

## NLRB Rolls Snake Eyes Before D.C. Circuit

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The U.S. Court of Appeals for the D.C. Circuit recently dealt casinos a winning hand by overturning a ruling of the National Labor Relations Board (NLRB). This time [the court determined](#) the NLRB incorrectly included surveillance techs at the Bellagio and Mirage Hotels as members of a larger unit seeking representation by the International Association of Operating Engineers. In a split decision, the court determined that the surveillance techs who control the casinos' surveillance, access and alarm systems and help investigate errant employees were more like guards and therefore could only be included in an all-guard unit. Judge Sri Srinivasan dissented. The case turned on the definition of "guard" in section 9(b)(3) of the National Labor Relations Act, which precludes the NLRB from certifying a union "if it includes, together with other employees, any individual employed as a guard to enforce against employees and other persons rules to protect property of the employer or to protect the safety of persons on the employer's premises." The court determined that the fact the techs themselves did not "observe, report or respond" to misconduct was not dispositive. Because the surveillance operators and security officers in the monitor rooms could not function without the techs, "they are 'essential' to the process," the court said. In reaching that conclusion, Judge Karen LeCraft Henderson quoted Sam "Ace" Rothstein from the 1995 movie Casino:

In Vegas, everybody's gotta watch everybody else. Since the players are looking to beat the casino, the dealers are watching the players. The boxmen are watching the dealers. The floormen are watching the boxmen. The pit bosses are watching the floormen. The shift bosses are watching the pit bosses. The casino manager is watching the shift bosses. I'm watching the casino manager. And the eye in the sky is watching us all.

In addition, the court determined that the board had failed to consider the unique nature of casinos, likening them to banks with a similar need for strict security. Likewise, the court ruled, the NLRB also failed to grant sufficient weight to the "the crucial fact" that the techs were involved in the enforcement of rules against coworkers, which is one of the key reasons guards are to be excluded from bargaining units that encompass employees performing other jobs within an organization.

### RELATED PRACTICE AREAS

Labor and Employment  
Labor Relations  
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### RELATED TOPICS

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