NLRB Grad Student Decision Extends Beyond Unionization

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In a landmark case, the National Labor Relations Board (NLRB) recently ruled that Columbia University teaching and research assistants (and those at other private colleges and universities) are employees and can unionize. Last month's long-awaited ruling opens the doors for graduate and undergraduate students to unionize and bargain collectively concerning wages, hours and working conditions. Additionally, it expands federal employment protections to students at all private colleges and universities, regardless of whether or not they unionize. Every affected student is now protected from retaliation when they engage in group activity or discussion related to wages or working conditions.

For decades, the NLRB has taken the opposite position; steadfastly holding that student workers at private schools were not employees under the National Labor Relations Act, with the exception of a brief deviation from 2000 to 2004. The Columbia University decision upends this long-standing position and reverses the last major decision on this matter, Brown University, which held that the NLRA was intended to regulate only purely economic relationships. In that case, the board ruled that students could not be considered statutory employees because a graduate student's relationship with a private university is "primarily educational."

How Did We Get Here?
In the Columbia University case, the United Auto Workers sought to represent graduate student workers at Columbia and The New School. Graduate students have long argued they are employees of their private universities. It is important to note graduate students at public universities are subject to different collective bargaining laws, and many have already formed or are affiliated with labor organizations. However, Columbia University, joined by many other prominent academic institutions, took the position graduate students should not be considered employees because their relationship with the university is primarily academic.

Graduate students often provide services, such as teaching, grading undergraduate tests and research in exchange for compensation. Regardless of how paid, whether by salary or financial aid, the students have long contended they are employees who should be afforded the right to bargain collectively, even if they retain an academic relationship with the school. These students argued that unionization and collective bargaining would not harm student-faculty relationships or academic freedom.

University administrators have long argued that collective bargaining would undermine the academic relationship by intruding upon decisions such as the subject matter and manner of teaching and research, issues they believe should be left to the exclusive discretion of university faculty and administration. They argued, for example, that subjecting issues such as course content, standards of advancement and administration of exams to the possibility of collective bargaining would compromise the institution's ability to evaluate graduate students' academic progress.

Overall, school officials have forcefully contended that recognition of graduate students as employees for purposes of collective bargaining could create an adversarial atmosphere that could threaten the collaborative model of graduate education. Unfortunately for university administrators, the NLRB cast aside these concerns.

The NLRB paid particular attention to the definition of "employee" under Section 2(3) of the NLRA, highlighting that it includes "any employee" without further limitation. Additionally, the NLRB pointed out that while certain types of employees are exempt under Section 2(3), students are not. They cited this as strong evidence supporting the graduate students' case.

Further, the NLRB reasoned the fundamental error of NLRB members who earlier ruled against graduate students as employees in the 2004 case against Brown University was their failure to focus upon the existence of an employment relationship. Instead, they focused on determining the primary relationship between the university and workers, which was deemed to be educational. The current NLRB ruled the existence of an employment relationship is paramount, and should be the determining factor when deciding if students are employees.

What Comes Next?

Research and teaching assistants at private schools now are afforded protections under the NLRA, including the right to unionize and the right to engage in protected concerted activity without fear of retaliation. In light of the Columbia University ruling, an influx of union activity is expected on private college and university campuses; likely to be initiated by both students and inspired union representatives. If a union election is conducted and students vote in favor of unionization, they can begin working with their union representatives to negotiate pay, schedules and other working conditions.

However, employment protections do not stop there. The NLRB's reach expands well past organized workplaces. In fact, it is even targeting private employers located in areas where there is no union activity. The NLRA protects the rights of all employees to engage in "protected concerted activity." In other words, employees who discuss terms or conditions of employment or participate in group activities aimed at changing workplace conditions, such as protests, are protected from retaliation.

With the expanded rights, all university administrators should take note of the NLRB's new and aggressive agenda toward employers, especially its new handbook and social media interpretations and policies. Many employment practices that have heretofore seemed common and acceptable are

and policies. Many employment practices that have heretofore seemed common and acceptable are now not in the eyes of the NLRB.

For example, if an employee takes to Twitter and calls her supervisor a disparaging name, termination may seem the obvious response. However, if in that same Tweet she says she and her coworkers are expected to work long hours or are not paid enough, the NLRB would likely consider this to be protected activity. Administrators now need to be mindful that any actions that may potentially obstruct students' rights could put them at risk of a lawsuit.

Moreover, while the NLRB's ruling is not binding on other federal or state agencies, there is the potential that students will eventually be treated as employees in other contexts. For example, might student workers next argue they have a right to workers' compensation or unemployment benefits?

Currently, the U.S. Department of Labor takes the position that graduate student research assistants at private universities are not employees for purposes of federal wage and hour laws. This is because the research assistants are considered to be in an educational relationship and not an employment relationship. Based on this reasoning, the DOL has said it will not enforce federal overtime pay laws with respect to graduate student research assistants. But might this reasoning erode now that graduate students are deemed employees for purposes of collective bargaining under the NLRA?

While the far-reaching effects of the NLRB's decision to treat graduate students as employees for purposes of collective bargaining will no doubt take years to play out, they are sure to make waves on the campuses of private universities throughout the country.

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