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The Gifts Keep On Comin': NLRB GC Memo Signals Favorable Change For Employers In Union Elections

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On Dec. 15, the National Labor Relations Board announced in its *PCC Structurals, Inc. decision* that it had overruled its infamous *Specialty Healthcare* precedent and eliminated the "overwhelming community of interest" standard for employers opposing micro-units.

According to the NLRB's press release on *PCC Structurals*: "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.'"

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

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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 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.

In the wake of *PCC Structurals*, the NLRB General Counsel issued a memo on Dec. 22 that directs NLRB Regional Directors – who preliminarily decide scope-of-unit issues – to immediately start applying the *PCC Stucturals* standard. In fact, the memo instructs Regional Directors to consider whether proposed units in pending election cases are consistent with the new standard – even in cases where the "unit issue" had been previously stipulated to or otherwise decided. The memo also notes that the change in the law generally should give rise to the granting of more extension requests related to hearings and submissions of filings.

This memo is a potential game changer for both election cases underway and those being filed in the future. Separately, the NLRB announced on Dec. 12 that it is evaluating whether the current "ambush election rule" should remain as is, be modified, or rescinded in its entirety so more change on this front may be on the horizon. Stay tuned.