

# Legal Connections



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## APPROPRIATE BARGAINING UNIT STANDARD CONTINUES TO PERPLEX NLRB

The National Labor Relations Board is hoping that the fourth time is the charm when it comes to designing an enduring standard for determining an appropriate bargaining unit. On Dec. 7, 2021, the NLRB issued a notice in the case *American Steel Construction* inviting parties and amici to submit briefs addressing whether the board should reconsider its standard for determining if a petitioned-for bargaining unit is an appropriate unit.

Broadly speaking, an appropriate bargaining unit is a group of two or more employees who may reasonably be grouped together for purposes of collective bargaining. It is a fundamental decision that the NLRB must make in the context of any union organizing effort.

The NLRB's struggle to design a workable standard for determining an appropriate bargaining unit began in 2011, when it upended nearly 20 years of precedent in its decision in *Specialty Healthcare*. The



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NLRB's decision in *Specialty Healthcare* required employers challenging a petitioned-for unit to show that employees outside of the proposed unit shared "an overwhelming community of interest" with the employees inside the proposed unit.

This standard gave unions a significant advantage in arranging proposed units, and increased the risk of fractured bargaining units, also known as "micro-units." These micro-units presented a host of problems, resulting in the exclusion

of the interests and rights of some employees from the bargaining process, and sometimes conflicting with well-established industry norms.

In 2017, the NLRB addressed these problems by overruling *Specialty Healthcare*, and restoring the traditional community-of-interest test for determining whether a petitioned-for unit is appropriate. Additionally, in 2019, the NLRB introduced a three-part test for analyzing challenges to the makeup of a proposed bargaining unit. This test sharpened and focused the traditional community-of-interest test.

The notice issued this week shows that the traditional community-of-interest test is once again in the spotlight. Whether the NLRB returns to the *Specialty Healthcare* standard, revises the traditional standard, or creates an entirely new standard remains to be seen. However, the NLRB's decision to consider changing this standard, yet again, is further evidence of

### EDUCATION & EVENTS

Thursday, Feb. 10 • 9 a.m. – 4:15 p.m.  
**2022 AAML Symposium**  
6.0 CLE Hours (1.0 P.C.)

Wednesday, Feb. 16 • 10 – 11 a.m.  
**Live Webinar: CyberThreats: How to Make Your Law Firm Resilient to Cyber Risk**  
1.0 P.C. CLE Hours

All classes listed are offered by the Columbus Bar Association through Zoom. To register, call 614-221-4112 or enroll online at [www.cbalaw.org](http://www.cbalaw.org).

the NLRB's ambitious pro-labor agenda under the Biden Administration.

Briefs from interested parties were submitted to the Board on Jan. 21, and the party's responses to those briefs are due by Monday, Feb. 7. Employers will need to closely monitor the *American Steel Construction* case moving forward and should prepare for the possible return of a pro-union standard for analyzing whether a proposed bargaining unit is appropriate, which would permit unions to organize smaller groups of employees. ■

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## UNDERUTILIZED FEDERAL PROGRAM PROVIDES FINANCIAL AID COVERING FUNERAL COSTS FOR COVID-19-RELATED DEATHS

Have you lost a loved one to COVID-19? Has the costly burden of arranging and paying for their funeral fallen on your shoulders? Help may be out there.

One of the seemingly lesser-known benefits of the Coronavirus Response and Relief Supplemental Appropriations Act of 2021 and the American Rescue Plan Act of 2021 is a program, run through the Federal Emergency Management Agency, which provides financial assistance for COVID-19



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related funeral expenses. So, how does it work?

### Eligibility

There are two categories of eligible deaths as they relate to this program. In both, you must be a U.S. citizen, non-citizen national or qualified alien who incurred funeral expenses. First, for deaths occurring from Jan. 20, 2020, to May 16, 2020, either (1) the death certificate must indicate the

death was attributed to COVID-19 or (2) the death certificate must be accompanied by a signed statement provided by the original certifier, the local medical examiner, or the

coroner that indicates COVID-19 as the cause of or contributing factor in the death. Second, for deaths occurring after May 16, 2020, the death certificate must indicate that the death was attributed to COVID-19.

### Benefits

Under the Acts, an individual is eligible for maximum relief of \$9,000 per deceased individual and a maximum of \$35,500 per application if the applicant incurred funeral expenses for multiple decedents. The following are some, but not all, of the expenses covered:

- Funeral services
- Cremation

- Internment
- Casket or urn
- Burial plot
- Marker or headstone
- Clergy
- Costs of producing and certifying multiple death certificates

### How to Apply

The only way to apply for the program is to call FEMA, which indicates it should take only 20 minutes to apply. The COVID-19 Funeral Assistance Helpline can be reached at (844) 684-6333. When you call, you will be assigned a FEMA application number, and you can then submit your documentation online, by fax or by mail. ■



## E-Discovery and Social Media

Where is the information and how can you get it?

Register for this course for an overview of e-discovery principles and how they relate to social media. Plus, what are the ethical considerations with social media discovery? This program will be presented on Zoom on February 18, 2022 from noon to 1:30pm and has been approved for 1.5 CLE Hours (with 0.5 Prof. Conduct).

**FEB 18**  
1.5 CLE Hours

### REGISTRATION:

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