

Labor and Employment Alert

August 26, 2016

NLRB Concludes That Student Assistants Can Unionize

On August 23, 2016, the National Labor Relations Board overturned its prior precedent in *Brown University* and concluded that student assistants—including both graduate and undergraduate teaching assistants—at private colleges and universities may be considered statutory employees who can organize and bargain over the terms and conditions of their employment.

The Board's decision in *Trustees of Columbia University in the City of New York* involved Columbia University graduate students who work as teaching assistants. The Graduate Workers of Columbia Union filed a petition to represent the teaching assistants. NLRB personnel initially concluded that the student assistants were primarily students and could not organize, consistent with the Board's prior ruling in *Brown University*, 342 NLRB 1205 (2004). The union appealed this initial determination to the five-member Board in Washington, DC. The Board reversed, concluding that "student assistants who have a common-law employment relationship with their university" can be employees within the meaning of Section 2(3) of the National Labor Relations Act—and thereby engage in collective bargaining—while also being students. *Columbia University*, 364 NLRB No. 90. The Board's conclusion applies equally to student assistants paid directly by the university and assistants engaged in research funded by external grants.

The Board's *Columbia University* decision overturns its 2004 decision in *Brown University* that prevented graduate students at private universities from organizing a labor union. In *Brown University*, the Board majority held that student assistants were primarily students—not statutory employees—because they were "primarily students and have a primarily educational, not economic, relationship with their university." In reversing this precedent, the Board held that the students' educational relationship is not jeopardized by, and does not come at the expense of, the economic one. Instead, the Board's latest decision concluded that collective bargaining between a university and its employed graduate students can coexist successfully alongside student-teacher relationships.

Absent reversal on appeal, the *Columbia University* decision now permits graduate teaching assistants and other similar student teaching positions at private universities to unionize. Private universities should evaluate their current relationships with graduate and other student teachers and consider whether they are prepared to address future organizing efforts. They should also ensure that they comply with the various protections the National Labor Relations Act provides for statutory employees when dealing with teaching assistants, regardless of whether any formal unionization activity is taking place on campus. Public colleges and universities, where state laws govern unionization, will not be affected by the *Columbia University* decision. However, public universities should prepare for an increase in organizing activity on their campuses in light of the renewed focus on the unionization of teaching assistants.

Akin Gump's labor and employment lawyers have decades of experience dealing with issues under the National Labor Relations Act, including the application of traditional labor law in a university setting.

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