

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 2

NEW YORK UNIVERSITY,

Employer

and

Case No. 2-RC-23481

GSOC/UAW

Petitioner

**ORDER DISMISSING PETITION**

On May 3, 2010, GSOC/UAW (the "Petitioner") filed a Petition in the above-captioned matter requesting to be certified as the exclusive collective-bargaining representative of the following unit of the employees:

Included: All individuals enrolled in graduate-level programs at New York University who are employed to perform the functions of teaching assistants, research assistants and graduate assistants (regardless of job title).

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

On May 11, 2010, New York University (the "Employer" or "NYU") filed a motion to dismiss the petition (Attachment 1). On May 11, 2010, an Order Postponing Hearing Indefinitely was issued (Attachment 2).

On May 14, 2010, I issued an Order to Show to Cause as to whether the instant Petition should be dismissed based on the decision in *Brown University*, 342 NLRB 483 (2003) (Attachment 3). On May 20, 2010, Petitioner responded to the Order to Show

Cause (Attachment 4). On May 28, 2010, the Employer submitted a reply to the Petitioner's response (Attachment 5).

After carefully considering the parties' submissions and the arguments made therein, I conclude, for the reasons set forth below, that a hearing is not warranted in this matter, and that the Petition should be administratively dismissed.

A. The Position of the Parties

The Employer moves for dismissal of the Petition maintaining that, pursuant to the Board's decision in *Brown, supra*, the graduate student assistants sought to be represented by the Petitioner are not employees within the meaning of the Act. Moreover, the Employer asserts that graduate student research assistants in the Sackler Institute and certain science departments, including the Center for Neural Science ("CNS"), do not perform a service for the Employer and thus would not be considered employees even under preexisting precedent. See *New York University*, 332 NLRB 1205, 1209 n.10, 1221 (2000) ("*NYU*") (citing *Leland Stanford Univ.*, 214 NLRB 621 (1974)).<sup>1</sup> The Employer also contends that certain doctoral students in the Graduate School of Arts and Sciences are currently compensated for teaching as adjunct faculty in a manner distinct from recipients of graduate fellowship grants. As such, the Employer asserts these doctoral students are not students within the meaning of *Brown*; but rather, are employee members of an already-existing adjunct faculty bargaining unit, which has been represented by ACT-UAW Local 7902 ("Local 7902")

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<sup>1</sup> The Board in *NYU* specifically excluded these graduate assistants because the evidence did not establish that they performed any service for the Employer. *NYU, supra* at 1209 n.10. Of course, even if they did perform a service for the Employer, they would not be deemed employees under *Brown*. See *Brown, supra*, at 488 (reasoning that graduate student assistants are not statutory employees because the service performed by them "is part and parcel of the core elements" of their graduate work.)

since 2002. Thus, the Employer takes the position that the collective-bargaining agreement with that union bars the inclusion of these doctoral students in the petitioned-for unit.<sup>2</sup>

Petitioner acknowledges that the petitioned-for unit includes graduate assistants that would not be deemed employees under *Brown*, and that the *Brown* decision is controlling and would require dismissal of the instant petition. Should this petition be dismissed on that basis, the Petitioner intends to file a petition for review requesting the Board to reconsider the decision in *Brown* “on the basis that it was wrongly decided both as a matter of law and policy.” (Pet. Resp. at 2.) Petitioner posits that, should the Board remand the Petition for a hearing, it would proffer evidence in support of its request for reconsideration<sup>3</sup>, as well as other evidence relevant to the issue of whether some of the individuals covered by the petition are students, rather than employees, or adjuncts, as argued by the Employer.<sup>4</sup>

#### B. Decision to Dismiss Petition

Both parties argue that the Board’s decision in *Brown* requires the dismissal of

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<sup>2</sup> In a letter dated May 14, 2010, Local 7902 informed me that it does not intend to intervene in the instant matter.

<sup>3</sup> In support of a request for reconsideration of *Brown*, Petitioner would present evidence on its bargaining history with the Employer regarding the unit, “expert testimony to establish that the premises and assumptions underlying the *Brown* decision are incorrect,” and evidence concerning the “duties, compensation, benefits and terms and conditions of employment” of the petitioned-for graduate student assistants. (Pet. Resp. at 2.)

<sup>4</sup> Petitioner argues that it would “offer evidence that the Board found lacking” in the *NYU* record to show that, currently, Sackler and certain science graduate students are in fact graduate student assistants who perform a service for the Employer. (Pet. Resp. at 3.) The Employer counters that “[t]he Board [in *NYU*] found that [Petitioner’s] evidence failed to demonstrate -- not that the record was insufficient to establish -- that such individuals were employees within the meaning of the Act.” (Emp. Reply at 2.) Petitioner also disagrees with the representations made by the Employer that certain graduate assistants should be part of an already-represented unit of adjunct faculty, and intends to present evidence which would establish that these graduate assistants are properly included in the petitioned-for unit, should the Board remand this case for a hearing.

the petition filed herein. I agree.<sup>5</sup>

I will therefore administratively dismiss this petition on the basis that it seeks an election among graduate student assistants that are clearly not statutory employees under *Brown* for the reasons set forth therein.

**THEREFORE**, based on the foregoing reasons, further proceedings on the Petition herein are not warranted, and

**IT HEREBY IS ORDERED** that the Notice of Hearing issued herein be revoked and that the Petition be dismissed.

*Right to Request Review:* Pursuant to the provisions of Section 102.67 of the National Labor Relations Board's Rules and Regulations, Series 8, as amended, you may obtain review of this action by filing a request with the Executive Secretary, National Labor Relations Board, 1099 14th Street, NW, Washington, DC 20570-0001. This request for review must contain a complete statement setting forth the facts and reasons on which it is based.

*Procedures for Filing a Request for Review:* Pursuant to the Board's Rules and Regulations, Sections 102.111 – 102.114, concerning the Service and Filing of Papers,

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<sup>5</sup> No useful purpose would be served by holding an initial hearing to gather evidence on the questions of: (1) whether the graduate student assistants in the Sackler Institute and certain science departments (including CNS) currently perform services for the Employer and are thus graduate student assistants; and (2) whether graduate assistants classified by the Employer as adjunct faculty are covered by the collective-bargaining agreement with Local 7902, or are graduate assistants to be appropriately included in the petitioned-for unit. In this regard, the Employer contends that even if this petition was not dismissed under *Brown*, these graduate assistants and members of its adjunct faculty are not properly included in the unit. If the Petitioner prevailed on these two issues, the petition would still have to be dismissed under *Brown*.

the request for review must be received by the Executive Secretary of the Board in Washington, DC by close of business on June 21, 2010, at 5 p.m. (ET), unless filed electronically. **Consistent with the Agency's E-Government initiative, parties are encouraged to file a request for review electronically.** If the request for review is filed electronically, it will be considered timely if the transmission of the entire document through the Agency's website is accomplished by no later than 11:59 p.m. Eastern Time on the due date.

Please be advised that Section 102.114 of the Board's Rules and Regulations precludes acceptance of a request for review by facsimile transmission. If you mail the request for review or send it by a delivery service, it must be received by the Executive Secretary of the Board in Washington, DC by the close of business at 5:00 p.m. Eastern Time or be postmarked or given to the delivery service no later than June 18, 2010. Upon good cause shown, the Board may grant special permission for a longer period within which to file.<sup>6</sup> A copy of the request for review must be served on each of the other parties to the proceeding, as well as on the undersigned, in accordance with the requirements of the Board's Rules and Regulations.

Filing a request for review electronically may be accomplished by using the E-filing system on the Agency's website at [www.nlr.gov](http://www.nlr.gov). Once the website is accessed, select the E-Gov tab, click on E-Filing, and follow the detailed instructions. The responsibility for the receipt of the request for review rests exclusively with the sender.

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<sup>6</sup> A request for extension of time, which may also be filed electronically, should be submitted to the Executive Secretary in Washington, and a copy of such request for extension of time should be submitted to the Regional Director and to each of the other parties to this proceeding. A request for an extension of time must include a statement that a copy has been served on the Regional Director and on each of the other parties to this proceeding in the same manner or a faster manner as that utilized in filing the request with the Board.

A failure to timely file the request for review will not be excused on the basis that the transmission could not be accomplished because the Agency's website was off line or unavailable for some other reason, absent a determination of technical failure of the site, with notice of such posted on the website.

Dated June 7, 2010  
New York, New York



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Celeste J. Mattina  
Regional Director, Region 2  
National Labor Relations Board  
26 Federal Plaza, Room 3614  
New York, New York 10278

# Attachment 1



May 11, 2010

**By E-Mail**

Celeste J. Mattina, Esq.  
Regional Director  
National Labor Relations Board  
Region 2  
26 Federal Plaza, Room 3614  
New York, NY 10278-0104

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Member of the Firm  
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ebrill@proskauer.com  
www.proskauer.com

Re: New York University, Case No. 2- RC-23481

Dear Regional Director Mattina:

This firm represents New York University ("NYU" or the "University") with respect to the petition filed by GSOC/UAW ("UAW" or the "Union") on May 3, 2010, seeking certification as the exclusive representative of a unit of "all individuals enrolled in graduate level programs at NYU, who are employed to perform the functions of teaching assistants, research assistants and graduate assistants (regardless of job title)."

As discussed more fully below, NYU submits that the petition should be dismissed for the fundamental reason that the graduate assistants whom UAW seeks to represent are students, not employees, under the NLRB's holding in *Brown University*, 342 NLRB 483 (2004), who have no right to engage in collective bargaining under the National Labor Relations Act. To the extent that the petition is intended to include graduate students who are appointed as adjunct faculty – not as graduate assistants – they are represented by UAW and covered by a collective bargaining agreement with the University.

**1. Graduate Assistants in the Proposed Unit Are Not Employees Under the NLRB's Decision in *Brown University***

In *New York University*, 332 NLRB 1205 (2000) ("*NYU*"), the Board held that graduate students at NYU appointed as Teaching Assistants, Graduate Assistants and Research Assistants (collectively referred to as "graduate assistants") were employees within the meaning of Section 2(3) of the Act. While finding that the majority of NYU's graduate assistants were employees, the Board affirmed the Regional Director's holding that graduate assistants in the Sackler Institute of Graduate Biomedical Sciences and Research Assistants in certain science departments funded by external grants were not employees and were properly excluded from the unit on the grounds they perform research on their dissertation topics rather than provide specific services for the University. Following that decision, the UAW was certified as representative of the

graduate assistants included in the bargaining unit. NYU and the UAW entered into a collective bargaining agreement covering the graduate assistants, effective September 1, 2001 through August 31, 2005.

Four years later, in *Brown University*, 342 NLRB 483 (2004), the Board expressly overruled *NYU*. It observed that the *NYU* decision had reversed more than 25 years of Board precedent applying the "principle . . . that graduate student assistants are primarily students and not statutory employees," and that "graduate assistants who perform services at a university in connection with their studies, have a predominantly academic, rather than economic, relationship with their school." (*Id.* at 488.) In conclusion, the Board declared in unambiguous terms "the Federal law to be that graduate student assistants are not employees within the meaning of Section 2(3) of the Act." (*Id.* at 493.)

In light of the Board's decision in *Brown*, which expressly rejected the holding that NYU's graduate assistants were employees under the Act, NYU withdrew recognition from the UAW as representative of the graduate assistants upon termination of their collective bargaining agreement in 2005. The UAW did not assert any legal challenge to NYU's withdrawal of recognition, implicitly accepting that the graduate assistants were not employees under the *Brown* decision, and that its certification was nullified.

*Brown* remains the law and constitutes an absolute bar to the petition here. There can be no dispute that the graduate assistants at NYU, as in *Brown*, are students who are performing services in connection with their educational programs and are simply not "employees" within the meaning of the National Labor Relations Act.

As noted above, to the extent the petition seeks to represent Research Assistants, it is defective for the additional reason that, as the Board held in *NYU*, graduate assistants in the Sackler Institute and science departments who are supported with externally funded research grants are not statutory employees. Research Assistants in the Physics, Chemistry and Biology Departments and the Center for Neural Sciences were excluded from the bargaining unit in 2000, and RAs in those and other departments who currently are supported on external research grants (or who otherwise do not provide specific services to the University) would be excluded from the present petition on the same grounds.

## **2. Graduate Students Appointed as Adjunct Faculty Are Part of a Certified Bargaining Unit of Adjunct Faculty Represented by UAW**

The UAW presently represents a unit of adjunct and part-time faculty, which was certified by the NLRB in Case No. 2-RC-22522 in or about July 2002. That unit includes "all adjunct or part-time faculty employed by the Employer, who provide at least a total

of forty contact hours of instruction in one or more courses in an academic year (September 1 – August 31), or at least a total of 75 contact hours of individual instruction or tutoring during a semester . . . .” Since its certification, UAW has represented numerous NYU graduate students who have been appointed to a wide variety of adjunct and part-time teaching positions in the same bargaining unit with all other adjunct and part-time faculty who meeting the criteria for inclusion.

Beginning in the 2009-10 Academic Year, the Graduate School of Arts and Sciences adopted a new financial aid plan for graduate students, referred to as Financial Aid Reform (“FAR”) 4, under which graduate students who teach are appointed as adjunct faculty. GSAS doctoral students are fully supported on fellowships, typically for five years, and are compensated for their teaching as adjunct faculty members in addition to and separate from their fellowship support.<sup>1</sup> The graduate students who are appointed as adjunct faculty pursuant to FAR 4, meet criteria for inclusion in the UAW adjunct and part-time faculty unit. They perform the same duties as other adjunct faculty and have been treated as part of that unit since the adoption of FAR 4 in June, 2009.

As noted above, the adjunct faculty bargaining unit has included graduate students appointed as adjunct faculty since its inception. Allowing GSOC to remove this group of adjunct faculty from the certified adjunct faculty bargaining unit and include them in a separate unit would be inappropriate and inconsistent with Board case law. The Board “places a heavy evidentiary burden on a party attempting to show that historical units are no longer appropriate.” *Ready Mix USA, Inc.*, 340 NLRB 946, 947 (2003), quoting *Banknote Corp. of America, v. NLRB*, 84 F.3d 637, 647 (2d Cir. 1996) and *Banknote Corp. of America*, 315 NLRB 1041, 1043 (1994). See also *Trident Seafoods, Inc.* 318 NLRB 738, 739-40 (1995) (holding that “compelling circumstances [are required] to overcome the significance of bargaining history” or a showing that the “unit is repugnant to Board policy”). Such a showing cannot be made in this case.

The UAW is in no position to claim, let alone establish, that the adjunct and part-time faculty bargaining unit certified by the Board, which has included graduate students from the outset, no longer serves the purposes and policies of the Act. Consistent with this Board precedent, the Regional Director should not permit the UAW to alter the

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<sup>1</sup> One of the principal indicia of student status relied on by the Board in *Brown* was the fact that the amounts received by graduate student assistants generally were the same as or similar to the amounts received by students on a fellowship, which do not require any assistance in teaching or research (342 NLRB at 388-489.) Thus, “the money received by the [graduate assistants] is not compensation for work. It is financial aid to a student.” (*Id.* at 488.) That description, while applicable to most of NYU’s graduate assistants, does not apply to graduate students appointed as adjunct faculty.

Proskauer >>

Hon. Celeste J. Mattina

May 11, 2010

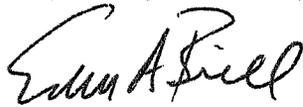
Page 4

adjunct and part-time faculty unit in which there has been a six year history of collective bargaining.

**CONCLUSION**

The petition should be dismissed and the Notice of Hearing withdrawn.

Respectfully submitted,



Edward A. Brill

cc: Allen Rose, Esq.  
Terrance J. Nolan, Esq.  
Peter D. Conrad, Esq.

## Attachment 2

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 2

NEW YORK UNIVERSITY

Employer

And

Case No. 2-RC-23481

GSOC/UAW

Petitioner

**ORDER TO SHOW CAUSE**

On May 3, 2010, GSOC/UAW (the Petitioner) filed the petition in this matter requesting to be certified as the exclusive collective-bargaining representative of the following unit of employees:

Included: All individuals enrolled in graduate-level programs at New York University (the Employer) who are employed to perform the functions of teaching assistants, research assistants and graduate assistants (regardless of job title)

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

By letter dated May 10, 2010, the Petitioner asserted that the majority of the employees in the petitioned-for unit are graduate student assistants within the meaning of Brown University, 342 NLRB 483 (2003).

On May 11, 2010, the Employer submitted a motion to dismiss the petition. On May 11, 2010, an Order Postponing Hearing Indefinitely was issued.

In *Brown University, supra*, the Board overruled its prior decision in *New York University*, 332 NLRB 1205 (2000), and held that graduate student assistants are not employees within the meaning of Section 2(3) of the Act.

Therefore, based on the foregoing:

**IT IS HEREBY ORDERED** that the Petitioner provide written cause as to whether the petition should be dismissed based on the decision in *Brown University, supra*, and based on the further arguments made in the Employer's motion to dismiss. The Petitioner's submission must be received in this office by the close of business on May 21, 2010, and the Petitioner must simultaneously serve a copy upon the Employer.

**IT IS FURTHER ORDERED** that the Employer provide a written reply to the Petitioner's response to the Order To Show Cause, and that such reply must be received in this office by the close of business on May 28, 2010. The Employer must simultaneously serve a copy upon the Petitioner.

Dated at New York, New York  
May 14, 2010



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Celeste J. Mattina, Regional Director  
National Labor Relations Board, Region 2  
26 Federal Plaza, Room 3614  
New York, New York 10278

# Attachment 3

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 2**

**NEW YORK UNIVERSITY,**

**Employer**

**and**

**Case No. 2-RC-23481**

**GSOC/UAW,**

**Petitioner.**

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**RESPONSE OF GSOC/UAW TO ORDER TO SHOW CAUSE**

In response to the Order to Show Cause issued on May 14, 2010 in the above-referenced case, Petitioner GSOC/UAW submits the following:

At issue in this case is a petition filed by GSOC/UAW on May 3, 2010, seeking to represent a bargaining unit of "all individuals enrolled in graduate-level programs at New York University who are employed to perform the functions of teaching assistants, research assistants and graduate assistants (regardless of job title)." As noted in the Order to Show Cause, the Petitioner has acknowledged that the majority of the employees in the petitioned-for unit are graduate assistants within the meaning of Brown University, 342 NLRB 483 (2004). In Brown, the NLRB categorically excluded graduate assistants (teaching assistants and research assistants) from coverage of the Act, overruling its prior decision in New York University, 332 NLRB 1205 (2000).

As a result, the Petitioner agrees that the law, as it currently stands under Brown, requires the dismissal of the petition. Should the petition be dismissed,

the Petitioner intends to request review of that dismissal pursuant to NLRB Rules and Regulations, Section 102.67(c). The Petitioner's Request for Review would ask that the Brown decision be reconsidered on the basis that it was wrongly decided both as a matter of law and policy.

More specifically, the Petitioner intends to ask the Board to remand this case to the Region to conduct a hearing in which Petitioner would be permitted to submit evidence in support of its contention that Brown should be overruled, as well as evidence relevant to establishing the appropriateness of the unit sought in the petition. As further explicated in the Petitioner's correspondence of May 7, 2010 to the Regional Director, the Petitioner would seek to introduce three categories of evidence in such a hearing. The Union would offer evidence regarding bargaining history with respect to the unit of graduate assistants represented by the UAW following certification of the Union in Case No. 2-RC-22082. The Union contends that this evidence will help to establish that, contrary to the opinion of the majority of the Board in Brown, graduate assistants can successfully engage in collective bargaining, thus avoiding labor disputes and fulfilling the purposes of the Act. The Petitioner would also seek to introduce expert testimony to establish that the premises and assumptions underlying the Brown decision are incorrect. This would include, *inter alia*, evidence of successful collective bargaining among graduate assistants around the country, testimony regarding the nature of the economic relationship between universities and graduate assistants, and evidence regarding the impact of collective bargaining on academic freedom. Finally, the Petitioner would present evidence

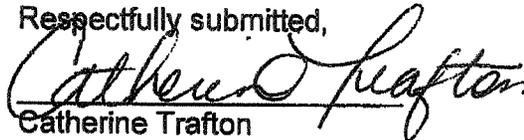
concerning the duties, compensation, benefits and terms and conditions under which the petitioned-for employees perform services for the Employer.

To be clear, the Petitioner seeks to represent a unit that includes all research assistants employed by NYU, including those employed at the Sackler Institute of Graduate Biomedical Sciences and in the various science departments of NYU. In New York University, supra, the Board found that the record was insufficient to establish that certain science research assistants at NYU were employees within the meaning of the Act. If the Board orders a hearing on this petition, the Union will offer the evidence that the Board found lacking in the prior case, to establish that these science research assistants are statutory employees who share a community of interest with the other employees in the petitioned-for unit.

Finally, in its Motion to Dismiss, the Employer makes various representations regarding a number of employees within the petitioned-for unit that it claims are already represented as part of the adjunct faculty bargaining unit represented by UAW Local 7902. With all due respect, the Employer's representations regarding this group of employees - - representations that have not been tested by evidence - - are at best, raised prematurely here. Should the petition be dismissed, review granted and a hearing ordered, both parties will have the opportunity to present evidence regarding the appropriateness of the unit. Suffice it to say, the Petitioner does not agree with the University's characterization of the group of employees in question.

In conclusion, and in response to the Order to Show Cause, the Petitioner acknowledges that under current law, it seeks to represent a unit of individuals who have been categorically excluded from coverage under the Act by the Board's decision in Brown. As a matter of procedure, this requires dismissal of the petition in order that the Union be allowed to seek review of that legal decision, which it asserts was wrongly decided both as a matter of law and policy.

Respectfully submitted,



Catherine Trafton  
Associate General Counsel  
International Union, UAW  
8000 East Jefferson Avenue  
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(313) 926-5216

Thomas W. Meiklejohn  
Livingston, Adler, Pulda, Meiklejohn  
and Kelly, P.C.  
557 Prospect Avenue  
Hartford, CT 06105-2922  
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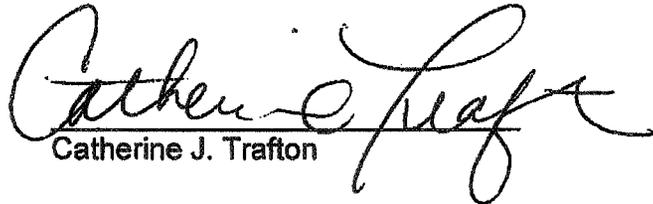
Dated: May 20, 2010

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies and declares that one (1) copy of the document referenced below was served as follows:

1. Document(s) served: Response of GSOC/UAW To Order To Show Cause
2. Served upon: Service list attached
3. Method of service: Overnight Mail
4. Date served: May 20, 2010

I certify and declare under penalty of perjury that the foregoing is true and correct.

  
Catherine J. Trafton

**Service List:**

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Proskauer Rose LLP  
1585 Broadway  
New York, NY 10036-8299

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Legal Department Fax (313) 926-5240

*Solidarity House*

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DETROIT, MICHIGAN 48214  
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INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE & AGRICULTURAL IMPLEMENT WORKERS OF AMERICA - UAW

RON GETTELFINGER, *PRESIDENT*

ELIZABETH BUNN, *SECRETARY-TREASURER*

VICE-PRESIDENTS: GENERAL HOLIEFIELD • BOB KING • CAL RAPSON • JIMMY SETTLES  
*Associate General Counsel*

Daniel W. Sherrick  
*General Counsel*  
Georgi-Ann Bargamian  
*Deputy General Counsel*

Ava Barbour  
Carlos F. Bermudez  
Niraj R. Ganatra

William J. Karges  
Susanne Mitchell  
Michael F. Saggau

Maneesh Sharma  
Blair K. Simmons  
Jeffrey D. Sodko

Catherine J. Trafton  
Stephen A. Yokich

May 20, 2010

Celeste Mattina, Regional Director  
NLRB Region 2  
26 Federal Plaza, Room 3614  
New York, NY 10278-0104

*Via Overnight Mail*

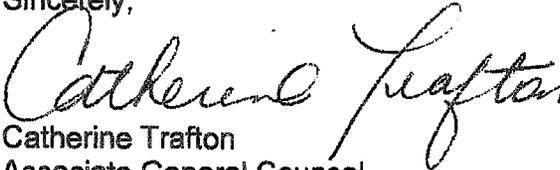
**Re: New York University  
Case No. 2-RC-23481**

Dear Ms. Mattina:

Enclosed please find an original and two copies of GSOC/UAW's Response To Order To Show Cause and certificate of service.

Thank you in advance for your attention to this matter. Please contact me with any questions.

Sincerely,

  
Catherine Trafton  
Associate General Counsel

CT:djn  
opeiu494  
Enclosures  
cc: Edward A. Brill, Esq.

NEW YORK, NY  
MAY 21 10:55 AM '10

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## Attachment 4

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 2

NEW YORK UNIVERSITY,	X		
	:		
	:		
and	:	Employer,	
	:		Case No. 2-RC-23481
	:		
GSOC/UAW,	:		
	:		
	:	Petitioner.	
	:		
	X		

**REPLY OF NEW YORK UNIVERSITY  
TO PETITIONER'S RESPONSE TO ORDER TO SHOW CAUSE**

On May 14, 2010, the Regional Director issued an Order to Show Cause whether the petition herein should be dismissed based on the NLRB's decision in *Brown University*, 342 NLRB 483 (2004). New York University ("NYU") submits this reply to the May 20, 2010, Response of GSOC/UAW To Order To Show Cause ("Petitioner's Response").

In its response, Petitioner expressly agrees with NYU that the law requires dismissal of the petition. (Petitioner's Response at 1.) As both parties are in agreement that the petition must be dismissed, there is no need for NYU to respond here to the arguments Petitioner intends to make to the Board in a Request for Review of the petition's anticipated dismissal. Rather, NYU reserves its right to respond to such arguments, if necessary, in a Statement in Opposition to any Request for Review that may be filed by Petitioner.

However, to correct the record we note that NYU has not "acknowledged that the majority of the employees in the petitioned-for unit are graduate assistants within the meaning of *Brown University*" as the Order to Show Cause states. To the contrary, as explained in our letter

dated May 11, 2010, which the Regional Director deemed a motion to dismiss the petition, the vast majority of graduate students in the proposed bargaining unit are appointed as adjunct faculty and are included in a unit presently represented by UAW and covered by an existing collective bargaining agreement. They are not “graduate assistants.”

Petitioner now has taken the position that the proposed unit also includes “all graduate students appointed as Research Assistants, including those in the Sackler Institute of Graduate Biomedical Science and the various science departments of NYU.” However, these research assistants, who are supported on externally-funded grants, were expressly held not to be employees -- as advocated by the Union -- in *New York University*, 332 NLRB 1205 (2000)(*NYU*). Petitioner misrepresents the NLRB’s decision in *NYU*, asserting that the Board found the record in that case to be “insufficient to establish that certain science research assistants at NYU were employees within the meaning of the Act.” (Petitioner’s Response at 3.) In fact, the Board agreed with the Regional Director that the Sackler graduate assistants and the science department research assistants funded by external grants “are properly excluded from the unit. *Leland Stanford Junior Univ.*, 214 NLRB 621 (1974).” *NYU*, 332 NLRB at 1209, n.10. The Board found that the evidence failed to demonstrate -- not that the record was insufficient to establish -- that such individuals were employees within the meaning of the Act. *Id. Brown* did not affect this aspect of *NYU*, and *Stanford* has remained the law for more than 35 years. Thus, the research assistants in the Sackler Institute and the science departments expressly excluded in *NYU*, as well as similarly situated research assistants in other departments, are not statutory employees, without regard to the Board’s central holding in *Brown* decision.

In conclusion, the petition raises no question concerning representation of employees and, therefore, must be dismissed by the Regional Director.

New York, New York  
May 28, 2010

Respectfully Submitted,



---

Edward A. Brill  
Proskauer Rose LLP  
1585 Broadway  
New York, NY 10036  
(212) 969-3015  
ebrill@proskauer.com

CERTIFICATION OF SERVICE

The undersigned counsel for the Employer hereby certifies that the within Reply of New York University to Petitioner's Response to Order to Show Cause has been served on Petitioner by delivery to its counsel of record, Catherine Trafton, Esq., Associate General Counsel, International Union, UAW, and Thomas W. Meiklejohn, Esq., Livingston, Adler, Pulda, Meiklejohn and Kelly, P.C., by overnight and electronic mail on Friday, May 28, 2010.

A handwritten signature in black ink, appearing to read "Brian Rauch", written over a horizontal line.

Brian S. Rauch