

## NLRB

### *Backgrounder on Specialty Healthcare*

The single most troubling case currently pending before the National Labor Relations Board (NLRB or Board) is *Specialty Healthcare and Rehabilitation Center of Mobile and United Steelworkers, District 9*, 356 NLRB No. 56 (2010). Briefs were due in the case on March 8<sup>th</sup> and a ruling is expected sometime thereafter. Because this is a representation case, there will be no opportunity for direct judicial review and the Board could begin implementing the decision immediately in other cases.

The Board's ruling is expected to reverse 50 years of case law by radically changing the standard for determining an appropriate bargaining unit for all of the estimated six million workplaces covered by the National Labor Relations Act. The key issue is whether employees performing the same job at a single facility presumptively constitute a bargaining unit for organizing purposes, irrespective of any commonality those employees share with other employees outside the proposed unit. The Board has historically applied a clear set of standards to determining a unit appropriate for bargaining – this case would turn those standards upside down.

The decision could make it easier for unions to organize by cherry picking a unit composed of the subset of employees most likely to organize, regardless of whether those employees constitute a practical unit. For example, the union may choose to organize poker dealers at a casino, rather than all dealers, because it knows the poker dealers support the unions, while the blackjack and other dealers may not.

Employers who are organized under such a system could be faced with the complicated and extremely burdensome task of bargaining with multiple small or “fractured” units, with separate wage schedules, benefit packages and grievance processes for similarly situated employees (e.g., different collective bargaining agreements for poker and blackjack dealers, cashiers and stockers, manufacturing production employees with similar skills but working on different machines, etc.). This could overwhelm businesses, particularly small businesses, with administrative requirements forcing them into a constant state of bargaining. Imagine a small business franchise owner with 4 fast food restaurants managing 8 or more separate bargaining relationships with different unions or a manufacturer with a different unit for each different piece of machinery in the facility.

Fractured units also would greatly limit an employer's ability to cross train and meet customer and client demands via lean, flexible staffing as employees could not perform work assigned to another unit. The impact on business productivity and competitiveness would be significant. Employees also would suffer from reduced job opportunities as promotions and transfers would be hindered by organization-unit barriers.

The current standard is well established and works well for employers and workers. There is no justification for the NLRB to overturn precedent and create unnecessary uncertainty.