



FRIDAY, JAN. 27, 2023

Dear Faculty and Staff Colleagues:

As you may be aware, there is an effort underway on campus to form a union of graduate students for purposes of collective bargaining with the University. We are writing to you today to provide some important guidelines as to your communications and interactions with the University's graduate students, as you may be considered managerial or supervisory employees under federal labor law. The enclosed guidance applies to most faculty under federal labor law; in addition, staff who hold supervisory roles are held to the same standards.

Background

The National Labor Relations Act ("NLRA") is the foundational federal labor law for private sector employees and employers, such as Syracuse University, that sets forth the rights of employees, unions and employers in, among other things, bargaining, representation elections and protected concerted activity.

Prior to 2000, for more than 25 years, the National Labor Relations Board ("NLRB"), the agency responsible for interpreting and administering the NLRA, held that graduate assistants at private colleges and universities were not "employees" within the meaning of the NLRA and therefore not eligible to join unions and engage in collective bargaining. The NLRB had determined that graduate assistants whose degree programs included supervised teaching or research as an

integral component of their academic development were primarily students who were not employees under the NLRA.

In 2000, however, in the NYU case, the NLRB held that graduate assistants can be considered “employees” under the NLRA, and therefore were eligible for collective bargaining.

In 2004, in the Brown University case, the NLRB overturned the NYU decision, and held that graduate assistants were not “employees” under the NLRA, concluding that graduate assistants were primarily students with a primarily educational, not economic, relationship with their universities.

In August 2016, in the Columbia University case, and in yet another reversal, the NLRB ruled that graduate student teaching and research assistants at issue, who performed work in exchange for compensation, were “employees” under the NLRA with the right to unionize and engage in collective bargaining.

Since the Columbia University decision, some graduate assistants at other private universities have undertaken efforts to form unions, with mixed results in favor and against unionization.

Graduate Student Union Organizing on Campus

As referenced above, there is an effort underway on campus to form a union representing a group of the University’s graduate students. A group identifying itself as Syracuse Graduate Employees United (“SGEU”) announced that it has affiliated with the Service Employees International Union (“SEIU”) for purposes of forming such a union.

If the union organizers collect signed authorization cards from at least 30% of potential bargaining unit members—i.e., the group of graduate students the union seeks to represent (a group yet-to-be defined)—they can file a petition with the NLRB to hold an election as to whether there should be a union representing the bargaining unit. The outcome of the election would be determined by a majority of the eligible voters who vote in the election (as opposed to a majority of the entire bargaining unit). In practice, this means that if 100 out of the entire population of eligible students vote, 51 voters would determine the outcome of the election for the entire bargaining unit.

The University respects the important role of labor unions in our workplace. We have a collaborative relationship with the four unions that represent approximately 1,400 University employees.

Interactions and Communication

Under the law, employers and labor unions must follow strict guidelines during union organizing campaigns. This is of particular significance to faculty members, as most faculty are considered “supervisors” under the NLRA. Some staff members may also be considered “supervisors.” The law provides for free speech during union organizing campaigns, as long as any free expression “contains no threat of reprisal or force or promise of benefit.” In short, threats of reprisal or promises of benefits are not protected free speech, and are prohibited.

As a result, what follows is guidance for University faculty, deans, academic leaders and staff to ensure that we comply with the law and promote a climate of freedom of expression and respect that upholds our commitment to academic freedom.

With this in mind, please review the following guidance from the University's General Counsel:

Guidance

University faculty and staff should avoid interactions and communications that constitute threats, interrogation, promises or surveillance ("TIPS").

Threats

- **DO NOT THREATEN:** Do not tell or suggest to graduate students that voting for/forming a union or not voting for/forming a union will result in negative treatment. Faculty should not make predictions of adverse consequences that are not based on objective facts, and should avoid stating that certain consequences **will** result from unionization, but instead that certain consequences **could** or **may** result. Faculty can continue to express their opinions, share their experiences, convey facts, raise questions and challenge assumptions, as long as they do not threaten any particular outcome.

Interrogation

- **DO NOT INTERROGATE:** Do not ask graduate students their position on unionization, if they have or have not signed an authorization card to support the union, if they know of others who have a particular stance, or for the names of individuals associated with the proposed union/union leadership. Do not ask for information about the organizational structure of the proposed union, or what transpires at the organizing

meetings. If a student voluntarily shares that information, you may listen but cannot ask questions about it. Do not demand that a graduate student share their personal opinion about unionizing. If a student voluntarily expresses their personal views or other information, you can listen and you can share your facts, opinions or examples and personal experiences in a non-threatening, non-coercive manner.

Promises

- **DO NOT PROMISE:** Do not reward or promise benefits to graduate students in order to influence their decision to support or not support a union. Like threats, promises of benefits as an inducement to support or oppose a union are prohibited under the law. Faculty members should be aware that, although a union representative can make such promises, faculty are considered agents of the University, and as a result, cannot and should not promise anything on behalf of the University or the union. In this regard, faculty are free to tell students that promises made by a union cannot be fulfilled without the University agreeing to any changes through bargaining.

Surveillance

- **DO NOT ENGAGE IN SURVEILLANCE:** Student activities such as attending union-organizing meetings or having group discussions about unionizing are protected by law. Do not engage in surveillance of such activities. This might include, for example: taking photos of a gathering with a cell phone or writing down names of attendees.

At the same time, faculty and staff retain the freedom to express personal opinions—for and against—the efforts of some graduate students to unionize. Specifically, faculty and staff can share facts, personal opinions and experiences/examples.

You can, for example, tell students that the law allows them to make their own choice about whether to support or join the union. You can encourage students to vote. You can share personal experiences regarding, for example, union organizing at a prior employer, or prior experiences with collective bargaining. You can explain how the unionization and collective bargaining processes work. Above all, faculty and staff can and should continue engaging with students in the classroom and beyond as teachers, mentors and supporters.

This is a complex subject with very specific legal parameters. You may also refer to the [NLRB website](#) for additional information.

Thank you.

Sincerely,

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