothing even remotely similar to the situation in *Martin Marietta* where the Board found
20 “changed circumstances have *obliterated* the previous separate identifies of the two units”
21 exists here. *See id.* (emphasis supplied). The Regional Director correctly considered *Martin*
22 *Marietta* and similar cases in rejecting AMR’s Petitions. Order pp. 18-19. The fact that the
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1 Regional Director found the facts here dictated a different result than the one in *Martin*
2 *Marietta* does not constitute error and does not warrant granting AMR's request for
3 review.⁶
4

5 CONCLUSION

6 Because there are no compelling grounds for review of the Regional Director's
7 Order within the meaning of 29 C.F.R. § 102.67(d), AFSCME Local 2960 respectfully
8 requests that AMR's request for review be denied.
9

10 Respectfully submitted this 24th day of April, 2019.

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16 ⁶ In criticizing the Regional Director's determination for purportedly considering
17 community of interest criteria that were different for the different bargaining units
18 because they were codified in provisions of the three different collective bargaining
19 agreements, AMR relies solely on an inapposite case that does not involve multiple
20 unions with separate bargaining history. *Oxford Chemicals*, 286 NLRB 187 (1987) (cited
21 by AMR at pp. 2,13. 14). *Oxford Chemicals*, a case involving the placement of three
22 employees and one bargaining unit, the Board applied the "dual function employee" rules
23 to a single employee who, when hired, was not part of any bargaining unit and did not
24 initially do bargaining unit work. After one of the two bargaining unit employees retired,
25 a significant amount of bargaining unit work was subsequently shifted to the non-unit
26 employee and the Board found that, based on the bargaining unit work that was shifted to
27 that employee, he belonged in the bargaining unit, notwithstanding the fact that certain
28 terms and conditions of employment had been negotiated by the union. A contrary
decision would have deprived both employees of a legal right to Board certification. See,
e.g., *Int'l Transp. Serv., Inc. v. N.L.R.B.*, 449 F.3d 160, 164 (D.C. Cir. 2006) ("The Board
will not certify single-employee bargaining units because the Act does not empower it to
do so."). The facts here are not even remotely the same and the legal principles and Board
precedent is different.

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CERTIFICATE OF FILING AND SERVICE

I hereby certify that on April 24, 2019, I electronically submitted the attached to the National Labor Relations Board and the Regional Director for filing with copies emailed to the following:

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