

BEFORE THE
NATIONAL LABOR RELATIONS BOARD

In the Matter of: THE TRUSTEES OF COLUMBIA UNIVERSITY IN THE CITY OF NEW YORK, Employer, and GRADUATE WORKERS OF COLUMBIA - GWA, UAW, Petitioner.	Case No. 2-RC-143012
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The above-entitled matter came on for hearing pursuant to Notice, before AUDREY EVEILLARD, Hearing Officer, at the Jacob Javits Federal Building, 26 Federal Plaza, New York, New York on Tuesday, March 31, 2015, at 10:00 a.m.

A P P E A R A N C E S

1 On behalf of the Employer:

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23 On Behalf of the Petitioner:

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I N D E X

WITNESS

DIRECT

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2 (None.)

	<u>EXHIBIT NUMBER</u>	<u>IDENTIFIED</u>	<u>RECEIVED</u>
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2	BOARD'S		
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P R O C E E D I N G S

(Time Noted: 10:48 a.m.)

HEARING OFFICER EVEILLARD: On the record.

The hearing will now be in order. This is a formal hearing, "In the Matter of Columbia University," Case Number 2-RC-143012 before the National Labor Relations Board. The Hearing Officer appearing for the Board is Audrey Eveillard, myself. And the hearing is being conducted at 26 Federal Plaza in the hearing room adjacent to Room 3614, New York, New York.

All the parties have been informed of the procedures at the formal hearing before the Board by service of a Statement of Standard Procedures, with the Notice of Hearing. I have additional copies of the statement for distribution if any party wishes for more.

All parties please note that the official reporter makes the official -- makes the only official transcript of these proceedings. And all citations, arguments, and briefs, if briefs are to be submitted, must refer to the official record.

In the event that any of the parties wish to make off the record remarks, requests to make such remarks should be directed to the Hearing Officer, not to the official reporter.

Statement of reasons in support of motions and objections should be specific and concise. Exceptions automatically follow all adverse rulings.

Objections and exceptions may on appropriate request be

1 permitted to, on appropriate request, be permitted to an entire
2 line of questioning.

3 The parties are reminded that witnesses should neither
4 seek nor receive assistance from others in the hearing room
5 while testifying.

6 Will counsel and other representatives please state their
7 appearances, name, and addresses for the record. Petitioner?

8 MR. MEIKLEJOHN: For the Petitioner, Thomas W. Meiklejohn.

9 MS. ROTHGEB: And Nicole Rothgeb.

10 MR. MEIKLEJOHN: Livingston, Adler, Pulda, Meiklejohn &
11 Kelly, 557 Prospect Avenue, Hartford, Connecticut 06105.

12 MR. PLUM: For the Respondent, Bernard Plum, Ed Brill and
13 Matthew Batastini of Proskauer Rose, Eleven Times Square, New
14 York, New York. And Patricia Catapano from the General Counsel
15 Office of Columbia University.

16 HEARING OFFICER EVEILLARD: Are there any other
17 appearances?

18 (No response.)

19 HEARING OFFICER EVEILLARD: Let the record show no
20 response.

21 Are there any other persons, parties, or labor
22 organizations in the hearing room at this time who claim an
23 interest in this proceeding?

24 (No response.)

25 HEARING OFFICER EVEILLARD: Let the record show no

1 response.

2 At this time, I propose to receive the Formal Papers.
3 They have been marked as Board's Exhibit Number 1. This
4 exhibit has already been shown to the parties. Are there any
5 objections to its introduction?

6 MR. MEIKLEJOHN: No objection for the Union.

7 MR. PLUM: No objection.

8 HEARING OFFICER EVEILLARD: Since there are no objections,
9 the Formal Papers are received into evidence.

10 (Board's B-1 marked and received.)

11 HEARING OFFICER EVEILLARD: Okay, Petitioner, please state
12 for the record the correct and complete name of the Petitioner
13 as set forth in its Constitutions and Bylaws, listing any and
14 all variations.

15 MR. MEIKLEJOHN: Well, the Petitioner in this case is
16 Graduate Workers of Columbia - GWC, UAW. It's an organizing
17 committee affiliated with the United Auto Workers. Or with the
18 International Union, United Automobile, Aerospace and
19 Agricultural Implement Workers of America. But the Petitioner
20 is Graduate Workers of Columbia - GWC, UAW.

21 HEARING OFFICER EVEILLARD: Mr. Plum, please state the
22 correct corporate name of the Employer, as appears on the
23 certificate of incorporation.

24 MR. PLUM: It's Columbia University in the City of New
25 York. The Trustees of Columbia University in the City of New

1 York.

2 HEARING OFFICER EVEILLARD: Is that the name designated on
3 the petition?

4 MR. PLUM: No. I don't think so.

5 MR. MEIKLEJOHN: The petition just names Columbia
6 University.

7 HEARING OFFICER EVEILLARD: Do you wish to amend the
8 petition to reflect the Employer's correct corporate name as
9 stated by counsel?

10 MR. MEIKLEJOHN: Sure. Yes. So moved.

11 HEARING OFFICER EVEILLARD: Any objections?

12 MR. PLUM: No.

13 HEARING OFFICER EVEILLARD: Hearing no objections, the
14 amendment to the petition is granted.

15 Are there any motions to intervene in this proceeding?
16 Are there any motions to intervene in these proceedings to --
17 are there any motions to intervene in this proceeding at this
18 time?

19 (No response.)

20 HEARING OFFICER EVEILLARD: Let the record show no
21 response.

22 It's my understanding that from the off the record
23 discussions that the parties have one Joint stipulation which
24 was handed to me, which I will now read into the record? Or
25 would you like to read it into the record?

1 MR. MEIKLEJOHN: No, I was -- we're going to offer it as
2 an exhibit, as well, is my understanding. It's going to be
3 Joint Exhibit 1.

4 MR. PLUM: Joint Exhibit 1.

5 MR. MEIKLEJOHN: And I understand that there is a request
6 from the Employer that it also be read into the record. But I
7 would now -- I would move the introduction of Joint Exhibit 1.

8 HEARING OFFICER EVEILLARD: Any objections?

9 MR. PLUM: With the understanding that it's going to be
10 read into the record.

11 HEARING OFFICER EVEILLARD: I'm going to read it right
12 now.

13 MR. PLUM: Okay.

14 HEARING OFFICER EVEILLARD: Okay.

15 (Joint's J-1 marked and received.)

16 MR. BRILL: Would you rather have -- I'm happy to read it
17 if --

18 HEARING OFFICER EVEILLARD: Go ahead. Please.

19 MR. BRILL: Just because I'm more familiar with it.
20 Can you hear me on the microphone?

21 HEARING OFFICER EVEILLARD: You have to be a little
22 louder.

23 MR. BRILL: We used to use the lapel microphones, but I
24 guess that's not --

25 The Employer, one of the nation's oldest private

1 institutions of higher education is located in the New York
2 metropolitan area. Its main campus is located in Morningside
3 Heights (the "Morningside Heights campus") in Manhattan between
4 116th Street and 120th Street, along Broadway. Columbia also
5 has a Health Sciences campus, located in Washington Heights at
6 168th Street and Fort Washington Avenue; and research
7 facilities in Palisades, New York (the "Lamont-Doherty
8 Observatory") and Irvington, New York (the "Nevis
9 Laboratories"). Columbia has an enrollment of about 30,000
10 students.

11 Columbia is governed by a 24-member Board of Trustees,
12 which is responsible for the overall management of the
13 University. The President of Columbia University is hired by
14 the Board of Trustees, serves as the University's chief
15 executive officer, and is responsible for Columbia's
16 administrative and academic affairs. The Provost (the
17 "Provost"), is Columbia's chief academic officer. Academically
18 the University has three main areas: the Arts and Sciences
19 (which accounts for about half of Columbia's student body), the
20 Health Sciences, and the professional schools (the Graduate
21 School of Business, the Fu Foundation School of Engineering and
22 Applied Science, the School of Journalism, the School of Law,
23 the School of Architecture Planning and Preservation, the
24 School of International and Public Affairs ("SIPA"), and the
25 School of Social Work.) A number of the schools that fall

1 within these three main academic areas are further broken down
2 into departments and academic programs. The heads of each of
3 these primary academic areas, the Executive Vice President for
4 Arts and Sciences, and the Deans of the professional schools
5 report to the Provost.

6 The Executive Vice President of Health and Biomedical
7 Sciences reports to the President. The Executive Vice
8 President of Arts and Sciences oversees a number of Schools
9 that do not report directly to the Provost. These include the
10 School of the Arts, Columbia College, the School of Continuing
11 Education, the School of General Studies, and the Graduate
12 School of Arts and Sciences ("GSAS"). The Executive Vice
13 President for Health and Biomedical Sciences is also
14 responsible for a number of schools that report to him. These
15 are the School -- the College of Physicians and Surgeons
16 (Columbia's Medical School), the School of Dental Health, the
17 School of Nursing, and the Joseph P. Mailman School of Public
18 Health ("SPH"). Columbia also has a University Senate, which
19 is composed of faculty, administration, and student
20 representatives. The University Senate is primarily an
21 advisory body, and issues relating to educational policies,
22 physical development, budget, and the University's external
23 relations are within the Senate's purview. In regards to the
24 University's budget, individual schools develop a budget each
25 year with the assistance of the Executive Vice President for

1 Finance. The individual budgets must ultimately be approved by
2 the Board of Trustees.

3 Columbia offers a number of degrees, including
4 undergraduate degrees from Columbia College, the general -- the
5 School of General Studies and the Fu Foundation School of
6 Science and Engineering --

7 I think that's actually the wrong name of the school.
8 Yeah, that should say Fu Foundation School of Engineering and
9 Applied Science.

10 -- a variety of professional degrees from the professional
11 schools, a Master of Arts ("MA"), Master of Philosophy
12 ("M.Phil.") and a Ph.D. In general, doctoral students are
13 awarded the M.Phil. degree before completion of the
14 requirements that lead to the award of a Ph.D.

15 Ph.D. programs are offered exclusively through GSAS,
16 irrespective of whether a program sits in the School of Arts
17 and Sciences. For example, Ph.D. programs that sit in the
18 Health Sciences Campus and Basic Science departments, such as
19 Anatomy and Cell Biology, and Physiology and Cellular
20 Biophysics, are awarded and administered by GSAS; and these
21 students attend GSAS graduations, not Health Sciences
22 graduations. In total, there are 61 Ph.D. programs offered at
23 the University, with 30 of those programs based in the Graduate
24 School of Arts and Sciences departments, and the other 31 Ph.D.
25 programs sitting in the other Schools. The GSAS establishes

1 the minimum requirements students must meet in order to earn
2 the Ph.D. degree, although individual departments may exert
3 influence over Ph.D. programs within the parameters set by the
4 GSAS. In many cases, applications to Ph.D. programs are made
5 directly to the GSAS, but after reviewing the applications and
6 selecting suitable applicants, the GSAS forwards the
7 applications to Ph.D. programs to individual departments for
8 further scrutiny and selection. Generally, doctoral students
9 must successfully complete required course work, then pass one
10 or two rounds of qualifying exams, written and/or oral. At
11 this point in their academic program, Columbia's doctoral
12 students are awarded their M.Phil. degree and begin the
13 research phase of the program, which culminates in a
14 dissertation. After the successful defense and completion of
15 the dissertation, the doctoral student is eligible to be
16 awarded the Ph.D. degree.

17 That concludes the stipulation.

18 HEARING OFFICER EVEILLARD: Okay, thank you.

19 MR. MEIKLEJOHN: Yeah, we do agree that the correct name
20 of the Foo Foundation School is Foo Foundation School of
21 Engineering and Applied Sciences.

22 HEARING OFFICER EVEILLARD: Okay. At this time I'll read
23 the commerce information and the parties can state whether or
24 not they will stipulate to it.

25 Columbia University, herein "the Employer," is a New York

1 corporation which has -- which operates a private university
2 maintaining its principle office at 2060 Broadway at 116th
3 Street, in the city and state of New York, where it is and has
4 been continuously engaged in providing educational and related
5 services.

6 Annually, in the course and conduct of its operations, the
7 Employer derives gross revenue in excess of \$1 million. And
8 purchases goods and materials valued in excess of 50,000
9 directly from suppliers located outside the state of New York.

10 Do the parties so stipulate?

11 MS. CATAPANO: And the name of the University should be
12 "The Trustees" --

13 COURT REPORTER: You have to speak louder.

14 MR. PLUM: The name should be consistent with what was
15 said earlier, which is The Trustees of Columbia University in
16 the City of New York.

17 HEARING OFFICER EVEILLARD: So noted. But for purposes of
18 the hearing, I think it's enough to say "Columbia University."

19 MR. PLUM: If we all understand that that's what we mean.

20 HEARING OFFICER EVEILLARD: Right.

21 MR. PLUM: And the address, I'm not sure the address is
22 correct.

23 MS. CATAPANO: The address -- that's an old address.

24 HEARING OFFICER EVEILLARD: It's an old address? What's
25 the correct address?

1 MS. CATAPANO: 535 West 116th Street.

2 HEARING OFFICER EVEILLARD: Okay. Other than those two
3 amendments, do the parties stipulate that the commerce
4 information is correct?

5 MR. PLUM: Yes.

6 MR. MEIKLEJOHN: So stipulated.

7 HEARING OFFICER EVEILLARD: Okay. Do the parties
8 stipulate that the Graduate Workers of Columbia - GWC, UAW is a
9 labor organization within the meaning of Section 2(5) of the
10 National Labor Relations Board -- Relations Act -- Labor
11 Relations Act, as amended?

12 MR. MEIKLEJOHN: So stipulated.

13 MR. PLUM: Yeah, no that -- we won't stipulate to that. I
14 mean, we -- I think this issue has come up in other cases where
15 an organizing committee was not a labor organization. And the
16 students aren't employees. So we can't stipulate to that.

17 MR. MEIKLEJOHN: Can I just ask a question? Is the
18 question that they would not be a labor organization because
19 the employees who participate you contend -- or the individuals
20 who participate you contend are not employees?

21 MR. PLUM: Yes, that's one issue. The other issue is
22 whether an organizing committee is a labor organization.

23 MR. MEIKLEJOHN: Okay.

24 HEARING OFFICER EVEILLARD: Hold on.

25 MR. MEIKLEJOHN: All right.

1 HEARING OFFICER EVEILLARD: Go ahead.

2 MR. MEIKLEJOHN: So we will have to call a witness to
3 establish that employees participate and it exists for the
4 purposes of collective bargaining.

5 Although, I think the filing of the petition should
6 establish that second -- that second requirement.

7 HEARING OFFICER EVEILLARD: Does the Employer decline at
8 this time to recognize the Petitioner as the exclusive
9 bargaining representative of the employees petitioned for,
10 until such time as it is certified as such and a appropriate
11 bargaining unit determined by the Board?

12 MR. PLUM: That's correct.

13 HEARING OFFICER EVEILLARD: Okay. It is my understanding
14 from off the record discussions that the Employer has no
15 history of collective bargaining with a union; is that correct?

16 MR. PLUM: For this -- not for this group of individuals,
17 that's correct.

18 HEARING OFFICER EVEILLARD: Okay. And it's my
19 understanding that there's no contract bar to this proceeding?

20 MR. MEIKLEJOHN: Correct.

21 MR. PLUM: Correct.

22 HEARING OFFICER EVEILLARD: The unit sought by the
23 Petitioner as set forth in Petitioner 2-RC-143012 is as
24 follows: included in the unit would be all student employees
25 who provide instructional services, including graduated and

1 undergraduate teaching assistants, and all departmental
2 research assistants employed by the Employer at all of its
3 facilities, including Morning Heights -- Morningside Heights,
4 Health Sciences, LaMont Doder, and Nevis facilities, employed
5 at the Employer's facilities.

6 MR. MEIKLEJOHN: There are more specifications in the
7 petition, itself.

8 HEARING OFFICER EVEILLARD: Okay.

9 MR. MEIKLEJOHN: Do you want me to read the petition?

10 HEARING OFFICER EVEILLARD: Sure.

11 MR. MEIKLEJOHN: Read it into the record? Okay.

12 The Union is seeking to represent all student employees
13 who provide instructional services, including graduate and
14 undergraduate teaching assistants (teaching assistants,
15 teaching fellows, law associates, preceptors, instructors,
16 listening assistants, course assistants, readers and graders)
17 and all graduate research assistants (including those
18 compensated through training grants) and all departmental
19 research assistants employed by the Employer at all of its
20 facilities, including Morningside Heights Health Science,
21 Lemont Dougherty and Nevis facilities.

22 HEARING OFFICER EVEILLARD: And excluded?

23 MR. MEIKLEJOHN: All other employees, guards and
24 supervisors as defined in the Act.

25 HEARING OFFICER EVEILLARD: Does the petition have any

1 amendments for the petitioned for unit?

2 MR. MEIKLEJOHN: No. No, we do not, not at this time.

3 HEARING OFFICER EVEILLARD: And it's my understanding that
4 the Employer disagrees with the unit sought, described above,
5 is an appropriate unit?

6 MR. PLUM: Correct.

7 HEARING OFFICER EVEILLARD: And Employer claims that the
8 unit sought is not an appropriate unit because the graduate
9 students are not employees under the Act; is that correct?

10 MR. PLUM: That's correct. And even if they were, it
11 wouldn't be an appropriate unit.

12 HEARING OFFICER EVEILLARD: Okay. Off the record.

13 (Whereupon, a brief recess was taken.)

14 HEARING OFFICER EVEILLARD: Back on the record.

15 At this time I would like the Employer to state its
16 position with respect to the petitioned for unit on the record.

17 MR. BRILL: I'll state it briefly.

18 First of all, the petition was properly dismissed by the
19 Regional Director under the governing authority, Brown
20 University, which held that students who provide services to
21 their university in connection with their educational programs
22 are not employees within the meaning of the National Labor
23 Relations Act. And we believe that Brown was correctly
24 decided. And although this case was remanded by the Board for
25 creation of a factual record, with respect to possible

1 reconsideration of *Brown*, we believe that the record to be
2 created here will demonstrate that *Brown* was correctly decided.
3 And that the holding of *Brown* should remain in place going
4 further with respect to the potential unit in the event that --
5 unlikely event that *Brown* were to be reversed.

6 Nonetheless, there are some significant problems with
7 respect to the unit description. As I think you're aware,
8 there was a prior decision by the Region about 15 years ago and
9 the Regional Director at that time excluded certain categories
10 on the basis that they were temporary because they're
11 appointments typically lasted no more than one or two
12 semesters.

13 We understand that the Petitioner is now seeking to
14 include students who may have similar temporary appointments.
15 And our position is that in general, Masters students and
16 undergraduate students who have positions that might otherwise
17 come within the definition of the unit, should be excluded in
18 large part because they -- they're in these positions on a
19 temporary basis. And also because they completely lack any
20 community of interest with Ph.D. students, for many reasons.

21 There are also a number of positions that are identified
22 in the unit -- in the petition who don't either -- these
23 positions don't exist anymore. For example, law associate is
24 not a student position. It's my understanding the University
25 no longer has listening assistants. Course assistant is not

1 a -- it's not an appointed position. It may be a title that's
2 used in some departments on a casual basis. And similarly,
3 graders is, I believe, just a colloquial description of
4 students who are formerly appointed as readers.

5 With respect to students on training grants who are
6 expressly included in the petition, the students in training
7 grants do not have appointments of any kind. They're simply
8 supported in the same way as students who are on fellowships.
9 So we disagree that there's any basis for including students on
10 training grants.

11 So basically, our position is that the petition is
12 correctly dismissed and should be dismissed again after the
13 hearing. In fact, I would say that the Regional Director is
14 compelled in any event to dismiss the petition at the end of
15 this hearing, subject to another application to the Board, to
16 determine at that point based on the record whether a majority
17 of the Board is still in reviewing the case.

18 HEARING OFFICER EVEILLARD: Mr. Meiklejohn?

19 MR. MEIKLEJOHN: As counsel indicated, the principle issue
20 here is whether people who do the work of Columbia University,
21 whose work generates income for Columbia, and who are
22 compensated for doing that work should be denied the right to
23 organize through the procedures of the National Labor Relations
24 Board, just because they also happen to be students at that
25 same institution that employs them.

1 Outside of the jurisdiction of the National Labor
2 Relations Board, in the public sector, graduate students,
3 employees are organizing and successfully negotiating
4 collective bargaining agreements. Even within the private
5 sector, here in New York, graduate student employees at New
6 York University have successfully organized and are negotiating
7 a collective bargaining agreement, outside of the procedures of
8 the National Labor Relations Board, because the NLRB decided in
9 *Brown* to withdraw those procedures and make them unavailable to
10 student employees who wished to form a union.

11 So our position with respect to *Brown*, first of all, as
12 we've already argued once, is that it is a decision that
13 ignores the broad definition of employee in the statute. It
14 ignores relevant precedent in all sorts of other areas
15 involving the employee status of people who are also students.
16 It creates an artificial category of people who are "primarily
17 students" without offering any explanation or any justification
18 for why someone can't be both an employee and a student like an
19 apprentice, like an intern or a resident at a medical school.
20 There is simply no logical justification for creating this
21 artificial dichotomy between students and employees.

22 And the decision relies entirely upon imagined threats to
23 academic freedom and the relationship between students and
24 faculty, which had no justification or basis in the record in
25 *Brown*, and no empirical justification anywhere.

1 We submit that the imagined dangers of collective
2 bargaining for graduate student employees is based upon a
3 negative attitude towards collective bargaining that is
4 fundamentally inconsistent with the statute. It's states that
5 it was passed to promote collective bargaining.

6 With respect to the Regional Director's position, we'll
7 argue this in greater detail at the close of the hearing in our
8 briefs, but our position is that the decision of the Board --
9 the unanimous decision of the Board to re-open this case
10 clearly states that *Brown* should be reconsidered.

11 And to the extent that evidence is objected to on the
12 grounds that it was not relied upon *Brown* or was found to be
13 irrelevant in *Brown*, we would submit that that is not -- that
14 the Board's order re-opening this case clearly -- makes it
15 clear that that is not a precedent that should govern what
16 evidence is received in this proceeding.

17 Our position further is that the footnote in that
18 decision, which states that it was -- in which two members of
19 the Board joined in stating that the petition that the Regional
20 Director was bound by the *Brown* decision and acted properly in
21 dismissing it, the fact that that footnote was not signed by
22 the other three members of the Board is something that we would
23 urge the Regional Director to consider very seriously when the
24 time comes for her to decide whether she is still bound and
25 obligated to follow *Brown*, which as we say is a decision that

1 cannot be reconciled with the statute or with logic or with the
2 policies of the Act or with the precedent interpreting that
3 decision.

4 The unit we are seeking to represent here in its broad
5 outlines tracks the unit found appropriate by the Regional
6 Director in the previous case, Case Number 2-RC-22358,
7 referenced by counsel. If there are -- obviously if there are
8 jobs that no longer exist, then we don't have to worry about
9 those people showing up to vote because they won't exist.

10 With respect to the undergraduate teaching assistants and
11 the Masters teaching assistants, they were included previously
12 and our position is that they do very similar work, if not
13 identical work, share a community of interest with the other
14 student employees that we're seeking, and should be included in
15 the unit.

16 The one change that we're seeking from the Regional
17 Director's decision in 2-RC-22358 is to include a series of
18 categories of employees who were deemed -- who were excluded
19 from the bargaining unit as temporary employees. And
20 specifically, I hope I get them all, there were summer TAs,
21 SIPA TAs, S-I-P-A TAs, teaching fellows at the Law School, law
22 school research assistants, SIPA program assistants, and
23 service fellows.

24 Now, we're not claiming that they should be included in
25 this case because of any change in the facts. We just -- we

1 would argue that the exclusion of these employees as temporary,
2 as alleged temporary employees should be considered or their
3 status as members of the bargaining unit should be considered
4 in light of the Board's decision in Kansas City Reparatory
5 Theater, which makes it clear that temporary employees do have
6 the right to organize. And that the question with respect to
7 temporary employees should be do they share a community of
8 interest with the balance -- with the remainder of the
9 employees?

10 And our position is that even though these employees are
11 appointed or hired for only a very short period, a shorter
12 period of time than most of the other people in the bargaining
13 unit, they share a community of interest with the other
14 employees in the bargaining unit, because they perform similar
15 duties. And because most of them also receive assignments on a
16 semester basis, which the employees who were found to be
17 appropriate in the previous case, they in most instances work
18 several semesters or repeated semesters, but most of their
19 assignments, at least in the teaching categories, are made on a
20 semester-by-semester basis.

21 So the fact that somebody is appointed and works only for
22 one semester does not mean that they lack a community of
23 interest with the other employees in the bargaining unit.

24 So that's the change that we're seeking. But in the
25 broadest terms we are seeking to represent the unit that was

1 found appropriate in the previous Columbia case, with those
2 modifications for employees found temporary. And we are and
3 will be urging the Regional Director to decide this case based
4 upon all of the legal precedent and not just one case, which we
5 regard as a gross anomaly.

6 Thank you.

7 MR. BRILL: May I -- can I say a few words --

8 HEARING OFFICER EVEILLARD: Sure.

9 MR. BRILL: -- in response?

10 First of all, I'm not going to respond to the
11 mischaracterization of the *Brown* decision. We don't need to
12 debate the *Brown* decision.

13 COURT REPORTER: You've got to speak louder.

14 MR. BRILL: I'm not going to respond to Counsel's
15 characterization or mischaracterization of the *Brown* decision.
16 I don't think it's necessary to get into that argument here.
17 But I just want to make a few points.

18 First of all, the prior Regional Director's decision was
19 actually vacated by the Board following the *Brown* decision. So
20 while we both refer to that decision, it is in no way binding.
21 It may have some guidance, but with respect to the
22 undergraduate -- the inclusion of the undergraduate students
23 and some of the Masters students in particular, we believe that
24 the Regional Director in the prior decision grossly erred in
25 including them in the bargaining unit.

1 We had appealed that issue to the Board and -- because the
2 case was -- the decision was vacated and the case dismissed,
3 there really is no precedent here with respect to
4 undergraduates and Masters students.

5 With respect to the *Kansas City Reparatory* case, that case
6 really is not at all a basis for including the type of
7 temporary appointments that are involved here. That case
8 involved, as I recall, musicians who were on call. And while
9 they're individual assignments may have been for a limited
10 period of time, it was understood that every time there was a
11 need for people in that particular job, then they would be
12 called up. So one particular assignment may only be several
13 weeks or a month in duration, but the next time there was a
14 need for musicians they would, again, be the ones who were
15 employed.

16 Here there's absolutely no expectation of employment. And
17 the evidence will show that the categories that we're seeking
18 to exclude, and in many cases were excluded the last time,
19 simply are students, many of the Masters or undergraduate
20 students who were appointed for one semester and that's it. Or
21 maybe two semesters. And there's absolutely no expectation or
22 pattern that they're going to be reappointed the next time
23 there's a need for somebody in that category.

24 And the last thing I would say is that I think at least a
25 few of the categories that counsel for the Petitioner has

1 mentioned, do not -- they're not people who provide
2 instructional or research services. So I don't think they're
3 within the scope of the petition at all, as I understand it.

4 HEARING OFFICER EVEILLARD: Anything further?

5 MR. BRILL: No. We'll have a lot further --

6 MR. MEIKLEJOHN: Do you want me to argue with him more?

7 HEARING OFFICER EVEILLARD: No. Not at all.

8 MR. MEIKLEJOHN: I would be glad to. Didn't really think
9 you would want to encourage that.

10 HEARING OFFICER EVEILLARD: So at this time do you -- does
11 anybody want to offer opening statements? Or should we --

12 MR. BRILL: I think those were our opening statements.

13 HEARING OFFICER EVEILLARD: I think we did.

14 MR. MEIKLEJOHN: I think we did opening statements.

15 HEARING OFFICER EVEILLARD: Okay.

16 MR. MEIKLEJOHN: I did, anyway.

17 HEARING OFFICER EVEILLARD: Okay. It's my understanding
18 that we're not going to have any testimony today, but that
19 Petitioner has some documents that he would like to offer into
20 evidence.

21 MR. MEIKLEJOHN: Yes. Yes, thank you. You have -- do you
22 want a set of the paper copies?

23 MR. BRILL: Well, not unless there's some ruling that
24 they're --

25 MR. MEIKLEJOHN: Okay.

1 MR. BRILL: -- somehow relevant to this.

2 HEARING OFFICER EVEILLARD: These are?

3 MR. MEIKLEJOHN: These are collective bargaining
4 agreements at public sector universities, which we would be
5 offering for the purpose of demonstrating and establishing that
6 there is a growing pattern of collective bargaining among
7 employees in the job -- some of the job classifications that
8 we're seeking here in the public sector. And to go through
9 these one at a time, I --

10 Shall I have them marked by the court reporter?

11 HEARING OFFICER EVEILLARD: You should.

12 MR. MEIKLEJOHN: Okay.

13 COURT REPORTER: Can we go off the record for a moment?

14 HEARING OFFICER EVEILLARD: Off the record.

15 (Whereupon, a brief recess was taken.)

16 HEARING OFFICER EVEILLARD: Back on the record.

17 MR. MEIKLEJOHN: The Petitioner moves --

18 MR. PLUM: We don't want them now. Okay, there's a
19 mistake in the ruling about their relevance --

20 COURT REPORTER: We're on the record.

21 MR. MEIKLEJOHN: Petitioner moves the introduction of the
22 following public sector collective bargaining agreements.

23 HEARING OFFICER EVEILLARD: As?

24 MR. MEIKLEJOHN: Well, let's start with just as
25 Petitioner's Exhibit 1, we move the introduction of an

1 agreement between Rutgers and the Rutgers Council of AAUP
2 Chapters, AAUP-AFE.

3 (Petitioner's P-1 marked.)

4 MR. MEIKLEJOHN: And why don't we just stop with that
5 and --

6 HEARING OFFICER EVEILLARD: So we're not going to do it
7 1(a) or --

8 MR. MEIKLEJOHN: I'm just going to do 1 through 12.

9 HEARING OFFICER EVEILLARD: Okay.

10 MR. MEIKLEJOHN: Yeah. So do you want me to go -- do you
11 want me offer them all at once?

12 HEARING OFFICER EVEILLARD: Yes.

13 MR. MEIKLEJOHN: Okay. Offer as Exhibit 2, collective
14 bargaining agreement between Oregon State Board of Higher
15 Education and the Coalition of Graduate Employees AFT.

16 (Petitioner's P-2 marked.)

17 MR. MEIKLEJOHN: Exhibit 3 we offer an agreement between
18 the Regents of the University of Michigan and Graduate
19 Employees Organization, affiliated with the AFG.

20 (Petitioner's P-3 marked.)

21 MR. MEIKLEJOHN: I should be marking this. Okay, what am
22 I up to, 4?

23 MR. BRILL: Three.

24 MR. MEIKLEJOHN: What number did I just say?

25 HEARING OFFICER EVEILLARD: You're up to 5.

1 COURT REPORTER: Number 4.

2 MR. MEIKLEJOHN: This next one's 5? Okay, thank you.

3 Number 5 we move the introduction of a --

4 COURT REPORTER: He was on 3.

5 HEARING OFFICER EVEILLARD: No. The University of New
6 Jersey is Number 1. Oregon is Number 2. Michigan is Number 3.

7 MR. MEIKLEJOHN: Right, so this is 4.

8 HEARING OFFICER EVEILLARD: Yeah.

9 COURT REPORTER: Four.

10 HEARING OFFICER EVEILLARD: I'm sorry.

11 MR. MEIKLEJOHN: That's okay.

12 MR. PLUM: I thought Rutgers was --

13 MR. MEIKLEJOHN: Rutgers is New Jersey.

14 MR. PLUM: I know that.

15 MR. MEIKLEJOHN: Four is an agreement between The Board of
16 Trustees of the University of Illinois and Graduate Employees
17 Organization, GEO Local 6267, affiliated with the AFT.

18 (Petitioner's P-4 marked.)

19 MR. MEIKLEJOHN: Petitioner's 5 is a collective bargaining
20 agreement between the University of Oregon and Graduate
21 Teaching Fellows Federation AFT.

22 (Petitioner's P-5 marked.)

23 MR. MEIKLEJOHN: Petitioner's 6 is a collective bargaining
24 agreement between Florida State University and United Faculty
25 of Florida, Florida State University Graduate Assistants

1 United.

2 (Petitioner's P-6 marked.)

3 MR. MEIKLEJOHN: Petitioner's Exhibit 7 is an agreement
4 between University of Florida Board of Trustees and Graduate
5 Assistants United, United Faculty of Florida.

6 (Petitioner's P-7 marked.)

7 MR. MEIKLEJOHN: Petitioner's 8 is an agreement between
8 City University of New York and Professional Staff Congress
9 CUNY.

10 (Petitioner's P-8 marked.)

11 MR. MEIKLEJOHN: Nine is the collective bargaining
12 agreement between The Board of Trustees of the California State
13 University and the United Auto Workers.

14 (Petitioner's P-9 marked.)

15 MR. MEIKLEJOHN: Ten is an agreement between Graduate
16 Employee Organization Local 2322 UAW and the University of
17 Massachusetts at Amherst.

18 (Petitioner's P-10 marked.)

19 MR. MEIKLEJOHN: Petitioner's Exhibit 11 is a collective
20 bargaining agreement between The Board of Regents of the
21 University of Washington and UAW Local 4121, Academic Student
22 Employees.

23 (Petitioner's P-11 marked.)

24 MR. MEIKLEJOHN: And Petitioner's Exhibit 12, we move the
25 introduction of an agreement between The Regents of the

1 University of California and the International Union, UAW
2 Academic Student Employee Unit.

3 (Petitioner's P-12 marked.)

4 MR. MEIKLEJOHN: And I move the introduction of those
5 documents for the purposes that I've outlined. I think the
6 pattern is relevant. And it is certainly evidence that we
7 would seek to rely upon to argue that *Brown* was wrongly
8 decided.

9 HEARING OFFICER EVEILLARD: Any objections?

10 MR. PLUM: Yeah.

11 MR. BRILL: Yes, we object.

12 HEARING OFFICER EVEILLARD: Okay. What's the basis of
13 your objection?

14 MR. PLUM: So as we've just heard in the statements that
15 both sides delivered, the issue or the principle issue in this
16 case is whether the students that Petitioner seeks to represent
17 are employees under the National Labor Relations Act. And in
18 order to decide that, which has already been decided, but in
19 order to create a record so that an argument can be made that
20 *Brown* should be overruled, we're going to have many days of
21 testimony that's going to -- that will focus on what do these
22 folks do? How do they spend their time? What's the nature of
23 their -- their particular relationship with Columbia
24 University? And there will be detailed facts elicited by each
25 side, in the one had to demonstrate that those particular facts

1 and the particular relationship that's at issue is more like an
2 employee, according to the Petitioner, or the fundamental, from
3 our perspective, from the University's perspective that the
4 fundamental connection that we have with these folks is as
5 students.

6 If that's the issue that's before us or the principle
7 issue that's before us, we frankly see -- we can't even
8 conceive -- this is not one of those close questions in our
9 minds, we can't conceive of why it's relevant.

10 Whether there is or isn't a growing pattern, to use
11 counsel's words, in the public sector under entirely different
12 circumstances and entirely different legal systems or
13 principles, why if in fact these 12 represent a growing pattern
14 in the public sector, which I don't know whether, you know, 12
15 examples among the -- I don't know, how many universities
16 are -- public universities are there? Hundreds? Thousands?
17 So this may or may not be a growing pattern. But even if it is
18 a growing pattern, we're struggling to see the conceivable
19 relationship between these collective bargaining agreements or
20 the existence of these collective bargaining agreements and
21 whether the people that the Petitioner seeks to represent at
22 Columbia are or aren't employees under the National Labor
23 Relations Act.

24 So it's kind of glib to say that there's a growing pattern
25 and that somehow relates to this case.

1 Certainly, in *Brown* the -- you know, the Board made the
2 point that the fact that some unions that are public employee
3 unions, that was certainly deemed to be irrelevant to the
4 Board's determination in *Brown*. And I think it's notable that
5 we don't know anything about the circumstances or the standards
6 under which these various groups of students were treated as
7 employees. Whether it was just a private recognition, or
8 whether as in California you have a specific statutory
9 framework that gives students the right to organize in public
10 universities.

11 So I don't think that there's been any showing by the
12 Petitioner of how this is relevant.

13 HEARING OFFICER EVEILLARD: Do you need to put in any
14 evidence discussing these collective bargaining agreements?

15 MR. MEIKLEJOHN: I don't plan to. I mean, I will
16 represent I could put on a witness to testify that these --
17 some of these are what they are on their face. And but the
18 others are publically available documents.

19 MR. PLUM: Yeah, but --

20 MR. MEIKLEJOHN: The -- that, I think, goes to the -- I
21 mean, as I understand counsel's objection, it goes to the
22 relevance of the documents. And I don't think I need to put on
23 testimony to establish that they're relevant. You know, I --

24 HEARING OFFICER EVEILLARD: I'm not sure how they're
25 relevant, though.

1 MR. MEIKLEJOHN: The argument -- I don't think I need
2 testimony. The argument is that they're relevant because they
3 show the collective bargaining agreement (*sic*) is taking place
4 in the public sector.

5 I think a lot of the points that counsel makes may go to
6 the weight of that evidence. But ultimately, the fact that
7 there is collective bargaining going on in the public sector is
8 a factor that the Board should be entitled to weigh and decide;
9 is this relevant? Is this something that we want to look at to
10 decide whether the evils speculated upon by the Board in -- in
11 the *Brown* decision are the boogey-man that they fear.

12 But the --

13 MR. PLUM: The evils -- oh, I'm sorry.

14 MR. MEIKLEJOHN: -- you know, the -- you know, I don't
15 think it's necessary to bring in witnesses from all of these
16 schools to testify that these are, in fact, the collective
17 bargaining agreements. I don't think that is the issue that's
18 being raised by counsel. The issue they're raising is should
19 the Board rely upon this? And we just would like to have that
20 evidence in front of the Board so they can make that
21 determination.

22 MR. PLUM: Well, I just have to --

23 HEARING OFFICER EVEILLARD: I'm just concerned about
24 how -- I'm just concerned about what the Board could glean from
25 just the collective bargaining agreements without anything

1 else.

2 MR. PLUM: Well, that's exactly right, because you know,
3 I -- I do want to emphasize that despite everything that's been
4 said, there's been no real articulation of relevance. You
5 know, what is the relevance to the issue that's in front of us
6 of the fact that these documents exist, right?

7 But I think your point was the point that I was just about
8 to make; if these documents are admitted, we're going to have
9 to put on testimony to demonstrate whether they're -- whether
10 these collective bargaining agreements do or don't represent
11 evils, or what their circumstances of origin were.

12 The fact that a collective bargaining agreement exists,
13 anybody who bargains for a living or often, as I do, knows that
14 the fact that a collective bargaining agreement exists doesn't
15 mean that it's not problematic for academic freedom or anything
16 else.

17 So if Counsel is trying to, by putting in this evidence,
18 signal to the Board, look, it's not a problem. Collective
19 bargaining is great. It doesn't intrude upon academic freedom.
20 Well, I don't know. If we call someone from the University of
21 Michigan, we may find out something quite the contrary. And I
22 think that's the inference that Counsel wants to create. We
23 would be entitled to put on witnesses to rebut that inference.
24 And we would have to.

25 I think in Oregon it was just a big strike.

1 HEARING OFFICER EVEILLARD: Anything else?

2 MR. MEIKLEJOHN: I just -- I mean I would just -- I think
3 that those arguments go to the weight and not to the
4 admissibility.

5 MR. PLUM: Well, they also go to the question of what kind
6 of hearing we're going to have.

7 HEARING OFFICER EVEILLARD: I'm going to reserve making a
8 decision until Thursday morning.

9 MR. PLUM: Fair enough.

10 HEARING OFFICER EVEILLARD: I will send you an e-mail
11 giving you a head's up ahead of time, hopefully. So if you
12 just want to appeal, you'll have that right.

13 MR. MEIKLEJOHN: Oh, okay.

14 MR. PLUM: Thank you. We appreciate that.

15 HEARING OFFICER EVEILLARD: Anything else?

16 MR. MEIKLEJOHN: Could I just have two minutes to talk to
17 Mr. --

18 HEARING OFFICER EVEILLARD: Okay. Off the record.

19 (Whereupon, a brief recess was taken.)

20 HEARING OFFICER EVEILLARD: Back on the record.

21 Any other documents being offered today?

22 MR. MEIKLEJOHN: No.

23 MR. PLUM: No. We have a witness coming on Thursday. Can
24 you add him to the letter?

25 HEARING OFFICER EVEILLARD: You sent it via e-mail?

1 MR. BRILL: I sent you an e-mail for Dr. --

2 HEARING OFFICER EVEILLARD: I've just got to get it
3 stamped and then I'll e-mail it back to you.

4 MR. BRILL: Okay, great. Thank you.

5 MR. PLUM: That was great, by the way.

6 HEARING OFFICER EVEILLARD: Yeah.

7 MR. PLUM: Yeah, that was great. It was like the best
8 thing that's happened to me in this building.

9 MR. BRILL: Also, I mean, especially at lunchtime, we
10 never --

11 MR. MEIKLEJOHN: This is all on the record, right?

12 MR. BRILL: Oh.

13 HEARING OFFICER EVEILLARD: Any other documents?

14 COURT REPORTER: We are on the record.

15 HEARING OFFICER EVEILLARD: Yes.

16 MR. MEIKLEJOHN: No. Nothing else at this time.

17 HEARING OFFICER EVEILLARD: Okay. Anything else further
18 for today?

19 MR. BRILL: No.

20 MR. PLUM: Nothing further.

21 HEARING OFFICER EVEILLARD: Okay. So we are adjourned
22 until 9:30 on Thursday, April 2nd. Thank you.

23 (Whereupon, at 11:45 a.m., the hearing in the above-entitled
24 matter was concluded.)

C E R T I F I C A T E

This is to certify that the attached proceedings done before
the NATIONAL LABOR RELATIONS BOARD REGION TWO

In the Matter of:

THE TRUSTEES OF COLUMBIA UNIVERSITY IN THE CITY OF NEW
YORK,

Employer,

and

GRADUATE WORKERS OF COLUMBIA -GWA, UAW,

Petitioner.

Case No.: 2-RC-143012

Date: March 31, 2015

Place: New York, New York

Were held as therein appears, and that this is the original
transcript thereof for the files of the Board

Official Reporter

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