

NOT INCLUDED  
IN BOUND VOLUMES

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD

OAKWOOD HEALTHCARE, INC.  
Employer  
and Case 7-RC-22141

INTERNATIONAL UNION, UNITED AUTOMOBILE,  
AEROSPACE AND AGRICULTURAL IMPLEMENT  
WORKERS OF AMERICA (UAW), AFL-CIO  
Petitioner

BEVERLY ENTERPRISES-MINNESOTA, INC.,  
d/b/a GOLDEN CREST HEALTHCARE CENTER  
Employer  
and Cases 18-RC-16415  
18-RC-16416

UNITED STEELWORKERS OF AMERICA,  
AFL-CIO, CLC  
Petitioner

CROFT METALS, INC.  
Employer  
and Case 15-RC-8393

INTERNATIONAL BROTHERHOOD  
OF BOILERMAKERS, IRON SHIP  
BUILDERS, BLACKSMITHS, FORGERS  
AND HELPERS, AFL-CIO  
Petitioner

NOTICE AND INVITATION TO FILE BRIEFS

On March 5, 2002, the Board granted the Employer's Request for Review of the Acting Regional Director's Decision and Direction of Election in Oakwood Healthcare, Inc., Case 7-RC-22141. On October 18, 2002, the Board (Member Liebman dissenting) granted review of the Regional Director's Supplemental Decision in Golden Crest Healthcare Center, Cases 18-RC-16415, 18-RC-16416. On October 24,

2002, the Board (Member Liebman dissenting) granted review of the Acting Regional Director's Supplemental Decision in Croft Metals, Inc., Case 15-RC-8393.

The Board has included these three cases in a single notice inviting the filing of briefs in order to afford the opportunity to the parties and interested amici to fully address the issues below. The Board, however, has not consolidated these cases for decision. Accordingly, although one brief should be filed addressing all three cases, eight copies of the brief should be submitted for each of the three cases.

The parties and interested amici are invited to file briefs, with the Board in Washington, D.C. on or before September 19, 2003, addressing the supervisory status of the individuals in dispute in these three cases in light of the Supreme Court's decision in NLRB v. Kentucky River Community Care, 532 U.S. 706 (2001). No extensions of time will be granted for the filing of these briefs, which shall not exceed 50 pages in length. The briefs should address the following questions, with reference to each of the three cases. Where you are asked to provide a definition, test, distinction, or delineation, explain how the Board should apply it to each of the three cases. The parties may file responses to these briefs on or before October 3, 2003. No extensions of time will be granted for filing responses, which shall not exceed 10 pages in length:

1. What is the meaning of the term "independent judgment" as used in Section 2(11) of the Act? In particular, what is "the degree of discretion required for supervisory status," i.e., "what scope of discretion qualifies" (emphasis in original)? Kentucky River at 713. What definition, test, or factors should the Board consider in applying the term "independent judgment"?
2. What is the difference, if any, between the terms "assign" and "direct" as used in Sec. 2(11) of the Act?
3. What is the meaning of the word "responsibly" in the statutory phrase "responsibly to direct"?

4. What is the distinction between directing "the manner of others' performance of discrete tasks" and directing "other employees" (emphasis in original)? Kentucky River, at 720.
5. Is there tension between the Act's coverage of professional employees and its exclusion of supervisors, and, if so, how should that tension be resolved? What is the distinction between a supervisor's "independent judgment" under Sec. 2(11) of the Act and a professional employee's "discretion and judgment" under Sec. 2(12) of the Act? Does the Act contemplate a situation in which an entire group of professional workers may be deemed supervisors, based on their role with respect to less-skilled workers?
6. What are the appropriate guidelines for determining the status of a person who supervises on some days and works as a non-supervisory employee on other days?
7. In further respect to No. 6 above, what, if any, difference does it make that persons in a classification (e.g., RNs) rotate into and out of supervisory positions, such that some or all persons in the classification will spend some time supervising?
8. To what extent, if any, may the Board interpret the statute to take into account more recent developments in management, such as giving rank-and-file employees greater autonomy and using self-regulating work teams?
9. What functions or authority would distinguish between "straw bosses, leadmen, set-up men, and other minor supervisory employees," whom Congress intended to include within the Act's protections, and "the supervisor vested with "genuine management prerogatives." NLRB v. Bell Aerospace Co., 416 U.S. 267, 280-281 (1974) (quoting Senate Report No. 105, 80<sup>th</sup> Cong., 1<sup>st</sup> Sess., 4 (1947)).

10. To what extent, if at all, should the Board consider secondary indicia-- for example, the ratio of alleged supervisors to unit employees or the amount of time spent by the alleged supervisors performing unit work, etc.-- in determining supervisory status?

Dated, Washington, D.C. July 25, 2003

By direction of the Board:

Lester A. Heltzer

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Executive Secretary