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## Labor & Employment Bulletin

### NLRB DECISION MAKES IT EASIER TO UNIONIZE EMPLOYER FACILITIES

On Tuesday, August 30, 2011, the National Labor Relations Board ("NLRB") issued a decision in *Specialty Healthcare and Rehabilitation Center of Mobile* that will make it far easier for unions to organize private sector employers. This Decision redefines what constitutes a unit of employees appropriate for collective bargaining and applies in all industries, not just health care.

In the past, when a union petitioned the NLRB for an election covering employees in an "appropriate unit," that unit generally consisted of all of the employees in the workplace that shared a "community of interest." In a manufacturing setting, such a unit would typically include all of the production and maintenance employees in the workplace, i.e. a "wall-to-wall" unit. To prevail in the representation election, the union had to convince a simple majority of all the employees from the proposed voting unit to cast a ballot for union representation.

In the words of Board Member Brian Hayes' dissent, the *Specialty Healthcare* decision redefines "the test of an appropriate unit by looking only at whether a group of employees share a community interest among themselves and make[s] it *virtually impossible* for a party opposing this unit to prove that any excluded employees should be included." (Emphasis added). The test announced by the NLRB varies significantly from the analysis that has

been applied by the NLRB for decades.

In practical terms, a union may now cherry-pick only those employees it believes support the union, in some cases a single job classification. The burden now falls on the employer to show that the excluded employees should be in the unit because they share an overwhelming community of interest with the union's cherry-picked employees.

The new standard makes it significantly easier for unions to organize almost any workplace. Instead of trying to organize, for example, a unit of set-up men, assemblers, finishers, warehouse men, loaders and dispatchers, a union may now focus on the two set-up men it knows strongly support the union. This will allow unions the opportunity to organize from the inside out, and could lead to multiple micro-bargaining units and force employers to negotiate multiple contracts within a single workplace. The Board's *Specialty Healthcare* decision is expected to appreciably increase the number of unionized workplaces. Employers should give immediate consideration to the effect of the decision on their respective businesses.

**To discuss and further consider the implications of the Specialty Healthcare decision, please contact a member of Benesch's Labor and Employment Practice Group:**

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