



September 30, 2019

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

**Re: University of Chicago v. NLRB, Case Nos. 18-3659 and 19-1146 --
Oral Argument Held September 18, 2019 – Judges Kanne,
Hamilton and Barrett - Response to Citations of Supplemental
Authority**

Dear Mr. Agnello:

Pursuant to Rule 28(j), F.R.A.P., and Circuit Rule 28(e), the Petitioner writes to respond to the Citations of Supplemental Authority filed by the Intervenor and the Respondent.

While it is true that on September 20, 2019, the National Labor Relations Board published its Notice of Proposed Rulemaking regarding the non-employee status of university and college students working in connection with their studies (84 FR 49691 (Sept. 23, 2019)), it is not true that the Proposed Rule “has no relevance to the instant proceedings” as the Intervenor asserts. The Rule, which foretells a seismic shift in the Board’s jurisprudence concerning student employees, is manifestly relevant to the present case, for at least two reasons.

First, the Board has sought comments on whether the Rule should encompass students who hold non-academic jobs: “[T]he Board also invites comments on whether the rule should also apply to exclude from Section 2(3) coverage students employed by their own educational

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institution in a capacity unrelated to their course of study due to the very tenuous secondary interest that these students have in their part-time employment. *San Francisco Art Institute*, supra at 1252.” (internal quotation marks omitted). 84 FR at 49694. Thus, the Rule could fully restore *San Francisco Art Institute* to validity, which would be a basis for this Court to remand the present case to the Board.

Second, the Rule could make all students who hold jobs at the institutions they attend non-employees. The Proposed Rule states, “Students who perform any services, including, but not limited to, teaching or research assistance, at a private college or university in connection with their undergraduate or graduate studies are not employees within the meaning of Section 2(3) of the Act.” While the University has not asked this Court to rule on whether the students at issue are employees under the Act, the Court should nonetheless remand so the Board can assess the effect of the Proposed Rule on this case.

In sum, the Notice of Proposed Rulemaking is unquestionably relevant and, if nothing else, is a basis for this Court to remand the case to the Board.

Sincerely,

COZEN O'CONNOR

By: Jacob M. Rubinstein

JMR

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

No. 18-3659, 19-1146

UNIVERSITY OF CHICAGO,)
)
Petitioner,)
)
v.)
)
NATIONAL LABOR RELATIONS)
BOARD,)
)
Respondent.)

CERTIFICATE OF COMPLIANCE

Pursuant to Federal Rule of Appellate Procedure 32(g)(1), the Petitioner, University of Chicago certifies that the body of this document contains 349 words of proportionally spaced, 14-point type (full document 431 words), and that the word-processing system used was Microsoft Word 2016.

CERTIFICATE OF SERVICE

I, Jean Campbell, state under oath that 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.

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