NLRB Ruling Makes It Easier to Organize Temporary Workers

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On July 11, 2016, the National Labor Relations Board in *Miller & Anderson*, in another pro-union decision, overruled its own precedent and ruled that unions do not need employer consent before organizing bargaining units that combine both regular employees and temporary workers jointly employed by another entity. Prior to the decision, unions had to get consent from both joint employers in order to represent this type of "mixed" unit. As a result, it will now be easier for unions to organize regular and jointly employed temporary workers in one multiemployer bargaining unit.

The rule at issue in *Miller & Anderson* has been the subject of a game of political football over the years. In 2000, during the Clinton administration, the Board ruled in the *Sturgis* case that both "solely employed" workers (i.e, regular workers with one main employer) and "jointly employed" workers (i.e., workers employed by both the employer and a temporary staffing agency) could be represented in the same bargaining unit, so long as they were all employed by the same main employer and shared a sufficient community of interest. In 2004, during the Bush administration, the Board overruled *Sturgis* in *Oakwood Care Center*, ruling that a union could only represent a "mixed" unit if it obtained consent from both the "user" employer who employs the entire proposed bargaining unit and the "supplier" employer that supplied the jointly employed workers. In *Miller & Anderson*, the Obama Board overruled *Oakwood* and readopted the *Sturgis* rule. The decision continues the trend of the Obama Board overruling Bush-era decisions that were unfavorable to unions.

The *Miller & Anderson* decision is significant, particularly in light the Board's 2015 decision in *Browning Ferris Industries* (discussed here). In *Browning Ferris*, the Board loosened the standards for finding that two companies are "joint employers" of a single workforce. With the one-two punch of *Browning Ferris* and *Miller & Anderson*, not only is it more likely that the Board will find these "jointly employed" workforces to exist, but it will now be easier for unions to organize multiemployer units in these workplaces.

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