



NLRB Rules Student Employees Can Unionize

GROUNDBREAKING RULING CHANGES FACE OF UNIVERSITY EMPLOYMENT

Insights

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In a game-changing decision reversing clear legal precedent, the National Labor Relations Board (NLRB) ruled by a 3-1 margin today that university students who work as teaching and research assistants at private universities are “statutory employees” under the National Labor Relations Act (NLRA) and can organize to form unions (*Columbia University*). The ruling applies to both graduate and undergraduate students who perform work, at the direction of the university, for which they are compensated. It will require private universities to immediately conform their practices to adjust to this new era of labor law.

The Decision

Colleges and universities have felt comfortable for quite some time because the legal landscape has consistently held that graduate students were considered to be primarily students and not university employees. In 2004, the NLRB issued a ruling stating that graduate students could not organize into unions, pointing out that their relationship with their employer was “primarily educational,” and that collective bargaining among the students would undermine the nature and purpose of graduate education.

Over the past decade, however, labor advocates have argued that graduate students are exploited by higher education institutions, required to do work without being protected by the full complement of workers’ rights. That led to further challenges to the model, including an attempted organizing drive by the United Auto Workers union at Columbia University and the New School in New York. Their initial bids were unsuccessful, but today the Labor Board reversed its 2004 ruling and granted the students employee status.

The NLRB said that there is nothing in the NLRA preventing teaching assistants from being treated like employees, including the right to organize into a union and engage in collective bargaining. Nothing in the statute carves out a special category for workers whose relationship to the employer is “primarily educational,” according to today’s decision.

Instead, the NLRB found it determinative that the students had a “common-law employment relationship” with the schools, meaning that the school had control over the teaching and research assistants and paid them for their work. The Board held that the students deserved such protections

when “they perform work, at the direction of the university, for which they are compensated.” This “compensation” includes aid packages.

Although the higher education community asked the Board to reject these arguments by raising a series of concerns that would arise upon unionization, including harm to the faculty-student relationship and the diminishment of academic freedom, the NLRB was unconvinced. “In sum, there is no compelling reason – in theory or in practice – to conclude that collective bargaining by student assistants cannot be viable or that it would seriously interfere with higher education.”

What Does This Mean For Institutions Of Higher Education?

The scope of the Board’s decision is breathtaking. In the stroke of a pen, the Board transformed the nation’s private universities and colleges from educational institutions into workplaces where students who have the opportunity to serve as teaching and research assistants are now considered employees entitled to the panoply of rights, procedures, and economic weapons granted by the NLRA. The Board’s decision lumps together all students – whether Ph.D., masters or undergraduates – who serve as teaching or research assistants into one category: employees. The Board’s definition of “statutory employee” is exceptionally broad. And again, while the focus has been on graduate student employees, who are now covered, it also extends to undergraduate student employees, a fact confirmed by the proposed bargaining unit in Columbia which specifically includes those students.

Today’s decision is binding on all private institutions of higher education. It is possible that Columbia or another university subject to organizing may, if it loses an election, engage in a technical refusal to bargain in order to present the Board’s decision to a Court of Appeals for review.

The practical impact of this decision will have a profound impact on higher education. Because there is no case law identifying bargaining subjects for student assistants, litigation will undoubtedly go on for years, causing uncertainty and instability in many potential collective bargaining relationships. Will the scope of bargaining impact such fundamental issues as curricular requirements? The hours a Ph.D. candidate must spend in the lab to complete the dissertation; the workload of teaching assistants? These questions remain unanswered.

Moreover, as dissenting Board Member Miscimarra pointed out, more than just the “creation of bargaining rights” are at stake here as the NLRA creates “wide-ranging requirements and obligations” with respect to statutory employees. According to Miscimarra, the impact of this ruling may extend to issues such as the confidentiality of internal investigations involving student employees (including Title IX investigations) and common conduct rules that typically apply to student employees.

Because the Board’s decision touches all student assistant positions, some institutions may even choose to eliminate teaching or research opportunities for students, even though such opportunities may be honors students seek.

While an appeal of the decision is highly likely, higher education institutions need to prepare for this new standard immediately.

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