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Panel: Graduate Student Employees - Collective Bargaining After the NLRB's Columbia University Decision (CLE) - Handout: Petitioner's brief on review

NATIONAL LABOR RELATIONS BOARD

In the Matter of:	:	
THE TRUSTEES OF COLUMBIA IN THE CITY OF NEW YORK	:	
Employer,	:	
and	:	Case No. 2-RC-143012
GRADUATE WORKERS OF COLUMBIA-GWC, UAW	:	
Petitioner.	:	
	:	FEBRUARY 29, 2016

PETITIONER'S BRIEF ON REVIEW

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I. INTRODUCTION

This petition was filed by an organization of student employees at Columbia University seeking to utilize the Board's procedures to demonstrate its support among student employees. These student employees perform services for Columbia, receive compensation for performing those services, work to fulfill the mission of the University, and work under its direction and control. They thus meet the definition of an "employee" as that word is defined in the dictionary, used at common law, and generally interpreted under the National Labor Relations Act. Nevertheless, the Regional Director decided that she was "compelled" to dismiss this petition on the authority of Brown University, 342 N.L.R.B. 483 (2004).

The Board in Brown categorically declared "federal law to be that graduate student assistants are not employees within the meaning of Section 2(3) of the Act," 342 N.L.R.B. at 493, overruling the unanimous decision issued just four years earlier in New York University, 332 N.L.R.B. 1205 (2000) (NYU I). Since 2010, this Board has granted review eight times, in five cases, finding "compelling reasons" to reconsider Brown.[1] Nevertheless, that decision remains on the books, frustrating efforts by student employees to utilize the Board's electoral processes to organize. The time has come to squarely overrule a decision that has no basis in the statute, precedent, logic, or experience.

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[1] The Board first found compelling reasons to reconsider Brown in New York University, 356 N.L.R.B. No. 7 (NYU II) in October 2010. That case was again dismissed after a hearing, and the Board again granted review to reconsider Brown in an unpublished order dated June 22, 2012. That same day, the Board granted review in Polytechnic Institute of New York University, Case No. 29-RC-12054. These two petitions were ultimately withdrawn, a year and one-half after review had been granted, without decision by the Board, pursuant to an agreement for a private election procedure. The Board, in Northwestern University, 13-RC-12139, invited briefs to address, *inter alia*, whether the Board should overrule Brown, but then decided that the case was not the appropriate vehicle to debate the issue. Northeastern University, 362 N.L.R.B. No. 167 (2015). Finally, the Board has twice granted review of orders dismissing this case and The New School, Case No. 02-RC-143009.

II. PROCEDURAL HISTORY AND ISSUES PRESENTED

This petition was filed December 17, 2014, by Graduate Workers of Columbia-GWC, UAW ("the Union"), seeking a unit of student employees of Columbia University ("the Employer," "the University," or "Columbia"). As amended, the Petitioner contends that the following Unit of student employees who provide teaching and research-related services to Columbia is appropriate for the purposes of collective bargaining:

> INCLUDED: 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.

(Dec. 1).[2]

Apart from the question of whether student employees have the statutory right to organize, the parties are in broad agreement as to the scope of the Unit. In particular, the Employer agrees with the Petitioner that, if Brown is overruled, then the Unit should include employees in research positions as well as those who provide instructional services. The Employer agrees in particular that the unit should include Graduate Research Assistants who conduct research funded by external research grants (Tr. 1000). The Employer, contrary to the Union, would exclude employees who are

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[2] Citations to the record in this case shall be designated as follows:
Regional Director's Supplemental Decision and Order Dismissing Petition --- Dec. (followed by page no.)
Transcript ---------- Tr. (followed by page no.)
Employer's Exhibit---------- Er. Ex. (followed by exhibit no.)
Petitioner's Exhibit---------- Pet. Ex. (followed by exhibit no.)

enrolled as masters' students or undergraduate students. The Employer would also exclude Graduate Research Assistants conducting research funded by Training Grants.

In a Decision dated October 30, 2015, the Regional Director dismissed this petition pursuant to Brown. On November 13, the Petitioner filed its Request for Review, which was granted by the Board on December 23. By Order dated January 13, 2016, the Board invited the parties to submit briefs to address four questions:

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

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

3. If the Board concludes that graduate student assistants, terminal masters' degree students and undergraduate students are statutory employees, would a unit composed of all these classifications be appropriate?

4. If the Board concludes that graduate student assistants, terminal masters' degree students and undergraduate students are statutory employees, what standard should the Board apply to determine whether they constitute temporary employees?

This brief is submitted by the Petitioner to address those questions.

III. FACTS

A. Overview

All of the student employees in the petitioned-for unit perform services that help to fulfill the mission of the institution. "The central mission of Columbia University is to

create, preserve and disseminate knowledge through teaching and research." (Pet. Ex. 64). The Unit sought is composed of student employees who fulfill this dual mission by providing instructional services or conducting research.

While Columbia is a non-profit organization, it generates substantial revenue to fulfill this mission. The University receives revenues from tuition, government grants, income from endowments, income from investments, and earnings from intellectual property derived from research conducted at the University (Dec. 14; Tr. 71, 114). Two of the three largest sources of income for the University are tuition and government grants. For the fiscal year that ended June 30, 2014, the Employer's total operating revenues and support totaled more than $3.8 billion. Of this sum, $887 million was received in net tuition and fees, and more than $750 million from government grants and contracts (Pet. Ex. 51, p. 3). Student employees in the classifications sought in this petition perform work that helps to generate income from tuition and from grants.

B. Appointment of Student Officers

Most of the student employees at issue receive appointments as "student officers." (Dec. 8; Tr. 63, 87, 97). By definition, a student officer is someone who works to fulfill either the academic or the research mission of the University. The University appoints a student officer "to assist in the instructional and research programs of their departments and schools" (Dec. 8; Er. Ex. 2; Tr. 113-14). Thus, a student officer is appointed to provide services that contribute to the "central mission" of the University.

C. Financial Support for Ph.D. Students

The funding packages provided to doctoral students at the Graduate School of Arts and Sciences ("GSAS"), include a tuition waiver, health insurance, University fees,

and a stipend (Dec. 6-7). The University conditions this funding on the students performing instructional or research services for Columbia. The Dean of GSAS, Carlos Alonso, sends a letter describing the funding package to all applicants who are offered admission (Er. Ex. 36, 37, 38; Tr. 294). The letter states that, if the applicant accepts the offer, she will be named a "Dean's Fellow" (Er. Ex. 36, 37, 38). All GSAS students are awarded Dean's Fellowships, and the package is substantially the same for all students, with minor differences between those for students in the Natural Sciences and those for students in the Social Sciences and Humanities (Dec. 6, 7; Tr. 295-97, 579). The admission letters uniformly state, "As a Dean's Fellow, you will receive a comprehensive funding package, **which includes some teaching and research responsibilities**." (Er. Ex. 36, 37, 38; Dec. 6) (emphasis added). Thus, upon admission, all Ph.D. students are informed that they have to fulfill teaching and research responsibilities in order to receive funding.

The amount of the stipend is increased annually to enable the University to remain "competitive" with other elite institutions such as Harvard, Yale, Stanford, and Princeton (Tr. 298). This funding package is awarded for a five-year period (Dec. 6; Tr. 216, 297-98). For students in the Humanities and Social Sciences, the first year of funding "entails no service obligation...." (Dec. 6; Er. Ex. 39; Tr. 306). In the next three years, GSAS does require students to provide "services" in order to obtain their funding (Dec. 6; Er. Ex. 39; Tr. 306-07). Students in these years must fulfill either teaching or research "responsibilities" in order to receive their funding (Tr. 307). Students may be excused from these "service obligations" if they obtain a grant from a government or other outside funding source during one of these years (Tr. 216-17). Thus, the

University does not expect students to fulfill their "service obligations" unless the University is going to use its funds to pay them.

GSAS generally provides students in the Humanities and Social Sciences a "Dissertation Fellowship" in their fifth year, to afford them time to work on their research without any service obligations (Tr. 306, 447; Er. Ex. 39). After the fifth year, students are offered teaching positions in exchange for the same funding package, provided that there is a need for their instructional services (Dec. 6; Tr. 463-64).

In the Natural Sciences, students are required to begin teaching in the first year in order to receive funding (Er. Ex. 39; Tr. 749). Students are appointed for one or two years as instructional officers of the University, and then move on to appointments as student officers of research (Tr. 749; Er. Ex. 100).

The process at the Fu School of Engineering and Applied Science is similar. The Fu School typically awards doctoral students four or five years of funding, all of which require service as either a Teaching Assistant or a Research Assistant. Normally, the student will work as a Teaching Assistant in the first year and then obtain a position as a Research Assistant (Dec. 22; Tr. 657; Er. Ex. 886-88). Admission letters for students admitted to the Fu School clearly state that financial support is "in exchange for your participation in our research and instructional program" (Er. Ex. 87; Tr. 676).

D. The Core Curriculum

The Core Curriculum ("the Core") is a set of required courses that must be completed by all undergraduate students at Columbia College and by many students in other divisions of the University (Dec. 8; Tr. 100, 142, 184-85). Graduate student employees provide instructional services in most elements of the Core (Dec. 8). The

Columbia College Bulletin, states, "The Core Curriculum is the cornerstone of the Columbia College education. The central intellectual mission of the Core is to provide all students with wide-ranging perspectives on significant ideas and achievements in literature, philosophy, history, music, art and science." (Pet. Ex. 16, p. 88). Thus, graduate assistants who teach or assist in teaching courses in the Core play a role in fulfilling this "cornerstone" of the central intellectual mission of the University.

E. Services Provided by Doctoral Officers of Instruction

1. Preceptors

A Preceptor has an appointment as a "student officer of instruction." (Er. Ex. 2; Tr. 68). All student officers of instruction "have responsibilities relating to the educational programs at the University." (Tr. 68). A Preceptor is appointed to teach an independent course in the undergraduate Core Curriculum (Dec. 11; Tr. 68, 307). A Preceptor is responsible for all aspects of teaching a class (Dec. 12; Tr. 164-65; Er. Ex. 18, 19). Preceptors teach the year-long classes, Literature Humanities and Contemporary Civilization, that are part of the Core Curriculum (Dec. 11; Tr. 150; Er. Ex. 11). They work under the guidance and direction of a faculty member who is designated as the chair of the course (Dec. 12; Tr. 160-61). Preceptors normally may teach a class in the Core for up to two years (Dec. 12; Ex. 14, 15).

The Employer offers approximately 60 sections of each of these two courses, with a maximum of 22 students per section (Dec. 11; Tr. 145-46; Er. Ex. 6, 7). These classes are taught by "the entire span of ranks in the profession from retired faculty to senior tenured faculty; junior untenured faculty; postdoctoral fellows; graduate students and adjunct faculty." (Tr. 146; see also Tr. 153; Dec. 8). Preceptors may teach as many

as 24 of the 60 sections in each class (Dec. 11; Tr. 152). The Director of the Center for the Core explained that this target had been arrived at because the University values having the class taught by an "inter-generational faculty," and this number had been deemed the optimal number for the benefit of the undergraduate students in the classes (Tr. 164). These courses are taught in small classes to "provide students with opportunities to develop intellectual relationships with faculty early on in their College career..." (Pet. Ex. 16, p. 88). Where the class is taught by a Preceptor, therefore, the undergraduate student is given an opportunity to develop this important intellectual relationship with a graduate student employee.

In order to be selected to teach as a Preceptor, a graduate student must complete an application process (Dec. 12; Tr. 155). The University requires each applicant to submit a cover letter describing prior teaching experience, a C.V., and student evaluations from prior classes taught (Dec. 12; Er. Ex. 12, 13). It requires the same materials from postdoctoral fellows and adjuncts seeking to teach the course (Tr. 176). Preceptors are selected based upon their ability to explain materials in a way that the undergraduate students will understand (Tr. 156). The committee selects the candidates it believes will do a good job as instructors and whose teaching will best benefit the undergraduate students (Tr. 173).

The selection committee sends a letter to the successful applicants, offering appointment to Preceptor positions (Tr. 157; Er. Ex. 14, 15). The letters notify the Preceptor, "The second year of the appointment is contingent on satisfactory performance in the initial year." (Er. Ex. 14, 15). After graduation, a Preceptor may be

hired to teach the same course as a postdoctoral faculty fellow or as an adjunct (Tr. 176, 177).

2. ***Teaching Fellows***

Teaching Fellows are also student officers of instruction (Tr. 68; Er. Ex. 2). Like "Preceptor", this title is used only at GSAS (Dec. 10; Tr. 68-69; Er. Ex. 2). Teaching Fellows ("TFs") perform a wide range of teaching functions, including assisting faculty members in a classroom, leading discussion sessions, giving individual lectures, and teaching their own courses as instructors of record (Dec. 10; Tr. 69, 203). Like Preceptors, Teaching Fellows play an important role in teaching the Core Curriculum, serving as instructors of record for Art Humanities and Music Humanities (Dec. 17-18, 26; Tr. 149).[3] Each of these classes is offered in about forty sections (Dec. 18; Er. Ex. 8, 9; Tr. 821). Faculty members teach two to five of these sections, TFs typically teach about a dozen sections, and adjunct faculty teach the remainder (Tr. 613-14, 821-22). To be appointed to a position as a TF in Music Humanities, a student must go through an application and interview process to demonstrate teaching potential (Pet. Ex. 33). Graduate students in the Music Department in the second year of their Ph.D. studies, may be appointed as teaching assistants to assist instructors in these classes, helping instructors at any academic level, from TF to tenured faculty (Dec. 16; Tr. 609-12; Pet. Ex. 30, 34, pp. 2-3). The Chair of the Department of Art History testified that, in staffing Art Humanities, the University uses "as many [Teaching Fellows] as are available during that particular year." (Tr. 821). Teaching Fellows also serve as instructors in the

[3] While some of the Employer's witnesses and the Regional Director used the title "Teaching Assistant" to refer to these positions, it appears that Ph.D. candidates at GSAS who are appointed by the department to assist in the instruction of these classes are considered to be Teaching Fellows by GSAS and receive officer appointments as Teaching Fellows (Er. Ex. 2; Tr. 68-69).

University Writing course required of all undergraduates and in classes that students take to fulfill Columbia College's language requirement (Dec. 11; Tr. 185-86, 856, 868).

Teaching Fellows serve as instructors in other types of classes. Students in the Art History Department have the opportunity to teach a required course for Art History majors at Barnard College (Er. Ex. 53, 4th page). Music Department Ph.D. students serve as instructors in classes within the Music Department (Pet. Ex. 34). In the Math Department, TFs assist faculty members in teaching classes, and then move on to teach their own classes (Dec. 16; Tr. 203-04). Many students in the Natural Science departments lead laboratory sections for undergraduate students, in addition to performing a wide range of other duties (Pet. Ex. 21(B)(3)). For example, in the Physics Department, Ph.D. candidates teach laboratory sections (Tr. 754-55). There is no faculty member present in the laboratory class, so the TF has full responsibility for preparing the laboratory equipment, running through experiments to ensure that they run smoothly, and guiding and helping the students as they learn to conduct the experiments themselves (Tr. 755, 764, 781). Thus, TFs are responsible for teaching undergraduate students in the experimental sciences how to conduct experiments.

According to GSAS' Teaching Guidelines, TFs are expected to spend roughly 15 to 20 hours per week on their teaching duties (Dec. 10; Er. Ex. 40, 3rd page, para. 17). A TF whose work is not satisfactory must be given an opportunity to improve and, failing that, is subject to loss of administrative but not academic standing, which can result in a warning, suspension or dismissal (Er. Ex. 40, para. 18; Ex. 52; Tr. 469-70). Teaching assignments and duties for TFs are determined by the academic needs of the departments or programs where they perform their duties (Tr. 302, 463-64, 836).

The role of undergraduate education at Columbia is to transmit established knowledge to the undergraduate students (Tr. 448-49). Teaching Fellows in all types of assignments participate in the transmission of knowledge to undergraduate students (Tr. 449). Teaching Fellows play an important role in the instruction of undergraduate students (Er. Ex. 76, p. 2; Tr. 519-20; Pet. Ex. 15). Thus, the work of a TF serves the mission of undergraduate education at Columbia.

3. Teaching Assistants

The University makes formal appointments as Teaching Assistants ("TAs") to students outside of GSAS who perform teaching duties (Dec. 10; Er. Ex. 2). This includes doctoral students at other schools, such as the Fu School of Engineering and Applied Science, as well as Masters' students (Dec. 10; Tr. 69). The Vice Provost of the University testified, "Teaching Assistants perform functions which are very similar to a Teaching Fellow." (Dec. 10; Tr. 69). TAs at the FU School assist faculty in teaching courses. Their duties may include designing examinations, grading homework assignments, holding office hours to meet with students, conducting recitation sessions for larger classes, helping students with homework, and otherwise communicating with students about their classes (Dec. 22-23; Tr. 664). The teaching work performed by TAs contributes to the education of the undergraduate students and thus helps to fulfill the mission of the University (Tr. 675-76). According to the Fu School web page:

> The role of a teaching assistant is critical in a content-heavy curriculum such as in engineering and the applied sciences, said Dean Feniosky Pena-Mora. All of our TAs are deeply invested in support of our teaching mission....
>
> A great TA can make a tremendous difference in how an undergraduate student views a particular course, and, in fact, can play a

> large part in that student's success in the course and in subsequent courses, said Dean Pena-Mora.

(Pet. Ex. 61).

F. Direction and Control

It is undisputed, and the record establishes, that student officers of the University, in all classifications, are directed in their work by members of the faculty and perform in a manner controlled by the University (Tr. 106-07, 160-61, 208-10, 512; Er. Ex. 40).

G. Distinctions Between Academic and Economic Relationships

The Employer offered extensive evidence that faculty and administrators of the University believe that teaching has academic benefits for student employees who teach. The Petitioner does not dispute that there are often pedagogical benefits both to teaching and conducting research. Indeed, that is an essential element of any field of professional endeavor: the professional continues to learn while working in the field. This is true of the faculty members as well as student employees (Tr. 877-78, 1033-34).

Nevertheless, the economic relationship between a student employee and the school is severable from the academic relationship. TFs who do not fulfill their duties may be subject to discipline (Er Ex. 40, ¶18; Er. Ex. 52; Tr. 469-70). In the Psychology Department, Teaching Fellows are evaluated separately on their teaching performance and may "receive warnings where teaching is substandard." (Pet. Ex. 23, p. 2). The most dramatic illustration of the distinction between the academic relationship and the employment relationship is provided by the case of Longxi Zhao.

Longxi, a native of China, came to the United States in the Fall Semester of 2013 to pursue a Master's of Science degree in Chemical Engineering at the Fu School (Dec.

27; Tr. 884, 885; Pet. Ex. 53). He received his Master's in February 2015 and was admitted to the Ph.D. program in the same department for the Spring 2015 Semester (Dec. 27; Tr. 884; Pet. Ex 54). Doctoral students in the Chemical Engineering Department customarily work as TAs for one year and then become Research Assistants (Tr. 888). Longxi's first appointment was as a TA in an undergraduate class in Kinetics taught by Professor Banta (Dec. 27; Tr. 887-88).

Before commencing his TA duties, Longxi approached Professor Banta and asked whether he could take an extended Spring Break to return to China (Dec. 27;Tr. 892, 894-95). Professor Banta rejected this request (Tr. 895). As a consequence, Longxi decided to take a much shorter trip home, during Columbia's Spring Break, which ran from Saturday, March 14 through Sunday, March 22 (Tr. 909). He left the Friday before, March 13, and returned Monday, March 23 (Tr. 896).

When he returned to New York, Longxi found two letters waiting for him. One was from the Assistant Director of the Office of Graduate Student Affairs, notifying him that a "Dean's Discipline Hearing" was to be held the next day to address accusations of "harassing others." (Tr. 906-07; Pet. Ex. 59). When he attended that hearing on March 24, he learned that this accusation of "harassment" related to an e-mail that he had sent six weeks earlier that had used the "f" word in a self-deprecating manner to refer to a mistake that he had made (Dec. 27; Tr. 907; Pet. Ex. 57). The second letter informed Longxi that he had been terminated from his position as a TA (Pet. Ex. 20). That letter, signed by Professor Sanat Kumar, Chair of the Department, reads:

> The Department of Chemical Engineering Graduate Committee at Columbia University has decided to terminate your teaching assistant position for CHEM E4230 for the following reasons:

> - Making and implementing decisions without approval from the course instructor (i.e. late homework submission and point deduction)
> - Sending inappropriate email correspondence to students
> - Failing to proctor a quiz on Friday, March 13
> - Taking a vacation during the semester without approval.
>
> In particular, you were previously verbally warned that if you proceeded to take an unapproved vacation that interfered with your teaching assistant position you would be subject to dismissal. **Accordingly, this termination is effective immediately. As a result, you will no longer receive a salary for this position.**
>
> However, in an effort to work with you, since this decision was recently made, your tuition for the Spring 2015 term will be paid for by the academic department. **A teaching assistant position, although a useful funding source, is not a requirement for the doctoral degree.** Therefore, if you decide to apply for a teaching assistant position in the future, you must submit an application for consideration but these incidents will understandably cause pause in any future considerations.

(Pet. Ex. 20) (emphasis added). Longxi disputes these allegations, noting particularly that he was not scheduled to work on March 13 (Dec. 27). He appealed his dismissal to Dean Kachani of the Fu School, who denied the appeal on the ground that there were "sufficient grounds for termination." (Dec. 27; Pet. Ex. 60).

This incident clearly reveals the distinctly economic nature of the employment relationship between graduate student employees and the University. As stated in the termination letter, Longxi was terminated from his position as a TA, but his student status was not affected. The alleged offenses relied upon to justify his termination all relate to his employment as a TA, not his academic performance. Dean Kachani's explanation for his decision to uphold the termination, that Longxi was guilty of "dereliction of duty" and "insubordination," are typical employment offenses. The consequences of the termination were purely economic: the loss of his semi-monthly

stipend payments (Tr. 933). Dean Kachani further explained why Longxi was terminated a day before the hearing regarding alleged harassment. The Dean's Discipline Hearing related to Longxi's status as a student, not his employment as a TA (Tr. 937-38). As Dean Kachani put it, "Those are two different matters." (Tr. 937).

IV. THE BOARD SHOULD OVERRULE BROWN

A. NYU I was Consistent with the Language of Section 2(3), Common Law and Precedent Interpreting that Section

The decision in NYU I was built on a solid legal foundation of the language of the statute, Supreme Court decisions and Board precedent. That foundation remains sound today. NYU I relied, first and foremost, on the broad definition of "employee" in section 2(3) of the Act and on Supreme Court decisions giving an expansive reading to this statutory language. NYU I at 1205 (citing NLRB v. Town & Country, 516 U.S. 85, 91-92 (1995); Sure-Tan, Inc. v. NLRB, 467 U.S. 883, 891-92 (1984); Phelps Dodge Corp. v. NLRB, 313 U.S. 177, 185-86 (1941)). In Town & Country, a unanimous Supreme Court held, "The ordinary dictionary definition of 'employee' includes any 'person who works for another in return for financial or other compensation,'" and the Act's definition of employee as including "*any* employee" "seems to reiterate the breadth of the ordinary dictionary definition." 516 U.S. at 90 (quoting American Heritage Dictionary 604 (3d ed. 1992)) (emphasis in original). In Sure-Tan, the Court held that the "breadth" of the definition of "employee" in section 2(3) "is striking: the Act squarely applies to 'any employee.' The only limitations are specific exemptions for agricultural laborers, domestic workers, individuals supervised by their spouses or parents, individuals employed as independent contractors or supervisors, and individuals employed by a person who is not an employer under the NLRA." 467 U.S. at 891.

There is no exclusion in the statute for employees who are "also students" or "primarily students." Thus, the Board decision in NYU I was solidly grounded in the language of the statute and Supreme Court precedent defining that language.

The section 2(3) definition of "employee" is informed by the common-law master-servant relationship. Town & Country, 516 U.S. at 93-94. These student employees clearly fall within the common law definition of "employee." The Restatement (Third) of the Law, Employment, §§ 101(1) and 102 (2015), provides that an employment relationship exists where an individual acts "at least in part" to serve the interests of the employer, the employer consents to receive those services, the individual is not engaged in an independent business to provide those services, and the work is not performed on a voluntary basis (i.e., the individual is paid by the employer). These criteria clearly fit the student employees at Columbia. As discussed extensively above, the work they perform serves the interests of the University. The Employer consents to them performing these services, and they are certainly not involved in independent businesses. As they are paid for the work that they perform, they are not volunteers. Thus, they fit the common law definition of "employee." Indeed, comment g to section 1.02 provides that student assistants who are paid to perform work that benefits an educational institution have an employment relationship with that institution.

NYU I was also consistent with established Board precedent interpreting Section 2(3) of the Act. For example, in Sunland Construction Co, 309 N.L.R.B. 1224 (1992), in holding that paid union organizers are employees where they obtain jobs to try to organize other employees, the Board reaffirmed that the statute applies in the absence of an express exclusion. "Under the well settled principle of statutory construction -

expressio unius est exclusio alterius - only these enumerated classifications are excluded from the definition of employee." Id. at 1226. The Board gave a similarly broad reading to the statutory definition of employee in Seattle Opera Association, 331 N.L.R.B. 1072 (2000), enf'd 292 F.3d 757 (D.C. Cir. 2002), holding that auxiliary choristers at a non-profit opera company were "employees". Enforcing the Board's decision, the D.C. Circuit distilled the Supreme Court's and Board's broad reading of the statute and the common-law master servant relationship into a two-part test: "[I]t is clear that - where he is not specifically excluded from coverage by one of section 152(3)'s[4] enumerated exemptions - the person asserting statutory employee status *does* have such status if (1) he works for a statutory employer in return for financial or other compensation; and (2) the statutory employer has the power or right to control and direct the person in the material details of how such work is to be performed." 292 F.3d at 762 (internal citations omitted) (emphasis in original). The decision in NYU I is fully consistent with this definition.

Finally, the decision in NYU I is consistent with Boston Medical Center, 330 N.L.R.B. 152 (1999), holding that medical interns, residents and fellows are "employees," despite the fact that they are also students. As in NYU I, the Board in Boston Medical based its decision on the broad language of section 2(3) and the Supreme Court decisions emphasizing that the definition encompasses anyone who works for an employer in exchange for compensation. Id. at 159-60. The Board relied upon the fact that there is no exclusion in section 2(3) for employees who are also students. The Board also pointed to section 2(12)(b) of the Act, which defines professional ***employee*** to include "any employee who (i) has completed the courses of

[4] Section 2(3) of the NLRA is, of course, codified at 29 U.S.C. Sec. 152(3).

specialized intellectual instruction ... and (ii) is performing related work under the supervision of a professional person...." Id. at 161. Like interns and residents, graduate assistants literally fit within this definition of professional employees: they have completed advance courses of instruction and they work under the direction of a faculty member in their field of study.

The Board in Boston Medical emphatically rejected the idea that there is some inconsistency between being an employee and being a student, holding that interns' and residents' "status as students is not mutually exclusive of a finding that they are employees." Id.

> As 'junior professional associates,' interns, residents and fellows bear a close analogy to apprentices in the traditional sense. It has never been doubted that apprentices are statutory employees. . . . Nor does the fact that interns, residents and fellows are continually acquiring new skills negate their status as employees. Members of all professions continue learning throughout their careers[5] . . . . Plainly, many employees engage in long-term programs designed to impart and improve skills and knowledge. Such individuals are still employees, regardless of other intended benefits and consequences of these programs.

Id. at 161 (citations and footnotes omitted). The holding of Boston Medical has not been questioned by the courts of appeals, has resulted in fruitful collective bargaining, and remains good law. St. Barnabas Hospital, 355 N.L.R.B. No. 39 (2010). NYU I was entirely consistent with Boston Medical.

B. NYU I Was Also Consistent with Long-Standing Precedent Finding Apprentices to Be Employees

As the Board recognized in Boston Medical, there is no logical basis to conclude that one cannot be both a student and an employee. The Board has a long history of recognizing that apprentices are employees under the Act. Apprentices are required to

[5] This is true of faculty at Columbia (Tr. 877-78, 1033-34).

work as a part of their training for a craft or trade. Their work provides on-the-job training that is critical to learning the craft. Apprentices generally must complete a certain number of hours of classroom training and a specified number of years of work in the field to qualify as journeymen. Despite the fact that the work of apprentices is thus part of their training for a career, the Board has consistently treated apprentices as employees.

As far back as 1944, the Board held that apprentices who attended a school as part of a 4 or 5 year training program and worked under the supervision of training supervisors for 2½ years were employees within the meaning of the Act. Newport News Shipbuilding & Dry Dock Co., 57 N.L.R.B. 1053, 1058-59 (1944). Similarly, in General Motors Corp., 133 N.L.R.B. 1063, 1064-65 (1961), the Board found apprentices who were required to complete a set number of hours of on-the-job training, combined with related classroom work in order to achieve journeyman status, to be employees. See also Chinatown Planning Council, Inc., 290 N.L.R.B. 1091, 1095 (1988) (describing apprentices "working at regular trade occupations while receiving on-the-job training"), enf'd, 875 F.2d 395 (2d Cir. 1989). All of these apprentices were students and employees at the same time. Their work was related to their schooling. They learned while working and earning money. The Board has never suggested that, in order to find an apprentice to be an employee, it was necessary to weigh the educational benefit that he received against the economic benefit his employer derived in order to decide whether the relationship was "primarily educational." "[I]t has never been doubted that apprentices are statutory employees" because there is no inconsistency between working and learning. Boston Medical, 330 N.L.R.B. at 161.

Like apprentices, graduate student workers are engaged in learning while simultaneously performing services for an employer designed to prepare them for their post-graduation careers. Indeed, the Employer refers to the research and instructional services performed by graduate student employees as their "professional apprenticeship." (Er Ex. 36, 37, 38). A worker can be a student engaged in a course of study at the same time as he or she is an apprentice "employee" under the Act. Boston Medical, supra.

In summary, NYU I was built on a solid legal foundation. The finding that one can be both a student at an educational institution and an employee of that same institution is consistent with the broad, sweeping definition of "employee" in the NLRA and with Supreme Court and Board precedent generally interpreting that definition. Finding graduate assistants to be "employees" is also consistent with the common law meaning of the term. NYU I was consistent with the long history of Board cases finding apprentices to be employees, including apprentices who received schooling in their trade from their employer. The section 2(12)(b) definition of "professional employee" as including a person who has received specialized intellectual instruction and is working under the supervision of a professional person precisely describes many graduate assistants and discloses the understanding of Congress that student employees working in an advanced intellectual field would be treated as employees in the same fashion as apprentice tradespeople. Finally, Boston Medical and St. Barnabas are inconsistent with the reasoning and legal basis of Brown. Brown is clearly an outlier that cannot be reconciled with the language of the statute or any applicable precedent.

C. There is No Precedent to Support Brown

Brown, by contrast to NYU I, represents a sharp departure from existing precedent, and is inconsistent with the language of the statute and Supreme Court precedent. At the outset, it is astonishing that the Board in Brown ignored the broad scope of the definition of employee in section 2(3) of the Act. This is contrary to the most fundamental principle of statutory construction. In interpreting the meaning of any statute, "[w]e start, as always, with the language of the statute." Williams v. Taylor, 529 U.S. 420, 431 (2000); Am. Tobacco Co. v. Patterson, 456 U.S. 63, 68 (1982) ("[I]n all cases involving statutory construction, our starting point must be the language employed by Congress . . .") (quotation and citation omitted). The Brown majority disregarded this most basic tenet of statutory interpretation.

The majority claimed to return to what it characterized as the status of the law before NYU I. As support for that proposition, the majority cited two decisions which, it claimed, held that graduate assistants are "primarily students" and therefore not employees within the meaning of section 2(3) of the Act. Neither of these cases lends any support for the proposition that graduate assistants cannot also be employees.

In the first of those decisions, Adelphi University, 195 N.L.R.B. 639 (1972), the Board did hold that teaching and research assistants were "primarily students." There is not the slightest suggestion in that decision, however, that the Board believed that this was somehow inconsistent with employee status. Rather, the Board held that student status distinguished teaching assistants from regular faculty members, so that they lacked a community of interest with regular faculty members. "[W]e find that the graduate teaching and research assistants here involved, although performing some

faculty-related functions, are primarily students and **do not share a sufficient community of interest with the regular faculty to warrant their inclusion in the unit**." 195 N.L.R.B. at 640 (emphasis added). NYU I, by finding a separate unit of student employees to be appropriate, was entirely consistent with Adelphi. The Board, in Brown, did not "return" to Adelphi's holding. Instead, it distorted the holding of a case that supports finding student employees to have a separate community of interest from other employees.

Similarly, Leland Stanford Junior University, 214 N.L.R.B. 621 (1974), did not hold that a graduate student could not be simultaneously a student and an employee.[6] Rather, the Board found that a specific group of graduate students were not employees because they were not paid by the university for providing services to the university. The Board found that the tax-exempt stipends received by the students from outside funding agencies were not payment for services performed for the university. "Based on all the facts, we are persuaded that the relationship of the RA's (sic) and Stanford is not grounded on the performance of a given task where both the task and the time of its performance is designated and controlled by an employer." 214 N.L.R.B. at 623. This finding stands in sharp contrast to the findings of the Regional Director that the petitioned-for individuals receive payments categorized by the University as "salaries" for performing duties that are also performed by admitted employees such as faculty members (Dec. 29). There is nothing in Leland Stanford to support the holding that student employees who are paid to perform tasks for the benefit of the university cannot be employees within the meaning of section 2(3) of the Act.

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[6] The Board in St. Clare's Hospital, 229 N.L.R.B. 1000 (1977), did read Leland Stanford to hold that graduate assistants could not be employees. Leland Stanford, however, does not stand for that proposition, and St. Clare's had been overruled before the Board issued the Brown decision.

The Board in Brown cited Adelphi and Leland Stanford as support for what it characterized as a "fundamental": "the Act is designed to cover economic relationships." 342 N.L.R.B. at 488. As the record in this case demonstrates, student employees ***do*** have an economic relationship with their university. There is nothing in either Adelphi or Leland Stanford that would support a holding that an individual cannot have an economic relationship with a university because he also has an educational relationship with the university. Neither of those cases even suggests that one cannot be both student and employee. Indeed, this false dichotomy between working and learning was forcefully rejected by the Board in Boston Medical and is inconsistent with the decades of case law finding apprentices to be employees.

The Brown majority relied almost entirely on St. Clare's to provide support for the exclusion of an entire class of employees from the protections of the Act, notwithstanding that St. Clare's had been expressly overruled in Boston Medical, 330 N.L.R.B. at 152. Despite this rather glaring flaw in the precedential value of the case, the Brown majority proceeded to construct their rationale around St. Clare's, quoting extensively from that decision. 342 N.L.R.B. at 489-90. The majority relied upon St. Clare's for the proposition that there is some inconsistency between an academic relationship and an employment relationship. Based solely on St. Clare's, without citation to any other authority, any evidence or any academic research, the Board concluded that collective bargaining could harm the academic relationship between students and faculty and could infringe on academic freedom. Thus, the entire foundation for Brown is a case that had been overruled. A decision so totally lacking a foundation should not be permitted to frustrate student employees' efforts to organize.

D. There Is No Factual or Logical Basis for the "Policy Considerations" Relied Upon by the Majority in Brown

The Brown majority speculated that collective bargaining by graduate student workers would impair academic freedom and interfere with the student-faculty relationship. The Board cited no studies or evidence to support this speculation. The record in this case contains evidence that contradicts those assumptions. This includes evidence of the benefits of collective bargaining with respect to student employees, much of it from studies commissioned by NYU in an effort to justify withdrawing recognition of its graduate assistants' union in the aftermath of Brown. A published academic study showing that the speculation by the majority in Brown about the harms of collective bargaining were unfounded. The Employer presented an expert witness who admitted that there is no evidence that collective bargaining causes such harm (Tr. 572-73). The fear that collective bargaining would damage educational institutions is born out of the imagination of those hostile to collective bargaining.

1. *The Expansion of Collective Bargaining in the Public Sector*

The growth of collective bargaining at public universities provides evidence that fears that collective bargaining will damage higher education are unrealistic. At the commencement of this hearing, the Petitioner introduced twelve collective bargaining agreements covering graduate student employees at public universities (Pet. Ex. 1-12). By the time the hearing closed, Graduate Employee Union Local 6950, UAW, had added to the trend, entering into a collective bargaining agreement effective July 1, 2015, covering Graduate Assistants at the University of Connecticut (Pet. Ex. 73). Despite the expansion of collective bargaining among student employees at these

public sector institutions, there is no evidence that the harms imagined in Brown have occurred. As discussed below in Subsection 3, the evidence is to the contrary.

The majority in Brown dismissed the growth of public sector collective bargaining by noting that the public sector is governed by statutes with different definitions of "employee." However, the exclusion of university student employees from the protections of the NLRA is not based upon the language of section 2(3) or anything to be found in the Act. Rather, it is based upon the supposed impact of the collective bargaining on academic freedom and on mentoring relationships. There is no reason to believe that collective bargaining would affect such relationships differently in the private sector. The growth of collective bargaining by student employees at public universities is evidence that those harms are not real.

2. *The Experience at New York University*

The experience at New York University shows that collective bargaining for graduate assistants works without infringing academic freedom or mentoring relationships. On March 1, 2001, the UAW and NYU signed a letter agreement in which the University recognized the Union and committed to bargain over graduate student employment (Jt. 2; Jt. Ex. 9, p. 130).[7] The parties agreed that collective bargaining

[7] Joint Exhibits 2 through 8 and Employer Exhibits 20 and 21 were previously introduced into evidence in *New York University*, Case No. 2-RC-23481, held in 2010. Joint Exhibits 9 and 10 are excerpts from the transcript of that case (Tr. 733). In that transcript, the exhibits are referred to by the exhibit numbers assigned during that hearing. To follow references to those exhibits in the transcript, the following list matches the exhibit numbers from the *NYU* hearing with the numbers assigned in this case:

Columbia Exhibit Number	NYU Hearing Exhibit Number
Jt. Ex. 2	Pet. Ex. 5
Jt. Ex. 3	Pet. Ex. 6
Jt. Ex. 4	Pet. Ex. 7
Jt. Ex. 5	Pet. Ex. 29

would not extend to academic matters, including "the merits, necessity, organization, or size of any academic activity, program or course established by the University, the amount of any tuition, fees, fellowship awards or student benefits (provided they are not terms and conditions of employment), admission conditions and requirements for students, decisions on student academic progress (including removal for academic reasons), requirements for degrees and certificates, the content, teaching methods and supervision of courses, curricula and research programs and any issues related to faculty appointment, promotion or tenure." (Jt. Ex. 2).

When the parties reached a collective bargaining agreement, they each issued a public announcement expressing gratification with the outcome of negotiations (Jt. Ex. 4; Jt. Ex. 9, p. 133-35; Jt. Ex. 10, pp. 734-35). A memorandum to "The University Community" from Robert Berne, NYU's then Vice President for Academic and Health Affairs, specifically noted that the agreement "achieves all" of the aims the University identified at the start of negotiations, including "the primacy of our fundamental academic mission, values and prerogatives." (Jt. Ex. 4). Similarly, a press release distributed by NYU noted that "[t]he agreement reaffirms fundamental academic prerogatives of the University," and quoted NYU President Dr. L. Jay Oliva's statement that "I am very pleased at the outcome of these efforts." (Jt. Ex. 4). The collective bargaining agreement protected NYU's "academic mission, values and prerogatives" via a management and academic rights clause (Jt. Ex. 3; Jt. Ex. 10, pp. 736, 743). This CBA remained in effect through August 31, 2005 (Jt. Ex. 3). Prior to the Board's July

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Jt. Ex. 6 ----------Pet. Ex. 30
Jt. Ex. 7 ----------Er. Ex. 40
Jt. Ex. 8 ----------Er. Ex. 41
Er. Ex. 20 ----------Er. Ex. 39
Er. Ex. 21 ----------Er. Ex. 40

2004 decision in Brown, the parties had a peaceful and productive collective bargaining relationship. As NYU's Director of Labor Relations conceded, the academic rights language of the collective bargaining agreement "provided the university with a mechanism" to protect its academic freedom (Jt. Ex. 10, pp. 742-43).

After Brown, NYU signaled plans to withdraw recognition after the CBA expired. The University's Faculty Advisory Committee, a body composed of twenty faculty members, issued a "recommendation" that the Employer withdraw recognition (Er. Ex. 20). Nevertheless, the Committee recognized many positive results of the CBA, including improved "stipend levels, health care coverage, sick leave, posting of positions, work loads, and grievance procedures." (Er. Ex. 20).

In May 2005, the University's Senate Academic Affairs Committee and Senate Executive Committee issued a joint report recommending that NYU discontinue collective bargaining (Er. Ex. 21). This report also noted many concrete, positive results of collective bargaining, including "increased stipends, health care benefits, stability, and clarity of work expectations" for graduate employees (Er. Ex. 21). Directly contrary to at least one of the assumptions underlying Brown, the Senate Committees' report noted that unionization had been positive for the student/faculty relationship, quoting several salient statements from faculty members:

- Impact on quality of relationship between faculty and graduate students:
  - "The union contract has definitely diminished areas of friction around these relationships – there's a greater professional clarity."
- Impact on departmental morale:
  - "Departmental morale much improved."
- Overall:

o "This cuts two ways re: graduate assistants. On the one hand, those students who have been abused by faculty in the past can no longer be abused. On the other hand, those who have been let off too lightly also get more work from a faculty who are also more aware of their rights. Overall more equality . . . which I think is good."

***

o "No direct effect. Our department has, over the years, become more attentive to grad students' needs. If anything, the union has facilitated this, which has improved overall relations."

(Er. Ex. 21).

Despite the positive results of unionization identified in these reports, NYU withdrew recognition in August 2005 (Jt. Ex. 9, p. 138). As a consequence, graduate employees went on strike during the Fall 2005 semester (Jt. Ex. 9, pp. 138-39). Thus, as long as these employees enjoyed the protection of the Act, successful collective bargaining took place without damaging the academic mission of the university. When student employees lost the protection of the Act, labor strife followed. The experience at New York University demonstrates that extending the protections of the Act to graduate student employees serves the statutory purpose to promote labor peace.

Recently, NYU and the UAW have entered into a new collective bargaining agreement covering graduate student employees (Pet. Ex. 47). Thus, graduate student employees at NYU have rejoined the growing movement to organize to engage in collective bargaining.

3. ***Academic Studies***

The Employer introduced into the record a study that contradicts the conjecture by the Brown majority (Er. Ex. 81). That study was recently published in the ILR Review, the official journal of the Cornell University Industrial and Labor Relations

School. It reports on a survey of graduate student employees at public universities where graduate assistants are represented by a labor organization, comparing their survey responses with graduate student assistants at similar, non-union public sector universities.[8] "Effects of Unionization on Graduate Student Employees: Faculty - Student Relations, Academic Freedom, and Pay," Rogers, Eaton and Voos, 66 ILR Rev. 485 (4-15-2013). The study contradicts the assumptions made by the majority in Brown, finding evidence suggesting that collective bargaining might even improve student-faculty relationships. The authors concluded:

> While the NLRB in the *Brown* decision ... emphasizes the potential for a negative impact on faculty-student relationship, our results support other theoretical traditions that suggest unionization might have no impact or even a positive impact on those relationships. In the unionized departments we surveyed, students reported better personal and professional support relationships with their primary advisors than were reported by their nonunion counterparts. Our data do not permit us to conclude with certainty the reason for the positive impact.... Either way, we find no support for the NLRB's contention in the *Brown* decision that union representation would harm the faculty-student relationship.
>
> Also contrary to the Board in *Brown*, ample reason exists to think that unionization might actually strengthen the academic freedom of graduate students; however, we found only scant evidence of a positive effect.... We did find some support, albeit weak, for a positive impact of unionization on the overall climate of academic freedom (both departmental and university-wide). Again, no support was found for the NLRB's contention in *Brown* that GSE[9] unionization would diminish academic freedom.

(Er. Ex. 81 at 507).

The Employer called Professor Henry Farber of Princeton University to dispute this study. The Employer paid Professor Farber $735 per hour to criticize the

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[8] The comparison had to be conducted at public sector universities because the Board decision in Brown had frustrated organizing attempts by graduate student assistants in the private sector until the recent successful effort by NYU student employees to organize outside the processes of the NLRB.

[9] "Graduate Student Employee."

methodology of the study and the validity of its conclusions (Tr. 569). Not surprisingly, he was indeed critical of the study and the authors' conclusions (Tr. 544-54). He acknowledged, however, that in order to be published in the ILR Review, the study had to be subjected to a peer review process (Tr. 570). He also testified that he was aware of no empirical evidence that union representation has any negative effects on faculty/student relationships, nor any evidence that union representation has damaged academic freedom in any way (Tr. 572-73). Thus, the Employer's expert witness admitted that Brown is built upon a foundation of undocumented speculation.

4. The Record in this Case Exposes the Flaws in Brown

The majority's reasoning in Brown is further undermined by the record in this case. The Regional Director found that the working relationship between the University and the student employees bears a striking similarity to the relationship between the University and its admitted employees:

> In many respects the duties of student assistants are the same as those of admittedly "employee" counterparts on the Columbia University faculty. Teaching Fellows are considered "Instructors of Record" in some classes and the experience of undergraduates in their classes is equivalent to that of students in the same class when led by a senior faculty member. In other respects teaching assistants relieve faculty of tasks, such as grading, proctoring, and administrative work, that would otherwise fall within their job duties in their capacity as paid employees.... Testimonial as well as documentary evidence shows payments to students are sometimes described and treated administratively as salaries, and the assistant positions are called, "jobs." Doctoral student Cairns testified that he viewed his teaching duties primarily as fulfillment of his obligations in return for the stipend support he is receiving. [10]

(Dec. 29).

[10] Cairns's testimony is consistent with letters that doctoral students receive upon admission, informing them that receipt of their fellowship funding packages "includes some teaching and research responsibilities." (Er. Ex. 36, 37, 38).

There is extensive additional evidence that the relationship between the University and the petitioned-for individuals bears characteristics of an employment relationship. Stipends for graduate assistants are established in order to be "competitive" with similar institutions. This is consistent with the manner in which employers commonly establish pay rates, particularly for professional employees and other employees with desirable skills. The Employer sends letters informing graduate assistants that receipt of a funding package "includes some teaching and research responsibilities." (Er. Ex. 36, 37, 38; Dec. 6). They are relieved of these "responsibilities" if they obtain outside funding as an alternative to the stipend from Columbia. In other words, they do not have to do the work if the Employer does not have to pay them. Thus, the compensation paid to graduate student employees bears many hallmarks of the compensation paid to employees.

Many of these student employees go through a selection procedure that has the features of a hiring process. Preceptors, for example, must provide the same application materials as postdoctoral fellows and adjuncts applying to teach the same classes (Tr. 176). The application materials include a cover letter describing teaching experience, a résumé, and student evaluations of prior classes taught (Dec. 12; Er. Ex. 12, 13). Applicants for positions as Teaching Fellows in Core courses go through a similar application process (Dec. 16; Tr. 609-12; Pet. Ex. 30). Selection committees choose the applicants they believe will be effective teachers in educating undergraduate students (Tr. 173). That is, hiring decisions are based upon an assessment of how well the applicants will perform on the job. Those who are selected are processed through the Employer's Human Resources Department (Dec. 8).

Student officers of instruction are appointed to "assist the instructional programs" of the University. That is, they are appointed to fulfill the mission of the University to "disseminate knowledge through teaching...." (Pet. Ex. 64). They teach undergraduate students, including Core Courses that are the "cornerstone" of the shared undergraduate curriculum. A certain proportion of graduate students are selected as instructors in Core Courses because the Employer believes that to be best for undergraduate education. An undergraduate registering for these courses does not know whether the section will be taught by a retired faculty, tenured faculty, untenured faculty, adjunct or graduate assistant. Undergraduate students evaluate all instructors, including tenured faculty, Preceptors and Teaching Fellows utilizing the same forms (Dec. 9). Student officers who serve as instructors of record are expected to establish mentoring relationships with students in their classes. Teaching Fellows in the laboratory sciences teach undergraduates how to conduct laboratory experiments, a critical skill for any student interested in the experimental sciences. Thus, the work performed by Preceptors, TFs and TAs fulfills the mission of the Employer in many ways, the same as other categories of employees who teach undergraduates.

In addition to fulfilling the mission of the University, this work helps to generate income for the University. Tuition is the largest source of income for Columbia. Undergraduate students pay tuition to take classes taught by student employees. Employees in the unit sought in this petition thus receive compensation in exchange for performing services that fulfill the purpose of and generate income for the University. They have an economic relationship with the Employer.

Moreover, the record establishes that this economic relationship can be separated from the academic relationship that these individuals have as students. To the extent that Brown has any logic, its premise is that the academic relationship between student and school is inseparable from the economic relationship. The record in this case contradicts this premise.

The record reveals that Columbia recognizes the distinction between its academic and its economic relationships with its student employees. When a graduate student is selected to work as a Preceptor, the University sends a letter informing her that continuation in the position for a second year is "contingent on satisfactory performance..." (Er. Ex. 14, 15). There is no suggestion that failure to deliver "satisfactory" performance will affect academic status. A TF whose work is not satisfactory must be given an opportunity to improve and, failing that, is subject to a warning, suspension or dismissal (Er. Ex. 40, para. 18; Ex. 52; Tr. 469-70). Teaching Fellows may be evaluated separately on their teaching performance and "receive warnings where teaching is substandard." (Pet. Ex. 23, p. 2). Teaching assignments and duties for TFs are determined by the academic needs of the departments or programs where they perform their duties (Tr. 302, 463-64, 836). Doctoral students beyond the fifth year are offered paid teaching assignment on condition that there is a need for those services. These are all examples of ways in which the University treats the employment relationship as separable from the academic relationship.

The clearest illustration of this distinction is in the example of Longxi Zhao. When he was accused of dereliction of duty and insubordination on his job, Longxi was terminated from the job, without any change in his academic status. His use of the "f"

word in an e-mail resulted in two separate actions, one directed at his employment status and another directed at his academic status. He was given a hearing to determine whether sending that e-mail should affect his student status after he had been fired from his job. As Dean Kachani put it, "Those are two different matters." (Tr. 937). If the University can separate the academic and the employment relationship, the same can be done in collective bargaining.

5. Conclusion

In summary, Brown is inconsistent with the broad language of the statute and the vast weight of precedent from the Board and the Supreme Court. It is based upon assumptions that are irrelevant to labor policy, contradicted by actual experience at public sector universities and at NYU. Those policy assumptions are contradicted by academic research. The decision is premised upon a perceived inconsistency between working and learning which does not exist. The Board should issue a decision restoring legal protection to student employees.

V. RESEARCH ASSISTANTS WHO PERFORM RESEARCH WORK FOR THE UNIVERSITY AND RECEIVE COMPENSATION FROM THE UNIVERSITY FOR THOSE SERVICES ARE EMPLOYEES, REGARDLESS OF WHETHER THE UNIVERSITY RECEIVES FUNDING FOR THAT RESEARCH FROM OUTSIDE SOURCES.

A. Additional Facts Related to Graduate Research Positions

The University appoints student employees who conduct research to the status of student officers of research (Dec. 13; Tr. 70). All student officers of research are appointed to fulfill the research mission of Columbia. A Graduate Research Assistant ("GRA") is a student who assists with the research of a faculty member and is compensated with funds provided to the University by a research grant from an external

funding source, such as a government agency (Dec. 13; Tr. 70-71, 409). A Research Fellow provides similar services, but is compensated from funds that originate within the University. Most of the students who receive either of these appointments are in the Natural Sciences (Dec. 14; Tr. 70, 409). A third classification, a Research Assistant, performs similar duties in areas other than the Natural Sciences (Tr. 70-71, 409). Outside of GSAS, students may be appointed as Departmental Research Assistants to provide assistance to a department or a school in the conduct of research (Dec. 14; Er. Ex. 2). The parties agreed that, if Brown is overruled, doctoral students in all of these classifications should be included in the Unit.

All student officers of research contribute to the mission of the University in exchange for compensation, including those funded by external grants. A research grant results from an application submitted by one or more faculty members[11] to a funding agency such as the National Institutes of Health ("NIH"), the National Science Foundation (NSF"), another government agency, or a private foundation (Tr. 661-62, 768, 1016). The grant proposal may provide for GRAs to work with a faculty member on the proposed research (Dec. 13; Tr. 662, 769, 1017-18). The proposal must describe the work to be performed by all personnel involved in the project, including GRAs (Tr. 455, Pet. Ex. 72, 18th page (Bates No. 003433)). Funds to compensate people working on the grant, including faculty members, post-doctoral employees, and GRAs are considered "personnel costs" (Tr. 769; Pet. Ex. 72, 18th page; Pet. Ex. 50, pp. 60-68 (Bates Nos. 000067-75). As a condition of receiving the grant, the work performed by all personnel, including GRAs, must be in furtherance of the research

[11] A faculty member whose grant application is approved is referred to as the "Principal Investigator" or "PI" (Tr. 1017).

project (Dec. 13; Tr. 455-56; Pet. Ex. 48, section labeled "Financial Management). The PI has the responsibility to ensure that GRAs work to fulfill the stated purpose of the grant proposal (Tr. 685, 1017-18).

The budget for the grant must spell out how the "direct costs" of the research project, including the salaries paid to GRAs, will contribute to the research project (Pet. Ex. 50, p. 69, Bates No. 000076; Tr. 798). In addition, federal grants include funding for "indirect costs" or "facilities and administration." This payment is calculated as a percent of allowable direct costs (Tr. 686). When work to fulfill the grant is conducted on campus, the University receives an additional 60% of allowable direct costs to cover indirect costs (Tr. 799, 806). The salaries paid to GRAs fall within the category of allowable direct costs (Tr. 798, 800). Therefore, if a grant proposal calls for a payment of $35,000 for a GRA's salary for research to be conducted on campus, the University would receive an additional $21,000 to cover indirect costs (Dec. 29; Tr. 686-87, 800). If the grant proposal is approved, the funds are transmitted to the University (Tr. 684, 768-69, 1017). The University places the funds received for direct costs into an account to pay the salaries and other expenses of the research. The indirect costs are available "to run the enterprise of the University." (Tr. 1017).

Student officers of research who do not receive external funding are appointed as Research Fellows or GRA Research Fellows (Dec. 14; Er. Ex. 2). These student employees perform similar duties to the GRAs, the principal distinction being the source of the funds from which the University pays their stipends (Tr. 70, 115, 1019).

B. Research Assistants Are Employees If They Provide Services Under the Direction of the University That Benefit the University, and They Receive Compensation For That Work

As discussed at length above, the statutory definition of "employee" is strikingly broad. It encompasses any individuals who provide services for an employer in exchange for compensation, under the direction and control of the employer. Graduate research assistants fit this definition, regardless of whether the payments made to them come from externally funded grants or from other university funds. The Board has asked what standard should be applied to determine whether students who perform research should be considered to be statutory employees. The answer is that students should be considered to be "employees" if they meet this statutory definition.

In the instant case, DRAs and GRAs both perform research under the direction of university faculty members. They receive the same amount of compensation as TFs. Their research benefits the University by fulfilling its mission to conduct original research (Tr. 683, 792, 1031). All student officers of research contribute to this mission. The Employer's witnesses testified that the work performed by student officers of research contributes to a faculty member's research (Tr. 116, 769). Research by student officers of research can also lead to patents or other intellectual property which belong to the Employer (Dec. 15; Tr. 115; Pet. Ex. 66). Faculty members seek research assistants who have skills that fit the needs of their laboratories and will contribute to their research (Tr. 1031, 1057). Student researchers are "conducting research in their laboratory in an area that's near and dear to the heart of the faculty member." (Tr. 984). The Employer's faculty members stated in a variety of ways that student officers of research help to fulfill the research mission of the University (e.g., Tr. 683).

The parties agree that, if Brown is overruled, then the fact that the funds to pay their stipends are provided by an outside agency rather than university funds is not a reason to exclude them from the coverage of the Act. If anything, the University achieves a greater benefit if the research is funded by external grants. Not only does the University conserve funds by not having to use its own money to pay the stipends of the research assistants, it also receives indirect funds from those grants that it can use to "run the enterprise of the university." Thus, research funded by external grants fulfills the research mission of and generates funds for the University.

There is nothing in either NYU I or Leland Stanford to suggest that student employees paid with funds derived from external grants cannot be employees. The RAs in those two cases were found not to have an economic relationship to the university because the evidence failed to establish that they performed services for the university under its direction and control. In Leland Stanford, the Board concluded that the RAs worked only for the benefit of their education, receiving tax-exempt stipends that were "not determined by the services rendered." 214 N.L.R.B. at 622. In summarizing the evidence, the Board found:

> Based on all the facts, we are persuaded that the relationship of the RA's (sic) and Stanford **is not grounded on the performance of a given task where both the task and the time of its performance is designated and controlled by an employer**. Rather it is a situation of students within certain academic guidelines having chosen particular projects on which to spend the time necessary, as determined by the project's needs.

Id. (emphasis added). The Board in NYU I followed Leland Stanford to find that research assistants in the physical sciences were not employees:

> For the reasons set forth by the Regional Director, we agree that the Sackler graduate assistants and the few science department research assistants funded by external grants are properly excluded from the unit.

> *Leland Stanford Junior Univ.*, 214 NLRB 621 (1974). **The evidence fails to establish that the research assistants perform a service for the Employer and**, therefore, they are not employees as defined in Section 2(3) of the Act.

332 N.L.R.B. at 1209, n. 10 (emphasis added). The parties agree that the evidence in this case shows that externally funded GRAs do perform a service for Columbia.

During the period between NYU I and Brown, regional directors who dealt with the issue did not interpret either Leland Stanford or NYU I as establishing a blanket exclusion of research assistants funded by external grants. Rather, they treated the issue as a factual one, turning on whether the RAs performed services that benefited the university, under the direction and supervision of faculty members, for which the RAs were paid. In an earlier case involving the Employer, Columbia Univ., Case No. 2-RC-22358, the Regional Director, applying NYU I, found RAs working on externally-funded grant projects to be employees.[12] Although the Regional Director noted that services performed by these RAs "help [them] to develop skills and techniques that will prepare them for their dissertation research," she also concluded that, as in the instant case, RAs "perform vital services that are necessary for the University to fulfill its obligations under its research grants, without any regard as to whether such services are related to the dissertation." 2-RC-22358 at 19. These research projects were "central to Columbia's mission, so much so that faculty research grants account for 15 percent of the University's annual budget." Id. at 38. Thus, the RAs' work was "necessary to the fulfillment of the grants' research requirements, and accordingly, must be regarded as service to the University." Id. There is no contention that anything has

[12] The Regional Director made this finding at the urging of the Employer, over the objection of the Petitioner.

changed since that finding was made, other than that the proportion of Columbia's income derived from external grants has risen to nearly 20% (Pet. Ex. 51).

Similarly, in Tufts Univ., Case No. 1-RC-21452, a regional director found that RAs working on externally-funded grant projects performed research necessary to complete the grant-funded project, "under the control and direction of the Tufts faculty," and for compensation. Tufts, slip op. at 10, 37. As at Columbia, "[i]n all cases . . . the research performed by the RA is work that is necessary for the purposes of the grant." Id. Thus, "there can be no doubt that RAs at Tufts perform services for the University," and "are employees within the meaning of the Act." Id. at 37, 38.

The relationship between GRAs funded by external grants and Columbia is indistinguishable from the relationship between the research project assistants ("RPAs") and the employer in Research Foundation of the State University of New York, 350 N.L.R.B. 197 (2007). The RPAs were students at the State University of New York ("SUNY"). Like the GRAs at Columbia, they conducted research funded by external grants. Unlike at Columbia, grant funds for research at SUNY are awarded to the Research Foundation, which administers the funds for SUNY and pays the RPAs and other employees who conduct the research. The Board found that there was an economic relationship between the Research Foundation and the RPAs, notwithstanding that their research work was paid for with funds derived from external grants. The Board distinguished Brown because the RPAs did not have an academic relationship with the Research Foundation. Therefore, the fact that they were students at SUNY did not prevent them from being employees of Research Foundation. If the Board recognizes that a graduate assistant can have both an academic relationship and

an economic relationship with the same institution and overrules Brown, then the distinction between this case and Research Associates is eliminated. The holding of Research Associates should be extended to student employees performing research at the school where they are students. The source of funding for research assistants' salaries is irrelevant to whether they are entitled to the protections of the Act.

Students funded by training grants should also be included in the Unit. The only distinction between researchers funded from Training Grants and GRAs funded by research grants is the source of the funding. They perform the same duties, sometimes in the same laboratories (Dec. 31; Tr. 995). Student employees are often funded by a research grant in one semester and a Training Grant in the next, or vice versa (Tr. 994, 1012-13). They are paid the same compensation (Tr. 1019-20). If the Training Grant provides for a lower stipend, the University provides additional compensation to bring them to the same stipend as GRAs (Tr. 993). Like GRAs, they fulfill the mission of the University to conduct research and produce new knowledge. They thus share a community of interest with GRAs, and should be included in the Unit.

In summer, the Board should hold that whether graduate student employees conducting research are employees depends upon whether they have an economic relationship to the university. If they receive funding without regard to whether they perform services for the university, then they are solely students and not employees. If they perform services for the university's benefit under its direction, and are paid for that work, then they are employees. It should make no difference where the Employer gets the money to pay them for their services.

VI. MASTERS' STUDENTS AND UNDERGRADUATE STUDENTS WHO PERFORM SIMILAR SERVICES SHOULD BE INCLUDED IN THE UNIT

The Regional Director found that undergraduate and Masters' student employees perform duties "identical or nearly identical to doctoral student assistants, often side-by-side with doctoral students (Dec. 30). They should therefore be included in the Unit.

The record is replete with evidence that Masters' and undergraduate students perform similar work to Ph.D. students in teaching classifications. The Vice Provost for Academic Affairs testified, "Teaching Assistants perform functions which are very similar to a Teaching Fellow.... In other parts of the University, they will be Masters' students." (Tr. 69). He further testified that Readers are Masters' students "specifically appointed to grade papers and exams." (Tr. 70). These are duties also performed by Preceptors and Teaching Fellows. The Employer has a category of student officers, Teaching Assistants III ("TA III"), reserved for undergraduate students who provide teaching services. As student officers, they are thus appointed to fulfill the instructional mission of the University. TA IIIs lead recitation and laboratory sections and assist other undergraduate students (Tr. 69-70). Again, these are duties performed by TFs in GSAS, and TAs at the Fu School.

There are numerous specific examples of Masters' and undergraduate student employees fulfilling specific functions similar to Ph.D. students who teach. Masters' students and TA IIIs in the Math Department serve as assistants in the classroom and help with grading (Tr. 221-22). These functions are also performed by some TFs and by TAs at the Fu School. TA IIIs work in the Math Department "help room" alongside Ph.D. students (Tr. 222, 228). When asked about differences between the work of TA IIIs and Ph.D. students in the help room, the Chair of the Math Department succinctly

replied, "None." (Tr. 228). Masters' students in the School of Fine Arts serve as instructors for undergraduate students within the School of Fine Arts, and they also may be appointed as instructors in the University Writing Program that is a requirement for undergraduate students in Columbia College (Tr. 361-63). Ph.D. Teaching Fellows similarly serve as instructors in the University Writing Program (Tr. 185-86, 856, 868). Masters' students at the School of International and Public Affairs ("SIPA") can be appointed to Instructional Assistantships, which include Teaching Assistants, Departmental Research Assistants, and Readers (Er. Ex. 90, p. 1). Students in all of these categories assist with the instructional mission of the school, performing duties that are also performed by TFs in GSAS (Er. Ex. 90, pp. 2-3).[13] Thus, the duties of Masters' and undergraduate students with teaching assignments are remarkably similar to those of Ph.D. students with Teaching Fellow appointments. As the Vice Provost put it at another point in his testimony, "there is considerable similarity between what they do..." (Tr. 107-08).

Whether undergraduate and Masters' degree student employees should be included in a bargaining unit with doctoral students should be decided according to normal community of interest standards. In addition to performing the same duties, they work side-by-side with doctoral students in some settings, and the undergraduates who are being taught cannot tell whether they are being taught by doctoral, Masters or undergraduate students (Dec. 30). The Regional Director made these findings regarding the community of interest factors:

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[13] Program Assistants, on the other hand, perform administrative functions (Er. Ex. 90). As they do not provide instructional or research services to the Employer, the Petitioner agrees that they shall be excluded from the bargaining unit.

> [U]ndergraduate and Master's students serving in instructional and research positions may share a community of interest with doctoral candidates because they are all performing essentially the same work. On the other hand, as the Employer emphasizes, it is true that the financial compensation to Master's Degree students and undergraduates in assistant positions differs significantly from that provided to doctoral students.

(Dec. 30).

The question is not whether a unit limited to Ph.D. student employees would be appropriate, but whether the petitioned-for unit is appropriate. Such an issue as to the scope of the Unit should be addressed as in any other case:

> [W]hen a union seeks to represent a unit of employees 'who are readily identifiable as a group (based on job classifications, departments, functions, work locations, skills, or similar factors), and the Board finds that the employees in the group share a community of interest after considering the traditional criteria, the Board will find the petitioned-for unit to be an appropriate unit. . . .'

DPI Secuprint, Inc., 362 N.L.R.B. No. 172 (2015), sl. op at 3, quoting Specialty Healthcare & Rehabilitation Center of Mobile, 357 N.L.R.B. No. 83 (2011), sl. op. at 12, enfd. *sub nom.* Kindred Nursing Centers East v. NLRB, 727 F.3d 552 (6th Cir. 2013). The unit of student employees who provide instructional and research services for the Employer constitutes a readily identifiable group. The factors cited by the Regional Director establish that they share a community of interest. Moreover, the fact that they are all students at the institution that employs them is an additional factor that supports a finding that they share a community of interest.

By virtue of their status as students, all student employees generally share a community of interest that is separate from other university employees. As discussed above, the Board recognized the distinct interests of student workers in Adelphi University, 195 N.L.R.B. at 640. The labor organizations in Adelphi sought to represent

a unit of full-time and regular part-time faculty members. The university argued that 125 graduate assistants, including teaching assistants and research assistants, should be added to the faculty unit. The Board discussed the similarity in graduate assistants' and faculty members' duties, and the close and regular contact between them. Despite these factors, which would normally favor inclusion of the graduate assistants in the faculty unit, the Board excluded them because of their status as students. "The graduate assistants are graduate students working toward their own advanced academic degrees, and their employment[14] depends entirely on their continued status as such." 195 N.L.R.B. at 640. The Board listed a variety of differences in the terms and conditions of graduate assistants' employment from those of faculty members that resulted from their status as students. In light of these differences, the Board concluded, "that the graduate teaching and research assistants here involved, although performing some faculty-related functions, are primarily students and do not share a sufficient community of interest with the regular faculty to warrant their inclusion in the unit." Id. In other words, because the graduate assistants were students as well as employees, they had a separate community of interest. Their status as students was determinative of their community of interest.

In a footnote distinguishing other cases, the Board emphasized that the status of graduate assistants as students was indeed what distinguished them from other university employees. "For, unlike the graduate assistants, the research associate [in C.W. Post Center of Long Island University, 189 N.L.R.B. 905 (1971)] was not **simultaneously a student** but already had his doctoral degree...." Id. at 640 n.8. In

[14] The use of the word "employment" in this context confirms that the Board did not see any inconsistency between employment and being a student. The Board simply recognized that status as a student had a major impact on their working conditions, which differentiated them from other employees.

the same footnote, the Board distinguished Federal Electric Corp., 162 N.L.R.B. 512 (1966), which included other classifications of employees in a bargaining unit with academic teachers, by again emphasizing that because graduate assistants are students, they "do not share a similar community of interest with the faculty members...." Adelphi, 195 N.L.R.B. at 640 n.8. The Board likened graduate assistants to laboratory assistants excluded from a professional teaching unit in Long Island University (Brooklyn Center), 189 N.L.R.B. 909 (1971). These laboratory assistants worked in the science laboratories with faculty members, but they were excluded from the bargaining unit because they were Master's students working toward their graduate degrees. See Adelphi, 195 N.L.R.B. at 640 n.8. The Board has considered "student status" in several other cases where it excluded student employees from units of other university employees. See, e.g., Saga Food Serv. of Cal., 212 N.L.R.B. 786 (1974); Barnard Coll., 204 N.L.R.B. 1134 (1973); Cornell Univ., 202 N.L.R.B. 290 (1973); Georgetown Univ., 200 N.L.R.B. 215 (1972). Thus, "student status" is relevant to community of interest.

Columbia's attorneys have referred to San Francisco Art Institute, 226 N.L.R.B. 1251 (1976), and Saga Food Service of California, 212 N.L.R.B. 786 (1974), as cases that support finding that undergraduate and Masters' student employees are not statutory employees. Those cases actually support a finding that student employees share a distinct community of interest. The principal holding of San Francisco Art Institute and Saga is that student employees lack a community of interest with other university employees because they are students. In San Francisco Art Institute, the Board found that art students working as janitors at the school in which they were

enrolled did not have the right to organize because they lacked a "sufficient interest in their conditions of employment to warrant representation...." 226 N.L.R.B. at 1252. In Saga, students at UC Davis were found to lack sufficient interest in jobs as cafeteria workers. It is questionable whether this aspect of the holdings of those two cases can be reconciled with Kansas City Repertory, where the Board held that it is for the employees to decide whether they have enough interest in their jobs to engage in collective bargaining. However, it is not necessary to reach that issue, because, unlike student janitors at an art school, student teaching and research employees **do** have an interest in their employment. Their jobs are related to their professional development and their long-term careers, so that they have an ongoing interest in their conditions of employment.

In summary, the Board has long recognized that student employees have a separate community of interest because of the very fact that they are students. Their student status does not mean that they are not employees, only that they have interests that differ from faculty and other employees. In addition, as the Regional Director found, they perform similar or identical functions under similar working conditions, sometimes working side-by-side.[15] A unit of all student employees who provide instructional or research services is appropriate in this case.

VII. STUDENT EMPLOYEES WITH APPOINTMENTS OF AT LEAST ONE SEMESTER SHOULD BE INCLUDED IN THE UNIT

The Board has long recognized that employees hired for a limited period of time have the right to organize. See, e.g., Berlitz Sch. of Languages, Inc., 231 N.L.R.B. 766

[15] Because doctoral students generally have a longer tenure of employment and are compensated differently, a bargaining unit limited to doctoral students would also be appropriate. It is, of course, well-established that more than one unit may be appropriate. Specialty Healthcare, supra.

(1977) (on call teachers); Avis Rent-a-Car Sys., Inc., 173 N.L.R.B. 1366 (1968) (employees hired to drive rental vehicles from one rental car center to another); Hondo Drilling Co., 164 N.L.R.B. 416 (1967) (employees of an oil drilling company); Daniel Constr. Co., 133 N.L.R.B. 264 (1961) (construction industry); Pulitzer Publishing Co., 101 N.L.R.B. 1005 (1952) (camera operators and sound technicians at a television station). The Board recently reaffirmed the right of temporary employees to organize in Kansas City Repertory Theater, 356 N.L.R.B. No. 28 (2010).

On the other hand, the Board routinely excludes temporary employees from units of full-time and regular part-time employees. The reason for this exclusion is that temporary employees lack a community of interest with regular employees because the term of their employment is different. As the Board explained in Kansas City Repertory, temporary employees are customarily excluded from units of full-time and regular part-time employees because they have different interests as a result of their temporary status. They are excluded from the bargaining unit because they lack a community of interest with employees whose employment is indefinite and ongoing, not because they do not have the right to engage in collective bargaining.

In one sense, all graduate assistants can be regarded as temporary employees, since their employment in that capacity will end when they complete their studies. To determine whether a graduate student employee is employed for a sufficient period of time to vote in an election, the touchstone should be whether the duration of his employment is for such a short period that his interests are substantially different from other graduate student employees.

As discussed above, student employees share a community of interest separate from other employees based upon their dual status as students and employees: their employment is related to their education and to their professional careers. An appointment of at least one academic semester reflects the dual interest in employment and education that defines the community of interest among graduate assistants. The customary practice at NYU, Brown, Columbia, the New School, and Tufts, as evidenced by the record in this case and the Board's and Regional Directors' decisions - is to appoint graduate assistants to positions for a period of at least one semester. This reflects the fact that the business of a university is conducted in semester-long work units. Undergraduate students are a university's primary customers, and they purchase the university's services on a semester basis. The university, in turn, appoints many of its employees, including adjuncts and other non-tenured faculty, to work in semester-long units. The Board has recognized that adjunct faculty appointed on a semester by semester basis constitute an appropriate unit. See Pacific Lutheran University, 361 N.L.R.B. No. 157 (2014). Thus, student employees who receive appointments of at least one academic semester[16] should be included in a unit of student employees.

VIII. CONCLUSION

With respect to the questions posed by the Board, the Petitioner respectfully requests that the Board hold as follows:

1. The Board should overrule Brown.

2. The Board should hold that graduate student assistants engaged in research are statutory employees if they perform services that benefit the university,

[16] In a school that operates on a term system rather than a semester system, students appointed for at least one term should be included.

under the direction and control of the university, and receive compensation for performing those services. If this test is met, it is irrelevant where the university obtains the funds to pay the student employee. In the instant case, the Unit should include all GRAs, including those whose compensation is derived from training grants, and DRAs.

3. A unit composed of student employees at all levels of their education, including doctoral student employees, Masters' degree student employees, and undergraduate student employees is a readily identifiable group. Therefore, this constitutes a presumptively appropriate unit. In the instant case, employees at all of these levels perform similar duties and often work together, so they share a community of interest and should be included in the Unit.

4. All student employees who receive appointments of one semester or longer share a community of interest and should be included in the Unit.

ON BEHALF OF THE PETITIONER,
GRADUATE WORKERS OF COLUMBIA-GWC, UAW

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CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing Petitioner's Brief on Review was sent via email, on this 29th day of February, 2016, to the following:

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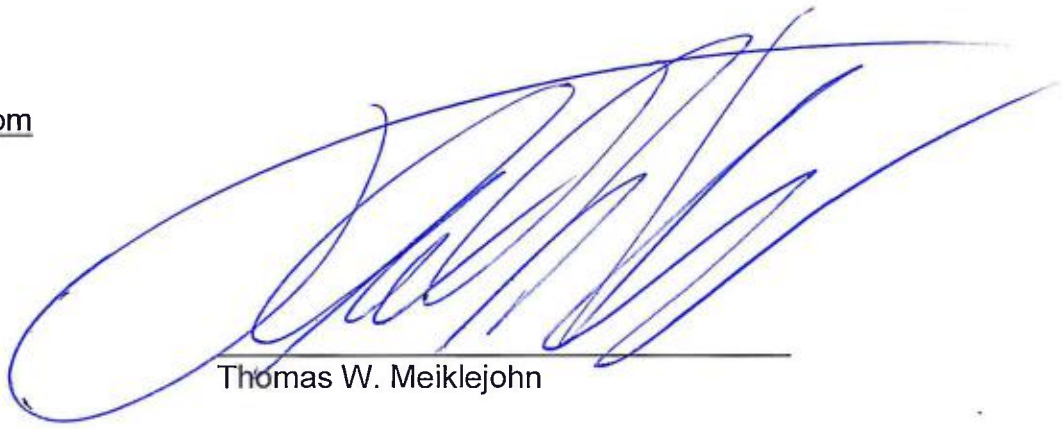

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