

NLRB Decides Private University Teaching and Research Assistants Can Unionize

Continuing a recent trend of upending long-standing decisions, the National Labor Relations Board ruled yesterday that student teaching and research assistants at private colleges and universities are statutory employees who can unionize under the National Labor Relations Act. The 3-1 decision in *Columbia University* reverses the Board's 2004 *Brown University* decision and opens the floodgates to union organizing efforts among student teaching and research assistants nationwide. To stem the tide, private colleges and universities should act now to minimize their vulnerability to union organizing efforts.

In December 2014, a United Auto Workers affiliated union filed a petition seeking to represent a unit of the school's graduate and undergraduate teaching assistants, as well as graduate research assistants. Columbia, citing to the Board's decision in *Brown University*, argued that such students were not "employees" as contemplated by the NLRA because their relationship to the school was "primarily educational." Additionally, the university contended that injecting the "inherently adversarial bargaining obligation" into the university-student relationship would be detrimental to the spirit of collaboration so highly valued in academia.

While the Board clearly recognized the educational aspect of the services at issue, it came down on the side of unionization, noting that its decision was based on the "very broad" language of the NLRA, and rooted in the underlying policies of the Act that encourage collective bargaining and protect workers' rights to organize. Central to the Board's decision was simply "the existence of an employment relationship," regardless of whether "some other relationship between the employee and the employer is the primary one." Put directly, the Board held that it was reversing *Brown University* because that decision "deprived an entire category of workers of the protections of the Act without a convincing justification."

With regard to the last point, the three-member majority repeatedly stated that there is a dearth of evidence to support the argument that allowing student assistants to unionize would harm the academic relationship, and emphasized that academic integrity and freedom has not been impeded by units of faculty members at many private colleges and universities. (Public universities are not impacted by the *Columbia University* decision, because they are covered by state labor laws rather than the NLRA.) The majority also emphasized that "some of the practical concerns raised by Columbia and *amici* seem to be generic complaints about the statutory requirements inherent in a collective-bargaining relationship, rather than education-specific concerns."

Due to previous Board decisions, private universities already are facing a rash of elections involving units of non-tenure eligible faculty, and unions are winning the vast majority of them. This trend indicates that many universities, but especially those where such faculty have organized recently, are vulnerable to union organizing efforts aimed at student teaching and graduate research assistants.

In light of the *Columbia University* decision, private colleges and universities should recognize that they will now be inviting targets for union organizing activity by student teaching and research assistants, and should take the following steps to limit their exposure:

- Consider ramping up existing employment relations efforts. For example, if you do not know the concerns your student teaching and research assistant populations have, you should be working to determine what they are now, before a petition is filed. Your existing communications efforts, along with surveys, group meetings, and personal interactions can all be used to assess the attitudes of this population.
- Consider implementing initiatives, which fit within your organizational culture, aimed at



Joseph E. Tilson

Member

jtilson@cozen.com
Phone: (312) 474-7880
Fax: (312) 878-2019



Anna Wermuth

Vice Chair,
Labor &
Employment
Department

awermuth@cozen.com
Phone: (312) 474-7876
Fax: (312) 878-2023

Related Practice Areas

- Labor & Employment

addressing those concerns.

- Research the unions that are most likely to file petitions aimed at these groups, to determine their campaign strategy.
- Train administrators and others on how to respond to student teaching and research assistants' concerns and organizing efforts.
- Keep lines of communication with student teaching and research assistants open.
- Document — with as much specificity as possible — all the ways in which the union presence interferes with academic integrity and/or presents other challenges specific to academia. This evidence could prove crucial if your college or university faces a union organizing effort.

Union organizers have just been handed yet another group of employees with no real history of unionization and collective bargaining. We expect that, with their ongoing and increasing efforts to unionize non-tenure eligible faculty, unions already have been engaged in efforts to organize student teaching and research assistants in anticipation of this long-awaited decision. Colleges and universities have been aware of the possibility of a *Columbia*-style decision, but now that it is here, institutions need to redouble their efforts to connect with all their affected populations to forestall unionization.

Cozen O'Connor's Labor & Employment attorneys are available to provide counsel and guidance on the issues discussed in this Alert.