

## **Article 23 - Representation Proceedings**

### **Section 23.1      Petition Filing**

- (A) A petition for the election of a collective bargaining representative and a petition for an election to decertify a collective bargaining representative may be filed by an employee or group of employees, or any individual or labor organization acting in their behalf.
  
- (B) An employer may file a petition alleging that one or more individuals or labor organizations have presented a claim to the employer to be recognized as the collective bargaining representative of the employees in a unit appropriate for such purposes.

### **Section 23.2      Contract Bar**

If a collective bargaining agreement is in effect which covers any or all of the employees to be covered by the petition, a petition shall normally be considered timely only if filed during the period 90 to 60 days prior to the expiration date of the collective bargaining agreement, or after the expiration thereof if a successor agreement has not become effective. A petitioner filing a petition at any other time shall justify why the normal time period should be waived.

**Section 23.3      Petition for Election of Collective Bargaining Representative**

A petition for election of a collective bargaining representative, when filed by an employee organization, employee(s) or individuals shall be filed with the Board on a form provided by the Board and shall contain the following information:

- (A) The name and address of the petitioner;
- (B) The name and address of the employer;
- (C) The general nature of the business, the approximate total number of employees, and whether the business is engaged in intrastate or interstate commerce and a factual basis for the conclusion; including a statement as to the most recent gross annual revenue of the business;
- (D) A detailed description of the types, classifications or groups of employees in the bargaining unit or units thought to be appropriate and the total number of such employees in each bargaining unit or units;
- (E) An allegation that not less than 30 percent of the employees of the appropriate bargaining unit desire to be represented for collective bargaining by the petitioner or some other representative, and that the employer declines to recognize the representative. In the event there is an individual or employee organization which has been certified or is being currently recognized as the bargaining representative, the date and result of the last election, and the name and address of the currently-recognized or certified bargaining representative, must be set forth. A copy of the collective bargaining contract, if one exists, should be included with the petition; and
- (F) A request that the Board determine whether a question of representation exists, and, if so, that the Board conduct an election by secret ballot and certify the results to the parties.

The petition shall be signed and verified before any person authorized to administer an oath. The petition, or supporting signature cards requesting representation by a collective bargaining representative, shall be signed by not less than 30 percent of the persons in the proposed bargaining unit. The signature cards shall be solely for the Board's use in determining whether there is sufficient interest as required by statute.

**Section 23.4      Petition for Decertification of Collective Bargaining Representative**

A petition for an election to decertify a collective bargaining representative, where the petitioner is not seeking the election of another employee organization or individual as bargaining representative, shall be filed with the Board on a form provided by the Board, together with the collective bargaining contract, if one exists, and shall contain the following information:

- (A) The name and address of the petitioner;
- (B) The name and address of the currently-certified or currently-recognized bargaining representative;
- (C) The name and address of the employer;
- (D) The general nature of the employer's business, the approximate total number of employees, and whether the business is engaged in intrastate or interstate commerce and the factual basis for the conclusion; including a statement as to the most recent gross annual revenue of the business;
- (E) The types, classification or groups of employees which constitute the approximate bargaining unit or units; and the total number of employees in each bargaining unit or units;
- (F) An allegation that not less than 30 percent of the employees in the bargaining unit assert that the individual or employee organization currently certified as bargaining agent is no longer supported by a majority of the employees in the bargaining unit; and
- (G) A request that the Board determine whether a question of representation exists, and, if so, that the Board conduct an election by secret ballot and certify the result to the parties.
- (H) The petition shall be signed and verified before any person authorized to administer an oath.

**Section 23.5      Decertification Petition; Showing of Interest**

The decertification petition, or supporting signature cards indicating the employees no longer desire to be represented by the incumbent bargaining representative, shall be signed by at least 30 percent of the employees in the established bargaining unit.

### **Section 23.6 Sufficiency of Showing of Interest**

- (A) The determination whether a showing of interest requirement to support a petition for election of collective bargaining representative, a petition for decertification of collective bargaining representative, or a petition for intervention in a representation proceeding has been satisfied shall be made administratively by the Board. The Board shall not disclose the identities of employees whose signature cards or petitions are filed in support of the petition.
- (B) If the Board finds a sufficient showing of interest has not been made, the petitioner shall be given notice by the Board of such finding and shall be allowed a reasonable amount of time, but not less than 10 days, to submit a further showing of interest. If sufficient showing of interest is not made in the specified time, the Board will dismiss the petition.

### **Section 23.7 Petition of Employer; Contents**

A petition filed by an employer shall contain:

- (A) The name and address of the petitioning employer;
- (B) The general nature of the business, the total number of employees, and whether the business is engaged in intrastate or interstate commerce and a factual basis for the conclusion, including a statement as to the most recent gross annual revenue of the business;
- (C) A detailed description of the types, classifications or groups of employees in the bargaining unit or units thought to be appropriate, and the total number of such employees in each bargaining unit or units;
- (D) The names and addresses of any individuals or labor organizations who claim to represent any of the employees in the alleged bargaining unit or units, a copy of any contract covering any employees in such unit or units, and the date and result of the last election of a collective bargaining representative;
- (E) An allegation of the position taken by the petitioner with reference to the claims of representation being made. The claim or claims must be set forth and the petitioner's position with respect to all claims listed; and
- (F) A request that the Board hold a hearing to determine whether a question of representation exists, and, if so, that the Board conduct an election by secret ballot and certify the results to the parties.

### **Section 23.8 Notice of Petition**

Upon the filing of a valid petition for election of a collective bargaining representative or a petition for decertification of a collective bargaining representative, the Board shall provide copies to the other parties designated in the petition.

### **Section 23.9 Posting of Petition**

Upon receipt of a petition from the Board, the employer shall immediately post copies of the petition at a place normally used for employer-employee communications.

### **Section 23.10 Employer Response to Representation Petition**

Upon receipt of a valid petition for the election of a collective bargaining representative, where there is no incumbent bargaining representative or the incumbent bargaining representative is seeking to expand the existing bargaining unit, the Board shall request the employer to file with the Board within a specified time, but not less than seven days, a list of the names of the employees proposed by the petitioner to be included in the bargaining unit, or added to the existing bargaining unit, employed as of the date the petition was filed with the Board. This list will be used by the Board in determining whether a sufficient showing of interest has been made by the petitioner. Also, the Board shall request the Employer to notify the Board within a specified time, but not less than 15 days, of the employer response to the petition among the following three options:

- (A) The employer can voluntarily recognize the petitioner and the unit named in the petition provided the employee organization demonstrates by petition or signature cards the support of a majority of the employees in the bargaining unit it seeks to represent, no rival employee organization seeks to represent employees in the unit, and the bargaining unit is appropriate under the standards set forth in Section 1543 of the Act.
- (B) The employer can agree to a consent election. A consent election does not imply recognition of petitioner for collective bargaining purposes, but it does require agreement the unit proposed by the petitioner is appropriate.
- (C) The employer can raise a question of unit determination or representation, which question shall be specified.

### **Section 23.11      Response to Other Petitions**

Upon receipt of a valid petition for election of a collective bargaining representative, where there is an incumbent bargaining representative, or a petition to decertify a collective bargaining representative, the Board shall request the employer to file with the Board within a specified time, but not less than seven days, a list of the names of the employees included in the bargaining unit, employed as of the date the petition was filed with the Board. This list will be used by the Board in determining whether a sufficient showing of interest has been made by the petitioner. Also, the Board shall request the employer and the incumbent bargaining representative to notify the Board within a specified time, but not less than 15 days, whether any collective bargaining agreement is in effect which would bar an election or whether any questions of unit determination or representation exist, which questions shall be specified.

### **Section 23.12      Intervenors**

Upon the filing of a petition for election of a collective bargaining representative, an individual or employee organization wishing to appear on the election ballot may petition to intervene upon filing a petition signed by employees or supported by signature cards signed by 10 percent of the employees in the proposed bargaining unit and otherwise containing the information set forth in Section 23.3. Such petition shall be filed with the Board within 10 days of the date the employer posted the notice of petition pursuant to Section 23.9. An incumbent bargaining representative shall not be required to file a petition to intervene in response to a petition filed to decertify it as bargaining representative but shall appear on the election ballot unless it disclaims any interest in remaining the representative of employees or does not respond to the petition.

### **Section 23.13      Voluntary Recognition**

Upon notification that an employer has voluntarily recognized an employee organization as the exclusive bargaining representative of employees of a bargaining unit, the Board shall issue a Certification of Voluntary Recognition certifying the employee organization as the exclusive bargaining representative of such employees provided the voluntary recognition is consistent with the Act.

### **Section 23.14      Investigation; Notice of Hearing**

The Board shall cause any election petition to be investigated as provided by statute. If in the course of its investigation the Board determines that a question of unit determination or representation exists, it shall schedule a hearing before the Board.

### **Section 23.15      Informal Settlement of Unit Determination or Representation Questions**

A Board member or agent may be assigned by the Board to informally assist the parties in resolving questions of unit determination or representation prior to the commencement of any hearings before the Board.

### **Section 23.16      Consent Election**

The parties may waive a unit determination hearing and enter into a consent election agreement after 15 days from the date of the filing of a petition for election of collective bargaining representative. Such agreement shall include the composition of the appropriate bargaining unit and an agreement that the employees in the unit shall vote in a representation election.

### **Section 23.17      Notice of Election**

If the Board, after investigation and any necessary hearing, determines that a representation election is appropriate, or upon consent of all parties, the Board shall issue a Notice of Election. Such notice shall include, but not be limited to, a description of the appropriate bargaining unit; a sample ballot; the date(s), time(s) and place(s) of the election; and voting instructions. These notices shall be posted immediately by the Employer in a place normally used for employer-employee communications to ensure that all employees have sufficient warning of the date, time and location.

### **Section 23.18      Content of Ballot**

Generally, employees eligible to vote in an election vote only on the question of whether they wish to be represented by a particular employee organization, and do not generally vote on the composition of the bargaining unit. There may be more than one employee organization included on the ballot. An exception to this general rule exists with respect to professional employees. Professional employees may not be included in a bargaining unit with non-professional employees unless a majority of professional employees vote for inclusion in the unit. Professional employees are given two votes in an election; one to determine whether they wish to be included in the unit with non-professional employees, and the other whether they wish to be represented by a particular employee organization.

### **Section 23.19      Mail Ballot; Elections**

The Board may conduct an election in whole or in part by mail ballot if it is not practical or reasonable to hold an election at which employees may vote in person.

### **Section 23.20 Absentee Ballots**

The Board may permit employees to vote by absentee ballot if they will not be present at the time and place set forth for the election for particular reasons agreed to by the parties or determined by the Board. Absentee ballots will be commingled with other ballots cast before the ballots are counted to preserve the confidentiality of the vote.

### **Section 23.21 Voter Eligibility List**

After the issuance of a Notice of Election, the Board shall require the employer to file with the Board, by a specified date prior to the election, a list of the names and mailing addresses of the eligible employees in the bargaining unit as of a specified payroll period. The employer shall provide a copy of this list to the other party or parties at the time the list is provided to the Board, and the Board shall give the parties an opportunity to file any objections to this list by a specified date prior to the election. If objections are not filed, the Board will consider that list final and no additions or deletions will thereafter be permitted unless agreed to by the parties. At the time the voter eligibility list is filed, the employer also shall post copies of the list providing the names, but excluding the mailing addresses, of employees eligible to vote in the election next to where the Notice of Election was posted.

### **Section 23.22 Observers**

Each party to an election shall be permitted to have one observer of its own selection at the election at each of the polling places and at the counting of the ballots.

### **Section 23.23 Spoiled Ballots**

A ballot marked in an election so that the choice is indeterminable shall be considered a spoiled ballot which expresses no choice, does not contribute to the results of the election and shall not be considered a vote cast.

### **Section 23.24 Challenging Voters**

Any prospective voter may be challenged at the polling place prior to casting a vote or, in the case of absentee ballots, at the time and place designated for the counting of ballots, for cause except for questions of eligibility which shall be raised as set forth in Section 23.21. The Board agent conducting the election shall rule on the challenges and the agent's decision shall be final.

### **Section 23.25 Majority Vote Requirement**

An employee organization must receive a majority of valid votes cast in an election to become certified or remain certified as exclusive bargaining representative.

### **Section 23.26 Runoff Election**

A runoff election shall be conducted by the Board when an election, in which the ballot provides for no less than three choices (i.e., at least two representatives and a "no union"), results in no choice receiving a majority of the valid votes cast. The Board shall not conduct a runoff election when only two choices appear on the ballot and the result is a tie. In that case, the Board will issue an order providing the employee organization is not certified or is decertified as bargaining representative, as applicable. In a runoff election, the Board shall issue a Notice of Election as set forth in Section 23.17 and shall require the employer to file a voter eligibility list as set forth in Section 23.21. The ballot in the runoff election shall provide for a selection between the two choices receiving the largest and second largest number of valid votes cast.

### **Section 23.27 Objection to Election Conduct**

Any interested party may file with the Board, within 10 days of the election, an objection to the conduct of the election.

- A. Contents of the objection: The objection shall set forth the following:
  - (1) The date and place of the contested election;
  - (2) The results of the election;
  - (3) Factual allegations to support the objection to the conduct of the election, including the names or identities of the persons or organizations charged, applicable addresses and the employees affected; and
  - (4) A request that the Board investigate the objection. The complainant may also request the Board to set aside the election.
- B. Service of copy: The Board shall forthwith send by certified or registered mail a copy of the objection to each person or organization named in the objection and to all other persons who appear to the Board to have an interest in the subject matter of the objection, including all parties involved in the election.
- C. Answer: In the discretion of the Board, one or more of the persons or organizations named in the objection may be directed to file an answer to the objection within such time as may be established by the Board.
- D. Investigation: The Board may delegate to an agent the authority to conduct an investigation with respect to the objection.

**Section 23.28      Order Certifying Results of Election**

Subsequent to expiration of the period for objecting to the conduct of the election, and if the Board has not set aside the election as a result of any objection filed, the Board shall issue an order of certification, non-certification or decertification of the bargaining representative, as applicable.

**Section 23.29      Affiliation of Independent Employee Organization;  
Amendment of Certification**

A request for amendment of certification may be filed with the Board in the event that an independent employee organization serving as existing bargaining representative of employees affiliates with another employee organization. The Board may find appropriate an amendment of certification, recognizing the affiliation, if the following requirements are met: 1) there is a guarantee of continuity of representation, 2) sufficient democratic standards were met to determine whether support existed among employees for affiliation, and 3) the originally certified organization does not remain a presently, functioning viable entity after the affiliation.