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# Another NLRB Flip-Flop In The Works: Unions Seek To Organize College And University Graduate Assistants

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It appears the NLRB may be poised to reverse *Brown University*, 342 N.L.R.B. 483 (2004) and use its decisional law to expand its jurisdiction. In *Brown* the Bush Board categorically held that graduate student assistants are not employees within the meaning of the National Labor Relations Act. The Board in *Brown* had emphasized the fact that the students' relationships with the university were predominantly academic, rather than employment-related. Most recently the holding in *Brown* was at issue in the attempt by the Northwestern University football players to organize, but the Board declined to address the issue squarely, deciding instead to side-step the issue based on jurisdictional and public policy grounds. The case at issue is *The New School*, No. 02-RC-143009 (N.L.R.B., Oct. 21, 2015). The parties in this case have already been before the Board several times regarding the SENS-UAW's (an affiliate of the United Auto Workers) attempt to organize the New School's graduate student assistants. When the union first petitioned late last year to represent employees who provide teaching, instructional and research services at the New School in New York, the Board initially followed *Brown* and dismissed the petition…twice. However, the union has filed a petition requesting review of the second dismissal and has since strongly urged the Board to take the opportunity to review *Brown*. The Board granted the petition on October 21st, a sign that *Brown* may be on the chopping block after all. The SENS-UAW Representation Petition that is in dispute seeks to represent graduate students at The New School in New York who assist faculty with teaching and research in various programs at the school and in a variety of positions, including teaching fellows, research assistants, and graduate assistants. SENS-UAW says that approximately 350 individuals work in the petitioned-for classifications, and it reports that positions require 10 to 20 hours per week. The UAW has also been affiliated with student workers at other private colleges and universities in the Northeast. For example, the UAW's Columbia University affiliate, Graduate Workers of Columbia (GWC-UAW), sought and was granted a similar review of the dismissal of its representation petition. SENS-UAW has argued in the New School case not only that *Brown* should be overturned, but also that its proposed employee classifications are distinguishable from those in *Brown*. Graduate assistants at the New School receive stipends disbursed in bi-weekly payments, but the amount of the payments does not vary with respect to the number of hours that a student actually worked. The amount of the stipend averages around a few thousand dollars per semester, however the highest paid position received stipends ranging from $30,000 to $40,000. There are also eligibility requirements to obtain a position, including a required minimum GPA, and SENS-UAW describes the selection process as

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“yearly competitions for precarious jobs.” While the regional director decided the case by relying on the Board’s precedent in *Brown,* she also went further to discuss some of the differences between the students in *Brown* and *The New School*. The New School, unlike Brown University, does not require its doctoral candidates to teach in order to obtain degrees. Further, the amount of the financial support for the Brown students did not vary based on the nature of their duties, unlike the New School student. Finally, the New School students engaged in a variety of different activities (e.g. tutoring, teaching, administrative tasks), while the Brown students positions all had at least some overlap. SENS-UAW has seized on such distinctions to push its case to the NLRB to reverse *Brown*, and by accepting the SENS-UAW Petition for Review it appears the Board is listening. Be assured that we’ll be watching closely as this important case for private colleges and universities progresses.