



UNITED STATES GOVERNMENT  
**NATIONAL LABOR RELATIONS BOARD**

Appellate and Supreme Court Litigation Branch  
Washington, D.C. 20570

September 24, 2019

**VIA CM/ECF**

Gino J. Agnello  
Clerk of Court, U.S. Court of Appeals  
for the Seventh Circuit  
Everett McKinley Dirksen U.S. Courthouse  
219 Dearborn St., Rm. 2722  
Chicago, IL 60604

Re: *University of Chicago v. NLRB*,  
Nos. 18-3659 & 19-1146  
Oral argument held September 18, 2019  
(Judges Kanne, Hamilton, and Barrett)

Dear Mr. Agnello:

The National Labor Relations Board submits the following letter pursuant to Federal Rule of Appellate Procedure 28(j) and Circuit Rule 28(e).

At oral argument in this case, the Court asked Board counsel about the status of potential rulemaking that the Board had disclosed it was considering regarding the employee status of student workers. This letter is to inform the Court that the Board has now formally issued a Notice of Proposed Rulemaking and has solicited public comments on a proposed regulation establishing that certain student workers are not “employees” within the meaning of Section 2(3) of the National Labor Relations Act. *Jurisdiction—Nonemployee Status of University and College Students Working in Connection with Their Studies*, 84 Fed. Reg. 49,691 (proposed Sept. 23, 2019) (to be codified at 29 C.F.R. pt. 103). The Board maintains that, as stated at argument, the pendency of the rulemaking process should not affect the Court’s disposition of the present case.

Whereas administrative rulemaking is generally prospective only, the unfair-labor-practice question on review with the Court is whether the University violated the National Labor Relations Act by refusing to recognize or bargain with a union that was duly certified by the Board as exclusive bargaining representative of a unit

of student library workers in March 2018. In the underlying certification proceeding, the Board had declined to revisit its governing precedent regarding student workers.

Moreover, the outcome of the potentially lengthy rulemaking process and its effects, if any, on the particular bargaining unit at issue here remain uncertain. Accordingly, the Notice of Proposed Rulemaking should not affect or delay the Court's consideration of the University's petition for review and the Board's cross-application for enforcement of its Order in this case. The parties will be able to evaluate the impact of any final regulation on the underlying bargaining unit at a later date outside of the present proceeding.

Very truly yours,

s/David Habenstreit

David Habenstreit

Acting Deputy Associate General Counsel

National Labor Relations Board

1015 Half Street, S.E.

Washington, D.C. 20570

cc: all counsel (via CM/ECF)

**UNITED STATES COURT OF APPEALS  
FOR THE SEVENTH CIRCUIT**

UNIVERSITY OF CHICAGO	)	
Petitioner/Cross-Respondent	)	Nos. 18-3659, 19-1146
	)	
v.	)	Board Case No.
	)	13-CA-217957
NATIONAL LABOR RELATIONS	)	
BOARD	)	
Respondent/Cross-Petitioner	)	

**CERTIFICATE OF COMPLIANCE**

Pursuant to Federal Rule of Appellate Procedure 32(g)(1), the Board certifies that this document contains 310 words of proportionally spaced, 14-point type, and that the word-processing system used was Microsoft Word 2016.

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**CERTIFICATE OF SERVICE**

I hereby certify that on September 24, 2019, I electronically filed the foregoing document with the Clerk of the Court for the United States Court of Appeals for the Seventh Circuit by using the CM/ECF system. I certify that the foregoing document will be served via the CM/ECF system on all parties or their counsel of record.

/s/ David Habenstreit  
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Dated at Washington, DC  
this 24th day of September 2019