

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

(Ukiah, California)

ROBERT McADOO d/b/a UKIAH AMBULANCE

Employer

and

SHANENE EATON, An Individual

Petitioner

and

HEALTH CARE WORKERS UNION, LOCAL
250, SEIU, AFL-CIO

Union

Case 20-RD-2381

DECISION AND ORDER

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board; hereinafter referred to as the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding, the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed. 1/
2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein. 2/
3. The labor organization(s) involved claim(s) to represent certain employees of the Employer. 3/
4. No question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act. 4/

ORDER

IT IS HEREBY ORDERED that the petition filed herein be, and it hereby is, dismissed.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the **Executive Secretary, 1099-14th Street, NW, Washington, DC 20570-0001**. This request must be received by the Board in Washington by March 23, 2004.

Dated March 9, 2004

at San Francisco, California

/s/ Robert H. Miller
Regional Director, Region 20

- 1/ No representative of the Union appeared at the hearing. The record reflects that the Union was served with a copy of the petition and notice of hearing in this case by first class mail February 13, 2004. Thereafter, by Order dated February 19, 2004, all parties were notified that the hearing was rescheduled from February 20, 2004 to 10:00 a.m. on February 27, 2004, at a location to be designated in Ukiah, California. All parties were notified by facsimile transmission on February 27, 2004, of the location where the hearing would be held. In these circumstances, I find that the decision of the hearing officer to proceed with the hearing in the absence of a representative of the Union did not constitute prejudicial error.

- 2/ The record reflects that the Employer is a sole proprietorship with a place of business in Ukiah, California, where it operates an emergency medical transport business. In the twelve-month period preceding the hearing, the Employer derived gross revenues in excess of \$1.4 million of which \$330,000 came from Federal Medicare payments for services rendered by the Employer, approximately \$750,000 came from private pay patients and/or insurance companies, and the remainder came from Medi-Cal payments. The record also reflects that in during the twelve-month period preceding the hearing, the Employer purchased and received at its Ukiah facility, ambulances valued in excess of \$158,000 directly from a car dealership located in Alverata, Texas. Based on such facts, I find that the Employer is engaged in commerce within the meaning of the Act.

- 3/ With regard to the labor organization status of the Union, the record shows that the Employer and the Union were party to at least two collective bargaining agreements the most recent of which was effective by its terms for the period March 27, 2000 to March 26, 2002 (the Agreement), covering employees in the following unit:

“ . . . all employees included in the bargaining unit as certified by the National Labor Relations Board in Case #20-CA-26353-1. The bargaining unit shall include all full-time and part-time Emergency Medical Technicians, Emergency Medical Technicians II’s, Paramedics, Dispatchers and Office Clerical employees employed by the employer at all employer facilities, excluding all other employees, guards, and supervisors as defined in the Act as amended.”

The Agreement contains provisions covering wages, fringe benefits and other terms and conditions of employment for unit employees. At the time of the hearing, the unit consisted of approximately thirty employees including twelve EMT-1s, seventeen paramedics and at least one office clerical, Petitioner Shanene Eaton, who is a medical biller. The record reflects that representatives of the Union negotiated the Agreement with the Employer and that unit employees participated on the Union’s bargaining committee during such negotiations. The record further reflects that the Union has filed grievances with the Employer on behalf of unit employees during the term of the Agreement and the collective-bargaining agreement that preceded it. In

addition to the foregoing, the record reflects that employees of the Employer attended meetings held by the Union and paid dues to the Union. A field representative from the Union most recently visited the Employer in November 2003. In these circumstances, I find that the Union is a labor organization within the meaning of Section 2(5) of the Act.

- 4/ For the reasons discussed below, I am dismissing the petition in this matter because of the existence of a contract bar.

Under the Board's contract bar principals, an existing contract will serve as a bar to an election unless the election petition is filed during the "insulated period." The "insulated period" rule holds that petitions must be filed more than 60 days but less than 90 days before the expiration date of the contract. *Leonard Wholesale Meats*, 136 NLRB 1000 (1962). An untimely-filed petition is regarded as premature under this rule and may be dismissed unless the contract is determined not to be a bar for other reasons. See *Deluxe Metal Furniture Co.*, 121 NLRB 995, 999 (1958); *Maramount Corp.*, 310 NLRB 508 (1993).

Where a contract contains an automatic renewal provision, the Board has held that such a provision is valid and if neither party provides timely notice of its desire to modify or terminate a contract, the contract renews itself and constitutes a bar unless a timely petition is filed during the insulated 60 to 90 day period. See *Deluxe Metal Furniture Co supra*.

The record reflects that the petition in this case was filed on February 12, 2004, seeking a decertification election in a unit comprised of "All full-time and regular part-time EMT's and EMT's, paramedics, dispatchers and office clerical employees employed by the Employer; and excluding all other employees guards and supervisors as defined in the Act." The petitioned-for unit is co-extensive with that covered by the Agreement.

As indicated above, the Agreement is a two-year contract with an expiration date of March 26, 2002. The Agreement contains in Article XXV, an automatic renewal provision which states that it will remain in effect from year to year after its expiration date, unless written notice of cancellation, amendment or modification is given by one party to the other at least 90 days prior to each subsequent anniversary date. The record shows that since the Agreement was entered into, the Union has not contacted the Employer to request that the Agreement be reopened or terminated. Nor does the record show that the Employer has ever given the Union the written notice necessary to modify or terminate the Agreement. Given the absence of any evidence that a written notice has ever been given by either party to cancel, amend or modify the Agreement, by the terms of its roll over provision, it has rolled over and has a current expiration date of March 26, 2004. For purposes of application of the Board's contract bar doctrine,

each roll over of the Agreement is treated as a new one year contract with a new insulated window period for the filing of petitions.

As noted above, the petition herein was filed on February 12, 2004. Because it was not filed in the prescribed 60 to 90 day insulated window period (December 27 to January 25) prior to the Agreement's expiration date of March 26, 2004, I find that the Agreement stands as a bar to the processing of the petition herein. See *Maramount Corp.*, 310 NLRB 508 (1993); *Providence Television*, 194 NLRB 759, 760 (1972); *Union Carbide Corp.*, 190 NLRB 191 (1971); *General Cable Corp.*, 139 NLRB 1123 (1962); *Leonard Wholesale Meats*, 136 NLRB 1000 (1962); *Deluxe Metal Furniture Co.*, 121 NLRB 995, 999 (1958); see also *B.B.&T Management Corporation Supplemental Decision & Order*, 20-RD-2373 (December 31, 2003).

Accordingly, the petition is hereby dismissed.

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