UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

DOCKETING STATEMENT

Administrative Agency Review/Enforcement Proceedings

1. DOCKET NO.: 19-2092 2. DATE DOCKETED: 5/13/2019

3. CASE NAME (Lead Parties Only)

National Labor Relations Board
Petitioner
v.

GTS Ambulance Transportation, et al
Respondent

4. TYPE OF CASE: Review ☐ Enforcement ☑

5. CASE INFORMATION:

a. Identify agency whose order is to be reviewed: National Labor Relations Board

b. Give agency docket or docket number(s): 22-CA-135312

c. Give date(s) of order(s): February 5, 2019

d. Is a request for rehearing or reconsideration pending at the agency? ☐ Yes ☑ No

e. Are any other cases involving the same underlying agency order pending in this Court or in any other court?
☐ Yes ☑ No

If Yes, identify name(s), docket number(s), and court(s):

f. Are any other cases, to counsel's knowledge, pending before the agency, this Court or the Supreme Court which involve substantially the same issues as the instant case presents? ☐ Yes ☑ No

If Yes, give name(s) of these cases and identify court/agency:

Signature: /s/ David Habenstreit Date: May 20, 2019

Name of Counsel or Pro Se Litigant (Print) David Habenstreit

Firm: National Labor Relations Board Phone: (202) 273-2960

Address: 1015 Half St., S.E., Washington, D.C. 20570

Name of Party Represented: National Labor Relations Board

ATTACH A CERTIFICATE OF SERVICE

Note: If counsel for any other party believes that the information submitted is inaccurate or incomplete, counsel may so advise the Clerk within 10 days by letter specifically referring to the challenged statement.

NOTICE: This opinion is subject to formal revision before publication in the bound volumes of NLRB decisions. Readers are requested to notify the Executive Secretary, National Labor Relations Board, Washington, D.C. 20570, of any typographical or other formal errors so that corrections can be included in the bound volumes.

GTS Ambulance Transportation, LLC and ROL Ambulance, LLC, as single employers and/or alter egos *and* Med-Life M&M. Case 22–CA–135312

February 5, 2019

DECISION AND ORDER

BY MEMBERS MCFERRAN, KAPLAN, AND EMANUEL

The General Counsel seeks a default judgment in this case on the ground that the Respondent has failed to file an answer to the complaint. Upon a charge and amended charges filed by Med-Life M&M (the Union) on various dates between August 25, 2014, and May 21, 2015, the General Counsel issued a complaint on June 29, 2015, alleging that GTS Ambulance Transportation, LLC (Respondent GTS) and ROL Ambulance, LLC (Respondent ROL), as single employers and/or alter egos (collectively the Respondent), violated Section 8(a)(5), (3), and (1) of the National Labor Relations Act. The Respondent failed to file an answer.

On July 30, 2015, the General Counsel filed a Motion for Default Judgment with the Board. Thereafter, on August 5, 2015, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Default Judgment

Section 102.20 of the Board's Rules and Regulations provides that the allegations in a complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the complaint affirmatively stated that unless an answer was received by July 13, 2015, the Board may find, pursuant to a motion for default judgment, that the allegations in the complaint are true. Further, the undisputed allegations in the General Counsel's motion disclose that the Region, by letter dated July 14, 2015, notified the Respondent that unless an answer was received by July 21, 2015, a motion for default judgment would be filed. Nonetheless, the Respondent failed to file an answer.[1]

Accordingly, in the absence of good cause being shown for the failure to file an answer, we deem the allegations of the complaint to be admitted as true, and we grant the General Counsel's Motion for Default Judgment in part. As discussed below, we deny the motion with respect to the conduct described in paragraphs 11(i), (j), (l), and (m) below, we sever and remand the corresponding complaint allegations in paragraphs 17(k), (l), (o), and (p) to the Region for further appropriate action, and we grant the motion with respect to the remaining complaint allegations.

Although the complaint concludes that the conduct described in paragraphs 11(i), (j), (l), and (m) below constitutes a violation of Section 8(a)(3), the complaint does not allege sufficient facts to determine whether the conduct violated the Act. Specifically, the complaint fails to allege that the Respondent engaged in such conduct because its employees joined or assisted the Union or to discourage them from engaging in those activities. Accordingly, we deny the motion with respect to those allegations. However, this denial is without prejudice, and nothing herein precludes the General Counsel from amending the complaint to address this pleading deficiency. In addition, a new hearing is not required if, in the event of an amendment to the complaint, the Respondent again fails to answer, thereby admitting evidence that would permit the Board to find the violations alleged and order an appropriate remedy. In such circumstances, the General Counsel may renew the motion for default judgment with respect to the amended complaint allegations. See, e.g., *Cray Construction Group*, supra.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, Respondent GTS has been a limited liability company with an office and place of business in Linden, New Jersey (the GTS facility), and has been furnishing ambulance and mobility assistance vehicle (MAV) transportation services.

Since about July 2014, at which time Respondent ROL commenced its operations, and continuing to date,

[1] The motion for default judgment and attached exhibits indicate that a copy of the complaint was served by certified mail on Respondent GTS at its office in Linden, New Jersey, and tracking information provided by the United States Postal Service shows that this document was delivered on July 1, 2015. A copy of the complaint was also sent by certified mail to Respondent ROL at its office in Morris Plains, New Jersey, on June 30 and July 1, 2015, but no authorized recipient was available. The copy of the complaint was thus returned to the regional office as "unclaimed." It is well settled that a respondent's failure or refusal to accept certified mail or to provide for appropriate service cannot serve to defeat the purposes of the Act. See, e.g., *Cray Construction Group, LLC*, 341 NLRB 944, 944 fn. 5 (2004); *I.C.E. Electric, Inc.*, 339 NLRB 247, 247 fn. 2 (2003). In any event, as found herein, Respondent ROL is an alter ego of and single employer with Respondent GTS. It is well established that where two companies are alter egos and/or single employers, service on one is sufficient to constitute service on the other. See, e.g., *Somerville Construction Co.*, 338 NLRB 1178, 1178 fn. 2 (2003).

Respondent ROL has been a limited liability company with an office and place of business in Linden, New Jersey (the ROL facility), and has been furnishing ambulance transportation services.

At all material times, Respondent GTS and Respondent ROL have been affiliated business enterprises with common officers, ownership, directors, management, and supervision; have formulated and administered a common labor policy; have shared common premises and facilities; have provided services for and made sales to each other; have interchanged personnel with each other; have interrelated operations with common clients, supplies, equipment and forms; and have held themselves out to the public as a single-integrated business enterprise. At all material times, Respondent GTS and Respondent ROL have had substantially identical management, business purposes, operations, equipment, customers, and supervision, and ownership. About July 2014, Respondent ROL was established by Respondent GTS as a disguised continuation of Respondent GTS. Respondent GTS established Respondent ROL for the purpose of evading its responsibilities under the Act.

Based on the operations and conduct described above, Respondent GTS and Respondent ROL are, and have been at all material times, alter egos and a single employer within the meaning of the Act.

In conducting its operations during the 12-month period ending April 30, 2015, the Respondent derived gross revenues in excess of $250,000, and purchased and received at its Linden, New Jersey facilities goods valued in excess of $5000 directly from points outside the State of New Jersey.

We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

The Union is an organization in which employees participate, and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, and terms and conditions of employment.

We find that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

At all material times, the following individuals held the positions set forth opposite their respective names and have been supervisors of the Respondent within the meaning of Section 2(11) of the Act and agents of the Respondent within the meaning of Section 2(13) of the Act:

Roy Santos	Shareholder and Officer of Respondent GTS
Glenn Santos	Shareholder and Officer of Respondent GTS
Troy Santos	Shareholder and Officer of Respondent ROL
Tricia Solon	Respondent GTS Operations Manager & Respondent ROL Office Manager
Maria Robins	Scheduler
Ruben Martinez, Jr.	EMT Supervisor
Maloney Santianna	Dispatch Manager
Mario Milaq Payroll	Manager and Dispatcher
Mark Milaq	Dispatcher

The following employees of the Respondent (the unit) constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

> All full-time and regular part-time EMTs and MAV drivers employed by the Respondent at its Linden, New Jersey facilities, but excluding all dispatchers, clerks, maintenance mechanics and janitors, guards, managers and supervisors as defined in the Act.

On August 7, 2014, a majority of the unit designated the Union as their exclusive collective-bargaining representative, and on August 15, 2014, the Board certified the Union as the exclusive collective-bargaining representative of the unit.[2]

At all times since August 7, 2014, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the unit.

The following events occurred, giving rise to these proceedings:

1. About June 24, 2014, the Respondent, by Roy Santos and Ruben Martinez, Jr., at an Applebee's in Linden, New Jersey, engaged in surveillance of employees' union activities.

2. About June 24, 2014, the Respondent, by Roy Santos, at the GTS facility:

a. interrogated its employees about their union sympathies;

b. by telling employees that the Union would not be able to help or do anything for them, informed its employees that it would be futile for them to select the Union as their bargaining representative; and

[2] We correct the typographical errors in the complaint stating that these events took place in 2015, rather than in 2014. In addition, we correct the typographical error in the complaint stating that the Union requested information on September 13, 2015.

c. promised its employees improved pay if the employees rejected the Union as their bargaining representative.

3. About early July 2014, the Respondent, by Roy Santos, at the GTS facility:

a. interrogated its employees about their union sympathies; and

b. by telling employees that the Union would not be able to help and that the Respondent can discharge whoever it wants, informed its employees that it would be futile for them to select the Union as their bargaining representative.

4. About July 13, 2014, the Respondent, by Roy Santos, at the GTS facility:

a. threatened its employees with closure of the facility and job loss if they selected the Union as their bargaining representative;

b. promised its employees to pay their medical bills, hold Christmas parties, and post monthly schedules if the employees rejected the Union as their bargaining representative;

c. by soliciting employee complaints and grievances, promised its employees increased benefits and improved terms and conditions of employment if the employees rejected the Union as their bargaining representative; and

d. promised to promote employees if they rejected the Union as their bargaining representative.

5. About July 14, 2014, the Respondent, by Roy Santos, at the GTS facility:

a. interrogated its employees about their union sympathies and activities;

b. by impliedly telling employees that management was aware of their union activities and sympathies, created an impression among its employees that their union activities were under surveillance by the Respondent; and

c. by telling employees that that the Union would not be able to help or do anything for them, informed its employees that it would be futile for employees to select the Union as their bargaining representative.

6. About late July 2014, the Respondent, by Roy Santos, at the GTS facility:

a. threatened its employees with closure of the facility and job loss if they selected the Union as their bargaining representative;

b. interrogated its employees about their union sympathies; and

(c) threatened its employees with stricter work rules and harsher discipline, including discharge, if they selected the Union as their bargaining representative.

7. About early August 2014, the Respondent, by Roy Santos, at the GTS facility:

(a) by impliedly telling employees that management was aware of their union sympathies, created an impression among its employees that their union activities were under surveillance by the Respondent;

(b) by telling employees that the Union would not be able to stop an employee from being disciplined or discharged, informed its employees that it would be futile for them to select the Union as their bargaining representative; and

(c) promised its employees better pay and paid time-off if they rejected the Union as their bargaining representative.

8. About late July 2014, the Respondent, by Tricia Solon, interrogated its employees about their union sympathies.

9. About late February 2015, the Respondent, by Glenn Santos, threatened not to recall employees to work because of their union sympathies.

10. About July 2014, the Respondent assigned work previously performed by its employees to employees of Respondent ROL because its employees joined and assisted the Union and engaged in concerted activities, and to discourage them from engaging in these activities.

11. About the dates listed below, the Respondent took the following adverse employment actions against the employees named below.

a. July 20, 2014: discharged Janita Dunn;

b. July 28, 2014: discharged Jamal Woltz;

c. July 30, 2014: issued a written warning to Jhon Jaramillo;

d. August 2014: reduced work hours of Jhon Jaramillo and Ian Henry;

e. August 14, 2014: discharged Arslan Mobarak;

f. August 15, 2014: issued a written warning to Doug Gelsleichter, and demoted Celia Valente from Driver to Tech;

g. August 19, 2014: discharged Ian Henry;

h. August 22, 2014: issued written warnings and suspension to Fara Gonzalez;

i. September 5, 2014: issued a final warning to Fara Gonzalez;

j. September 10, 2014: issued a written warning to Sherman Francis;

k. September 24, 2014: suspended Sherman Francis and Philip Pais;

l. October 3, 2014: issued a written warning to Fara Gonzalez;

m. November 29, 2014: issued a final warning to Mathew Lee;

n. December 1, 2014: discharged Jonathan Escobar;

o. December 2, 2014: discharged Philip Pais;

p. December 8, 2014: discharged Mathew Lee.

12. The Respondent engaged in the conduct described in paragraphs 11(a)–11(h), 11(k), and 11(n)–11(p), because its employees joined and assisted the Union and engaged in concerted activities, and to discourage them from engaging in these activities.

13. The subjects set forth above in paragraphs 11(c)–11(p) relate to wages, hours, and other terms and conditions of employment of the unit and are mandatory subjects for purposes of collective bargaining.

14. The Respondent engaged in the conduct described in paragraphs 11(c)–11(p) without prior notice to the Union and without affording the Union an opportunity to bargain with the Respondent with respect to this conduct.

15. About August 2014, the Respondent established a new policy of posting monthly schedules instead of calling employees a day in advance to inform them of their shifts.

16. About December 12, 2014, the Respondent imposed a more onerous attendance policy and issued discipline to employees pursuant to that policy.

17. About February 1, 2015, the Respondent terminated the medical benefits of unit employees.

18. About January 19, 2015, the Respondent laid off unit employees, including Celia Valente.

19. Since about January 19, 2015, the Respondent has recalled some employees to work and has refused to recall other employees, including Jhon Jaramillo, Fara Gonzalez, Alexander Goncalvez, Celia Valente, and Melvin Sanchez.

20. The Respondent engaged in the conduct described in paragraphs 15, 16, 18, and 19 because its employees joined and assisted the Union and engaged in concerted activities, and to discourage them from engaging in these activities.

21. The subjects described in paragraphs 16–19 relate to wages, hours, and other terms and conditions of employment of the unit and are mandatory subjects for the purposes of collective bargaining.

22. The Respondent engaged in the conduct described in paragraphs 16–17 and 19 without prior notice to the Union and without affording the Union an opportunity to bargain with the Respondent with respect to this conduct; and the Respondent engaged in the conduct described in paragraph 18 without prior notice to the Union and without affording the Union an opportunity to bargain with the Respondent with respect to the decision and effects of this conduct.

23. From October 9 to December 11, 2014, the Respondent and the Union met for the purposes of collective bargaining. At all material times, the Union has been the unit's collective-bargaining agent during these negotiations.

24. Since about December 11, 2014, the Respondent has refused to meet and bargain with the Union regarding a collective-bargaining agreement and other mandatory subjects of bargaining.

25. About the dates listed below, the Union engaged in the following conduct.

a. Since about September 13, 2014, the Union has requested in writing that the Respondent furnish the Union with the following information: contracts with nursing facilities, patient applications, patient care reports, daily log sheets, and billing records.

b. Since about September 23, 2014, the Union has requested in writing that the Respondent furnish the Union with employees' personnel files.

c. Since about October 10, 2014, the Union, in writing, has requested that the Respondent furnish the Union the information set forth in the copy of the email attached to the complaint as Exhibit A.[3]

d. Since about February 16, 2015, the Union, in writing, has requested that the Respondent furnish the Union with the information set forth in the copy of the email attached to the complaint as Exhibit B.[4]

26. The information requested by the Union, as described above, is necessary for, and relevant to, the Union's performance of its duties as the exclusive collective-bargaining representative of the unit.

27. About the dates listed below, the Respondent engaged in the following conduct.

a. Since about September 17, 2014, the Respondent, in writing, by attorney Cynthia Ringell, failed and refused to furnish the Union with the information it requested on September 13, 2014, described in paragraph 25(a).

b. Since about September 23, 2014, the Respondent has failed and refused to furnish the Union with the

[3] The Union's October 10, 2014 request for information is incorporated into this Decision and Order as "Appendix B."

[4] The Union's February 16, 2015 request for information is incorporated into this Decision and Order as "Appendix C."

information it requested on September 23, 2014, described in paragraph 25(b).

c. Since about October 10, 2014, the Respondent, in writing, by attorney Cynthia Ringell, has failed and refused to furnish the Union with the information it requested on October 10, 2014, described in paragraph 25(c) and set forth in Appendix B.

d. Since about February 16, 2015, the Respondent has failed and refused to furnish the Union with the information it requested on February 16, 2015, described in paragraph 25(d) and set forth in Appendix C.

CONCLUSIONS OF LAW

1. By the conduct described in paragraphs 1–9, the Respondent has been interfering with, restraining, and coercing employees in the exercise of the rights guaranteed in Section 7 of the Act in violation of Section 8(a)(1) of the Act.

2. By the conduct described in paragraphs 10, 11(a)–(h), (k), (n)–(p), 15–16, and 18–19, the Respondent has been discriminating in regard to the hire or tenure or terms or conditions of employment of its employees, thereby discouraging membership in a labor organization in violation of Section 8(a)(3) and (1) of the Act.[5]

3. By the conduct described in paragraphs 11(d), 16–19, 24 and 27(a)– (d), the Respondent has been failing and refusing to bargain collectively and in good faith with the exclusive collective-bargaining representative of its employees in violation of Section 8(a)(5) and (1) of the Act.[6]

4. The Respondent's unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent has violated Section 8(a)(3) and (1) of the Act by assigning work previously performed by its employees to Respondent ROL's employees; by suspending Fara Gonzalez, Sherman Francis, and Philip Pais; and by discharging Janita Dunn, Jamal Woltz, Arslan Mobarak, Ian Henry, Jonathan Escobar, Philip Pais, and Mathew Lee; and violated Section 8(a)(5), (3), and (1) by laying off unit employees including Celia Valente; and by recalling some employees from layoff but refusing to recall other employees including Jhon Jaramillo, Fara Gonzalez, Alexander Goncalvez, Celia Valente, and Melvin Sanchez, we shall order the Respondent to rescind those actions and offer those employees full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed. Further, the Respondent shall make the employees whole for any loss of earnings and other benefits suffered as a result of the discrimination against them.

Backpay shall be computed in accordance with *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest at the rate prescribed in *New Horizons*, 283 NLRB 1173 (1987), compounded daily as prescribed in *Kentucky River Medical Center*, 356 NLRB 6 (2010). In addition, we shall order the Respondent to compensate the employees for any adverse tax consequences of receiving a lump-sum backpay award, and to file with the Regional Director for Region 22, within 21 days of the date the amount of backpay is fixed, either by agreement or Board order, a report allocating the backpay awards to the appropriate calendar years for each employee. *AdvoServ of New Jersey, Inc.*, 363 NLRB No. 143 (2016).

In accordance with *King Soopers, Inc.*, 364 NLRB No. 93 (2016), we shall also order the Respondent to compensate the employees for their search-for-work and interim employment expenses, regardless of whether those

[5] As discussed above, while the complaint concludes that the Respondent's conduct in pars. 11(i), (j), (l), and (m) violates Sec. 8(a)(3), it fails to allege that the Respondent engaged in such conduct because its employees joined or assisted the Union or to discourage them from engaging in those activities. Therefore, as discussed above, we deny the motion for default judgment with respect to those allegations.

In contrast, while the complaint fails to affirmatively state the legal conclusion that the Respondent's conduct in pars. 11(g), (n), and (o) violates Sec. 8(a)(3), it does allege that the Respondent engaged in that conduct because its employees joined and assisted the Union and engaged in concerted activities, and to discourage employees from engaging in these activities. Therefore, we find that the complaint alleges sufficient facts upon which to conclude that the Respondent's conduct in pars. 11(g), (n), and (o) violates Sec. 8(a)(3).

[6] The complaint alleges that the Respondent violated Sec. 8(a)(5) by the warnings, demotion, suspensions, and discharges set forth in pars. 11(c) and (e-p). The complaint does not allege the existence of any collective-bargaining agreement requiring bargaining before taking those actions. *Alan Ritchey, Inc.*, 359 NLRB 396 (2012), held that employers have a duty to bargain before imposing discretionary discipline under certain circumstances, but that decision had been invalidated by the Supreme Court prior to the issuance of the complaint in this case. See *NLRB v. Noel Canning*, 134 S.Ct. 2550 (2014). In *Total Security Management Illinois 1, LLC*, 364 NLRB No. 106 (2016), the Board reaffirmed the rationale of the *Alan Ritchey* decision and held that discretionary discipline is a mandatory subject of bargaining, and therefore employers may not impose discretionary discipline of a serious nature without first affording the union notice and opportunity to bargain, subject to certain exceptions. However, the Board also decided to apply that holding prospectively only. Because this case was pending when *Total Security Management* issued, the holding of that decision does not apply here. Accordingly, we deny the motion for default judgment with respect to these complaint allegations. In denying the motion on this basis, we find it unnecessary to pass on the merits of the Board's decision in *Total Security Management.* Member McFerran concurs in the denial of the motion with respect to these complaint allegations.

expenses exceed interim earnings. Search-for-work and interim employment expenses shall be calculated separately from taxable net backpay, with interest at the rate prescribed in *New Horizons*, supra, compounded daily as prescribed in *Kentucky River Medical Center*, supra.

Further, the Respondent shall be required to remove from its files any references to its unlawful actions, and to notify the employees in writing that this has been done and that these actions will not be used against them in any way.

In addition, having found that the Respondent violated Section 8(a)(3) and (1) of the Act by issuing written warnings to Jhon Jaramillo, Doug Gelsleichter, and Fara Gonzalez; and by demoting Celia Valente from Driver to Tech; and violated Section 8(a)(5), (3), and (1) by reducing the work hours of Jhon Jaramillo and Ian Henry, we shall order the Respondent to rescind those actions and make the employees whole for any loss of earnings or other benefits suffered as a result of its unlawful conduct. Further, having found that the Respondent violated Section 8(a)(5), (3), and (1) of the Act by imposing a more onerous attendance policy on about December 12, 2014, and issuing discipline to employees pursuant to that policy, we shall order the Respondent to rescind the policy and any discipline issued pursuant to that policy, to restore and maintain the attendance policy as it previously existed, and to make the employees whole for any loss of earnings or other benefits suffered as a result of its unlawful conduct. Backpay shall be computed in accordance with Ogle Protection Service, 183 NLRB 682 (1970), enfd. 444 F.2d 502 (6th Cir. 1971), with interest at the rate prescribed in New Horizons, supra, compounded daily as prescribed in Kentucky River Medical Center, supra. In addition, we shall order the Respondent to compensate the employees for any adverse tax consequences of receiving a lump-sum backpay award, and to file with the Regional Director for Region 22, within 21 days of the date the amount of backpay is fixed, either by agreement or Board order, a report allocating the backpay awards to the appropriate calendar years for each employee. *AdvoServ of New Jersey, Inc.*, supra.

The Respondent shall also be required to remove from its files any references to its unlawful actions, and to notify the employees in writing that this has been done and that these actions will not be used against them in any way.

Further, having found that the Respondent violated Section 8(a)(3) and (1) of the Act by establishing a new policy of posting monthly schedules in August 2014, we shall order the Respondent, if requested by the Union, to rescind the policy.

Additionally, having found that the Respondent has violated Section 8(a)(5) and (1) of the Act by unilaterally terminating unit employees' medical benefits, we shall order the Respondent to restore and maintain the unit employees' medical benefits and to make the unit employees whole by reimbursing them for any expenses ensuing from the Respondent's unilateral changes to the medical benefits, as set forth in *Kraft Plumbing & Heating*, 252 NLRB 891, 891 fn. 2 (1980), enfd. mem. 661 F.2d 940 (9th Cir. 1981), such amounts to be computed in the manner set forth in Ogle Protection Service, supra, with interest as prescribed in *New Horizons*, supra, compounded daily as prescribed in *Kentucky River Medical Center*, supra.[7] In addition, we shall order the Respondent to compensate the employees for any adverse tax consequences of receiving a lump-sum backpay award, and to file with the Regional Director for Region 22, within 21 days of the date the amount of backpay is fixed, either by agreement or Board order, a report allocating the backpay awards to the appropriate calendar years for each employee. *AdvoServ of New Jersey, Inc.*, supra.

Further, having found that the Respondent has violated Section 8(a)(5) and (1) of the Act by failing and refusing since about December 11, 2014, to meet and bargain with the Union regarding a collective-bargaining agreement and other mandatory subjects of bargaining, we shall order the Respondent to bargain with the Union with respect to wages, hours, and other terms and conditions of employment and, if an understanding is reached, to embody the understanding in a signed agreement. In addition, having found that the Respondent violated Section 8(a)(5) and (1) of the Act by failing and refusing to furnish the Union with necessary and relevant information it requested on September 13 and 23, October 10, 2014, and February 16, 2015, we shall order the Respondent to provide the Union with the requested information.

Finally, to ensure that the employees are accorded the services of their selected bargaining agent for the period provided by law, we shall construe the initial period of the certification as beginning on the date the Respondent begins to bargain in good faith with the Union. *Mar-Jac Poultry Co.*, 136 NLRB 785 (1962); accord *Burnett Construction Co.*, 149 NLRB 1419, 1421 (1964), enfd. 350 F.2d 57 (10th Cir. 1965); *Lamar Hotel*, 140 NLRB 226, 229 (1962), enfd. 328 F.2d 600 (5th Cir. 1964), cert. denied 379 U.S. 817 (1964).

ORDER

The National Labor Relations Board orders that the Respondent, GTS Ambulance Transportation, LLC and ROL

[7] To the extent that an employee has paid premiums that have been accepted by the insurer in lieu of the Respondent's delinquent payments during the period of the delinquency, the Respondent will reimburse the employee.

Ambulance, LLC as single employers and/or alter egos, Linden, New Jersey, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Engaging in surveillance of employees' union activities.

(b) Interrogating employees about their union sympathies and activities.

(c) Informing employees that it would be futile for them to select Med-Life M&M (the Union) as their bargaining representative by telling them that the Union would not be able to help or do anything for them, that the employer can discharge whoever it wants, and that the Union would not be able to stop an employee from being disciplined or discharged.

(d) Promising employees improved pay, payment of their medical bills, Christmas parties, paid time off, and the posting of monthly schedules, if they reject the Union as their bargaining representative.

(e) Threatening employees with closure of their work facility, job loss, stricter work rules, and harsher discipline, including discharge, if they select the Union as their bargaining representative.

(f) Soliciting employee complaints and grievances, thereby impliedly promising increased benefits and improved terms and conditions of employment if the employees reject the Union as their bargaining representative.

(g) Promising to promote employees if they reject the Union as their bargaining representative.

(h) Creating the impression of surveillance among its employees by impliedly telling them that management is aware of their union activities and sympathies.

(i) Threatening not to recall employees to work because of their union sympathies.

(j) Assigning work previously performed by its employees to employees of Respondent ROL because employees joined and assisted the Union and engaged in concerted activities, and to discourage them from engaging in these activities.

(k) Discharging, laying off, refusing to recall, demoting, suspending, or issuing written warnings to employees, reducing their hours, or otherwise discriminating against any of them because they joined and assisted the Union and engaged in concerted activities, or to discourage them from engaging in these activities.

(l) Establishing a new policy of posting monthly schedules instead of calling employees a day in advance to inform them of their shifts because employees joined and assisted the Union and engaged in concerted activities, or to discourage them from engaging in these activities.

(m) Imposing a more onerous attendance policy and issuing discipline to employees pursuant to that policy because employees joined and assisted the Union and engaged in concerted activities, or to discourage them from engaging in these activities.

(n) Terminating the medical benefits of the unit employees, reducing work hours, imposing a more onerous attendance policy and issuing discipline to employees pursuant to that policy, laying off unit employees, and recalling some employees to work and refusing to recall others, without giving the Union prior notice and affording the Union an opportunity to bargain.

(o) Failing and refusing to meet and bargain collectively and in good faith with the Union as the exclusive collective-bargaining representative of employees in the bargaining unit.

(p) Failing and refusing to furnish the Union with requested information that is relevant and necessary to the Union's performance of its functions as the collective-bargaining representative of the Respondent's unit employees.

(q) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, meet and bargain with the Union as the exclusive collective-bargaining representative of the employees in the following appropriate unit concerning terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement:

> All full-time and regular part-time EMTs and MAV drivers employed by the Respondent at its Linden, New Jersey facilities, but excluding all dispatchers, clerks, maintenance mechanics and janitors, guards, managers and supervisors as defined in the Act.

(b) Within 14 days from the date of this Order, offer discharged employees Janita Dunn, Jamal Woltz, Arslan Mobarak, Ian Henry, Jonathan Escobar, Philip Pais, and Mathew Lee, and unlawfully laid-off employee Celia Valente and other unlawfully laid-off employees, including Jhon Jaramillo, Fara Gonzalez, Alexander Goncalvez, and Melvin Sanchez, full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed.

(c) Make Janita Dunn, Jamal Woltz, Arslan Mobarak, Ian Henry, Jonathan Escobar, Philip Pais, Mathew Lee, Celia Valente, Jhon Jaramillo, Fara Gonzalez, Alexander Goncalvez, Melvin Sanchez, and other unlawfully laid-off employees whole for any loss of earnings and benefits

suffered as a result of the discrimination against them, in the manner set forth in the remedy section of this decision.

(d) Within 14 days from the date of this Order, rescind the unlawful assignment of work previously performed by its employees to Respondent ROL's employees; the suspensions of Fara Gonzalez, Sherman Francis, and Philip Pais; the reduction in work hours of Jhon Jaramillo and Ian Henry; the demotion of Celia Valente; and the written warnings issued to Jhon Jaramillo, Doug Gelsleichter, and Fara Gonzalez.

(e) Make its unit employees, including suspended employees Fara Gonzalez, Sherman Francis, and Philip Pais, employees Jhon Jaramillo and Ian Henry whose hours were reduced, and demoted employee Celia Valente, whole for any loss of earnings and other benefits suffered as a result of the Respondent's unlawful conduct in the manner set forth in the remedy section of this decision.

(f) Compensate employees for the adverse tax consequences, if any, of receiving lump-sum backpay awards, and file with the Regional Director for Region 22, within 21 days of the date the amount of backpay is fixed, either by agreement or Board order, a report allocating the backpay award to the appropriate calendar year for each employee.

(g) Within 14 days from the date of this Order, remove from its files any reference to the unlawful discharges, layoffs, refusals to recall, suspensions, demotion, written warnings, reduction in work hours, and disciplines issued pursuant to the more onerous attendance policy, and within 3 days thereafter, notify the employees in writing that this has been done and that the unlawful actions will not be used against them in any way.

(h) Upon request by the Union, rescind its new policy of posting monthly schedules instead of calling employees a day in advance to inform them of their shifts.

(i) Restore and maintain the unit employees' medical benefits as they previously existed.

(j) Make the unit employees whole for any expenses resulting from the unilateral termination of their medical benefits, with interest, in the manner set forth in the remedy section of this decision.

(k) Within 14 days from the date of this Order, rescind the more onerous attendance policy and any discipline imposed on employees pursuant to the new policy, restore and maintain its attendance policy as it previously existed, and make the employees whole for any loss of earnings or other benefits suffered as a result of its unlawful conduct, in the manner set forth in the remedy section of this decision.

(l) Furnish the Union in a timely manner with the information requested by the Union on September 13 and 23 and October 10, 2014, and February 16, 2015.

(m) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(n) Within 14 days after service by the Region, post at its Linden, New Jersey facility copies of the attached notice marked "Appendix A."[8] Copies of the notice, on forms provided by the Regional Director for Region 22, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. If the Respondent has gone out of business or closed the facilities involved in this proceeding, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since June 24, 2014.

(o) Within 21 days after service by the Region, file with the Regional Director for Region 22 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. February 5, 2019

Lauren McFerran, Member

Marvin E. Kaplan, Member

[8] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

William J. Emanuel, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX A

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join or assist a union

Choose a representative to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT engage in surveillance of your union activities.

WE WILL NOT inform you that it would be futile for you to select Med-Life M&M (the Union) as your bargaining representative by telling you that the Union would not be able to help or do anything for you, that we can discharge whoever we want, and that the Union would not be able to stop you from being disciplined or discharged.

WE WILL NOT interrogate you about your union sympathies and activities.

WE WILL NOT promise you improved pay, payment of your medical bills, Christmas parties, paid time off, and the posting of monthly schedules, if you reject the Union as your bargaining representative.

WE WILL NOT threaten you with closure of your work facility, job loss, stricter work rules, and harsher discipline, including discharge, if you select the Union as your bargaining representative.

WE WILL NOT solicit complaints and grievances from you and thereby impliedly promise increased benefits and improved terms and conditions of employment if you reject the Union as your bargaining representative.

WE WILL NOT promise to promote you if you reject the Union as your bargaining representative.

WE WILL NOT create the impression of surveillance among you by impliedly telling you that management is aware of your union activities and sympathies.

WE WILL NOT threaten not to recall you to work because of your union sympathies.

WE WILL NOT assign work previously performed by you to employees of Respondent ROL Ambulance, LLC because you joined and assisted the Union and engaged in concerted activities or to discourage you from engaging in these activities.

WE WILL NOT discharge, lay off, refuse to recall, demote, suspend, or issue written warnings to you, or reduce your hours, or otherwise discriminate against any of you because you joined and assisted the Union and engaged in concerted activities, or to discourage you from engaging in these activities.

WE WILL NOT establish a new policy of posting monthly schedules instead of calling you a day in advance to inform you of your shifts because you joined and assisted the Union and engaged in concerted activities, or to discourage you from engaging in these activities.

WE WILL NOT impose a more onerous attendance policy and issue discipline to you pursuant to that policy because you joined and assisted the Union and engaged in concerted activities, or to discourage you from engaging in these activities.

WE WILL NOT terminate your medical benefits, reduce your work hours, impose a more onerous attendance policy and issue discipline to you pursuant to that policy, lay you off, or recall some of you to work and refuse to recall others, without giving the Union prior notice and an opportunity to bargain.

WE WILL NOT fail and refuse to meet and bargain collectively and in good faith with the Union as the exclusive collective-bargaining representative of our employees in the bargaining unit.

WE WILL NOT fail and refuse to furnish the Union with requested information that is relevant and necessary to the Union's performance of its functions as collective-bargaining representative of our unit employees.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights listed above.

WE WILL, on request, meet and bargain with the Union as the exclusive collective-bargaining representative of our employees in the following appropriate unit concerning terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement:

> All full-time and regular part-time EMTs and MAV drivers employed by us at our Linden, New Jersey facilities, but excluding all dispatchers, clerks, maintenance mechanics and janitors, guards, managers and supervisors as defined in the Act.

WE WILL, within 14 days from the date of the Board's Order, offer discharged employees Janita Dunn, Jamal

Woltz, Arslan Mobarak, Ian Henry, Jonathan Escobar, Philip Pais, Mathew Lee, and unlawfully laid-off employee Celia Valente and other unlawfully laid-off employees, including Jhon Jaramillo, Fara Gonzalez, Alexander Goncalvez, Melvin Sanchez, full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed.

WE WILL make Janita Dunn, Jamal Woltz, Arslan Mobarak, Ian Henry, Jonathan Escobar, Philip Pais, Mathew Lee, Celia Valente, Jhon Jaramillo, Fara Gonzalez, Alexander Goncalvez, Melvin Sanchez, and other unlawfully laid-off employees whole for any loss of earnings and other benefits suffered as a result of the discrimination against you, less any net interim earnings, plus interest.

WE WILL, within 14 days from the date of the Board's Order, rescind the unlawful assignment of work previously performed by our employees to Respondent ROL Ambulance, LLC's employees, suspensions of Fara Gonzalez, Sherman Francis, and Philip Pais, reduction in work hours of Jhon Jaramillo and Ian Henry, demotion of Celia Valente, and written warnings issued to Jhon Jaramillo, Doug Gelsleichter, and Fara Gonzalez.

WE WILL make our employees, including unlawfully suspended employees Fara Gonzalez, Sherman Francis and Philip Pais, employees Jhon Jaramillo and Ian Henry, whose work hours were unlawfully reduced, and unlawfully demoted employee Celia Valente, whole for any loss of earnings and other benefits suffered as a result of our unlawful conduct, less any net interim earnings, plus interest, plus reasonable search-for-work and interim employment expenses.

WE WILL compensate our unit employees for the adverse tax consequences, if any, of receiving lump-sum backpay awards, and WE WILL file with the Regional Director for Region 22, within 21 days from the date the amount of backpay is fixed, either by agreement or Board order, a report allocating the backpay award to the appropriate calendar year for each employee.

WE WILL, within 14 days from the date of the Board's Order, remove from our files any references to the unlawful discharges, layoffs, refusals to recall, suspensions, demotion, written warnings, reduction in work hours, and discipline issued pursuant to the more onerous attendance policy, and WE WILL, within 3 days thereafter, notify you in writing that this has been done and that these actions will not be used against you in any way.

WE WILL, on request by the Union, rescind the new policy of posting monthly schedules instead of calling you a day in advance to inform you of your shifts.

WE WILL restore and maintain your medical benefits as they previously existed.

WE WILL make you whole for any expenses resulting from the unilateral termination of your medical benefits, plus interest.

WE WILL, within 14 days from the date of the Board's Order, rescind the more onerous attendance policy and the discipline we imposed on employees pursuant to that policy, and WE WILL restore and maintain our attendance policy as it previously existed, and WE WILL make our employees whole for any loss of earnings or other benefits suffered as a result of our unlawful conduct, plus interest.

WE WILL furnish the Union in a timely manner with the information it requested on September 13 and 23 and October 10, 2014, and February 16, 2015.

GTS Ambulance Transportation, LLC and ROL Ambulance, LLC as single employers and/or alter egos

The Board's decision can be found at www.nlrb.gov/case/22-CA-135312 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273-1940.

APPENDIX B

---------- Forwarded message ----------
From: **Med-Life** <medlifeunion@gmail.com>
Date: Fri, Oct 10, 2014 at 9:18 AM
Subject: Information Request
To: Cynthia Ringel <cringel@jplawfirm.com>

Ms. Ringel

As per our meeting yesterday, we write to request any and all information related to the incidents below. Please attach any documentation that support the employer's position. Thank you for your assistance.

1. Since about June, 2014, reduced the hours and work opportunities of employees, including Jhon Jaramillo, Ian Henry, and Melvin Sanchez.

2. On about July 20, 2014, discharged Jenita Dunn.

3. On about July 25, 2014, discharged Jamal Woltz.

4. On about early August, 2014, discharged Arslan Mobarak.

5. On about early August, 2014, issued a warning to Jhon Jaramillo.

6. On about August, 2014, increased employee contributions toward medical insurance.

7. On about August 13, 2014, demoted and reduced the pay of Ceilia Valente.

8. On about August 15, 2014, issued a final warning to Doug Gelslieichter.

9. On about August 22, 2014, issued warnings and suspended Farah Gonzalez.

10. On about August 28, 2014, required Jhon Jaramillo to work with a partner who, by mutual request and agreement, he had been excluded from working with in the past.

11. On about September 7, 2014, issued a final warning to Farah Gonzalez

12. On about September 10, 2014, issued a warning to Sherman Francis.

13. On about September 26, 2014, issued warnings to and suspended Phil Pais and Sherman Francis.

14. Specify GTS Ambulance relationship with transportation company ROL.

EXHIBIT A

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Eric S. McLemore, Pres.
Med-Life M&M Union
Newark, NJ 07112
Ph: 1+732-900-3169
Ph: 1+201-644-6695
www.medlifeunion.com

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This e-mail is not intended, nor shall it be deemed, unless otherwise expressly provided in writing, to (1) constitute or provide legal advice or counsel, or create an attorney-client relationship with the firm or me, unless the recipient already has an attorney-client relationship with the firm or me; or (2) contain my electronic signature (the typewritten signature included in this e-mail is not an "electronic signature" within the meaning of the Electronic Signatures in Global and National Commerce Act or any other law of similar import, including and without limitation, the Uniform Electronic Transactions Act, as the same may be enacted in any state). Statements made in this e-mail are not binding unless and until mutually satisfactory agreements memorializing the subject matter of the transmission are executed by hand and are exchanged between the parties to the agreement.

APPENDIX C

---------- Forwarded message ----------
From: "Medlife Union" <medlifeunion@gmail.com>
Date: Feb 16, 2015 3:38 PM
Subject: Information Request
To: <trc543@aol.com>
Cc:

Good Evening,

As per our telephone conversation today the following information is requested and required for Med- Life to properly represent bargaining unit employees.

This information is necessary to continue negotiations with GTS AMBULANCE LLC, in compliance with law, rule, regulation, and requirement set forth by the "NLRB" As such, the information is necessary and needed for the union to have full and proper discussion, understanding, and negotiation of the subject within the scope of bargaining so defined herein.

Requested documents are as follow:

1. Why was Roy Santos unavailable for previously scheduled bargaining session?
2. What is the reason for layoffs?
3. When and how were employees notified of layoff?
4. A list of all employees laid off;
5. When do you expect to recall employees?
6. Current seniority list;
7. Can employees file for unemployment?
8. Do you plan to contest employees' unemployment claims?
9. Are you willing to settle on some of the claims/ charges filed with the NLRB?
10. When are you available to meet for continued bargaining?

Please forward ALL documents by **February 20th 2014**. If any other documents are needed you will be notified.

EXHIBIT B

Respectfully,

--

Med-Life M&M Union
Newark, NJ 07112
Ph: 1+732-900-3169
Ph: 1+201-644-6695
www.medlifeunion.com

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