Syllabus

NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States* v. *Detroit Timber & Lumber Co.*, 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

NATIONAL LABOR RELATIONS BOARD *v.* KENTUCKY RIVER COMMUNITY CARE, INC., ET AL.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

No. 99–1815. Argued February 21, 2001– Decided May 29, 2001

When co-respondent labor union petitioned the National Labor Relations Board to represent a unit of employees at respondent's residential care facility, respondent objected to the inclusion of its registered nurses in the unit, arguing that they were "supervisors" under §2(11) of the National Labor Relations Act (Act), 15 U. S. C. §152(11), and hence excluded from the Act's protections. At the representation hearing, the Board's Regional Director placed the burden of proving supervisory status on respondent, found that respondent had not carried its burden, and included the nurses in the unit. Thereafter, respondent refused to bargain with the union, leading the Board's General Counsel to file an unfair labor practice complaint. The Board granted the General Counsel summary judgment on the basis of the representation determination, but the Sixth Circuit refused to enforce the Board's order. It rejected the Board's interpretation of "independent judgment" in §2(11)'s test for supervisory status, and held that the Board had erred in placing the burden of proving supervisory status on respondent.

Held:

1. Respondent carries the burden of proving the nurses' supervisory status in the representation hearing and unfair labor practice proceeding. The Act does not expressly allocate the burden of proving or disproving supervisory status, but the Board has consistently placed the burden on the party claiming that the employee is a supervisor. That rule is both reasonable and consistent with Act, which makes supervisors an exception to the general class of employees. It is not contrary to the requirement that the Board must prove the elements of an unfair labor practice, because supervisory status is not an ele-

ment of the Board's refusal-to-bargain charge. The Board must prove that the employer refused to bargain with the representative of a properly certified unit; the unit was not properly certified only if respondent successfully showed at the certification stage that some employees in the unit were supervisors. Pp. 3–6.

2. The Board's test for determining supervisory status is inconsistent with the Act. The Act deems employees to be "supervisors" if they (1) exercise 1 of 12 listed supervisory functions, including "responsibly direct[ing]" other employees, (2) use "independent judgment" in exercising their authority, and (3) hold their authority in the employer's interest, §2(11). The Board rejected respondent's proof of supervisory status on the ground that employees do not use "independent judgment" under §2(11) when they exercise "ordinary professional or technical judgment in directing less-skilled employees to deliver services in accordance with employer-specified standards." Brief for Petitioner 11. This interpretation, by distinguishing different kinds of judgment, introduces a categorical exclusion into statutory text that does not suggest its existence. The text permits questions regarding the degree of discretion an employee exercises, but the Board's interpretation renders determinative factors that have nothing to do with degree: even a significant judgment only loosely constrained by the employer will not be independent if it is "professional or technical." The Board limits its categorical exclusion with a qualifier that is no less striking: only professional judgment applied in directing less skilled employees to deliver services is not "independent judgment." Hence, the exclusion would apply to only 1 of the listed supervisory functions– "responsibly to direct"– though all 12 require using independent judgment. Contrary to the Board's contention, Congress did not incorporate the Board's categorical restrictions on "independent judgment" when it first added "supervisor" to the Act in 1947. The Board's policy concern regarding the proper balance of labor-management power cannot be given effect through this statutory text. Because this Court may not enforce the Board's order by applying a legal standard the Board did not adopt, *NLRB* v. *Bell Aerospace Co.,* 416 U. S. 267, 289–290, the Board's error precludes the Court from enforcing its order. Pp. 6–15.

193 F. 3d 444, affirmed.

SCALIA, J., delivered the opinion for a unanimous Court with respect to Part II, and the opinion of the Court with respect to Parts I and III, in which REHNQUIST, C. J., and O'CONNOR, KENNEDY, and THOMAS, JJ., joined. STEVENS, J., filed an opinion concurring in part and dissenting in part, in which SOUTER, GINSBURG, and BREYER, JJ., joined.