MANAGEMENT EXCLUSIONS

INTRODUCTION

The *Labour Relations Code* states that workers exercising managerial functions are not considered employees for the purposes of the statute. Section (1)(l)(i) states:

> 1(l) "employee" means a person employed to do work who is in receipt of or entitled to wages, but does not include
>
> > (i) a person who in the opinion of the Board performs managerial functions or is employed in a confidential capacity in matters relating to labour relations, or

This issue usually arises during certification proceedings when the Board is determining who is in the bargaining unit. The issue also arises because of organizational changes made by the employer. For example, an employee may receive new job responsibilities or a new title. Under Section 12(3)(b), the Board can directly hear and decide an application for determination of the person's status. Parties must show the Board they have attempted to resolve the difference before they bring a determination application.

This policy summarizes the purposes of the management exclusion and sets out the general criteria for deciding if a person exercises managerial functions.

PURPOSE

The managerial exclusion is designed to avoid conflicts of interest. Employers must manage their staff. They must also negotiate and enforce collective agreements. To do this, employers need staff not subject to union influence. Excluding management personnel also helps a union to operate free of employer influence.

CRITERIA

The Board determines who exercises managerial functions on a case-by-case basis. The nature of the industry and the employer as well as the size of the institution can all affect who is excluded. The Code does not define "managerial functions." The Code also does not list any specific criteria that the Board must consider. The Board has developed the following approach to deciding cases.

Persons Impacting on Employment Relationships

Determine which employees supervise others. Then determine if they exercise effective control over the employees they supervise. To qualify for the managerial exclusion, they must make effective recommendations that materially affect the economic lives of employees. Effective recommendations are serious recommendations that are consistently acted upon. The following checklist (adapted from *Okanagan Telephone Co.* [1977] 2 Can. L.R.B.R. 428) is a useful **guide** for determining whether managerial functions are being exercised:

- **Supervision:** Does the person exercise supervisory responsibility over other employees? How many employees? How significant is the supervision?
- **Hiring and Promotion:** Does the person make these decisions or at least make effective recommendations to others?
- **Discipline and Discharge*:*** Again, determine the extent of the person's role in making these key decisions.
- **Directing Work:** Is the person responsible for the operation of an organizational unit? Who has ultimate authority for assigning work and ensuring that the quality of work meets expectations?
- **Independence:** Does the person exercise considerable managerial discretion?
- **Labour Relations Input:** Does the person represent management in responding to grievances and interpreting the collective agreement? Does the person have meaningful input into management bargaining proposals?
- **Supervising Subordinate Supervisors:** Does the person oversee a junior supervisor who is in the bargaining unit?
- **Evaluating Employee Performance:** Determine the person's role in assessing the performance of others. Can the person have an important impact on another's career through such evaluations? Are the evaluations acted upon?
- **Ordering Overtime/Granting Time Off:** What is the financial impact of these decisions? Does the person exercise independent discretion?
- **Policy Setting:** What role does the person have in establishing company policy or altering it?

Persons Not Impacting on Employment Relationships

Even if people do not directly impact the terms and conditions of another's employment through supervision, they may still exercise managerial functions. People who are involved in matters of policy or the running of the organization may be excluded. This decision is based upon:

1. whether or not they exercise independent decision-making responsibilities that
2. impact the employment relationship.

If both of these criteria are met, they are excluded. Do not exclude such persons, however, if their decisions involve the implementation of pre-determined policies. Nor should they be excluded merely because they make technical decisions based on their expertise in a particular area.

Provided the person has independent discretion, the exclusion operates across all aspects of typical managerial decision-making. This includes budgeting, marketing, financial control and the like. The power to merely make effective recommendations in such areas, where there is no direct impact on the employment relationship, is not normally sufficient to justify excluding persons as managerial.

This approach may apply to the "management team" concept. In many modern work environments decisions are made on a collegial basis. In some cases, even though no decisions directly affecting the employment relationship of others are made, the group as a whole may make independent, major managerial decisions. The members of this team could then justifiably be excluded. Closely scrutinize any attempts by an employer to widely distribute managerial authority. There is a limit to which increasing numbers of persons can be excluded as managerial by simply dispersing aspects of managerial authority downwards through the organization.