

NLRB Rules Temp Workers and Regular Employees May Be Organized In Single Bargaining Unit Without Employers' Consent

Labor & Employment Law Update

By Julie Proscia on July 11, 2016

In a 3-1 decision the National Labor Relations Board made it easier to organize a company with a contingent workforce. Today's Board decision returned to the rule established in *M.B. Sturgis, Inc.*, 331 NLRB 1298 (2000) ("Sturgis"), reversing *Oakwood Care Center*, 343 NLRB 659 (2004) ("Oakwood") thereby holding that employer consent is not necessary for units that combine jointly employed and solely employed employees of a single user employer.

So what does this mean?

Under the newly resurrected Sturgis standard temporary employees can once again be included in a single bargaining unit, with regular employees, if:

- (1) The staffing agency and the employer are determined to be joint employers, and
- (2) the temporary employees shared a community of interest (e.g., similar working conditions, similar skills, functions, wage and benefit packages, and common supervision) with the company's regular employees.

Under the Sturgis standard there is no requirement of a finding of joint employment for all employees in the bargaining unit. Rather under the Sturgis standard unions are allowed to organize both joint-employer and single-employer employees into a single bargaining unit when at least some of the impacted employees were jointly employed.

This newly resurrected rule is a departure from the NLRB standard that allowed a union to organize only if both the employer and the staffing agency consent. The resurgence of the Sturgis standard is part of a trend at the NLRB to expand the "joint employer" doctrine and increase the organization of separate businesses that are interrelated.

Employers should take care in their selection of staffing companies and be cognizant that a contingent workforce does not necessarily mean a union free workforce.

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