# NLRB Hands Down More Employer-Friendly Rulings

In the spirit of the holiday season, the National Labor Relations Board ("NLRB" or "the Board") has provided employers with two more "presents" in the form of two new Board decisions. Continuing their **trend from last week**, on Friday, the Board modified two additional standards that were established during the previous administration's Board.

**Redefined "Community of Interest" Standard**

In the petition, unions have the first attempt to define which employees are part of the potential bargaining unit and can therefore vote in a representation election. Under *Specialty Healthcare*, the Board established a very high standard for an employer to modify that proposed bargaining unit—employers were required to show that employees they wanted to include share an "overwhelming" community interest with the union's proposed organizing group—the "micro-unit" standard.

In Friday's ruling in *PCC Structurals Inc. and International Association of Machinists & Aerospace Workers AFL-CIO District Lodge W24*, the Board overruled *Specialty Healthcare*, reinstating the well-known traditional "community-of-interest" standard for determining an appropriate bargaining unit in union representation cases.

By reverting to the traditional "community of interest" test, a bargaining unit will again be based on a balanced assessment of how the workers are organized and classified, the types of jobs they do, and their skills and training, without regard to whether any groups share an "overwhelming" community of interests. Specifically, the new "community of interest" 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.

This new standard negates the *overwhelming* strategic advantage unions had in choosing which employees to include or exclude from a proposed bargaining unit (pun intended!).

**Restored Standard of Duty to Bargain Over "Changes" to Employment Conditions**

Pursuant to the *DuPont* ruling from 2016, employers were required to bargain with unions before implementing "changes" or revisions to employment conditions even if the employers had a strong history of making such changes.

In the Board's *Raytheon Network Centric Systems and United Steel, Paper & Forestry, Rubber, Manufacturing, Energy, Allied Industrial & Service Workers International Union, AFL-CIO*, the Board restored a 50-year-old precedent allowing businesses to change policies without a union's permission if they've taken similar actions before.

So long as employers can show that they had typically made similar operational or business decisions in the past, the return to the "dynamic status quo" doctrine will allow employers to make unilateral "changes" in employment terms, such as modifying benefit plans, without having to bargain with the union.

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