



ALERTS

Union Activity In Higher Education Reached Historic Levels In 2022 And Beyond

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Highlights

A patchwork of varying federal and state laws apply to higher education institutions concerning the collective bargaining rights of their employees

In 2022, the U.S. saw the highest number of work stoppages at higher education institutions in 15 years, and since March 2022, 19 bargaining units representing students have been recognized by the NLRB

As organization efforts remain strong across the country, colleges and universities should be ready for continued organizing efforts and union activity throughout 2023

Following a week-long strike, New Jersey Gov. Phil Murphy [recently announced](#) a tentative agreement had been reached between Rutgers University and the Rutgers AAUP-AFT and the Rutgers Adjunct Faculty Union. This strike, along with recent data from the National Labor Relations Board (NLRB), continues to signal a strong push of union activity across the nation by both faculty and student workers.

The Nature of Organizing in Higher Education

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Unlike other sectors, labor organizing in the higher education setting is complicated and subject to a patchwork of laws that vary by the nature of the institution, including whether it is public or private; where the institution is located and what rights are afforded by its state's laws; and whether such rights are extended to student workers.

The National Labor Relations Act (NLRA) only applies to private employers, thus limiting its protections only to employees at private universities. In a landmark 1980 decision, [NLRB v. Yeshiva University](#), the U.S. Supreme Court further narrowed the protections of the act to non-tenure track employees, including graduate students, unless the institution otherwise agreed to recognize the bargaining unit or the tenured track faculty members do not hold "managerial authority."

In 2016, the NLRB further endorsed these rights with its decision in [Columbia Univ.](#), 364 NLRB No. 90. Under the Trump administration, however, the NLRB sought to further limit these protections by exempting college students from the NLRB's jurisdiction, declaring them to not be employees under the act. However, in March 2021, the NLRB [announced that it was withdrawing](#) this proposed rule.

For employees at public universities, the rules vary greatly. Collective bargaining rights are protected by state law for academic professionals in 34 states. The extent to which those rights are protected varies dramatically. In some jurisdictions, strikes are prohibited by law (with such prohibitions often being disregarded). State law may also limit the subjects that may be bargained for, thus limiting negotiations solely to subjects like wages. Of those 34 states, only a handful provide collective bargaining rights to student workers. However, even where such protections are not enshrined in law, organizing activity has resulted in strikes and the formation of unions.

Recent Trends in Organizing in Higher Education

A new era of union activism has made itself known across a number of high-profile union organizing drives and work stoppages across the service industry, most notably Starbucks. However, union activity is up across the board, and the higher education sector is no different. Since January 2022, the Cornell University Industrial Labor Relations School [Labor Action Tracker](#) reports that nearly 40 strikes have occurred across the country in the higher education sector.

The recent Rutgers strike follows strikes by the faculty at the University of Illinois Chicago, threats to strike by the faculty at Fordham University in New York earlier this year, and strikes by graduate students at Temple University. Each of these comes on the heels of the most active year for work stoppages in higher education in decades. This growth in activity was driven by faculty and students. [Bloomberg Law](#) reported that 2022 saw 15 strikes by faculty and graduate students across the country, a number almost triple from the year before. Of the approximately 222,306 workers that engaged in a work stoppage in 2022, at least 137,000 were academic professionals (almost 62 percent), according to Bloomberg. Included in that number was also the country's large labor walkout – a strike by 48,000 postdoctoral and graduate students and teaching assistants at the University of California that lasted almost six weeks.

All of this activity is further anchored by a flurry of union activity at private

academic institutions by graduate and undergraduate students. Since 2021, the NLRB has certified nearly 20 different bargaining units comprised of graduate and undergraduate students employed by the institutions. These units include graduate teaching and research assistants; resident and housing advisors; and students employed within campus dining services. While primarily concentrated at schools in the Northeast, this also extends across the country with units being certified across New York and New England, with schools like Fordham, Boston University, and Dartmouth; to Midwestern schools like Grinnell College in Iowa and Northwestern University; to the West coast with the University of Southern California. Each of these came after votes which resulted in sizable union wins.

Likewise, public institutions continue to see significant labor activity by their students across the country. Such activity stretches from the aforementioned strike at Temple University in Pennsylvania to organization drives at the University of Minnesota to the bargaining efforts underway at the University of Oregon. This is true even where collective bargaining rights of students are not recognized at public institutions. [Inside Higher Education](#) has chronicled the efforts of the United Campus Workers, which has organized at public university campuses across Arizona, Colorado, Georgia, Kentucky, and Tennessee, and support is only growing. In fact, strikes at public sector institutions are occurring even when they are not legal and, despite that, some courts have refused to intervene.

What's Next?

Driven by the economics of the post-pandemic world, organizing efforts are rapidly expanding and outpacing previous years in all industries – including higher education. This comes at the same time that colleges and universities are relying on non-tenure track instructors and graduate students in the classroom to a historical degree. These instructors have grown to account for nearly three-quarters of the academic workforce in recent years. At the intersection of both of these trends will be the continued growth of union presences on campus.

Against the backdrop of these trends and emboldened by the support of the NLRB, union efforts are poised to remain strong and 2023 is likely to continue to look much like 2022. Coupled with long-standing endorsements for unions by organizations like the American Association of University Professors, broad-based support, and coordinated national strategies, a steady stream of newly certified units and work stoppages are likely to follow at colleges and universities across the country.

Higher education institutions and their officials need to be mindful of the circumstances specific to their institution and the relevant legal frameworks concerning collective bargaining rights applicable to their institution. Furthermore, those institutions desiring to remain union-free should consider proactive steps with regard to employee relations, vulnerability assessments, and other tools at their disposal in order to stay out in front of the pack.

To obtain more information, please contact the Barnes & Thornburg attorney with whom you work or Grant Pecor at 616-742-3911 or gpecor@btlaw.com or Aaron Vance at 317-261-7956 or aaron.vance@btlaw.com.

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