

# NLRB CLEARS PATH FOR UNIONIZING TEMPORARY WORKERS AND PERMANENT EMPLOYEES AS ONE GROUP

The National Labor Relations Board has launched yet another attack on employers who use staffing agencies and external labor sources. The NLRB's long-awaited decision yesterday in *Miller & Anderson* makes it much easier for unions to simultaneously represent both the permanent employees of a company and workers from staffing agencies. It does so by eliminating the requirement that both employers -- companies and staffing agencies -- consent to the combined bargaining unit.

Now the unions will decide whether the groups are represented jointly or separately unless there is an overwhelming showing the groups do not share a sufficient community of interest. Previously, unions seeking to represent both traditional employees and temporary workers in a single unit were required to obtain the consent of both the employer and staffing agency.

Employers must now confront complex issues of collective bargaining and contract administration that arise from bargaining units covering diverse employment arrangements. For example, an employer that subcontracts with a staffing agency might be forced to simultaneously bargain over both those external employees and its own permanent employees, despite the two groups' divergent interests on many issues. Staffing agencies and other labor supply companies, on the other hand, could find themselves drawn into labor disputes, whether or not their own employees are involved.

For companies that use staffing agencies or external labor suppliers, proper planning might prevent a future determination of joint-employer status or of a "community of interest" between internal and external employees. Likewise, staffing agencies themselves will need to be prepared for opportunistic organizing activities by unions and their allies. The Board's decision to return to a standard not requiring employers' consent has tremendous reach and opens up greater possibilities for unionization and bargaining efforts.

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