



Recent Board Decision Highlights Serious Threat to Employers

Several years ago in a case entitled *Specialty Healthcare*, the National Labor Relations Board ("NLRB") changed a decades-long standard with regard to how a union can organize employees. Prior to *Specialty Healthcare*, unions typically had to organize "wall-to-wall," meaning that if they wanted to go after a particular facility, they had to organize all production and maintenance employees at the facility. Naturally, the larger the unit, the more difficult it was for the union to organize.

In *Specialty Healthcare*, the Board ruled that a union can now organize a smaller unit of employees at the same facility as long as it is a readily identifiable group whose members share a community of interest. An employer can oppose these smaller units only by showing an overwhelming community of interest between the employees the union is going after, and other employees at the facility—a tough standard.

In a three to one decision decided last week by the NLRB, (*Macy's, Inc. and Local 1445, United Food and Commercial Workers Union. Case 01-RC-091163; 31 NLRB No. 4.*), the Board applied its controversial *Specialty Healthcare* decision for the first time to a retail employer. The Board found a bargaining unit consisting of 41 employees in the cosmetics and fragrances department at a Boston-area Macy's store to be appropriate, and upheld the exclusion of all other sales employees at the store. In finding in favor of the union, the Board emphasized that these Macy's employees work in separate departments, report to different supervisors, work in separate physical spaces, and have no significant contact with other sales employees in other departments.

This ruling bolsters the unions' increasing efforts to organize micro-units consisting of small, distinct groups of employees within the same facility, and no doubt makes employers more vulnerable. A small group of employees can vote a union in, perhaps creating a greater risk of other employees in the facility following suit.

Staying on top of employee issues is paramount. Ignoring problems in the workplace is a sure-fire way to foster union organizing. Supervisor training is also a big key in structuring your defense. Supervisors must know what to look for, what they can and cannot say, and the importance of managing employee morale.

Your defenses should be in place now. The laws favor union organizing today like no other time in recent history.

— [Sidney F. Lewis, V](#)

Remember that these legal principles may change and vary widely in their application to specific factual circumstances. You should consult with counsel about your individual circumstances. For further information regarding these issues, contact:

Sidney F. Lewis, V
Partner, Jones Walker LLP
201 St. Charles Ave
New Orleans, LA 70170-5100
504.582.8352 tel
slewis@joneswalker.com

[Jones Walker Labor & Employment Practice Group](#)
www.joneswalker.com

This alert should not be construed as legal advice or a legal opinion on any specific facts or circumstances. The contents are intended for general informational purposes only, and you are urged to consult your own attorney concerning your own situation and any specific legal questions you may have.