



ANOTHER PRO-UNION DECISION BY THE NLRB: UNIONS NOW ALLOWED TO ORGANIZE SELECT EMPLOYEE GROUPS INSTEAD OF COMPANY-WIDE

In the latest move by the National Labor Relations Board (“the Board”) making it easier for unions to organize, the Board ruled on December 30, 2011, that unions may now target select groups of employees instead of organizing larger groups of employees with general common interests company- or facility-wide. In a case involving Northrop Grumman Shipbuilding, Inc., the Board affirmed a Regional Director’s order directing an election for a *union-selected* unit consisting only of nuclear safety technicians at a shipyard that builds nuclear-powered aircraft carriers and submarines. In other words, the Board allowed the union to carve out only the technicians the union wanted to organize, ignoring the other technicians at the facility even though they shared some community of interests with the nuclear safety technicians.

The Board based its decision on another recent ruling that the National Labor Relations Act does *not* require the *most* appropriate unit, but merely an *appropriate* unit. In the Specialty Healthcare case, decided in August 2011, the Board reversed over 50 years of legal precedent in deciding that additional employees outside a voting unit proposed by the union can be included only when there is no “legitimate” basis on which to exclude them.

The effect of these decisions is that unions may now try to organize narrow groups of employees, such as those in a particular job title or department, or who may be disgruntled for one reason or another.

These decisions also are another building block in what we have called the Board’s “rescue plan for unions.” The first was the Board’s new rule requiring employers to post notices displaying information about employee union organizing rights, which has now been pushed back to April 30. The second are new Board rules designed to speed up union elections and to make it more difficult for employers to mount an effective opposition campaign. Two lawsuits have been filed to block the Board’s new posting rule. Additionally, a bill has been introduced in Congress to roll back several of the Board’s recent pro-union initiatives, including the new election rules. However, none of these efforts has slowed the Board’s pro-union shift. Thus, in the face of this changing environment, employers are more vulnerable than ever to union organizing.

Now is the time to assess your employee relations environment. Determine whether there are issues among any particular groups of employees that may form the basis for union organizing, and consider action on these issues, including supervisor training on employee relations, communications, and union awareness.

—*Sidney F. Lewis, V and H. Mark Adams*



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
201 St. Charles Avenue
New Orleans, LA 70170-5100
504.582.8352 *tel*
504.589.8352 *fax*
slewis@joneswalker.com

Labor & Employment Practice Group

H. Mark Adams
Jennifer L. Anderson
Timothy P. Brechtel
Bradley R. Byrne
Susan K. Chambers
Laurie M. Chess
Karen G. Clay
Amy C. Cowley
Steven R. Cupp
Kathryn W. Drey
Jennifer L. Englander

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Mary Margaret S. Lebato
Sidney F. Lewis, V
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Courtney L. Tomlinson
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