American Medical Response, Incorporated *and* National Emergency Medical Services Association Union, Petitioner

American Medical Response, Incorporated *and* Eric Stephens, Employee Petitioner and SEIU United Healthcare Workers West, Service Employees International Union,[1] Union. Cases 32–RC–5234 and 32–RD–1450

August 17, 2005

DECISION AND DIRECTION OF THIRD ELECTION

BY CHAIRMAN BATTISTA AND MEMBERS LIEBMAN AND SCHAUMBER

The National Labor Relations Board has considered an objection (Objection 3) to a mail ballot election held from February 23–March 16, 2005, and the attached administrative law judge's supplemental report recommending disposition of it.[2] The election was conducted pursuant to a Stipulation on Objections and Challenges dated December 27, 2004.[3] The tally of ballots shows 848 for National Emergency Medical Services Association (NEMSA); 580 for SEIU United Healthcare Workers West, Service Employees International Union (SEIU); 19 against the participating labor organizations; and 90 challenged ballots, an insufficient number to affect the results of the election.

The Board has reviewed the record in light of the exceptions and brief, has adopted the administrative law judge's findings and recommendations only to the extent consistent with this Decision and Direction of Third Election, and finds that the election must be set aside and a new election held.

Objection 3 alleges that the failure to provide the Employer's critical care transport registered nurses (RNs), who are professional employees under the Act, with a *Sonotone*[4] ballot warrants setting aside the election. The judge recommended that this objection be overruled. For the reasons set forth below, we find, contrary to the judge, that the election failed to comport with the requirements of Section 9(b)(1) of the Act and accordingly must be set aside.

I. BACKGROUND

A. The Facts

The facts are undisputed. The SEIU has been the collective-bargaining representative of employees of the Employer since 1995. Initially, the bargaining unit only included nonprofessional employees. A collective-bargaining agreement covering those nonprofessional employees was entered into and was effective from October 12, 1996 through June 30, 2001. The SEIU and the Employer subsequently entered into a successor agreement effective from July 1, 2001 to June 30, 2006. In 2002, the Employer's RNs, who were not at that time represented by any union, began to express interest in being represented by the SEIU.[5] The parties stipulated that the RNs are professional employees.

The current collective-bargaining agreement contains a recognition clause that includes a provision entitled "Fast and Fair Recognition Procedure." That provision establishes a procedure governing "the representation of employees not currently represented by the Union." Section 1.4, A.2 states:

> If the Union notifies the Employer that it has the majority support in a facility, operation, or class of workers that is currently unrepresent[ed] as demonstrated by signed membership cards or a signed recognition petition, which is verified by the California State Conciliation Service, the parties will jointly request the State Conciliation Service to conduct a representation election within 30 days of the notice.

Section 1.4, A.3 states:

> Within a week of the verification of the Union's majority support, the Employer and the Union will jointly meet with affected workers to announce the election, outline the election process, and to jointly commit to the employees[']right to choose.

Section 1.4, A.5 states:

[1] We have amended the caption to reflect the disaffiliation of the Service Employees International Union from the AFL–CIO effective July 25, 2005.

[2] SEIU filed 6 objections to the election. The Regional Director directed a hearing on Objection 3 and overruled each of the other objections. SEIU filed a request for review of the Regional Director's overruling of Objections 1 and 2. In light of our disposition of Objection 3, we find it unnecessary to rule on SEIU's request for review.

[3] An initial election was held on August 30 and 31, and September 1 and 2, 2004. All parties stipulated, with the approval of the Regional Director, that the 2004 election should be considered a nullity and the results set aside.

[4] *Sonotone Corp*., 90 NLRB 1236 (1950). In *Sonotone*, the Board adopted a two-step voting procedure for professional employees in elections involving both professional and nonprofessional employees. The ballot includes two questions. The first question asks the professional employees if they want to be included in a unit of professional and nonprofessional employees. The second question asks the professional employees if they wish to be represented by the union or unions involved.

[5] Two geographically separate groups of the Employer's RNs contacted the SEIU. One was located in the Valley Region of the Employer's Northern Pacific Region and the other was located in the Bay/Coastal Region of the Employer's Northern Pacific Region.

> If the Union receives a majority of the votes cast in the representation election, the Employer shall recognize the Union as the representative of the affected employees, cover the affected employees under the terms of this agreement and bargain over appropriate wage scales and any other condition of employment, which may not be covered by this agreement.

Upon learning of the RNs' interest in being represented, the SEIU formed an organizing committee to explain to the RNs the fast and fair recognition process set forth in the contract. SEIU organizing committee members communicated with each RN and told each that a result of voting for the SEIU under the fast and fair recognition procedure would be the addition of the RNs to the existing bargaining unit. The SEIU solicited and received RN signatures on representation petitions.

The petitions were submitted to the California State Mediation and Conciliation Service (CSMCS), and the CSMCS agreed to conduct an election. Joint meetings to announce the election and outline the election process were then held by the Employer and the SEIU with the RNs as required by the contract. During those meetings, the RNs who attended were told and understood that they would be voting on whether to be represented by the SEIU as part of the overall bargaining unit.

The CSMCS conducted separate elections among the two RN groups. The Bay/Coastal Region RNs voted on June 24, 2002, and the Valley Region RNs voted on October 7, 2002. In each election the ballot question was: "I choose to be represented by Healthcare Workers Local 250 (SEIU) or No Organization." The SEIU won both elections, and there were no objections filed or other unit or self-determination disputes in either election.

After each election, the Employer recognized the SEIU as the RNs' representative as part of the overall bargaining unit, and the Employer and the SEIU negotiated and executed "side letter" supplements to the contract covering the RNs.

On March 12, 2004, NEMSA filed a representation petition seeking to represent employees of the Employer in a mixed professional and nonprofessional unit, and the same day an employee filed a decertification petition seeking to decertify the SEIU in the same unit. A hearing was held, and on July 23, 2004, the Acting Regional Director for Region 32 issued a Decision and Direction of Election directing an election in a unit consisting of both professional employees (RNs), and nonprofessional employees such as EMTs, drivers, wheelchair van drivers, dispatchers, system status controllers, call takers, prebillers, and billers. An initial election was held in August and September 2004, and the question on the ballot was whether employees wished to be represented by SEIU, by NEMSA, or by neither. There was no separate ballot for professional employees, and the professional employees (RNs) were not asked if they wanted to be included in a unit with nonprofessionals. The initial election was set aside pursuant to a stipulation of the parties, and a new mail ballot election (the election at issue here) was held in February and March 2005. The ballot was the same as in the 2004 election. NEMSA won the mail ballot election, and the SEIU filed objections. The RD directed a hearing on Objection 3, the *Sonotone* objection, and overruled all the other objections.

B. The Judge's Supplemental Report

A hearing on Objection 3 was held before an administrative law judge. In his supplemental report, the judge initially found that the SEIU's failure to raise the *Sonotone* ballot issue at an earlier stage in this proceeding did not preclude it from raising this issue now.[6]

The judge next rejected the contention that *Sonotone* voting procedures were necessary in this election. The judge stated that "the provisions of Section 9(b)(1) of the Act have been held to require only a single, one time, self-determination election by professionals . . . ."[7] The judge also stated that the "one time" self-determination election need not have been a Board-conducted *Sonotone* election, and that the Board will accept elections conducted by other agencies, including state agencies, provided that the state agency's election procedure was "free of irregularities and reflected the true desires of the employees." *Corporacion de Servicios Legales de Puerto Rico,* 289 NLRB 612 fn. 2 (1988).

The judge found that the RNs' elections in 2002 met the standard of *Corporacion de Servicios Legales,* in that they were free of irregularities, and they tested the true desires of the professional employees as to whether or not they wished to be included in the larger bargaining unit with nonprofessional employees. Because the SEIU was not seeking to represent the RNs in a free-standing unit in those elections, by voting for the SEIU the employees were effectively voting to be represented in a unit with nonprofessionals. The RNs were well aware of the purpose and consequences of the 2002 balloting. The RNs were told both individually by the SEIU agents and by the Employer and the SEIU agents at employee meet-

[6] The judge relied on *Pontiac Osteopathic Hospital,* 327 NLRB 1172 (1999), in which the Board found that the self-determination requirements of Sec. 9(b)(1) of the Act are mandatory and are to be enforced by the Board where appropriate, irrespective of the position taken by the parties at any stage of the proceeding. There were no exceptions to the judge's finding.

[7] The judge did not cite any authority for this proposition.

ings that the question to be presented in the election was whether or not the nurses wished to join the existing SEIU-represented unit. The judge concluded, therefore, that the elections among the RNs in 2002 fulfilled the 9(b)(1) requirement that professional self-determination elections be held, and that it was not necessary that the instant Board election include self-determination balloting of professional employees. Accordingly, he recommended that Objection 3 be overruled.

C. The SEIU's Exceptions

The SEIU contends in its exceptions that the failure to provide the RNs with a *Sonotone* ballot is a violation of Section 9(b)(1) of the Act. The Act specifically prohibits the Board from finding appropriate a unit that joins professional employees with nonprofessional employees unless a majority of the professional employees vote to be so included. It is undisputed that the mandatory *Sonotone* procedure was not utilized in this election, nor was it used in the CSMCS elections in 2002. Thus, those elections did not conform to the requirements of Section 9(b)(1). Moreover, even if the RNs had acquiesced in their inclusion in a mixed unit represented by SEIU in 2002, they did not agree to representation by NEMSA in a mixed unit. The SEIU argues that the election must be set aside because the absence of a *Sonotone* ballot in this election deprived the RNs of the opportunity to vote on such inclusion, in violation of Section 9(b)(1) of the Act.

II. DISCUSSION

Section 9(b)(1) of the Act provides:

> [T]he Board shall not (1) decide that any unit is appropriate . . . if such unit includes both professional employees and employees who are not professional employees unless a majority of such professional employees vote for inclusion in such unit[.]

Thus, the Act effectively grants professional employees the right to decide by majority vote whether they wish to be included in a unit with nonprofessional employees. In *Leedom v. Kyne*, 358 U.S. 184, 191 (1958), the Supreme Court held that Congress "intended that right to be enforced" by the Board. To safeguard that right, the Board has adopted a special type of self-determination procedure known as a *Sonotone* election, so named after the lead case. *Sonotone Corp*., 90 NLRB 1236 (1950). In a *Sonotone* election, the ballots for the professionals includes two questions. The first question asks the professional employees if they want to be included in a unit of professional and nonprofessional employees. The second question asks the professional employees if they wish to be represented by the union or unions involved.

In the instant case, it is undisputed that the RNs are professional employees and that they were not provided with a *Sonotone* ballot. In other words, the election was held in a unit that, contrary to Section 9(b)(1) of the Act, combined professional employees with nonprofessional employees without affording the professionals an opportunity to vote whether they wished to be included in such a unit. Therefore, we find that the election must be set aside.[8]

The judge's conclusion that a *Sonotone* ballot was not necessary in this election was based on the assumption that professional employees need only have one opportunity to vote on inclusion in a mixed professional/nonprofessional unit. However, that assumption is inconsistent with the Board's decision in *Westinghouse Electric Corp*., 116 NLRB 1545, 1547 (1956). In that case, the Board rejected the argument that separate *Sonotone* balloting was unnecessary because the professionals had, 6 years earlier, "already enjoyed the statutory privilege" of separately expressing their desire to be included in a mixed professional/nonprofessional unit. The Board stated that "[t]here is nothing in the statute limiting the privilege thus accorded to professional employees to a single opportunity in the course of their employment for a particular employer. Nor do we perceive anything in the statutory language which frees the Board, in its unit determinations, from the limitation imposed by Section 9(b)(1) after it has once conformed to it with respect to any particular group of professional employees." This principle was reaffirmed in *Westinghouse Electric Corp*., 129 NLRB 846, 848 (1960) ("Section 9(b)(1) of the Act precludes the Board from joining in a single bargaining unit professional and nonprofessional employees, without first affording to the professional employees [an] opportunity to separately express their desires respecting such inclusion. This is so whether or not the professional employees have, on a prior occasion, been afforded such opportunity.")[9]

[8] A *Sonotone* ballot is particularly necessary here, where the RNs have never expressed any view as to whether they wished to be represented by NEMSA in a mixed professional/nonprofessional unit. The 2002 CSMCS elections involved only the SEIU.

[9] We therefore find it unnecessary to pass on the judge's finding that the 2002 CSMS elections were equivalent to Board *Sonotone* elections and provided the professional employees with an adequate opportunity to vote on whether to be included in the same unit with the nonprofessionals.

Corporacion de Servicios Legales de Puerto Rico, supra, 289 NLRB 612 fn. 2, cited by the judge, does not require a different result. Indeed, that case cites the first *Westinghouse Electric* decision, quoted above, with approval. *Corporacion de Servicios Legales* is distinguishable, as it did not involve the issue presented here of whether a *Sonotone* ballot is required in a Board-conducted election involving both professional and nonprofessional employees held subsequent to a state election.

For these reasons, we sustain Objection 3, set aside the election, and direct a new election providing for a *Sonotone* ballot for the RNs. See *Sunrise, Inc*., 282 NLRB 252 (1986) (setting aside the election is the appropriate action following a failure to provide required *Sonotone* ballots).

We shall therefore direct elections in the following separate voting groups, one consisting of all RNs and the other consisting of all other nonprofessional unit employees.

The RNs will be asked the following two questions on their ballots:

(1) Do you wish to be included with nonprofessional employees in a unit for the purposes of collective bargaining?

(2) Do you wish to be represented for purposes of collective bargaining by National Emergency Medical Services Association; by SEIU United Healthcare Workers West, Service Employees International Union; or by neither?

If a majority of the professional employees vote "yes" to the first question, indicating a desire to be included in a unit with nonprofessional employees, they shall be so included. Their vote on the second question will be counted with the votes of the nonprofessional employees to decide which union, if any, shall be the representative for the entire combined bargaining unit. If, on the other hand, the RNs do not vote for inclusion, their votes on the second question will be separately counted to decide whether they want either of the Unions on the ballot to represent them in a separate professional unit. Similarly, the votes of the nonprofessionals would be separately counted to decide whether they want either of the Unions on the ballot to represent them in a separate nonprofessional unit.

[Direction of Third Election omitted from publication.]

Timothy K. Talbot, Esq. (*Carroll, Burdick & McDonough*), of Sacramento, California for NEMSA.

William A. Sokol, Esq. (*Weinberg, Roger & Rosenfeld),* of Alameda, California for the SEIU.

Julian B. Bellenghi, Esq. (*Collins & Bellenghi)*, of Irvine, California for the Employer.

Mr. Eric Stephens, pro se, of Santa Rosa, California.

Instead, that case dealt with the applicability of the contract-bar doctrine, and the Board decided that it was "not unreasonable to defer the exercise of the professional employees' right of self-determination until the end of the then-current contract." 289 NLRB at 613.

SUPPLEMENTAL REPORT AND RECOMMENDATIONS ON OBJECTIONS

STATEMENT OF THE CASE

CLIFFORD H. ANDERSON, Administrative Law Judge. I heard the above captioned case in Oakland, California on April 27, 2005. The matter arose as follows.

On March 12, 2004, the National Emergency Medical Services Association (NEMSA) filed a representation petition with Region 32 of the National Labor Relations Board (NLRB) docketed as Case 32–RC–5234 seeking to represent certain employees of American Medical Response, Incorporated (the Employer). On the same day, Mr. Eric Stephens, an individual, filed a representation petition with Region 32 of the NLRB docketed as Case 32–RD–450 seeking an election to decertify a bargaining unit of certain employees of the Employer represented by the SEIU United Healthcare Workers West, Service Employees International Union, AFL–CIO (the SEIU).

On July 23, 2004, following a consolidated hearing, the Acting Regional Director for Region 32 issued a Decision and Direction of Election directing an election be held in the consolidated cases in the following unit of the Employers California employees (the unit):

> Including: all full-time and regularly scheduled part-time registered nurses, EMT-1s, EMT-2s, EMT-Ps, Drivers, Wheelchair Van Drivers, Dispatchers, System Status Controllers, Call takers, Pre-Billers, and Billers (except for Pre-Billers and Billers in Stanislaus, San Francisco, Sacramento, Shasta, and San Joaquin Counties) including bargaining unit personnel serving as acting supervisors in the following counties: Monterey, Tulare, Santa Cruz, Santa Clara, San Mateo, (except EMT-Ps covered in a separate Agreement) Stanislaus (excluding Turlock Operations), Alameda, San Francisco, Contra Costa, San Mateo, Stanislaus (Vehicle Service Technician only) and Tulare(Clerk 1s and Clerk 2s only). Also including: all full-time and regularly scheduled part-time CCTs and EMT/CCTs in Alameda, Contra Costa, San Mateo and Yolo Counties, Paramedic/CCTs in Contra Costa, Monterey, Placer, Sacramento, San Joaquin-Calaveras, and Santa Clara Counties, CCT/RNs in Alameda, Contra Costa, Monterey, Sacramento, Santa Clara, and Sonoma Counties; Mail Room Clerks in Alameda County; Dispatchers and Call Takers in Modesto and Sacramento Dispatch Centers, EMT-1s and Paramedics in San Benito County; Vehicle Service Technicians (VST) in Contra Costa, San Joaquin-Calaveras, San Mateo and Santa Clara Counties; Gurney Van Drivers in Sacramento County, Pre-Billing Representative and Technicians in San Mateo County; and Service Receipt Processor/Pre-Billers in Santa Clara County.
>
> Excluding: Advanced Life Support (ALS) paramedics in Turlock, Tracy and San Mateo County, all other personnel including guards and supervisors as defined by the National Labor Relations Act, as amended.

The direction of election provided that all eligible voters in the Unit would vote whether or not they no longer wished to be represented by the SEIU, and whether or not they wished to be represented by NEMSA without discussion or distinction be-

tween professional or nonprofessional employees and without provision for a separate ballot for professional Unit voters.

An initial election was held on August 30 and 31, 2004 and September 1 and 2, 2004. The challenged ballots in the vote were determinative. Timely objections were filed. Thereafter all parties stipulated, with the approval of the Regional Director on December 27, 2004, that the election should be considered a nullity and the results set aside. The issue of professional employee self determination ballots was not raised.

A new election was conducted by mail ballot from February 23, 2005 through March 16, 2005. The same voter choices were presented as in the first election. The tally of ballots served on the parties on March 21, 2005 showed the challenged ballots were not determinative and that NEMSA had obtained a majority of valid votes cast.

Thereafter the SEIU filed timely objections to the election which were served on all parties. On April 14, 2005, the Regional Director issued a Report and Recommendations on Objections and Notice of Hearing. The report overruled all the SEUI's objections save its objection number 3. The report quoted the objection in full and made the following assertions respecting that objection:

Objection No. 3.

> Approximately forty (40) Registered Nurses[1], who are professionals within the meaning of the Act, were permitted to vote in the election with ballots exactly like all other nonprofessional members of the unit, and were thus denied their right to vote separately as to whether they wished to be separately represented in a professional unit of their own, or whether they wished to be represented as part of the larger nonprofessional unit.

Section 9(b)(1) of the Act provides that professional employees may not be included in a bargaining unit with nonprofessionals unless they vote in favor of such inclusion. While the investigation disclosed that, pursuant to Article 1.4 of the latest collective bargaining agreement between the Employer and the SEIU, elections were conducted by the California State Conciliation Service in 2002 amongst the Employer's previously unrepresented critical care transport registered nurses, hereinafter RNs, which resulted thereafter in the RNs being included in the recognized unit and covered by the collective bargaining agreement, I have determined that the circumstances surrounding this election raise material issues of fact and law that may best be resolved by a hearing.

The Director's report on objections then directed that a hearing on the SEIU's objection no. 3 be held and, further directed that the hearing officer prepare and cause to be served upon the parties a report containing resolutions of the credibility of witnesses, findings of fact, and recommendations to the Board as to the disposition of the objection. The matter was assigned to me in due course prior to the hearing.

[1] The instant record establishes that 73 nurses were eligible to vote.

FINDINGS OF FACT

Upon the entire record,[2] including helpful briefs[3] from the Employer and NEMSA, I make the following findings of fact.[4]

1. Bargaining unit history and events

The Employer employs both professional and nonprofessional employees.[5] As set forth in the Regional Director's report quoted above, the bargaining unit as presently composed, save that no Registered Nurses were included, was represented by the SEIU and a collective-bargaining agreement was in place as early as 1996. The initial bargaining unit was therefore composed entirely of nonprofessional employees under Board definitions.

The collective-bargaining agreement, effective by its terms from July 1, 2001 to June 30, 2006, contains a recognition clause which includes Article 1, Section 4 entitled: "Fast and Fair Recognition Procedure," which establishes an elaborate procedure for adding employees to the collective-bargaining unit. Section 1.42 of Article 1.4 states:

> 2. If the Union notifies the Employer that it has the majority support in a facility, operation, or class of workers that is currently unrepresented[ed] as demonstrated by signed member-

[2] The transcript of proceedings commences its pagination at 263, presumably following on the pagination of the original preelection representation hearing. The record includes the original 2-volume transcript as an exhibit.

[3] Briefs were due on May 11, 2005.

[4] The findings are based primarily on the written and oral stipulations of counsel at trial, documents of record, and the findings contained in the Regional Director's Report. In certain cases where noted, reliable, unchallenged testimony in the instant proceeding and at the original representation hearings herein was also considered. The record is essentially free of contested facts beyond arguments of relevancy.

[5] The term "professional employee" is a statutorily defined term of art.

Sec. 2(12) of the Act states:

> The term "professional employee'' means—
>
> (a) any employee engaged in work (i) predominantly intellectual and varied in character as opposed to routine mental, manual, mechanical, or physical work; (ii) involving the consistent exercise of discretion and judgment in its performance; (iii) of such a character that the output produced or the result accomplished cannot be standardized in relation to a given period of time; (iv) requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study in an institution of higher learning or a hospital, as distinguished from a general academic education or from an apprenticeship or from training in the performance of routine mental, manual, or physical processes; or
>
> (b) any employee, who (i) has completed the courses of specialized intellectual instruction and study described in clause (iv) of paragraph (a), and (ii) is performing related work under the supervision of a professional person to qualify himself to become a professional employee as defined in paragraph (a).

In this proceeding, the "Registered Nurses" in the unit, sometimes referred to as the nurses, were stipulated to be professional within the meaning of the Act. There was no contention by any party that any other Unit employees were professionals as defined in the Act. All non-nurse Unit employees are therefore considered nonprofessional in the legal noted for purposes of the analysis herein.

> ship cards or a signed recognition petition, which is verified by the California State Conciliation Service, the parties will jointly request the State Conciliation Service to conduct a representation election with 30 days of the notice.

Section 1.43 of Article 1.4 states:

> 3. Within a week of the verification of the Union's majority support, the Employer and the Union will jointly meet with affected workers to announce the election, outline the election process, and to jointly commit to the employees right to choose.

Section 1.45 of Article 1.4 states:

> 5. If the Union receives a majority of the votes cast in the representation election, the Employer shall recognize the Union as the representative of the affected employees, cover the affected under the terms of this agreement and bargain over appropriate wage scales and any other conditions of employment which may not be covered by this agreement.

In 2002, two geographically separate groups of the Employer's critical care transport registered nurses (sometimes referred to as CCT-RNs or nurses) utilized these procedures. The first was located in the Valley Region of the Employer's Northern Pacific Region (Alameda, Contra Costa, Santa Clara, Monterey and San Mateo Counties) and the second was located in the Bay/Coastal Region of the Employer's Northern Pacific Region (Alameda, Contra Costa, Santa Clara, Monterey and San Mateo Counties). Each of the two nurses groups contacted the SEIU and expressed the desire to become represented as part of the existing unit.

The parties stipulated to the following facts. Upon learning of the nurses, interest in being represented, the SEIU formed an organizing committee to explain the fast and fair recognition process set forth in Section 1.4 of the contract to the nurses. The nurses had earlier met among themselves on multiple occasions to discuss union representation and considered three possible options. The first option was to seek to be added to the SEIU collective-bargaining unit under the fast and fair recognition process and thus to be represented by the SEIU. The second option was to join an existing nurses only organization such as the California Nurses Association and request that body represent a CCT-RN only professional bargaining unit. The third option was to form a new employer/nurses only association and request representation by that organization in a separate CCT-RN professional bargaining unit. The Employer's nurses decided to seek representation by the SEIU in the existing unit.

At that point, each of the two nurses groups contacted the SEIU and expressed the desire to become represented as part of the existing unit. Upon learning of the nurses interest in being represented, the SEIU formed an organizing committee to explain the fast and fair recognition process set forth in Section 1.4 of the contract to the nurses. The parties stipulated that Messrs. Scott Lemmon and Roland Guy, at the time the SEIU organizing committee members, would have testified that the two communicated with each CCT-RN and told each that voting for the SEIU under the fast and fair recognition procedure would result in the nurses being added to the existing bargaining unit.

The SEIU solicited and received nurse employee signatures on representation petitions. The language on the petition forms stated in part:

> To: California State Conciliation Service
>
> We are dedicated American Medical Response (AMR) registered nurses who seek to improve the lives of our patients and ourselves. We believe that joining a union is the best way to have a real voice at work and develop solutions to issues we face. AMR registered nurses are uniting in order to most effectively contribute our knowledge and experience to the task of improving health care. We, the undersigned, therefore authorize Health Care Workers Union, the SEIU Local 250 as our union for purposes of negotiation ages, benefits and other terms and conditions of employment.

The petitions were submitted to the California State Conciliation Service under the provisions of contract Section 1.42. The California State Conciliation Service verified majority support in each case and in each case the parties jointly requested the State Conciliation Service to conduct a representation election.

After the representation petitions were submitted, the State was asked to conduct an election and agreed to do so; joint meetings were held by the Employer and the SEIU with the nurses as required under Section 1.43 of the contract, inter alia, to announce the election and outline the election process. During those meetings, the CCT-RNs who attended were told and understood they would be voting on whether to be represented by the SEIU as part of the overall bargaining unit.

The SEIU independently publicized the elections seeking nurse support. The SEIU document, "The Voice of AMR CCT RN Employees," dated, June 2, 2002, was placed in evidence. The document under a headline announcing a union election among Bay/Coastal Region nurses began:

> On Monday June 3rd] [2002], neutral mediator Paul Roose of the California State Mediation and Conciliation Service verified that a majority of CCT RNs in the five counties signed petitions to be represented by the health Care Workers Union, the SEIU Local 250 and directed that a secret ballot election be held whether to join with the rest of our AMR coworkers as members of the SEIU Local 250.

The document contained prounion nurse commentary, including: "Alameda County CCT RN Scott Lemon agrees; 'CCT RNs need to be part of the same bargaining unit as other AMR union employees. . . .'"

The California State Conciliation Service conducted separate election among the two nurse groups. The Bay/Coastal Region nurses voted on June 24, 2002. The Valley Region nurses voted on October 7, 2002. In each case the ballot question was: "I chose to be represented by Healthcare Workers Local 250 (THE SEIU) or No organization." The tally of ballots respecting the Bay/Coastal Region nurses recited that out of 52 eligible voters, 34 cast valid ballots with the SEIU receiving 28 votes and no organization 6. The tally of ballots respecting the Valley Region nurses recited that out of 36 eligible voters, 31 cast valid ballots with the SEIU receiving 18 votes and no or-

ganization 11 and two challenged. In each election, there were no objections filed or other unit or self determination disputes of any kind.

After each election, the Employer recognized the SEIU as the relevant nurses representative as part of the overall bargaining unit. After each election and recognition, the Employer and the SEIU negotiated "side letter" supplements to the contract covering the nurses involved. In each case the side letter provided that the main contract would govern terms and conditions of employment of the nurses involved with additional particulars contained in the side agreement. The Bay/Coastal Region nurses side letter was signed and dated by the SEIU and the Employer on February 18 and 25, 2003, respectively. The Valley Region nurses' side letter was signed and dated by the SEIU and the Employer on October 9 and 15, 2002, respectively. The side letter agreements became addendums to the collective-bargaining agreement.

There is no contention that any represented nurse or other member of the bargaining unit objected to the nurses' inclusion in the larger overall unit or suggested that such unit placement had not been fairly decided by the nurses in the State balloting described above. Neither the Employer nor the SEIU ever objected to the initial or continued inclusion of the nurses in the overall unit. No objection to the continued inclusion of the nurses in the overall unit was raised in the initial preelection representation case hearing. No party proposed self-determination balloting language for the nurses in the initial hearing or in the stipulation for a second election in the instant case.

2. Board election standards for mixed professional/ nonprofessional employee unit elections

The Act addresses appropriate bargaining units in which elections may be held and provides at Section 9(b)(1):

> [T]he Board shall not (1) decide that any unit is appropriate for such purposes if such unit includes both professional employees and employees who are not professional employees unless a majority of such professional employees vote for inclusion in such unit;

Over time the Board has evolved election procedures to accommodate self-determination elections of which a professional/nonprofessional unit self-determination election is one type. Thus the Board's Case Handling Manual, Part Two, Representation Proceedings, Section 11091.1, Self-Determination Elections, Elections Involving Professional Employees provides:

> . . . In elections to ascertain the desires of *professional* employees as to their inclusion in a unit with nonprofessional employees, pursuant to Section 9(b)(1) of the Act, paragraph 9 of the election agreement, which describes the wording of choices on the ballot, should be altered to conform to the following:
>
> Two questions shall appear on the ballot:
>
> 1. Do you wish to be included with nonprofessional employees in a unit for the purposes of collective bargaining?
>
> To which the choice of answers shall be "Yes'' or "No."
>
> 2. Do you wish to represented for purposes of collective bargaining by [union]?
>
> . . . .

This type of election is referred to as a *Sonotone* election after the Board's fountainhead case: *Sonotone Corp.,* 90 NLRB 1236 (1950), in which the procedures were established.

Professional self-determination elections under *Sonotone* and its progeny have many variations. Some elections provide the professionals with the choice of being represented in a single unit with nonprofessional employees or in an all professional employee unit. There may be more than one labor organization involved; one union may be willing to represent the professionals only as part of an overall unit and another may be willing to represent them in either or only as a separate group. There are therefore many permutations and ballot options.

In the instant case, respecting the nurse elections in 2002, there was but the single labor organization, the SEIU, seeking to represent the nurses and the SEIU was seeking to represent them only as part of the overall unit and not as a free-standing professional or nurse only unit. In such a situation, the nurses were in fact answering both the Board's *Sonotone* questions by voting to be represented by the SEIU as part of the larger bargaining unit or in choosing no representation. Since there was only one union seeking to represent the nurses in one overall unit, the more complicated alternative choices the *Sonotone* scheme was created to handle are not relevant to the instant case.

The Board's Representation Case Handling Manual at paragraph 11091.2) describes a different type of self-determination election in which a group of unrepresented employees decides whether or not to join an existing represented bargaining unit.

> (a) One voting group—one union: This is an election in which the incumbent representative of employees in a partially organized plant seeks to add a group of unrepresented employees to its existing unit, commonly referred to as an *Armour-Globe*[6] election. In such event, the following language should be added to the agreement:
>
> If a majority of valid ballots are cast for [the incumbent union], they will be taken to have indicated the employees' desire to be included in the existing [fill in description] unit currently represented by [the incumbent union]. If a majority of valid ballots are not cast for representation, they will be taken to have indicated the employees' desire to remain unrepresented.

The ballot choice presented voters in a single union *Armour-Globe* election is in essence that which the nurses were presented on their 2002 ballots. Do you wish to be represented by the union? Yes or no?

The Board also conducts elections among employees in currently represented bargaining units based on representation petitions seeking to remove or change the labor organization

[6] *Armour & Co.*, 40 NLRB 1333 (1942); *Globe Machine & Stamping Co.*, 3 NLRB 294 (1937).

representing the unit involved. Those bargaining units sometimes contain both professional and nonprofessional employees. The Board early on had to deal with the complications and implications to its representation law framework of such petitions and how to conduct elections in such a setting.

The Board has taken the position that, if professional employees in an existing professional/nonprofessional mixed bargaining unit had earlier had the opportunity to vote to choose inclusion in a single unit with nonprofessional employees in a fair election, they need not do so a second time. Thus, for example, if the Board had conducted a professional employee self-determination election in the past which resulted in the professional employees electing to be included in a mixed professional/nonprofessional bargaining unit, and had that mixed represented unit been subject to a later Board election, the Board does not find it necessary to hold a second self-determination election for the professionals. Rather the professional employees in that second vote cast their single question, representation or not, ballots in the same manner as all other unit employees and the ballots are tallied without distinction as between professionals and nonprofessionals. In effect, the provisions of Section 9(b)(1) of the Act have been held to require only a single, one time, self-determination election by professionals and does not require them to repeatedly decide if they desired to be included in a mixed professional/nonprofessional employee unit. In such a setting, once is enough.

Bargaining relationships within the jurisdiction of the Act result not only from Board certifications of labor organizations as representative of employees, but also result from voluntary recognition and from elections conducted by public agencies at the state and local level. State certifications of state election results in effect, certifying a union as the representative of employees in particular bargaining units, come before the Board both from elections conducted under contractually established election agreements, as here, and in cases where employees initially were under state jurisdiction and subsequently came under the jurisdiction of the Act. Such bargaining units which subsequently come before the Board often involve mixed professional/nonprofessional units, because the Board in more recent times expanded its jurisdiction to include certain types of health care institutions which often had earlier state certified unions representing mixed professional/nonprofessional units.

In examining a state certification of a mixed professional/nonprofessional unit for purposes of determining if a Board election now requires self-determination balloting on the part of the unit professionals, the Board does not take a reflexive approach accepting or rejecting certifications automatically, but rather looks to the original process. The Board noted in *Corporacion de Servicios Legales de Puerto Rico*, 289 NLRB 612 fn. 2 (1988):

> The Board will recognize the validity of a state certification where the election procedure was free of irregularities and reflected the true desires of the employees. *See St. Luke's Hospital Center*, 221 NLRB 1314, 1315–1316 (1976), enfd. 551 F.2d 476 (2d Cir. 1976).

Thus the Board in appropriate cases will scrutinize prior state balloting of professionals to determine if that state balloting provided a proper professional employees' self-determination election and thus allows the Board to forgo conducting a second self-determination election process among the professionals in the unit. And, in considering the state action, the Board will look to the substance of the initial state self determination process to determine if the true desires of the professional employees were fairly tested by the election procedures used. Substance, not form is the relevant consideration in determining the sufficiency of the state's earlier election. Surely an element of comity lies in holding the state to the test of *Corporacion de Servicios Legales de Puerto Rico*, supra, rather than the Board's self-imposed *Sonotone* standard.

3. Analysis and conclusions

a. Preliminary matters

Two arguments respecting the objection here under consideration should be dealt with initially. First, is the objection here improper and invalid because it is a post election challenge to voter ballots? Second, is the SEIU in some manner or to some degree estopped or limited in pressing this objection before the Board because it had represented the mixed professional/nonprofessional unit and/or because it had entered into stipulations following the initial election that the second election be held in the same fashion as the first, i.e. agreed it would be conducted without special self-determination balloting of nurses?

These arguments are definitively resolved by *Pontiac Osteopathic Hospital*, 327 NLRB 1172 (1999). There the Board made clear that a hearing officer who found that an objection dealing with the failure to address self-determination issues was "in the nature of a post election challenge" was in error. The Board ruled that the self-determination requirements of Section 9(b)(1) of the Act, quoted above, are a mandate to the Board and apply and will be enforced where appropriate irrespective of the position taken by the parties at any stage of the proceeding. See also *Sunrise, Inc.,* 282 NLRB 252 (1986). Thus, I find it is appropriate and necessary to consider whether or not the 2002 nurses balloting in the instant case meets the requirements of Section 9(b)(1) of the Act as that section is applied by the Board to the election under objection herein.

b. The issue narrowed

The cases cited above make clear that a Board decertification election or a Board representation petition election in the situation where a petitioning union seeks to replace the current representing labor organization in a mixed professional/nonprofessional bargaining unit requires *Sonotone* professional employees self-determination balloting unless the professional employees in the existing mixed professional/nonprofessional unit have previously voted in an election in which a majority of the voting professionals chose to join the current mixed unit. The Board does not require that the earlier election have been a Board-conducted *Sonotone* election. The Board will accept elections conducted by other agencies, including state agencies. It does require however that the state agency's "election procedure was free of irregularities and

reflected the true desires of the employees." *Corporacion de Servicios Legales de Puerto Rico*, supra. In other words, the Board requires that the statutory requirements of Section 9(b)(1) of the Act, quoted supra, be fairly met, but does not require that the Board have conducted the self-determination election involved or that the procedures involved be precisely those of *Sonotone* so long as the election process was free of irregularity and reflected the true desires of the professional employees as to whether or not they wished to be included in a bargaining unit with nonprofessional employees.

Applying those doctrines to the instant case, the issue narrows significantly. The parties agree the bargaining unit involved included professional employees, i.e. registered nurses, and nonprofessional unit employees, i.e. all others. There is no doubt that the Board in conducting the election under objection did not provide self determination balloting for the professional nurses. As noted above, such self determination provisions are necessary under Section 9(b)(1) of the Act, the SEIU's objection has merit, and a new Board election will be necessary, unless the nurses had earlier fairly elected to be included in the mixed unit in the 2002 elections.

There is no doubt that the sufficiency of the State's 2002 election to meet the self determination requirements of Section 9(b)(1) of the Act and thus make such balloting unnecessary in the Board election, is the issue the Regional Director has directed me to resolve. Thus the Director held in his report:

> Section 9(b)(1) of the Act provides that professional employees may not be included in a bargaining unit with nonprofessionals unless they vote in favor of such inclusion. While the investigation disclosed that, pursuant to Article 1.4 of the latest collective-bargaining agreement between the Employer and the SEIU, elections were conducted by the California State Conciliation Service in 2002 amongst the Employer's previously unrepresented critical care transport registered nurses, hereinafter RNs, which resulted thereafter in the RNs being included in the recognized unit and covered by the collective-bargaining agreement, I have determined that the circumstances surrounding this election raise material issues of fact and law that may best be resolved by a hearing.

The employees in the job description of critical care transport registered nurses are the Registered Nurses who are the professional employees at issue here. Thus, all the professional employees involved were eligible to vote in the State election in 2002, and no other employees were eligible to so vote. The majority of voting professional employees chose representation and the professional employees, i.e. the Registered Nurses, were included in the larger represented bargaining unit which, from that point forward, continued in unchanged form and was the unit involved in the election under objection.

Thus, there is no dispute and I find that the professional employees held a vote among themselves and by majority elected union representation as part of the up to that point nonprofessional unit. The record contains neither a contention by any party nor evidence which even suggests let alone establishes that the California State Conciliation Service's election procedures in the 2002 elections were in any way irregular. Thus, there is no dispute and I find that there were professional employee only elections conducted by a state agency and that the election procedures were free of irregularities. Further, there is no dispute and I find that a majority of the professional employees voting in that 2002 chose union representation.

The sole remaining element of the Board elements necessary to satisfy the self-determination requirements of Section 9(b)(1) of the Act and the Board's application of that as relevant in *Corporacion de Servicios Legales de Puerto Rico*, 289 NLRB 612 (1988), is the single question of whether or not the 2002 elections tested the true desires of the professional employees as to whether or not they wished to be included in the larger bargaining unit with nonprofessional employees. Here we arrive at the heart of the SEIU's objection to the validity of the Board election conducted on February 23, 2005, the SEIU argues that Section 9(b)(1) of the Act required the Board provide the Registered Nurses with a self determination, *Sonotone* type, election and failed to do so.

Counsel for the SEIU at trial and counsel for the Employer on brief argue that *Sonotone* voting procedures were necessary in the election under objection because the 2002 state election failed to test the true desires of the Registered Nurses as to whether or not they wished to be included in a unit with nonprofessional employees. NEMSA disagrees. It is appropriate to turn to that narrow issue.

> c. Did the 2002 California State Conciliation Service elections among the Employer's unrepresented critical care transport registered nurses fairly test the voters desires to be represented in a unit with nonprofessional employees?
>
> 1. May Any Non-*Sonotone* Election Test the True Desires of Professional Employees as to Whether they Wished to Be Included in A Bargaining Unit with Nonprofessional Employees?

The SEIU and the Employer argue that Section 9(b)(1) of the Act requires a two-part *Sonotone* election among professional employees. The Employer on brief argues that this requirement applies not only to Board elections, where *Sonotone* procedures are always invoked, but also to any state or other election which is offered as a sufficient earlier testing of professional employee sentiments. Thus, the Employer on brief and the SEIU by the language of its objection itself are arguing that the California State elections held in 2002 were not *Sonotone* elections and therefore, *ipso facto*, the bargaining unit's professional employees have not been provided with a required self-determination election. The only cure, they argue, is to set aside the current election under objection and hold a new election with *Sonotone* procedures in place for the nurses.

Counsel for NEMSA argues on brief at 11–12:

> Congress intended Section 9(b)(1) to be applicable to situations where the Board itself establishes bargaining units in the first instance." *Retail Clerks Local 324 (Vincent Drugs),* 144 NLRB 1247, 1251 (1963) (emphasis added). The Board found "nothing in Section 9(b)(1) or its legislative history to suggest that Congress intended that section to invalidate as inappropriate a historically established contract unit simply because of a joinder of professional and nonprofessional employees. Id. At 1252.

NEMSA argues further that Section 9(b)(1) of the Act does not require the professionals always be asked two separate questions on the ballot. Rather, counsel argues, as *Sonotone* itself states, the Board need only "ascertain the desires of the professional employees as to inclusion in a unit with nonprofessional employees." *Sonotone Corp.,* 90 NLRB 1236, at 1241 (1950). Thus, counsel for NEMSA argues on brief, in the instant case because in the State elections the only choice to be presented to the nurses was whether or not they wished to join the larger nonprofessional unit, the single question asked the nurses on the ballot presented the only question before them and that single decision differed in no possible way from the same question presented in a two-part *Sonotone* ballot.

To exemplify NEMSA's argument, the two ballot forms or styles are set forth below. The only question presented the nurses in 2002, as discussed in greater detail above, was whether or not they wished to be represented as part of the nonprofessional unit.

The California ballots provided each voting nurse a single choice: "I choose to be represented by Healthcare Workers Local 250 (The SEIU) or No organization." A two part *Sonotone* election ballot on the same issue would break the choice into two questions: Question one: Do you desire to be included with nonprofessional employees in a single unit for purposes of collective bargaining? Question two: Do you desire to be represented by the SEIU?

There is no dispute and I find that the California State Conciliation Service nurse self-determination elections in 2002 were not *Sonotone* elections with *Sonotone's* characteristic two ballot questions discussed above. Rather, in Board parlance, the ballot choices presented to the nurses in the two 2002 California State Conciliation Service elections were those of an *Armour-Globe*[7] self-determination election, as described supra.

Having found that the California State elections in the ballot choice presented were equivalent to Board *Armour-Globe* elections, does such an election satisfy the self-determination requirements for professional employees joining a nonprofessional unit or on the facts of this case, was a *Sonotone* style two part balloting necessary?

Based on all the above and the record as a whole, I find and conclude that the 2002 California State Conciliation Service elections for nurses were fully equivalent to Board *Armour-Globe* elections and that in the instant case the *Armour-Globe* balloting format met the requirements of Section 9(b)(1) of the Act. I reach this latter conclusion for several reasons.

First, the *Armour-Globe* procedures are as venerable as those of Sonotone and have been held by the Board and the courts in countless cases to provide valid self-determination elections for residual groups of employees. Thus in *Belroit Corp.*, 310 NLRB 637, 637 (1993), described the intent of the *Armour-Globe* election as follows:

> [W]e find that the logical and unambiguous intent of the entire self-determination election process was to allow the plant clerical employees to become part of the existing represented group of production and maintenance employees. *Southern Indiana Gas Co.*, 284 NLRB 895, 898 (1987), enfd. 853 F.2d 580 (7th Cir. 1988); see also *NLRB v. Raytheon Co.*, 918 F.2d 249 (1st Cir. 1990). Since a majority of the clerks who voted in the self-determination election cast ballots indicating a ''desire to be included in the existing unit of production and maintenance employees currently represented by'' the Union, they joined that unit on certification.

The nurses in 2002 were, in effect, a residual group of employees being given an opportunity to join an existing unit. They were clearly not given an option to be represented separately in a second all professional unit. No union save the SEIU was involved. Therefore polling the nurses in 2002 in an *Armour-Globe* self-determination election provided them with the only two, single self-determination choices: did the nurses chose representation in the existing nonprofessional unit represented by the SEIU or did they desire no representation, that a *Sonotone* two question ballot in that limited choice situation would provide. In the unusual case presented in 2002, where the residual nurses could only chose joining the represented unit or chose not being represented, any argued distinction between *Sonotone* and *Armour-Globe* balloting is a distinction without a difference. And to deny the California State elections' effectiveness on such grounds would be a needless affront to comity.

Second, even were the Board to exalt form over substance and find an *Armour-Globe* balloting did not meet Board standards in this narrow fact situation, I find as NEMSA argues, the standard to be applied is not that which the Board directs its own agents to undertake, but rather the standard of *Corporacion de Servicios Legales*, 289 NLRB 612 fn. 2 (1988):

> The Board will recognize the validity of a state certification where the election procedure was free of irregularities and reflected the true desires of the employees. See *St. Luke's Hospital Center,* 221 NLRB 1314, 1315–1316 (1976), enfd. 551 F.2d 476 (2d Cir. 1976).

I find without any doubt that the ballot questions presented the nurses in the 2002 California State Conciliation Service elections were procedurally able to ascertain the true desires of the employees. I find therefore that the California State Conciliation Service election procedures were proper and polling employees under them could reflect the true desires of employees and therefore meet the Board's requirements that professional employees have been provided a self-determination election in joining a nonprofessional unit.

---

[7] The Board adds to the notice of election in *Armour-Globe* elections additional explanatory language making clear to voters the consequences to the voters of a vote for the union. The Board notice provides the following:

> If a majority of valid ballots are cast for the incumbent union, they will be taken to have indicated the employees' desire to be included in the existing [fill in description] unit currently represented by [the incumbent union]. If a majority of valid ballots are not cast for representation, they will be taken to have indicated the employees' desire to remain unrepresented.

2. Did the California State Conciliation Service 2002 Nurse Self-Determination elections reflect the true desires of the employees?

It is one thing to hold that an election procedure has the potential to fairly poll professional employees desires respecting joining a nonprofessional employees bargaining unit. It is another to find that the election, in fact, did produce such a result. It is therefore appropriate to turn to the actual 2002 elections themselves.

There was no contention that the 2002 California State Conciliation Service elections were in any way irregular. No party raised such a challenge in the instant case either before me or in the preelection portion of the instant case. The record is clear that no challenges or protests to the elections were made following their conclusions or after the nurses were included in the bargaining unit.

While the record has no evidence of the language on the 2002 California State Conciliation Service notices of election, the record contains substantial evidence, discussed in greater detail above, that the nurses were well aware of the purpose and consequences of the 2002 balloting. Thus the record established that the nurses considered seeking separate representation in an all professional unit by a professional employees labor organization, but chose rather to seek to join the existing SEIU represented bargaining unit. The record further establishes that the nurses were told both individually by the SEIU agents and by the Employer and the SEIU agents at employee meetings, that the question to be presented in the election was whether or not the nurses wished to join the existing SEIU represented unit. The SEIU election literature also made it clear the nurses were voting to join the existing unit.

Finally, of course the election mechanism itself, the Fast and Fair Recognition Procedure of the collective-bargaining agreement, by the contract's terms, made it explicitly clear that such an election only applied to employees not currently represented who sought to join the represented unit covered by the contract. I find therefore that the nurses in 2002 were fully appraised of the self determination choices the election presented and were also aware that a majority vote for representation would place the nurses in the existing nonprofessional employee unit represented by the SEIU.

d. Summary and conclusion

In summary, based on all the above and the record as a whole, I found that the election under objection in the instant case did not include *Sonotone* polling of the professional employees in the unit. I further found that the Board requires self-determination elections among professional employees in joining bargaining units of nonprofessional employees.

I considered evidence of the circumstances of the 2002 California State Conciliation Service elections for nurses which led to their inclusion in the bargaining unit to determine if the elections met the requirements of the Board as set forth in *Corporacion de Servicios Legales*, supra: "The Board will recognize the validity of a state certification where the election procedure was free of irregularities and reflected the true desires of the employees." I determined that the elections in 2002 were free of irregularities and reflected the true desires of the employees.

Based on this determination, I further find and conclude that the elections among the nurses in 2002 fulfilled that Board requirement that professional self-determination elections be held. Based on that conclusion, I further conclude that it was not necessary that the Board election, currently under objection, include professional self-determination election balloting of professional employees. That being so, the election at issue was proper, the SEIU's Objection number 3 is without merit and should be overruled.

Recommendation to the Board[8]

The Director in his Report on Objections directed that I make recommendations to the Board as to the disposition of the objection contained in the SEIU's objection number 3. Based on the record as a whole, as set forth above, I have found and concluded that the SEIU's Objection No. 3 is without merit. I therefore make the following recommendation to the Board.

> I recommend the Board overrule the SEIU United Healthcare Workers West, Service Employees International Union, AFL–CIO's Objection No. 3 and certify the election results that the National Emergency Medical Services Association received a majority of ballots cast and is therefore the exclusive representative of employees in the following unit:

The Northern California employees of American Medical Response: Including: all full-time and regularly scheduled part-time registered nurses, EMT-1s, EMT-2s, EMT-Ps, Drivers, Wheelchair Van Drivers, Dispatchers, System Status Controllers, Call takers, Prebillers, and Billers (except for Pre-Billers and Billers in Stanislaus, San Francisco, Sacramento, Shasta, and San Joaquin Counties) including bargaining unit personnel serving as acting supervisors in the following counties: Monterey, Tulare, Santa Cruz, Santa Clara, San Mateo, (except EMT-Ps covered in a separate Agreement) Stanislaus (excluding Turlock Operations), Alameda, San Francisco, Contra Costa, San Mateo, Stanislaus (Vehicle Service Technician only) and Tulare(Clerk 1s and Clerk 2s only). Also including: all full-time and regularly scheduled part-time CCTs and EMT/CCTs in Alameda, Contra Costa, San Mateo and Yolo Counties, Paramedic/CCTs in Contra Costa, Monterey, Placer, Sacramento, San Joaquin-Calaveras, and Santa Clara Counties, CCT/RNs in Alameda, Contra Costa, Monterey, Sacramento, Santa Clara, and Sonoma Counties; Mail Room Clerks in Alameda County; Dispatchers and Call Takers in Modesto and

[8] The Board's Rules and Regulations Section 102.69(e) provides in part concerning a hearing officer's report resolving questions of credibility and containing findings of fact and recommendations as to the disposition of the issues:

> [A]ny party may within 14 days from the date of issuance of the report on challenged ballots or on objections, or on both, file with the Board in Washington, D.C., exceptions to such report, with supporting brief if desired. Within 7 days from the last date on which exceptions and any supporting brief may be filed, or such further period as the Board may allow, a party opposing the exceptions may file an answering brief with the Board in Washington, D.C. If no exceptions are filed to such report, the Board, upon the expiration of the period for filing such exceptions, may decide the matter forthwith upon the record or may make other disposition of the case.

Sacramento Dispatch Centers, EMT-1s and Paramedics in San Benito County; Vehicle Service Technicians (VST) in Contra Costa, San Joaquin-Calaveras, San Mateo and Santa Clara Counties; Gurney Van Drivers in Sacramento County, Pre-Billing Representative and Technicians in San Mateo County; and Service Receipt Processor/Pre-Billers in Santa Clara County. Excluding: Advanced Life Support (ALS) paramedics in Turlock, Tracy and San Mateo County, all other personnel including guards and supervisors as defined by the National Labor Relations Act, as amended.