Physicians Are Not Always Supervisors Under the NLRA

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In a recent decision, Region 10 of the National Labor Relations Board found that physicians are not automatically "supervisors" under the National Labor Relations Act (NLRA). *Piedmont Health Services, Inc. and Piedmont Health Services Medical Providers United*, Case No. 10-RC-286648. Although physicians have the authority to direct other employees within a healthcare institution, their primary role is to provide healthcare services to patients, not provide administrative and personnel services to the institution itself. Thus, in certain situations, physicians can be considered employees under the NLRA and may unionize with other healthcare personnel.

Definition of "Supervisor"

The Piedmont Health Services United union filed an election petition seeking to represent employees in the company's North Carolina facilities. The proposed unit included a group of nurses, physicians' assistants, and physicians. The company argued that the physicians should be excluded from the unit because they were supervisors under the NLRA.

Under Section 2(11) of the NLRA, "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."

Region 10 determined that the physicians in this case did not routinely direct other employees, assign work, determine the hiring, firing, or promotion of employees, issue discipline when required, or engage in other personnel decisions that are reserved for supervisors. Rather, the physicians' primary role was to provide healthcare services to patients. Thus, any occasional supervisory

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tasks that may have been performed did not necessitate a supervisor classification.

"Community of Interest"

Region 10 also found that the proposed unit was appropriate because the physicians shared a "community of interest" with other healthcare personnel (nurse practitioners, certified nurse midwives, and physician assistants) because they were all integrated with one another, shared common supervisors, and used similar skills to perform nearly identical work while providing healthcare services to their patients. Thus, the physicians were properly included with other healthcare personnel to constitute an appropriate unit for the election.

Region 10's decision shows that physicians, and potentially other professionals, will not be automatically considered supervisors under the NLRA. Employers should consider reviewing physicians' job duties to ensure that they have supervisory authority that meets the requirements of Section 2(11).

For more information, contact Brice Smallwood, Alesha Hamilton, or any other attorney with Frost Brown Todd's Labor and Employment practice group.

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