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Union Organizing Alert: Micro-Units May Be Back At The Labor Board

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Few decisions in labor law caused the uproar we saw in 2011 stemming from the National Labor Relations Board's (NLRB) decision in [Specialty Healthcare & Rehabilitation Center of Mobile](#). That decision led to numerous "micro-units" being certified over the course of several years. In 2017, however, the [NLRB overruled Specialty Healthcare](#) and enunciated a new standard that disfavored such units.

Given the [recent changes at the NLRB](#), it may be unsurprising that the agency announced last week it will soon revisit this issue. According to its [press release](#):

"In *PCC Structural's* 365 NLRB No. 160 (2017), as revised in *The Boeing Co.*, 368 NLRB No. 67 (2019), the Board overruled the prior standard for determining if a proposed bargaining unit is an appropriate unit, which was set forth in *Specialty Healthcare & Rehabilitation Center of Mobile*, 357 NLRB 934 (2011). In today's notice, the Board invites the filing of briefs to afford the parties and interested amici the opportunity to address the following questions: 1. Should the Board adhere to the unit-determination standard in *PCC Structural's, Inc.*, 365 NLRB No. 160 (2017), as revised in *The Boeing Company*, 368 NLRB No. 67 (2019)? [and] 2. If not, what standard should replace it? Should the Board return to the standard in *Specialty Healthcare*, 357 NLRB 934 (2011), either in its entirety or with modifications?"

With the new composition of the Board, it is likely *Specialty Healthcare* will be revived. Historically, the NLRB favored all-inclusive “wall-to-wall units” (e.g., production and maintenance employee units in the manufacturing setting). In contrast, micro-units are fractional, as they generally seek to decrease the size of the unit and make union organizing easier.

For example, a union could believe it has ample support in a manufacturing plant among maintenance employees, but not production employees, so it could seek to only represent the maintenance workers – in which case the employer would be left dealing with a labor agreement only applying to half of the workforce and likely resulting in inequities among its employees.

Prior to 2011, the NLRB often disapproved of micro-units, but *Specialty Healthcare* made it easier for unions to seek such groupings – and that could again be the case in the near future.

Employers should take notice of this and prepare for changes on this front.