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ALLEGHENY COUNTY LABOR COUNCIL
REPORT OF LEGAL COUNSEL
November 3, 2016

I. University Students Considered Employees protected under the NLRA; Columbia University v. Graduate Corkers of Colombia, UAW

On August 23, 2016 the NLRB decided the question of whether students who also worked for Colombia University could be considered "employees" of the University and therefore entitled to certain protections under the National Labor Relations Act. In this case, a group of graduate and undergraduate students sought to organize.

The students in this case performed work at the direction of faculty and received compensation while simultaneously pursuing their studies. Colombia University opposed unionization and argued that students were not "employees" because, although they performed work and received compensation from the University, these individuals were "primarily students" with a predominantly educational, rather than economic, relationship with the University. The Board rejected this argument; the Board held that the student teaching assistants could be considered "employees" under the Act because they performed work at the direction of the University for compensation. That the teaching assistants were also students at Colombia University did not change this dynamic and therefore did not prevent them from also being deemed "employees" under the Act. The Board further ruled that the prior state of the law deprived an entire category of workers of the protections of the Act without a persuasive justification for doing so. The Board relied heavily on Board policy which is designed to encourage collective bargaining and protect workers in the exercise their rights to freely associate and designate a union to represent them.

This decision is significant for a few reasons. First, and most obviously, it opens the door to the unionization of students who also work at Universities. It presents an opportunity to further grow the union ranks, especially on a local level given the high concentration of colleges and universities in Western Pennsylvania. Another take away from this decision lies in the broad application of who the Board considers an "employee" for purposes of protections under the Act. This same reasoning may be applied in other contexts where an individual's economic relationship with the employer coexists with an educational or other non-economic relationship.

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II. Discussion of dress code constitutes protected activity under the NLRA; UniQue Personnel Consultants, Inc. v. Ana Orozco

Under Section 7 of the National Labor Relations Act, an employer is prohibited from interfering with employees in their rights to engage in concerted activity for the purpose of mutual aid or protection. One key question the Board examines in determining whether an action constitutes "concerted activity" is the manner in which an employee's actions may be linked to their coworkers.

On August 26, 2016, the Board issued a decision that considered whether or not a discussion between coworkers regarding an employer dress code and discipline constituted protected concerted activity under the Act. The case involved an employer staffing company which maintained a detailed dress code that prohibited certain types of clothing as well as the display of body piercings and tattoos while at work. Management asked an employee to remove her facial piercings while at work on multiple occasions. This same employee was also issued a disciplinary warning regarding her violation of the dress code when she wore capri pants to a company golf outing. Feeling she had been singled out, the employee voiced her displeasure and sought advice from a number of coworkers regarding the dress code. One coworker with whom this employee discussed this issue informed human resources. Shortly thereafter, the company terminated this employee.

The Board held this was a violation of the Act because the company had wrongfully terminated the employee because she had engaged in protected concerted activity. The Board considered this instance to constitute protected concerted activity because the employee had discussed the discipline she received and the unfairness of the dress code with her coworkers. Put differently, the employee sought advice concerning a term and condition of her employment from a coworker. Emphasizing this point, the Board ruled that an employee's conduct in seeking the support of coworkers regarding a workplace concern is concerted activity and protected by the Act. As a result of this violation, the Board ordered the company to reinstate this employee with back pay.

Respectfully submitted,
JOSEPH S. PASS, ESQUIRE