



Electronic Dispatch

# Higher Education Law Information Memo

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## THE NATIONAL LABOR RELATIONS BOARD HOLDS THAT GRADUATE STUDENT ASSISTANTS ARE NOT ENTITLED TO UNIONIZE: THE *BROWN UNIVERSITY* DECISION

On July 13, 2004, in *Brown University*, 342 N.L.R.B. No. 42, the National Labor Relations Board held (by a 3 to 2 margin) that graduate student assistants are not “employees” under the National Labor Relations Act. In so holding, the Board reversed its 2000 decision in *New York University*, and declared that it would be inconsistent with the purposes and policies of the NLRA to allow graduate student assistants to unionize.

This information memo briefly reviews the Board’s prior decisions on this issue, and explains the rationale behind the Board’s *Brown University* decision.

### The Board’s Prior Holdings

In 1974, in its *Leland Stanford* decision, the Board held that graduate student research assistants who were enrolled as Ph.D. candidates in the Stanford physics department were not employees under the NLRA. The Board found that the research assistants were required to be enrolled as students to hold their research positions, and were required to perform research in order to obtain their degrees. The Board also found that they received academic credit for their research. Although the research assistants received a stipend from Stanford, the Board determined that the stipend was not dependent on the nature or the intrinsic value of the research work performed, but instead was for the goal of providing the graduate students with financial support while they completed their degree requirements. Based on all of these factors, the Board held that the relationship between Stanford and the graduate student assistants was primarily academic rather than economic in nature, and that the graduate student assistants should not be permitted to unionize.

For over 25 years, the Board followed its *Leland Stanford* decision, and adhered to the principle that the mutual interests of graduate student assistants and educational institutions in the services performed by those students are predominantly academic rather than economic in nature. However, in *New York University*, the Board held that graduate student teaching assistants were “employees” who were entitled to unionize under the NLRA. Although the Board also held in its *New York University* decision that certain graduate student research assistants who performed research as part of their degree requirements were not employees, the *New York University* decision nevertheless was a significant departure from the Board’s prior position on the status of graduate student assistants.

### The *Brown University* Decision

The *Brown University* case involved graduate students at Brown University who served as teaching assistants, research assistants, and proctors. Teaching assistants were generally assigned to lead a small section of a large lecture course taught by a professor. Research assistants were generally required to conduct research under the direction of a faculty member pursuant to a grant received by the faculty member. Proctors were assigned to perform a wide variety of academic tasks, but generally did not teach or conduct research. To be awarded a teaching assistantship, research assistantship, or proctorship, an individual was required to be enrolled as a student. All graduate student assistants received a stipend, as well as payment of tuition and payment of Brown University’s health fee.

In holding that the graduate student assistants were not entitled to unionize, the Board emphasized that the NLRA was intended to cover only economic relationships, and stated that relationships that are primarily academic in nature are inappropriate for collective bargaining. The Board relied on several factors in finding that the relationship between the graduate student assistants and Brown was primarily academic rather than economic. First, the Board noted that individuals were required to be enrolled as



graduate students at Brown to receive a teaching assistantship, research assistantship, or proctorship. Second, the Board found that the principal focus of these graduate student assistants was to obtain a degree, and that the services performed as a graduate student assistant were generally for the purpose of completing degree requirements. Third, the Board found that the same faculty members who supervised the teaching and research of the graduate student assistants generally served as dissertation advisors for those graduate students. Fourth, the Board found that the stipend received by the graduate student assistants was more akin to financial aid rather than payment for services rendered to Brown.

The Board expressly reversed its *New York University* decision, and stated that imposing collective bargaining on the academic relationship between Brown and its graduate student assistants would have a “deleterious impact” on the educational decisions made by Brown’s faculty and administrators. Specifically, the Board expressed concern that collective bargaining would intrude upon decisions with respect to the subject and manner of teaching and research, which are primarily academic issues that should be left to the discretion of Brown’s faculty and administrators. The Board also observed that graduate student education is generally dependent upon individual relationships between graduate students and their faculty advisors, and that collective treatment of graduate student assistants would therefore be inappropriate and detrimental to the educational process. Accordingly, the Board concluded that it would be contrary to national labor policy to extend collective bargaining rights to graduate student assistants.

### Conclusion

Based on the Board’s *Brown University* decision, graduate student assistants (whether their duties involve teaching, conducting research, or performing a variety of other academic tasks) are not considered employees under the NLRA if their relationship with their educational institution is primarily academic rather than economic.

Colleges and universities with graduate programs can take the following affirmative steps to ensure that graduate student assistants understand that their relationship with their educational institution is primarily academic rather than economic: (1) include a statement in graduate program brochures, web sites, and other material describing graduate programs that teaching and research are fundamental parts of obtaining a graduate degree, and that working as a teaching assistant or research assistant is a way to meet degree requirements and/or supplement a student’s academic experience; (2) include in any position description for a graduate teaching assistant and research assistant a requirement that an individual holding such a position be enrolled as a full-time graduate student; (3) specify in any written descriptions of financial aid packages that working as a teaching or research assistant is a form of financial aid that is available to graduate students; and (4) ensure that the work performed by graduate student assistants is supervised by faculty members within their graduate program and is related in some way to their graduate education.

If you have any questions regarding the *Brown University* decision or need any assistance or advice with respect to union organizing on your campus, please contact:

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