Speakers Show Split Views on Impact Of NLRB Case on Graduate Assistants

National Labor Relations Board proceeding over whether to reverse precedent and allow union organizing of graduate assistants at private universities touches on issues of academic freedom and economic fairness on campus, speakers suggested in a sharply divided panel discussion on the topic.

“You can’t just take a magic wand and make every grad student an employee, when in fact there are many nuances,” said Joseph W. Ambash, managing partner of the Boston office of the Fisher & Phillips law firm, referring to the board’s interest in revisiting the question of the employment status of graduate assistants. “It’s inevitable that collective bargaining would get into issues involving curriculum, financial aid or grading.’’

In a case involving Columbia University, the board is considering whether to reverse the position it set out in Brown University, 342 N.L.R.B. 483, 175 LRRM 1089 (2004) (136 DLR AA-1, 7/16/04), which found that graduate assistants are primarily students and can’t be considered employees under the National Labor Relations Act. That decision itself reversed a 1999 board finding in a case involving New York University.

Ambash, who represented Brown in the 2004 case, wrote an amicus brief on behalf of Ivy League institutions other than Columbia, plus the Massachusetts Institute of Technology and Stanford University. The brief was among several filed in response to an invitation by the board in the Columbia case (Columbia Univ., NLRB, No. 02-RC-143012) (44 DLR C-1, 3/7/16).

Appearing with Ambash on a panel discussing the Columbia case was former NLRB Chairman Wilma Liebman, who is a visiting scholar at the Rutgers University School of Management and Labor Relations, and Paula Voos, an associate dean at Rutgers who directs undergraduate and master’s degree programs at the school.

The April 4 discussion was part of an annual Hunter College conference on collective bargaining in higher education.

Financial Aid or Employment? Most graduate students at the so-called Ivy-Plus group of leading research universities receive tuition remission, health-care coverage and annual stipends, but in most schools, “the amount received is not tied to teaching load,” Ambash said. Rather, he continued, it’s “part and parcel of their academic program, as a financial aid package.”

Adversarial relationships are “built into the DNA” of the NLRA but would impinge on decisions protected by academic freedom and “dramatically change the paradigm of higher education,” Ambash argued. At NYU, he said, union grievances “repeatedly and relentlessly” sought to enter that realm, despite contract language setting academic freedom as off-limits.

If the board allows bargaining by graduate assistants, Ambash said, universities inevitably would be “bombarded” by information requests and unfair labor practice charges on what’s subject to bargaining.

“The NLRB must carefully look at each situation to determine where and when some graduate students are employees,” he said. “You can’t just say that everyone’s an employee. No appellate court would find that grades, class size, teaching load or course format are bargainable.”

But Liebman questioned Ambash’s view of collective bargaining as “deleterious to the academic process,” suggesting that the essence of the NLRA is “profoundly collaborative.” Collective bargaining, she maintained, should be seen not as taking adversarial positions but as “building a cooperative social democracy.”

Competing Interests Seen. The existence of competing interests, she said, “doesn’t mean the relationship has to be adversarial.”

Issues between universities and graduate assistants don’t disappear in the absence of collective bargaining, Liebman said. “You can see collective bargaining as an institution for channeling and resolving conflict,” she said. “These issues will be there whether they come under the act or not.”

Saying that the question of what constitutes an employer or an employee is “blossoming” in varied industries, she warned against a “jurisprudence stuck in the past” that fails to adjust to changing needs and a changing economy.

She further alluded to “differences of opinion on what academic freedom covers.” At NYU, she said, the union lost its grievances over academic freedom issues, “so you can say the process worked.”

As fewer and fewer university teaching loads are carried by tenured faculty, the lower-paid graduate assistants are picking up the slack, Liebman argued.

“Graduate assistants are performing services for the university,” she said. “These are not just made-up jobs
to show graduate assistants how to teach. If they didn’t do these jobs, someone else would have to.”

**Comparative Costs.** But Ambash replied that, at the institutions he represents, cost isn’t the issue in deciding where graduate assistants teach. If would cost far less to use adjunct faculty rather than making the teaching assignments part of the Ph.D. curriculum, he said, although he acknowledged that “that’s not true everywhere.”

Graduate students do serve in an apprenticeship-like role, but “an educational relationship isn’t separate from an economic relationship,” Voos said, suggesting that “it’s not either-or.”

Voos said that Ambash had drawn an “alarmist picture that doesn’t match my perception of a highly unionized environment at Rutgers,” a public institution. There’s been no onslaught of grievances, she said, adding that bargaining can be “simultaneously adversarial and collegial.”

For the likely consequences for academic freedom of classifying graduate assistants as employees at private universities, she said, “we can look to the public sector, where many states do have graduate assistant representation.” She called public and private research universities “quite similar to one another,” despite multiple differences.

**Survey Results.** In an Internet-based survey of perceptions of graduate assistants at eight large research universities, Rutgers researchers found no evidence of a less supportive faculty-graduate student relationship at the four institutions with union representation compared with the four with none, Voos said. Nor were any associations found between unionization and a perception of restricted academic freedom, she said.

The unionized graduate assistants did perceive that they were getting “higher pay and fairer pay,” she added.

In reply to Voos, Ambash suggested that a survey of the perceptions of administrators would show a different view of the effects of unionization.

**UConn Success Story.** In an earlier session on graduate assistant organizing and contract negotiations, representatives of management and labor reviewed the April 2014 success of United Auto Workers Region 9A in organizing 2,300 graduate assistants at the University of Connecticut, after management had agreed to stay neutral in a card-collection campaign.

The neutrality ultimately adopted by NYU in the UAW’s long-running bid to organize graduate assistants there was seen as a model, said Michael J. Eagen, labor and employment director for UConn. He described his institution as “an island” surrounded by campuses at the University of Massachusetts, the University of Rhode Island and the State University of New York system, where graduate assistants are all organized.

UConn has a long history of solid labor relations, and the possibility was looming that graduate assistants there would be declared employees by legislation or state labor board action, he said.

“Some folks were uncomfortable with the idea that the union could get involved in subjects affecting teaching, but none of the first-year grievances have touched on issues of academic concern,” Eagen said.

Achieving a first contract after nine months of bargaining was “a case study of how things should work,” said Ken Lang, a UAW Region 9 international representative. The process moved forward once adequate meeting time was set “to hash out our differences,” he said.

**‘Organizer’s Dream.’** The recognition process at UConn, Lang said, was “an organizer’s dream,” with only 62 days elapsing from the first card signed to state labor board verification. Elected officials helped in the drive, with the governor and more than 70 state legislators urging the university’s neutrality, he said.

“UConn really did the right thing and should be commended for that,” Lang said.

University officials didn’t challenge the collective bargaining procedure or the majority sign-up, and they didn’t take the path of “wasting enormous resources” fighting the union on those issues, he said.

“That set a positive tone moving forward,” but the bargaining process proved difficult, he said.

Facing an April 2015 deadline to submit an agreement to the state legislature for approval, he said, the union sought to press the university to speed up the talks by voting to invoke arbitration if a negotiated agreement wasn’t possible.

“We didn’t want to go to arbitration, but that’s what appears to have gotten us more full-day bargaining sessions,” Lang said. “Thank God we settled the contract last year, because this year’s legislature would not have approved it.”

The conference was sponsored by the National Center for the Study of Collective Bargaining in Higher Education and the Professions at Hunter, which is part of the City University of New York.

**By John Herzfeld**

To contact the reporter on this story: John Herzfeld in New York at jherzfeld@bna.com

To contact the editor responsible for this story: Susan J. McGolrick at smcogolrick@bna.com

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