UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 25

MARATHON HEALTH, LLC and OURHEALTH PROFESSIONAL PHYSICIANS GROUP, LLC, a Joint Employer

Employer

Case 25-RC-365021

and

TEAMSTERS LOCAL 135

Petitioner

DECISION AND DIRECTION OF ELECTION

On May 5, 2025, Teamsters Local 135 ("Petitioner" or "Local 135") filed a representation petition under Section 9(c) of the National Labor Relations Act ("Act") seeking to represent certain employees employed by Marathon Health, LLC and OurHealth Professional Physicians Group, LLC (collectively "Employer"). Specifically, Petitioner seeks a unit of all full-time and regular part-time medical assistants, medical receptionists, and patient care coordinators employed at the Marathon-managed clinic located at 5510 South East Street, Building A, Suite B in Indianapolis, Indiana. There are approximately five employees in the petitioned-for unit.

A hearing was held on May 14, 2025, before a hearing officer of the National Labor Relations Board ("Board"). The Employer contends the Regional Director does not possess the authority to process the petition because the Board is unconstitutionally structured and because the Board currently lacks a quorum. Additionally, the Employer argues the petition should be dismissed because it fails to allege the Indiana Teamsters Health Benefits Fund ("Fund") as a joint employer of the employees in the petitioned-for unit, and because Petitioner has a disqualifying conflict of interest where the Fund is a joint employer. Petitioner maintains the Fund is not a joint employer of the employees and that no such conflict of interest exists.

At the outset of the hearing, the hearing officer set forth the burden for proving a disqualifying conflict of interest and a joint employer relationship, including the Board's standard of specific detailed evidence. The parties were provided an opportunity to present their positions, call, examine, and cross-examine witnesses, to introduce into the record evidence of the facts that support their contentions,[1] and to file post-hearing briefs.

The Board has delegated its authority in this proceeding to me under Section 3(b) of the Act. Based on the entire record in this proceeding and relevant Board law, I find that neither the Board's structure nor the Board's lack of quorum bar processing of the instant petition and there

[1] As the Employer's position regarding the Board's structure and lack of quorum are legal in nature and do not require the submission of evidence, I precluded the introduction of evidence on those issues but allowed the parties to fully present their arguments.

is no disqualifying conflict of interest for Petitioner in representing the petitioned-for employees. Additionally, I find that the Fund is not a joint employer of the employees in the petitioned-for unit. Accordingly, I shall direct an election in the petitioned-for unit.

I. FACTS

Marathon Health, LLC ("Marathon") operates and performs health services for its clients through contracted clinical providers. Specifically, Marathon operates approximately 740 clinics across 41 states, including the facility located at 5510 South East Street ("Clinic"), the only facility at issue in this case. Marathon contracts with OurHealth Professional Physicians Group, LLC ("OurHealth") to provide professional clinical services at this location.[2] The petitioned-for medical assistants, medical receptionists, and patient care coordinators, who are all supervised by Marathon Clinical Supervisor Andrea Coryell, work at the Clinic. The Clinic is managed and overseen by Regional Operations Manager Shelby Smith,[3] who reports to Vice President Jennifer Smith Gonzalez, who reports to Senior Vice President Daniel Stafford, all of whom work for Marathon. Stafford reports to Marathon's Chief Operating Officer, which was Michael Michetti until May 2025.[4]

The Clinic was initially opened in 2014 through a management and professional services agreement between the Fund and Activate Healthcare, LLC ("Activate"). The Fund is a Taft-Hartley health-and-welfare plan jointly administered by labor and management for the benefit of its participants, which are Teamsters-represented employees (and their covered dependents) of employers who executed collective-bargaining agreements with eligible Indiana locals of the International Brotherhood of Teamsters. The Fund was created in 1960 solely under the auspices of Teamsters Local 135 but was merged and amended to its present state sometime in the early 2000s to include Teamsters Joint Council 69 and its constituent local unions, along with Teamsters Local 142. The Fund's authority is vested in eight trustees—four representatives appointed by signatory employers, two representatives appointed by Petitioner, and two representatives appointed by Teamsters Joint Council 69. Currently, Local 135's trustees on the Fund are President Dustin Roach and Business Agent Jesse Mikesell.[5]

Under the trustees' delegation of authority, the Fund is operated by Administrative Manager Patricia Wilson[6] and independent consultant Mike Larson. Local 135 President Roach initially sets the wages and pays the wages and benefits of Wilson and the Fund's other seven

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[2] The parties stipulated that Marathon Health and OurHealth Professional Physicians Group are a joint employer of the petitioned-for employees.

[3] At the time of the hearing, according to Marathon COO Michetti, Regional Sales Manager Brittany Wildman was covering for Smith during an extended leave.

[4] Michetti became Marathon's Advisor to the CEO the week before the hearing. For ease of reference, I refer to him as COO throughout this Decision.

[5] In addition to being President of Local 135, Roach is also Vice President of Joint Council 69. However, Joint Council 69 President Robert Warnock (who is also President of Teamsters Local 364) appoints its two Fund trustees. The two Fund trustees appointed by Joint Council 69 are Warnock and Teamsters Local 414 President George Gerdes.

[6] Also referred to in the record as Fund Administrator and Juana Patricia Wilson, respectively.

employees, which are then reimbursed by the Fund.[7] Larson testified that they are covered by Local 135's insurance and pension plans through the Central States Joint Board. Roach further provided undisputed testimony that, while Local 135 nominally employs the Fund employees, the trustees have ultimate authority over their terms and conditions of employment. Of these eight Fund employees, only Wilson has any regular contact with the Clinic and the petitioned-for employees, attending monthly meetings that include Marathon managers, the Clinic's medical providers, and sometimes its other staff. Larson may also attend the monthly meetings, particularly if Wilson is unavailable. At the meetings, Marathon regularly reports on standardized items such as who is on paid time off (PTO) and various issues the Fund, via Wilson, has raised. Michetti gave the example of Wilson receiving calls from patients who felt they were not timely scheduled for appointments by the medical receptionists, and Marathon taking steps to ensure patients were timely seen. In another example, Wilson raised concerns about the high number of virtual appointments for patients, and Marathon ensured patients could be seen in person.

Activate performed clinical services at the Clinic until it sold to Paladina Healthcare, which then merged sometime later to form Everside Health, LLC ("Everside"), which subsequently merged with Marathon in early 2024. Marathon continues to operate under the Activate management and professional services agreement with the Fund.[8] In addition to the Clinic at issue here, Marathon currently operates 33 other clinics to which Fund members have access in Indiana Under the agreement, the Fund reimburses Marathon for the costs of the Clinic's operations, which amounted to approximately $880,000 in 2024 for administrative expenses, payroll, and benefits. In return, Marathon assumes responsibility under the agreement for managing and staffing the Clinic. The record does not show what payments are made between Marathon and OurHealth. While any participant in the Fund is eligible to receive care at the Clinic, the vast majority of its visitors are members of Local 135.[9]

The management and professional services agreement contains rates the Fund pays for certain positions at the Clinic but does not require specific wages or benefits for the Clinic's employees; nor does it give the Fund the right to set Clinic employee wages or benefits. The agreement sets a minimum staffing level but does not specify when individual employees must work. It does not set the work schedule of any particular classification or employee at the Clinic nor give the Fund the authority to set more than the Clinic's operating hours. The agreement does not reference discipline nor give the Fund any authority over discipline of the petitioned-for

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[7] Independent consultant Larson and Local 135 President Roach both testified that Wilson spends 75 percent of her time working for the Fund, which is reimbursed by the Fund, and 25 percent of her time working for Local 135, which is not reimbursed by the Fund (i.e., it is paid only by Local 135). The other seven Fund employees spend 100 percent of their time working for the Fund, which wages are fully reimbursed to Local 135 by the Fund. This includes Larson's successor, who he is currently training.

The record contains an unexecuted draft of a 2023 amended cost-sharing agreement between the Fund and Teamsters Local 135. The record does not contain any such executed cost-sharing agreement. Thus, I give this document no weight.

[8] Marathon COO Michetti testified that the current agreement includes 14 amendments, but Employer Exhs. 12-20 contain only 9 amendments. References to the agreement in this Decision include those 9 amendments.

[9] The Clinic is also open to participants of the Mid-Central Operating Engineers Health and Welfare Fund, which offers reciprocal treatment to Fund participants at the former's Indianapolis, Indiana facility.

employees. Similarly, the agreement does not give the Fund any authority over hiring or discharge of petitioned-for employees. Section 3.2.3 specifies Marathon (formerly Activate) "assum[es] responsibility for staffing and scheduling" for the Clinic and OurHealth (formerly Activate Services PC). The agreement does not give the Fund the authority to supervise or direct the work of the petitioned-for employees.

Larson and Michetti testified that Fund Administrative Manager Wilson participates at some point in the interview process of all the Clinic's hires. Michetti further testified that he thought he "may have heard" of one, or at most two, candidates for "a medical assistant kind of role" that Wilson had rejected and, in his 3 years working for Marathon (formerly Everside), the Clinic had never hired someone Wilson rejected. The record does not contain specifics or otherwise detail the Employer's hiring process or Wilson's role in it, including selection of candidates to interview, ultimate selection of a candidate, or wage rate extended to the selected candidate. There is no record evidence that Wilson has the authority to have a petitioned-for employee terminated.[10]

II. CONFLICT OF INTEREST AND JOINT EMPLOYER STATUS

A. Board Law

1. Conflict of Interest

"Employees have the right to be represented in collective-bargaining negotiations by individuals who have a single-minded loyalty to their interests. Conversely, an employer is under a duty to refrain from any action which will interfere with that employee right and place him even in slight degree on both sides of the bargaining table." *Nassau & Suffolk Contractors' Assn.*, 118 NLRB 174, 187 (1957). "Where the union has direct and immediate allegiances which can fairly be said to conflict with its function of protecting and advancing the interests of the employees it represents, it cannot be a proper representative." *Medical Foundation of Bellaire*, 193 NLRB 62, 64 (1971).

On the other hand, where such a conflict is remote, a union is not disqualified from serving as a bargaining representative. See, for example, *David Buttrick Co.*, 167 NLRB 438, 439 (1967) (finding potential conflict of interest was too remote to disqualify local union from representing bargaining unit where international union could not exert sufficient influence over the local to protect investment made by affiliated pension fund to employer's competitor), enfd. 399 F.2d 505, 507 (1st Cir. 1968). To establish a disabling conflict of interest, a party asserting the conflict bears the burden of showing a "clear and present" danger that the conflict will prevent the union from vigorously representing the employees in the bargaining process, and this burden is "a heavy one." *SuperShuttle International Denver, Inc.*, 357 NLRB 68, 69 (2011); *Alanis Airport Services*, 316 NLRB 1233, 1233 (1995) (citing *Garrison Nursing Home*, 293 NLRB 122, 122 (1989)).

[10] Under the agreement, the Fund reserves the right to object to physicians or providers, which are not included in the petitioned-for unit. The agreement does not reserve this right for any of the petitioned-for classifications.

2. Joint Employer Status

On April 27, 2020, the Board's Final Rule on Joint Employer Status under the National Labor Relations Act ("Rule") took effect.[11] See Sec. 103.40 of the Board's Rules and Regulations. Under the Rule:

> An employer, as defined by Section 2(2) of the National Labor Relations Act (the Act), may be considered a joint employer of a separate employer's employees only if the two employers share or codetermine the employees' essential terms and conditions of employment. To establish that an entity shares or codetermines the essential terms and conditions of another employer's employees, the entity must possess and exercise such substantial direct and immediate control over one or more essential terms or conditions of their employment as would warrant finding that the entity meaningfully affects matters relating to the employment relationship with those employees. Evidence of the entity's indirect control over essential terms and conditions of employment of another employer's employees, the entity's contractually reserved but never exercised authority over the essential terms and conditions of employment of another employer's employees, or the entity's control over mandatory subjects of bargaining other than the essential terms and conditions of employment is probative of joint-employer status, but only to the extent it supplements and reinforces evidence of the entity's possession or exercise of direct and immediate control over a particular essential term and condition of employment. Joint-employer status must be determined on the totality of the relevant facts in each particular employment setting. The party asserting that an entity is a joint employer has the burden of proof.

Sec. 103.40(a). The Rule defines "essential terms and conditions of employment" as "wages, benefits, hours of work, hiring, discharge, discipline, supervision, and direction." Sec. 103.40(b). The Rule makes clear that for substantial direct and immediate control to "meaningfully affect matters relating to the employment relationship with those employees," the actions must have a regular or continuous consequential effect on an essential term or condition of employment. Sec. 103.40(d). A joint employer relationship therefore exists where, under the totality of the circumstances, an employer, while contracting in good faith with an otherwise independent company, "meaningfully affects" matters relating to the employment relationship of a company's employees by exercising substantial direct and immediate control over one or more of the above essential terms and conditions of employment. *Cognizant Technology Solutions U.S. Corp.*, 372 NLRB No. 108 (2023).

In this case, the Employer bears the burden of proof as the party asserting the Fund is a joint employer of the unit employees. Sec. 103.40(a) of the Board's Rules and Regulations.

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[11] On March 8, 2024, U.S. District Judge J. Campbell Barker of the Eastern District of Texas vacated both the Board's 2023 joint employer rule and its rescission of the 2020 Rule. The Board dropped its appeal of Judge Barker's decision on July 19, 2024, prior to the filing of the petition in the instant case. Thus, the 2020 Rule is in effect for this case.

B. Application of Board Law to This Case

The Employer contends the instant petition must be dismissed because (1) Petitioner is unqualified to represent the petitioned-for unit because it possesses a conflict of interest with the Employer, and, subsumed within that argument, (2) the Fund is an unnamed joint employer of the employees in the petitioned-for unit. The evidence in the record does not support either contention.

1. Conflict of Interest

The Employer argues Petitioner is disqualified from representing the employees in the petitioned-for unit because it cannot 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." *Bausch & Lomb Optical Co.*, 108 NLRB 1555, 1559 (1954). Relying on *Centerville Clinics, Inc.*, 181 NLRB 135 (1970), and *Medical Foundation of Bellaire*, 193 NLRB 62 (1971), the Employer argues that Petitioner has an "interest on both sides of the bargaining table" because the Fund, which reimburses the Employer for all costs in operating the Clinic, has a clear interest in the success of the Clinic (and thus the Employer); that Petitioner's negotiations for increased wages and benefits in bargaining with the Employer could negatively affect the Fund's ability to generate financial savings, which in turn could result in increased healthcare costs for the Fund's participants; and that such bargaining attempts by Petitioner necessarily contradict the fiduciary duties Local 135 President Roach owes to the Fund as a trustee. The Employer poses several hypotheticals which it believes exemplify the conflict—that Roach could discharge Administrative Manager Wilson due to the latter's employment with Petitioner; that Petitioner, if authorizing a strike of the Clinic, would likely request its members (who make up the vast majority of the Clinic's patrons) not to enter the Clinic and receive medical treatment; and that, as a trustee of the Fund, Roach could feasibly take the position to shut down the Clinic if it were deemed in the best interests of the Fund's participants, despite this running in clear opposition to the interests of the employees in the petitioned-for unit.

The Employer's assertions contain the same fatal flaw, conflating the Fund with Petitioner. However, Petitioner is a labor organization that represents employee interests with their employers while the Fund is statutory labor-management fund providing health-and-welfare benefits to unionized employees and their dependents. Petitioner does not have any structural control over the Fund, as the latter's trust agreement provides Petitioner only two of the eight trustee positions and, even when combined with other union appointees, only four of the eight trustees are union appointed while management representatives compose the other four. There is no evidence that Petitioner's President Roach or any other Petitioner official somehow dominate or control the decisions and direction of the Fund despite this arrangement. Roach testified unrebutted to examples of differences of opinion he has had with the Fund, indicating he and Petitioner do not rule the Fund unchecked. Similarly, the mere fact that Petitioner initially sets the wages and compensates Wilson and the Fund's other employees does not itself fuse Petitioner and the Fund into a single entity, as Roach testified unrebutted that the Fund ultimately controls their terms and conditions. Under the trust agreement, Wilson exercises only the authority that

the Fund delegates to her[12] and, under Sec. 5.1(w) of the trust agreement, Wilson "act[s] at the direction of the Trustees." The record shows all other Fund employees perform no work for Petitioner.

Both joint employer entities here (Marathon and OurHealth) are certainly at an arm's length distance from Petitioner. The Employer is a national enterprise, operating roughly 740 clinics in 41 states. None of the eight seats on Marathon's board of directors are occupied by representatives of Petitioner (or the Fund).[13] Petitioner does not employ any of the employees of Marathon or OurHealth, either within the petitioned-for unit or outside of it. And, as Marathon COO Michetti testified, no one from Petitioner or the Fund would represent the Employer in collective bargaining.

The Employer's reliance on *Centerville Clinics* and *Medical Foundation of Bellaire* is therefore inapposite. In *Centerville Clinics*, an unfair labor practice case, the Board found a conflict of interest where nearly all board of director members for the employer clinic were "representatives from constituent locals and districts" of the union, including a member of the union's international executive board. 181 NLRB at 139–140. While the trial examiner (the equivalent of today's administrative law judge) considered it "noteworthy" that the "purpose" of the clinic was to serve eligible union members and dependents and the union's Taft-Hartley fund was the "principle source of revenue" for the clinic, id. at 139, the union actually represented the clinic in collective bargaining in that case, to the point where two members of the international executive board "sat on opposite sides of the bargaining table." Id. at 140. Agreements reached in bargaining remained subject to the international union's approval, and it was this "dual role" of the union, "together with its actual participation" on both sides of the table in bargaining, which led to the conclusion that a conflict existed. Ibid. In *Medical Foundation of Bellaire*, another unfair labor practice case involving the United Mine Workers, the union again possessed "substantial membership on the board of trustees" of the employer. 193 NLRB at 64. Indeed, the president of the employer was a member of the union. Citing *Centerville Clinics* for both its holding and factual findings regarding the specific union and Taft-Hartley fund at issue, the trial examiner found the union's conflict of interest "legally debar[red]" it from representing the unit at issue. Ibid. In the instant case, there is simply no evidence of any comparable participation by Petitioner in any executive decision making or negotiating roles for either joint employer.[14]

The Employer's citation to *St. John's Hospital & Health Center*, 264 NLRB 990 (1982), is also unavailing. In that representation case, involving a hospital and union, the Board found a disqualifying conflict of interest where nurse registries used by the hospital were operated by the union, which "exercises effective control of its regions" and "the regions exercise total control over the registries." Id. at 991. Here, as explained above, Petitioner does not dominate or control

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[12] As discussed below, Wilson's authority does not rise to the level of creating a joint employer relationship or establishing the Fund dominates the Employer.

[13] There are no details in the record regarding the structure of OurHealth, including its board of directors (if any such board exists), and the record contains no indication or implication Petitioner has any direct involvement with OurHealth.

[14] As a further dissimilarity from the case before me, both the local union and its international in *Centerville Clinics* were parties to a collective-bargaining agreement with the employer. 181 NLRB at 136. The Employer here has not alleged Petitioner's international union has any such involvement with these decidedly local affairs.

or otherwise direct the actions of the Fund nor the Employer; nor can Petitioner gain dominance or control over the Fund. Compare *Welfare & Pension Funds*, 178 NLRB 14 (1969) (disqualifying local union from representing employees because international union can control local affairs and employer's chief administrator is responsible to committee of union fund trustees), with *Mine Workers Welfare & Retirement Fund*, 192 NLRB 1022 (1971) (finding no conflict of interest where local union represents fund's employees and international union can control local affairs but appoints only 1 of 3 trustee positions of fund). See also *Anchorage Community Hospital, Inc.*, 225 NLRB 575 (1976).

Conversely, the Board's reasoning in *Child Day Care Center*, 252 NLRB 1177 (1980), provides compelling direction for this case. In *Child Day Care Center*, a Taft-Hartley fund operated a day care center, directly employing all its employees. The Board expressly rejected the administrative law judge's reliance on the fact that the union appointed half of the Taft-Hartley fund's trustees to support the conclusion that the union was incompetent to represent the day care center's employees. The Board pointed out that, under its precedents, "a union's participation in a trust fund does not preclude its representation of the Fund's employees where union officials do not represent a majority on the board of trustees and there is no other reason to suppose that the union is unable to approach negotiations with the single-minded purpose of protecting and advocating the interests of employees."[15] Id. at 1177 (citing *Anchorage Community Hospital, Inc.*, 225 NLRB 575 (1976)). Although the Board nonetheless affirmed the finding of a disqualifying conflict of interest, it did so "solely on the dual role" of an individual both as a trustee of the fund and as the "business agent who services the [union]," where there was a specific example of the business agent's participation in a decision to lay off a bargaining unit employee and handle that employee's grievance. Ibid. Notably, the *Child Day Care* Board explicitly rejected the judge's application of *Centerville Clinics* and *Medical Foundation of Bellaire* to the facts at hand because in those cases "the union representatives held a majority on the respondents' governing bodies." Id. at 1177–1178, fn. 9.

Petitioner, which holds 25 percent of the seats *on the Fund* whose members and dependents patronize the Clinic, is not precluded from representing employees *of the Employer* that operates the Clinic.

Moreover, the record evidence fails to establish that Wilson or any other individual holds a dual role with the Employer and Petitioner or that there is otherwise a disabling conflict of interest with Petitioner representing employees working at the Clinic. As discussed below, despite performing work for both the Fund and Petitioner, Wilson does not directly control the daily functioning of the Clinic or the terms and conditions of employment of its employees. The Employer has therefore failed to carry its "heavy" burden in demonstrating that Petitioner's representation of the employees in the petitioned-for unit poses a "clear and present" danger to the bargaining process. *SuperShuttle International Denver*, 357 NLRB at 69. Even assuming, for

[15] In its brief, the Employer labels the Board's statement as "dicta." However, the Board has since adopted administrative law judge decisions that cite *Child Day Care Center* solely for this proposition, for example, *Teamsters Local 688 Insurance & Welfare Fund*, 298 NLRB 1085, 1087 (1990), and *Cooperativa De Credito y Ahorro Vegabajena*, 261 NLRB 1098, 1103 (1982), and never overruled the underlying precedent—*Anchorage Community Hospital*, 225 NLRB 575 (1976), and *Mine Workers Welfare & Retirement Fund*, 192 NLRB 1022 (1971).

the sake of argument, Wilson or a Petitioner agent possessed a conflict of interest, it would not necessarily preclude Petitioner from representing the Employer's employees because their lack of involvement with collective bargaining or direct competition with the Employer fails to rise to the level of disqualifying conflict for Petitioner. *Garrison Nursing Home*, 293 NLRB at 122, 124 (finding "even if [a particular union agent] is shown to have a disqualifying conflict of interest, it does not follow that the [p]etitioner would be absolutely disqualified from representing the [e]mployer's employees" and withholding Board certification of union until conflict ceases, citing *Harlem River Consumers Cooperative, Inc.*, 191 NLRB 314, 319 (1971)).

For the foregoing reasons, I conclude Petitioner does not possess a conflict of interest that would disqualify it from representing the petitioned-for employees.

2. Joint Employer Status of the Fund

To demonstrate the Fund (not Petitioner) is a joint employer with Marathon and OurHealth Professional Physicians Group[16], the Employer is required to show that the three "share or codetermine the employees' essential terms and conditions of employment." Sec. 103.40(a) of the Board's Rules and Regulations. "Essential terms and conditions of employment" means wages, benefits, hours of work, hiring, discharge, discipline, supervision, and direction. Sec. 103.40(b).

The record is completely devoid of evidence that the Fund exerts direct control over the petitioned-for employees' wages, benefits, hours of work, discharge, discipline, supervision, and direction. The Fund's agreement with Marathon sets certain minimum standards regarding the number of employees employed by Marathon and the Clinic's hours of operation; however, the record evidence does not support a conclusion that Wilson or any other Fund employee controls or directs the daily functioning of the Clinic.

Section 103.40(c) describes "Direct and Immediate Control" for each essential term and condition of employment.

> (1) ***Wages.*** An entity exercises direct and immediate control over wages if it actually determines the wage rates, salary or other rate of pay that is paid to another employer's individual employees or job classifications. An entity does not exercise direct and immediate control over wages by entering into a cost-plus contract (with or without a maximum reimbursable wage rate).

Larson testified that the Fund has expressed a concern about high turnover of the Employer's medical assistants and suggested to the Employer that increased wages may alleviate the problem; however, there is no record evidence the Fund specified any particular rate of pay or has ever set any rates of pay for the petitioned-for employees. In fact, Marathon COO Michetti testified that the Employer has discretion over Clinic employees' wages. Thus, the Fund does not exercise direct and immediate control over wages.

[16] The Employer did not argue that the Petitioner was a joint employer with the Fund, Marathon, or OurHealth.

> (2) ***Benefits.*** An entity exercises direct and immediate control over benefits if it actually determines the fringe benefits to be provided or offered to another employer's employees. This would include selecting the benefit plans (such as health insurance plans and pension plans) and/or level of benefits provided to another employer's employees. An entity does not exercise direct and immediate control over benefits by permitting another employer, under an arm's-length contract, to participate in its benefit plans.

There is no record evidence that the Fund is involved with the benefits of Clinic employees. In fact, Michetti testified that the Employer has discretion over Clinic employees' benefits. Thus, the Fund does not exercise direct and immediate control over benefits.

> (3) ***Hours of work.*** An entity exercises direct and immediate control over hours of work if it actually determines work schedules or the work hours, including overtime, of another employer's employees. An entity does not exercise direct and immediate control over hours of work by establishing an enterprise's operating hours or when it needs the services provided by another employer.

As discussed above, the agreement between Marathon and the Fund establishes operating hours for the Clinic but does not set the work schedule for any particular employees, including petitioned-for employees. Thus, the Fund does not exercise direct and immediate control over hours of work.

> (4) ***Hiring.*** An entity exercises direct and immediate control over hiring if it actually determines which particular employees will be hired and which employees will not. An entity does not exercise direct and immediate control over hiring by requesting changes in staffing levels to accomplish tasks or by setting minimal hiring standards such as those required by government regulation.

The only evidence submitted by the Employer which approaches the joint employer standard is the Fund's role in hiring, specifically the involvement of Wilson in the hiring process.

As discussed above, Michetti testified that Wilson essentially holds a "veto" power of some kind over hiring, such that if she objects to a candidate Marathon will not hire that person. However, nothing in the record demonstrates that the Clinic is, in fact, obligated to abide by her objection. Notably, the record does not contain any concrete examples of this veto ever being wielded against applicants for unit positions. Michetti's uncertain hearsay testimony is accorded no weight.[17] As such, this is less than "contractually reserved but never exercised authority" specified in the Rule that, standing alone, does not establish joint employer status. Sec. 103.40(a) of the Board's Rules and Regulations. Further, there is no evidence that Marathon cannot refuse a hire Wilson does not veto or that Wilson otherwise affects hiring at the Clinic. At most, Michetti's testimony establishes that the Clinic in its sole discretion has decided it will defer to Wilson if it receives negative feedback from her regarding a candidate for hire. Thus, the evidence fails to establish the Fund, via Wilson, has "direct and immediate control" over "hiring," which requires the Fund both "actually determines which particular employees will be

[17] Michetti specifically testified regarding petitioned-for positions that "I think I may have heard about [Wilson vetoing] for, like, a medical assistant kind of role, maybe once, maybe twice at the very highest time."

hired *and* which employees will not" (emphasis added) Sec. 103.40(c)(4). Thus, the Fund does not exercise direct and immediate control over hiring.

> (5) ***Discharge.*** An entity exercises direct and immediate control over discharge if it actually decides to terminate the employment of another employer's employee. An entity does not exercise direct and immediate control over discharge by bringing misconduct or poor performance to the attention of another employer that makes the actual discharge decision, by expressing a negative opinion of another employer's employee, by refusing to allow another employer's employee to continue performing work under a contract, or by setting minimal standards of performance or conduct, such as those required by government regulation.

The is no record evidence that the Fund, including via Wilson, has ever terminated an employee of the Employer, let alone an employee in a petitioned-for classification. While the Fund may have the ability to raise concerns, or even have a non-unit *physician* or *provider* removed from the Clinic, nothing in the record indicates such a removal requires their discharge from Marathon or would otherwise impair their ability to work at other Marathon facilities. Thus, the Fund does not exercise direct and immediate control over petitioned-for employees' discharge.

> (6) ***Discipline.*** An entity exercises direct and immediate control over discipline if it actually decides to suspend or otherwise discipline another employer's employee. An entity does not exercise direct and immediate control over discipline by bringing misconduct or poor performance to the attention of another employer that makes the actual disciplinary decision, by expressing a negative opinion of another employer's employee, or by refusing to allow another employer's employee to access its premises or perform work under a contract.

There is no record evidence of discipline, specifically a petitioned-for employee receiving discipline because of the Fund or Wilson. Thus, the Fund does not exercise direct and immediate control over discipline.

> (7) ***Supervision.*** An entity exercises direct and immediate control over supervision by actually instructing another employer's employees how to perform their work or by actually issuing employee performance appraisals. An entity does not exercise direct and immediate control over supervision when its instructions are limited and routine and consist primarily of telling another employer's employees what work to perform, or where and when to perform the work, but not how to perform it.

Michetti testified that Fund Administrator Wilson notifies him and Marathon of deficiencies in service and has advocated for a "secret shopper" program to help identify such deficiencies. He gave the examples of virtual appointments and patients not being timely scheduled as concerns raised by the Fund, via Wilson. However, there is no record evidence that the Fund gave the Employer any instructions, let alone unlimited or nonroutine instructions on how employees should perform their work or that the Employer passed those instructions on to petitioned-for employees. Similarly, there is no record evidence Wilson or Larson spoke directly with the petitioned-for employees about the issues or gave them unlimited or nonroutine instructions on

how to perform their work. Thus, the Fund does not exercise direct and immediate control over supervision.

> (8) ***Direction.*** An entity exercises direct and immediate control over direction by assigning particular employees their individual work schedules, positions, and tasks. An entity does not exercise direct and immediate control over direction by setting schedules for completion of a project or by describing the work to be accomplished on a project.

There is no record evidence that the Fund assigns particular employees their individual work schedules, positions, or tasks. Thus, the Fund does not exercise direct and immediate control over direction.

For the foregoing reasons, I conclude that the Fund is not a joint employer of the petitioned-for employees and Petitioner does not possess a conflict of interest with the Employer that would render it incompetent to represent the employees in the stipulated unit.

III. THE BOARD'S STRUCTURE DOES NOT BAR THE REGIONAL DIRECTOR FROM PROCESSING THE PETITION IN THIS CASE

The Employer raises a threshold argument that the instant petition should be dismissed because the Board's structure violates Article II of the U.S. Constitution by limiting, in Section 3(a) of the Act, the right of the President to remove Board members "for neglect of duty or malfeasance in office but for no other cause."

The Employer's argument that the petition should be dismissed is unpersuasive. The Board recently rejected an identical claim concerning unconstitutional removal protections for Board members in *SJT Holdings, Inc.*, 372 NLRB No. 82 (2024).[18] There is a strong public interest in addressing representation disputes that are of concern to employees and employers alike as soon as possible and I therefore decline to dismiss or otherwise cease processing the instant petition based on the asserted grounds.[19]

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[18] Then-Member Kaplan did not join the majority "in reaching the merits of the Constitutional issue," explaining that it was "for the courts, not the Board, to make determinations on the Constitutional issues being raised." Id. slip op. at 2 fn. 5. I take administrative notice that President Trump's removal of former Board Member Gwynne Wilcox on January 27, 2025, is now the subject of active litigation involving the removal protections in the Act. *See Wilcox v. Trump*, No. 1:25-cv-00334-BAH (D.D.C. filed Feb. 5, 2025).

[19] To the extent the Employer has argued it will be harmed absent dismissal of the petition, the Employer has only generally asserted that it is harmed by having to participate in the administrative process and expend resources. They have offered no evidence that they have suffered harm as a result of the Board's removal protections. This bare assertion is insufficient to warrant dismissal of the petition. *Cortes v. NLRB*, No. 1:23-cv-02954, slip op. at 7 (D.D.C. Apr. 10, 2024) (declining to address the constitutionality of Board members' removal protections because "the Court could 'dispose of the case' on the harm requirement," quoting *Bond v. United States*, 572 U.S. 844, 855 (2014)), *appeal docketed* No. 24-5152 (D.C. Cir. June 10, 2024).

IV. THE BOARD'S ABSENCE OF A QUORUM DOES NOT PREVENT A REGIONAL DIRECTOR FROM CERTIFYING THE RESULTS OF AN ELECTION

The Employer makes a second threshold argument that the Board requires a quorum of three members in order to exercise or delegate its powers and that the authority of a regional director to exercise the powers of Sec. 9 of the Act depends on lawful delegation of power from a three-member Board.

With President Trump's removal of former Board Member Gwynne Wilcox on January 27, 2025, the number of Senate-confirmed Board members was reduced to two. The Board no longer has a quorum[20] and is unable to issue decisions until a quorum is restored under Supreme Court precedent in *New Process Steel, LP v. NLRB*, 560 U.S. 674 (2010). Ordinarily a vacancy in a Board seat "shall not impair the right of the remaining members to exercise all of the powers of the Board." Sec. 3(b) of the Act. This provision, however, is subject to the caveat that "three members of the Board shall, at all times, constitute a quorum." Ibid. The Supreme Court in *New Process Steel* determined that the statutory language requires the Board to have at least three members in order to act.

Sections 9(b) and 9(c) of the Act reserve to the Board the statutory authority to make bargaining unit determinations and resolve questions concerning representation. In 1959, Congress passed, and the President signed, the Landrum-Griffin amendments to the Act which, among other things, added Section 3(b) to the Act permitting the Board to delegate its authority over representation cases to regional directors. The Board subsequently delegated this decisional authority to regional directors in 1961,[21] which was upheld by a unanimous Supreme Court in *Magnesium Casting Co. v. NLRB*, 401 U.S. 137 (1971), rehearing denied 402 U.S. 925 (1971). The delegated authority of regional directors to process representation cases has never been withdrawn. In 2017, following the Court's decision in *New Process Steel*, the Board adopted regulations which, in part, clarify that "all representation cases may continue to be processed, and the appropriate certification should be issued by the Regional Director notwithstanding the pendency of a request for review," during any time when the Board lacks a quorum. Sec. 102.182 of the Board's Rules and Regulations. This regulation did not modify the underlying 56-year-old delegation of authority.

The Employer's argument concerning Board quorum is not new. In the wake of *New Process Steel* numerous parties claimed regional directors lack the ability to exercise their delegated authority when the Board loses a quorum. This argument has been explicitly rejected by the Board. See *Brentwood Assisted Living Community*, 355 NLRB No. 149 at fn. 2 (2010), enfd. 675 F.3d 999 (6th Cir. 2012) (explaining regional director "properly processed the underlying representation proceeding by virtue of the authority delegated to him" notwithstanding the Board lacked a quorum). The Board's conclusion that the ability of the Regional Directors, and the General Counsel, to exercise delegated authority does not cease when the Board lacks a quorum has been routinely upheld by the Circuit Courts of Appeal. See,

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[20] Section 3(a) of the Act establishes the Board, composed of five members appointed by the President by and with the advice and consent of the Senate.

[21] See 26 Fed. Reg. 3889 (1961)

for example, *NLRB v. Bluefield Hospital Co., LLC*, 821 F.3d 534 (4th Cir. 2016); *UC Health v. NLRB*, 803 F.3d 669 (D.C. Cir. 2015); *Osthus v. Whitesell Corp.*, 639 F.3d 841, 844 (8th Cir. 2011); *Frankl v. HTH Corp.*, 650 F.3d 1334, 1354 (9th Cir. 2011); *Overstreet v. El Paso Disposal LP*, 625 F.3d 844, 853 (5th Cir. 2010). See also *SSC Mystic Operating Co., LLC v. NLRB*, 801 F.3d 302, 308 (D.C. Cir. 2015) ("we must defer to the Board's reasonable interpretation that the lack of a quorum at the Board does not prevent Regional Directors from continuing to exercise delegated authority that is not final because it is subject to eventual review by the Board"), cert. denied 580 U.S. 986 (2016). The Supreme Court's decision in *New Process Steel* compels a similar result. As the Court explained, "our conclusion that the delegee group ceases to exist once there are no longer three Board members to constitute the group does not cast doubt on the prior delegations of authority to nongroup members, such as the regional directors or the general counsel. The latter implicates a separate question that our decision does not address." 560 U.S. at 684 fn. 4.

To the extent the Employer cites *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369 (2024), as standing for the proposition that Court's prior analysis is now suspect, the Supreme Court in *Loper Bright* made clear that a holding's "[m]ere reliance on *Chevron* cannot constitute a special justification for overruling such a holding, because to say a precedent relied on *Chevron* is, at best, just an argument that the precedent was wrongly decided." 603 U.S. 369, 375 (2024). In any event, the D.C. Circuit in *UC Health* found the Board's interpretation persuasive on its own terms:

> [A]llowing the Regional Director to continue to operate regardless of the Board's quorum is fully in line with the policy behind Congress's decision to allow for the delegation in the first place. Congress explained that the amendment to the NLRA that permitted the Board to delegate authority to the Regional Directors was "designed to expedite final disposition of cases by the Board." See 105 Cong. Rec. 19,770 (1959) (statement of Sen. Barry Goldwater). Permitting Regional Directors to continue overseeing elections and certifying the results while waiting for new Board members to be confirmed allows representation elections to proceed and tees up potential objections for the Board, which can then exercise the power the NLRA preserves for it to review the Regional Director's decisions once a quorum is restored. And at least those unions and companies that have no objections to the conduct or result of an election can agree to accept its outcome without any Board intervention at all. The Board's interpretation thus avoids unnecessarily halting representation elections any time a quorum lapses due to gridlock elsewhere.

803 F.3d at 675–676. Additionally, *Loper Bright* is inapplicable here because it involves only a standard of review to be applied by the courts.

The Board and the courts have explained that the authority delegated to regional directors in 1961 by a Board acting with a quorum survives any subsequent loss of a quorum. Given this clear precedent, I decline to dismiss the petition based on the Employer's claim that regional directors lose the authority to process representation cases when the Board lacks a quorum.

V. CONCLUSION

Based upon the entire record in this matter and in accordance with the discussion above, I conclude and find as follows:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction herein.[22]

3. Petitioner is a labor organization within the meaning of Section 2(5) of the Act and claims to represent certain employees of the Employer.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

5. The following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act[23]:

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[22] As stipulated by the parties:

> Marathon Health, LLC, a Delaware limited liability company with an office and place of business in Indianapolis, Indiana, is engaged in providing health services to clients through contracted clinical providers and providing or arranging for the provision of certain non-clinical administrative, back-office, and business support services to clinical providers. During the past twelve months, a representative period of time, Marathon Health derived gross revenues in excess of $250,000 from all sales and performance of services. During the same representative period of time, Marathon Health purchased and received at its Indiana facilities goods valued in excess of $50,000 directly from suppliers located outside the State of Indiana.
>
> OurHealth Professional Physicians Group, LLC ("OHPPG"), an Indiana limited liability company with an office and place of business in Indianapolis, Indiana, is engaged in providing professional clinical services, including through a contract with Marathon Health. During the past twelve months, a representative period of time, OHPPG derived gross revenues in excess of $250,000 from all sales and performance of services. During the same representative period of time, OHPPG purchased and received at its Indiana facilities goods valued in excess of $50,000 directly from suppliers located outside the State of Indiana.

[23] At the hearing, the parties stipulated that the petitioned-for employees is an appropriate unit within the meaning of Section 9(b) of the Act, specifically:

> Included: All full-time and regular part-time Medical Assistants, Medical Receptionists, and Patient Care Coordinators employed by the Employer.
>
> Excluded: All professional employees (including but not limited to Physicians and Psychologists), office clerical employees, guards and supervisors as defined in the Act, and all other employees.

Although the parties agreed upon the single-facility scope of the unit, they disputed about how to identify the clinic in the unit description. Given the existence of 33 similar facilities in Indiana, I am including the address of the clinic in the unit description.

Included: All full-time and regular part-time Medical Assistants, Medical Receptionists, and Patient Care Coordinators employed by the Employer at the 5510 South East Street, Indianapolis, Indiana facility.

Excluded: All professional employees (including but not limited to Physicians and Psychologists), office clerical employees, guards and supervisors as defined in the Act, and all other employees.

VI. DIRECTION OF ELECTION

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. Employees will vote whether or not they wish to be represented for purposes of collective bargaining by Teamsters Local 135.

A. Election Details

The election will be held on **Friday, July 25, 2025** from 1:30 p.m. to 2:00 p.m. in the employee breakroom of the clinic located at 5510 South East Street, Building A, Suite B, Indianapolis, Indiana.

B. Voting Eligibility

Eligible to vote are those in the unit who were employed during the payroll period ending **Saturday, July 5, 2025**, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. In a mail ballot election, employees are eligible to vote if they are in the unit on both the payroll period ending date and on the date they mail in their ballots to the Board's designated office.

Employees engaged in an economic strike, who have retained their status as strikers and who have not been permanently replaced, are also eligible to vote. In addition, in an economic strike that commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements, are eligible to vote. Unit employees in the military services of the United States may vote if they appear in person at the polls.

Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period, and, in a mail ballot election, before they mail in their ballots to the Board's designated office; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

C. Voter List

As required by Section 102.67(l) of the Board's Rules and Regulations, the Employer must provide the Regional Director and parties named in this decision a list of the full names (that employees use at work), work locations, shifts, job classifications, and contact information

(including home addresses, available personal email addresses, and available home and personal cell telephone numbers) of all eligible voters.

To be timely filed and served, the list must be *received* by the regional director and the parties by **Tuesday, July 22, 2025**. The list must be accompanied by a certificate of service showing service on all parties. **The region will no longer serve the voter list.**

Unless the Employer certifies that it does not possess the capacity to produce the list in the required form, the list must be provided in a table in a Microsoft Word file (.doc or .docx) or a file that is compatible with Microsoft Word (.doc or .docx). The first column of the list must begin with each employee's last name and the list must be alphabetized (overall or by department) by last name. Because the list will be used during the election, the font size of the list must be the equivalent of Times New Roman 10 or larger. That font does not need to be used but the font must be that size or larger. A sample, optional form for the list is provided on the NLRB website at www.nlrb.gov/what-we-do/conduct-elections/representation-case-rules-effective-april-14-2015.

When feasible, the list shall be filed electronically with the Region and served electronically on the other parties named in this decision. The list may be electronically filed with the Region by using the E-filing system on the Agency's website at www.nlrb.gov. Once the website is accessed, click on **E-File Documents**, enter the NLRB Case Number, and follow the detailed instructions.

Failure to comply with the above requirements will be grounds for setting aside the election whenever proper and timely objections are filed. However, the Employer may not object to the failure to file or serve the list within the specified time or in the proper format if it is responsible for the failure.

No party shall use the voter list for purposes other than the representation proceeding, Board proceedings arising from it, and related matters.

D. Posting of Notices of Election

Pursuant to Section 102.67(k) of the Board's Rules, the Employer must post copies of the Notice of Election accompanying this Decision in conspicuous places, including all places where notices to employees in the unit found appropriate are customarily posted. The Notice must be posted so all pages of the Notice are simultaneously visible. In addition, if the Employer customarily communicates electronically with some or all of the employees in the unit found appropriate, the Employer must also distribute the Notice of Election electronically to those employees. The Employer must post copies of the Notice at least 3 full working days prior to 12:01 a.m. of the day of the election and copies must remain posted until the end of the election. For purposes of posting, working day means an entire 24-hour period excluding Saturdays, Sundays, and holidays. However, a party shall be estopped from objecting to the nonposting of notices if it is responsible for the nonposting, and likewise shall be estopped from objecting to the nondistribution of notices if it is responsible for the nondistribution. Failure to follow the posting requirements set forth above will be grounds for setting aside the election if proper and timely objections are filed.

RIGHT TO REQUEST REVIEW

Pursuant to Section 102.67 of the Board's Rules and Regulations, a request for review may be filed with the Board at any time following the issuance of this Decision until 10 business days after a final disposition of the proceeding by the Regional Director. Accordingly, a party is not precluded from filing a request for review of this decision after the election on the grounds that it did not file a request for review of this Decision prior to the election. The request for review must conform to the requirements of Section 102.67 of the Board's Rules and Regulations.

A request for review must be E-Filed through the Agency's website and may not be filed by facsimile. To E-File the request for review, go to www.nlrb.gov, select E-File Documents, enter the NLRB Case Number, and follow the detailed instructions. If not E-Filed, the request for review should be addressed to the Executive Secretary, National Labor Relations Board, 1015 Half Street SE, Washington, DC 20570-0001, and must be accompanied by a statement explaining the circumstances concerning not having access to the Agency's E-Filing system or why filing electronically would impose an undue burden. A party filing a request for review must serve a copy of the request on the other parties and file a copy with the Regional Director. A certificate of service must be filed with the Board together with the request for review. Neither the filing of a request for review nor the Board's granting a request for review will stay the election in this matter unless specifically ordered by the Board.

Dated: July 18, 2025

Colleen M. Maples

Colleen M. Maples, Regional Director
National Labor Relations Board, Region 25
Minton-Capehart Federal Building
575 North Pennsylvania Street, Suite 238
Indianapolis, Indiana 46204-1520

Form NLRB-707
(4-2015)

United States of America
National Labor Relations Board

NOTICE OF ELECTION

PURPOSE OF ELECTION: This election is to determine the representative, if any, desired by the eligible employees for purposes of collective bargaining with their employer. A majority of the valid ballots cast will determine the results of the election. Only one valid representation election may be held in a 12-month period.

SECRET BALLOT: The election will be by SECRET ballot under the supervision of the Regional Director of the National Labor Relations Board (NLRB). A sample of the official ballot is shown on the next page of this Notice. Voters will be allowed to vote without interference, restraint, or coercion. Electioneering will not be permitted at or near the polling place. Violations of these rules should be reported immediately to an NLRB agent. Your attention is called to Section 12 of the National Labor Relations Act which provides: ANY PERSON WHO SHALL WILLFULLY RESIST, PREVENT, IMPEDE, OR INTERFERE WITH ANY MEMBER OF THE BOARD OR ANY OF ITS AGENTS OR AGENCIES IN THE PERFORMANCE OF DUTIES PURSUANT TO THIS ACT SHALL BE PUNISHED BY A FINE OF NOT MORE THAN $5,000 OR BY IMPRISONMENT FOR NOT MORE THAN ONE YEAR, OR BOTH.

ELIGIBILITY RULES: Employees eligible to vote are those described under the VOTING UNIT on the next page and include employees who did not work during the designated payroll period because they were ill or on vacation or temporarily laid off, and also include employees in the military service of the United States who appear in person at the polls. Employees who have quit or been discharged for cause since the designated payroll period and who have not been rehired or reinstated prior to the date of this election are *not* eligible to vote.

SPECIAL ASSISTANCE: Any employee or other participant in this election who has a handicap or needs special assistance such as a sign language interpreter to participate in this election should notify an NLRB Office as soon as possible and request the necessary assistance.

PROCESS OF VOTING: Upon arrival at the voting place, voters should proceed to the Board agent and identify themselves by stating their name. The Board agent will hand a ballot to each eligible voter. Voters will enter the voting booth and mark their ballot in secret. DO NOT SIGN YOUR BALLOT. Fold the ballot before leaving the voting booth, then personally deposit it in a ballot box under the supervision of the Board agent and leave the polling area.

CHALLENGE OF VOTERS: If your eligibility to vote is challenged, you will be allowed to vote a challenged ballot. Although you may believe you are eligible to vote, the polling area is not the place to resolve the issue. Give the Board agent your name and any other information you are asked to provide. After you receive a ballot, go to the voting booth, mark your ballot and fold it so as to keep the mark secret. DO NOT SIGN YOUR BALLOT. Return to the Board agent who will ask you to place your ballot in a challenge envelope, seal the envelope, place it in the ballot box, and leave the polling area. Your eligibility will be resolved later, if necessary.

WARNING: This is the only official notice of this election and must not be defaced by anyone. Any markings that you may see on any sample ballot or anywhere on this notice have been made by someone other than the National Labor Relations Board, and have not been put there by the National Labor Relations Board. The National Labor Relations Board is an agency of the United States Government, and does not endorse any choice in the election.

Form NLRB-707
(4-2015)

United States of America
National Labor Relations Board
NOTICE OF ELECTION

AUTHORIZED OBSERVERS: Each party may designate an equal number of observers, this number to be determined by the NLRB. These observers (a) act as checkers at the voting place and at the counting of ballots; (b) assist in identifying voters; (c) challenge voters and ballots; and (d) otherwise assist the NLRB.

VOTING UNIT

EMPLOYEES ELIGIBLE TO VOTE:

Those eligible to vote are: **All full-time and regular part-time Medical Assistants, Medical Receptionists, and Patient Care Coordinators employed by the Employer at the 5510 South East Street, Indianapolis, Indiana facility during the payroll period ending July 05, 2025.**

EMPLOYEES NOT ELIGIBLE TO VOTE:

Those not eligible to vote are: **All professional employees (including but not limited to Physicians and Psychologists), office clerical employees, guards and supervisors as defined in the Act, and all other employees.**

DATE, TIME AND PLACE OF ELECTION

DATE: Friday, July 25, 2025 **HOURS:** 1:30 p.m. to 2:00 p.m.

PLACE: In the employee breakroom of the facility located at 5510 South East Street, Building A, Suite B, Indianapolis, Indiana.

EMPLOYEES ARE FREE TO VOTE AT ANY TIME THE POLLS ARE OPEN.

Form NLRB-707
(4-2015)

United States of America
National Labor Relations Board
NOTICE OF ELECTION

UNITED STATES OF AMERICA

National Labor Relations Board

25-RC-365021

OFFICIAL SECRET BALLOT

For certain employees of

MARATHON HEALTH, LLC AND OURHEALTH PROFESSIONAL PHYSICIANS GROUP, LLC, AS A JOINT EMPLOYER

Do you wish to be represented for purposes of collective bargaining by

TEAMSTERS LOCAL 135?

MARK AN "X" IN THE SQUARE OF YOUR CHOICE

YES	NO
☐	☐

DO NOT SIGN OR WRITE YOUR NAME OR INCLUDE OTHER MARKINGS THAT WOULD REVEAL YOUR IDENTITY. MARK AN "X" IN THE SQUARE OF YOUR CHOICE ONLY.

If you make markings inside, or anywhere around, more than one square, return your ballot to the Board Agent and ask for a new ballot. If you submit a ballot with markings inside, or anywhere around, more than one square, your ballot will not be counted.

The National Labor Relations Board does not endorse any choice in this election. Any markings that you may see on any sample ballot have not been put there by the National Labor Relations Board.

WARNING: This is the only official notice of this election and must not be defaced by anyone. Any markings that you may see on any sample ballot or anywhere on this notice have been made by someone other than the National Labor Relations Board, and have not been put there by the National Labor Relations Board. The National Labor Relations Board is an agency of the United States Government, and does not endorse any choice in the election.

Form NLRB-707
(4-2015)

United States of America
National Labor Relations Board
NOTICE OF ELECTION

RIGHTS OF EMPLOYEES - FEDERAL LAW GIVES YOU THE RIGHT TO:

- Form, join, or assist a union
- Choose representatives to bargain with your employer on your behalf
- Act together with other employees for your benefit and protection
- Choose not to engage in any of these protected activities
- In a State where such agreements are permitted, the Union and Employer may enter into a lawful union-security agreement requiring employees to pay periodic dues and initiation fees. Nonmembers who inform the Union that they object to the use of their payments for nonrepresentational purposes may be required to pay only their share of the Union's costs of representational activities (such as collective bargaining, contract administration, and grievance adjustment).

It is the responsibility of the National Labor Relations Board to protect employees in the exercise of these rights.

The Board wants all eligible voters to be fully informed about their rights under Federal law and wants both Employers and Unions to know what is expected of them when it holds an election. If agents of either Unions or Employers interfere with your right to a free, fair, and honest election the election can be set aside by the Board. When appropriate, the Board provides other remedies, such as reinstatement for employees fired for exercising their rights, including backpay from the party responsible for their discharge.

The following are examples of conduct that interfere with the rights of employees and may result in setting aside of the election:

- Threatening loss of jobs or benefits by an Employer or a Union
- Promising or granting promotions, pay raises, or other benefits, to influence an employee's vote by a party capable of carrying out such promises
- An Employer firing employee to discourage or encourage union activity or a Union causing them to be fired to encourage union activity
- Making campaign speeches to assembled groups of employees on company time where attendance is mandatory, within the 24-hour period before the mail ballots are dispatched
- Incitement by either an Employer or a Union of racial or religious prejudice by inflammatory appeals
- Threatening physical force or violence to employees by a Union or an Employer to influence their votes

The National Labor Relations Board protects your right to a free choice.

Improper conduct will not be permitted. All parties are expected to cooperate fully with this Agency in maintaining basic principles of a fair election as required by law

Anyone with a question about the election may contact the NLRB Office at (317)226-7381 or visit the NLRB website www.nlrb.gov for assistance.