

NLRB Region Five Rules that Resident Advisors at George Washington University are Employees Who May Unionize

On April 21, 2017, the Acting Regional Director of Region Five of the National Labor Relations Board (NLRB) issued a [Decision and Direction of Election](#) holding that Resident Advisors (RAs) at George Washington University are employees under the National Labor Relations Act (NLRA) who are entitled to vote in a union representation election. This decision comes on the heels of the NLRB's recent decision in [Columbia University](#), holding that graduate and undergraduate student assistants are employees who are also entitled to unionize. This ruling by NLRB Region Five could potentially open the door for unions to organize RAs at other private institutions of higher education.

The representation petition at George Washington was filed by Local 500 of the Service Employees International Union (SEIU). SEIU sought to represent a bargaining unit of all full-time and regular part-time RAs at George Washington, which consisted of approximately 110 individuals. As a condition of becoming an RA, an individual must be a full-time undergraduate student enrolled in a degree-granting program, and must have completed his or her first year of studies. RAs at George Washington are expected to be in good academic and judicial standing. George Washington argued that RAs should not be considered "employees" under the NLRA for two principal reasons: (1) its requirement for RAs to be undergraduate students is necessary for the RAs to develop a "peer-to-peer mentoring relationship" with their assigned residents; and (2) RAs are an important part of George Washington's residence life program, which is an extension of its academic program.

The Acting Regional Director of NLRB Region Five rejected George Washington's arguments after a hearing on these issues, finding that the RAs have an employment relationship with the University. The Acting Regional Director determined that RAs perform services for the University, are subject to the University's control, and perform their services in exchange for payment. The RAs at George Washington receive a stipend of \$2,500 for the academic year, less applicable tax withholdings, as well as free on-campus housing valued at \$12,665 per year. The RA position description at George Washington sets forth four main categories of job duties, along with a list of particular expectations for each category of job duties. The Acting Regional Director also found that RAs are subject to discipline, up to termination, if they fail to comply with George Washington's policies or if they fail to remain in good academic or judicial standing. One particular piece of evidence that the Acting Regional Director found to be significant was that RAs at George Washington are required to sign a four-page document entitled "Resident Advisor Employment Agreement," which describes the University's "expectations and employment terms" for RAs.

According to the Acting Regional Director, the mere fact that being an RA might be part of the educational experience of an undergraduate student at George Washington does not preclude a determination that the relationship is principally an economic relationship. The Acting Regional Director wrote: "Employment experiences can simultaneously be educational or part of one's personal development, yet they nonetheless retain an indispensable economic core."

A representation election will be scheduled in the coming weeks for the RAs at George Washington to determine if they wish to be represented by SEIU for purposes of collective bargaining. George Washington has the right to seek review by the NLRB and potentially by a federal appellate court if SEIU wins the election. At this point, two of the three occupied seats on the NLRB are filled by Democratic appointees who are pro-union. There are also two vacancies on the NLRB. When those vacancies are filled by President Trump, it is expected that the NLRB will have its first Republican majority in approximately nine years. Therefore, this ruling by NLRB Region Five may not be the last word on this important issue for institutions of higher education.

If you have any questions about this Information Memo, please contact [Subhash Viswanathan](#), any of [attorneys](#) in our [Higher Education Practice](#), or the attorney in the firm with whom you are regularly in contact.



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