Paragon Systems Inc. *and* Carlos A. Poveda and United Federation Leos-PBA Law Enforcement Officers Security & Police Benevolent Association and International Union, Security, Police and Fire Professionals of America (SPFPA) and California Protective Security Officers Association (CPSOA) and United Trades & Transportation Workers Union Local 323. Case 21-RD-343514

March 25, 2026

DECISION ON REVIEW AND ORDER

BY MEMBERS PROUTY, MURPHY, AND MAYER

The issue presented in this case is whether the Board should reconsider *University of Chicago*, 272 NLRB 873 (1984). In that case, the Board held that where—as here—a petitioned-for unit consists of "guards" within the meaning of Section 9(b)(3) of the National Labor Relations Act, it will not permit a mixed guard-nonguard union (i.e., a labor organization that admits to membership, or is affiliated directly or indirectly with an organization which admits to membership, employees other than guards) to intervene to appear on the ballot or otherwise take advantage of the Board's election processes. Id. at 876.[1]

On June 7, 2024, the Party in Interest—an admitted mixed guard-nonguard union—filed a motion to intervene in these proceedings. On June 11, 2024, the Acting Regional Director issued an Order Denying Motion to Intervene, citing *University of Chicago*. Thereafter, in accordance with Section 102.67 of the Board's Rules and Regulations, the Party in Interest filed a timely request for review, contending that the Board should overrule *University of Chicago*; the Party in Interest also requested a stay of this proceeding.

On July 24, 2024, the Board issued an order staying the election and granting the request for review, as it raised substantial issues warranting review.

Having carefully considered the entire record in this proceeding, including the request for review, we have decided not to reconsider *University of Chicago* at this time. We accordingly affirm the Acting Regional Director's denial of the Party in Interest's motion to intervene.

ORDER

The Order Denying Motion to Intervene is affirmed, and the case is remanded to the Regional Director for further action consistent with this Decision.[2]

Dated, Washington, D.C. March 25, 2026

James R. Murphy, Member

Scott A. Mayer, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

MEMBER PROUTY, dissenting.

The Board granted review in this proceeding to determine whether to reconsider *University of Chicago*, 272 NLRB 873 (1984). In that decision, the Board held that where a representation proceeding involves a petitioned-for unit of guards within the meaning of Section 9(b)(3) of the Act, the Board will preclude a mixed guard-nonguard union—like the Party in Interest in this case, United Trades & Transportation Workers Union Local 323—from intervening in that proceeding or appearing on the ballot. The foundation of the *University of Chicago* decision was that Section 9(b)(3) of the Act should be construed to foreclose any participation in such a representation proceeding by a mixed guard-nonguard union. However, in my view, nothing in Section 9(b)(3) of the Act compels that result. And nothing in the policies of the Act recommend it. To the contrary, *University of Chicago* limits the choice of bargaining representative for guards, thus undermining the key policy goals of the Act to promote "stable labor relations by allowing employees to express fully their wishes as to a collective-bargaining agent." *Bally's Park Place, Inc.*, 257 NLRB 777, 779 (1981). I would overrule *University of Chicago* and return to prior precedent that allowed a mixed guard-nonguard union to intervene and participate in representation elections, with certification of the arithmetical results if that union was the employees' choice in the election.[1] Accordingly, in the present case, I would grant Local 323's motion to intervene.

Section 9(b)(3) of the Act provides that the Board shall not decide that any unit combining guards and nonguards

[1] Sec. 9(b)(3) of the Act prohibits the Board from certifying a mixed guard-nonguard union as the representative of a bargaining unit of guards. *University of Chicago* interpreted the prohibition on certification to also prohibit intervention by a mixed guard-nonguard union.

[2] The Board's July 24, 2024 stay is lifted as of today's order.

[1] *Bally's*, supra, and *William Burns Detective Agency*, 138 NLRB 449 (1962).

is appropriate, and that "no labor organization shall be certified as the representative of employees in a bargaining unit of guards if such organization admits to membership, or is affiliated directly or indirectly with an organization which admits to membership, employees other than guards." Thus, as relevant here, the text of Section 9(b)(3) plainly prohibits Board certification of a mixed guard-nonguard union, but it prohibits *only* Board certification of such a mixed union. All Section 9(b)(3) does is prohibit the Board from placing its certification imprimatur on the choice of representative if it involves the selection of a mixed guard-nonguard union by a unit of guard employees. Guards, like other statutory employees, have a fundamental right under Section 7 "to bargain collectively through representatives of their own choosing." 29 U.S.C. § 157. There is simply nothing in the plain language of Section 9(b)(3) that prohibits the Board from allowing its processes to be used to assist those employees in selecting or retaining the collective-bargaining representative of their choice, even if that representative is a noncertifiable union.

My view was the view of the Board for the 22 years before the *University of Chicago* decision. The Board held in *Burns Detective Agency* that nothing in the terms of Section 9(b)(3) prohibits the Board from permitting mixed guard-nonguard unions from participating in representation elections conducted among guard employees and certifying the arithmetic election results when such unions are victorious. 138 NLRB 449, 452 (1962). The Board reaffirmed this principle in *Bally's Park Place,* supra, 257 NLRB at 779.[2]

Even when the Board in *University of Chicago* reversed course from *Burns* and *Bally's*, it acknowledged that "Section 9(b)(3), read literally, proscribes only the Board's authority to certify a guard nonguard union." 272 NLRB at 874. In the view of the Board in *University of Chicago*, in the absence of a statutory prohibition forbidding the Board from allowing a mixed guard-nonguard union from intervening and the Board certifying arithmetically the election results, the issue before the Board was whether it should construe Section 9(b)(3) broadly or narrowly. Id. at 874 and fn. 12, 876.[3] The Board in *University of Chicago* chose to interpret Section 9(b)(3) broadly so as to preclude participation by a mixed guard-nonguard union in a Board-conducted election as an intervenor.[4]

However, key policy considerations of the Act strongly counsel the Board to narrowly construe Section 9(b)(3). In other words, the Board should construe the provision to prevent the certification of mixed guard-nonguard unions, as Section 9(b)(3) expressly prohibits. But the Board should not construe Section 9(b)(3) more broadly to prohibit such mixed guard-nonguard unions from participating in representation elections (and certifying the arithmetic election results when such unions are victorious), because that participation is not prohibited by the terms of Section 9(b)(3) and to do so cuts against policies of the Act.

A cornerstone of the Act is the guarantee to statutory employees of the right under Section 7 to freely select or reject the collective-bargaining representative of their own choosing. By prohibiting the placement of noncertifiable unions on the ballot, *University of Chicago* plainly impairs employee choice in a Board election. Given that this limitation on the election process for guards—who like other employees have an unrestricted right to choose their bargaining representative—infringes on employees' right to select collective-bargaining representatives "of their own choosing," and does so without (as even the *University of Chicago* majority agreed) a statutory command to do so, it is a limitation that runs against the grain of the Act's policy on free choice. Thus, *University of Chicago* "diminished the employees' Section 7 rights to choose or reject collective-bargaining representation—the cardinal tenet which the Act mandates and which the Board is assigned to effectuate in administering the Act." *University of Chicago*, 272 NLRB at 878 (dissenting opinion). This limitation further undermines the key policy of the Act to promote stable labor relations via employee free choice to select or reject a bargaining representative.

The infringement on employee choice is clearly illustrated when a mixed guard-nonguard union that is the incumbent representative of employees is precluded from

[2] The courts agreed. See *General Service Employees, Local 73 v. NLRB*, 230 F.3d 909, 914 (7th Cir. 2000) ("The only limitation on the Board's power vis-á-vis units including guards is that, under 9(b)(3), the Board may not certify unions to represent them if the union also includes non-guards."); *Rock-Hill-Uris, Inc. v. McLeod*, 236 F.Supp. 395, 398-399 and fn. 15 (S.D.N.Y. 1964) (permitting intervention by mixed guard-nonguard unions "is perfectly consistent with the Congressional scheme" of the Act and is "within the Board's competence and involved its sole discretion"), affd. 344 F.2d 697, 698–699 and fn.15 (2nd Cir. 1965).

[3] See *University of Chicago*, 272 NLRB at 874 fn. 8 (determination whether or not to place a noncertifiable union on a ballot in a Board conducted election is a discretionary Board action).

[4] *University of Chicago* supported its choice based on the legislative history of Sec. 9(b)(3). See 272 NLRB at 875 and fn. 22. It is an axiom of statutory interpretation that there is generally no need to go beyond the statutory text where—as with Sec. 9(b)(3)—its plain language is unambiguous. See, e.g., *Garcia v. United States*, 469 U.S. 70, 75 (1984). There is accordingly no warrant for the Board to analyze the legislative history to resolve the issue here. The Board should construe the words of Sec. 9(b)(3) to mean what they say. In any event, the legislative history does not support the outcome in *University of Chicago*. See *Loomis Armored US, Inc.*, 364 NLRB 144, 147–148 and fn. 29 (2016); *University of Chicago*, 272 NLRB at 877–878 (dissenting opinion); *Bally's Park Place*, 257 NLRB at 779–780 fn. 12.

appearing on the ballot. The employees there are prevented from exercising their free choice to express their support for a "representative[] of their own choosing." The deleterious effect is no less, however, when the precluded union is a nonincumbent, as in the instant proceeding. In that situation, the rule of *University of Chicago* prevents employees from expressing support at the ballot for a nonincumbent intervenor which, based on a proper showing of interest, seeks to appear on the ballot. The policies of the Act fully support permitting both incumbent and nonincumbent mixed guard-nonguard unions to appear on the ballot as an intervenor.[5]

The unencumbered right of employees to select the representative of their choice—be it a certifiable or noncertifiable union—is of paramount importance to the statutory scheme of the Act. Placing a noncertifiable union on the Board ballot as an intervenor for the sole purpose of certifying the arithmetical election results permits employees to more fully exercise their Section 7 rights. This procedure is not prohibited by the language of Section 9(b)(3) and contributes to sound labor relations by permitting the employees to express fully their wishes as to their choice of a representative for collective bargaining. Accordingly, I dissent from my colleagues' decision not to reconsider and overrule *University of Chicago*.

Dated, Washington, D.C. March 25, 2026

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David M. Prouty, Member

NATIONAL LABOR RELATIONS BOARD

[5] There is thus no warrant for permitting only incumbent mixed guard-nonguard unions to appear as an intervenor on the ballot, as the Board held in *Wackenhut Corp.*, 223 NLRB 83 (1976). The Board in *Bally's*, supra at 779, overruled *Wackenhut* and once again permitted nonincumbent intervention, as it had under *Burns*, supra, and that practice continued until the Board disallowed intervention by any mixed guard-nonguard union, incumbent or nonincumbent, in *University of Chicago*.