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CLIENT ALERT: NLRB Reverses Brown University and Leland Stanford, Finding Student Teaching and Research Assistants Are Employees and Can Unionize – By Rachel Munoz and Allison Cherundolo

On August 23, 2016, the National Labor Relations Board in a 3-to-1 decision overturned *Brown University*, 342 NLRB 483 (2004), and determined that both graduate and undergraduate students who perform services at a university in connection with their studies are employees and have the right to unionize. In *The Trustees of Columbia University in the City of New York and Graduate Workers of Columbia, GWC, UAW*, the Board reversed the Regional Director's dismissal of the Graduate Workers of Columbia-GWC, UAW petition which sought to represent both graduate (Ph.D. and Master's Degree students) and undergraduate teaching assistants, as well as graduate research assistants. In *Brown*, the Board had previously held that graduate assistants are not statutory employees within the meaning of Section 2(3) of the National Labor Relations Act (the "Act"). The *Columbia* decision not only overturns this long-standing precedent, but also overturned *The Leland Stanford Junior University,* 214 NLRB 621, 623 (1974), decision that found externally-funded research assistants were not employees under the Act.

- Students are Statutory Employees who have a Common-Law Employment Relationship with the University

In interpreting Section 2(3) of the Act, which provides, in relevant part, that "[t]he term 'employee' shall include any employee" 29 U.S.C. §152(3), the majority reasoned that *Brown* was a fundamentally flawed decision because it framed the issue of statutory coverage "not in terms of the statutory relationship, but rather on whether some other relationship between the employee and the employer is the primary one." *Columbia*, at p. 5. According to the Board in *Columbia,* statutory coverage is determined by evaluating whether or not the university and the student have a common-law employer-employee relationship. Specifically, the Board said that the key inquiry is whether the employer has control over the employee's work that is performed in exchange for compensation, regardless of whether or not a student-educator relationship also concurrently exists.

In applying this new standard, the Board found that both undergraduate and graduate students are common law employees, and in turn fall within the purview of Section 2(3). The Board reached this conclusion by finding that Columbia University oversees and directs student assistants' teaching activities and has an important interest in doing so in order to continue generating revenue through student tuition. Furthermore, the Board found significant that not only do student assistants receive compensation for their duties, but receipt of that compensation is conditioned upon their performance of teaching duties even if that compensation also constituted financial aid.

- Board Reasons that Asserting Jurisdiction over Students Promotes the Goals of Federal Labor Policy

The Board in *Columbia* also reasoned that extending statutory coverage to student assistants, and permitting them to choose whether to engage in collective bargaining, would further the Act's policies – a premise previously rejected by the Board in *Brown*. According to the Board, the majority in *Brown* wrongly concluded, without any empirical support, that collective bargaining between a university and its employee graduate students would harm student-teacher relationships, the educational process, academic freedom, and other traditional goals of higher education. To the contrary, the Board rejected its previous reasoning and now ruled that a graduate student can simultaneously be both a student *and* an employee, and a university can be both the student's educator *and* employer. The Board highlighted that collective bargaining by graduate student employees is "increasingly a fact of American university life" noting that graduate students at public universities around the country are unionized. *Columbia*, at p.9. The Board was unpersuaded that because private colleges and universities could face the threat of a strike by student workers, something most state laws governing collective bargaining do not permit, the Act should not be extended to students at private colleges and universities.

- Research Assistants are Employees

The *Columbia* decision also overruled the Board's 1974 decision in *Leland Stanford* and instead concluded that under the common-law test research assistants at Columbia are also employees under the Act. *Leland Stanford* held that externally-funded research assistants in the sciences are ineligible for collective bargaining because they were pursuing their own research in pursuit of their degrees – as opposed to performing employment services for the university. The Board rejected the premise that a student's work that advances the student's own educational interests as well as those of the university could serve as a barrier to finding employee status. Instead, where "a university exerts the requisite control over the research assistant's work, and where that specific work is performed as a condition of receiving the financial award, a research assistant is properly treated as an employee under the Act." P. 17.

- Undergraduate and Graduate Teaching Assistants and Research Assistants Constitute an Appropriate Unit

The Board also ruled that the undergraduate and graduate students (both Ph.D. students and Master's Degree students) and research assistants may properly form a single bargaining unit and bargain together with the University. The Board reached this conclusion because all of the student assistants performed instructional and research services for Columbia; therefore, the Board reasoned that their duties were integrated and designed to meet the University's teaching and research mission in non-faculty roles. In so concluding, the Board rejected the University's arguments that differences in pay, benefits, and duties for those students who teach and those do not, would frustrate the collective bargaining process.

The *Columbia* decision can be found here.

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