WEST VIRGINIA CODE: §21-1A-5

§21-1A-5. Representatives and elections.

(a) Representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining with respect to rates of pay, wages, hours of employment or other conditions of employment.

(b) The board shall decide in each case whether, in order to assure to employees the fullest freedom in exercising the rights guaranteed by this article, the unit appropriate for the purposes of collective bargaining shall be the employer unit, craft unit, plant unit, or subdivision thereof: Provided, That the 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; or (2) decide that any craft unit is inappropriate for such purposes on the ground that a different unit has been established by a prior board determination, unless a majority of the employees in the proposed craft unit vote against separate representation; or (3) decide that any unit is appropriate for such purposes if it includes, together with other employees, any individual employed as a guard to enforce against employees and other persons rules to protect property of the employer or to protect the safety of persons on the employer's premises; but no labor organization shall be certified as the representative of employees in a bargaining unit of guards if such organization admits to membership, or is affiliated directly or indirectly with an organization which admits to membership, employees other than guards.

(c) (1) Whenever a petition shall have been filed, in accordance with such regulations as may be prescribed by the board:

(A) By an employee or group of employees or any individual or labor organization acting in their behalf alleging that employees (i) wish to be represented for collective bargaining and that their employer declines to recognize their representative as the representative defined in subsection (a) of this section, or (ii) assert that the individual or labor organization, which has been certified or is being currently recognized by their employer as the bargaining representative, is no longer a representative as defined in subsection (a) of this section; or

(B) By an employer, alleging that one or more individuals or labor organizations have presented to him a claim to be recognized as the representative defined in subsection (a) of this section; the board shall investigate such petition and if it has reasonable cause to believe that a question of representation exists shall provide for an appropriate hearing upon due notice. If the board finds upon the record of such hearing that such a question of representation exists, it shall direct an election by secret ballot and shall certify the results thereof.

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(2) Any labor organization may intervene in the procedures provided for in this subsection upon the filing with the board of a petition alleging that it represents one or more employees in the unit with respect to which a question of representation exists. If the board finds the allegation to be valid and the unit to be appropriate, it shall order an election and shall order that the name of such intervening labor organization be included among the choices on the secret ballot to be used in such election. If the board finds that the petition is invalid, the board may dismiss the petition or permit such petition to be amended in accordance with the procedures established by such board.

(3) No election shall be directed in any bargaining unit or any subdivision within which, in the preceding twelve-month period, a valid election shall have been held. Employees engaged in an economic strike who are not entitled to reinstatement shall be eligible to vote under such regulations as the board shall find consistent with the purposes and provisions of this article in any election conducted within twelve months after the commencement of the strike. In any election where none of the choices on the ballot receives a majority, a runoff shall be conducted, the ballot providing for a selection between the two choices receiving the largest and second largest number of valid votes cast in the election.

(4) Nothing contained in this section shall be construed as prohibiting the waiving of hearings by stipulation for the purpose of a consent election in conformity with regulations of the board.

(5) In determining whether a unit is appropriate for the purposes specified in subsection (b) of this section the extent to which the employees have organized shall not be controlling.

(d) Upon the filing with the board, by thirty per centum or more of the employees in a bargaining unit covered by an agreement between their employer and a labor organization made pursuant to subdivision (3), subsection (a), section four of this article, of a petition alleging that they desire that such authority be rescinded, the board shall take a secret ballot of the employees in such unit and certify the results thereof. No election shall be conducted pursuant to this subsection in any bargaining unit or any subdivision within which, in the preceding twelve-month period, a valid election shall have been held.

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