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TEAMSTERS JOINT COUNCIL 40
REPORT OF LEGAL COUNSEL
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I. University Students Considered Protected Employees 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 unionize.

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" of the union 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 and sided with the students and the Union in holding that student teaching assistants could be considered "employees" under the Act because they performed work at the direction of the University for compensation. The fact that that teaching assistants were also students at Colombia University did not change this and did not prevent them from also being "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 leaned heavily on the policy of the NLRA which is to encourage collective bargaining and protect workers exercising 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 the Universities. It presents an opportunity to further grow the union movement, especially on a local level given the high concentration of colleges and universities in Western Pennsylvania. Another advantage in this decision lies in the broad application of who the Board considers an "employee" for purposes of labor protections under the Act. This same broad based reasoning might be applied in other contexts where an individual's economic relationship with the employer coexists with an educational or other non-economic relationship.

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

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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.

Recently, the Board issued a decision which considered whether or not a discussion between coworkers regarding an employer dress code and discipline constituted protected concerted activity under the Act on August 26, 2016. This case involved an employer staffing company which maintained a detailed dress code prohibiting certain types of clothing and the display of body piercings and tattoos while at work. Supervisors asked Ana Orozco, an employee, to remove her facial piercings while at work on multiple occasions and issued her a warning regarding her violation of the dress code for one instance when she wore capri pants to a company golf outing. Feeling that she had been singled out, Orozco voiced her displeasure and sought advice from a number of coworkers regarding the dress code. One coworker who Orozco discussed this issue with informed human resources and shortly thereafter, the company terminated Ana Orozco's employment with the company.

The Board held that this was a violation of the National Labor Relations Act because the company had wrongfully terminated Orozco because of legally protected concerted activity. The Board considered this instance to constitute protected concerted activity because Orozco had discussed the discipline she received and the unfairness of the dress code policy with her coworkers. Put differently, Orozco had sought advice concerning a term and condition of her employment. Emphasizing the 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 Orozco with back pay.

Respectfully submitted,
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