"It's Like Déjà Vu All Over Again"[1]: The Boeing Micro-Unit Case

By **Morris Hawk**

It looks like the National Labor Relations Board (NLRB) will have *another* opportunity to clarify the test for determining whether a micro-unit of employees in a functionally integrated manufacturing plant constitutes an appropriate bargaining unit.

The case involves Boeing's South Carolina plant – where approximately 2700 workers build Boeing's 787 jets. The Machinists Union filed a petition seeking to represent a "micro" bargaining unit consisting of a group of 178 mechanics (called flight-line readiness technicians and flight-line readiness technician inspectors) and excluding all other manufacturing employees. The entire group of production employees had previously voted down the union in 2017. The Regional Director of the NLRB's Atlanta office (Region 10) concluded that the micro-unit was an appropriate unit and conducted the election. The mechanics voted 104-65 to join the union. Boeing has appealed the Regional Director's decision to the Board.

If these facts sound familiar to you, it is because they are. Just nine months ago, the Board remanded a Regional Director decision from Region 19 permitting an election in a similarly proposed micro-unit. In that case (*PCC Structurals, Inc*.), the Machinists Union sought to carve out a bargaining unit of 100 welders from a production workforce of 2,565 employees at a manufacturing plant that produced metal castings (predominantly for the aerospace industry). The Regional Director in the *PCC Structurals* case found the micro-unit appropriate based upon the Board's *Specialty Healthcare* bargaining unit test. The *Specialty Healthcare* test essentially established a presumption that a readily-identified sub-group of employees that a union petitions to represent would constitute an appropriate bargaining unit unless the employer proved that the employees excluded from the proposed unit shared such an "overwhelming community of interest" that there was no legitimate basis to exclude them from the unit.

The Board in *PCC Structurals* overruled the *Specialty Healthcare* test (which the Obama-era Board had adopted in 2011) and reinstated the traditional community of interest test. In so doing, the Board made clear that there should be no presumption that a petitioned-for unit is appropriate. Rather, Section 9 of the National Labor Relations Act mandates that the Board must carefully examine the community of interest shared by employees both inside and outside the proposed unit. That inquiry must address whether the employees:

- are organized into a separate department;
- have distinct skills and training;
- have distinct job functions and perform distinct work, including inquiry into the amount and type of job overlap between classifications;
- are functionally integrated with the employer's other employees;
- have frequent contact with other employees;
- have distinct terms and conditions of employment; and,
- are separately supervised.

[1] Yogi Berra, New York Yankees' Catcher and Hall of Famer.

A micro-unit of employees carved out from a larger group of employees is only appropriate where an examination of the factors outlined above demonstrates that the smaller group's shared interests are "sufficiently distinct" from the interests which the smaller group shares with the excluded employees.

Based upon the majority's language in *PCC Structurals*, it was widely assumed that it would be much more difficult for unions to successfully petition for elections in micro-units, particularly in functionally integrated manufacturing plants. That may ultimately prove true. However, upon remand, the Regional Director in *PCC Structurals* concluded after a supplemental hearing that the micro-unit of welders was appropriate even under the new standard set forth by the Board. Now, the Regional Director in Region 10 has come to the same conclusion regarding the micro-unit at Boeing's South Carolina plant.

The appropriateness of a specific bargaining unit is admittedly a fact-specific inquiry. However, it will be interesting to see whether the Board will consider the Regional Directors' determinations to be consistent with the Board's instruction in *PCC Structurals* or whether the Board will find that the determinations reflect vestiges of *Specialty Healthcare*'s presumption which must still be rooted out.

For employers, particularly manufacturers, the fact-specific community of interest determinations in *Boeing* and *PCC Structurals* provide some helpful guidance on how to avoid creating a working environment and production structure that may leave them susceptible to a micro-unit petition. Both determinations also demonstrate the importance of completing a community of interest analysis (or at least developing an awareness of the relevant factors) as part of any union avoidance toolkit. Roetzel's labor attorneys stand ready to assist you in that analysis.

If you have any questions about this topic or need assistance with your union avoidance strategy or any other labor and employment matter, please contact one of the listed Roetzel attorneys.

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