In four separate cases, the National Labor Relations Board regional director in Newark, New Jersey has found health care employees not to be supervisors and therefore entitled to be included in collective bargaining units and to vote in union elections. Regional Director Gary Kendellen issued the findings in light of the May 2001, U. S. Supreme Court decision in *NLRB v. Kentucky River Community Care Inc.*, 121 S. Ct. 1861 (2001). In that case, the Supreme Court held that the Labor Board’s test for deciding whether a professional employee exercises independent judgment in performing certain tasks and qualifies as a supervisor was inconsistent with the National Labor Relations Act. It was the second time the Supreme Court has disagreed with the Labor Board on the issue of supervisory status for health care employees within the past decade, and the Court had left open several questions for further Board consideration.

The four cases involved different categories of employees in different health care settings where a union had petitioned for a representation election. In one case involving physicians at an occupational health clinic chain, the regional director found that the doctors do not use independent judgment to assign or responsibly direct other employees. Medical assistants perform most of their work on their own, the director found. “Where an employee has been preassigned a set of tasks, it is not supervisory authority for an employee to ask another employee to do those tasks that were already assigned.” Although the doctors write prescriptions for physical therapy, the director found no evidence that they direct the therapists in how to perform their jobs. [*Occupational Health Centers of New Jersey P.A. d/b/a Concentra Medical Centers*, NLRB Reg. Dir., No. 22-RC-11944, 1/31/02.]

In a second case, the regional director ruled that registered nurses at a home health care service “perform virtually all of their work on their own.” The RNs prepare a personal care plan for each patient to be carried out by a trained aide. The RNs are not responsible for making patient assignments; they lack the authority to reassign or to discipline; and they are not held accountable for the aides’ performance, the director found. [*Meridian Home Care Services Inc.*, NLRB Reg. Dir., No. 22-RC-12098, 1/31/02.]

In *Madison Center Genesis Eldercare Inc.*, NLRB Reg. Dir., No. 22-RC-11729, 1/31/02, the regional director determined that registered nurses at a nursing home were not supervisors since they give only routine instructions on existing patient care plans to licensed practical nurses and certified nursing assistants. Other evidence of supervisory status, such as authority to assign work, was insufficient to show that the RNs were not merely functioning within the parameters established by the employer, according to the director.

In *Renex Dialysis Clinic of Bloomfield Inc.*, NLRB Reg. Dir., No. 22-RC-12162, 1/31/02, the regional director ruled registered nurses are not supervisors where the patient care technicians work independently in performing dialysis treatments. The director found the RNs do not assign the technicians to patients, are not responsible for their work, and do not play a significant role in scheduling, assigning work, or discipline and evaluation.

In each recommendation, the regional director repeated: “It is well established that an individual need possess only one of the enumerated indicia of authority in order to be encompassed by the definition,
as long as the exercise of such authority is carried out in the interest of the employer, and requires the exercise of independent judgment." As recognized by the Supreme Court, the Labor Board has discretion to determine the scope or degree of discretion that meets the requirement that a supervisor use independent judgment. Also, the Court left open the interpretation of the phrase "responsible to direct" in the definition of “supervisor” under the NLRA.

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