Construction Industry Round Table

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Business News

8/28/2015 – NLRB Ruling Could Affect Relationships with Subcontractors on Projects

In a ruling that breaks with 30 years of settled law and standards in the marketplace as for when a company is a "joint employer with a subcontractor" the National Labor Relations Board (NLRB) has created an open-ended definition with uncertain perimeters. The highly controversial and potentially extremely disruptive ruling will not only likely redefine the traditional franchise model, but MAY impact the relationship between General Contractors and Subs on construction projects. The NLRB concluded that a business/company is a "joint employer" if it can control job conditions, even if it doesn't exert such authority [the case was brought by the Teamsters union involving a Browning-Ferris Industries plant in California]. Before the ruling, the threshold was much higher whereby to be a "joint employer" the company must have the power to fire or direct workers. This brand new definition means something as simple as requiring a uniform could amount to indicia of control for purposes of the rule. So, for example, it is possible that universally agreed upon work rules, such as safety, that a General expects and seeks with a Sub may be considered sufficient control – making the General a "joint employer" with the Sub. BUT, even if the General does not exercise that amount of "direction" when it comes the worksite and the Subs' employees performance/safety procedures, it may STILL be considered a "joint employer" under this far ranging open ended definition. Given the highly controversial nature of the NLRB ruling and the potential impact it will have, there is a strong likelihood it will be challenged in the courts.

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