

Inside Higher Ed: NLRB Steps Toward Grad Unions

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The National Labor Relations Board, in a 2-to-1 decision, has edged away from its recent history of rejecting unionization rights for graduate teaching assistants at private universities.

In the decision, the NLRB found that the graduate students at New York University who are currently trying to unionize with the United Auto Workers deserve a full hearing on the merits of their organizing drive. In so doing, the majority of the NLRB reversed a regional director's decision that the UAW could not organize graduate students at NYU because of a 2004 NLRB ruling in a case involving Brown University graduate students.

In the Brown ruling, the board found that graduate students are primarily students, not employees, and so are not appropriately entitled to collective bargaining under the National Labor Relations Act. (The right of graduate teaching assistants at public universities to unionize is governed by state laws, so some public universities have had unionized T.A.s for years, while others do not have them at all.)

In its latest ruling, the NLRB suggested that there may be circumstances that merit granting collective bargaining rights to the NYU students irrespective of the decision in the Brown case. Further, the NLRB said that there may be "compelling reasons" to reverse the Brown decision. So the NLRB returned the case to the regional director for a full hearing, a potentially lengthy process. The actions of the NLRB are consistent with its past approach to reversing rulings, which is to do so on the basis of a full hearing at the regional level, which has not been done in the NYU case to date.

The new ruling is being greeted as a promising sign by those organizing at NYU -- and with disappointment by the university. It could also be the start of a long legal fight over the issue, and one that could easily be reversed later. The Brown decision came during the Bush administration and reversed a ruling by the NLRB in the Clinton administration that recognized collective bargaining rights at private universities. The current pattern is for Democratic appointed board members to back grad student unions and Republicans to oppose them, leaving open the possibility for further flip-flops by the board as administrations change down the road.

The union fight at NYU has plenty of history behind it. In 2002, when the Clinton administration's NLRB ruling still governed the question, NYU became the first (and, to date, only) private university to recognize a grad student union. The university negotiated a contract with the UAW unit at the university. In 2005, after the 2004 ruling took away grad

students' right to a union, NYU announced that it would not negotiate a new contract with the UAW and that it believed the union relationship had not been productive for the university. The union went on strike in November of that year, hoping to force the university to recognize the union -- even without NLRB requiring that it do so. The strike was highly visible at the beginning, but gradually lost force and officially ended in September 2006, without NYU recognizing the union.

In its new ruling, the NLRB cites differences in NYU's relationship with its graduate students now as compared with the past and with other universities today to suggest that they may be entitled to a union. For instance, the NLRB ruling notes that NYU has said that its graduate students who teach do so voluntarily and are free to join the adjunct union at the university for representation in their role as instructors. The NLRB ruling says that this is significant because it means that graduate students are being paid as employees, not simply as graduate students.

As for the Brown decision, the NLRB notes with apparent sympathy that the UAW argues that the 2004 decision was "based on policy considerations extrinsic to the labor law we enforce and thus not properly considered in determining whether the graduate students are employees." This week's ruling was signed by two NLRB members who are Democratic appointees, Craig Becker and Mark G. Pearce.

A Republican appointee, Brian Hayes, wrote the dissent, in which he said that the facts have not changed from the ruling on Brown University's graduate students, and that the law shouldn't change just because Democrats now control the NLRB majority.

"The request for review itself sets forth no proper, let alone 'compelling' reasons for reconsideration," says the Hayes dissent. "The request does not raise, allege, or reference a single fact, circumstance, argument, legal precedent, or claim that was not in existence and clearly before the board when it rendered its decision in Brown. Thus, the request for review does nothing more than ask that a board, with changed membership, view precisely the same evidence and argument considered by a prior board, but reach an opposite result. This is not a proper basis for 'reconsideration.' To suggest that it is merely serves to reinforce the views of the board's critics who charge that its view of the law is wholly partisan and thus changeable based on nothing more than changes in board membership."

Maida Rosenstein, president of UAW Local 2110, which includes graduate teaching assistants, said she was very pleased with the NLRB's ruling. "This is tacitly a decision that the Brown ruling was wrong," she said. "There would be no reason to conduct further hearings unless the board believed that the Brown decision was flawed."

Rosenstein said that grad students remain highly motivated to vote in a new union -- and predicted that they would eventually win the right to do so.

Academic labor has been pushing hard for the reversal of the Brown precedent, and the

American Federation of Teachers also issued a statement of support for the latest NLRB decision. "The NLRB's decision in the Brown University case finding that graduate teaching fellows are students and not employees was a ruling that did not reflect the reality of the university workplace," David Strom, AFT general counsel, said in the statement. "The NLRB's direction here to the parties to develop a full record on the duties and responsibilities of graduate teaching fellows gives the board the opportunity to get it right and correct the obvious flaws in the Brown University decision."

NYU had a very different take on the decision, issuing a statement that in part echoed the NLRB dissent. "The fundamental issues that led to the board's decision in the Brown case are essentially unchanged," it said.

The NYU statement also questioned the idea that its graduate teaching assistants are anything but students, and noted that today's grad students at the university aren't required to teach, and receive much better packages than did those who were at NYU when the union drive started years ago. "Fully-funded grad students now receive their education tuition-free, receive a stipend that is among the most generous in the U.S., and have their health premiums paid by NYU -- a package worth in excess of \$70,000 a year -- all without having to do anything but pursue their degree," said the NYU statement. "In what way, one might ask, can they now be construed as employees?"

— Scott Jaschik