

NLRB ruling could deprive millions of US workers of bargaining rights

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In a ruling with broad implications, the National Labor Relations Board earlier this month decided that registered nurses can be excluded from union membership if they perform certain minimal supervisory duties. The case involved Oakwood Heritage Hospital in Taylor, Michigan, where the United Auto Workers had been attempting to organize nurses.

US labor law exempts supervisors from legal protections guaranteeing the right to join a union. The NLRB ruling could lead to the exclusion of up to 8 million workers who up until now would have qualified for union representation.

In a 3-2 decision the board held that workers could be classified as supervisors if they oversaw other employees and could be held accountable for their performance. It further asserted that workers could be deemed supervisors if their supervisory functions accounted for as little as 10 to 15 percent of their work time.

The ruling could affect large numbers of workers in the restaurant and retail trades where it is common for employees to be delegated minor supervisory duties, such as shift assignments, even though the bulk of their responsibilities involve routine tasks. The two dissenting NLRB members pointed out that the ruling would classify most of the country's 20 million professional workers as supervisory—for example doctors, who may direct the activities of nurses.

Steven Bokart, general counsel for the United States Chamber of Commerce, said the ruling did not go as far as he wanted. He called claims that millions would be exempted from union representation “outrageous.”

However, William Gould, former head of the NLRB under the Clinton administration, called the ruling “seismic.” He said the interpretation provided

“substantial” room for employer abuse, since managers could add just enough supervisory responsibilities to the job descriptions of employees to cause them to fall into the exempt category.

In the Oakwood case, management had argued that nurses in the intensive care unit who assigned responsibilities to other nurses, nurses' assistants and technicians were exempt supervisory employees. The UAW said the duties were minor and routine and required little independent judgment.

The immediate effect of the ruling will be to encourage hospitals to redefine job duties in order to claim that hundreds of thousands of the 2.6 million nurses in the US are supervisory employees, thereby abolishing their collective bargaining rights. In some cases companies could use the ruling to simply refuse to recognize the bargaining rights of groups of employees they claim are supervisory.

Anticipating a favorable NLRB ruling on this issue, some employers had already initiated challenges to the union representation rights of their employees. For example, earlier this year Virginia Mason Medical Center in Seattle indicated it planned to dispute the union status of all 600 of its registered nurses, pointing to the pending NLRB case.

The ruling in the Oakwood Healthcare case was one of three pending disputes, collectively known as the Kentucky River cases. They involved attempts by employers in a wide variety of industries to classify workers with minor oversight responsibilities as supervisors in order to circumvent union organizing efforts. Using the same expanded criteria it established in the Oakwood case, the board ruled against employers in two other instances, saying the workers involved did not have enough independent authority to qualify as supervisors.

In the case of Golden Crest Healthcare Center in Hibbing, Minnesota, the board found that nurses there did not have the authority to assign tasks to other nurses. It also ruled against Croft Metals in McComb, Mississippi, which claimed lead workers in the loading dock area at its facility were supervisory.

The recent NLRB ruling follows a series of antiunion decisions by the Bush-appointed majority on the labor board. In 2004 the NLRB denied union coverage to graduate teaching assistants. In the Oakwood Care Center case, also in 2004, the board effectively stripped workers employed by temporary agencies of the right to organize, declaring that they could not form a union with permanent employees without employer consent. In another ruling, the board held that disabled workers in rehabilitation programs were not employees and therefore not eligible to organize. It has also ruled that newspaper carriers were independent contractors, not workers eligible to form unions.

The AFL-CIO has done nothing in the face of the latest attack by the Bush administration besides organizing a few token protests outside NLRB offices. As always, its entire strategy is oriented toward pressure on the Democratic Party.

House Democratic leader Nancy Pelosi issued a perfunctory denunciation of the NLRB ruling regarding the classification of supervisory employees. As a countermeasure she urged passage of the Employee Free Choice Act, jointly sponsored by Democratic Senator Edward Kennedy and Republican Arlen Specter, which provides for a so-called card check, a procedure that allows union recognition without a certification election. The action is purely symbolic, since the measure has no chance of passage. In any event it will do nothing to halt the ongoing decimation of the AFL-CIO's membership base.

Union membership continues to plummet, despite all the efforts of the labor bureaucracy to reverse the tide. As a percentage of the private sector workforce, the number of workers belonging to unions now stands at its lowest level in more than 100 years.

There is little reason to believe that the new restrictions on union organizing are actually aimed at the moribund AFL-CIO bureaucracy, which would oppose rather than encourage any real influx of militant workers into the ranks of the unions. The main fear of the employer groups is that the disquiet and anger of

workers over falling wages, jobs cuts and oppressive conditions on the job will find expression in an independent movement outside the control of the old "labor" organizations. The erection of new legal restrictions on the democratic rights of workers to organize represents a preemptive and completely reactionary attack against such a movement.



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