



NRLB to Reconsider Unionization of Private College Graduate Students

November 24, 2015

Last month, the National Labor Relations Board (“NLRB”) voted 3 to 1 to reconsider whether graduate students who work as teaching assistants or research assistants at private universities are protected by the National Labor Relations Act (the “Act” or “NLRA”) and whether they can participate in collective bargaining with institutions.

By way of brief background, in 2004, the NLRB held in *Brown University*, 342 N.L.R.B. 483 (2004) that an educational relationship between graduate students and the University precluded the existence of an economic relationship and that the NLRA protected only economic relationships. More specifically, the NLRB found that the graduate students’ relationship with the University was not an economic relationship because the University required graduate students to serve as teaching assistants as part of completing their degrees and that the graduate students received stipends for serving as teaching assistants rather than payment for their services. Thus, the NLRB held that the students were not “employees” within the meaning of the NLRA and therefore not entitled to collective bargaining rights.

In a similar case, the New York regional office of the NLRB recently ruled against New School graduate teaching assistants represented by United Autoworkers (“UAW”), citing to precedent that graduate students are primarily students, not employees, as per the *Brown* decision. However, on or about October 21, 2015, in an unconventional move, the NLRB agreed to review the New York regional director’s decision in the [New School case](#), No. 02-RC-143009 (N.L.R.B., Oct. 21, 2015) finding that the request for review “raises substantial issues warranting review.” “We’re thrilled that the Board has granted review and we hope that they will issue a decision very quickly in the case,” said UAW Region 9A Director Julie Kushner. “I can’t say that we’re surprised. We have been very confident from the beginning that this would happen, that the board would rule favorably on the right to organize for graduate research and teaching assistants.” New School spokeswoman Josephine Parr said in a statement, “Our graduate teaching and research assistants are an important and valued part of The New School community, and we appreciate the NLRB’s continued, careful examination of the complex issues involved in this matter.”

Graduate students at private universities have long argued that they should have the rights of employees. The Obama administration has sought to make it easier to unionize at private higher education institutions, and the current majority of the NLRB is viewed as sympathetic to unions, which may, in the New School case, lead to the NLRB’s reversal of the *Brown University* precedent.

The NLRB almost had an opportunity to address this unionization issue back in 2011 when a similar case involving New York University graduate students was filed. However, the NLRB never decided the case on its merits

because the graduate students and New York University settled the dispute and the parties agreed to allow the graduate students to unionize. In any event, as in the New York University case, it is anticipated that the New School graduate students will emphasize the growing trend in universities in utilizing their graduate students to fill the roles of teachers and argue that the graduate students should be entitled to bargain for better pay and working conditions. Higher education management is anticipated to raise concerns that unionization would stifle academic decisions made by faculty who supervise graduate students.

Private institutions should closely follow the development of the New School case as it has the potential to have significant practical as well as legal implications. If the New School graduate students win, many other graduate students across the country will seek to organize to have stronger bargaining powers against universities.

If you have any questions or concerns regarding education or employment related issues, please contact Thomas B. Wassel at twassel@cullenanddykman.com or at 516-357-3868.

Thank you to Garam Choe, a law clerk at Cullen and Dykman, for his help with this post.