

NLRB ISSUES NEW RULING ON TEMPORARY WORKERS

On November 19, 2004, the National Labor Relations Board (NLRB) ruled that temporary workers cannot join a union of permanent employees of the employer to which they are assigned without the consent of both the temporary agency and the employer of the permanent employees. The 3-2 decision by the NLRB in H.S. Care overrules its controversial M.B. Sturgis decision of 2000 where the NLRB said that the temporary agency and the contracting employer were joint employers of temporary workers assigned to the contracting employer, whether they consented or not. M.B. Sturgis also ruled that temporary employees could join the union of permanent workers where they were assigned and/or vote in a representation election. In H.S. Care, the NLRB ruled that a unit of employees that includes workers from a temporary agency and permanent employees of a contracting employer are multi-employer units, which require consent under Section 9(b) of the Act. The Board stated that without consent, conflicts can arise among the different employers. Section 9(b) and the Board's community of interest tests are designed to prevent such conflicts.

This decision marks the second time in less than six months that the NLRB has overruled one of its controversial rulings. In June of 2004, in IBM Corp., the NLRB overruled its Ohio Epilepsy Foundation decision which extended *Weingarten* rights to non-unionized employees to have a coworker present when during an employer investigation that might reasonably lead to discipline.

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