

## Definition of Supervision

The Labor-Management Relations Act defines “supervisor” in § 2(11), which provides:

The term “supervisor” means 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 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 U.S.C. § 152(11).

Employees are statutory supervisors if: (1) they hold the authority to engage in any 1 of the 12 listed supervisory functions; (2) their “exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment;” and (3) their authority is held “in the interest of the employer.” See Kentucky River, 532 U.S. at 712-13 (citing NLRB v. Health Care & Retirement Corp. of America, 511 U.S. 571 (1994)).

Consistent with the statutory language and legislative intent, it is recognized that Section 2(11)’s disjunctive listing of supervisory indicia does not alter the essential conjunctive requirement that a supervisor must exercise independent judgment in performing the enumerated functions. See HS Lordships, 274 N.L.R.B. 1167 (1985). Indeed, as stated by the Sixth Circuit in Beverly Enterprises v. NLRB, 661 F.2d 1095 (6<sup>th</sup> Cir. 1981), “[r]egardless of the specific kind of supervisory authority at issue, its exercise must involve the use of true independent judgment in the employer’s interest before such exercise of authority becomes that of a supervisor.”

Additionally, the exercise of independent judgment alone will not suffice for “the decisive question of whether [the employee has] been found to possess authority to use

independent judgment with respect to the exercise . . . of some one or more of the specific authorities listed in Section 2(11).” Advanced Mining Group, 260 N.L.R.B. 486 (1982). In short, “some kinship to management, some empathetic relationship between employer and employee must exist before the latter becomes a supervisor of the former.” Id.

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