

LEGAL EAGLE EYE NEWSLETTER

August 2001

For the Nursing Profession

Volume 9 Number 8

Labor Relations: US Supreme Court Sees Nurses As Supervisors, Not Employees.

The US Supreme Court has handed down a ruling affecting nurses' rights relative to union organizing and collective bargaining in healthcare facilities where they work.

Overruling the National Labor Relations Board (NLRB), the Supreme Court ruled that a mental health facility in Kentucky had no obligation to bargain with a labor union local that claimed to represent all 110 of the facility's patient-care workers. The members of the local union were nurse's aides, rehabilitation counselors and six registered nurses.

There were twelve more persons working at the facility who the union conceded were managerial and whom the union did not claim to represent.

Supervisors Do Not Belong In Bargaining Unit With Employees

By attempting to include the registered nurses in the local bargaining unit the union had created an illegal bargaining unit, the court ruled. It was illegal because it included employees and supervisors alike, the six registered nurses being supervisors, not employees, in the Supreme Court's judgment.

The Court followed its own 1994 ruling that said registered nurses who supervise other patient-care workers may have no Federal labor law rights.



Nurses are supervisors, not employees, as the terms are used in the National Labor Relations Act, if they use their own independent professional judgment to provide patient care by overseeing nurse's aides who directly administer patient care.

Only employees, not supervisors, belong in a bargaining unit with other employees of a healthcare facility.

UNITED STATES SUPREME COURT, 2001.

National Labor Relations Act

The National Labor Relations Act (NLRA) as supplemented by the Taft-Hartley Act of 1947 does not allow supervisors to be mixed into a local union bargaining unit with employees.

The rationale is that only employees, not supervisors, have the right to organize and bargain collectively with their employer under NLRA.

Quoting the NLRA, the Court noted that a supervisor is "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 responsibility 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."

The key for the Court was that these registered nurses used independent professional judgment to direct other care workers, the nurse's aides at the facility who performed direct patient care. They were supervisors and not subject to the jurisdiction of the NLRB. **N.L.R.B. v. Kentucky River Community Care, Inc.**, 121 S. Ct. 1861 (2001).

Inside this month's issue ...

August 2001

New Subscriptions Page 3

**Labor Relations/Nurses As Supervisors/Union Bargaining Unit
Developmental Disability/Discrimination/Community Placements
Patient Care Issues/Nurse Resigns - Resident's Personal Finances
Labor & Delivery/Hypoxic Brain Ischemia - Morphine Toxicity
Epidural Pump - Nursing Negligence/Medical Review Panel
Terbutaline Infusion Pump/Off Label Medication
Operating Room/Patient Falls - Operating Room/Res Ipsa Loquitur
Operating Room/Physician As Captain Of The Ship**