

NLRB FINDS LIEUTENANTS GUARDING NUCLEAR POWER PLANTS LACK SUPERVISORY STATUS

It's very common for employees to hold quasi-supervisory roles in their workplaces and it's no different in security firms. In the case of the latter, many would think lieutenants overseeing security forces guarding nuclear power plants from terrorist attacks would easily qualify as supervisors. Everyone, that is, except the National Labor Relations Board (NLRB).

In the NLRB's February 10, 2015 decision in *G4S Government Services*, the Board held that even though the work of the lieutenants "involves thwarting or repelling a terrorist attack or other force-based incursion by armed attackers" and the "commands" of the lieutenants "must be obeyed in the event of an attack" the lieutenants were employees on par with those who report to them. The NLRB found the lieutenants do not exercise sufficient independent judgment over decisions regarding directing the employees, assigning or disciplining them.

The case is another reminder that it can be difficult to accurately classify some employees under the various tests used by the many government agencies reviewing your employee classifications. The tests for a supervisor versus employee or independent contractor versus employee or exempt or not exempt are all different and are extremely fact specific. One trend has been clear over the last several years – the default is to consider someone to be an employee or non-exempt and thereby covered by the various employment laws and regulations.

One can only imagine what Colonel Jessup in *A Few Good Men* would think of such a decision from the NLRB and its impact on our national security.

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