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NBA Team's Electronic Display Operators Are Employees, Not Independent Contractors, Says NLRB

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On Aug. 18, the National Labor Relations Board (NLRB) determined that a group of electronic display operators for the NBA's Minnesota Timberwolves were employees, not independent contractors. The case came about after the electronic display crew filed a petition to have a union, the International Alliance of Theatrical Stage Employees, represent them. The Timberwolves argued that the representation petition should be dismissed on grounds the workers were independent contractors, as the National Labor Relations Act (NLRA) only applies to employees. An NLRB regional director found the crewmembers were contractors and dismissed the petition, however the NLRB disagreed and overturned his decision. At issue in the case was a crew of workers who produce electronic content that is displayed on a four-sided video display that hangs over center court during games. When evaluating whether workers are independent contractors, the NLRB looks at various factors, including the amount of control by the employer, whether the employer provides the tools necessary for the job, the length of time the worker has provided services to the company, and whether the services provided by the workers are part of the "regular business" of the employer. Weighing and analyzing all of those factors, the NLRB found the workers in this case to be employees under the NLRA. The board specifically found that the Timberwolves exerted significant control over the workers, including by dictating the content to be put on the display screen and at what time the workers had to report for games; the team provided all of the tools to the crewmembers that were necessary for performing their services; most of the crewmembers had been working for the team for a number of years; and the crewmembers' operation of the display screen was essential to the employer's regular business. Given the NLRB found the crewmembers to be employees, they can now proceed with seeking union representation. NLRB Chairman Philip Miscimarra dissented in the case, as he believed the evidence established the crewmembers were, in his view, relatively free from control and had the opportunity to work for other employers. Unfortunately, he was outvoted in this case. This case serves as an important reminder to carefully evaluate independent contractor relationships. The Department of Labor, Internal Revenue Service, and state unemployment agencies routinely scrutinize such arrangements as well. It is vital that companies plan carefully and review the applicable tests for establishing valid contractor arrangements in order to avoid (or at least mitigate) legal risk in this area.

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