Multi-Location Retail Store Not "Appropriate" For Bargaining

Insights
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The National Labor Relations Board(NLRB) recently held that a proposed bargaining unit of 32 Connecticut stores of Sleepy's Inc. was not an appropriate multi-location bargaining unit. The decision, by board members Leibman and Schaumber, provides insight into how a retailer's operations can impact the scope of a bargaining unit should organizing efforts take place.

The Board Rules
Sleepy's Inc. is a bedding retailer, with approximately 700 stores, located primarily in the northeast. Each store is generally staffed by only one employee each work day. Union organizing efforts took place at many of its locations in Connecticut. After the ordinary administrative process, the board's Regional Director certified a proposed bargaining unit of 32 stores and about 62 employees.

The primary basis for the Regional Director's decision was his conclusion that this was a "distinct Employer-designated geographical grouping of stores, all of which are under the direct supervision of [the same regional manager]." The employer appealed this decision to the board in Washington, which overturned the Regional Director's decision. *Sleepy's Inc.*

The board addressed the issue using its "community of interest analysis" developed for multi-location units that are "more than a single location, but less than chain wide in scope." The overarching concern of the test is to identify whether the set of employees in the proposed unit have interests that are distinct from the employees at the locations excluded from the unit. The important factors include "similarity of employee skills, duties and working conditions; functional integration of business operations, including employee interchange; centralized control of management, supervision and labor relations; whether the petitioned-for unit conforms to an administrative function or organizational grouping of the employer's operations; geographic cohesiveness and proximity; and collective-bargaining history."

Similar, But Not Similar Enough
Sleepy's store operations were not unusual. It divided its stores into five markets each led by a Regional Vice President. Each market was divided into regions led by Regional Managers responsible for between 30 to 35 stores. The Regional Managers each had District Managers working under them responsible for subsets of stores within the Regional Manager's area of responsibility. The 32 stores in question were in the employer's New England market that included approximately 156 stores.

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While only one employee was generally on duty in each store, the stores were connected through electronic communications. An employee in one store could review the inventory of all the stores. Customers could purchase a product from one store and pick it up from a store in a different locale. All store employees throughout the company were governed by the same employment policies and practices. The Regional Vice President made hiring and promotion decisions. He also participated in employee disciplinary matters including termination.

The proposed unit consisted of 32 stores within the New England market, all of which were located in Connecticut. The employees of these locations were identical in terms of skills and duties. They were geographically similar, being within 60 miles of each other. The main distinguishing characteristic of these stores was that – at least for a time – they were under the supervision of the same regional manager.

The board held that these similarities were not enough to conclude that the unit stores' employees had a common interest distinct from the excluded stores' employees. Particularly, there was no distinction between the employees of these stores and the employees of the other stores in the same market.

The Regional Vice President, not the Regional Manager, was primarily responsible for employment decisions. Some excluded stores in the same market were actually geographically closer to some of the stores comprising the petitioned-for unit. Additionally, while the employees assigned to these stores generally did not work in other stores, employees from outside the unit worked in the stores in the unit about 50% of the time. Many of the employees working in these stores were floaters who were not assigned a specific store.

But most importantly, the board found the Regional Director erred in concluding that this grouping of stores was the product of the employer's administrative structure. It noted that the designation of the unit used by the Regional Director in his decision, "R-37," actually referred to a specific regional manager, not to a distinct grouping of stores. The assignments of stores to regional managers was very fluid, changing as stores opened and closed and as regional managers came and went. Thus, the grouping of stores under the moniker R-37 had changed numerous times since the unit decision. As such, the board concluded this unit was not appropriate.

The board did not go so far as to hold, as the employer requested, that no subset of the stores smaller than the New England Market could be an appropriate unit. It suggested, although without any analysis, that perhaps all the stores located in Connecticut could be an appropriate unit.

What This Means For Retail Employers

When a union seeks to represent employees at a single location, the board reasons that such a single-store unit is "presumptively appropriate." But if the union seeks a certain group of stores, but less than the entire company, a number of factors are in play. Consequently, it is possible for either party, the union or the employer, to argue that the unit should be larger or smaller than what was petitioned for. While the positions of each party are going to vary with the facts of the case, it's not

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petitioned for. While the positions of each party are going to vary with the facts of the case, it's not unusual to find that the employer is arguing for a larger unit (harder to organize) while the union argues for a smaller one (easier to organize.). In this case, Sleepy's argued that no unit smaller than the entire New England region was appropriate. The board did not rule on that argument, but sent the case back to its Regional Director for further action on whether any unit smaller than New England might be appropriate.

Preventing a union organizing effort is rarely going to be the prime concern when a retailer sets up its operational structure. In fact, any restructuring that was designed for the purpose of hindering union organizing would carry no weight when unit decisions are being made, and could even be unlawful. On the other hand, many legitimate factors are utilized in the assessment of an appropriate unit, and most of them are also factors that drive operational decisions.

For example, geographic proximity is a significant concern so that district and regional managers can spend more time in the stores and less time on the road. Maintaining consistency in the application of company-wide employment policies and practices requires centralized oversight. A company's need for a management structure efficient in hiring, training, promoting, disciplining, and terminating employees can dictate the level of management where these decisions take place. Stability of management over groups of stores will likely be of greater importance to retailers with a small number of large stores, than for retailers with a large number of smaller stores.

Conventional wisdom suggests that the more different locations are included in a collective bargaining unit, the harder the union's job of winning representation will be. The employer's goal in Sleepy's was to increase the number of locations in the unit. But the Sleepy's decision does not indicate retailers should rush to make structural management changes to avoid organizing. Rather, it's a reminder to consider how a retailer's management structure could affect the scope of potential bargaining units.

Management structure is a significant factor in the board's unit determinations, but it's hardly a good union-avoidance strategy. If a company is structured in a way that suggests that only large multi-location units are appropriate, unions will likely focus on organizing individual stores. Preventing union organizing at this level may best be handled through store manager training. Where it is more likely that a few large stores in a geographic area would be targeted as a unit, avoidance efforts may be directed at implementing pro-employee policies, keeping communications open, honest, and free flowing, and making sure wages and benefits are competitive for your industry and locale.

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