NLRB Places Further Limitations on "Micro Units"

Written by Jonathan A. Keselenko, Christopher Feudo, Leah S. Rizkallah

September 18, 2019

On September 9, 2019, the National Labor Relations Board ("NLRB") clarified its standard for reviewing the appropriateness of small bargaining units within larger workforces, sometimes referred to as "micro units." The ruling gives employers guidance on how the NLRB will apply the so-called "community of interest" standard in such cases and gives the NLRB significant leeway to reject such units.

The NLRB's decision concerned a bargaining unit at a Boeing Co. plant in South Carolina. In May 2018, the International Association of Machinists won an election to represent 178 flight-readiness technicians at the facility, which employed over 2,700 production and maintenance workers. The NLRB Regional Director approved the unit, applying the "community of interest" standard announced by the NLRB in its December 2017 *PCC Structurals* decision. Boeing Co. appealed the decision, arguing that a larger unit, which had rejected the union by a wide margin in a 2017 election, was the appropriate unit.

In a 3-to-1 decision, the NLRB blocked the smaller unit. Finding that *PCC Structurals*, and the precedent on which it was based, had not clearly described how the employees' shared and distinct interests should be weighed or how the standard should be applied, the NLRB clarified that *PCC Structurals* contemplated a three-step process for determining the appropriateness of a bargaining unit.

First, the NLRB must determine whether the workers within the unit share a community of interest. Second, the Board must determine whether the employees excluded from the unit have meaningfully distinct interests in the context of collective bargaining that outweigh similarities with unit members. According to the NLRB, the inquiry "does not require that distinct interests must outweigh similarities by any particular margin, nor does it contemplate that a unit would be found inappropriate merely because a different unit might be more appropriate." Rather, the NLRB simply must "analyze the distinct and similar interests and explain why, taken as a whole, they do or do not support the appropriateness of the unit." Third, the NLRB must look to any agency guidelines specific to the employer's industry. Applying this restated standard to the Boeing unit, the NLRB determined the petitioned-for unit was inappropriate, concluding that the technicians in the unit did not share an internal community of interest, and they did not have sufficiently distinct interests from the excluded employees (there were no industry-specific guidelines applicable to the case).

The decision in *Boeing Co.* marks a further retraction from the Obama-era standards that allowed unions to find success by organizing smaller units. While some smaller units have been approved under *PCC Structurals*, they will face increased scrutiny and will be easier for employers to challenge.

RELATED PRACTICES

- Labor & Employment
- Labor Relations