

Labor Law: Nursing Home RN's, LPN's Are Supervisors, Use Independent Judgment To Direct, Discipline Other Employees.

A privately owned extended-care facility refused to negotiate with the union voted in by the facility's RN's, LPN's and CNA's.

The union complained to the US National Labor Relations Board. The Board ordered the facility to negotiate with the union or be charged with an unfair labor practice. The US Court of Appeals for the Sixth Circuit, however, ruled the union certification election was invalid and the facility did not have to recognize the union.

Nursing Home Nurses Are Supervisors, Not Rank-And-File Employees

US labor law excludes a supervisor from the definition of an employee. Only employees have the right to union representation.

A supervisor is someone who uses his or her own independent judgment in exercising authority over others in the workplace.

Independent Nursing Judgment

Nurses in nursing homes use their independent judgment, the court pointed out, to assess residents' needs on a daily basis, to decide what

care is needed and to direct the actions of nursing assistants. Nurses must take guidance from doctors' orders and residents' care plans, but nevertheless still have to use their own independent professional nursing judgment to see that residents' needs are fully met.

Disciplinary Decisions

Employee discipline is another area where nurses in nursing homes can and must use their own professional judgment. A mistake by a nursing assistant may call for no intervention, informal or formal in-service education, a corrective write-up, or disciplinary proceedings to have the aide terminated by management.

Although the director of nursing and administrator make final decisions about termination, floor nurses' actions made a lot of difference in how other nursing-home employees are disciplined, making them supervisors in the court's view. Extendicare Health Services, Inc. v. N.L.R.B., 2006 WL 1307474 (6th Cir., May 9, 2006).