

NLRB Rules Student Assistants Are Statutory Employees With Collective-Bargaining Rights

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On August 23, 2016, the National Labor Relations Board issued a decision with significant implications for private colleges and universities. In *Columbia University*, 364 NLRB No. 90 (Aug. 23, 2016), a 3-1 majority of the Board overruled a prior Board Decision, *Brown University*, and concluded that graduate and undergraduate teaching and research assistants are statutory employees under the National Labor Relations Act with attendant collective-bargaining rights under the Act.

Specifically, the Board held that "student assistants who have a common-law employment relationship with their university are statutory employees under the Act" and stated that it would apply that standard to student assistants, "including assistants engaged in research funded by external grants."

The Board expressly overruled *Brown University*, which had stood for the proposition that "graduate assistants *cannot* be statutory employees because they are primarily students and have a primarily educational, not economic, relationship with their university." The Board further held that the petitioned-for bargaining unit from Columbia – made up of graduate, terminal Master's degree, and undergraduate students – was an appropriate bargaining unit and did not contain "temporary employees" who may not be included in the unit under the Act.

The *Columbia University* decision – if it is affirmed in the appeal(s) likely to follow from it – substantially expands the universe of potential statutory employees with which higher education institutions must contend for purposes of collective bargaining.

Finally, as to the broader potential impact of the *Columbia University* decision, we note that the Board majority expressly distinguished the question presented in its decision regarding student teaching and research assistants from the question presented and the Board's unanimous decision regarding student athletes in *Northwestern University*, 362 NLRB No. 167 (2015). The Board majority in *Columbia University* notes that student teaching and research assistants, unlike college athletes, are not "within and govern[ed] by an athletic consortium dominated by public universities" – that is, the National Collegiate Athletic Association (NCAA). The Board's *Northwestern University* decision was addressed in a previous alert, NLRB Tosses Northwestern University Football Team's Representation Petition.

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