

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 34

BRISTOL HOSPITAL EMS, LLC

and

INTERNATIONAL ASSOCIATION OF  
EMTS AND PARAMEDICS SEIU/INAGE,  
LOCAL 5000

Case 34-CA-12481

DATE OF MAILING November 2, 2009

**AFFIDAVIT OF SERVICE OF copies of MOTION FOR SUMMARY JUDGMENT  
AND FOR ISSUANCE OF BOARD DECISION AND ORDER and MEMORANDUM  
IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT FOR AND ISSUANCE OF  
BOARD DECISION AND ORDER**

I, the undersigned employee of the National Labor Relations Board, being duly sworn, depose and say that on the date indicated above I served the above-entitled document(s) by email upon the following persons, addressed to them at the following addresses:

Ms. Jeanine Reckdenwald  
Bristol Hospital EMS  
25 Newell Road  
Bristol, CT 06010  
jreckden@bristolhospital.org

Roger P. Gilson, Jr., Esquire  
Jackson Lewis LLP  
177 Broad Street  
P.O. Box 251  
Stamford, CT 06901  
gilsonr@jacksonlewis.com

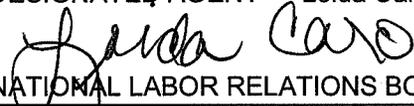
Matthew Levy, National Director  
International Association of EMTs and  
Paramedics, SEIU/NAGE Local 5000  
159 Burgin Parkway  
Quincy, MA 02169  
mlevy@nage.org

Steven Weigand, National Representative  
International Association of EMTs and  
Paramedics, Local 17, SEIU/NAGE  
P.O. Box 170  
Thompson Ridge, NY 10985  
sweigand@nage.org

Subscribed and sworn to before me this 2nd day

of November, 2009

DESIGNATED AGENT Loida Caro

  
NATIONAL LABOR RELATIONS BOARD

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 34**

BRISTOL HOSPITAL EMS, LLC

and

INTERNATIONAL ASSOCIATION OF EMTS  
AND PARAMEDICS, LOCAL 5000, SEIU/NAGE

Case No. 34-CA-12481

**MOTION FOR SUMMARY JUDGMENT AND FOR  
ISSUANCE OF BOARD DECISION AND ORDER**

Counsel for the General Counsel hereby moves for Summary Judgment on the pleadings and supporting papers and for issuance of a Decision and Order by the National Labor Relations Board (herein called the Board), pursuant to Sections 102.24 and 102.50 of the Board's Rules and Regulations, and in support of the said Motion states the following:

1. On March 6, 2009, International Association of EMTs and Paramedics, Local 50007, SEIU/NAGE (herein called the Union) filed a representation petition in Case No. 34-RC-2313 (Exhibit A), seeking an election among certain employees of Bristol Hospital EMS, LLC (herein called Respondent).
2. Pursuant to a Stipulated Election Agreement approved by the Regional Director of Region 34 (herein called the Regional Director) on March 13, 2009 (Exhibit B), an election was held on April 16, 2009 among the following employees of Respondent (herein called the Unit):

All full-time and regular part-time EMT-P's, EMT-I's, EMT-Basics, Secretary III, and Wheel Chair Van Attendants employed by the Employer at its 371 Terryville Avenue, Bristol, Connecticut facility; but excluding other office clerical employees, the EMS Education Coordinator, EMS Supervisors, the BLS instructor, all other employees, and all guards, professional employees, and supervisors as defined in the Act.

3. On April 16, 2009, Respondent's employees in the Unit voted in a secret ballot election under the supervision of the Regional Director. The Tally of Ballots (Exhibit C) revealed the following results:

Approximate number of eligible voters.....	71
Void Ballots .....	0
Votes cast for International Association of EMTs and Paramedics, Local 5000, SEIU/NAGE .....	36
Votes cast against participating labor organization.....	22
Valid votes counted .....	58
Challenged ballots .....	6
Valid votes counted plus challenged ballots .....	64

Challenges are not sufficient in number to affect the results of the election.

4. On April 23, 2009, Respondent filed timely Objections to the conduct of the election and to conduct affecting the results of election (Exhibit D), and on May 14, 2009, the Regional Director issued a Report on Objections in which he recommended that the Objections be overruled in their entirety (Exhibit E).

5. On May 27, 2009, Respondent filed with the Board Exceptions to the Report alleging, inter alia, that the Regional Director improperly failed to consider certain evidence proffered in support of Objections 1 through 4 (Exhibit F). Pursuant to Sec. 102.65(e)(1) of the Board's Rules and Regulations, the Regional Director treated the Respondent's Exceptions as a Motion for Reconsideration.

6. On June 9, 2009, the Regional Director issued a Supplemental Report on Objections in which he addressed and considered the specific evidence that Respondent claimed he originally failed to consider. Notwithstanding such evidence, the Regional Director adhered to his previous recommendation that the Objections be overruled in their entirety. (Exhibit G)

7. On June 22, 2009, Respondent filed with the Board Supplemental Exceptions to the Supplemental Report on Objections (Exhibit H).
8. On July 23, 2009, the Board issued a Decision and Certification of Representative in Case No. 34-RC-2313 (Exhibit I) certifying the Union as the exclusive collective bargaining representative of the employees in the Unit.
9. On October 8, 2009, the Union filed the charge herein (Exhibit J), alleging that Respondent has violated Section 8(a)(1) and (5) of the Act by refusing to recognize and bargain with the Union. The charge was served upon Respondent by regular mail and facsimile transmission on October 8, 2009 (Exhibit K).
10. On October 15, 2009, the Regional Director of Region 34 issued a Complaint and Notice of Hearing (Exhibit L) alleging, inter alia, that Respondent violated Section 8(a)(1) and (5) of the Act by failing and refusing to recognize and bargain with the Union. The Complaint and Notice of Hearing was served by certified mail upon Respondent at its business address in Bristol, Connecticut on October 15, 2009 (Exhibit M).
11. On October 28, 2009, Respondent filed an Answer to the Complaint (Exhibit N).
12. In its Answer, Respondent admits the following: the filing of the charge (paragraph 1); its status as an employer (paragraphs 2, 3, and 4); the labor organization status of the Union (paragraph 5); the appropriateness of the Unit (paragraph 6); that the Union was certified as the exclusive collective-bargaining representative of the Unit on July 23, 2009 (paragraph 7); that by letter dated September 16, 2009, the Union requested bargaining as the exclusive collective-bargaining representative of the Unit (paragraph 9); and that since September 16, 2009, it has refused to recognize and

bargain with the Union as the exclusive collective bargaining representative of the Unit (paragraph 10).

13. In its Answer, Respondent denies the following: that the Union has been the exclusive collective-bargaining representative of the Unit within the meaning of Section 9(a) of the Act (paragraph 8); and that it violated Section 8(a)(1) and (5) of the Act by refusing to recognize and bargain with the Union as the exclusive collective bargaining representative of the Unit (paragraph 11). It also raises as an affirmative defense that the Union was improperly certified because: 1) "it engaged in objectionable conduct which rendered a free and fair election impossible;" 2) the Board was not properly constituted under Section 3(b) of the Act and thus did not have the authority to schedule the April 16, 2009 election, hold the April 16<sup>th</sup> election, deny the Respondent's Request for Review or issue its July 23, 2009 Decision and Certification of Representative;" and 3) the Board ignored precedent by certifying the Union despite "acknowledging" evidence showing that employees may have met with Union representatives within 24 hours of, or during, the election.

14. For the reasons set forth in the attached Memorandum, and noting that the supporting papers and Respondent's Answer establish facts sufficient to conclude that Respondent has violated the Act as alleged in the Complaint and that Respondent has raised no material issue of fact requiring a hearing, Respondent has no valid defense to the Complaint.

**WHEREFORE**, Counsel for the General Counsel respectfully moves:

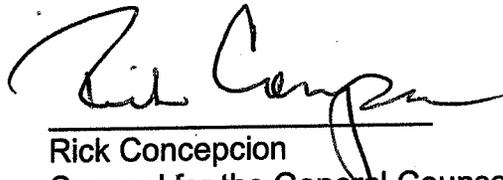
1. That all the allegations in the Complaint be deemed to be true and so found;

2. That the Board issue a Decision and Order finding that Respondent violated Section 8(a)(1) and (5) of the Act; and

3. That the Board grant such further relief as may be appropriate.

Dated at Hartford, Connecticut this 2<sup>nd</sup> day of November 2009.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Rick Concepcion", written over a horizontal line.

Rick Concepcion  
Counsel for the General Counsel  
National Labor Relations Board  
Region 34

UNITED STATES GOVERNMENT  
NATIONAL LABOR RELATIONS BOARD  
PETITION

<b>DO NOT WRITE IN THIS SPACE</b>	
Case No. <b>34-RC-2313</b>	Date Filed <b>March 6, 2009</b>

**INSTRUCTIONS:** Submit an original of this Petition to the NLRB Regional Office in the Region in which the employer concerned is located.

The Petitioner alleges that the following circumstances exist and requests that the NLRB proceed under its proper authority pursuant to Section 9 of the NLRA.

1. PURPOSE OF THIS PETITION (If box RC, RM, or RD is checked and a charge under Section 8(b)(7) of the Act has been filed involving the Employer named herein, the statement following the description of the type of petition shall not be deemed made.) (Check One)
- RC-CERTIFICATION OF REPRESENTATIVE** - A substantial number of employees wish to be represented for purposes of collective bargaining by Petitioner and Petitioner desires to be certified as representative of the employees.
  - RM-REPRESENTATION (EMPLOYER PETITION)** - One or more individuals or labor organizations have presented a claim to Petitioner to be recognized as the representative of employees of Petitioner.
  - RD-DECERTIFICATION (REMOVAL OF REPRESENTATIVE)** - A substantial number of employees assert that the certified or currently recognized bargaining representative is no longer their representative.
  - UD-WITHDRAWAL OF UNION SHOP AUTHORITY (REMOVAL OF OBLIGATION TO PAY DUES)** - Thirty percent (30%) or more of employees in a bargaining unit covered by an agreement between their employer and a labor organization desire that such authority be rescinded.
  - UC-UNIT CLARIFICATION** - A labor organization is currently recognized by Employer, but Petitioner seeks clarification of placement of certain employees: (Check one)  In unit not previously certified.  In unit previously certified in Case No. \_\_\_\_\_
  - AC-AMENDMENT OF CERTIFICATION** - Petitioner seeks amendment of certification issued in Case No. \_\_\_\_\_. Attach statement describing the specific amendment sought.

2. Name of Employer <b>Bristol Hospital EMS, LLC</b>		Employer Representative to contact <b>Ryan White</b>	Tel. No. <b>(860)585-3679</b>
3. Address(es) of Establishment(s) involved (Street and number, city, State, ZIP code) <b>371 Terryville Ave. Bristol, CT 06010</b>			Fax No. <b>(860)585-3542</b>
4a. Type of Establishment (Factory, mine, wholesaler, etc.) <b>Ambulance Service</b>	4b. Identify principal product or service <b>Pre-hospital transportation</b>		Cell No.
5. Unit Involved (In UC petition, describe present bargaining unit and attach description of proposed clarification.) <b>Included</b> All full-time and regular part-time administrative assistants, drivers, EMTs, EMT-intermediates, and EMT-Paramedics employed by the Employer. <b>Excluded</b> All other employees including supervisors, managers and guards as defined by the Act.			6a. Number of Employees in Unit: Present <b>70+/-</b> Proposed (By UC/AC)
(If you have checked box RC in 1 above, check and complete EITHER item 7a or 7b, whichever is applicable)			6b. Is this petition supported by 30% or more of the employees in the unit? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No *Not applicable in RM, UC, and AC

- 7a.  Request for recognition as Bargaining Representative was made on (Date) \_\_\_\_\_ and Employer declined recognition on or about (Date) \_\_\_\_\_ (If no reply received, so state).
- 7b.  Petitioner is currently recognized as Bargaining Representative and desires certification under the Act.

8. Name of Recognized or Certified Bargaining Agent (If none, so state.) <b>None</b>		Affiliation	
Address	Tel. No.	Date of Recognition or Certification	
	Cell No.	Fax No.	e-Mail

9. Expiration Date of Current Contract. If any (Month, Day, Year)  
**NA**
10. If you have checked box UD in 1 above, show here the date of execution of agreement granting union shop (Month, Day and Year)
- 11a. Is there now a strike or picketing at the Employer's establishment(s) involved? Yes  No
- 11b. If so, approximately how many employees are participating?

11c. The Employer has been picketed by or on behalf of (Insert Name) \_\_\_\_\_, a labor organization, of (Insert Address) \_\_\_\_\_ Since (Month, Day, Year) \_\_\_\_\_

12. Organizations or individuals other than Petitioner (and other than those named in items 8 and 11c), which have claimed recognition as representatives and other organizations and individuals known to have a representative interest in any employees in unit described in item 5 above. (If none, so state)

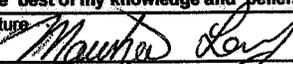
Name	Address	Tel. No.	Fax No.
None		Cell No.	e-Mail

13. Full name of party filing petition (If labor organization, give full name, including local name and number)  
**International Association of EMTs and Paramedics, SEIU/NAGE local 5000**

14a. Address (street and number, city, state, and ZIP code) <b>159 Burgin Parkway Quincy, MA 02169</b>	14b. Tel. No. EXT <b>(617)376-0220</b>	14c. Fax No. <b>(617)812-6489</b>
	14d. Cell No.	14e. e-Mail

15. Full name of national or international labor organization of which Petitioner is an affiliate or constituent (to be filled in when petition is filed by a labor organization)  
**International Association of EMTs and Paramedics, SEIU/NAGE local 5000**

I declare that I have read the above petition and that the statements are true to the best of my knowledge and belief.

Name (Print) <b>Matthew Levy</b>	Signature 	Title (if any) <b>National Director</b>
Address (street and number, city, state, and ZIP code) <b>159 Burgin Parkway Quincy, MA 02169</b>	Tel. No. <b>(617)376-7247</b>	Fax No. <b>(617)812-6489</b>
	Cell No. <b>(617)947-3200</b>	eMail <b>mlevy@nage.org</b>

**WILLFUL FALSE STATEMENTS ON THIS PETITION CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)**  
**PRIVACY ACT STATEMENT**

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 et seq. The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing unfair labor practice and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is voluntary; however, failure to supply the information will cause the NLRB to decline to invoke its processes.



UNITED STATES OF AMERICA  
NATIONAL LABOR RELATIONS BOARD

BRISTOL HOSPITAL EMS, LLC  
Employer

and

INTERNATIONAL ASSOCIATION OF EMTs and  
PARAMEDICS (IAEP) (NAGE, SEIU 5000)  
Petitioner

DATE FILED  
03/06/2009

Case No. 34-RC-2313

Date Issued 04/16/2009

Type of Election:  
(Check one:)

- Stipulation
- Board Direction
- Consent Agreement
- RD Direction
- Incumbent Union (Code)

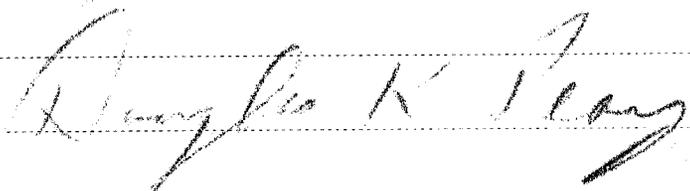
(If applicable check either or both:)

- 8(b) (7)
- Mail Ballot

TALLY OF BALLOTS

The undersigned agent of the Regional Director certifies that the results of the tabulation of ballots cast in the election held in the above case, and concluded on the date indicated above, were as follows:

1. Approximate number of eligible voters	71	
2. Number of Void ballots	0	
3. Number of Votes cast for	PETITIONER	36
4. Number of Votes cast for		
5. Number of Votes cast for		
6. Number of Votes cast against participating labor organization(s)		23
7. Number of Valid votes counted (sum of 3, 4, 5, and 6)		58
8. Number of Challenged ballots		6
9. Number of Valid votes counted plus challenged ballots (sum of 7 and 8)		64
10. Challenges are (not) sufficient in number to affect the results of the election.		
11. A majority of the valid votes counted plus challenged ballots (Item 9) has (not) been cast for	PETITIONER	

For the Regional Director 

The undersigned acted as authorized observers in the counting and tabulating of ballots indicated above. We hereby certify that the counting and tabulating were fairly and accurately done, that the secrecy of the ballots was maintained, and that the results were as indicated above. We also acknowledge service of this tally.

For EMPLOYER

For PETITIONER

For

For

UNITED STATES OF AMERICA  
BEFORE THE  
NATIONAL LABOR RELATIONS BOARD  
REGION 34

-----	X	
BRISTOL HOSPITAL EMS, LLC,	:	
	:	CASE 34-RC-2313
	:	
Employer,	:	
	:	
-and-	:	
	:	
INTERNATIONAL ASSOCIATION OF	:	
EMTS AD PARAMEDICS, SEIU/NAGE	:	
LOCAL 5000,	:	
Petitioner.	:	
-----	X	

**EMPLOYER’S OBJECTIONS TO THE CONDUCT  
OF THE ELECTION AND TO CONDUCT  
AFFECTING THE RESULTS OF THE ELECTION**

Pursuant to Section 102.69 of the National Labor Relations Board’s Rules and Regulations, as amended, BRISTOL HOSPITAL EMS, LLC (the “Employer”) hereby objects to conduct affecting the results of the election in the above matter for the following reasons:

1. During the restricted period, beginning 24 hours before the scheduled time for the election and continuing up through the day of the election in the above referenced case (e.g. 6:00 am April 15, 2009), the Union, in violation of the *Peerless Plywood Co.* rule, conducted election speeches and/or “question and answer” sessions with groups of eligible Bristol Hospital EMS, LLC employee voters, while they were on company time.

2. The Board has held that this rule applies to “employers and unions alike” and prohibits either party from making election speeches on company time to groups of employees “within 24 hours before the scheduled time for conducting an election.” For more

than fifty years, the Board has held that a violation of this rule by either the Employer or the Union "*will cause the election to be set aside whenever valid objections are filed.*" *Peerless Plywood Co.*, 107 NLRB 427, 429 (1953) (emphasis added).

3. The Board also has held that this rule applies not only to formal speeches but "question and answer sessions" held on company time even where such meetings are not held on the Employer's premises. Moreover, even where some of the employees are not on company time, the Board has held that "for purposes of applying the rule, it is sufficient that *some of the employees* attended the meeting on company time." *See Montgomery Ward & Co.*, 124 NLRB 343, 344 (1959) (emphasis added).

4. The Board believes that such election speeches and/or "question and answer" sessions by either the Employer or the Union create a "mass psychology among the eligible voting employees," by granting the party who conducts them the "last most telling word" and therefore an "unfair advantage."

5. During the critical pre-election period, Union agents, supporters and/or others acting in concert with them created a pervasive atmosphere of fear and coercion by threats, harassment, and intimidation.

6. During the critical pre-election period, Union agents, supporters and/or others acting in concert with them interfered with the "laboratory conditions" required in Board elections by inflammatory appeals to bias.

7. By the above and other conduct, the Union has interfered with and coerced eligible voters with regard to the exercise of their Section 7 rights under the National Labor Relations Act and destroyed the atmosphere necessary to conduct a fair election. The above

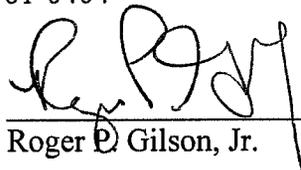
coercive acts and other conduct taking place during the critical pre-election and actual voting periods were sufficient to affect the results of the election.

WHEREFORE, for all the foregoing and any other reasons recognized by law, the Employer respectfully requests that the Acting Regional Director review and investigate the aforementioned conduct and set aside the results of the election or, in the alternative, order a hearing thereon.

Respectfully submitted,

JACKSON LEWIS LLP  
177 Broad Street, 8<sup>th</sup> floor  
Stamford, CT 06904  
(203) 961-0404

By:

  
\_\_\_\_\_  
Roger P. Gilson, Jr.

Dated: April 23, 2009  
Stamford, CT

**CERTIFICATE OF SERVICE**

I hereby certify that the Employer's Objections to the Conduct Affecting the Results of the Election was served this 23<sup>rd</sup> day of April, 2009 via facsimile transmission, and that the original and five (5) copies of the Employer's Objections were served this 23<sup>rd</sup> day of April, 2009 via FedEx overnight mail service, upon the following:

John S. Cotter, Acting Regional Director  
National Labor Relations Board  
Region 34  
280 Trumbull Street  
21<sup>st</sup> Floor  
Hartford, CT 06103

  
\_\_\_\_\_  
Roger P. Gilson, Jr.

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 34**

BRISTOL HOSPITAL EMS, LLC.

Employer

and

INTERNATIONAL ASSOCIATION OF EMTs and  
PARAMEDICS (IAEP) (NAGE, SEIU 5000)

Petitioner

Case No. 34-RC-2313

**REPORT ON OBJECTIONS**

Pursuant to a Stipulated Election Agreement approved by the undersigned on March 13, 2009, a secret ballot election was conducted on April 16, 2009, among certain employees of the Employer.<sup>1</sup> The Tally of Ballots prepared after the election and served upon the parties revealed that a majority of the valid votes was cast for the Petitioner.<sup>2</sup> On April 23, 2009, the Employer filed timely Objections to the election (Exhibit 1), a copy of which was sent to the Petitioner. Based upon an investigation conducted pursuant to Section 102.69 of the Board's Rules and Regulations, Series 8, as amended, I am recommending that the Objections be overruled.

**Objections 1 through 4**

Objections 1 through 4 all relate to the allegation that the Petitioner conducted "election speeches and/or question and answer sessions" on company time, beginning 24 hours before the election and through the election. In this regard, the election was conducted on April 16, 2009, from 6 am to 10 am and from 2 pm to 4 pm.

In support of Objections 1 through 4, the Employer submitted a copy of an e-mail dated March 30, 2009 from employee Matt Hebert apparently addressed to numerous employees. The e-mail informed the employees that the Petitioner's representatives would be available to answer their questions on specified dates and times, beginning on

<sup>1</sup> The unit consists of all full-time and regular part-time EMT-P's, EMT-I's, EMT-Basics, Secretary III, and Wheel Chair Van Attendants, employed by the Employer at its 371 Terryville Avenue, Bristol, Connecticut facility; but excluding other office clerical employees, the EMS Education Coordinator, EMS Supervisors, the BLS instructor, all other employees, and all guards, professional employees and supervisors as defined in the Act.

<sup>2</sup> There were approximately 71 eligible voters. 36 votes were cast for the Petitioner, 23 votes were cast against the Petitioner, and 6 votes were challenged.

March 30<sup>th</sup>, at various locations in and near Bristol, Connecticut. This included April 15 (the day before the election) at the "Dewitt Page Park" in Bristol from 11 am to 6 pm, and on April 16 (the day of the election) at the Dunkin Donuts in Bristol from 6 am to 4 pm. The e-mail encouraged employees to "make every effort to speak with one or all of these union representatives", further noting that "[t]he times and days are set up in a way that employees are able to talk with these individuals on your days off, times before, after or during work hours." Although the Petitioner admits that unit employees received this e-mail, it denies that any of its representatives actually met with any employees during the 24 hour period prior to the election.

In addition to the March 30 e-mail described above, the Employer proffered evidence showing that ambulances driven by unit employees were present at the Dunkin Donuts in Bristol on April 16 during the hours of the election. In this regard, the Employer's ambulances contain GPS tracking devices that identify the exact geographic location of every ambulance at any given moment, and that records documenting such GPS data are maintained in the course of its business. Such records proffered by the Employer show that two ambulances containing four eligible voters stopped at the Dunkin Donuts location on April 16 during the hours of the election.<sup>3</sup> Other records proffered by the Employer establish that 23 of its 28 unit employees were on duty on April 15 and April 16 during the hours that the Petitioner's representatives were available to speak with employees on those dates.

Based upon the evidence described above, the Employer asserts that the Petitioner violated the Board's rules set forth in *Peerless Plywood Co.*, 107 NLRB 427, 429 (1953), by conducting, during the 24 hour period prior to the election and during the election, "election speeches and/or 'question and answer' sessions with groups of eligible Bristol Hospital EMS, LLC employees, while they were on company time." The only case cited by the Employer in support of this assertion, other than *Peerless Plywood*, supra, is *Montgomery Ward & Co.*, 124 NLRB 343 (1959), which it cites in support of its claim that "question and answer" sessions are covered by the *Peerless Plywood* rule and that not all employees must be on company time during such "question and answer" sessions.

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<sup>3</sup> The Employer further claims, without evidentiary support, that its GPS records show that an ambulance containing eligible voters stopped for more than an hour at the Dunkin Donuts on April 15, and that the Petitioner's representatives were present at that location rather than the posted location of Dewitt Page Park.

Contrary to the Employer's claims, it is well established that *Peerless Plywood* does not prohibit employers or unions from making campaign speeches on or off company premises during the 24 hour period "if employee attendance is voluntary and on the employees own time" (emphasis in original). *Montgomery Ward & Co.*, supra, at fn. 5, and cases cited therein. Moreover, the Board has long held that the *Peerless Plywood* rule does not apply to non-coercive conversations between employer or union representatives and individual employees during the 24 hour period prior to the election, including conversations held during working time at an individual employee's work station. *Associated Milk Producers, Inc.*, 237 NLRB 879 (1978); *Livingston Shirt Corporation*, 107 NLRB 400 (1953).

At best, the Employer's evidence shows that unit employees may have met with Petitioner representatives within 24 hours of, or during, the election. However, it is undisputed that any such meetings or conversations were completely voluntary in nature. Under such circumstances, regardless of the nature or timing of such meetings, the Petitioner did not violate the *Peerless Plywood* rule. *Andel Jewelry Corporation*, 326 NLRB 507 (1998); *Associated Milk Producers*, supra; *Livingston Shirt Corporation*, supra.

Accordingly, I recommend that Objections 1 through 4 be overruled.

#### Objections 5 and 6

Objection 5 alleges that union agents and supporters "created an atmosphere of fear and coercion by threats, harassment, and intimidation." Objection 6 alleges that Union agents and supporters engaged in "inflammatory appeals to bias". As the evidence in support of both Objections consists of a letter sent by one unit employee to another unit employee, the Objections are addressed concurrently.

In support of these Objections, the Employer relies solely upon a letter prepared by employee Bryan Gaitly addressed to employee Jay Pax (attached hereto as Exhibit 2), which it asserts was left in an unidentified "public area" for viewing by other employees. The Employer contends that the letter constitutes harassment and intimidation and impliedly threatened employee Pax. With regard to the alleged "inflammatory appeals to bias", the Employer contends that the letter appeals to the perceived prejudices of its predominantly young male paramedics by referring to Pax, a

senior female paramedic, as a "proverbial old dog". The Employer also contends that Gaity was, or was perceived to be, an agent of the Petitioner, on the basis that he communicated the scheduling of Union meetings to employees during the campaign, and acted as an observer for the Petitioner during the election.

The Petitioner admits that the letter was sent by Gaity to Pax, in response to a previous letter written by Pax (attached as Exhibit 3) that she had mailed to unit employees. The Petitioner further asserts that both letters were posted side-by-side on the employee bulletin board at the Employer's facility. However, the Petitioner denies that Gaity is an agent of the Petitioner. In this regard, the Petitioner asserts that Gaity was not a member of its organizing committee, and that the campaign was conducted by its own representatives, Steve Weigand and James Duffy. The Petitioner also denies any involvement in the preparation or distribution of Gaity's letter to Pax.

With regard to Objection 5, the evidence is insufficient to establish that Gaity is an agent of the Petitioner. In this regard, it is well established that merely communicating information about union meetings and acting as an observer at a Board election is insufficient to establish an employee as a general agent of a labor organization. *Lamar Advertising of Janesville*, 340 NLRB 979, 980 (2003); *Corner Furniture Discount Center, Inc.*, 339 NLRB 1122 (2003); *Advance Products Corporation*, 304 NLRB 436 (1991); *United Builders Supply Co.*, 287 NLRB 1364 (1988). Because Gaity is not an agent of the Petitioner, the statements in his letter to fellow employee Pax must be assessed under the Board's standard for third-party conduct. In this regard, the Board will set aside an election on the basis of third-party threats only if the conduct is so aggravated that it creates a general atmosphere of fear and reprisal rendering a free election impossible. *Lamar Advertising of Janesville*, supra; *Corner Furniture Discount Center, Inc.*, supra; *Cal-West Periodicals*, 330 NLRB 599, 600 (2000); *Westwood Horizons Hotel*, 270 NLRB 802 (1989). Moreover, the Board applies its third-party conduct standard as an objective test: whether, under all the circumstances, a reasonable employee would have been put in fear by the allegedly threatening conduct. *Lamar Advertising of Janesville*, 340 NLRB at 981; *Corner Furniture Discount Center, Inc.*, supra, 339 NLRB at 1123. Finally, the burden of proof lies with the objecting party. *Cal-West Periodicals*, supra.

The Employer has clearly failed to meet its burden of establishing that Gaity's letter was so aggravated that it created a general atmosphere of fear and reprisal rendering a free election impossible. In this regard, although the letter was widely disseminated to other unit employees shortly before the election, I am unable to conclude that a reasonable employee would view Gaity's letter as threatening in nature. More specifically, the letter contains no overt threats of harm to Pax, and no other evidence was proffered regarding any other circumstances that would lead a reasonable employee to believe that the letter contained any threats of harm to Pax. Rather, the letter at best contains the type of "mere bravado" that the Board and the courts have repeatedly held to be non-threatening in nature, especially in the context of hotly contested election. *Lamar Advertising of Janesville*, supra (a threat by one employee to another to "kick ass", without more, is unlikely to intimidate the listener). Thus, in the absence of any threatening conduct in Gaity's letter, there is no basis to conclude that the letter created an "atmosphere of fear and coercion" as envisioned by the Board in *Westwood Horizons Hotel*, supra, and its progeny. Assuming arguendo that the letter could be interpreted as indirectly threatening Pax with some type of unspecified harm, I find that such statements were not so aggravated in nature as to create a general atmosphere of fear and reprisal rendering a free election impossible and warranting a new election. *Majestic Star Casino LLC v. NLRB*, 373 F.3d 1345, 1350 (DC Cir. 2004); *NLRB v. Precision Indoor Comfort Inc.*, 456 F.3d 636, 639 (6<sup>th</sup> Cir. 2006); *Associated Rubber Co.*, 332 NLRB 1588 (2000); *Cal-West Periodicals*, supra, 340 NLRB at 600.

With regard to Objection 6, the Board has long held that an election will be set aside if a party engages in a campaign designed to exacerbate prejudicial feelings by irrelevant, inflammatory appeals to bias. *Sewell Manufacturing Co.*, 138 NLRB 66 (1962); *Beatrice Grocery Products, Inc.*, 287 NLRB 302 (1987); *Brightview Care Center, Inc.*, 292 NLRB 352 (1989). In *Beatrice Grocery Products*, the Board, citing *Sewell*, distinguished between an objectionable "sustained course of conduct deliberate and calculated in intensity to appeal to racial prejudice" from unobjectionable "isolated, casual prejudicial remarks." 287 NLRB at 302. In this regard, the Board has declined to

consider as objectionable racial appeals that are, at most, an accusation against the other party "in the nature of general campaign propaganda which employees [are] capable of fairly evaluating in choosing their representative." *Coca-Cola Bottling Co.*, 232 NLRB 717, 718 (1977).

As noted above, it cannot be established that Gaity, the author of the letter, is an agent of the Petitioner, nor is there any evidence that the Petitioner either authorized or condoned the contents of the letter. See *Benjamin Coal Co.*, 294 NLRB 572, 573 (1989); *Vitek Electronics*, 268 NLRB 522, 527-534 (1984). Thus, there is no evidence to establish that the Petitioner, as a party to the election, engaged in a campaign designed to exacerbate prejudicial feelings by irrelevant, inflammatory appeals to bias. Moreover, assuming arguendo that the contents of the letter could be attributed to the Petitioner, the fleeting reference by a younger male unit employee to a more senior female unit employee as a "proverbial old dog" does not constitute the type of objectionable "sustained course of conduct deliberate and calculated in intensity to appeal to . . . prejudice" envisioned by the Board in *Sewell*. Rather, the statement is at best the type of isolated remark envisioned by the Board in *Beatrice Grocery Products* as unobjectionable in nature.

In view of the above, I find that the letter constitutes general propaganda that employees were capable of fairly evaluating in choosing their representative, and does not rise to the level of objectionable conduct. *Coca-Cola Bottling Co.*, supra.

Accordingly, I find that Objections 5 and 6 do not provide a basis for setting aside the election and I recommend that they be overruled.

#### Objection 7

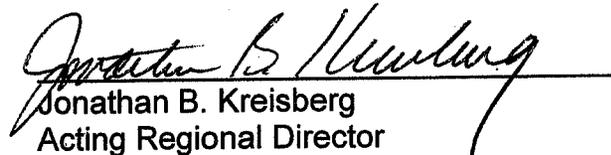
Objection 7 consists of conclusionary and "catch-all" language in support of which no additional evidence was provided. Accordingly, I recommend that Objection 7 be overruled.

Having recommended that the Employer' Objections be overruled in their entirety, I further recommend that a Certification of Representative issue on behalf of the Petitioner.

**Right to File Exceptions**

Under the provisions of Section 102.69 of the Board's Rules and Regulations, exceptions to this report may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, DC 20570, or electronically pursuant to the guidance that can be found under "E-gov" on the Board's web site at [www.nlr.gov](http://www.nlr.gov). This request must be received by the Board in Washington, D.C. by May 28, 2009.

Dated at Hartford, Connecticut this 14th day of May, 2009.

  
Jonathan B. Kreisberg  
Acting Regional Director  
National Labor Relations Board  
Region 34

UNITED STATES OF AMERICA  
BEFORE THE  
NATIONAL LABOR RELATIONS BOARD  
REGION 34

-----	X	
BRISTOL HOSPITAL EMS, LLC,	:	
	:	CASE 34-RC-2313
	:	
Employer,	:	
	:	
-and-	:	
	:	
INTERNATIONAL ASSOCIATION OF	:	
EMTS AD PARAMEDICS, SEIU/NAGE	:	
LOCAL 5000,	:	
Petitioner.	:	
-----	X	

**EMPLOYER'S OBJECTIONS TO THE CONDUCT  
OF THE ELECTION AND TO CONDUCT  
AFFECTING THE RESULTS OF THE ELECTION**

Pursuant to Section 102.69 of the National Labor Relations Board's Rules and Regulations, as amended, BRISTOL HOSPITAL EMS, LLC (the "Employer") hereby objects to conduct affecting the results of the election in the above matter for the following reasons:

1. During the restricted period, beginning 24 hours before the scheduled time for the election and continuing up through the day of the election in the above referenced case (e.g. 6:00 am April 15, 2009), the Union, in violation of the *Peerless Plywood Co.* rule, conducted election speeches and/or "question and answer" sessions with groups of eligible Bristol Hospital EMS, LLC employee voters, while they were on company time.

2. The Board has held that this rule applies to "employers and unions alike" and prohibits either party from making election speeches on company time to groups of employees "within 24 hours before the scheduled time for conducting an election." For more

than fifty years, the Board has held that a violation of this rule by either the Employer or the Union "*will cause the election to be set aside whenever valid objections are filed.*" *Peerless Plywood Co.*, 107 NLRB 427, 429 (1953) (emphasis added).

3. The Board also has held that this rule applies not only to formal speeches but "question and answer sessions" held on company time even where such meetings are not held on the Employer's premises. Moreover, even where some of the employees are not on company time, the Board has held that "for purposes of applying the rule, it is sufficient that *some of the employees* attended the meeting on company time." *See Montgomery Ward & Co.*, 124 NLRB 343, 344 (1959) (emphasis added).

4. The Board believes that such election speeches and/or "question and answer" sessions by either the Employer or the Union create a "mass psychology among the eligible voting employees," by granting the party who conducts them the "last most telling word" and therefore an "unfair advantage."

5. During the critical pre-election period, Union agents, supporters and/or others acting in concert with them created a pervasive atmosphere of fear and coercion by threats, harassment, and intimidation.

6. During the critical pre-election period, Union agents, supporters and/or others acting in concert with them interfered with the "laboratory conditions" required in Board elections by inflammatory appeals to bias.

7. By the above and other conduct, the Union has interfered with and coerced eligible voters with regard to the exercise of their Section 7 rights under the National Labor Relations Act and destroyed the atmosphere necessary to conduct a fair election. The above

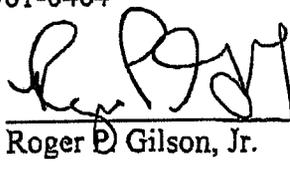
coercive acts and other conduct taking place during the critical pre-election and actual voting periods were sufficient to affect the results of the election.

WHEREFORE, for all the foregoing and any other reasons recognized by law, the Employer respectfully requests that the Acting Regional Director review and investigate the aforementioned conduct and set aside the results of the election or, in the alternative, order a hearing thereon.

Respectfully submitted,

JACKSON LEWIS LLP  
177 Broad Street, 8<sup>th</sup> floor  
Stamford, CT 06904  
(203) 961-0404

By:

  
\_\_\_\_\_  
Roger D Gilson, Jr.

Dated: April 23, 2009  
Stamford, CT

April 13, 2009

To Jay,

I am writing this because I wish to express my disgust with the selfish way in which you have decided to express your opinions. First of all, YES, you do have the right to talk to your co-workers, yet I should also have the same right to tell you to go pound sand if I don't feel like listening to the one sided opinions of our most veteran employee who has her own personal agenda against the introduction of a union or anything else new for that matter. However, its kind of hard to do that with a letter, seeing how you cannot be interrupted, cut off or disagreed with but you already knew that. Nice try.

How can you *possibly* complain about a lack of an open exchange of ideas when I have not seen you at a single union rep meeting??? Many others and I have made every effort to attend both MANAGEMENT (mandatory) union busting meetings as well as many of the IAEP's meetings, which have been more than accessible to employees of any shift as well as informative. Where have you or any of the other anti-union employees been? Have you made an appearance at a union meeting? Have you asked any questions to anyone from the IAEP? The answers are NO... and why is that?

Second, you wrote "*But I believe that with proper, non-unionized voice, we can be heard. We should give the administration time to correct the past "bad" managerial style.*" Where were you 3 years ago? We've already done that. The definition of INSANITY is repeating the same act over and over expecting different results. How many times do we have to touch the fire before we realize that it is hot Jay? I, for one, am done with that approach and I know that many feel as I do.

You made many references in your letter about union "facts". Again, how did you get said "facts" without showing your face at a single union meeting? Don't tell me from H.R. A strike is not our only bargaining chip if we go union because the EMPLOYEES must vote on this strike as with anything else and NO ONE whether pro or anti union wants to strike. DEAD ISSUE!!!

Also, we will absolutely *not* have union dues removed from our paychecks the moment a union is voted in. No dues whatsoever are paid until a final contract is negotiated between UNION and HOSPITAL... so we are looking at about a year give or take before that happens. And who would possibly consider in a million years spending the GROUP'S \$34,000/year to buy equipment for the ambulances as you suggested? That is the responsibility of the company Jay, no one else but you wants to buy their own personal pocket sized O2 sat for \$400 (skin color, radial pulse and cap refill work just fine for the rest of us). You say in one sentence you want to be serious, then, in another, you make a joke about a \$34,000 party. What is that?

We cannot fight our own battles with management because without representation, Jay, we are just a bunch of whiny employees with no recourse or ability to otherwise

challenge the company. We can ask and they can laugh. With a union, there is a legal process and a legal contract that must be followed by both employees and management. This is stability that many others and I are willing to pay for. Nothing is free.

You, *personally*, have many reasons to be anti union and I can understand that, but you can't expect to push your opinions on others the way that you have via home mailers. It's a personality issue with you and anyone who knows you can see it. YOU HATE CHANGE. No matter what it is. You had a tough transition with going from the Life pack 11 to Zoll monitors and still cant even use the newest Zoll we have. You had a hard time dealing with the loss of an IV tray and still carry your own supply of blood tubes. God forbid anything come along to disrupt Jay Pax's bubble. Computer run forms?.. same issue. How about Burlington? I don't have enough paper to discuss your lack of coping ability with that place!

And finally, you are BHEMS's proverbial "old dog" and there is no way you are learning any "new tricks". Why would anyone in your position want to stir the pot this late in his or her career? I get it, but the majority of the staff *now* is a young one. I have been here long enough to see the shortfalls of the hospital administration(s) over a long period but am still young and determined enough to attempt to affect the change that is needed for the betterment of the dept. I want to leave this place better than when I found it and I am willing to put in the hard work and so are many others.

I know that this letter contains some harsh remarks which are not exactly the best recipe for your desired "open exchange of ideas", and for that I am sorry. But YOU opened this door when you took the personality, passion, and most importantly *tone of voice out of* your argument by putting it on paper, and then mailing it to me and the rest of the employees. Perhaps this could have been avoided with a face-to-face, which was never attempted.

My home address and the addresses of other employees are not at your disposal to be force-feeding us your skewed opinions. That is why we have pigeonholes at work and email addresses. If I am to receive another envelope from you in the mail, it had better contain only season's greetings. I am sure I speak for more than just myself on this matter. I expect this tactical bull \$#it from management and from the union but any individual employee can, if they so choose, approach me in person with his or her issues or can promptly kiss my ass. No more mail Jay...

**IF YOUR VOTE IS TO BE AN INFORMED ONE, YOU SHOULD SEEK INFORMATION FROM BOTH SIDES.**

**It's not too late. Union reps are available for meetings up to and including the date of the vote. April 16, 2009**

-Bryan Gaity-

April 10, 2009

To my fellow co-workers,

I am writing because I wish to express my opinion about the current events at BHEMS-LLC. I should have the right to talk to my co-workers, yet it seems that any discussion of the subject is met with a hostile reaction if an opposing view is expressed. There doesn't seem to be an open exchange of ideas.

I will be the first to agree that upper management DID NOT seem to have our best interest at heart. I did not like the direction our organization was being taken, or how we were handled. But I believe that with the proper, non-unionized voice, we can be heard. We should give the administration time to correct the past "bad" managerial style.

I've heard from people that they are scared for the future of their jobs, and the union is going to protect them. Look around and see that union workers are being laid off. We are living right now in a very scary period of time and I do not think that a union can protect workers.

Let's not forget that the only bargaining chip a union has is a strike. Can any of us afford that?

Wanting "stricter regulations and policies" and being held to a "higher standard" are valuable goals that can be accomplished by our own hands. Having a union cannot make an individual keep to a higher standard. A person's character, and job ethics, is what makes a person better than competent and want to excel in their field.

Since this is all about the money, let me address the money part of this. We will be having union dues removed from our paycheck the moment the union is voted in. Using their union dues schedule, as a group, we will be paying \$665.00 per week or \$34,580.00 per year for representation. For thirty four thousand dollars we could buy some of the equipment that we need, or pay an individual from our own ranks to represent us to management.... Or have one heck of a party every year.

**Lets ask some hard questions:**

**We had an employee committee in place a few years back that was established to address some of the complaints and issues. Many temporary fixes were initiated, but the committee fell apart because the employees lost interest in keeping up the effort required. Are we being just as lazy now? Is that why we need a union? Laziness? Or are we afraid to fight our own battles face to face with management?**

**I strongly feel that as a group of professionals, we have the ability within ourselves to effect change for our own good.**

**We have the means in place right now to bring our concerns to management. We have an open door policy to work with & we had (and can easily bring back) an employee advisory committee. If we put as much effort into our existing system that we seem to be expending on this union fight,**

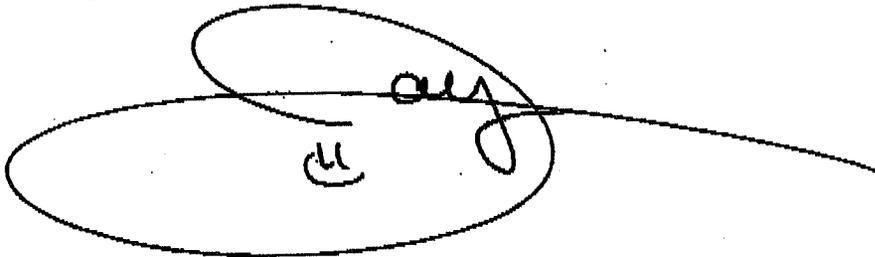
**WE COULD ACCOMPLISH LOTS MORE!**

**Please vote on April 16<sup>th</sup> 2009**

**Make EVERY VOICE count!**

**Thank you,**

**Jay Pax ; ]**

A handwritten signature in black ink, appearing to read "Jay Pax", is written over a large, hand-drawn oval. The signature is stylized and somewhat cursive.

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD**

<b>In the Matter of</b>	:	
	:	
<b>BRISTOL HOSPITAL EMS, LLC</b>	:	
	:	
<b>Employer,</b>	:	
	:	
<b>and</b>	:	<b>CASE NO. 34-RC-2313</b>
	:	
<b>INTERNATIONAL ASSOCIATION OF EMTS AND PARAMEDICS, SEIU/NAGE LOCAL 5000</b>	:	
	:	
<b>Petitioner.</b>	:	

**EXCEPTIONS TO THEN ACTING REGIONAL DIRECTOR’S REPORT  
ON OBJECTIONS**

Pursuant to Section 102.69 of the Rules and Regulations of the National Labor Relations Board (“Board”), the Employer, Bristol Hospital EMS, LLC (“EMS” or “Employer”), by and through its undersigned counsel, hereby files Exceptions to the then Acting Regional Director’s Report On Objections (“Report”) issued on May 14, 2009, for the following reasons:

1. On April 16, 2009, pursuant to a stipulation between the Employer and the International Association of EMTs and Paramedics, SEIU/NAGE Local 5000 (hereinafter the “Petitioner”) the Board conducted a representation election at Bristol Hospital EMS, LLC to determine whether a majority desired representation by Petitioner for the purposes of collective bargaining. The tally of ballots showed that 36 voted for Petitioner, 22 voted against and 3 challenges by Petitioner. Thus, assuming the challenges filed by the Petitioner were cast against it, the outcome could have been altered by approximately six votes or less than 10% of the 70 eligible voters.<sup>1</sup>

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<sup>1</sup> Enclosed please find the tally as Exhibit 1.

2. On April 23, 2009, the Employer filed timely objections to the election and within seven (7) days, it timely filed evidence in support of the objections alleging the following:<sup>2</sup>

During the restricted period, beginning 24 hours before the scheduled time for the election and continuing up through the day of the election in the above referenced case (e.g. 6:00 am April 15, 2009), the Union, in violation of the *Peerless Plywood Co.* rule, conducted election speeches and/or “question and answer” sessions with groups of eligible Bristol Hospital EMS, LLC employee voters, while they were on company time.

3. In support of this objection, the Employer submitted union meeting notices which scheduled meetings with eligible voters during the predominant shift times of eligible voters on the day before the election and on the very day of the election.<sup>3</sup> Such notices advised employees of their “right” to attend such meetings on company time. Evidence including a digitally recorded GPS trip log that established the presence of company vehicles and eligible voters at announced union meeting locations during the prohibited 24 hour period and on the day of the vote prior to the close of the polls.<sup>4</sup> The Employer also submitted work schedules showing that such employees were on company time. (See Employer’s Summary of Evidence’s Exhibit D).
4. The Board has held that the *Peerless Plywood* rule applies to “employers and unions alike” and prohibits either party from making election speeches or conducting “question and answer sessions” on company time to groups of employees “within 24 hours before the scheduled time for conducting an election” and during the day of the election. Moreover, even where some of the employees are not on company time, the Board has held that for purposes of applying the rule, “it is sufficient that *some of the employees* attended the meeting on company time.” See *Montgomery Ward & Co.*, 124 NLRB 343, 344 (1959) (emphasis added). For more than fifty years, the Board has held that a

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<sup>2</sup> We have attached the Employer’s Objections at Exhibit 2 and the Summary of Evidence dated April 30, 2009 as Exhibit 3. The Exhibits for the Employer’s April 30, 2009 Summary of Evidence are attached to that document as Exhibits A-E.

<sup>3</sup> We have attached the union meeting notice submitted to the Region as evidence as Exhibit A of the Employer’s Summary of Evidence, which advises employees they can meet on company time.

<sup>4</sup>We have enclosed a CD-ROM disc as Exhibit 4 which contains GPS information and a trip log of EMS ambulances on the days in question. The files contained on this disc can be opened in Windows Media Player. If Board staff has any difficulty viewing the material contained on said disc please feel free to contact this office for technical support. Also, please see Exhibit C of Employer’s Summary of Evidence.

violation of this rule by either the Employer or the Union “*will cause the election to be set aside whenever valid objections are filed.*” *Peerless Plywood Co.*, 107 NLRB 427, 429 (1953) (emphasis added).

5. Notwithstanding the *Peerless Plywood* rule, the Acting Regional Director issued a Report on Objections recommending, without the benefit of a hearing, that the *Peerless Plywood* objection should be dismissed as a matter of law. With due respect, we believe the Acting Regional Director’s Report on Objections was clearly erroneous as a matter of law and urge that it be rejected and that the *Peerless Plywood* objection be sustained or, if additional factual findings are required, that it be remanded.
6. We submit that the Acting Regional Director’s Report on Objections clearly erred in overruling the Employer’s *Peerless Plywood* objection solely on the grounds that employee attendance while on company time was “voluntary.” Specifically, the Acting Regional Director noted:

[a]t best, the Employer’s evidence shows that unit employees may have met with Petitioner representatives within 24 hours of, or during, the election. However, it is undisputed that any such meetings or conversations were completely *voluntary in nature*. ... Under such circumstances, regardless of the nature or timing of such meetings, the Petitioner did not violate the *Peerless Plywood* rule. Report at 3 (emphasis added).<sup>5</sup>

Long-standing and controlling Board precedent establishes that the pivotal and determinative issue is not whether groups of EMS employees *voluntarily* attended union campaign meetings within the prohibited period, but whether they attended such meetings *while on company time*. Clearly, there is no violation if the group meeting is not on “company time.” Conversely, if the employer or union conducts campaign meetings with groups of employees on company time during the prohibited period, it remains a *Peerless Plywood* violation even if their attendance is voluntary.

7. The Board’s *Montgomery Ward* decision is very clear that the *Peerless Plywood* rule was “**designed to bar absolutely the use of company time** for campaign speeches

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<sup>5</sup> “Report at \_\_\_” refers to page(s) of the Acting Regional Director’s Report On Objections.

during the 24-hour period immediately preceding the election.” *Montgomery Ward*, 124 NLRB 343 (1959), *Id.* at 344. (emphasis added). There, the Board went on to say that “the issue of ‘voluntary’ attendance *only arises* if the employees are attending on their ‘own time.’” *Id.* (emphasis added). Thus, a party objecting on the basis of a *Peerless Plywood* rule violation, need only show: 1) that a group of employees met with union or employer representatives during the proscribed time frame; 2) while such employees were on company time. Moreover, the Board stated that “it would not ‘prohibit’ employers or unions from making campaign speeches on or off company premises during the 24-hour period if employee attendance is voluntary *and* on the employees’ own time.” *Id.* at fn. 5. (emphasis in original). The Board’s use of the word “and,” as well as the intentional emphasis the Board gave to such conjunctive, makes it clear that the Board’s exception for “voluntary” attendance is only triggered when both elements: 1) voluntary attendance and 2) non-working time, are satisfied. Here, because of the nature of their duties as first responders, the EMS employees are either responding to an emergency call or they are ‘waiting to be engaged’ in order to respond to an emergency call from the second their shift begins until the second their shift ends. Due to the nature of the work they have no scheduled or unscheduled breaks during their shift. Thus, the EMS paramedics and EMTs are on paid company time for their entire shift. Given the correlation of the shift schedules, the Excelsior list, the announced meeting schedules and digital trip logs submitted into evidence, the Employer has met its burden of establishing at least a prima facie case that the Union conducted prohibited campaign meetings or “question and answer” sessions with assembled groups of eligible voters on company time on the day before and on the day of the election. Therefore, it is wholly irrelevant whether such employees attended union meetings, within the *Peerless Plywood* period on a voluntarily basis. Instead, the only factual issue is *whether they attended such meetings while on working time.*

8. In his Report on Objections, the Acting Regional Director correctly stated that “it is well established that *Peerless Plywood* does not prohibit employer or union from making campaign speeches on or off company premises during the 24 hour period ‘if employee attendance is voluntary *and* on the employees own time.’”(emphasis in original) Report at 3, citing *Montgomery Ward & Co.*, supra at fn. 5, and cases cited therein. However,

the Acting Regional Director then, without explanation, ignored the conjunctive “and,” specifically emphasized by the Board and cited by the Acting Regional Director, in finding that the Petitioner did not violate the *Peerless Plywood* rule. His reliance on the single standard of voluntariness as it applies to campaign meetings during the *Peerless Plywood* period is not only contrary to well-established Board law, it is bad policy and should be overturned. Further, it ignores the Acting Regional Director’s own correct statement of law which appears on the very same page in the Report on Objections. His erroneous interpretation of Board law which he cited as “well established” is clearly reversible error. Report at 3.

9. In his Report on Objections, and in spite of abundant and incontrovertible evidence on this point, the Acting Regional Director failed to make a finding of fact on the pivotal issue whether EMS employees were on working time when they attended union campaign meetings during the *Peerless Plywood* period. By failing to make a finding of fact on this critical issue, the Acting Regional Director committed reversible error.
10. Since the Acting Regional Director assumed for the purposes of his recommendation that the Union held meetings with groups of eligible voters during the prohibited period, and the undisputed record evidence (the final work schedules) clearly shows that the employees (save one) were on company time, the objection should be sustained by the Board and the election should be overturned.
11. Alternatively, if the Board is not inclined to make its own finding on the issue of company time, we urge that the case be remanded for hearing to create record on this issue based on the sworn testimony of witnesses. Further, since the Union in its submission to the Region never disputed the claim that it held campaign meetings with groups of eligible voters on the very day of the election (it disputed the claim as to the day before the vote), the Hearing Officer can and should find as a matter of established fact that the campaign meetings occurred with groups of eligible voters at the most critical time—the moments before they went to the polls.
12. If the Acting Regional Director’s reliance on the single standard of “voluntariness” is allowed to stand it would create an inherent bias favoring unions in the application of

the *Peerless Plywood* rule which, since its inception, was designed to apply to “both employers and unions alike.” Since a union is not the “employer” and thus could not compel employees to attend last minute campaign meetings on working time (particularly in a first election where the union was not previously certified or recognized), such attendance would always be presumed to be “voluntary.” Thus, particularly in a first election situation, as we have here, it is virtually inconceivable that a union would be ever found to violate the rule which was designed to equally apply to them.

13. Based on the Acting Regional Director’s erroneous interpretation of Board law, the *Peerless Plywood* rule would effectively be “dead letter” as applied to unions. In cases such as this where employees on company time are mobile or where they off-site (e.g. leased or contractor employees working within another company’s facility), unions could conduct campaign meetings with impunity on company time within the 24 hours of a scheduled election or on the very day of the election and thus gain the improper advantage which *Peerless Plywood* was designed to preempt (i.e. the offending party creates a group psychology and the last word in the moments before employees cast their ballots). In conclusion, the Acting Regional Director’s erroneous interpretation of Board law would artificially insulate unions from ever violating the *Peerless Plywood* rule.<sup>6</sup> Therefore, the Acting Regional Director’s interpretation of the *Peerless Plywood* rule is clearly in error.

14. We take exception to the Acting Regional Director’s claim that the Employer provided no evidence of a stop at the Dunkin Donuts on April 15. The Employer did provide the Board information, it was contained on a CD-ROM the Employer sent to the Board on April 30, 2009 as part of the Employer’s Summary of Evidence. Upon information and belief, the staff at Region 34 did not or were not able to open the disc which counsel’s technical staff had determined is in perfect working order.<sup>7</sup> However, this fact was not brought to the attention of the Employer or its undersigned counsel prior to the Acting

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<sup>6</sup> *Bro-Tech Corp.*, 330 NLRB 37 (1999)(Board found a union violated the *Peerless Plywood* rule, and directed new election).

<sup>7</sup> The CD-ROM in question was checked by a technical support employee of the undersigned’s firm prior to it being sent to the Board; it was in working order.

Regional Director's issuance of his Report on Objections nor was it revealed in the report.<sup>8</sup>

15. We take exceptions to the Board's conclusion that the Employer failed to establish facts when the Acting Regional Director did not review the disc filed by the Employer. During the course of an administrative investigation, there is no reason the Board should not have requested a replacement disc or assistance in opening the evidence. Instead, the Board claimed that the Employer did not submit any evidence. We have attached an identical copy of this disc which, as with the previous disc, Employer's counsel and counsel's technical support has accessed numerous times in preparing these Exceptions. The Acting Regional Director's failure to review the submitted evidence and his claim that the Employer did not provide evidentiary support, without explanation to the Board's inability to access the discs, is a significant oversight to which the Employer takes exception.

16. While we agree that this case involves the novel fact that the EMS employees were mobile and off-site for nearly their entire shift, we believe the *Peerless Plywood* rule should apply equally regardless of the nature and locus of the employment. Again, to hold otherwise would essentially exempt unions from the *Peerless Plywood* rule in such employment situations.

17. Finally, we take exception to the Acting Regional Director's conclusion that a reasonable employee could not feel threatened or intimidated by Mr. Gaity's (an eligible voter) letter given the fact that the letter involved a personal attack on a fellow eligible voter and contained an implicit threat. Further, the Acting Regional Director recommended this objection be overruled notwithstanding the fact that he found that Mr. Gaity's letter was widely distributed to EMS employees within 48 hours of the scheduled election.

---

<sup>8</sup> On May 26, 2009 an attorney from this office spoke to John Cotter of Region 34 who indicated that they were unable to access the data on the disc.

Accordingly, for the foregoing reasons, and the reasons set forth in the Employer's Brief in Support of Exceptions, the Employer respectfully requests that its Exceptions and Objections one and two be sustained.

Respectfully submitted this 27th day of May, 2009.

JACKSON LEWIS LLP  
177 Broad Street  
8<sup>th</sup> Floor  
Stamford, CT 06901  
Telephone: (203) 961-0404

BY: Roger P. Gilson/mip  
Roger P. Gilson, Jr.

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD**

**In the Matter of** :  
 :  
**BRISTOL HOSPITAL EMS, LLC** :  
 :  
 **Employer,** :  
 :  
**and** : **CASE NO. 34-RC-2313**  
 :  
**INTERNATIONAL ASSOCIATION OF** :  
**EMTS AND PARAMEDICS,** :  
**SEIU/NAGE LOCAL 5000** :  
 :  
 **Petitioner.** :

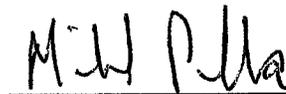
**CERTIFICATE OF SERVICE**

This is to certify that a copy of the foregoing **Exceptions to then Acting Regional Director's Report On Objections** was served this 27th day of May, 2009, upon the individuals named below by first-class United States mail, postage prepaid and addressed as follows:

Matthew Levy, National Director  
International Association of EMTs  
and Paramedics (IAEP) (NAGE,  
SEIU 5000)  
159 Burgin Parkway  
Quincy, MA 02169

Jonathan B. Kreisberg  
Regional Director  
National Labor Relations Board  
Region 34  
280 Trumbull St., 21<sup>st</sup> Floor  
Hartford, CT 06103-3503

BY:



Michael J. Passarella

# EXHIBIT 1

UNITED STATES OF AMERICA  
NATIONAL LABOR RELATIONS BOARD

BRISTOL HOSPITAL EMS, LLC

Employer

and

INTERNATIONAL ASSOCIATION OF EMTs and  
PARAMEDICS (IAEP) (NAGE, SEIU 5000)

Petitioner

DATE FILED  
03/06/2009

Case No. 34-RC-2313

Date Issued 04/16/2009

Type of Election:  
(Check one:)

- Stipulation
  - Board Direction
  - Consent Agreement
  - RD Direction
- Incumbent Union (Code)

(If applicable check either or both:)

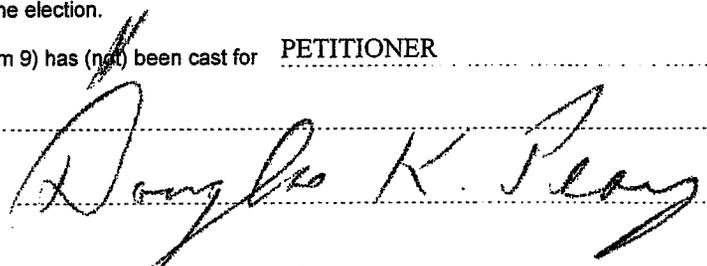
- 8(b) (7)
- Mail Ballot

TALLY OF BALLOTS

The undersigned agent of the Regional Director certifies that the results of the tabulation of ballots cast in the election held in the above case, and concluded on the date indicated above, were as follows:

- |  |                   |           |           |
|--|-------------------|-----------|-----------|
| 1. Approximate number of eligible voters   | .....             | <u>71</u> |           |
| 2. Number of Void ballots  | .....             | <u>0</u>  |           |
| 3. Number of Votes cast for  | <u>PETITIONER</u> |           | <u>36</u> |
| 4. Number of Votes cast for  | .....             |           |           |
| 5. Number of Votes cast for  | .....             |           |           |
| 6. Number of Votes cast against participating labor organization(s)                                | .....             |           | <u>20</u> |
| 7. Number of Valid votes counted (sum of 3, 4, 5, and 6)   | .....             |           | <u>58</u> |
| 8. Number of Challenged ballots  | .....             |           | <u>6</u>  |
| 9. Number of Valid votes counted plus challenged ballots (sum of 7 and 8)                          | .....             |           | <u>64</u> |
| 10. Challenges are (not) sufficient in number to affect the results of the election.               |                   |           |           |
| 11. A majority of the valid votes counted plus challenged ballots (Item 9) has (not) been cast for | <u>PETITIONER</u> |           |           |

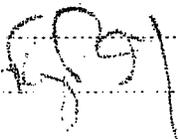
For the Regional Director



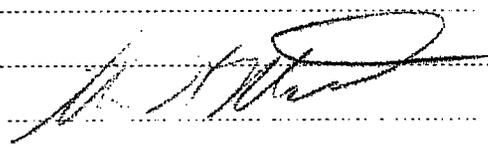
The undersigned acted as authorized observers in the counting and tabulating of ballots indicated above. We hereby certify that the counting and tabulating were fairly and accurately done, that the secrecy of the ballots was maintained, and that the results were as indicated above. We also acknowledge service of this tally.

For EMPLOYER

For PETITIONER



For



# EXHIBIT 2

Representing Management Exclusively in Workplace Law and Related Litigation

**jackson lewis**  
Attorneys at Law

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BIRMINGHAM, AL	LOS ANGELES, CA	PROVIDENCE, RI
BOSTON, MA	MIAMI, FL	RALEIGH-DURHAM, NC
CHICAGO, IL	MINNEAPOLIS, MN	RICHMOND, VA
CLEVELAND, OH	MORRISTOWN, NJ	SACRAMENTO, CA
DALLAS, TX	NEW ORLEANS, LA	SAN FRANCISCO, CA
DENVER, CO	NEW YORK, NY	SEATTLE, WA
DETROIT, MI	ORANGE COUNTY, CA	STAMFORD, CT
GREENVILLE, SC	ORLANDO, FL	WASHINGTON, DC REGION
HARTFORD, CT	PHILADELPHIA, PA	WHITE PLAINS, NY
HOUSTON, TX	PHOENIX, AZ	
LAS VEGAS, NV	PITTSBURGH, PA	

April 23, 2009

**VIA FACSIMILE & FED-EX**

John S. Cotter  
Acting Regional Director  
National Labor Relations Board  
Region 34  
280 Trumbull Street, 21st Floor  
Hartford, CT 06103-3503

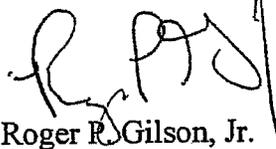
Re: Bristol Hospital EMS, LLC  
Case No. 34-RC-2313

Dear Mr. Cotter:

Pursuant to Section 102.114(f) of the Board's Rules and Regulations, we are submitting via facsimile the Employer's Objections to the Conduct Affecting the Results of the Election. We are sending via overnight mail the original and five (5) copies of the above-referenced Objections. We have also sent an electronic copy of the above-referenced objections to Douglas Peary, the Labor Board agent who handled the April 16, 2009 election via email.

Very truly yours,

JACKSON LEWIS LLP



Roger R. Gilson, Jr.

RPG/bb

cc: Jeanine F. Reckdenwald  
Steven J. Porzio, Esq.

UNITED STATES OF AMERICA  
BEFORE THE  
NATIONAL LABOR RELATIONS BOARD  
REGION 34

-----	X	
BRISTOL HOSPITAL EMS, LLC,	:	
	:	CASE 34-RC-2313
	:	
Employer,	:	
	:	
-and-	:	
	:	
INTERNATIONAL ASSOCIATION OF	:	
EMTS AD PARAMEDICS, SEIU/NAGE	:	
LOCAL 5000,	:	
Petitioner.	:	
-----	X	

**EMPLOYER’S OBJECTIONS TO THE CONDUCT  
OF THE ELECTION AND TO CONDUCT  
AFFECTING THE RESULTS OF THE ELECTION**

Pursuant to Section 102.69 of the National Labor Relations Board’s Rules and Regulations, as amended, BRISTOL HOSPITAL EMS, LLC (the “Employer”) hereby objects to conduct affecting the results of the election in the above matter for the following reasons:

1. During the restricted period, beginning 24 hours before the scheduled time for the election and continuing up through the day of the election in the above referenced case (e.g. 6:00 am April 15, 2009), the Union, in violation of the *Peerless Plywood Co.* rule, conducted election speeches and/or “question and answer” sessions with groups of eligible Bristol Hospital EMS, LLC employee voters, while they were on company time.

2. The Board has held that this rule applies to “employers and unions alike” and prohibits either party from making election speeches on company time to groups of employees “within 24 hours before the scheduled time for conducting an election.” For more

than fifty years, the Board has held that a violation of this rule by either the Employer or the Union "*will cause the election to be set aside whenever valid objections are filed.*" *Peerless Plywood Co.*, 107 NLRB 427, 429 (1953) (emphasis added).

3. The Board also has held that this rule applies not only to formal speeches but "question and answer sessions" held on company time even where such meetings are not held on the Employer's premises. Moreover, even where some of the employees are not on company time, the Board has held that "for purposes of applying the rule, it is sufficient that *some of the employees* attended the meeting on company time." *See Montgomery Ward & Co.*, 124 NLRB 343, 344 (1959) (emphasis added).

4. The Board believes that such election speeches and/or "question and answer" sessions by either the Employer or the Union create a "mass psychology among the eligible voting employees," by granting the party who conducts them the "last most telling word" and therefore an "unfair advantage."

5. During the critical pre-election period, Union agents, supporters and/or others acting in concert with them created a pervasive atmosphere of fear and coercion by threats, harassment, and intimidation.

6. During the critical pre-election period, Union agents, supporters and/or others acting in concert with them interfered with the "laboratory conditions" required in Board elections by inflammatory appeals to bias.

7. By the above and other conduct, the Union has interfered with and coerced eligible voters with regard to the exercise of their Section 7 rights under the National Labor Relations Act and destroyed the atmosphere necessary to conduct a fair election. The above

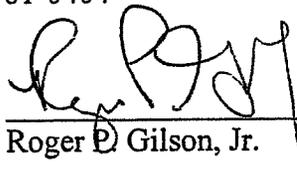
coercive acts and other conduct taking place during the critical pre-election and actual voting periods were sufficient to affect the results of the election.

WHEREFORE, for all the foregoing and any other reasons recognized by law, the Employer respectfully requests that the Acting Regional Director review and investigate the aforementioned conduct and set aside the results of the election or, in the alternative, order a hearing thereon.

Respectfully submitted,

JACKSON LEWIS LLP  
177 Broad Street, 8<sup>th</sup> floor  
Stamford, CT 06904  
(203) 961-0404

By:

  
\_\_\_\_\_  
Roger D. Gilson, Jr.

Dated: April 23, 2009  
Stamford, CT

**CERTIFICATE OF SERVICE**

I hereby certify that the Employer's Objections to the Conduct Affecting the Results of the Election was served this 23<sup>rd</sup> day of April, 2009 via facsimile transmission, and that the original and five (5) copies of the Employer's Objections were served this 23<sup>rd</sup> day of April, 2009 via FedEx overnight mail service, upon the following:

John S. Cotter, Acting Regional Director  
National Labor Relations Board  
Region 34  
280 Trumbull Street  
21<sup>st</sup> Floor  
Hartford, CT 06103



---

Roger P. Gilson, Jr.

# EXHIBIT 3



Attorneys at Law

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HARTFORD, CT
HOUSTON, TX
LAS VEGAS, NV
LONG ISLAND, NY
LOS ANGELES, CA
MIAMI, FL
MINNEAPOLIS, MN
MORRISTOWN, NJ
NEW ORLEANS, LA
NEW YORK, NY
ORANGE COUNTY, CA
ORLANDO, FL
PHILADELPHIA, PA
PHOENIX, AZ
PITTSBURGH, PA
PORTLAND, OR
PROVIDENCE, RI
RALEIGH-DURHAM, NC
RICHMOND, VA
SACRAMENTO, CA
SAN FRANCISCO, CA
SAN FRANCISCO, CA
SEATTLE, WA
STAMFORD, CT
WASHINGTON, DC REGION
WHITE PLAINS, NY

April 30, 2009

VIA FACSIMILE & FED-EX

John S. Cotter
Acting Regional Director
National Labor Relations Board
Region 34
280 Trumbull Street, 21st Floor
Hartford, CT 06103-3503

Re: Bristol Hospital EMS, LLC
Case No. 34-RC-2313

Dear Mr. Cotter:

On April 23, 2009, the Employer in the above-referenced case filed Objections to the Conduct Affecting the Results of the Election. Today, pursuant to Section 102.69 and 102.114(f) of the Board's Rules and Regulations, we are submitting via facsimile the Employer's Summary of Evidence in Support of Objections. We are sending via overnight mail the original and five (5) copies of the above-referenced Evidence. We have also sent an electronic copy of the above-referenced Evidence to Douglas Peary, the Labor Board agent who handled the April 16, 2009 election via email.

We just received the Petitioner's Response to Employer's Objection. While it is too late to modify our Summary of Evidence, we wish to address several points which the Petitioner raised in its response.

First, Petitioner's counsel acknowledges that Union representatives were available to meet with eligible employee voters on April 15th, the day before the election. Yet, Petitioner's counsel asserts that no employee met with a Union representative within 24 hours of the election. The GPS data attached as Exhibit C to Employer's Summary of Evidence casts doubt on that assertion by Petitioner's Counsel. The data showed that two EMS staff members, one of whom was an eligible voter, were stationed at Dunkin' Donuts for more than an hour during the scheduled meeting time.

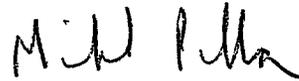
Second, Petitioner's counsel's assertion that such meetings were voluntary is irrelevant. Board law establishes that the only factor is whether such meetings were held on company time. Campaign meetings, voluntary or otherwise, held within 24 hours of the election violate the *Peerless Plywood* rule.

Third, while Petitioner's counsel denies any face-to-face meetings with eligible voters took place within 24 hours prior to the election, Petitioner's counsel specifically fails to deny such meeting(s) took place on April 16<sup>th</sup>. *Peerless Plywood* establishes that the 24 hour rule continues both during the polling period and between polling periods. On April 16, IAEP National Representative Steve Weigand arrived 15-20 minutes late for the pre-election conference. We suspect that Weigand was meeting with eligible voters during this time.

Finally, the GPS data establishes two possible meeting times and locations during the 24 hour period which casts doubt on the Petitioner's position that no meeting took place. For the foregoing reasons and the reasons presented in the Employer's Summary of Evidence, the Employer respectfully requests that the Acting Regional Director review and investigate the Petitioner's conduct and set aside the results of the election or, in the alternative, order a hearing thereon.

Very truly yours,

JACKSON LEWIS LLP



Roger P. Gilson, Jr.  
Michael J. Passarella  
Steven J. Porzio

RPG:bb

Enclosures

cc: Ms. Jeanine F. Reckdenwald

UNITED STATES OF AMERICA  
BEFORE THE  
NATIONAL LABOR RELATIONS BOARD  
REGION 34

BRISTOL HOSPITAL EMS, LLC	X	
	:	CASE 34-RC-2313
Employer,	:	
	:	
-and-	:	
	:	
INTERNATIONAL ASSOCIATION OF EMTS AND PARAMEDICS, SEIU/NAGE, LOCAL 5000,	:	
Petitioner.	:	
	X	

**SUMMARY OF EMPLOYER'S EVIDENCE  
IN SUPPORT OF OBJECTIONS**

**OBJECTION 1:** During the restricted period, beginning 24 hours before the scheduled time for the election (i.e., 6:00 am April 15, 2009) and continuing up through the day of the election, in the above referenced case, the Union, in violation of the *Peerless Plywood Co.* rule, conducted election speeches and/or "question and answer" sessions with groups of eligible Bristol Hospital EMS, LLC employee voters, while they were on company time.

**WITNESSES:** Mark Zarrella (EMS Director), Rachel Norville (an eligible voter).

**EVIDENCE:** On March 30, 2009, Matt Hebert, an EMS Paramedic and Petitioner's key on-site representative, sent an email (see Exhibit A attached) to approximately 60 Bristol Hospital EMS, LLC employees. This email indicated that IAEP Union Business Agents would be in Bristol during the restricted "24 hour" period and on the day of the vote to

meet with EMS employees to discuss the union and the election.<sup>1</sup> Hebert's email notes that employees were encouraged to meet with the IAEP representatives at times including "during work hours" and that employees "are able to visit [the IAEP representatives] while on shift..."

Specifically, Hebert's email notes that on April 15<sup>th</sup> IAEP representative Jim Duffy would be available from 11:00am-6:00pm to meet with employees at the De Witt Page Park in Bristol, CT. Additionally, it states that on April 16<sup>th</sup> Steve Weigand, IAEP National Representative, would be at the Dunkin Donuts in Bristol, CT from 6:00am-4:00pm. This period encompassed the polling period and the times between the two polling periods. This was further corroborated on April 13, 2009, when Bryan Gaity (an eligible voter) wrote a letter that was distributed to many EMS employees (see Exhibit B attached) confirming that "Union reps are available for meetings up to and *including the date of the vote.*" (emphasis added).<sup>2</sup>

The election in the above referenced case was conducted on April 16, 2009 beginning at 6:00am. Thus, the 24 hour restricted period based on the *Peerless Plywood* rule began at 6:00am on April 15<sup>th</sup> and ran up until the end of the election at 4:00pm on April 16<sup>th</sup>. Therefore, the IAEP's campaign meetings on April 15<sup>th</sup> and 16<sup>th</sup> with eligible voters on company time violated the *Peerless Plywood* rule.

Upon information and belief, the scheduling of these meetings, including their location and time, identified in Hebert's March 30<sup>th</sup> email was designed to enable Union representatives to give election speeches and conduct "question and answer" sessions with on-duty eligible voters in violation of the "24 hour" rule. Rachel Norville will establish that she was an intended recipient, and did in fact receive a copy of Hebert's March 30<sup>th</sup> email. Further, Norville will establish that she volunteered a copy of Hebert's email to Mark Zarrella.

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<sup>1</sup> In addition to being sent to EMS employees, Hebert's email was also sent to three IAEP union representatives (Dave Shaller, Jim Duffy, and Steve Weigand). This email was volunteered to an EMS Manager.

<sup>2</sup> See Objection 2 for more detail about the Gaity letter.

Mark Zarrella will establish that most Bristol Hospital EMS employees are assigned to ambulances for the entirety of their shift, which renders them mobile, thus permitting them to attend off-site Union meetings while still on working time. Zarrella will establish that EMS employees are paid "portal to portal", or in other words, from the second they punch in at the beginning of their shift until the second they punch out at the end of their shift. Zarrella will establish that EMS employees are not given meal or rest breaks during their shifts. They are either engaged on a call, or are waiting to be engaged on a call, and are thus on working time every second of their shift. Two EMS employees are usually assigned to each ambulance. While the Employer is precluded from conducting surveillance upon union meetings, circumstantial evidence establishes that IAEP held campaign meetings in violation of the *Peerless Plywood* rule.

EMS Director, Mark Zarrella, will testify that about a year ago Bristol Hospital EMS began participating in an EMS ambulance tracking system, which was used to deploy those emergency vehicles which were closest to incoming calls in order to reduce emergency response times. As a result, each and every Bristol Hospital EMS ambulance is equipped with a Global Positioning Satellite ("GPS") tracking device. The GPS tracking device identifies the exact geographic location of every ambulance at any given moment. Records of this GPS data are maintained at a central repository in Waterbury, CT. These records can establish where Bristol Hospital EMS ambulances were located on April 15<sup>th</sup> and 16<sup>th</sup> minute by minute throughout the entire day. Thus, it is possible to determine whether an ambulance was positioned at the arranged location of the prohibited campaign meetings and for what period of time. The aforementioned GPS records (see Exhibit C attached) were sought and obtained after these

Objections were filed for the purpose of substantiating the suspected violation of the *Peerless Plywood* rule.

With the help of these records, Zarrella will establish that at least some Bristol Hospital EMS ambulances containing on-duty eligible voters were parked for a significant period of time on April 16<sup>th</sup> at the Dunkin Donuts during times when the IAEP indicated they were holding scheduled campaign meetings there. For example, Zarrella will testify that Exhibit C shows that on April 16<sup>th</sup> from approximately 8:53am until approximately 9:12am (a span of approximately 19 minutes) a Bristol Hospital EMS ambulance containing two on-duty eligible voters stopped at a Dunkin Donuts on North Main Street in Bristol, CT. This data can be gleaned from Exhibit C by examining the graphical representation on the right hand side of the page, which shows the ambulance on North Main Street, as well as the actual GPS data on the left hand side of the page which shows the latitude and longitude coordinates of the ambulance as well as the exact time that ambulance was at those coordinates. The coordinates found on Exhibit C from 8:53am to 9:12am are the coordinates for a Dunkin Donuts in Bristol, CT, which just so happens to be the exact same Dunkin Donuts in Bristol, CT that the IAEP indicated would be the setting for Union campaign meetings on April 16<sup>th</sup>. Moreover, the approximate 19 minute period of time that ambulance was parked at the Dunkin Donuts was during the period of time an IAEP representative was scheduled to be there to conduct Union campaign meetings. Other GPS data analyzed from the April 15-16 timeframe shows that typical stops at that Dunkin Donuts last only a few minutes.

Zarrella will establish that, based on the EMS Schedule (see Exhibit D attached), 28 employees were on duty on April 15<sup>th</sup> during the restricted *Peerless Plywood* period. Of those 28 employees, Zarrella will establish that 23 of them were on duty at times when the above referenced Union meetings were scheduled to take place on April 15<sup>th</sup>. Further, Zarrella will establish that 23 employees were on duty on April 16<sup>th</sup> during the restricted *Peerless Plywood* period. Of those 23 employees, Zarrella will establish that all 23 of them were on duty at times when the above referenced Union meetings were scheduled to take place on April 16<sup>th</sup>. With the assistance of GPS data, Zarrella will show that on April 16<sup>th</sup> Matt Hebert and Nate Parker were the two on-duty eligible voters who stopped at the Dunkin Donuts on North Main Street in Bristol, CT, which was listed as the location for that day's Union campaign meetings. The GPS also establishes another stop during the period of the scheduled meeting earlier that day at about 7:30am. This involved two eligible voters, Anthony Betz and Matthew Klimovicz. In addition, the GPS data establishes that there was a stop of more than an hour during the time set for the meeting on the preceding day.<sup>3</sup> This involved two staff members, Lee Jacobs and Jessica Mastropierro. Jacobs was an eligible voter.

Mark Zarrella will establish that Steven Weigand, the IAEP National Representative who appeared on behalf of the IAEP for the April 16<sup>th</sup> election, was approximately 20 minutes late for the pre-election conference that was scheduled to begin at 5:30 am on April 16<sup>th</sup>. Zarrella will also establish that Weigand, according to Hebert's March 30<sup>th</sup> email, was also the IAEP representative scheduled to meet with employees on April 16<sup>th</sup>. The fact that Weigand was late to the pre-election conference suggests he was meeting with eligible

---

<sup>3</sup> Upon information and belief, the meeting for the preceding day was moved from DeWitt Page Park to the Dunkin Donuts.

voters to discuss the IAEP and/or the election before the voting commenced, a clear violation of the *Peerless Plywood* rule.<sup>4</sup>

Finally, Mark Zarrella will also establish that, in addition to being an eligible voter and a Bristol Hospital EMS employee, Matt Hebert, at all times relevant to the Employer's objections, was and/or was perceived to be an agent of the IAEP. As discussed above, it was Hebert who, on behalf of the IAEP, sent to approximately 60 EMS employees the list of dates, times and locations of IAEP meetings and which IAEP representative would be present (see Exhibit A attached). Zarrella will establish that it was Hebert, in his email (see Exhibit A attached), who recommended that employees meet with Union representatives while on working time and notified employees that any supervisor who prevents them from meeting with Union representatives on working time would be committing "a violation that needs to be reported to *me* as soon as possible." (emphasis added). Zarrella will also establish that it was Hebert who on or about March 29, 2009 posted a flyer (see Exhibit E attached), on behalf of the IAEP. In addition to being posted on the IAEP's behalf, the very same flyer was also posted under Hebert's own name. Lastly, Zarrella will establish that Hebert and Gaity served as the IAEP's election observers on April 16<sup>th</sup>. Thus, for all the above reasons, Hebert and Gaity were, at all times relevant to the Employer's objections, agents of the IAEP for the purpose of communicating to unit employees that election campaign meetings were being scheduled on working time in violation of the *Peerless Plywood* rule.

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<sup>4</sup> In addition to Weigand, we also believe IAEP may have had one or more other business agents conducting prohibited campaign meetings on the day before the election as well as on the day of the election including Jim Duffy and Dave Shaller.

There is reasonable cause to believe that the IAEP violated the *Peerless Plywood* rule because the IAEP scheduled meetings on April 15<sup>th</sup> and 16<sup>th</sup>; the IAEP encouraged eligible voters to attend such meetings on company time; the presence of Bristol Hospital EMS ambulances containing at least five on-duty eligible voters on a date and time when the prohibited IAEP campaign meetings were scheduled can be established by GPS data. We also believe a more detailed analysis of the enclosed computer disk will disclose other examples of violations of the *Peerless Plywood* rule.

**OBJECTION 2:** During the critical pre-election period, Union agents, supporters and/or others acting in concert with them created an atmosphere of fear and coercion by threats, harassment, and intimidation.

**WITNESSES:** Mark Zarrella (EMS Director), Jay Pax (an eligible voter).

**EVIDENCE:** On April 13, 2009, Bryan Gaity (an eligible voter) wrote a threatening and abusive letter to Jay Pax (another eligible voter) in response to an anti-union letter she sent to co-workers. Upon information and belief, Gaity distributed and sent his letter not only to Jay Pax, but also to several other eligible voters. He also left a copy of the letter in a public area at the EMS building for any and all employees to see. Gaity's letter implicitly threatened Pax should she ever again send any other letter with "skewed opinions" (i.e., anti-union letter) to other employees' homes. Gaity's letter also appealed to the perceived prejudices of the predominantly young male paramedics working at the EMS by referring to Pax, a senior, female paramedic, as the "proverbial old dog." This letter was written in retaliation for her opposition to the Union. Gaity's letter chastised, humiliated, demeaned, harassed, and intimidated Pax simply because she chose to exercise her rights to lawfully express her opinion on unions and other issues on paper.

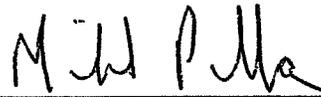
Finally, Mark Zarrella will also establish that Bryan Gaity, at all times relevant to the Employer's objections, was and/or was perceived to be an agent of the IAEP. Not only was Gaity the Union's observer, he communicated to employees, on behalf of the IAEP, the scheduling of Union campaign meetings during working time on the day of the election.

WHEREFORE, for all the foregoing and any other reasons recognized by law, the Employer respectfully requests that the Acting Regional Director review and investigate the aforementioned conduct and set aside the results of the election or, in the alternative, order a hearing thereon.

Respectfully submitted,

JACKSON LEWIS LLP  
177 Broad Street, 8<sup>th</sup> floor  
Stamford, CT 06904  
(203) 961-0404

By:



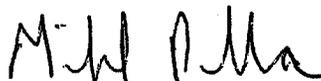
Roger P. Gilson, Jr.  
Michael J. Passarella  
Steven J. Porzio

Dated: April 30, 2009  
Stamford, CT

**CERTIFICATE OF SERVICE**

I hereby certify that the Employer's Summary of Evidence in Support of Objections was served this 30<sup>th</sup> day of April, 2009 via facsimile transmission, and that the original and five (5) copies of the Employer's Objections were served this 30<sup>th</sup> day of April, 2009 via FedEx overnight mail service, upon the following:

John S. Cotter, Acting Regional Director  
National Labor Relations Board  
Region 34  
280 Trumbull Street  
21<sup>st</sup> Floor  
Hartford, CT 06103



---

Michael J. Passarella

Exhibit A

**From:** "matthew hebert" <hebertemt@gmail.com>  
**Sent:** Monday, March 30, 2009 11:37 AM  
**To:** "Aaron Dejarlins" <aarond43@gmail.com>, "Adam Levine" <aalevinej@gmail.com>, "Andy Mercieri" <andybob@snet.net>, "Brett Kwasniewski" <BrettKwasniewski@asu.edu>, "Carl Usher" <carlusher@yahoo.com>, "Chris Hoebel" <choebel@bhems.com>, "Christina Benevenuto" <llll25256@netscape.net>, "Chuck Judd" <chuckj06010@yahoo.com>, "Craig Bellini" <craigbellini@sbcglobal.net>, "Darryl Lanzara" <dlanzara@sbcglobal.net>, "Dave Murphy" <davmurph@optonline.net>, "Dave Olmsted" <dolmsted@comcast.net>, "Dave Schaller" <rellahcs@comcast.net>, "David Petersen" <EMTfromSoCal@yahoo.com>, "Dean Landrette" <landrette@att.net>, "Denise Shea" <denise.cochrane@cigna.com>, dnrsvp@aol.com, "Ed Austin" <plyffemt@aol.com>, "Eric Marin" <ffemarin@sbcglobal.net>, "Eric McCoy" <emccoy690@hotmail.com>, "Fernando Figueroa" <figgy8428@yahoo.com>, "Greg Marcotte" <gmarco11@aol.com>, "Jay Pax" <goddess17unit@sbcglobal.net>, "Jen St. Amand" <jennstamand@bhems.com>, "Jessica Mastropiero" <emsgirljess@hotmail.com>, "Jessica Ostrander" <hitchic29@yahoo.com>, "Jessica Wilson" <ctkity21@aol.com>, "Jim Duffy" <jduffy01@snet.net>, "Joel Buslewicz" <jbuslewicz@gmail.com>, "John Bennet" <benny224@aol.com>, "John Rooney" <yenoorj@hotmail.com>, "Josh Mosdale" <Mosdale@cox.net>, "Karen Nozolillo" <kiki69@comcast.net>, "Kay Hanjan" <sike2001@aol.com>, "Keith Shamber" <akadogbite@yahoo.com>, "Kevin Ceritello" <medic145@att.net>, "Kevin Infante" <kev71@sbcglobal.net>, "Kevin Watson" <kevinbiker27@aim.com>, "Kyle Croce" <kcroce@live.com>, "Laurie Strand" <lauriestrand418@hotmail.com>, "Lee Jacobs" <lee\_jacobs\_fire09@yahoo.com>, "Lisa Hohl" <lisah08@yahoo.com>, "Lyndsay Ingellis" <dissertation\_route101@hotmail.com>, "Mark Trompeter" <mark.trompeter@campionambulance.com>, "Melissa Patrick" <gmpatrick2000@yahoo.com>, "Michael Gerrity" <michael-gerrity@att.net>, "Mike Krupinski" <mikekrupinski@yahoo.com>, "Owen Grove" <drogrove@hotmail.com>, "Pete Bekstrom" <peterbemt@aol.com>, "Phil Brochu" <philfire1@sbcglobal.net>, "Phil Lombardo" <DadofBPI@aol.com>, "PJ Roche" <firemedpj98@sbcglobal.net>, "Rachel Norville" <rachel.norville@campionambulance.com>, "Rick Mailhot" <rxk102@yahoo.com>, "Rob Klepps" <rkleppsjr@sbcglobal.net>, "Ryan Rigon" <ryan.rigon@gmail.com>, "Sam Wilson" <samuelcwillsoniii@yahoo.com>, "Scott Bullock" <imwher@yahoo.com>, "Shari Fegley" <littlesnit2@aol.com>, "Shawn McCormick" <sunnimidge@apl.com>, "Steve Ouelette" <ssouellette@comcast.net>, "Steve Sechow" <fd\_5959@yahoo.com>, "Steve Weigand" <sweigand@nage.org>, "Taylor Norton" <nortontar@ccsu.edu>, "Tony Benvenuto" <jlb5716@comcast.net>, "Tony Betz" <crazytones@comcast.net>, "Vanessa Biondi" <biondi@hartford.edu>  
**Subject:** IAEP LOCAL REPRESENTITIVES AVAIALBE EVERYDAY FOR THE NEXT 3 WEEKS

Hello All,

I hope this email finds you well. For the next three weeks there will be representatives available for all employees to come out and visit so that you may ask any and all questions regarding the IAEP and union procedures. It is vitally important for every one of us to make a well thought an informed decision about the union. These representatives are not here to sell the union, they are here to sell "you". These individuals work as EMTs and Paramedics throughout Connecticut and the rest of the north east. These individuals should be able to answer whatever questions you may have, however, if they are not able to, I will find the answer for you and get back to you as soon as I recieve it. I am using my blackberry service again so as soon as you send me an email I will be able to respond.

Please make every effort to speak with one or all of these union representatives. The times and days are set up in a way that employees are able to talk with these individuals on your days off, times before, after or during work hours. You are able to visit these individuals while on shift and if any supervisors or managers prohibit you from going to any of these locations, that is a violation that needs to be reported to me as soon as possible.

Sincerely,

Matthew Hebert

This is an updated schedule:

- March 30 - George Hockhousen - Dunkin Dounts 182 North Main St Bristol CT 06010 (11am-5pm)  
March 31 - George Hockhousen - Dunkin Dounts 182 North Main St Bristol CT 06010 (11am-6pm)  
April 1 - George Hockhousen - Dunkin Dounts 182 North Main St Bristol CT 06010 (11am-6pm)  
April 2 - George Hockhousen - Parking Lot - De Witt Page Park 647 King Street Bristol CT 06010 (11am-6pm)  
April 3 - George Hockhousen - Burlington Fire Department 719 George Washington Turnpike, Burlington CT 06013 (11am-7pm)  
April 4 - Dave Schaller - Parking Lot - De Witt Page Park 647 King Street Bristol CT 06010 (11am-6pm)  
April 6 - Steve Weigand - Dunkin Dounts 182 North Main St Bristol CT 06010 (11am-6pm)  
April 7 - Steve Weigand - Parking Lot - De Witt Page Park 647 King Street Bristol CT 06010 (11am-6pm)  
April 8 - Jim Duffy - Dunkin Dounts 182 North Main St Bristol CT 06010 (11am-6pm)  
April 9 - Jim Duffy - Parking Lot - De Witt Page Park 647 King Street Bristol CT 06010 (11am-6pm)  
April 10 - George Hockhousen - Burlington Fire Department 719 George Washington Turnpike, Burlington CT 06013 (11am-7pm)  
April 11 - George Hockhousen - Dunkin Dounts 182 North Main St Bristol CT 06010 (11am-6pm)  
April 12 - George Hockhousen - Parking Lot - De Witt Page Park 647 King Street Bristol CT 06010 (11am-6pm)  
April 13 Dave Schaller - Dunkin Dounts 182 North Main St Bristol CT 06010 (11am-6pm)  
April 14 - Jim Duffy - Dunkin Dounts 182 North Main St Bristol CT 06010 (11am-6pm)  
April 15 - Jim Duffy - Parking Lot - De Witt Page Park 647 King Street Bristol CT 06010 (11am-6pm)  
April 16 Steve Weigand - Dunkin Dounts 182 North Main St Bristol CT 06010 (6am-4pm)

*I his was my response.*

*B.G.*

April 13, 2009

To Jay,

I am writing this because I wish to express my disgust with the selfish way in which you have decided to express your opinions. First of all; YES, you do have the right to talk to your co-workers, yet I should also have the same right to tell you to go pound sand if I don't feel like listening to the one sided opinions of our most veteran employee who has her own personal agenda against the introduction of a union or anything else new for that matter. However, its kind of hard to do that with a letter, seeing how you cannot be interrupted, cut off or disagreed with but you already knew that. Nice try.

How can you *possibly* complain about a lack of an open exchange of ideas when I have not seen you at a single union rep meeting??? Many others and I have made every effort to attend both MANAGEMENT (mandatory) union busting meetings as well as many of the IAEP's meetings, which have been more than accessible to employees of any shift as well as informative. Where have you or any of the other anti-union employees been? Have you made an appearance at a union meeting? Have you asked any questions to anyone from the IAEP? The answers are NO... and why is that?

Second, you wrote "*But I believe that with proper, non-unionized voice, we can be heard. We should give the administration time to correct the past "bad" managerial style.*" Where were you 3 years ago? We've already done that. The definition of INSANITY is repeating the same act over and over expecting different results. How many times do we have to touch the fire before we realize that it is hot Jay? I, for one, am done with that approach and I know that many feel as I do.

You made many references in your letter about union "facts". Again, how did you get said "facts" without showing your face at a single union meeting? Don't tell me from H.R. A strike is not our only bargaining chip if we go union because the EMPLOYEES must vote on this strike as with anything else and NO ONE whether pro or anti union wants to strike. DEAD ISSUE!!!

Also, we will absolutely *not* have union dues removed from our paychecks the moment a union is voted in. No dues whatsoever are paid until a final contract is negotiated between UNION and HOSPITAL... so we are looking at about a year give or take before that happens. And who would possibly consider in a million years spending the GROUP'S \$34,000/year to buy equipment for the ambulances as you suggested? That is the responsibility of the company Jay, no one else but you wants to buy their own personal pocket sized O2 sat for \$400 (skin color, radial pulse and cap refill work just fine for the rest of us). You say in one sentence you want to be serious, then, in another, you make a joke about a \$34,000 party. What is that?

We cannot fight our own battles with management because without representation, Jay, we are just a bunch of whiny employees with no recourse or ability to otherwise

challenge the company. We can ask and they can laugh. With a union, there is a legal process and a legal contract that must be followed by both employees and management. This is stability that many others and I are willing to pay for. Nothing is free.

You, *personally*, have many reasons to be anti union and I can understand that, but you can't expect to push your opinions on others the way that you have via home mailers. It's a personality issue with you and anyone who knows you can see it. YOU HATE CHANGE. No matter what it is. You had a tough transition with going from the Life pack 11 to Zoll monitors and still cant even use the newest Zoll we have. You had a hard time dealing with the loss of an IV tray and still carry your own supply of blood tubes. God forbid anything come along to disrupt Jay Pax's bubble. Computer run forms?... same issue. How about Burlington? I don't have enough paper to discuss your lack of coping ability with that place!

And finally, you are BHEMS's proverbial "old dog" and there is no way you are learning any "new tricks". Why would anyone in your position want to stir the pot this late in his or her career? I get it, but the majority of the staff *now* is a young one. I have been here long enough to see the shortfalls of the hospital administration(s) over a long period but am still young and determined enough to attempt to affect the change that is needed for the betterment of the dept. I want to leave this place better than when I found it and I am willing to put in the hard work and so are many others.

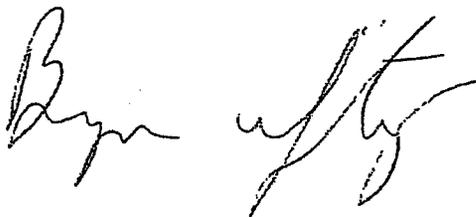
I know that this letter contains some harsh remarks which are not exactly the best recipe for your desired "open exchange of ideas", and for that I am sorry. But YOU opened this door when you took the personality, passion, and most importantly *tone of voice out* of your argument by putting it on paper, and then mailing it to me and the rest of the employees. Perhaps this could have been avoided with a face-to-face, which was never attempted.

My home address and the addresses of other employees are not at your disposal to be force-feeding us your skewed opinions. That is why we have pigeonholes at work and email addresses. If I am to receive another envelope from you in the mail, it had better contain only season's greetings. I am sure I speak for more than just myself on this matter. I expect this tactical bull \$#it from management and from the union but any individual employee can, if they so choose, approach me in person with his or her issues or can promptly kiss my ass. No more mail Jay...

IF YOUR VOTE IS TO BE AN INFORMED ONE, YOU SHOULD SEEK INFORMATION FROM BOTH SIDES.

It's not too late. Union reps are available for meetings up to and including the date of the vote. April 16, 2009

-Bryan Gaity-



GET ROUTE

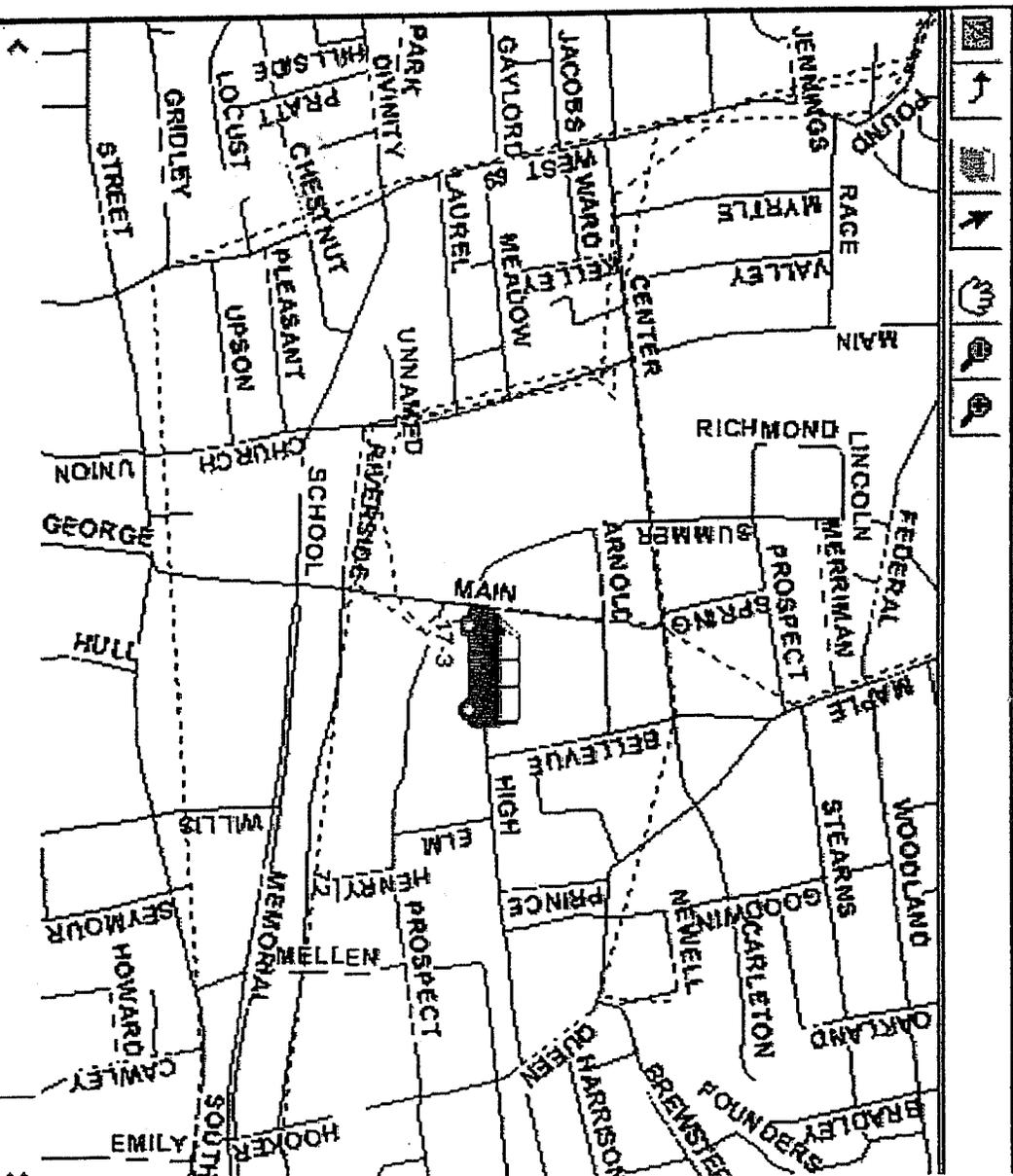
Enter the date, vehicle and company name to playback

Date  Vehicle #  Company  GET ROUTE

Auto Zoom  Arrow Link  Show All Vehicle Icons

Show Complete Route  Clear

Seq	Start Time	Lat/Long	Address
9493755	08:47:40	41° 40.713' N, 072° 56.	
9493760	08:48:10	41° 40.583' N, 072° 56.	
9493770	08:48:40	41° 40.371' N, 072° 56.	
9493776	08:49:10	41° 40.349' N, 072° 56.	
9493803	08:52:39	41° 40.282' N, 072° 56.	
9493808	08:53:09	41° 40.328' N, 072° 56.	
9493812	08:53:39	41° 40.538' N, 072° 56.	
9493821	08:54:09	41° 40.538' N, 072° 56.	
9493913	09:04:08	41° 40.513' N, 072° 56.	
9493916	09:04:38	41° 40.292' N, 072° 56.	
9493918	09:05:08	41° 40.326' N, 072° 56.	
9493920	09:05:38	41° 40.352' N, 072° 56.	
9493994	09:12:37	41° 40.413' N, 072° 56.	
9494003	09:13:07	41° 40.587' N, 072° 56.	





Week

# Bristol Hospital EMS L - Chair Car Schedule

PAQUIN 416.477  
 CURTIS MILES STD

Time of Shift	Sunday 4/12/09	Monday 4/13/09	Tuesday 4/14/09	Wednesday 4/15/09	Thursday 4/16/09	Friday 4/17/09	Saturday 4/18/09
5a - 11a *see notes		Ray Paquin	Ray Paquin	Ray Paquin	Ray Paquin	? Ray Paquin	5a-1p Al Roberts
6a - 2p		Robert Olschefski	Robert Olschefski	Robert Olschefski	Robert Olschefski	Robert Olschefski	9a-12p Armando Roman
8a - 4p		Alfred Duchene	Alfred Duchene Al Roberts	AL Roberts	Al Roberts	Al Roberts	
<del>9a - 12p</del>				Alfred Duchene AP-YP	Alfred Duchene AP-YP	Alfred Duchene AP-YP	
11p - 7p		Curtis Miles	Curtis Miles	Curtis Miles	Curtis Miles	Curtis Miles	
2p - 6p		Ralph Lostocco	Ralph Lostocco	Ralph Lostocco	Ralph Lostocco	Ralph Lostocco	
Special							

\* Ray Paquin must stay until 12p two days during the week, if not needed m, t, w, then he must stay until 12p on thur and fri.

Month of 4/09

## Exhibit E

Once again Bristol Hospital is presenting slanted and incorrectly worded information to our employees and once again Bristol Hospital needs to be corrected on what is being put forward....

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Management Said: What guarantee do we have that we would have the right to vote on whether to go on strike since no such rule is contained in the union's constitution?

The Truth: Going on strike is at the discretion of the local employee union and not the decision of the IAEP itself. If employees feel that it is necessary for a strike, then that is our decision. However if this union goes through, during a contracted period, there will be no striking *whatsoever*. This decision is made during a period of contract arbitration.

Management Said: What guarantee do we have that in this economy and through collective bargaining we would get higher wages and larger increases than we get now, and that would cover the amount we would have to pay in union dues?

The Truth: Why would anyone settle for less they have now? This just doesn't make sense. We are one of the few divisions of Bristol Hospital posting financial gains. How much of that money have you seen put back into your pocket. ZERO! The economy is certainly far from great at the moment but do not be fooled by Bristol Hospital's attempts to sway you. They are depriving you of what you are truly worth.

Management Said: How does the union justify spending member dues money on items such as close to \$30,000 at the Beverly Hills Hilton, and almost \$20,000 dollars for season tickets at Fenway Park?

The Truth: Running a business costs money. When David Holway became national president, he increased his executive board from 10 members to 42 members in an effort to better represent employees at a local and national level. The Beverly Hills Hilton was used as a conference and lodging center for many days to bring all of the representatives up to speed on the goings on of the union. Because this union and its parent company are a national organization, these costs happened to be on the west coast versus its main location in Quincy, MA.

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Management Said: The union can collect \$11.75 per employee per week or just over \$50 a month....The IAEP returns "per capita" \$3.00 back to the local unions general fund per full time employee.

The Truth: The union collects the following dues. \$10.20 for full time employees, \$8.20 for part time/per diem employees and \$4.50 for those that choose not to be in the union. People who opt out of the union still pay a fee because it is mandated by federal law. Even if you opt out of the union, that \$4.50 still entitles you to full representation by the union in an event where you may face

disciplinary action or you wish to file a grievance. The only thing you are not allowed to do is attend union meetings and vote on the contract. Even if you are not technically part of the union, you are able to reap all of the benefits of a ratified contract. How many coffees or meals do you buy on shift in a given week? I'm sure the total amount runs around the same price as union dues.

In regards to the issue surrounding George Hockhousen and his alleged mishandling of his financial statements. NEMSA, the National Emergency Medical Services Association, began hassling the IAEP in an effort to discredit them so that they, NEMSA, could bolster their appearance in the eyes of other potential non union affiliated organizations. They found that George Hockhousen failed to file the appropriate documents in a timely fashion with the Department of Labor and NEMSA decided to act on it. By the time NEMSA filed their appropriate paperwork and blow the whistle on the IAEP, the matter was resolved and the paperwork was filed. There was no mismanagement of funds nor did he lie about costs or spenditure. George was simply found to be guilty of failing to file his paperwork on time. No further action was taken and the issue was resolved.

Isn't funny how Ryan White was just reassigned to a different department just while the heat is starting to get turned up? Why did it finally have to take efforts of our division to unite and stand together to remove a road block? Do you think that if we never presented the union to the hospital that these changes would have been made?

**TAKE THE TIME TO ACCURATELY DISSEMINATE THE  
INFORMATION PRESENTED TO YOU WITHIN THE NEXT  
THREE WEEKS PRIOR TO THE ELECTION.**

**IF YOU HAVE ANY QUESTIONS WHATSOEVER AND FEEL  
AWKWARD APPROACHING MYSELF, PLEASE SEND ME AN  
EMAIL OR FEEL FREE TO CALL. I WANT TO MAKE SURE  
EVERYONE HAS THE CORRECT INFORMATION BEFORE  
VOTING.**

Many of us have worked tirelessly to make sure that everyone's voice is heard within this company. Please make every effort possible to attend a meeting or speak with a representative. We are always here and we are always listening.

Sincerely,

Matthew D. Hebert EMT-P

hebertemt@gmail.com

# EXHIBIT 4

IS A PLAYBACK  
CAMPION GPS CD-R

DISC IS BEING SENT  
UNDER SEPARATE  
COVER BY FEDERAL  
EXPRESS

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 34**

BRISTOL HOSPITAL EMS, LLC.

Employer

and

INTERNATIONAL ASSOCIATION OF EMTs and  
PARAMEDICS (IAEP) (NAGE, SEIU 5000)

Petitioner

Case No. 34-RC-2313

**SUPPLEMENTAL REPORT ON OBJECTIONS**

On May 14, 2009, I issued a Report on Objections in the above-captioned matter (hereinafter referred to as the Report). In the Report I recommended that the Employer's objections to the election be overruled, and that a Certification of Representative issue on behalf of the Petitioner. On May 27, 2009, the Employer filed with the Board Exceptions to the Report. In its Exceptions, the Employer alleges, inter alia, that the undersigned improperly failed to consider certain evidence proffered in support of Objections 1 through 4. In light of such allegations, the parties were informed that, pursuant to Sec. 102.65(e)(1) of the Board's Rules and Regulations, the Employer's Exceptions would be treated as a Motion for Reconsideration.

After fully considering all of the facts and contentions raised by the Employer in its Exceptions, I hereby issue this Supplemental Report on Objections.

As noted in the Report, Objections 1 through 4 all relate to the allegation that the Petitioner conducted "election speeches and/or question and answer sessions" on company time, beginning 24 hours before the election and through the election, in violation of the Board's *Peerless Plywood* rule. In finding no merit to these objections, I noted, inter alia, that the Employer had proffered evidence

showing that two ambulances occupied by four unit employees stopped at a Dunkin Donuts during the election hours on April 16, and that Union representatives were scheduled to be present at that Dunkin Donuts location during that time period to speak with employees. In making this finding, I noted in footnote three that “[t]he Employer further claims, without evidentiary support, that its GPS records show that an ambulance containing eligible voters stopped for more than an hour at the Dunkin Donuts on April 15, and that the Petitioner’s representatives were present at that location rather than the posted location of Dewitt Page Park.”

In its Exceptions, the Employer asserts, contrary to my finding, that it did proffer evidence showing that ambulances containing eligible voters were present at the Dunkin Donuts on April 15 (i.e., during the 24-hour period prior to the election contemplated by the *Peerless Plywood* rule). In this regard, the Employer attached to its Exceptions a CD marked “Campion GPS Playback Exhibit 4”, and asserted that the same CD containing the identical information was included with its April 30, 2009 “Summary of Employer’s Evidence in Support of Objections” (herein called the Summary) that it had provided to this office on or about that date. (A copy of the Summary is attached to its Exceptions as Exhibit 3.) The Employer in its Exceptions speculates, based upon a conversation with the Assistant Regional Director following the issuance of the Report, that this office knowingly failed to consider the evidence on the CD because it was unable to access the data contained on the CD, and had acted improperly by failing to contact the Employer to advise it of our inability to access the data on the disk.

The Employer’s assertions are only partially correct. In this regard, unbeknownst to me, the Employer did proffer a CD to this office with the Summary. The CD, which had no markings on it, was contained in a clear plastic box with the date and the case name and number printed on the cover, and was enclosed in an unmarked white padded envelope. It was not marked as an exhibit or as an attachment to the Summary, nor was it referenced in the Summary. To the contrary, the Summary only referenced four attached and

marked exhibits, including Exhibit 3, a one-page copy of a GPS report related to the location of the two ambulances at the Dunkin Donuts on April 16. When the envelope containing the Summary and the CD was opened, the CD became separated from the Summary because it was assumed, based upon the markings on the clear plastic case containing the CD, that the CD merely contained an electronic version of the Summary.<sup>1</sup> As a result, I never considered the contents of the CD in preparing my Report, nor was there any way for me to know from the Summary that the CD even existed.

Following the issuance of the Report, counsel for the Employer contacted this office concerning the CD, at which point the CD was located within our office and, for the first time, attempts were made to access the data on the disk. After several unsuccessful attempts were made to open the disk, the Employer's counsel was informed that we were unable at that time to access the data on the disk. Thus, contrary to the Employer's claim in its Exceptions, the Employer was never told that the evidence on the CD was not considered in preparing the Report because the CD could not be opened.

In light of the foregoing evidence showing that the CD was proffered by the Employer in a timely manner in support of its Objections, I have now considered the evidence contained on the CD as it bears upon the Employer's Objections 1 through 4. More specifically, the CD contains GPS data for certain time periods on April 15 and 16, 2009. The data, which is constantly in motion unless paused, is displayed through the "Windows Media Player". The screen is identical to Employer Ex. 3 attached to its Summary. In this regard, it appears that Employer Ex. 3 is a print-out of the moving screen for the period of time that the Employer contends that one of its ambulances containing two eligible voters was parked at the Dunkin Donuts for approximately 19 minutes on April 16, the day of the election. Comparing the location of the ambulance as shown on Exhibit 3, and assuming arguendo that such is the location of the Dunkin Donuts, it appears from my review of the CD that one of the Employer's ambulances was

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<sup>1</sup> Although not required, parties have increasingly been supplying the Region with electronic versions of documents, such as briefs.

present in the immediate vicinity of the Dunkin Donuts from 11:29 a.m. to 11:35 a.m. on April 15.<sup>2</sup>

Having considered the contents of the CD, I reaffirm my recommendation that Employer's Objections 1 through 4 should be overruled. At best, the evidence on the CD shows that one of the Employer's ambulances containing eligible voters was present for a six-minute period at the Dunkin Donuts on April 15, 2009, during the 24-hour period prior to the election. More importantly, no evidence has been proffered by the Employer establishing that any of the Petitioner's representatives were present at the Dunkin Donuts on that date. In this regard, other evidence proffered by the Employer shows that the Petitioner's representatives were scheduled to be at a different location on that date, i.e., DeWitt Page Park, and that the Employer, "upon information and belief", merely asserted without any supporting evidence that the location for April 15 had been changed from DeWitt Page Park to the Dunkin Donuts.

However, assuming arguendo that the Employer could establish that the Petitioner's representatives met or even spoke with eligible voters at the Dunkin Donuts on April 15, 2009, there is no evidence or claim that such conversations violated the *Peerless Plywood* rule. To the contrary, as noted in my Report, the Board has long held that the *Peerless Plywood* rule does not apply to non-coercive conversations between employer or union representatives and individual employees during the 24 hour period prior to the election, including conversations held during working time at an individual employee's work station. *Associated Milk Producers, Inc.*, 237 NLRB 879 (1978); *Livingston Shirt Corporation*, 107 NLRB 400 (1953); *Andel Jewelry Corporation*, 326 NLRB 507 (1998).

Accordingly, I adhere to my previous recommendation that Employer's Objections 1 through 4 should be overruled.

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<sup>2</sup> Although the Employer was specifically asked to identify those file locations that would show the presence of ambulances at the Dunkin Donuts on April 15, the only file location identified by the Employer is that noted above.

**Right to File Exceptions**

Under the provisions of Section 102.69 of the Board's Rules and Regulations, exceptions to this Supplemental Report may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, DC 20570, or electronically pursuant to the guidance that can be found under "E-gov" on the Board's web site at [www.nlr.gov](http://www.nlr.gov). This request must be received by the Board in Washington, D.C. by June 23, 2009.

Dated at Hartford, Connecticut this 9th day of June, 2009.

  
Jonathan B. Kreisberg  
Acting Regional Director  
National Labor Relations Board  
Region 34

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD**

**In the Matter of**

**BRISTOL HOSPITAL EMS, LLC**

**Employer,**

**and**

**INTERNATIONAL ASSOCIATION  
OF EMTS AND PARAMEDICS,  
SEIU/NAGE LOCAL 5000**

**Petitioner.**

**CASE NO. 34-RC-2313**

**SUPPLEMENTAL EXCEPTIONS TO THE REGIONAL DIRECTOR'S  
SUPPLEMENTAL REPORT ON OBJECTIONS**

Pursuant to Section 102.69 of the Rules and Regulations of the National Labor Relations Board ("Board"), the Employer, Bristol Hospital EMS, LLC ("EMS" or "Employer"), by and through its undersigned counsel, hereby files Supplemental Exceptions to the Regional Director's Supplemental Report On Objections ("Supplemental Report") issued on June 9, 2009, for the following reasons:

1. On May 14, 2009 the then Acting Regional Director of Region 34 issued his Report on Objections ("Report") in the above referenced case, to which the Employer filed timely exceptions on May 27, 2009. On June 9, 2009 the Regional Director of Region 34 issued his Supplemental Report on Objections in the above referenced case, to which the Employer files these exceptions.<sup>1</sup>
2. Nothing in the Supplemental Report corrects the fatal flaws in the original Report on Objections. As stated in the Employer's first exceptions, the Regional Director assumed that group meetings took place on the day of the election between Union representatives and groups of EMS employees. The evidence submitted by the

<sup>1</sup> These exceptions to the Supplemental Report do not replace but only augment the Employer's exceptions filed on May 27, 2009 in response to the then Acting Regional Director's Report on Objections.

Employer showed that those employees were on working time. However, despite this, the Regional Director still found there was no *Peerless Plywood* rule violation since he found that such meetings were attended by EMS employees voluntarily. Again, the Employer respectfully submits that the critical question in finding a *Peerless Plywood* rule violation is not whether employees attended union meetings voluntarily within the *Peerless Plywood* period, but rather whether they attended such meetings while on working time.

3. The Petitioner's Counsel has never denied that group meetings occurred on the day of the election, and only denied that they occurred on the day before the election. Petitioner's counsel also did not dispute the Employer's contention that such meetings if held as scheduled would necessarily have occurred during working time for a substantial number of eligible voters. Similarly, in his Report, the Regional Director did not question the Employer's work schedules which demonstrated that 23 unit employees were on work time during the scheduled union meeting times on the day before the election and on the day of the election. While the Regional Director correctly acknowledges that the work schedules show eligible voters were on duty during the Union's scheduled meeting times, he fails to address the fact that several of those who were shown to be on duty were actually placed (via the GPS data) at the announced union meeting site at the announced meeting time on the day of the election. This connection was explicitly drawn by the Employer in its evidence summary, as follows:

With the assistance of GPS data, Zarrella will show that on April 16<sup>th</sup> Matt Hebert and Nate Parker were the two on-duty eligible voters who stopped at the Dunkin Donuts on North Main Street in Bristol, CT, which was listed as the location for that day's Union campaign meetings. The GPS also establishes another stop during the period of the scheduled meeting earlier that day at about 7:30am. This involved two eligible voters, Anthony Betz and Matthew Klimovicz.

The Union's meeting schedule establishes that the meeting was to be held at the Dunkin Donuts at the very times Matt Hebert, Nate Parker, Anthony Betz and Matthew Klimovicz were present.<sup>2</sup> Furthermore, the Employer's work schedule (which has never been challenged) shows that at those very times Matt Hebert, Nate Parker, Anthony Betz and Matthew Klimovicz were all on working time. If, as the Regional Director assumed for purposes of his Report, meetings between several EMS employees and Union representatives took place on the 16<sup>th</sup> and the uncontested evidence shows that those same employees were on working time, it would constitute a per se violation of the *Peerless Plywood* rule.

4. The Employer established that eligible voters who were present at the meeting site at the time of the scheduled meetings were on working time because the schedule proves it. However, in his Report, the Regional Director fails to correlate the GPS data with the work schedules. In his Supplemental Report, the Regional Director fails to correct this material error. The Regional Director does spend significant time discussing the Region's problem of not knowing about or keeping track of the computer disc they received in the package of evidence and correctly points out that even without the disc the Employer printed material from the disc and introduced it as an Exhibit which, in combination with the work schedules, showed that eligible voters on work time attended a union meeting on the critical day of the election. Again, the Supplemental Report fails to mention the significance and implications of the circumstantial evidence in its possession.
5. The Employer appreciates the Regional Director's clarification regarding the CD containing the GPS data. Employer's counsel assumed that Region 34 reviewed the disc because it was sent in the same package with the rest of the evidence and because we enclosed a screen capture from it. When the Region informed counsel, after issuing the Report, they could not access the disc we did not imagine that the decision makers were unaware of the disc before the Report issued. Thus, we assumed they had it, knew they had it, but could not access it at the time. However, putting aside the Regional

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<sup>2</sup> Please see Exhibit A of the Employer's April 30, 2009 Summary of Evidence. This same Exhibit is also attached as part of Exhibit 3 (again marked as Exhibit A) to the Employer's May 27, 2009 Exceptions to the then Acting Regional Director's Report on Objections.

Director's clarification, which we accept, it still doesn't alter the validity of the Employer's May 27<sup>th</sup> exceptions to the Report.

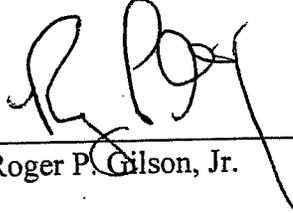
6. The evidence shows that two groups of eligible voters were at the sites of union meetings while on work time. As many as 23 eligible voters were on working time at the time of the two scheduled meeting which were held during the Peerless Plywood period. However, since those employees may have gone in EMS wheelchair vans, which did not contain GPS tracking devices, or in their personal vehicles, their location could not be established via the GPS trip log. Naturally, the Employer was reluctant to question them about attending a union meeting. However, if a hearing were to be held, the evidence might show that in addition to the four identified voters as many as 19 others might have gone to the meeting. It is for this reason, among others, that the Employer requests that the Board either sustain the Employer's Objections to the above referenced election, or remand the case for a hearing to establish through sworn testimony that the Union violated the *Peerless Plywood* rule.

Wherefore, for the foregoing reasons and those set forth in the Employer's May 27, 2009 Exceptions to the Report on Objections, the Employer respectfully requests that its Objections one and two be sustained or, alternatively, that this case be remanded for a hearing on the material issues of fact which remain notwithstanding the Report and Supplemental Report on Objections.

Respectfully submitted this 22<sup>nd</sup> day of June, 2009.

JACKSON LEWIS LLP  
177 Broad Street  
8<sup>th</sup> Floor  
Stamford, CT 06901  
Telephone: (203) 961-0404

BY:

  
\_\_\_\_\_  
Roger P. Gilson, Jr.

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD**

**In the Matter of**

**BRISTOL HOSPITAL EMS, LLC**

**Employer,**

**and**

**INTERNATIONAL ASSOCIATION OF  
EMTS AND PARAMEDICS,  
SEIU/NAGE LOCAL 5000**

**Petitioner.**

**CASE NO. 34-RC-2313**

**CERTIFICATE OF SERVICE**

This is to certify that a copy of the foregoing **Supplemental Exceptions to the Regional Director's Supplemental Report On Objections** was served this 22<sup>nd</sup> day of June, 2009, upon the following individuals named below by overnight Federal Express and addressed as follows:

Matthew Levy, National Director  
International Association of  
EMTs and Paramedics (IAEP)  
(NAGE, SEIU 5000)  
159 Burgin Parkway  
Quincy, MA 02169

Jonathan B. Kreisberg  
Regional Director  
National Labor Relations Board  
Region 34  
280 Trumbull St., 21<sup>st</sup> Floor  
Hartford, CT 06103-3503

Michael J. Brady  
346 Main Street  
Cromwell, CT 06416

DATED: \_\_\_\_\_  
Stamford, CT

6/22/09

BY: \_\_\_\_\_

  
Roger P. Gilson, Jr.

NOT INCLUDED IN  
BOUND VOLUMES

LS  
Bristol, CT

UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD

BRISTOL HOSPITAL EMS, LLC  
Employer

and

Case 34-RC-2313

INTERNATIONAL ASSOCIATION OF EMTs  
AND PARAMEDICS, NAGE/SEIU LOCAL 5000

Petitioner

DECISION AND CERTIFICATION OF REPRESENTATIVE

The National Labor Relations Board<sup>1</sup> has considered objections to an election held on April 16, 2009, and the Regional Director's report and supplemental report recommending disposition of them. The election was conducted pursuant to a

<sup>1</sup> Effective midnight December 28, 2007, Members Liebman, Schaumber, Kirsanow, and Walsh delegated to Members Liebman, Schaumber, and Kirsanow, as a three-member group, all of the Board's powers in anticipation of the expiration of the terms of Members Kirsanow and Walsh on December 31, 2007. Pursuant to this delegation, Chairman Liebman and Member Schaumber constitute a quorum of the three-member group. As a quorum, they have the authority to issue decisions and orders in unfair labor practice and representation cases. See Sec. 3(b) of the Act. See *Snell Island SNF LLC v. NLRB*, 568 F.3d 410 (2d Cir. 2009); *New Process Steel v. NLRB*, 564 F.3d 840 (7th Cir. 2009), petition for cert. filed 77 U.S.L.W. 3670 (U.S. May 22, 2009) (No. 08-1457); *Northeastern Land Services v. NLRB*, 560 F.3d 36 (1st Cir. 2009), rehearing denied No. 08-1878 (May 20, 2009). But see *Laurel Baye Healthcare of Lake Lanier, Inc. v. NLRB*, 564 F.3d 469 (D.C. Cir. 2009), petitions for rehearing denied Nos. 08-1162, 08-1214 (July 1, 2009).

Stipulated Election Agreement. The tally of ballots shows 36 for and 23 against the Petitioner, with 6 challenged ballots, a number insufficient to affect the results of the election.

The Board has reviewed the record in light of the exceptions and briefs, has adopted the Regional Director's findings and recommendations, and finds that a certification of representative should be issued.

CERTIFICATION OF REPRESENTATIVE

IT IS CERTIFIED that a majority of the valid ballots have been cast for International Association of EMTs and Paramedics, NAGE/SEIU Local 5000, and that it is the exclusive collective-bargaining representative of the employees in the following appropriate unit:

All full-time and regular part-time EMT-P's, EMT-I's, EMT-Basics, Secretary III, and Wheel Chair Van Attendants, employed by the Employer at its 371 Terryville Avenue, Bristol, Connecticut facility; but excluding other office clerical employees, the EMS Education Coordinator, EMS Supervisors, the BLS instructor, all other employees, and all guards, professional employees and supervisors as defined in the Act.

Dated, July 23, 2009, Washington, D.C.

\_\_\_\_\_  
Wilma B. Liebman, Chairman

\_\_\_\_\_  
Peter C. Schaumber, Member

NATIONAL LABOR RELATIONS BOARD

(SEAL)

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FORM EXEMPT UNDER 44 U.S.C 3512

INTERNET  
FORM NLRB-501  
(2-08)

UNITED STATES OF AMERICA  
NATIONAL LABOR RELATIONS BOARD  
CHARGE AGAINST EMPLOYER

DO NOT WRITE IN THIS SPACE	
Case <b>34-CA-12481</b>	Date Filed <b>October 8, 2009</b>

**INSTRUCTIONS:**

File an original with NLRB Regional Director for the region in which the alleged unfair labor practice occurred or is occurring.

1. EMPLOYER AGAINST WHOM CHARGE IS BROUGHT	
a. Name of Employer <b>Bristol Hospital EMS, LLC</b>	b. Tel. No. <b>(860)585-3599</b>
	c. Cell No.
	f. Fax No. <b>(860)585-3028</b>
d. Address (Street, city, state, and ZIP code) <b>25 Newell Road Bristol, CT 06010</b>	e. Employer Representative <b>Jeanine Reckdenwald</b>
	g. e-Mail
	h. Number of workers employed <b>80+/-</b>
i. Type of Establishment (factory, mine, wholesaler, etc.) <b>Ambulance Service</b>	j. Identify principal product or service <b>Pre-hospital transportation</b>
k. The above-named employer has engaged in and is engaging in unfair labor practices within the meaning of section 8(a), subsections (1) and (list subsections) (5) _____ of the National Labor Relations Act, and these unfair labor practices are practices affecting commerce within the meaning of the Act, or these unfair labor practices are unfair practices affecting commerce within the meaning of the Act and the Postal Reorganization Act.	
2. Basis of the Charge (set forth a clear and concise statement of the facts constituting the alleged unfair labor practices) Since on or about July 23, 2009 the above mentioned Employer has failed and refused to meet and bargain with the International Association of EMTs and Paramedics, SEIU/NAGE local 5000 following certification as the exclusive representative of employees in case number 34-RC-2313.	
3. Full name of party filing charge (if labor organization, give full name, including local name and number) <b>International Association of EMTs and Paramedics, SEIU/NAGE Local 5000</b>	
4a. Address (Street and number, city, state, and ZIP code) <b>159 Burgin Parkway Quincy, MA 02169</b>	4b. Tel. No. <b>(617)376-7247</b>
	4c. Cell No. <b>(617)947-3200</b>
	4d. Fax No. <b>(617)812-6489</b>
	4e. e-Mail
5. Full name of national or international labor organization of which it is an affiliate or constituent unit (to be filled in when charge is filed by a labor organization) <b>International Association of EMTs and Paramedics, SEIU/NAGE Local 5000</b>	
6. DECLARATION I declare that I have read the above charge and that the statements are true to the best of my knowledge and belief.	
By <u></u> (Signature of representative or person making charge)	Tel. No. <b>(617)376-7247</b>
	Office, if any, Cell No.
<b>Matthew Levy, National Director IAEP</b> (Print/type name and title or office, if any)	Fax No. <b>(617)812-6489</b>
Address <b>159 Burgin Parkway Quincy, MA 02169</b>	e-Mail <b>MLEVY@NAGE.ORG</b>
	<b>10/08/2009</b> (date)

WILLFUL FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)

PRIVACY ACT STATEMENT

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 et seq. The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing unfair labor practice and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is voluntary; however, failure to supply the information will cause the NLRB to decline to invoke its processes.

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 34

**Bristol Hospital EMS, LLC**

and

**International Association of EMTs and  
Paramedics SEIU/INAGE Local 5000**

Case No. 34-CA-12481

DATE OF MAILING October 8, 2009

**AFFIDAVIT OF SERVICE OF a copy of DOCKET LETTER AND CHARGE FILED**

I, the undersigned employee of the National Labor Relations Board, being duly sworn, depose and say that on the date indicated above I served the above-entitled document(s) by facsimile transmission and regular mail upon the following persons, addressed to them at the following addresses:

Ms. Jeanine Reckdenwald  
Bristol Hospital EMS  
25 Newell Road  
Bristol, CT 06010

Roger P. Gilson, Jr.  
Esquire  
Jackson Lewis LLP  
177 Broad Street  
P.O. Box 251  
Stamford, CT 06901

Subscribed and sworn to before me this 8th day

of October, 2009

DESIGNATED AGENT Elizabeth C. Person



NATIONAL LABOR RELATIONS BOARD

MODE = MEMORY TRANSMISSION START=OCT-09 10:22 END=OCT-09 10:24

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UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 34

**Bristol Hospital EMS, LLC**

and

**International Association of EMTs and  
Paramedics SEIU/INAGE Local 5000**

Case No. 34-CA-12481

DATE OF MAILING October 8, 2009

**AFFIDAVIT OF SERVICE OF a copy of DOCKET LETTER AND CHARGE FILED**

I, the undersigned employee of the National Labor Relations Board, being duly sworn, depose and say that on the date indicated above, I served the above-entitled document(s) by facsimile transmission and regular mail upon the following persons, addressed to them at the following addresses:

Ms. Jeanine Reckdenwald  
Bristol Hospital EMS  
25 Newell Road  
Bristol, CT 06010

Roger P. Gilson, Jr.  
Esquire  
Jackson Lewis LLP  
177 Broad Street  
P.O. Box 251  
Stamford, CT 06901

Subscribed and sworn to before me this 8th day

of October, 2009

DESIGNATED AGENT Elizabeth C. Person

*Elizabeth C. Person*  
NATIONAL LABOR RELATIONS BOARD

MODE = MEMORY TRANSMISSION

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END=OCT-08 15:58

FILE NO. = 071

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INCOMPLETE COMMUNICATION(S) OCCURRED.  
THIS FILE IS STILL IN MEMORY. YOU MAY RETRY OR DELETE BY EDIT FILE MODE.

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**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 34**

**Bristol Hospital EMS, LLC**

and

**International Association of EMTs and  
Paramedics SEIU/INAGE Local 5000**

Case No. 34-CA-12481

DATE OF MAILING October 8, 2009

**AFFIDAVIT OF SERVICE OF a copy of DOCKET LETTER AND CHARGE FILED**

I, the undersigned employee of the National Labor Relations Board, being duly sworn, depose and say that on the date indicated above I served the above-entitled document(s) by facsimile transmission and regular mail upon the following persons, addressed to them at the following addresses:

Ms. Jeanine Reckdenwald  
Bristol Hospital EMS  
25 Newell Road  
Bristol, CT 06010

Roger P. Gilson, Jr.  
Esquire  
Jackson Lewis LLP  
177 Broad Street  
P.O. Box 251  
Stamford, CT 06901

Subscribed and sworn to before me this 8th day

of October, 2009

DESIGNATED AGENT Elizabeth C. Person

*Elizabeth C. Person*

NATIONAL LABOR RELATIONS BOARD

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 34**

BRISTOL HOSPITAL EMS, LLC

and

INTERNATIONAL ASSOCIATION OF EMTS  
AND PARAMEDICS, LOCAL 17

Case No. 34-CA-12481

**COMPLAINT AND NOTICE OF HEARING**

International Association of EMTs and Paramedics, Local 17, herein called the Union, has charged that Bristol Hospital EMS, LLC., herein called Respondent, has been engaging in unfair labor practices as set forth in the National Labor Relations Act, 29 U.S.C., Sec. 151 et seq., herein called the Act. Based thereon, the General Counsel, by the undersigned, pursuant to Section 10(b) of the Act and Section 102.15 of the Rules and Regulations of the National Labor Relations Board, herein called the Board, issues this Complaint and Notice of Hearing and alleges as follows:

1. The charge in this proceeding was filed by the Union on October 8, 2009, and a copy was served on Respondent by facsimile transmission and regular mail on October 8, 2009.
2. At all material times, Respondent, a Connecticut corporation with a facility located in Bristol, Connecticut, herein called its facility, has been engaged in the operation of providing ambulance and medical transportation services.
3. During the twelve-month period ending September 30, 2009, Respondent, in conducting its operations described above in paragraph 2, derived gross revenues in excess of \$500,000 and purchased and received at its facility goods valued in excess of \$5,000 directly from points outside the State of Connecticut.
4. At all material times, Respondent has been an employer engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act.
5. At all material times, the Union has been a labor organization within the meaning of Section 2(5) of the Act.

6. The following employees of Respondent, herein called the Unit, constitute a unit appropriate for purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time EMT-P's, EMT-I's, EMT-Basics, Secretary III, and Wheel Chair Van Attendants, employed by the Respondent at its Bristol, Connecticut facility; but excluding other office clerical employees, the EMS Education Coordinator, EMS Supervisors, the BLS instructor, all other employees, and all guards, professional employees and supervisors as defined in the Act.

7. On July 23, 2009, the Union was certified as the exclusive collective-bargaining representative of the Unit.

8. At all times since July 23, 2009, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the Unit.

9. By letter dated September 16, 2009, the Union requested that Respondent bargain collectively with the Union as the exclusive collective-bargaining representative of the Unit.

10. Since on or about September 16, 2009, Respondent has failed and refused to recognize and bargain with the Union as the exclusive collective-bargaining representative of the Unit.

11. By the conduct described above in paragraph 10, 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)(1) and (5) of the Act.

12. The unfair labor practices of Respondent described above affect commerce within the meaning of Section 2(6) and (7) of the Act.

#### **ANSWER REQUIREMENT**

Respondent is notified that, pursuant to Sections 102.20 and 102.21 of the Board's Rules and Regulations, it must file an answer to the complaint. The answer must be **received by this office on or before October 29, 2009, or postmarked on or before October 28, 2009.** Respondent should file an original and four copies of the answer with this office and serve a copy of the answer on each of the other parties.

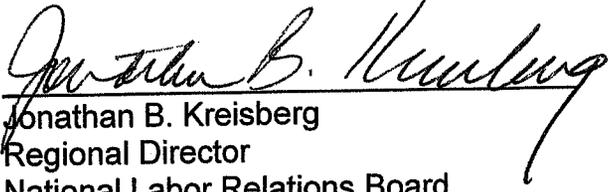
An answer may also be filed electronically by using the E-Filing system on the

Agency's website. In order to file an answer electronically, access the Agency's website at <http://www.nlr.gov>, click on **E-Gov**, then click on the **E-Filing** link on the pull-down menu. Click on the "File Documents" button under "Regional, Subregional and Resident Offices" and then follow the directions. The responsibility for the receipt and usability of the answer rests exclusively upon the sender. A failure to timely file the answer will not be excused on the basis that the transmission could not be accomplished because the Agency's website was off-line or unavailable for some other reason. When an answer is filed electronically, an original and four paper copies must be sent to this office so that it is received no later than three (3) business days after the date of electronic filing. Service of the answer on each of the other parties must still be accomplished by means allowed under the Board's Rules and Regulations. The answer may not be filed by facsimile transmission. If no answer is filed, the Board may find, pursuant to a Motion for Default Judgment, that the allegations in the complaint are true.

#### **NOTICE OF HEARING**

**PLEASE TAKE NOTICE THAT** commencing on a date and time to be determined, at 280 Trumbull Street, 21<sup>st</sup> Floor, Hartford, Connecticut, and on consecutive days thereafter until concluded, a hearing will be conducted before an administrative law judge of the National Labor Relations Board. At the hearing, Respondent and any other party to this proceeding have the right to appear and present testimony regarding the allegations in this complaint. The procedures to be followed at the hearing are described in the attached Form NLRB-4668. The procedure to request a postponement of the hearing is described in the attached Form NLRB-4338.

Dated at Hartford, Connecticut, this 15<sup>th</sup> day of October, 2009.

  
Jonathan B. Kreisberg  
Regional Director  
National Labor Relations Board  
Region 34

Attachments

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 34

BRISTOL HOSPITAL EMS, LLC

and

INTERNATIONAL ASSOCIATION OF  
EMTS AND PARAMEDICS SEIU/INAGE  
LOCAL 5000

Case 34-CA-12481

DATE OF MAILING October 15, 2009

AFFIDAVIT OF SERVICE OF copies of

**COMPLAINT AND NOTICE OF HEARING with  
NLRB Forms 4338 and 4668 attached.**

I, the undersigned employee of the National Labor Relations Board, being duly sworn, depose and say that on the date indicated above I served the above-entitled document(s) by certified and regular mail upon the following persons, addressed to them at the following addresses:

Ms. Jeanine Reckdenwald  
Bristol Hospital EMS  
25 Newell Road  
Bristol, CT 06010  
Certified No. 7004 1350 0004 4644 9986

Roger P. Gilson, Jr., Esquire  
Jackson Lewis LLP  
177 Broad Street  
P.O. Box 251  
Stamford, CT 06901  
Regular Mail

Matthew Levy, National Director  
International Association of EMTs and  
Paramedics, SEIU/NAGE Local 5000  
159 Burgin Parkway  
Quincy, MA 02169  
Regular Mail

Steven Weigand, National Representative  
International Association of EMTs and  
Paramedics, Local 17, SEIU/NAGE  
P.O. Box 170  
Thompson Ridge, NY 10985  
Regular Mail

Subscribed and sworn to before me this 15<sup>th</sup> day

DESIGNATED AGENT Terri L. Gupton



of October, 2009

NATIONAL LABOR RELATIONS BOARD

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 34**

BRISTOL HOSPITAL EMS, LLC

and

Case 34-CA-12481

INTERNATIONAL ASSOCIATION  
OF EMTS AND PARAMEDICS, LOCAL 17, SEIU/NAGE

**RESPONDENT'S ANSWER**

Pursuant to Sections 102.20, 102.21 and 102.23 of the Rules and Regulations of the National Labor Relations Board, Respondent Bristol Hospital EMS, LLC (the "Respondent"), by its attorneys Jackson Lewis LLP, hereby answers the Complaint as follows:

1.

Respondent admits the allegations contained in Paragraph 1 of the Complaint, except that it did not receive the charge by regular mail until October 9, 2009.

2.

Respondent admits the allegations contained in Paragraph 2 of the Complaint, except that the "facility located in Bristol, Connecticut, herein called its facility" can only refer to the Respondent's facility located on 371 Terryville Avenue, Bristol, Connecticut.

3.

Respondent admits the allegations contained in Paragraph 3 of the Complaint.

4.

Respondent admits the allegations contained in Paragraph 4 of the Complaint.

5.

Respondent admits the allegations contained in Paragraph 5 of the Complaint.

6.

Respondent admits the allegations contained in Paragraph 6 of the Complaint, except that the stipulated unit identified employees employed by the Respondent “at its 371 Terryville Avenue, Bristol, Connecticut facility...”

7.

Respondent admits the allegations contained in Paragraph 7 of the Complaint, except that it avers that the Board improperly certified the Union, because the Union engaged in conduct that interfered with the results of the election and because the Board was not properly constituted under Section 3(b) of the Act and thus did not have the authority to schedule the April 16, 2009 election, hold the April 16<sup>th</sup> election, deny the Respondent’s Request for Review or issue its July 23, 2009 Decision and Certification of Representative.

8.

Respondent denies each and every allegation contained in Paragraph 8 of the Complaint since the Respondent argues that the Union was never properly certified as the exclusive bargaining representative of the Unit.

9.

Respondent admits the allegations contained in Paragraph 9 of the Complaint.

10.

Respondent denies that the Union is properly certified as the exclusive collective bargaining representative of the employees in question, except it admits that since on or about September 16, 2009, Respondent has failed and refused to recognize and bargain collectively with the Union.

11.

Respondent denies each and every allegation contained in Paragraph 11 of the Complaint.

12.

Respondent denies each and every allegation contained in Paragraph 12 of the Complaint.

#### **ADDITIONAL DEFENSES**

13.

The Union was improperly certified because it engaged in objectionable conduct which rendered a free and fair election impossible. Additionally, at all times relevant to the above referenced case, the Board was not properly constituted under Section 3(b) of the Act and thus did not have the authority to schedule the April 16, 2009 election, hold the April 16<sup>th</sup> election, deny the Respondent's Request for Review or issue its July 23, 2009 Decision and Certification of Representative. Further, even if the Board acted within its statutory authority under 3(b) of the Act, it clearly erred as a matter of law when it ignored, without explanation, Board precedent by certifying the Union despite acknowledging that "the evidence shows that employees may have met with Petitioner representatives within 24 hours of, or during the election," and not challenging the Respondent's contention and evidence that the meetings were on "company time" within the Peerless Plywood period. It further erred as a matter of law in ruling that

regardless of the nature and timing of those meetings there could be no violation of the Peerless Plywood rule if such meetings were voluntary, thereby ignoring Board precedent stating that such meetings, to be lawful, must be both "voluntary and on the employee's own time".

WHEREFORE, Respondent prays that the Complaint, in all respects, be dismissed.

Respectfully submitted,

JACKSON LEWIS LLP  
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8<sup>th</sup> Floor  
Stamford, CT 06901

By: \_\_\_\_\_

  
Roger P. Gilson, Jr.

Dated: October 28, 2009

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 34

BRISTOL HOSPITAL EMS, LLC

and

Case 34-CA-12481

INTERNATIONAL ASSOCIATION  
OF EMTS AND PARAMEDICS, LOCAL 17, SEIU/NAGE

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **RESPONDENT'S ANSWER** was served on the 28th day of October 2009, upon the individuals named below, addressed as follows:

Steven H. Weigand, National Representative  
IAEP Local 17  
P.O. Box 170  
Thompson Ridge, NY 10985  
(via Email and U.S. Mail because P.O. Box)

Matthew Levy, National Director  
IAEP, SEIU/NAGE Local 5000  
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IAEP/NAGE  
346 Main Street  
Cromwell, CT 06416  
(via FedEx)

  
Steven J. Porzio

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 34**

BRISTOL HOSPITAL EMS, LLC

and

INTERNATIONAL ASSOCIATION OF EMTS  
AND PARAMEDICS, LOCAL 5000, SEIU/NAGE

Case No. 34-CA-12481

**MEMORANDUM IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT  
FOR AND ISSUANCE OF BOARD DECISION AND ORDER**

**I. FACTS**

The essential facts and supporting exhibits are described in the Motion for Summary Judgment. In its Answer, Respondent admits paragraphs 1 through 7, 9 and 10, but denies that the certified Unit has been the exclusive collective-bargaining representative of the Unit or that its certification was proper (paragraph 8); and denies that it has committed any unfair labor practices by refusing to recognize and bargain with the Union (paragraphs 11 and 12). Moreover, it is clear from Respondent's Affirmative Defense that Respondent seeks to challenge the validity of the Board's certification of the Union.

Accordingly, in the absence of any newly discovered or previously unavailable evidence or any special circumstances, the Board should find that there are no factual issues in dispute and that none of the Respondent's denials of the Complaint's allegations require a hearing.

## II. ARGUMENT

It is readily apparent from Respondent's Answer and affirmative defenses that it seeks to challenge the validity of the Board's certification, but in doing so, Respondent raises no material issue of fact. It is well settled that issues raised, litigated and decided in a prior representation case may not be re-litigated in a subsequent unfair labor practice case, and that the findings on those issues are binding on the parties, absent newly discovered or previously unavailable evidence, or that some special circumstances exist requiring the Board to reexamine its prior decision. See Rules and Regulations of the Board, Section 102.67(f); Pittsburgh Plate Glass v. NLRB, 313 U.S. 146, 162 (1941). The Board has since reiterated this policy in numerous cases. See Biewer Wisconsin Sawmill, 306 NLRB 732 (1992); Terrace Gardens Plaza, Inc., 315 NLRB 749 (1994); and JRED Enterprises, Inc., d/b/a Deadline Express, 313 NLRB 1244 (1994).

In the instant case, Respondent, through its denial of certain Complaint paragraphs and its affirmative defense, clearly seeks to re-litigate the issue of whether the Union engaged in certain objectionable pre-election conduct, which was fully resolved by the Regional Director in his Report on Objections issued on May 14, 2009 and in his Supplemental Report on Objections issued on June 9, 2009, and by the Board in its Decision and Certification of Representative issued on July 23, 2009 in which it affirmed the Regional Director's findings and conclusions in his Report and Supplemental Report. Accordingly, as a matter of law, Respondent's refusal to recognize the validity of the Board's certification of the Union by failing to bargain with

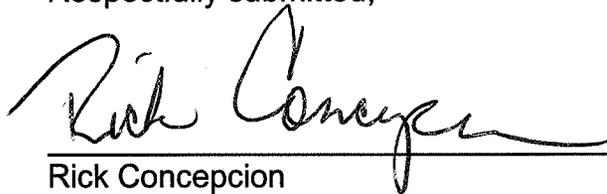
the Union following the issuance of the certification violates the Act. See Terrace Gardens Plaza, Inc., supra; Biewar Wisconsin, supra.

**III. CONCLUSION**

Based upon the facts admitted by Respondent, the record of the proceeding in Case No. 34-RC-2313, and the arguments made herein, it is submitted that Respondent has raised no issues which require an evidentiary hearing and has failed to assert any valid defense to the allegations in the Complaint. Respondent's claims regarding the Union's pre-election conduct and its Objections have been fully resolved by the Regional Director in the previous representation case. Accordingly, it is respectfully requested that the Motion for Summary Judgment be granted and that the Board issue a Decision and Order requiring Respondent to recognize and bargain with the Union and to post an appropriate Notice to Employees.

Dated at Hartford, Connecticut this 2nd day of November, 2009.

Respectfully submitted,



Rick Concepcion  
Counsel for the General Counsel  
National Labor Relations Board  
Region 34