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Trump NLRB majority puts Machinists election win at Precision Castparts back in legal limbo

The ruling has national ramifications, but whether the welders can unionize is again up to the Seattle NLRB office

In a Dec. 16 decision, a new Trump-appointed majority on the National Labor Relations Board (NLRB) used a Portland-area labor law dispute to overturn a major Obama-era NLRB ruling that curbed employers' ability to use legal delays to stymie union campaigns.

When workers seek to unionize, the NLRB determines which of their co-workers do and don't belong in their proposed bargaining unit — if employer and union don't agree. Under the law, units can include all of an employer's workers, those at a particular location or department, or those in a particular craft specialty. For decades, employers have filed frivolous objections to the units unions propose, winning only 5 percent of the time, but delaying union elections for years through multiple stages of appeal. But in a case called *Specialty Healthcare*, an Obama-appointed NLRB majority ruled in 2011 that when the NLRB has



Precision Castparts welders, above, want to start bargaining a union contract. But a new NLRB decision could delay that for years.

found the union's proposed unit to be an appropriate one, employers who want to challenge that decision have the burden of proof to show that workers they want to add to the unit share "an overwhelming community of interest" with workers in the unit the union proposed.

Employer associations howled in protest, saying the *Specialty Healthcare* decision would lead to the proliferation of "micro-unions" like just the fragrance counter workers in a department store. But Machinists staff attorney William H. Haller, who

wrote a law review article about *Specialty Healthcare*, says that's not what happened: The average size of union-proposed bargaining units has remained about the same since 2011.

"I think [employer groups' micro-union argument] is a smoke-screen to disguise their real motive, which is to make sure that the legal process is cumbersome and takes as long as possible," Haller said.

Last July, Machinists District Lodge W24 asked the NLRB to hold a union election for a group of 100 Portland-area welders at

Precision Castparts. Precision argued that a welders-only bargaining unit was improper, and that the unit should instead include all 2,500 Portland-area workers. [Precision has repeatedly defeated attempts to unionize that larger group.] The NLRB's Seattle office found that the welders were an appropriate bargaining unit, and under the *Specialty Healthcare* decision, declined to consider Precision's objections and held a union election Sept. 22, which the Machinists won 54 to 38. Then Precision appealed, saying its objections should have been considered by the NLRB.

On Dec. 26, the new Trump majority agreed — voting 3-2 to overturn the *Specialty Healthcare* ruling and send the case back to the Seattle NLRB office, which must now consider Precision's objections.

Will the welders get their union? It could go either way. They do the same kind of work, but in different departments. NLRB Seattle regional director Ron Hooks will decide. If he upholds his previous ruling, Precision can appeal through multiple stages, which could take two years or more to resolve.

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