

# College and University Instructors Organizing in Record Numbers

By Tyson Roan

More than 20,000 workers across the country have formed unions at colleges and universities in the past four years, with petitions pending that seek to organize 7,000 more. This explosion of organizing activity has provided the National Labor Relations Board with an opportunity to revisit important issues, and its recent decisions may extend bargaining rights to broad categories

Unlike their full-time counterparts, these workers are typically hired to teach a particular course and paid on a per course basis, often with no benefits and no expectation of continued employment beyond the course that they are teaching. They frequently teach classes at multiple different colleges and universities during an academic term. The median annual compensation for a part-

time contingent faculty worker, who often has a terminal degree, is \$16,200. It is estimated that one quarter of these workers are enrolled in at least one public assistance program.

These workers are joining unions in droves, with a large majority of the recent organizing aimed specifically at adjunct instructors. Beyond contingent faculty, unions are seeking to organize full-time faculty, both tenure and non-tenure track, various support personnel, and graduate students. Nearly all graduate student organizing has occurred at public colleges and universities since the Board's 2004 decision in *Brown University*, 342 NLRB 482 (2004), which held that graduate students are not covered by the Act. But, that may soon change. The Board recently invited briefs on whether it should

overrule *Brown University*. If the Board decides to overturn *Brown University* and extends coverage of the Act to graduate students, intensified organizing efforts aimed at the more than 250,000 unorganized graduate students nationwide is likely to follow.

Perhaps the most significant recent Board decision in the higher education context, however, is *Pacific Lutheran University ("PLU")*, 361 NLRB No. 157 (2014). In *PLU*, the Board reexamined the analysis that it should employ pursuant to two key Supreme Court cases. First, the Board reexamined when it should exercise jurisdiction over religious educational institutions, pursuant to the test developed by the Supreme Court in *NLRB v. Catholic Bishop*. A divided Board focused its analysis on the nature of the employees' duties, rather than just looking at the religious nature of the institution. Pursuant to *PLU*, the Board will exercise jurisdiction over bargaining units containing faculty from religious colleges and universities unless the schools hold out these employees as performing a specific religious function. The Board cautioned against an intrusive inquiry into the institution's actual religious beliefs. Instead, focus is on widely available documents that demonstrate, for example, that faculty members are required to integrate the school's religious teachings into their coursework, serve as religious advisors, propagate religious tenets, or participate in religious training. Absent such evidence, the Board's majority determined that employees of religious institutions are "indistinguishable from their counterparts at universities that do not claim any religious affiliations or connections" and are covered by the Act.

In *PLU*, the Board also confronted criticisms of its prior decisions analyzing whether

faculty members are managers not covered by the Act pursuant to the Supreme Court's *NLRB v. Yeshiva University* decision. In an effort to develop a more workable, predictable analytical framework, the Board examined faculty's managerial control and effective recommendations in the following categories, giving greater weight to the first three areas than the last two: (1) academic programs, (2) enrollment management policies, (3) finances, (4) academic policies, and (5) personnel policies and decisions.

In addition to *PLU*, other developments at the Board have also played a role in the recent organizing gains within higher education including the Board's new election rules and its recent guidance on the use of electronic signatures for obtaining proof of worker support for unionization, especially among adjuncts, who are often on the move and much easier to communicate with electronically than in person. And, the Board's decision in *Specialty Healthcare* has enabled unions to focus organizing efforts on single department bargaining units within a larger college or university.

Even with the recent efforts to organize workers within higher education, there are still close to a million unorganized instructors throughout the country. Sustained organizing efforts among these workers is likely to continue, and these efforts will likely be accelerated by recent Board decisions extending coverage of the Act to hundreds of thousands of additional higher education employees. ■

**Tyson Roan** ([troan@seiu73.org](mailto:troan@seiu73.org)) is General Counsel for SEIU Local 73 in Chicago. Much of the data contained in this article was obtained from the National Center for the Study of Collective Bargaining in Higher Education and the Professions at Hunter College.



Teachers gather to protest against education cuts at Chicago State University in Chicago, April, 2016.

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of higher education employees who have historically been excluded from coverage under the National Labor Relations Act.

The surge in worker organizing at colleges and universities tracks these institutions' increased reliance on non-tenure track faculty, often known as adjuncts or contingent faculty. Many colleges and universities have moved away from an employment model centered on full-time positions to one that instead relies on contingent positions that are less expensive to staff and offer the institutions more flexibility.

This move away from permanent, full-time positions is particularly pronounced within higher education. In 1969, contingent faculty occupied only about 20% of all faculty positions. Now, part-time and full-time contingents fill more than 70% of all positions.

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