

**NATIONAL LABOR RELATIONS BOARD
REGION TWO**

In the Matter of:	:	
	:	
THE TRUSTEES OF COLUMBIA IN	:	
THE CITY OF NEW YORK	:	
	:	
Employer,	:	
	:	
and	:	Case No. 2-RC-143012
	:	
GRADUATE WORKERS OF	:	
COLUMBIA-GWC, UAW	:	
	:	
Petitioner.	:	
	:	June 24, 2015

BRIEF OF THE PETITIONER TO THE REGIONAL DIRECTOR

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I. INTRODUCTION

This petition seeks a unit composed primarily of graduate student assistants at Columbia University. The record establishes that student employees perform services for Columbia, receive compensation for those services, work to fulfill the mission of the University, and do so under its direction and control. They thus meet the definition of an “employee” as that term is defined in the dictionary, used under common law, and generally interpreted under the National Labor Relations Act. Therefore, they are entitled to an election to decide whether they wish to be represented by a labor organization unless the Regional Director concludes that she is compelled by Brown University, 342 N.L.R.B. 483 (2004), to dismiss this petition. The Regional Director is not obligated to follow Brown and should not do so.

The Board majority in Brown held, “graduate student assistants are not employees within the meaning of section 2(3) of the Act.” 342 N.L.R.B. at 493. To the extent that Brown has any logic, it is premised upon the Board’s finding that employment as a graduate assistant is inseparable from enrollment as a student. The record in this case contradicts that premise. The evidence establishes that the academic relationship between student and university can be treated separately from the economic relationship of employee and employer. Indeed, Columbia does treat student employees differently in their capacity as employees from the manner it treats them as students. Brown was also based upon speculation that collective bargaining for graduate student employees would harm the academic side of the relationship by undermining the mentoring relationship between graduate student and faculty member

and by infringing upon academic freedom. The record in this case debunks that speculation.

Subsequent decisions establish that the Board does not consider Brown to be valid precedent. In 2010, the Acting Regional Director dismissed the petition in *NYU*, Case No. 2-RC-23481, without a hearing. The Board granted review of that decision, finding "compelling reasons for reconsideration of the decision in Brown University." New York University, 356 N.L.R.B. No. 7 (2010) ("NYU II"). *NYU II* was again dismissed on the basis of Brown after a full record had been made, and the Board again granted review stating that it wished to consider the validity of the decision in Brown. Last year, the Board invited briefs on review in Northwestern University, addressing, *inter alia*, whether the Board should "adhere to, modify or overrule the test of employees status" applied in Brown. Case No. 13-RC-121359, Order dated May 12, 2014. Finally, in this case, the Board unanimously reversed the Regional Director's Order dismissing this petition (Order date 3/13/15). That Order includes a footnote stating, "Members Miscimarra and Johnson note that the Regional Director properly dismissed the petition based on existing law....." citing Brown. Significantly, the other three Board members did not join in this footnote that cited Brown as "existing law" that should control the decision of the Regional Director. Thus, a majority does not consider Brown to be binding upon the Regional Director.

Accordingly, and for the reasons set forth in greater detail below, the Petitioner respectfully requests the Regional Director to direct an election in the unit sought in the petition.

II. PROCEDURAL HISTORY AND ISSUES PRESENTED

This petition was filed December 17, 2014, by Graduate Workers of Columbia-GWC, UAW (“the Union” or “GWC, UAW”), seeking a unit including all student employees of Columbia University (“the Employer,” “the University,” or “Columbia”).¹ The petition was dismissed by the Regional Director on the authority of Brown by Order dated February 6, 2015, and reopened by Order of the Board on March 13, 2015. A hearing was conducted on twelve dates between March 31 and June 8, 2015. At the close of the hearing, the Petitioner amended the petition to delete three job classifications that the evidence shows are no longer in existence (Jt. Ex. 12, para. 8; Tr. 1072). As amended, therefore, the Petitioner contends that the following is a Unit appropriate for the purposes of collective bargaining:

INCLUDED: All student employees who provide instructional services, including graduate and undergraduate Teaching Assistants (Teaching Assistants, Teaching Fellows, Preceptors, Course Assistants, Readers and Graders²); All Graduate Research Assistants (including those compensated through Training Grants) and All Departmental Research Assistants employed by the Employer at all of its facilities, including Morningside Heights, Health Sciences, Lamont-Doherty and Nevis facilities.

EXCLUDED: All other employees, guards and supervisors as defined in the Act.

The Employer contends that GWC, UAW is not a labor organization within the meaning of section 2(5) of the Act (Tr. 15-16). The Employer also contends that the petition should be dismissed because graduate student assistants should be denied

¹ The petition was amended at the hearing to the correct legal name of Columbia, “The Trustees of Columbia in the City of New York” (Tr. 7-8).

² The record establishes that student employees classified as “Readers” are colloquially referred to as “Graders,” but that the official title is Reader (Tr. 75-76). The Grader title is still used in official documents at the Engineering School (Tr. 693). Therefore, the Petitioner seeks to retain this job title in the unit description.

their statutory rights on the authority of Brown. The Employer agrees that, if its student employees are found to have the right to organize, then the Unit should encompass all four locations listed in the petition and that it should include both employees in the teaching classifications and those in research positions (Tr. 1000). However, the Employer contends that the Unit should be limited to doctoral students, excluding student employees who are enrolled as masters' students or undergraduate students, and that students funded by Training Grants should also be excluded from the Unit (Tr. 19-20, 1000).

Thus, this case presents the following issues:

1. Is the Petitioner a labor organization within the meaning of section 2(5) of the Act?
2. Does the Regional Director have the authority to decide whether these student employees have the right to an election?
3. Are student employees of Columbia who perform instructional and research work employees within the meaning of section 2(3) of the Act?
4. Should undergraduate and masters' student employees who perform services similar to those of Ph.D. students be excluded from the Unit?
5. Should student employees who perform services identical to those performed by Graduate Research Assistants but who receive funds supplied by Training Grants be excluded from the Unit?

III. THE PETITIONER IS A LABOR ORGANIZATION WITHIN THE MEANING OF THE ACT

A. Facts

The petition is filed by "Graduate Workers of Columbia – GWC, UAW" (Bd. Ex. 1(A), line 13). The petition states, on its face, that GWC, UAW is an affiliate or constituent of the "International Union, UAW" (Ibid, line 15). Kenneth Lang, an

International Representative for the UAW, testified that the impetus for the creation of GWC, UAW came from student workers at Columbia. Two groups of student employees contacted the UAW seeking to form a union and engage in collective bargaining. Under the leadership of the UAW, those two groups combined to form GWC, UAW, which has been recognized as an organizing committee by the UAW (Tr. 45, 51, 55-56). Student employees have come forward and publicly identified themselves as members of GWC, UAW seeking to engage in collective bargaining with the Employer to improve working conditions (Tr. 46-48; Pet. Ex. 13, 14). The authorization card used in this campaign states,

I hereby join with my co-workers to improve our wages, our working conditions and our lives. I authorize the Graduate Workers of Columbia University and United Automobile, Aerospace and Agricultural Implement Workers of America (GWC-UAW) to represent me for the purposes of collective bargaining with my employer over wages, benefits, working conditions and other terms and conditions of employment.

(Pet. Ex. 13).

The Employer pointed out that, under Article 36, sec. 15 of the UAW Constitution, only local unions, District Councils, family auxiliaries, and Community Action Councils can be issued charters by the International (Er. Ex. 1, p. 102). The Petitioner is not asking the NLRB to issue a charter to GWC, UAW. The Petitioner is seeking an election so that student workers at Columbia can vote whether to be represented by GWC, UAW. Section 15 of Article 36 continues by stating that other “subordinate bodies” such as GWC, UAW, “shall exist upon the authority of, and be generally supervised by and responsible to, the International Executive Board” (Ibid). Thus, GWC, UAW exists, and student employees have participated in the organization since its inception.

If this campaign is successful, a local union will be designated to participate in negotiations for a collective bargaining agreement. It is anticipated that UAW Local 2110, an amalgamated local of the UAW which already represents other employees of the Employer, will be designated as that local union (Tr. 48-49). Student workers from GWC, UAW would be elected to serve on the bargaining committee to participate in these negotiations (Tr. 49, 54). The International Executive Board has interpreted the Constitution to require that members of a negotiating committee be elected by the employees that they speak for (Official Interpretations of Article 45, sec. 2, published in Er. Ex. 1 at pp. 205-06). Article 35, sec. 3(c) of the Constitution guarantees that, within an amalgamated local, "each unit will have autonomy on matters pertaining strictly to that unit" (Er. Ex. 1, pp. 96-97). Thus, while Local 2110 and the International Union will have the authority to enter into a collective bargaining agreement with the Employer, the members of GWC, UAW will participate in those negotiations and will be entitled to make their own decisions with respect to a collective bargaining agreement.

B. The Petitioner Meets the Definition of a Labor Organization in Section 2(5) of the Act

The evidence summarized above leaves no doubt that the Petitioner meets the two criteria necessary to establish labor organization status.

Under §2(5) of the Act:

The term 'labor organization' means any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.

This definition is intentionally phrased very broadly. NLRB v. Cabot Carbon Co., 360 U.S. 203, 211 n. 7 (1959); Electromation, Inc., 309 N.L.R.B. 990, 993-94. To fall within

this broad definition, all that is required is some evidence that employees participate in the organization and some evidence that the organization intends to negotiate on behalf of employees.

In order to be a labor organization under Section 2(5) of the Act, two things are required: first, it must be an organization in which employees participate; and second, it must exist for the purpose, in whole or in part, of dealing with employers concerning wages, hours, and other terms and conditions of employment.

Alto Plastics Mfg. Corp., 136 N.L.R.B. 850, 851 (1962). Accord, Grand Lodge, Int'l Ass'n of Machinists, 159 N.L.R.B. 137 (1966); Butler Mfg. Co., 167 N.L.R.B. 308 (1967); East Dayton Tool & Die Co., 194 N.L.R.B. 266 (1971); Roytype, Division of Litton Business Systems, 199 N.L.R.B. 354 (1972).

Lang's testimony establishes that student employees participate in GWC-UAW, along with UAW staff. This fulfills the first criteria under Alto Plastics. It is also undisputed that this organization was created for the purpose of establishing a collective bargaining relationship with Columbia and dealing with Columbia with respect to rates of pay and working conditions. The employees who are members of GWC-UAW will participate in those negotiations. Thus, the organization exists for the purpose of dealing with the Employer.

The Employer's contention seems to be that GWC-UAW is not the true petitioner, because the International Union and Local 2110 will have bargaining rights after the Union is certified. The internal affairs of a petitioning union are not relevant to a determination of whether it meets the statutory definition. Gemex Corp., 120 N.L.R.B. 46 (1958). The Employer may also argue that GWC-UAW is not the correct name of

the Union. The Board recently enunciated the standard to be applied in determining whether a petitioning union is properly identified:

The Board's fundamental objective in representation cases is to ascertain whether the employees in the voting unit wish to be represented by a particular labor organization or organizations. Achievement of this objective is impossible if, when they cast their ballots, the employees do not know the identity of the organization that they are voting for or against.

Humane Society for Seattle/King County, 356 N.L.R.B. No. 13 (2010). In Humane Society, the Board found that the petitioner had deliberately concealed its affiliation with a union that represented employees of another animal shelter that was in danger of closing. The Board held that this was grounds for setting aside the election because "there was widespread confusion among the unit employees regarding whether the voting concerned an existing union that represented employees of another employer or a newly organized union representing only the unit employees." Ibid. In the instant case, there is no chance of such confusion, as the petition clearly identifies the Petitioner as an affiliate of the UAW.

The Employer may refer to §11198 of the Board's Casehandling Manual, which provides that the name of the Union should be the same as that which appears in its Constitution. Humane Society makes clear, however, that the correct standard is whether the name on the ballot creates confusion as to the identity of the petitioner.³ The name that appears on the petition in this case clearly reveals that the Petitioner is an organizing committee established by and affiliated with the UAW.⁴ Therefore, the

³ Unlike a Board decision, the Casehandling Manual does not have the force of law. Norton Health Care, 350 N.L.R.B. 648 n. 4 (2007); Starlight Cutting, Inc., 280 N.L.R.B. 1071 n. 3 (1986).

⁴ The Union's Constitution establishes that "UAW" is an official name of the organization. This "abbreviation" appears on the cover of the Constitution, in the preamble (p. 3) and in Article 1, stating the name of the entity (p. 5). These letters are used throughout the Constitution to identify the organization (E.g., Article 6, §20 at p. 11; Article 23, §1 at p. 61; Article 28, §6 at p. 68; Article 33, §2(b) at p. 88).

Regional Director should find that the Petitioner is a labor organization within the meaning of the Act.

IV. THE OPERATIONS OF THE EMPLOYER

The Employer, one of the nation's oldest private institutions of higher education, is located in the New York metropolitan area. Its main campus is located in Morningside Heights (the "Morningside Heights campus") in Manhattan between 116th Street and 120th Street, along Broadway. Columbia also has a Health Sciences campus, located in Washington Heights at 168th Street and Fort Washington Avenue; and research facilities in Palisades, New York (the "Lamont-Doherty Observatory") and Irvington, New York (the "Nevis Laboratories"). Columbia has an enrollment of about 30,000 students (Jt. Ex. 1).

Columbia is governed by a 24-member Board of Trustees, which is responsible for the overall management of the University. The President of Columbia University is hired by the Board of Trustees, serves as the University's chief executive officer, and is responsible for Columbia's administrative and academic affairs. The Provost (the "Provost") is Columbia's chief academic officer. Academically, the University has three main areas: the Arts and Sciences (which accounts for about half of Columbia's student body), the Health Sciences, and the professional schools (which include the Graduate School of Business, the Fu Foundation School of Engineering and Applied Science ("the Fu School"), the School of Journalism, the School of Law, the School of Architecture Planning and Preservation, the School of International and Public Affairs ("SIPA"), and the School of Social Work). A number of the schools that fall within these three main academic areas are further broken down into departments and academic programs.

The heads of each of these primary academic areas, the Executive Vice President for Arts and Sciences and the Deans of the professional schools, report to the Provost. The Executive Vice President of Health and Biomedical Sciences reports directly to the President. The Executive Vice President of Arts and Sciences oversees a number of Schools that do not report directly to the Provost. These include the School of the Arts, Columbia College, the School of Continuing Education, the School of General Studies, and the Graduate School of Arts and Sciences (“GSAS”). The Executive Vice President for Health and Biomedical Sciences is also responsible for a number of Schools that report to him. These are the College of Physicians and Surgeons (Columbia’s Medical School), the School of Dental Medicine, the School of Nursing, and the Joseph P. Mailman School of Public Health (“SPH”). Columbia also has a University Senate, which is composed of faculty, administration, and student representatives. The University Senate is primarily an advisory body, and issues relating to educational policies, physical development, budget, and the University’s external relations are within the Senate’s purview. In regards to the University budget, individual schools develop a budget each year with the assistance of the Executive Vice President for Finance. The individual budgets must ultimately be approved by the Board of Trustees (Jt. Ex. 1).

Columbia offers a number of degrees, including undergraduate degrees from Columbia College, the School of General Studies, and the Fu Foundation School of Engineering and Applied Science, a variety of professional degrees from the professional schools, the Master of Arts (“MA”), Master of Philosophy (“M.Phil.”), and the Ph.D. In general, doctoral students are awarded the M.Phil. degree before completion of the requirements that lead to the award of the Ph.D. (Jt. Ex. 1; Tr. 13).

All but one of the Ph.D. programs are offered exclusively through GSAS, irrespective of whether a program sits in the School of Arts and Sciences. For example, Ph.D. programs that sit in the Health Sciences Campus in Basic Sciences departments, such as Anatomy and Cell Biology, and Physiology and Cellular Biophysics, are awarded and administered by GSAS; and these students attend GSAS graduations, not Health Sciences graduations. In total, there are 62 Ph.D. programs offered at the University, with thirty of those programs based in the Graduate School of Arts and Sciences departments, 31 Ph.D. programs sitting in the other Schools but administered through GSAS, and one Ph.D. degree, in education, offered through Columbia's Teachers' College (Jt. Ex. 1; Tr. 64, 99).

The parties stipulated that the Employer is engaged in commerce (Tr. 13-15). The University receives revenues from tuition, government grants, income from endowments, income from investments, and earnings from intellectual property derived from research conducted at the University (Tr. 71, 114). Two of the three largest sources of income for the University are tuition and government grants. For the fiscal year that ended June 30, 2014, the Employer's total operating revenues and support totaled more than \$3.8 billion. Of this sum, \$887 million was received in net tuition and fees,⁵ and more than \$750 million from government grants and contracts (Pet. Ex. 51, p. 3). As will be demonstrated below, student employees in the classifications sought in this petition perform work that helps to generate that income.

V. PRIOR PROCEEDING REGARDING COLUMBIA GRADUATE ASSISTANTS

In 2001, the UAW filed the petition in Case No. 2-RC-22358, seeking to represent a unit of student employees who performed instructional services at the

⁵ I.e., tuition and fees, less financial aid grants.

Morningside Heights campus (Dec. & Dir. Of Election dated 2/11/02). The Employer took the position that the bargaining unit should encompass all four locations of the Employer and should include GRAs (Ibid, p. 2). On February 11, 2002, the Regional Director issued a decision finding for the Employer on these two main disputed issues. She found that the unit sought by the petitioner was inappropriate and that the only appropriate unit would include all of the Employer's campuses and would include student employees who conduct research as well as those who provide instructional services (Ibid). The Employer's Request for Review was granted by the Board. While the Request for Review was pending, the Board issued the decision in Brown, holding that graduate student employees did not have the right to organize under the Act. Accordingly, and with no objection from the petitioner, that petition was dismissed.

The petition in this case was modeled upon the unit found appropriate by the Regional Director in 2002. As noted above, the Union has agreed to delete job classifications that no longer exist from the unit description. The Union also contends that Teaching Assistants and Course Assistants in the School of International and Public Affairs ("SIPA"), and other Master's Degree students, share a community of interest with the employees included in the petitioned-for Unit. The Employer seeks to modify the bargaining unit found appropriate in the 2002 decision by excluding undergraduate Teaching Assistants. The parties agreed that student employees appointed to provide teaching services during the summer, who were excluded in the previous decision, may be included as many of the same student employees provide similar services during the summer and during the school year (Jt. Ex. 12, para. 3). As noted above, the parties disagree as to the inclusion of graduate student researchers

whose research is funded by Training Grants. The prior decision did not address that issue.

VI. STUDENT OFFICERS OF THE UNIVERSITY

Most of the student employees at issue receive appointments as “student officers of the University.” (Tr. 63, 87, 97). The appointment process begins in the department where the student will hold the appointment. Upon selection by the faculty of a department, the dean or the vice president will nominate the student to serve as either an Officer of Instruction or an Officer of Research (Tr. 87; Er. Ex. 2). The nomination is submitted to the Provost’s office for approval and, if the nomination is approved, the student will receive an appointment “to assist in the instructional and research programs of their departments and schools” (Er. Ex. 2; Tr. 113-14). “The central mission of Columbia University is to create, preserve and disseminate knowledge through teaching and research.” (Pet. Ex. 64). Thus, a student officer is appointed to provide services that contribute to the central mission of the University. The appointment is then forwarded to the Employer’s Human Resources Department for entry into the Employer’s human resources software system (Tr. 87).

The University also appoints faculty members, researchers, librarians and administrators to positions as “officers” (Tr. 97). According to the Vice Provost, officers, including student officers, are distinguished from other employees of the University, classified as “support staff,” in that their positions entail greater responsibility, they are paid semi-monthly rather than weekly, and they are considered to be “exempt” employees not entitled to earn overtime (Tr. 97-99).

VII. DOCTORAL STUDENT EMPLOYEES ARE STATUTORY EMPLOYEES

A. Introduction

As noted above, the parties disagree as to whether graduate student employees have the right to decide for themselves whether they wish to be represented by a union. However, if a decision is made that graduate student employees are “employees” within the meaning of the Act, the Employer agrees that doctoral students in the job classifications named in the petition, other than students funded by Training Grants, share a community of interest and therefore should be included in the petitioned-for Unit. That is, the parties agree that if graduate student employees have the right to organize, any appropriate Unit would include Teaching Assistants, Teaching Fellows, Preceptors, Graduate Research Assistants, and Departmental Research Assistants. Therefore, we will address whether student employees in those classifications have the right to organize under the Act, before addressing disputed issues regarding whether other student employees should properly be included in the bargaining unit.⁶

B. Facts Related to Doctoral Student Employment

1. Academic and Fellowship Programs

GSAS awards the Doctor of Philosophy (Ph.D.) degree and, in the Music Department, a Doctor of Musical Arts (D.M.A.) degree (Er. Ex. 28; Tr. 259-60). GSAS establishes the minimum requirements that students must meet in order to earn the Ph.D. degree, although individual departments may exert influence over Ph.D. programs within the parameters set by GSAS. In many cases, applications to Ph.D.

⁶ An academic appointment as a Reader, also known as a Grader, is reserved for masters’ and undergraduate student employees (Tr. 70). Since the Employer contends that all masters’ and undergraduate students should be excluded from the Unit, Readers will be discussed below, in connection with the disputed job classifications.

programs are made directly to GSAS, but after reviewing the applications and selecting suitable applicants, GSAS forwards applications to Ph.D. programs to individual departments for further scrutiny and selection (Jt. Ex. 1). While the details and timeline vary from department to department, a doctoral student will typically spend between one and three years taking courses from GSAS faculty (Tr. 275). The University generally awards a Master of Arts or Master of Science degree to doctoral candidates after one year (Tr. 92, 264). The student then must pass a comprehensive or qualifying examination, which may be written, oral, or a combination of the two, in order to demonstrate a mastery of the conventions of the discipline and the capacity to participate in advanced discourse in the field (Tr. 275, 276-77). If she passes this exam, the student must produce a proposal for a doctoral thesis. If the student successfully defends the proposal to a faculty committee, the University awards the student the Master of Philosophy (M.Phil.) degree (Tr. 92, 275; Jt. Ex. 1).⁷ From that point forward, the student's academic work focuses on researching and writing the dissertation (Tr. 275). Upon completing the dissertation, the student must defend the research and conclusions before a committee of usually five faculty members. If defense is successful, the University will confer the Ph.D. degree (Tr. 275-76).⁸ This process generally requires eight to nine years in the Humanities, six to seven years in the Social Sciences, and five to six years in the Natural Sciences (Tr. 279).

During these years pursuing a doctoral degree, the students are expected to engage in other ways in the academic life of the department. GSAS requires that each

⁷ Students working toward the D.M.A. degree are not awarded the M.Phil. (Er. Ex. 28).

⁸ The D.M.A. degree is equivalent to the Ph.D., except that the final requirement is a musical composition rather than a dissertation (Tr. 260).

student fulfill a one year teaching requirement before receiving the M.Phil. (Er. Ex. 28). However, GSAS does not award academic credit to doctoral students for teaching (Tr. 234). The student is also expected to participate in other educational activities of the department such as symposia and colloquia (Tr. 277-78). As Dean Carlos Alonso of GSAS put it, "There's a thing called the intellectual life of the department that graduate students are supposed to be a part of, just like faculty." (Tr. 278).

When an applicant is admitted to GSAS, Dean Alonso sends a letter offering admission to the doctoral program in a particular department (Er. Ex. 36, 37, 38; Tr. 294). The letter states that, if the applicant accepts the offer, she will be named a Dean's Fellow (Er. Ex. 36, 37, 38). All GSAS students are awarded Dean's Fellowships, and the package is substantially the same for all students, with minor differences between those provided to students in the Natural Sciences and those offered to students in the Social Sciences and Humanities (Tr. 295-97, 579). The letters uniformly state, "As a Dean's Fellow, you will receive a comprehensive funding package, which includes some teaching and research responsibilities." (Er. Ex. 36, 37, 38). The letter includes an "estimated value" of the fellowship in the first academic year, which includes tuition, fees, health insurance premiums, and a stipend (Tr. 299). The second page of the letter provides a description of the elements of the fellowship. The letters state, "Your fellowship includes participation in your department's professional apprenticeship, which includes some teaching and research responsibilities. The faculty regard this experience as a vital part of your education." (Er. Ex. 36, 37, 38).

This funding package is awarded for a five year period (Tr. 216, 297-98). The amount of the stipend is increased annually to enable the University to remain

“competitive” with other elite institutions such as Harvard, Yale, Stanford, and Princeton, so that the University can attract the students that it wants in its Ph.D. programs (Tr. 298). For students in the Humanities and Social Sciences, the first year of funding comes with no strings attached. As described on GSAS’ web page and by Dean Alonso, the first year of funding “entails no service obligation....” (Er. Ex. 39; Tr. 306). In the next three years, GSAS does require students to provide “services” in order to obtain their funding, with the University appointing them to positions as student officers of the University (Er. Ex. 39; Tr. 306-07). Students in these years must fulfill either teaching or research “responsibilities” in order to receive their funding (Tr. 307). Students may be excused from these “service obligations” if they obtain a grant from a government or other outside funding source during one of these years (Tr. 216-17). GSAS generally provides students in the Humanities and Social Sciences a “Dissertation Fellowship” in their fifth year, to afford them time to work on their research without any service obligations (Tr. 306, 447; Er. Ex. 39). After the fifth year, students are offered teaching positions in exchange for the same funding package, provided that there is a need for their instructional services (Tr. 463-64). In the Natural Sciences, students are required to begin teaching in the first year in order to receive funding (Er. Ex. 39; Tr. 749). Students are appointed for one or two years as instructional officers of the University, and then move on to research appointments (Tr. 749; Er. Ex. 100).

During semesters when no services are required, such as the Dean’s Fellowship year and the Dissertation Fellowship year, the entire stipend is deposited into the student’s bank account at the beginning of the semester, with no tax withholding (Tr. 309, 840). During semesters when the student is working in a teaching or research

position, one third of their stipend is paid in the form of a semi-monthly salary from the Employer's payroll account, subject to withholding for income taxes and reported as earned income on an IRS Form W-2 (Tr. 309, 461). Student employees are also required to provide I-9 employment verification information in order to hold one of these positions (Tr. 243-44, 611). Additional salaried compensation is provided for students who hold teaching appointments during the summer session (Tr. 239).

The process at the Fu School is similar. Students may be admitted with or without having previously obtained a Master's Degree (Tr. 658). Students admitted without a Master's Degree take classes for two years and are generally awarded a Master's Degree after one year, while those admitted with a previous Master's Degree take classes for one year. In either case, the student will take the qualifying examination after about one year (Tr. 658-59). The Fu School typically awards doctoral students four or five years of funding, all of which require service as either a Teaching Assistant or a Research Assistant. Normally, the student will work as a Teaching Assistant in the first year and then obtain a position as a Research Assistant (Tr. 657; Er. Ex. 886-88). Admission letters for students admitted to the Fu School clearly state that financial support is "in exchange for your participation in our research and instructional program" (Er. Ex. 87; Tr. 676).

2. The Core Curriculum

The Core Curriculum ("the Core") is a set of courses that make up the liberal arts undergraduate education requirements throughout the University (Tr. 100). Students at Columbia College, the undergraduate school of the Faculty of Arts and Sciences, are required to take the entire Core, and undergraduate students at the School of

Engineering and Applied Sciences are required to take at least half of the courses (Tr. 142). There are various definitions of what constitutes the Core. The Director of the Center for the Core Curriculum thinks of the Core as the five courses that he oversees: Literature Humanities, Contemporary Civilization, Frontiers of Science, Art Humanities, and Music Humanities. Literature Humanities and Contemporary Civilization are year-long courses, while the other three are one semester courses (Tr. 100, 142). There are additional required courses for students at Columbia College that are sometimes referred to as part of the Core, but which are not administered by the Director of the Center for the Core (Tr. 184-85). In addition to the five courses named above, Columbia College requires students to take University Writing, to fulfill a Foreign Language requirement, to take courses from a broad list of global and science classes, and to meet a physical education requirement (Tr. 184-85; Pet. Ex. 16). The Columbia College Bulletin, in describing all of these requirements, states, “The Core Curriculum is the cornerstone of the Columbia College education. The central intellectual mission of the Core is to provide all students with wide-ranging perspectives on significant ideas and achievements in literature, philosophy, history, music, art and science.” (Pet. Ex. 16, p. 88). As will be developed throughout this brief, graduate student employees in the various classifications play a substantial role in fulfilling this cornerstone mission.

3. Services Provided by Preceptors

A Preceptor has an appointment as a “student officer of instruction.” (Er. Ex. 2; Tr. 68). All student officers of instruction “have responsibilities relating to the educational programs at the University.” (Tr. 68). A Preceptor is appointed to teach an independent course in the undergraduate Core Curriculum (Tr. 68, 307). A Preceptor is

responsible for instructing a class, attending weekly faculty meetings with other instructors teaching the same class, teaching class sessions, administering exams, grading exams and papers, submitting final grades, and holding office hours to meet with students in the class (Tr. 164-65; Er. Ex. 18, 19). Preceptors work under the guidance and direction of a faculty member who is designated as the chair of the course (Tr. 160-61). The Employer provides extensive training for Preceptors (Tr. 158-59; Er. Ex. 14, 15, 18, 19). A Preceptor may teach a class in the Core Curriculum for up to two years (Er. Ex. 14, 15).

Preceptors teach the year-long classes, Literature Humanities and Contemporary Civilization (Tr. 150; Er. Ex. 11). The Employer offers approximately 60 sections of each of these two courses each year, with a maximum of 22 students per section (Tr. 145-46; Er. Ex. 6, 7). These classes are taught by “the entire span of ranks in the profession from retired faculty to senior, tenured faculty; junior untenured faculty; postdoctoral fellows; graduate students and adjunct faculty.” (Tr. 146; see also Tr. 153). All instructors, including Preceptors, are sent packets of information regarding teaching the course (Tr. 162; Er. Ex. 16, 17). Contemporary Civilization is “a constant and essential element of the Columbia College curriculum.” (Er. Ex. 7, p. 1). As part of the Core Curriculum, both of these courses are taught in small classes to “provide students with opportunities to develop intellectual relationships with faculty early on in their College career...” (Pet. Ex. 16, p. 88). Where the class is taught by a Preceptor, therefore, the undergraduate student is given an opportunity to develop this important intellectual relationship with a graduate student employee.

During the 2014-15 academic year, graduate student Preceptors taught 17 of the sections in Contemporary Civilization and 19 sections of Literature Humanities (Tr. 152). The Employer has a general rule that no more than 12 Preceptors may be selected to teach in each of these classes each year (Tr. 163-164). Since Preceptors may teach the class for two years, as many as 24 of the 60 sections in each class could be taught by Preceptors (Tr. 152). The Director of the Center for the Core explained that this target had been arrived at because the University values having the class taught by an “inter-generational faculty,” and this number had been deemed the optimal number for the class (Tr. 164).

In order to be selected to teach as a Preceptor, a graduate student must complete an application process (Tr. 155). An applicant must be enrolled in GSAS as a Ph.D. candidate, have completed the M.Phil. degree, and ordinarily be in the 5th or 6th year to be eligible to teach as a Preceptor in the following year (the 6th or 7th year, respectively) (Tr. 155; Er. Ex. 12, 13). Students beyond the 7th year are no longer eligible (Tr. 151; Er. Ex. 11). Applicants are required to submit a cover letter describing prior teaching experience, a C.V., and student evaluations from prior classes taught (Er. Ex. 12, 13). The same materials are required from postdoctoral fellows and adjuncts seeking to teach the course (Tr. 176). Applicants for Preceptor positions are interviewed by a committee of two, three or four faculty members (Tr. 156-57). Preceptors are selected based upon their ability to explain materials in a way that the undergraduate students will understand (Tr. 156). The committee selects the candidates it believes will do a good job as instructors and whose teaching will benefit the undergraduate students (Tr. 173).

The selection committee sends a letter to the successful applicant, offering appointment to a Preceptor position (Tr. 157; Er. Ex. 14, 15). The letters notify the Preceptor, “The second year of the appointment is contingent on satisfactory performance in the initial year.” (Er. Ex. 14, 15). After graduation, a Preceptor may be hired to teach the same course as a postdoctoral faculty fellow or as an adjunct (Tr. 176, 177). In addition to their GSAS Fellowships, Preceptors receive an additional \$1,000 for the year plus a \$3,200 summer fellowship payment (Tr. 154).

4. Services Provided by Teaching Fellows

Teaching Fellows are also student officers of instruction (Tr. 68; Er. Ex. 2). Like Preceptors, this is a title that is used only at GSAS (Tr. 68-69; Er. Ex. 2). Teaching Fellows (“TFs”) perform a wide range of teaching functions, including assisting faculty members in a classroom, leading discussion sessions, giving individual lectures, and teaching their own courses as instructors of record (Tr. 69, 203). According to the results of a survey conducted by the University’s Teaching Center, the specific duties performed by TFs vary considerably from department to department (Pet. Ex. 21(B)).⁹ Throughout GSAS, TFs in some departments design courses, write the syllabus for a class, establish grading standards and criteria, deliver lectures, lead discussion sections, teach laboratory sections, grade students’ work, hold office hours, perform administrative duties related to course work, scan and digitize materials for classes, manage audio/visual materials, receive automated feedback from students, manage shared spaces, provide software support, create quizzes and tests, calculate grades, and evaluate courses (Pet. Ex. 21(B); Tr. 105, 1063).

⁹ Petitioner’s Exhibit 21(B) is in three parts, corresponding respectively to the Humanities departments, the Social Sciences departments, and the Natural Sciences departments.

Like Preceptors, Teaching Fellows play an important role in teaching the Core Curriculum. With respect to the courses that are administered by the Director of the Center for the Core, TFs serve as instructors of record for two of the remaining three courses: Art Humanities and Music Humanities (Tr. 149).¹⁰ Each of these two classes is offered in about forty sections (Er. Ex. 8, 9; Tr. 821). To be eligible to teach one of these classes, a Ph.D. student must have completed the requirements for the M. Phil. (Tr. 821; Er. Ex. 104, p. 44). Faculty members teach about two to five of these sections, TFs typically teach about a dozen sections, and the University hires adjunct faculty to teach the remainder (Tr. 613-14, 821-22). All instructors in Art Humanities follow the same syllabus (Tr. 822). In Music Humanities, all instructors, including the Teaching Fellows, design their own syllabus within certain defined parameters (Tr. 618; Pet. Ex. 34). To be appointed to a position as a TF in Music Humanities, a student must go through an application and interview process to demonstrate teaching potential (Pet. Ex. 33). Graduate students in the Music Department in the second year of their Ph.D. studies may be appointed as teaching assistants to assist instructors in these classes, helping instructors at any academic level, from TF to tenured faculty (Tr. 609-12; Pet. Ex. 30, 34, pp. 2-3).¹¹ The Chair of the Department of Art History described Art Humanities as “unique to Columbia,” although he went on to explain that other schools are starting to copy this course (Tr. 823). He testified that, in staffing this class, the University uses “as many [Teaching Fellows] as are available during that particular

¹⁰ Frontiers of Science is taught entirely by senior faculty (Tr. 149). Thus, of the five courses that “define” undergraduate education at Columbia (Tr. 102), four are taught in part by student officers of instruction.

¹¹ While the Music Department uses the title “Teaching Assistant” to refer to these positions, it appears that Ph.D. candidates at GSAS who are appointed by the department to TA positions are considered to be Teaching Fellows by GSAS and receive officer appointments as Teaching Fellows (Er. Ex. 2; Tr. 68-69).

year.” (Tr. 821). Teaching Fellows also serve as instructors in the University Writing course that all undergraduates are required to take and in classes that students take to fulfill Columbia College’s language requirement (Tr. 185-86, 856, 868).

In addition, Teaching Fellows serve as instructors in other types of classes. Students in the Art History Department have the opportunity to teach a required course for Art History majors at Barnard College (Er. Ex. 53, 4th page). Music Department Ph.D. students have opportunities to serve as instructors in classes within the Music Department (Pet. Ex. 34). In the Math Department, TFs assist faculty members in teaching classes, and then move on to teach their own classes (Tr. 203-04). Many students in the Natural Science departments are responsible for leading laboratory sections for undergraduate students, in addition to performing a wide range of other duties (Pet. Ex. 21(B)(3)). For example, in the Physics Department, Ph.D. candidates are expected to teach for two years (Tr. 754). Their teaching duties can include teaching laboratory sections for introductory undergraduate labs, grading lab reports, staffing the Physics Help Room, grading lecture course exams, proctoring exams, and attending meetings (Er. Ex. 102, 3rd page). The laboratory sections are the principal teaching assignment for Physics department TFs (Tr. 754-55). There is no faculty member in the laboratory section, so the TF has full responsibility for preparing the laboratory equipment, running through experiments to ensure that they run smoothly, and guiding and helping the students as they learn to conduct the experiments themselves (Tr. 755, 764, 781). Thus, TFs are responsible for teaching undergraduate students how to conduct experiments in the experimental sciences.

Other Teaching Fellows are given assignments to assist in conducting classes. In the Political Science Department, Teaching Fellows are referred to as Teaching Assistants, despite the fact that they are formally appointed as TFs (Pet. Ex. 22; Tr. 69; Er. Ex. 2). Although they have less responsibility for the class, these student employees still contribute to the educational mission of the University. According to the Political Science Department Teaching Manual, they “help students to get more from their courses and ... ease the burdens of faculty instructors.” (Pet. Ex. 22).

According to GSAS’ Teaching Guidelines, Teaching Fellows are expected to spend roughly 15 to 20 hours per week on their teaching duties (Er. Ex. 40, 3rd page, para. 17). A TF whose work is not satisfactory must be given an opportunity to improve and, failing that, is subject to loss of administrative but not academic standing, which can result in a warning, suspension or dismissal (Er. Ex. 40, para. 18; Ex. 52; Tr. 469-70). Teaching assignments and duties for TFs are determined by the academic needs of the departments or programs where they perform their duties (Tr. 302, 463-64, 836).

The role of undergraduate education at Columbia is to transmit established knowledge to the undergraduate students (Tr. 448-49). Teaching fellows in all types of assignments participate in the transmission of this knowledge to undergraduate students (Tr. 449). Teaching Fellows play an important role in the instruction of undergraduate students (Er. Ex. 76, p. 2; Tr. 519-20; Pet. Ex. 15). Thus, the work of a TF serves the mission of undergraduate education at Columbia.

5. Services Provided by Teaching Assistants

While Teaching Fellows at GSAS who assist faculty members or teach recitations sections are sometimes referred to as “teaching assistants,” (E.g., Er. Ex. 102; Pet. Ex. 22, 23, 30, 34), Ph.D. students at GSAS, other than preceptors who teach, are officially appointed as Teaching Fellows (Tr. 69; Er. Ex. 2). The University makes formal appointments as Teaching Assistants (“TAs”) to students outside of GSAS who perform teaching duties (Er. Ex. 2). This includes doctoral students at other schools, such as the Fu School as well as masters’ students (Tr. 69). The Vice Provost of the University testified, “Teaching Assistants perform functions which are very similar to a Teaching Fellow.” (Tr. 69).

The Vice Dean of the Fu School described the work of TAs at that school. TAs assist faculty in teaching courses. Their duties may include designing examinations, grading homework assignments, holding office hours to meet with students, conducting recitation sessions for larger classes, helping students with homework, and otherwise communicating with students about their classes (Tr. 664). The teaching work performed by TAs contributes to the education of the undergraduate students and thus helps to fulfill the mission of the University (Tr. 675-76). According to the Fu School web page:

The role of a teaching assistant is critical in a content-heavy curriculum such as in engineering and the applied sciences, said Dean Feniosky Pena-Mora. All of our TAs are deeply invested in support of our teaching mission....

A great TA can make a tremendous difference in how an undergraduate student views a particular course, and, in fact, can play a large part in that student’s success in the course and in subsequent courses, said Dean Pena-Mora.

(Pet. Ex. 61).

6. Services Provided by Graduate Student Employees with Research Appointments

Appointments as officers of research are given to student employees who conduct research at the University (Tr. 70). A Graduate Research Assistant (“GRA”) is a student assisting with the research of a faculty member and who is compensated with funds from a research grant from an external funding agency, such as a government grant (Tr. 70-71, 409). A GRA Research Fellow provides similar services, but is compensated from funds that originate with the University. Most of the students who receive these appointments are in the Natural Sciences (Tr. 70, 409). A third classification, a Research Assistant, performs similar duties in areas other than the Natural Sciences (Tr. 70-71, 409). Outside of GSAS, students may be appointed as Departmental Research Assistants to provide assistance to a department or a school in the conduct of research (Er. Ex. 2). The parties agree that, if student employees are found to be statutory employees, these classifications should be included in the Unit.

The evidence shows that student officers of research also contribute to the mission of the University in exchange for compensation. A research grant results from an application submitted by one or more faculty members¹² to a funding agency such as the National Institutes of Health (“NIH”), the National Science Foundation (NSF), another government agency, or a private foundation (Tr. 661-62, 768, 1016). The grant proposal may provide for GRAs to work with a faculty member on the proposed research (Tr. 662, 769, 1017-18). The proposal must describe the work to be performed by all personnel, including GRAs, who would be involved in the project (Tr.

¹² A faculty member whose grant application is approved is referred to as the “Principal Investigator” or “PI” (Tr. 1017).

455, Pet. Ex. 72, 18th page (Bates No. 003433)). Funds for people working on the grant, including faculty members, post-doctoral employees, and GRAs are considered “personnel costs” (Tr. 769; Pet. Ex. 72, 18th page; Pet. Ex. 50, pp. nos. 60-68 (Bates Nos. 000067-75). As a condition of receiving the grant, the work performed by all personnel, including GRAs, must be in furtherance of the research project (Tr. 455-56; Pet. Ex. 48, section labeled “Financial Management). The PI has the responsibility to ensure that GRAs work to fulfill the stated purpose of the grant proposal (Tr. 685, 1017-18).

The grant proposal must include a budget that describes how the funds will be spent if the grant is awarded (Tr. 118). This budget must spell out how the “direct costs” of the research project, including equipment, supplies, travel, consultants, publication, and similar costs, will contribute to the research project (Pet. Ex. 50, page no. 69, Bates No. 000076). Personnel costs, including the salaries paid to GRAs, are considered direct costs (Tr. 798; Pet. Ex. 50). In addition, federal grants include funding for “indirect costs” or “facilities and administration.” This payment is calculated as a percent of allowable direct costs (Tr. 686). When work to fulfill the grant is conducted on campus, the University receives an additional 60% of allowable direct costs to cover indirect costs, while it receives only 26% when the work is performed at an off-campus location (Tr. 799, 806). The salaries paid to GRAs fall within the category of allowable direct costs (Tr. 798, 800). Therefore, if a grant proposal called for a payment of \$35,000 for a GRA’s salary for research to be conducted on campus,¹³ the University would receive an additional \$21,000 to cover indirect costs (Tr. 686-87, 800). If the grant proposal is approved, the funds are transmitted to the University (Tr. 684, 768-69,

¹³ See Er. Ex. 38, 99, setting out an annual stipend of slightly more than \$35,000 for GRAs.

1017). The University places the funds received for direct costs into an account to pay the salaries and other expenses to conduct the research. The indirect costs are available “to run the enterprise of the University.” (Tr. 1017).

Student officers of research who do not receive external funding are appointed as Research Fellows or GRA Research Fellows (Er. Ex. 2). These student employees perform similar duties to the GRAs, the principal distinction being the source of the funds from which they receive their stipends (Tr. 70, 115, 1019).

One mission of the University is to produce original research (Tr. 683, 792, 1031). All student officers of research contribute to fulfilling this mission. The Employer’s witnesses testified repeatedly that the work performed by student officers of research contribute to a faculty member’s research (Tr. 116) or contribute to the faculty member’s experiments (Tr. 769). Research by student officers of research can also lead to patents or other intellectual property which belongs to the Employer (Tr. 115; Pet. Ex. 66). Faculty members seek research assistants who have skills that fit the needs of their laboratories and will contribute to their research (Tr. 1031, 1057). Student researchers are “conducting research in their laboratory in an area that’s near and dear to the heart of the faculty member.” (Tr. 984). The Employer’s faculty members stated in a variety of ways that student officers of research help to fulfill the research mission of the University (E.g., Tr. 683).

7. Direction and Control

It is undisputed, and the record establishes, that student officers of the University, in all classifications, are directed in their work by members of the faculty and

perform in a manner controlled by the University (Tr. 106-07, 160-61, 208-10, 512; Er. Ex. 40).

8. Distinctions Between Academic and Economic Relationships

The Employer offered extensive evidence that faculty and administrators of the University believe that teaching has academic benefits for student employees who teach. The Petitioner does not dispute that there are often pedagogical benefits both to teaching and conducting research. Indeed, that is an essential element of any field of professional endeavor: the professional continues to learn while working in the field. This is true of the faculty members as well as graduate student employees (Tr. 877-78, 1033-34).

Despite the fact that learning and working go together in an academic position, the record shows that the economic relationship between a student employee and the school is distinct from the academic relationship. Preceptors are allowed to teach a second year only if they do their jobs well in the first year (Er. Ex. 14, 15). TFs who do not fulfill their duties may be subject to discipline (Er. Ex. 40, ¶18; Er. Ex. 52; Tr. 469-70). In the Psychology Department, Teaching Fellows are evaluated separately on their teaching performance and may “receive warnings where teaching is substandard.” (Pet. Ex. 23, p. 2). The most dramatic illustration of the distinction between the academic relationship and the employment relationship is provided by the case of Longxi Zhao.

Mr. Longxi, a native of China, came to the United States in the Fall Semester of 2013 to pursue a Master of Science degree in Chemical Engineering at the Fu School of Engineering and Applied Science (Tr. 884, 885; Pet. Ex. 53). He did not hold any teaching or research appointments while he was in the Master’s Degree program (Tr.

886-87). Mr. Longxi received his Master's in February 2015 and was admitted to the Ph.D. program in the same department for the Spring 2015 Semester (Tr. 884; Pet. Ex 54). Doctoral students in the Chemical Engineering Department customarily work as TAs for one year and then become research assistants (Tr. 888). Mr. Longxi's first appointment was as a TA in an undergraduate class in Kinetics taught by Professor Banta (Tr. 887-88).

Professor Banta's class met twice per week, on Tuesdays and Thursdays (Tr. 888-89). Professor Banta would give short lectures and either problems to solve or quizzes in each class (Tr. 888). If a student in the class did not pass a quiz, he was required to take another version of the quiz and pass it before being permitted to progress to the next quiz. If the student failed the second, "make-up" quiz, he would have to take a third quiz, and so on, until he passed (Tr. 889-90). Mr. Longxi and the other TA for the class, Natalie, were expected to attend all classes; grade the homework, quizzes and exams; photocopy the quizzes; proctor the quizzes; help students solve the problems; and present the "make-up" quizzes to the students (Tr. 888-89, 890). They were required to hold office hours once per week, and would offer the make-up quizzes during office hours (Tr. 889, 890, 912). Mr. Longxi's office hours were on Wednesdays, and Natalie's on Fridays (Tr. 891; Pet. Ex. 55).

Before commencing his duties as TA, Mr. Longxi approached Professor Banta and asked whether he could take an extended Spring Break so that he could return to China (Tr. 892, 894-95). Professor Banta rejected this request (Tr. 895). As a consequence, Mr. Longxi decided to take a much shorter trip home, during Columbia's Spring Break, which ran from Saturday, March 14 through Sunday March 22 (Tr. 909).

He left the Friday before, March 13, and returned Monday, March 23 (Tr. 896). When he returned to New York, he found two letters waiting for him. One was a letter from the Assistant Director of the Office of Graduate Student Affairs, notifying him that a “Dean’s Discipline Hearing” was to be held the next day to address accusations of “Harassing others.” (Tr. 906-07; Pet. Ex. 59). When he attended that hearing on March 24, he learned that this accusation of “harassment” related to an e-mail that he had sent to students in Professor Banta’s class six weeks earlier that had used the “f” word in a self-deprecating manner to refer to a mistake that he had made (Tr. 907; Pet. Ex. 57). Mr. Longxi’s faculty advisor had already informed him that the e-mail had disturbed Professor Banta, and Mr. Longxi had immediately sent an apology to the students in the class, none of whom had complained (Tr. 903-05; Pet. Ex. 58).

The second letter informed Mr. Longxi that he had been terminated from his position as a TA (Pet. Ex. 20). That letter, signed by Professor Sanat Kumar, Chair of the Department, reads in full:

The Department of Chemical Engineering Graduate Committee at Columbia University has decided to terminate your teaching assistant position for CHEN E4230 for the following reasons:

- Making and implementing decisions without approval from the course instructor (i.e. late homework submission and point deduction)
- Sending inappropriate email correspondence to students
- Failing to proctor a quiz on Friday, March 13
- Taking a vacation during the semester without approval

In particular, you were previously verbally warned that if you proceeded to take an unapproved vacation that interfered with your teaching assistant position you would be subject to dismissal. Accordingly, this termination is effective immediately. As a result, you will no longer receive a salary for this position.

However, in an effort to work with you, since this decision was recently made, your tuition for the Spring 2015 term will be paid for by the academic department. A teaching assistant position, although a useful funding source, is not a requirement for the doctoral degree. Therefore, if you decide to apply for a teaching assistant position in the future, you must submit an application for consideration but these incidents will understandably cause pause in any future considerations.

We wish you the very best with your academic and professional endeavors.

(Pet. Ex. 20).

Mr. Longxi testified that the accusation of making and implementing decisions without approval involved an instance in which students handed in a written version of the homework, rather than submit it electronically. He told the students that he would not deduct points for lateness if they turned in the paper copy that day and delivered it electronically by the following date. Professor Banta overruled him saying that he wanted a point deducted for submitting homework in the wrong format (Tr. 901). The second bullet point refers to the e-mail in which he used the “f” word in a self-deprecating manner, for which he had already apologized, and which was the subject of the hearing scheduled for the day after he was terminated (Tr. 902-07). With respect to the third point, Mr. Longxi testified that he was not scheduled to proctor a quiz on March 13 because that was a Friday, and Natalie, not he, had office hours that day (Tr. 908-09). Finally, with respect to the fourth bullet point, he testified that his vacation did not interfere with his TA duties because he was only required to work on Tuesdays, Wednesdays and Thursdays and he therefore did not miss any work days (Tr. 909-910). Neither Professor Banta, nor Professor Kumar, discussed any of these issues with Mr. Longxi before he was terminated (Tr. 910).

Mr. Longxi appealed his dismissal to Dean Kachani of the Fu School, who denied the appeal on the ground that there were “sufficient grounds for termination.” (Pet. Ex. 60). Dean Kachani testified that he conducted an investigation of some sort that led him to the conclusion that Mr. Longxi did have duties to perform on March 13 and that Professor Banta had ordered him not to travel until after that day (Tr. 932-33). Dean Kachani testified that this led him to conclude that Mr. Longxi was guilty of “dereliction of duties and insubordination.” (Tr. 935). Mr. Longxi was not afforded an opportunity to respond to whatever evidence Dean Kachani relied upon in reaching this conclusion (Tr.951).

The merits and fairness of this treatment are not a subject of this hearing. This incident is significant because it clearly reveals the distinctly economic nature of the employment relationship between graduate student employees and the University. As stated in the termination letter, Mr. Longxi was terminated from his position as a TA, but his student status was not affected. The alleged offenses relied upon to justify his termination all relate to his employment as a TA, not his academic performance. Professor Kachani’s explanation for his decision to uphold the termination, that Mr. Longxi was guilty of “dereliction of duty” and “insubordination,” are typical employment offenses. None of his alleged offenses related to his academic studies. The consequences of the termination were purely economic: the loss of his semi-monthly stipend payments (Tr. 933). Dean Kachani further explained why Mr. Longxi was terminated a day before the hearing regarding alleged harassment. He explained that the hearing was unrelated to Mr. Longxi’s employment status. The Dean’s Discipline

Hearing related to his status as a student, not his employment as a TA (Tr. 937-38). As Dean Kachani put it, “Those are two different matters.” (Tr. 937).

C. Evidence Regarding the Growth and Impact of Collective Bargaining by Graduate Student Assistants

1. The Growth of Collective Bargaining in the Public Sector

The Board in NYU II, cited by the Board in the Order reopening this case, stated that one factor to consider would be the growth of collective bargaining for graduate student employees in the public sector. At the commencement of this hearing, the Petitioner introduced twelve collective bargaining agreements covering graduate student employees at public universities (Pet. Ex. 1-12). By the time the hearing closed, Graduate Employee Union Local 6950, UAW, had added to the trend, entering into a collective bargaining agreement scheduled to take effect on July 1, covering Graduate Assistants at the University of Connecticut, including Teaching Assistants and Research Assistants (Pet. Ex. 73). Clearly, a decision that graduate student employees do not have the right to organize is out of step with trends in academia in this country.

2. The Experience at New York University

The experience with collective bargaining at New York University shows that collective bargaining for graduate assistants works. On March 1, 2001, the UAW and NYU signed a letter agreement in which the University recognized the Union and committed to bargain over graduate student employment (Jt. 2; Jt. Ex. 9, p. 130).¹⁴ The

¹⁴ Joint Exhibits 2 through 8 and Employer Exhibits 20 and 21 were previously introduced into evidence in *New York University*, Case No. 2-RC-23481, held in 2010. Joint Exhibits 9 and 10 are excerpts from the transcript of that case (Tr. 733). In that transcript, the exhibits are referred to by the exhibit numbers assigned during that hearing. To follow references to those exhibits in the transcript, the following list matches the exhibit numbers from the *NYU* hearing with the numbers assigned in this case:

UAW recognized “that certain issues involving the academic mission of the University lie outside the scope of bargaining;” “that the University’s bargaining obligation is limited by statute to ‘wages, hours, and other terms and conditions of employment’ of graduate assistants;” and “that the collective bargaining obligations of the University do not encompass matters that pertain exclusively to degree requirements of any University student.” (Jt. Ex. 2). The letter agreement went on to specify examples of academic matters excluded from NYU’s bargaining obligations, including “the merits, necessity, organization, or size of any academic activity, program or course established by the University, the amount of any tuition, fees, fellowship awards or student benefits (provided they are not terms and conditions of employment), admission conditions and requirements for students, decisions on student academic progress (including removal for academic reasons), requirements for degrees and certificates, the content, teaching methods and supervision of courses, curricula and research programs and any issues related to faculty appointment, promotion or tenure.” (Jt. Ex. 2).

The parties began bargaining a first contract in April 2001, and reached a tentative agreement in January 2002 (Jt. Ex. 9, pp. 131-32). The agreement was ratified by the membership on January 30, 2002, retroactive to September 2001 (Jt. Ex. 3; Jt. Ex. 9, pp. 137). At the conclusion of negotiations, both parties made public

Columbia Exhibit Number	NYU Hearing Exhibit Number
Jt. Ex. 2 -----	Pet. Ex. 5
Jt. Ex. 3 -----	Pet. Ex. 6
Jt. Ex. 4 -----	Pet. Ex. 7
Jt. Ex. 5 -----	Pet. Ex. 29
Jt. Ex. 6 -----	Pet. Ex. 30
Jt. Ex. 7 -----	Er. Ex. 40
Jt. Ex. 8 -----	Er. Ex. 41
Er. Ex. 20 -----	Er. Ex. 39
Er. Ex. 21 -----	Er. Ex. 40

announcements expressing that they were pleased with the outcome of negotiations (Jt. Ex. 4; Jt. Ex. 9, p. 133-35; Jt. Ex. 10, pp. 734-35). A memorandum to “The University Community” from Robert Berne, NYU’s then Vice President for Academic and Health Affairs, specifically noted that the agreement “achieves all” of the aims the University identified at the start of negotiations, including “the primacy of our fundamental academic mission, values and prerogatives.” (Jt. Ex. 4). Similarly, a press release distributed by NYU noted that “[t]he agreement reaffirms fundamental academic prerogatives of the University,” and quoted NYU President Dr. L. Jay Oliva’s statement that “I am very pleased at the outcome of these efforts.” (Jt. Ex. 4).

The collective bargaining agreement protected NYU’s “academic mission, values and prerogatives” via an extensive management and academic rights clause (Jt. Ex. 3; Jt. Ex. 10, pp. 736, 743). The clause, set forth at Article XXII of the agreement, provided:

A. Management of the University is vested exclusively in the University. Except as otherwise provided in this Agreement, the Union agrees that the University has the right to establish, plan, direct and control the University’s missions, programs, objectives, activities, resources, and priorities; to establish and administer procedures, rules and regulations, and direct and control University operations; to alter, extend or discontinue existing equipment, facilities, and location of operations; to determine or modify the number, qualifications, scheduling, responsibilities and assignment of graduate assistants; to establish, maintain, modify or enforce standards of performance, conduct, order and safety; to evaluate, to determine the content of evaluations, and to determine the processes and criteria by which graduate assistants’ performance is evaluated; to establish and require graduate assistants to observe University rules and regulations; to discipline or dismiss graduate assistants; to establish or modify the academic calendars, including holidays and holiday scheduling; to assign work locations; to schedule hours of work; to recruit, hire, or transfer; to determine how and when and by whom instruction is delivered; to determine in its sole discretion all matters relating to faculty hiring and tenure and student admissions; to introduce new methods of instruction; or to subcontract all or any portion

of any operations; and to exercise sole authority on all decisions involving academic matters.

B. Decisions regarding who is taught, what is taught, how it is taught and who does the teaching involve academic judgment and shall be made at the sole discretion of the University.

C. The above enumeration of management rights is not exhaustive and does not exclude other management rights not specified herein, nor shall the exercise or non-exercise of rights constitute a waiver of any such rights by the University.

D. No action taken by the University with respect to a management or academic right shall be subject to the grievance or arbitration procedure or collateral suit unless the exercise thereof violates an express written provision of this agreement.

(Jt. Ex. 3, pp. 19-20).

This CBA remained in effect through August 31, 2005 (Jt. Ex. 3). Prior to the Board's July 2004 decision in Brown, the parties had a peaceful and productive collective bargaining relationship. At the *NYU II* hearing, the University introduced copies of two arbitration decisions involving grievances brought by the Union that NYU believed raised claims that threatened its academic freedom (Jt. Ex. 7, 8). Assuming, *arguendo*, that the claims made by the Union in those grievances somehow carried some threat to academic freedom, the decisions demonstrate that the collective bargaining process worked to protect that academic freedom. Both of those grievances were denied by arbitrators on the basis of the CBA's management and academic rights clause. A third grievance referred to by NYU was withdrawn by the Union (Jt. Ex. 10, p. 689). In one of the cases identified by the University, the Union argued that the decision to award certain teaching positions to graduate students from other schools rather than to NYU graduate students violated the CBA's recognition clause (Jt. Ex. 7). Arbitrator Scheinman disagreed with the Union's position, opining that "the applicable

contract language is susceptible to only one (1) reasonable construction: The University has complete discretion to determine when its Graduate Students will be used to teach a course, what courses they will teach and when courses will be taught by instructors who are not Graduate Students.” (Jt. Ex. 7, at 14). Thus, the results of these grievances confirm that the collective bargaining process worked to protect academic freedom. As NYU’s Director of Labor Relations ultimately conceded, the academic rights language of the collective bargaining agreement “provided the university with a mechanism” to protect its academic freedom (Jt. Ex. 10, pp. 742-43).

After Brown was handed down, NYU signaled plans to withdraw recognition after the CBA expired. On April 26, 2005, the University’s Faculty Advisory Committee, a body composed of twenty faculty members, issued a “recommendation” that the Employer withdraw recognition (Er. Ex. 20). This recommendation appeared to be based solely on the fact that the Union had filed the grievances, discussed above, that the Committee claimed “threatened to impede the academic decision-making authority of the faculty.” (Er. Ex. 20). However, the Committee acknowledged that “no case involving academic decision making has been decided in the favor of the United Auto Workers,” and no other concrete criticisms or reasons for discontinuing collective bargaining for graduate assistants were identified in the Committee’s recommendation (Er. Ex. 20). To the contrary, the Committee recognized many positive results of the CBA, which it argued should be preserved, including improved “stipend levels, health care coverage, sick leave, posting of positions, work loads, and grievance procedures.” (Er. Ex. 20).

In May 2005, the University's Senate Academic Affairs Committee and Senate Executive Committee issued a joint report also recommending that NYU discontinue collective bargaining solely on the basis of "the realities and risks to maintenance of the University's management rights and academic decision-making from the UAW's vigorous and relentless pursuit of the grievances it has chosen to press" - again, despite the fact that none of those grievances were successful for the Union, and therefore none actually had any effect on the University's management or academic rights (Er. Ex. 21). Furthermore, the Senate Committees' report noted many concrete, positive results of collective bargaining, including "increased stipends, health care benefits, stability, and clarity of work expectations" for graduate employees (Er. Ex. 21). Directly contrary to at least one of the assumptions underlying Brown, the Senate Committees' report noted that unionization had been positive for the student/faculty relationship, quoting several salient statements from faculty members:

- Impact on quality of relationship between faculty and graduate students:
 - o "The union contract has definitely diminished areas of friction around these relationships – there's a greater professional clarity."
- Impact on departmental morale:
 - o "Departmental morale much improved."
- Overall:
 - o "This cuts two ways re: graduate assistants. On the one hand, those students who have been abused by faculty in the past can no longer be abused. On the other hand, those who have been let off too lightly also get more work from a faculty who are also more aware of their rights. Overall more equality . . . which I think is good."
 - o "So far, nothing in the past four years of unionization suggests needed change."

o “No direct effect. Our department has, over the years, become more attentive to grad students’ needs. If anything, the union has facilitated this, which has improved overall relations.”

(Er. Ex. 21).

Despite the positive results of unionization identified in these reports, NYU withdrew recognition from the Union in August 2005 (Jt. Ex. 9, p. 138). As a consequence of this decision – and only after the CBA expired – graduate employees went on strike during the first semester of the 2005-2006 academic year (Jt. Ex. 9, pp. 138-39). Thus, the University’s withdrawal of recognition, rather than collective bargaining, resulted in labor unrest. As long as these employees enjoyed the protection of the Act, successful collective bargaining took place. When they lost the protection of the Act, labor strife followed. The experience at New York University demonstrates that extending the protections of the Act to graduate student employees serves the statutory purpose to promote labor peace.

Recently, NYU and the UAW have entered into a new collective bargaining agreement covering graduate student employees (Pet. Ex. 47). Thus, graduate student employees at NYU have rejoined the growing movement to organize to engage in collective bargaining.

3. Academic Studies

The majority in Brown relied upon conjecture about possible damage that collective bargaining might cause to graduate education. The majority speculated that collective bargaining might undermine student-faculty relationships or threaten the academic freedom of universities. The Employer introduced into the record a study that

contradicts this speculation (Er. Ex. 81). That study was recently published in the ILR Review, the official journal of the Cornell University Industrial and Labor Relations School. It reports on a survey of graduate student employees at public universities where the graduate assistants are represented by a labor organization, comparing their survey responses with answers offered by graduate student assistants at similar non-union public sector universities.¹⁵ “Effects of Unionization on Graduate Student Employees: Faculty - Student Relations, Academic Freedom, and Pay,” Rogers, Eaton and Voos, 66 ILR Rev. 485 (4-15-2013). The study contradicts the assumptions made by the majority in Brown and even suggests that collective bargaining might improve student-faculty relationships. The authors concluded:

While the NLRB in the *Brown* decision ... emphasizes the potential for a negative impact on faculty-student relationship, our results support other theoretical traditions that suggest unionization might have no impact or even a positive impact on those relationships. In the unionized departments we surveyed, students reported better personal and professional support relationships with their primary advisors than were reported by their nonunion counterparts. Our data do not permit us to conclude with certainty the reason for the positive impact.... Either way, we find no support for the NLRB’s contention in the *Brown* decision that union representation would harm the faculty-student relationship.

Also contrary to the Board in *Brown*, ample reason exists to think that unionization might actually strengthen the academic freedom of graduate students; however, we found only scant evidence of a positive effect.... We did find some support, albeit weak, for a positive impact of unionization on the overall climate of academic freedom (both departmental and university-wide). Again, no support was found for the NLRB’s contention in *Brown* that GSE¹⁶ unionization would diminish academic freedom.

(Er. Ex. 81 at 507).

¹⁵ The comparison had to be conducted at public sector universities because the Board decision in Brown had frustrated organizing attempts by graduate student assistants in the private sector until the recent successful effort by NYU student employees to organize outside the processes of the NLRB.

¹⁶ “Graduate Student Employee.”

The Employer called Professor Henry Farber of Princeton University to dispute this study. The Employer paid Professor Farber \$735 per hour to criticize the methodology of the study and the validity of its conclusions (Tr. 569). Not surprisingly, Dr. Farber was indeed critical of the study and the authors' conclusions (Tr. 544-554). He acknowledged, however, that in order to be published in the ILR Review, the study would have been subjected to a peer review process (Tr. 570). He also testified that he was aware of no empirical evidence that union representation has any negative effects on faculty/student relationships, nor any evidence that union representation has damaged academic freedom in any way (Tr. 572-73).

D. The Regional Director should Direct an Election

1. The Regional Director is not Bound to Follow Brown

In remanding this case, the Board made it clear that it does not expect the Regional Director to blindly follow Brown's holding that "graduate student assistants are not employees." Brown, 342 N.L.R.B. at 493. This case was previously dismissed by the Regional Director on that basis. The full, five-member Board unanimously reversed that dismissal, citing NYU II. In NYU II, the Board held that there were compelling reasons to reconsider Brown, including that Brown overruled a decision issued less than four years earlier, and that Brown was based upon policy considerations extrinsic to the Act. The Board in NYU II also held that the growth of collective bargaining among graduate student employees and expert evidence regarding policy considerations upon which Brown purported to be based would also be relevant. In its Order reopening this case, the Board directed the Regional Director to conduct a hearing and issue a decision. The citation to NYU II is a directive to the Regional Director to consider the

factors cited by the Board in that decision. The Regional Director should weigh those factors rather than assume that Brown is controlling.

In addition, the decision reopening this case includes a footnote stating, “Members Miscimarra and Johnson note that the Regional Director properly dismissed the petition based on existing law [citing Brown], and the Board does not here decide whether or not existing law should be overruled.” The other three Board members did not join in this footnote endorsing the proposition that it was proper to apply Brown to this case. The fact that only two members of the Board joined in this footnote compels the conclusion that a majority of the Board rejected the proposition that the Regional Director is obligated to follow Brown in deciding this case.

2. The Literal Language of the Statute Includes Employees who are also Students

One of the arguments that the Board asked the Regional Director to consider is whether the Board’s Brown decision is inconsistent with the broad definition of employee in section 2(3) of the Act. The Board majority in Brown did not consider the language of section 2(3) of the Act. This is contrary to the most fundamental principles of statutory construction. In interpreting the meaning of any statute, “[w]e start, as always, with the language of the statute.” Williams v. Taylor, 529 U.S. 420, 431 (2000); Am. Tobacco Co. v. Patterson, 456 U.S. 63, 68 (1982) (“[I]n all cases involving statutory construction, our starting point must be the language employed by Congress . . .”) (quotation and citation omitted). The language of section 2(3) demands a broad, inclusive reading.

Section 2(3) provides, in relevant part, “[t]he term ‘employee’ shall include any employee . . .” 29 U.S.C. §152(3). The Supreme Court has repeatedly interpreted this

language broadly. The “breadth” of this definition “is striking: the Act squarely applies to ‘any employee.’ The only limitations are specific exemptions for agricultural laborers, domestic workers, individuals supervised by their spouses or parents, individuals employed as independent contractors or supervisors, and individuals employed by a person who is not an employer under the NLRA.” Sure-Tan, Inc. v. NLRB, 467 U.S. 883, 891 (1984) (citing 29 U.S.C. §152(3)); see also Sunderland Constr. Co., 309 N.L.R.B. 1224, 1226 (1992) (“Under the well settled principle of statutory construction – *expressio unius est exclusio alterius* – only these enumerated classifications are excluded from the definition of employee.”) Of particular significance, there is no exclusion in the statute for employees who are “also students” or “primarily students.”

In NLRB v. Town & Country Electric, Inc., a unanimous Supreme Court elaborated that “[t]he ordinary dictionary definition of ‘employee’ includes any ‘person who works for another in return for financial or other compensation,’” and the Act’s definition of employee as including “any employee” “seems to reiterate the breadth of the ordinary dictionary definition.” 516 U.S. 85, 90 (1995) (quoting American Heritage Dictionary 604 (3d ed. 1992)) (emphasis in original); see also, e.g., Am. Tobacco, 456 U.S. at 68 (“[W]e assume that the legislative purpose is expressed by the ordinary meaning of the words used. Thus, absent a clearly expressed legislative intention to the contrary, that language must ordinarily be regarded as conclusive.”) (quotation and citation omitted). The Court in Town & Country noted that a broad reading of “employee” consistent with the dictionary definition of the word also comports with the common law master-servant relationship. The Court explained that “[i]n the past, when Congress has used the term ‘employee’ without defining it, we have concluded that

Congress intended to describe the conventional master-servant relationship as understood by common-law agency doctrine.” *Id.* at 94 (quotation and citation omitted). Here, the broad dictionary definition of “employee” is consistent with the traditional agency doctrine because “[a]t common law, a servant was one who performed services for another and was subject to the other’s control or right of control. Consideration, i.e. payment, is strongly indicative of employee status.” Boston Med. Ctr., 330 N.L.R.B. 152, 160 (1999), citing Town & Country, 516 U.S. at 93-95.

In addition to being faithful to the ordinary meaning of the statutory language, the Town & Country court also held that a “broad, literal interpretation of the word ‘employee’ is consistent with several of the Act’s purposes, such as protecting the right of employees to organize for mutual aid without employer interference, and encouraging and protecting the collective-bargaining process.” *Id.* at 91, citing Sure-Tan, 467 U.S. at 892; Republic Aviation Corp. v. NLRB, 324 U.S. 793, 798 (1945) (quotation marks omitted). A broad interpretation of “employee” is also consistent with the Act’s legislative history: “It is fairly easy to find statements to the effect that an ‘employee’ . . . simply ‘means someone who works for another for hire,’ H.R. Rep. No. 245, 80th Cong., 1st Sess., 18 (1947), and includes ‘every man on a payroll’, 79 Cong. Rec. 9686 (1935).” *Id.* By contrast, “contrary statements, suggesting a narrow or qualified view of the word, are scarce, or nonexistent – except, of course, those made in respect to the specific . . . exclusions written into the statute.” *Id.*

Given the language of the statute, the purposes of the Act, and its legislative history, the Board and courts have traditionally taken a very expansive view of the types of workers who meet the definition of “employee.” *See, e.g.,* Town and Country (paid

union organizers may also simultaneously be considered “employees”); Sure-Tan, 467 U.S. 883 (undocumented workers are “employees”); NLRB v. Hendricks County Rural Elec. Membership Corp., 454 U.S. 170 (1981) (certain confidential employees are “employees” under Section 2(3)); Phelps Dodge Corp. v. NLRB, 313 U.S. 177 (1941) (job applicants are “employees”); Seattle Opera Ass’n, 331 N.L.R.B. 1072 (2000), enforced at 292 F.3d 757 (D.C. Cir. 2002) (auxiliary choristers at non-profit opera company are “employees”); Boston Med. Ctr., 330 N.L.R.B. 152 (1999) (medical interns, residents, and fellows are “employees”). In Seattle Opera, the D.C. Circuit distilled the Supreme Court’s and Board’s broad reading of the statute and the common-law master servant relationship into a two-part test: “[I]t is clear *that where he is not specifically excluded from coverage by one of section 152(3)’s enumerated exemptions the person asserting statutory employee status does have such status if (1) he works for a statutory employer in return for financial or other compensation; and (2) the statutory employer has the power or right to control and direct the person in the material details of how such work is to be performed.*” 292 F.3d at 762 (internal citations omitted) (emphasis in original). Applying that standard to Columbia leads to the conclusion that the statute applies to these student employees. They provide services for the University to help fulfill its missions. They receive compensation for that work. They work under the direction and control of the University. They are employees.

3. The Board Decision in NYU I was Consistent with Precedent

Consistent with all of the authority discussed above, the Board in New York University, 332 N.L.R.B. 1205 (2000) (“NYU I”), concluded that graduate student workers - referred to as “graduate assistants” - are employees under Section 2(3). After

noting that graduate workers are not within the enumerated exclusions in the statute, the Board concluded that “[t]he uncontradicted and salient facts establish that graduate assistants perform services under the control and direction of the Employer, and they are compensated for these services by the Employer.” NYU I, 332 N.L.R.B. at 1206. “Graduate assistants work as teachers or researchers,” “perform their duties for, and under the control of, the Employer’s departments or programs,” and “are paid for their work and are carried on the Employer’s payroll system.” Id.

In addition, the Board noted that the graduate assistants’ relationship with NYU is strikingly similar to the relationship that medical interns, residents, and fellows had with their employer in Boston Medical, a case decided just a few years before NYU I that found “ample evidence” to support a finding that apprentice physicians fall within the definition of employee “notwithstanding that a purpose of their being at a hospital may also be, in part, educational.” Boston Med., 330 N.L.R.B. at 160; see NYU I, 332 N.L.R.B. at 1206-07. Boston Medical was reaffirmed in St. Barnabas Hosp., 355 N.L.R.B. No. 39 (2010), which rejected the argument that Boston Medical should be reconsidered in light of Brown.

Finally, the NYU I Board rejected the Employer’s policy argument that permitting graduate workers to unionize would damage academic freedom, noting that this argument was unsupported by any evidence. The Board also noted that it has asserted jurisdiction over private, non-profit colleges and universities since Cornell University, 183 N.L.R.B. 329 (1971). “After nearly 30 years of experience with bargaining units of faculty members, we are confident that in bargaining concerning units of graduate assistants, the parties can ‘confront any issues of academic freedom as they would any

other issue in collective bargaining.” NYU I, 332 N.L.R.B. at 1208 (quoting Boston Med., 330 N.L.R.B. at 164). The experience at NYU described above in Part C, 2 above confirms this prediction.

Petitioner submits that NYU I distilled all of the earlier relevant cases from both the Supreme Court and the Board into the proper legal framework for assessing whether graduate student workers are “employees.” And, as explained below, Brown unconvincingly and inconsistently departed from those earlier cases, relying on conjecture about policy considerations rather than rules of statutory construction to deny graduate employees the right to organize.

4. Brown Dramatically Departed from the Language of the Act and Existing Precedent Regarding the Definition of “Employee”

The Board in Brown ignored the broad language of the statute, Supreme Court decisions giving an expansive interpretation of the term “employee,” and the well-reasoned decision in NYU I issued just four years earlier. Instead, the Board relied on unsupported policy considerations extrinsic to labor law to conclude that graduate students who perform work for the universities they attend, for compensation, and at the universities’ direction and control, are not employees. Rather than analyzing whether graduate workers are “employees” under Section 2(3) - that is, rather than determining whether graduate workers perform services for an employer for compensation, at the employer’s direction and control - Brown simply concluded that graduate workers have a “primarily educational” relationship with the Employer. Brown, 342 N.L.R.B. 483, 488 (2004). According to Brown, because graduate workers “are first and foremost students, and their status as graduate student assistant is contingent upon their continued enrollment as students . . . they are primarily students” and not employees.

Id. This holding creates a false dichotomy between working and learning that has no foundation in the law, evidence or logic.

Brown relied heavily on the academic freedom argument rejected in NYU I, as well as a policy argument that unionization of graduate workers would damage the student-faculty relationship. In this regard, Brown adopted reasoning set forth in St. Clare's Hospital, 229 N.L.R.B. 1000 (1977), a case that was expressly overturned by Boston Medical. See 330 N.L.R.B. at 152 (“Having carefully reviewed the entire record in this proceeding . . . the Board has decided to overrule *Cedars-Sinai*, *St. Clare's Hospital*, and other decisions following those cases . . .”). Nonetheless, Brown relied upon St. Clare's conclusion “that subjecting educational decisions [to collective bargaining] would be of ‘dubious value’ because educational concerns are largely irrelevant to wages, hours, and working conditions,” and that “in many respects, collective treatment is ‘the very antithesis of personal individualized education.’” Brown, 342 N.L.R.B. at 489-90, quoting St. Clare's, 229 N.L.R.B. at 1002. Brown also adopted St. Clare's determination “that collective bargaining would unduly infringe upon traditional academic freedoms,” concluding that “[i]mposing collective bargaining would have a deleterious impact on overall educational decisions by the Brown faculty and administration.” Id. at 490, citing St. Clare's, 229 N.L.R.B. at 1003. According to Brown, collective bargaining by graduate workers would adversely affect “decisions . . . includ[ing] broad academic issues involving class size, time, length, and location, as well as issues over graduate assistants’ duties, hours, and stipends. In addition, collective bargaining would intrude upon decisions over who, what, and where to teach or research - the principal prerogatives of an educational institution like Brown.” Id.

The Brown majority did not cite any evidence to support its conclusions about the supposed adverse effects of collective bargaining by graduate student workers. This is not surprising because, as the Employer’s expert witness conceded, there is no empirical evidence that collective bargaining has any adverse effects on academic freedom or the educational process. On the contrary, there is now at least one published academic study that contradicts this speculation. Moreover, the evidence regarding the experience at NYU shows that collective bargaining did not infringe on academic freedom and may have improved student-faculty relationships. This is consistent with the findings of the study published in the ILR Review.

Brown relied entirely on unsupported conjecture from a nearly thirty-year-old, overruled decision. This conjecture cannot be reconciled with Boston Medical, where the Board overruled St. Clare’s and held that the proper analysis for determining whether a group of workers are “employees” entitled to the Act’s protection is whether they perform services for an employer for compensation, at the employer’s direction and control. Boston Med., 330 N.L.R.B. at 159-61 (discussing, *inter alia*, analysis set forth in Sure-Tan and Town & Country). Accord, Seattle Opera, 92 F.3d at 762. Boston Medical rejected the “primarily educational” rationale set forth in St. Clare’s as “flawed in many respects.” Id. at 159.

Moreover, Boston Medical expressly rejected the academic freedom and other policy considerations identified in St. Clare’s, holding that the notion that collective bargaining by student workers will impair academic freedom “puts the proverbial horse before the cart.” Id. at 164:

The contour of collective bargaining is dynamic with new issues frequently arising out of new factual contexts: what can be bargained about, what the

parties wish to bargain about or concentrate on, and what the parties are free to bargain about, may change. But such problems have not proven to be insurmountable in the administration of the Act . . . [W]e note that there are often restrictions on bargaining due to outside influences, e.g., contracts an employer may have with other concerns that require the employer to conduct its business in a specific manner, or specifications in a contract that limit what an employer may or may not do. An employer is always free to persuade a union that it cannot bargain over matters in the manner suggested by the union because of these restrictions. But that is part of the bargaining process: the parties can identify and confront any issues of academic freedom as they would any other issue in collective bargaining. If the parties cannot resolve their differences through bargaining, they are free to seek resolution of the issues by resort to our processes, and we will address them at the appropriate time.

Id. Accordingly, the Board in Boston Medical refused to “assume” without evidence that collective bargaining would “interfere with the educational missions” of academic employers or prevent student workers “from obtaining the education necessary to complete their professional training.” Id. at 164-65. “If there is anything we have learned from the long history of this Act, it is that unionism and collective bargaining are dynamic institutions capable of adjusting to new and changing work contexts and demands in every sector of our evolving economy.” Id. at 165.

Brown’s failure to follow Boston Medical - indeed, its reliance on a case expressly rejected by Boston Medical - is particularly troubling because Brown did not purport to overrule Boston Medical. See, Brown, 342 N.L.R.B. at 483 n.4 (“[W]e express no opinion regarding the Board’s decision in Boston Medical Center.”) Rather, Brown sought to distinguish Boston Medical solely on the basis that the medical apprentices in that case had already obtained their degrees, whereas graduate assistants have not yet graduated. See, Brown, 342 N.L.R.B. at 487. However, the reasoning set forth in Boston Medical - which, as noted above, is supported by the language of the Act and

well-established Supreme Court precedent on the definition of “employee” - is equally applicable to graduate assistants. In the light of the Board’s decision in St. Barnabas, Brown must be seen as an outlier that cannot be reconciled with prior and subsequent decisions.

Thus, an additional reason not to follow Brown lies in its reliance on cases expressly overruled by Boston Medical, such as St. Clare’s. The proper course would be to faithfully apply the lessons of Town & Country, Sure-Tan, and their progeny, which explain the correct analysis for determining employee status under the Act. Finally, post-Brown, the Board has made clear that Boston Medical remains good law. Because Brown cannot be harmonized with Boston Medical and St. Barnabas, and because it fails to follow not only that case, but also the clearly established law regarding the definition of “employee” in Section 2(3) set forth in Sure-Tan, Town & Country, and Seattle Opera, the Regional Director should not rely upon Brown. Instead, the decision in this case should be based upon St. Barnabas, Boston Medical, Town & Country, Sure-Tan, the other decisions cited above, and the clear language of the statute.

a. *Brown’s Holding is not Dictated by Adelpia or Leland Stanford*

In addition to its reliance on rejected policy determinations extrinsic to the Act, Brown purported to find legal support for its decision in two earlier Board cases involving universities, Adelpia University, 195 N.L.R.B. 639 (1972), and Leland Stanford Junior University, 214 N.L.R.B. 621 (1974). Neither of these cases support the proposition that graduate student workers performing services for compensation under the direction and control of an Employer are not employees under section 2(3).

In Adelphia, the Board held that graduate assistants should be excluded from a faculty bargaining unit, because the student workers did not share a community of interest with the faculty members. 195 N.L.R.B. at 640. The Board's conclusion was based, in large part, on the fact that the student workers were "guided, instructed, and corrected in the performance of their assistantship duties by the regular faculty members to whom they are assigned." Id. Adelphia did not hold that the graduate assistants were not employees under the Act, and "[n]othing in the Board's decision suggests that the graduate assistants could not have formed a bargaining unit of their own." Brown, 342 N.L.R.B. at 495 (Members Liebman and Walsh, dissenting).

Similarly, Leland Stanford did not hold that graduate student workers are categorically excluded from the definition of "employee" in section 2(3). Rather, that case held that the petitioned-for unit of research assistants were not employees because their relationship with the employer "is not grounded on the performance of a given task where both the task and the time of its performance is designated and controlled by the employer." 214 N.L.R.B. at 623. In other words, the petitioned-for RAs in Leland Stanford were not employees under section 2(3) on the specific facts of that case because they failed to meet one of the key factors in the employee test: they did not perform services at the employer's direction and control. See, e.g., Seattle Opera, 292 F.3d at 762; see also, Brown, 342 N.L.R.B. at 495 (Members Liebman and Walsh, dissenting) (noting that Leland Stanford's "narrow rationale is not inconsistent with NYU [I]).

- b. *Brown's "Primarily Students" Rationale for Denying the Act's Coverage to Graduate Student Workers is also Inconsistent with the Board's Apprenticeship Cases.*

In order to distinguish Boston Medical, Brown set up the false dichotomy between student workers who are "primarily students," and who thus have a "primarily educational" relationship with their employer, and student workers who are primarily employees because they have finished their coursework and received their academic degrees. Brown, 342 N.L.R.B. at 487. This rationale cannot be reconciled with Board precedent concerning other student workers including the medical interns, residents, and fellows in Boston Medical.

Brown's "primarily students" rationale also cannot be reconciled with the Board's long history of recognizing that apprentices are employees, entitled to the protections of the Act. Apprentices, by definition, are required to work as a part of their training for a craft or trade. Apprentices typically work for an employer while taking classes to learn the craft. This work provides on-the-job training that is critical to learning the craft. Apprentices generally must complete a certain number of hours of classroom training and a specified number of years of work in the field in order to qualify as journeymen. Despite the fact that the work of apprentices is thus part of their training for a career, the Board has consistently treated such apprentices as employees.

As far back as 1944, the Board held that apprentices who attended a school as part of a 4 or 5 year training program and worked under the supervision of training supervisors for 2½ years while learning shipbuilding skills were employees within the meaning of the Act. Newport News Shipbuilding and Dry Dock Co., 57 N.L.R.B. 1053, 1058-59. Similarly, in General Motors Corp., 133 N.L.R.B. 1063, 1064-65 (1961), the

Board found apprentices who were required to complete a set number of hours of on-the-job training, combined with related classroom work in order to achieve journeyman status, to be employees. See also, Chinatown Planning Council, Inc., 290 N.L.R.B. 1091, 1095 (1988) (describing apprentices “working at regular trade occupations while receiving on-the-job training”), enfd, 875 F.2d 395 (2d Cir. 1989). All of these apprentices were students and employees at the same time. Their work was related to their schooling. They learned while working and earning money. In short, they were students and employees simultaneously.

The Board has never suggested that, in order to find an apprentice to be an employee, it was necessary to weigh the educational benefit that he received from working with a journeyman against the economic benefit his employer derived in order to decide whether the relationship was “primarily educational.” “[I]t has never been doubted that apprentices are statutory employees eligible to vote in elections with their more experienced colleagues.” Boston Med., 330 N.L.R.B. at 161, citing Vanta Co., 66 N.L.R.B. 912 (1946). The reason is quite simple. There is no inconsistency between working and learning.

Like apprentices, graduate student workers are receiving an education while simultaneously performing service for the Employer designed to prepare them for their post-graduation careers. Indeed, the Employer repeatedly refers to teaching and research as part of the “professional apprenticeship” of the student employees. The use of the word “apprenticeship” by this highly erudite institution is an explicit acknowledgment that these individuals are both students and employees. By definition, an “apprentice” is an employee as well as a student. The Board’s apprenticeship cases

demonstrate that a worker can be a student engaged in a course of study at the same time as he or she is an “employee” under the Act. Accordingly, these cases provide yet another legal reason not to follow Brown.

5. The Record in this Case Exposes the Flaws in Brown

The majority’s reasoning in Brown is undermined by the record in this case. The majority in Brown began with the assumption that the academic relationship between student and school was inseparable from the economic relationship between employee and employer. The Board then goes on to posit that collective bargaining with respect to the economic relationship will injure the academic relationship by harming the mentoring relationship between student and faculty advisor, and by somehow undermining academic freedom. The record in this case contradicts each of these propositions.

First, the record establishes that the economic relationship is not inseparable from the academic relationship. When a graduate student is selected to work as a Preceptor, the University sends a letter informing her that continuation in the position for a second year is “contingent on satisfactory performance...” (Er. Ex. 14, 15). There is no suggestion that failure to deliver “satisfactory” performance will affect academic status. A TF whose work is not satisfactory must be given an opportunity to improve and, failing that, is subject to a warning, suspension or dismissal (Er. Ex. 40, para. 18; Ex. 52; Tr. 469-70). Many teaching positions, such as appointments to teach classes in the Core, require that the student go through an application and interview process to demonstrate his qualifications to teach the class. Teaching assignments and duties for TFs are determined by the academic needs of the departments or programs where they

perform their duties (Tr. 302, 463-64, 836). Teaching Fellows may be evaluated separately on their teaching performance and “receive warnings where teaching is substandard.” (Pet. Ex. 23, p. 2). These are all examples of ways in which the University treats the employment relationship as separable from the academic relationship.

The clearest illustration of this distinction can be found in the treatment of Longxi Zhao. When he was accused of dereliction of duty and insubordination on his job, Mr. Longxi was terminated from the job, without any change in his academic status. Moreover, his use of the “f” word in an e-mail resulted in two separate actions, one directed at his employment status, and the other directed at his academic status. He was given a hearing to determine whether sending that e-mail should affect his student status, after he had already been fired from his job. As Dean Kachani put it, “Those are two different matters.” (Tr. 937). If the University can separate the academic and the employment relationship, there is no reason the same cannot be done in the context of collective bargaining.

This is confirmed by the evidence regarding collective bargaining at NYU. At the time the bargaining relationship was established, the parties agreed that collective bargaining would not impact academic freedom. NYU administrators apparently felt that collective bargaining intruded into the academic realm, but the examples that they cited all involved grievances in which NYU’s position prevailed. Thus, assuming that the Union did attempt to infringe upon academic freedom, the contract language did its job of protecting academic freedom. The parties were able to engage in collective bargaining without harm to academic freedom.

The academic study and the Employer's expert witness confirm that there is no basis for believing that collective bargaining will damage academic relationships. The study published in the Cornell ILR review found some evidence that collective bargaining may even improve student-faculty relationships (Er. Ex. 81). While the Employer's expert was dismissive of the study, he agreed that there is no evidence to support the speculation by the majority in Brown that collective bargaining would harm either academic freedom or student-faculty relationships. Moreover, the report by the NYU Faculty Senate that union representation "diminished areas of friction" between faculty and students and improved morale supports the findings of the published study (Er. Ex. 21). Thus, the record in this case shows that there is no foundation in the real world for the Brown decision.

6. Conclusion

"The central mission of Columbia University is to create, preserve and disseminate knowledge through teaching and research." (Pet. Ex. 64). Graduate student employees contribute to the fulfillment of this mission under the direction and control of the University. They receive compensation for doing so. They are therefore employees.

Student employees who teach perform services for the University that are fundamental to its mission. Graduate student employees teach many of the classes that are central to the undergraduate curriculum, including classes in the Core that are required of all undergraduate students. The record is replete with examples and statements about the contributions that Preceptors, Teaching Fellows and Teaching Assistants make to the educational mission of the University. Undergraduate students

pay tuition to receive this education, so these student employees also help the University to generate income as well as to fulfill its educational mission.

Student employees who perform research also provide services that help to fulfill the mission of the University. The work that they do contributes directly to fulfilling the research mission of the University. They are selected to work in laboratories or on research projects based upon the skills and talents that they can bring to fulfilling a research project. The work that they do also contributes to the finances of the Employer. The Employer receives government grants based upon the work performed by student officers of research. Their work can result in intellectual property for the Employer, which can generate additional income.

Graduate students who perform instructional services and research services are compensated by the University for performing these services. The Employer contends that stipends are “financial aid,” but there can be no doubt that, whatever these payments are called, they are compensation for services. Upon admission to GSAS, students are informed that their “funding package ... includes some teaching and research responsibilities.” (Er. Ex. 37, 38, 39). In other words, in order to receive the money, they have to fulfill their teaching or research “responsibilities.” Teaching and research duties required to receive stipends are referred to as “service obligations” on the GSAS website (Er. Ex. 39). The website also describes the stipends as “compensation for such service...” (Pet. Ex. 28). The payments may be referred to as “salaries” in appointment letters given to graduate students selected for teaching positions (Pet. Ex. 30). When Mr. Longxi was terminated from his TA position, he stopped receiving his salary. Students who receive outside funding are excused from

their “teaching obligations” if they obtain their own funding (Tr. 216-17). Student officers of instruction whose duties entail extra responsibilities, such as Preceptors and summer Teaching Fellows, receive extra compensation in recognition of these extra responsibilities. Payments are processed through the payroll department, subject to tax withholding and I-9 requirements. Thus, it is beyond dispute that the payments to students for teaching and conducting research, whatever label the Employer chooses to place on them, constitute compensation for services rendered.

In summary, graduate student employees perform services for the University. Those services help to fulfill the mission of the University and also generate income for the University. They perform these services under the direction and control of the University faculty. They receive compensation for performing those services. Therefore, they are “employees” within the meaning of the Act.

VIII. MASTERS’ STUDENTS AND UNDERGRADUATE STUDENTS WHO PERFORM SIMILAR SERVICES

The record contains extensive evidence that Masters’ and undergraduate students perform services similar to those performed by doctoral students in exchange for compensation. They should be included in the Unit in this case.

The record is replete with evidence that Masters’ and undergraduate students who teach perform similar work to the Ph.D. students in the classifications discussed above. The Vice Provost for Academic Affairs testified, “Teaching Assistants perform functions which are very similar to a Teaching Fellow.... In other parts of the University, they will be Masters’ students.” (Tr. 69). He further testified that Readers are Masters’ students “specifically appointed to grade papers and exams.” (Tr. 70). These are duties performed by Preceptors and Teaching Fellows. The Employer has a category of

student officers, Teaching Assistants III (“TA III”), reserved for undergraduate students who provide teaching services. TA IIIs lead recitation sections and laboratory sections and assist other undergraduate students (Tr. 69-70). Again, these are duties performed by TFs in GSAS, and TAs at the Fu School.

There are numerous examples in the record of Masters’ and undergraduate student employees fulfilling similar functions to Ph.D. students who teach. Masters’ students and TA IIIs in the Math Department serve as assistants in the classroom and help with grading (Tr. 221-22). These are functions performed by some TFs and by TAs at the Fu School. TA IIIs also work in the Math Department “help room” alongside Ph.D. students (Tr. 222, 228). When asked about differences between the work of TA IIIs and Ph.D. students in the help room, the Chair of the Math Department succinctly replied, “None.” (Tr. 228). Masters’ students in the School of Fine Arts serve as instructors for undergraduate students within the School of Fine Arts, and they also may be appointed as instructors in the University Writing Program that is a requirement for undergraduate students in Columbia College (Tr. 361-63). Ph.D. Teaching Fellows also serve as instructors in the University Writing Program (Tr. 185-86; 856, 868). Masters’ students at the School of International and Public Affairs (“SIPA”) can be appointed to Instructional Assistantships, which include Teaching Assistants, Departmental Research Assistants, and Readers (Er. Ex. 90, p. 1). Students in all of these categories assist with the instructional mission of the school performing duties that are also performed by TFs in GSAS (Er. Ex. 90, pp. 2-3).¹⁷ Thus, the duties of Masters’ and undergraduate students with teaching assignments are remarkably similar to those of Ph.D. students

¹⁷ Program Assistants, on the other hand, perform administrative functions (Er. Ex. 90). As they do not provide instructional or research services to the Employer, the Petitioner agrees that they shall be excluded from the bargaining unit.

with Teaching Fellow appointments. As the Vice Provost put it at another point in his testimony, “there is considerable similarity between what they do...” (Tr. 107-08).

The Employer’s primary contention appears to be that these student employees should be excluded from the Unit because their employment is of shorter duration because their educational programs are of shorter duration. It is true that most Masters’ Degree programs require no more than two years to complete. Thus, on average, Masters’ and undergraduate employees work for about two semesters during their enrollment at Columbia, while doctoral students work an average of about nine years (Er. Ex. 4). The Employer thus contends that they should be excluded as “temporary employees.” The fact that these student employees average fewer semesters of work is not a basis for exclusion from the bargaining unit, as they share a community of interest with other student employees.

The Board has long recognized that employees hired for a limited period of time with a defined endpoint have the right to organize. See, e.g., Berlitz Sch. of Languages, Inc., 231 N.L.R.B. 766 (1977) (on call teachers); Avis Rent-a-Car Sys., Inc., 173 N.L.R.B. 1366 (1968) (employees hired to drive rental vehicles from one rental car center to another); Hondo Drilling Co., 164 N.L.R.B. 416 (1967) (employees of an oil drilling company); Daniel Constr. Co., 133 N.L.R.B. 264 (1961) (construction industry); Pulitzer Publishing Co., 101 N.L.R.B. 1005 (1952) (camera operators and sound technicians¹⁸ at a television station). The Board recently reaffirmed the right of temporary employees to organize in Kansas City Repertory Theater, 356 N.L.R.B. No. 28 (2010).

¹⁸ Then known as cameramen and soundmen.

On the other hand, the Board routinely excludes temporary employees from units of full-time and regular part-time employees. The reason for this exclusion is that temporary employees lack a community of interest with regular employees because the term of their employment is different from that of regular employees. As the Board explained in Kansas City Repertory, temporary employees are customarily excluded from units of full-time and regular part-time employees because they have different interests as a result of their temporary status. That is, they are excluded from the bargaining unit because they lack a community of interest with employees whose employment is indefinite and ongoing, not because they do not have the right to engage in collective bargaining.

In one sense, all graduate assistants can be regarded as temporary employees, since their employment in that capacity can be expected to end when they complete their studies. In determining whether a graduate student employee is employed for a sufficient period of time in order to be permitted to vote in an election, the touchstone should be whether the duration of their employment is for such a short period of time that their interests are substantially different from the interests of other graduate student employees. Student employees share a community of interest separate from other employees based upon their dual status as students and employees: their employment is related to their education and to their professional careers. The same is true of Masters' and undergraduate student employees. Moreover, all student employees share a community of interest based upon the fact that they perform similar duties. Indeed, as noted above, in some instances, such as University Writing, they teach the exact same course.

An appointment of at least one academic semester reflects the dual interest in employment and education that defines the community of interest among graduate assistants. The customary practice at Brown, Columbia, and Tufts, as evidenced by the record in this case and the Board's and Regional Directors' decisions in these cases - is to appoint graduate assistants to positions for a period of at least one semester. This reflects the fact that the business of a university is conducted in semester-long work units. Undergraduate students are a university's primary consumers or customers, and they purchase the university's services on a semester basis. The university, in turn, appoints its graduate assistants to work in semester-long units. Thus, student employees who receive appointments of at least one academic semester should be included in a unit of graduate assistants.

Columbia's attorneys have referred to San Francisco Art Institute, 226 N.L.R.B. 1251 (1976), and Saga Food Service of California, 212 N.L.R.B. 786 (1974), as cases that support finding that undergraduate and Masters' student employees are not statutory employees. Those cases actually support a finding that graduate assistants appointed to jobs lasting at least one semester share a community of interest. The principal holding of San Francisco Art Institute and Saga is that student employees lack a community of interest with other university employees because they are students. In San Francisco Art Institute, the Board found that art students working as janitors at the school in which they were enrolled did not have the right to organize because they lacked a "sufficient interest in their conditions of employment to warrant representation...." 226 N.L.R.B. at 1252. In Saga, students at UC Davis were found to lack sufficient interest in jobs as cafeteria workers. It is questionable whether this

aspect of the holdings of those two cases can be reconciled with Kansas City Repertory, where the Board held that it is for the employees to decide whether they have enough interest in their jobs to engage in collective bargaining. However, it is not necessary to reach that issue in this case, because, unlike student janitors at an art institute, student teaching and research employees **do** have an interest in their employment. Their jobs are related to their professional development and their long-term careers, so that they have an ongoing interest in their conditions of employment. Thus, it is consistent with those cases to include Masters' and undergraduate student employees in the bargaining unit.

IX. STUDENT RESEARCHERS ON TRAINING GRANTS SHOULD BE INCLUDED IN THE UNIT

The only distinction between researchers funded from Training Grants and GRAs funded by research grants is the source of the funding. They perform the same duties, sometimes in the same laboratories (Tr. 995). Student employees are often funded by a research grant in one semester and a Training Grant in the next, or vice versa (Tr. 994, 1012-13). They are paid the same compensation (Tr. 1019-20). If the Training Grant provides for a lower stipend, the University provides additional compensation to bring them to the same stipend as GRAs (Tr. 993). Like GRAs, they help to fulfill the mission of the University to conduct research and produce new knowledge. They thus share a community of interest with GRAs whom the Employer concedes should be included in the Unit. Therefore, they should be included in the Unit as well.

X. CONCLUSION

The Regional Director should direct an election in the petitioned-for Unit, as amended.

ON BEHALF OF THE PETITIONER,
GRADUATE WORKERS OF COLUMBIA-GWC, UAW

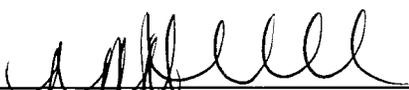
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CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing Brief of the Petitioner to the Regional
Director was sent via email, on this 24th day of June, 2015, to the following:

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