

# The (Official) Return of the Micro-Unit: NLRB Decision Reinstates Obama-era Standard for Appropriate Bargaining Unit Composition

PUBLISHED ON  
December 15, 2022

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On Thursday December 14, 2022 the [National Labor Relations Board](#) (NLRB) issued its decision [in \*American Steel Construction, Inc.\*](#), in which it reinstated a 2011 standard and overruled 2017 and 2019 Trump-era board decisions on the subject of what constitutes an "appropriate" bargaining unit for the purposes of a representation election.

The test that was reinstated was articulated in *Specialty Healthcare & Rehabilitation Center of Mobile* 357 NLRB 934 (2011). In that decision, the Board held that the employees should enjoy "full freedom of association" and therefore, have the ability to organize any unit of their choosing, so long as it is "readily identifiable as a group" and the employees share a "community of interest." In furtherance of the principle "full freedom of association," the proposed bargaining unit now enjoys a presumption of "appropriateness," so long as the composition is not "arbitrary or irrational."

The decision put the burden on the employer to challenge the proposed bargaining unit, typically to prove that employees excluded from the proposed bargaining unit "share an overwhelming community of interest" with those in the proposed unit. These proposed units are commonly known as "Micro-Units" because they purposefully do NOT include all the hourly employees in a given workforce, facility, or even department. They are seen as easing the burden on unions to get their proverbial "foot in the door" of a non-union employer.

During the Trump Presidency, the NLRB issued two decisions, *PCC Structurals*, 365 NLRB No. 160 (2017) and *The Boeing Co.* 368 NLRB No. 67 (2019), which overruled *Specialty Healthcare*.

Although not unexpected, in light of pronouncements made by President Biden and NLRB General Counsel Abruzzo, it makes official that Micro-Unit organizing and elections will increase. The NLRB is already seeing a record increase in election petitions this year, approximately 56%, with unions winning 76% of the time.

Barley Snyder's Labor Law team provides specific "Rapid Response Training" to its clients to assist them in being prepared for these types of elections, as well as responding to the ever-changing landscape of NLRB decisions which affect union and non-union workplaces alike. If you have any questions regarding these NLRB updates, recent NLRB decisions or specific labor inquiries, please contact [Kevin Moore](#) or any member of Barley Snyder's [Labor Law Team](#).

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