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National Labor Relations Board Redefines “Supervisor”

October 1, 2006—The NLRB issued a lead case addressing supervisory status in response to Supreme Court decision in *Kentucky River*, a collective of three cases hinging on the definition of “supervisor.” The action is being criticized by Democrats and unions who argue that it could mean that there will be a separate class of workers who are neither truly management nor allowed to join unions. Business leaders argue that the change is appropriate and will not affect a large number of workers.

From NLRB:

The National Labor Relations Board has set forth guidelines for determining whether an individual is a supervisor under the National Labor Relations Act. In a major decision made public today, with a 3-2 vote, the Board held that the permanent charge nurses employed by the Employer, Oakwood Heritage Hospital, an acute care hospital, exercised supervisory authority in assigning employees within the meaning of Section 2(11) of the Act. *Oakwood Healthcare, Inc.*—348 NLRB No. 37 (Sept. 29, 2006).

The Board found that the charge nurses, as a regular part of their duties, assigned nursing personnel to the specific patients for whom they would care during their shift. The Board found that such assignments, which consisted of giving “significant overall duties” to an employee, met the statutory definition of “assign” under the Act. The Board further found that the Employer met its burden to show that its charge nurses exercised independent judgment in making such assignments. Finally, the Board found that the Employer failed to establish that the rotating charge nurses exercised supervisory authority for a “substantial” part of their work time. As a result, the Board found that only the Employer’s permanent charge nurses were supervisors, rather than employees, under the Act. The majority opinion is signed by Chairman Robert J. Battista and Members Peter C. Schaumber and Peter N. Kirsanow. Members Wilma B. Liebman and Dennis P. Walsh dissented. The decision is posted on the Board’s [Web site](#).

In *NLRB v. Kentucky River Community Care*, 532 U.S. 706 (2001), the Supreme Court criticized the Board’s extant interpretation of the Section 2(11) term “independent judgment.” As a result, the Board endeavored in today’s *Oakwood Healthcare* decision to reexamine and clarify its interpretations of the term “independent judgment” as well as the terms “assign” and “responsibly to direct,” as those terms are set forth in Section 2(11). The Board proffered the following definitions.

The Board defined “assign” as the act of “designating an employee to a place (such as a location, department, or wing), appointing an individual to a time (such as a shift or overtime period), or giving significant overall duties, i.e. tasks, to an employee.” Further, to “assign” for purposes of the Act, “refers to the . . . designation of significant overall duties to an employee, not to the . . . ad hoc instruction that the employee perform a discrete task.”

The Board then defined the statutory term “responsibly to direct” as follows: “If a person on the shop floor has men under him, and if that person decides what job shall be undertaken next or who shall do it, that person is a supervisor, provided that the direction is both ‘responsible’ . . . and carried out with independent judgment.” The Board held that the element of “responsible” direction involved a finding of accountability, so that it must be shown that the “employer delegated to the putative supervisor the authority to direct the work and the authority to take corrective action, if necessary” and that “there is a prospect of adverse consequences for the putative supervisor” arising from his/her direction of other employees.

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