CLIENT ALERTS & INSIGHTS

NLRB Reaffirms Test on "Micro-Units"; Blocks Mechanics Unit at Boeing in South Carolina

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Authors: Adam Primm, W. Eric Baisden

On September 9, 2019, the National Labor Relations Board ("NLRB") continued its recent wave of activity in *Boeing*, 368 NLRB No. 67 (Sep. 9, 2019), by reaffirming its December 2017 decision in *PCC Structurals*, 355 NLRB No. 160 (2017) (see prior alert here) that outlined when a micro-unit could be appropriate.

Under *PCC Structurals*, the Board found that workers in a proposed micro unit must share a community of interest with each other that is meaningfully distinct from the employees excluded from the proposed micro unit. That decision overturned the Obama-era *Specialty Healthcare* decision that stated that a proposed unit was considered appropriate unless the excluded workers shared an "overwhelming community of interest" with the micro unit. In *PCC Structurals*, the burden is on the employees in the proposed micro unit to show that they are sufficiently distinct from others, which shifted the *Specialty Healthcare* burden off of employers to show the overwhelming community of interest.

In *Boeing*, the NLRB found that the regional director misapplied the *PCC Structurals* micro unit test. In *Boeing*, the regional director found that a micro unit of 175 flight-line readiness technicians and technician inspectors out of approximately 2,700 production and maintenance employees at the Boeing facility constituted an appropriate micro unit. The Board found that the regional director misapplied the test laid out in *PCC Structurals* and improperly recognized the micro unit for two reasons. First, the NLRB found that the proposed unit was not appropriate because the two worker classifications did not share a community of interest with each other. While the flight readiness technicians and inspectors share some interests (identical terms and conditions of employment, frequent daily contact with each other, and many of the same skills and training), they also belonged to separate departments and did not share supervision at any level below the CEO. Furthermore, their job functions were sufficiently distinct as the technicians complete mechanical work and the inspectors assure quality. Finally, there was never any interchange between the two positions.

Second, even if the two classifications shared a community of interests, that theoretical community of interest is not sufficiently distinct from the interests of the other employees excluded from the micro unit. The included classifications shared a high degree of functional integration with the excluded employees in that they all worked to produce a single product. Moreover, the technicians and inspectors are only exclusively responsible for about 1 percent of tasks necessary to deliver a single aircraft and otherwise aid in production stages alongside, or in place of, excluded employees. Even prior to *PCC Structurals*, the NLRB had held that it was inappropriate to carve out a "disproportionately small portion of a large, functionally integrated facility as a separate unit." Citing *Publix Super Markets*

, 343 NLRB 1023 (2004). Furthermore, some included technicians are in the same department as excluded technicians. Some included inspectors are included in the same department as excluded inspectors. On the other hand, other than higher wages, the included employees mostly shared the terms and conditions of employment, including policies and benefits, with excluded employees. Included and excluded inspectors and technicians shared almost all skills and training, other than a requirement to hold a particular license required by the FAA. Otherwise, the included employees used the same skills as the excluded employees. Despite the higher wages, required license, and lack of interchange with other jobs, the NLRB otherwise found that the included employees shared far more interests with excluded employees than were meaningfully distinct. Therefore, the NLRB reversed the regional director's certification of the micro unit as appropriate and dismissed the petition.

For more information, contact a member of the firm's Labor & Employment Practice Group.

Eric Biasden | ebaisden@beneschlaw.com | 216.363.4676

Adam Primm | aprimm@beneschlaw.com | 216.363.4451