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All The King's Horses And All The King's Men CAN Put Humpty Dumpty Together Again: NLRB Overrules Specialty Healthcare, Potentially Reducing Number Of Fractured Bargaining Units

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The National Labor Relations Board (NLRB) capped one of the most notable weeks in its history by issuing a decision that overruled the agency's now infamous *Specialty Healthcare & Rehabilitation Center of Mobile*, 357 NLRB 934 (2011), decision. That decision paved the way for a slew of micro-units being certified by the NLRB over the last five-plus years (despite the NLRB's assurances back in 2011 that its holding in *Specialty Healthcare* would only apply to healthcare bargaining units).

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, they 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 *Specialty*

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Healthcare altered the NLRB's legal standard regarding bargaining units and made it easier for unions to seek such units. Specifically, the NLRB held in *Specialty Healthcare* that an employer opposing a micro-unit had to show the "larger" unit desired by the company shared an "overwhelming community of interest" with the smaller unit sought by a union – an almost impossibly high standard. *Specialty Healthcare* resulted in fractured units around the country and many headaches for employers.

Fast forward to Dec. 15, 2017. In PCC Structurals, Inc., the newly Trump-appointed NLRB members overruled *Specialty Healthcare* and eliminated the "overwhelming community of interest" standard for employers opposing micro-units. The board stated the following in a press release on the new case: In a 3-2 decision involving PCC Structurals, Inc., the National Labor Relations Board overruled *Specialty Healthcare & Rehabilitation Center of Mobile*, 357 NLRB 934 (2011) (*Specialty Healthcare*), and reinstated the traditional community-of-interest standard for determining an appropriate bargaining unit in union representation cases.

The National Labor Relations Act provides that the Board must decide in each case whether the group of employees a union seeks to represent constitutes a unit that is 'appropriate' for collective bargaining. … The Board has now abandoned the 'overwhelming' community-of-interest standard. In today's decision, the Board stated that 'here are sound policy reasons for returning to the traditional community-of-interest standard that the Board has applied throughout most of its history, which permits the Board to evaluate the interests of all employees—both those within and those outside the petitioned-for unit—without regard to whether these groups share an 'overwhelming' community of interests.'

By abandoning *Specialty Healthcare*, this likely will result in a reduction in the number of micro-units certified by the board going forward. Great news for employers. Excellent end to an epic week at the NLRB, which saw significant reversals of other Obama-era precedent and an announcement that the board may be seeking to rescind the "ambush election rule."