

December 2016

## The Winds of Changes Shift: An Analysis of Recent Growth in Bargaining Units and Representation Efforts in Higher Education

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### Recommended Citation

Herbert, William A. (2016) "The Winds of Changes Shift: An Analysis of Recent Growth in Bargaining Units and Representation Efforts in Higher Education," *Journal of Collective Bargaining in the Academy*: Vol. 8 , Article 1.  
Available at: <http://thekeep.eiu.edu/jcba/vol8/iss1/1>

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# The Winds of Changes Shift: An Analysis of Recent Growth in Bargaining Units and Representation Efforts in Higher Education

## **Erratum**

Table 5 p. 9, replace Grinnell University with Grinnell College.

# **The Winds of Changes Shift: An Analysis of Recent Growth in Bargaining Units and Representation Efforts in Higher Education**

William A. Herbert<sup>1</sup>

Over the past four years we have seen a significant growth in unionization efforts and collective bargaining relationships in higher education. By far the biggest area of organizational and bargaining unit growth has been with respect to non-tenure track faculty, particularly at private non-profit colleges and universities including religiously affiliated institutions. The growth in private sector faculty representation and bargaining constitutes a major new shift in higher education. There has also been continued growth in the number of bargaining units in the public sector among tenured/tenure-track faculty, non-tenure track faculty, and graduate student employees.

In this article, we analyze a representative sample of data from the first three quarters of calendar year 2016 concerning bargaining unit growth and pending questions of representation in higher education with respect to faculty and student employees. The data covers 64 resolved or pending questions of representation in the period January 1 - September 30, 2016. The information concerning each question of representation comes from primary source materials and public information posted on websites of labor relations agencies. The analysis of the data will be considered within the context of legal doctrines raised in certain cases, and that have impacted faculty and graduate student employee unionization for decades. Data concerning bargaining units limited to professionals, administrative staff, classified staff, and security in higher education are not examined.

The five tables below set forth the data under analysis. Tables 1 and 2 present data concerning private sector tenured/tenure-track faculty units, and non-tenure track faculty respectively. Tables 3 and 4 include data with a similar breakdown among public sector faculty, and Table 5 presents data with respect to student employees in the private and public sectors. The Tables do not include questions of representation filed on or after October 1, 2016.

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<sup>1</sup> Mr. Herbert is Executive Director of the National Center for the Study of Collective Bargaining in Higher Education and the Professions, Hunter College, City University of New York.

Each table includes the following: the state where the institution is located; the institution’s name; the national affiliation of the certified or petitioning union; whether the representation petition is pending, resulted in a certification, a dismissal or a withdrawal; the tally of ballots if an election was held; the legal defense, if any, raised in opposition to the petition; the unit size; and the unit composition. The size of each unit is based on the number of eligible voters permitted to participate in the representation election, the number of unit members referenced in an administrative decision, or the approximate number listed in the representation petition. The specific composition of each certified or proposed unit is set forth in the endnotes.

Tables 1 and 2 reveal that there have been 20 new certified private sector faculty bargaining units in the first nine months of 2016. This represents a remarkable 25.9% increase over the 77 private sector bargaining units identified by the National Center for the Study of Collective Bargaining in Higher Education and the Professions (National Center) in its 2012 *Directory of U.S. Faculty Contracts and Bargaining Agents in Institutions of Higher Education (2012 Directory)*.<sup>2</sup> One of the newly certified units includes a tenured/tenure-track faculty unit, and the remaining units are composed of non-tenure track faculty. Of the 19 private sector non-tenure track units, 63.2% are combined full-time and part-time faculty units, 26.3% are units of part-time faculty only, and 10.5% are full-time faculty units.

Table 1

*Completed or Pending Cases Involving Private Sector Tenured/Tenure-Track Faculty in First Three Quarters of 2016*

State	Institution	Agent	Status	Tally	Unit	
					Size	Comp.
CA	Notre Dame de Namur University	SEIU	Certified	35-6	61	FT <sup>i</sup>
MA	Tufts University	SEIU	Dismissed (Y)		70	FT-PT <sup>ii</sup>
MT	Carroll College	AFT-NEA	Dismissed (CB; Y)		97	FT-PT <sup>iii</sup>
PA	Marywood University	NEA	Dismissed; Pending (Y; CB)		179	FT-PT <sup>iv</sup>

*Note:* Legal Issues Raised: CB = *Catholic Bishop*; Y = *Yeshiva*

<sup>2</sup> Berry, J. & Savarese, M. (2012) *Directory of U.S. Faculty Contracts and Bargaining Agents in Institutions of Higher Education*, pp. 58-59.

Table 2

*Completed or Pending Cases Involving Private Sector Non-Tenure Track Faculty (FT, PT and FT/PT Units) in First Three Quarters of 2016*

State	Institution	Agent	Status	Tally	Unit	
					Size	Comp.
CA	Notre Dame de Namur University	SEIU	Certified	148-11	208	PT <sup>v</sup>
CA	Holy Names University	SEIU	Certified	63-17	142	PT <sup>vi</sup>
CA	University of Southern California	SEIU	Certified	32-3	44	FT-PT <sup>vii</sup>
CA	University of Southern California	SEIU	Pending (Y)	113-127 (set aside)	337	FT-PT <sup>viii</sup>
CA	University of Southern California	SEIU	Certified; Pending (Y)	31-6	45	FT-PT <sup>ix</sup>
IL	Loyola College Chicago	SEIU	Certified; Pending (CB)	142-11	326	FT-PT <sup>x</sup>
IL	Loyola College Chicago	SEIU	Certified; Pending (CB)	8-0	11	FT-PT <sup>xi</sup>
IL	Northwestern University	SEIU	Pending	223-191	678	FT-PT <sup>xii</sup>
IL	Saint Xavier University	NEA	Certified (CB)	29-25	122	PT <sup>xiii</sup>
IL	Kaplan International	Newspaper Guild	Certified	14-3	26	FT-PT <sup>xiv</sup>
MA	Boston University	SEIU	Certified	135-36	282	FT-PT <sup>xv</sup>
MA	Bentley University	SEIU	Withdrawn <sup>3</sup>		155	PT <sup>xvi</sup>
MA	Brandeis University	SEIU	Withdrawn		228	PT <sup>xvii</sup>
MD	McDaniel College	SEIU	Certified	82-36	238	PT <sup>xviii</sup>
MD	Goucher College	SEIU	Certified	40-36	99	FT-PT <sup>xix</sup>
NC	Duke University	SEIU	Certified	174-29	296	FT-PT <sup>xx</sup>
NY	Ithaca College	SEIU	Certified	23-13	48	FT <sup>xxi</sup>
NY	Marist College	SEIU	Pending	154-165 Rerun: 167-177	549	PT <sup>xxii</sup>

<sup>3</sup> The withdrawn representation petitions at Bentley University and Brandeis University sought clarification of previously certified part-time faculty units.

State	Institution	Agent	Status	Tally	Unit	
					Size	Comp.
NY	Wells College	SEIU	Certified	27-6	60	FT-PT xxiii
NY	Manhattan College	AFT-NEA	Pending (CB)		400	PT <sup>xxiv</sup>
MN	Minn. Coll. Art & Design	SEIU	Certified (Y)	16-13	33	FT <sup>xxv</sup>
MN	Minn. Coll. Art & Design	SEIU	Certified	43-20	76	PT <sup>xxvi</sup>
MO	Saint Louis University	SEIU	Certified	89-28	156	FT-PT xxvii
PA	Chatham University	USW	Withdrawn		380	FT-PT xxviii
PA	Duquesne University	USW	Pending (CB)	50-9	88	PT <sup>xxix</sup>
WA	Saint Martin's University	SEIU	Certified; Pending (CB)	63-34	129	FT-PT xxx
WA	Seattle University	SEIU	Certified; Pending (CB, Y)	73-63	199	FT-PT xxxi

*Note:* Legal Issues Raised: CB = *Catholic Bishop*; Y = *Yeshiva*

The average of electoral tallies in Tables 1 and 2 show that 72.8% of faculty in the 24 private sector units who participated in representation elections voted in favor of unionization.<sup>4</sup> The Service Employees International Union (SEIU) was the certified bargaining agent in 90% of the 20 recently certified private sector faculty units. Emblematic of the changes in faculty unionization was the certification of SEIU as the representative of a non-tenure track faculty unit at Duke University, the first new private sector faculty bargaining unit in a right-to-work state in a quarter of a century.

These figures, however, are subject to change as the result of pending administrative litigation. As Table 2 reveals, nine cases involving private sector institutions, including five with newly certified non-tenure track units, are the subject of current litigation before the NLRB

<sup>4</sup> The Marist rerun tally, rather than the one from the overturned election, was used in calculating the average of electoral tallies.

concerning two legal doctrines to be discussed below. The results of that litigation may increase or decrease the total number of new bargaining units in the period under study.<sup>5</sup>

In addition, election results involving non-tenure track faculty at Marist College and the University of Southern California were set aside by the National Labor Relations Board (NLRB) based on findings that each institution engaged in improper conduct prior to the election that interfered with the faculty's free choice. In both elections, the faculty voted against union representation. A subsequent rerun election at Marist resulted in the same outcome, which is being challenged. A new election at the University of Southern California has been blocked by a pending unfair labor practice charge. A vote in favor of unionization by non-tenure track faculty at Northwestern University has not resulted in a certification. In that case, the NLRB Regional Office is considering electoral challenges that can be outcome determinative.<sup>6</sup>

The demonstrative growth in private sector non-tenure track faculty units and organizing effort is a clear manifestation of the substantial change in faculty composition. Bowen and Tobin summarized the data concerning the change in the following manner:

- In 1969, tenured/tenure-track faculty accounted for over three-quarters of all faculty (78.3 per cent); in 2009, tenured/tenure-track faculty accounted for just over one-third of all faculty (33.%). As many people have noted, the ratio simply flipped.
- Among non-tenure track faculty, both full-time and part-time staff have increased, but part-timers have increased faster (by over 400 percent between 1970 and 2003).<sup>7</sup>

The growth in private sector unionization among contingent faculty confirms an important 1973 observation by Ladd and Lipset: "The lower the tier of academe, in terms of security, income, prestige, and involvement in the graduate scholarly-research culture, the stronger the vote for unionization, as represented by a regular union body; the higher the level, the greater the likelihood of votes for 'no representation,' or for the least 'union-like' faculty organization on

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<sup>5</sup> The administrative litigation pursued by a university concerning one of the newly certified non-tenure track units was unsuccessful. See, *University of Southern California*, 365 NLRB No. 11 (2016). The NLRB Board decision did not alter the total number of new private sector faculty bargaining units listed in Tables 1 and 2.

<sup>6</sup> Since October 1, 2016 three additional private sector faculty representation petitions were filed regarding contingent faculty at Augsburg College, University of Hartford and the Institute of Culinary Education. SEIU was certified to represent a unit of 199 full-time and part-time non-tenure track faculty at Augsburg College after an 89-70 vote in favor of representation. The full-time and part-time contingent faculty at the University of Hartford voted 278-230 for SEIU representation of a unit of 876 faculty. At the Institute of Culinary Education, an AFT-NEA affiliate was certified to represent a unit of 85 full-time and part-time ESL instructors after the instructors voted 38-20 in favor of representation. These questions of representation are not included in Table 2.

<sup>7</sup> Bowen, W. G. Tobin, E. M. (2016) *Locus of Authority: The Evolution of Faculty Roles in the Governance of Higher Education*, p. 152.

the ballot.”<sup>8</sup> Another significant factor leading to the increase in contingent faculty unionization has been the alt-labor activism of organizations like the New Faculty Majority and the Coalition of Contingent Academic Labor, the coordinated nationwide faculty organizing campaigns by SEIU’s Faculty Forward, and organizing by other unions including AFT, NEA, and AAUP. A third factor that might have affected the growth in new private sector non-tenure track faculty units in 2016 was the NLRB’s modified representation case processing rules. The modified rules were aimed at expediting the resolution of questions of representation.

As Tables 3, 4 and 5 demonstrate, there has been slower growth in certified public sector bargaining units since January 1, 2016. Only 12 new public sector units were certified as the result of petitions filed during the period under study, along with the certified merger of two pre-existing units at Wright State University.<sup>9</sup> The 12 new units include 10 faculty units, one unit of department chairs, and one graduate student employee unit. One third of the new public sector units are in right-to-work states.

There has been only a 2.1% increase in public sector units over the 562 public sector bargaining units identified by the National Center in its *2012 Directory*.<sup>10</sup> AAUP, AFT, AFT-NEA, AFT-AAUP, and NEA constitute 83% of the selected bargaining agents for the 12 newly certified public sector units. Nine of the new units resulted from an election. The average of electoral tallies in Tables 3 and 4 shows that 73.3% of the unit members who voted supported unionization.<sup>11</sup>

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<sup>8</sup> Ladd, E. C. & Lipset, S. M. (1973) *Professors, Unions, and American Higher Education*, p. 48.

<sup>9</sup> An additional new public sector bargaining unit was formed in the fourth quarter of 2016 when an NEA affiliate was certified without an election to represent a unit of 373 tenured/tenure-track faculty at Southern Illinois University Edwardsville. During the same period, AAUP filed a petition seeking to represent a unit of approximately 87 full-time faculty at Santa Fe Community College. These two questions of representation are not included in Tables 3 and 4.

<sup>10</sup> Berry, J. & Savarese, M. (2012) *Directory of U.S. Faculty Contracts and Bargaining Agents in Institutions, of Higher Education*, supra.

<sup>11</sup> The showings of interest that formed the bases for public sector certifications without an election at Northern Illinois University and Cayuga Community College were not included in the average of electoral tallies. In both, the petitioning union was certified based on the submission of a showing of interest from over 50% of the at-issue bargaining unit.



Table 3

*Completed or Pending Cases Involving Tenured/Tenure-Track Faculty (FT, PT and FT/PT Units) and Department Chairs at Public Colleges in First Three Quarters of 2016*

State	Institution	Agent	Status	Tally	Unit	
					Size	Comp.
FL	Tallahassee Community College	AFT-NEA	Certified	139-22	185	FT xxxii
FL	State College of Florida	AFT-NEA	Certified	75-24	107	FT xxxiii
FL	Florida Polytechnic University	AFT-NEA	Certified	38-6	50	FT-PT xxxiv
FL	St. Petersburg College	AFT-NEA	Pending		370	FT xxxv
IL	Northern Illinois University	AFT-AAUP	Certified	Cert. w/o Election <sup>12</sup>	590	FT xxxvi
MA	University of Massachusetts Boston	NEA	Certified	17-8	35	Chairs xxxvii
MN	University of Minnesota	SEIU	Pending		2,905	FT-PT xxxviii
NH	Plymouth State College	AAUP	Certified	97-67	174	FT xxxix
NV	College of Southern Nevada	AAUP	Certified	263-126	524	FT-PT xl
OH	Belmont College	AFT	Certified	28-3	32	FT xli
OH	Wright State University	AAUP	Certified Merged Unit <sup>13</sup>			FT xlii

*Note:* Legal Issues Raised: CB = *Catholic Bishop* Y = *Yeshiva*

<sup>12</sup> The Illinois collective bargaining law permits certifications without an election like New York and some other states. See, Herbert, W. A. (2010/2011) *Card Check Labor Certification: Lessons from New York*, 74 Alb. L. Rev. 93.

<sup>13</sup> This representation case resulted in an amendment to a certification to reflect the merger of full-time tenured/tenured-track bargaining units. *Wright State University*, 33 OPER ¶ 108 (2016).

Table 4

*Completed or Pending Cases Involving Non-Tenure Track Faculty at Public Colleges and Universities in First Three Quarters of 2016*

State	Institution	Agent	Status	Tally	Unit	
					Size	Comp.
FL	Hillsborough Community College	SEIU	Certified	339-189	1,006	PT <sup>xliv</sup>
MO	Saint Charles Community College	SEIU	Certified	108-66	333	PT <sup>xliv</sup>
NY	Cayuga Community College	AFT-NEA	Certified	Cert. w/o election	207	PT <sup>xliv</sup>
NY	Herkimer County Community College	SEIU	Pending		108	PT <sup>xlvi</sup>
NY	Tompkins- Cortland Community College	AFT-NEA	Pending		250	PT <sup>xlvi</sup>
PA	Beaver County Community College	USW	Withdrawn			PT <sup>xlvi</sup>

Table 5

*Completed or Pending Cases Involving Student Employees at Private and Public Colleges and Universities in First Three Quarters of 2016*

State	Institution	Agent	Status	Tally	Unit	
					Size	Comp.
CT	Yale University	UNITE-HERE	Pending		6	GSE <sup>xliv</sup>
CT	Yale University	UNITE-HERE	Pending		24	GSE <sup>l</sup>
CT	Yale University	UNITE-HERE	Pending		23	GSE <sup>li</sup>
CT	Yale University	UNITE-HERE	Pending		9	GSE <sup>lii</sup>
CT	Yale University	UNITE-HERE	Pending		14	GSE <sup>liii</sup>
CT	Yale University	UNITE-HERE	Pending		66	GSE <sup>liv</sup>
CT	Yale University	UNITE-HERE	Pending		55	GSE <sup>lv</sup>
CT	Yale University	UNITE-HERE	Pending		60	GSE <sup>lvi</sup>
CT	Yale University	UNITE-HERE	Pending		18	GSE <sup>lvii</sup>
CT	Yale University	UNITE-HERE	Withdrawn		22	GSE <sup>lviii</sup>

State	Institution	Agent	Status	Tally	Unit	
					Size	Comp.
IA	Grinnell University	UGSDW	Certified	21-1	91	Student Dining Workers lix
MO	University of Missouri	NEA	Pending √+ <sup>14</sup>		2,600	GSE <sup>lx</sup>
NY	Columbia University	UAW	Pending	1,602- 623	4,256	GSE <sup>lxi</sup>
NY	New School	UAW	Pending		350	GSE <sup>lxii</sup>
NY	Cornell University	AFT-NEA	Pending ++ <sup>15</sup>			GSE <sup>lxiii</sup>
OR	Portland State University	AFT-AAUP	Certified	Cert. w/o Election	793	GSE <sup>lxiv</sup>

*Note:* √+ = Court Litigation; √++ = Non-NLRB Recognition Procedure

The relative low level of recent growth in the public sector is attributable to various factors: the scope of pre-existing union density, the limited number of states with laws permitting bargaining on campus, and the erosion of collective bargaining rights in certain states. On the horizon is a pending public sector representation petition filed by SEIU seeking to represent a combined statutorily-defined unit at the University of Minnesota of approximately 3,000 tenured/tenure-track, and non-tenure track faculty.<sup>16</sup>

The comparative growth in private sector versus public sector bargaining units since January 1, 2016 is in stark contrast to the sectoral breakdown found by the National Center in 2012: 562 public sector faculty units and 77 private sector faculty bargaining units.<sup>17</sup> The import of the recent rate of growth in the private sector is highlighted by the fact that one half of the

<sup>14</sup> Coalition of Graduate Workers v. Univ. of Missouri, Cir. Ct., Boone Co., State of Missouri, Case #16BA-CV01634 the complaint is available at <http://bloximages.newyork1.vip.townnews.com/columbiatribune.com/content/tncms/assets/v3/editorial/7/db/7dbd9f6b-b7d2-54b9-83a3-47abe0390e6c/573496b5922e7.pdf>.

<sup>15</sup> Union-University Conduct Rules and Recognition Election Agreement (May 16, 2016) available at <https://cornellgsu.files.wordpress.com/2016/05/code-of-conduct-tentative-agreement-signed.pdf>. It is unclear whether the parties at Cornell have yet agreed on the size of the at-issue bargaining unit of graduate student employees.

<sup>16</sup> University of Minnesota, Unit 8, Minneapolis, Minnesota, BMS Case No. 16PCE0644 (2016).

<sup>17</sup> Berry, J. & Savarese, M. (2012) *Directory of U.S. Faculty Contracts and Bargaining Agents in Institutions, of Higher Education, supra.*

private sector units identified in the *2012 Directory* were tenure-track legacy units that pre-dated the 1980 decision by the United States Supreme Court in *NLRB v. Yeshiva University (Yeshiva)*,<sup>18</sup> and the 1979 decision in *NLRB v. Catholic Bishop of Chicago (Catholic Bishop)*.<sup>19</sup>

In *Yeshiva*, the Court ruled that the faculty at that private institution were managerial, and therefore without any rights under the National Labor Relations Act (NLRA), because their role in shared governance included formulating and effectuating managerial policies and making operative decisions for the institution. The Court in *Catholic Bishop* held that the NLRB cannot assert jurisdiction over a representation petition concerning lay teachers at a religiously-affiliated school when the assertion of agency jurisdiction created a significant risk of infringing on religious liberty protected by the First Amendment.

Following the *Yeshiva* decision, many private sector institutions refused to negotiate successor or initial agreements with incumbent unions representing tenured/tenure-track faculty. By the end of 1988, at least 23 faculty unions on private sector campuses were decertified based on *Yeshiva*.<sup>20</sup> The specter of potential decertification efforts after the expiration of contracts altered the power dynamics at the negotiating tables and in labor relations for incumbent units of tenured tenure-track faculty that continue to be recognized following *Yeshiva*.

The legal doctrines enunciated in *Yeshiva* and *Catholic Bishop* stymied growth in private sector faculty unionization for many years, and continue to shape faculty representation issues in higher education today. An important legacy of *Yeshiva* is the chilling effect it has had on private sector tenured/tenure-track faculty. Without the protection of the NLRA, private sector faculty have no federal labor law protection against retaliation for engaging in otherwise legally protected associational activities. Simply put, a successful legal defense by an institution under *Yeshiva* results in the faculty being exempted from the “full freedom of association” promised by the NLRA.<sup>21</sup>

The chilling effect of *Yeshiva* extends to union strategies related to private sector tenured/tenure-track faculty. Table 1 lists only four completed or pending representation cases concerning private sector tenured/tenure-track faculty. This relatively small number of representation cases supports the conclusion that *Yeshiva* remains present in the institutional memory of faculty and faculty unions. Moreover, in 75% of the cases listed in Table 1 an NLRB Regional Director ruled that tenured/tenure-track faculty are managerial under *Yeshiva*.

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<sup>18</sup> 444 U.S. 672 (1980).

<sup>19</sup> 440 U.S. 490 (1979).

<sup>20</sup> “*Yeshivawatch*” - *Year Nine*, National Center Newsletter, Vol 16, No. 5 (Nov/Dec 1988).

<sup>21</sup> 29 U.S.C. § 151.

Tables 1 and 2 identify nine cases where religiously-affiliated institutions have raised a *Catholic Bishop* jurisdictional defense, and six cases where institutions have argued that faculty are managerial under *Yeshiva*. In contrast, Notre Dame de Namur University, a Catholic institution, chose not to assert *Yeshiva* or *Catholic Bishop* defenses in response to petitions seeking faculty unionization. The position taken by Notre Dame de Namur University underscores the legal reality that whether to assert a defense under *Yeshiva* or *Catholic Bishop* is left to the discretion of the institution responding to a representation petition.

Religiously-affiliated institutions have at their disposal a means for avoiding litigation over principled concerns concerning governmental entanglement with religious freedom under *Catholic Bishop* and, at the same time, showing respect for its faculty's right to workplace association and collective bargaining. This can be accomplished through an agreement with a union that establishes a non-governmental procedure to resolve the question of representation, which can end in voluntary recognition of a faculty representative. There is precedent for this approach. As Duquesne University School of Law Dean Emeritus Nicholas P. Cafardi explained at the National Center's 2015 annual conference, the Catholic Diocese of Pittsburgh in the 1970's agreed to a non-governmental resolution of a question of representation involving lay faculty that led to stable labor relations over the decades.<sup>22</sup>

In Table 2, we identify four cases where institutions have attempted to use non-tenure track faculty's involvement in shared governance to claim that they are managerial under *Yeshiva*.<sup>23</sup> These cases highlight a potential legal consequence when contingent faculty are given an equal or a significantly larger role in shared governance on private sector campuses: it might result in exempting them under *Yeshiva* from the collective associational rights to unionize, engage in collective bargaining, and participate in other activities for mutual aid and protection, under the

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<sup>22</sup> Podcast, Impact of Pacific Lutheran on Collective Bargaining at Catholic Colleges and Universities, 42nd Annual National Conference of the National Center for the Study of Collective Bargaining in Higher Education and the Professions, April 20, 2015 available at <http://silo.hunter.cuny.edu/xglL0KRt>. David L. Gregory, who moderated the 2015 conference panel, recommended a broader adoption of the non-NLRB procedure in his subsequent article *Is Religious Liberty the Ultimate Management Prerogative?: Some Reflections on Pacific Lutheran University and Service Employees International Union, Local 925*, 33 Hofstra Lab. & Emp. L.J. 207, 239 (2016) (“Yet, a ‘grand compromise’ may be in order. Unions should seriously consider forgoing NLRB jurisdiction in return for voluntary recognition. Disputes would be resolved by a voluntarily agreed upon arbitrator. This alternative solution could satisfy the interests of both parties while also fully conforming to the social justice teachings of the Catholic Church.”)

<sup>23</sup> In one of the University of Southern California cases listed in Table 2, the NLRB Board on December 30, 2016 denied the university's request for review of a Regional Director's decision, which had concluded that the at-issue contingent faculty were not managerial under *Yeshiva* despite the faculty's involvement in shared governance. *University of Southern California*, 365 NLRB No. 11 (2016). The Board's decision underscores the difficulty that colleges and universities face in trying to prove that their non-tenure track faculty are managerial. This is due, in part, to the nature of the faculty's employment relationship.

NLRA. Nevertheless, the *Yeshiva* factor is frequently omitted when contingent faculty's role in shared governance at private institutions is examined.

Even when unsuccessful, litigation concerning *Yeshiva* and *Catholic Bishop* defenses have historically delayed the electoral outcomes in representation cases. For example, the 2010 representation petition filed on behalf of Manhattan College non-tenure track faculty remains pending at the NLRB, with the election ballots impounded, based upon the institution's jurisdictional objections under *Catholic Bishop*.

One university's effort to defeat a non-tenure track faculty unionization effort based on *Yeshiva* and *Catholic Bishop* led to an important 2014 NLRB decision in *Pacific Lutheran University (Pacific Lutheran)*.<sup>24</sup> In *Pacific Lutheran*, the NLRB revised the standards and analyses it would apply to employer defenses under *Yeshiva* and *Catholic Bishop*. The *Pacific Lutheran* standards were not subject to judicial scrutiny because the petition filed by SEIU was withdrawn after a vote tally demonstrated that the faculty had voted 30-54 against union representation with 38 additional ballots challenged. The soundness and the application of the revised standards in *Pacific Lutheran* are the subject of challenges in eight pending cases identified in Tables 1 and 2.

In *Pacific Lutheran*, the NLRB revised the standards it will apply to *Yeshiva* defenses by increasing the burden of proof on a party asserting faculty managerial status. Under the new standards, specific proof must be presented demonstrating that faculty actually exercise managerial decisions or "make effective recommendations" concerning five specific areas: academic programs; enrollment management; finances; academic policy, and personnel policy and decisions. To demonstrate that faculty make effective recommendations, the NLRB requires proof be presented that the recommendations are "almost always followed by the administration."

The NLRB in *Pacific Lutheran* adopted a two-step analysis with respect to whether it can properly exercise jurisdiction over a religiously affiliated institution under *Catholic Bishop*. The threshold issue to be determined when a religiously affiliated college raises a jurisdictional defense under *Catholic Bishop* is whether the institution holds itself as providing a religious educational environment. This can be demonstrated through statements on its website or in a mission statement, handbook, or course catalog along with other internal and public documents. If an institution meets its evidentiary burden concerning the threshold issue, it must then present evidence demonstrating that it holds out the at-issue faculty as performing a specific function in creating and maintaining the religious education environment. The faculty's specific role can be

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<sup>24</sup> 361 NLRB No. 157 (2016).

demonstrated through internal and public communications such as job descriptions, faculty handbooks, and comments made to current and future students and faculty.

The revised standards in *Pacific Lutheran* have not tempered institutions from invoking *Yeshiva* and *Catholic Bishop*, but their defenses have had mixed results. In 2016, the NLRB denied a request by an AFT-NEA affiliate for review of a Regional Director's decision in *Carroll College*.<sup>25</sup> In its decision, the NLRB found that the Regional Director had properly applied *Pacific Lutheran* standards in jurisdictionally dismissing the petition that sought to represent faculty at a small Catholic college in Montana. The Board declined, however, to review the challenge to the Regional Director's alternative conclusion that the tenured/tenure-track faculty are managerial because of their role in shared governance under *Yeshiva* and *Pacific Lutheran*.

In *University of Southern California*,<sup>26</sup> the Board affirmed a Regional Director's application of the *Pacific Lutheran* standards in finding contingent faculty to be non-managerial under *Yeshiva*. In reaching its decision, the Board reemphasized that under *Pacific Lutheran* the "the nature of the faculty's employment" is relevant for determining managerial status, and that managerial status can only be proven by evidence demonstrating that the at-issue faculty "actually exercise control" or make effective recommendations that are "almost always" followed by university administrators.

At Tufts Medical School, a Regional Director's decision found the tenured/tenure-track faculty to be managerial, which resulted in the dismissal of the petition. A Regional Director's decision finding Marywood University subject to NLRB jurisdiction and finding that the tenured/tenure-track faculty are managerial is the subject of pending petitions for review.

In two other 2016 decisions issued in *Seattle University*<sup>27</sup> and *Saint Xavier University*,<sup>28</sup> the NLRB sustained *Catholic Bishop* defenses with respect to faculty in departments who are held out as performing a religious function, and excluded those faculty members from the respective bargaining units. These cases might be a signal of a new NLRB departmental uniting approach in higher education representation cases.

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<sup>25</sup> NLRB Case No. 19-RC-165133 available at <https://www.nlr.gov/case/19-RC-165133>.

<sup>26</sup> 365 NLRB No. 11 (2016).

<sup>27</sup> 364 NLRB No 84 (2016).

<sup>28</sup> 364 NLRB No. 85 (2016).

There were two noteworthy, but conflicting, 2016 decisions with respect to faculty unit composition. In *Minnesota College of Art and Design*,<sup>29</sup> an NLRB Regional Director found that part-time adjunct faculty should be in a separate bargaining unit from full-time ranked faculty, a majority of whom have five-year employment contracts. The Pennsylvania Labor Relations Board reached the opposite legal conclusion finding that part-time faculty at a community college belonged in the same bargaining unit with full-time faculty.<sup>30</sup> The disparate findings are the result of differing philosophies and precedent of the two agencies when it comes to uniting issues.

Lastly, in Table 5, we set forth data concerning completed and pending representation petitions involving student employees in the private and public sectors. Since January 1, 2016, there have been only two new certified units, one in the private and one in the public sector. In August 2016, the NLRB issued its *Trustees of Columbia University* decision,<sup>31</sup> holding that graduate and undergraduate assistants at that institution are employees covered under the NLRA. The decision reinstated the UAW's representation petition that led to an election in which the student employees voted 1602-623 in favor of unionization. The vote is being challenged by Columbia University based on allegations of election misconduct, which are currently under investigation

A UAW representation petition seeking to represent graduate and undergraduate assistants at the New School is pending following a remand by the NLRB Board for further processing. At Cornell University, an agreement was reached with an AFT-NEA affiliate for a non-NLRB election concerning that school's teaching assistants, graduate research assistants, graduate assistants, and research assistants. Another AFT-NEA affiliate has commenced litigation seeking a judicial determination that graduate assistants at the University of Missouri have the right to collective bargaining under the Missouri Constitution.

On the heels of the *Trustees of Columbia University* decision, UNITE HERE filed 10 petitions seeking to represent departmental bargaining units at Yale University with an aggregate number of 351 graduate and research assistants. One of the petitions, concerning 22 graduate

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<sup>29</sup> NLRB Case No. 18-RC-182596 (Sept. 23, 2016) available <http://apps.nlr.gov/link/document.aspx/09031d458220f39f>

<sup>30</sup> Beaver County Community College, 47 PPER ¶78 (2016).

<sup>31</sup> *Trustees of Columbia University*, 364 NLRB No. 90 (2016). The *Trustees of Columbia University* decision reversed prior NLRB precedent holding that graduate and undergraduate assistants were not employees under the NLRA. New NLRB Board members confirmed by the Senate to fill current vacancies will likely result in a new majority that will ultimately reverse *Trustees of Columbia University*, constituting another NLRB flip-flop on the question of whether student assistants are employees entitled to the NLRA's rights and protections.



students in the Comparative Literature Department, was later withdrawn. The remaining Yale cases remain pending before the NLRB Region 1 Director.

It is probable that the recent change in NLRB decisional law will lead to the filing of more petitions seeking to represent graduate and undergraduate student employees at private sector campuses. In the fourth quarter of 2016 petitions were filed seeking to represent graduate student employees at Harvard College,<sup>32</sup> Duke University,<sup>33</sup> and Loyola University Chicago.<sup>34</sup> At Harvard, the graduate student employees voted 1272-1456 against unionization. That matter remains pending, however, as the NLRB determines 314 challenged ballots.<sup>35</sup>

In conclusion, the relevant data since January 1, 2016 demonstrate a strong growth in union representation on higher education campuses, and other collective organizational activities, by academic labor. The election tallies that led to the certifications show consistently strong faculty support for unionization. In future scholarship, the 2016 data will be merged into a much larger National Center dataset covering the four-year period beginning on January 1, 2013 for a more comprehensive analysis of the growth in faculty and student employee unionization since the National Center's 2012 Directory.

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#### Endnotes: Certified or Proposed Bargaining Unit Compositions

<sup>i</sup> All Full-Time Faculty and Full-Time Librarian Faculty (Tenured, Tenure-Track, and Non-Tenure Track) employed by the Employer. Excluded: All other employees.

<sup>ii</sup> All tenured and tenure-track faculty including assistant professors, associate professors and professors employed by the Tufts University School of Medicine.

<sup>iii</sup> All tenured and tenured track faculty employed by Carroll College.

<sup>iv</sup> All full-time and regular part-time instructors, faculty, including assistant professors, associate professors employed by Marywood University. Excluded: All other employees including IHM Sisters, adjunct professors, guards and supervisors as defined in the Act.

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<sup>32</sup> See, *President and Fellows of Harvard College*, NLRB Case No. 01-RC-186442 available at <https://www.nlr.gov/case/01-RC-186442>.

<sup>33</sup> See, *Duke University*, NLRB Case No. 10-RC-187957 available at <https://www.nlr.gov/case/10-RC-187957>.

<sup>34</sup> See, *Loyola University Chicago*, NLRB Case No. 13-RC-189548 available at <https://www.nlr.gov/case/13-RC-189548>. During the same quarter, SEIU filed a petition seeking to represent approximately 109 resident advisors at George Washington University. See, *The George Washington University*, NLRB Case No. 05-RC-188871 available at <https://www.nlr.gov/case/05-RC-188871>.

<sup>35</sup> See, *President and Fellows of Harvard College*, NLRB Case No. 01-RC-186442 available at <https://www.nlr.gov/case/01-RC-186442>.

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<sup>v</sup> All part-time faculty, including Lecturers, Senior Lecturers, Assistant Librarians (part-time), Associate Librarians (part-time), Core Faculty, Part-time In-Residence faculty, Part-time teaching Professors Emeritus and Emerita employed by the Employer at its Belmont, California facility during the payroll period 2015-2016 academic year, including employees who did not work during that period because they were ill on vacation, or were temporarily laid off. Others permitted to Vote: Any part-time faculty in the above included-unit who were employed and taught one or more courses during the summer of 2015 and have a reasonable expectation of teaching one or more courses during the summer of 2016 may vote in the election but their ballots will be challenged since their eligibility has not been resolved. No decision has been made regarding whether the individuals are included in, or excluded from, the bargaining unit. The eligibility or inclusion of these individuals will be resolved, if necessary, following the election. Excluded: All other employees, full-time faculty, all administrators with faculty ranks, non-teaching faculty, Honorary Degree Holders, Deans, Presidents, Provosts, visiting faculty and visiting scholars, staff members that teach on a part-time basis, full-time and part-time exempt staff and non-exempt staff members, research employees, University officers and staff who hold faculty titles and/or teach, student-employees, University Emeritus and Emerita without part-time teaching duties, administrators, managerial employees, members of religious orders, trustees, other professional employees, confidential employees, and supervisors as defined by the Act (including Department Chairs and/or Program Directors who are supervisors as defined by the Act).

<sup>vi</sup> All Adjunct Faculty (including Adjunct Instructors, Adjunct Professors, Adjunct Assistant Professors, Adjunct Lecturers, and Adjunct Professors), employed by the Employer. Excluded: All faculty members who are employed as ranked faculty, meaning all full-time and pro rata tenured faculty and tenure-track faculty and term faculty holding the rank of Instructor, Assistant Professor, Associate Professor, or Professor; Professors Emeritus, Professors Alumnus, Visiting Professors, Affiliate Professors, Kodaly Summer Institute faculty, Department Chairs, Directors, Assistant Directors, Academic Advisors, division directors, center directors, assistant directors, program and department chairs, program staff, Deans and Chairs including those who may have teaching assignments); graduate and undergraduate students and student employees, teaching and research assistants and fellows, all other faculty and other employees in non-degree granting programs (including extension or continuing education instructors, public programs, or other special programs), Individual Lesson Instructors (Individual Music Lesson instructors), Ensemble Directors, Instructors in Athletics and Recreation; also excluding all staff and administrator employees, officers and trustees of the University; members of religious orders who are employed by the University; teachers and other employees of Raskbob School; all other employees, all volunteers, independent contractors, managerial employees, professional and confidential employees, guards, and supervisors as defined in the National Labor Relations Act. Those eligible to vote in the election are employees in the above unit who were employed for teaching of one or more courses during the period beginning July 1, 2015 to the payroll period ending March 20, 2016.

<sup>vii</sup> All full-time and part-time lecturers who are employed by the University of Southern California and who teach at least one class, section, lesson, or lab within the program known as the USC International Academy at the Employer's instructional facilities at the University Park Campus. Excluded: All tenured or tenure-track faculty; all visiting faculty; all faculty teaching at an academic unit other than the USC International Academy; all faculty regularly employed by the Employer at any location other than the University Park Campus; all faculty teaching online courses exclusively (regardless of location); all emeritus faculty; all registrars and librarians; all Athletic Department coaches; all graduate students; all post-doctoral scholars; all lab assistants, graduate assistants, clinical fellows, teaching assistants, and research assistants; all mentors who do not have teaching responsibilities; all department chairs; all administrators, including those who have teaching responsibilities; the President of the University; the Provost; all Associate Provosts, Vice Provosts, and Vice Presidents; all Deans, Vice Deans, Associate Deans and Assistant Deans, regardless of their faculty status; all non-faculty employees; all volunteers; and all managers, supervisors, and guards as defined in the Act.

<sup>viii</sup> All full-time and part-time non-tenure track faculty who are employed by the University of Southern California, including those who also hold a position as a Program Director or Coordinator, and who teach at least one credit-earning class, section, lesson, or lab within the academic unit known as the USC Dana and David Dornsife College of Letters, Arts and Sciences at the Employer's instructional facilities at the University Park Campus. Excluded: All tenure or tenure-track faculty; all visiting faculty; all faculty teaching at an academic unit other than the USC Dana and David Dornsife College of Letters, Arts and Sciences; all faculty regularly employed by the Employer at any location other than the University Park Campus; all faculty teaching online courses exclusively (regardless of location); all emeritus faculty; all registrars and librarians; all Athletic Department coaches; all graduate students; all

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post-doctoral scholars; all lab assistants, graduate assistants, clinical fellows, teaching assistants, and research assistants; all mentors who do not have teaching responsibilities; all department chairs, regardless of their faculty status; the President of the University; the Provost; all Associate Provosts, Vice Provosts, and Vice Presidents; all Deans, Vice Deans, Associate Deans and Assistant Deans, regardless of their faculty status; all non-faculty employees; all volunteers; all other represented employees; and all managers, supervisors, and guards as defined in the Act.

<sup>ix</sup> All full-time and part-time non-tenure track faculty who are employed by the University of Southern California and who teach at least one credit-earning class, section, lesson, or lab within the academic unit known as the USC Roski School of Art and Design at the Employer's instructional facilities at the University Park Campus or at the Graduate Fine Arts Building, located at 3001 South Flower Street, Los Angeles, California 90007. Excluded: All tenured or tenure-track faculty; all faculty whose primary teaching responsibilities are within an academic unit other than the USC Roski School of Art and Design; all faculty whose primary area of practice and/or scholarship is outside the following areas: ceramics, critical studies, design, intermedia, painting and drawing, photography, printmaking, or sculpture; all faculty regularly employed by the Employer at any location other than the University Park Campus or the Graduate Fine Arts Building; all faculty teaching online courses exclusively (regardless of location); all emeritus faculty; all registrars and librarians; all Athletic Department coaches; all graduate students; all post-doctoral scholars; all lab assistants, graduate assistants, clinical fellows, teaching assistants, and research assistants; all mentors who do not have teaching responsibilities; all department chairs, regardless of their faculty status; all administrators, including those who have teaching responsibilities; the President of the University; the Provost; all Associate Provosts, Vice Provosts, and Vice Presidents; all Deans, Associate Deans and Assistant Deans, regardless of their faculty status; all non-faculty employees; all volunteers; all other represented employees; and all managers, supervisors, and guards and defined in the Act.

<sup>x</sup> All full-time and part-time graduate and undergraduate non-tenure-track faculty (Adjuncts, Adjunct Professors, Adjunct Instructors, Adjunct Lecturers, Accompanists, Instructors, Lecturers, Lab Instructors, Senior Lecturers, and Visiting Faculty) employed by Loyola University Chicago in academic programs housed at its Main campus, 1032 W. Sheridan Rd, Chicago, IL 60660, including the College of Arts & Sciences, the English Language Learning Program, and the Graduate School. Excluding: All tenured faculty, tenure-track faculty, distinguished service faculty, research faculty who are not teaching credit bearing courses, and emeritus faculty; all faculty in non-degree granting programs, unless expressly included above; all faculty teaching in programs housed or facilities and addresses other than those described above; all faculty teaching online courses only; employees who do not teach undergraduate or graduate level credit-earning courses or labs, unless expressly included above; the Water Tower Campus, the Health Sciences Campus, the Retreat and Ecology Campus, the Rome Campus, the Beijing Campus, the Vietnam Center; the School of Continuing and Professional Studies, the Marcella Niehoff School of Nursing, the Stritch School of Medicine, the Quinlan School of Business, the School of Education, the Corboy Law Center, the School of Social Work, the School of Communications, the Institute of Pastoral Studies, the Arrupe College, the Loyola University Museum of Art (LUMA), faculty paid benefits other than Loyola University Chicago (including governments and organizations); all administrators (including deans, directors, trustees, provosts, and chairs who may have teaching assignments); graduate students; athletic coaches; academic advisors, including those with teaching assignments; all other employees employed by the University, including those who teach a class or course and are separately compensated for such teaching; and managers, confidential employees, office clerical employees, professional employees, guards and supervisors as defined in the Act.

<sup>xi</sup> All full-time and part-time English Language Learning Program I ESL faculty and team members (adjunct instructors, instructors, ESL professors, ESL teachers, and ESL tutors) employed by Loyola University Chicago in the English Language Learning Program at its Main campus, 1032 W Sheridan Rd, Chicago, IL 60660. Excluded: All tenured faculty and tenure-track faculty; all faculty only teaching in program or facilities other than those described above; all administrators, all other employees employed by the University, including those who teach a class or course and are separately compensated for such teaching; all managers, confidential employees, office clerical employees, professional employees, guards and supervisors as defined in the Act.

<sup>xii</sup> All full-time and part-time graduate and undergraduate non-tenure-eligible faculty (including the follow titles: Adjunct Faculty, Adjunct Instructors, Adjunct Lecturers, Adjunct Assistant Professors, Adjunct Associate Professors, Adjunct Professors; Postdoctoral Fellows, Visiting Postdocs, Clinical Assistant Professors, Clinical Associate Professors, Clinical Professors, Artists-in-Residence, Instructors, Lecturers, Senior Lecturers, Distinguished Senior Lecturers, Visiting Faculty, Visiting Assistant Professors, Visiting Associate Professors,

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Visiting Lecturers, Visiting Scholars, Visiting Professors, Research Assistant Professors, Research Associate Professors, Research Professors, Assistant Professors of Instruction, Associate Professors of Instruction, Professors of Instruction, and Weinberg College Advisors who hold teaching-track appointments) employed by Northwestern University and currently teaching at least one course at Weinberg College of Arts and Sciences, McCormick School of Engineering & Applied Sciences, Bienen School of Music, the School of Communication, the School of Education & Social Policy, Medill School of Journalism, and the Graduate School. Excluded: All tenured faculty, tenure-eligible faculty, emeritus faculty, research faculty who are not teaching courses, the Feinberg School of Medicine faculty, the Pritzker Law School faculty, the Kellogg School of Business faculty, the School for Professional Studies faculty, Northwestern in Qatar faculty, all faculty teaching only at the Chicago or Doha campuses, all administrators (including deans, directors, provosts, and chairs who may have teaching assignments); graduate students, athletic coaches, all other employees employed by the University, including those who teach a class or course and are separately compensated for such teaching, managers, confidential employees, office clerical employees, professional employees, guards and supervisors as defined in the Act.

<sup>xiii</sup> All part-time faculty employed by the Employer at its campuses presently located at 3700 West 103rd Street, Chicago, Illinois and 18230 Orland Parkway, Orland Park, Illinois, who teach at least three credit hours per semester; but excluding all part-time faculty members in the School of Nursing, all music tutors, all student supervisors in the School of Education, independent contractors, confidential employees and managers, office clerical employees and guards, professional employees and supervisors as defined in the Act.

<sup>xiv</sup> All full-time and part-time ESL teachers, substitute teachers and academic coordinators employed by the Employer in the Chicago metropolitan area. Excluded: All other employees including managers, guards and supervisors as defined in the Act.

<sup>xv</sup> All non-tenured or non-tenure-track lecturers, senior lecturers, master lecturers, and instructors who are salaried (whether full-time, part-time, or half-time), and who teach at least one credit bearing course on the Charles River Campus of Boston University, including the Metropolitan College Prison Program. A non-tenured, salaried lecturer, senior lecturer, master lecturer, or instructor identified above working for the University in another capacity shall not cause that employee to lose status as a bargaining unit member unless expressly excluded in the exclusion listing below. Excluded: All professors (including full, associates, assistants and professors of the practice); faculty compensated solely on a per course basis; School of Medicine faculty; School of Dental Medicine faculty; School of Management faculty; Graduate School of Management faculty; School of Law faculty; deans; provosts; administrators; department chairs; associate chairs; post-docs; graduate assistants; graduate students; athletic coaches; lecturers, senior lecturers, master lecturers, or instructors who teach only courses at campuses other than Charles River (excluding the Metropolitan College Prison Program) or non-degree granting courses (including the Center for Professional Education); Director of the Writing Program, Director of the Health Communication Program, Chair of the Mechanical Engineering Course Review Committee and Chair of the Undergraduate Lab Safety Committee, Manager of the Global Hospitality Education Consortium; Director/Coordinator of the College of Communication Adjunct Writing Program; all faculty who teach exclusively in on-line programs; all other employees; and managers, confidential employees, guards and supervisors as defined by the Act.

<sup>xvi</sup> Part-time adjunct faculty (including adjunct associate professors, adjunct lecturers, adjunct senior lecturers and adjunct instructors) employed by Bentley at its Main Campus, 175 Forest Street, Waltham, MA, teaching at least one credit-bearing graduate or undergraduate course (including hybrid and blended courses) and who are compensated on a per-course basis. An employee working for the University in another capacity who also teaches at least one credit bearing course identified above and is compensated on a per-course basis shall not cause that employee to lose status as a bargaining unit member unless their other capacity working for the University is expressly excluded. Excluding: All faculty who teach only exclusively online courses, courses at campuses other than the Main Campus, non-degree granting courses, or First-Year Seminar, Transfer Seminar, or Career Development Seminar courses; tenured or tenure-track faculty; full-time faculty; visiting faculty; deans; provosts; department chairs; graduate assistants; graduate students; including PhD candidates; managerial employees, confidential employees; guards and supervisors as defined by the Act.

<sup>xvii</sup> All graduate and undergraduate non-tenure track faculty in the below-listed classifications employed by Brandeis University who are contracted to teach at least one credit-bearing or non-credit bearing course (including online, hybrid and blended courses and including Spring, Summer and Fall courses) at the College of Arts and Sciences, the Graduate College of Arts & Sciences, the International Business School, the Heller School for Social

Policy and Management, the Rabb School of Continuing Studies, English Language Programs, Gateway Scholars Programs, Summer Courses, or Justice Brandeis Semester, or who are contracted to teach courses in the Transitional Year Program: Adjuncts; Assistant Adjunct Professors; Associate Adjunct Professors; Adjunct Associate Professors; Adjunct Lecturers; Adjunct Professors; Adjunct Associate Professors of the Practice; Instructors; Senior Instructors; Lecturers; Senior Lecturers; Part-time Fellows; In-residence Writers, Poets, and Artists; Research Professors; Associate Research Professors; Assistant Research Professors; Professors, Assistant Professors and Associate Professors Outside the Tenure Structure; Professors and Associate Professors of the Practice who are not on multi-year contracts; Graduate Students who teach courses beyond their stipend and are compensated on a per-course basis; an employee working for the University in another capacity who also teaches a class or course identified above and is compensated on a per course basis is included within the unit, unless the employee is expressly excluded. Excluding: All full-time; salaried faculty; all faculty within the Tenure Structure; visiting faculty; all professors and associate professors of the practice on multi-year contracts; emeritus/a faculty; full-time fellows including Joshua A. Guberman, Kay, and Senior; University Prize Instructors who do not teach any other courses compensated on a per-course basis that is beyond their stipends; all employees who teach only Osher Lifelong Learning Institute courses, Justice Brandeis semester, English Language Program courses, Gateway Scholars Program courses, physical education courses, high school program courses, Summer Music Workshops, Summer Courses, and/or non-credit bearing courses; deans; provosts, associate provosts and assistant provosts; administrators; department chairs; full-time employees who teach courses and do not receive compensation beyond their salary for doing so; graduate students who teach only courses pursuant to a stipend; athletic coaches; all other employees, managers, confidential employees, guards and supervisors as defined by the Act.

xviii All Adjunct Lecturers and Graduate Adjunct Lecturers paid by the class, teaching credit earning classes in face-to-face settings (on or off campus) at McDaniel College; Excluded: All other employees, including Adjunct Lecturers and Graduate Adjunct Lecturers who serve only as internship Supervisors, Adjunct Lecturers and Graduate Adjunct Lecturers who teach only on-line, managers, guards, and supervisors as defined in the Act

xix All full-time, part-time and half-time, non-tenure and non-tenure track faculty employed by Goucher College to teach at least one credit bearing classes, lessons or labs (including but not limited to Post-Doctoral Teaching Fellows) on its campus located at 1021 Dulaney Valley Road, Baltimore, Maryland 21204; but excluding all graduate and post graduate faculty and teaching fellows, all faculty in the Welch Graduate Studies Center, all tenure and tenure track faculty, all other employees whether or not they have teaching responsibilities, including but not limited to program directors, department chairs, graduate students, teaching associates, teaching assistants, librarians, registrars, deans, provosts, administrators, coaches, office clerical employees, managers, confidential employees, guards and supervisors as defined in the Act.

xx All full-time and part-time non-regular-rank faculty who teach undergraduate or graduate-level credit-earning courses or labs (including but not limited to the following titles: Adjunct Professors, Lecturing Fellows, Lecturers, Consulting Professors, Consulting Associates, Scholars in Residence, and Instructors) employed by Duke University in academic programs housed at its campus in Durham, North Carolina, including the Trinity College of Arts & Sciences, the Graduate School, and the Center for Documentary Studies; but excluding all regular rank faculty (including but not limited to tenured faculty, tenure-track faculty, Professors of the Practice, Clinical Professors, Research Professors, and Lecturers), distinguished service faculty, employees in research positions (Senior Research Associate, Research Associate, Senior Research Scholar, Senior Research Scientist, Research Scientist and Lab Administrator) who do not teach more than one credit-earning course during an academic year, Visiting Faculty who have full-time appointments in another educational institution and who teach exclusively at Duke for no more than two years, Post-Doctoral Associates, and emeritus faculty; all faculty at locations other than the facilities described above; all faculty teaching online courses only; employees who do not teach undergraduate or graduate-level credit-earning courses or labs; faculty at the Duke Divinity School, Duke Kunshan University, Duke-NUS Medical School, Fuqua School of Business, Nicholas School of the Environment, Pratt School of Engineering, Sanford School of Public Policy, Duke Law School, Duke University School of Medicine, Duke University School of Nursing, and Duke University Health System; faculty paid by entities other than Duke University (including governments and organizations); all administrators (including deans, directors, provosts, and chairs who may have teaching assignments); athletic coaches; all other employees employed by Duke University (including those who teach a class or course and are separately compensated for such teaching); curators; and managers, confidential employees, office clerical employees, professional employees, guards, and supervisors as defined by the Act.

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<sup>xxi</sup> All limited-term faculty teaching with “Term” appointments on a full-time non-tenured and non-tenure track basis employed by the Employer at its Ithaca, New York Campus during the payroll period ending. Excluded: Full-time staff, tenured and tenure track faculty, full-time non-tenured and non-tenure track faculty teaching with “Notice” appointments, artist/writers/scholars in residence, deans (including associate and assistant deans), department chairs and managerial employees, confidential employees, guards and supervisors as defined by the Act and all other employees.

<sup>xxii</sup> All adjunct faculty employed by the Employer who teach undergraduate and/or graduate level courses, who teach in the classroom and/or online, and who teach courses at either the Employer’s Poughkeepsie, New York campus or its Fishkill, New York campus, and Student Teaching Supervisors; but excluding all other faculty, tenured and tenure eligible faculty, full-time faculty and faculty who only teach in the classroom at locations other than the Poughkeepsie Campus or the Fishkill Campus, administrators, coaches, librarians, directors, managers, guards, supervisors and professional employees as defined in the Act, and all other employees whether or not they have teaching responsibilities.

<sup>xxiii</sup> All non-tenured and non-tenure track faculty, including but not limited to those with the titles Lecturer, Visiting Lecturer, Visiting Assistant Professor, and Instructor who have taught at least one-credit hour since the beginning of the fall 2015 semester. Excluded: Managerial Employees (including Head Coaches and Head Athletic Trainers), confidential employees, guards and supervisors as defined in the Act, and tenured and tenure-track faculty, deans (including associate and assistant deans), provosts, and department chairs.

<sup>xxiv</sup> All individuals employed as part-time faculty with an adjunct academic rank who teach a minimum of a three (3) credit college degree level course for a full semester (or the equivalent hours of a semester length course). Excluded: All other full and part-time employees, including visiting and full time faculty, regardless of teaching load, students who are employed by the College, and guards and supervisors as defined in the Act.

<sup>xxv</sup> All full-time faculty who teach undergraduate or graduate-level credit-earning courses or labs at the Employer’s campus located at 2501 Stevens Avenue South, Minneapolis, Minnesota, including ranked faculty holding the titles of Assistant Professor, Associate Professor or Full Professor, pro-rata ranked faculty and visiting faculty. Excluded: All part-time faculty including those holding the titles of Adjunct Faculty or Adjunct Professor; administrators (including Deans, Directors, Provosts and Chairs who may have teaching assignments); Instructors who do not also serve as faculty members; Mentors who do not also serve as faculty members; faculty who teach exclusively on-line; Student Assistants at any level (including those teaching courses in addition to being paid a stipend); Adjuncts who are also employed by the Employer in an administrative role, all other employees at the Employer (including those who teach a class or course and are separately compensated for such teaching); managers, confidential employees, office clerical employees, guards and supervisors, as defined in the Act.

<sup>xxvi</sup> All part-time faculty who teach undergraduate or graduate-level credit-earning courses or labs at the Employer’s campus located at 2501 Stevens Avenue South, Minneapolis, Minnesota, including but not limited to faculty holding the titles of Adjunct Faculty or Adjunct Professor. Excluded: All full-time faculty, including ranked faculty holding the titles of Assistant Professor, Associate Professor or Full Professor, pro-rata ranked faculty and visiting faculty; administrators (including Deans, Directors, Provosts and Chairs who may have teaching assignments); Instructors who do not also serve as faculty members; Mentors who do not also serve as faculty members; faculty who teach exclusively on-line; Student Assistants at any level (including those teaching courses in addition to being paid a stipend); Adjuncts who are also employed by the Employer in an administrative role; all other employees at the Employer (including those who teach a class or course and are separately compensated for such teaching); managers, confidential employees, office clerical employees, guards and supervisors, as defined in the Act.

<sup>xxvii</sup> All full-time and part-time graduate and undergraduate non-tenure-track faculty, postdoctoral fellows, and graduate assistants who teach courses beyond their stipend and are compensated on a per-course basis, employed by Saint Louis University in its College of Arts and Science, School of Education, School of Social Work, Honors Program, or the School for Professional Studies of Saint Louis University who teach at least one credit-bearing course in a degree-granting program at the campus located at Grand Blvd and Lindell Blvd, Saint Louis City, also known as the Frost Campus. Excluded: All other employees: tenured faculty, tenure-track faculty, full-time and part-time staff who also teach as an adjunct, deans, associate deans, assistant deans, provost, vice provosts, assistant provosts, administrators, department chairs, graduate assistants who only teach courses pursuant to a stipend, graduate students, athletic coaches, persons teaching exclusively on-line courses, all persons employed by all other Colleges, Schools, or Programs not specified in the unit description above and faculty who teach non-

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degree granting courses, office clerical employees, managers, confidential employees, guards and supervisors as defined by the Act.

<sup>xxviii</sup> All full-time faculty and part-time faculty, including those who are also employed as non-instructional personnel. Excluded: All graduate school employees, office clerical employees, all other employees and guards, and supervisors as defined in the Act.

<sup>xxix</sup> All part-time adjunct faculty employed by the Employer in the McAnulty College and Graduate School of Liberal Arts located in Pittsburgh, Pennsylvania; excluding all full-time faculty, graduate students, staff and administrators, office clerical employees and guards, other professional employees and supervisors as defined in the Act, and all other employees.

<sup>xxx</sup> All full-time and part-time contingent faculty who teach at least one credit-bearing lab or class (including online classes) or one ESL class and who are employed by the Employer at its main campus in Lacey, Washington, or at its extension and satellite campuses, including but not limited to contingent faculty with the title of Instructor, English as a Second Language (ESL) Instructor, Educational Supervisor, Education Laboratory Instructor, Visiting Faculty, and Lecturer (Lecturer I, Lecturer II, Lecturer III). Excluded: All regular faculty, Provosts, Academic Deans, Professors, Assistant Professors, Associate Professors, Professors Emeriti, Librarians, nonprofessional employees, all other employees (whether or not they have teaching responsibilities), Summer Cultural Exchange employees who do not have teaching responsibilities outside their Summer Cultural Exchange duties, managerial employees, confidential employees, and guards and supervisors as defined in the Act.

<sup>xxxi</sup> All non-tenure-eligible faculty employed by the Employer, including but not limited to all non-tenure-track instructors, senior instructors, adjunct faculty, senior adjuncts, lecturers, senior lecturers, legacy titles including but not limited to visiting professors, visiting assistant professors, and core lecturers; excluding all faculty teaching in the College of Nursing, all faculty teaching in the School of Law, all other employees, professors emeritus, tenure-track and tenured faculty, administrative faculty, full-time staff who are not compensated additionally for teaching, administrators, department administrators, program coordinators, program directors, directors, clinical professor series, library faculty, research faculty, research scientists/scholars, post-doctoral scholars/fellows, truly visiting faculty, distinguished professors, professors in residence, endowed chairs, campus clergy, deans, associate deans, department chairs, campus safety personnel, lab assistants, graduate assistants, teaching assistants, managers, guards, and supervisors as defined in the Act.

<sup>xxxii</sup> Full-time Faculty, Counselors, and Librarian. Excluded: All managerial, administrative, supervisory, and confidential employees including, but not limited to, Executive Positions, Administrative Positions, Managerial Professional Positions, Classified Staff Professional Positions, and Classified Staff Positions. Also excluded are all Adjunct and Part-time Faculty positions.

<sup>xxxiii</sup> All full-time employees in the lower division position classifications of instructor, associate professor, assistant professor, and professor. Excluded: All other employees of the State College of Florida Board of Trustees including program directors, librarians, advisors, department chairs, all employees of the Collegiate School, all faculty in the baccalaureate program, and all confidential and managerial employees.

<sup>xxxiv</sup> All professional employees holding regular, visiting, provisional, research, affiliate, or joint appointments whose primary duties are teaching, research and service and those professional employees holding these appointments whose primary duties are in direct support of the University's educational and applied research mission, including the following classifications: Professor; Associate Professor; Assistant Professor; Instructor; Lecturer; Wellness Counselor; Librarian; Assistant Librarian; and faculty in the Florida Institute for Phosphate Research. Excluded: All other employees of the Florida Polytechnic University, including President; Vice President; Executive Vice President; Provost Vice Provost; General Counsel; Assistant General Counsel; other non-faculty administrative positions; employees serving as members of the Board of Trustees and managerial and confidential employees.

<sup>xxxv</sup> All full-time instructional personnel, including librarians and guidance counselors. Excluded: President, assistants to the President, registrars, directors, deans, associate deans, coordinators, admissions counselors.

<sup>xxxvi</sup> All full-time (0.51 FTE and above) tenured and tenure-track faculty employed at Northern Illinois University. Excluded: All adjunct, part-time and non-tenure faculty, retirees; students; faculty of the College of Law; and all

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other supervisory, managerial, confidential and short-term employees as defined in the Illinois Educational Labor Relations Act.

<sup>xxxvii</sup> Department Chairs

<sup>xxxviii</sup> The Twin Cities Instructional Unit consists of the positions of all instructional employees with the rank of professor, associate professor, assistant professor, including research associate or instructor, including research fellow, located on the Twin Cities Campus: Tenure Track: Professors, Regents Professors, Associate Professors, Assistant Professor; Non-Tenure Track: Professors, Adjunct Professors, Adjunct Research Professor, Research Professors, Visiting Professors, Associate Professors, Adjunct Associate Professors, Research Associate Professors, Teaching Associate Professors, Visiting Associate Professors, Assistant Professors, Adjunct Assistant Professors, Research Assistant Professors, Teaching Assistant Professors, Visiting Assistant professor, Instructors, Adjunct Instructors, Lecturer, Senior Lecturer, Teaching Specialist, and Senior Teaching Specialist

<sup>xxxix</sup> All tenured and tenure-track faculty including Chairs Excluded: Contract faculty, Clinical faculty, Research faculty, Assistant Directors and Directors.

<sup>xl</sup> Faculty ("CC Instructor" and "CC Professor") "Counselor," and "Librarian" (both of which are tenure-eligible). "Emergency hires" who are in 1-year fixed-term positions. The legal requirement for inclusion into the unit was "academic faculty working .5 FTE or more, with an appointment length of six months or more.

<sup>xli</sup> All permanent full time faculty members. Excluded: all administrative personnel and support staff.

<sup>xlii</sup> All full-time tenured and tenured-track faculty, Senior Lecturers, Lecturers, Instructors, Clinical Assistant Professors, Clinical Instructors, and visiting faculty at Wright State University. Excluded: All department chairs and heads, deans, provosts, vice-presidents, the President, supervisors defined by Ohio Revised Code 4117.01 (F), all faculty within the Schools of Medicine and Professional Psychology other than those who are tenured or tenured-track, and all other employees not included above.

<sup>xliii</sup> All part-time adjunct faculty employed by Hillsborough Community College (HCC) at its campuses (including Ybor, Brandon, Dale Mabry, Southshore, Plant City, The Regent, Tampa Electric Company Center, and MacDill Air Force Base Center, and locations established in the future) currently teaching at least one college-credit-bearing course (including hybrid and blended courses, online courses, and dual enrollment courses) and who are compensated on a per point basis by HCC, including any employee who meets these criteria and who also works for HCC in another capacity unless expressly excluded. Excluded: All tenured and tenure-track faculty, full-time faculty, visiting or contract faculty, academic advisors, deans, assistants to deans, provosts, coordinators, directors, dual enrollment adjuncts paid by Hillsborough County School Board, employees covered by an existing collective bargaining agreement (professional staff, non-instructional staff, supervisory staff, full-time faculty), administrators, accountants, IT technicians, counselors, athletic coaches, substitute faculty, faculty teaching Postsecondary Adult Vocational Programs (PSAV) certificate credit courses or non-degree granting courses, managerial, confidential employees, guards, and supervisors as defined by the Act.

<sup>xliv</sup> All part-time faculty who teach at least one credit bearing course. Excluded: All full-time faculty; all Faculty Emeritus; faculty who have another position at the College that qualifies them for full-time status with the College; deans, administrators, department chairs; faculty who also serve in a supervisory, managerial or confidential role; individuals who teach courses only in the continuing education program; athletic coaches; all other employees, supervisors, managers, confidential employees, office clerical employees, professional employees, and guards.

<sup>xlv</sup> All adjunct faculty. Excluded: All other employees.

<sup>xlvi</sup> All Adjunct Faculty employed by Herkimer Community College. Excluded: All full-time faculty, all adjunct faculty with dual function status who hold any other full-time position at Herkimer Community College, all directors and supervisors, all employees represented by another certified or recognized employee organizations at Herkimer Community College

<sup>xlvii</sup> Adjunct Instructors, Para-Professional Tutors, and Professional Tutors; Excluded: Full-Time Faculty, Student Employees, Managerial, Supervisory, and Confidential Employees and Faculty who exclusively teach TC3 courses through College Now or other concurrent enrollment programs for high school students.

<sup>xlviii</sup> Regular Part-Time Faculty.



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<sup>xlix</sup> All graduate students who are regular full-time and part-time Teaching Fellows, part-time Acting Instructors, and Associates in Teaching in the East Asian Languages and Literatures Department. EXCLUDED: All other employees, managers, supervisors and guards.

<sup>l</sup> All graduate students who are regular full-time and part-time Teaching Fellows, Part-Time Acting Instructors, and Associates in Teaching in the English Department. Excluding all other employees, managers, supervisors and guards

<sup>li</sup> All graduate students who are regular full-time and part-time Teaching Fellows, Graders, Part-Time Acting Instructors, and Associates in Teaching in the History of Art Department. Excluded All other employees, managers, supervisors and guards.

<sup>lii</sup> All graduate students who are regular full-time and part-time Teaching Fellows, Graders, Part-Time Acting Instructors, and Associates in Teaching in the Math Department. Excluded: All other employees, managers, supervisors and guards.

<sup>liii</sup> All graduate students who are regular full-time and part-time Teaching Fellows, Graders, Part-Time Acting Instructors, and Associates in Teaching in the Geology & Geophysics Department. Excluded: All other employees, managers, supervisors and guards

<sup>liv</sup> All graduate students who are regular full-time and part-time Teaching Fellows, Graders, Part-Time Acting Instructors, and Associates in Teaching in the Physics Department. Excluded: All other employees, managers, supervisors and guards.

<sup>lv</sup> All graduate students who are regular full-time and part-time teaching fellows, graders, part-time Acting Instructors, and Associates in Teaching in the History Department. Excluding All other employees, managers, supervisors and guards

<sup>lvi</sup> All graduate students who are regular full-time and part-time Teaching Fellows, Graders, Part-Time Acting Instructors, and Associates in Teaching in the Political Science Department. Excluded: All other employees, managers, supervisors and guards.

<sup>lvii</sup> All graduate students who are regular full-time and part-time Teaching Fellows, Graders, Part-Time Acting Instructors, and Associates in Teaching in the Sociology Department. Excluded: All other employees, managers, supervisors and guards.

<sup>lviii</sup> All graduate students who are regular full-time and part-time Teaching Fellows, Part-Time Acting Instructors, and Associates in Teaching in the Comparative Literature Department. Excluding All other employees, managers, supervisors and guards.

<sup>lix</sup> All full-time and regular part-time employees who regularly work in one or more of the following shifts: Afternoon Service/Utility, Baker's Helper, Beverages, Cold Food Re-Stocker/Desserts & Bread, Cook's Help, Custodian Lunch, Custodian Dinner, Deli, Dessert, Dish Line, Dish Line/Silverware Drop Attendant, Dish Machine Operator, Dishroom Floater, Dishroom Floater/Glasses, Dishroom Helpers, Dishroom Restocker, Dishroom Utility, Glasses, Grill Cook, Grill/Carver, Honor G Grill Clean Up Crew, Inventory Late, Pizza, Plat Du Jour, Pots and Pans, Salad & Soup, Sanitation/Spills, Sauté Cook, Silverware Sorter, Smoothie Attendant, Stir Fry Clean Up, Student Dishroom Leader, Student Leader Marketplace, Student Leader Trainee Dishroom, Veg Prep, Vegan/Halal, or Waffle Bar Attendant; excluding all regular full-time Custodians, Facilities Management Staff, Marketplace Cooks, Bakers, and Chefs, and guards and supervisors, as defined by the Act, and all other employees.

<sup>lx</sup> Graduate Assistants, Graduate Teaching Assistants, Graduate Research Assistants, Graduate Instructors, Graduate Library Assistants, and Graduate Fellows.

<sup>lxi</sup> All student employees who provide instructional services, including graduate and undergraduate Teaching Assistants (Teaching Assistants, Teaching Fellows, Preceptors, Course Assistants, Readers and Graders): All Graduate Research Assistants (including those compensated through Training Grants) and All Departmental Research Assistants employed by the Employer at all of its facilities, including Morningside Heights, Health Sciences, Lamont-Doherty and Nevis facilities. Excluded: All other employees, guards and supervisors as defined in the Act.

<sup>lxii</sup> All student employees who provide teaching, instructionally-related or research services, including Teaching Assistants (Course Assistants, Teaching Assistants, Teaching Fellows, and Tutors), and Research Assistants

(Research Assistants and Research Associates), and Student Assistants 3 at the Parsons School. Excluded: All other employees, guards and supervisors as defined by the Act.

<sup>lxiii</sup> Ithaca and Geneva Campus-based graduate students enrolled in the Graduate School who hold titles Under University Policy 1.3 as Teaching Assistants, Graduate Research Assistants, Graduate Assistants, and Research Assistants excluding Fellows.

<sup>lxiv</sup> All Graduate Assistants employed by Portland State University, including Graduate Administrative Assistants, Graduate Research Assistants, and Graduate Teaching Assistants, but excluding supervisory and confidential employees.