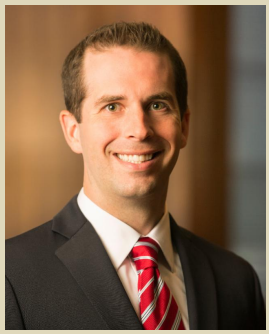
RAY QUINNEY & NEBEKER

Employment Law Update

Newly Found Rights for Student Assistants



Jeremiah J. Hansen

The National Labor Relations Board recently issued a decision holding that student assistants working at private colleges and universities who perform work for compensation at the direction of the college or university have the right under the National Labor Relations Act ("NLRA") to organize and collectively bargain. This decision will certainly have a significant impact on private universities throughout the country, and may also impact other private organizations whose workers are currently exempt from collective bargaining rights under the NLRA.

The Board's recent decision was a long time in the making. Back in 2000, the Board, in a decision that reversed more than 25 years of precedent, held that certain New York University graduate student assistants were employees under the NLRA and were entitled to organize and collectively bargain with NYU, even though they were also enrolled as students. The Board rejected NYU's argument that student assistants are not statutory employees because their relationship with the university or college is predominately a teacher-student relationship, rather than an employer-employee relationship.

In a 2004 decision involving student assistants at Brown University, the Board overruled its 2000 decision. The Board specifically held that it was returning to its pre-NYU precedent that graduate students are not statutory employees. The Board concluded that student assistants are primarily students and have a predominantly academic, rather than economic, relationship with their school, and are not, therefore, employees under the NLRA.

However, the Board's 2004 decision to reinstate 25 years of precedent was not the final word. Most recently, Columbia University student assistants sought to join the United Automobile Workers. Columbia University argued that collective bargaining on behalf of student assistants would lead to a more adversarial relationship between student assistants and the university, undermining the university's purpose. Other private universities have also argued that

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allowing student assistants to unionize is a slippery slope. They argue that such a change would be highly disruptive and could extend beyond the economic and intrude on academic matters such as class materials, class size, and the length of lectures–matters that the universities argue should be their sole domains. Proponents of collective bargaining rights have cited studies showing that unionizing on behalf of student assistants at public universities had not had an adverse impact on academic freedom or the student-faculty relationship.

On August 23, 2016, the Board held that the NLRA granted it authority to treat student assistants as statutory employees where they are paid for work they perform at the direction of the university. The Board further held that coverage under the NLRA is permitted by virtue of an employment relationship and is not foreclosed by the existence of some other, additional relationship that the NLRA does not reach. The Columbia decision reaches all student assistants at private universities who have an employment relationship with their university, even those engaged in research funded by external grants. In fact, the class certified in the Columbia case included graduate students, Master's degree students, and even undergraduate students.

Private universities need to carefully consider the repercussions of this decision and its effect on employee-students. They should also consult with an attorney who has experience with union and labor issues. Likewise, any private organization that uses workers currently exempt from coverage under the NLRA should take a close look at how the Board's recent action may impact them, and should consult their attorney should they have any questions or concerns.

If you have any employment-related questions, please contact a member of our firm's Labor and Employment Section.