

RNs

WORKING TOGETHER

Fact Sheet and Background Information on Pending National Labor Relations Board Decision Affecting Private Sector Nurses

- Observers of labor and healthcare issues are anticipating a major decision by the National Labor Relations Board (NLRB) in three combined cases that could deem millions of nurses as supervisors, thereby disenfranchising them from their union and shaking the very foundation of union organizing in the private sector healthcare arena. Such a decision would likely to have massive reverberations for workers in other private sector jobs.
- The cases under NLRB review are: *Oakwood Healthcare Inc.*, *Golden Crest Healthcare Center and Croft Metals Inc.*
- NLRB is considering whether certain employees who hold a minimum amount of authority in the workplace should be considered supervisors under the National Labor Relations Act (NLRA). The issue revolves around whether nurses should be considered supervisors if, even on occasion, they use independent judgment to make decisions, such as assigning or responsibly directing others' work. Under the NLRA, supervisors do not have the legal protections available to other workers and can be disciplined or fired for supporting the union.
- Nurses' status under the NLRA – as protected employees or unprotected supervisors – remains an unsettled issue. In 1994 and 2001, the U.S. Supreme Court issued decisions on whether a nurse providing typical nursing services in a nursing home or hospital should be characterized as an employee entitled to the NLRA's protections *or* as a supervisor and excluded.
- In its latest decision, *Kentucky River Community Care Inc.*, the court rejected an NLRB interpretation that would have protected most nurses as employees. The Court's decision, however, did not settle the substantive issue – who is a supervisor – and kicked the issue back to the NLRB.
- The best possible outcome for healthcare professionals would be a board decision stating that nurses do not have authority to “assign” or “responsibly to direct” other employees using independent judgment. Under this scenario, nurses would not lose their right to form, join or assist unions or to bargain collectively. However, due to the pro-management composition of the board's majority, such a holding is unlikely.

- The worst possible outcome would be a board decision holding that charge nurses, or nurses who have taken charge at any time for any reason, are supervisors as defined by the NLRA. These nurses could be fired or disciplined for engaging in union activity. They technically would have the right to form a union, but the decision to do so would be at the discretion of the employer.
- Employers would not be obligated by a NLRB decision on these cases to remove union recognition from any registered nurse.
- The Bush-appointed NLRB has issued a series of anti-worker decisions over the past five years. For instance, in a 2004 decision involving Brown University, the NLRB ruled that graduate student assistants at private institutions are not employees as defined by the NLRA and therefore ineligible for NLRA protection and union status.
- For more information about the pending NLRB ruling or to set up an interview regarding the ruling, please contact Jamie Horwitz at 202/879-4447, Suzanne Martin at 301/628-5133 or Jodie Sakol at 202/429-1134.