



March 2, 2021

BY E-FILE

Roxanne L. Rothschild
Executive Secretary
National Labor Relations Board
1015 Half Street SE
Washington, D.C. 20570

Re: American Medical Response Mid-Atlantic, Inc.
Case No. 05-CA-221233

Dear Ms. Rothschild:

I represent American Medical Response Mid-Atlantic, Inc., the Respondent in the above-referenced case, and write to provide the Board with a statement of supplemental authority under Reliant Energy, 339 NLRB 66 (2003), in connection with the Respondent’s Motion for Clarification (the “Motion”), which was filed with your office on December 8, 2020, and remains pending before the Board.

Put simply, through the Motion, the Respondent is seeking an explanation as to why the Board refused to apply a Wright Line analysis to the disciplinary actions challenged by the General Counsel. In a Decision and Order issued on July 17, 2019, the Board found these actions as unlawful under Atlantic Steel, 245 NLRB 814 (1979), which, of course, the Board overruled only a few days later in General Motors, 369 NLRB No. 127 (2020). Despite the fact the Board held that General Motors would apply retroactively, the Board denied a Motion for Reconsideration where the Respondent asked the Board to apply the Wright Line analysis as envisioned by General Motors.

The Board’s obligation to offer an explanation for its actions was clear already, but now is undeniable given a Decision recently issued by the United States Court of Appeals for the District of Columbia Circuit. In Leggett & Platt, Inc. v. NLRB,

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2021 WL 644100 (February 19, 2021), the Court held that the Board erred by not applying a new rule, namely the one adopted in Johnson Controls, 368 NLRB No. 20, retroactively to the case before the Court. The Court observed the Board decided to apply Johnson Controls retroactively and stressed that any unexplained departure from the agency's new rule would be the "very essence" of arbitrary action. Id., page 5. Notably, in Leggett & Platt, the Board provided an explanation for not applying Johnson Controls retroactively. Though the explanation was rejected by the Court, there was, at least, an explanation offered by the agency. Here, by contrast, the Board simply has not offered *any* explanation for its refusal to evaluate the General Counsel's allegations under Wright Line, which is the applicable analysis under General Motors.

Respectfully submitted,

/s/ _____

Bryan T. Carmody

cc: Christy Bergstressor, Counsel for the General Counsel, *via* e-mail
Mosiah Grayton, Charging Party, *via* e-mail