

PUBLICATION

NLRB Permits Graduate Students to Unionize at Private Institutions

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On August 23, 2016, in a 3 to 1 decision, the National Labor Relations Board (NLRB) issued a ruling that renders graduate student assistants "employees" for the purposes of unionization, overturning a standard that previously prohibited unionization efforts at private universities and colleges across the country.

Before 2000, the NLRB had never included students within the provisions of the National Labor Relations Act (NLRA). That year, in a case involving New York University, the NLRB held that graduate assistants are employees and thus subject to unionization. Four years later, however, the NLRB reversed itself in a case involving Brown University and held that graduate teaching research assistants were not employees, but students, because their relationship with the school was "primarily educational" and not "economic." That was the standard until Tuesday.

The current case began in 2014, when the Graduate Workers of Columbia (GWC) and the United Autoworkers Union (UAW) filed a petition seeking to represent graduate and undergraduate teaching assistants, and graduate and department research assistants at Columbia University. Because the standard at the time (stemming from the 2004 decision) was that graduate teaching research assistants were not employees with unionization rights, the NLRB regional director in Manhattan reviewed the petition and rejected it.

That decision was appealed by the nascent union. On appeal, the NLRB held that its 2004 Brown University decision was unsupported by a legitimate justification for distinguishing between graduate student assistants and other employees. It stated that the text of the NLRA supports inclusion of graduate students as "employees," and that the Board, which decided the Brown University case, failed to show that collective bargaining between the university and its students could not co-exist in the educational setting.

The sole Board member who disagreed was Republican Philip A. Miscimarra. He argued that Congress did not intend to include students within the provisions of the NLRA. He suggested that collective bargaining may detract from students' education and questioned whether the Board was prepared to deal with unfair labor practices involving students.

In the wake of this decision, many predict that students at other private colleges and universities will seek to unionize. Columbia University has publicly stated that it disagrees with the ruling. It is unclear whether the University will seek a review of the Board's decision in federal court. If the NLRB's decision stands, this may have a far-reaching impact on other areas of employment law, such as the Fair Labor Standards Act, state workers' compensation laws and state unemployment compensation laws.

For more information on this decision, please contact Emma Davis or any of the members of the Firm's Higher Education and Labor & Employment groups.