Title 29 —Labor
Subtitle B —Regulations Relating to Labor
Chapter I —National Labor Relations Board

PART 103—OTHER RULES

Authority: 29 U.S.C. 156, in accordance with the procedure set forth in 5 U.S.C. 553.

Subpart A—Jurisdictional Standards

§ 103.1 Colleges and universities.

The Board will assert its jurisdiction in any proceeding arising under sections 8, 9, and 10 of the Act involving any private nonprofit college or university which has a gross annual revenue from all sources (excluding only contributions which, because of limitation by the grantor, are not available for use for operating expenses) of not less than $1 million.

[35 FR 18370, Dec. 3, 1970]

§ 103.2 Symphony orchestras.

The Board will assert its jurisdiction in any proceeding arising under sections 8, 9, and 10 of the Act involving any symphony orchestra which has a gross annual revenue from all sources (excluding only contributions which are because of limitation by the grantor not available for use for operating expenses) of not less than $1 million.

[38 FR 6177, Mar. 7, 1973]

§ 103.3 Horseracing and dogracing industries.

The Board will not assert its jurisdiction in any proceeding under sections 8, 9, and 10 of the Act involving the horseracing and dogracing industries.

[38 FR 9507, Apr. 17, 1973]

Subpart B—Election Procedures

§ 103.20 Election procedures and blocking charges.

(a) Whenever any party to a representation proceeding files an unfair labor practice charge together with a request that it block the processing of the petition to the election, or whenever any party to a representation proceeding requests that its previously filed unfair labor practice charge block the further processing of the petition, the party shall simultaneously file, but not serve on any other party, a written offer of proof in support of the charge. The offer of proof shall provide the names of the witnesses who will testify in support of the charge and a summary of each witness's anticipated testimony. The party seeking to block the processing of a petition shall also promptly make available to the regional director the witnesses identified in its offer of proof.

(b) If the regional director determines that the party's offer of proof describes evidence that, if proven, would interfere with employee free choice in an election, the regional director shall, absent special circumstances, hold the petition in abeyance and notify the parties of this determination.

(c) If the regional director determines that the party's offer of proof describes evidence that, if proven, would be inherently inconsistent with the petition itself, the regional director shall, absent special circumstances, hold the petition in abeyance and notify the parties of this determination; in appropriate circumstances, the regional director should dismiss the petition subject to reinstatement and notify the parties of this determination.

(d) If the regional director determines that the party's offer of proof does not describe evidence that, if proven, would interfere with employee free choice in an election or would be inherently inconsistent with the petition itself, and thus would require that the processing of the petition be held in abeyance absent special circumstances, the regional director shall continue to process the petition and conduct the election where appropriate.

(e) If, after holding a petition in abeyance, the regional director determines that special circumstances have arisen or that employee free choice is possible notwithstanding the pendency of the unfair labor practices, the regional director may resume processing the petition.

(f) If, upon completion of investigation of the charge, the regional director determines that the charge lacks merit and is to be dismissed, absent withdrawal, the regional director shall resume processing the petition, provided that resumption of processing is otherwise appropriate.

(g) Upon final disposition of a charge that the regional director initially determined had merit, the regional director shall resume processing a petition that was held in abeyance due to the pendency of the charge, provided that resumption of processing is otherwise appropriate.

(h) The provisions of this section are intended to be severable. If any paragraph of this section is held to be unlawful, the remaining paragraphs of this section not deemed unlawful are intended to remain in effect to the fullest extent permitted by law.

[89 FR 63026, Aug. 1, 2024]

§ 103.21 Processing of petitions filed after voluntary recognition.

(a) An employer's voluntary recognition of a labor organization as exclusive bargaining representative of a unit of the employer's employees, based on a showing of the union's majority status, bars the processing of an election petition for a reasonable period of time for collective bargaining between the employer and the labor organization.

(b) A reasonable period of time for collective bargaining, during which the voluntary-recognition bar will apply, is defined as no less than 6 months after the parties' first bargaining session and no more than 1 year after that date.

(c) In determining whether a reasonable period of time for collective bargaining has elapsed in a given case, the following factors will be considered:

(1) Whether the parties are bargaining for an initial collective-bargaining agreement;

(2) The complexity of the issues being negotiated and of the parties' bargaining processes;

(3) The amount of time elapsed since bargaining commenced and the number of bargaining sessions;

(4) The amount of progress made in negotiations and how near the parties are to concluding an agreement; and

(5) Whether the parties are at impasse.

(d) In each case where a reasonable period of time is at issue, the burden of proof is on the proponent of the voluntary-recognition bar to show that further bargaining should be required before an election petition may be processed.

(e) Notwithstanding paragraph (a), an employer's voluntary recognition of a labor organization as exclusive bargaining representative of a unit of the employer's employees will not preclude the processing of a petition filed by a competing labor organization where authorized by Board precedent.

(f) This section shall be applicable to an employer's voluntary recognition of a labor organization on or after September 30, 2024.

(g) The provisions of this section are intended to be severable. If any paragraph of this section is held to be unlawful, the remaining paragraphs of this section not deemed unlawful are intended to remain in effect to the fullest extent permitted by law.

[89 FR 63026, Aug. 1, 2024]

Subpart C—Appropriate Bargaining Units

§ 103.30 Appropriate bargaining units in the health care industry.

(a) This portion of the rule shall be applicable to acute care hospitals, as defined in paragraph (f) of this section: Except in extraordinary circumstances and in circumstances in which there are existing non-conforming units, the following shall be appropriate units, and the only appropriate units, for petitions filed pursuant to section 9(c)(1)(A)(i) or 9(c)(1)(B) of the National Labor Relations Act, as amended, except that, if sought by labor organizations, various combinations of units may also be appropriate:

(1) All registered nurses.

(2) All physicians.

(3) All professionals except for registered nurses and physicians.

(4) All technical employees.

(5) All skilled maintenance employees.

(6) All business office clerical employees.

(7) All guards.

(8) All nonprofessional employees except for technical employees, skilled maintenance employees, business office clerical employees, and guards.

Provided That a unit of five or fewer employees shall constitute an extraordinary circumstance.

(b) Where extraordinary circumstances exist, the Board shall determine appropriate units by adjudication.

(c) Where there are existing non-conforming units in acute care hospitals, and a petition for additional units is filed pursuant to sec. 9(c)(1)(A)(i) or 9(c)(1)(B), the Board shall find appropriate only units which comport, insofar as practicable, with the appropriate unit set forth in paragraph (a) of this section.

(d) The Board will approve consent agreements providing for elections in accordance with paragraph (a) of this section, but nothing shall preclude regional directors from approving stipulations not in accordance with paragraph (a), as long as the stipulations are otherwise acceptable.

(e) This rule will apply to all cases decided on or after May 22, 1989.

(f) For purposes of this rule, the term:

(1) ***Hospital*** is defined in the same manner as defined in the Medicare Act, which definition is incorporated herein (currently set forth in 42 U.S.C. 1395x(e), as revised 1988);

(2) ***Acute care hospital*** is defined as: either a short term care hospital in which the average length of patient stay is less than thirty days, or a short term care hospital in which over 50% of all patients are admitted to units where the average length of patient stay is less than thirty days. Average length of stay shall be determined by reference to the most recent twelve month period preceding receipt of a representation petition for which data is readily available. The term “acute care hospital” shall include those hospitals operating as acute care facilities even if those hospitals provide such services as, for example, long term care, outpatient care, psychiatric care, or rehabilitative care, but shall exclude facilities that are primarily nursing homes, primarily psychiatric hospitals, or primarily rehabilitation hospitals. Where, after issuance of a subpoena, an employer does not produce records sufficient for the Board to determine the facts, the Board may presume the employer is an acute care hospital.

(3) ***Psychiatric hospital*** is defined in the same manner as defined in the Medicare Act, which definition is incorporated herein (currently set forth in 42 U.S.C. 1395x(f)).

(4) The term *rehabilitation hospital* includes and is limited to all hospitals accredited as such by either Joint Committee on Accreditation of Healthcare Organizations or by Commission for Accreditation of Rehabilitation Facilities.

(5) A *non-conforming unit* is defined as a unit other than those described in paragraphs (a) (1) through (8) of this section or a combination among those eight units.

(g) Appropriate units in all other health care facilities: The Board will determine appropriate units in other health care facilities, as defined in section 2(14) of the National Labor Relations Act, as amended, by adjudication.

[54 FR 16347, Apr. 21, 1989]

Subpart D [Reserved]

Subpart E—Joint Employers

§ 103.40 Joint employers.

(a) An employer, as defined by section 2(2) of the National Labor Relations Act (the Act), is an employer of particular employees, as defined by section 2(3) of the Act, if the employer has an employment relationship with those employees under common-law agency principles.

(b) For all purposes under the Act, two or more employers of the same particular employees are joint employers of those employees if the employers share or codetermine those matters governing employees' essential terms and conditions of employment.

(c) To “share or codetermine those matters governing employees' essential terms and conditions of employment” means for an employer to possess the authority to control (whether directly, indirectly, or both), or to exercise the power to control (whether directly, indirectly, or both), one or more of the employees' essential terms and conditions of employment.

(d) “Essential terms and conditions of employment” are

(1) Wages, benefits, and other compensation;

(2) Hours of work and scheduling;

(3) The assignment of duties to be performed;

(4) The supervision of the performance of duties;

(5) Work rules and directions governing the manner, means, and methods of the performance of duties and the grounds for discipline;

(6) The tenure of employment, including hiring and discharge; and

(7) Working conditions related to the safety and health of employees.

(e) Whether an employer possesses the authority to control or exercises the power to control one or more of the employees' essential terms and conditions of employment is determined under common-law agency principles. For the purposes of this section:

(1) Possessing the authority to control one or more essential terms and conditions of employment is sufficient to establish status as a joint employer, regardless of whether control is exercised.

(2) Exercising the power to control indirectly (including through an intermediary) one or more essential terms and conditions of employment is sufficient to establish status as a joint employer, regardless of whether the power is exercised directly.

(f) Evidence of an entity's control over matters that are immaterial to the existence of an employment relationship under common-law agency principles and that do not bear on the employees' essential terms and conditions of employment is not relevant to the determination of whether the entity is a joint employer.

(g) A party asserting that an employer is a joint employer of particular employees has the burden of establishing, by a preponderance of the evidence, that the entity meets the requirements set forth in paragraphs (a) through (f) of this section.

(h) A joint employer of particular employees

(1) Must bargain collectively with the representative of those employees with respect to any term and condition of employment that it possesses the authority to control or exercises the power to control, regardless of whether that term or condition is deemed to be an essential term and condition of employment under this section for the purposes of establishing joint-employer status; but

(2) Is not required to bargain with respect to any term and condition of employment that it does not possess the authority to control or exercise the power to control.

(i) The provisions of this section are intended to be severable. If any paragraph of this section is held to be unlawful, the remaining paragraphs of this section not deemed unlawful are intended to remain in effect to the fullest extent permitted by law.

[88 FR 74017, Oct. 27, 2023]

Subpart F—Remedial Orders

§ 103.100 Offers of reinstatement to employees in Armed Forces.

When an employer is required by a Board remedial order to offer an employee employment, reemployment, or reinstatement, or to notify an employee of his or her entitlement to reinstatement upon application, the employer shall, if the employee is serving in the Armed Forces of the United States at the time such offer or notification is made, also notify the employee of his or her right to reinstatement upon application in accordance with the Military Selective Service Act of 1967, as amended, after discharge from the Armed Forces.

[37 FR 21939, Oct. 17, 1972, as amended at 38 FR 9506, Apr. 17, 1973]