

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 1**

NORTHEASTERN UNIVERSITY

Employer

And

Case 01-RC-311566

**GRADUATE EMPLOYEES OF NORTHEASTERN
UNIVERSITY - UAW**

Petitioner

DECISION AND DIRECTION OF ELECTION¹

Northeastern University (the Employer or the University) is a private, non-profit university with its main campus located in Boston, Massachusetts. In addition to its Boston campus, the University has satellite campuses located in Arlington, Virginia; Burlington, Massachusetts; Charlotte, North Carolina; London, United Kingdom; Miami, Florida; Nahant, Massachusetts; Oakland, California; Portland, Maine; San Francisco, California; San Jose, California; Seattle, Washington; Toronto, Canada; and Vancouver, Canada.

The Petitioner, Graduate Employees of Northeastern University - UAW, seeks to represent a bargaining unit comprised of approximately 2000 graduate students enrolled at Northeastern University who provide instructional services or research services at the Boston, Nahant, and Burlington campuses.

The Employer takes the position that hourly-paid student-employees do not share a community of interest with the other petitioned-for student-employees; that the petitioned-for unit is not comprised of a readily identifiable group; and that the students employed at the Nahant and Burlington campuses do not share a community of interest with the students employed at the Boston campus.²

¹ The petition in this case was filed under Section 9(c) of the Act. The parties were provided opportunity to present evidence on the issues raised by the petition at a hearing held via videoconference before a hearing officer of the National Labor Relations Board (the Board). I have the authority to hear and decide these matters on behalf of the Board under Section 3(b) of the Act. I find that the hearing officer's rulings are free from prejudicial error and are affirmed; that the Petitioner is a labor organization within the meaning of the Act; that there is no contract bar or other bar to election in this matter; and that a question affecting commerce exists concerning the representation of certain employees of the Employer.

² The Employer argues that the Petitioner should have been precluded from responding to the issues raised by the Employer with respect to the appropriateness of the petitioned-for unit because the Petitioner's responsive statement of position was insufficiently detailed. The Regional Director denied the Employer's motion to preclude during the hearing after determining that the Petitioner properly filed and met its burden in its responsive statement of position, and I renew that determination here.

As set forth below, I find that there is a community of interest among the petitioned-for employees, regardless of the method by which they are paid or the location at which they work. Accordingly, I shall direct an election in the petitioned-for unit.

FACTS

Procedural History

In its pre-hearing Statement of Position, the Employer contended that the petitioned-for unit is not appropriate. The Petitioner argued that the issues raised by the Employer were governed by the Board's decision in *Columbia University*, 364 NLRB No. 90 (2016) and moved that the Employer be required to make an offer of proof as to why it should be permitted to litigate issues governed by settled law. The Regional Director agreed and asked that the Employer make an offer of proof in support of its contention that the graduate students at issue here are distinctly different from the graduate students in *Columbia* that the Board should find that they are not employees and do not share a community of interest with other graduate student employees.

Accordingly, the Employer made an offer of proof in support of the contentions raised in its Statement of Position.³

In its offer of proof, the Employer argued that due to Northeastern University's focus on experiential learning, graduate students receiving Stipended Graduate Assistantships (SGAs) are not employees even pursuant to the Board's decision in *Columbia* and, that to the extent that *Columbia* holds that such students are employees, *Columbia* was wrongly decided. Students engaged in experiential learning often conduct research at one of the University's partner organizations. The partner organizations submit payment to the University in return for the students' efforts and the University continues to monitor the students' academic progress. The Employer also emphasized that student research assistantships are assigned to correlate with students' own research interests and that students are, therefore, being paid to earn their degrees rather than being paid to provide services to the University.⁴

The Regional Director determined that the Employer did not provide sufficient evidence to distinguish itself from the employer in *Columbia* with respect to the employee status of graduate students. The Employer's argument that student research assistants are earning their degrees rather than providing services to the Employer was explicitly considered and rejected by the *Columbia* Board when it overturned the *Brown University* holding that "the graduate assistants *cannot* be statutory employees because they 'are primarily students and have a primarily educational, not economic, relationship with their university.'" *Id.* (quoting *Brown University*, 342 NLRB 483, 487 (2004)). The *Columbia* Board concluded that "it is appropriate to extend statutory coverage to students working for universities covered by the Act unless there are strong reasons not to do so." *Id.* at 1081. The Board continued that "the fact that a research assistant's work might advance his

³ Tr. pages 31 through 59.

⁴ As is discussed below, several witnesses testified that in practice, the research they conduct as research assistants does not or cannot contribute to their dissertations.

own educational interests as well as the University's interests is not a barrier to finding statutory employee status." *Id.* at 1096.

In its offer of proof, the Employer also described the differences between hourly-paid graduate students and graduate students receiving Stipended Graduate Assistantships (SGAs), arguing that the two groups of graduate students do not share a community of interest. The Employer was permitted to litigate this issue, as detailed below. The other issues raised by the Employer in its offer of proof—including the appropriateness of the petitioned-for multilocation unit and eligibility of students seeking master's degrees, the applicability of the Family Educational Rights and Privacy Act (FERPA) to NLRB proceedings—were also litigated to the extent necessary. All potential witnesses specifically cited by the Employer in its offer of proof, as well as additional witnesses, testified at the hearing.

Finally, the Petitioner initially stated that its proposed unit description was intended to include fellows enrolled in Northeastern and paid by the University. The Petitioner has since agreed not to seek fellows. In its brief, the Employer acknowledges that the Petitioner disclaimed interest in representing the fellows. Thus, any comparisons made between the fellows enrolled at Northeastern and the fellows at issue in the recently issued decision by the Region in *Massachusetts Institute of Technology*, Case No. 01-RC-304042 (2023) are moot.

Employer's Structure and Business

Northeastern University is divided into ten academic colleges. Each college has its own dean and associate dean; each dean reports to the Provost's Office. The Provost reports to the President of the University.

Six of the ten colleges offer PhD programs: the Bouvé College of Health Sciences; the College of Arts, Media, and Design; the College of Engineering; the College of Science; the College of Social Science and Humanities; and the Khoury College of Computer Science. The University also offers a multidisciplinary PhD through the Provost's Office. Approximately 1,700 students are enrolled in the University's 36 PhD programs.

In general, PhD candidates take academic classes for two years, pass a qualifying examination, conduct research on their dissertation topics, and, finally, defend their dissertations. This process takes, on average, four to six years in total. PhD students are evaluated annually; this evaluation may include an assessment of the student's service pursuant to a teaching assistantship or research assistantship.

The University also offers Master's degrees and professional doctorate degrees (including law degrees). Over 100 Master's programs are available at the University's main campus in Boston and over 250 Master's programs are available across the University's various locations.⁵ Approximately 20,000 graduate students are enrolled at the University in total.

⁵ <https://graduate.northeastern.edu/programs#/master/-/-/-/-/>

Like many large universities, the Employer has twin missions of conducting research and educating students. The Employer prides itself on experiential learning, which allows students to engage with the world through professional work, research, and service. For example, the Employer's co-op program allows undergraduate and Master's students to spend six months working at outside organizations. PhD students can also study and conduct research at an outside organization, earning a Graduate Certificate in Experiential PhD Leadership in the process.

The Coastal Sustainability Institute at Northeastern University is located in Nahant, Massachusetts, about eighteen miles from the Employer's main campus in downtown Boston. The Nahant campus is focused on mitigating threats (such as pollution, extreme weather, and loss of biodiversity) to coastal communities. Some faculty members have offices at both the Nahant campus and the Boston campus, and the Employer operates all-day shuttle service between the campuses for use by faculty, students, and staff.

The Northeastern University Innovation Campus at Burlington is located within approximately 21 miles from the Employer's downtown Boston campus.⁶ The Burlington campus is focused on innovation and discovery in emerging fields, including cybersecurity and nanomedicine. Among other goals, it aims to enhance the safety of new pharmaceuticals; develop new materials and manufacturing sensors at nanoscale; and assess technologies to meet the needs of intelligence analysts and homeland security practitioners. The Burlington campus includes pharmaceutical training facilities work, laboratories belonging to outside organizations, and the Kostas Center for Homeland Security. The Kostas Center's security restrictions require that students be approved to enter.

The Burlington campus, like the Nahant campus, shares personnel with the Boston campus. Notably, Dr. David Luzzi is both the Senior Vice Provost for Research at Northeastern University and the Vice President of the Northeastern University Innovation Campus in Burlington. The Employer operates shuttle service between Burlington and Boston for students and staff.

Graduate students whose research assistantships are conducted in Burlington or Nahant laboratories do not conduct their research elsewhere.

Stipended Graduate Assistantships

Graduate students finance their educations in various ways. Some students are entirely self-funded and receive no financial assistance, while other students are "Industry PhD students" paid by a third party to complete a PhD.⁷ Many students receive financial aid from the University. The

⁶ The Employer maintains the Burlington campus is 28 miles from the main campus. However, according to google maps, while there are several routes one can take between the two facilities, all place the driving distance somewhere from 14.1 miles and 21 miles.

⁷ The Union does not seek to represent graduate students employed by third parties; it only seeks to represent those graduate students who are also employees of Northeastern University in a research or instructional capacity. The Union also does not seek to represent students who receive fellowships—whether funded by the University or by a third party—which do not require a service commitment.

University determines the amount of a student's financial aid package when it admits that student, although it does not immediately determine the precise source of the funds. A newly admitted PhD student's financial aid is guaranteed for five years, provided that that student remains in good academic standing.

The Stipended Graduate Assistantship (SGA) is a common form of financial aid. A PhD student on an SGA receives health insurance, tuition, and an annual stipend. The annual value of the stipend is set by the academic college in which the student is enrolled and currently varies between \$31,000 and \$44,000. The stipend is paid to the student in twice-monthly installments throughout the semester.

SGAs come with expectations of service in the form of a research assistantship or a teaching assistantship. Each semester, the University sends PhD students an assignment letter detailing the student's specific service expectation. Students are expected to spend up to twenty hours per week on assistantship, but in most circumstances they do not record their hours.⁸ Most assistantships last one or two semesters in duration, although in theory an assistantship can be terminated at any time.

The Employer attempts to ensure that research assistantships align with the students' own research goals, and students often apply directly for the assistantships which most interest them. However, multiple student-employees testified that they have conducted research which will not be included in their dissertations. Further, a research assistantship may include not only research itself but also mentoring undergraduate students who are assisting in the lab, attending lab meetings, representing the lab at conferences, and crafting articles for publication. Student-employee witnesses testified that they were uncertain as to whether the other student-employees working in the laboratories were hourly or stipended employees.

Teaching assistantships are a requirement of some degree programs. A PhD student-employee testified that she was offered a choice of teaching assistantships for the current semester and selected the position she preferred. The duties of a teaching assistantship vary widely. One student-employee may be the instructor of record for a course; another may be responsible for some combination of grading, holding office hours, and helping to prepare lectures.

Most, but not all, graduate students receiving SGAs are PhD candidates.

⁸ There are some exceptions. The Program Policies & Procedures for the School of Criminology and Criminal Justice in the College of Social Sciences and Humanities explains: "Faculty supervisors should ensure that they do not assign more than 20 hours of assignments per week. An exception to this is an additional 6 hours as permitted by the Director of the School, where an RA is compensated for this time based on an hourly rate as stipulated by the University." Pet. Ex. 88.

Hourly Student Employment

Lawrencia Raynor is the Director of Student Employment at the University's Office of Student Employment, Graduate Assistantships, and Fellows (SEGAF). As such, she is responsible for the oversight and operation of all student employment matters on the University's campus, including work study and non-work study positions. Director Raynor testified that the process of filling a position begins when a would-be employer (such as an academic department) within the University submits a job requisition request to her office. SEGAF then reviews the job description and posts the job on Work Day, a digital posting and position management system. SEGAF's review of job description includes making certain that the proposed pay range is commensurate with the proposed job description.⁹ However, the decision to hire a particular student rests with the manager who initially requested the job posting. All students, regardless of whether they are undergraduate students or graduate students, may apply for a job posted by SEGAF.

The teaching positions available through SEGAF range from graders to proctors to yoga instructors and do not necessarily correspond to a student-employee's academic course of study. Research positions also do not always require student-employees to have a particular background in the area so long as they are interested in, for example, gathering articles on a given topic. In some cases, though, a professor prefers to hire a student who has recently taken a course and is familiar with the material, or a job posting specifically requires that the applicant's own field of study overlap with the work required by the position.

Students who are selected for hourly jobs are paid at an hourly rate and receive compensation on a biweekly schedule.¹⁰ They do not receive tuition waivers or health insurance. Hourly positions rarely extend beyond an academic year, and often last for one semester or less.¹¹ SEGAF handles complaints—including complaints about pay issues and supervisor conflict—from hourly student-employees.

On occasion, student-employees obtain hourly jobs that were never posted to Work Day by SEGAF. Student-employee Chelsea Diaz testified that she obtained hourly employment through direct communication with the professor who taught the class for which she served as a teaching assistant. As an hourly teaching assistant, Diaz holds office hours and leads review sessions.

Most, but not all, graduate students working hourly jobs are in the process of earning Masters degrees.

⁹ There are five separate pay range levels. In February 2022, Level 1 ranged from \$14.25 to \$15.00 per hour and Level 5 ranged from \$30.00 to \$40.00 per hour. Director Raynor testified that rates have since increased.

¹⁰ SEGAF is responsible for disbursing funds both to hourly student-workers paid on a biweekly basis and to stipended student-workers paid on a twice-monthly basis.

¹¹ There are exceptions when, for example, a professor prefers that teaching assistants continue in their positions from year to year until graduation.

ANALYSIS

The Employer takes the position that hourly-paid student-employees do not share a community of interest with the student-employees paid by stipend; that the petitioned-for unit is not comprised of a readily identifiable group; and that the students employed at the Nahant and Burlington campuses do not share a community of interest with the students employed at the Boston campus.

Nahant and Burlington Campuses

The appropriateness of a multi-facility unit is determined by whether the employees in question share a community of interest, considering the following factors: (1) similarity in skills, duties, and working conditions; (2) functional integration; (3) employee contact and interchange; (4) centralized control of management and supervision; (5) geographic proximity; and (6) bargaining history. See, e.g., *Exemplar, Inc.*, 363 NLRB No. 157 (2016); *Clarian Health Partners, Inc.*, 344 NLRB 332, 334 (2005); *Bashas', Inc.*, 337 NLRB 710, 711 (2002); *Alamo Rent-A-Car*, 330 NLRB 897, 897 (2002). In this context, the question is simply whether the petitioned-for unit is an appropriate one; the Board's single-facility presumption does not apply and does not need to be overcome. *Hazard Express, Inc.*, 324 NLRB 989, 989 (1997) (citing *NLRB v. Carson Cable TC*, 795 F.2d 879, 886-87 (9th Cir. 1986); *Capital Coors Co.*, 309 NLRB 322, 325 (1992)). However, the Board will find a petitioned-for multi-facility unit inappropriate if the petitioned-for group does not share a community of interest distinct from that shared with employees at other, excluded locations. *Laboratory Corp. of America Holdings*, 341 NLRB 1079, 1082 (2004); see also *Acme Markets, Inc.*, 328 NLRB 1208 (1999).

- Similarity of Skills, Functions and Working Conditions

There is no real dispute that the student-employees share similar skills, functions, and working conditions regardless of the location at which they perform their work. All are graduate students enrolled in the University's degree programs. All receive the same compensation and benefits. This factor weighs in favor of including the Boston, Nahant, and Burlington student-employees in the same bargaining unit.

- Functional Integration and Employee Interchange

Functional integration occurs when employees in a unit sought by a union work on different phases of the same product or provide a service as a group. Functional integration is also present when an employer's workflow involves all employees in a unit sought by a union. Evidence that employees work together on the same matters, have frequent contact with one another, and perform similar functions is relevant when examining whether functional integration exists. *Transerv Systems*, 311 NLRB 766 (1993). On the other hand, if functional integration does not result in contact among employees in the unit sought by a union, the existence of functional integration has less weight.

Interchange occurs where a portion of the work force of one facility is involved in the work of the other facility through temporary transfer or assignment of work. However, a significant portion of the work force must be involved and the work force must be actually supervised by the second location.

Here, the record reveals little evidence of functional integration beyond the fact that all petitioned-for employees are directly involved in furthering the Employer's twin missions of conducting research and educating students. Further, the record reveals no evidence of employee interchange.

However, although these factors weigh against finding a multi-facility unit to be appropriate, I do not give them great weight in my analysis. The majority of student-employees are assigned to specific jobs which involve unique tasks. Those tasks are not easily transferred to another student-employee who teaches a different class or conducts research in a different lab, regardless of whether the classes and labs are located on the same campus or on different campuses. The nature of the student-employees' work is simply too specialized to allow for significant interchange or require significant contact even when student-employees are broadly performing the same functions for the same pay.

- Central Control over Daily Operations and Labor Relations

When evaluating an employer's control over daily operations and labor relations, the Board focuses on whether the employees perform their day-to-day work under the supervision of one who is involved in rating their performance and in affecting their job status and who is personally involved with the daily matters which make up their grievances and routine problems. *Hilander Foods*, 348 NLRB 1200, 1203 (2006). Therefore, the primary focus of this factor is the control that facility-level management exerts over employees' day-to-day working lives.

In this matter, student-employees are generally supervised by the faculty member who heads the laboratory in which they perform research or who teaches the class for which they are a teaching assistant. The record reveals that some faculty members have offices both at the Boston campus and at a satellite campus, and that faculty members so situated supervise student-employees. Higher management, too, is shared among the Boston area campuses. For example, Dr. David Luzzi is both the Senior Vice Provost for Research at Northeastern University and the Vice President of the Northeastern University Innovation Campus in Burlington. The record reveals no indication that the Burlington and Nahant campuses have their own administrative structure at all. Rather, the Burlington and Nahant campuses function as specialized extensions of the nearby Boston campus.

This factor weighs in favor of a finding that the petitioned-for multi-facility unit is appropriate.

- Distance between Locations

The Nahant Campus and the Burlington Campus are both located in the Greater Boston area. The Nahant Campus is eighteen miles from the Employer's main campus in downtown Boston, while the Burlington campus is within approximately 21 miles of the main campus. The Portland, Maine, campus is over 100 miles from the Employer's main campus. All other campuses are even more distant; for example, the London campus is approximately 3200 miles from the main campus.

I find that the distance between locations weighs in favor of a multi-location unit. In contrast to the Employer's other satellite campuses, the Nahant Campus and the Burlington Campus are in the same metropolitan area as the main campus. Indeed, travel between the Boston-area campuses is so consistent and voluminous that the Employer operates all-day shuttle service between the campuses for use by faculty, students, and staff.

- Bargaining History

There is no history of collective bargaining between the graduate student-employees and the Employer.

- Conclusion

I have carefully considered the record evidence and weighed the various factors described above, and I find the petitioned-for multi-location unit is appropriate. The record establishes that the student-employees share skills, functions, and work conditions. The locations are in close proximity and bound together by the Employer's shuttle services. The locations further share common administration embodied by identical higher-level and lower-level supervision. While interchange between the student-employees is at best minimal, this is attributable to the nature of the work rather than to whether the employees share a community of interest.

Stipended Graduate Assistantships and Hourly Student Employment

It is well-established that a petitioner is not required to seek a bargaining unit that is the only appropriate unit or even the most appropriate unit. *Morand Bros. Beverage Co.*, 91 NLRB 409, 417-418 (1950), *enfd.* 190 F.2d 576 (7th Cir. 1951). The Act merely requires that the unit sought by a petitioner be *an* appropriate unit. *Wheeling Island Gaming, Inc.*, 355 NLRB 637, fn. 2 (2010), citing *Overnite Transp. Co.*, 322 NLRB 723, 723 (1996); *P.J. Dick Contracting, Inc.*, 290 NLRB 150, 150 (1988).

In *American Steel Construction, Inc.* 372 NLRB No. 23 (December 14, 2022), the Board overruled *PCC Structurals, Inc.*, 365 NLRB No. 160 (2017) and reinstated *Specialty Healthcare & Rehabilitation Center of Mobile*, 357 NLRB 934 (2011). The Board applied its decision in *American Steel Construction* retroactively to all pending cases and held that:

[T]he Board will once again approve a petitioned-for “subdivision” of employee classifications if the petitioned-for unit: (1) shares an internal community of interest; (2) is readily identifiable as a group based on job classifications, departments, functions, work locations, skills, or similar factors; and (3) is sufficiently distinct. Of course, the Board need not address each element in every case: if a particular element is not disputed, it need not be adjudicated. But if a party contends that the petitioned-for unit is not sufficiently distinct—i.e., that the smallest appropriate unit contains additional employees—then the Board will apply its traditional community-of-interest factors to determine whether there is an “overwhelming community of interest” between the petitioned-for and excluded employees, such that there is no rational basis for the exclusion.¹² If there are only minimal differences, from the perspective of collective-bargaining, between the petitioned-for employees and a particular classification, then an overwhelming community of interest exists, and that classification must be included in the unit. As the Board noted in *Specialty Healthcare*, this test does not disturb or displace any preexisting rules or presumptions applicable to specific industries or occupations.

In assessing the appropriateness of any proposed unit, the Board considers such community of interest factors as whether 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. *American Steel Construction, Inc.*, supra; *United Operations, Inc.*, 338 NLRB 123 (2002).

Stipended and hourly graduate student-employees alike work in many of the Employer’s academic departments and colleges. Graduate student-employees are most often directly supervised by professors who teach classes or lead research labs. However, hourly student-employees have the option of resolving their employment-related difficulties with SEGAF, while stipended student-employees manage issues directly with their faculty advisors.

Likewise, stipended and hourly graduate student-employees are paid through different mechanisms. Stipended employees receive tuition waivers and health insurance while hourly students do not. However, the hourly rates paid to some student-employees overlap with the stipend ranges paid to other student-employees. In 2022, Level 5 hourly employee wages ranged from \$30.00 to \$40.00 per hour. Assuming stipended student-employees work twenty hours per week, they receive \$32.35 to \$40.25 per hour from their stipends.

There is some overlap between the two-groups of student-employees with respect to job functions. An hourly-paid teaching assistant may perform grading work and hold office hours; so too may a stipended teaching assistant. While some stipended teaching assistants perform more advanced duties, including being listed as the instructor of record, not all stipended teaching

¹² Here, the Employer is not contending that additional employees must be added to the unit; rather, it is contending that the petitioned-for unit lacks an internal community of interest. However, the framework for evaluating a community of interest remains the same.

assistants do so. Similarly, research assistants may work in the same laboratories and attend the same meetings regardless of whether they are stipended or hourly employees.

The majority of student-employees are assigned to specific jobs which involve unique tasks. Accordingly, there is little to no contact between student-employees unless they happen to be assigned to work in the same laboratory under the direction of the same professor. In addition, there is no evidence of interchange between hourly and stipended employees. As was discussed above with respect to student-employees assigned to different campuses, no teaching assistant is likely to substitute for a teaching assistant assigned to another class. The nature of the student-employees' work is simply too specialized to allow for significant interchange or require significant contact even when student-employees are broadly performing the same functions for the same pay. However, it is nonetheless the case that all petitioned-for employees are directly involved in furthering the Employer's twin missions of conducting research and educating students but are not otherwise functionally integrated.

- Readily Identifiable Group

The Employer contends that the petitioned-for unit does not constitute a readily identifiable group as required by *American Steel* and *United Operations*. In those cases, the Board explained that when the employees in a petitioned-for unit 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. This is true even when employees in the unit could be placed in a larger unit which would also be appropriate unless the party contending that the smaller unit is inappropriate demonstrates that employees in the larger unit share an overwhelming community of interest with those in the petitioned-for unit. A petitioner may not seek to represent "an arbitrary segment" of the workforce, *United Operations*, *ibid.*, citing *Pratt & Whitney*, 327 NLRB 1213, 1217 (1999). The *United Operations* Board observed that no two employees' terms and conditions of employment are identical, and that some distinctions are too slight or too insignificant to provide a rational basis for a unit's boundaries.

First, the Employer takes the position that the petitioned-for unit in the instant case is an arbitrary segment because all student employees hired through SEGAF are employed through the same process regardless of whether they are engaged in teaching or research. This argument is not persuasive; indeed, job functions and skills are commonly used to define a unit's boundaries.

Next, the Employer notes that the Petitioner did not seek to represent undergraduate students who may be engaged in teaching or research jobs. While it is true that undergraduate students are sometimes included in similar bargaining units—indeed, the bargaining unit in *Columbia* included undergraduates—their absence here does not render the proposed unit arbitrary. Rather, it is simple to determine which employees are included: included are those employees who are enrolled in the Employer's graduate programs.¹³

¹³ The Employer has not argued that either undergraduate student-employees or graduate student-employees whose job duties include neither research nor teaching should be included in the unit. The Employer has not proposed any alternate unit, or multiple alternate units, which it would view as appropriate.

The Employer cites to *The Neiman Marcus Group, Inc.*, 361 NLRB 50 (2014). In that case, a petitioner sought to represent employees who sold shoes in Salon Shoes (which constituted its own department) and employees who sold shoes in the Contemporary Sportswear Department, while excluding other salespeople in the Contemporary Sportswear Department. The Board concluded that the factors favoring a finding of community of interest were outweighed by the lack of any relationship between the contours of the proposed unit and the administrative or operational lines drawn by the Employer. After finding a lack of community of interest between the salespeople in the two departments, the Board did not reach the issue of whether the excluded employees shared an overwhelming community of interest with the petitioned-for employees.

The instant case is distinguishable from *Neiman Marcus*. As discussed above, there is a community of interest between the graduate student-employees who receive stipends and those who receive an hourly wage: all are graduate students engaged in teaching or conducting research on behalf of the Employer in exchange for payment. The Employer itself distinguishes between graduate students and undergraduate students, as well as between student-employees who further its mission by teaching and conducting research and student-employees whose jobs (such as resident hall proctor) may be more tangential to the Employer's mission.

- *Columbia University*

The employer in *Columbia University*, supra, argued that differences in pay and benefits, duties, and remunerative interests demonstrate the absence of a community of interest between PhD student-employees and other student-employees. However, the *Columbia* Board explicitly determined that the petitioned-for unit of graduate and undergraduate teaching assistants, as well as graduate research assistants, was appropriate. The *Columbia* Board explained:

We note that all of the student assistants here are performing 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. Although some of the assistantships undertaken by PhD students may involve advanced duties, in many cases their roles are similar to those of Master's and undergraduate assistants who fill related positions. And even when the PhD assistants take on more advanced roles, there is often still an overlap of job duties with Master's and undergraduate student assistants...

While Master's and undergraduate assistants may, arguably, have some different priorities from those of PhD assistants, there are also overarching common interests. For most student assistants, there will be a shared desire to successfully balance coursework with job responsibilities, as well as a shared desire to mitigate the tuition and opportunity costs of being a student. Additionally, all student assistants are likely to share a desire to address policies affecting job postings, pay periods, stipend disbursement, and personal health insurance coverage. Student assistants also have common interests in developing guidelines for discipline and discharge and establishing a grievance-and-arbitration procedure. While PhD assistants, as longer-term students, may be somewhat more concerned with certain types of remuneration, such as housing subsidies, their interests are

certainly not at odds with those of the shorter-term employees. Indeed, the unit's overarching interest in addressing issues pertaining to one's simultaneous employment and enrollment as a student provides ample basis on which to pursue a common bargaining agenda.

Id. at 1098-1099, footnotes omitted.

The same conclusion is warranted here. In the instant case, as in *Columbia*, all student-employees in the petitioned-for unit perform work which furthers the University's teaching and research goals. They perform overlapping and adjacent duties and are likely to have similar concerns about balancing their academic and job responsibilities.¹⁴ While some student-employees certainly have more complex responsibilities than others, it is often the case that a bargaining unit includes employees with varying levels of experience and expertise. Accordingly, I find that the petitioned-for unit is appropriate in that there is a sufficient community of interest between hourly and stipended graduate student-employees.

DIRECTION OF ELECTION

I find that the petitioned-for employees constitute an appropriate unit.

Accordingly, based on the foregoing, I shall direct an election for the employees in the following unit:

All graduate students enrolled at Northeastern University who provide instructional services or research services at the Boston, Nahant, and Burlington campuses, but excluding all undergraduate students employed by the employer, fellows, managers, guards, and supervisors as defined in the Act, and all other employees.

Additionally, as will be discussed in more detail below, those eligible to vote in the election are:

- (a) individuals who are employed in a unit position in the Fall 2023 semester, or
- (b) individuals who were employed in a unit position in the Fall 2022 and/or Spring 2023 semesters, unless the person has graduated from or withdrawn from the program by the election date.

¹⁴ As the Employer points out in its brief, the facts in *Columbia* and the facts in the instant case are not identical, and the Board did not hold in *Columbia* that a unit including both Master's and PhD students is presumptively appropriate. While it is true that the Master's students in *Columbia* were paid by stipend and employed on a semester-by-semester basis, unlike the hourly student-workers here, the similarities between the two bargaining units are nonetheless worthy of note.

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 EMPLOYEES OF NORTHEASTERN UNIVERSITY - UAW.

A. Election Details¹⁵

The election will be held on Tuesday, September 19, 2023, Wednesday, September 20, 2023, and Thursday, September 21, 2023, from 10:00 a.m. to 12:00 p.m. and from 2:00 p.m. to 6:00 p.m. at a room to be determined at the Employer's Boston, Massachusetts campus.

B. Voting Eligibility

The *Columbia* Board observed that unique circumstances of student assistants' employment raise potential voter eligibility issues where students do not necessarily work in consecutive semesters but retain a continuing interest in the terms and conditions of employment of the unit. *Ibid* at 1100. See also *Steiny & Co.*, 308 NLRB 1323, 1325 (1992) and *Trump Taj Mahal Casino*, 306 NLRB 294 (1992).

Accordingly, the *Columbia* Board remanded that case and instructed the Regional Director to establish an appropriate voting eligibility formula. The Regional Director issued a Supplemental Decision and Direction of Election finding that those individuals who held a unit position during the prior academic year remained eligible to vote even where they did not currently hold a unit position.

The Petitioner argues, and I find, that the same formula is appropriate here.

The Employer takes the position no special eligibility formula is warranted and highlights the fact that multiple regions have applied a traditional eligibility formula in graduate student cases, including *Yale University*, Case Nos. 01-RC-183014, 01-RC-183016, 01-RC-183022, 01-RC-183025, 01-RC-183031, 01-RC-183038, 01-RC-183039, 01-RC-183043, 01-RC-183050 (2017) and *Washington University*, Case No. 14-RC-206299 (2017). I note that the cited Yale University cases were withdrawn in 2018. When the same petitioner sought again to represent graduate students in *Yale University*, Case No. 01-RC-305762 (2022), the parties stipulated that a lookback period of one year was appropriate in keeping with *Columbia*. Likewise, regional directors found lookback formulas appropriate in other graduate student cases such as *Duke University* Case No. 10-RC-187957 (2017); *University of Chicago* Case No. 13-RC-198325 (2017); *Vanderbilt University* Case No. 10-RC-193205 (2017); and *University of Pennsylvania* Case No. 04-RC-199609 (2017).

¹⁵ The Employer's spring semester ended on April 19, 2023; the first day of classes for the fall semester is scheduled for August 31, 2023. The majority of student-employees are not present on campus during the summer months. The Petitioner has proposed that, in order to afford the Employer sufficient opportunity to put together an accurate list of eligible voters, the election should not be scheduled before the week of September 18, 2023. The Employer has not argued otherwise.

The Employer further asserts that students expected to graduate in May 2023 should not be eligible to vote. Because the election will not take place until September 2023, those students who graduated in May 2023 will no longer be student-employees and will, accordingly, no longer be eligible to vote. As to any broader argument that students approaching graduation are by definition temporary employees and appropriately included in a bargaining unit with longer-term employees, I note that the *Columbia* Board explicitly considered and rejected the argument that the relatively short tenure of Master's and undergraduate student assistants' employment suggested a divergence of interests that would frustrate collective bargaining. The *Columbia* Board held:

However, all the employees in this unit, which we find to be an appropriate, serve finite terms. Although the Ph.D. student assistants typically serve for the longest periods, all the classifications perform similar duties in (not necessarily continuous) semester increments. Thus, in some sense, one could argue that all the student assistants here are temporary. Yet the Board has made clear that finite tenure alone cannot be a basis on which to deny bargaining rights, because "[i]n many employment relationships, an employee may have a set tenure and, in that sense, may not have an indefinite departure date.... To extend the definition of 'temporary employee' to [all] such situations, however, would be to make what was intended to be a limited exception swallow the whole."

Ibid. at 1099, quoting *Boston Medical Center*, 330 NLRB 152 (1999).

Therefore, eligible to vote are those in the unit who were employed during the payroll period ending **July 4, 2023**, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Additionally, those eligible to vote in the election are: (a) individuals who are employed in a unit position in the Fall 2023 semester; or (b) individuals who were employed in a unit position in the Fall 2022 and/or Spring 2023 semesters, unless the person has graduated from or withdrawn from the program by the election date.

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. Unit employees in the military services of the United States may vote if they appear in person at the polls.

Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period, and, in a mail ballot election, before they mail in their ballots to the Board's designated office; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

C. Voter List

As required by Section 102.67(l) of the Board's Rules and Regulations, the Employer must provide the Regional Director 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.

The Employer argues in its brief that voter list information including "the home address, home telephone number, cell phone number, and personal email address for each student, to the extent known to Northeastern" is protected by the Family Educational Rights and Privacy Act (FERPA). The Employer acknowledges that the Region may subpoena voter list information, but takes the position that the Region may not require the Employer to disclose the information to the Union. Further, the Employer takes the position that "[r]egulations under FERPA make clear that even where a university may disclose the information, it may only do so 'on the condition that the party to whom the information is disclosed will not disclose the information to any other party without the prior consent of the parent or eligible student.' 34 CFR § 99.33(a)."

FERPA governs the privacy of student education records. 20 U.S.C. § 1232g; 34 CFR Part 99. Universities that violate FERPA are subject to the loss of federal funding. *Id.* at § 1232g(a), (b); 34 CFR § 99.1. FERPA provides that schools must obtain a student's written, prior consent when disclosing "personally identifiable information" from "education records," unless an exception applies. 20 U.S.C. § 1232g(b)(1); 34 CFR § 99.30. (FERPA's privacy rights transfer from parents to students when they turn eighteen or attend a school beyond high school. 34 CFR § 99.5(a).)

One exception to this privacy requirement applies to records sought pursuant to a "lawfully issued subpoena." 20 U.S.C. § 1232g(b)(2)(B); 34 CFR § 99.31(a)(9). Regarding this subpoena exception, FERPA permits the release of educational information "pursuant to any lawfully issued subpoena, upon condition that parents and the students are notified of all such orders or subpoenas in advance of the compliance therewith by the educational institution." 20 U.S.C. § 1232g(b)(2)(B). The Department of Education's FERPA regulations similarly note that "[a]n educational agency or institution may disclose personally identifiable information from an education record of a student without the consent required by § 99.30 if" the "disclosure is to comply with a judicial order or lawfully issued subpoena." 34 CFR 99.31(a), (a)(9)(i).

The Board's representation rules generally require an employer to submit both an initial list of certain employee information to the Board and to the union (eight business days after a petition is filed), as well as a voter list, with more detailed information (two business days after an election is either agreed to by the parties or directed by the regional office). 29 C.F.R. §§ 102.62(d), 102.67(l).

Accordingly, in these circumstances, the Region will not require the Employer to disclose FERPA records directly to the Union. Rather, the Region will use its subpoena authority to obtain the voter list from the Employer and then, consistent with FERPA authorities, share that list with the Union. See 20 U.S.C. § 1232g(b)(2)(B); 34 CFR § 99.31(a), (a)(9)(i); see also 34 CFR § 99.33.1 Contrary to the Employer's argument, this redisclosure by the Region to the Union is

permissible under FERPA; Section 99.33(a)'s prohibition on redisclosures does not apply when the initial disclosure occurs pursuant to a subpoena.¹⁶ The Region's subpoena therefore enables the Employer to harmonize its compliance obligations under both the NLRA and FERPA.

To be timely filed and served, the list must be *received* by the Regional Director on **July 24, 2023**. Additionally, to account for those unit employees hired into a unit position for the Fall 2023 semester the Employer will provide the Regional Director an updated voter list on **September 8, 2023**.

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.

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. 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

Pursuant to Section 102.67(k) of the Board's Rules, the Employer must post copies of the Notice of Election, which will be forthcoming, in in conspicuous places, including all places where notices to employees in the unit found appropriate are customarily posted. The Notice must be posted so all pages of the Notice are simultaneously visible. In addition, if the Employer customarily communicates electronically with some or all of the employees in the unit found appropriate, the Employer must also distribute the Notice of Election electronically to those employees. The Employer must post copies of the Notice at least 3 full working days prior to 12:01 a.m. of the day of the election and copies must remain posted until the end of the election.

¹⁶ 34 CFR 99.33(c) states: "[p]aragraph (a) of this section does not apply to disclosures under §§ 99.31(a)(8), (9)." In turn, 34 CFR § 99.31(a)(9) refers to disclosures made "to comply with a judicial order or lawfully issued subpoena."

For purposes of posting, working day means an entire 24-hour period excluding Saturdays, Sundays, and holidays. However, a party shall be estopped from objecting to the nonposting of notices if it is responsible for the nonposting, and likewise shall be estopped from objecting to the nondistribution of notices if it is responsible for the nondistribution.

Failure to follow the posting requirements set forth above will be grounds for setting aside the election if proper and timely objections are filed.

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 10 business 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 must be E-Filed through the Agency's website and may not be filed by facsimile. To E-File the request for review, go to 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, and must be accompanied by a statement explaining the circumstances concerning not having access to the Agency's E-Filing system or why filing electronically would impose an undue burden. 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: July 14, 2023



Laura A. Sacks, Regional Director
National Labor Relations Board
Region 01