

04.6.2018

# Memo on International Graduate Assistants

**To**

Joseph Canamucio

**From**

Craig R. Shagin  
Shagin Law Group LLC

**CC**

Coalition of Graduate  
Employees

**Re**

Effect of Unionization on  
International Students

**Question:**

What effect, if any, would unionization of graduate student assistants at Penn State have on the international graduate student's immigration status?

**Conclusion:**

Generally, the immigration laws are written to support unions and prevent employers from hiring alien workers as a means to "bust" a strike or preclude unionization. The same applies here and for the reasons stated at length below, I see no adverse effect on an international student's immigration status by the creation of a union. Indeed, the international graduate student could join the union fully consistent with his immigration status.

Further, there would be no loss of status to the international student if the union subsequently goes on strike. His or her status is dependent only on maintaining a full course load as described below. However, the international student would not be permitted to work *during* a strike or lockout. Once the strike or lockout is over, the international graduate student assistant would have no bar to such employment.

**Analysis:**

Aside from the general requirements of a non-immigrant to maintain status, an F-1 must maintain a full course of study [8 CFR §214.2(f)(6)], which includes the following:

1. Postgraduate study, certified by DSO as a full course of study.
2. Undergraduate college or university—12 semester/quarter hours if all undergraduates are enrolled for 12 hours and are charged full tuition or considered full-time for other administrative purposes.
3. Post-secondary nonvocational (e.g., junior college, fine arts school)—12 hours; credits must be accepted by at least 3 schools.
4. Reduced Course Load—A student may not reduce course load below a full course without obtaining permission from the DSO. If permitted, may only reduce it to 6 semester/quarter hours or half the clock hours of a full course. 8 CFR §214.2(f)(6)(iii). Students may reduce

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course load one time unless it is for medical reasons and then only for a maximum of 12 months. In the latter case, the student may be authorized to carry no course load. 8 CFR §§214.2(f)(6)(iii)(A)–(B). May have reduced course load for final term. 8 CFR §§214.2(f)(6)(i)(B), (iii)(C).

Students working on either curriculum practical training or optional practical training are fully free to join the union. The provisions of 214.2(f)(14) do not, as suggested by the piece you sent me entitled “How might unionization affect international students on F1 Visas” result in an international student losing *their* right to work with either the CPT or OPT authorization for employment. Rather it suspends the ability of *the employer* to employ such individuals while the strike is under way. The student retains his work authorization, the employer loses his right to employ such individuals during the pendency of the strike. Once the strike is over, the employer may again employ the international graduate assistant. In other words, an employer may not use the immigration laws to facilitate union or strike busting.

I hope this clarifies the issue. If not and you need additional explanation or analysis I shall be happy to provide the same.