

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
)	28-CA-22519

RESPONDENT PROFESSIONAL MEDICAL TRANSPORT'S
STATEMENT OF EXCEPTIONS

Respondent Professional Medical Transport, Inc. (“PMT” or “Respondent”), by and through its attorneys, Sherman & Howard L.L.C., pursuant to the National Labor Relations Board (“NLRB” or “Board”) Rules and Regulations § 102.46, hereby takes the following exceptions to the decision and rulings of the Administrative Law Judge:¹

1. The Administrative Law Judge’s finding that Respondent has failed to show actual loss of majority support and that by withdrawing recognition from the Union, PMT violated Section 8(a)(5) and (1), despite his ruling preventing Respondent from presenting evidence on lack of majority. (15 ALJD 44-46).

2. The Administrative Law Judge’s decision to preclude PMT from presenting evidence concerning the Union’s lack of majority status and reject its offer of proof. (2 ALJD 21-23).

3. The Administrative Law Judge’s finding and conclusion that PMT violated Section 8(a)(5) and (1) by refusing to provide the Union with requested information in July 2008

¹ Citations in this Statement of Exceptions will be as follows: “ ___ ALJD ___ ” to indicate the page (preceding ALJD) and line numbers (following ALJD) of the Decision of the Administrative Law Judge.

(9 ALJD 22-25), including, but not limited to, the Administrative Law Judge's failure to consider the fact that the request was overbroad and requested information concerning non-bargaining unit employees.

4. The Administrative Law Judge's finding and conclusion that Respondent violated Section 8(a)(5) and (1) by posting a notice for employees "opt out" of providing their contact information to the Union (10 ALJD 31-34).

5. The Administrative Law Judge's finding and conclusion that the alleged direct dealing was continuing in nature and was not barred by Section 10(b) of the Act. (10 ALJD 31-35).

6. The Administrative Law Judge's credibility resolutions, including, but not necessarily limited to; the Administrative law Judge's finding that the testimony of Justin Lisonbee, Jason Wayne Seyferth, Tod Robert Wais, and Ryan Joseph Nolan was credible (11 ALJD 20 – 34); the Administrative Law Judge's finding that Bob Ramsey's testimony was wholly incredible (12 ALJD 37-38); the Administrative Law Judge's finding that James R. Roeder's testimony regarding why the additional firefighters would not have taken away unit work was "unique, uncorroborated, and not credible" (12 ALJD 45-49); the Administrative Law Judge's finding that PMT admitted to hiring a large number of firefighters (12 ALJD 7); and the Administrative Law Judge's finding that the testimony of Joy Carpenter and Kellie O'Connor was incredible. (13 ALJD 2-5).

7. The Administrative Law Judge's finding that PMT violated Section 8(a)(5) and (1) by unilaterally assigning unit work to nonunit firefighters, despite the fact that the Complaint alleged a unit that included these part-time firefighters, (13 ALJD 18-19).

8. The Administrative Law Judge's finding that PMT reduced the unscheduled overtime hours for unit employees by assigning that work to nonunit firefighters (13 ALJD 5-6; 24 ALJD 35-36).

9. The Administrative Law Judge's finding that the amount of work assigned to firefighters during the relevant period of time was significantly higher than in the past and therefore required prior notice to the Union (13 ALJD 15-18).

10. The Administrative Law Judge's finding and conclusion that PMT violated Section 8(a)(5) and (1) by refusing to provide the Union with requested information in January 2009 (13 ALJD 39-41), including, but not limited to, the Administrative Law Judge's failure to consider the fact that the request was overbroad and requested information concerning non-bargaining unit employees.

11. The Administrative Law Judge's finding that PMT violated Section 8(a)(5) and (1) by unilaterally placing security cameras in the living quarters of employees at several stations (14 ALJD 30-32), including, but not limited to, the Administrative Law Judge's finding that "it was never told to the employees or the Union that the cameras would not be operational." (14 ALJD 26-28); and the Administrative Law Judge's decision to not credit Mr. Ramsey's testimony (14 ALJD 9).

12. The Administrative Law Judge's finding that PMT violated Section 8(a)(5) and (1) by failing to give the Union an opportunity to bargain over the effects of the relocation of Stations 606 and 607. (15 ALJD 12-14; 24 ALJD 17-19).

13. The Administrative Law Judge's finding and conclusion that PMT violated Section 8(a)(5) and (1) by changing healthcare benefits without first allowing the Union an opportunity to bargain about the changes. (16 ALJD 33-35; 24 ALJD 44-45).

14. The Administrative Law Judge's finding that PMT violated Section 8(a)(5) and (1) by unilaterally disallowing the Union president or his designee reasonable access to all PMT's communication and electronic devices (18 ALJD 12-14).

15. The Administrative Law Judge's finding that the message Mr. Barkley sent to employees was protected union activity. (22 ALJD 31-32);

16. The Administrative Law Judge's finding that PMT violated Section 8(a)(1) by threatening to remove an employee from active duty because he engaged in union activity. (22 ALJD 33-35).

17. The Administrative Law Judge's Conclusions of Law finding that PMT has engaged in unfair labor practices by withdrawing recognition from the Union. (23 ALJD 30-39).

18. The Administrative Law Judge's Conclusions of Law finding that PMT has engaged in unfair labor practices by refusing to provide the Union with requested information that is relevant to the performance of the Union's duties. (23 ALJD 30-32, 40-42).

19. The Administrative Law Judge's Conclusions of Law finding that PMT has engaged in unfair labor practices by failing to give the Union an opportunity to bargain over the effects of the relocation of Stations 606 and 607. (23 ALJD 30-32, 44-45).

20. The Administrative Law Judge's Conclusions of Law finding that PMT has engaged in unfair labor practices by changing healthcare benefits without first allowing the Union an opportunity to bargain about the changes. (23 ALJD 30-32, 46-49).

21. The Administrative Law Judge's Conclusions of Law finding that PMT has engaged in unfair labor practices by unilaterally placing security cameras in the living quarters of employees. (23 ALJD 30-32, 50-51).

22. The Administrative Law Judge's Conclusions of Law finding that PMT has engaged in unfair labor practices by dealing directly with employees. (24 ALJD 1-3; 24 ALJD 1-2).

23. The Administrative Law Judge's Conclusions of Law finding that PMT has engaged in unfair labor practices by unilaterally assigning unit work to nonunit firefighters. (23 ALJD 1-3; 24 ALJD 3-4).

24. The Administrative Law Judge's Conclusions of Law finding that PMT has engaged in unfair labor practices by unilaterally disallowing the Union president or his designee reasonable access to all PMT's communication and electronic devices. (23 ALJD 1-3; 24 ALJD 7-8).

25. The Administrative Law Judge's Conclusions of Law finding that PMT has engaged in unfair labor practices by threatening to remove an employee from active duty because he engaged in union activity. (24 ALJD 9-11).

26. The Administrative Law Judge's proposed remedy ordering bargaining over the effects, bargaining which must include at the option of the Union, the payment of some monetary compensation to the unit employees whose working conditions allegedly suffered as a result of the relocations. (24 ALJD 30-34).

27. The Administrative Law Judge's proposed remedy to "make whole all unit employees who at the compliance stage of this proceeding are determined to have lost earnings" as a result of the alleged unlawful transfer of bargaining unit work. (24 ALJD 37-40).

28. The Administrative Law Judge's proposed remedy that PMT rescind changes to its healthcare benefits for unit employees and restore the same healthcare benefits that were previously available to unit employees. (24 ALJD 45-48).

29. The Administrative Law Judge's proposed remedy that PMT reimburse employees for any losses resulting from the change in healthcare benefits. (24 ALJD 48-50).

30. The Administrative Law Judge's proposed remedy compelling the posting of a notice and imposing, on the first day of notice posting, a requirement that the notice be sent on the email system that PMT uses to electronically communicate to employees. (24 ALJD 51-52; 25 ALJD 1; 25 ALJD 5-6).

31. The Administrative Law Judge's recommended order that PMT cease and desist from:

- (a) Unlawfully withdrawing recognition from the Union as the collective-bargaining representative of the employees in the unit described above.
- (b) Refusing to provide the Union with requested information that is relevant to the performance of the Union's duties as the collective-bargaining representative of employees.
- (c) Failing to give the Union an opportunity to bargain over the effects of the relocation of Stations 606 and 607 on the working conditions of unit employees.
- (d) Changing healthcare benefits without first allowing the Union an opportunity to bargain about the changes.
- (e) Unilaterally placing security cameras in the living quarters of employees at several stations.
- (f) Dealing directly with employees instead of with the Union as the collective-bargaining representative of the employees.

- (g) Discontinuing employees use of PMT's electronic communication devices because employees engaged in union activity.
- (h) Unilaterally assigning unit work to nonunit firefighters.
- (i) Unilaterally disallowing the Union president or his designee reasonable access to all PMT's communication and electronic devices.
- (j) Threatening to remove an employee from active duty because he engaged in union activity.
- (k) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

(25 ALJD 13-45; 26 ALJD 1-4).

32. The Administrative Law Judge's proposed order requiring the taking of various forms of affirmative action including:

- (a) On request, bargain with the Union as the exclusive representative of the employees in the following appropriate unit concerning terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement:

Full time field paramedics, EMT's, IEMT's, and registered nurses, but excluding administrative staff individuals, support services or personnel not directly operating in the field as an EMS provider.
- (b) Provide the Union with requested information that is relevant to the performance of the Union's duties as the collective-bargaining representative of employees.

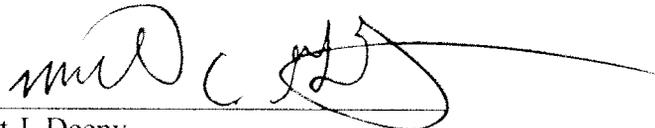
- (c) Remove the message concerning a “Request to Withhold Personal Information” from all bulletin boards.
- (d) Bargain with the Union over the effects of the relocation of Stations 606 and 607 on the working conditions of unit employees.
- (e) Within 14 days from the date of this Order, notify the Union president in writing that he or his designee is permitted reasonable access to all PMT’s communication and electronic devices.
- (f) Rescind the transfer of unit work to nonunit firefighters that began in September 2008, restore that work to unit employees in the manner that existed prior to that unlawful conduct and make whole all unit employees who at the compliance stage of this proceeding are determined to have lost earnings and other benefits as a result of the unlawful transfer of bargaining unit work as described in the Remedy section of this decision.
- (g) Rescind the unlawful changes in healthcare benefits for unit employees in 2009 and restore, and make available to unit employees, the same health care benefits that were available to such employees immediately prior to its unlawful conduct and make the unit employees whole by reimbursing them for any losses resulting from the unlawful conduct, with interest.
- (h) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored

in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

- (i) Within 14 days after service by the Region, post at its stations in and about Tempe, Arizona, copies of the attached notice marked "Appendix." Copies of the notice, on forms provided by the Regional Director for Region 28, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since July 25, 2008. PMT shall also send, on the first day of notice posting as required herein, a copy of this notice to employees on the same basis as it electronically communicates to its employees.
- (j) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply. (26 ALRD 5-43; 27 ALRD 22).

RESPECTFULLY SUBMITTED this 17th day of December, 2009.

SHERMAN & HOWARD L.L.C.



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I certify that I caused a copy of the foregoing
to be electronically filed this 17th day of
December, 2009.

COPIES of the foregoing were sent via
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