



NLRB Boosts 'Micro Units' With Macy's Decision

News

7.29.14

Steve Bernstein was quoted in the *Corporate Counsel* article "NLRB Boosts 'Micro Units' With Macy's Decision" that was featured on July 29, 2014.

In 2011, the National Labor Relations Board (NLRB) issued a memorable decision in *Specialty Healthcare and Rehabilitation Center of Mobile*. The ruling, which was eventually upheld by a federal court of appeals, dealt a blow to employers: establishing a tougher standard for those seeking to prevent small collective bargaining groups known as "micro units," or "micro unions," from forming in their workplaces.

Another ruling by the labor board handed down on July 22 expanded on the *Specialty Healthcare* decision, showing that the board will apply the same rules to retail workers looking to form a micro unit that it did to health-care workers. In its 3-1 Macy's decision, the NLRB granted a victory to the United Food and Commercial Workers International Union, and opened a door to further micro union organizing efforts in the retail industry.

In its ruling that said the cosmetics and fragrance workers can in fact unionize, the NLRB relied on a "community of interest" test, determining that the members of the micro unit are a readily identifiable group that has enough concerns in common to legally band together. However, it also applied a much newer standard straight out of *Specialty Healthcare*: the idea that in order to prove that the rest of the workers should be part of the unit too, the employer has to demonstrate that they share "an overwhelming community of interest" with the original group.

Meeting the burden of proving that the community of interest is "overwhelming" across a business or a store appears to be close to impossible at this point, Steve told CorpCounsel.com. "That might explain why you've seen such a strong opposition within the business community," he said. "It's hard to conceive of a set of facts that is going to meet this standard."

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