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**South Sound Inpatient Physicians, PLLC, and Joint Employer PeaceHealth and Union of American Physicians and Dentists. Case 19–RC–338479**

April 30, 2026

DECISION ON REVIEW AND ORDER

BY CHAIRMAN MURPHY AND MEMBERS PROUTY  
AND MAYER

South Sound Inpatient Physicians, PLLC (Sound) provides hospitalist (i.e., hospital medicine) services to acute-care hospital clients, including two PeaceHealth hospitals in Washington—United General Hospital in Sedro Woolley and St. Joseph’s Medical Center in Bellingham—through two separate business client contracts Sound has with each hospital. On March 22, 2024,<sup>1</sup> the Union of American Physicians and Dentists (the Petitioner) filed a petition to represent a unit of approximately 29 full-time, regular part-time and per diem physicians, Doctors of Osteopathy, Nurse Practitioners, and Physician Assistants employed at the two hospitals (hereinafter “the hospitalists”), and asserted that Sound and PeaceHealth are joint employers of the hospitalists. In response, both Sound and PeaceHealth asserted that PeaceHealth is not a joint employer of the petitioned-for hospitalists.

Following a hearing, on May 5, the Regional Director issued a Decision and Direction of Election in which, as is pertinent here,<sup>2</sup> he concluded that PeaceHealth is a joint employer of the hospitalists because PeaceHealth exercises substantial direct and immediate control over the hospitalists’ hiring, supervision, wages, and benefits.<sup>3</sup> In accordance with Section 102.67 of the National Labor Relations Board’s Rules and Regulations, PeaceHealth and Sound filed timely requests for review of the Regional

Director’s Decision and Direction of Election. The Petitioner filed Oppositions to the requests for review.<sup>4</sup>

The requests for review are granted as they raise substantial issues warranting review. Having carefully considered the entire record, including the requests for review and the briefs in opposition, we find that the Petitioner has not met its burden of proof to establish that PeaceHealth is a joint employer of the hospitalists under Section 103.40 of the Board’s Rules and Regulations. 29 CFR § 103.40.<sup>5</sup> Accordingly, we reverse the Regional Director’s joint-employer finding and remand for further appropriate action consistent with this Decision on Review and Order.

I. JOINT-EMPLOYER STANDARD

Section 103.40 of the Rules and Regulations sets forth the Board’s joint-employer standard.<sup>6</sup> Joint-employer status is established “only if the two employers share or co-determine the employees’ essential terms and conditions of employment.” Sec. 103.40(a). To establish that a putative joint employer shares or codetermines essential terms and conditions of another employer’s employees, the putative joint employer

must possess and exercise such substantial direct and immediate control over one or more essential terms and conditions of [the employees’] employment as would warrant finding that the [putative joint employer] meaningfully affects matters relating to the employment relationship with those employees.

*Ibid.* Evidence of the putative joint employer’s indirect control,<sup>7</sup> contractually reserved but never exercised authority,<sup>8</sup> or control over non-“essential” terms and conditions is probative, but only to the extent that such evidence “supplements and reinforces” evidence of direct and immediate control over a particular essential term. *Ibid.* Joint-employer status must be determined based on “the totality of the relevant facts in each particular employment setting,” and the party asserting joint-employer status has the burden of proof. *Ibid.*

*Standard for Determining Joint Employer Status*, 88 Fed. Reg. 73946 (Oct. 27, 2023).

<sup>6</sup> 29 CFR § 103.40. Sec. 103.40 was added to the Board’s Rules and Regulation pursuant to a final rule issued in 2020. See *Joint Employer Status Under the National Labor Relations Act*, 85 Fed. Reg. 11184 (Feb. 26, 2020) (2020 Final Rule). At the time the Decision and Direction of Election issued, the text of Sec. 103.40 reflected a final rule issued in 2023. See *Standard for Determining Joint Employer Status*, 88 Fed. Reg. 73946 (Oct. 27, 2023). The 2023 final rule never took effect, however, and while the instant requests for review were pending the Board issued a final rule restoring the prior (and at all relevant times applicable) regulatory text. See *Withdrawal of the 2023 Standard for Determining Joint Employer Status*, 91 Fed. Reg. 9707 (Feb. 27, 2026).

<sup>7</sup> “Indirect control” is further defined in Sec. 103.40(e).

<sup>8</sup> “Contractually reserved authority over essential terms and conditions of employment” is further defined in Sec. 103.40(f).

<sup>1</sup> All dates hereinafter are in 2024 unless otherwise indicated.

<sup>2</sup> The Regional Director also found that the petitioned-for two-facility unit was appropriate; no party seeks review of that finding.

<sup>3</sup> The election was conducted on June 11; a majority of employees selected the Petitioner as their collective-bargaining representative. In the absence of objections or dispositive challenges, the Regional Director issued a Certification of Representative on June 20.

<sup>4</sup> There is no merit to the Petitioner’s argument that the requests for review do not comply with Sec. 102.67(e) of the Board’s Rules and Regulations because Sound and PeaceHealth did not attach the Decision and Direction of Election or the hearing transcript.

<sup>5</sup> In evaluating the joint-employer question, Member Prouty applies Sec. 103.40 as extant law. However, for the reasons set forth in the preamble to the Board’s now-vacated 2023 joint-employer rule, he does not believe that Sec. 103.40 currently sets forth the proper standard. See

“Essential terms and conditions of employment” are wages, benefits, hours of work, hiring, discharge, discipline, supervision and direction. Sec. 103.40(b). Section 103.40(c) provides examples of what does—and does not—constitute “direct and immediate control” over each of the essential terms and conditions of employment. Section 103.40(d) defines control as “substantial” if the control exercised “has a regular or continuous consequential effect” on an essential term, but not if it is sporadic, isolated, or de minimis. Section 103.40(e) and (f) define “indirect control” and “contractually reserved authority over essential terms and conditions of employment.”

## II. ANALYSIS

The Regional Director found that PeaceHealth exercises direct and immediate control over the hiring, supervision, wages, and benefits of the Sound employees and is therefore a joint employer. For the reasons that follow, we find, to the contrary, that the Petitioner has not demonstrated that PeaceHealth possesses and exercises such substantial direct and immediate control over any of the essential terms and conditions of employment of Sound’s employees as would warrant finding that PeaceHealth meaningfully affects matters relating to the employment relationship with those employees. 29 CFR § 103.40(a).

### A. Hiring

Section 103.40(c)(4) provides that “[a]n entity exercises direct and immediate control over hiring if it actually determines which particular employees will be hired and which employees will not.” 29 CFR § 103.40(c)(4). “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.” *Ibid.*

The Regional Director found that PeaceHealth exercises direct and immediate control over hiring by virtue of the evidence that (1) PeaceHealth management “participated in interviewing at least one provider for a job,” and (2) “the provider employment contracts make being credentialed by PeaceHealth a precondition of employment,” thereby giving the PeaceHealth credentialing committee veto power over the hiring of individual providers. Contrary to the Regional Director, we find that neither circumstance establishes that PeaceHealth exercises substantial direct and immediate control over hiring.

With respect to interviews, the Board has made clear that a putative joint employer’s mere participation in interviews is insufficient to establish that it exercises direct and immediate control over hiring.<sup>9</sup> As for credentialing,

the Petitioner has not established either that PeaceHealth itself establishes the requirements for credentialing of Sound’s hospitalists or that any credentialing requirements that may be attributable to PeaceHealth extend beyond setting minimal hiring standards. The record accordingly does not establish that PeaceHealth actually determines which employees will be hired and which employees will not, as would be necessary to establish control over hiring within the meaning of the Board’s standard.

### B. Supervision

Under Section 103.40(c)(7), direct and immediate control over supervision is limited to either “instructing” the employees in “how to do their work” or “actually issuing employee-performance appraisals.” 29 CFR § 103.40(c)(7). Direct and immediate control over supervision is not established by “limited and routine” instructions that consist primarily of telling the employees “what work to perform, or where and when to perform the work, but not how to perform it.” *Ibid.*

Here, it is undisputed, and the Regional Director acknowledged, that Sound onsite personnel supervise the hospitalists in the sense of overseeing their day-to-day work. The Regional Director nevertheless found that PeaceHealth exercises direct and immediate control over supervision by requiring specific charting practices, completion of certain training, and committee participation as well as by controlling the average number of patients cared for per shift. We find, contrary to the Regional Director, that the Petitioner has not established that PeaceHealth’s limited involvement in these aspects of the hospitalists work goes beyond “telling another employer’s employees what work to perform . . . but not how to perform it,” which does not support finding direct and immediate control over supervision. 29 CFR § 103.40(c)(7). Moreover, in light of the hospitalists’ direct supervision by Sound personnel, we cannot conclude that any PeaceHealth authority reflected by the evidence relied upon by the Regional Director in this part of the analysis is sufficiently substantial to “warrant finding that [PeaceHealth] meaningfully affects matters relating to the employment relationship with” the hospitalists in order to support an overall joint-employer finding. 29 CFR § 103.40(a).

### C. Wages

Under Section 103.40(c)(1), a putative joint employer has direct and immediate control over wages if that entity “actually determines the wage rates, salary or other rate of pay that is paid to another employer’s individual employees or job classifications.” 29 CFR § 103.40(c)(1). “An

<sup>9</sup> See 2020 *Final Rule*, above, 85 Fed. Reg. at 11225 (citing *Flagstaff Medical Center*, 357 NLRB 659, 667 (2011), and *AM Property Holding*

*Corp.*, 350 NLRB 998, 1002 (2007)); 85 Fed. Reg. at 11227 (citing *G. Wes Ltd.*, 309 NLRB 225, 225 fn. 5 (1995)).

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).” 29 CFR § 103.40(c)(1).<sup>10</sup>

In concluding that PeaceHealth has direct and immediate control over Sound’s hospitalists’ wages, the Regional Director found that there was “extensive, specific evidence” that PeaceHealth “exercise[d] control” over the hospitalists’ wages because no wage increases were given during the duration of the prior contracts between Sound and PeaceHealth, but increases were given when the two current contracts were signed. The Regional Director additionally noted that, prior to the signing, Sound repeatedly indicated to its hospitalists that no wage or salary increases could be granted until PeaceHealth agreed to, and signed, the contracts. In addition, the Regional Director relied on the fact that PeaceHealth remits quality payments to Sound when the hospitalists meet certain quality metrics (negotiated between Sound and PeaceHealth); he found that Sound bases the quality bonuses awarded to hospitalists on the quality metrics and that Sound provides bonuses to hospitalists only after receiving PeaceHealth’s quality payments.

The evidence relied upon by the Regional Director, however, establishes at most that Sound makes decisions about wage increases and bonuses for its employees in the light of the financial terms of its contracts with PeaceHealth. The mere fact that the financial terms of a company’s contract for the provision of services may impose some restraint on its choices about what to pay its employees as a matter of economic reality is a feature common to any company-to-company contracting relationship and does not, without more, establish here that PeaceHealth possesses or exercises a kind of control that is relevant to the Board’s joint-employer analysis.<sup>11</sup> We accordingly find, contrary to the Regional Director, that the Petitioner did not meet its burden of showing that PeaceHealth exercised direct and substantial control over Sound’s hospitalists’ wages.

#### D. Benefits

Under Section 103.40(c)(2), an entity exercises direct and immediate control over another employer’s

employees’ benefits “if it actually determines the fringe benefits to be provided or offered” to the other employer’s employees by, for example, “selecting the benefit plans (such as health insurance plans and pension plans) and/or level of benefits provided to another employer’s employees.” 29 CFR § 103.40(c)(2). However, “[a]n 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.” *Ibid.*

The Regional Director concluded that PeaceHealth exercises direct and immediate control over Sound’s hospitalists’ benefits based solely on his finding that PeaceHealth determines “the level of malpractice insurance provided by Sound to” the hospitalists. However, contrary to the Regional Director, the record shows only that PeaceHealth requires Sound to ensure that the hospitalists have malpractice insurance. There is no indication that PeaceHealth has any role in selecting the plan or carrier or dictates the level of coverage; indeed, the individual employment contracts between Sound and the hospitalists expressly leave open the amount of coverage to be provided.<sup>12</sup> These limited statements are accordingly insufficient to establish that PeaceHealth actually determines the malpractice insurance benefit provided to the hospitalists.<sup>13</sup>

#### E. Conclusion

The Petitioner did not meet its burden of introducing sufficient evidence to establish that PeaceHealth exercised substantial direct and immediate control over one or more essential terms and conditions of employment. For the reasons discussed above, the evidence pertaining to hiring, supervision, wages and benefits is too limited to establish substantial and/or direct or immediate control, as those terms are defined in Section 103.40. We accordingly reverse the Regional Director’s findings to the contrary.

#### ORDER

The Regional Director’s finding that PeaceHealth is a joint employer of the petitioned-for employees is reversed, and the case is remanded to the Regional Director for further appropriate action consistent with this Decision on Review and Order.

<sup>10</sup> The record in this case does not include the contracts between Sound and PeaceHealth, and we need not address whether this principle applies here.

<sup>11</sup> See *2020 Final Rule*, above, 85 Fed. Reg. at 11196, 11227–11228; cf. *Browning-Ferris Industries of California, Inc. v. NLRB*, 911 F.3d 1195, 1220 (D.C. Cir. 2018) (“routine contractual terms, such as a very generalized cap on contract costs . . . would seem far too close to the routine aspects of company-to-company contracting to carry weight in the joint-employer analysis.”).

<sup>12</sup> The individual contracts more specifically state that Sound will provide malpractice insurance “in such amounts as are determined necessary

from time to time by the Employer [i.e., Sound], and at least in such amounts as may be required in order for Employee to maintain good standing at any Facility where Employee provides professional Services pursuant to this Agreement.”

<sup>13</sup> Cf. *Cognizant Technology Solutions U.S. Corp. and Google LLC*, 372 NLRB No. 108, slip op. at 2 (2023) (finding control over benefits where Google “selects the level of benefits provided by requiring Cognizant to provide employees eight fully paid sick days per year, 12 weeks of fully paid parental leave, and six employee assistance program support sessions per year.”)

Dated, Washington, D.C. April 30, 2026

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James R. Murphy, Chairman

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David M. Prouty, Member

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Scott A. Mayer, Member

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