

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

THE TRUSTEES OF COLUMBIA
UNIVERSITY IN THE CITY
OF NEW YORK

Employer

and

Case 02-RC-143012

GRADUATE WORKERS OF
COLUMBIA –GWC, UAW
Petitioner

BRIEF ON BEHALF OF INDIVIDUAL ACADEMIC PROFESSORS OF SOCIAL SCIENCE
AND LABOR STUDIES AS AMICI CURIAE

We, the undersigned, are university faculty, social scientists and scholars with recognized academic interests and expertise in labor and employment relations and workplace organization, or experience working in universities with graduate assistant unions and collective bargaining.

As amici curiae, we submit this brief in response to the National Labor Relations Board's invitation to address four questions regarding the right of graduate student assistants to organize for purposes of collective bargaining as employees under the National Labor Relations Act. This brief will focus on the first and second questions presented by the Board:

1. Should the Board modify or overrule *Brown University*, 342 NLRB 483 (2004), which held that graduate student assistants who perform services at a university in connection with their studies are not statutory employees within the meaning of Section 2(3) of the National Labor Relations Act?

The Board should overrule *Brown University* and return to its understanding established in *New York University*, 332 NLRB 1209 (2000) that “graduate assistants are statutory employees, notwithstanding that they simultaneously are enrolled as students.” As employees, they should not, as a class, be excluded from equal rights under the Act to engage in the full freedom of association, self-organization, collective bargaining, or other mutual aid or protection.

Among the principal arguments made by the majority in *Brown University* are the assertions that collective bargaining would interfere with the “intensely personal” educational process between faculty and students and would “unduly infringe upon traditional academic freedoms” 342 NLRB at 489, 490. Our review of the scholarly research on this question shows no empirical basis to support these claims. For example, Rogers, Eaton and Voos (2013) conducted a survey of 516 Ph.D. students in five disciplines at four unionized and four non-union public universities across the United States.¹ The authors found no support for the contention that unionization would diminish academic freedom, and that in the unionized departments they surveyed, “students reported better personal and professional support relationships with their primary advisors than were reported by their nonunion counterparts.” (2013: 507).

¹ Rogers, Sean E., Adrienne E. Eaton, and Paula B. Voos. 2013. “Effects of Unionization on Graduate Student Employees: Faculty–Student Relations, Academic Freedom, and Pay,” *ILRReview*, 66 (2): 487-510.

Similar findings are reported by other researchers. Hewitt (2000) surveyed 299 faculty members in the liberal arts and sciences at five major public university campuses with graduate assistant collective bargaining.² The respondents overwhelmingly reported that “based on their experiences, collective bargaining does not inhibit their ability to advise, instruct, or mentor their graduate students” (2000: 164). Other studies of faculty, administrators and graduate student union members, including Julius and Gumpert (2003), Lee, et al. (2004) and Gross (2006), reinforce these findings.³

As faculty members with doctoral degrees, we have experience on both sides of the student-faculty relationship. Some of us worked under collective bargaining agreements and participated in unions when we were ourselves graduate students at public universities like the University of California, the University of Michigan, Rutgers University, and the University of Wisconsin, where graduate students have collective bargaining rights and unions have been legally recognized for many years. Our experience did not harm in any way the quality of our education or our subsequent professional careers, but rather contributed to our understanding of the issues involved in graduate student employment.

² Hewitt, Gordon J. 2000. “Graduate Student Employee Collective Bargaining and the Educational Relationship between Faculty and Graduate Students,” *Journal of Collective Negotiations in the Public Sector*, 22(2): 153–66.

³ Julius, Daniel J., and Patricia J. Gumpert. 2002. “Graduate Student Unionization: Catalysts and Consequences.” *Review of Higher Education*, 26 (2): 187–216; Lee, Jenny J., Leticia Oseguera, Karen A. Kim, Amy Fann, Tracy M. Davis and Robert A. Rhoads. 2004. “Tangles in the Tapestry: Cultural Barriers to Graduate Student Unionization.” *Journal of Higher Education*, 75 (3): 340-361; Gross, Andrew. 2006. “Campus Union Coalitions and the Corporate University: Organizing at the University of California.” In Ernst Benjamin and Michael Mauer (Eds.), *Academic Collective Bargaining*, pp. 332-48. Washington, DC and New York: AAUP and MLA.

As professors, many of us have worked or currently work in settings with collective bargaining agreements governing the employment of graduate student assistants. We have found this arrangement to be beneficial in two key respects: First, it eliminates the possibility that favoritism or prejudice on the part of individual faculty members will affect the terms and conditions of graduate assistants' employment. Secondly, it allows faculty members supervising graduate student assistants to focus entirely on the educational relationship, while leaving employment matters to the university administration and the union. This is consistent with the study cited earlier by Julius and Gumpert (2003: 201), whose data "suggest that the clarification of roles and employment policies can enhance mentoring relationships . . . because of more clearly delineated expectations and enumeration of responsibilities between faculty and graduate students set forth in labor agreements" (cited by the dissenting members in *Brown University* 342 NLRB at 499).

There is no reason to believe that the conditions for graduate student unionization at private universities are not comparable to those at public universities. At public and private universities alike, graduate students, faculty and administrators all have a powerful shared interest in the quality of education and the training of future scholars. Academic disciplines do not have two separate systems for those who receive their Ph.D. degrees from private versus public universities; we are all sociologists, physicists, historians, and so on. The work is the same; graduates of public universities often go on to teach at private universities and vice-versa, and in the course of their careers faculty often circulate between jobs at both types of institutions.

Finally, insofar as it improves their economic condition, the unionization of graduate assistants enables them to focus on their academic work and reduces the likelihood that they will

be forced to assume burdensome student debt or employment outside the university.⁴ This is especially important for economically disadvantaged students, and in that way unionization may also help to increase economic diversity within the university's graduate student population (Schenk 2012; Rogers, Eaton and Voos 2013).

2. If the Board modifies or overrules *Brown University*, supra, what should be the standard for determining whether graduate student assistants engaged in research are statutory employees, including graduate student assistants engaged in research funded by external grants? See *New York University*, 332 NLRB 1205, 1209 fn. 10 (2000) (relying on *Leland Stanford Junior University*, 214 NLRB 621 (1974)).

Graduate assistants appointed to perform research, including those whose funding comes from external grants, work to carry out the mission of the university and should be considered employees. Faculty members who secure external grants for their research are not only pursuing their own interests but also fulfilling the mission of their employer, the university, and often hire graduate assistants to carry out the research objectives of the grant. The graduate research assistants hired for such projects perform specific research tasks under the control of a faculty supervisor; the university frequently receives a share of the grant money as overhead and administers the research assistants' compensation through its university payroll system. As the dissenting members in *Brown University* noted, "the Regional Director found that Brown withholds income taxes from the stipends of teaching assistants, research assistants, and proctors and requires them to prove their eligibility for employment under Federal immigration laws." 342 NLRB at 497.

⁴ Schenk, Tom L. 2012. "The Effects of Graduate-Student Unionization on Stipends." Iowa State University, Office of Community College Research and Policy; Choy, S.P., and Cataldi, E.F. 2006. *Student Financing of Graduate and First-Professional Education, 2003–04* (NCES 2006-185). U.S. Department of Education. Washington, DC: National Center for Education Statistics.

As with graduate assistants more generally, there is no evidence that the inclusion in collective bargaining of those engaged in externally-funded research under the direction of faculty would impair mentoring relationships between faculty and students. Currently, some of these graduate assistants engage in collective bargaining at NYU, under a voluntary agreement with the Union.⁵ The list of public universities with established graduate employee unions covering externally-funded graduate assistants includes the University of Connecticut, the University of Massachusetts, Rutgers, the State University of New Jersey, the University of Oregon, Oregon State University, and the University of Washington, all highly-regarded institutions with Carnegie Classifications as research universities with very high research activity (RU/VH), similar to Brown, Columbia and NYU. The presence of graduate assistant unions in these institutions has not diminished their stature.

Contrary to the majority in *Brown University*, the research evidence and our experience show that collective bargaining for graduate assistants does not interfere with academic freedom or the educational relationship between faculty and students. This includes graduate research assistants funded through external grants, who like other graduate assistants should be considered employees. For all of the above reasons, we urge the Board to overturn *Brown University* and recognize graduate assistants as statutory employees within the meaning of Section 2(3) of the National Labor Relations Act.

Respectfully submitted,

⁵ *Memorandum of Agreement between New York University and International Union, UAW and Local 12110, UAW*, March 10, 2015.

Mark Anner, Associate Professor of Labor and Employment Relations and Political Science, Penn State University.

Carolina Bank Munoz, Associate Professor of Sociology, Brooklyn College. Former Chair, Section on Labor and Labor Movements, American Sociological Association.

Kate Bronfenbrenner, Senior Lecturer and Director of Labor Education Research, Cornell University. Former Chair, Section on Labor and Labor Movements, American Sociological Association.

Robert Bruno, Professor of Labor and Employment Relations, School of Labor and Employment Relations, University of Illinois, Urbana-Champaign.

Michael Burawoy, Professor of Sociology, University of California, Berkeley. Former President, American Sociological Association.

Dan Clawson, Professor of Sociology, University of Massachusetts, Amherst. Former Chair, Section on Labor and Labor Movements, American Sociological Association.

Peter Evans, Senior Research Fellow, Watson Institute for International Studies, Brown University. Former Chair, Section on Labor and Labor Movements, American Sociological Association

David Fasenfest, Associate Professor of Sociology, Wayne State University.

Janice Fine, Associate Professor of Labor Studies and Employment Relations, Rutgers University.

Frances Fox Piven, Distinguished Professor of Political Science and Sociology, Graduate Center - City University of New York. Former President, American Sociological Association.

Naomi Gerstel, Distinguished University Professor, Department of Sociology, University of Massachusetts, Amherst.

Shannon Gleeson, Associate Professor, Cornell University, School of Industrial and Labor Relations. Former Chair, Section on Labor and Labor Movements, American Sociological Association.

Jeff Goodwin, Professor of Sociology, New York University.

Heidi Gottfried, Associate Professor of Sociology, Wayne State University.

William B. Gould IV,* Charles A. Beardsley Professor of Law, Emeritus, Stanford University. Chairman, California Agricultural Labor Relations Board; Former Chairman, National Labor Relations Board.

*LL.B.

Michael Hout, Professor of Sociology, New York University.

Arne L. Kalleberg, Kenan Distinguished Professor of Sociology, University of North Carolina at Chapel Hill. Former President, American Sociological Association.

Howard Kimeldorf, Professor Emeritus of Sociology, University of Michigan, Ann Arbor.

Gordon Lafer, Associate Professor. Labor Education and Research Center, University of Oregon.

John Logan, Professor and Director of Labor and Employment Studies, San Francisco State University.

Steven H. Lopez, Associate Professor of Sociology, The Ohio State University. Former Chair, Section on Labor and Labor Movements, American Sociological Association.

Michael McCann, Gordon Hirabayashi Professor for the Advancement of Citizenship; Director, Harry Bridges Center for Labor Studies, University of Washington. Former President, Law and Society Association.

Steven McKay, Associate Professor of Sociology; Director, Center for Labor Studies, UC Santa Cruz. Former Chair, Section on Labor and Labor Movements, American Sociological Association.

Ruth Milkman, Distinguished Professor of Sociology, Graduate Center - City University of New York; Research Director, Murphy Institute, CUNY. President, American Sociological Association; Former Chair, Section on Labor and Labor Movements.

Bruce Nissen, Director of Research, Center for Labor Research and Studies, Florida International University.

Nancy Plankey-Videla, Associate Professor of Sociology, Texas A & M University. Chair, Section on Labor and Labor Movements, American Sociological Association.

Ellen Reese, Professor of Sociology and Chair of Labor Studies, UC-Riverside.

Chris Rhomberg, Associate Professor of Sociology, Fordham University. Chair-elect, Section on Labor and Labor Movements, American Sociological Association.

Joel Rogers, Sewell-Bascom Professor of Law, Political Science, Public Affairs, and Sociology, University of Wisconsin-Madison.

Vincent J. Roscigno, Distinguished Professor of Arts and Sciences in Sociology, The Ohio State University. Former President, Southern Sociological Society.

Jake Rosenfeld, Associate Professor of Sociology, Washington University-St. Louis.

Saskia Sassen, Robert S. Lynd Professor of Sociology, Columbia University.

Andrew Schrank, Olive Watson Professor of Sociology and International and Public Affairs, Brown University.

Michael Schwartz, Distinguished Teaching Professor of Sociology, emeritus, Stony Brook University, SUNY. Former Chair, Section on Labor and Labor Movements, American Sociological Association.

Gay Seidman, Martindale-Bascom Professor of Sociology, University of Wisconsin-Madison.

Rachel Sherman, Associate Professor of Sociology, New School for Social Research.

Jiannbin Lee Shiao, Associate Professor of Sociology, University of Oregon.

Vicki Smith, Professor of Sociology, University of California, Davis. Former Chair, Section on Organizations, Occupations, and Work, American Sociological Association.

Judith Stepan-Norris, Professor of Sociology, University of California, Irvine. Former Chair, Section on Labor and Labor Movements, American Sociological Association.

Chris Tilly, Professor of Urban Planning and Sociology and Director, Institute for Research on Labor and Employment, UCLA. Former Chair, Section on Labor and Labor Movements, American Sociological Association

Donald Tomaskovic-Devey, Professor of Sociology, University of Massachusetts, Amherst. Former President, Southern Sociological Society; Former Secretary, American Sociological Association.

Lowell Turner, Academic Director, The Worker Institute at Cornell; Professor of International and Comparative Labor, ILR School, Cornell University.

Steven Vallas, Professor of Sociology, Northeastern University. Former Chair, section on Organizations, Occupations and Work, American Sociological Association.

Kim Voss, Professor of Sociology, University of California, Berkeley. Former Chair, Section on Labor and Labor Movements, American Sociological Association.

Bruce Western, Professor of Sociology, Guggenheim Professor of Criminal Justice Policy, Director, Malcolm Wiener Center for Social Policy, Harvard University.

Erik Olin Wright, Professor of Sociology, University of Wisconsin-Madison. Former President, American Sociological Association.

All signatories appear in their individual capacities only, not as spokespersons or agents for any institution or organization with whom they may be associated. Affiliations are given for identification purposes only.

CERTIFICATE OF SERVICE

I, Chris Rhomberg, hereby certify that on February 26, 2016, I caused to be served a copy of the foregoing brief on behalf of individual academic professors of social science and labor studies as *Amici Curiae*, by electronic mail on the following:

Edward Brill
Bernard M. Plum
Proskauer Ross LLP
11 Times Square
New York, NY 10036-8299
ebrill@proskauer.com
BPlum@proskauer.com

Jane E. Booth, General Counsel
Columbia University
412 Low Memorial Library
535 West 116th Street
New York, NY 10027
jeb@gc.columbia.edu

Thomas Meiklejohn
Livingston, Adler, Pudla, Meiklejohn & Kelly, P.C.
557 Prospect Avenue
Hartford, CT 06105
twmeiklejohn@lapm.org

Julie Kushner, Director
UAW Region 9A
256 West 38th Street, 12th Floor
New York, NY 10018
Jkushner@uaw.net

Karen P. Fernbach, Regional Director
National Labor Relations Board, Region 2
26 Federal Plaza, Room 3614
New York, New York 10278-0104
karen.fernbach@nrb.gov

/s/ Chris Rhomberg
Chris Rhomberg