

...Nurses respond to NLRB ruling stripping union rights

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the definitions of those things, and the Supreme Court had said "independent judgment" and "responsibly to direct" are ambiguous and in need of more precise defining by the NLRB.

Accordingly, the Board agreed to consider Oakwood Healthcare's appeal in March 2002, to use it as a case to refine its legal definition of supervisor.

A tight definition of supervisor isn't easy in the complex workplace hierarchy of health care. At Oakwood, RNs report to an on-site nursing manager, clinical managers, clinical supervisors and assistant clinical managers, in addition to following doctors' orders. But they also direct less-skilled employees to perform tasks such as feeding, bathing and walking patients. Charge nurses, in turn, are RNs who are responsible for overseeing their patient care units. They meet with doctors and patients' family members, and they assign other RNs, licensed practical nurses, nursing assistants, technicians and paramedics to handle particular patients. Some RNs are charge nurses on every shift they work, while some rotate in and out, sometimes serving as charge nurse and sometimes serving as regular staff nurses.

For four-and-a-half years, the Board heard arguments from both sides and thought about it for a long time, long enough that the Board's Clinton appointees' terms expired and were replaced with Bush appointees.

In the end, the Board said permanent charge nurses were supervisors, and so were rotating charge nurses if they were regularly scheduled and served as charge nurses at least 15 percent of the time. Oakwood's rotating nurses weren't regularly scheduled as such, so they got to keep their union. But its permanent charge nurses are now excluded, and management has a pretty good roadmap as to how to exclude the others.

The decision is likely to harm nurses unions in several ways. When current contracts expire, management could complain that charge nurses don't belong in the unit, and legally they would presumably have the upper hand in eliminating those individuals from the union. But that could provoke strong response from the unions, such as the promised strike by CNA if management tries it.

Kaiser Permanente, which has the best relations with its unions of any health care system in the nation, has already announced it has no intention of reclassifying charge nurses. But it remains to be seen what other employers will do.

At least one union used its latest contract to postpone reclassification: The Vermont Federation of Nurses and Health Professionals, affiliated with the American Federation of Teachers Healthcare Division, ratified a three-year contract in July that includes a provision that no registered nurse or licensed practical nurse in the bargaining unit can be considered managerial



Kaiser Permanente RN Bruce Corkum, vice president of AFT Healthcare Northwest, tells reporters a recent NLRB decision will make it more risky for some nurses to challenge hospitals over bad patient care decisions.

or supervisory.

But the bigger impact of the decision is likely to be that it slows unionization drives: Employers fighting union campaigns will be able to exclude charge nurses. And that's not just a numerical loss. Charge nurses are often the nurses who've shown more initiative or leadership ability, and are often the nurses leading union campaigns.

Finally, Oakwood Healthcare, plus

the two companion decisions, have the potential to spread this unwanted "supervisor status" to other workers besides charge nurses. In the cases of Golden Crest Health Care and Croft Metals Inc., the NLRB didn't say the workers WEREN'T supervisors, just that management had failed to prove they were. Some legal observers have said this opens the door to further legal challenges that would try to expand the definition of supervisor. At Golden Crest, the NLRB said nursing home management failed to show that charge nurses had the authority to require other employees to stay past the end of their shifts or come in from off-duty status. It's easy to see how management could get a different result: give them that authority, and charge nurses become supervisors. At Croft, the NLRB said management failed to show that lead workers at the factory were expected to use enough independent judgment to qualify as supervisors.

Overall, it's likely that anti-union employers that have up-to-date legal advice will tweak job descriptions and change workplace practices to fit the broadened definition of supervisor, in order to reduce or limit the number of union members.

There is a chance the decision could be reversed by a later Board. The NLRB interprets the National Labor Relations Act, but its interpreta-

tions have changed depending on what party is in the White House. For example, Clinton appointees to the NLRB ruled that graduate students working as teaching and research assistants could unionize. Bush appointees reversed that decision.

The NLRB's decision in the Oak-

wood case was split 3-2, with the two Democrats on the Board giving a dissenting opinion. The Board's composition could change if and when the White House goes to a Democrat. The current White House occupant's service is limited to two terms, and expires at the end of 2008.

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