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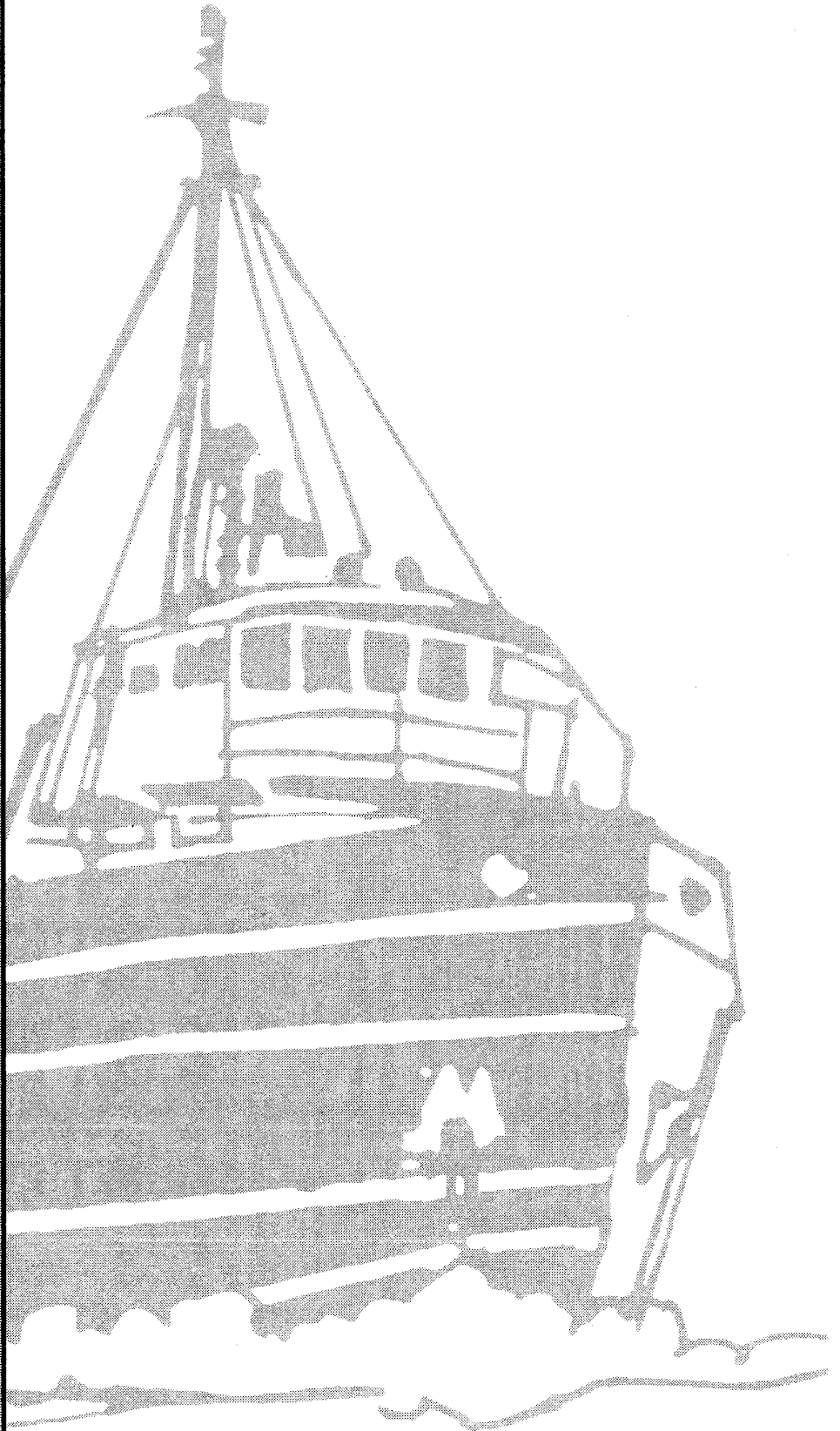
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SUPERVISORY STATUS UNDER THE NATIONAL LABOR RELATIONS ACT

What is a Supervisor and why is it important?

Under the National Labor Relations Act, Section 2(11) lists the following criteria as determinative factors in deciding supervisor status of an employee. In order to be properly designated as a supervisor, an individual must have the authority to do one or more of the following:

Hire, Transfer, Suspend, Layoff,
Recall, Promote, Discharge, Assign,
Reward, Discipline, Responsibly
direct, or adjust grievances.

If an individual has the authority to independently make decisions regarding any of the previous criteria then the Board is required to find that the employee is a supervisor within the meaning of the Act. If employees do not have the authority to do any one or more of the criteria listed but do have the authority to effectively recommend any one of the criteria then that person should also be determined to be a supervisor by the National Labor Relations Board. An "Effective recommendation" exists when an employee uses independent judgment and that judgment is followed by his/her superiors without the necessity of performing an independent investigation. The following is a list of reasons determining supervisory status is important:

- (1) The recognized right that a company has to expect its supervisors to be loyal to its philosophy on union matters.
- (2) if supervisory authority does exist, employers are responsible for the statements of their supervisors.
- (3) An individual vested with supervisory authority is not entitled to the same protections under the National Labor Relations Act that a non-supervisor is provided.
- (4) Supervisors do not enjoy the Section 7 protections listed in the next section and accordingly, a company can lawfully termi-

nate a supervisor for supporting a union.

- (5) Supervisors do not vote in elections and are not part of a bargaining unit protected by the NLRA.
- (6) The union, Offshore Mariners United, has made it clear in its propaganda that it intends to pursue captains of offshore supply vessels as part of an appropriate voting and bargaining unit. The OMU will certainly argue that captains are not vested with supervisory authority in an effort to take control over the jobs of licensed personnel and ultimately to put shackles on companies in the industry when dealing with the threat of a strike.

The following are the protections granted to non-supervisory personnel under the National Labor Relations Act:

1. Section 7 of the NLRA grants employees the right to organize, bargain collectively and engage in concerted activities for mutual benefit.
2. In general, it is an unfair labor practice for an employer:
 - (A) to interfere with, restrain, or coerce employees in the exercise of the rights guarantee in Section 7 (Section 8(a)(1));
 - (B) to dominate or interfere with the formation or administration of a labor organization or contribute financial or other support to a labor organization (Section 8(a)(2));
 - (C) to encourage or discourage membership in any labor organization by discrimination in regard to hire or tenure or conditions of employment, with the one exception of the valid union shop (Section 8(a)(3));

(D) to discharge or otherwise discriminate against an employee for filing charges or giving testimony under the Act (Section 8(a)(4)); to refuse to bargain collectively with the majority representative of the employees (Section 8(a)(5));

TIPS ON PREPARING FOR SUPERVISORY DETERMINATION BEFORE THE NLRB

1. Check your employee manuals concerning job descriptions and determine whether the descriptions are consistent with the actual duties.
2. Revise job descriptions according to whether the Company intends to have a particular position classified as supervisory or non-supervisory. Either way, make sure you practice what you preach.
3. If it is the intention of the Company to have a chief mate designated as having supervisory authority, the following is a list of examples of steps that can be taken that will assist in the evaluation by the National Labor Relations Board:
 - A) keep logs of when the chief mate is on watch and performing navigational activities;
 - B) have a chief mate sign disciplinary forms and perform independent investigations regarding disciplinary matters;
 - C) have a chief mate provide written support for evaluations of employees;
 - D) have chief mates recommendations considered with respect to wage increases, decreases, promotions, or demotions;
 - E) provide chief mates with a voice in hiring and in firing decisions;
 - F) have chief mates attend management meetings with captain;
 - G) publish to the rest of the crew that it is expected for them to treat individuals in the chief mate position as a supervisor and manager of the Company;
 - H) make sure that the chief mates are well aware of their obligations as managers with the Company and any involvement by them with the union is prohibited and not protected by the National Labor Relations Act.

Source: "Thomas P. Hubert," Jones Walker, LLP