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NLRB Allows Private University Students to Unionize

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The National Labor Board of Relations decision released today will have far-reaching consequences for private universities and colleges. The decision promises to be a potential source of litigation and headaches for college administrators regardless of whether student employees on campus choose to organize.

In *Columbia University,* a 3-1 board majority held that graduate and undergraduate research and teaching assistants were employees within the meaning of the National Labor Relations Act (NLRA), and that there were no policy reasons to deny them collective bargaining rights.

Because the students are now "employees" under the NLRA, the board's various decisions extending rights to unorganized workers in areas ranging from policies regarding social media restrictions to sharing of personally identifiable information about other students will now be applicable to students to the extent that they are also employees.

In *Columbia University*, the United Auto Workers filed a petition seeking to represent "all student employees who provide instructional services, including graduate and undergraduate Teaching Assistants; … all graduate research assistants … and all departmental research assistants …"

In contesting the petition, Columbia relied on board precedent in *Brown University*, 342 NLRB 483 (2004) and earlier cases dating back to at least *Stanford University*, 214 NLRB 621 (1974). Those cases held teaching and research assistants not to be employees because the students' primary relationship to the university was that of student and not employee, and further held that even if they could be considered employees, requiring collective bargaining was sufficiently inconsistent with other important interests so that it should not be required.

The board majority swept these aside and overruled *Brown University* and its precursors. Instead, the board held that so long as there is "payment of tangible compensation" coupled with management control of the putative employee's activity, there is employment under the Act. The board went on to state that even when the economic component of a relationship is "comparatively slight, relative to other aspects of the relationship … the payment of compensation, in conjunction with the employer's control, suffices to establish an employment relationship for purposes of the Act."

The board further held that nothing in the student-university relationship would make collective bargaining inconsistent with the purposes of the Act. Notably, the majority did not discuss its recent decision in *Northwestern University*, 362 NLRB No. 167 (2015), which specifically declined to decide whether college football players were employees based on their receipt of an athletic grant in aid coupled with extensive control.

The decision is subject to attack on appeal on a variety of grounds, but for now, colleges and universities would be wise to undertake a review of policies and procedures applicable to student employees for compliance with NLRA requirements.

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