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NLRB takes up graduate students' right to organize at private universities

Robert Lafolla

(Reuters) - The National Labor Relations Board agreed on Wednesday to consider a union bid to organize graduate students at the New School in New York City, teeing up an opportunity to overturn an 11-year-old decision barring graduate student unionization.

The NLRB will review a March ruling from its regional director in New York City that rejected a petition from a United Auto Workers affiliate seeking to represent teaching and research assistants at the university.

Several labor law experts said the board is likely to reverse the 2004 ruling that held Brown University graduate research and teaching assistants aren't employees under the National Labor Relations Act. Overturning the Brown decision would open the gates for graduate student organizing on private campuses all over the country.

"It's clear to everybody that their goal is to reverse the Brown decision," said Joseph Ambash, an attorney who represents employers at Fisher & Phillips.

Graduate students at public universities have unionized in 14 states, including California, New York, Illinois and Michigan, according to William Herbert, director of the National Center for the Study of Collective Bargaining in Higher Education and the Professions at Hunter College in New York City. Public employees aren't covered by the NLRA, so the organizing rights of graduate students at public universities depend on each state's labor laws, Herbert said.

New York University is the only private college in the country with unionized graduate students. The NLRB granted graduate students at NYU the right to organize in 2000. The board was controlled by Democratic members at the time.

Partisan control of the NLRB flipped after the 2000 election of Republican President George W. Bush, paving the way for the Brown decision barring graduate student unionization.

Due to the Brown decision, NYU graduate students were denied the right to collectively bargain after their contract expired in 2005. A UAW affiliate pressed the issue at the NLRB in 2010. Democratic members took control of the board after the 2008 election of President Barack Obama.

But the union withdrew its case from the NLRB once the university agreed to a private election in 2013. The union won the election with 98 percent of the vote.

In 2014, UAW affiliates petitioned the NLRB to organize at the New School and Columbia University. The NLRB regional director initially dismissed both petitions without a hearing in February of this year. The board reversed both dismissals in March and ordered the regional director to reconsider them after holding hearings.

While Regional Director Karen Fernbach's decision in the Columbia case is still pending, she again dismissed the union's petition in the New School case. She said she was "constrained by Brown" to find the graduate students aren't employees under the NLRA.

In its petition asking for board review, the union argued that "the time has come to squarely overrule" the Brown decision.

The NLRB voted 3-1 to consider the New School case. Philip Miscimarra, the lone remaining Republican member of the board, dissented.

"The fact that the NLRB granted review isn't a surprise, but it's very exciting," said Julie Kushner, director of UAW Region 9A, which covers eastern New York and the six New England states.

A New School spokeswoman said the school values its graduate teaching and research assistants and it appreciates the NLRB's attention.

The case is the New School, NLRB, No. 02-RC-143009.

For the petitioner: Thomas Meiklejohn and Nicole Rothgeb of Livingston, Adler, Pulda, Meiklejohn & Kelly

For the employer: Douglas Catalano of Norton Rose Fulbright