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Too Small? NLRB's New Micro-Unit Test Likely Headed To Federal Court

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The National Labor Relations Board (NLRB)'s test for evaluating whether small "micro-units" sought by unions are appropriate for collective bargaining will likely face scrutiny at the federal level as a key case seems teed up for appeal.

In 2017, the NLRB overruled its infamous *Specialty Healthcare* decision that made it easier for unions to organize smaller employee segments of an employer's business. The Board specifically [overruled the *Specialty Healthcare*](#) "micro-unit" case in a decision involving the company PCC Structural. In that case, however, the NLRB [ultimately determined](#) that a smaller unit sought by the union was appropriate. [According to Bloomberg Law](#), PCC Structural appears poised to appeal that determination to a federal appeals court.

Bloomberg explains:

"The National Labor Relations Board on Nov. 27 ruled that PCC Structural Inc. unlawfully refused to bargain with an International Association of Machinists Union affiliate that represents a unit of the company's welders. Despite the legal framework being more employer-friendly, the board approved a smaller unit of PCC workers in 2018. Board procedure typically doesn't allow employers to challenge unit determinations directly, so they must manufacture an unfair labor practice case to serve as a vehicle to appeal the underlying unit decision. Unions don't have this option if the unit

they petition to represent is rejected. An appeal by PCC would give a federal appeals court the chance to weigh in on the NLRB's test for what some employer groups have labeled 'micro units.'"

The 2017 *PCC Structural*s decision generally was viewed as positive by employers. In fact, it has been cited by the NLRB in the last two years to nix smaller units sought by unions, including in a [case involving Boeing](#). It will be interesting to see how this unfolds in federal court. Stay tuned.