

# NLRB LIMITS APPLICATION OF “MICRO-UNIT” STRATEGY

Insights  
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In a blow to national union organization efforts, the National Labor Relations Board just clarified the test for determining whether “micro-units” of employees within a larger workforce can organize on their own. In its September 9 *Boeing Company* decision, the NLRB addressed a union’s efforts to utilize a “micro-unit” strategy to target a petitioned-for unit that made up of only two job classifications from a significantly larger, integrated workforce. In reversing a Regional Director’s decision to allow a representation election with this smaller subset of employees, the NLRB clarified its traditional community-of-interest standard for evaluating the appropriateness of petition for bargaining units.

## HISTORY OF “MICRO-UNIT” STRATEGY

In 2011, the Obama-era NLRB issued its decision in *Specialty Healthcare* that allowed unions to improve their chances of winning a union vote by making it easier for unions to target a smaller subset of a larger workforce. The current NLRB rejected this “micro-unit” approach in 2017’s [\*PCC Structurals, Inc.\*](#) decision by returning to the application of a traditional community-of-interest test to evaluate the appropriateness of petitioned-for bargaining units.

In *PCC Structurals*, the NLRB held that a union can target a portion of a larger workforce only if the union’s petitioned-for unit shares a community-of-interest sufficiently distinct from excluded employees. The NLRB’s return to this more traditional standard reduced the possibility that a union

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could improve its chances of winning a representation election by “cherry-picking” only certain employees.

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## **BACKGROUND OF *BOEING*CASE**

Boeing has operated its facility in North Charleston, South Carolina, to manufacture the 787 Dreamliner commercial aircraft since 2009. Since at least 2012, the International Association of Machinists Union (IAM) has tried to organize the facility.

In 2015, the IAM petitioned for a vote in a unit of all production and maintenance employees at the site, which involved a unit of approximately 3,000 employees. This organizing effort ended when the IAM withdrew its petition prior to a vote in April 2015. In 2017, the IAM once again petitioned for an election of all production and maintenance employees. The union was overwhelmingly defeated in this effort with 2,087 employees voting against union representation and only 731 employees voting for the IAM.

In its third bite at the apple, the IAM decided to target a significantly smaller slice of the workforce. It petitioned for an election involving a proposed bargaining unit of only Flight-Line Readiness Technicians and Flight-Line Readiness Technician Inspectors at the North Charleston site. These two groups consisted of approximately 180 employees out of the 2,700 production and maintenance employees in the overall workforce.

In May 2018, the Regional Director for the NLRB’s Atlanta Region concluded that the IAM’s smaller, petitioned-for unit was appropriate under the *PCC Structural, Inc.* analysis. Boeing contested this decision asserting that the Regional Director misapplied the *PCC Structural* standard and pointed out a need to clarify the guidelines for applying the 2017 test. The NLRB agreed to hear the case and ultimately agreed with Boeing.

## **THE 3-PART TEST: CLARIFICATION OF TRADITIONAL COMMUNITY-OF-INTEREST STANDARD**

While the NLRB intended for its *PCC Structural*’ decision to reestablish the traditional community-of-interest standard in evaluating the appropriateness of petitioned-for units and eliminate the significant disruptions caused by a union carving out a smaller subset of employees, the IAM’s 2018

efforts at Boeing and the Regional Director's approval of this strategy necessitated a clarification. In the September 9 *Boeing* decision, the NLRB accomplished this by providing a three-step analysis.

As a result of this recent decision, determinations of whether a petitioned-for unit is appropriate will involve the NLRB considering:

1. whether the employees in the petitioned-for unit share a community of interest with each other;
2. whether the employees excluded from the petitioned-for unit have meaningfully distinct interest in the context of collective bargaining that outweighs similarities with the proposed unit members; and
3. whether there are any industry-specific rules that have established appropriate unit configurations.

Applying this three-part test to the IAM's petitioned-for unit of only Flight-Line Readiness Technicians and Flight-Line Readiness Technician Inspectors, the NLRB found that these employees did not share an internal community of interest and did not have sufficiently distinct interest from excluded employees. The Board also concluded that there were no appropriate unit guidelines specific to Boeing's operations. The NLRB also recognized that well-established NLRB precedent supported a presumption that "integrated manufacturing facilities," like Boeing's North Charleston facility, should be wall-to-wall.

## TAKEAWAYS

The NLRB's recent decision in *Boeing* helps stabilize a significant area of U.S. labor law. The decision reestablishes the application of a legally sound analysis for analyzing the appropriateness of petitioned-for unit and makes the manipulations of NLRB procedures less likely.

However, as the events leading to the NLRB's recent decision confirm, organized labor's efforts to circumvent even the most sound legal analysis are likely to continue. While business and operational demands will always be the paramount considerations in establishing job classifications and departmental structures, employers utilizing an integrated operation should give some consideration to its employment structure to further reduce the risk of facing a

“micro-unit.” This is especially the case for employers who believe they will be the target of organizing efforts.

We will continue to monitor any further developments from the NLRB as they become available, so make sure you are subscribed to [Fisher Phillips' alert system](#) to gather the most up-to-date information. For further information or guidance, contact your Fisher Phillips attorney or any member of the firm's [Labor Relations Practice Group](#).

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