Employment Law Alert: NLRB Rejects “Micro-Unit” Community of Interest Standard

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In *PCC Structurals, Inc.*, 365 NLRB No. 160 (2017), the National Labor Relations Board ("NLRB" or the "Board") invalidated *Specialty Healthcare & Rehabilitation Center of Mobile*, 357 NLRB 931 (2011), reverting back to the "traditional" community of interest standard applied to petitioned-for bargaining units. In its 2011 *Specialty Healthcare* decision, the Board adopted a new standard, requiring an employer to demonstrate that its proposed bargaining unit shares an "overwhelming community of interest" with the petitioned-for unit sought by the union. This resulted in unions seeking smaller "micro-units" that were generally easier to organize.

In *PCC Structurals*, the Board, in a 3-2 decision, overruled *Specialty Healthcare*, primarily relying on the specific language in and the legislative history of the National Labor Relations Act ("NLRA" or the "Act"). In support of its holding, the Board cited language in the Act that states, "In determining whether a unit is appropriate . . . the extent to which the employees have organized *shall not be controlling*." The Board further identified legislative history indicating the Board's review of an appropriate unit was never meant to be perfunctory or deferential, which was essentially what *Specialty Healthcare* mandated. The Board also attacked the *Specialty Healthcare* standard on the basis that it ignored the organizing rights of all employees excluded from the petitioned-for unit who nonetheless may share a substantial community of interest with the petitioned-for employees. Reverting back to the previous standard, the NLRB made clear that, going forward, it will "determine whether the petitioned-for employees share a community of interest sufficiently distinct from employees excluded from the proposed unit to warrant a separate appropriate unit."

PCC Structurals represents another major pro-employer decision decided in the brief window where the NLRB had a Republican majority for the first time in nearly a decade. By rejecting the "overwhelming community of interest" standard, the Board has now made it more difficult for unions to cherry-pick smaller groups of employees in the hopes of increasing the odds of a successful union campaign. It will be interesting going forward to see how this new standard influences union organizing efforts and is applied by NLRB regional directors, who are the initial adjudicators of any challenge to the scope of a union's proposed bargaining unit. For now, employers should be pleased with the reversion back to the more traditional community of interest standard.