United States of America
National Labor Relations Board

In the Matter of:	)	
	)	
The Trustees of Columbia in the City of New York,	)	
	)	
	)	
Employer	)	
	)	Case No. 02-RC-143012
And	)	
	)	
Graduate Workers of Columbia-GWC, UAW,	)	
	)	
Petitioner	)	

BRIEF OF AMICUS CURIAE UNITED STEEL, PAPER AND FORESTRY, RUBBER, MANUFACTURING, ENERGY, ALLIED INDUSTRIAL AND SERVICE WORKERS INTERNATIONAL UNION, AFL-CIO/CLC IN SUPPORT OF PETITIONER

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STATEMENT OF AMICUS CURIAE

The United Steelworkers ("USW" or "Union") submits this amicus brief in response to the Board's Notice and Invitation to File Briefs in the above-captioned case. The Board's decision will determine whether graduate student assistants ("GSAs") are able to exercise their rights guaranteed under Section 7 of the National Labor Relations Act.

USW represents 850,000 North American workers in various industries, including higher education. The Union recently launched an organizing campaign for faculty and GSAs at the University of Pittsburgh. The Union frequently advocates on behalf of its members and for the rights of workers generally.

INTRODUCTION

In *New York University*, 332 NLRB 1205 (2000), the Board ruled that GSAs were statutory employees under the Act. Four years later, the Board abruptly reversed course. In *Brown University*, 342 NLRB 483 (2004), the Board refused to extend the Act's protections to GSAs, arguing that they were primarily students.

The *Brown* majority insisted that "25 years of untroubled experience under pre-*NYU* standards" is reason enough to exclude GSAs from Board jurisdiction. *Brown*, 342 NLRB at 493. The *Brown* majority does not specify who, exactly, views this time as "untroubled": certainly not GSAs, whose rights the Act was designed to protect. Recent GSA organizing campaigns at private universities across the country, including Cornell, Harvard, the New School, the

University of Chicago, and Yale[1] demonstrate that GSAs continue to experience significant job-related grievances, and desire unionization as a means to address those grievances.

The frustration of GSAs is not surprising. As universities "increasingly . . . mak[e] decisions in response to external market concerns," administrators rely on low-paid GSAs and adjunct faculty members to conduct more and more of the duties traditionally performed by full-time faculty.[2] Universities enjoy substantial savings by using GSAs to teach courses and conduct research: while full-time Columbia faculty earn an average salary of $151,479,[3] GSAs receive stipends ranging from $20,000 to $44,000.[4] The average stipend for a GSA in the Columbia Graduate School of Arts and Sciences is $25,336, not much to live in one of the world's most expensive cities.[5] According to the MIT Living Wage Calculator, the living wage floor in Manhattan is $28,516.80 for a single adult with no children.[6] Further, rent for Columbia-owned graduate student housing increases 4 to 5 percent a year, while GSA stipends remain the same.[7]

[1] COALITION OF GRADUATE EMPLOYEE UNIONS, http://www.thecgeu.org/wiki/ContractWiki (last visited Feb. 26, 2016).
[2] Brief for the AAUP as Amicus Curiae, p. 8, *Pacific Lutheran University*, 361 NLRB No. 157 (2014). *See also* Vauhini Vara, *A Pioneering Union at Columbia?*, THE NEW YORKER, Dec. 5, 2014, *available at* http://www.newyorker.com/business/currency/pioneering-union-columbia ("[Universities] have increasingly relied on graduate students as workers—to aid full professors in teaching lecture-hall classes, help them with research in university labs, and so on—partly to help keep costs down").
[3] THE INTEGRATED POSTSECONDARY EDUCATION DATA SYSTEM, https://nces.ed.gov/ipeds/ (last visited Feb. 26, 2016).
[4] Steven Greenhouse, *Columbia Graduate Students Push for a Labor Union*, N.Y. TIMES, Mar. 3, 2015, *available at* http://www.nytimes.com/2015/03/04/nyregion/columbia-graduate-students-push-for-a-labor-union.html?_r=0.
[5] Emma Kolchin-Miller, *Graduate Students Share Experiences of Late Pay*, COLUMBIA DAILY SPECTATOR, April 16, 2015, *available at* http://columbiaspectator.com/news/2015/04/16/graduate-students-share-experiences-late-pay.
[6] MIT LIVING WAGE CALCULATOR, http://livingwage.mit.edu/states/36/locations (last visited Feb. 26, 2016).
[7] Naomi Sharp, *Mind the (Wage) Gap: Should University Administrators Be Earning More Than $1 Million*, THE BLUE AND WHITE, Feb. 2015, *available at* http://static1.squarespace.com/static/545d1072e4b043f3abfccc09/t/54ecff78e4b0487f159e5eda/1424818040421/gap.pdf.

Columbia is supposed to provide their GSAs with these stipends in allotments throughout the year. However, the university frequently pays the GSAs weeks, or even months, late. GSAs report borrowing money to buy food and pay rent while they wait for their paychecks.[8]

GSAs at Columbia also worry about healthcare costs, especially for their partners or children.[9] Chandler Walker, a GSA in the cell and molecular biology department, reports paying $900 annually to include her wife in her health insurance plan.[10] Seth Prins, a GSA studying epidemiology, has not visited a dentist for four years because of the prohibitive cost.[11]

Inadequate benefits, low pay, and an uncertain job market take their toll on GSAs' mental health. A new report at the University of California at Berkeley found that 47% of Ph.D. students and 37% of master's students suffer from depression.[12] Not surprisingly, "[s]tudents mentioned financial concerns in the survey responses more than any other topic."[13] As one GSA explained:[14]

> Finishing a Ph.D and finding a job is often an incredible financial hardship for even a relatively well of student now. Many students must beg or borrow tens of thousands of dollars from relatives or otherwise rely on family resources and still end up in crushing student loan and credit card debt. Poor students can't rely on family—they often have family members relying on them.

[8] Rachel Bernstein, *Ivy League Graduate Students Push for Unionization*, SCIENCE, Apr. 28, 2015, available at http://www.sciencemag.org/careers/2015/04/ivy-league-graduate-students-push-unionization; Kolchin-Miller, *supra* note 4; Vara, *supra* note 2.
[9] Vara, *supra* note 2.
[10] Bernstein, *supra* note 6.
[11] Vara, *supra* note 2.
[12] Akane Otani, *An Academic Job Slump is Making Graduate Students Depressed*, BLOOMBERG, Apr. 24, 2015, *available at* http://www.bloomberg.com/news/articles/2015-04-24/an-academic-job-slump-is-making-graduate-students-depressed.
[13] *Id.*
[14] North, Anna, *When Education Brings Depression*, N.Y. TIMES, Oct. 7, 2014, *available at* http://op-talk.blogs.nytimes.com/2014/10/07/when-education-brings-depression/.

Another GSA describes graduate school generally:[15]

> . . . [W]e sign a six-year contract to live on or around the poverty line while our teaching, writing, and research busies us for roughly 12 hours a day. We're told these drudgeries are requisite sacrifices to the life of the mind . . . but this wisdom affords little comfort to the faltering fourth-year.

And a journalist points out graduate school is not an extension of undergraduate studies:[16]

> . . . [G]raduate students aren't just older undergraduates. Graduate students have bigger responsibilities and weightier, longer-term commitments. They have to worry about funding their training and research, publishing papers, and finishing dissertations . . . Graduate students are [also] more likely to have spouses and children who share the impact of their successes and failures.

In response to financial concerns, mental and physical health issues, and increased workloads, organizing among GSAs is on the rise.[17] GSAs are organizing in at least ten private universities across the country.[18] NYU remains unionized, even after the *Brown* decision. GSAs have successfully organized unions at 31 public universities[19] and organizing efforts continue in at least seven additional public schools.[20]

GSAs at Columbia launched their union campaign with the United Auto Workers in the early 2000s.[21] On December 12, 2014, the Graduate Workers of Columbia University-United Auto Workers ("GWC-UAW") submitted their petition to the Board.[22] Bound by the *Brown* precedent, the Regional office dismissed the petition. *Trustees of Columbia University*, Case 02-

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[15] Scheinman, Ted, *Grad School's Mental Health Problem*, PACIFIC STANDARD, Sep. 30, 2014, *available at* http://www.psmag.com/health-and-behavior/grad-schools-mental-health-problem-91549
[16] North, *supra* note 14.
[17] The current wave of GSA organizing is by no means the first. The first recognized GSA union was formed in 1969 at the University of Wisconsin-Madison. *See* COALITION OF GRADUATE EMPLOYEE UNIONS, *supra* note 1.
[18] *Id.*
[19] *Id.*
[20] *Id.*
[21] GRADUATE WORKERS OF COLUMBIA UNIVERSITY, http://www.columbiagradunion.org/our-history/ (last visited Feb. 26, 2016).
[22] *Id.*

RC-143012, Supplemental Decision and Order Dismissing the Petition (Oct. 30, 2015) at 27. The GWC-UAW appealed to the Board.

The Board should overturn *Brown* and restore collective bargaining rights to GSAs. *Brown* was wrongly decided; GSAs are statutory employees within the literal meaning and the spirit of the Act. Further, the Board should a) apply the *NYU* standard to research assistants; b) consider whether GSAs, terminal master's degree students, and undergraduate students are performing professional work when determining appropriate collective bargaining units; and c) find that GSAs, terminal master's degree students, and undergraduate students are not temporary employees.

LEGAL ARGUMENT

1. The Board should overrule *Brown* and find that GSAs who perform services for the university in connection with their graduate studies are employees within the meaning of Section 2(3) of the Act.

The Board should overrule *Brown* and find that GSAs are employees within the meaning of Section 2(3) because: a) the plain language of the Act includes GSAs; b) recognizing GSAs' Section 7 rights furthers the purposes of the Act; c) recognizing GSAs' Section 7 rights is not the break with Board precedent the *Brown* majority describes; and d) collective bargaining is appropriate in the academic context.

a. GSAs are employees within the plain meaning of Section 2(3).

Section 2(3) of the Act broadly defines "employee" as "any employee" and then proceeds to list a number of exceptions. In *Sure-Tan, Inc. v. NLRB*, 467 U.S. 883, 891-892 (1984), the Court recognized that "the breadth of § 2(3)'s definition is striking" and that workers not expressly

exempted by Congress "plainly come within the broad statutory definition of 'employee.'" These Congressional exceptions do not include graduate or undergraduate students.[23]

In *NLRB v. Town & Country Elec., Inc.*, 516 U.S. 85 (1995) (finding company workers additionally compensated by the union for internal organizing are statutory employees), the Court turned to the dictionary and common law definitions of "employee" in order to interpret the Act's expansive definition. The dictionary defines "employee" as "a person who works for another in return for financial or other compensation."[24] Under the common law, a 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." *New York University*, 332 NLRB at 1206.

First, Columbia's GSAs perform services for the university. The Teaching Fellows teach undergraduate courses, grade papers and exams, proctor, and perform administrative work. Research Assistants conduct many of the same tasks as faculty and post-doctorate employees. *Trustees of Columbia* at 10-11, 13-14. Indeed, "[i]n many respects the duties of student assistants are the same as those of admittedly 'employee' counterparts on the Columbia University faculty." *Id.* at 29.

Second, GSAs perform these duties for the university and under the university's control. For example, the GSAs' departments decide whether individual GSAs will receive departmental appointments. *Id.* at 8. Teaching Fellows in the Graduate School of Arts and Sciences receive

[23] Section 2(3) expressly exempts agricultural laborers, domestic workers, individuals working for certain family members, independent contractors, supervisors, and individuals employed by entities subject to the Railway Labor Act.

[24] *Employee Definition*, AMERICAN HERITAGE DICTIONARY, https://www.ahdictionary.com/word/search.html?q=employee (last visited Feb. 26, 2016).

training from the Teaching Center in which the university presents campus policies.[25] *Id.* at 9. Faculty members visit classes in order to evaluate the instruction of Teaching Fellows. *Id.*at 9. The university assigns many GSAs to teach courses in the Core Curriculum program, required for undergraduates. *Id.* at 8. Faculty members oversee the projects on which Research Assistants work. *Id.* at 13.

And third, GSAs perform services for the university in exchange for compensation. The majority of Teaching Fellows and Research Assistants receive a five-year funding package, which includes full tuition, health insurance, the payment of university facilities fees, and a stipend. *Id.* at 6. University payroll administers the GSAs' stipends, which are subject to W2 reporting and employment verification through I-9 forms. *Id.* at 7. The Regional Director found, "[t]estimonial as well as documentary evidence shows payments to students are sometimes described and treated administratively as salaries, and the assistant positions are called 'jobs.'" *Id.* at 29.

These payments to GSAs are consideration for work, not financial aid. Universities increasingly rely on GSAs (and adjunct faculty members) to provide teaching and research services for pay far below the compensation provided to full-time faculty. GSAs "provide the university with a cheap yet indispensable labor force."[26] Indeed, "graduate students are dramatically cheaper instructional personnel than full-time faculty (although adjuncts are usually

[25] Some GSAs receive extensive training. For example, the university requires math doctoral students to take a weekly teacher-training course while Preceptors attend orientation programming and subsequent weekly seminars about the courses they are teaching. *Id.* at 11-12.

[26] David Ludwig, *Why Graduate Students of America are Uniting*, THE ATLANTIC, Apr. 15, 2015, *available at* http://www.theatlantic.com/education/archive/2015/04/graduate-students-of-the-world-unite/390261/.

a little cheaper still), and they automatically have a fixed term since they leave as soon as they complete (or drop out of) their programs."[27]

Universities benefit tremendously from this arrangement. Of course GSAs gain valuable professional skills as well, but the benefit to GSAs does not negate the fact that they provide a vital service to their university employer. As the Board explained in the context of medical interns:

> The advanced training in the specialty the individual receives at the Hospital is not inconsistent with "employee" status. It complements, indeed enhances, the considerable services the Hospital receives from house staff, and for which house staff are compensated. That they also obtain educational benefits from their employment does not detract from this fact. Their status as students is not mutually exclusive of a finding that they are employees.

Boston Medical Center Corp., 330 NLRB 152, 160-161 (1999). Similarly, university employers are able to pay GSAs low wages while benefiting from the GSAs increased experience and training. The Board should not permit university employers to evade their collective bargaining responsibilities as well.

b. Recognizing the collective bargaining rights of GSAs furthers the underlying purposes of the Act.

The *Brown* majority does not argue that the statutory and common law definitions of employee exclude GSAs. Instead, the *Brown* majority explains that its analysis "goes further than th[e] tautology" in 2(3) by "examin[ing] the underlying purposes of the Act." *Brown University*, 342 NLRB at 491. The majority provides no legislative or historical support for its position. Instead, the majority argues that GSAs have a primarily "educational" relationship with

[27] Robin J. Sowards, Remarks at the NLG-NYC Labor & Employment Committee/NYU Law Students for Economic Justice (Apr. 10, 2015).

their employer and points to "[t]he Board's longstanding rule that it will not assert jurisdiction over [these] relationships . . ." *Brown University*, 342 NLRB at 488.

First, as explained *infra*, the Board has no such longstanding rule. *See also Cornell University*, 183 NLRB 329 (1970) (Board's assertion of jurisdiction over private colleges and universities furthers the purposes of the Act). Second, neither the Act nor Board precedent requires that the employee's relationship with her employer be only or primarily economic. *See New York University*, 342 NLRB at 497 (citing *Seattle Opera v. NLRB*, 292 F.3d 757. 762 (D.C. Cir. 2000)) (affirming Board's decision finding auxiliary choristers employees under the Act even though compensation received was minimal); *Boston Medical Center Corp.*, 330 NLRB at 160 (" . . . nothing in the statute suggests that persons who are students but also employees should be exempted from the coverage and protection of the Act"). Third, the majority relies on *St. Clare's Hospital & Health Center*, 229 NLRB 1000 (1977), a case which *Boston Medical Center*, *supra*, explicitly overturned. And finally, the majority overlooks that the breadth of the statutory definition *does* reflect the underlying purposes of the Act: to encourage collective bargaining and to protect the rights of employees, broadly defined, to organize. *See Town & Country Elec.*, 516 U.S. at 454 (extending coverage to union organizers consistent with Act's purpose of protecting employee organizing rights); *Sure-Tan*, 467 U.S. at 892 (extending coverage to undocumented workers consistent with Act's purpose of encouraging collective bargaining).

c. The Brown *decision marked the first time that the Board denied GSAs their collective bargaining rights.*

The *Brown* majority claimed that, "[u]ntil *NYU*, the Board's principle was that graduate student assistants are primarily students and not statutory employees." *Brown University*, 342

NLRB at 342. In fact, the *Brown* decision marked the first time that the Board denied GSAs their Section 7 rights. In *Adelphi University*, 195 NLRB 639 (1972), cited by the *Brown* majority, the employer attempted to include GSAs within a unit of full-and part-time faculty. When considering whether GSAs and faculty shared a community of interest, the Board concluded that "the graduate assistants are primarily students and they *therefore* do not share a similar community of interest with the faculty members and professional librarians" *Adelphi*, 195 NLRB at 649, fn. 8 (emphasis added). The Board discussed GSAs' primary student status in the context of distinguishing their interests from faculty members; the Board did not address whether the Act covered GSAs or whether GSAs would constitute an appropriate separate unit.

The *Brown* majority also relied on *Leland Stanford Junior University*, 214 NLRB 621 (1974). In *Leland Stanford*, the Board concluded that research assistants in the physics department were not statutory employees. The case hardly established a general principle applicable to GSA organizing across private universities, however. *See Brown*, 342 NLRB at 487. The three-page decision focused entirely on facts specific to the 83 research assistants at Leland Stanford. Specifically, the Board focused its analysis on the fact that the research assistants received external grants to perform research exclusively for the purpose of completing their degrees. In contrast, the majority of Columbia GSAs are paid directly by the university.

The *Brown* majority also discussed two cases, *St. Clare's Hospital*, 229 NLRB 1000 (1977) and *Cedars-Sinai Medical Center*, 223 NLRB 251 (1976), which held that medical interns, residents, and fellows were not statutory employees. In one sentence, the majority acknowledged that the Board later overturned these cases in *Boston Medical Center*. Curiously, the *Brown* majority did not apply *Boston Medical Center* to GSAs, distinguishing the case because the interns, residents, and fellows had already completed their medical degrees. *Brown University*,

342 NLRB at 487. This distinction played no part in the *Boston Medical Center* Board's analysis. In fact, the *Boston Medical Center* opinion acknowledged that the individuals are "*students* learning their chosen medical craft [and] are also 'employees' within the meaning of Section 2(3) of the Act." *Boston Medical Center*, 330 NLRB 152 at 152 (emphasis added). The Board also stated that "[a]s a policy matter, we do not believe that the fact that house staff are also students warrants depriving them of collective-bargaining rights, or withholding the statutory obligations attendant to those rights." *Id.* at 163.

In sum, *Brown* was the first Board case to deny collective bargaining rights to GSAs. The *Brown* majority's repeatedly emphasized point that "the petitioned-for individuals are *students*" is immaterial: nothing in the Act precludes students from exercising collective bargaining rights. *Brown University*, 342 NLRB at 492 (emphasis in the original). As the Board explained in *Boston Medical Center* at 161, "there has been no question that students are statutory employees."

d. Collective bargaining is a flexible arrangement that is currently working in multiple academic environments.

The *Brown* majority also claimed that collective bargaining is not well-suited to the academic environment.[28] The majority cited to *St. Clare's Hospital*, 229 NLRB at 1002, 1003, in which the Board argued that the educational process is "'intensely personal,'" and that recognizing collective bargaining rights would infringe on academic freedom. *Brown University*, 342 NLRB at 489-490. As mentioned above, the *Boston Medical Center* Board expressly overturned *St. Clare's Hospital*. In *Boston Medical Center*, 330 NLRB at 163, the Board looked at bargaining

[28] The *Brown* majority ignored collective bargaining between academic faculty members and their university employers. As of 2012, 27% of all faculty are unionized. JO BERRY & MICHELLE SAVARESE, DIRECTORY OF U.S. FACULTY CONTRACTS & BARGAINING AGENTS IN INSTITUTIONS OF HIGHER EDUCATION vi, viii (Sept. 2012).

in public sector hospitals and found "no indication that any of the negative problems flowing from such a finding, as predicted by the *Cedars-Sinai*/*St. Clare's Hospital* opinions, have occurred or would occur."[29]

Similarly, GSAs at a number of public universities are granted collective bargaining rights under state labor laws. These current GSA collective bargaining efforts provide empirical support for the benefits of extending the Act's coverage to GSAs. A recent comparison of four non-union universities with four union universities found no evidence that unionization negatively impacted academic freedom or the faculty-graduate student relationship.[30] In fact, "[a]cross the board, student employees in unionized universities reported more positive student-teacher relationships, more academic freedom, and greater economic well-being than did student employees in nonunionized universities."[31] Similarly, the American Association of University Professors ("AAUP") confirms that "graduate student unions do not hurt professor-student relations."[32]

Moreover, federal labor law places limits on subjects of bargaining and on the duty to bargain generally. Topics, such as academic freedom, that might "intrude into . . . the heart of the educational process," are not mandatory subjects of bargaining. *Brown University*, 342 NLRB at 492. And as the *Brown* dissent pointed out, GSAs, as scholars and future academics, have a strong interest in protecting academic freedom. *Id.* at 500. In reviewing graduate union collective

[29] The *Boston Medical* Board addressed the employee status of house residents, who often enjoyed collective bargaining rights under state law if they worked at a public hospital. Similarly, many states allow GSAs at public universities to organize.
[30] Adrienne E. Eaton, Sean E. Rogers, & Paula B. Voos, *Effects of Unionization on Graduate Student Employees: Faculty-Student Relations, Academic Freedom, and Pay*, 66 ILR REVIEW 487, 507 (Apr. 2013).
[31] *Id.* at 500.
[32] Brief for the AAUP as Amicus Curiae , p. 13, *New York University*, 332 NLRB 1205 (2000).

bargaining agreements, a recent study found that these contracts covered typical subjects of bargaining, such as salaries, benefits, and health and safety.[33]

In short, the majority's speculative concerns are no justification for denying employees their rights under the Act. Collective bargaining is a flexible process that is successful in diverse industries with diverse characteristics, including entertainment, journalism, professional sports, healthcare, transportation, legal services, retail, and higher education. *See Brown* University, 342 NLRB at 499. As the Board has stated:

> If there is anything we have learned in the long history of this Act, it is that unionism and collective bargaining are dynamic institutions capable of adjusting to new and changing work contexts and demands in every sector of our evolving economy . . . To assume otherwise is not only needlessly pessimistic, but gives little credit to the intelligence and ingenuity of the parties. *Boston Medical Center Corp.*, 330 NLRB at 165.

Not only is unionism capable of adapting to an evolving economy, but the Board also has an obligation to adapt the collective bargaining regime to changed circumstances. *Id.* at 498 (citing *American Trucking Ass'ns v. Atchison Topeka & Santa Fe Railway Co.*, 387 U.S. 397, 416 (1967)). Universities are part of this changing economy and are changing internally. As the chairman of Suffolk University's Board of Trustees put it: "'We need people who understand that running an institution of higher education today means running a business.'"[34] As a result, when "applying the corporate business model, university administrators have relied increasingly on external market forces to make decisions based on revenue generating potential of academic programs."[35] These decisions lead to low-paid GSAs (and adjunct faculty members) carrying heavier course loads and administrative responsibilities.[36]

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[33] Eaton et al, *supra* note 30 at FN 4.
[34] Quoted in Brief for the AAUP as Amicus Curiae, *supra* note 29, at 7.
[35] Brief for the AAUP as Amicus Curiae, *supra* note 29, at 29.
[36] Daniel J. Julius & Patricia J. Gumport, *Graduate Student Unionization: Catalysts and Consequences*, 26 REVIEW OF HIGHER EDUC. No. 2, 187 at 191, 196 (2002).

In response to these changes, GSA organizing is on the rise. The Board should ensure that these efforts receive the protections of the Act.

2. The Board should ask whether GSAs engaged in research are performing work that benefits the university when determining whether such students are statutory employees.

If the Board overrules *Brown* and finds that GSAs are entitled to collective bargaining rights, labor organizations will likely petition for units including teaching and research assistants. Most universities, including Columbia, fund some research assistants internally and others through external grants. *Trustees of Columbia University*, at 14. In *Leland Stanford*, 214 NLRB at 621, the Board declined to assert jurisdiction over research assistants in the physics department because "the payments to RA's [sic] are in the nature of stipends or grants to permit them to pursue their advanced degrees" and the university "provide[s] financial aid for its graduate students by means of a stipend for doing what is required of them to earn their degrees." In *New York University*, 332 NLRB at 1209 fn. 10, the Board applied the *Leland Stanford* logic, excluding research assistants funded by external grants because "[t]he evidence fails to establish that the research assistants perform a service for the Employer . . ."

The Board should continue to apply the *Leland Stanford* and *NYU* standard to GSAs engaged in research, regardless of whether the funding is internal or external to the university (although the source of funding should be a factor for the Board to consider). The Board should determine whether the GSAs' research provides a benefit or service to the university. The Board should consider factors such as the source of the funding, whether the GSA individually applied for funding, whether the university controls the GSA's ability to receive funding, whether the GSA's research generates monetary benefits for the university, and whether the GSA is conducting

research solely for her dissertation. By necessity, the inquiry will proceed on a case by case basis, as GSA funding differs from university to university.

3. The Board should ask whether GSAs, terminal master's degree students, and undergraduate students are performing professional work when determining whether a unit composed of all of these classifications is appropriate.

If the Board finds that GSAs, terminal master's degree students, and undergraduate students are statutory employees, the Board should assess the type of work that these student employees perform when deciding if all three belong in the same bargaining unit. Rather than focusing on the student employee classification, the Board should ask if the student employee is engaged in "professional" work. Professional work refers to the work typically performed by GSAs, such as teaching courses, grading exams and papers, and conducting research that benefits the university.

4. The Board should find that GSAs, terminal master's degree students, and undergraduate students are not temporary employees.

GSAs, terminal master's degree students, and undergraduate students are not temporary employees. Again, the Board's decision in *Boston Medical Center* is instructive. In that case, the Board explained why the interns, residents, and fellows were not temporary employees despite their finite terms of employment:

> [T]he Board has never applied the term "temporary" to employees whose employment, albeit of finite duration, might last from 3 to 7 or more years, and we will not do so here. In many employment relationships, an employee may have a set tenure and, in that sense, may not have an indefinite departure date. Athletes who have 1, 2, or greater years' length employment contracts are, theoretically at least, employed for a limited time, unless their contracts are renewed; work at a legal aid office may be for a set 2-year period; a teaching assignment similarly may be on a contract basis. To extend the definition of "temporary employee" to such situations, however, would be to make what was intended to be a limited exception swallow the whole.

Boston Medical Center, 330 NLRB at 166. Similar to the medical interns in *Boston Medical*, student employees work for a set period of time, generally have an expectation of reappointment, and have "a sufficient interest in their conditions of employment to warrant representation." *San Francisco Art Institute*, 226 NLRB 1251, 1252 (1976).[37] In the event that the Board does find that GSAs, master's students, and undergraduate students are temporary workers, the students should form one classification of employees.

CONCLUSION

For the above stated reasons, the Board should find that the GSAs at Columbia are employees within the meaning of Section 2(3) and entitled to the protections of the Act.

Dated: February 29, 2016

Respectfully submitted,

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[37] In *San Francisco Art Institute*, the Board declined to approve a unit of undergraduate students who worked on a part-time basis as janitors for the school. The Board stated that "the resolution of this question turns on whether the student janitors manifest a sufficient interest in their conditions of employment to warrant representation in a separate unit." *San Francisco Art Institute*, 226 NLRB at 1252. The Board focused on the brief employment tenure of the students, that some students received tuition scholarships as pay, and that the students were primarily concerned with their studies rather than their employment. In contrast, GSAs and master's and undergraduate students engaged in professional work are often employed by their universities for years, receive taxable income, and have a serious connection to their work.

Certificate of Service

This is to certify that a copy of the foregoing document was sent via e-mail, on this 29th day of February, 2016, to the following:

Karen P. Fernbach, Regional Director
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