

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD REGION 2**

COLUMBIA UNIVERSITY

Employer

and

Case No. 02-RC-143012

**GRADUATE WORKERS OF
COLUMBIA-GWC, UAW**

Petitioner

FEBRUARY 20, 2015

PETITIONER'S REQUEST FOR REVIEW

I. INTRODUCTION

Graduate Workers of Columbia-GWC, UAW ("the Petitioner") filed this petition on December 17, 2014, claiming to represent a unit of student employees employed by Columbia University ("the Employer" or "Columbia"). This unit includes employees who provide instructional services and employees who work as research assistants. These employees are enrolled as students at Columbia and are paid to perform services that generate income for the University. Thus, they are both students at Columbia and employees of Columbia.

By Order dated February 6, 2015, the Regional Director for Region Two dismissed the petition based upon the categorical holding in Brown University, 342 N.L.R.B. 483 (2004), that graduate student assistants are not employees within the meaning of the Act. Brown is an aberrant decision that cannot be reconciled with the language of the Act or with other decisions of the Board and of the Supreme Court. The Regional Director acknowledged that, on three occasions since 2010, the Board has issued orders stating that it wished to reconsider the holding in Brown. Nevertheless,

the Regional Director concluded that she was “constrained by current Board precedent” to dismiss this petition without a hearing.

The Petitioner respectfully requests that the Board grant review of the dismissal of this petition. The Board has repeatedly questioned the continuing viability of Brown, granting review of decisions that followed the precedent of Brown. At a minimum, the Board should do the same in this case, reversing the dismissal and reinstating the petition. The Petitioner respectfully requests that the Board go further, reverse Brown, and restore to graduate student employees the right to bargain collectively through representatives of their choosing.¹

II. HISTORY OF NLRB DECISIONS REGARDING STUDENT ORGANIZING

On April 3, 2000, the Regional Director for Region Two issued a Decision and Direction of Election in *New York University*, Case No. 2-RC-22082, finding graduate assistants at NYU to be statutory employees entitled to legal protection for the right to organize. The Regional Director found that existing NLRB precedent supported finding these graduate assistants to be employees. He found that these student employees met the statutory definition of an employee under section 2(2) of the Act, in that they performed services for NYU in exchange for compensation by the university. He found particular support for this holding in Boston Medical Center Corp., 330 N.L.R.B. 152 (1999), where the Board held that interns and residents (“house staff”) at a teaching hospital are employees protected by the Act. Just six months later, the Board unanimously affirmed the Regional Director’s decision. New York University, 332 N.L.R.B. 1205 (2000) (NYU I). That decision unleashed a flood of pent-up enthusiasm

¹ In her decision, the Regional Director stated that the Union relied upon “policy considerations” as grounds to overrule Brown. In fact, the Union contends that this result is compelled by the statute.

for organizing by student employees at elite private universities in the Northeast, including this one. *Brown University*, Case No. 1-RC-21368; *The Trustees of Columbia University in the City of New York*, Case No. 2-RC-22358; *The Trustees of the University of Pennsylvania*, Case No. 4-RC-20353; *Tufts University*, Case No. 1-RC-21452. In the *Columbia* case, a 30-day hearing was held, resulting in a regional director's decision defining the scope and composition of a unit of graduate assistants (copy attached).

This enthusiastic response was crushed four years later when the Board issued its 3-2 decision in Brown, overruling the unanimous decision in NYU I. The Brown decision was inconsistent with relevant Board and court decisions and cannot be reconciled with the language or intent of the statute. The Brown majority held that graduate assistants are “primarily students” and therefore not employees. The conclusion that one who is “primarily” a student cannot also be an employee has no basis in logic or in the law. The Brown majority stated that NYU I had overruled 25 years of precedent to conclude that graduate assistants could be both students and employees. In fact, NYU I was in line with and consistent with past decisions of the Board and the Supreme Court. Brown is the only current precedent to find some inconsistency between being a student and being an employee. The one case cited by the Board that arguably supported that decision was St. Clare's Hospital, 229 N.L.R.B. 1000 (1977), a decision that had already been overruled when Brown issued and that continues to be discredited. Nevertheless, for ten years, Brown has stood as a barrier to organizing by student employees.

On three occasions over the past five years, the Board has issued orders in which it stated that it had decided to reconsider the Brown decision. 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"). The Board reopened the case and remanded for a hearing. After 19 days of hearings over four and one-half months, the Acting Regional Director again dismissed the petition on the authority of Brown. The Board granted review a second time, reiterating that there are "compelling reasons for reconsideration of *Brown University*." Case No. 2-RC-23481, unpublished Order dated 6/22/12. Another year and one-half passed after this order granting review in NYU II for the second time, but no decision was forthcoming. Finally, in December 2013, three and one-half years after the petition had been filed, the petitioner entered into an agreement with NYU for an alternative method to demonstrate its majority status and withdrew the petition in Case No. 2-RC-23481.

This past May, the Board invited briefs on review in *Northwestern University*, Case No. 13-RC-121359, to address, *inter alia*, whether the Board should "adhere to, modify or overrule the test of employees status" applied in Brown. Order dated May 12, 2014. No decision has issued in that case. Despite the repeated orders from the Board finding "compelling reasons" to reconsider Brown, regional directors feel themselves obligated to continue to follow its holding, frustrating attempts by student employees to form unions through the procedures provided under the Act.

Once again, the Board must grant review and reopen a case dismissed on the basis of Brown. However, that action is not sufficient. Since Brown is inconsistent with the statute and all relevant precedent, the Board should hesitate no longer before overruling that aberration.

III. THE BOARD SHOULD GRANT REVIEW OF THE DISMISSAL OF THIS PETITION

Section 102.67(c)(4) of the Board's Rules and Regulations provides that review should be granted where there are "compelling reasons for reconsideration of an important Board rule or policy." The Board has three times held that Brown should be reconsidered. That decision is inconsistent with law and precedent and is frustrating the desire of thousands of student employees to organize. There are "compelling reasons" to grant review forthwith.

Brown is inconsistent with the definition of an employee in Section 2(3), which expresses the intent of Congress that the statute be given broad application. An employee for purposes of this law is defined as "any employee." The Supreme Court has repeatedly held that this phrase must be read broadly. In NLRB v. Town & Country, 516 U.S. 85 (1995), a unanimous Supreme Court held, "The 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. at 90 (quoting American Heritage Dictionary 604 (3d ed. 1992)) (emphasis in original). Brown conflicts with this holding by finding that individuals who work for a university in return for financial compensation are not employees.

In Sure-Tan, Inc. v. NLRB, 467 U.S. 883 (1984), the Court held that the "breadth" of the definition of "employee" in section 2(3) "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." 467 U.S. at 891 (1984). There is no exclusion in the statute for employees who are "also students" or "primarily students."

Consistent with this Supreme Court precedent, the Board has given a broad reading of the definition of an employee. For example, in Sundland Construction Co, 309 N.L.R.B. 1224 (1992), in holding that paid union organizers are employees where they obtain jobs to try to organize other employees, the Board reaffirmed that the statute applies in the absence of an express exclusion. "Under the well settled principle of statutory construction - *expressio unius est exclusio alterius* - only these enumerated classifications are excluded from the definition of employee." 309 N.L.R.B. at 1226. Similarly, the Board gave a broad reading to the statutory definition of employee in Seattle Opera Ass'n, 331 N.L.R.B. 1072 (2000), enforced 292 F.3d 757 (D.C. Cir. 2002), holding that auxiliary choristers at non-profit opera company 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). Brown is inconsistent with this Board and Supreme Court precedent in crafting an exclusion that does not appear in the statute in order to find that individuals who provide services for a university in exchange for compensation are not employees.

The decision in Brown likewise cannot be reconciled with the long history of case law holding that an individual can be both a student and an employee. An apprentice, by definition, is both a student and an employee. He or she is required to work as a part of the 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. An apprentice 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 an apprentice is thus part of training for a career, the Board has consistently treated 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 two and one-half 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 (1944). 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 UTD Corp., 165 N.L.R.B. 346 (1967) (apprentices included in bargaining unit); 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.”

In a similar vein, the Board held in Boston Medical Center, 330 N.L.R.B. 152 (1999) that medical interns, residents and fellows are “employees,” despite the fact that they are also students. The Board in Boston Medical emphatically rejected the idea that there is some kind of inconsistency between being an employee and being a student:

Their status as students is not mutually exclusive of a finding that they are employees.

As ‘junior professional associates,’ interns, residents and fellows bear a close analogy to apprentices in the traditional sense. It has never been doubted that apprentices are statutory employees.... Nor does the fact that interns, residents and fellows are continually acquiring new skills negate their status as employees. Members of all professions continue learning throughout their careers.... Plainly, many employees engage in long-term programs designed to impart and improve skills and knowledge. Such individuals are still employees, regardless of other intended benefits and consequences of these programs.

330 N.L.R.B. at 161 (citations and footnotes omitted). “[I]t has never been doubted that apprentices are statutory employees ...” because there is no inconsistency between working and learning. Id.

The holding of Boston Medical has not been questioned by the courts of appeals, has resulted in fruitful collective bargaining, and remains good law. The Board reaffirmed the holding that medical residents and interns can be both students and employees in St. Barnabas Hospital, 355 N.L.R.B. No. 39 (2010). Thus, the holding of Brown that a class of individuals cannot be employees because they are also students represents an outlier – a decision so at odds with other decisions regarding the employee status of other classes of student workers that it should be overruled forthwith.

The only distinction between graduate assistants and apprentices in the trades, whose status as employees has never been questioned, lies in the level of their education and the intellectual nature of their work. That cannot be a basis for excluding graduate assistants from the statutory definition of employee, as section 2(12) explicitly includes employees whose work is intellectual in nature within the coverage of the Act. Indeed, section 2(12)(b) sets forth a definition of professional employee that fits graduate assistants precisely. The term “professional employee” includes “any employee who (i) has completed the courses of specialized intellectual instruction ... and (ii) is performing related work under the supervision of a professional person....” See Boston Medical, 330 N.L.R.B. at 161. Graduate assistants therefore cannot be distinguished from apprentices on the ground that their courses involve “intellectual instruction” rather than instruction in a trade. Moreover, the residents and interns found to be employees in Boston Medical and St. Barnabas have achieved at least as high a level of intellectual accomplishment as graduate assistants. Thus, Board precedent holds that

employees who work in connection with their studies are employees. Brown is inconsistent with that precedent.

The Board majority in Brown purported to base its holding on two decisions involving universities, Adelphi University, 195 N.L.R.B. 639 (1972), and Leland Stanford Junior University, 214 N.L.R.B. 621 (1974). Neither of these cases lends any support to the proposition that graduate students cannot also be employees. In Adelphi, the Board did hold that the graduate student teaching and research assistants were “primarily students.” There is not the slightest suggestion in that decision, however, that the Board believed that this was somehow inconsistent with employee status. Rather, the Board held that student status distinguished teaching assistants from regular faculty members, so that they had a community of interest separate from regular faculty members. “[W]e find that the graduate teaching and research assistants here involved, although performing some faculty-related functions, are primarily students and do not share a sufficient community of interest with the regular faculty to warrant their inclusion in the unit.” 195 N.L.R.B. at 640. NYU I, by finding a separate unit of student employees to be appropriate, was entirely consistent with Adelphi. The Board, in Brown, did not “return to the holding” of Adelphi. Instead, the Board distorted the holding of a case which actually supports a finding that graduate assistants are employees who have a separate community of interest from other employees.

Similarly, Leland Stanford did not hold that a graduate student could not be simultaneously a student and an employee. Rather, the Board found the graduate students were not employees on the particular facts of that case. The Board found

that the tax-exempt stipends received by the students from outside funding agencies were not payment for services performed for the university. "Based on all the facts, we are persuaded that the relationship of the RAs and Stanford 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. There is nothing in Leland Stanford to support Brown's holding that a graduate assistant cannot be an employee where the student does perform tasks under the direction and for the benefit of the university.

The Board in Brown went on to find that student employees are not statutory employees because their relationship to the university is "primarily educational." As discussed above, there is nothing in either Adelphi or Leland Stanford that would support a holding that one cannot be both student and employee. Indeed, the false dichotomy between working and learning was forcefully rejected by the Board in Boston Medical and is inconsistent with decades of case law finding apprentices to be employees. In the face of this precedent, the Brown majority turned to St. Clare's Hospital, 229 N.L.R.B. 1000 (1977), to provide support for excluding an entire class of employees from the protections of the Act. St. Clare's, however, had been expressly overruled in Boston Medical. 330 N.L.R.B. at 152. Thus, the only case cited by the majority in Brown which supports the holding of that case is a case that has been overruled.

To summarize, the Brown decision was unsupported by the language of the statute, Supreme Court precedent, and the Board decisions upon which the Board purported to rely. The Board failed to consider the language of the statute. The

Board failed to follow repeated admonitions by the Supreme Court that section 2(3) is to be read broadly. The Board cited Adelphi and Leland Stanford for the proposition that there is some inconsistency between being a student and being an employee, but there is nothing in those cases to support a finding that there is such an inconsistency. In finding this inconsistency, the Board ignored its long history of finding apprentices to be employees. Finally, the Board relied upon a decision that had been expressly overruled. Clearly, the Brown decision is an outlier: a decision which cannot be reconciled with the statute or with other interpretations of the Act. Accordingly, there are compelling reasons to grant review and reinstate this petition.

IV. IT IS NOT NECESSARY TO HOLD A HEARING BEFORE OVERRULING BROWN

It is not necessary for a hearing to be held in this matter for the Board to overrule Brown. That decision established a categorical exclusion of all graduate assistants from legal protection of the right to organize. The applicability of that exclusion to a group of student employees is a purely legal issue that does not turn on the particular terms and conditions of employment of those employees. The exclusion is absolute. As we have explained above, that categorical exclusion is inconsistent with the statute and with case law interpreting the statutory definition of employee. Therefore, Brown can be overruled based upon its inconsistency with the law and precedent.

Brown itself was not based upon any findings regarding the particular terms and conditions of graduate assistants at that school. The factual findings that define the scope of the holding in Brown are those that define graduate assistants as a class. The Board relied upon the following findings:

1. The graduate student assistants in the petitioned-for unit were enrolled in the university at students;
2. The work of graduate assistants as teachers or researchers was related to their education;
3. Graduate assistants work closely with faculty members; and
4. They receive financial support to attend Brown.

342 N.L.R.B. at 488-89. These are the facts that define a graduate assistant. It is not necessary to hold a hearing to determine whether the petitioned-for unit includes graduate assistants. The question is whether there is any inconsistency between their status as students and a finding that they are employees. No hearing is needed to conclude that one can be both an employee and a student simultaneously.

The Board in Brown speculated that collective bargaining could interfere with academic freedom and could affect the relationship between graduate assistants and faculty members. 342 N.L.R.B. at 489-90. This speculation was not based upon any evidence in the record or, indeed, on any foundation other than the biases of the Board majority. The majority admitted that its decision was not based upon “empirical evidence.” 342 N.L.R.B. at 493. Therefore, there is no need for a hearing to reject the unsupported speculation about harm that can result from collective bargaining by student employees.

The major factual conclusion drawn by the Board was that graduate assistants at Brown were “primarily students.” 342 N.L.R.B. at 492. This conclusion is significant only if one accepts the premise that there is some inconsistency between being a student and being an employee. This false dichotomy between working and learning was forcefully rejected by the Board in Boston Medical and in St. Barnabas, and it is inconsistent with decades of case law finding apprentices to be employees. One can be

both a student and employee. The one need not detract from the other. Therefore, there is no need to create a record for the purpose of balancing employee status against educational status.

Moreover, a record already exists regarding the student employees at issue in this case. The record in Case No. 2-RC-22358 addressed the nature and extent of the Employer's operations. That record describes the Employer's locations and the inter-relationship between operations at those locations. The regional director made findings regarding the academic requirements for students at Columbia, the work performed by graduate assistants, and the inter-relationship between the two. That hearing dealt extensively with the terms and conditions under which graduate assistants perform their duties. While there may have been changes over the past 13 years, and the parties may argue for modifications to the precise parameters of the unit found appropriate by the regional director in Case No. 2-RC-22358, the evidence necessary for a determination as to the employee status of graduate assistants at Columbia is already available to the Board.

In summary, the legal principles are clear. There is no basis in statutory language, precedent, or logic for holding that graduate assistants are not employees merely because they are also students. There is no need for a hearing to address what is a pure legal issue. Moreover, a record has already been created regarding Columbia's operations and the terms and conditions of employment of its graduate assistants. Granting review and remanding the case for a hearing, without addressing the continuing viability of Brown, will only result in unnecessary delay. If this case is remanded without overruling Brown, a lengthy hearing will be followed by another

dismissal and another request for review. It is unclear, after Brown, what evidence would be relevant to the question of whether these student employees have the right to organize, but the track record of litigation by major universities leaves little doubt that an effort will be made to ensure that the litigation is protracted. If the Regional Director again dismisses this petition, the employees will have to wait for the Board to grant review, reconsider Brown, and finally make a decision. Student employees at Columbia have been seeking to have the NLRB conduct an election since 2001.² Brown has stood as an obstacle to these employees for more 14 years. The Employer should not be permitted to use it as a vehicle to frustrate the rights of these employees any longer.

V. CONCLUSION

In conclusion, there is little doubt that there are “compelling reasons” to reconsider the Brown precedent. The Board has repeatedly held that Brown should be reconsidered, and that decision cannot be justified on the basis of the statute, precedent or logic. The real question is whether the Board should overrule Brown before a hearing is held in this case. We have tried to demonstrate that Brown is a continuing obstacle to attempts by student employees to organize under the NLRA. The Board needs to find the most expeditious and efficient means to remove an obstacle to effectuating the policies of the Act. If the Board is not prepared to reverse Brown on the basis of the law, without a hearing first being held, then the Board should grant review and remand expeditiously, so that a hearing can be held before Columbia begins its summer break. A hearing over the summer might greatly inconvenience witnesses, particularly representatives of the Employer, forcing them to appear and give testimony

² The specific employees have changed over the years, but student employees at Columbia first petitioned for representation in 2001.

during a period when they customarily would be traveling for academic purposes. If Brown is not overruled at this stage in the proceedings, then such a hearing will be followed by another dismissal and another request for review seeking reconsideration of the Brown precedent. Therefore, if the Board is not prepared to issue a decision overruling Brown, then this case needs to be remanded to the Regional Director straightaway.

On the other hand, a decision overruling Brown now will enable these employees to exercise their rights much more expeditiously. A record can still be made, but the employees would not have to await another decision by the Board before being afforded an opportunity to vote. If the Regional Director is freed of the constraints to follow Brown, then she would be free to direct an election after the hearing is held in a unit that she finds to be appropriate on the basis of the record. Therefore, a decision overruling Brown is the best vehicle to effectuate the policies of the Act.

RESPECTFULLY SUBMITTED

By: 

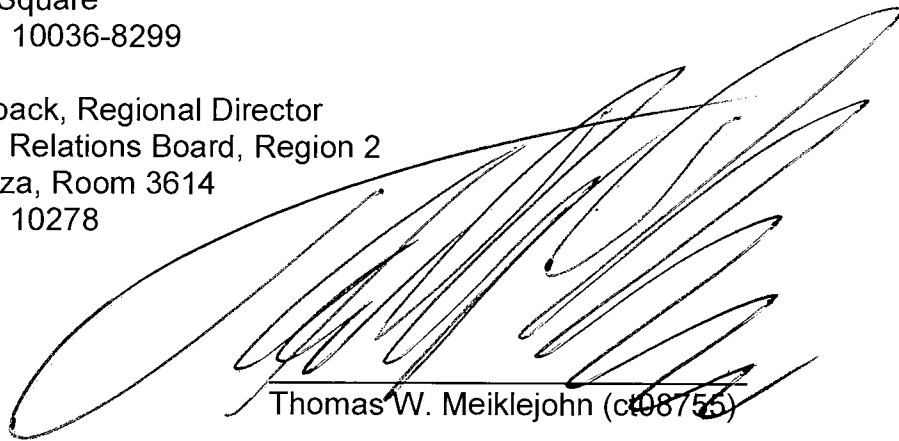
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that he has served copies of the Petitioner's Request for Review on each of the following parties by electronic mail on February 20, 2015:

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A large, stylized handwritten signature in black ink, appearing to read 'T. Meiklejohn', is written over the printed name and extends across the right side of the page.

Thomas W. Meiklejohn (cd08755)

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 2

THE TRUSTEES OF COLUMBIA UNIVERSITY IN
THE CITY OF NEW YORK

Employer

and

Case No. 2-RC-22358

INTERNATIONAL UNION, UNITED AUTOMOBILE,
AEROSPACE AND AGRICULTURAL IMPLEMENT
WORKERS OF AMERICA, UAW, AFL-CIO

Petitioner

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing on the above-captioned petition was held before Rhonda Gottlieb, a Hearing Officer of the National Labor Relations Board. Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its powers in connection with this case to the undersigned Regional Director.

Upon the entire record in this proceeding,¹ I find that:

1. The Hearing Officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. The parties stipulated, and I find, that The Trustees of Columbia University in the City of New York (the "Employer" or "Columbia"), a not-for-profit corporation, with its campus located in New York, New York, is an institution of higher education. Annually, in the course and conduct of its operations, the Employer derives gross revenues in excess of \$1 million and

¹ Briefs were filed by the Employer and the Petitioner and have been duly considered.

purchases and receives at its New York, New York facility goods and supplies valued in excess of \$50,000, directly from suppliers located outside the State of New York.

3. The parties stipulated, and I find, that the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, UAW, AFL-CIO (the "Petitioner" or the "Union"), is a labor organization within the meaning of Section 2(5) of the Act.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c) and Section 2(6) and (7) of the Act.

5. The Petitioner seeks in its petition, as amended at the hearing,² to represent employees in the following unit: ~~student employees who perform instructional services as teaching assistants, teaching fellows, preceptors, instructors, listening assistants, course assistants, readers and graders~~ (hereinafter referred to collectively as "TA's") ~~on the Employer's Morningside Heights campus, excluding all other employees.~~ The Employer asserts that the petition should be dismissed because TA's are not employees within the meaning of Section 2(3) of the Act. The Employer asserts further that if I find that TA's are employees under the Act, I must also find that the Employer's graduate research assistants ("GRA's"), who are not included in the petition, are employees and that the petitioned-for unit is inappropriate because it excludes the GRA's. In response to this, the Union argues that a unit limited to instructional employees is appropriate and alternatively, that GRA's are not employees. In the event that I was to conclude that it would be inappropriate to exclude GRA's from the petitioned-for unit, the Petitioner would argue that other non-instructional employees, the Employer's Departmental Research Assistants ("DRA's"), Program Assistants and Service Fellows, should also be part of the unit. The Employer argues that some of these positions are being phased out and others

² The petition, as originally filed sought an election in a unit comprised of "All Teaching Assistants, Research Assistants, Graduate employees employed as Instructors and Preceptors employed by Columbia University," excluding, "[a]ll other employees, Research Assistants who are not employees

should be specifically excluded because they are temporary. Contrary to the Union, the Employer contends that undergraduate students serving as TA's should not be included in the unit, because they are not employees or because they do not share a sufficient community of interest with the unit and are temporary employees. In addition, the Employer argues that a unit that does not include TA's and GRA's at all of the Employer's campuses and research facilities in the New York metropolitan area is inappropriate. The Employer contends that the inclusion of students appointed to what it contends to be temporary positions in Columbia's School of the Arts Film Division, Law School, School of International and Public Affairs, or Summer Session and Summer Program for High School Students, would also be inappropriate. The Petitioner will proceed to an election in any unit found appropriate herein.³

The Employer, one 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 between 20,000 and 22,000 students. During the spring 2001 semester, roughly 1,200 students served in TA positions, about 600 students served in GRA or DRA positions, and between 100-150 students served in administrative, clerical and/or technical positions for the University.

within the meaning of the National Labor Relations Act, all employees at the medical and dental schools, Lamont and Nevis Laboratories and guards and supervisors as defined by the Act."

³ The University has changed the titles of many of its student assistant positions effective as of the 2001-2002 academic year. It appears that students previously classified as TA's, readers, graders, and some students who were classified as preceptors, have been renamed "teaching fellows." The title "preceptor" is now employed for students serving in Contemporary Civilizations and Literature Humanities courses. References to University titles in this Decision, except where otherwise defined, will be to the titles used prior to the 2001-2002 academic year, as those titles were in place when the instant petition was filed and serve as references throughout most of the record.

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 and Dean of Faculties (the "Provost") is Columbia's chief academic officer. Academically, the University has three main areas: the School of Arts and Sciences (which accounts for about half of Columbia's student body), the Health Sciences, and the professional schools (the Graduate School of Business, the Fu Foundation School of Engineering and Applied Science, the School of Architecture, the School of Journalism, the School of Law, the School of Planning and Preservation, 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 Vice President for Arts and Sciences, the Vice President of Health Sciences, and the Deans of the professional schools, all report to the Provost. The Vice President of Arts and Sciences also oversees a number of Schools that do not report directly to the Provost. These include the School of the Arts, Columbia College, the Division of Continuing Education and Special Programs, the School of General Studies, the School of International and Public Affairs ("SIPA"), and the Graduate School of Arts and Sciences ("GSAS"). The Vice President for Health Sciences is also responsible for a number of Schools that do not report directly to the Provost. These are the College of Physicians and Surgeons (Columbia's Medical School), the School of Dentistry and Oral Surgery, 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 regard 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.

Columbia offers a number of degrees, including undergraduate degrees from Columbia College, 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.

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 the GSAS; and these students attend GSAS graduations, not Health Sciences graduations. In total, there are 59 Ph.D. programs offered at the University, with 26 of those programs based in the School of Arts and Sciences departments, and the other 33 Ph.D. programs sitting in the other Schools. The GSAS establishes the minimum requirements that students must meet in order to earn the Ph.D. degree, although individual departments exert influence over Ph.D. programs within the parameters set by the GSAS. In many cases applications to Ph.D. programs are made directly to the GSAS, but after reviewing the applications and selecting suitable applicants, the GSAS forwards applications to Ph.D. programs to individual departments for further scrutiny and selection. Generally, doctoral students must successfully complete required course work, then pass one or two rounds of qualifying exams, written and/or oral. At this point in their academic program, Columbia's doctoral students are awarded their M.Phil. degree and begin the research phase of the program, which culminates in a dissertation. After the successful defense and completion of the dissertation, a doctoral student is eligible for the award of the Ph.D. degree.

TEACHING AND SERVICE REQUIREMENTS:

The Columbia University Bulletin of the Graduate School of Arts and Sciences ("GSAS Bulletin") states that "[a]ll degree candidates are required to participate in the instructional and research activities of the Graduate School during a portion of their time in residence.

Requirements may vary in degree from department to department." Gillian Lindt, the interim Dean of GSAS until the fall of 2001, testified that the GSAS-wide teaching requirement went into effect in 1985-1986 but was not enforced because not enough teaching opportunities were available for all GSAS students. Dean Lindt stated that Columbia could deny the award of a Ph.D. to students who have not performed instructional activities, but acknowledged that Ph.D. degrees have been awarded since that time to students who performed no such service. The record establishes that since 1997, 508 of 1,139 students who received doctoral degrees (474 of them receiving Ph.D.'s) were never appointed to instructional positions in the University.⁴ During the 1999-2000 academic year, ninety-two percent of students awarded Ph.D.'s taught during their graduate education at Columbia.

New requirements for the award of a Ph.D. must be approved by the GSAS's Dean and Executive Committee. Stephen Rittenberg, Vice Provost for Academic Administration, testified that any changes in degree requirements made by the GSAS's Executive Committee would be recorded in writing. However, other than the guidelines adopted in April 2000, discussed below, there is no evidence of a University-wide teaching requirement for the award of the doctoral degree apart from the GSAS bulletin noted above.⁵ To the contrary, Dean Lindt testified that Columbia could require students to teach only if it provided them with funding. Additionally, the Chair of the Physics Department testified that teaching is not a prerequisite for the award of a

⁴ Additionally, approximately 62 students may have held teaching positions that were not recorded in the University's Personnel Information System.

⁵ Columbia was directed by the Hearing Officer to produce any minutes or resolutions regarding GSAS teaching or research requirements, and was additionally served a subpoena seeking production of resolutions of GSAS's Executive Committee and/or Faculty Senate or minutes from meetings of either of these bodies that addressed instructional and research requirements.

Ph.D. The Music Department Chair stated that there is no formal academic teaching requirement for any degree offered through the Music Department, that such a requirement is connected to funding and that a student who was independently wealthy and refused funding and did not teach could still be awarded a Ph.D. The Chair of the Art History Department testified that although teaching was part of the culture of the Art History Department, it was not an academic requirement. When asked whether a teaching requirement would apply to someone who did not accept University funding, the Political Science Department Chair did not know the answer to the question, and responded only that all students were currently funded.

Columbia is moving towards a full-funding model for GSAS students, expecting to provide five years of full-funding to 90 percent of the 2002 incoming doctoral student class. The Enhancement Plan, (also known as the "Macagno Plan") established in May 1997 by former-GSAS dean, Eduardo Macagno, recognized that there was "a comparatively large enrollment at Columbia in the Humanities and Social Sciences, with a lower ratio of funded to unfunded students than at comparable universities, higher than acceptable attrition and a prolonged time-to-degree." Under the Enhancement Plan, Columbia expects to guarantee five years of full funding to 90 percent of the 2002 academic year's incoming GSAS students, with funding provided beginning in the second year for the remaining 10 percent of students. Funding takes the form of student assistantships and fellowships. In general, as a condition of receiving funding, students are required to perform services for the University as a student assistant for three years. The student assistantship can take the form of the TA, GRA, or DRA position. The other two years of the five years of University-provided funding take the form of fellowship and entail no service requirement. This funding goal has been arrived at incrementally. For instance, only 83 percent of GSAS's Humanities and Social Science students received full funding last academic year. The Enhancement Plan discussed teaching by graduate students, noting that "[w]hen graduate students serve as teaching assistants or preceptors, three purposes are served: undergraduate instruction, graduate financial aid, and the training and

education of the graduate students themselves." The Enhancement Plan then "offer[ed] the following proposals for discussion: 1. No student that obtains a Ph.D. in Arts and Sciences Departments should do so without at least 2 years of supervised teaching at Columbia. 2.

Ideally, Ph.D. students in the Humanities and Social Sciences should teach for three years, in a progression that involves increasing independence and responsibility. . . ."

Pursuant to these proposals, in April 2000, the GSAS Executive Committee approved a resolution requiring each GSAS department to create teaching guidelines. Such teaching guidelines (the "new teaching guidelines") have been adopted in the Slavic Languages, Religion, Physics, Middle Eastern and Asian Languages and Culture, Germanic Languages, French and Romance Philology, History, Political Science, English and Comparative Literature, Economics, Classics, Biological Sciences, Astronomy, Mathematics and Psychology Departments, and state "[i]n fulfillment of the requirements for the M.Phil. degree, all students must gain teaching experience as part of their graduate training."⁶ GSAS Assistant Dean Margaret Edsall testified that all GSAS departments are required to adopt the new teaching guidelines. Ph.D. candidates in the History Department received the new teaching guidelines at the beginning of the Fall 2001 semester. As of the time the hearing was conducted in this matter, these guidelines had not been distributed to students in other departments within GSAS.

According to testimony by Dean Lindt and Assistant Dean Edsall, a number of GSAS departments had either express or de facto teaching requirements in place prior to the adoption of the new teaching guidelines. These departments are: Anatomy and Cell Biology, Art History, Biochemistry and Molecular Biophysics, Biological Sciences, Biomedical Engineering, Chemistry, Classics, Computer Science, Earth and Environmental Science, Ecology and Environmental Biology, English and Comparative Literature, Mathematics, Medical Informatics, Music, Psychology, Spanish, and Statistics. There is record testimony, however, that several of

⁶ As noted above, Ph.D. candidates are awarded the M.Phil. degree prior to beginning their dissertation research.

these departments historically have had no teaching requirement for the award of a Ph.D.

Professor Ann Douglas, of the English and Comparative Literature Department, testified that there was no teaching requirement for the award of a Ph.D. in that department. She testified that although most doctoral students in the English and Comparative Literature Department teach prior to the award of their degrees, these students serve as TA's as a condition of their University funding, not because of an academic requirement. Professor Douglas also stated that a teaching requirement for the award of a Ph.D. in English and Comparative Literature was not discussed in departmental meetings, and that she was unaware of GSAS communicating to the English and Comparative Literature Department that there is such a teaching requirement. Similarly, the Chair of the Classics Department testified that there was no formal teaching degree requirement in Classics. Professor Foner, a member of the History Department faculty for roughly twenty years, testified that at no time during his tenure at Columbia has there been an academic teaching requirement for the award of a Ph.D. in the History Department.

Assistant Dean Edsall testified that she did not believe there was a teaching requirement in the Health Science Campus's Ph.D. programs. Michael O'Connor, Vice Dean for Finance and Administration in the School of Public ("SPH") testified that there was no teaching requirement within SPH for the award of any degree. Available TA positions are posted on the SPH website under "Student Employment Opportunities." Additionally, there is no evidence of an academic teaching requirement in the School of the Arts, the School of Business, the School of International and Public Affairs, the School of Journalism, the School of Law, or the School of Social Work. In the School of Engineering, there is an academic teaching requirement in only the Computer Science and Biomedical Engineering Departments, but not in the School's other departments or programs.

In some instances, course credit is granted to TA's. Students in the Art History, Epidemiology, French, History, Psychology, Medical Informatics, and Spanish Departments, as

well as students in the Law School, are eligible for some form of course credit for service as a TA.

Students awarded Ph.D's during the three year period ending in the Spring 2000

semester averaged 5.27 semesters of service as TA's, while undergraduates averaged 1.84 semesters of TA service over the same time period. These figures are reflective of only those TA's formally appointed in the University's Personnel Information System, and do not reflect informal appointments, which are also made. In this regard, although Columbia's data states that 37 undergraduates receiving degrees over those three years held TA appointments, the record establishes that in the Computer Science department alone, 70 undergraduates served as TA's last semester, and that they may serve in that capacity from one up to five semesters.

INSTRUCTIONAL POSITIONS:

The University relies heavily on TA's for providing instruction, particularly in the following undergraduate courses: Logic and Rhetoric (Columbia's freshman English class), Contemporary Civilizations, Literature Humanities, Art Humanities, Music Humanities, and foreign language. These courses form Columbia's renowned Core Curriculum, although there was conflicting evidence in regard to whether foreign languages and Logic and Rhetoric are considered part of the Core Curriculum. The record also establishes that the number of TA's needed for teaching these courses is largely a function of undergraduate enrollment, because the University strives to keep class sizes at no more than 22 students in order to foster the intellectual relationships between instructors and students. TA's teach 95 percent of Logic and Rhetoric classes, 80-90 percent of Art Humanities classes, 75 percent of Music Humanities classes, 40 percent of Contemporary Civilizations and Literature Humanities classes, at least 90 percent of introductory French classes, at least 50 percent of introductory Spanish classes, and 60 percent of language classes in the Classics department.

Staffing needs based on course enrollment largely drive TA assignments in other courses as well. In a memo sent to GSAS departments concerning teaching appointments for the current academic year, Dean Lindt directed that graduate student funding allocations to departments were to be used first for covering the departments' teaching needs with the use of TA's, while any remainder could be used to fund non-teaching dissertation fellowships. The record contains evidence that TA assignments are controlled by a department's teaching needs in the following departments: American Studies, Art History, Biostatistics, Classics, Chemistry, Computer Science, Earth and Environmental Sciences, Germanic Languages, History, Mathematics, Middle Eastern and Asian Languages and Cultures, Physics, Political Science, Psychology, Religion, and Statistics.

~~TA's serve in a variety of capacities~~, in some cases serving as the instructor of record. Columbia's TA Teaching Manual states that some TA's "teach courses on their own" and that in such a role, a TA's "duties are closest to those of a faculty member" and that the TA is "responsible for all aspects of teaching a course." During the Spring 2001 semester, TA's served as the instructor of record for 15.6 percent of all courses in the School of Arts and Sciences and 8.2 percent of all courses taught in the University as a whole. TA's also serve as leaders of laboratory sections in science classes with large enrollments of students, and as discussion section leaders in large non-science classes. In classes that do not have discussion or laboratory sections, TA's may be assigned to assist faculty in other respects. Depending on the department and a TA's year in an academic program, their title may be any of the following: teaching assistant, teaching fellow, preceptor, instructor, listening assistant, course assistant, reader or grader.

Whether serving as the instructor of record, leader of a lab or discussion section, or assisting a faculty member in a lecture class, the TA's' duties and responsibilities include: grading, designing and/or assisting in the design of exams, preparing course materials and/or quizzes and assignments, writing letters of recommendation for students, reporting students

having academic problems to the applicable undergraduate program, proctoring exams, lecturing portions of a class, tutoring, holding office hours, substituting for a faculty member who is absent, maintaining course web sites, attending staff meetings, assisting with syllabus preparation, ordering textbooks, photocopying reading assignments, and placing reading assignments on reserve in Columbia's libraries.

~~Undergraduate students~~ at Columbia are also appointed to TA positions in the University. Undergraduate TA's serve primarily in undergraduate classes and in graduate level classes in the Computer Science Department. The demand for undergraduates to serve as TA's bears a relationship to the available supply of graduate student TA's. For example, Psychology Department Chair, Professor Hood, stated that undergraduate TA's are used in the Psychology Department because the demand for TA's in that department is greater than the supply of graduate-level TA's. He testified further that a greater number of undergraduate TA's would be used in the Psychology Department if the supply of graduate-level TA's was smaller.

Undergraduate TA's lead discussion and laboratory sections, hold office hours, grade, tutor, and maintain course web sites. Undergraduate TA's do not, however, serve as the instructor of record. Daniel Kestin, a former undergraduate in the Computer Science Department who served as an undergraduate TA for 5 semesters, testified that he served as a Head TA in the Computer Science Department, supervising all other TA's in the department. Although it was his understanding that undergraduates could serve as Head TA even when other TA's assigned to a course were graduate students, he could point to no such instance. Kestin testified that he did not, however, play any role in selecting TA's, and that final supervisory authority lay with the faculty member in charge of TA's in the department. Professor McKeown, Chair of the Computer Science Department, testified that undergraduate TA's in the Computer Science Department do not serve as instructor of record, substitute for professors who are absent, and usually are assigned to lower-level courses than are graduate

student TA's. Kestin, on the other hand, testified that the duties of undergraduate and graduate TA's were the same.

Undergraduate TA's are often selected to serve in instruction positions after demonstrating outstanding academic success in a particular course. TA service is not an undergraduate degree requirement at Columbia, and undergraduates receive no academic credit for serving as TA's. In regard to grievances TA's may have with the University, graduate student TA's are free to formally file grievances in regard to their TA service, while undergraduate TA's are not.

TA's in the Law School have different classifications depending on whether or not they have attained their JD degree. TA's with a JD who are enrolled in post-JD programs are selected by the University as preceptors for two-year appointments and are referred to in the Law School as Law Associates. The TA's who are candidates for the JD degree are known as Teaching Fellows. Both classifications have duties that overlap those of the GSAS TA's, as they lead discussion sections, grade, and prepare course materials. Law Associates also serve as instructor of record for legal writing and research classes. Teaching Fellows are eligible to serve only after the first year of their program, and they are, for the most part, appointed for one semester only.

The School of International and Public Affairs has two instructional positions, Teaching Assistant and Course Assistant. The duties of SIPA's TA's and Course Assistants include many of those stated above in regard to the University's TA's as a whole, such as holding office hours, putting course readings on library reserve, and providing tutorial sessions. SIPA's TA's and Course Assistants are pursuing masters' degrees, not Ph.D.s, and generally are students for two years. Roughly half of SIPA's TA's and Course Assistants are appointed in their positions for one semester, and the rest are appointed for an additional semester.

Graduate students also serve as Instructors and TA's in Columbia's Summer Session programs. In its description of the summer program the University states, "the Summer Session

carries on the academic mission of Columbia during the summer months." Both undergraduate and graduate students may enroll in Summer Session programs. Columbia also offers a program for high school students in the Summer Session. In the summer of 2001, Columbia

graduate students serving as Summer Session instructors made up about a third of the Summer Session faculty and served as the instructor of record in the courses they taught. Although not serving as instructor of record, another 41 Columbia graduate students served as TA's. Summer Session TA's' duties include running discussion sections, serving as laboratory assistants, grading, holding office hours, and providing tutoring. While subject to more supervision and less likely to be required to design a course syllabus, Summer Session instructors share the same duties as other Summer Session faculty. Appointments in the summer programs last from 5-12 weeks, and a large majority of instructors and TA's in the summer programs serve for only one summer.

Columbia considers ~~Students' qualifications~~ in appointing them to TA positions in the Core Curriculum classes, Contemporary Civilizations, Literature Humanities, Music Humanities, and Logic and Rhetoric, and in appointments to a variety of departments in the School of Arts and Sciences, including Classics, Economics, French, Physics, Political Science, and Psychology. Students' qualifications to serve as TA's are also considered in schools outside of Arts and Sciences, such as in the School of Architecture, the School of the Arts, and the Law School.

Columbia trains TA's to ensure that they can adequately perform their duties. In this regard, a number of departments, including Chemistry, French, Mathematics, Political Science, Psychology, Spanish and Portuguese, have teaching courses or training sessions. And the Logic and Rhetoric course provides a "Teaching Practicum" to ensure that its TA's provide the course's undergraduates with competent instruction.

~~TA's~~ hours of work can vary depending on the nature of their of their assignments. Most perform services an average of 15 hours a week. Some TA's, particularly those serving as

instructors of record, may work up to 40 hours a week. Others may perform less than 10 hours of services a week.

Columbia appoints TA's as officers of the University, and ~~the same personnel forms that are used for faculty members are used for TA's.~~ TA's are described in Columbia's Faculty Handbook (the "Faculty Handbook") as student officers. The Faculty Handbook states that "[s]tudent officers are paid monthly over the period of their appointment, in the manner of other part time officers of the University[.]" and the University's Financial Aid Handbook states that "[p]ayments associated with teaching and research appointments are considered wages, and as such a W-2 form from the University will be issued to each student who has received a fellowship in the form of a salary." Accordingly, Columbia's Payroll Department issues TA's a ~~portion of their stipend in monthly salary checks with payroll taxes withheld and the rest as a lump sum payment in the beginning of the semester.~~ In semesters in which they serve as TA's, students are required to submit W-4 forms. During semesters in which students are not serving as TA's, they receive all of the funding for that period as a lump sum payment at the beginning of a given semester.

Columbia asserts that the stipends and tuition and fee remission are financial aid, not compensation for services, pointing out that students receive the same stipend and tuition and fee remission totals whether or not they serve as a TA in a given semester. In this regard Dean Lindt testified that the "major effort" of the Enhancement Plan "was to make sure that students shouldn't be dependent upon whatever portion [of their stipend] happened to be tied to a particular teaching appointment they received." In regard to how Columbia arrives at funding levels, Dean Lindt and Vice President Cohen testified that Columbia is guided by the level of graduate student funding offered by Columbia's competitors, primarily, Harvard, Princeton, Yale, the University of Chicago, and Cornell. The record indicates that it costs the University over \$40,000 per year to fund a graduate student TA, while an adjunct, who may already possess a

doctoral degree and have prior teaching experience, would be paid approximately \$5,000 per course.

GSAS students in the Basic Sciences departments at the Health Sciences Campus

receive the largest stipend, about \$22,000 for a 12-month period, up to \$27,000 in tuition remission, reimbursement for health insurance fees and the student activity fee, while students in the Biology Department on the Morningside Heights Campus receive about the same. The remaining GSAS students receive a smaller stipend of \$15,000-\$18,000 a year with tuition and fee remission. TA's in SIPA receive full tuition and health insurance remission in addition to a stipend of \$2,900 - \$3,100 per semester. Course Assistants in SIPA receive \$5,000 as salary or to offset tuition. Federal "work study" funds are used to support students who are eligible for them in SIPA. In the Law School, Law Associates receive tuition remission for one semester per year, as well as an annual stipend of \$34,752. Teaching Fellows who are eligible are paid with work study funds. In the School of the Arts' Film Division, TA's in the second year of the program receive tuition remission of \$4,300 and a \$1,300 stipend. In the third year of the program, Film Division TA's receive \$2,000 as a stipend. The School of Architecture's Department of Urban Planning TA's receive tuition remission and a \$4,000 stipend. Computer Science Department TA's receive tuition remission and upwards of \$2,000 in stipend, with stipend amount varying depending on whether the TA is a graduate or undergraduate, whether the TA is a Head TA, and whether the TA appointment is one required by that department. Undergraduates serving as TA's in the School of Arts and Sciences receive from \$600 to \$2,500 in stipend without tuition or health fee remission. Undergraduates are sometimes appointed informally and are paid through the college payroll, or with work study funds.

Columbia's Faculty Handbook states that all services performed by Columbia's student officers are provided "under the direction and supervision of an officer of higher rank." Although TA's are generally not subject to discipline or discharge, Dean Lindt testified that a student performing inadequately as a TA could be removed by the University, although not necessarily

expelled. The University's TA Teaching Manual describes a TA "as both student and teacher" and admonishes TA's to maintain a "detached professional[ism]." Individual departments offer similar words of advice to their TA's. For instance, the Economics Department informs TA's that they "should understand quite positively that this is not merely a financial aid position. Accompanying this position are professional responsibilities."

RESEARCH POSITIONS:

Vice President of the School of Arts and Sciences Cohen testified that research is central to Columbia's institutional mission. The University's \$300 million in faculty research grants accounts for roughly 15 percent of Columbia's annual budget. Columbia's GRA's perform research and research-related services. Generally, GRA's perform such work under research grants from sources outside of the University. Most research grant work at Columbia is in the Natural Sciences departments based on Morningside Heights and the Basic Sciences departments based on the Health Sciences Campus, and, accordingly, most GRA's are graduate students in those departments. Typically, faculty members submit grant applications on behalf of the University to a federal funding entity, in many cases the National Institutes of Health ("NIH") or National Science Foundation ("NSF"), listing themselves as the "principal investigator/s" of the research project. Grant applications are made to private funding sources as well, but the record indicates that most of Columbia's research grants are federally funded. Typically, the application contains an itemized budget for the project and makes specific requests for funding of personnel, such as GRA's, technicians and support staff, who will work on the research project. In this itemized budget, GRA stipends are listed under "salary," while reimbursement for GRA tuition is listed under "other" expenses. The application describes the nature and goals of the research, as well as the time frame for completion. Often, an application will list proposed GRA's by name and specifically describe the work they will do. The GRA's resume or biographical sketch may sometimes be included with the application.

Within the University, the personnel under a research grant are often referred to as a research team, and GRA's will generally choose the professor associated with their research team to serve as one of their dissertation sponsors. If a grant application is successful, Columbia

receives remuneration from the funding entity for completion of the proposed research project. Where a funding entity pays an amount for a GRA's salary that is less than a given department's funding levels, the University pays the difference to ensure uniform departmental funding of GRA's.

Once Columbia has been awarded a grant, it takes on certain contractual obligations. According to NIH's Grants Policy Statement, Part II: Terms and Conditions of NIH Grant Awards, which governs most grants in the University's Natural and Health Sciences departments, services rendered by a GRA must not only be geared towards the goals of the grant, they must be necessary to the grant. Columbia's Executive Director of the Office of Projects and Grants testified that charging a grant for the tuition or stipend of a student not performing services in furtherance of the grant would violate the "basic principles" under which grants are administered.

Services provided by GRA's are necessary to fulfilling the goals of grant-funded research projects. In addition, GRA's perform research and other services under grants that may be unrelated to their dissertation research. For instance, Professor Donald Hood, the principal investigator of an NIH grant concerning retinal disease, testified that GRA Xian Zhang joined this research project as a first year Ph.D. student, and that as Zhang progressed in his studies, he was given greater responsibilities for the project, designing programs for the analysis of collected data. Professor Hood stated that he supervises Zhang on a daily basis and assigns him specific tasks to perform, such as calibrating the computer equipment used for the project. While acknowledging that some of the tasks Zhang has performed may ultimately be useful in regard to his dissertation research, Professor Hood also testified that many tasks Zhang has performed under the grant "will certainly not be applicable" to Zhang's dissertation.

Similarly, Professor Steven Kahn, the principal investigator of a research project funded by the National Aeronautics and Space Administration ("NASA"), entitled "Science and Calibration Support for the Reflecting Grade Spectrometer on the X-Ray Multi-Mirror Mission", testified that the grant has required GRA's Jean Cottam, Joshua Spodek, John Peterson, Peter Leutenegger, and Masao Sako, to perform specific tasks such as calibrating instruments used for research, data analysis, and interpretation of astrophysical observations. Professor Kahn testified that each of these tasks was necessary to the goals of the research project and the GRA's successful completion of these tasks has assisted Kahn in securing other grants. Certain of the services performed by the GRA's on this research project were unrelated to their dissertation research, although Professor Kahn stated that such services "would be good for the student educationally." In this vein, Cinque Soto, a third year Ph.D. student in the Biochemistry and Molecular Biophysics Department worked as a GRA on a research project funded by NSF that involved the rapid computational analysis of biological function with the aim of developing software tools and databases to study proteins and nucleic acids. Professor Barry Honig, the principal investigator of the project, testified that Soto performed assigned tasks under his control and direction which were necessary for the completion of the project, irrespective of whether they will advance Soto's dissertation research.

Thus, while the services performed by the GRA's help to develop skills and techniques that will prepare them for their dissertation research, they also perform vital services that are necessary for the University to fulfill its obligations under its research grants, without regard as to whether such services are related to the dissertation. In addition, the record establishes that GRA's receive funding, as do the TA's, in the form of stipends and tuition and fee remission.

OTHER CLASSIFICATIONS:

The Petitioner seeks to include the University's DRA's, the Law School's Research Assistants, SIPA's Program Assistants, and the School of the Arts' Service Fellows in the unit

only in the event a unit limited to instructional positions is held to be inappropriate. The Employer asserts that the DRA's in the Film Division of the School of the Arts are temporary positions and should be excluded from any bargaining unit. The Employer takes no position with respect to the remaining DRA's. The Employer contends that the Law School's Research Assistants, SIPA's Program Assistants, and the School of the Arts' Service Fellows are also temporary positions, and thus should be excluded from any bargaining unit. DRA's are described by the University as "a full time candidate for a graduate degree in the University who is appointed annually to assist a department . . . in the conduct of research." There is no evidence in the record to suggest that there is any academic requirement in the University to serve as a DRA. In fact, GSAS has been phasing out the DRA position over the last several years. Only 5 to 10 DRA positions remain in GSAS, while there are about 6 in the Film Division of the School of the Arts. DRA's are essentially personal research assistants for Columbia faculty, and the DRA's are assigned their duties by Columbia faculty members. DRA's duties include basic library research, internet research, fact checking, bibliography preparation, statistical analyses, photocopying, and mundane tasks such as ordering food and cleaning. In the Film Division of the School of the Arts, which offers a two-year program of courses followed by completion of two to three thesis films, DRA's duties also include organizing film screenings, guest speaker programs, orientations, managing casting files and scheduling auditions. DRA's work between 5 and 20 hours per week. The qualifications of DRA's are evaluated before their appointment, and the record establishes the services performed by the DRA's would likely need to be performed by other individuals if not performed by the DRA's. DRA's generally serve in that position for no more than 2-3 semesters, and DRA's in the Film Division are appointed for one semester only. The record indicates that it is not uncommon for DRA's to later become TA's.

Research Assistants in the Law School, like the Law School TA's, are JD candidates in three-year programs of study. Research Assistants serve as personal research assistants to

Columbia's law professors, performing research related tasks. They are eligible to serve as a research assistant only after the first year of their JD program, and are appointed for one semester at a time. Most of the Law School's Research Assistants do not serve in this position for more than one semester.

Program Assistants provide administrative and clerical services in SIPA. SIPA students are not required to serve as Program Assistants, nor do they receive academic credit for serving as Program Assistants. Their duties include running speakers series, organizing retreats, assisting in publishing newsletters and magazines, writing reports, organizing field trips, panels and conferences, updating databases and web pages, and general administrative services. SIPA refers to Program Assistants as staff in internal documents. Like SIPA's TA's and Course Assistants described above, Program Assistants are pursuing masters' degrees, not Ph.D.s, and generally are students for two years. About half of the Program Assistants are appointed in their positions for one semester, and about half are appointed for an additional semester.

School of the Arts Service Fellows primarily provide administrative and technical services. A Service Fellow position is not a degree requirement, and academic credit is not granted for such service. The duties of Service Fellows include: event/meeting/festival coordination, organizing readings, maintaining the production schedule, serving as Head Projectionist or Production Coordinator, casting, filing, maintaining databases and web pages, and other administrative tasks. Qualifications of students are considered in making Service Fellow appointments. Service Fellow appointments are for one year or one semester at a time. Service Fellows may serve subsequently as a TA.

UNIVERSITY FACILITIES:

Columbia is located in and around the New York metropolitan area. The University's ~~Morningside Heights Campus and Health Sciences Campus are both located in Manhattan;~~ the Morningside Heights Campus being situated between 116th Street and 120th Street along

Broadway and the Health Sciences Campus located at about 168th Street and Fort Washington Avenue. In addition, Columbia's Lamont-Doherty Observatory is located in Palisades, New York, about 15 miles from the Morningside Heights Campus, and the Nevis Laboratories

(collectively the "research facilities") are located in Irvington, New York, about 17 miles from the Morningside Heights campus. There is a University-wide computer network and phone system that connects the Morningside Heights Campus, the Health Sciences Campus, and the research facilities. Columbia provides students, faculty and employees free use of a shuttle bus service between the various locations. Students can also travel to the various sites via public transportation.

A large majority of the TA's are based at the Morningside Heights Campus. GRA's are divided between the campuses and research facilities. Out of the money received by the University in research grants, 60 percent goes towards grants based on the Health Sciences Campus, 14 percent goes towards grants based at the Lamont-Doherty Observatory, 13 percent goes towards grants based at Morningside Heights, and 13 percent goes to grants based at Nevis Laboratories. Grants are administered at both the Morningside Heights and Health Sciences campuses. The academic calendar and holiday schedules of the Health Science and Morningside Heights campuses differ as do health insurance benefits and premiums for students at the two campuses. Students based at the Health Science Campus are eligible for housing in that vicinity and are not eligible for housing near the Morningside Heights Campus. Morningside Heights students, as well as students performing services at the two research facilities, are offered housing near the Morningside Heights Campus.

Although Columbia's Vice President for Human Resources has labor relations administration responsibilities for the entire university, there are separate labor relations offices at each of the campuses and at the Lamont-Doherty Observatory. However, Columbia's Vice President for Human Resources is responsible for the negotiation and administration of collective bargaining agreements for the entire University. The Vice President for Human

Resources also has ultimate responsibility for the administration of union benefit plans and for labor relations in regard to employees without union representation. Employment records for the University are located centrally at the Morningside Heights Campus, although job listings are posted and hiring is done at the various campuses. Assistant Dean Edsall testified that although she has authority for graduate student teaching on the Morningside Heights Campus, she has no such responsibility for the Health Sciences Campus. The Provost sets stipend and tuition remission levels for all student assistants centrally, and should a school or program wish to deviate from this determination, the Provost's approval is required. While there is no collective bargaining history between the individuals at issue in this petition and the University, there are 11 collective bargaining agreements in effect between Columbia and various unions representing a variety of the University's employees. One of the 11 contracts covers employees at more than one campus. Columbia's Director of Labor Relations is responsible for the third step and appeals to arbitration for all of the University's contract grievances.

The Ph.D. programs in Basic Sciences located at the Health Sciences Campus are academically similar to the Natural Sciences Ph.D. programs based at Morningside Heights in that they have similar course and research requirements. Basic Science students have access to all of Columbia's facilities on the Morningside Heights Campus. Executive Vice Provost Crow testified that out of a total of about 6,000 grants, more than 50 grants involve research collaborations involving the Morningside Heights and Health Sciences campuses.

Departments and programs in Morningside Heights' Natural Sciences and Health Science's Basic Sciences share academic connections. One such example involves the Department of Biomedical Engineering. The department is based at the Morningside Heights campus; however, the department chair of Biomedical Engineering has offices at both campuses and a lab at the Health Sciences Campus. Other Biomedical Engineering faculty members have labs and/or offices at one or both of the campuses. Students in the Biomedical Engineering Department take classes at the Morningside Heights and Health Sciences

campuses. Some of the Department's courses are co-taught by faculty from both campuses, and more than a third of the Biomedical Engineering Department's core faculty, as well as about 75 percent of its affiliated faculty, hold joint appointments in Columbia's Medical School.

The Department of Biological Sciences at Morningside Heights also shares some connections with Basic Sciences programs at the Health Sciences Campus. There are 21 faculty members from Morningside Heights' Biological Sciences Department and 23 faculty from Health Sciences' Basic Sciences faculty from which doctoral students in Biology can select, when selecting a research team for their dissertation research.

In the Department of Biochemistry and Molecular Biophysics, based at the Health Sciences Campus, students enroll in elective courses held at Morningside Heights. Biochemistry and Molecular Biophysics students also join research teams at Morningside Heights, have Morningside Heights faculty on their dissertation committees, serve as TA's at Morningside Heights, and attend seminars on the Morningside Heights campus.

The Medical Informatics Department is based at the Health Sciences Campus; however, its doctoral candidates are required to take courses in Computer Science that are offered at the Morningside Heights Campus. There is interchange among Medical Informatics faculty and Computer Science Department faculty in the form of guest lectures. Medical Informatics students have chosen faculty based at Morningside Heights as their dissertation advisors. There are also joint grant-funded research projects involving the Medical Informatics and Computer Science departments, and these two departments also collaborate in the area of genetics and genomics through the Genome Center, which is located at the Health Sciences Campus.

The Health Sciences Campus-based program, Neurobiology and Behavior, is the result of a merger of Biology, Psychology and Basic Sciences research programs in 1995. Faculty members from both the Morningside Heights and Health Sciences campuses participate in the program. Neurobiology and Behavior's required courses and labs are located at both the

Morningside Heights and Health Sciences campuses, while dissertation committees often are comprised of faculty from both campuses. Many of the program's students, who are based on the Health Sciences Campus, serve as TA's on the Morningside Heights Campus.

A Center in Computational Biology and Bioinformatics is being established by faculty members from the Biochemistry, Genetics, Medical Informatics, and Pharmacology departments of the Health Sciences Campus in conjunction with faculty members from the Biology, Applied Mathematics, Electrical Engineering, Computer Science, and Statistics departments of the Morningside Heights Campus.

Academic programs in Molecular Biophysics and Vision Sciences are interdisciplinary programs, involving faculty from both the Morningside Heights and Health Sciences campuses. Molecular Biophysics students are about evenly split between the Morningside Heights and Health Sciences campuses, and the program's faculty come from the Chemistry Department at Morningside Heights and Health Science's Biochemistry Department. The interdisciplinary program in Vision Sciences is being created with the support of a recent grant and will include faculty from the Anatomy, Biochemistry, Genetics, Neurobiology, Nutrition, Pathology, and Physiology Departments of the Health Sciences Campus, as well as Morningside Heights' Bioengineering, Biology, Chemistry, and Psychology departments.

Faculty and students from the various campuses and research facilities participate together in seminars and research clubs. As all of Columbia's Ph.D. programs are governed and administered by GSAS, doctoral students in the Basic Sciences and Natural Sciences programs are all subject to GSAS's requirements, and Basic Sciences students participate in graduation ceremonies with other GSAS students on the Morningside Heights Campus.

The School of Public Health ("SPH") is located on the Health Sciences Campus and participates in dual degree programs with SIPA, the School of Business, and the School of Social Work on the Morningside Heights Campus, and dual degree programs with the Health Sciences-based Medical School, School of Dentistry, and the School of Nursing. Approximately

10 percent of SPH's enrollment comes from students cross-registering from other schools in the University.

The Lamont-Doherty Observatory ("Lamont"), located in Palisades, New York, also

shares academic connections with the Morningside Heights and Health Sciences campuses. GRA's from the Department of Earth and Environmental Sciences ("DEES") perform research services at Lamont. A few DEES courses are taught at Lamont, while the bulk of DEES courses, both graduate and undergraduate, are offered at the Morningside Heights Campus. Most DEES students live near Morningside Heights although some live near Lamont. Out of 39 GRA's in DEES, 26 perform their research at Lamont, while the other 13 perform their research at Morningside Heights. In the Spring 2001 semester, 10 DEES students served as GRA's and TA's simultaneously, and many DEES students teach at Morningside Heights. Lamont is linked with either the Morningside Heights Campus or the Health Sciences Campus on approximately 40 multi-campus research projects. One such project is the Environmental Molecular Sciences Institute located at Lamont, which combines faculty and GRA's from DEES and the Chemistry, Applied Physics, Electrical Engineering, and Earth and Environmental Engineering Departments on Morningside Heights.

The Nevis Laboratories ("Nevis"), which, as stated, is located in Irvington, New York, also shares academic connections with the Morningside Heights Campus. GRA's from the Physics Department, which is based on the Morningside Heights Campus, perform research at Nevis. All Physics Department classes are taught at Morningside Heights, and Morningside Heights is the location for the Physics Department's weekly seminars and colloquia. Many Physics students serve as TA's on the Morningside Heights Campus. About 18 of 95 Physics graduate students are affiliated with research groups that perform research at Nevis, and about half of these students spend little or no time at Nevis.

Columbia's Health Science Campus is in close physical proximity to the New York Presbyterian Hospital, the New York State Psychiatric Institute, the Neurological Institute of New

York and the Harkness Eye Institute (the "Medical Center"). These facilities are sometimes referred to collectively as the "Columbia-Presbyterian Medical Center."⁷ The Health Science Campus's Basic Sciences students are not considered students in the Medical School and are not involved with patient care; nor do they perform research or other services in patient care areas or attend classes in patient care areas. There is, however, some interrelationship between the departments and programs located on this campus and the Medical Center. For example, the Medical Informatics Department provides information services to New York Presbyterian, and the Department of Pathology states that its mission "is to advance the understanding of the causes of disease, to seek ways to prevent and cure disease, and to serve our patient population by providing the highest quality diagnostic service." Additionally, the Biostatistics Department is affiliated with the Medical Center, and it has offices in New York Presbyterian Hospital. Both the faculty and students in this department are issued Medical Center identification cards. Some of the faculty in the Basic Sciences departments hold joint appointments in clinical departments or programs as well as in the Medical Center. Additionally, certain departments at Morningside Heights also have connections to the Medical Center. Many faculty of the Biomedical Engineering Department, based on the Morningside Heights Campus, have affiliations with the Medical School.

POSITIONS OF THE PARTIES:

As noted above, the Petitioner seeks a unit comprised of only those employees who perform instructional services (TA's) on the Employer's Morningside Heights Campus, excluding all other employees. The Petitioner, relying upon New York University, 332 NLRB No. 111 (2000), ("NYU"), contends that the teaching assistants are employees and that a unit comprised

⁷ The Union asserts that the Health Science Campus's School of Medicine, School of Dentistry, and School of Public Health are physically connected to the hospital and institutes. The Employer states that New York Presbyterian Hospital is adjacent to the Medical School and is legally distinct from Columbia University, having its own Board of Trustees.

of instructional employees is an appropriate one under Board law. In this regard, the Petitioner argues that research associates are not employees because that their projects are performed primarily in furtherance of their dissertation research and do not constitute service to the

University. The Petitioner further contends that the research associates and those teaching assistants that may be located at the University's other facilities need not be included in the petitioned unit.

The Employer contends, initially, that the TA's sought by the Petition are not employees. Columbia argues that the Board's decision in NYU is not controlling in the instant matter because, unlike at NYU, teaching is a degree requirement for the vast majority of doctoral students at the University, graduate students receive academic credit for their teaching service, and the University provides graduate students with financial aid, rather than compensation for services rendered. In the event that it is concluded that TA's are employees under the Act, Columbia would argue that an appropriate unit must also include the GRA's and all graduate student assistants, other than temporary employees, at the University's two campuses and two research facilities. The University further asserts that undergraduate TA's should be excluded from any unit because they are not employees under the Act or alternatively because they do not share a sufficient community of interest with the unit or are temporary employees.

INSTRUCTIONAL POSITIONS:

The initial question to be addressed is whether the individuals in the petitioned for unit, the TA's on the Morningside Heights campus, are "employees" under the Act. As the Board has held, "Section 2(3) of the Act broadly defines the term 'employee' to include 'any employee. . . unless the Act explicitly states otherwise.'" New York University, supra. The Supreme Court has supported the Board's interpretation of Section 2(3), noting that "the breadth of Section 2(3) is striking," and that "unless a category of workers is among the few groups specifically exempted

from the Act's coverage, the group plainly comes within the statutory definition of "employee." Sure-Tan, Inc., 467 U.S. 883, 891-92 (1984); New York University, supra.

As the Court more recently explained in NLRB v. Town & Country, 516 U.S. 85, 90-95 (1995), under the Act, the term "employee" reflects the master-servant relationship that has evolved under common-law agency doctrine. In particular, the master-servant relationship exists "when a servant performs services for another, under the other's control or right of control, and in return for payment."

In NYU, the Board applied these principles in regard to a petitioned-for unit of graduate students serving as full-time and regular part-time teaching assistants, graduate assistants, research assistants, graduate student graders and graduate student tutors (referred to collectively as "graduate assistants"), holding the graduate assistants to be employees under the Act. In arriving at this conclusion, the Board first noted that the graduate assistants were not within any category of workers excluded from coverage under the Act in Section 2(3). Next, the Board held that the facts before it established that "graduate assistants perform services under the control and direction of the Employer, and they are compensated for these services by the Employer." *Id.*

Columbia argues that the TA's at issue in the instant petition are not employees under the Act. Columbia calls attention to the fact that the Board, in rejecting NYU's argument that the graduate assistants were merely receiving financial aid and were not being paid for the services they performed for NYU, stated, "[t]hat this is work in exchange for pay, and not solely the pursuit of education, is highlighted by the absence of any academic credit for virtually all graduate assistant work. Indeed, in most cases graduate assistants have completed their coursework and are working on their dissertation while performing this work." Columbia asserts that its graduate students are required to teach in order to be awarded a Ph.D. or M.Phil., and that, accordingly, based on the passage quoted from NYU above, its graduate students are not engaged in work for pay and are thus not employees under the Act.

Initially, Columbia asserts that there has been a GSAS-wide teaching requirement for the award of a Ph.D. or M.Phil. since the 1985-1986 academic year, and it points to the GSAS bulletin, which states that "[a]ll degree candidates are required to participate in the instructional and research activities of the Graduate School during a portion of their time in residence. . . ." as evidence of this requirement. Although Columbia asserts that it could deny the award of a Ph.D. to students who have not performed instructional activities, there is no evidence that this has occurred, and the evidence establishes that degrees have been awarded to students who performed no such activities. In this regard, the record establishes that since 1997, 508 of 1,139 students who received doctoral degrees (474 of them receiving Ph.D.'s) were never appointed to instructional positions in the University; and only 92 percent of students awarded Ph.D's during the 1999-2000 academic year taught during their graduate education at Columbia.⁸

[Additionally, there is no evidence that, prior to April 2000, the University had established any formal change in the requirements for the award of the Ph.D. degree that would have made a GSAS-wide teaching requirement a condition for successful completion of the program.]

Columbia points to a number of departments in which it appears that all graduate students have taught for a number of years. As the testimony of members of the Music, Art History, English and Comparative Literature, Classics and History departments illustrate, however, with the limited exception of the Computer Science and Biomedical Engineering departments, such teaching has not been academically required but was, rather, a condition of funding. New teaching guidelines were approved in April 2000 by the GSAS Executive committee and then adopted in various departments, as outlined above. As of the time the hearing was held in this matter, however, only the History Department had actually distributed these new teaching guidelines to students. It must also be stressed that the new teaching guidelines have been adopted so recently that it is unclear from the record whether they were in

⁸ Accepting Columbia's assertion that perhaps 62 of these students may have held teaching positions that were not recorded in the University's Personnel Information System, then 446 of 1,139 students

effect prior to the filing of the instant petition. Based upon the foregoing, I find that the asserted GSAS-wide teaching requirement has not been consistently required, and I further find that teaching service historically has not been a degree requirement.⁹ I therefore conclude that teaching is not a degree requirement and is not part of the curriculum in most departments in the University. It should also be noted that the record does not establish that most of Columbia's TA's go on to careers in teaching.

Even if I were to find, however, that Columbia's graduate students have an academic requirement to teach, this factor, by itself, should not be determinative with respect to whether they enjoy employee status under the Act. In Boston Medical Center, 330 NLRB No. 30 (1999), the Board held that medical interns, residents and fellows were employees under the Act despite the fact that these individuals were required to complete their internship, fellowship, or residency in order to become certified in a medical specialty.¹⁰

Under the test for "employee" status under the Act, the relevant questions are: whether a servant performs services for another; whether such services are under the other's control or right of control; and whether such services are in return for payment. Town & Country, 516 U.S. at 90-95. The record establishes that the TA's perform services for Columbia. With respect to Core Curriculum courses, a requirement for all undergraduate students, TA's teach 95 percent of Logic and Rhetoric classes, 80-90 percent of Art Humanities classes, 75 percent of Music Humanities classes, 40 percent of Contemporary Civilizations and Literature Humanities classes; and in language classes TA's teach at least 90 percent of introductory French classes,

receiving doctoral degrees since 1997 did not teach.

⁹ It appears that there are individual departments, however, that require graduate students to teach. Although Dean Lindt testified at one point that Columbia could require students to teach only if it provides them with funding, there is also evidence in the record that seems to establish that there is an academic teaching requirement in the Computer Science Department and Biomedical Engineering Departments.

¹⁰ I note that the Regional Director, Region 1, recently responded to exactly the same argument by Brown University in regard to the above-quoted text from NYU, "that merely because the Board stated in NYU that the lack of academic credit for graduate assistant work 'highlighted' the fact that this work was not solely in pursuit of education, it does not follow that the absence of this factor produces the

at least 50 percent of introductory Spanish classes, and 60 percent of language classes in the Classics Department. The record also makes clear that Columbia's staffing needs drive TA assignments. The specific services provided by TA's are also firmly established in the record.

These services include: lecturing, grading, designing and/or assisting the design of exams, preparing course materials and/or quizzes and assignments, writing letters of recommendation for students, reporting students having academic problems to the applicable undergraduate program, proctoring exams, lecturing portions of a class, tutoring, holding office hours, substituting for a faculty member who is absent, maintaining course web sites, attending staff meetings, assisting with syllabus preparation, ordering textbooks, photocopying reading assignments, and placing reading assignments on reserve in Columbia's libraries.

It is largely uncontested that the services provided by the TA's are provided under Columbia's control or right of control. As noted, Columbia's Faculty Handbook states that all services performed by Columbia's student officers are done so "under the direction and supervision of an officer of higher rank." TA's are assigned duties by Columbia faculty, and the number of tasks assigned determines the hours of service required of TA's. Although Columbia asserts that TA's are not subject to discipline or discharge, testimony to the contrary was offered by Dean Lindt, who stated that a student performing inadequately as a TA could be removed by the University, although not necessarily punished academically. Under all the above circumstances, I therefore find that the TA's provide Columbia with services under Columbia's control and right of control.

Lastly, it is clear that TA's services are in return for payment. As noted above, TA's are described in Columbia's faculty handbook as student officers, and the faculty handbook states that "[s]tudent officers are paid monthly over the period of their appointment, in the manner of other part time officers of the University." The TA's receive W-2 and W-4 forms. TA's receive

opposite result, such that receiving academic credit for this service automatically makes a graduate student a non-employee." Brown University, 1-RC-21368, 37 (November 16, 2001).

payment in the form of stipend and or tuition and fee remission, with amounts dependent on school and department. As in NYU, this evidence is more than sufficient to show that the services that the TA's perform under Columbia's control and right of control are in exchange for consideration.

~~Columbia argues that the stipends, tuition and fee remission are financial aid that bears no economic relation to the services provided by the TA's, but this argument fails to find support in the record.~~ As noted above, the University pays over \$40,000 per year to fund a graduate student TA. Funding levels are driven by the level of graduate student funding offered by Columbia's competitors. Columbia must match or exceed those funding levels to attract the best students whether or not it requires them to teach. Thus, it seems clear that there is an economic incentive to make use of graduate students as instructors, rather than adjunct faculty, who may already possess a doctoral degree as well as teaching experience, but would have to be compensated for teaching. Thus, it is apparent that there is an authentic economic relationship between Columbia and the TA's.

Columbia argues additionally that even if the University's graduate student TA's are found to be employees under the Act, undergraduate TA's are not entitled to collective bargaining rights under Board precedent. See San Francisco Art Institute, 226 NLRB 1251-52 (1976); Cornell University, 202 NLRB 290, 292 (1973); Georgetown University, 200 NLRB 215, 216 (1972). These cases, however, were decided prior to Boston Medical Center, supra, in which the Board overruled Cedars-Sinai Medical Center, 223 NLRB 251 (1976), as clarified in St. Clare's Hospital & Health Center, 229 NLRB 1000 (1977). In Boston Medical Center, the Board held that the house staff members met the test for employee status under the Act, despite the fact that they were also students, concluding that Cedars-Sinai and St. Clare's were wrongly decided. Applying these principles in NYU, the Board determined that the graduate assistants at issue in that case were also employees under the Act. New York University, supra. Columbia asserts that NYU addressed only graduate student assistants and did not

address the different considerations that might apply in determining the employee status of undergraduates under the Act. The Board in NYU did not state, however, that its holding was limited to graduate students and did not preclude the possibility that its findings could be applicable to undergraduate student employees. Rather, the Board stressed its reliance on the common law test to determine employee status under the Act. Given that undergraduate students in the employ of a college or university are not among the few groups specifically exempted from the Act's coverage, and that the record establishes that the undergraduate TA's meet the criteria for employee status in that they too perform services, under the direction and control of the University, for compensation, I conclude that Columbia's undergraduate TA's are employees under the Act.

The University further argues that, irrespective of whether they are found to be employees under the Act, undergraduate TA's do not share a community of interest with the graduate students and should be excluded from any collective bargaining unit. The University points to differences in the academic programs of undergraduates and graduate students, as well as differences in financial aid structure, the way undergraduate TA's are selected, and some differences in their duties. Graduate student TA's also are free to formally file grievances in regard to their TA service, while undergraduate TA's are not. The similarities between undergraduate TA's and graduate student TA's, however, outweigh the differences. As with the graduate students, the demand for undergraduates to serve as TA's appears to be driven largely by the needs of undergraduate departments, and undergraduate TA's perform many of the same functions as graduate TA's. They lead discussion and laboratory sections, hold office hours, grade, tutor, and maintain course web sites. In the Computer Science Department, an undergraduate even served as a Head TA, supervising other TA's in the department.¹¹

¹¹ The parties do not contend, and the record does not support, a determination that the Head TA position is a supervisory position under Section 2(11) of the Act. I also take note of the contradictory testimony in regard to whether undergraduate TA's oversee graduate TA's in the Computer Science Department.

The University also argues that, like the graders and tutors in NYU, undergraduate TA's are temporary employees. See New York University, supra, slip op. at 18. The University asserts that, as compared to students awarded Ph.D's over the past three years who averaged 5.27 semesters of service as TA's, undergraduates receiving degrees averaged only 1.84 semesters of TA service over the same time period. These figures are reflective of only TA's formally appointed in the University's Personnel Information System, and do not reflect informal appointments, which are also made. In this regard, although Columbia's data states that 37 undergraduates receiving degrees over those three years held TA appointments, the record demonstrates that in the Computer Science Department alone, 70 undergraduates served as TA's last semester, and that they have served in that Department from 1 to 5 semesters. The record evidence thus fails to establish that the undergraduates are temporary employees with little or no expectation of reappointment. ~~As the undergraduate TA's share a community of interest with the graduate TA's, I find it appropriate to include them in the unit.~~

~~Columbia contends that the Law School's TA's, the TA's in Columbia's summer programs, as well as the TA's and course assistants in SIPA should be excluded from the unit because of their temporary status.~~¹² In NYU, the Regional Director excluded graduate student graders and tutors from the petitioned-for unit largely due to their temporary status. Noting that the graders and tutors were appointed for finite periods of time ~~(for periods ranging from one week to one semester)~~, the Regional Director concluded that students in these positions ~~could not anticipate a string of assignments or more appointments to the same assignment.~~ This conclusion, coupled with the fact that there were differences in compensation between the graders and tutors and the rest of the unit, led the Regional Director to find these to be

¹² As will be addressed in the discussion of research positions and administrative/clerical/technical positions, Columbia seeks to exclude Service Fellows and DRA's in the Film Division of the School of the Arts, Research Assistants in the Law School, as well as SIPA's Program Assistants, arguing that these are temporary employees. ..

temporary positions. Accordingly, they were excluded from the unit due to their lack of a community of interest with the rest of the unit. New York University, supra, slip op. at 18.

Both the Law Associates and Teaching Fellows in the Law School have duties that overlap those of the GSAS TA's, as they lead discussion sections, grade, and prepare course materials. Law Associates also serve as the instructor of record for legal writing and research classes, and are appointed for a two-year term. I therefore find that they are employees who have a reasonable expectation of employment for that period of time and, accordingly, that they should be included in the unit. ~~The record establishes, however, that Teaching Fellows generally do not serve for more than one semester. Thus, the Teaching Fellows are similar to the graders and tutors in NYU, with little expectation of serving for more than a finite and brief period of time. Inasmuch as these teaching assistants do not have a reasonable expectation of future employment in that position, I find it appropriate that they be excluded from the unit.~~

Teaching
Fellows
out

SIPA's TA's and Course Assistants perform many of the same duties as the University's TA's as a whole. As masters' degree students, SIPA's TA's and Course Assistants generally are students for only two years. ~~As noted, about half of SIPA's TA's and Course Assistants are appointed in their positions for one semester, and the rest are appointed for only one additional semester. SIPA's TA's and Course Assistants are thus also similar to the graders and tutors in NYU, with little expectation of serving for more than a finite period of time, and accordingly, I find that they are properly excluded from the unit.~~

PA TAs
+
SSAs
out

The Instructors and TA's in Columbia's summer programs, as noted, perform duties which include serving as instructor of record, running discussion sections, serving as laboratory assistants, grading, holding office hours, and providing tutoring. As appointments in the summer programs last from 5-12 weeks, and a large majority of Instructors and TA's in the summer programs serve for only one summer, ~~these TA's in the summer programs are also similar to the graders and tutors in NYU, with little expectation of serving for more than one finite period of time, and therefore should also be excluded from the unit.~~

summer
TAs
out

Having concluded that the graduate and undergraduate TA's are employees under the Act, it is now necessary to determine whether a unit consisting solely of instructional employees at the Morningside campus, the unit which the Petitioner seeks, is a unit appropriate for the purposes of collective bargaining. It is well-settled that the Act does not require that the petitioned-for unit be the only appropriate unit, the most appropriate unit, or what could become the ultimate unit; it requires only that the unit be "appropriate." See, e.g., Overnight Transportation Co., 322 NLRB 723 (1996); Dezcon, Inc., 295 NLRB 109 (1989); Capital Bakers, 168 NLRB 904 (1968); Morand Bros. Beverage Co., 91 NLRB 409 (1950), *enfd* 190 F.2d 576 (7th Cir. 1951). And, while a petitioner's desire in regard to unit composition and scope is relevant, it is in no way dispositive, see Airco, Inc., 273 NLRB 348 (1984), because a proposed bargaining unit based on an arbitrary grouping of employees will always be inappropriate. See, e.g., Moore Business Forms, Inc., 204 NLRB 552 (1973); Glosser Bros., Inc., 93 NLRB 1343 (1951). Illustrative of this principle is United States Steel Corp., 192 NLRB 58 (1971), in which the Board held that when technical and maintenance employees interchange jobs, are under common supervision, and have similar working conditions, a unit that included only one of these groups of workers was inappropriate. Under all the facts presented herein, for the reasons set forth below, I conclude that a unit limited to instructional employees based only at the Morningside campus is not an appropriate unit for purposes of collective bargaining and that the unit must also include GRA's and DRA's employed at the Morningside and Health Sciences campuses, as well as at the Lamont and Nevis research facilities, as well as any TA's who may teach at those facilities.

RESEARCH POSITIONS:

GRADUATE RESEARCH ASSISTANTS:

The record establishes the GRA's perform services for Columbia. In NYU, certain student research assistants, primarily in natural science departments, were held not to be

employees under the Act because the Board concluded that these students did not perform services for NYU. New York University, supra, slip op. at n.10. These student assistants worked under grants from sources outside of NYU, often from federal entities such as NIH or NSF, but were only required to perform research towards their dissertations, with no other service requirements. Id. at 12. In holding these that these students were not employees under the Act, the Board cited Leland Stanford Junior University, 214 NLRB 621 (1974), as supporting precedent. In Leland Stanford, research assistants were held not to be employees under the Act because they provided no services for the University, and because, "Stanford was, essentially, a disinterested party. Stanford did not control the research, did not request the research, and, most significantly, did not receive remuneration from a third party for the particular research." Cedars-Sinai Med. Center, 223 NLRB 251, 255 n. 14 (1976); Leland Stanford Junior University, 214 NLRB 621 (1974).

Columbia's GRA's are distinguishable from both the student research assistants in NYU and Leland Stanford's research assistants in that the GRA's provide services to Columbia. It should first be noted that that research is central to Columbia's mission, so much so that faculty research grants account for 15 percent of the University's annual budget. While faculty members apply for grants in the capacity of a principal investigator, they do so on behalf of the University, and when a grant proposal is accepted by a funding entity, Columbia is paid by the funding entity to complete the research. Columbia clearly cannot be described as disinterested in its grant-funded research. Services rendered by a GRA, under the guidelines of the grant-awarding entities, must be necessary to the completion of grant-funded research in order to be billed to the grant; and the record reveals, through extensive testimony from faculty members serving as principal investigators on grant-funded research, that the services provided by the GRA's has in fact been necessary to the fulfillment of the grants' research requirements, and accordingly, must be regarded as service to the University. The record contains many such

examples of GRA's providing services necessary to the fulfillment of Columbia's grant-related obligations.

[In NYU, as discussed, the fact that the natural sciences students were only required to perform research towards their dissertations, with no other service requirements, was significant to the Board in holding that these students were not employees under the Act. 332 NLRB No. 111, slip op. at 12. ~~When all students of a certain classification are performing research related solely to their own dissertations under a grant, this logically suggests that these students are not providing services to the university; however, it does not necessarily follow that the performance of required dissertation research mandates the conclusion that services have not been provided and that the students at issue are not employees.~~ Nevertheless, the record additionally establishes that GRA's perform research and other services for Columbia under its research grants that are unconnected, and sometimes unrelated, to their dissertations.]

In regard to the University's direction and control of the GRA's, ~~the principal investigator, a Columbia faculty member, is invested with the primary responsibility for supervision of personnel, including GRA's, working on the research project. And as demonstrated in regard to the research grants discussed above, principal investigators assign specific tasks and ensure that the tasks are completed as specified.~~

The services provided by the GRA's are clearly in return for payment. Like the TA's, GRA's receive payment in the form of stipend and or tuition and fee remission, with amounts dependent on school and department. Again, for the reasons set forth above, this is more than sufficient to show that the services that the GRA's perform under Columbia's control and right of control is in exchange for consideration.

Columbia's GRA's perform services for Columbia, under Columbia's control and right of control, and the work that is performed is in return for payment. I therefore find that Columbia's GRA's are employees under the Act.

I further find that under the circumstances herein, an appropriate unit must include the GRA's. I note that the Board has not squarely addressed the issue as to whether a petitioned-for instructional unit of student assistants that seeks to exclude research assistants and include only teaching assistants is appropriate. The Employer relies upon NYU, where both teaching assistants and research assistants were included in the same unit. However, the union in NYU sought to include both teaching assistants and research assistants in the petitioned-for bargaining unit. Thus, the Board's holding in that case fails to resolve the question posed by the instant case in that the Petitioner has petitioned for a unit consisting solely of teaching assistants, and is specifically seeking to exclude research assistants.

~~The Petitioner cites a number of cases where instructional units were held to be appropriate in support of the proposition that a unit of instructional employees constitutes an appropriate unit. See, e.g., Trustees of Boston University v. NLRB, 575 F.2d 301 (1st Cir. 1978), vacated on other grounds, 445 U.S. 912 (1980); Developmental Disabilities Institute, Inc., 334 NLRB No. 143 (2001); Nova Southeastern University, 325 NLRB 728 (1998); St. Thomas University, 298 NLRB 280 (1990). The Petitioner is correct that instructional units have been held to be appropriate by the Board. This certainly does not mean, however, that an instructional unit will be appropriate in all circumstances.~~

The Petitioner also cites two cases in support of the proposition that the Board has excluded non-instructional positions from instructional bargaining units. See Goddard College, 216 NLRB 457, 457-58 (1975); Roman Catholic Archdiocese, 216 NLRB 249 (1975). However, neither Goddard College nor Roman Catholic Archdiocese involved purely instructional units, as the Petitioner asserts. Both of those cases involved units that included more than instructional positions. In Goddard College and Roman Catholic Archdiocese, the respective unions sought to include certain positions in the bargaining unit, but the Board excluded these positions due to the fact that they did not share a community of interest with the other members of the proposed unit, holding that the fact that the excluded positions were not teaching positions, in addition to

other dissimilarities between the positions at issue, warranted their exclusion from the units in those cases. These cases do not support the proposition that the Board excludes non-instructional positions from instructional units. A number of cases, however, have found bargaining units comprised of both instructional and non-instructional employees to be appropriate due to a shared community of interest. See New York University, supra; University of Vermont, 223 NLRB 423 (1976); Northeastern University, 218 NLRB 247 (1975); Goddard College, 216 NLRB 457, 457-58 (1975); Roman Catholic Archdiocese, 216 NLRB 249 (1975); University of Miami, 213 NLRB 634 (1974); C.W. Post Center of Long Island University, 189 NLRB 904 (1971).

Although the Board has not considered whether a unit of student assistants that includes only teaching assistants and excludes research assistants is appropriate, Board precedent that has addressed related unit composition questions suggests, however, that such a unit may not, under certain circumstances, be appropriate for collective bargaining. See University of Vermont, 223 NLRB 423 (1976); Northeastern University, 218 NLRB 247 (1975); University of Miami, 213 NLRB 634 (1974); C.W. Post Center of Long Island University, 189 NLRB 904 (1971).

In University of Vermont, 223 NLRB 423 (1976), the union petitioned to represent a unit of all full-time faculty, including the school of nursing and professional librarians, but excluding personnel in the schools of allied health sciences and medicine. The union did not seek to include non-student research associates in the unit. The Board determined that the research associates were independent professionals working within a research grant from sources outside of the University of Vermont. In most cases, the Board found, a principal investigator would hire several research associates and a support staff for a specific research project. The Board determined that the research associates enjoyed the same fringe benefits as regular full-time faculty, received comparable salaries, and like most academic faculty, possessed advanced degrees. The Board concluded that the research associates had "a close

professional community of interest with the faculty sufficient to warrant their inclusion in the voting unit[,] even though the research associates were not involved in performing instructional services.

In Northeastern University, 218 NLRB 247 (1975), the union sought to represent a unit of all full-time members of the teaching and research faculty. The union failed to take a position in regard to whether the position of research associate should be included in the unit, thereby requiring the Board to determine whether this position should or should not be included in the unit. Id. at 253. The Board determined that the research associates performed research on special research projects under the direction of a principal investigator, had the status of professionals like the rest of the faculty, and enjoyed all the benefits that were enjoyed by other employees of the University. Accordingly, ~~the Board included the research associates in the~~ unit. Id. at 254.

While these cases do not directly address the issue presented by the instant matter, the principles gleaned from University of Vermont and Northeastern University are instructive. Although the unions therein were not seeking the exclusion of the research associates, they also were not, as in NYU, seeking their inclusion in the unit. Required then to decide what would constitute an appropriate unit, in Northeastern University and University of Vermont, the Board held that the appropriate unit in both of these cases included the research assistants. The Board did not state in these cases that a unit that excluded the research assistants would also be appropriate.

~~Applying the principles from Northeastern University and University of Vermont to the facts at hand leads to the conclusion that the petitioned-for unit is not an appropriate unit for purposes of collective bargaining. Like the research associates in Northeastern University and University of Vermont, Columbia's GRA's perform research on special research projects under the direction of a principal investigator. As the research associates in Northeastern University and University of Vermont shared a close community with the respective faculties by way of the~~

similarity in their salaries, their educational backgrounds, the benefits they enjoyed, and in their university status as professionals. Columbia's GRA's similarly share a close community of interest with Columbia's TA's, sharing similar salaries, benefits, educational level, and the same university status as student assistants. Moreover, looking at other community of interest factors such as common supervision, interchangeability and contact among employees, work situs, and general working conditions, see, e.g., Seaboard Marine Ltd., 327 NLRB No. 108 (1999); J.C. Penney Co., 328 NLRB No. 105 (1999); K.G. Knitting Mills, 320 NLRB 374 (1995); Long Island University, 189 NLRB 909 (1971), it appears that Columbia's GRA's and TA's share an even closer community of interest than did the research associates and other faculty in Northeastern University and University of Vermont. Columbia's GRA's and TA's are often in the same schools and same departments, attending the same classes and lectures, with the same professors serving as supervisors, and as Columbia points out, the GRA's and TA's are sometimes one and the same, as some students can serve both functions at the very same time. As noted above, 45 students on Morningside Heights campus held both GRA and TA positions in the Spring 2001 semester, and of all graduate students awarded degrees in the last three years, 341 held both GRA and TA appointments, although not simultaneously.

The only difference of significance between the GRA's and the TA's is that the two groups perform different functions, the TA's providing instructional services and the GRA's providing research-related services. The Union argues that there is also significance in the fact that the GRA's and TA's are students in different departments, but this difference is of no significance as the TA's are in different departments in relation to each other as well. The Union also asserts that the TA's and GRA's serve different constituencies, but this contention is no more than a restatement of the fact that the GRA's and TA's perform different functions. While the TA's provide services to the University through instructing or assisting in the instruction of students, the GRA's provide services to the University through research-related services. It is therefore clear that the only difference of any significance between the GRA's and TA's is in the

functions they perform. In a different context, the Board has held that where the function two groups of employees perform is the only significant difference between the employees, both groups of employees must be included in the same bargaining unit. United States Steel, 192

NLRB 58 (1971). ~~Columbia's GRA's and TA's share such a close community of interest that a unit composed solely of TA's under these facts would be an arbitrary grouping, and, thus, such a unit is not appropriate for purposes of collective bargaining.~~ See, e.g., Moore Business Forms, Inc., 204 NLRB 552 (1973); Glosser Bros., Inc., 93 NLRB 1343 (1951). Accordingly, an appropriate unit must include the GRA's.¹³

DEPARTMENTAL RESEARCH ASSISTANTS:

The Petitioner seeks to include the University's DRA's if a unit limited to instructional positions is held to be inappropriate. The Employer, noting that there are few individuals occupying this position and that the position is in the process of being phased out, does not specifically seek to exclude all DRA's. Columbia does, however, seek to exclude DRA's in the School of the Arts' Film Division, arguing that they are temporary employees.

As noted, a DRA is described by the University as "a full time candidate for a graduate degree in the University who is appointed annually to assist a department . . . in the conduct of research[.]" and there is no evidence in the record to suggest that there is any academic requirement in the University to serve as a DRA. DRA's duties include basic library research, internet research, fact checking, bibliography preparation, statistical analyses, photocopying, and mundane tasks such as ordering food and cleaning, and in the Film Division of the School of the Arts, DRA's duties also include organizing film screenings, guest speaker programs, orientations, managing casting files and scheduling auditions. ~~In light of these duties, I find the DRA's perform services for the University.~~

¹³ I stress, however, that I am not suggesting that a purely instructional unit of student assistants cannot be a unit appropriate for collective bargaining under other circumstances.

DRA's perform these services under Columbia's control and right of control, as the DRA's are essentially personal research assistants for Columbia faculty and are assigned their duties by Columbia faculty members.

As to whether the services provided by the DRA's are in return for payment, such services are clearly in return for payment. As do the TA's and GRA's, the DRA's receive payment in the form of stipend and or tuition and fee remission. Thus, Columbia's DRA's perform services for Columbia, under Columbia's control and right of control, and the work that is performed is in return for payment. I therefore find that Columbia's DRA's are employees under the Act.

For the reasons stated above in the discussion of the GRA's, an appropriate unit should include DRA's. See University of Vermont, 223 NLRB 423 (1976); Northeastern University, 218 NLRB 247 (1975); University of Miami, 213 NLRB 634 (1974); C.W. Post Center of Long Island University, 189 NLRB 904 (1971). Although, as noted above, it appears that this position is in the process of being eliminated, there is no evidence that the implementation of this plan is imminent. Most DRA's generally serve in that position for 2-3 semesters, and the record indicates that it is not uncommon for DRA's to later become TA's. The DRA's in the Film Division of the School of the Arts, however, are appointed generally for one semester only. In this manner, they are similar to the graders and tutors in NYU, with little expectation of serving for more than a finite period of time, and thus should be excluded from the unit.

DRA's
in
film
are out

Similarly, Research Assistants in the Law School, who the Employer seeks to exclude as temporary employees, are JD candidates. They are eligible to serve as Research Assistants only after the first year of their JD program, and are appointed for one semester at a time. As most of the Law School's research assistants do not serve in this position for more than one semester, they too are similar to the graders and tutors in NYU, with little expectation of serving for more than a finite period of time, and thus should be excluded from the unit.

Law RAs
are
out

ADMINISTRATIVE, CLERICAL, AND TECHNICAL POSITIONS:

SIPA's Program Assistants provide administrative and clerical services in SIPA. Like SIPA's TA's and Course Assistants discussed above, about half of the Program Assistants are appointed in their positions for only one semester, and about half are appointed for an additional semester. ~~SIPA's Program Assistants thus share similarities with the graders and tutors in NYU, with little expectation of serving for more than a finite period of time, and therefore should be excluded from the unit.~~

SIPA
program
assistants
are or

Service Fellows in the School of the Arts provide administrative and technical services. As noted, Service Fellow appointments are for one year or one semester at a time. While Service Fellows may serve subsequently as a TA, the record did not establish that Service Fellows do serve subsequently as TA's. Thus the Service Fellows are also similar to the graders and tutors in NYU, with little expectation of serving for more than a finite period of time, and should be excluded from the unit.

Service
Fellows
are or

CAMPUS LOCATIONS:

As stated earlier, the Act does not require that the petitioned-for unit be the only appropriate unit, the most appropriate unit, or what could become the ultimate unit; it requires only that the unit is "appropriate." See, e.g., Overnight Transportation Co., 322 NLRB 723 (1996). In regard to unit scope, the Board has long held that a single location is presumptively appropriate. See, e.g., Huckleberry Youth Programs, 326 NLRB No. 127 (1998); Hedins Corp., 255 NLRB 160 (1981); Penn Color, Inc., 249 NLRB 1117, 1119 (1980); Cornell University, 183 NLRB 329 (1970); Marks Oxygen Co., 147 NLRB 228, 230 (1964). This presumption is rebuttable, however, see, e.g., J & L Plate, 310 NLRB 429 (1993).

In Cornell University, 183 NLRB 329 (1970), the Board held that in the educational setting, it would continue to look to factors it had long considered in the industrial setting where an employer operates more than one facility. Those factors are: prior bargaining history;

centralization of management particularly in regard to labor relations; extent of employee interchange; degree of interdependence or autonomy; differences or similarities of skills and functions of the employees; and geographical locations of the facilities in relation to each other. See, e.g., Comell University, 183 NLRB 329 (1970); President & Fellows of Harvard College, 269 NLRB 821 (1984); Trustees of Tufts College, 251 NLRB 785 (1980); Fairleigh Dickinson University, 205 NLRB 673 (1973).

In The Trustees of Columbia University in the City of New York, 222 NLRB 309 (1976) ("Columbia"), the Board applied the Comell factors in regard to a petition seeking to represent Columbia's clerical employees at the Momingside Heights Campus. Columbia argued that the only appropriate unit was one that included technical employees and was university-wide in scope. Id. The appropriateness of including Health Science Campus employees was not before the Board. The Board found that, despite there being several locations, University management was highly centralized in regard to wage, salary and benefit structure and scheduling of employees, factors arguing against the presumption that the single location was appropriate. The Board also determined, however, that the Nevis Laboratories and the Lamont-Doherty Observatory had independent research functions and operations, independent funding sources, were not subject by the University to centralized day-to-day direction, and were each located about 15 miles from the Momingside Heights Campus. Weighing these factors, the Board determined that the Nevis Laboratories and Lamont-Doherty Observatory employees did not share a community of interest with the rest of the unit to warrant their inclusion in the bargaining unit. Id. at 310.

The Union argues that the factors that led the Board to uphold the presumption in favor of the single location, the Momingside Heights Campus, and exclude the employees at Lamont and Nevis argue as forcefully today that a unit limited to the Momingside Heights Campus is appropriate. The Union asserts that Lamont and Nevis still have independent research functions and operations, independent funding sources, still are not subject by the University to

centralized day to day direction, and are each still located about 15 miles from the Morningside Heights Campus. The Union also points out that Lamont now has its own labor relations office, which it did not have when the Board decided Columbia. Additionally, the Union contends, that

the employees at issue performing services at the Health Sciences Campus do not share a community of interest with the employees at issue performing services at the Morningside Heights Campus, asserting that the two campuses have separate funding, administration and labor relations; that the employees have different terms and conditions of employment, and that Section 8(g) of the Act may apply to the employees performing services at the Morningside Heights Campus.¹⁴

The record, however, establishes that there is ~~significant academic and research integration between the Morningside Heights Campus and the research facilities, as well as between the Morningside Heights and Health Sciences campuses, which suggests that these separate facilities are not autonomous.~~ The ~~Ph.D. programs in Basic Sciences located in the Medical School on the Health Sciences Campus are academically similar to Natural Sciences Ph.D. programs based on the Morningside Heights Campus, with similar course and research requirements and levels of student funding; and faculty move between the Basic Sciences and Natural Sciences programs.~~ Departments and programs are in some cases intertwined between the two campuses. For example, the Department of Biomedical Engineering is based at the Morningside Heights Campus, yet, ~~has offices and labs at both campuses. Students in the Biomedical Engineering Department take classes at the Morningside Heights and Health Sciences campuses, while courses in this department are co-taught by faculty from both campuses.~~ In the Department of Biological Sciences at Morningside Heights, doctoral students can choose from among 21 faculty members from the Biological Sciences Department and 23

*Similar
of
academic
programs*

¹⁴ Section 8(g) provides that "[a] labor organization before engaging in any strike, picketing, or other concerted refusal to work at any health care institution shall, not less than ten days prior to such action, notify the institution in writing and the Federal Mediation and Conciliation Service of that intention..."

faculty from the Basic Sciences faculty when selecting a research team. Students in the Department of Biochemistry, based at the Health Sciences Campus, take electives at the Morningside Heights Campus, join research teams at Morningside Heights, have Morningside Heights faculty on their dissertation committees, serve as TA's at Morningside Heights, and attend seminars on the Morningside Heights Campus. Medical Informatics' doctoral candidates, based at the Health Sciences Campus, are required to take courses in Computer Science that are offered at Morningside Heights. More than 50 grants involve research collaborations between the Morningside Heights and Health Sciences campuses. SPH, located on the Health Sciences Campus, participates in dual degree programs with SIPA, the School of Business, and the School of Social Work, all located on the Morningside Heights Campus.

This integration is exhibited at the research facilities as well. Lamont is linked with either the Morningside Heights Campus or the Health Sciences Campus on approximately 40 multi-campus research projects; and Nevis employs the use of GRA's from the Physics Department, which is based on the Morningside Heights Campus, for its research projects. All of these factors support a finding of interdependence between the Morningside Heights Campus, the Health Sciences Campus and the research facilities in the areas of research and academics, areas of great relevance in regard to the employees at issue in the petition.

The strong academic connections among and between the campuses and research facilities also lead to employee interchange and interface. For instance, out of 39 GRA's in DEES, 26 perform their research at Lamont, while the other 13 perform their research at Morningside Heights. GRA's from the Physics Department, which is based on the Morningside Heights Campus, perform research at Nevis and serve as TA's on the Morningside Heights Campus. Neurology and Behavior's students, who are based on the Health Sciences Campus, serve as TA's on the Morningside Heights Campus.

There is also centralization of management in regard to the employees at issue. As all of Columbia's Ph.D. programs are governed and administered by GSAS, doctoral students are

all subject to GSAS's requirements, regardless of the location at which they perform services.

Accordingly, salary levels for student assistantships are determined centrally by the Provost,

and thus, despite the fact that there are separate labor relations offices at several of the

*salaries
determined
centrally*

locations, labor relations are not administered individually by site in regard to the employees at issue. Terms and conditions of employment in regard to salary, benefits, and working environments are also similar for the employees at issue at all locations.

Finally, the Petitioner's argument that the Health Science Campus employees do not share a community of interest with the Morningside Heights employees because of the possible applicability of Section 8(g) in regard to these employees is unpersuasive. The record does not establish that Columbia and the Medical Center constitute a joint or single employer, nor does it establish that employees at issue in this petition in fact perform services in locations where Section 8(g) would govern a job action. The mere possibility that Section 8(g) might apply to employees at the Health Sciences Campus is unduly speculative and does not alter my determination that the employees at the Health Science Campus share a close community of interest with the other employees at issue.

In light of the foregoing, I find that the employees performing services at the two campuses and research facilities share such a close community of interest that the presumption in favor of the single location has been rebutted. An appropriate unit, therefore, must include the employees at issue from both campuses and research facilities; and, accordingly, I find that a unit appropriate for purposes of collective bargaining must include Columbia's TA's, GRA's, and DRA's performing services at the Morningside Heights Campus, Health Sciences Campus, Lamont-Doherty Observatory, and Nevis Laboratories.

In view of the foregoing, I find that the following unit constitutes a unit that is appropriate for the purposes of collective bargaining:

INCLUDED: All graduate and undergraduate Teaching Assistants (Teaching Assistants, Teaching Fellows, Law Associates, Preceptors, Instructors, Listening Assistants, Course Assistants, Readers and Graders),

Graduate Research Assistants and Departmental Research Assistants employed by the Employer at its Morningside Heights, Health Sciences, Lamont-Doherty and Nevis facilities.

EXCLUDED: All other employees, including Teaching Fellows and Research Assistants in the Law School, Instructors and Teaching Assistants in the Summer Session programs, Teaching Assistants, Course Assistants and Program Assistants in the School of International and Public Affairs, Departmental Research Assistants in the School of the Arts, Film Division, Service Fellows in the School of the Arts, and guards, and supervisors as defined by the Act.

DIRECTION OF ELECTION


An election by secret ballot shall be conducted by the Regional Director, Region 2, among the employees in the unit found appropriate at the time¹⁵ and place set forth in the notice of election¹⁶ to be issued subsequently, ~~subject to the Board's Rules and Regulations.~~ ~~Eligible to vote are those in the unit who were employed during the payroll period ending immediately preceding the date of the Decision, including employees who did not work during that period because they were ill, on vacation or temporarily laid off and those in the unit who have been employed for 30 working days or more within the 12 months preceding the eligibility date for the election, or had some employment during those 12 months and have been employed for 45 working days or more within the 24-month period immediately preceding the eligibility date.~~ Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained their status as such during the eligibility period and their replacements. Those in the military services of the United States who are in the unit may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period,

¹⁵ Pursuant to Section 101.21(d) of the Board's Statements of Procedure, absent a waiver, an election will normally be scheduled for a date or dates between the 25th and 30th day after the date of this decision.

¹⁶ The Board has adopted a rule requiring that election notices be posted by an employer "at least 3 full working days prior to 12:01 a.m. of the day of the election." Section 103.20(a) of the Board's Rules. In addition, the Board has held that Section 103.20(c) of the Board's Rules requires that an employer notify the Regional Office at least five full working days prior to 12:01 a.m. of the day of the election, if it has not received copies of the election notice. Club Demonstration Services, 317 NLRB No. 52 (1995).

employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced.¹⁷ Those eligible shall vote whether they desire to be represented for collective bargaining purposes by International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, UAW, AFL-CIO.¹⁸

Dated: February 11, 2002
at New York, New York


Celeste J. Mattina
Regional Director, Region 2
National Labor Relations Board
26 Federal Plaza, Rm. 3614
New York, New York 10278

¹⁷ In order to assure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses that may be used to communicate with them. North Macon Health Care Facility, 315 NLRB 359 (1994); Excelsior Underwear, Inc., 156 NLRB 1236 (1966); NLRB v. Wyman Gordon Company, 394 U.S. 759 (1969). Accordingly, it is hereby directed that within seven days of the date of this Decision, three copies of an election eligibility list, containing the full names and addresses of all eligible voters, shall be filed by the Employer with the Regional Director, Region 2, who shall make the list available to all parties to the election. In order to be timely filed, such list must be received in the Regional Office at the address below, on or before February 19, 2002. No extension of time to file this list may be granted, nor shall the filing of a request for review operate to stay the filing of such list, except in extraordinary circumstances. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed.

¹⁸ Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570. This request must be received by February 25, 2002.