2017 Ending With A Bang: Obama Era NLRB "Micro Unit" Ruling Reversed

Labor & Employment Law Update

By Jeffrey Risch on December 22, 2017

2017 is coming to an end, and with somewhat of a *Bang!* for labor relations moving forward under Trump's NLRB. In a matter involving PCC Structurals, Inc. and the Intern'l Assoc. of Machinists & Aerospace Workers (19-RC-202188), the NLRB this month overruled its 2011 decision in *Specialty Healthcare & Rehabilitation Center of Mobile*, 357 NLRB 934, and reinstated the traditional community-of-interest standard for determining an appropriate bargaining unit in union representation cases. The essence of the 2017 decision is that the National Labor Relations Act mandates that the NLRB must evaluate, in each and every case, whether the group of employees a union seeks to represent constitutes a unit that is "appropriate" for collective bargaining.

As a reminder… in *Specialty Healthcare*, the NLRB held that if a union petitioned for an election among a particular group of employees, those employees PRESUMABLY shared a community of interest among themselves. And so, if the employer took the position that the smallest appropriate unit had to include employees excluded from the proposed unit, the NLRB could not find the petitioned unit inappropriate unless the employer proved that the excluded employees shared an **"overwhelming"** community of interest with the petitioned-for group. The practical effect of this ruling made it "next to impossible" for an employer to successfully challenge the union's petitioned for "micro-unit".

The Trump NLRB (in a 3-2 party split decision) has now abandoned the "overwhelming" community-of-interest standard stating that "there are sound policy reasons for returning to the traditional community-of-interest standard that the Board has applied throughout most of its history…"

This PCC Structurals case involved a Regional Office's finding that a petitioned for unit (a "micro-unit") of approximately 100 welders was appropriate for collective bargaining. A "micro-unit" is a small and discrete subset of employees at a particular worksite or worksites, which a union seeks to represent. It is the opposite of a "wall-to-wall unit" that would encompass the majority of an employer's non-supervisory employees. Applying *Specialty Healthcare*'s "overwhelming community of interest" standard, the Regional Director rejected the employer's contention that the smallest appropriate unit was a wall-to-wall

unit of 2,565 employees.

Of course, the more limited that a union defines a petitioned for unit, the less number of employees belong to the unit and the easier it is for the union to "cherry pick" the necessary votes to win an election and get a "foot in the door" of an employer. We saw this work to the union's benefit in many cases since *Specialty Healthcare* (see here).

The Quick Take Away: Despite this favorable ruling for employers who prefer to remain union-free, it may be temporary due to what political party occupies the White House; and it does not prevent unions from successfully petitioning for smaller units at a place of business that would otherwise meet the "community of interest" standard. Indeed, smaller units have always been successfully petitioned for by labor unions under this standard. But, for the time being, big labor may not be able to "cherry pick" a few employees at a time.

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