

11th Circuit Overturns NLRB: Finds Atlanta-area Stagehands Are Independent Contractors

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**John T.L.
Koenig**
Partner

The 11th Circuit Court of Appeals yesterday vacated a decision by the NLRB holding that a company, an Atlanta-area stagehand referral service, violated the National Labor Relations Act (NLRA). The company refers stagehands to producers of concerts, sporting events, and other live events in the Atlanta area. In 2014, the International Alliance of Theatrical Stage Employees union sought to represent the stagehands who contract with the referral service. The NLRB determined that the stagehands were employees of the referral service, directed an election and certified the union as the bargaining representative of the stagehands. The referral service refused to bargain with the union, the NLRB found the company to have committed an unfair labor practice by doing so and the company then appealed to court.

The 11th Circuit vacated the NLRB's decision, finding that the stagehands were independent contractors and therefore, the NLRB lacked jurisdiction over the case. The court noted "the Board has no authority whatsoever over independent contractors." The court also found it to be "well settled that the common law of agency governs" the determination of whether an individual is an employee or independent contractor. The court listed multiple factors under the common law agency test but held that the most critical factor was the extent of control the company exercises over the details of the work. The test for control "takes into account the degree of supervision, the entrepreneurial interests of the agent and any other relevant factors." It also distinguishes between "control over the manner and means of the agent's performance and the details of the work," which is relevant, and "mere economic control or control over the end result of the performance," which is not. Applying those factors, the court determined that only the event producers and touring crews control the means of the work performed by the stagehands, and the referral company lacked the expertise to direct the stagehands in their work for any particular client.

While control is the most important factor, the court also noted there were several other indicia of independent contractor status, including that the referral company did not withhold taxes, the stagehands signed agreements with the service which indicated they were independent contractors, the absence of any fringe benefits provided by the referral service, the fact that the stagehands used their own tools, and that insurance was provided by the clients, not the referral service. [A copy of the decision can be found here.](#)

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