

“Micro-Units” Eliminated: NLRB Overturns Specialty Healthcare



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Adding to the list of falling precedents in the waning days of Chairman Miscimarra’s term, on Friday, the NLRB reversed another of the seminal decisions of the Obama-Board when it overruled the [highly controversial *Specialty Healthcare and Rehabilitation Center of Mobile*](#), 357 NLRB 934 (2011) [decision](#). The 3-2 decision in [PCC Structurals, Inc.](#), 365 NLRB No. 160 (2017) erased the much derided concept of “micro-units” and reinstated the traditional community of interest test for use in determining the appropriate bargaining unit in representation cases. The newly-readopted traditional test considers factors such as functional integration, employee skill, employee interchangeability, working conditions, wages and benefits, common supervision, and bargaining history to determine whether a proposed unit of workers shares a community of interest.

In challenging a petitioned for a bargaining unit, *Specialty Healthcare* had required an employer to demonstrate that employees that a union did not share an “overwhelming” community of interest with the petitioned-for group of employees in order for the excluded employees to be eligible for inclusion in the union’s unit. The Board used the traditional test only as the starting point of the inquiry, also requiring the employer to prove that the petitioned-for unit was “truly inappropriate.” As a result, the *Specialty Healthcare* decision led to an influx of smaller bargaining units comprised of, for example, a single department of employees instead of the more traditional broader units of employees sharing interests across an organization.

The Board, in *PCC Structurals*, abandoned the “overwhelming” community of interest

standard, reasoning that the traditional standard “that the Board has applied throughout most of its history” allows the Board to “evaluate the interests of all employees – both those within and those outside the petitioned-for unit.”

Like the other decisions from the Board in the last two days, this decision was not a surprise. Indeed, the departing Chairman Miscimarra hinted in [May](#) that *Specialty Healthcare* could be on its last legs when he noted that he believed *Specialty Healthcare* was wrongly decided. Given that Chairman’s term is set to expire on Saturday, December 16, he was able to reverse the perceived wrong he saw in *Specialty Healthcare* on his way out the door.

Just as in the other Obama-Board holdings that have fallen in recent days, Members Pearce and McFerran forcefully dissented in the decision.

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