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Fine Line: Fourth Circuit Joins Other Courts In Narrowly Interpreting Who Qualifies As An NLRA-Exempt Manager

Labor Relations Update on **December 5, 2025**

On December 1, 2025, in *NLRB v. Constellis, LLC*, a unanimous Fourth Circuit panel joined other federal appellate courts in narrowly interpreting the National Labor Relations Act's ("NLRA" or the "Act") judge-made managerial exception, which carves out certain high-level employees from the NLRA's protections.

The decision reinforces the decades-long trend of construing the exception narrowly and underscores the NLRA's broad definition of employee. In short, this is a demanding standard, and courts and the National Labor Relations Board (the "Board") may deem even key employees covered by the NLRA—and thus able to unionize and invoke the Act's other protections—unless another exception applies.

Background

A former firearms and tactics instructor at Constellis, LLC, raised safety concerns with supervisors, including reports over bullets allegedly ricocheting on several ranges during shooting exercises. After a meeting in which he raised his voice and argued with supervisors, Constellis suspended and discharged him for alleged insubordination.

In the ensuing unfair labor practice case, the Board held that Constellis violated Section 8(a)(1) by suspending and firing the instructor. Although the company argued the instructor was a manager and therefore not covered by the Act, the Board adopted the administrative law judge's conclusion that he was not a manager and was entitled to engage in protected activity, including his voicing of safety concerns to supervisors.

The Board concluded that the instructor was not a manager because, despite training other employees, he did not represent management interests by taking or recommending discretionary actions that effectively control or implement employer policy. For example, he did not attend management meetings and had no role in selecting trainees or deciding whether a student could continue in the program or be placed as a security guard with a federal agency.

The Fourth Circuit's Decision

The Fourth Circuit upheld the Board's decision, emphasizing that the Supreme Court's managerial exception is narrow.

Relying on the Supreme Court's standard, an individual must "formulate and effectuate management policies by expressing and making operative the decisions of their employer" to qualify as an NLRA-exempt manager.

Given that test and the Act's broad definition of "employee," the court aligned with decisions from the D.C. and Sixth Circuits—*Univ. S. Cal. v. NLRB*, 918 F.3d 126 (D.C. Cir. 2019) and *David Wolcott Kendall Mem. Sch. v. NLRB*, 866 F.2d 157 (6th Cir. 1989)—in narrowly construing the exception.

The court further relied on the Supreme Court's decision in *NLRB v. Yeshiva Univ.*, 444 U.S. 672, 690 (1980), explaining that the exception does not apply to employees "whose decisionmaking is limited to the routine discharge of professional duties in projects to which they have been assigned."

In enforcing the Board's order that the instructor was not managerial, the Fourth Circuit highlighted that the instructors: (i) were not permitted to formulate or effectuate management policies; (ii) could not alter the curriculum they taught; (iii) had no role in selecting students for training; (iv) were barred from independently disciplining students; and (v) were unable to decide if students were permitted to remain in the training program.

Takeaways

If employers want to demonstrate that an employee is an NLRA-exempt manager, then the employee should have true managerial authority to formulate and effectuate management policies. This recent decision by the Fourth Circuit reaffirms that the NLRA has a broad definition of “employee” and applies even to some employees who perform key roles for an employer but lack genuine policy-making authority.

Regardless, while the NLRA’s managerial exception is narrow, other categories—such as “supervisor” or “confidential employee”—may still apply depending on the facts. Employers appearing before the Board should assess both the Act’s broad coverage and the full range of potential exceptions.

As always, we will continue to monitor how courts interpret the NLRA and its exceptions.

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Related Professionals

- **Joshua S. Fox**
  Partner
- **Yonatan Grossman-Boder**
  Special Labor Relations Counsel