Labor Law - Supervisory Personnel and the N. L. R. A

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SUPERVISORY EMPLOYEES AND THE NATIONAL LABOR RELATIONS ACT

Section 2(3) of the National Labor Relations Act in defining the term "employee" to include any employee save farm labor, domestic help, and individuals employed by their parents or spouses impliesly places supervisory employees under the Act. However, section 2(2) of the same Act in defining the term "employer" to include any person acting in the interest of an employer, directly or indirectly, would seem to exclude supervisory employees from the provisions of the National Labor Relations Act. Therefore, there has been, since the enactment of the Act in 1935, considerable doubt and controversy as to whether or not plant superintendents, foremen, and other supervisory employees have the legal right to participate in a collective bargaining unit or to organize themselves into one, to become members of the union representing the employees of their particular industry or to form a union themselves. Is the employer guilty of an unfair labor practice who discharges or demotes a supervisory employee because of union membership or activities? Is such an employee within the jurisdiction of the National Labor Relations Board?

By its decision in the Maryland Drydock Company case, given May 17, 1943, the National Labor Relations Board reversed previous rulings and ruled negatively as to the questions above propounded. In this case the Industrial Union of Marine and Shipbuilding Workers petitioned the Board for the right to represent temporary supervisory employees either in the same unit to which subordinate employees belonged or in separate units. The Board dismissed the petition, finding that supervisory employees are not proper parties of a separate unit for collective bargaining nor of an all-embracing unit, on the grounds that such practice would disrupt managerial and production technique and might, very well, have a coercive effect on the rank and the file of the employees. The soundness of this ruling is apparent from the following cases, which preceded Maryland Drydock Company v. National Labor Relations Board.

In National Labor Relations Board v. Christian Board of Publications the Court sustained a Board ruling which held that supervisory employees may be included in an appropriate unit for collective bargaining. Here, the defendant was charged with an unfair labor practice in that the supervisory employees formed a company collective bargaining unit which stifled all true union activity. The defendant pleaded that since the supervisory employees were within section 2(3) of the Nation-

1 N.L.R.B. release R-5517.
2 113 F.2d 678 (C.C.A. 8th, 1940).
3 44 N.L.R.B. 31.
al Labor Relations Act, the doctrine of *respondeat superior* did not in this instance apply. The Board admitted the status of the supervisory employees but denied the defendant’s contention.

*National Labor Relations Board v. Skinner and Kennedy Stationery Company* placed supervisory employees under both section 2(3) and section 2(2) of the Act. Here, Eckert, a foreman of the defendant, was discharged because of union activities. The defendant demurred to the jurisdiction of the Board on the grounds that Eckert was not an employee under the Act, but more properly was an employer. The Board ruled that Eckert was an employer under section 2(2) of the Act as to those under him, but that he was also an employee under section 2(3) of the Act and for that reason had the right to become a member of an employees’ union.

The question of whether or not supervisory employees come under the employee provisions of the National Labor Relations Act was explicitly decided in the affirmative by *In the Matter of the Union Collieries Coal Company and the Mine Officials Union of America,* and the controversy seemed to be finally determined. Here, supervisory employees, foremen, weigh bosses, and fire bosses, were authorized by the Board to form their own union for purposes of collective bargaining. It was ruled that section 2(3) of the Act was sufficiently broad to include all supervisory employees. The Board felt that this was necessary to prevent coercion of such employees by employers and through them of subordinate employees.

However, in *General Motors Sales Corporation v. U. M. W. of America, Local 216* the National Labor Relations Board came to its decision by a process of reasoning which would eventually, and naturally, result in the ruling of the *Maryland Drydock Company* case. In the instant case the defendant demoted Franke, a shipping supervisor, because of his refusal to relinquish union membership. During a strike Franke had engaged in union activities in that he caused shippers to boycott the Company under the threat: “If you pick up any goods now, after the strike I will see to it that you get no more.”... Franke allotted consignments to the shippers. While granting that Franke was an employee under the Act, the Board ruled that the act of the defendant was not discriminatory nor an unfair labor practice. This because Franke had abused his position of trust and responsibility with the Company to work against its interest. The Board recognized the right of the Company to require adherence of supervisory employees to its policies.

4 113 F(2nd) 667 (C.C.A. 8th, 1940).
5 34 N.L.R.B. 1052.
7 N.L.R.B. release R-5517.
The decision in the *Maryland Drydock Company* case that supervisory employees may not join or form a collective bargaining unit is for the best interests of industry, labor, and the public. As the facts of the *General Motors* case made so evident, membership of supervisory employees in unions tends to destroy the sense of responsibility and company loyalty which managerial and production techniques require of such employees. The industrial discipline and morale necessary for a continued advance of the labor movement would be seriously impaired by the presence of foremen, supervisors, plant superintendents and the like within collective bargaining units. Supervisory employees must be responsible agents of the particular industry or the welfare of the public will not be served. It is difficult for supervisory employees to maintain a sense of responsibility to their employers and to be loyal to their particular union... the interests of the two are so often divergent. Today, when the war effort demands the maximum in production achievement, supervisory employees, because they are in charge of so many vital operations, should not be permitted to become involved in labor controversies.

*Thomas McDermott.*

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8 Supra, note 2.
9 34 N.L.R.B. 1052.