

Labor Law: Is A Charge Nurse A Rank And File Employee Or A Supervisor?

A charge nurse in a long-term care facility was fired for circulating a petition among the facility's employees protesting a plan by management to delegate some tasks formerly done by non-licensed CNA's to the facility's RN's and LPN's.

The company fired the charge nurse. She countered by filing an unfair labor practice with the local office of the National Labor Relations Board (NLRB).

The NLRB decided she was a supervisor, not an employee. The NLRB upheld the company's right to fire her. That is, as far as the NLRB was concerned, a supervisor has no rights under the National Labor Relations Act (NLRA).

The US Court of Appeals for the District of Columbia Circuit overruled the NLRB. The court ruled the charge nurse in this case was an employee, not a supervisor. Her conduct was clearly a protected activity within her rights under the NLRA as an employee, assuming she was, in fact, an employee and not a supervisor.

Emerging Legal Issue

When Do Nurses Become Supervisors?

"Supervisor" and "employee" are mutually exclusive categories as the NLRA is interpreted by the NLRB and the Federal courts.

Someone who falls within the definition of a supervisor is not protected by the NLRA. A supervisor is management. The company may feel that engaging in collective action on behalf of the company's employees is a disloyal act for management personnel and may be able to fire a disloyal person in management.

In any event, the relationship between individuals in management and the company itself is not governed by the NLRA. An individual in management has no right to file an unfair-labor-practice complaint with the NLRB.

Facts of the Case

This Nurse Was Not a Supervisor

As a charge nurse she had the responsibility to oversee the other nurses and the CNA's working in her area. As a weekend charge nurse she was the highest-ranking

Private sector labor-law issues are governed by the US National Labor Relations Act (NLRA).

The NLRA provides comprehensive protection to employees engaged in collective action against company management relating to the terms and conditions of their employment.

The protection given to employees engaged in collective action goes well beyond union organizing, union collective bargaining, picketing and striking, activities that are traditionally associated with the NLRA.

However, the NLRA applies only to employees.

By definition, a supervisor is not an employee. A supervisor is management. The NLRA does not apply to issues that arise between personnel in management and the company itself.

A supervisor has authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward or discipline other workers.

The authority of a supervisor requires the use of independent judgment, or the person is not a supervisor.

UNITED STATES COURT OF APPEALS
DISTRICT OF COLUMBIA CIRCUIT
March 23, 2007

employee on the premises when she was on duty and was paid more than other charge nurses. Those factors, standing alone, would tend to support the argument she was a supervisor, but that was not the full story.

Did Not Make Disciplinary Decisions

She was expected to write up CNA's and other nurses who still did not perform their jobs correctly after her verbal efforts to correct them were unsuccessful.

However, her disciplinary write-ups went to the directors of nursing and human relations for decisions whether the employees would be reprimanded, suspended, fired or face other disciplinary action.

She was expected and did fill out portions of employees' evaluations that involved her direct observations of their performance.

However, the employee evaluations likewise went to higher ups for decisions whether to retain a probationary employee, promote an employee, give a raise, etc.

Followed Company Policies

Did Not Make Policies

She sent two employees home for reporting to work intoxicated. She had no choice in the matter, no room to exercise her own independent judgment. Policy had been made by management. If an employee reported to work in grossly unfit condition, the charge nurse sent the individual home, period.

On more than one occasion she called the director of nursing at home on the weekend for guidance what to do about employee work-rule infractions that fell into gray areas of interpretation.

That is, she did not have the authority to decide if coming back late from break or if failing to answer call bells promptly was or was not sufficient grounds to send a CNA home for the rest of the shift. That decision required the independent judgment of someone in management, the director of nursing, who, with the authority to use independent judgment, unlike the charge nurse, was a supervisor, not an employee. *Jochims v. NLRB*, 480 F. 3d 1161 (D. C. Cir., March 23, 2007).