§ 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 Posting of election notices.

(a) Employers shall post copies of the Board's official Notice of Election in conspicuous places at least 3 full working days prior to 12:01 a.m. of the day of the election. In elections involving mail ballots, the election shall be deemed to have commenced the day the ballots are deposited by the Regional Office in the mail. In all cases, the notices shall remain posted until the end of the election.

(b) The term working day shall mean an entire 24-hour period excluding Saturdays, Sundays, and holidays.

(c) A party shall be estopped from objecting to nonposting of notices if it is responsible for the nonposting. An employer shall be conclusively deemed to have received copies of the election notice for posting unless it notifies the Regional Office at least 5 working days prior to the commencement of the election that it has not received copies of the election notice.

(d) Failure to post the election notices as required herein shall be grounds for setting aside the election whenever proper and timely objections are filed under the provisions of §102.69(a).

[52 FR 25215, July 6, 1987]

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 hos-
pitals 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 ex-
clude facilities that are primarily nurs-
ing homes, primarily psychiatric hos-
pitals, or primarily rehabilitation hos-
pitals. Where, after issuance of a sub-
poena, an employer does not produce
records sufficient for the Board to de-
termined the facts, the Board may pre-
sume 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 in-
corporated 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 Com-
mision for Accreditation of Rehabili-
tation 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 sec-
tion 2(14) of the National Labor Rela-
tions Act, as amended, by adjudication.

[54 FR 16347, Apr. 21, 1989]

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 em-
ployee employment, reemployment, or
reinstatement, or to notify an em-
ployee of his or her entitlement to re-
instatement upon application, the em-
ployer shall, if the employee is serving
in the Armed Forces of the United
States at the time such offer or notifi-
cation is made, also notify the em-
ployee of his or her right to reinsta-
tement 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]

PART 104—NOTIFICATION OF EM-
PLOYEE RIGHTS; OBLIGATIONS
OF EMPLOYERS (effective date
delayed indefinitely)

Subpart A—Definitions, Requirements for
Employee Notice, and Exceptions and
Exemptions

Sec.
104.201 What definitions apply to this part?
104.202 What employee notice must employ-
ers subject to the NLRA post in the
workplace?
104.203 Are Federal contractors covered
under this part?
104.204 What entities are not subject to this
part?

APPENDIX TO SUBPART A—TEXT OF EMPLOYEE
NOTICE

Subpart B—General Enforcement and
Complaint Procedures

104.210 How will the Board determine
whether an employer is in compliance
with this part?
104.211 What are the procedures for filing a
charge?
104.212 What are the procedures to be fol-
lowed when a charge is filed alleging that
an employer has failed to post the re-
quired employee notice?
104.213 What remedies are available to cure
a failure to post the employee notice?
104.214 How might other Board proceedings
be affected by failure to post the em-
ployee notice?