



# Higher Education Alert: Student Assistants at Private Universities Are “Employees” for Purposes of Collective Bargaining, NLRB Rules

August 25, 2016

The National Labor Relations Board has ruled that student assistants employed with private universities are "employees" with union organizing and collective bargaining rights and other protections under federal labor law. The NLRB's August 23 decision involved graduate students at Columbia University and overrules legal precedent. By doing so, the NLRB has cleared a pathway to union organizing of both graduate and undergraduate-level student assistants—even those funded by external grants or in work-study positions.

Gray Plant Mooty labor attorneys Mark Mathison and Meghann Kantke were among the co-authors of an amicus brief filed in this case earlier this year on behalf of more than a dozen firm members of the Higher Education Council of the Employment Law Alliance (ELA). Among our arguments in that brief were the assertions that there was "no reasoned justification" for the NLRB to overrule its own precedent in a 2004 Brown University case, and that characterizing student assistants as "employees" with collective bargaining rights would substantially harm and alter the "fundamentally academic" nature of the relationship between universities and their students. The NLRB decision rejected those concerns in holding that student assistants are employees, reversing its 2004 decision in *Brown University*, which it characterized as having "deprived an entire category of workers of the protections of the Act, without a convincing justification in either the statutory language or the policies of the Act."

The 3 - 1 *Columbia University* decision includes a lengthy and well-reasoned dissent by board member Philip A. Miscimarra, who noted that Congress never intended the NLRA to apply to students and also that the NLRB's processes and procedures fit poorly with the relationship between students and their academic institutions. The American Council on Education, in noting the decision and its apparent application even to undergraduates in federal work-study positions, called it an "unprecedented federal intrusion."

The dissent further contemplates a wide variety of unwelcome effects in academia that the decision may portend. For example, the "economic weapons" of traditional collective bargaining will now be available to student assistants and their schools. If bargaining comes to impasse, students could strike, and in that context schools could, among other things, suspend tuition waivers students receive in connection their academic assistantships. Miscimarra also warns parents to "take heed" that the decision will affect the



student experience in many, likely negative and unexpected, ways. NLRB rules would restrict schools from keeping investigations confidential in the context of increasingly-common Title IX investigations of sexual assault allegations, for example.

By greatly increasing the number of individuals who may be unionized on campuses nationwide, and thus the potential union dues available, this ruling raises the attractiveness of campus groups to unions. We expect to see unions make efforts to include adjunct faculty and students together in organizing bargaining units. In fact, unions including SEIU and the United Auto Workers have expressed their intentions to aggressively organize in this arena. Union organizing appears to be well-underway at Harvard, Cornell, Northwestern, and St. Louis Universities, as well as at Columbia and the New School, among others. Particularly in light of the now-abbreviated timeline for conducting a union election under recently adopted NLRB rules, colleges and universities will need to seriously consider proactively preparing for potential union activity on campus.

**About the Employment Law Alliance:**

The Employment Law Alliance is the world's largest network of labor, employment and immigration lawyers. With specialists in more than 135 countries, all 50 states and each Canadian province, the ELA provides multi-state and multi-national companies with seamless and cost-effective services worldwide. Gray Plant Mooty is a member of the Employment Law Alliance and its Higher Education Council, which consists of firms and lawyers committed to serving institutions of higher education.