

# The Bennett Law Firm

## *Client Update*

Trusted Advisor to Management for Over 50 Years  
Labor Relations ~ Employment Law ~ Business Litigation  
Portland, ME (207) 773.4775 / Boston, MA (617)973.1550



### **NLRB CONTINUES TO PUSH “MICRO UNITS” TO MAKE IT EASIER FOR UNIONS TO WIN CAMPAIGNS**

Throughout the years, we have urged our clients to be proactive to avoid successful union organizing drives. Part of that advice has centered on periodic training of supervisors and managers on the relevant issues such as how to identify a problem early and what can and cannot be said. Another aspect of our advice has been centered on how the employer structures its employment relationship to maximize its opportunity to remain union free.

When a union petitions the National Labor Relations Board to represent a group of employees, the petition must seek to represent an appropriate unit of employees. The legal standard is not the most appropriate unit or a more appropriate unit but rather that the requested unit is “an” appropriate unit. The employer’s preference is of no consequence.

In recent years, unions have refined their organizing strategies to focus their efforts on what are now being called micro units. Under the micro unit strategy, the union picks a relatively small group of employees and petitions to represent them as “an” appropriate unit. This strategy is contrary to what we used to experience whereby unions sought to represent as large a group as possible in order to maximize their revenue generating opportunities. It is also a highly effective method for a union to get its foot in the door and later work to organize the larger group. The micro unit strategy has always concerned us even though until recently we were in a better position to combat it if a petitioning union attempted to deploy it.

The current NLRB has fostered the micro unit strategy over the past few years and has signaled an approach to these cases that will make it very difficult for employers to expand potential bargaining units unless it prepares in advance. This shift is important because the employer’s ability to expand the potential unit often makes the difference as to whether the employer remains union free. Below, we discuss a recent case that highlights this new reality and at the end make some practical suggestions for being proactive in order to minimize the micro unit challenge.

In Cranwell Management Corp., the Service Employees Union petitioned the NLRB to represent

a bargaining unit comprised of full time and on call massage therapists in Lenox, Massachusetts. The employer sought to include the other professionals who worked in its spa such as estheticians, cosmetologists and fitness instructors. These employees worked in the same areas and had much overlap in their daily work routines. Seemingly, the employer had the law on its side. In 1999, the NLRB, in a similar situation, found a massage therapist only unit to be inappropriate and expanded the voting group.

The NLRB Regional Director in Boston applied a two-step process to determine that a massage therapist only unit can be appropriate.

Under step one of the test, the Regional Director found that the massage therapists were identifiable as a group which meant that they qualified as “an” appropriate unit. Under step two, the Regional Director analyzed whether the estheticians, cosmetologists and fitness instructors shared such an overwhelming community of interest with the massage therapists that no legitimate basis existed to exclude these additional employees from being in the unit. The community of interest standard is ridiculously subjective and can take into consideration many factors such as degree of job overlap, functional integration, frequency of contact between employees, similarity of terms of employment, lines of supervision and skills involved. Unfortunately in most cases, these factors are manipulated to suit an outcome.

Consistent with the Cranwell Management case, last month, the NLRB endorsed the use of a micro unit at a Macy’s store in Saugus, Massachusetts. In that decision, in a 3 to 1 vote, the NLRB held that the cosmetic and fragrances departments of the store may organize as a micro unit even though the departments make up less than one third of the total number of employees at the store.

#### Recommended Action To Minimize Your Exposure to Micro Unit Organizing

To be proactive, we are available to work with employers to analyze and structure the working relationship so that an employer gets in a strong position to respond to the micro unit issue should it ever arise. For example, in a sales/distribution organization, grouping and managing salespeople, drivers, helpers and merchandisers in teams rather than functions will help to avoid a micro unit of just one of these classifications. Having cross training programs in place so that employees are trained to perform more than one position and actually moving employees back and forth whether to gain experience or to cover for absences is another idea that will help. Similarly, increasing employee contact and interaction between jobs is important as is maintaining the same terms and conditions of employment for all employees.

As this NLRB evolves, these issues are only going to become more serious. If you would like our help in being more proactive, then please let us know.