

NLRB Rejects Challenge to Small Bargaining Unit And Rules That Macy's Must Bargain With Cosmetics Union

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No bargaining unit too small? Certainly not for the National Labor Relations Board.

Earlier this month, the NLRB rejected Macy's argument that a cosmetics bargaining unit was too narrow and ordered the retailer to bargain with the unit. Macy's had tried to argue that an entire store bargaining unit was more appropriate and that the cosmetics union was an inappropriate subset of the store. Macy's is appealing the Board's decision to the Fifth Circuit.

This decision by the Board is a result of its 2011 decision in *Specialty Healthcare* which heightened the standard for employers challenging narrow collective bargaining units. In that decision, which was affirmed by the Sixth Circuit, the Board held that when an employer is challenging a proposed bargaining unit on the grounds that it improperly excludes certain employees, the employer must show that the excluded workers share "an overwhelming community of interest" with those in the proposed unit.

Employers, particularly brick and mortar department stores, will want to think twice before challenging smaller bargaining units in their stores – at least if the challenge is that they're just too small. The NLRB hasn't found any unit to be "too small," at least not yet.