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Sixth Circuit Rules that Charge Nurses are not Supervisors Under the National Labor Relations Act

June 26, 2012

On June 20, 2012, the U.S. Court of Appeals for the Sixth Circuit held in *Frenchtown Acquisition Co. d/b/a Fountain View of Monroe v NLRB* that charge nurses employed by a long-term care and rehabilitation facility were not supervisors under the National Labor Relations Act (the Act) and, therefore, the employer must negotiate with them in good faith.

The 43 charge nurses were represented, along with 45 nursing aides, by a unit of the American Federation of State, County and Municipal Employees, AFL-CIO (the Union). In 2004, the employer entered into a collective bargaining agreement with the Union. However, when it expired in 2009, the employer asked the National Labor Relations Board (the Board) to find that the charge nurses qualified as supervisors under section 2(11) of the Act, which provides that only "employees" have a right to unionize and bargain collectively. Supervisors are specifically excluded from the Act's definition of an "employee."

Under a previously established standard by the Supreme Court, individuals are considered supervisors if they: (1) have the authority to engage in any one of the twelve supervisory actions listed in the statute; (2) use "independent judgment" in exercising that authority; and (3) hold that authority "in the interest of the employer."

The employer in *Frenchtown Acquisition Co.* argued that the charge nurses were supervisors because they had authority to assign, responsibly direct, discipline, hire, and transfer other employees, or effectively recommend these actions. The Board and the Sixth Circuit disagreed finding that the employer failed to meet its burden of proving that the charge nurses actually engaged in any one of these supervisory actions. As the Court stated, general testimony asserting that status is not enough. There must be specific evidence produced that supports the testimony before the Board or reviewing courts will determine that an employee is not entitled to protection by the Act.

What Does This Mean for Employers?

Courts recognize that the Board takes great care to ensure that exemptions from coverage under the Act are not construed so broadly as to deny workers the right to organize. Therefore, both the courts and the Board hold employers to high standards when they are trying to prove that certain employees are not covered. Employers cannot assume that an employee qualifies as a supervisor simply because they hold that title. Before refusing to negotiate with any particular employee, employers must undergo a detailed analysis to determine whether specific evidence exists to support the exemption.