



## CAMPUS COUNSEL

A legal blog written for administrators, HR professionals, in-house counsel, and deans at colleges and universities

### NLRB General Counsel Issues Memorandum on Rights of Faculty and Students

BY ROBERT G. YOUNG • FEBRUARY 24, 2017

On January 31, 2017, the Office of the General Counsel of the National Labor Relations Board (“OGC”) issued a [memorandum](#) describing its position on the rights of certain individual faculty members and students under the National Labor Relations Act. Drawing on three recent cases decided on union representation issues (*Pacific Lutheran University*, *Columbia University*, and *Northwestern University*), the OGC set out its position on how the reasoning in those cases may apply to individuals’ rights under the NLRA. In particular, the OGC announced that it would utilize the principles set out in *Pacific Lutheran University* for determining whether individuals employed by schools with an asserted religious mission can fall within the NLRB’s jurisdiction. Similarly, the OGC stated that it would use the principles set out in *Columbia University* to assess whether student assistants are “employees” for NLRA purposes.

Finally, the OGC stated that it will consider scholarship football players at Division I FBS private sector colleges to be “employees” for purposes of the NLRA. The NLRB did not actually decide that question in *Northwestern University*, but rather left the issue open and instead dismissed the claim on other grounds. However, using the evidentiary record that had been developed in the *Northwestern University* case, the OGC declared that it would consider those football players to be “employees” under the NLRA, and thus entitled to the protections under the statute. The OGC limited its pronouncement, however, to scholarship football players at the FBS Division I level; the OGC expressed no opinion on whether other student-athletes (whether in other sports or at other levels of competition) could be considered “employees” under the NLRA.

**Client Tip:** *The OGC’s memorandum serves as a guidebook on how it will process unfair labor practices brought by individual faculty members or students. It appears likely that the standards set out in the memorandum will lead to an uptick in charges processed by the OGC, particularly in the area of student-athletes. Institutions should begin to prepare now for how best to respond to any such charge.*