

No. 22186 -- Lylloth G. Woodall v. International Brotherhood of
Electrical Workers, Local 596

Cleckley, Justice, concurring:

I agree entirely with Justice McHugh's analysis of the legal issues presented here and with his application of them to the facts of this case. Consistent with that analysis, however, I think it appropriate to emphasize that the determinations of whether a particular union is an "employer" within the meaning of W. Va. Code, 5-11-3(d) (1981), and whether a union's officers and directors are to be counted as employees under W. Va. Code, 5-11-3(e) (1981), must be made on a case-by-case basis. A different result might obtain, for example, if the officers or directors worked full-time in their capacity for the union, received an ample salary paid by the union, or functioned as subordinates in some hierarchical structure. Because none of those facts was present in this case, nor were there any other facts that would make the directors common law "employees," I concur.