

OFFICE OF THE GENERAL COUNSEL
Division of Operations-Management

MEMORANDUM OM 94- 98

November 22, 1994

TO: All Regional Directors, Officers-in-Charge
and Resident Officers

FROM: William G. Stack, Associate General Counsel

SUBJECT: Supervisors Serving As Observers

In a recent Board decision, Bosart Co., 314 NLRB No. 45 (1994), the Board set aside an election because a supervisor had acted as an observer. In footnote number 4, the Board said that the problem could be avoided in the future if the Board agent conducting the election had informed the parties that the use of a supervisor as an observer might result in the election being set aside.

The Casehandling Manual in Section 11310 states in relevant part that observers must be nonsupervisory employees of the employer, unless there is a written agreement by the parties to the contrary. It also indicates that if a claim is made that an observer is ineligible to act as an observer, the matter should be discussed and the parties made aware that the use of an ineligible observer may result in the election being set aside.

In view of the Bosart Co. case, the better practice is for the Board agent to independently inquire as to the status of the observers in order to avoid, where possible, an objection over the supervisory status of an observer. In this regard, attached is a form which you may wish to use for this purpose.


W. G. S.

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Attachment

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

NATIONAL LABOR RELATIONS BOARD
Region

Re:

_____ hereby designates
[Party]

[Name and Job Title]

to act as its observer during the conduct of the election in
the above case.

I certify that the above-named individual is an employee of
the Employer and is not a supervisor within the meaning of
Section 2(11) of the Act.

(Name of Employer, Union or RD Petitioner)

By: _____
(Representative)

(Title)

It should be noted that the use of a supervisor as an
observer may result in the setting aside of the election.
Section 2(11) of the National Labor Relations Act states:
"The term 'supervisor' means any individual having
authority, in the interest of the employer, to hire,
transfer, suspend, lay off, recall, promote, discharge,
assign, reward, or discipline other employees, or
responsibly to direct them, or to adjust their grievances,
or effectively to recommend such action, if in connection
with the foregoing the exercise of such authority is not of
a merely routine or clerical nature, but requires the use of
independent judgment."