

# What Labor Board's Return to Allowing Micro-Units for Bargaining Means for Construction Employers

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December 29, 2022

## Meet the Authors



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The National Labor Relations Board has issued a decision that could be of significant aid to organized labor in reorganizing the construction industry. *American Steel Construction Inc. and Iron Workers Local 25*, 372 NLRB 23 (2022).

Union membership among construction industry employees has been eroding for decades. At the zenith, in 1947, approximately 87% of non-supervisory construction industry employees were represented by a union. By 2000, that number was about 18%. In 2021, less 13% of construction workers were union members.

*American Steel Construction* could result in a more union-friendly approach in determining the appropriate voting unit when a union petitions for an election. The practical effect of *American Steel Construction* is allowing an organizing union to seek an election among small subsets of employees, sometimes referred to as “micro-units.” Unions generally have a higher chance of success when the unit is smaller, as is well-illustrated by facts the *American Steel Construction*. The company was in the structural steel business. It employed fabricators, welders, and painters in its fabrication shop, truck drivers who delivered the fabricated product to job sites, and field employees who performed the installations at the construction sites. The union sought to represent only the field employees and filed a petition requesting that the Board conduct an election among that group. The company objected and argued that the high level of integration of the company’s operations require a “wall-to-wall” or company-wide unit. The Board’s regional director agreed that, based on the then-existing law, the larger wall-to-wall unit was the appropriate one. Presumably because it did not like its chances with the larger unit, the union appealed. In its December 14 decision, the Board sided with union and held that the election should go forward among the smaller group the union preferred.

Under the new rule a union’s preference will be respected when the employees in the group it seeks to represent constitute as “readily identifiable as a group based on job classifications, departments, functions, work locations, skills or similar factors.”

This decision could have significant implications in the construction world, where employees often are part of small identifiable groups based on skills, trade, or job function. Indeed, the nature of the industry seems to lend itself to organizing micro-units. A major concern is that this decision increases the risk that employers will face multiple elections and having to manage multiple unions, each representing small groups of employees.

Jackson Lewis attorneys are available to answer inquiries regarding this and other developments.

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