

## NLRB Considers Graduate Students “Employees” and Permits Union Organizing

The National Labor Relations Board (“NLRB”) reversed long-standing precedent in a recent decision involving graduate students, expanding the numbers of employees that may organize into unions. In Columbia University, the NLRB decided that graduate students working as student assistants are “employees” covered under the National Labor Relations Act (“NLRA”) because they “perform work, at the direction of the university, for which they are compensated.” Thus, where student assistants have an employment relationship with their college or university, the student assistants can be considered employees entitled to join or form a union and avail themselves of other protections under the NLRA.

In making its decision, the NLRB expressly disregarded the student-teacher relationship and the scholastic character of the students’ work, opting instead to apply a broad definition of “employee” to permit the students to unionize. It explained that, “A graduate student may be both a student *and* an employee; a university may be both the student’s educator *and* employer. By permitting the Board to define the scope of mandatory bargaining over ‘wages, hours, and other terms and conditions of employment,’ the Act makes it entirely possible for these different roles to coexist – and for genuine academic freedom to be preserved.”

Without a doubt, Columbia University will lead to an increase in organizing efforts at colleges and universities. Upon learning of the decision, the Service Employees International Union (“SEIU”), a national union on the front lines of expanding union membership, immediately stepped up their efforts to reach graduate students. Calling it the “Graduate Workers Forward” movement, SEIU urges faculty and graduate student workers to “win a voice in decisions that affect wages, benefits, and working conditions with my employer.” Colleges and universities will soon feel the effects of SEIU’s effort, as well as the efforts of other unions desiring to expand their ranks.

Moreover, consequences outside of the context of union organizing result from the Columbia University decision. The Act protects all employees who engage in protected concerted activities – group action related to wages, hours, and working conditions. Student-employees are now protected from adverse employment decisions resulting from their complaints about the terms and conditions of employment. These students may be protected when they discuss employment issues on social media. Student handbooks may be subject to review by the NLRB for policies that involve the employment relationship and violate the Act.

The Columbia University decision overturns the NLRB’s previous position that students who teach or perform research at a private university are not employees. As of late, the NLRB has changed course on several of its long-held positions, leaving employers to navigate murky waters in the realm of organizational activity. All employers are affected by the NLRB’s expansive approach to union organizing – colleges and universities are just the latest subject.

The best approach to organizational activity is a proactive one. Employers that react to a union's attempt to organize their employees are far less likely to succeed against an organizing campaign than employers who work to develop relationships and communicate with their employees well before the rumblings of union activity. Now that student assistants are considered employees for purposes of organizing, colleges and universities should include these groups in their communication and relationship-building efforts. Colleges and universities should also review employment policies that apply to students to ensure compliance with the Act.

Cohen & Grigsby's Labor & Employment Group is well-versed in organizing campaigns, collective bargaining and other issues related to the Act. Please contact us at 412.297.4900 to discuss this or any other topic related to your employees. To receive future bulletins and news alerts, please send an e-mail to [bulletins@cohenlaw.com](mailto:bulletins@cohenlaw.com).

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