

# Management Alert



## NLRB Continues its Involvement in Cases Affecting the Academic Employer

In addition to the decision recently issued by the National Labor Relations Board (“NLRB”) that impacts all private employers such as those involving social media policies, workplace rules, and class action waivers, the NLRB continues to focus on private educational institutions. Although most of the education cases involve colleges and universities, the principles presented in them have the potential for impacting primary and secondary schools, and being exported to the state laws governing public educational entities at all levels.

### NLRB Jurisdiction Over Religious Schools

As we [reported](#) in July, the NLRB has been stockpiling cases regarding the Board’s jurisdiction over religious schools, and the ability of graduate students to unionize. Although the Board’s validity and future ability to address these issues was a primary concern at the time, Congress stymied any additional controversy in late July by confirming the nominations of three Democratic and two Republican Board members, Chairman Mark Gaston Pearce (D), Kent Hirozawa (D), Nancy Schiffer (D), Harry I. Johnson, III (R), and Philip A. Miscimarra (R). [For more, see [here](#)].

The new, fully-constituted Board, however, has yet to provide any definitive answers in these areas. Regarding the extent to which the Board will exercise jurisdiction over religious schools (primary, secondary, and colleges and universities), several requests for review remain pending before the Board in election cases. See *Manhattan College* (Case No. 02-RC-023543) (election ordered); *St. Xavier University* (Case Nos. 13-RC-022025; 13-RC-092296) (elections ordered); *Duquesne University of the Holy Spirit* (Case No. 06-RC-080933) (elections ordered); *Islamic Saudi Academy*, (Case No. 05-RC-080474) (election not ordered for teachers, but ordered for non-teacher employees); and *Pacific Lutheran University* (Case No. 19-RC-102521) (petition pending).

### Unionization of Graduate Students

Meanwhile, in early December 2013, graduate “employees” at New York University and the Polytechnic Institute of NYU overwhelmingly voted to be represented by the United Auto Workers union, after an eight-year dispute ended with the parties reaching a voluntary election agreement. Roughly half of the eligible 1,247 graduate, research and teaching assistants voted in the election, with 98% of them voting for union representation. In doing so, they became the only unionized graduate employees at a private university in the U.S.

Because the parties reached a voluntary agreement over the graduate students’ right to organize, colleges and universities will have to continue to wait to see if the new Board will revisit its decision in *Brown University*, 342 NLRB 483 (2004) where it held that graduate students performing teaching and research services are *not* employees falling under the protections

of the National Labor Relations Act. Although the current Democratic-leaning Board would likely reverse course if given the opportunity, *Brown* remains the law of the land, despite the recent developments at NYU. Regardless, it can be anticipated that the UAW will use its *victory at NYU* as a springboard to organize graduate students at other schools.

## The Push to Organize Adjunct Faculty Continues

Meanwhile, institutions of higher learning should take heed as the push to organize adjunct and part-time faculty at colleges and universities continues full speed ahead, particularly with the help of the Service Employees International Union's "*Adjunct Action*" campaign.

The SEIU already has organized adjunct faculty at American University, Georgetown, George Washington and Montgomery College in Washington D.C. and part-time faculty at Tuft's University in Boston (an election at Boston's Bentley University failed by two votes). In the most recent election, the SEIU successfully organized adjunct faculty at Whittier College in Los Angeles.

Several other petitions have been filed on behalf of adjunct faculty at the University of La Verne and Loyola Marymount University in Los Angeles, and at Northeastern University in Boston. In late December, 2013, the Board ordered a mail ballot election to be held in February 2014 for adjunct faculty at Leslie University in Cambridge, Massachusetts. Schools facing these unionization efforts are often compelled to conduct their campaigns electronically in order to effectively communicate with adjunct and part-time faculty who generally are not "on campus" as frequently as other faculty. See, for example, the University of La Verne's official website regarding adjunct unionization efforts.

According to its website, the SEIU is attempting to use the threat of the impact of the Affordable Care Act to persuade adjunct and part-time faculty to unionize. Specifically, the SEIU is trying to persuade potential members that union protection is needed in order to prevent schools from reducing faculty hours to less than 30 a week in order to avoid having to provide healthcare coverage under ACA.

Based on the recent successes and ongoing efforts of the SEIU's Adjunct Action campaign, it is safe to conclude that 2014 will follow 2013 as a year of heightened organizing efforts on behalf adjunct and part-time faculty in schools across the country.

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