

NLRB RELEASES SPECIALTY HEALTHCARE DECISION

In a 3-1 decision released yesterday, the National Labor Relations Board (NLRB) decided the *Specialty Healthcare* case favoring the ability of small units of employees to unionize. Overruling the established *Park Manor* standard, the NLRB ruled that just the 53 CNAs at a nursing facility could organize as one collective bargaining unit.

Park Manor utilized what was termed a "pragmatic or empirical community of interest" standard for determining collective bargaining units in non-acute care health facilities. The NLRB decided that this standard did not meaningfully differ from the board's traditional "community of interest" standard, and that *Park Manor's* approach has become obsolete. In overruling *Park Manor*, the NLRB returns non-acute care facilities to the traditional "community of interest" standard, which generally bases bargaining units on whether employees had similar responsibilities, supervisors, skills, working conditions, and pay scales.

This allowed the 53 CNAs seeking to organize at the Specialty Healthcare facility the ability to form a collective bargaining unit of their own. The facility's management argued that, under *Park Manor*, the facility's 33 other nonprofessional workers, including janitors, cooks, and file clerks, would have to be included in the bargaining unit. Such inclusion would presumptively prevent a majority of employees voting in favor of unionization. Absent the inclusion of non-CNA employees, the CNAs at the facility may successfully form a collective bargaining unit on their own.

In a *New York Times* article discussing this case, Michael Eastman, the executive director of labor law policy at the United States Chamber of Commerce, states "This ruling makes it easier for unions to gerrymander who is in a bargaining unit to help them be successful in organizing."

The sole dissenting Board member, Brian Hayes, states in his dissent that the Board's decision "fundamentally changes the standard for determining whether a petitioned-for unit is appropriate in any industry subject to the Board's jurisdiction."

Parties opposed to the Board's decision claim nursing facilities may see cost increases and decreases in quality of care due to fractured employment terms.

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