



SUPERVISOR IN NAME ONLY

Union rights of eight million workers at stake in Labor Board ruling

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The National Labor Relations Board (NLRB) will soon decide three cases, known collectively as the Kentucky River cases, which could change the basic rights of workers in America. If the NLRB accedes to the demands the employers are making in these cases to significantly broaden the definition of “supervisor,” hundreds of thousands of employees could be stripped of their contract protections and millions more across the economy could be denied the right to form unions or engage in collective bargaining.

The National Labor Relations Act (NLRA), the nation’s primary law determining the rights of employees to join unions and bargain collectively, excludes “supervisors” from the definition of “employee” (29 USC 152 (3)). A “supervisor” is defined as:

any individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment. (29 USC 152 (11))

The three cases are: *Oakwood Healthcare Inc.*, *Golden Crest Healthcare Center*, and *Croft Metals, Inc.* The cases deal respectively with registered nurses (RNs) acting as “charge”

nurses in a hospital; “charge” nurses (RNs and LPNs) in a long-term care facility; and “leadmen” and “load supervisors” in a manufacturing facility.

The upcoming cases all involve whether these employees can be classified as supervisors and thus excluded from NLRA protections and participation in collective bargaining because they “responsibly direct other employees” while using “independent judgment.” But until now no one would have called these employees “supervisors” in the traditional sense because they do not have authority to hire, fire, discipline, evaluate, or promote the employees they supposedly supervise.

Skilled and experienced workers such as registered nurses, who give instructions to co-workers about how and when to perform certain tasks, are particularly vulnerable to reclassification as supervisors under this push for a broader reinterpretation of the term. For example, nurses who tell orderlies or nurse aides to do certain things for particular patients are at high risk of reclassification, as are journeymen construction workers who guide other workers on a crew.

These forthcoming decisions have the potential to affect a wide range of workers, including many in the building and construction, broadcast, energy, shipping, accounting, and health care industries. The very broad definition of “supervisor” employers are seeking ultimately could take away the right to join a union and bargain collectively from 8 million Americans throughout the labor market.

We have analyzed the potential impact of the decisions in two ways: by examining the supervisory duties associated with the occupations involved in dozens of cases pending before the NLRB or its hearing officers, and by examining the supervisory duties of the entire U.S. private sector workforce that is covered by the NLRA. Looking just at the dozens of pending cases, the position advocated by the employers involved would lead to the exclusion of approximately 1.4 million employees as supervisors. Across all occupations, this extreme employer-centric po-

sition would strip 8 million more workers of their right to participate in a union and bargain collectively, adding to the approximately 8.6 million first-line supervisors that the GAO estimates have already been excluded by prior interpretations of the NLRA.¹

In each of 35 occupations, ranging from registered nurses and computer systems analysts to private guards and police officers, more than 50,000 employees could lose their right to join a union or bargain collectively (Table 1).

TABLE 1
Occupations with more than 50,000 workers affected

Census occupation title (NCS code)	Share with supervisory duties at Level 2	Affected workers (in 1,000s)
Registered Nurses (95)	34.8%	843.0
Computer Systems Analysts and Scientists (64)	25.5%	397.0
Management Related Occupations, N.E.C. (37)	26.4%	200.2
Accountants and Auditors (23)	26.2%	180.7
Cooks (436)	11.1%	180.0
Secretaries (313)	7.3%	166.9
Cashiers (276)	4.4%	162.0
Electricians (575)	23.4%	152.0
Other Financial Officers (25)	27.3%	144.7
Social Workers (174)	23.1%	144.0
Sales Workers, Other Commodities (274)	6.0%	133.5
General Office Clerks (379)	6.4%	127.0
Engineers, N.E.C. (59)	25.4%	125.8
Licensed Practical Nurses (207)	18.4%	123.8
Bookkeepers, Accounting, and Auditing Clerks (337)	6.5%	121.7
Machine Operators, N.E.C. (777)	6.5%	99.0
Food Preparation Occupations, N.E.C. (444)	3.9%	95.0
Bank Tellers (383)	12.1%	93.0
Assemblers (785)	4.2%	91.7
Carpenters (567)	15.9%	87.2
Personnel- Training and Labor Relations Specialists (27)	21.3%	85.0
Janitors and Cleaners (453)	3.4%	83.0
Electrical and Electronic Engineers (55)	17.8%	78.9
Mechanics and Repairers, N.E.C. (547)	11.1%	77.5
Pharmacists (96)	34.7%	70.5
Administrative Support Occupations, N.E.C. (389)	6.6%	69.2
Advertising and Related Sales Occupations (256)	30.8%	67.5
Stock Handlers and Baggers (877)	3.4%	66.6
Truck Drivers (804)	2.5%	65.9
Food Counter, Fountain, and Related Occupations (438)	4.9%	62.7
Industrial Machinery Repairers (518)	10.2%	57.4
Health Technologists and Technicians, N.E.C. (208)	8.7%	55.2
Physicians Assistants (106)	62.6%	53.7
Physicians (84)	18.5%	52.4
Construction Trades, N.E.C. (599)	20.5%	51.5
Guards and Police, Except Public Service (426)	4.1%	50.3
Total		4,715

In 24 occupations, including physician assistants, tile setters, and registered nurses, more than 30% of those employed could lose their union rights (Table 2).

The occupations involved in the cases we reviewed that are pending before the NLRB or its administrative law judges include at least those listed in Table 3 (see page 4), if not more.

Method of Analysis

The estimate of the effect of reclassifying these workers as supervisors and removing them from NLRB coverage was calculated using data on the share of each of 447 detailed occupations affected and the employment level in each occupation.

Specifically, we employ the Bureau of Labor Statistics' estimates of the share of each occupation that has so-called "supervisory" duties. This share is based on the factors provided in the Bureau of Labor Statistics' National Compensation Survey, which assigns a level to each occupation according to its skill content along 10 dimensions, including knowledge, complexity, personal contacts, and so on. One of these 10 "leveling factors" is "Supervisory Duties," describing "the level of supervisory responsibility for a position." We have identified that those having supervisory duties at what NCS calls "Level 2" will be impacted by the potential ruling. The U.S. Department of Labor provides a description of "Level 2" duties on page 177 of Bulletin 2561, *National Compensation Survey: Occupational Wages in the United States, July 2002*:

Incumbent sets the pace of work for the group and shows other workers in the group how to perform assigned tasks. Commonly performs the same work as the group, in addition to lead duties. Can also be called group leader, team leader, or lead worker.

To estimate the effect of excluding employees who work at supervisory Level 2, we needed to identify the employment levels in each occupation. BLS kindly provided an estimate of the share of private, non-farm employment in each occupation in 2002. Some information on "confidential employment" was excluded, and as a result the occupation shares totaled 99.6% rather than 100%. We rescaled the share to allow them to sum to 100%. We multiplied each occupation's employment share by the total non-farm, private payroll employment in 2005.

Given these data, the impact on each occupation is simply the share affected multiplied by the employment level. The total affected is the sum of the impact of the individual occupations.

TABLE 2
Occupations with more than 30% affected

Census occupation title (NCS code)	Share with supervisory duties at Level 2
Physicians Assistants (106)	62.6%
Nuclear Engineers (49)	49.5%
Tile Setters, Hard and Soft (565)	48.1%
Chemistry Teachers (115)	44.8%
Underwriters (24)	40.0%
Sheetmetal Duct Installers (596)	39.7%
Agricultural and Food Scientists (77)	39.7%
Social Scientists, N.E.C. (169)	38.4%
Power Plant Operators (695)	37.1%
Physical Therapists (103)	36.8%
Electrical Power Installers and Repairers (577)	35.9%
Recreation Workers (175)	35.1%
Business, Commerce, and Marketing Teachers (135)	34.9%
Registered Nurses (95)	34.8%
Pharmacists (96)	34.7%
Aerospace Engineers (44)	34.4%
Therapists N.E.C. (105)	34.0%
Physical Scientists N.E.C. (76)	33.5%
Dressmakers (666)	32.9%
Biological Science Teachers (114)	32.2%
Science Technicians, N.E.C. (225)	31.9%
Advertising and Related Sales Occupations (256)	30.8%
Actuaries (66)	30.7%
Health Diagnosing Practitioners N.E.C. (89)	30.6%

Endnotes

1. General Accounting Office. 2002. *Collective Bargaining Rights: Information on the Number of Workers With and Without Bargaining Rights*, GAO-02-835, September, p.10.

TABLE 3
Occupations directly affected by pending cases

Census occupation title (NCS code)	Supervisory duties at Level 2	Affected workers (in 1,000s)
Physicians (84)	18.5%	52.4
Registered Nurses (95)	34.8%	843.0
Business, Commerce, and Marketing Teachers (135)	34.9%	9.4
Editors and Reporters (195)	12.0%	24.1
Licensed Practical Nurses (207)	18.4%	123.8
Sales Representative Mining, Manufacturing, and Wholesale (259)	5.2%	31.3
Demonstrators-Promoters and Models, Sales (283)	3.2%	4.6
Dispatchers (359)	9.1%	11.9
Weighers, Measurers, Checkers, and Samplers (368)	1.4%	0.4
Baggage Porters and Bellhops (464)	4.1%	2.3
Millwrights (544)	6.9%	5.2
Glaziers (589)	20.8%	10.2
Tool and Die Makers (534)	13.8%	22.0
Stationary Engineers (696)	21.9%	9.4
Sawing Machine Operators (727)	3.6%	4.1
Printing Press Operators (734)	8.4%	25.1
Assemblers (785)	4.2%	91.7
Production Inspectors, Checkers, and Examiners (796)	6.0%	28.9
Theology Teachers (147)	2.2%	0.3
Trade and Industrial Teachers (148)	5.3%	0.3
Freight, Stock, and Material Handlers, N.E.C. (883)	3.8%	43.8
Post-secondary Teachers	11.7%	42.6
Total cases	14.6%	1,387