

# Electronic Alert

Volume 19, Issue 26

August 24, 2016

## **Look Out Private Universities, Student Assistants Have the Right to Join a Union** By Kyle Abraham

On August 23, 2016, the National Labor Relations Board (“NLRB”) ruled that graduate and student assistants may be “employees,” and as employees they have the right to join unions and to collectively bargain. In *Columbia University*, the NLRB reversed a rule that had been in place since 2004, which held that graduate assistants cannot be employees because they are primarily students.

According to the NLRB, if student assistants perform work, at the direction of a university, for which they are compensated, they have the right to join a union. The NLRB did not address the form or amount of compensation that is required before student assistants will be considered employees; however, the NLRB suggested the compensation must be more than “educational benefits.” This is consistent with the NLRB’s decision in *Northwestern University* that student athletes receiving grant-in-aid scholarships are not employees.

In an effort to exclude student assistants from the petitioned-for bargaining unit, Columbia University argued that temporary employees (some student assistants do not work longer than a single semester), as a matter of practice, are regularly excluded from the bargaining units. The NLRB agreed that as a matter of *practice* temporary employees are excluded from bargaining units, but the NLRB ruled that temporary employees still have the *right* to collectively bargain.

The next question in the analytical framework is which employees are eligible to vote in an election. The NLRB traditionally creates an “eligibility formula” to determine which employees may vote in a union election. For example, the eligibility formula for adjunct faculty members is based on a 1-4 ratio of workload compared to full-time faculty members. Instead of creating an eligibility formula for student assistants, the NLRB directed the case go back to the Regional Director to determine the appropriate eligibility rules. The NLRB signaled the eligibility formula may be a ratio of the time spent working as a student assistant compared to the academic career at the university.

Interestingly, the NLRB expressly considered the experience of public universities in reaching its decision. Public universities are governed by state labor laws, and student assistants in Oregon, Washington, California, Florida, Illinois, Iowa, Massachusetts, Michigan and Pennsylvania have the right to join a union. As a refresher, Oregon’s Employment Relations Board ruled graduate assistants are employees under Oregon’s Public Employee Collective Bargaining Act. *Coalition of Graduate Employees, Local 6069*, Case No. UC-04-12, 2013 WL 485140 (Jan. 4, 2013). As a result, the NLRB held that allowing student assistants to organize would not be detrimental to the pursuit of a private university’s educational goals because student assistants in some states have been organized for decades.

In light of the NLRB’s decision, private universities should expect to see a flurry of organizing activity within the ranks of student assistants as the new school year gets underway. There are a wide range of

responses available to an employer when faced with an organizing campaign. Universities would be wise to develop a response strategy to organizing efforts before receiving a petition for an election.