

National Labor Relations Board Identifies new test for Assessing Bargaining Units in Non-Acute Care Facilities

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In a decision made public on August 30, 2011, the National Labor Relations Board has stated that it will no longer apply a special standard when determining whether bargaining units in non-acute health care facilities are appropriate under the National Labor Relations Act. Instead, employees in health care facilities other than hospitals will be subject to the same “community-of-interest” standard that the Board utilizes in other workplaces.

The case, Specialty Healthcare and Rehabilitation Center of Mobile, involved a representation petition filed by a group of certified nursing assistants (CNAs) working at a nursing home facility. The employer opposed the CNAs’ petition, arguing that the proposed unit was inappropriate under the standard set forth by the Board in its 1991 decision in Park Manor Care Center. In that case, the Board found that there are only eight appropriate bargaining units in non-acute health care facilities and that all others are inappropriate absent “extraordinary circumstances.” Therefore, the employer contended that a unit of CNAs was not appropriate inasmuch as all nonprofessional employees were not included (as required in the Park Manor decision and its progeny).

In the NLRB’s Specialty Healthcare ruling, the Board rejected the Park Manor standard, finding that “the suggestion that there is only one set of appropriate units in an industry runs counter to the statutory language and the main corpus of our jurisprudence.” The Board determined that all proposed units in non-acute health care facilities should instead be subject to the “community-of-interest” standard, under which any group of employees that generally shares work duties, skills, department affiliation, and other terms of conditions of employment is considered to be an appropriate unit.

Employers in the non-acute health care industry, including nursing homes and home care services, should be aware of this significant change in the National Labor Relations Board’s position. Employees in such facilities will now be able to more easily gain representation based solely upon the common terms and conditions of their employment. Employers should, therefore, be prepared for a renewed interest in organizing and should consult counsel to review strategies in responding to that potential.

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National Labor Relations Board (NLRB)