Are teaching assistants, research assistants, and proctors employees under the nl...

Education, Teaching

Case study 5. 2 - " Are Teaching Assistants, Research Assistants, and Proctors Employees under the NLRB? " Given the broad definition of “ employee” found in the NLRA, one would have to conclude that the teaching assistants, research assistants, and proctors are all employees of Yellowstone University. At a public institution the NLRA would specifically not apply, but as a private institution Yellowstone is providing compensation to its graduate students for contributions made to the operation of the school at large.

The additional tuition remissions given to the majority of graduate students is the only portion of this compensation that could reasonably be considered financial aid, and make it clear that the services provided by the graduate students are economically advantageous to the institution in and of themselves, regardless of the education that the graduate students receives via these services (i. e. teaching and research). There are several reasons that a labor union would wish to organize and represent teaching assistants and research assistants, as well as the proctors and anyone else performing work for Yellowstone University.

On an altruistic level, it could be that they simply wished to ensure fair employment practices and better conditions and compensation for the employees. On a more pragmatic level, the bargaining power of the labor union would be far greater of teaching assistants and research assistants were unionized. The recognized employees—specifically instructors and researchers—of Yellowstone University are presumably unionized, and the addition of teaching and research assistants to the union rolls would give

labor near complete control over the basic functions (research and instruction) of the university.

In addition to providing the union with a much stronger bargaining position in absolute terms, this would give the union greater flexibility in bargaining with more available concessions. Fro that reason, teaching assistants, research assistants, and proctors might be wary of joining the same labor organization as the professors and other union employees at the school. There are also many benefits, however, not the least of which would be their collective bargaining power, and the ability to negotiate pay rates at all, in fact. Under the current onditions of stipends delivered under the guise of financial aid, these graduate students have absolutely no power to negotiate with the university at all. They are actually largely at Yellowstone’s mercy; their education as well as their stipend is dependent on their performance of whatever tasks are assigned to them by their immediate supervisors. In this situation, unfair employment demands could potentially be made that the graduate student would feel obligated to carry out rather than risk not only their current position bt alo their academic and professional future. Unionization would go a long way in alleviating many of these worries.

Under the NLRA, all of the graduate students mentioned in the case study (with the exception of the fellows working solely on their dissertations) would have the right to assemble, organize, and engage in collective bargaining with Yellowstone University concerning wages and other compensations for work performed. They would likewise be able to make demands in regards to working conditions and the types and amounts of work that they could be

asked to perform. They would also, after a failure of collective bargaining between labor and management and a consensus as provided for by the union, be allowed to engage in a work stoppage.

As explained above, anyone engaged in productive work for Yellowstone University could be considered an employee under the National Labor Relations ct (NLRA). As teaching assistants, these graduate students are essential to the undergraduate education taking place in the university (which is undoubtedly a major source of profit for the private university). As researches, they are directly contributing to the more corporeal products of the institution, which also provide economic benefit in the form of publications, patents, technologies, etc.

Even proctors, who are less directly involved in the production capabilities of the institution, alleviate burdens on other paid employees in their counseling of undergraduate students and administrative/clerical work. Though all of this might indeed be a part of the institution’s education plan, it is disingenuous of Yellowstone University to claim that these students are not also employees. A final proof lies in the fact that i the graduate students did not fulfill these functions, it would be necessary for the university to hire other employees in order to continue operations.

Case Study 6. 3 - " Unilateral Work Rule Changes" The deceptively simple zipper clause included in the labor contract is profoundly powerful in its effects, or would be so if the legal exceptions of such a clause were not so prohibitive of its seeming intent. The clause is not especially complex, and

means exactly what it says—except for instances explicitly specified by he contract, no further bargaining is needed or can be required until the termination/expiration of the contract as “ all the bargain able issues for the term thereof” have been definitively addressed by the contract.

When both parties (i. e. labor and management) sign this contract, it is intended to mean that both parties are agreeing that all issues that can be bargained have been dealt with, and that therefore no more bargaining is necessary. In reality, however, the full scope of the clauses’ stated powers cannot be enforced due to existing legal requirements enforcing mandatory bargaining on certain labor issues. The zipper clause, that is, cannot prevent either labor or management from seeking or insisting on bargaining over an area that specifically requires bargaining between the two parties under U.

S. labor law. Even if the labor contract grants unilateral authority to one or the other of the parties in regards to a particular issue, any action taken that affects an area for which collective bargaining is mandated must be agreed upon by both labor and management. In this scenario, management’s interpretation of the contract suggests that this contract supersedes law and legal precedent, claiming that the unilateral power granted it in the contract and the zipper clause both separately grant them absolute authority to make the new rules.

Had these rules not encroached upon grounds of mandatory bargaining, this reading of the contract would have been applicable. However, given that bonuses and incentive pay are areas of employment compensation in which

decisions must be reached via collective bargaining, the issue of increased wages for achieving perfect attendance is something that must be negotiated. As the union cannot actually force management to pay any such bonus, when the contract still in effect did not provide for one, it does not seem especially advantageous for them to press the issue at this point, but they certainly have a legal right to.

The new work rules specifically use the word “ bonus” to describe the additional pay, which is clearly a form of incentive pay as well; management did not even make an effort to circumvent the law through a manipulation of language (though apparently through arrogance rather than forthrightness). The testing of employees is also considered a condition of employment worthy of mandatory collective bargaining, so management would again be in the wrong regarding this rule.

Depending on the state of operation, such a rule’s very legality might be in question; at the least, mandatory drug tests have consistently been seen as an invasion of privacy in many occupations, and bargaining n this point is not only legally mandatory but provides better protection for the employer in producing legally indisputable results in the case of a positive test related to an accident and/or injury. The fact that they would attempt to implement this new policy without prior notice or negotiation is evidence of bad faith bargaining on management’s part.

The implementation of the new system of bonuses does not itself constitute an instance of bad faith bargaining, as it was not a reduction of current

bonuses and in no way had an adverse effect on the employees. Their refusal to meet for bargaining regarding the issue, however, is a violation of good faith principles. Thus, both on their original implementation of the drug testing rule and in their refusal to meet for bargaining on both issues display bad faith bargaining on the part of the management. In this instance, suit could be filed in federal courts after the filing of an official complaint with the National Labor Relations Board.

Repeated attempts to bring management to bargaining throughout the process would be advantageous, however, as the federal courts have limited power and at best will most likely simply force management to the bargaining table, without imposing any other restrictions or conferring advantages to either party. Sources: Holey, W. (2009). Case study 5. 2 (Are Teaching Assistants, Research Assistants, and Proctors Employees Under the NLRB). The Labor Relations Process. (pp. 226 – 228). Mason, OH: Cenegage. Holley, W. (2009). Case study 6. 3 (Unilateral Work Rule Changes) The Labor Relations Process. (pp. 287– 288) Mason, OH: Cenegage.