

Webinar

The Post-*Columbia* Campus: A Look at Organizing, Bargaining and What Comes Next

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February 7, 2017

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Webinar

Presenters



David Blake



Barbara
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Jonathan Fritts

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Agenda

- The *Columbia University* decision and how the standard may change under the Trump administration
- The challenges faced when negotiating with students
- Interest-based versus positional bargaining: what works best?
- The reality of implementing a graduate student employee collective bargaining agreement

The Current NLRB



Mark Pearce
8/27/18



Phil Miscimarra
12/16/17
Acting Chairman as of 1/26/17

Lauren McFerran
12/16/19



When Will There Be a Republican Majority?



Phil Miscimarra*
12/16/17
*Appointed Acting
Chairman
January 26, 2017



Mark Pearce
8/27/18



+ 2 Vacancies to be nominated
by President Trump



Lauren McFerran
12/16/19

The NLRB's General Counsel

General Counsel Richard Griffin

- Former Board Member
- Formerly General Counsel for the International Union of Operating Engineers
- Term expires 11/4/17
- Issued a memo on 1/31/17 outlining prosecutorial position on statutory rights of university faculty and students



The NLRB's Changing Position on Graduate Assistants as "Employees"

- *New York University*, 332 NLRB 1205 (2000)
 - Board applied the common-law agency test to find that graduate assistants fall within the meaning of "employee" as defined in Section 2(3) of the Act because they perform services under the control and direction of the university for which they are compensated.
- *Brown University*, 342 NLRB 482 (2004)
 - Board overturns *NYU*, declining to exercise jurisdiction over graduate teaching assistants, ruling they are not statutory employees because they "are primarily students and have a primarily educational, not economic, relationship with their university." *Id.* at 487.

Columbia University, 364 NLRB No. 90 (2016)

- Graduate Workers of Columbia – GWC, UAW petitioned to represent both graduate and undergraduate Columbia University student assistants in the following bargaining unit:

All student employees who provide instructional services, including graduate and undergraduate Teaching Assistants (Teaching Assistants, Teaching Fellows, Preceptors, Course Assistants, Readers and Graders): All Graduate Research Assistants (including those compensated through Training Grants) and All Departmental Research Assistants employed by the Employer at all of its facilities, including Morningside Heights, Health Sciences, Lamont-Doherty and Nevis facilities.
- Regional Director applied *Brown University* and dismissed the petition, finding that the students are not statutory employees.
- Board granted review on December 23, 2015.

Columbia University, 364 NLRB No. 90 (2016)

- Board overturns *Brown University*, holding that student assistants who have a common-law employment relationship with their university are statutory employees under the Act.
 - Broad definition of “employee” under Section 2(3) of the NLRA.
 - Majority reasons that “the payment of compensation, in conjunction with the employer’s control, suffices to establish an employment relationship for purposes of the Act” regardless of whether another, non-economic relationship exists.
 - “There is no compelling reason—in theory or in practice—to conclude that collective bargaining by student assistants cannot be viable or that it would seriously interfere with higher education.”

Columbia University -- Miscimarra Dissent

- The majority ignores the realities of the university setting and that the “paramount goal” for student assistants is to obtain a degree, which could be undermined by labor unrest.
 - Risks and uncertainties are too great where students have made a significant financial investment.
 - Implications of a strike on a college campus.
- Collective bargaining could conflict with other federal statutes and regulations based on educational objectives.
- Practical concerns:
 - Confidential investigations involving student misconduct
 - Witness statement disclosure
 - Invalidating rules concerning student conduct

Bargaining Unit Issues

- Board directed an election in a bargaining unit of undergraduate students, master's degree students, and Ph.D. students, despite broad variation among classifications with respect to job duties, length of service, levels of responsibility, and pay.
 - Includes students engaged in research funded by external grants.
 - Board declined to exclude groups of employees with shorter tenures from the bargaining unit as “temporary” workers.
 - Leaves open the possibility of mixed student and non-student bargaining units.

Bargaining Unit Issues

- “Community of interest” among “all student employees who provide instructional services and all research assistants at Columbia University’s campuses.”
 - They all “work in similar settings (in labs and classrooms at the university)”
 - They all “perform[] a supplemental education service”
 - They all “work under the direction of the University”
- But unions could instead seek to organize groups of student assistants in separate smaller units. *See Yale University*, 01-RC-183014 (Jan. 25, 2017).
 - “[T]he mere fact employees in the proposed unit also share a community of interest with additional employees does not render the smaller unit inappropriate.”
 - There must be an “*overwhelming* community of interest”

Other Categories of Student “Employees”?

- Will Columbia University be applied to other categories of student “employees”?
 - Resident advisors
 - Campus tour guides
 - Students who do administrative/office work
 - Student guards
 - Student athletes
- Per GC Memo 17-01 (Jan. 31, 2017), this is an issue not only for union organizing, but also for other forms of concerted activity under the NLRA.
 - Section 7 of the NLRA protects not only union organizing activity, but also other activity for “mutual aid or protection”.

How the Law May Change at the NLRB

- Union election petition
 - Request for NLRB review of Regional Director decision applying *Columbia University*
 - “Technical” refusal to bargain following NLRB decision
 - Court of appeals review
- Unfair labor practice charge
 - Litigate whether students are employees for purposes of other forms of concerted activity under the NLRA
 - Administrative law judge decision
 - NLRB decision
 - Court of appeals review

Poll Question

1. Do you have any union-represented student “employees” on your campus?
 - a. Teaching or research assistants
 - b. Students who do office/administrative work
 - c. Resident advisors
 - d. Student guards
 - e. Other categories of student workers
 - f. None of the above

MANAGING THE PROCESS NEGOTIATING WITH GRAD STUDENTS

Dr. David Blake
Vice Chancellor and CHRO
Seattle Colleges

BLAME IT ON OREGON

Understanding the Dynamic

- Grad student are not professional negotiators
- Be prepared to spend significant time in educating them:
 - University finances and budgetary Process
 - Going from a student to an employee
 - How this new arrangement may impact the traditional student/faculty relationship
- Their bargaining team will change frequently
- Moving from idealistic to realistic

Approaches

- Positional: negotiating strategy that involves holding on to a fixed idea of position and arguing for it and it alone, regardless of any underlying interests.
 - Can be a bit of a turn off with this group.
- Interest Based: parties work to find a “win/win” solution to shared interests.
 - Tends to be more compatible with the academic model students are familiar with.

Do's and Don'ts

- Don't lecture or teach
- Do work on shared interests
- Do be patient
- Do understand that the power dynamic has changed from student to employee
- Don't rush the process. This will take time as your new union leaders are trying to figure this out.
- Do educate your faculty on how the contract is to be implemented

Poll Question

2. So, you are ready to begin your first experience with negotiating with grad students...you sit down, stare at each other and do what?

- a. Get to know each other
- b. Set the ground rules
- c. Share your interests or positions
- d. Hope and pray this goes well
- e. All of the above

IMPLEMENTING THE NEW STUDENT EMPLOYEE CBA: CONSIDERATIONS AND PRIORITIES

Barbara Cardeli-Arroyo
Assistant Vice President
Office of Employee Relations
New York University

*The beginning is the most important
part of the work* (Plato)

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NYU - Background

- NYU is the first private university to agree to recognize its graduate student employees as a bargaining unit and collectively bargain with a union (United Auto Workers) for the terms and conditions of employment for their graduate student employees
- Collective bargaining began in Spring 2014 and concluded in Spring 2015
- The negotiated six-year Local 2110 Collective Bargaining Agreement was signed on June 1, 2015.

The New CBA - Implementation

• **NYU Bargaining Unit**

- PhD and Masters Students (Years 1-7)
- PhD and Masters Students (Years 1-7) – Adjuncts
- Graduate Assistants
- Teaching Assistants
- Research Assistants (With Certain Exclusions)
- Hourly Appointments

The New CBA - Implementation

• **NYU Bargaining Unit Exclusions**

- Research Assistants in School of Engineering; Biology; Chemistry; Neural Sciences; Physics; Mathematics; Computer Science; and Psychology
- Graders
- Tutors
- MBA Stern Students
- Colleges of Dentistry, Law, and Medicine

The New CBA - Implementation Landscape

- No similar CBA to base upon
- New work rules are hybrid at best – or do not exist with other groups
- Timekeeping may not be 100% automated and precise i.e., accruals, sick and vacation usage
- Schools and administrative units have less latitude and discretion with internal practices in the governance of graduate employees
- Stakeholders must work both independently and in unison with the implementation team while using existing resources towards coordinated goals
- Data, if available, may reside in different systems

The New CBA – Implementation Landscape

- **New Set of Rules and Roles for Student Employees**
 - Blurred roles of student vis-a-vis student employee
 - Interpretation of what was actually bargained may differ and increased use of grievance procedures
 - Learning curve of labor relations
 - For example:
 - Role of shop steward
 - Role of union as negotiator and representative
 - Deadlines and time bars
 - What a grievance is – and what it is not

Poll Question

3. If you had to implement a new student employee union CBA right now, how confident are you that your **Human Resources and Student Information Systems** are able to accurately process new student employee appointments, classifications, pay scales, and paychecks?

- a) Extremely confident
- b) Moderately confident
- c) Neither confident nor worried
- d) Worried
- e) Do not know anything about systems capability

The New CBA - Implementation Priorities

- **Overcoming Academic and Human Resources Systems Challenges**
 - Both systems have distinct purposes that do not always lend towards the ease of relevant data flow
 - Academic systems generally interact with HR systems in a limited way to get paychecks issued
 - Information usually flows one way
 - Updates in one system do not necessarily trigger corresponding updates in the other system

The New CBA - Implementation Priorities

- **Balancing of Identification, Planning, and Scheduling of Deliverables**
 - Focus on high priority, short-term immediate deliverables
 - Examples:
 - Bargaining Unit Eligible Employee List
 - One-Time Payments
 - On-Time Paychecks with Correct CBA Rate(s)
 - Medical/Dental Plans Open Enrollment
 - Simultaneous planning for longer range priorities

The New CBA - Implementation Priorities

- **Ensuring Uniform Application Across the University: Communication, Communication, Communication**
 - Central resource of information and direction
 - Coordinated and consistent information on:
 - CBA terms and university obligations
 - List of deliverables and stakeholders
 - Practical considerations i.e., Appointment Letters, Dues Deduction Authorization Cards, Appointment “tip-sheets”
 - Partnering of HR Officers and Fiscal Officers to cascade information to Deans, Department Chairs, Department Administrators

The New CBA – Risks to Successful Implementation

- **Logistical:** Timeline of deliverables very ambitious
- **Systems:** Internal and/or external systems must precisely meet specification requirements with little or no lead time for programming
- **Schools:** Larger, decentralized School must require and enforce a strict application of contract terms



Thank You!

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