SheppardMullin

Articles

Temporary Employees Now Easier Targets For Unions

10.15.2000

The NLRB has abandoned at least ten years of precedent to make it easier for unions to organize "leased" or "contract" employees- commonly referred to as "temps." It has long been the law that an employee unit including both "regular" and "leased" employees was a multi-employer bargaining group. This meant that the unit could not be organized without the consent of both employers. On August 25, 2000, the NLRB overruled itself and said that no employer consent is required when unions want to organize a group of "regular" and "leased" employees working side by side.

The NLRB took note of the dramatic recent growth in the "temporary help supply industry." The Board said recent surveys indicated that "alternative employment arrangements" accounted for as much as 4.3% of all employment in February 1999 (approximately 5.6 million employees).

This flip-flop by the NLRB raises important issues about how temp agency employees should be handled. If a union tries to organize a group that includes "temps" with regular employees, the appropriateness of the bargaining unit will be analyzed under traditional "community of interest" standards. Those organizing drives will also raise traditional "joint employer" issues and voter eligibility issues. All of these legal standards should be taken into account whenever a decision is made to make significant use of "leased" employees. Be aware that the unions may now take a much closer look at the huge contingent work force. Be prepared!

With the resurgence of union organizing activity generally, it is a good time to review the basics of maintaining non-union status.

This article was originally published as a Labor and Employment Law Update (October 2000), a Sheppard, Mullin, Richter & Hampton LLP publication.

Practice Areas

Labor and Employment Counseling

Labor and Employment Litigation