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The Future of the NLRB under President Trump

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In late June, President Trump nominated Marvin Kaplan and William Emanuel to fill vacant seats on the National Labor Relations Board ("NLRB," or "the Board").[1] Kaplan is Counsel to the Occupational Safety and Health Review Commission and former Workforce Policy Counsel to the House Education and Workforce Committee,[2] while Emanuel is a shareholder at management-side labor and employment law firm Littler Mendelson, P.C. and a member of the Federalist Society.[3]

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[1] *Four Nominations Sent to the Senate Today*, THE WHITE HOUSE (June 20, 2017), https://www.whitehouse.gov/the-press-office/2017/06/20/four-nominations-sent-senate-today (announcing nomination of Kaplan); *Seventeen Nominations Sent to the Senate Today*, THE WHITE HOUSE (June 29, 2017), https://www.whitehouse.gov/the-press-office/2017/06/29/seventeen-nominations-sent-senate-today (announcing nomination of Emanuel).

[2] Marvin Kaplan, LINKEDIN, https://www.linkedin.com/in/marvin-kaplan-4bb36614/ (last visited July 12, 2017).

[3] Jen Klein, *Littler Shareholder William Emanuel Nominated to Serve on the National Labor Relations Board*, LITTLER MENDELSON, P.C. (June 28, 2017),

Kaplan was confirmed by the Senate on August 2, 2017 in a party-line vote,[4] and Emanuel was confirmed on September 25, 2017.[5]

Nearly a decade of Republican obstruction – using the filibuster to prevent confirmation votes on President Obama's NLRB nominees – provided Trump the opportunity to fill these two Board vacancies immediately upon taking office. Now, Trump is able to shift labor policy in a direction that empowers employers and weakens workers.[6]

I. Senate Obstruction of Obama's Nominees Laid the Groundwork for Trump's Appointees

The Board has five members by statute, but can make decisions with a quorum of three members.[7] It has operated with vacancies at times throughout its history, but from 2008 to 2010 it had only two members, falling short of the three-member quorum.[8]

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https://www.littler.com/publication-press/press/littler-shareholder-william-emanuel-nominated-serve-national-labor-relations; Daniel Wiessner, *Trump pushes U.S. labor board toward Republican control*, REUTERS (June 27, 2017), https://www.reuters.com/article/usa-labor-nlrb/trump-pushes-u-s-labor-board-toward-republican-control-idUSL1N1JP025.

[4] Lydia Wheeler, *Senate confirms controversial Trump pick to labor board*, THE HILL (Aug. 2, 2017), http://thehill.com/regulation/labor/345041-senate-confirms-controversial-trump-pick-to-labor-board.

[5] Lydia Wheeler, *Senate confirms second Trump nominee to labor board*, THE HILL (Sept. 25, 2017), http://thehill.com/regulation/administration/352345-senate-confirms-second-trump-nominee-to-labor-board.

[6] Between writing and publication, President Trump also nominated a new NLRB General Counsel, Peter Robb. *See* 115th Congress, *PN1025 — Peter B. Robb — National Labor Relations Board*, CONGRESS.GOV, https://www.congress.gov/nomination/115th-congress/1025?r=56 (last visited Oct. 12, 2017). The General Counsel influences Board policy through significant prosecutorial discretion, and Trump's pick will undoubtedly impact the direction of the NLRB. However, those impacts are not considered in this article.

[7] 29 U.S.C. §§ 153 (a)-(b) (2016).

[8] *See Board Members Since 1935*, NAT'L LAB. REL. BD., https://www.nlrb.gov/who-we-are/board/board-members-1935 (last visited July 12, 2017).

Throughout the Obama administration, these vacancies hampered the Board's ability to function and provided opportunities for employers to attack the Board's decisions because it lacked quorum.[9] Senate Republicans prolonged this period of NLRB ineffectiveness by filibustering President Obama's nominees.[10] When President Obama began to fill the vacant seats using his authority to make recess appointments when the Senate was not in session,[11] courts rejected decisions of the Board on the theory that the Board's decisions were decided by improperly appointed Board members.[12] As the courts overruled the NLRB, Senate Republicans assailed President Obama's recess appointees for purported conflicts of interest.[13] The Senate agreed

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[9] *See* New Process Steel v. NLRB, 560 U.S. 674, 687-88 (2010) (holding that it was impermissible for the NLRB to make decisions with two members because 29 U.S.C. § 153(b) establishes "three members of the Board" as "a quorum of the Board"); *see also* Chamber of Commerce of U.S. v. NLRB, 879 F. Supp. 2d 18, 27 (D.D.C. 2012) (interpreting *New Process Steel* to require that all three current board members participate in a vote to satisfy quorum).

[10] *See* Brian R. D. Hamm, Note, *Modifying the Filibuster: A Means to Foster Bipartisanship while Reining in Its Most Egregious Abuses*, 40 HOFSTRA L. REV. 735, 744-45 (2012); Meredith Shiner, *Senate blocks Labor Board nominee*, POLITICO (Feb. 9, 2010, 5:00 PM), http://www.politico.com/story/2010/02/senate-blocks-labor-board-nominee-032758.

[11] U.S. CONST. art. II, § 2, cl. 3 ("The President shall have Power to fill up all Vacancies that may happen during the Recess of the Senate, by granting Commissions which shall expire at the End of their next Session.").

[12] NLRB v. Noel Canning, 134 S. Ct. 2550, 2573-74 (2014) (holding that President Obama's appointment of Members Block, Griffin, and Flynn during a three-day Senate recess was not permissible under the recess appointments clause, U.S. CONST. art. II, § 2, cl. 3). *But see* Mathew Enter., Inc. v. NLRB, 771 F.3d 812, 814 (D.C. Cir. 2014) (interpreting *Noel Canning* to validate President Obama's recess appointment of Member Becker because the appointment occurred during a 17-day Senate recess); *see, e.g.*, Tonja Jacobi & Jeff VanDam, *The Filibuster and Reconciliation: The Future of Majoritarian Lawmaking in the U.S. Senate*, 47 U.C. DAVIS L. REV. 261, 333-35 (2013).

[13] *See* Alec MacGillis, *Republicans seek NLRB member Craig Becker's recusal*, THE WASHINGTON POST (Aug. 17, 2010), http://www.washingtonpost.com/wp-dyn/content/article/2010/08/16/AR2010081605082.html.

in 2013 on a compromise to fill four Board seats: two vacant Board seats and two seats then filled by recess appointees.[14] By offering two Republican nominees and two new Democratic nominees, who had not previously been appointed through recess appointments, President Obama was able to have the first fully Senate-confirmed Board of his administration.[15]

This Republican obstruction and filibustering of Board appointees during the Obama administration limited the effectiveness of the Board and left two vacancies when President Trump took office.[16] With a Republican majority in the Senate and filibuster rules substantially weakened in recent years, President Trump is positioned to refashion the Board swiftly and radically by nominating two strongly ideological candidates to create a three-member Republican majority on the five-seat Board.[17]

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[14] *See* Josh Hicks, *How Obama's NLRB nominees became central to Senate filibuster deal*, THE WASHINGTON POST (July 17, 2013), https://www.washingtonpost.com/news/federal-eye/wp/2013/07/17/how-obamas-nlrb-nominees-became-central-to-the-senates-filibuster-deal/.

[15] *Id.*; *see also* Josh Hicks, *Senate committee approves Obama's NLRB nominees despite GOP opposition*, THE WASHINGTON POST (May 23, 2013), https://www.washingtonpost.com/news/federal-eye/wp/2013/05/23/senate-committee-approves-obamas-nlrb-nominees/ (noting the Republican opposition to Democratic members Block and Griffin because they had been recess appointees); *see also Members of the NLRB since 1935*, NAT'L LAB. REL. BD., https://www.nlrb.gov/who-we-are/board/members-nlrb-1935 (last visited July 12, 2017) (noting party affiliation of members Block and Griffin).

[16] *See Board Members Since 1935*, NAT'L LAB. REL. BD., https://www.nlrb.gov/who-we-are/board/board-members-1935 (last visited July 12, 2017) (noting the vacancies).

[17] *See* Jeremy W. Peters, *In Landmark Vote, Senate Limits Use of the Filibuster*, N.Y. TIMES (Nov. 21, 2013), http://www.nytimes.com/2013/11/22/us/politics/reid-sets-in-motion-steps-to-limit-use-of-filibuster.html (discussing the Democratic Senate vote to end the supermajority filibuster for executive branch nominees and judicial nominees other than Supreme Court nominees); *see, e.g.*, Wilson Andrews, Audrey Carlsen, Jasmine C. Lee, Alicia Parlapiano & Anjali Singhvi, *How Senators Voted on the Gorsuch*

II. Likely Changes for Workers under President Trump's Board

Employer organizations and conservative think tanks believe that Trump's nominees "are likely to shift the NLRB back toward its *traditional role of impartial arbiter*," suggesting that the Obama Board has acted as a "union partisan." [18] These employer groups claim that Kaplan and Emanuel will bring "balance" to the Board and its interpretation of the National Labor Relations Act ("NLRA").[19]

These are common talking points for employer interests, but they run counter to the Congressional declaration of policy in the NLRA of "encouraging the practice and procedure of collective bargaining and . . .

Filibuster and the Nuclear Option, N.Y. TIMES (Apr. 6, 2017), https://www.nytimes.com/interactive/2017/04/06/us/politics/gorsuch-supreme-court-vote.html?_r=0 (noting the party-line Republican vote to end the supermajority filibuster for Supreme Court nominees).

[18] Carl Horowitz, *Trump's NLRB Nominees Would Restore Common Sense to Workplace Relations*, NAT'L LEGAL & POL'Y CTR. (July 10, 2017), http://nlpc.org/2017/07/10/trumps-nlrb-nominees-restore-common-sense-workplace-relations/ (emphasis added).

[19] Erin Mulvaney, *What Labor Lawyers Are Saying About Marvin Kaplan, Trump's First NLRB Pick*, THE NAT'L L. J. (June 20, 2017), http://www.nationallawjournal.com/id=1202790656367/What-Labor-Lawyers-Are-Saying-About-Marvin-Kaplan-Trumps-First-NLRB-Pick (quoting Angelo Amador, senior vice president and regulatory counsel for the National Restaurant Association); *see also* Glenn Spencer, *White House Taps Kaplan for NLRB, Pizzella for DOL*, U.S. CHAMBER OF COM. (June 20, 2017, 10:00 AM), https://www.uschamber.com/article/white-house-taps-kaplan-nlrb-pizzella-dol (hoping Trump's nomination of Marvin Kaplan will "restore balance and common sense to the NLRB . . . . "); Sean P. Redmond, *White House Submits Emanuel for NLRB*, U.S. CHAMBER OF COM. (June 28, 2017), https://www.uschamber.com/article/white-house-submits-emanuel-nlrb (noting that the "business community will welcome a restoration of balance on the Board" following Senate confirmation of Kaplan and Emanuel).

protecting the exercise by workers of full freedom of association, self-organization, and designation of representatives of their own choosing."[20]

Trump's nominees will be far from impartial. Emanuel works for a union-busting law firm, and has coauthored amicus briefs arguing for limited Board discretion and weakened employee rights under the NLRA.[21] Kaplan's professional experience as Workforce Policy Counsel to the House Education and Workforce Committee involved helping Congressional Republicans undermine the authority and discretion of the NLRB.[22] We should not expect neutrality from a Board with Emanuel and

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[20] 29 U.S.C. § 151 (2016); *see also* William Samuel, *Letter Opposing NLRB Nominations of Marvin Kaplan and William Emanuel*, AFL-CIO (July 18, 2017), https://aflcio.org/about/advocacy/legislative-alerts/letter-opposing-nlrb-nominations-marvin-kaplan-and-william ("Notwithstanding the clear purpose and mission of the agency . . . nothing in the background or statements of either nominee provides any assurance that either Kaplan or Emanuel would be guided and motivated by this basic mission.").

[21] William Samuel, *Letter Opposing NLRB Nominations of Marvin Kaplan and William Emanuel*, AFL-CIO (July 18, 2017), https://aflcio.org/about/advocacy/legislative-alerts/letter-opposing-nlrb-nominations-marvin-kaplan-and-william ("Emanuel has exclusively represented employers, most recently at the notorious union-busting law firm Littler Mendelson."); *see generally* Brief of the Coalition for A Democratic Workplace as Amicus Curiae in Support of Petitioner D.R. Horton, Inc. for Reversal of the Decision and Order of the National Labor Relations Board, D.R. Horton, Inc. v. NLRB, 737 F.3d 344 (5th Cir. 2013) (No. 12-60031), 2012 WL 2245132 (arguing that employers can restrict otherwise protected, concerted activity under the NLRA with forced arbitration clauses in employment agreements).

[22] *See, e.g.*, *The Workforce Democracy and Fairness Act: Protecting Workers' Free Choice*, COMMITTEE ON EDUC. & THE WORKFORCE (Apr. 14, 2015), https://edworkforce.house.gov/news/documentsingle.aspx?DocumentID=374294 (press release noting proposed statutory changes to NLRA procedures developed by Kaplan); *see also* William B. Gould IV, *Trump NLRB nominee is from 'the swamp'*, S.F. CHRON. (July 15, 2017), http://www.sfchronicle.com/opinion/openforum/article/Trump-NLRB-nominee-is-from-the-swamp-11291679.php (arguing, from the perspective of a former NLRB Chairperson, that "Kaplan has no qualifications as a labor lawyer, and his appointment would bring the political agenda of a Congress that hates the NLRB.").

Kaplan in the majority. We should expect a radical attack on the modest improvements to labor law made during the last administration.

The Obama-era NLRB made a series of decisions that reconciled the NLRA statutory language of 1935 with the realities of modern workplaces. The Board modernized its approach to graduate employee unionization by recognizing that graduate student employees are "employees" for purposes of the NLRA.[23] Obama's Board acknowledged that email communications are a routine part of work life, and held that employees are permitted under certain circumstances to use their employer's email system for personal communication and internal organizing.[24] The Board updated its law to address emerging franchise and other joint employer arrangements, making it easier for employees to hold franchisors accountable for labor law violations, and opening up large franchisors (e.g. McDonalds) to new organizing efforts.[25] The Board also updated its methods for determining appropriate bargaining units in

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[23] Trustees of Columbia Univ., 364 N.L.R.B. No. 90, 22 (2016) (reversing the Bush-era decision Brown Univ., 342 N.L.R.B. 483 (2004), which held that graduate student employees were not statutory employees under the NLRA and which had reversed the Clinton-era N.Y. Univ., 332 N.L.R.B. 1205 (2000), which had recognized graduate student employees as statutory employees).

[24] Purple Comm., Inc., 361 N.L.R.B. No. 126, 11 (2014) (reversing the Bush-era Guard Publ'g Co., 351 N.L.R.B. 1110 (2007) (*Register Guard*), which held that employee use of an employer's email system was not protected activity under the NLRA where the employer had a policy prohibiting use of email for non-work purposes).

[25] Browning-Ferris Indus., 362 N.L.R.B. No. 186, 15 (2015) (establishing that two employers are joint employers if "both [are] employers within the meaning of the common law, and if they share or codetermine those matters governing the essential terms and conditions of employment."); *see also* Miller & Anderson, Inc., 364 N.L.R.B. No. 39, 13-14 (2016) (holding that employer consent is not necessary to establish a bargaining unit comprised of both jointly-employed and solely-employed employees, and thereby reversing the Bush-era consent requirement from H.S. Care L.L.C., 343 N.L.R.B. 659 (2004) to return to the prior Clinton-era standard from M.B. Sturgis, Inc., 331 N.L.R.B. 1298 (2000), which applied "traditional community of interest factors" to decide if such combined bargaining units were appropriate).

complex modern workplaces,[26] by returning to its traditional flexible tests to define a "community of interest" to delineate an appropriate bargaining unit.[27]

These pro-worker decisions are likely to be overturned by a Board with Trump's new appointees. One need not speculate about how Kaplan and Emanuel will likely rule on cases: they have made clear their positions about the Obama-era Board's more progressive decisions.

As Workforce Policy Counsel to the House Education and Workforce Committee, Kaplan worked to develop the Workforce Democracy and Fairness Act.[28] Although not enacted when initially proposed, the bill would have restricted the NLRB's discretion to promulgate rules, prolonged its election procedure to favor employers, and undermined the Board's traditional community of interest test.[29] The Workplace Democracy and Fairness Act would have weakened the community of interest test by requiring that "employees . . . not be

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[26] Specialty Healthcare & Rehab. Ctr. of Mobile, 357 N.L.R.B. 934 (2011) (*Specialty Healthcare*) (reaffirming the "community of interest" approach to determining appropriate units in health care workplaces and overruling Park Manor Care Ctr., Inc., 305 N.L.R.B. 872 (1991)).

[27] The traditional "community of interest" test used by the Board to determine an appropriate bargaining unit considers such factors as "whether the employees are organized into a separate department; have distinct skills and training; have distinct job functions and perform distinct work, including inquiry into the amount and type of job overlap between classifications; are functionally integrated with the Employer's other employees; have frequent contact with other employees; interchange with other employees; have distinct terms and conditions of employment; and are separately supervised." Specialty Healthcare & Rehab. Ctr. of Mobile, 357 N.L.R.B. 934, 942 (2011), *quoting* United Operations, Inc., 338 N.L.R.B. 123, 123 (2002). Statutory authority for the Board to determine appropriate bargaining units is provided in 29 U.S.C. § 159(b) (2016).

[28] Noam Scheiber, *Trump Takes Steps to Undo Obama Legacy on Labor*, N.Y. TIMES (June 20, 2017), https://www.nytimes.com/2017/06/20/business/nlrb-trump-labor.html.

[29] Workforce Democracy and Fairness Act, H.R. 1768, 114th Cong. (2015-2016).

excluded from the unit unless the interests of the group seeking a separate unit are sufficiently distinct from those of other employees to warrant the establishment of a separate unit," [30] changing the longstanding rule that "'[t]he Board need only select *an* appropriate unit, not *the most* appropriate unit.'"[31] The change was intended to overturn the Obama-era Board's *Specialty Healthcare* decision, which critics claim permitted unions to organize "micro-units" rather than larger units with more job classifications, making initial organizing efforts easier for unions.[32] The bill would also have prevented the Board from passing regulations setting shorter election periods, which are thought to benefit unions.[33] With Kaplan on the Board, Congress need not pass legislation to reverse *Specialty Healthcare* or curtail the Board's authority to make rules about elections; the Board is likely to reverse course itself.

Two weeks before the 2016 presidential election, Emanuel coauthored a post on his law firm's website which noted that "[t]he direction of the Board . . . , of course, will depend on the outcome of the election," and which identified a number of the Board's decisions as

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[30] *Id.*

[31] Serramonte Oldsmobile, Inc. v. NLRB, 86 F.3d 227, 236 (D.C. Cir. 1996), *quoting* Cleveland Constr., Inc. v. NLRB, 44 F.3d 1010, 1013 (D.C. Cir. 1995) (emphasis added) (additional citations omitted).

[32] Workforce Democracy and Fairness Act, H.R. 1768, 114th Cong. (2015-2016); *see also The Workforce Democracy and Fairness Act: Protecting Workers' Free Choice*, COMMITTEE ON EDUC. & THE WORKFORCE (Apr. 14, 2015), https://edworkforce.house.gov/news/documentsingle.aspx?DocumentID=374294 (characterizing the Board's *Specialty Healthcare* decision as "radically alter[ing]" the policies for determining appropriate bargaining units by permitting "micro-units").

[33] Workforce Democracy and Fairness Act, H.R. 1768, 114th Cong. (2015-2016); *see also The Workforce Democracy and Fairness Act: Protecting Workers' Free Choice*, COMMITTEE ON EDUC. & THE WORKFORCE (Apr. 14, 2015), https://edworkforce.house.gov/news/documentsingle.aspx?DocumentID=374294 (calling the Board's shortened election period the "ambush election rule").

having an "adverse impact on both nonunion and unionized employers."[34] Emanuel identified employers' "increase[ed] exposure and risk" resulting from, inter alia, the Board's recognition of statutory employee status to graduate student employees, and its establishment of modern joint-employer rules.[35] His unfavorable view of the Board's decisions in these areas suggests that he will reverse them.

The original purpose of the NLRA was to ensure that "employees, if they desire to do so, shall be free to organize for their mutual protection or benefit." [36] Nominees who have spent their careers undermining workers' right to organize are unlikely to vindicate that right as Board members.

III. Concerns for Law Students

Law students may be interested in forthcoming changes at the NLRB because such changes will impact their future work, or because of an academic interest in labor law. Graduate and law students should pay attention to the make-up of the Board for an additional, self-interested, reason: whether private-sector graduate employees have protection under the NLRA has turned for two decades on the politics of the NLRB.[37] A Board decision revoking the current recognition of graduate student

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[34] William Emanuel, Michael J. Lotito & Gregory Brown, *NLRB Issues Numerous Decisions Against Employers as Hirozawa's Term Expires*, LITTLER MENDELSON, P.C. (Oct. 24, 2016), https://www.littler.com/publication-press/publication/nlrb-issues-numerous-decisions-against-employers-hirozawas-term.

[35] *Id.*

[36] 79 CONG. REC. 3,2371-72 (1935) (statement of Senator Robert F. Wagner (NY) on the National Labor Relations Act, which is often referred to as the "Wagner Act").

[37] *See generally* Trustees of Columbia Univ., 364 N.L.R.B. No. 90 (2016); Brown Univ., 342 N.L.R.B. 483 (2004); N.Y. Univ., 332 N.L.R.B. 1205 (2000).

employees as NLRA "employees" will determine to a significant degree the outcome of current organizing campaigns[38] and first contract efforts[39] at graduate schools across the United States.

If the Board decides to reclassify private-sector graduate student employees so they are no longer considered "employees" under the protections of the NLRA, as the Bush-era Board did in 2004,[40] efforts to organize a union of graduate students will not go through the NLRB representation election process. In this process, NLRB agents oversee a secret ballot election following a petition by the union showing the employees' interest in organizing.[41]

Should graduate student employees be barred from holding a typical representation election under the NLRB's procedures, it would still be possible – although more difficult – to organize a union and negotiate a collective bargaining agreement. Without a representation election, graduate employee unions will have to compel graduate schools to grant voluntary recognition, an agreement with the employer to hold a union election process not overseen by the Board. Without the NLRA to require union recognition and bargaining, unions will have to motivate graduate schools to agree to voluntary recognition procedures by

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[38] *See, e.g.*, *Home*, GENU-UAW: GRADUATE EMPLOYEES OF NORTHEASTERN UNIV. (2017), http://www.nugradunion.com/; *Home*, B.C. GRADUATE EMPLOYEES UNION – UAW (2017), http://www.bcgradunion.com/; *HGSU-UAW: Who We Are*, HARV. GRADUATE STUDENTS UNION HGSU-UAW (2017), http://harvardgradunion.org/; *BU Grad Union*, B.U. GRADUATE WORKERS UNION – UAW (2017), http://bugradunion.org/.

[39] *See, e.g.*, *Graduate Workers of Columbia Univ.*, GWC-UAW LOCAL 2110 (2017), https://columbiagradunion.org; *Student Employees at the New School*, SENS-UAW LOCAL 7902 (2017), https://sensuaw.org/.

[40] Brown Univ., 342 N.L.R.B. 483, 493 (2004).

[41] *See generally The NLRB Process*, NAT'L LAB. REL. BD., https://www.nlrb.gov/resources/nlrb-process (last visited Sept. 14, 2017).

developing member-driven campaigns, taking public actions, forming political alliances, and effectively utilizing the media.

The Graduate Student Organizing Committee of United Auto Workers Local 2110 and Region 9A (GSOC-UAW) successfully pursued such a strategy when they reached an agreement with New York University to grant voluntary recognition of the union following a non-NLRB vote.[42] This strategy was pursued at a time when the NLRB did not recognize graduate student employees as statutory employees.[43] Their campaign spanned years, but the graduate student employees ultimately succeeded by negotiating a first contract with New York University that resulted in substantial gains for graduate student workers at the institution.[44]

If President Trump's NLRB neglects the Board's founding mission to encourage the "full freedom of association, self-organization, and designation of representatives of [employees'] own choosing," the method of organizing outside the NLRB – as demonstrated at New York

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[42] *See Our history*, GSOC-UAW LOCAL 2110 THE UNION FOR GRADUATE EMPLOYEES AT N.Y. UNIV. (2017), https://makingabetternyu.org/our-history/ (last visited July 19, 2017); *see also* Steven Greenhouse & Ariel Kaminer, *With New Agreement, N.Y.U. Would Again Recognize Graduate Assistants' Union*, N.Y. TIMES (Nov. 26, 2013), http://www.nytimes.com/2013/11/27/nyregion/with-new-agreement-nyu-would-again-recognize-graduate-assistants-union.html.

[43] *Our history*, GSOC-UAW LOCAL 2110 THE UNION FOR GRADUATE EMPLOYEES AT N.Y. UNIV. (2017), https://makingabetternyu.org/our-history/ (last visited July 19, 2017) (discussing the union's strike following the NYU's withdrawal of recognition in the wake of the *Brown University* decision, and its use of open letters and petitions, alliances with faculty members, and relationships with local politicians to secure an agreement from NYU to hold and honor an election).

[44] Colleen Flaherty, *Gains for Grad Students*, INSIDE HIGHER ED (Mar. 11, 2015), https://www.insidehighered.com/news/2015/03/11/nyu-graduate-student-union-says-new-contract-includes-historic-gains.

University – may be the future of labor organizing in graduate schools and other workplaces across the country.[45]

[45] 29 U.S.C. § 151 (2016).