



UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD
OFFICE OF THE GENERAL COUNSEL
Washington, DC 20570

August 31, 2020

REID, MCCARTHY, BALLEW
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Re: American Medical Response
Case 19-CA-254983

Dear [REDACTED]

Your appeal from the Regional Director's refusal to issue complaint has been carefully considered. The appeal is denied substantially for the reasons in the Regional Director's letter of July 15, 2020.

The charge alleges that the Employer violated Sections 8(a)(1), (3), and (5) of the National Labor Relations Act by firing an employee both because of [REDACTED] union and/or protected concerted activities, as well as a result of a unilateral change to its outside employment policy. The charge also alleges that the Employer further violated Section 8(a)(5) of the Act by failing to [REDACTED]; and by [REDACTED] because of the [REDACTED].

With respect to the Section 8(a)(5) unilateral change allegation, we determined that there was no evidence to support a violation based on a unilateral change to a past practice theory. While you may assert the presence of multiple bargaining unit employees who also worked for the [REDACTED], the relevant past practice comparison would be whether the Employer had a past practice of continuing to allow dual employment despite the presence of an alleged pattern of misconduct. Here, the investigation disclosed no evidence of such past practice.

With respect to the Section 8(a)(3) allegation, to determine whether an employer's adverse action against an employee was discriminatorily motivated, the General Counsel must demonstrate by a preponderance of the evidence that the employee's protected activity was a motivating factor for the adverse decision; only after such showing is established, the inquiry turns into whether the employer would have taken the same action in the absence of the protected conduct. See *Wright Line*, 251 NLRB 1083 (1980), enfd. 662 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982).

We determined that the evidence did not indicate that the employee at issue was discharged for protected activities rather than for work-related reasons, specifically the misconduct noted above. With respect to the Section 8(a)(5) information request allegation, the evidence established that the Employer timely provided responsive documents and informed the Union that there were no more responsive documents.

Finally, with respect to the Employer' alleged refusal to meet with the Union because of the [REDACTED], we also agree with the Region's conclusion that this was an isolated incident that had no lasting, practical effect on the parties' processing of this grievance. Accordingly, the appeal is denied.

Sincerely,

Peter Barr Robb
General Counsel



By: _____

Mark E. Arbesfeld, Director
Office of Appeals

cc: RONALD K. HOOKS
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