

End In Sight For The Micro-Unit Nightmare Spawned By NLRB's Specialty Healthcare Decision? Maybe...

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There appears to be light at the end of the micro-unit tunnel. Anyone following National Labor Relations Board (NLRB) developments knows that few decisions have had as much impact on U.S. labor law as the agency's decision in *Specialty Healthcare & Rehabilitation Center of Mobile*, 357 NLRB 934 (2011). Now, NLRB Chairman Philip Miscimarra just offered hope, saying that the *Specialty Healthcare* decision may have been off-base. That decision paved the way for a slew of micro-units being certified by the NLRB over the last 5-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 Healthcare* altered the NLRB's legal standard regarding bargaining units and made it easier for unions to seek such units. Fast forward to now. On May 10, the NLRB declined to review and reverse a bargaining unit determination in *Cristal USA, Inc.*, 365 NLRB No. 74 (2017), that utilized the *Specialty Healthcare* standard in certifying a micro-unit. Notably, however, Miscimarra issued a dissent in which he explicitly stated that he believes "*Specialty Healthcare* was wrongly decided." He went on to note that the micro-unit in the *Cristal* case was concerning to him because it "promotes insatiability by creating a fractured or fragmented unit." All told, he seems prone to overturn *Specialty Healthcare* once two pro-management members join him on the NLRB and give him a majority, which is anticipated to occur in the coming months. This would be a huge win for companies nationwide.

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