

## 6. QUALIFICATION OF REPRESENTATIVE

### 177-3200

Section 9(c)(1)(A) provides that employees may be represented “by any employee or group of employees or any individual or labor organization.” An election is directed and a certification is issued unless the proposed bargaining representative fails to qualify as a bona fide representative of the employees. Specific statutory provisions defining “labor organization” and, in the case of guards, creating a limitation with respect to their representative are treated here. The Board has also developed administrative policies for determining the qualification of representatives, and these, too, are discussed in this chapter.

### 6-100 The Statutory Definition of Labor Organization

#### 177-3925

#### 347-4030

Section 2(5) defines “labor organization” as follows:

The term “labor organization” means any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.

See *Litton Business Systems*, 199 NLRB 354 (1972), and *Machinists*, 159 NLRB 137 (1966), for Board findings of a “labor organization.”

### 6-110 Application of the Statutory Definition

#### 308-6000

#### 339-2500 et seq.

#### 347-4030

The fact that a union is in its early stages of development and has not as yet won representation rights does not disqualify it as a labor organization. Thus, the Board has found that the petitioner existed for the statutory purposes, although those purposes had not yet come to fruition because employees had participated in its organization and subsequent activities, although the latter were limited by the organization’s lack of representation rights. *Michigan Bell Telephone Co.*, 182 NLRB 632 (1970). See also *Early California Industries*, 195 NLRB 671, 674 (1972).

When there was no showing that the intervenor restricted its membership on religious grounds or that it would not accord adequate representation to all unit employees, the intervenor was qualified to act as representative. *Town & Country*, 194 NLRB 1135 (1972).

Despite the lack of structural formality manifested by the absence of a constitution or bylaws and by the failure to collect dues or initiation fees, an organization which admitted employees to membership, was established for the purpose of representing its membership, and intended to do so if certified was found to be a labor organization. *Butler Mfg. Co.*, 167 NLRB 308 (1967). See also *Yale University*, 184 NLRB 860 (1970); *Stewart-Warner Corp.*, 123 NLRB 447 (1959). See also *NLRB v. Cabot Carbon Co.*, 360 U.S. 203 (1959). But a group of five employees who engaged in a concerted refusal to see patients, was not a labor organization and thus, not bound by the notice provisions of Section 8(g). *Venecare Ancillary Services*, 334 NLRB 965 (2001).

In *East Dayton Tool Co.*, 194 NLRB 266 (1972), the Board, after finding the petitioner to be a “labor organization” within the Act’s definition, also held that the fact that the petitioner’s organizers were members of the former independent union before its affiliation with the intervenor and the fact that the petitioner adopted a name similar to that of the former union did

not constitute the petitioner the same labor organization as the intervenor nor preclude the petitioner from filing a petition.

When the intervenor contended that the petitioner should not be recognized as a labor organization because it did not intend to fulfill its bargaining obligation if certified, but to affiliate with another labor organization immediately after certification, the Board found it premature to consider such possibility. Rather, the Board held that after certification it could, pursuant to its authority to police its certifications, examine the propriety of a post certification affiliation if an appropriate motion were filed. *Butler Mfg. Co.*, supra; *Guardian Container Co.*, 174 NLRB 34 (1969). The Board applied the same reasoning when it dismissed an employer's contention that the petitioner was not a labor organization because it had "bound itself by contract, custom, and practice" with the employer's competitors "not to bargain or negotiate any other or different terms of employment from those embodied in Petitioner's national contract." *Margaret-Peerless Coal Co.*, 173 NLRB 72 (1969). See also *Gino Morena Enterprises*, 181 NLRB 808 (1970), in which there was a premature contention that the petitioner did not fulfill the statutory requirement of employee participation.

In interpreting Section 2(5) of the Act, the Board, in *Alto Plastics Mfg. Corp.*, 136 NLRB 850, 851-852 (1962), stated its basic policy as follows:

In order to be a labor organization under Section 2(5) of the Act, two things are required: first, it must be an organization in which employees participate; and second, it must exist for the purpose, in whole or in part, of dealing with employers concerning wages, hours, and other terms and conditions of employment. If an organization fulfills these two requirements, the fact that it is an ineffectual representative, that its contracts do not secure the same gains that other employees in the area enjoy, that certain of its officers or representatives may have criminal records, that there are betrayals of the trust and confidence of the membership, or that its funds are stolen or misused, cannot affect the conclusion which the Act then compels us to reach, namely, that the organization is a labor organization within the meaning of the Act.

Accord: *Coinmach Laundry Corp.*, 337 NLRB 1286 (2003).

See also *Harrah's Marina Hotel*, 267 NLRB 1007 (1983), in which the Board held that the petitioner was not a labor organization. The employer contended that the petitioner was not a labor organization because of criminal activities of its officials and because it was not democratic. The Board found that the petitioner did not meet the statutory definition of Section 2(5) of the Act. See also *Mohawk Flush Doors*, 281 NLRB 410 (1986).

An exclusive bargaining representative is empowered to designate and authorize agents including other labor organizations to act on its behalf. *CCI Construction Co.*, 326 NLRB 1319 (1998).

## **6-120 Impact of Labor-Management Reporting and Disclosure Act of 1959**

### **133-2500**

Violations of the Labor-Management Reporting and Disclosure Act of 1959 do not affect Board policy, since Section 603(b) of the Act explicitly provides: "nor shall anything contained in [Titles I through VI] . . . of this Act be construed . . . to impair or otherwise affect the rights of any person under the National Labor Relations Act, as amended."

An organization's (or its agent's) possible failure to comply with the Landrum-Griffin Act should be litigated in the appropriate forum under that Act, and not by the indirect and potentially duplicative means of the Board's consideration in the course of determining the union's status under Section 2(5) of the Act. See *Neiser Supermarkets*, 142 NLRB 513 fn. 3 (1963); *Harlem River Consumers Cooperative*, 191 NLRB 314 (1971); and *Caesar's Palace*, 194 NLRB 818 (1972).

A violation of the Labor-Management Relations Act of 1947 was likewise held not to disqualify a petitioner from filing a representation petition. *Chicago Pottery Co.*, 136 NLRB 1247 (1962). As stated in *Lane Wells Co.*, 79 NLRB 252, 254 (1948), “excepting only the few restrictions explicitly or implicitly present in the Act, we find nothing in Section 9, or elsewhere, which vests in the Board any general authority to subtract from the rights of employees to select any labor organization they wish as exclusive bargaining representative.” See also *National Van Lines*, 117 NLRB 1213 (1957).

### **6-130 Public Policy Considerations**

**339-7527-8300**

**385-5050-7500**

**393-7016**

**530-8080**

To the few statutory restrictions, however, may be added the constitutional proscription, through the due-process clause of the Fifth Amendment, against any recognition or enforcement of illegal discrimination by a Federal agency. Thus, in *Hughes Tool Co.*, 147 NLRB 1573 (1964), the Board held that unions which exclude employees from membership on racial grounds may not obtain or retain a certified status under the Act. Similarly, the Board has indicated that an unlawful employment practice involving sex discrimination by a labor organization would disqualify that organization from representing a group of employees. See *Glass Bottle Blowers Local 106 (Owens-Illinois)*, 210 NLRB 943 (1974).

In *NLRB v. Mansion House Management Corp.*, 473 F.2d 471 (8th Cir. 1973), the court held that, when an employer in good-faith raises the issue of union racial discrimination as a defense to an 8(a)(5) charge, the Board should inquire whether the union has taken affirmative action to undo its discriminatory practices, and that the Board’s remedial machinery cannot be available to a union which is unwilling to correct past practices of racial discrimination. Because the policy underlying this decision implicates the Board’s issuance of a certification as well as bargaining orders, the Board, in *Handy Andy, Inc.*, 228 NLRB 447 (1977), held that unfair labor practice procedures are available for dealing with allegations of sex or race discrimination, but that such allegations will not be considered in representation proceedings. See also *Guardian Armored Assets, LLC*, 337 NLRB 557 (2002).

### **6-200 Statutory Limitation as to “Guards”**

**339-7575-7550 et seq.**

**385-5050-8700**

**401-2575-2800**

Section 9(b)(3) provides that the Board shall not certify a labor organization “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.” Thus, a petition for employees found to be “guards” was dismissed when the union, which sought to represent them, also admitted to membership employees other than guards, and therefore could not be certified under the Act as statutory representative. *A.D.T. Co.*, 112 NLRB 80 (1955); *Wackenhut Corp.*, 169 NLRB 398 (1968). On the other hand, the Board will refuse to litigate the collateral issue of whether employees represented by the union elsewhere are guards. *Rapid Armored Corp.*, 323 NLRB 709 (1997). However, a union which accepts its own nonguard employees into the union is not precluded from representing a unit of guards as a union cannot bargain for its own employees. *Sentry Investigation Corp.*, 198 NLRB 1074 (1972). Municipal police officers are not considered

“employees other than guards” for purposes of disqualifying a union to represent guards. *Children’s Hospital of Michigan*, 299 NLRB 430 (1990).

In *University of Chicago*, 272 NLRB 873 (1984), the Board reversed its practice of permitting nonguard units to intervene in an election sought by a guard union. In the Board’s view such a practice was inconsistent with the statutory proscription of Section 9(b)(3). Nor will the Board permit a nonguard unit to enjoy benefits of its unit clarification procedures. Thus in *Brink’s Inc.*, 272 NLRB 868 (1984), the Board dismissed a UC petition. Although it acknowledged that an employer could legally recognize a nonguard union, the Board concluded that use of the Board’s processes to further that end should not be permitted.

An indirect affiliation exists when a nonguard union participates in guard affairs to such an extent and for such a duration as to indicate that the guard union has lost the freedom to formulate its own policies. The Board has applied this standard with substantial latitude, particularly when guard unions were in their formative stages. *Magnavox Co.*, 97 NLRB 1111 (1951); and *Wells Fargo Guard Services*, 236 NLRB 1196 (1978). Thus, no indirect affiliation was found in which a guard union had free use of a nonguard union’s meeting hall (*International Harvester Co.*, 81 NLRB 374 (1949)); when a guard union shared office space with a nonguard union (*Brooklyn Piers, Inc.*, 88 NLRB 1364 (1950)); when a guard union was assisted in preparing unfair labor practice charges and in selecting an attorney (*Midvale Co.*, 114 NLRB 372 (1956)); when a nonguard union assisted a guard union in soliciting authorization cards (*Inspiration Consolidated Copper Co.*, 142 NLRB 53 (1963)); and when a guard union and an employer association voluntarily agreed to participate in a pension trust fund arrangement contractually established by the employer association and a nonguard union (*New York Hilton*, 193 NLRB 313 (1971)).

But when a guard union has continued to receive advice and/or financial aid from a nonguard union after the organizational stage, whether or not the nonguard union represents employees in the same plant, Section 9(b)(3) prohibits certification and the Board will revoke the certification of a previously certified union. *Mack Mfg. Corp.*, 107 NLRB 209 (1954); *International Harvester Co.*, 145 NLRB 1747 (1964); *Stewart-Warner Corp.*, 273 NLRB 1736 (1985); and *Brink’s Inc.*, 274 NLRB 970 (1985). Compare *Lee Adjustment Center*, 325 NLRB 375 (1998), where indirect affiliation was severed before bargaining. See also *Wackenhut Corp. v. NLRB*, 178 F.3d 543 (D.C. Cir. 1999). Note that the language of Section 9(b)(3) is not limited to the possible divided loyalty situation in a particular plant. *International Harvester Co.*, supra.

Actual rather than speculative membership of nonguards is required to refuse certification to the union. The noncertifiability of a guard union must be shown by “definitive evidence.” *Children’s Hospital of Michigan*, 317 NLRB 580 (1995). The record must establish that the union admits nonguards in order to support disqualification. *Elite Protective & Security Services*, 300 NLRB 832 (1990). The mere fact that the union also represents police officers in the public sector does not present a conflict of interest. *Guardian Armored Assets, LLC*, 337 NLRB 556 (2002).

In *Brink’s, Inc.*, 281 NLRB 468 (1986), the Board described the nature of the material that can be properly subpoenaed as part of an inquiry into affiliation.

For other guard issues, see section 18-200, infra, and section 18-230 for further discussion of indirect affiliation. Note also the discussion of the effect of a union’s constitution in deciding guard issues at section 6-310, infra.

## **6-300 Administrative Policy Considerations**

### **6-310 A Union’s Constitution and Bylaws**

**339-7525**

**339-7562**

Generally, the willingness of an organization or person to represent employees is controlling, not the eligibility of employees for membership in the organization or the organization’s constitutional jurisdiction. *NAPA New York Warehouse*, 75 NLRB 1269 (1948); “*M*” System, 115

NLRB 1316 fn. 2 (1956); and *Community Service Publishing*, 216 NLRB 997 (1975). See also *Kodiak Island Hospital*, 244 NLRB 929 (1979), in which a nurses' association accorded full membership only to registered nurses, but sought to represent other employees as well. Thus, the fact that a union is precluded by its constitution from representing the employees involved does not affect its ability to file a representation petition for those employees and, if it wins the election, to become their bargaining representative. *Hazelton Laboratories*, 136 NLRB 1609 (1962); *Big "N," Department Store No. 307*, 200 NLRB 935 fn. 3 (1972).

When certain provisions of a petitioner's constitution indicated that its membership was to be drawn from the ranks of Government employees, who are not "employees" within the meaning of Section 2(3) of the Act, but the "import of these provisions [did] not restrict membership exclusively to such government employees" and numerous statutory employees involved in the representation proceeding were participating, dues-paying members of the petitioner, the Board found no basis for disqualification. *Gino Morena Enterprises*, 181 NLRB 808 (1970). Compare *United Trucks & Bus Service Co.*, 257 NLRB 343 (1982), in which the petition was dismissed because the union admitted only "public employees" to membership. See also *Children's Hospital of Michigan*, 299 NLRB 430 (1990), in which the Board found that affiliation with public sector unions was not disqualifying. In a later *Children's Hospital* decision, *supra*, the Board repeated its policy of considering a union's constitutional restriction against representing nonguards as evidence of certifiability of a guard union.

In the absence of proof that the union will not accord effective representation to all employees in the unit, the Board does not inquire into a labor organization's constitution or charter. *Ditto, Inc.*, 126 NLRB 135 fn. 2 (1960). Thus, when it was alleged that a union was fraudulently chartered, the Board held that "contentions such as this, having to do with the alleged illegality of the formation of a labor organization, are internal union matters and do not necessarily affect the capacity of the organization to act as a bargaining representative." *Reed & Rattan Furniture Co.*, 117 NLRB 495, 496 (1957). See also *Gemex Corp.*, 120 NLRB 46 (1958).

However, when, despite the facade of a separate identity, the Board was convinced that the petitioning union was not an independent, autonomous organization devoted to the representation of the employees sought because of the manner in which it was organized and its affairs were being conducted, the burden of going forward with the evidence shifted to petitioner. And when the petitioner failed to rebut the inference that it was fronting for another organization which could not qualify as a representative of the employees involved, the Board disqualified it. *Iowa Packing Co.*, 125 NLRB 1408 (1960). See also *McGraw-Edison Co.*, 199 NLRB 1017 (1972), in which the Board permitted inquiry into the union's motivation in filing a petition which was alleged to be an attempt to change affiliation and escape from its agreement. Case discussed in section 7-120, *infra*.

## **6-320 Trusteeship**

### **339-2550**

The fact that a union is in trusteeship, whether in violation of the Labor-Management Reporting and Disclosure Act or not, does not disqualify it from representing employees as this does not, without more, affect its status as a labor organization within the meaning of the definition of Section 2(5) of the Act. *Terminal System*, 127 NLRB 979 (1960); *E. Anthony & Sons*, 147 NLRB 204 (1964); *Jat Transportation Corp.*, 128 NLRB 780 (1960); *Dorado Beach Hotel*, 144 NLRB 712, 714 fn. 5 (1963). But see *Illinois Grain Corp.*, 222 NLRB 495 (1976), in which conflicting claims resulting from the trusteeship raised a question concerning representation.

A charter from an international is not essential to a local's continued existence as a labor organization if the conditions of Section 2(5) are satisfied. *Awning Research Institute*, 116 NLRB 505 (1957). See also section 9-410, *infra*, for a discussion of schism.

### **6-330 Employer Assistance or Domination and Supervisory Involvement**

**177-3950-7200 et seq.**

**339-7550**

**339-7575-9300**

**393-6068-9050**

A labor organization found, in a prior unfair labor practice proceeding, to have received unlawful employer assistance has no standing to seek a Board-conducted election, and its petition is subject to dismissal. *Halben Chemical Co.*, 124 NLRB 1431 (1959). Such an organization may, of course, file a new petition based on an adequate showing of interest obtained after its illegal status of employee representative has been dissipated. *Sears, Roebuck & Co.*, 112 NLRB 559 (1955).

A fortiori, when an organization has been found to be dominated by the employer, it is deemed incapable of qualifying as a bona fide representative of employees. *Douglas Aircraft Co.*, 53 NLRB 486 (1943). It follows that a supervisor cannot represent employees for purposes of collective bargaining (*Kennecott Copper Corp.*, 98 NLRB 75 (1951)), nor may an organization controlled by supervisors do so (*Brunswick Pulp Co.*, 152 NLRB 973 (1965)), nor independent contractors who, by definition, are not employees within the meaning of the Act (*Brunswick Pulp*, supra). In *Apex Tankers Co.*, 257 NLRB 685 (1981), the Board found that a contract was not a bar to a petition when supervisors play a crucial role in the administration of the signatory union.

However, mere membership, limited participation, or the holding of a position of a supervisor in a labor organization does not per se destroy its capacity to act as a bona fide representative. *Allen B. Dumont Laboratories*, 88 NLRB 1296 (1950); *Associated Dry Goods Corp.*, 117 NLRB 1069 (1957). The crucial factors are substantial participation by employee members, as well as goals determined, and negotiations conducted by them. *International Paper Co.*, 172 NLRB 933 (1968). See particularly *Power Piping Co.*, 291 NLRB 494 (1988), in which the Board reviewed the history of this doctrine and set forth the applicable standard for determining whether supervisory participation is unlawful.

Health care cases, particularly in nurses' units, have presented a number of difficult issues of supervisory participation in the affairs of the petitioning labor organization. Very often nurses' unions are composed of both employee nurses and nurses whose duties clearly qualify them as statutory supervisors. In *Sierra Vista Hospital*, 241 NLRB 631 (1979), the Board set the test for determining whether the membership and participation of these supervisors in the union disqualified the union from being certified as the exclusive representative under Section 9 of the Act.

As described in *Sidney Farber Cancer Institute*, 247 NLRB 1 (1980), disqualification depends:

- (1) Upon whether a supervisor or supervisors employed by the employer were in a position of authority within the labor organization and, if so, upon the role of that individual or individuals in the affairs of the labor organization or;
- (2) In the instance of supervisory nurses employed by third-party employers and holding positions of authority, upon some demonstrated connection between the employer of the unit employees concerned and the employer or employers of those supervisors which might affect the bargaining agent's ability to single-mindedly represent the unit employees.

The burden of establishing this conflict is on the party opposing the union's qualification as a labor organization and is a "heavy one." See *Sidney Farber*, supra; *Western Baptist Hospital*, 246 NLRB 170 (1980), and *Highland Hospital*, 288 NLRB 750 (1988), in which the burden was not met and *Exeter Hospital*, 248 NLRB 377 (1980), in which the burden of establishing disqualification was met.

As contentions alleging employer domination or assistance are, in effect, unfair labor practice charges, they may not properly be litigated in representation proceedings (*Bi-States Co.*, 117 NLRB 86 (1957)), and evidence in support of such allegations is therefore excluded from proceedings designed to determine a bargaining representative (*Lampcraft Industries*, 127 NLRB 92 (1960); *John Liber & Co.*, 123 NLRB 1174 (1959)). However, this rule does not prevent a determination of a petitioner's alleged supervisory status, and if petitioner is found to be a supervisor within the meaning of the Act the petition will, of course, be dismissed. *Modern Hard Chrome Service Co.*, 124 NLRB 1235 (1959); *Carey Transportation*, 119 NLRB 332 (1958). See also section 7-310 and *Canter's Fairfax Restaurant*, 309 NLRB 883 fn. 2 (1992).

### **6-340 Nature of Representation**

The bona fides of labor organization status is not affected by the fact that both office or clerical employees and production and maintenance employees are represented by the same union. The Board does not interfere with the right of employees to choose whomever they wish to represent them. *Swift & Co.*, 124 NLRB 50 (1959).

### **6-350 The Union as a Business Rival (Conflict of Interest)**

#### **339-7575**

#### **385-5050**

A labor organization which is also a business rival of an employer is not a proper bargaining representative of employees of that employer. *Bausch & Lomb Optical Co.*, 108 NLRB 1555, 1558 (1954). In that case, the union operated an optical business which was in direct competition with the employer whose employees it sought to represent in collective bargaining. The disqualification is based on the latent danger that the union may bargain not for the benefit of unit employees, but for the protection and enhancement of its business interests which are in direct competition with those of the employer at the other side of the bargaining table. *Bambury Fashions*, 179 NLRB 447 (1969); *Douglas Oil Co.*, 197 NLRB 308 (1972). See also *Visiting Nurses Assn.*, 188 NLRB 155 (1971), in which the union through its affiliates was a business rival of the employer. But the danger must be "clear and present." A plan to engage in an activity that might be competitive and even disqualifying is not sufficient. The plans must have materialized. *Alanis Airport Services*, 316 NLRB 1233 (1995), and *IFS Virgin Island Food Service*, 215 NLRB 174 (1974). In *Detroit Newspapers*, 330 NLRB 505 fn. 2 (2000), the Board refused to find a conflict of interest in the publication of an "interim" newspaper that would shut down once the strike was settled.

The Board declined to apply the *Bausch & Lomb* principle in which it found that the alleged rival business was a cooperative store operated by the union for the use of its members only and could therefore not be regarded as being in competition with the employer. *Associated Dry Goods Corp.*, 150 NLRB 812 fn. 4 (1965). In *Garrison Nursing Home*, 293 NLRB 122 (1989), the Board found no conflict based on past relationships but did find a conflict in which there was a debtor/creditor relationship between the employer and a high official of the petitioner's union.

In *Russ Toggs, Inc.*, 187 NLRB 134 (1971), the petitioner alone sought to represent a unit of the employer's traveling commission salesmen. The Board directed an election despite the petitioner's affiliation with an association disqualified on the ground of conflict of interest, reasoning that the petitioner had existed as a separate labor organization and had separately represented employees for collective-bargaining purposes. The Board cautioned, however, that its processes might properly be invoked to examine the certification if it subsequently appeared that the petitioner was not acting independently, but as an agent of the association, in its representation of the employees.

Investment of union pension funds in a "competitor" of the employer does not disqualify the petitioning union from acting as bargaining representative. *David Buttrick Co.*, 167 NLRB 438 (1967). Neither do loans by the union's pension fund of the union's international affiliate to a

“competitor” of the employer where the local, rather than the international, dominated in dealings with the employer. *H. P. Hood & Sons (Hood I)*, 167 NLRB 437 (1967), and 182 NLRB 194 (1970) (*Hood II*).

In *Harlem River Consumers Cooperative*, supra, the intervenor labor organization’s business agent had a substantial business interest in a company engaged in promoting and selling certain brand name products to retail outlets, including the employer. The Board held that, although this did not disqualify the union generally from representing employees, it was incompatible with its disinterested representation of the employer’s employees. Thus, if the intervenor should win the election, it should not be certified so long as its business agent remained in that capacity in the employer’s geographical area. Compare *Teamsters Local 2000*, 321 NLRB 1383 (1996).

When no record evidence supported the contention that the petitioner’s parent organization was controlled by individuals other than drivers or owner-drivers and, therefore, the fleet owners, through their membership in the parent organization, did not dominate or control the affairs of petitioner, there was no basis for disqualification. *Tryon Trucking*, 192 NLRB 764 (1971); *Aetna Freight Lines*, 194 NLRB 740 (1972).

In *American Arbitration Assn.*, 225 NLRB 291 (1976), the Board rejected the employer’s contention that the role of the employer as a neutral in labor-management relations precluded representation of its employees or alternatively representation by other than an unaffiliated independent labor organization.

As a general rule, the Board will not find a conflict of interest where the union represents both the employees of the employer and a subcontractor doing business with that employer. In *CMT, Inc.*, 333 NLRB 1307 (2001), the Board rejected a contention that the petition should be dismissed where the union was seeking to represent the subcontractors employees and had previously grieved about the subcontracting. The Board in *CMT* noted two cases in which the Board did find a disability conflict. See *Catalytic Industrial Maintenance*, 209 NLRB 641 (1974), and *Valley West Welding Co.*, 265 NLRB 1997 (1982). Compare *Massachusetts Society for Prevention of Cruelty to Children v. NLRB*, 297 F.3d 41 (1st Cir. 2002) (union opposed contracting of public employees’ work to private sector).

### **6-360 The Union as an Employer**

**177-1683-8750**

**339-7575-2550**

A union is not qualified to act as bargaining representative of employees of another union where both it and the union acting as employer are affiliates of the same international union. *Teamsters Local 249*, 139 NLRB 605, 606 (1962). In that case, the union acting as employer and the petitioner were both subject to the same international’s constitution and bylaws which provided for control and participation by the international and the joint council in various activities of the locals, and the international and joint council contributed to the petitioner’s organizational expenses. Thus, if the petitioning union were permitted to represent the employees of its coaffiliate, it would, in effect, be permitted to bargain with itself. As the Board stated in an earlier case, “a union must approach the bargaining table ‘with the single-minded purpose of protecting and advancing the interests of the employees who have selected it as their bargaining agent and there must be no ulterior purpose.’” *Oregon Teamsters’ Security Plan Office*, 119 NLRB 207, 211 (1958). See also *Bausch & Lomb Optical Co.*, 108 NLRB 1555, 1559 (1954); and *Centerville Clinics*, 181 NLRB 135 (1970).

In the same vein, the Board has disqualified a “semi-beneficial” local which was considered under its parent’s constitution and bylaws as a subordinate body and which gave the parent the right to take over and conduct the affairs of the local if the best interests of the parent so required. *Welfare & Pension Funds*, 178 NLRB 14 (1969).



### **6-370 Joint Petitioners**

**316-6767**

**339-2582**

Two or more labor organizations are permitted to act jointly as bargaining representative for a single group of employees. *Vanadium Corp. of America*, 117 NLRB 1390 (1957); *S. D. Warren Co.*, 150 NLRB 288 (1965).

If the joint petitioners are successful in the election, they will be certified jointly and the employer may insist on joint bargaining. *Florida Tile Industries*, 130 NLRB 897 (1961). However, where each of the two unions which filed a joint petition intends to bargain only for the employees within its own jurisdiction, the Board has held such an intention is inconsistent with the concept of joint representation. *Automatic Heating Co.*, 194 NLRB 1065 (1972); *Stevens Trucking*, 226 NLRB 638 (1976).

### **6-380 Effect of Union Violence**

The Board has a longstanding policy of denying a bargaining order where the union has engaged in “unprovoked and irresponsible physical assaults” in support of its bargaining efforts. *Laura Modes Co.*, 144 NLRB 1592, 1596 (1963). This is not “routine relief.” *Overnite Transportation Co. (Dayton, Ohio Terminal)*, 334 NLRB 1074 (2001). Indeed, as noted in *Overnite*, the Board will not deny a bargaining order in every incident of union picket line misconduct. *Overnite Transportation Co.*, 333 NLRB 472 (2001).

In *Laura Modes*, supra, the Board did not preclude union representation of the unit employees involved. The union there had attained its bargaining status through unfair labor proceedings and the Board withheld a bargaining order until the union won a Board election. The Board decision in *Overnite*, 333 NLRB 472 (2000), suggests a willingness to refuse a bargaining order based on a certification and even to revoke the certification in the event a level of *Laura Modes* violence is established.

See also section 3-930.