

FLIP FLOPS IN THE SUMMER STUDENTS MAY NOW ORGANIZE... FOR THE TIME BEING

By Michael C. Harrington

The issue of whether students may be considered employees for purposes of organizing under the National Labor Relations Act has been hotly contested over the past decade. On August 23, 2016, the Board reversed itself again and held that certain students at Columbia University are able to organize under the NLRA.

For many years, students who provided teaching and other services to their college or university in the course of their studies were not considered employees for the purposes of organizing under the NLRA. Adelphi University, 195 NLRB 639 (1972); The Leland Stamford Junior University, 214 NLRB 621 (1974). The Board long held that the relationship between student teaching assistants and their university was primarily that of a student, and not a statutory employee.

In 2000, the Board reversed its position and held that students may in fact qualify as employees under the Act. New York University, 332 NLRB 1205 (2000). Four years later, holding that students have a "primarily educational, not economic, relationship with their university," the Board reversed itself again and returned to holding that students were not employees under the Act. Brown University, 342 NLRB 483 (2004).

Yesterday, three members of the Board voted to reverse Brown University and held that students at Columbia University may organize under the Act. In doing so, the Board observed that there were several public universities where students were represented by labor unions and that there was no empirical evidence that collective bargaining by students would harm the educational process.

Who knows how long the Columbia University decision will remain the law. Much will likely depend on who wins in November. Stay tuned!

If you have any questions about this decision or union organizing, please contact one of the members of Murtha's Labor and Employment Group.

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