



# Transportation Law Alert

**SCOPELITIS, GARVIN, LIGHT, HANSON & FEARY**

**NLRB Issues Miller & Anderson Decision Easing The Ability To Combine Solely And Jointly Employed Employees Into A Single Bargaining Unit**

The National Labor Relations Board today issued its long-awaited decision in *Miller & Anderson*, furthering its union-friendly stance on joint employment and bargaining units. The Board's decision makes it easier for a union to combine solely and jointly employed employees into a single bargaining unit. For example, an employer's direct, permanent employees can be combined with employees obtained through a temporary services agency even if the temporary services agency controls the wages and benefits of the temporary employees. The Board's decision reverses a 2004 Board decision, *Oakwood Care Center*, that precluded combining solely and jointly employed employees unless both employers agreed to the combined bargaining unit. In short, employer consent is no longer a factor in the analysis.

The Board's *Miller & Anderson* decision was foreshadowed by its 2015 *Browning-Ferris* decision, which relaxed the standard for determining whether a joint employment relationship exists. And the Board issued its decision in both instances despite widespread concern that an employer could not effectively bargain over terms and conditions of employment for all employees in the unit when the terms and conditions of the jointly employed employees may be controlled by the joint employer (e.g., a temporary services agency). The Board has attempted to alleviate concerns by reiterating that a "community of interest" must nevertheless exist between the solely and jointly employed employees.

The Board's decision, although not surprising, nevertheless forces employers to closely examine potential joint employment relationships and the possible effect of those relationships on union organizing campaigns and combined bargaining units. This examination should also include warehouse operations, PEO relationships, and potentially even drivers working for fleet owners. For additional information, please contact Jim Hanson ([jhanson@scopelitis.com](mailto:jhanson@scopelitis.com)) or Jack Finklea ([jfinklea@scopelitis.com](mailto:jfinklea@scopelitis.com)) in the Indianapolis office or Don Vogel ([dvogel@scopelitis.com](mailto:dvogel@scopelitis.com)) in the Chicago office.