

SCOTUS Declines To Weigh In On Micro-Units, But There Still Is Hope

June 20, 2017 | [National Labor Relations Board, Labor Relations](#)



David J. Pryzbylski
Partner

On June 19, the U.S. Supreme Court declined to accept an appeal filed by Macy's, Inc., regarding a ruling by the National Labor Relations Board (NLRB) that imposed a micro bargaining unit within one of the company's department stores. Specifically, the NLRB held that a union could seek to represent only the fragrance and cosmetic workers on two floors of the store. In 2016, the U.S. Court of Appeals for the Fifth Circuit [affirmed the NLRB's decision](#), which left the Supreme Court as the final judicial option for the company. With the Supreme Court's decision to deny acceptance of the appeal, the case now officially has concluded. For those unfamiliar with micro-units, when filing an election petition with the NLRB, a union must identify a legally appropriate group of employees (i.e., the "bargaining unit") it seeks to organize. Historically, all-inclusive "wall-to-wall units" (e.g., production and maintenance employee units) were favored by the NLRB. In contrast, micro-units are fractional; generally, unions seek to decrease the size of the unit and make 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. The NLRB previously often disapproved of micro-units, but it issued its now infamous 2011 decision in *Specialty Healthcare & Rehabilitation Center of Mobile* that altered the agency's legal standard regarding bargaining units and made it easier for unions to seek micro-units. Macy's was requesting in its appeal that the Supreme Court overrule *Specialty Healthcare*. While many hoped the Supreme Court would accept Macy's appeal, weigh in on micro-units, and overrule the NLRB's *Specialty Healthcare* decision, other avenues may remain. Indeed, in the past month, legislation has been introduced in Congress that would amend the National Labor Relations Act to [discourage micro-units](#) and the current NLRB Chairman Philip Miscimarra hinted in another case that he will overrule *Specialty Healthcare* if/when a [pro-management majority joins him on the board](#). Thus, micro-units remain an issue to watch, especially in light of the fact that pro-management members are [anticipated to have a majority on the NLRB soon](#).

RELATED PRACTICE AREAS

Labor and Employment
Labor Relations
National Labor Relations Board (NLRB)

RELATED TOPICS

NLRB
SCOTUS