

Election Puts Unions' Success With Student Workers In Peril

By **Tim Ryan**

Law360 (November 7, 2024, 8:37 PM EST) -- Unions have found success organizing graduate students and other student workers in recent years due to critical legal changes and dissatisfaction with the culture in higher education institutions, but experts warned the incoming Trump administration could threaten the momentum labor has built.



Experts have warned that an incoming Trump administration could threaten the momentum of unions that are successfully organizing grad students and other student workers. (iStock.com/gguy44)

More than 50,000 student workers have unionized in elections before the National Labor Relations Board since 2021, according to an Oct. 29 press release from the agency. The rush of unionization coincided with the board's current Democratic majority walking back a proposed rule that would have made the workers ineligible to unionize.

Experts said student workers as a group are ripe for union organizing as they seek better working conditions and protections from discrimination and to combat a culture that they see as undervaluing them. But whether unions will be able to continue capitalizing on the apparent interest workers have in organizing is in question as an incoming Republican majority on the board could make legal changes that would leave them ineligible to unionize under the National Labor Relations Act.

"Trump's win [Tuesday] brought this back to some unsteady ground in terms of whether or not the NLRB

decides these are actually statutory employees under the NLRA," said Damien DiGiovanni, a partner at Morgan Brown & Joy who represents higher education institutions in labor matters.

Organizing among graduate students dates back to the 1960s and among undergrads to the 1970s, said William Herbert, a distinguished lecturer at Hunter College and executive director of the National Center for the Study of Collective Bargaining in Higher Education and the Professions. The efforts began at public schools and largely remained there until 2000, Herbert said, because the NLRB had consistently said graduate students did not meet the definition of employee under the National Labor Relations Act and therefore could not unionize.

The NLRB changed course in a 2000 decision that held graduate assistants at New York University could vote on being represented by the United Auto Workers. The shift was short-lived, however, as the board reversed itself in a 2004 case involving Brown University that said graduate assistants were not employees because they were "primarily students and have a primarily educational" relationship with their school, rather than an economic relationship.

Then 2016 brought more change when the NLRB issued a decision that said graduate teaching and research assistants and undergraduate teaching assistants at Columbia were employees under the NLRA. The Columbia University board said student workers are employees under the NLRA because they perform work for their school and are paid for it and that their additional educational relationship with their institution does not undo that employment relationship.

The Columbia University decision came toward the end of the Obama board, and the incoming Republican majority after Donald Trump's 2016 election victory was expected to overturn the decision, DiGiovanni said. But unions organizing in the space withdrew their election petitions so as not to give the board a chance to change the law, DiGiovanni said, leaving the board without a case and leading it to **instead turn to rulemaking** in 2019.

That rulemaking never became final, however, and the board's current Democratic majority rescinded it in 2021, leading to an explosion of organizing.

"It's a trend that's been building and it's obviously gaining momentum," said UAW Region 6 Director Mike Miller, who has been involved in the union's efforts to organize student workers.

Graduate students at schools including Yale, Johns Hopkins and Duke University have successfully unionized in NLRB elections since the Biden board rescinded the rulemaking, joining undergraduates at schools including Dartmouth College, Tufts College and Harvard College, according to board data.

The UAW has been at the forefront of higher education unionization and represents more than 100,000 workers in academia, including 42% of all unionized graduate student workers, according to a September study from the National Center for the Study of Collective Bargaining in Higher Education and the Professions.

Miller said the movement has in some ways been contagious, as student workers who see their peers at other institutions unionize are inspired to follow the same path.

At a basic level, student workers are unionizing for familiar reasons of pay and economic stability, Miller said. But they also see unions as a counter to high levels of discrimination they report experiencing in their jobs, Miller said, and to a culture within many institutions that views graduate student life as an "elegant form of poverty."

"No one is willing to accept that anymore," Miller said. "People see their universities as having sufficient resources to pay them — not to get rich or anything like that, but to have economic stability so that anyone can be a grad student based on the quality of their ideas rather than coming from family wealth or something like that."

Herbert said research shows that working in the lower levels of a higher education institution, as student workers are, makes employees more likely to unionize, as does being in the presence of other collective social movements like those that take place on campuses.

"The level where someone is in the hierarchy in terms of the occupation and the institution will have an impact," Herbert said.

The basic demographics of the workforce also contribute to the success unions have found there, Herbert said, as record high levels of people under 30 have a favorable view toward organized labor.

Miller said the rush to unionize has not slowed down and is even spreading as unionized student workers graduate and move into other positions that are not yet unionized, such as post-doctoral roles or faculty positions.

"We get calls every day from more workers who want to form unions," Miller said. "I see that only increasing, not receding or abating."

But the chance that an NLRB under Trump reverses the Columbia University decision might blunt the momentum that unions have enjoyed during the Biden administration. DiGiovanni said overturning Columbia University might not affect some types of student workers — such as undergraduates who work in university dining halls — but would leave the validity of unions for workers in academic positions in question.

The sheer number of student workers who have now unionized might give the board some pause about overturning Columbia University, Herbert said, because it would be "quite destabilizing" for existing units. DiGiovanni agreed the board might be cautious about reversing Columbia University because of the number of bargaining units it would call into question, though the agency has bounced back and forth on numerous legal issues over the years.

How a legal change would affect already unionized workers is not quite clear, DiGiovanni said.

Some institutions might see the shift and decline to bargain when their contract expires because the workers' certification no longer would have legal backing, DiGiovanni said, while others might be more aggressive and challenge the union's status mid-contract.

But other schools and universities that see their relationship with unions differently might not be eager to "upset the apple cart" and instead choose to continue working with the union even though they are not legally required to, DiGiovanni said.

"I think it's largely going to be institution-specific," DiGiovanni said.

Miller said organizers he interacts with are "very creative" and capable of working around whatever changes come with a new administration and that he does not expect a change in administration to dampen workers' enthusiasm for unions.

"I don't think that the political party or politics of whoever is in the White House is somehow going to discourage workers from wanting to form unions, whether that's in higher ed or any other sector," Miller said.

--Editing by Bruce Goldman and Leah Bennett.