Viewpoint

Union organizing isn't the biggest problem the NLRB has created

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The NLRB certainly upset a lot of applecarts in the world of outsourced services with its ruling that a company or institution can be held a joint employer with its on-site service contractors in union organizing and contract negotiations. *(See story ,"How NLRB Decision Changes the Rules for Contracted Services," Fall 2015 issue.)*

"The NLRB's ruling is widely expected to permanently change the landscape for contracted workers," a press release from the AFL-CIO said. "No longer can an employer use a contracting company to circumvent the law and subject its employees to substandard treatment and unfair wages."

Certainly, being dragged into a service contractor's labor problems isn't an attractive prospect for companies, colleges and others who have outsourced their dining, hospitality and other on-site services.

The prospects for an effective defense aren't promising, unless you are willing to give up many requirements that have become standard in outsourcing contracts – drug tests of the contractor's employees and setting meal hours (and therefore employees' work schedules), for example.

It's possible union-related issues will be the least of your problems in this area, if the NLRB's ruling withstands court challenges – and it will be the law for the years it takes a case to work its way through the courts, possibly up to the Supreme Court.

A potentially bigger headache would be if the ruling is used as a tool by government agencies and your contractor's disgruntled employees to enmesh your organization in legal actions and lawsuits against the contractor over such issues as harassment, discrimination and OSHA or labor law violations.

A government agency doesn't have to follow the standards of the NLRB ruling, an employment attorney we consulted said, "but the NLRB can certainly be considered a persuasive authority for the interpretation of the joint employer relationship."

A government agency may not use the standard, but it's likely the attorney for an employee suing the contractor will try to include your company in the action.

Possibly, an indemnification clause in your contract with the provider would be at least a partial solution. We'll look for solutions and report developments in *Dining Insights* as they occur.

- Tom Mac Dermott