

## Resources

### NLRB Rules Prohibiting Unionization of Faculty at Private Colleges and Universities Likely to Change

June 12, 2012

On May 22, 2012, the National Labor Relations Board invited interested parties to file amicus briefs addressing whether faculty members at private colleges and universities are eligible to unionize under the National Labor Relations Act.

Although this issue was previously addressed by the 1980 U.S. Supreme Court decision in *NLRB v. Yeshiva*—which barred most university faculty from organizing because of their “managerial” role in governing the universities—the invitation to file amicus briefs appears to signal that the Board plans to establish new, more inclusive criteria for determining whether private university faculty are eligible to unionize.

One question that the Board would like addressed by amicus briefs asks “whether there have been developments in models of decision making in private universities since the issuance of *Yeshiva* that...the Board should consider in making a determination of faculty managerial status?” Another query asks if there are “distinctions to be drawn between and among different job classifications within a faculty—such as between professors, associate professors, assistant professors, and lecturers or between tenured and untenured faculty.” Both questions appear to seek ammunition that the Board can use to support a ruling that more private university faculty are non-managerial and thus, eligible to unionize, despite the Supreme Court’s *Yeshiva* decision.

The Board set a July 6, 2012 deadline for filing amicus briefs, which means a decision on faculty members’ union eligibility could issue before the start of the fall academic semester. Because of the quick timeframe, many private universities are now assessing how to ensure that their faculty will continue to be classified as “management,” should new criteria be set by the Board.

If your organization would like more information on how the Board’s decision could affect your employees’ eligibility to unionize, or if you have questions about workplace labor relations in general, please contact Dykema labor attorneys **Christopher R. Mikula** or **John A. Entenman**.

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