The NLRB Notice and Invitation to File Briefs in Specialty Healthcare, 356 NLRB No. 56

JANUARY 18, 2011

The National Labor Relations Board (“the NLRB”) issued a Notice stating that it may revise the current rules in order to allow separate units, such as certified nursing assistants only or housekeeping only, as bargaining units. The proliferation of small bargaining units could be problematic as it would likely impede operations of health care facilities. The Board has invited all interested persons and entities to file briefs addressing the issue.

In 1989, the Board promulgated several rules regarding appropriate units in the health care industry. For acute care facilities, the Board determined that eight units, or combinations of those units, were generally appropriate. In nursing homes and other nonacute care facilities, the Board decided that it would determine the appropriate units “by adjudication,” or on a case-by-case basis. Rule 103.30(g). However, the court may abandon this case-by-case rule and instead adopt a new rule, not through a formal rulemaking process, but by deciding a single case, the Specialty Healthcare case.

On December 22, 2010, the Board filed a Notice and Invitation to File Briefs in connection with a matter involving Specialty Healthcare and Rehabilitation Center (“Specialty Healthcare”). The specific issue before the Board in that matter is whether a unit comprised of solely certified nursing assistants is an appropriate bargaining unit at Specialty Healthcare. The Board has consistently held that a single service and maintenance unit, which includes all nonprofessional job titles, is the presumptively appropriate bargaining unit in this context. However, it is clear that the Board may abandon this approach in favor of allowing numerous bargaining units, each unit being comprised of only one job title.

Board Member Brian Hayes dissented from the Notice and Invitation to File Briefs, stating that when enacting the 1974 amendments to the National Labor and Relations Act, “both the Senate and House Reports directed that the Board give due consideration to preventing proliferation of units in the health care industry.” In the health care industry specifically, there is a need for uninterrupted and seamless operations. The proliferation of numerous bargaining units could lead to interruptions in operations, increased operational costs, and facilities having multiple bargaining obligations.

Because the Board intends to promulgate a new rule regarding appropriate bargaining units through its decision in the Specialty Healthcare case, rather than through formal rulemaking procedures, a party must file a brief in order for its position and concerns to be heard by the Board.

Briefs must be filed with the Board in Washington, D.C. by February 22, 2011.

If you have any questions or if you would like to discuss filing a brief in the Specialty Healthcare case, please contact any of the following members of Benesch's Labor & Employment Practice Group:

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