

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 28**

PROFESSIONAL MEDICAL TRANSPORT, INC.

and

**Cases 28-CA-22175
28-CA-22289
28-CA-22338
28-CA-22350**

**INDEPENDENT CERTIFIED EMERGENCY
PROFESSIONALS OF ARIZONA, LOCAL #1**

**GENERAL COUNSEL'S OPPOSITION TO
RESPONDENT'S MOTION FOR SUMMARY JUDGMENT**

Pursuant to Rule 102.24(b) of the Board's Rules and Regulations, Series 8, as amended, the General Counsel files this opposition to Respondent Professional Medical Transport, Inc.'s Motion for Summary Judgment (Motion)¹ filed on May 19, 2009. The Complaint alleges that Respondent violated Section 8(a)(5) of the Act in numerous respects, including by unlawfully withdrawing recognition from its employees' bargaining representative, Charging Party Independent Certified Emergency Professional of Arizona, Local #1 (Charging Party or Union).

Respondent's sole basis for demanding summary judgment is its contention that, when it first recognized the Union over three years ago, the Union lacked majority status. But nearly five decades of case law, including a United States Supreme Court decision, dictate that Respondent is making this argument too late. See *Machinists Local Lodge 1424 v. NLRB (Bryan Mfg. Co.)*, 362 U.S. 411 (1960); *Tahoe Nugget, Inc.*, 227 NLRB 357 (1976), *enfd.*, 548 F.2d 293 (9th Cir. 1978), *cert. denied* 442 U.S. 921 (1979) ("a respondent may not defend

¹ Respondent's Motion is, in fact, one for *partial* summary judgment, as it addresses only the § 8(a)(5) allegations set forth in the Complaint, and not those stated under § 8(a)(1) or (3) of the Act.

against a refusal-to-bargain allegation on the ground that the original recognition, occurring more than 6 months before charges had been filed in the proceeding raising the issue, was unlawful”). Respondent’s Motion is an unfortunate waste of the Board’s time and judicial resources, and should be dismissed accordingly.

I. BACKGROUND

It is undisputed that, in July 2006, Respondent recognized the Union as the bargaining agent for certain of its employees. (See Respondent’s Motion at 2) Respondent does not dispute that, after engaging in negotiations for over two years, it ceased recognizing the Union and implemented unilateral work rules.

II. ARGUMENT

Under established Board law, Respondent is presumed to have acted lawfully in recognizing the Union. See *Jim Kelley’s Tahoe Nugget*, 227 NLRB 357 (1976) (“[t]he Board has consistently presumed that a voluntarily recognized union continues to be the majority representative of the unit employees”). Respondent cannot dispute this presumption at this late hour. For an employer to raise a defense that based on its own illegal recognition of a minority union, “the employer must take timely action” within the meaning of Section 10(b) of the Act. *Expo Group*, 327 NLRB 413, 424-26 (1999) (“just as it removes a possibility of prosecution, the statute of limitations equally takes away a possible defense”).

The courts and the Board have consistently held that Section 10(b) precludes inquiry as to the lawfulness of recognition granted outside the Section 10(b) period that went unchallenged during the Section 10(b) period. See *Bryan Mfg. Co.*, *supra*; *Strand Theatre of Shreveport Corp*, 346 NLRB 523, 536-37 (2006); *Alpha Assoc.*, 344 NLRB 782, 782-83 (2005); *Expo Group*, 327 NLRB at 431; *Royal Components Inc.*, 317 NLRB 971, 972-73

(1995). Under this well-established principle, Respondent can no more rely on its time-barred recognition than can the General Counsel seek to prove a time-barred unfair labor practice as a necessary element of its case. *Expo Group*, 327 NLRB at 426 (employer is “presumed to have acted lawfully in recognizing the Union, and cannot dispute that fact now”).

Respondent’s defense simply cannot survive the United States Supreme Court’s time bar as set forth in *Bryan Manufacturing*, *supra*.

III. CONCLUSION

Based on the foregoing, Respondent’s Motion should be denied in its entirety.

Dated at Phoenix, Arizona, this 21st day of May 2009.

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CERTIFICATE OF SERVICE

I hereby certify that a copy of GENERAL COUNSEL'S OPPOSITION TO RESPONDENT'S MOTION FOR SUMMARY JUDGMENT in PROFESSIONAL MEDICAL TRANSPORT, INC., Cases 28-CA-22175 et al., was served by E-Gov, E-filing, and with permission by e-mail, on this 21st day of May 2009, on the following:

Via E-Gov, E-Filing:

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