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NLRB, Reversing an Earlier Ruling, Holds Employer Consent Required for Units Including Temporary Workers

In *Oakwood Care Center*, 343 NLRB No. 76 (November 19, 2004), the Board ruled that temporary workers supplied by a staffing firm and employees of the user employer cannot be combined in a single bargaining unit without the consent of both the temporary agency and the user employer. The decision overruled *M.B. Sturgis*, 331 NLRB 1298 (2000).

The NLRB determined that *Sturgis* contravened Section 9(b) of the National Labor Relations Act by requiring separate and distinct employers to bargain together regarding employees within the same unit. The Board noted that "[t]he Act contemplates that employees be grouped together by common interests *and* by a common employer" and further observed that "[t]he non-consensual mixing of employees of different employers vitiates that basic principle". It then concluded that *Sturgis* "profoundly diminishe[d] employee Section 7 rights"

NLRB Holds That Work Rules Which Prohibit Profane Language or Harassment Do Not Restrict Section 7 Activity

In *Lutheran Heritage Village-Livonia*, 343 NLRB No. 75 (November 19, 2004), the Board clarified its previous ruling in *Lafayette Park Hotel*, 326 NLRB 824 (1998), and held that an employer's work rules prohibiting "abusive and profane language," "harassment," (including, but not limited to, sexual harassment) and "verbal, mental, and physical abuse," should not be read as chilling the rights of employees to engage in activities protected by Section 7 of the National Labor Relations Act. The Board also refused to require the employer to explicitly "carve out" Section 7 conduct from a general prohibition against abusive or profane language or harassment.

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