

their own choosing, for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection.

(July 5, 1935, ch. 372, § 1, 49 Stat. 449; June 23, 1947, ch. 120, title I, § 101, 61 Stat. 136.)

#### AMENDMENTS

1947—Act June 23, 1947, amended section generally to restate the declaration of policy and to make the finding and policy of this subchapter “two-sided”.

#### EFFECTIVE DATE OF 1947 AMENDMENT

Act June 23, 1947, ch. 120, title I, § 104, 61 Stat. 152, provided that: “The amendments made by this title [amending this subchapter] shall take effect sixty days after the date of the enactment of this Act [June 23, 1947], except that the authority of the President to appoint certain officers conferred upon him by section 3 of the National Labor Relations Act as amended by this title [section 153 of this title] may be exercised forthwith.”

### § 152. Definitions

When used in this subchapter—

(1) The term “person” includes one or more individuals, labor organizations, partnerships, associations, corporations, legal representatives, trustees, trustees in cases under title 11, or receivers.

(2) The term “employer” includes any person acting as an agent of an employer, directly or indirectly, but shall not include the United States or any wholly owned Government corporation, or any Federal Reserve Bank, or any State or political subdivision thereof, or any person subject to the Railway Labor Act [45 U.S.C. 151 et seq.], as amended from time to time, or any labor organization (other than when acting as an employer), or anyone acting in the capacity of officer or agent of such labor organization.

(3) The term “employee” shall include any employee, and shall not be limited to the employees of a particular employer, unless this subchapter explicitly states otherwise, and shall include any individual whose work has ceased as a consequence of, or in connection with, any current labor dispute or because of any unfair labor practice, and who has not obtained any other regular and substantially equivalent employment, but shall not include any individual employed as an agricultural laborer, or in the domestic service of any family or person at his home, or any individual employed by his parent or spouse, or any individual having the status of an independent contractor, or any individual employed as a supervisor, or any individual employed by an employer subject to the Railway Labor Act [45 U.S.C. 151 et seq.], as amended from time to time, or by any other person who is not an employer as herein defined.

(4) The term “representatives” includes any individual or labor organization.

(5) 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.

(6) The term “commerce” means trade, traffic, commerce, transportation, or communication among the several States, or between the District of Columbia or any Territory of the United States and any State or other Territory, or between any foreign country and any State, Territory, or the District of Columbia, or within the District of Columbia or any Territory, or between points in the same State but through any other State or any Territory or the District of Columbia or any foreign country.

(7) The term “affecting commerce” means in commerce, or burdening or obstructing commerce or the free flow of commerce, or having led or tending to lead to a labor dispute burdening or obstructing commerce or the free flow of commerce.

(8) The term “unfair labor practice” means any unfair labor practice listed in section 158 of this title.

(9) The term “labor dispute” includes any controversy concerning terms, tenure or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether the disputants stand in the proximate relation of employer and employee.

(10) The term “National Labor Relations Board” means the National Labor Relations Board provided for in section 153 of this title.

(11) The term “supervisor” means any individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

(12) The term “professional employee” means—

(a) any employee engaged in work (i) predominantly intellectual and varied in character as opposed to routine mental, manual, mechanical, or physical work; (ii) involving the consistent exercise of discretion and judgment in its performance; (iii) of such a character that the output produced or the result accomplished cannot be standardized in relation to a given period of time; (iv) requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study in an institution of higher learning or a hospital, as distinguished from a general academic education or from an apprenticeship or from training in the performance of routine mental, manual, or physical processes; or

(b) any employee, who (i) has completed the courses of specialized intellectual instruction and study described in clause (iv) of paragraph (a), and (ii) is performing related work under the supervision of a professional person to qualify himself to become a professional employee as defined in paragraph (a).

(13) In determining whether any person is acting as an "agent" of another person so as to make such other person responsible for his acts, the question of whether the specific acts performed were actually authorized or subsequently ratified shall not be controlling.

(14) The term "health care institution" shall include any hospital, convalescent hospital, health maintenance organization, health clinic, nursing home, extended care facility, or other institution devoted to the care of sick, infirm, or aged person.<sup>1</sup>

(July 5, 1935, ch. 372, §2, 49 Stat. 450; June 23, 1947, ch. 120, title I, §101, 61 Stat. 137; Pub. L. 93-360, §1(a), (b), July 26, 1974, 88 Stat. 395; Pub. L. 95-598, title III, §319, Nov. 6, 1978, 92 Stat. 2678.)

#### REFERENCES IN TEXT

The Railway Labor Act, referred to in pars. (2) and (3), is act May 20, 1926, ch. 347, 44 Stat. 577, as amended, which is classified principally to chapter 8 (§151 et seq.) of Title 45, Railroads. For complete classification of this Act to the Code, see section 151 of Title 45 and Tables.

#### AMENDMENTS

1978—Par. (1). Pub. L. 95-598 substituted "cases under title 11" for "bankruptcy".

1974—Par. (2). Pub. L. 93-360, §1(a), struck out provisions which had excepted from definition of "employer" corporations and associations operating hospitals if no part of the net earnings inured to the benefit of any private shareholder or individual.

Par. (14). Pub. L. 93-360, §1(b), added par. (14).

1947—Act June 23, 1947, amended section generally to redefine terms used in this subchapter and to define several new terms.

#### EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-598 effective Oct. 1, 1979, see section 402(a) of Pub. L. 95-598, set out as an Effective Date note preceding section 101 of Title 11, Bankruptcy.

#### EFFECTIVE DATE OF 1974 AMENDMENT

Amendment by Pub. L. 93-360 effective on thirtieth day after July 26, 1974, see section 4 of Pub. L. 93-360, set out as an Effective Date note under section 169 of this title.

#### EFFECTIVE DATE OF 1947 AMENDMENT

For effective date of amendment by act June 23, 1947, see section 104 of act June 23, 1947, set out as a note under section 151 of this title.

### § 153. National Labor Relations Board

#### (a) Creation, composition, appointment, and tenure; Chairman; removal of members

The National Labor Relations Board (hereinafter called the "Board") created by this subchapter prior to its amendment by the Labor Management Relations Act, 1947 [29 U.S.C. 141 et seq.], is continued as an agency of the United States, except that the Board shall consist of five instead of three members, appointed by the President by and with the advice and consent of the Senate. Of the two additional members so provided for, one shall be appointed for a term of five years and the other for a term of two years. Their successors, and the successors of the other

members, shall be appointed for terms of five years each, excepting that any individual chosen to fill a vacancy shall be appointed only for the unexpired term of the member whom he shall succeed. The President shall designate one member to serve as Chairman of the Board. Any member of the Board may be removed by the President, upon notice and hearing, for neglect of duty or malfeasance in office, but for no other cause.

#### (b) Delegation of powers to members and regional directors; review and stay of actions of regional directors; quorum; seal

The Board is authorized to delegate to any group of three or more members any or all of the powers which it may itself exercise. The Board is also authorized to delegate to its regional directors its powers under section 159 of this title to determine the unit appropriate for the purpose of collective bargaining, to investigate and provide for hearings, and determine whether a question of representation exists, and to direct an election or take a secret ballot under subsection (c) or (e) of section 159 of this title and certify the results thereof, except that upon the filing of a request therefor with the Board by any interested person, the Board may review any action of a regional director delegated to him under this paragraph, but such a review shall not, unless specifically ordered by the Board, operate as a stay of any action taken by the regional director. A vacancy in the Board shall not impair the right of the remaining members to exercise all of the powers of the Board, and three members of the Board shall, at all times, constitute a quorum of the Board, except that two members shall constitute a quorum of any group designated pursuant to the first sentence hereof. The Board shall have an official seal which shall be judicially noticed.

#### (c) Annual reports to Congress and the President

The Board shall at the close of each fiscal year make a report in writing to Congress and to the President summarizing significant case activities and operations for that fiscal year.

#### (d) General Counsel; appointment and tenure; powers and duties; vacancy

There shall be a General Counsel of the Board who shall be appointed by the President, by and with the advice and consent of the Senate, for a term of four years. The General Counsel of the Board shall exercise general supervision over all attorneys employed by the Board (other than administrative law judges and legal assistants to Board members) and over the officers and employees in the regional offices. He shall have final authority, on behalf of the Board, in respect of the investigation of charges and issuance of complaints under section 160 of this title, and in respect of the prosecution of such complaints before the Board, and shall have such other duties as the Board may prescribe or as may be provided by law. In case of a vacancy in the office of the General Counsel the President is authorized to designate the officer or employee who shall act as General Counsel during such vacancy, but no person or persons so designated shall so act (1) for more than forty days when the Congress is in session unless a

<sup>1</sup> So in original. Probably should be "persons."