

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 13

UNIVERSITY OF CHICAGO

Employer

and

GRADUATE STUDENTS UNITED, AFFILIATED  
WITH ILLINOIS FEDERATION OF TEACHERS  
AND THE AMERICAN ASSOCIATION OF  
UNIVERSITY PROFESSORS, AFL-CIO

Case 13-RC-198325

Petitioner

**DECISION AND DIRECTION OF ELECTION**

On a petition duly filed under Section 9(c) of the National Labor Relations Act (Act), a hearing on this petition was conducted before a hearing officer of the National Labor Relations Board (Board) to determine whether it is appropriate to conduct an election in light of the issues raised by the parties.<sup>1</sup>

The University of Chicago (University or Employer) is an Illinois corporation with a principle location in Chicago, Illinois. It operates a private non-profit teaching and research university. Graduate Students United affiliated with Illinois Federation of Teachers and American Association of University Professors, AFL-CIO (Petitioner) seeks to represent a unit of all graduate students<sup>2</sup> who are full-time and regular part-time teaching assistants, research assistants, course assistants, workshop coordinators, writing interns, preceptors, language assistants, instructors, lecturers, lectors, and teaching interns in the School of Divinity, School of

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<sup>1</sup> Upon the entire record in this proceeding, the undersigned finds:

- a. The hearing officer's rulings made at the hearing are free from prejudicial error and are affirmed. It is noted in particular that the hearing officer's decision not to allow evidence concerning alleged supervisory taint of the petition in this matter is affirmed, as the Board has found it inappropriate to litigate such matters in representation proceedings. *Lampcraft Industries*, 127 NLRB 92 (1960); *John Liber & Co.*, 123 NLRB 1174 (1959); *Bi-States Co.*, 117 NLRB 86 (1957).
- b. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.
- c. Petitioner is a labor organization within the meaning of the Act.
- d. Petitioner seeks to represent certain employees of the Employer in the unit described in the instant amended petition, but the Employer declines to recognize the Petitioner as the collective-bargaining representative of those employees.
- e. There is no collective-bargaining agreement covering any of the employees in the voting group sought in this petition and the parties do not contend that there is any contract bar to this proceeding.
- f. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

<sup>2</sup> This includes both PhD candidates and Masters students holding these positions.

Social Services Administration, Division of Social Sciences, Division of Humanities, Division of Biological Sciences, and Division of Physical Sciences employed by the Employer at its campus in Chicago, Illinois.<sup>3</sup>

## I. ISSUES AND PARTIES' POSITIONS

The Employer maintains that the Board wrongly decided *Trustees of Columbia University in the City of New York*, 364 NLRB No. 90 (2016) (*Columbia University*) and should return to the standard in *Brown University*, 342 NLRB 483 (2004), but even under *Columbia University* its graduate students are not employees pursuant to Section 2(3) of the Act. Moreover, it maintains that even if its graduate students are found to be employees covered by the Act the unit sought by Petitioner is not appropriate because Masters students, so-called "non-lab research assistants," workshop coordinators, and graduate students teaching in excess of their academic requirements do not share a community of interest with PhD students in the petitioned-for unit and therefore must be excluded from the unit. The Employer also contends that should an election be directed a traditional eligibility formula should apply. In contrast, Petitioner maintains that the individuals at issue are employees within the meaning of the Act, the petitioned-for unit is appropriate for purposes of collective-bargaining, and further argues that a 1-year "look-back" eligibility formula should apply to include not only graduate students who are currently serving in the petitioned-for positions but those who have served in those capacities at any time during the past year.

## II. DECISION

As explained below, based on the record and relevant Board law, I find that the University's graduate students, who hold petitioned-for classifications, are employees within the meaning of Section 2(3) of the Act and the unit sought by Petitioner is appropriate. Accordingly, I direct an election in the following appropriate unit:<sup>4</sup>

Included: All graduate students who are full-time and regular part-time teaching assistants, research assistants, course assistants, workshop coordinators, writing interns, preceptors, language assistants, instructors, lecturers, lectors, and teaching interns in the School of Divinity, School of Social Services Administration, Division of Social Sciences, Division of Humanities, Division of Biological Sciences, and Division of Physical Sciences employed by the Employer at its campus in Chicago, Illinois.

Excluded: All other employees, managerial employees, guards, and supervisors as defined in the Act.

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<sup>3</sup> As amended at hearing.

<sup>4</sup> I further find for the reasons discussed below that a 1-year look-back period for voting eligibility is appropriate.

### III. THE EMPLOYER'S OPERATION

The Employer is a private non-profit teaching and research institution with a main campus located in Chicago, Illinois and was founded in its current form around 1890. The University was based on the model of the German research university of the 19th century, which focuses primarily on graduate education, and did not include undergraduates until many years later when it added the College, according to the model of Oxford and Cambridge. Typical annual PhD enrollment is comprised of "about 3,000 students" During the Spring 2017 quarter, there were 1,391 Masters students in programs covered by the instant petition. Ten individuals in Masters programs held petitioned-for positions—seven teaching assistants, one writing intern, one lecturer, and one language assistant.

Graduate education at the Employer is based out of five divisions (Divisions) and seven professional and continuing education schools (Schools). The five Divisions are: 1) the Division of Humanities (Humanities); 2) the Division of Social Sciences (SSD); 3) the Physical Sciences Division (PSD); 4) the Biological Sciences Division (BSD); and 5) the Institute of Molecular Engineering. The Schools are: 1) the Chicago Booth School of Business; 2) the Divinity School; 3) the Graham School of Continuing and Professional Studies; 4) the Harris School of Public Policy; 5) the Pritzker School of Medicine; 6) the Law School; and 7) the School of Social Service Administration (SSA). The Employer has approximately 87 graduate degree granting programs with about 52 of the programs covered by the instant petition.<sup>5</sup>

Unlike many American institutions of higher education, the University's undergraduate education is centralized in the College rather than housed among different colleges and schools. In contrast, the University's graduate education is decentralized. Each School and Division has its own academic dean and its own dean of students, who primarily oversee graduate students,<sup>6</sup> and its own deputy dean of the College, who oversees undergraduate education for their respective School or Division. The heads of the Divisions and Schools report to the Provost of the University, who reports to the President of the University.

Due to the lack of a unified graduate school, the Divisions and Schools operate with a high degree of autonomy in developing their graduate programs, including admissions and requirements for teaching and research. However, the Employer maintains UChicagoGRAD,<sup>7</sup> an office on campus that compliments the work of the Divisions and Schools in academic training, providing support for graduate students and postdoctoral employees as they navigate their academic and professional careers.

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<sup>5</sup> The instant petition does not cover programs offered by the Chicago Booth School of Business, Graham School of Continuing Liberal & Professional Studies, Harris School of Public Policy, the Law School, and Pritzker School of Medicine.

<sup>6</sup> Unless otherwise specified, the term "graduate students" will refer to Masters and PhD students.

<sup>7</sup> Formerly known as Graduate Student Affairs.

The University offers classes on a quarter system—summer, autumn, winter, and spring—with the main academic year being the autumn, winter, and spring quarters. Each quarter is about 10 weeks long.

The University requires all undergraduates to begin their undergraduate education at the University by taking courses from the Common Core curriculum (Core), which the University describes as “an integrated, often interdisciplinary, sequence of courses that are designed to establish the habits of mind and critical, analytic and writing skills that are expect of an educated, well-informed member of modern society.” About one-third of an undergraduate’s coursework is in the Core. Students must complete Core courses in Humanities, Social Sciences, Civilization (CIV), Physical Sciences, Biological Sciences, Mathematics, and Art, Music, or Drama, as well as demonstrate foreign language skills equivalent to one year of college study. Schools and Divisions offer undergraduate courses in the College that fulfill undergraduates’ Core requirements. Most faculty members hold appointments in both their School or Division and the College. Graduate students serve as instructors, lecturers, teaching assistants, course assistants, and writing interns to present the Core curriculum to undergraduates.

A course is one quarter long but can be part of sequence, a series of related courses. Core and CIV courses are often offered in a sequence. Core, CIV, and other low-level introductory courses typically have predetermined syllabi, readings, and assignments, as there are often multiple sections of the same course due to high enrollment. While one or more graduate students may assist with a course, each course has an instructor of record, who is ultimately responsible for the teaching of the course and the students’ grades.

#### **A. Academic Requirements for PhD Candidates**

Although each program is different, PhD students in most departments complete their required coursework during their first three years.<sup>8</sup> For example, Graduate Student Handbooks in Linguistics, Cinema & Media Studies, and Romance Languages & Literatures reference coursework being completed by the third year while Ecology & Evolution and Public Health Sciences state that most coursework will be completed in the first two years. As another example, a PhD candidate in Anthropology testified that course requirements in her program were generally completed in the first two years. After PhD students complete their coursework, they must attain candidacy. In some instances this requires passing an exam, in others it means successfully completing a research project or defending a Masters thesis, obtaining approval of a doctoral thesis, or a combination of these. At this point, PhD students primarily focus on their doctoral dissertations.

For example, the Dean and Director of the Office of Graduate Affairs in BSD testified that PhD students are evaluated by their thesis committee, which sets and tracks academic milestones, to ensure that students are continuing to make good academic progress. The committee outlines progress as well as future goals in a written document and recommends

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<sup>8</sup> Departments are located within a School or Division and offer one or more programs.

future follow-up meetings. Students who make minimal or no progress towards the goals of their dissertation are placed on academic probation, which lays out expected milestones typically over the next quarter. If the student is unable to comply with the expectations of the probationary document, their program may elect to propose dismissal. In BSD, the dismissal is evaluated by a standing committee, arranged through the Office of Graduate Affairs, to determine whether the student should be dismissed.

## **B. Teaching and Research Requirements for PhD Candidates**

Most students in PhD programs are required to teach as both an academic requirement and as a condition to receive funding from the University. Out of the 52 programs covered by the instant petition only four,<sup>9</sup> all within PSD, do not require teaching; however, two of these still involve PhD students taking "TA Training."<sup>10</sup>

All programs in BSD maintain the divisional teaching requirement of two courses or equivalent. As will be further discussed, PhD students in BSD are also required to join a lab and conduct research to complete their degrees. PhD students in Chemistry transition from teaching assistant at the beginning of their program to conducting research as a research assistant.

The University uses a standardized point system (referred to in the record as "GAI")<sup>11</sup> for setting forth the minimum teaching requirement in three of its Schools and Divisions.<sup>12</sup> Specifically, Divinity, Humanities, and SSD have division-wide teaching requirements of five GAI points. All programs within Divinity and SSD maintain this divisional requirement while, in Humanities, the Classics program and Romance Languages & Literatures program currently have an eight GAI point requirement and the Slavic Languages & Literatures program has a 12 GAI point requirement.<sup>13</sup>

All PhD programs with a teaching requirement, except five,<sup>14</sup> have a recommended timeframe for when students should fulfill their teaching requirements. For example, the Medical Physics program in BSD recommends PhD students fulfill their 2-course or equivalent teaching

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<sup>9</sup> Computer Science, Geophysical Sciences, Physics, and Computational & Applied Mathematics, a new program that is still developing its teaching requirement.

<sup>10</sup> A 2-week training period.

<sup>11</sup> For example, serving as teaching assistant (TA), course assistant (CA), teaching intern (TI), or writing intern earns 1 point per quarter. Serving as preceptor earns 1 point for three quarters. Lecturers and instructors earn 2 points per quarter. Language assistants earn ½ point per quarter.

<sup>12</sup> The parties stipulated that SSA, which offers only one program Social Services Administration (Social Work), has a 3-course teaching requirement but that teaching is not an academic requirement; however, neither party provided evidence or testimony to explain this difference.

<sup>13</sup> BSD has a teaching requirement of two courses or equivalent which is not associated with GAI.

<sup>14</sup> Computational Neuroscience and Neurobiology, both in BSD. In PSD, Astronomy & Astrophysics, Biophysical Sciences, and Computational & Applied Mathematics, which is a new program and still developing its recommendations.

requirement after the second year, the Statistics program suggests one quarter of teaching per academic year, and PhD students in Sociology are recommended to complete their 5 GAI teaching points in years 3 through 5.<sup>15</sup> However, these recommendations are not requirements. For example, one Sociology PhD student testified that she had completed 5½ GAI teaching points by the end of her third year.

PhD students fulfilling their teaching requirement are not disciplined based on their teaching performance nor is their performance graded.<sup>16</sup> Rather, PhD students fulfilling their teaching requirement who do not perform well are counseled by the faculty member in charge of the course to aid in their improvement. In one instance, a student who performed poorly was required to spend an additional quarter performing TA duties to demonstrate proficiency after receiving additional mentoring and guidance regarding their initial deficiency. However, TAs not fulfilling teaching requirements who perform poorly may not be awarded future TA positions.

As noted above, PhD students in BSD have a teaching requirement of two courses or equivalent. These individuals may substitute one classroom-based Teaching Assistant course or, with approval, an off-campus teaching experience such as a high school biology class or two 1-week intensive boot camps at the Marine Biology Laboratory, which is associated with the University, for one of their course requirements. The record is silent on how, or if, students substituting an equivalent teaching activity are judged to have satisfied the requirement.

While it is preferred that teaching requirements are fulfilled in courses related to a PhD student's field of interest, the record shows that teaching any course generally results in credit towards satisfying the requirement. For example, an SSD PhD student in Sociology served as a language assistant for Spanish in Humanities and received ½ GAI point towards her 5-point requirement. The Dean of Students for Divinity testified that Divinity PhD students can receive GAI points from teaching within Divinity, Humanities, or SSD; teaching in the Writing Program; or teaching outside the University at local colleges or seminaries.

### **C. Funding for Graduate Students**

When individuals are admitted to a PhD program they receive funding comprised of full tuition, fees, health insurance, and a stipend from the Division or School in which their program resides. The specific amount and length of funding is determined by each Division and School, but generally covers at least the student's first five years.

In programs that do not offer funding beyond five years, the University's website notes:

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<sup>15</sup> Specifically, TAing two courses in years 3 and 4, and one course in year 5.

<sup>16</sup> The record does not indicate that their teaching performance is evaluated in a way that becomes part of their academic record. However, the boilerplate language for the 2017-2018 Chemistry PhD admission letter states, "any continuing appointment as either a Teaching Assistant or a Research Assistant is contingent on continuing satisfactory performance, both as a student *and as a teacher*." (Emphasis added.)

For some students, the nature of their project is such that it takes more than five years to complete the degree. In these cases, a wealth of additional opportunities are available, including continued funding by a research group; fellowships which support language study, travel, or dissertation research; and on- and off-campus positions teaching or exploring other career paths.

All students are eligible for the Employer's healthcare plan, University Student Health Insurance Plan (U-SHIP), which is the equivalent of a platinum-level plan under the Affordable Care Act. Faculty, staff, and other employees of the Employer are not eligible for U-SHIP. Most individuals in PhD programs have most or all of their U-SHIP premiums covered as part of their funding. The particular amount and length paid by the Employer is determined by each School or Division. Most students in the natural sciences have their health insurance paid for the duration of their degree while those in the Social Sciences, Humanities, Divinity, and SSA have health insurance paid for the first five years of their degree, which can be extended by two years as long as the individual attains candidacy.<sup>17</sup> The University's *Guide to Student Health and Counseling Services* lists benefits for which only students are eligible. Faculty, staff, and other employees of the Employer are not eligible for these benefits.

The Employer's Graduate Student Parent Policy allows individuals in graduate programs, who become new parents, to modify their academic schedule, extend their milestones, and take a leave of absence. Faculty, staff, and other employees of the Employer are not eligible for this program. Individuals in PhD programs may apply for a childcare subsidy of up to \$2,000 disbursed quarterly. The childcare subsidy is administered by UChicagoGRAD.

Faculty, staff, and other non-student employees of the Employer are only eligible for the benefits outlined in the Employer's 2017 *Guide to Benefits*.

Masters students are generally eligible for the same benefits as PhD students but do not normally receive funding from the University as part of their program. For example, Masters students are eligible for the Student Parent Policy and U-SHIP, but they must cover the cost of their U-SHIP premiums. Masters students are not eligible for the Child Care Stipend.

In addition to tuition and healthcare, students in PhD programs receive an annual stipend, which varies depending on the particular department or program. Stipends can be funded through the University, a School or Division, a faculty member's research grant, or a combination of these. For example, PhD students in SSD receive stipends for autumn, winter, and spring quarters and are eligible for an additional \$3,000 stipend to fund their work during the summer quarter. As will be discussed, portions of these stipends are segregated and disbursed in separate, taxable payments as remuneration to students performing teaching or research during the particular quarter in which they perform these duties.

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<sup>17</sup> Candidacy requirements vary depending on the program. For example, in Chemistry a PhD student must pass an examination based on their coursework and research while PhD students in Divinity must have their dissertation proposal approved by their dissertation committee.

The annual stipend amounts and lengths vary depending on the School or Division in which the degree program is based. The Schools and Divisions set standard stipend amounts for each of their programs, but may augment that with a "prize stipend" in order to attract a graduate student who has received a higher offer from a different university. The minimum stipend amount in SSD for academic year 2016-2017 was \$24,000,<sup>18</sup> set by the Graduate Aid Initiative (GAI),<sup>19</sup> and the maximum was \$34,000, for individuals pursuing a PhD in Economics. As another example, a 2015 admission letter in Chemistry offered a 9-month teaching assistantship with a \$30,600 yearly stipend.

A typical PhD student in SSD receives a 5-year Social Sciences Fellowship that "provide[s] full tuition and University student health insurance for five years, and \$23,000 annually in combination of stipend and teaching salary. The fellowship also provides four summer grants in the amount of \$3,000 each, disbursed in years two through five in accordance with departmental guidelines and with the final grant contingent upon having reached candidacy."

As another example, PhD students in Humanities receive a 5-year Division of Humanities Fellowship, which "is a combination of tuition, stipend, teaching remuneration, and the University Student Health Insurance, if you elect to take it." Provided, they make satisfactory academic progress and are registered as full-time students for autumn, winter, and spring quarters. They are also eligible for up to four summer stipends with the fourth being contingent on candidacy and any additional requirements or conditions that a particular department may impose.

The SSA webpage states, "As part of their financial aid packages, students are expected in their first two years to work as research assistant with an SSA faculty member for 10-12 hours each week and for three years as a teaching assistant (usually during years three through five)."

Stipends are typically paid in thirds at the beginning of the autumn, winter, and spring quarters and are not taxed.<sup>20</sup> However, if a PhD student is fulfilling a teaching requirement the stipend is reduced by the amount for each teaching position held during the academic year. They are then separately compensated for their teaching or research duties on either a monthly or biweekly basis through the Employer's payroll system, Workday, with taxes withheld.<sup>21</sup> For example, a fourth-year Cinema & Media Studies PhD student who was a course assistant for one 1-quarter course during the 2015-2016 academic year had her \$23,000 annual stipend reduced by \$3,000 to \$20,000. At the beginning of the autumn, winter, and spring quarters she received one-

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<sup>18</sup> The minimum GAI stipend is set to increase to \$25,000 for academic year 2017-2018.

<sup>19</sup> Divinity, Humanities, SSD use GAI to add some standardization to funding and teaching requirements for their PhD students.

<sup>20</sup> Except that taxes are withheld on all funding amounts for international students.

<sup>21</sup> The record indicates that for academic year 2016-2017 most, if not all, TAs and RAs were paid biweekly through Workday while, in years past, some TAs and RAs may have received monthly payments depending on their Division or School and department or program.



third of \$20,000 in lump sum payments and during the spring quarter, when she was a course assistant, she received biweekly payments that totaled \$3,000 minus withholdings.<sup>22</sup>

Ideally, research assistants (RAs) working in labs are funded by external grants; however, if a grant is not available or does not cover the graduate student's stipend, funding may come from the Division or department or the discretionary funds of a particular faculty member.

Graduate students are paid \$3,000 for each instance they serve as a course assistant, teaching assistant, or teaching intern while fulfilling their academic requirements. If they teach beyond the academic requirement they are paid \$3,600 per course. Writing lectors receive \$3,000 per quarter while Graduate students serving as language assistants and writing interns receive \$1,500 per quarter. The record does not reveal if they are paid more once they have fulfilled their academic requirements. Preceptors receive \$7,500 for three quarters while covered by GAI. Additionally, graduate students who have fulfilled their academic requirements and move on to serve as instructors and lecturers receive \$5,000 per quarter if in the first 5 years of their program and \$6,000 thereafter. SSD summer RAs receive \$3,000 per quarter. Computer Science PhD students receive about \$2,500 per month as RAs or TAs.<sup>23</sup> The record does not disclose the method of payment for most RAs, but their stipends are earmarked as "compensation" in admission and appointment letters. Workshop coordinators receive between \$250 and \$2,000 for the entire academic year. This pay is not deducted from their stipend and they are paid by the University. So-called non-lab RAs are paid an hourly rate biweekly or by the project, neither of which is deducted from their stipend.

The record contains limited information regarding Masters students. As they do not typically receive a funding package, Masters students do not normally receive a stipend, although they may receive some money through scholarships. However, Masters students who hold petitioned-for positions are paid for the work they perform in those classifications.

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<sup>22</sup> As outlined in a 2014 admission letter to an SSD PhD applicant states:

You may fulfill your total teaching component according to circumstances and opportunities, provided you do so before the beginning of your sixth year. Since university fellowship awards are a combination of stipend and compensation and the standard pattern of teaching assignments is two courses in each of years three and four and one course in year five, the *stipend* portion of your award will be disbursed according to the standard pattern: that is, \$23,000 less the standard teaching assistant compensation for two courses in each of years three and four and \$23,000 less the compensation for one course in year five. You will receive the *compensation* portion of your award according to your actual pattern of teaching.

[Emphasis in original.]

<sup>23</sup> The record is not clear whether or not this is part of the stipend. An e-mail awarding a GAANN fellowship, which covered the stipend for a first-year PhD student, states "After your first year, you will be supported as a research assistant (RA) or as a teaching assistant (TA) at the standard rate (\$2500 per month)."

The record contains limited evidence that PhD students earn any formal paid vacation,<sup>24</sup> but they generally only perform the duties of their petitioned-for positions when school is in session.

#### **D. Duties and Functions of Graduate Students Performing Teaching Duties**

Graduate students serving as teaching assistants (TA), course assistants (CA), and teaching interns (TI) assist faculty members with their undergraduate teaching responsibilities. In so doing, their general duties involve attending lectures, keeping up with readings, leading discussion sections, holding office hours, and assisting the instructor of record with grading exams and papers. For graduate students who perform these duties in classes which have a lab component, such as Computer Science, Statistics, Chemistry, and the SSD Core sequence Social Science Inquiry, their duties may also include leading, and even developing the lab experience. For example, a Sociology PhD student, who TAed in the Social Science Inquiry course, designed the lab tutorials she used with the undergraduates. In this instance, the instructor of record did not attend any of the lab sessions the PhD student led to observe or critique the student's performance.

Graduate students in these positions will often be responsible for developing and presenting one lecture during the quarter. Graduate students have also been responsible for giving lectures if the instructor of record is absent due to illness or otherwise unavailable.

Openings for these positions are generally solicited via postings and e-mails, particularly for Core courses. In some instances, the instructor of record has directly solicited PhD students for these positions if the instructor of record is familiar with the abilities of the PhD student due to the student having previously studied with or TAed for the instructor of record. Graduate students may also directly petition a faculty member for teaching opportunities.

Writing intern is the title for graduate students serving as a type of specialized TA in the Humanities Core. The Deputy Dean of Humanities<sup>25</sup> noted, "A writing intern is sort of a TA in the Core curriculum in the sense of that the writing intern helps the students with the writing process and teaches them writing." Since Core courses in the Humanities are typically capped at 19 undergraduates, a discussion section is not necessary. Instead, graduate student writing interns

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<sup>24</sup> The only reference to vacation is the Department of Public Health Sciences Student Handbook PhD Program 2016, which states:

As graduate students who are fully registered and receiving a full stipend for four academic quarters, all students are required to be on campus, in residence, and engaged in study or research during all four quarters, including the summer. Winter break and spring break, in accordance with the university's academic calendar, may be taken as vacation. A two-week vacation is allowed during the summer. Any longer vacations or vacations at other times require prior approval of the Curriculum Committee or the student's advisor.

However, no witnesses from Public Health Sciences testified at the hearing.

<sup>25</sup> He also holds the positions of Deputy Dean of the College and Master of the Humanities Collegiate Division.

hold writing workshops and offer individual consultations to assist undergraduates with their writing.

Graduate students serving as instructors or lecturers are the instructors of record for a particular course or section. In some cases, for example if it is a Core course, they are often teaching one of many sections. In other cases, such as the prize lectureship in SSD, the graduate student has developed the course from scratch—designing the syllabus, selecting the readings, and creating the assignments. In all cases, the instructor or lecturer is responsible for deciding the students' final grades for the course. Instructors and lecturers are usually observed by a faculty member at least once during the quarter and, when teaching Core courses, may have weekly meetings with those teaching other sections of the course. Solicitation for graduate student instructor-of-record positions varies by department. For example, in Philosophy, a graduate student must submit their curriculum vita (CV) and a complete syllabus, including course description, assignments, and readings while SSD PhD students typically teach a Core or CIV class, which has mostly predetermined materials.

Graduate students serving as language assistants primarily give undergraduate students more language exposure, mostly through face-to-face conversations that last between 20 to 30 minutes. A Sociology PhD student, who was a Spanish language assistant, testified that she spent about six hours per week meeting one-on-one with students to practice their conversational skills according to a set of predetermined prompts.<sup>26</sup>

Preceptors are graduate students who help small groups of about 8 to 10 undergraduate seniors who are writing their baccalaureate thesis (BA thesis). A BA thesis is an optional undergraduate capstone that the University encourages and is usually completed during undergraduates' senior year. The preceptor provides guidance, assistance, and feedback on the BA thesis, but is not responsible for the topic or the grading.

Lectors are graduate students who teach small writing seminars within the University's writing program, known as the Little Red Schoolhouse. The Little Red Schoolhouse offers one quarter courses in academic and professional writing for which the students taking the course receive academic credit. To become a lector, a graduate student must apply by submitting a writing sample which, if deemed suitable by the associate director of the Writing Program, admits them to the one quarter writing internship training course, Training in English. Successful completion of the training course enables them to become a lector.

Graduate students who serve as workshop coordinators are responsible for curating a themed year-long series of workshops, or moderated presentations, which are held about 5 to 8 times per quarter. A particular workshop series may have more than one coordinator, but all are responsible for securing outside speakers and internal presenters, often PhD students at the University, ensuring the work is timely submitted and distributed to participants, and reviewing and familiarizing themselves with the material in order to lead to discussion or designate a

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<sup>26</sup> The record did not provide further detail regarding how these prompts are developed.

discussion leader. They are also in charge of the budget—airfare, lodging, catering. Workshop coordinators fall under the Council for Advanced Studies, an interdisciplinary group of about 12 faculty members. Service as a workshop coordinator is separately compensated above and beyond the annual stipend and is not academically required.

All graduate students adhere to applicable policies set forth in the University's Student Manual<sup>27</sup> and the Student Employment policy, including the University's human resource policies, discussed below. For example, appointment letters for PhD students lecturing in the Humanities indicate the student is subject to "the administrative policies of the University applicable to your academic appointment."

The record evidence regarding Masters students in the above positions is limited, as no Masters students were called as witnesses and no witnesses directly interacted with Masters students who held any of the petitioned-for positions. However, the record describes Masters students serving in the positions discussed above as performing the same work under the same conditions as PhD students.

**E. The Employer's Direction and Control of Graduate Students Performing Teaching Functions**

The University considers learning to teach and to evaluate student work as an integral part of graduate students' education. Some Divisions and Departments have formal documents that set forth the expectations of graduate students in teaching positions. For example, BSD has a Teaching Assistant Handbook.

Some Departments require PhD students to complete a pedagogy course or shorter orientation program before teaching while others have no formal requirement. For example, Romance Languages & Literatures requires PhD students to take a pedagogy course before they can teach and BSD encourages its PhD students to attend a workshop offered by the University's Chicago Center for Teaching (CCT) before they are TAs. As another example, graduate students in Chemistry undergo an intensive 2-week TA Training, which can be extended into a year-long biweekly seminar. The traditional 2-week TA Training is nearly 80 hours of instruction on policies, teaching, leading discussion groups, ethics in the classroom, and practice labs and discussion groups. As the Employer states in its brief, "As a result of this program, Chemistry PhD students need little, if any, individual faculty mentoring during the course to know exactly what to do as a TA."

Certain Departments also have a structured progression from TA to instructor of record.<sup>28</sup> For example, the Deputy Dean of Humanities, who is also a German professor,<sup>29</sup> noted that

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<sup>27</sup> The record does not contain a complete copy of the Student Manual.

<sup>28</sup> Similarly, although optional, CCT's offerings are based on a 5-stage progression: orientation to teaching, fundamentals of teaching, teaching advanced skills, teaching your own class, and launching.

<sup>29</sup> He is also the Deputy Dean of the College and Master of the Humanities Collegiate Division.

Germanic Studies requires graduate students start with a pedagogy seminar on second language acquisition in their first year, then teach elementary German in their second year, intermediary German in their third year, and advanced German in their fifth year.<sup>30</sup> Chemistry instructors also take a pedagogy workshop the week before classes begin.

PhD students teaching or assisting with sections of the same course may attend weekly meetings, particularly in Core courses, where the teachers discuss course progress, readings, and problems. For example, the Deans of Humanities and SSD and the Chair of Statistics testified that at the weekly meetings instructors outline the material to cover in a given week and attempt to address problems that anyone, teacher or assistant, may raise. The Chair also noted that even when a graduate student is the instructor of record for a section, Statistics faculty play a guidance role in the weekly meetings, determining the pace and homework assignments for the course.

Mentoring, both formal and informal, can play a large role in training and ongoing instruction for graduate students serving as TAs. Some faculty extensively mentor their student assistants. For example, the Dean of Graduate Affairs for BSD meets regularly with her TAs both in and out of the course. She explains various methods for teaching in different situations and discusses difficulties that may arise in class and their potential solutions. She sits in on her TAs' initial discussion sections and gives feedback. She collaborates with her TAs in developing grading rubric and critiques their implementation. She also has her TAs guest lecture so she can observe and comment on their performance.

Similarly, the Dean of Humanities has her TAs give one standalone lecture, which she observes, and provides in-depth feedback. She meets with her TAs to go over the course material for the week and discusses goals for the students taking the course. She has her TAs provide exam questions and paper topics, which are further developed collaboratively. She explains grading rubric and provides feedback on her TAs' comments. She also explains expectations for office hours and what she hopes students will take away from meeting with the TA. While some faculty and TAs discuss office hours, it is undisputed that TAs' office hours are unsupervised and almost never observed.

In contrast, some graduate students, particularly those with previous teaching experience, may not see their faculty member outside of the classroom. A Sociology PhD, who had been a public school teacher, testified that after an initial meeting regarding expectations she basically had no further communication outside of attending lectures with three different professors for whom she TAed.

Instructors of record generally provide TAs, CAs, TIs, and writing interns with the rubric for grading,<sup>31</sup> particularly if the assignment is more subjective, although some witnesses testified that they did not receive grading rubric when they held these positions. The grading rubric for Core courses follows a more uniform standard since the same assignments are given by different

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<sup>30</sup> The fourth year is considered the "dissertation year" for German PhD students.

<sup>31</sup> Graduate students holding instructor of record positions develop their own rubric.

teachers in multiple sections. These rubrics provide TAs with a general guide as to what they should be considering in their review and grading of assignments and exams.

The University's Student Employment policy limits full-time students, including graduate students, to employment of 20 hours or less per week; however, this limitation may be waived by the appropriate dean.<sup>32</sup> According to the policy:

While employed by the University, the student is covered by the University's human resources (HR) policies and procedures and may be disciplined or terminated from employment for policy noncompliance or inadequate performance. Students bear the responsibility of reviewing the Employee Handbook and becoming acquainted with the University's HR policies, all of which are available online at HR's webpage.

The Employee Handbook<sup>33</sup> applies to all employees of the University; however, as noted above, PhD students engaged in teaching work to satisfy their academic requirement are not disciplined based on performance, but may be disciplined for misconduct.

The University also houses the Chicago Center for Teaching (CCT),<sup>34</sup> "a traditional university center for teaching whose purpose is to advance the skills of teaching among anyone who teaches at the University." It offers pedagogical courses, seminars, workshops, and other programs to graduate students and faculty. The majority of these are optional, although some departments or programs may require CCT orientation sessions before graduate students may teach.<sup>35</sup> CCT offers a Teaching Assistant course, where students (and faculty) both observe and are observed by peers, give and receive feedback on their performance, and create an online teaching portfolio. CCT is under the Provost's Office. The majority CCT's offerings are optional with the exception of certain training courses that must be completed before a graduate student can be hold a writing-related positions such as lector, preceptor, or writing intern.

#### **F. Duties and Functions of Graduate Students Serving as Research Assistants**

Research Assistants (RAs) perform research under the funding and guidance of a research advisor, or principal investigator (PI), a faculty member whose broad research interests typically align with the graduate students' dissertation,<sup>36</sup> and are primarily found in the natural sciences—

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<sup>32</sup> In relevant part, "The University will not employ full-time students for more than 20 hours per week during quarters of full-time registration without the express permission of an area dean of students or their designee exceptions are governed by the policies of individual divisions and schools. Teaching and research are critical to the University's academic enterprise and will therefore be prioritized in considering exceptions."

<sup>33</sup> The record does not contain complete copies of either the Employee Handbook or the University's HR policies.

<sup>34</sup> CCT existed as the Center for Teaching and Learning from about 1999 to 2014.

<sup>35</sup> For example, a deputy dean in Humanities testified that new Core teachers are encouraged to take a 2-day orientation, but attendance is not recorded, while a Sociology PhD candidate testified that she had to take a 1-day orientation program before she could be a TA.

<sup>36</sup> PhD students in BSD.

BSD and PSD. The RA develops and tests hypotheses, refines experiments, and assists in publishing the results of the experiments. PhD students usually select a research advisor within their first two years, depending on the program. For example, Chemistry faculty members hold a 2-day symposium for all incoming PhD students, who then select a research group by the end of their first quarter. In BSD, first year PhD students have three rotations through various labs before choosing. The group's or lab's area of research is customarily associated with the dissertation research interest of the student.

PhD students in SSD who receive summer funding are classified as RAs only for the summer quarter so they can be on a faculty member's grant "to get supplemental summer income as they carry out their summer research," according to the Dean of SSD.

The duties of graduate students holding RA positions vary depending on the particular research group and lab. An RA in Chemistry works with different equipment than one in Computer Science or Psychology. As noted above, RAs in BSD and PSD typically select a group or lab aligned with their dissertation research interest. Because RAs are often funded by external grants, their experiments must fall broadly within the research described in the grant. Then, the RA develops and tests hypotheses, refines experiments, and assists in publishing the results of the experiments. There is no limit to the number of hours a PhD in BSD or PSD may work as an RA since their research is related to her or his dissertation topic.

Graduate students who hold RA positions, like those in teaching positions, are subject to the University's HR policies. For example, BSD expects its RAs to have read, understand, and abide by policies regarding Business Conduct, Conflict of Interest, Treatment of Confidential Information, Smoking/Non Smoking, Substance Abuse, Workplace Violence, Harassment, Discrimination and Sexual Misconduct, Mandatory Reporting of Child Abuse, and Information Technology Use and Access.

An RA may also be employed outside of a laboratory. So-called non-lab RAs<sup>37</sup> generally assist a particular faculty member with academic research and professional preparation, such as drafting presentations, summarizing articles on a particular topic, verifying references, compiling bibliographies and reading lists, ensuring reading availability at bookshops and through library reserve, and creating databases. These positions do not have a teaching component and do not fulfill any University teaching requirement although some may give academic credit.

#### **G. The Employer's Direction and Control of Graduate Students Serving as Research Assistants**

There are Divisional training requirements for RAs in PSD and BSD and most labs have orientation and training programs specific to their research. RAs receive training in research equipment and methodology from their research group or lab, including their advisor or PI. For example, PSD requires its students to complete online training modules in the responsible

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<sup>37</sup> The term "non-lab RA" appears to be a colloquialism used primarily by the University's faculty and does not appear to be an official title.

conduct of research through its Collaborative Institutional Training Initiative (CITI), which is customizable, with certain modules being optional depending on the program.

In a laboratory setting, RAs receive safety training, including OSHA, and proper animal handling, where applicable, and are not subject to the 20-hour time restriction of the University's Student Employment policy; however, the University's HR policies still apply. The Student Employment policy, including the University's HR policies, applies in full to so-called non-lab RAs.

While not every research project requires regular collaboration between RA and faculty member, mentoring, both formal and informal, can play a large role in training and ongoing instruction for RAs. For example, a PhD student in Developmental Biology testified that he chose his research group based on the mentoring style of the PI rather than the focus of the lab's current research, which was only tangentially related to the student's interests.

The PI often guides an RA's research by suggesting modifications to experiments and areas of focus. For example, a Chemistry PhD student testified that his research advisor reviews his results and highlights variables that do not require immediate resolution. Faculty members may also request RAs to perform specific research. The same PI asked the same RA to work on a particular project related to the PhD student's candidacy.

#### **H. Benefits to the University**

It is undisputed that the University offers the highest quality of education to its students, both graduate and undergraduate, and is a top-tier research institution. Every faculty witness acknowledged the importance of training the University's PhD students in pedagogy so that, among other things, undergraduates received high quality instruction and educational support even when such training required additional time from faculty members.

Some departments rely on graduate students in order to provide this excellent education. A Mathematics professor testified that the University would not be able to offer smaller more intimate undergraduate courses if it could not use graduate students as Teaching Assistants (colloquially called College Fellows) and standalone lecturers. Mathematics PhD students are required to TA three quarters of Mathematics courses in their second year, grading assignments and holding office hours, which frees up about 10 hours per week for the faculty instructor of record. In their third year, Mathematics PhD students start teaching standalone courses and are the majority of lecturers for lower-level undergraduate mathematics courses, such as calculus. Courses or sections taught by PhD student instructors of record do not have TAs even when their faculty counterparts do. These are classes that the University does not have to pay faculty to teach.

Similarly, the Chair of the Statistics Department testified that "essentially all [Statistics] courses use TAs except for the most advanced graduate courses that are basically at the level of a seminar that might have three or four [students], but any undergraduate course and any introductory graduate course will require teaching assistants due to the heavy load of grading homework, and additional office hours and study sections with the students." For example, an



introductory statistics course with three sections had five graduate students working as TAs to handling all of the grading and office hours.<sup>38</sup> According to the Chair, “graduate students in Statistics Department are required to TA for two quarters a year in order to be [financially] supported fully.”

As a world-renown research institution, a primary mission of the University is to conduct original research. Graduate students serving as RAs in research groups and laboratories both support and actively contribute to this mission when they perform experiments at the University, advancing scientific knowledge and achieving results necessary for continued grant funding. RAs also write grant proposals that lead to the University securing funding for its experiments. The Employer also benefits from the research they do because the Employer owns any patents or software developed by graduate students.

Similarly, so-called non-lab RAs support both faculty members’ teaching and publication endeavors. One faculty witness testified that his RA’s insight helped him convert many previously published articles into a book. Other work, such as preparing books and presentations for courses, directly support faculty members’ ability to provide high quality education.

#### IV. LEGAL ANALYSIS

In *Columbia University*, 364 NLRB No. 90 (2016), the Board applied the common law doctrine of agency, which “generally requires that the employer have the right to control the employee’s work, and that the work be performed in exchange for compensation” to determine whether or not student assistants were employees under Section 2(3) of the Act. *Id.*, slip op. at 15. The Board held that students were statutory employees because they performed teaching and research services directed by the university in exchange for compensation. “Statutory coverage is permitted by virtue of an employment relationship; it is not foreclosed by the existence of some other, additional relationship that the Act does not reach.” *Id.*, slip op. at 2. The *Columbia University* Board “rejected an inquiry into whether an employment relationship is secondary to or coextensive with an educational relationship,” finding that a student may be considered a common-law employee if their compensated work simultaneously advances their educational interests as well as the University’s interests. *Id.*, slip op. at 17. Even where the economic component is relatively small in comparison to other aspects of the relationship, “the payment of compensation, in conjunction with the employer’s control, suffices to establish an employment relationship for purposes of the Act.” *Id.*, slip op. at 6. The Employer maintains that *Columbia University* was wrongly decided. As I am constrained to apply Board precedent, an assertion that *Columbia University* was wrongly decided is a matter that may be resolved only by the Board. As further discussed, record evidence demonstrates that the Employer’s graduate students who hold teaching and/or research positions are employees within the meaning of the Act.

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<sup>38</sup> The course also had an undergraduate grader, who graded the easier questions and did not hold office hours.

**A. Employee Status of Petitioned-For Employees**

The Employer argues that its graduate students who hold teaching positions are distinguishable from the student assistants whom the Board found to be statutory employees in *Columbia University* and, therefore, it has met its burden of demonstrating that they are not statutory employees. In this regard, the *Columbia University* Board found that the fact that the student assistants at issue there “were thrust wholesale into many of the core duties of teaching—planning and giving lectures, writing exams, etc., including such critical courses as Columbia’s Core Curriculum, suggests that the purpose extends beyond the mere desire to inculcate teaching skills.” *Id.*, slip op. at 16. In the instant case, the Employer contends that the extensive training and guidance it offers to PhD students in the form of courses, seminars, workshops, orientations, training, etc. demonstrates that teaching is part-and-parcel of the students’ educational experience and that, unlike the student assistants in *Columbia University*, the relationship is solely educational. However, as discussed below, graduate students who teach and/or research to fulfill their academic requirements do so under the direction and control of the University, for the benefit of the University, and are compensated by the University for those duties; thus, their relationship with the University is not solely educational.

Importantly, the Board in *Columbia University* rejected “a focus on whether student assistants have a ‘primarily educational’ employment relationship with their universities,” explaining “[w]e can discern no policies that speak to whether a common-law employee should be excluded from the Act because his or her employment relationship co-exists with an educational or other non-economic relationship. Even when such an economic component may seem comparatively slight, relative to other aspects of the relationship between worker and employer, the payment of compensation, in conjunction with the employer’s control, suffices to establish an employment relationship for purposes of the Act.” *Id.*, slip op. at 6. In fact, the Board has long recognized that an individual may perform multiple roles for an employer, some of which are covered by the Act and some that are not. See, generally, *Adelphi University*, 195 NLRB 639 (1987) (Board held dual-function faculty member to be part of faculty unit even though he had supervisory authority over his secretary, which were out-of-unit supervisory responsibilities). Such is the case regarding the University’s TAs and RAs in the instant matter.

**1. Graduate students serving in teaching positions perform services for the benefit of the Employer, under its direction and control, for which they are compensated**

Record evidence demonstrates that graduate students teach or assist in teaching a number of undergraduate courses, including general education Core courses that compose about one-third of undergraduate students’ required coursework. For example, the Mathematics department relies on graduate students to teach a majority of its introductory courses. Similarly, the Statistics department needs graduate students to TA in order to maintain smaller class sizes, and graduate students make up the majority of language assistants in undergraduates’ foreign language courses.

The record also establishes that the Employer benefits from this work. In this regard, the Employer must provide instruction to its undergraduate students—classes for them must be taught, assignments must be graded, one-on-one assistance is expected to be provided. In providing these services for the Employer graduate students lead discussion groups, grade papers and exams, and maintain office hours; work one-on-one with undergraduate students to advance those students' foreign language proficiency; provide guidance to undergraduates writing the BA thesis; teach small writing seminars; and, in the courses they teach as instructors of record, develop courses and syllabi, select readings, and teach course sections eliminating the need for a faculty member altogether. In so doing, graduate students reduce the faculty member's workload by performing duties that a faculty member or non-student employee would otherwise have to perform and advance the Employer's mission of providing the highest quality of education for its undergraduate population.

The Employer directs the work of graduate students performing teaching functions through extensive training and regulations. Most departments have specific mandatory training that must be completed before a graduate student may serve as a TA, CA, TI, writing intern, lector, or preceptor. The faculty member for whom the student works instructs them how to grade student assignments, gives feedback on standalone lectures, and may work collaboratively with the graduate student on developing assignments or grading rubric. Many programs, such as German and Mathematics, have a recommended or required progression from TA to instructor of record. Writing interns and lectors must successfully interview for the position and complete a one quarter training course before teaching. Significantly, the Employer, through CCT, offers intensive teacher training programs both to its student assistants as well as its faculty. Moreover, the Employer exhibits control over graduate students performing teaching services by virtue of its expectations that they will comply with the Employer's policies and requirements as set forth, for example, in its web pages, handbooks, Graduate Student Employment and University HR policies.

Graduate students who teach are compensated for the beneficial services they provide the Employer in the form of taxable stipends. As noted, earnings from teaching assignments are deducted from PhD students' annual stipends. In some cases, these earnings are taxed and paid biweekly while the remainder of the stipend is paid quarterly and taxes are not withheld.<sup>39</sup> While not dispositive of the issue, throughout the Employer's manuals, handbooks and other documents, these payments are referred to as "wages," "salaries," "compensation," and "remuneration," and duties are referred to as "work."

**2. Graduate students serving as research assistants perform services for the benefit of the Employer, under its direction and control, for which they are compensated**

The Employer contends that its research assistants are distinguishable from those whom the Board found to be statutory employees in *Columbia University*, in that in the instant case, the

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<sup>39</sup> Taxes are withheld on all funding amounts for international students.

individual student chooses the lab where they research and their research advisor, are guided by faculty during the entire course of their research, that they are not “directed” in the same way that an employer directs or controls an employee’s work, and that the primary goal of the relationship between faculty and research assistants is to strengthen their education and prepare them to for the potential of running their own labs. This argument was expressly rejected by the Board in *Columbia University*. “The fact that a research assistant’s work might also advance his own educational interests as well as the University’s is not a barrier to finding statutory-employee status.” *Id.*, slip op. at 17. While some research assistants may operate with a large degree of independence, their research must still be within the terms of the grant and the Employer must account for the cost of their research.

Moreover, record evidence demonstrates that research assistants meet the common-law test. Specifically, research assistants provide services for the benefit and under the direction and control of the Employer. In this regard, research assistants perform research under the guidance of their respective faculty member, publish under or co-publish studies with their PIs, and help secure funding for research by applying for grants.

The record shows, as a research institution, one of the Employer’s primary missions is to conduct original research; and, therefore, the Employer directly benefits from the assistance and contributions of RAs to the research it performs. Testimony from the Dean of BSD acknowledges that graduate students working in the Employer’s labs further its mission to conduct original research. In research labs, RAs perform many tasks that faculty and non-student staff would otherwise do. Moreover, the Employer also benefits from the research they do because the Employer owns any patents or software developed by graduate students.

The Employer directs the work of graduate student RAs through extensive training and regulations. Most programs have specific mandatory training that must be completed before a graduate student may serve as an RA. Departments in PSD customize CITI with mandatory modules that must be completed while BSD requires safety and other training, where applicable. Training on specialized equipment comes from PIs and non-student employees. While graduate students choose where they will RA, their research must be covered by the chosen lab’s or research group’s area. PIs regularly meet and discuss RA’s’ experiments and progress, guiding the RA’s’ focus and suggesting modifications to their experiments. Moreover, the Employer exhibits control over graduate student RAs by virtue of its expectations that they will comply with the Employer’s policies and requirements as set forth, for example, in its web pages, handbooks, Graduate Student Employment and University HR policies.

Graduate student RAs are compensated for the beneficial services they provide the Employer either under their PIs’ grants or from University funds. Although the record does not detail how RAs in each program are specifically paid, those in BSD receive a W-2 statement for their RA position and the compensation is subject to state and federal withholdings. While not dispositive of the issue, as was the case for TAs, throughout the Employer’s manuals, handbooks and other documents, these payments are referred to as “wages,” “salaries,” “compensation,” and “remuneration,” and duties are referred to as “work.”

Inasmuch as graduate students serving as teaching assistants and research assistants perform services for the benefit of the Employer, under its direction and control, for which they are compensated, I find that they are employees within the meaning of Section 2(3) of the Act. I further find that a unit comprised of such employees to be appropriate for purposes of collective bargaining. Accordingly, I now turn to the consideration of the appropriateness of the petitioned-for unit.<sup>40</sup>

**B. The Petitioned-For Unit Is an Appropriate Unit**

In determining whether or not a unit of student assistants is appropriate, the Board explained in *Columbia University*, slip op. at 18:

As recognized by the Supreme Court, Section 9(a) [of the Act] suggests that employees may seek to organize “a unit” that is “appropriate”—not necessarily the single most appropriate unit. In other words, more than one appropriate bargaining unit logically can be defined in any particular factual setting. [Citations omitted.]

In determining whether the petitioned-for employees are *an* appropriate unit, the *Columbia University* Board reiterated that “a unit is appropriate if the employees in the proposed unit constitute a readily identifiable grouping and share a community of interest.” *Id.*, slip op. at 19, citing *Specialty Healthcare & Rehabilitation Center of Mobile*, 357 NLRB 934, 946 (2011). The Board uses a multifactor test to determine community-of-interest test consisting of:

[W]hether the employees are organized into a separate department; have distinct skills and training; have distinct job functions and perform distinct work, including inquiry into the amount and type of job overlap between classifications; are functionally integrated with the Employer’s other employees; have frequent contact with other employees; interchange with other employees; have distinct terms and conditions of employment; and are separately supervised.

*Ibid.*, citing *Specialty Healthcare* at 942, quoting *United Operations, Inc.*, 338 NLRB 123, 123 (2002). The extent of organizing may also be considered as one factor, although not a controlling one. *NLRB v. Metropolitan Life Insurance Co.*, 380 U.S. 228, 230 (1964).

In the instant case, all employees in the petitioned-for unit constitute a readily identifiable group—they are all graduate students and employees of the Employer whose work benefits the Employer by advancing the Employer’s educational mission. Record evidence further establishes

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<sup>40</sup> The Employer does not appear to contest that so-called non-lab RAs, workshop coordinators, Masters students, or PhD students teaching in excess of their academic requirements are employees within the meaning of the Act. As it states in its brief, “They seek out and accept these assignments on their own to enhance their own personal learning experience, for the income derived not as part of their academic program. Indeed, the teaching and research that they voluntarily undertake can be and often is completely unrelated to their educational interest.” Moreover, the record indicates that these students can suffer consequences due to poor performance, such as not being reappointed. Clearly, these individuals perform these services for the benefit and under the direction of the Employer and receive compensation for so doing.

that employees within the proposed unit share a community of interest. Specifically, all receive compensation for their services, are subject to the Employer's employment policies, including its HR policies, and work directly under the guidance of faculty members.

The Employer maintains that Masters students, so-called non-lab research assistants, workshop coordinators, and PhD students teaching in excess of their academic requirements do not share a community of interest with PhD students who teach and research as part of their academic requirements in part because of a difference in the manner in which each are compensated. The Employer notes that Masters students who choose to teach are compensated by the hour, non-lab research assistants by the hour or by project, workshop coordinators receive a nominal stipend for the academic year above and beyond traditional PhD funding, and PhD students teaching in excess of degree requirements are compensated specifically for those extra teaching assignments. However, this is a distinction without a difference inasmuch as record evidence demonstrates that all employees in the proposed unit are compensated for their services related to the petitioned-for positions in some manner.

Importantly, all of the graduate students in the petitioned-for classifications share a common purpose in that they "perform a supplemental educational service." That is, their duties are functionally integrated into a system designed to meet the University's teaching and research missions in non-faculty roles." *Columbia University*, slip op. at 19. While there may be some variance "in the difficulty and independence of work assignments, as well as in pay and benefits," *ibid.*, the proposed unit shares an "overarching interest in addressing issues pertaining to one's simultaneous employment and enrollment as a student [to] provide[] ample basis on which to pursue a common bargaining agenda." *Id.*, slip op. at 20. Accordingly, I find the petitioned-for unit is appropriate.<sup>41</sup>

## V. CONCLUSION

Based on the above, I direct an election in the following unit:

Included: All graduate students who are full-time and regular part-time teaching assistants, research assistants, course assistants, workshop coordinators, writing interns, preceptors, language assistants, instructors, lecturers, lectors, and teaching interns in the School of Divinity, School of Social Services Administration, Division of Social Sciences, Division of Humanities, Division of Biological Sciences, and Division of Physical Sciences employed by the Employer at its campus in Chicago, Illinois.

Excluded: All other employees, managerial employees, guards, and supervisors as defined in the Act.

## OTHERS PERMITTED TO VOTE:

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<sup>41</sup> This includes Masters students holding any of the positions included in the unit description.

At this time, no decision has been made regarding whether graduate students who are employed in the Employer's libraries and also hold positions as teaching assistants, research assistants, course assistants, workshop coordinators, writing interns, preceptors, language assistants, instructors, lecturers, lectors, and teaching interns<sup>42</sup> are included in, or excluded from, the instant bargaining unit, and individuals in those classifications may vote in the election but their ballots shall be challenged since their eligibility has not been resolved.

The eligibility or inclusion of the others permitted to vote will be resolved, if necessary, following the election.

## **VI. DIRECTION OF ELECTION**

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. Employees will vote whether or not they wish to be represented for purposes of collective bargaining by Graduate Students United, affiliated with Illinois Federation of Teachers and the American Association of University Professors, AFL-CIO.

### **A. Election Details**

At the hearing, the parties agreed to a manual-ballot election in the autumn after the start of the quarter. The election will be held on October 17 and 18, 2017 from 9:00 a.m. to 9:00 p.m. at locations to be determined.

### **B. Voting Eligibility**

As the Supreme Court recognized in *NLRB v. Yeshiva University*, 444 U.S. 672, 680-681 (1980), "the principles developed for use in the industrial setting cannot be imposed blindly on the academic world." While the Employer highlighted this warning at hearing and in its brief, it contends that no special eligibility formula is needed and that the traditional eligibility requirement—those employees on the payroll immediately preceding the date of the direction of election—should apply. During the hearing, the Employer argued that past service in one of the included unit positions was not indicative of an expectation of future employment,<sup>43</sup> as the University discourages graduate students from teaching beyond their academic requirements, which vary by program. The Petitioner, on the other hand, contends that a 1-year "look-back" eligibility formula should apply, to include not only graduate students who are currently serving in the petitioned-for positions but those who have served in those capacities at any time during

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<sup>42</sup> As petitioned for in case 13-RC-198365.

<sup>43</sup> Given that some programs allow PhD students to take quarters or even years off from their teaching and research requirements, that is technically true for a particular quarter. However, the record is clear that the students have teaching and research requirements, which must be met, and until fully met there is an expectation of further employment. Further, as discussed above, graduate students who continue their studies may elect to teach, research, or work even after satisfying their requirements.

the past academic year. As will be discussed, I find that a 1-year look-back formula for eligibility is appropriate.

The goal in crafting an appropriate eligibility formula is to “strike a balance between the need for an ongoing connection with a unit and concern over disenfranchising voters who have a continuing interest notwithstanding their short-term, sporadic or intermittent employment.” *Columbia University*, at slip op. 21-22, citing *Steiny & Co.*, 308 NLRB 1323, 1325 (1992) and *Trump Taj Mahal Casino*, 306 NLRB 294 (1992). The Board noted that, as here, “there are employees in the unit who, despite not being on the payroll at the time of the election, have a past history of employment that would tend to signify a reasonable prospect of future employment.” *Id.* at 22.

Under the particular circumstances presented here, payroll periods and cutoff dates are difficult to apply. Although graduate students typically receive the funding portion of their stipends at the beginning of each quarter, once they have begun serving in a unit position the employees are often paid, at least a portion of their stipend, biweekly until the end of the quarter or academic year depending on the position. Due to the variance of how unit employees are paid, instead of the payroll date concept used in many circumstances, a better descriptor is the particular quarter at issue. As the parties have agreed to an election after the start of the autumn 2017 quarter, under a traditional analysis and using quarters, the payroll cutoff date would be the spring 2017 quarter. Graduate students who held unit positions during summer 2017, may or may not have been receiving compensatory stipend payments last quarter.

It is also clear from the record that graduate students do not serve in the majority of unit positions continuously during their degree program. In some departments, they may choose which quarters they serve as RAs, TAs, CAs, teaching interns, or writing interns while others may not. The fact that a graduate student is not serving in a unit position during the quarter, or even the academic year, is not an indication that they will not do so in the future. This is true even if a graduate student has already satisfied their teaching or research requirements. For example, graduate students in their sixth year and beyond who may no longer be fully funded can still serve, and are often encouraged to serve, in unit positions in order to generate income.

Based on the evidence adduced at the hearing and the positions of the parties, I am directing an election in the petitioned-for unit according to the following eligibility formula:<sup>44</sup>

All graduate students, including Masters students, who have received compensation for work performed in a unit position in at least one quarter of Autumn 2016, Winter 2017, Spring 2017, Summer 2017, or Autumn 2017 who have not yet attained their degree or otherwise completed their course of study with the Employer.

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<sup>44</sup> The Board has used look-back periods in academic settings with circumstances similar to those here, such as adjuncts, who have inconsistent but regular employment. See, for example, *Catholic University of America*, 202 NLRB 727 (1973), clarifying 201 NLRB 929 (1973); *C.W. Post Center of Long Island University*, 198 NLRB 453, 454 (1973). See also, *Pacific Lutheran University*, 361 NLRB No. 157 (2014) (Board denied review of regional director’s decision to use an eligibility formula with look-back period).



Employees engaged in an economic strike, who have retained their status as strikers and who have not been permanently replaced, are also eligible to vote. In addition, in an economic strike that commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements, are eligible to vote.

Also eligible to vote using the Board's challenged ballot procedure are those individuals employed in the classifications whose eligibility remains unresolved as specified above and in the Notice of Election.

### C. Voter List

As required by Section 102.67(l) of the Board's Rules and Regulations, the Employer must provide the Regional Director and parties named in this decision a list of the full names, work locations, shifts, job classifications, and contact information (including home addresses, available personal email addresses, and available home and personal cell telephone numbers) of all eligible voters.

To be timely filed and served, the list must be *received* by the regional director and the parties by **Thursday August 10, 2017**. The list must be accompanied by a certificate of service showing service on all parties. **The region will no longer serve the voter list.**

Unless the Employer certifies that it does not possess the capacity to produce the list in the required form, the list must be provided in a table in a Microsoft Word file (.doc or .docx) or a file that is compatible with Microsoft Word (.doc or .docx). The first column of the list must begin with each employee's last name and the list must be alphabetized (overall or by department) by last name. Because the list will be used during the election, the font size of the list must be the equivalent of Times New Roman 10 or larger. That font does not need to be used but the font must be that size or larger. A sample, optional form for the list is provided on the NLRB website at [www.nlr.gov/what-we-do/conduct-elections/representation-case-rules-effective-april-14-2015](http://www.nlr.gov/what-we-do/conduct-elections/representation-case-rules-effective-april-14-2015).

When feasible, the list shall be filed electronically with the Region and served electronically on the other parties named in this decision. The list may be electronically filed with the Region by using the E-filing system on the Agency's website at [www.nlr.gov](http://www.nlr.gov). Once the website is accessed, click on **E-File Documents**, enter the NLRB Case Number, and follow the detailed instructions.

Failure to comply with the above requirements will be grounds for setting aside the election whenever proper and timely objections are filed. However, the Employer may not object to the failure to file or serve the list within the specified time or in the proper format if it is responsible for the failure.

No party shall use the voter list for purposes other than the representation proceeding, Board proceedings arising from it, and related matters.

**D. Posting of Notices of Election**

Notices of Election will be electronically transmitted to the parties, if feasible, or by overnight mail if not feasible. Section 102.67(k) of the Board's Rules and Regulations requires the Employer to timely post copies of the Board's official Notice of Election in conspicuous places, including all places where notices to employees in the unit are customarily posted. You must also distribute the Notice of Election electronically to any employees in the unit with whom you customarily communicate electronically. In this case, the notices must be posted and distributed **before 12:01 a.m. on Friday, October 12, 2017**. If the Employer does not receive copies of the notice by **October 9, 2017**, it should notify the Regional Office immediately. Pursuant to Section 102.67(k), a failure to post or distribute the notice precludes an employer from filing objections based on nonposting of the election notice.

To make it administratively possible to have election notices and ballots in a language other than English, please notify the Board Agent immediately if that is necessary for this election. If special accommodations are required for any voters, potential voters, or election participants to vote or reach the voting area, please tell the Board Agent as soon as possible.

**RIGHT TO REQUEST REVIEW**

Pursuant to Section 102.67 of the Board's Rules and Regulations, a request for review may be filed with the Board at any time following the issuance of this Decision until 14 days after a final disposition of the proceeding by the Regional Director. Accordingly, a party is not precluded from filing a request for review of this decision after the election on the grounds that it did not file a request for review of this Decision prior to the election. The request for review must conform to the requirements of Section 102.67 of the Board's Rules and Regulations.

A request for review may be E-Filed through the Agency's website but may not be filed by facsimile. To E-File the request for review, go to [www.nlr.gov](http://www.nlr.gov), select E-File Documents, enter the NLRB Case Number, and follow the detailed instructions. If not E-Filed, the request for review should be addressed to the Executive Secretary, National Labor Relations Board, 1015 Half Street SE, Washington, DC 20570-0001. A party filing a request for review must serve a copy of the request on the other parties and file a copy with the Regional Director. A certificate of service must be filed with the Board together with the request for review.

Neither the filing of a request for review nor the Board's granting a request for review will stay the election in this matter unless specifically ordered by the Board.

Dated: August 8, 2017 in Chicago, Illinois

A handwritten signature in black ink, appearing to read "Peter Sung Ohr", written over a horizontal line.

Peter Sung Ohr, Regional Director  
National Labor Relations Board – Region 13  
Dirksen Federal Building  
219 South Dearborn Street, Suite 808  
Chicago, Illinois 60604-2027