

Fractured Workforce: Federal Court Approves Micro-Unit Certified By NLRB

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Unfortunately, it appears the National Labor Relations Board's (NLRB) [recent trend](#) of certifying micro-units is here to stay until a pro-management majority at the agency is confirmed, which [may not happen as soon as we once thought](#). On Aug. 11, the U.S. Court of Appeals for the D.C. Circuit affirmed an NLRB decision against [Rhino Northwest LLC](#) that found a small, discrete segment of that company's workers could be properly certified as a bargaining unit. In affirming the unit, the board cited its now infamous *Specialty Healthcare & Rehabilitation Center of Mobile*, 357 NLRB 934 (2011), decision. The D.C. Circuit not only affirmed the bargaining unit at issue in the case, it also affirmed the agency's *Specialty Healthcare* bargaining unit test. The D.C. Circuit follows seven other federal courts of appeal in affirming the NLRB's use of the test. In *Rhino Northwest*, a union sought to organize a theatrical staging company's employees. The company employs workers that set up venues for concerts and various events. The union, however, only sought to represent "riggers" at a particular site – which are employees whose functions consist of "using motors to safely suspend objects overhead before events, and safely removing them with motors afterwards." The union did not want to represent any other classifications of workers who were involved in the assembly/disassembly of equipment at the venue (likely due to the fact the union did not believe it had sufficient interest from workers in other job categories). The company, however, disputed the proposed rigger-only "micro-unit" and contended that the only appropriate unit was one that included riggers and the other workers involved in assembly/disassembly. Now that the D.C. Circuit has affirmed the NLRB's decision, the case likely has concluded and the company is stuck with a fractured workforce. 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") that 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, as they, generally, 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. Earlier this year NLRB Chairman Miscimarra signaled that he would [overturn *Specialty Healthcare*](#) if

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given the chance with a pro-management majority behind him. Here's hoping the chairman gets the opportunity before he steps down at the end of this year.