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**NLRB HOLDS THAT GRADUATE STUDENT  
ASSISTANTS ARE NOT STATUTORY EMPLOYEES**

The National Labor Relations Board, in a 3-2 decision involving Brown University, found that graduate student assistants are not employees within the meaning of Section 2(3) of the National Labor Relations Act. The Board found that these persons are students and are not statutory employees. The majority opinion is signed by Chairman Robert J. Battista, and Members Peter C. Schaumber and Ronald Meisburg. Members Wilma B. Liebman and Dennis P. Walsh dissented. The decision is posted on the Board's website at [www.nlr.gov](http://www.nlr.gov).

The decision, dated July 13, 2004 and made public today, overrules the Board's decision four years ago in *New York University*, 332 NLRB 1205 (2000), which found that the graduate student assistants there were employees within the meaning of Section 2(3) of the Act. *NYU* had overruled over 25 years of precedent under which graduate student assistants had not been regarded as statutory employees. See the 1974 decision in *Leland Stanford Junior University*, 214 NLRB 621. The majority in *Brown* stated:

After carefully analyzing these issues, we have come to the conclusion that the Board's pre-*NYU* principle of regarding graduate student assistants as nonemployees was sound and well reasoned. It is clear to us that graduate student assistants, including those at Brown, are primarily students and have primarily an educational, not economic, relationship with the their university.

The majority pointed out that *Leland Stanford* was "wholly consistent with the overall purpose and aim of the Act." The Act governs "a fundamentally economic relationship between employees and employers."

The Board interpreted Section 2(3) in light of the "underlying fundamental premise of the Act," i.e. that the Act is "designed to cover economic relationships." The majority concluded: "The Board's longstanding rule that it will not assert jurisdiction over relationships that are 'primarily educational' is consistent with these principles."

In reaching its decision in the *Brown University* case, the Board dismissed a representation petition filed by the United Auto Workers union seeking to represent approximately 450 graduate students employed as teaching assistants, research assistants, and proctors. It reversed a Regional Director's Decision and Direction of Election that had relied on *NYU* in finding that these persons are statutory employees and constitute an appropriate unit for collective bargaining. The election was conducted on December 6, 2001, and the ballots were impounded pending the disposition of the union's request for review. Thus, the election is mooted by today's decision.

The majority said that there are also policy reasons for declining to extend collective bargaining rights to such persons. There is a danger that the imposition of collective bargaining in this context would intrude upon the academic relationship between the university and students. Further, the Board found that "it simply does not effectuate the national labor policy to accord [such persons] collective bargaining rights because they are primarily students."

The Board majority expressed no opinion regarding the Board's decision in *Boston Medical Center*, 330 NLRB 152 (1999), relied on heavily in the *NYU* decision, in which a Board majority found that interns, residents, and house staff at teaching hospitals were employees within the meaning of Section 2(3) of the Act.

In dissent, Members Liebman and Walsh observed that "collective bargaining by graduate students is increasingly a fact of American university life." They characterized the majority's decision as "woefully out of touch with contemporary academic reality" and stated that

The result of the Board's ruling is harsh. Not only can universities avoid dealing with graduate student unions, they are also free to retaliate against graduate students who act together to address their working conditions.

The dissent pointed to the broad definition of "employee" in the Act, arguing that the Board was not free to create its own exclusion for graduate assistants. According to the dissent, American universities increasingly rely on graduate students to perform important teaching and other work. Denying graduate students labor law rights, the dissent predicted, will lead to increased labor disputes on campus.

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