



NLRB APPROVES OF UNION ELECTION FOR “MICRO UNIT” OF IKEA EMPLOYEES

On April 19, 2021, the National Labor Relations Board (“NLRB”) issued a decision affirming a Regional Director’s decision to allow a union election for a bargaining unit of 15 maintenance and power equipment technicians at a California IKEA distribution center. The Board rejected the employer’s argument that the other 404 hourly employees at the facility should be included in the unit.

The NLRB’s current standard for “micro units” of employees – smaller groups of workers carved out into a separate bargaining unit from the rest of their co-workers – was created by the Trump Labor Board in a 2019 case, *The Boeing Company*. The *Boeing* decision requires a three-step analysis: First, do the employees in the petitioned-for micro unit share a community of interest with each other? Second, are the employees in the micro unit sufficiently distinct from other employees who have been excluded? And third, does the proposed unit meet the guidelines, if any that the Board has established in this particular industry? If the parties to an election choose not to litigate the second issue, then the Regional Directors can skip that step of the analysis.

In the *IKEA* case, the employer did attempt to challenge the appropriateness of the micro unit under the second step of *Boeing*, but it missed the Board’s strict deadline for filing and serving its position statement to raise this issue. For that reason, the Regional Director found that the employer was precluded from arguing about the inclusion of the other 404 hourly employees. However, the hearing officer still accepted evidence on that issue, in order to make a complete record. The Regional Director approved of the micro unit and ordered an election, and the employer appealed to the Board.

On review, the Board affirmed the Regional Director’s decision, finding that the micro unit was appropriate. The Board majority (two Republican Board members) found that even where an employer is precluded from arguing an issue, the Regional Director must nonetheless go through the second step of *Boeing* to

determine whether the proposed bargaining unit is appropriate. Chairman Lauren McFerran, the sole Democrat on the Board, concurred in the result but wrote a separate opinion. She first noted that *Boeing* and *PCC Structural*s – a 2017 case in which the Trump Board made it more difficult for smaller bargaining units to be approved – were wrongly decided and should be overturned. She also said that as long as *Boeing* is controlling law, Regional Directors should be free to skip the second step of that test where employers are precluded from arguing that point. This would apply the same standard where an employer has waived this type of argument as when the parties choose not to argue the same issue. Here, Chairman McFerran stated, the hearing officer should not have allowed any evidence about the facility’s additional employees.

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