

Recent Labor Victories for Adjunct Professors Signal Likely Uptick in Contingent Faculty Organizing

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Recently, adjunct professors at Elon University and Ithaca College won victories before the NLRB and an American Arbitration Association arbitrator, respectively, that further bolster the position that adjunct, or contingent, faculty members are “employees” as defined by the NLRA. Moreover, it also suggests that there will likely be a surge of new organizing activity amongst adjuncts in the future.

Non-Tenure Track Faculty at Elon University

In *Elon University*, [370 NLRB No. 91 \(2021\)](#), the NLRB, still with a Republican majority, unanimously affirmed the decision of a Regional Director that the petitioned-for non-tenure-track faculty members constituted an appropriate bargaining unit. Contrary to the University’s assertion, the Board held that the non-tenure-track faculty members, consisting principally of adjunct professors, are not managerial employees devoid of collective bargaining rights under the Act. The Board determined that the University failed to meet its burden of establishing that the petitioned-for non-tenured faculty members serve on any of the University’s shared governance committees that oversee academic programs, enrollment management policies, personnel policies, or financial considerations. The Board found that, for a number of these committees, adjunct faculty members were explicitly restricted from participating. In those limited circumstances where adjunct faculty members could theoretically serve on a collegial faculty body, the University failed to show that adjunct faculty in fact served on these committees. Additionally, the Board found that the petitioned-for faculty members were not structurally included in the University’s managerial bodies where the short-term nature of their employment makes service on the shared governance committees difficult. As such, the Board held that the non-tenured faculty members were not managerial employees and were an appropriate bargaining unit under the Act.

Contingent Faculty at Ithaca College

A unionized group of adjunct professors at Ithaca College had their right to engage in concerted action reaffirmed by a AAA arbitrator. In response to pandemic-related cuts by the University, an adjunct professor, on behalf of the Union, penned a memo to his tenured faculty colleagues titled “Solidarity in a Time of Crisis: A Plea from Your Contingent Colleagues”. The memo was posted to a virtual message board for the Ithaca College community and requested community support for contingent faculty members facing the prospect of continued layoffs. The memo suggested that tenured or tenure-track faculty members could assist their contingent colleagues by refusing certain courses over the summer term and pressuring department chairs to prioritize contingent faculty for these courses.

The University contended that the professor’s memo violated the no-strike provision of the collective bargaining agreement and threatened the professor with discipline “up to and including termination”. The University also demanded that the Union retract the memo.

The union filed a grievance which resulted in a hearing before an arbitrator. The arbitrator sided with the Union, finding that the professor’s actions did not violate the CBA and, therefore, the discipline was without just cause.

Takeaways

These recent decisions illustrate the difficulty universities and colleges will likely face when attempting to argue that adjunct faculty are not “employees” as defined by the Act. Higher education institutions that permit adjunct faculty to participate in shared governance committees and other managerial bodies, may have better luck arguing such contingent faculty are managers under the Act and therefore not entitled to rights under the Act. We expect that these cases will only intensify the amount of new organizing of adjunct faculty around the country.

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