



July 2, 2012

Labor & Employment Update

NATIONAL LABOR RELATIONS BOARD TO RECONSIDER BARGAINING RIGHTS FOR PROFESSORS AND GRADUATE STUDENTS

The National Labor Relations Act governs collective bargaining in the private sector. The Act grants to “employees” the right to form unions and to bargain collectively, and requires employers to engage in collective bargaining with unions that are certified to represent such employees.

While the question of who is an “employee” under the Act is relatively straightforward in most workplaces, in the context of higher education the issue has been much less clear. Two major groups at colleges and universities – faculty members and graduate students – may or may not have bargaining rights under the Act, depending on both the specific facts and circumstances of the particular institution and on the composition and inclination of the National Labor Relations Board (“NLRB”) at any given time.

In recent years, the NLRB has been particularly active in its attempts to expand and strengthen the coverage of the Act. In 2012, the NLRB has signaled that it is considering major changes to the scope of bargaining rights in colleges and universities for both faculty members and graduate students.

On May 22, 2012, the NLRB announced that it was accepting briefs from interested parties on the issue of whether faculty members at a university are employees under the Act or are, rather, “managerial” employees not subject to the protections of the Act (and therefore, with whom the employer need not bargain collectively). In 1981, the U.S. Supreme Court held that faculty members who were involved in managing the university were not covered by the Act. In the case currently before the NLRB, the NLRB found that faculty members at Point Park University were not managerial employees and therefore the university was obligated to bargain with their union. An appeals court sent the case back to the NLRB for a more complete explanation of its reasoning, and the Board has asked for briefs on the issue.

On June 22, 2012, the NLRB again solicited briefs from interested parties, this time with regard to the employee status of graduate students. In 2004 the NLRB held that graduate students generally are not employees protected by the Act because they have a primarily educational, not economic, relationship with the university. In its notice, the NLRB asked for comments on whether that decision should be reversed and, if so, what factors should it consider under a potential new standard.

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It is likely that the NLRB will decide these cases before the end of the year. Because the NLRB has become a political hot-button, the decisions may well come after the November election but before the Presidential inauguration. If the track record of the current Board holds true, there is a strong possibility that colleges and universities may be facing new challenges with regard to faculty and graduate students who wish to organize a union.

We will keep you apprised of these cases as they develop, but if you would like further information about these issues, please contact Hugh F. Murray at 860.240.6077 / hmurray@murthalaw.com, or Michael C. Harrington at 860.240.6049 / mharrington@murthalaw.com.



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