

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

PROFESSIONAL MEDICAL TRANSPORT, INC.))	
and))	Case Nos. 28-CA-22175
INDEPENDENT CERTIFIED EMERGENCY))	28-CA-22289
PROFESSIONALS OF ARIZONA, LOCAL #1))	28-CA-22338
_____))	28-CA-22350
)	

MOTION FOR SUMMARY JUDGMENT

Respondent Professional Medical Transport, Inc., by and through its undersigned attorneys, and pursuant to Section 102.24(b) of the Rules and Regulations of the National Labor Relations Board (“NLRB” or “Board”), hereby moves for summary judgment and dismissal of the Complaint as follows:

Introduction

In this case, the Region seeks to impose a union on a group of nearly 300 employees who have not chosen that union. This union never achieved majority status. Specifically, the Region is trying to force Professional Medical Transport, Inc. (“PMT”) to bargain with the Independent Certified Emergency Professionals of Arizona, Local No. 1, (“ICEP” or “Union”), a union which PMT’s employees have not chosen. There is no dispute that the National Labor Relations Act (the “Act”) does not require an employer to bargain with a union that does not have majority status.

The Region relies on an obscure, rebuttable, and inapplicable presumption which purports to require an employer to bargain with a union that has never shown majority

status. In the Region's view, the Board can now simply ignore evidence that the union does not currently enjoy majority status and compel bargaining that is clearly *prohibited* by the Act. The Region fails to recognize that federal courts, and the Board itself, have repeatedly held otherwise. The policies of the Act, and the principles of fairness that underlie the Board's rules, cannot plausibly be construed to impose liability on Respondent for any alleged unfair labor practice activity, where the Region cannot establish that the Union enjoys majority support.

All allegations of unilateral change depend on the existence of a valid collective bargaining relationship. No such predicate exists here.

Factual Background

In July 2006, PMT voluntarily and unlawfully recognized a minority union, the Independent Certified Emergency Professionals of Arizona (the "Union" or "ICEP"), as the bargaining agent for specified PMT employees. (Affidavit of Joy Carpenter, dated May 19, 2009, Exhibit 1 hereto, at ¶ 2). PMT and the Union engaged in on-going negotiations with the intent of reaching a mutually agreeable labor contract. At the beginning of the negotiations, the parties agreed on a process for negotiation, reaching a tentative agreement on an individual item, and moving on to the next item. (*Id.* at ¶ 3). The parties met between September 2007 and November 2007, more than a year after the illegal recognition, and agreed upon all non-economic terms by the end of November 2007. (*Id.* at ¶ 4).

However, on or about November 27, 2007, PMT asked Josh Barkley, the ICEP Co-founder and President and the individual with whom PMT had been negotiating, to

sign tentative agreements on each of the items upon which the parties had reached agreement. (Id. at ¶ 5). On December 9, 2007, Mr. Barkley, in a bad faith rejection of established collective bargaining procedures, rejected all tentative agreements in their entirety and notified PMT that he was breaking off negotiations. (Id. at ¶ 6; See also, E-mail and attached documents, Exhibit 2 hereto). At this time, Mr. Barkley illegally demanded that PMT implement the following “immediately” and that these were “the minimum requirements prior to restarting negotiations.”:

Demand list to be implemented immediately. December 8th
2007

1. Career Firefighters (except as described in current municipal contracts) working on starwest ambulances are to be terminated from starwest as employees.
2. 18 hour cars are to be paid 1 ½ times their pay rate for any hours worked in a day past 8 hours, or change the schedule back to 24 hour Kelly schedule, (4 concurrent days off)
3. reschedule a 5 day break, without loss of income, for 18 hour cars, at least once monthly.
4. 18 hour cars are to be given a posting station with the same amenities as required by state law for 24 hour cars with opportunity to use them.
5. 2 hour exhaustion breaks when needed (paid)
6. ½ hour paid lunch and 1 hour paid dinner break for all 24 hour cars
7. No further manipulation of union intervention in discipline or re-definitions of weingarten rights.
8. Time and half for anyone working a holiday, to include Christmas and Christmas eve of 2007, new years eve and new years day.
9. No further decreases in work hours.
10. Any other changes in system management that negatively affects field employees will be considered as further degradation of relations between labor and management.

These are the minimum requirements prior to restarting negotiations.

(See Exhibit 2)

That same day, Mr. Barkley threatened “impasse” and also demanded that PMT submit a proposed complete contract, rather than negotiating individual articles, as the parties had by agreement done previously in the negotiation process. He stated that it was “an unheard of practice to sign off on parts of contract prior to completion.” (See Exhibit 2).

Because the union rejected all tentative agreements, PMT had to redraft the entire agreement and start over in the negotiation process. (Exhibit 1 at ¶ 7). The Union, by e-mail, cut off further negotiations on December 8, 2007. (See Exhibit 2)

In or about June 2008, nearly two years after the original unlawful recognition, the parties renewed negotiations. PMT drafted a complete contract and presented it to the union. The union rejected the contract within 24 hours. (Exhibit 1 at ¶ 8).

For the purposes of this Motion, there is only one material factual inquiry: Does the Union now have or did the Union ever enjoy majority support? The Region has offered no evidence that the Union now has or ever had the support of a majority of the bargaining unit members. On the other hand, Respondent has provided the Region with affidavits establishing the following regarding the Union’s lack of majority status:

An affidavit provided to Region 28 on February 17, 2009, establishes the Union’s lack of majority. (Cunningham Affidavit, Exhibit 3 hereto). Mr. James Cunningham, a former union trustee, declares in his affidavit that the union never obtained more than 60

signatures on dues authorizations out of a unit that was never less than 171. No other union cards were signed or solicited. (Id. at ¶ 5).

Similarly, Joy Carpenter, the Respondent's Director of Human Resources, also provided an affidavit to Region 28 on February 17, 2009, which attests to the lack of majority status of the union. (Carpenter Affidavit, Exhibit 4 hereto). There, Ms. Carpenter declares that approximately 60 dues authorization cards were the only evidence ever provided of union support. At no time between July 2006, and February 2009, when the affidavit of Ms. Carpenter was executed, did the unit consist of fewer than 171 employees. (Id.). The unit now has over 300 employees. In the nearly three years since the recognition, the Union has never provided PMT with any evidence of majority status. (Exhibit 1 at ¶ 9).

Finally, on February 11, 2009, when the Union president was asked whether he had majority support, he refused to answer and left negotiations. (Id. at ¶ 10).

Legal Argument

I. Summary Judgment Standard

Summary judgment is appropriate in unfair labor practice proceedings where no material factual issue exists. National Labor Relations Bd. v. W.S. Hatch Co., 474 F.2d 558 (9th Cir. 1973); National Labor Relations Bd. v. Union Bros., Inc., 403 F.2d 883 (4th Cir. 1968). In response to a Motion for Summary Judgment, Counsel for the General Counsel may not rest upon the pleadings, but must present specific facts which demonstrate that there are material facts requiring a hearing. Chicago Health and Tennis

Clubs, Inc., 226 NLRB 1202 (1976), enforced, 567 F.2d 331 (7th Cir. 1977), cert denied., 437 U.S. 904 (1978).

II. The Region cannot establish majority support of the Union

A. *The Region's reliance on a presumption is improper*

As outlined above, the Region has no evidence that the Union has the support of a majority of bargaining unit employees. Nonetheless, the Region apparently relies upon the reasoning found in Pekowski Enterprises, Inc. v. International Brotherhood of Teamsters, 327 NLRB 413 (1999), as set forth by the ALJ, and affirmed by the Board.

The Region contends that Pekowski stands for the proposition that an employer cannot withdraw recognition of a union, after a collective bargaining agreement has been signed, based on a challenge to majority status at the time the employer granted recognition. Thus, the Region apparently argues, there is now a presumption that the Union has majority status based solely on PMT's voluntary recognition of the Union.

However, the Region's reliance on Pekowski is inappropriate as the case is distinguishable from the matter at hand. Importantly, Pekowski relied heavily on the fact that the parties had entered into successive collective bargaining agreements that covered a nearly four year period, from 1992-1996. Id. at 414. As between Respondent and the Union, no such collective bargaining agreement has ever been entered into. Indeed, the Charging Party Union has frustrated agreement at every turn. Thus, the presumption should not apply.

Further, in Pekowski, it was noted that the Respondent/employer did not submit any evidence supporting its reasonable belief that the union in that matter did not enjoy

majority status. Pekowski, 327 NLRB at 431. Here, Respondent has submitted to the Region objective, compelling evidence of its good faith uncertainty regarding the Union's majority status. Accordingly, based on these distinguishing characteristics, the Pekowski case is inapposite and the Region's reliance on that case is misplaced.

Additionally, the very presumption upon which the Region relies was rejected by the D.C. Circuit in Nova Plumbing v NLRB, 330 F.3d 531 (D.C. Cir. 2003). There, the Court stated "Because the Board relied solely on a contract provision suggesting that the company and the union intended a 9(a) relationship despite strong record evidence that the union may not have enjoyed majority support as required by section 9(a), we hold that the Board failed to protect the employees' section 7 rights "to bargain collectively through representatives of their own choosing." Id. at 533. Thus, the D.C. Circuit has already rejected similar reasoning by the Board.

Further, Respondent's position enjoys the support of the United States Supreme Court. In NLRB v. Curtin Matheson Scientific, Inc., 494 U.S. 775 (1990), the Supreme Court declared that an employer may rebut any arguable presumption of majority in two ways by showing at the time of its refusal to bargain either that the union in fact lacked majority support or by showing that the employer had a "good faith doubt," founded on a sufficient objective basis of the union's majority support." At no time has the union here enjoyed majority support. Nor has the union ever even proffered evidence intended to show majority support, despite requests by Respondent to do so.

In Pekowski, the ALJ, with Board approval, relied on the Curtin Matheson, supra, analysis described above. Thus, following the conferral of recognition, the employer

remains free to challenge the purported majority status of the union. And, here it is clear that the Union has not in fact had majority support at any time, either at the inception of the relationship, or at any time thereafter. Critically, no agreement ever resulted.

Levitz Furniture Co., 333 NLRB No. 105 (2001), in keeping with the lessons of Curtin Matheson, supra, further reinforces Respondent's position in saying: "Under our new standard, an employer can defeat a post withdrawal refusal to bargain allegation if it shows, as a defense, the union's actual loss of majority status." As outlined above, Exhibit 3, provided to Region 28 on February 17, 2009, establishes this defense, i.e. the lack of majority status. Mr. Cunningham, a former union trustee, declares in his affidavit that the union never obtained more than 60 signatures on dues authorizations out of a unit that was never less than 171. No other union cards were signed or solicited. (Exhibit 3 at ¶ 5).

Likewise, Joy Carpenter, the Employer's Director of Human Resources, who also provided an affidavit to Region 28 on February 17, 2009, attests to the lack of majority status of the union. (Exhibit 4 hereto). There, she declares that approximately 60 dues authorization cards were the only evidence ever provided of union support. At no time between July 2006, and February 2009, when the affidavit of Ms. Carpenter was executed, did the unit consist of fewer than 171 employees. Now the unit is over 300. Put bluntly, the union, at no time relevant, was even close to having majority status among unit employees. Section 7 of the Act is the first casualty if these all-important facts are downplayed, minimized, or overlooked. Indeed, the United States Supreme Court, in

ILGWU v. NLRB (Bernhard-Altman), 366 U.S. 721 (1961), forbids recognition of minority unions.

See too, Dana corp., infra, 351 NLRB No. 28 (2007) which, though it was decided after the recognition conferred here, signals the NLRB's recognition of the unreliability of card-based recognition and the need to protect employee free choice through the preferred method of a Board election [within 45 days of NLRB notice, a decertification petition may be filed, appropriately supported, and will be processed.]

The teaching of Curtis Matheson or Pekowski Enterprises is based on a presumption that two collective bargaining agreements over several years led to a presumed majority. No such critical facts exist here.

The Supreme Court in Garment Workers v. NLRB, 366 U.S. 731 (1961) held that an employer may not confer recognition on a minority union. Under the law, recognition of a minority union, even if mistakenly, is a clear invasion of employees' rights. The upshot of recognizing a minority union would be to impress the union upon a non-consenting majority.

Majority status is at the heart of the Act. As Senator Wagner declared in his support of the bill which became the foundation of the Act: “[C]ollective bargaining can be really effective only when workers are sufficiently solidified in their interests to make an agreement covering all. This is possible only by means of majority rule.”¹ See

¹ Hearings on S. 1958 before the Senate Comm. on Education and Labor, 74th Cong., 1st Sess. (1935), reprinted in 1 Leg. Hist. of the National Labor Relations Act, 1935, at 1419 (1949).

Gourmet Foods, 270 NLRB 578 (1984) (no bargaining order, even as remedy for “outrageous” and “pervasive” unfair labor practices, absent majority status.)

If the Union does not establish majority status, there is no case. There is no duty to bargain with or deal with a minority union. Accordingly, because the Region cannot establish majority status, the legal predicate of each of the unfair labor practice charges cannot be met. Thus, Respondent is entitled to summary judgment on all issues.

B. *Current NLRB Law regarding voluntary recognition was never complied with*

Under long-standing Board law, an employer may not extend recognition to a union that does not represent an uncoerced majority of employees. Ladies Garment Workers v. NLRB (Bernhard-Altmann), 366 U.S. 731 (1961).

In Dana Corp.,² 351 NLRB No. 28 (2007), the NLRB modified its recognition-bar doctrine to hold that an employer's voluntary recognition of a labor organization does not bar a decertification or rival union petition that is filed within 45 days of the notice of recognition.

In Dana Corp., a Board majority concluded that the basic justifications for providing an insulated period do not warrant immediate imposition of an election bar following voluntary recognition. The Board reasoned that the uncertainty surrounding voluntary recognition based on an authorization card majority (as opposed to union

² Although the Board held that the requirements would apply prospectively only, the Union's renegeing on all agreements in December 2007 and cutting off further negotiations required PMT to voluntarily recognize the Union again in June 2008, after Dana Corp. had been decided. Accordingly, this case should apply with equal force here. It is indisputable that the Dana Corp. requirements have not been complied with.

certification after a Board election) justified delaying the election bar for a brief period during which unit employees can decide whether they prefer a Board-conducted election. Under the Board's new policy, an employee or rival union may file a petition during a 45-day period following notice that a union has been voluntarily recognized.

The Board outlined the problems with voluntary recognition and outlined the infirmities inherent with “card checks.” The Board reasoned as follows:

While Section 9 of the Act permits the exercise of employee free choice concerning union representation through the voluntary recognition process, this does not require that Board policy in representation case proceedings must treat the majority card showings the same as the choice expressed in Board elections. On the contrary, both the Board and courts have long recognized that the freedom of choice guaranteed employees by Section 7 is better realized by a secret election than a card check. “[S]ecret elections are generally the most satisfactory—indeed the preferred—method of ascertaining whether a union has majority support.

Id. (internal quotations omitted).

The Board continued:

The current policy fails to give adequate weight to the substantial differences between Board elections and union authorization card solicitations as reliable indicators of employee free choice on union representation and fails to distinguish between the circumstances of voluntary recognition and those present in the other election-bar situations [].

The Board held that the employer and/or the union must promptly notify the Regional Office of the Board, in writing, of any grant of voluntary recognition. Upon being so apprised, the Regional Office of the Board will send an official NLRB notice to

be posted in conspicuous places at the workplace throughout the 45-day period alerting employees to the recognition and using uniform language.

Dana Corp. is instructive to the current situation for a number of reasons. First, the Court outlined the inherent flaws with card checks and voluntary recognition. It is indisputable here that the Union never even provided PMT with cards stating employees' desire to be represented by the Union. Accordingly, the concerns outlined in Dana Corp. are magnified here. Simply put, PMT's voluntary recognition of the Union was infirm.

Secondly, it is also indisputable that the Board was never informed of PMT's voluntary recognition of the Union, either in 2006, or in 2008, when negotiations reopened. Thus, the notice posting required under Dana Corp. never happened and any voluntary recognition was thus invalid.

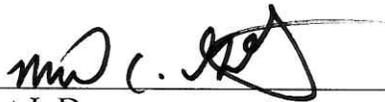
Accordingly, PMT's voluntary recognition of the Union was and is invalid and the Union should enjoy no presumption of majority status. Because the Union enjoys no presumption and because the Union has never actually established majority status, the Region cannot meet its burden to show majority status and the summary judgment on all allegations should be granted to PMT.

Conclusion

Based on all the foregoing, Respondent is entitled to judgment as a matter of law and the Complaint should be dismissed without a hearing before an administrative law judge. By asserting only the grounds set forth in this Motion, Respondent does waive any of its substantive defenses to the Complaint or any other basis for summary dismissal of this matter.

DATED this 19th day of May, 2009.

SHERMAN & HOWARD L.L.C.



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Phoenix, AZ 85004
Attorneys for Professional Medical
Transport, Inc.

I certify that I caused a copy of the foregoing
Motion for Summary Judgment to be electronically
filed this 19th day of May, 2009, and that a

COPY of the foregoing was sent via
Email this 19th day of May, 2009, to:

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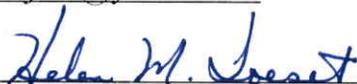
By 

EXHIBIT 1

AFFIDAVIT

State of Arizona)
)
County of Maricopa) ss.

My name is JOY CARPENTER and I am the Director of Human Resources at StarWest Family of Companies, which provides human resources services to Professional Medical Transport, Inc., ("PMT") among other companies.

- 1. This statement is provided in support of the Motion for Summary Judgment filed in NLRB Case Nos. 28-RM-616, 28-CA-22175, 28-CA-22289, and 28-CA-22338.
2. In July 2006, PMT voluntarily recognized the Independent Certified Emergency Professionals of Arizona (the "Union") as the bargaining agent for specified PMT employees.
3. PMT and the Union engaged in on-going negotiations. At the beginning of the negotiations, the parties agreed on a process for negotiation, reaching a tentative agreement on an individual item, and moving on to the next item.
4. The parties did not meet for negotiations between July 2006 and September 2007. The parties met between September 2007 and November 2007 and agreed upon all non-economic terms by the end of November 2007.
5. On or about November 27, 2007, PMT asked Josh Barkley, the Union Co-founder and President and the individual with whom PMT had been negotiating, to sign tentative agreements on each of the items upon which the parties had reached agreement.
6. On December 9, 2007, Mr. Barkley rejected all tentative agreements in their entirety and notified PMT that he was breaking off negotiations.
7. Because the union rejected all tentative agreements, PMT had to redraft the entire agreement and start over in the negotiation process.
8. In or about June 2008, nearly two years after the original unlawful recognition, the parties renewed negotiations. PMT drafted a complete contract and presented it to the union. The union rejected the contract within 24 hours.
9. In the three years since the Union was recognized as bargaining agent, the ICEP has never provided PMT with any evidence of majority status.
10. On February 11, 2009, when the Union president was asked whether he had majority support, he refused to answer and left negotiations.

The above represents an outline of my knowledge of the matter.

DATED this 18 day of May, 2009.


Joy Carpenter

I hereby certify that the foregoing Affidavit was subscribed and sworn to before me this 18th day of May, 2009, by Joy Carpenter.

Witness my hand and official seal.


Notary Public

[SEAL]



My Commission Expires:

7/12/10

EXHIBIT 2

Grubbs, Michael

From: Joe Gibson [IMCEAEX-
_O=STARWEST+20FAMILY_OU=STARWEST+20MSG1_CN=RECIPIENTS_CN=JGIBSON@starwestfamily.ds.
Sent: Saturday, December 08, 2007 9:34 PM
To: Bob Ramsey; Joy Carpenter; Jim Roeder
Subject: Fw:
Attachments: Downward trend on PMT wages and benefits.doc; CONTRACT #3-000000000000000000.doc; contract impasse.

----- Original Message -----

From: joshua barkley <coachjbar@yahoo.com>
To: Joe Gibson
Sent: Sat Dec 08 19:24:26 2007

Hi Joe. How are you.. Hope your holiday season is going well. It has been necessary for us to change course in negotiations. I have attached the reasons why. Basically its a production thing. After reading what we have left to cover, and what you have demanded in the current offer, We havent produced much. I await your response. Thanks Joe. Have a super weekend.

josh

Never miss a thing. Make Yahoo your homepage. <http://us.rd.yahoo.com/evt-51438/*http://www.yahoo.com/r/hs>

Downward trend on PMT wages and benefits

The wages and benefit package has been significantly reduced since the inception of the PMT Deployment Program In 2005-2006.

The company has decreased Healthcare availability and increased Co-payments for their employees. The cost of living has risen 12.2% since 2004 and PMT has not offered any relief to their employees. Holiday pay is non-existent for field employees and the PTO changes made in 2006 makes PMT time off the worst in the Industry.

Further: PMT has cut the 911 workforce and it's resources while simultaneously increasing the coverage area and changing the status of units to GT/911 units, increasing the workload for all involved in the system. PMT has repeatedly refused to pull manpower from GT sector to staff a dedicated 911 ride, further increasing the workload for the remaining units who have to cover the area of the "downed unit".

The average wage in 2004 roughly equals 44500\$ in 2004. After adjusted for inflation and increases in healthcare benefits, The PMT employee has lost 6540\$ of expendable income while receiving less benefits at the same time.

Cost of Living Increases based on the Social Security Consumer price index

2004-2.1%

2005-2.7%

2006-4.1%

2007-3.3%

Projected for 2008-2.3%

Healthcare benefits, cost to employee, has risen on average \$100 a month for just an individual with 1 dependent.

The average wages are \$10,000 dollars below regional averages, (Jems wage survey by region, Arizona is region 9)

To just get back to where we started, The employee would have to get a 15% increase in the wage and benefit package, (conservative estimate) and the workload increases and resource reduction would have to stop.

Demand list to be implemented immediately. December 8th 2007

1. Career Firefighters (except as described in current municipal contracts) working on starwest ambulances are to be terminated from starwest as employees.
2. 18 hour cars are to be paid 1 ½ times their pay rate for any hours worked in a day past 8 hours, or change the schedule back to 24 hour Kelly schedule, (4 concurrent days off)
3. reschedule a 5 day break, without loss of income, for 18 hour cars, at least once monthly.
4. 18 hour cars are to be given a posting station with the same amenities as required by state law for 24 hour cars with opportunity to use them.
5. 2 hour exhaustion breaks when needed (paid)
6. ½ hour paid lunch and 1 hour paid dinner break for all 24 hour cars
7. No further manipulation of union intervention in discipline or re-definitions of weingarten rights.
8. Time and half for anyone working a holiday, to include Christmas and Christmas eve of 2007, new years eve and new years day.
9. No further decreases in work hours.
10. Any other changes in system management that negatively affects field employees will be considered as further degradation of relations between labor and management.

These are the minimum requirements prior to restarting negotiations.

Contract proposal #3 Summary

Management rights section eliminated
Employee rights section eliminated
Union rights section eliminated

Certified Bargaining representative for the PMT employees: The Independent Certified
Emergency Professionals of Arizoan

Bargaining group: paramedics, Registered Nurses, Iemt's, emts Part time and full time.
(do not re-define part time)

Weingarten rights as described by federal law

Binding Arbitration as described
Expedited arbitration as described
Grievance process as described
Correspondence and notification as described
Duration. January 1st, 2008 – January _____
Scope and modification as described
Non discrimination as described
Pay scales as submitted plus 2.2% cola for 2007 cost of living increase
3% cola every year for the life of the contract, not dependent on Medicare increases.
Union officer paid leave as proposed
Dues check offs as proposed
We retain the right to strike
Seniority as proposed
Uniform allowance as proposed
Health and wellness as proposed. (exception will be , “the facility of their choice”)
Drug testing as proposed
Continuing education as proposed
PTO as proposed
Holiday pay as proposed
Pension system through “Waddell and Reed” as designed by the ICEPAZ
Committees as agreed upon, Discipline will be through weingarten rights (do not
redefine) subcontracting restriction as proposed
Longevity pay as proposed
Promotional opportunities as proposed
Health Insurance as proposed.
Supplemental health through our union insurance officer, Ned Beliccki “adflac”
FMLA and bereavement as proposed
Discharge and discipline as proposed
Paychecks and payday as proposed

Independent Certified Emergency Professionals



Of Arizona, Local#1

December 8th 2007

Joe Gibson

Joshua Barkley

Pmt Administration

After reading the proposal brought forth for signatures 2 weeks ago, we reject your contract proposal based on principal and presentation. We have submitted to you 2 contract proposals almost a year ago with no response. You agreed to begin negotiations in September only after it was made clear to you that we would be bringing in additional help. After 3 months of reviewing your articles, it appears that your chosen method of negotiations will produce no results. After agreeing to collective bargaining on July 6th, 2006, you still haven't offered us anything. Quite the contrary, you spent 3 months telling us how you were going to remove more of our rights as a union. There is nothing in your contract that benefits, improves or increases anything for our members.

You are formally put on notice that we will be seeking federal mediation from the Phoenix branch of Federal mediation and conciliation services in 15 days, declaring an "Impasse", if things don't drastically change. I will not sign off on any of your proposal. It is an unheard of practice to sign off on parts of contract prior to completion. At this late stage, I expect that our contract proposal be accepted. I will attach our last proposal. Thank you for your time and consideration,

Joshua Barkley, ICEP president

EXHIBIT 3

AFFIDAVIT

State of Arizona)
)
County of Maricopa) ss.

My name is JAMES CUNNINGHAM and I am currently employed as a Paramedic in the General Transport Division at Professional Medical Transport, Inc. ("PMT")

I, James Cunningham, state that I give this statement voluntarily. No one offered me any employment benefit, nor anything, nor have I been threatened with any reprisals related to my employment, nor in any way based on whether or not I provide this statement. I have been informed by management that:

1. The purpose of this statement is the investigation of NLRB Case Nos. 28-RM-616, 28-CA-22175, 28-CA-22289, and 28-CA-22338 and I understand that my statement may be provided to the National Labor Relations Board (NLRB).

2. I am giving information or statement of my own free will. I have been assured that the sole purpose of providing this information or statement is to describe the events and incidents I have witnessed, or relay information of which I have knowledge, that are connected with, or which relate to, alleged unfair labor practices. I have further been assured that I am free to refuse to answer any questions and that no reprisal will take place against me whether I cooperate or not.

3. I was hired by PMT on September 11, 2006 as a Paramedic in the General Transport division.

4. When the ICEP was formed in 2006, I was a Trustee appointed by Josh Barkley. I spoke with many of my fellow employees to persuade them to support our efforts. If the employee agreed to support the goals of the ICEP, I would ask the employee to contact Josh to obtain a form to have dues withheld from the employee's paycheck. This was done in mid-2007. No other union cards were solicited or signed. An example of what was signed is attached as Exhibit A.

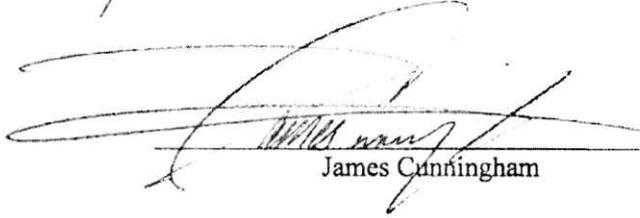
5. The ICEP obtained signatures from about 60 members of the unit which is described in the Letter of Acceptance dated July 7, 2006. At that time, there were about 171 employees in those classifications. As far as I am aware, the number of signed dues authorizations never exceeded 60 and the number of employees in the bargaining unit since that time has never been less than 171.

6. The existence of a majority was not discussed and no dues authorization cards were given to the Company until after negotiations started. I believe dues authorizations were served the Company in July of 2007.

7. I remained a Trustee with the ICEP until September 2008 when my term expired despite Josh Barkley notifying me that he was relieving me of my duties in July, 2008. The only documentation of support for the ICEP among the bargaining unit was the dues authorization

The above represents an outline of my knowledge of the matter.

DATED this 11th day of February, 2009.


James Cunningham

I hereby certify that the foregoing Affidavit was subscribed and sworn to before me this 11th day of February, 2009, by James Cunningham.

Witness my hand and official seal.




Notary Public

My Commission Expires: 7/12/10

EXHIBIT 4

AFFIDAVIT

State of Arizona)
)
County of Maricopa) ss.

My name is JOY CARPENTER and I am the Director of Human Resources at StarWest Family of Companies, which provides human resources services to Professional Medical Transport, Inc., ("PMT") among other companies.

1. The purpose of this statement is the investigation of NLRB Case Nos. 28-RM-616, 28-CA-22175, 28-CA-22289, and 28-CA-22338, and my statement may be provided to the National Labor Relations Board (NLRB).

2. On or about July 7, 2006, PMT, through a Letter of Acceptance, recognized the Independent Certified Emergency Professionals ("ICEP") of Arizona as the bargaining agent for specified bargaining unit employees of PMT. [Exhibit 1 hereto]

3. As of July 7, 2006, the bargaining unit employees, as described in the Letter of Acceptance, numbered approximately 171. Attached hereto as Exhibit 2 is a list of the bargaining unit employees as of July 2006.

4. PMT based its recognition of the ICEP on the July 7, 2006 letter only.

5. The only evidence of support for the Union was dues authorization cards executed by approximately 60 employees of the bargaining unit since PMT recognized the ICEP. Approximately 55 of these authorizations were provided to PMT in July 2007. Attached hereto as Exhibit 3 are the dues authorizations provided to PMT in July 2007.

6. At no time between July 2006 and the present did the bargaining unit ever consist of fewer than 171 employees. At no time since July 2007 has PMT had more than the approximately 60 dues authorizations.

7. The ICEP has never provided PMT with any further evidence of majority status.

8. In or about September 2008, PMT ceased deductions of ICEP dues because the authorizations provided to PMT were invalid under NLRB law because; 1) they did not contain any revocation language; 2) No labor agreement authorizing deductions was ever reached; and 3) The ICEP never demonstrated majority support of the bargaining unit members.

The above represents an outline of my knowledge of the matter.

DATED this 16 day of February 2009.


Joy Carpenter

I hereby certify that the foregoing Affidavit was subscribed and sworn to before me this 16th day of February, 2009, by Joy Carpenter.

Witness my hand and official seal.




Notary Public

My Commission Expires: 7/12/10