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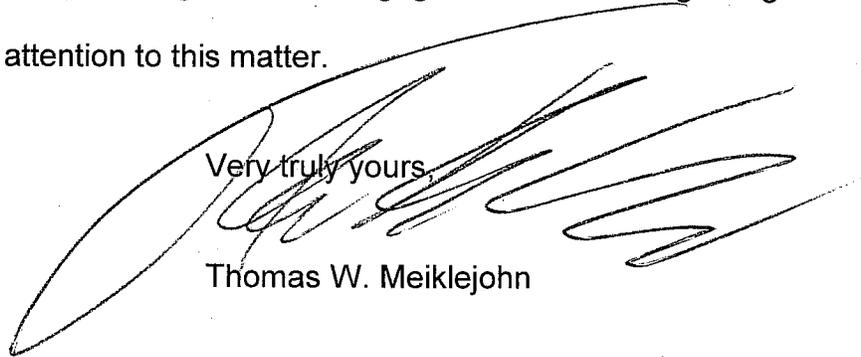
RE: New York University
Case No. 2-RC-23481

Dear Sir or Madam:

Pursuant to §102.67 of the Board's Rules and Regulations, enclosed please find the Petitioner's Request for Review, together with excerpts of the record in this proceeding that are cited in the Request for Review. This Request for Review raises the issue of whether the Board should overrule Brown University, 342 NLRB 483 (2004) and return to the holding of New York University, 332 NLRB 1205 (2000) that graduate student employees have the right to organize and engage in collective bargaining.

Thank you for your attention to this matter.

Very truly yours,


Thomas W. Meiklejohn

TWM/azh
Enclosure

cc: Edward Brill
Elbert F. Tellem
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UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

----- X

NEW YORK UNIVERSITY, :

Employer, :

And : Case No.

: 2-RC-23481

GSOC/UAW, :

Petitioner. :

----- X

PETITIONER'S REQUEST FOR REVIEW

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

New York University

Employer

Case No. 2-RC-23481

and

GSOC/UAW

Petitioner

PETITIONER'S REQUEST FOR REVIEW

This petition, seeking a unit of graduate student employees, is before the Board for the second time. On remand from the Board, the Acting Regional Director concluded that the unit sought would be appropriate but for the Board's decision in Brown University, 342 NLRB 483 (2004). Feeling constrained by Brown's holding that graduate assistants are not entitled to the protection of the Act, the Acting Regional Director again dismissed this petition. The Petitioner requests that the Board grant review and overrule Brown.

GSOC/UAW ("The Petitioner," "the Union," or "the UAW") seeks to represent the same unit of graduate student employees employed by New York University ("the Employer," "NYU" or "the University") that it represented before Brown "declare[d] the Federal law to be that graduate student assistants are not employees within the meaning of Section 2(3) of the Act." 342 NLRB at 493. The Regional Director first dismissed the instant petition without a hearing on June 7, 2010 because the petitioned-for employees are graduate students who are paid to perform services for

the university in which they are enrolled (Dec 1).¹ The Petitioner, while conceding that Brown was controlling, requested review on the ground that there are compelling reasons for reconsideration of Brown. (Dec. 1). The Board agreed, granting the Petitioner's Request for Review, reopening the case and remanding to the Regional Director for a hearing and a decision. New York University, 356 NLRB No. 7 (NYU II).

In granting review, the Board noted that Brown overruled a previous decision involving the Employer, New York University, 332 NLRB 1205 (2000) (NYU I), which had been decided only four years earlier. The Board also referenced the Petitioner's argument that Brown relied on "policy considerations extrinsic to the labor law we enforce and thus not properly considered in determining whether the graduate students are employees." NYU II, sl. op. at 1. The Board noted that the UAW had offered to present evidence, including expert testimony, "demonstrating that, even given weight to the considerations relied on by the Board in Brown University, the graduate students are appropriately classified as employees under the Act," and that the UAW argued that Brown "is inconsistent with the broad definition of employees contained in the Act and prior Board and Supreme Court precedent." By contrast, the Employer merely argued "that Brown University was correctly decided." Id. Accordingly, the Board directed the Regional Director to conduct a hearing to gather evidence and issue a decision addressing these contentions (Id. at 2). In addition, the Board instructed the Regional Director to consider the Employer's argument that graduate students formerly classified as teaching assistants had been converted to adjunct faculty because the

¹ Reference to the Acting Regional Director's Decision and Order Dismissing Petition shall be cited as "Dec. [followed by page number]."

Employer now labels their earnings “salaries” rather than “stipends” (Id. at 1).

Pursuant to the Board’s decision, the Acting Regional Director for Region Two conducted a hearing over 19 days between November 18, 2010 and March 1, 2011. Following the submission of briefs, the Acting Regional Decision issued his decision on June 16, 2011. He found that the employees sought in the petition “are performing services under the control and direction of this Employer, for which they are compensated.” (Dec. at 26). Therefore, they are employees at common law. See, e.g., NLRB v. Town and Country Electric, Inc., 516 U.S. 85 (1995); Sure-Tan v. NLRB, 467 U.S. 883 (1984); Boston Medical Center, 330 NLRB 152 (1999). The Acting Regional Director also found that, with minor modifications, the unit sought in the petition would be an appropriate unit (Dec. 26-27). Nevertheless, he dismissed the petition because “in *Brown*, graduate students were excluded from coverage of the Act on policy grounds.” (Dec. 26).

As the Board recognized in NYU II, there are “compelling reasons” to reconsider Brown. The record in this case establishes that the workers in the petitioned-for unit are both students and employees, and that as employees they deserve the protection of the Act. The record also contains the other evidence that the Board indicated would be relevant to reconsideration of Brown. Therefore, the time has come to reverse Brown, return to the holding of NYU I, and restore the bargaining rights of the graduate student employees at New York University.

I. **FACTS**

A. **Previous Collective Bargaining by Graduate Assistants at NYU**

On November 15, 2000, the UAW was certified as bargaining agent for a unit of teaching assistants, research assistants and graduate assistants employed by the Employer (Dec. 7; see NYU I). Following certification, the parties successfully negotiated a collective bargaining agreement covering this bargaining unit, which was effective by its terms for the period September 1, 2001 through August 31, 2005 (Dec. 7). That contract included a "Management and Academic Rights" clause specifically designed to protect the academic mission of the University:

A. Management of the University is vested exclusively in the University. Except as otherwise provided in this Agreement, the Union agrees that the University has the right to establish, plan, direct and control the University's missions, programs, objectives, activities, resources, and priorities; to establish and administer procedures, rules and regulations, and direct and control University operations; to alter, extend or discontinue existing equipment, facilities, and location of operations; to determine or modify the number, qualifications, scheduling, responsibilities and assignment of graduate assistants; to establish, maintain, modify or enforce standards of performance, conduct, order and safety; to evaluate, to determine the content of evaluations, and to determine the processes and criteria by which graduate assistants' performance is evaluated; to establish and require graduate assistants to observe University rules and regulations; to discipline or dismiss graduate assistants; to establish or modify the academic calendars, including holidays and holiday scheduling; to assign work locations; to schedule hours of work; to recruit, hire, or transfer; to determine how and when and by whom instruction is delivered; to determine in its sole discretion all matters relating to faculty hiring and tenure and student admissions; to introduce new methods of instruction; or to subcontract all or any portion of any operations; and to exercise sole authority on all decisions involving academic matters.

B. Decisions regarding who is taught, what is taught, how it is taught and who does the teaching involve academic judgment and shall be made at the sole discretion of the University.

C. The above enumeration of management rights is not exhaustive and does not exclude other management rights not specified herein, nor shall the exercise or non-exercise of rights constitute a waiver of any such rights by the University.

D. No action taken by the University with respect to a management or academic right shall be subject to the grievance or arbitration procedure or collateral suit unless the exercise thereof violates an express written provision of this agreement.

(Pet. Ex. 6 at 19-20).

Before the Board issued its decision in Brown, the Employer took the position that the above language protected the University's academic freedom and interests. For example, a memorandum to "The University Community" from Robert Berne, the Employer's Vice President for Academic and Health Affairs, specifically noted that the agreement "achieves all" of the aims the University identified at the start of negotiations, including "the primacy of our fundamental academic mission, values and prerogatives." (Pet. Ex. 7). Similarly, a press release distributed by the Employer noted that "[t]he agreement reaffirms fundamental academic prerogatives of the University," and quoted NYU President Dr. L. Jay Oliva's statement that "I am very pleased at the outcome of these efforts." (Pet. Ex. 7).

The Employer's attitude changed markedly in the aftermath of Brown. As the expiration date of the collective bargaining agreement approached, NYU Provost David McLaughlin asked the Faculty Advisory Committee on Academic Affairs to submit a recommendation as to whether the University should withdraw recognition from the Union. The Committee's report found that collective bargaining had produced improvements that should be preserved in the earnings, benefits and working conditions of graduate student employees (Dec. 8). Nevertheless, in order to take

advantage of Brown, the committee recommended withdrawing recognition, concluding, “Graduate students make vital contributions to the university in their roles as teaching assistants, graduate assistants and research assistants, but graduate students should be regarded, first and foremost, as students, apprentice researchers, and trainees of their faculty mentors, rather than as employees.” (Dec. 8; Er. Ex. 39, p. 1-2).

Post-Brown, NYU’s administration also commissioned a report by the Senate Academic Affairs Committee and Senate Executive Committee on whether to continue to bargain with the Union. This Committee suggested that NYU withdraw recognition, even though it found that collective bargaining had produced numerous positive results that should be retained (Dec. 8; Er. Ex. 38). Among these benefits, the Senate Committee noted “increased stipends, health care benefits, stability and clarity of work expectations” for graduate student employees (Er. Ex. 38, p. 6). The only alleged negative impact of collective bargaining noted by either of these committees was the time required to respond to grievances that, in the view of committees, had the “**potential** to impair or eviscerate management rights and academic judgment of the University....” (Er. Ex. 38, p. 8; Er. Ex. 39, p.2; Dec. 8) (emphasis added). Neither committee claimed that collective bargaining had caused any **actual** harm to academic freedom.

Significantly, all of the grievances cited in the Senate Committee report were decided in the University’s favor (Er. Ex. 38, p. 9). In an arbitration award introduced into the record by the Employer, the arbitrator found that the contract’s Management and Academic Rights language gave the University “complete discretion to determine when its Graduate Students will be used to teach a course, what courses they will teach

and when courses will be taught by instructors who are not Graduate Students." (Er. Ex. 40, at 14). Thus, these grievances confirm that the collective bargaining process worked to protect academic freedom. Even the Employer's Director of Labor Relations ultimately conceded that the Management and Academic Rights language of the collective bargaining agreement "provided the University with a mechanism" that protected its academic freedom. (Tr. 742-43).

After some discussions with the UAW, the Employer proposed a collective bargaining agreement in which disputes would be decided by Provost McLaughlin rather than by a neutral arbitrator (Dec. 9). The Union rejected this offer (Dec. 9). The Employer responded by withdrawing recognition after the contract expired and implementing the terms and conditions that it had proposed to the Union (Dec. 9; Er. Ex. 4).² This resulted in a lengthy, unsuccessful strike (Tr. 138-39).

B. Reclassification of Teaching Assistants

In 2002, another affiliate of the UAW, Adjuncts Come Together, ACT/UAW, AFL-CIO ("ACT/UAW") was certified as the representative of a separate bargaining of adjunct faculty at NYU (Dec. 7). The University and ACT/UAW negotiated their first collective bargaining agreement effective in May 2004, while the collective bargaining agreement covering graduate assistants was in effect (Dec. 7). Thus, the UAW

² In a footnote, the Acting Regional Director found, "It does not appear that the Employer formally withdrew recognition." (Dec. 9, fn. 6). However, in a letter to the Union, NYU's Director of Labor Relations stated, "[W]e are informing our community today that the University will not be negotiating a new contract with the United Auto Workers as the representatives of our graduate assistants." (Er. Ex. 4, second page). This statement to both the Union and the University community was the withdrawal of recognition. See also Tr. 138.

represented adjunct faculty and graduate assistants in separate bargaining units, through different local unions, during the same time period.

Prior to 2009, most graduate students who taught undergraduate students were classified as teaching assistants, and assigned to payroll code 101 (NYU I, 332 NLRB at 1210; Dec. 5). Compensation for their services came in the form of “stipends.” (NYU I, 332 NLRB at 1210; Dec. 9). Beginning in the Fall of 2009, the Employer began to eliminate the teaching assistant classification. At that time, the largest of the schools within the University, the Graduate School of Arts and Sciences (“GSAS”), implemented “Financial Aid Reform 4” (“FAR 4”) which eliminated the connection between teaching and the payment of stipends (Dec. 5-6, 9). Nevertheless, graduate students continued to teach for pay. The Employer transferred them from the payroll category for teaching assistants to the payroll category for adjunct faculty and began to call them adjunct faculty (Dec. 1; Tr. 376). The Employer set their salaries based upon provisions of the ACT/UAW collective bargaining agreement (Dec. 14). The Acting Regional Director found that graduate students new classified as adjuncts continue to perform substantially the same work as they previously performed when classified as teaching assistants (Dec. 15-16).³

The Employer took the position that, because it changed the job classification and the method of compensation for students who teach, they were magically converted into statutory employees (Dec. 1). The Employer claimed in this proceeding, and it informed the student employees at the time the change was made, that its action

³ A similar program was implemented elsewhere within the University in the Fall of 2010 (Dec. 12, fn.10).

in changing the labels placed on their jobs and their compensation had resulted in their inclusion in the ACT/UAW bargaining unit (Dec. 1, 10, 11). ACT/UAW vigorously and publicly denied that teaching assistants had been added to its bargaining unit (Dec. 11). The Acting Regional Director agreed, concluding that the Employer's actions did not result in an accretion of teaching assistants into the ACT/UAW bargaining unit because they "do not share an overwhelming community of interest" with the adjunct faculty who have historically comprised that unit (Dec. 27). See Frontier Telephone of Rochester, Inc., 344 NLRB 1270 (2005), *enfd.*, 2006 App. LEXIS 12443 (2d Cir. 2006); CHS, Inc., 355 NLRB No. 164 (2010).

C. Expert Testimony

Petitioner presented expert testimony from Dr. Paula Voos, a labor economist and professor at Rutgers University (Tr. 36; Pet. Ex. 1; Dec. 24). Dr. Voos and her colleagues recently completed a survey of the impact of collective bargaining on graduate assistants' relationships with their universities and faculty, the results of which she presented at the hearing (Pet. Ex. 2; Dec. 24). The survey collected empirical evidence on matters including the two primary policy assertions in Brown: that "Union representation of graduate student employees at universities harms the faculty/student relationship," and that "Union representation of graduate student employees at universities reduces academic freedom." (Pet. Ex. 2, at 2; Tr. 72; Dec. 24).

Dr. Voos's survey collected responses from doctoral students at eight large universities, four with union representation for graduate assistants and four without, matched in pairs by geographical region, approximate size of the student body, and

research and development expenditures (Tr. 44; Pet. Ex. 2, at 3; Dec. 24). The surveys were completed by students serving as teaching assistants and/or research assistants in disciplines broadly representing liberal arts, science, and professional schools (Tr. 43; Pet. Ex. 2 at 3; Dec. 24). Students were sent the survey via email, and completed it anonymously online, between March through July 2010 (Tr. 42, 45; Pet. Ex. 2 at 4; Dec. 24). Approximately 798 students completed the survey (Tr. 47-48; Dec. 24).

Dr. Voos's survey asked numerous questions related to both the student/faculty relationship and academic freedom. In the former category, students were asked to state their agreement or disagreement with numerous statements related to their relationship with their primary advisor, including statements related to the advisor's personal and professional support and development of the student, and the student's freedom to challenge the advisor's authority (Pet. Ex. 2, at 7-8). Also with respect to the student/faculty relationship, the survey asked students to assess whether the climate in their department was adversarial and whether they could freely exchange ideas with faculty in their department other than their primary advisor (Pet. Ex. 2, at 8-9). Comparing the results across the unionized and non-union universities, Dr. Voos "found no evidence that the student/teacher relationship was worse or damaged in the context of graduate student representation." (Tr. 57; Pet. Ex. 2 at 10-12; Dec. 25).

Regarding academic freedom, Dr. Voos's survey asked students to state their agreement or disagreement with statements related to their own academic freedom when teaching courses and performing research, as well as the climate of academic freedom in their program, department, and university (Pet. Ex. 2 at 13). As with the

results on the student/faculty relationship, Dr. Voos found no evidence that academic freedom was damaged by unionization (Tr. 58, 63; Pet. Ex. 2, at 14).

An earlier study conducted by Dr. Gordon Hewitt of Tufts University, based on the results of a survey of faculty at five universities, concluded that graduate assistant unionization does not inhibit the student/faculty relationship (Dec. 25).

The Employer called Dr. Henry Farber, Professor of Labor Economics at Princeton, to attempt to rebut Dr. Voos's testimony (Dec. 25). Ultimately, however, Dr. Farber appeared to concede the validity of Dr. Voos's conclusions, if not the rigor of her research methodology. He acknowledged that, with respect to the topics of the survey, the Voos study is "an interesting descriptive tool ... **to tell us that at this point in time in these universities there's no difference.**" (Tr. 1037). That is, he agreed that her study provides evidence that there is no difference in measures of academic freedom and in faculty-student relationships between the unionized universities and the non-union universities that she studied. Furthermore, with respect to the assumptions upon which Brown is based, Dr. Farber agreed that there is no evidence that unionization of graduate assistants harms the student/faculty relationship or undermines academic freedom. (Tr. 1062).

Thus, both expert witnesses in this case agreed that there is no empirical support for the policy assumptions relied upon by the majority in Brown.

II. THE BOARD SHOULD GRANT REVIEW, OVERRULE *BROWN*, AND RESTORE LEGAL PROTECTIONS FOR THE RIGHT OF GRADUATE STUDENT EMPLOYEES TO ORGANIZE

The Assistant Regional Director found that the petitioned-for workers are both students and employees, and that but for the Board's decision in Brown, they would be entitled to a vote on union representation. A consideration of the factors cited by the Board in remanding this case, contained in the instant record and examined by the Assistant Regional Director in his decision, leads to the conclusion that Brown was incorrectly decided and should be overruled.

A. Statutory Language and Supreme Court and Board Precedent Support the Conclusion that Graduate Student Employees are Entitled to the Protection of the Act

1. The literal language of the statute includes employees who are also students

The broad definition of "employee" in Section 2(3) includes graduate student employees. The Board majority in Brown erred by failing to even consider the language of section 2(3) of the Act. This is contrary to the most fundamental principle of statutory construction. In interpreting the meaning of any statute, "[w]e start, as always, with the language of the statute." Williams v. Taylor, 529 U.S. 420, 431 (2000); Am. Tobacco Co. v. Patterson, 456 U.S. 63, 68 (1982) ("[I]n all cases involving statutory construction, our starting point must be the language employed by Congress . . .") (quotation and citation omitted). The language of Section 2(3) demands a broad, inclusive reading.

Section 2(3) provides, in relevant part, "[t]he term 'employee' shall include any employee . . ." 29 U.S.C. § 152(3). The Supreme Court has repeatedly interpreted this language broadly. The "breadth" of this definition "is striking: the Act squarely applies

to 'any employee.' The only limitations are specific exemptions for agricultural laborers, domestic workers, individuals supervised by their spouses or parents, individuals employed as independent contractors or supervisors, and individuals employed by a person who is not an employer under the NLRA." Sure-Tan, Inc. v. NLRB, 467 U.S. 883, 891 (1984) (citing §2(3)); see also Sunderland Constr. Co., 309 NLRB 1224, 1226 (1992) ("Under the well settled principle of statutory construction - *expressio unius est exclusio alterius* - only these enumerated classifications are excluded from the definition of employee."). There is no exclusion in the statute for employees who are "also students" or "primarily students."

In NLRB v. Town & Country Electric, Inc., a unanimous Supreme Court elaborated that "[t]he ordinary dictionary definition of 'employee' includes any 'person who works for another in return for financial or other compensation,'" and the Act's definition of employee as including "any employee" "seems to reiterate the breadth of the ordinary dictionary definition." 516 U.S. 85, 90 (1995) (quoting American Heritage Dictionary 604 (3d ed. 1992)) (emphasis in original); see also, e.g., Am. Tobacco, 456 U.S. at 68 ("[W]e assume that the legislative purpose is expressed by the ordinary meaning of the words used. Thus, absent a clearly expressed legislative intention to the contrary, that language must ordinarily be regarded as conclusive.") (quotation and citation omitted). The Court noted that a broad reading of "employee" consistent with the dictionary definition of the word also comports with the common law master-servant relationship. The Court explained that "[i]n the past, when Congress has used the term 'employee' without defining it, we have concluded that Congress intended to describe the conventional master-servant relationship as understood by common-law agency

doctrine." Id. at 94 (quotation and citation omitted). Here, the broad dictionary definition of "employee" is consistent with the traditional agency doctrine because "[a]t common law, a servant was one who performed services for another and was subject to the other's control or right of control. Consideration, i.e. payment, is strongly indicative of employee status." Boston Med. Ctr., 330 NLRB 152, 160 (1999) (citing Town & Country, 516 U.S. at 93-95). The students in the petitioned-for unit perform services for NYU, subject to its control, and receive compensation from the University. They therefore fit the literal definition of "employee".

In addition to being faithful to the ordinary meaning of the statutory language, the Town & Country Court also held that a "broad, literal interpretation of the word 'employee' is consistent with several of the Act's purposes, such as protecting the right of employees to organize for mutual aid without employer interference, and encouraging and protecting the collective-bargaining process." Id. at 91 (citing Sure-Tan, 467 U.S. at 892; Republic Aviation Corp. v. NLRB, 324 U.S. 793, 798 (1945)) (quotation marks omitted). And, a broad interpretation of "employee" is also consistent with the Act's legislative history: "It is fairly easy to find statements to the effect that an 'employee' simply 'means someone who works for another for hire,' H.R. Rep. No. 245, 80th Cong., 1st Sess., 18 (1947), and includes 'every man on a payroll, 79 Cong. Rec. 9686 (1935)." Id. By contrast, "contrary statements, suggesting a narrow or qualified view of the word, are scarce, or nonexistent - except, of course, those made in respect to the specific . . . exclusions written into the statute." Id.

Given the language of the statute, the purposes of the Act, and its legislative history, the Board and courts have traditionally taken a very expansive view of the types

of workers who meet the definition of "employee." See, e.g., Town and Country (paid union organizers may also simultaneously be considered "employees"); Sure-Tan, 467 U.S. 883 (undocumented workers are "employees"); NLRB v. Hendricks County Rural Elec. Membership Corp., 454 U.S. 170 (1981) (certain confidential employees are "employees" under Section 2(3)); Phelps Dodge Corp. v. NLRB, 313 U.S. 177 (1941) (job applicants are "employees"); Seattle Opera Ass'n, 331 NLRB 1072 (2000), enforced 292 F.3d 757 (D.C. Cir. 2002) (auxiliary choristers at non-profit opera company are "employees"); Boston Med. Ctr., 330 NLRB 152 (1999) (medical interns, residents, and fellows are "employees"). In Seattle Opera, the D.C. Circuit distilled the Supreme Court's and the Board's broad reading of the statute and the common-law master servant relationship into a two-part test: "[I]t is clear that where he is not specifically excluded from coverage by one of section 152(3)'s enumerated exemptions the person asserting statutory employee status does have such status if (1) he works for a statutory employer in return for financial or other compensation; and (2) the statutory employer has the power or right to control and direct the person in the material details of how such work is to be performed." 292 F.3d at 762 (internal citations omitted) (emphasis in original). Graduate student workers are employees under this test.

2. The Board's decision in NYU I was consistent with precedent

Consistent with all of the authority discussed above, the Board in NYU I concluded that graduate student workers - referred to as "graduate assistants" - are employees under Section 2(3). After noting that it was "undisputed" that graduate

workers are not within the enumerated exclusions in the statute, the Board concluded that "[t]he uncontradicted and salient facts establish that graduate assistants perform services under the control and direction of the Employer, and they are compensated for these services by the Employer." NYU I, 332 NLRB at 1206. "Graduate assistants work as teachers or researchers," "perform their duties for, and under the control of, the Employer's departments or programs," and "are paid for their work and are carried on the Employer's payroll system." Id.

In addition, the Board noted that the graduate assistants' relationship with NYU is strikingly similar to the relationship that medical interns, residents, and fellows had with their employer in Boston Medical, a case that was decided just a few years before NYU I and that has recently been reaffirmed. The Board in Boston Medical found "ample evidence" to support a finding that apprentice physicians fall within the definition of employee "notwithstanding that a purpose of their being at a hospital may also be, in part, educational." Boston Med., 330 NLRB at 160; see NYU I, 332 NLRB at 1206-07. Boston Medical was recently reaffirmed in St. Barnabas Hospital, 335 NLRB No. 39 (2011), which rejected the argument that Boston Medical should be reconsidered in light of Brown.

Finally, the NYU I Board rejected the Employer's policy argument that permitting graduate workers to unionize would damage academic freedom, an argument that was unsupported by any evidence. The Board noted that it has asserted jurisdiction over private, non-profit colleges and universities since Cornell University, 183 NLRB 329 (1971). "After nearly 30 years of experience with bargaining units of faculty members, we are confident that in bargaining concerning units of graduate assistants, the parties

can 'confront any issues of academic freedom as they would any other issue in collective bargaining." NYU I, 332 NLRB at 1208 (quoting Boston Med., 330 NLRB at 164). Petitioner submits that NYU I distilled all of the earlier relevant cases from both the Supreme Court and the Board into the proper legal framework for assessing whether graduate student workers are "employees." As explained below, Brown unconvincingly and inconsistently departed from those earlier cases, relying on conjecture about policy considerations rather than the Act to deny graduate employees the right to organize.

3. Brown dramatically departed from the language of the Act and existing precedent regarding the definition of "employee."

The Board in Brown ignored the broad language of the statute, Supreme Court decisions giving an expansive interpretation of the term "employee," and the well-reasoned decision in NYU I issued just four years earlier. Instead, the Board relied on unsupported policy considerations extrinsic to labor law to conclude that graduate students who perform work for the universities they attend, for compensation, and at the universities' direction and control, are not employees. Rather than analyzing whether graduate workers are "employees" under Section 2(3) - that is, rather than determining whether graduate workers perform services for an employer for compensation, at the employer's direction and control - Brown simply concluded that graduate workers have a "primarily educational" relationship with the Employer. Brown, 342 NLRB 483, 488 (2004). According to Brown, because graduate workers "are first and foremost students, and their status as graduate student assistant is contingent upon their continued enrollment as students . . . they are primarily students" and not

employees. *Id.* This holding creates a false dichotomy between working and learning that has no foundation in law, evidence or logic.

Brown relied heavily on the academic freedom argument rejected in NYU I, as well as unsubstantiated speculation that unionization of graduate workers would damage the student-faculty relationship. In this regard, Brown adopted reasoning set forth in St. Clare's Hospital, 229 NLRB 1000 (1977), a case that was expressly overturned by Boston Medical. See 330 NLRB at 152 ("Having carefully reviewed the entire record in this proceeding . . . the Board has decided to overrule *Cedars-Sinai*, *St. Clare's Hospital*, and other decisions following those cases . . ."). Nonetheless, Brown relied upon St. Clare's conclusion "that subjecting educational decisions [to collective bargaining] would be of 'dubious value' because educational concerns are largely irrelevant to wages, hours, and working conditions," and that "in many respects, collective treatment is 'the very antithesis of personal individualized education.'" Brown, 342 NLRB at 489-90 (quoting St. Clare's, 229 NLRB at 1002). Brown also adopted St. Clare's determination "that collective bargaining would unduly infringe upon traditional academic freedoms," concluding that "[i]mposing collective bargaining would have a deleterious impact on overall educational decisions by the Brown faculty and administration." *Id.* at 490 (citing St. Clare's, 229 NLRB at 1003). According to Brown, collective bargaining by graduate workers would adversely affect "decisions . . . includ[ing] broad academic issues involving class size, time, length, and location, as well as issues over graduate assistants' duties, hours, and stipends. In addition, collective bargaining would intrude upon decisions over who, what, and where to teach or research - the principal prerogatives of an educational institution like Brown." *Id.*

The Brown majority did not cite any evidence to support its conclusions about these supposed adverse effects of collective bargaining by graduate student workers. This is not surprising because, as the record in this case establishes, there is no empirical evidence that collective bargaining has any adverse effects on academic freedom or the educational process. As discussed in greater detail below, the record in this case contains evidence that contradicts these assumptions. Brown relied entirely on unsupported conjecture from a nearly thirty-year-old, overruled decision. This conjecture cannot be reconciled with Boston Medical, where the Board overruled St. Clare's and held that the proper analysis for determining whether a group of workers are "employees" entitled to the Act's protection is whether they perform services for an employer for compensation, at the employer's direction and control. Boston Med., 330 NLRB at 159-61 (discussing, inter alia, analysis set forth in Sure-Tan and Town & Country). Accord Seattle Opera, 92 F.3d at 762. Boston Medical, rejected the "primarily educational" rationale set forth in St. Clare's as "flawed in many respects." Id. at 159.

Moreover, Boston Medical expressly rejected the academic freedom and other policy considerations identified in St. Clare's, holding that the notion that collective bargaining by student workers will impair academic freedom "puts the proverbial horse before the cart." Id. at 164:

The contour of collective bargaining is dynamic with new issues frequently arising out of new factual contexts: what can be bargained about, what the parties wish to bargain about or concentrate on, and what the parties are free to bargain about, may change. But such problems have not proven to be insurmountable in the administration of the Act . . . [W]e note that there are often restrictions on bargaining due to outside influences, e.g., contracts an employer may have with other concerns that require the

employer to conduct its business in a specific manner, or specifications in a contract that limit what an employer may or may not do. An employer is always free to persuade a union that it cannot bargain over matters in the manner suggested by the union because of these restrictions. But that is part of the bargaining process: the parties can identify and confront any issues of academic freedom as they would any other issue in collective bargaining. If the parties cannot resolve their differences through bargaining, they are free to seek resolution of the issues by resort to our processes, and we will address them at the appropriate time.

Id. Accordingly, the Board in Boston Medical refused to "assume" without evidence that collective bargaining would "interfere with the educational missions" of academic employers or prevent student workers "from obtaining the education necessary to complete their professional training." Id. at 164-65. "If there is anything we have learned from the long history of this Act, it is that unionism and collective bargaining are dynamic institutions capable of adjusting to new and changing work contexts and demands in every sector of our evolving economy." Id. at 165.

Brown's failure to follow Boston Medical - indeed, its reliance on a case expressly rejected by Boston Medical - is particularly troubling because Brown did not purport to overrule Boston Medical. See Brown, 342 NLRB at 483 n.4 ("[W]e express no opinion regarding the Board's decision in Boston Medical Center"). Rather, Brown sought to distinguish Boston Medical solely on the basis that the medical apprentices in that case had already obtained their degrees, whereas graduate assistants have not yet graduated. See Brown, 342 NLRB at 487. It is difficult to see how this distinction bears any relationship to the language or policies of the Act. The reasoning set forth in Boston Medical - which, as noted above, is supported by the language of the Act and well-established Supreme Court precedent on the definition of "employee" - is equally applicable to graduate assistants. In the light of the Board's decision in St. Barnabas

reaffirming Boston Medical, Brown must be seen as an outlier that cannot be reconciled with prior and subsequent decisions.

Thus, an additional reason to overrule Brown lies in its reliance on cases expressly overruled by Boston Medical, such as St. Clare's. The proper course would be to faithfully apply the lessons of Town & Country, Sure-Tan, and their progeny, which explain the correct analysis for determining employee status under the Act. Finally, post-Brown, the Board has made clear that Boston Medical remains good law. Because Brown cannot be harmonized with Boston Medical and St. Barnabas, and because it fails to follow not only that case, but also the clearly established law regarding the definition of "employee" in Section 2(3) set forth in Sure-Tan, Town & Country, and Seattle Opera, the Board should overrule Brown and restore the right of graduate student employees to engage in collective bargaining.

4. Brown's holding is not dictated by Adelphia or Leland Stanford.

In addition to its reliance on rejected policy determinations extrinsic to Act, Brown purported to find legal support for its decision in two earlier Board cases involving universities, Adelphia University, 195 NLRB 639 (1972) and Leland Stanford Junior University, 214 NLRB 621 (1974). Neither of these cases support the proposition that graduate student workers performing services for compensation under the direction and control of an employer are not employees under Section 2(3).

In Adelphia, the Board held that graduate assistants should be excluded from a faculty bargaining unit, because the student workers did not share a community of interest with the faculty members. 195 NLRB at 640. This conclusion was based, in

large part, on the fact that the student workers were "guided, instructed, and corrected in the performance of their assistantship duties by the regular faculty members to whom they are assigned." Id. Adelphia did not hold that the graduate assistants were not employees under the Act, and "[n]othing in the Board's decision suggests that the graduate assistants could not have formed a bargaining unit of their own." Brown, 342 NLRB at 495 (Members Liebman and Walsh, dissenting).

Similarly, Leland Stanford did not hold that graduate student workers are categorically excluded from the definition of "employee" in Section 2(3). Rather, that case held that the petitioned-for unit of research assistants were not employees because their relationship with the employer "is not grounded on the performance of a given task where both the task and the time of its performance is designated and controlled by the employer." 214 NLRB at 623. In other words, the petitioned-for RAs in Leland Stanford were not employees under Section 2(3) on the specific facts of that case because they failed to meet one of the key factors in the employee test: they did not perform services at the employer's direction and control. See, e.g., Seattle Opera, 292 F.3d at 762.

5. Brown's "primarily students" rationale for denying the Act's coverage to graduate student workers is also inconsistent with the Board's apprenticeship cases.

In order to distinguish Boston Medical, Brown set up the false dichotomy between student workers who are "primarily students," and who thus have a "primarily educational" relationship with their employer, and student workers who are primarily employees because they have finished their coursework and received their academic

degrees. Brown, 342 NLRB at 487. This rationale cannot be reconciled with Board precedent concerning other student workers including the medical interns, residents, and fellows in Boston Medical. It also cannot be reconciled with the Board's long history of recognizing that apprentices are employees, entitled to the protections of the Act.

Apprentices, by definition, are required to work as a part of their training for a craft or trade. Apprentices typically work for an employer while taking classes to learn a craft. This work provides on-the-job training that is critical to learning the craft. Apprentices generally must complete a certain number of hours of classroom training and a specified number of years of work in the field in order to qualify as journeymen. Despite the fact that the work of apprentices is thus part of their training for a career, the Board has consistently treated such apprentices as employees.

As far back as 1944, the Board held that apprentices who attended a school as part of a 4 or 5 year training program and who worked under the supervision of training supervisors for 2½ years while learning shipbuilding skills were employees within the meaning of the Act. Newport News Shipbuilding and Dry Dock Co., 57 NLRB 1053, 1058-59. Similarly, in General Motors Corp., 133 NLRB 1063, 1064-65 (1961), the Board found apprentices to be employees. These apprentices were required to complete a set number of hours of on-the-job training combined with related classroom work in order to achieve journeyman status. See also Chinatown Planning Council, Inc., 290 NLRB 1091, 1095 (1988) (describing apprentices "working at regular trade occupations while receiving on-the-job training"), enf'd, 875 F.2d 395 (2d Cir. 1989). All of these apprentices were students and employees at the same time. Their work was

related to their schooling. They learned while working and earning money. The Board has never suggested that, in order to find an apprentice to be an employee, it was necessary to weigh the educational benefit that he received from working with a journeyman against the economic benefit his employer derived in order to decide whether the relationship was "primarily educational." "[I]t has never been doubted that apprentices are statutory employees eligible to vote in elections with their more experienced colleagues." Boston Med., 330 NLRB at 161 (citing Vanta Co., 66 NLRB 912 (1946)). The reason is quite simple. The Board has traditionally recognized that there is no inconsistency between working and learning.

Like apprentices, graduate student workers are engaged in education while simultaneously performing services for an Employer designed to prepare them for their post-graduation careers. Indeed, the Faculty Advisory Committee characterized research assistants as "apprentice researchers". (Dec. 8) The Board's apprenticeship cases demonstrate that a worker can be a student engaged in a course of study at the same time as he or she is an "employee" under the Act. Accordingly, these cases provide yet another legal reason not to follow Brown.

B. The Record In This Case Contradicts Brown's Assumptions Regarding The Effect of Collective Bargaining On Academic Freedom And The Student/Faculty Relationship.

Rather than starting with the Act to determine whether graduate student workers are "employees," Brown relied on alleged policy considerations in reaching its conclusion that such workers are not protected by the Act. For the reasons explained above, that approach was flawed because it was inconsistent with the plain language of

the Act and established Board and Supreme Court precedent interpreting section 2(3). Moreover, Brown's assumptions with respect to these policy considerations - specifically, that collective bargaining by graduate student workers would impair academic freedom and the student/faculty relationship - were unsupported by any evidence in that case.

The record in the instant case contains evidence that contradicts those assumptions. First, Petitioner presented evidence that, prior to Brown, it had a peaceful collective bargaining relationship with the Employer that protected academic freedom and did not damage the student/faculty relationship. Second, the Employer's actions and positions show that NYU recognizes that there is no inconsistency between being a student and being an employee. Finally, academic studies viewed from both student and faculty perspectives have found no evidence that collective bargaining by graduate student workers deleteriously impacts either the student/faculty relationship or academic freedom. All of this evidence supports reversal of Brown.

- 1. The UAW and NYU had a successful and peaceful collective bargaining relationship for four years before Brown caused the Employer to withdraw recognition.**

In rejecting the Employer's argument that collective bargaining would infringe the academic freedom of colleges and universities, the Board in NYU I predicted that the parties could confront and resolve issues of academic freedom through the collective bargaining process. 332 NLRB 1208. The record herein establishes that this prediction was accurate. As noted above, the University and the UAW entered into a collective bargaining agreement containing a broad Management and Academic Rights clause

that explicitly guaranteed the academic prerogatives of the University. The Union filed grievances raising arguments which, the Employer claimed, were inconsistent with the protections for academic freedom in the Management and Academic Rights clause. The Union's position is that those grievances concerned the scope of the bargaining unit and rates of pay, having no potential for infringement on academic decision-making. The Union never attempted to tell the University what to teach or how it should be taught. The Employer nevertheless claims to have perceived a threat to academic freedom in the Union's position.

It is not necessary to decide whether the grievances touched upon issues of academic freedom in order to conclude that the collective bargaining process did not infringe on academic freedom. The Employer admitted that it prevailed on all of grievances that it felt had a potential to impact its academic prerogatives. The Employer's Director of Labor Relations conceded that the Management and Academic Rights clause worked to protect the University's academic freedom. Thus, contrary to Brown's assumptions, the record establishes that, at NYU, the collective bargaining process succeeded in resolving potential issues impacting academic freedom.

Apart from the handful of grievances discussed above, studies by committees created by the Employer consistently stated that collective bargaining was beneficial to the University community. These benefits of collective bargaining were achieved without a strike. This successful collective bargaining stands in sharp contrast to what transpired after Brown was handed down. On the basis of Brown, the Employer refused to enter into a new collective bargaining agreement containing an arbitration clause, insisting that final decision-making authority be reserved to its Provost. When

the Union rejected a contract that did not include arbitration (the mechanism for the resolution of disputes which is favored by federal labor law), the Employer withdrew recognition. A lengthy strike ensued. Thus, the University's withdrawal of recognition, rather than collective bargaining, resulted in labor unrest and disruption of the academic mission of the University. As long as these employees enjoyed the protection of the Act, successful collective bargaining took place. When they lost the protection of the Act, labor strife followed. The experience at New York University demonstrates that extending the protections of the Act to graduate student employees serves the statutory purpose of promoting labor peace.

Collective bargaining by other classes of university employees further undermines Brown's conclusion that graduate student workers should be denied collective bargaining rights because of the purported "deleterious impact" that collective bargaining in the university setting may have on a university's "overall educational decisions." Brown, 342 NLRB at 490. All of the potential negative impacts identified in Brown, if they actually existed, would seem to apply regardless of whether the workers seeking unionization are graduate assistants, adjunct faculty, or full-time faculty. Yet, the latter types of workers are recognized to be employees under the Act, and are permitted to bargain collectively - and, in fact, have done so for many years at private universities throughout the country, including at NYU. See, e.g., Univ. of Great Falls, 325 NLRB 83 (1997); Lorretto Heights Coll., 264 NLRB 1107 (1982), enforced 742 F.2d 1245 (10th Cir. 1984); Bradford Coll., 261 NLRB 565 (1982); Cornell Univ., 183 NLRB 329 (1971). Thus, concerns about academic freedom, whether real or simply a product of the Brown Board's imagination, are not a reason to deny graduate assistants the

right to collectively bargain. NYU I, 332 NLRB at 1208.

2. The Employer's position in this case is inconsistent with the assumptions made by the majority in Brown

The majority in Brown assumed that collective bargaining on behalf of graduate student employees would undermine the academic freedom of the university and damage relationships between students and their faculty mentors. The Board concluded that graduate assistants are "primarily students" and therefore excluded from the protections of the Act. The Employer's appointment of graduate students as adjunct faculty and its claim that these student employees have been added to the adjunct faculty bargaining unit demonstrates that NYU, based upon its experience with collective bargaining, does not share Brown's assumptions.

For at least the past 10 years, the Employer has followed the practice of appointing some graduate students to positions as adjunct faculty members (Dec. 12). These were students in the later years of their studies, who were no longer eligible for appointments as teaching assistants (Dec. 13). These student adjuncts were included in the collective bargaining unit represented by ACT/UAW. Therefore, they have been the subject of collective bargaining since the adjunct bargaining unit was organized in 2002. The Employer does not claim that inclusion of these graduate students in the adjunct bargaining unit has had any of the deleterious effects predicted by the Board in Brown. On the contrary, the Employer has been so pleased with the results of collective bargaining with ACT/UAW with respect to graduate student employees that it has attempted to convert teaching assistants to adjunct faculty and add them to the adjunct bargaining unit.

The conversion of teaching assistants to adjunct faculty highlights the absurdity of the dichotomy between students and employees created by the Board in Brown. The Employer admits that graduate students who are paid adjunct salaries are employees. The only difference between teaching assistants and graduate students who receive adjunct appointments after FAR 4 is the label placed on payments to the student employees. Teaching assistants received stipends. Graduate student adjuncts are paid salaries. Whether the compensation paid to the student employee is labeled a form of financial aid has no impact on the nature of the services performed or the benefits to the Employer of the work done by the student employees. Either way, the individuals are both students and employees. In their capacities as employees, they should enjoy the rights of employees.

3. Academic studies undermine the assumptions upon which Brown is based

The majority in Brown cited no empirical data to support its assumptions that collective bargaining by graduate assistants would harm academic freedom or student-faculty mentoring relationships. By contrast, the record in this case contains evidence to support the opposite conclusion: that collective bargaining has no adverse impact on academic freedom or student-faculty mentoring relationship. Dr. Voos testified that her studies showed no differences in academic freedom or mentoring relationships between universities where student employees are represented by unions and universities without unions.⁴ Similarly, the Hewitt study, measuring the issue from the

⁴. The Acting Regional Director characterized the results of Dr. Voos's study as "preliminary results that have neither been fully analyzed nor subjected to the peer-review process." (Dec. 24). However, the record establishes that Dr. Voos is an

faculty point of view, found no harm to the student-faculty relationship. Even the Employer's expert testified that there is no empirical research to support either of the Brown assumptions (Tr. 1067). Thus, not only did the Board err by making labor policy on the basis of unsupported assumptions, the evidence in this case directly contradicts these assumptions about the negative effects of collective bargaining by graduate student employees.

Moreover, the studies by the Faculty Advisory Committee and the Senate Academic Affairs Committee at NYU further contradict the Brown assumptions. Neither report suggested any harm to the student-mentor relationship. On the contrary, interviews by the Senate committee with Directors of Graduate studies actually found an improvement in student faculty relationships

- Impact on recruitment:
 - 'Its positive - it reassures and impresses candidates.'
 - 'It has certainly been excellent for student morale, and has contributed positively to recruitment.'

 - Impact on teaching
 - 'Absolutely positive. Fair and understood rules, obligations, and responsibilities have only enhanced [teaching] relations.'
-

expert in labor studies who has written extensively about collective bargaining (Pet. Ex. 1). She testified regarding the data underlying her study, that her conclusions are based upon a methodology that is accepted as reliable, and that she has applied that methodology in accordance with professional standard to the data that she gathered. Therefore, her opinion as to the results of her study is admissible. See Federal Rules of Evidence 702; Daubert v. Merrell Dow Pharmaceuticals, 509 U.S.579 (1993).

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

(Er. Ex. 38, p. 6). Similarly, the Faculty Advisory Committee noted that improvements resulting from the collective bargaining process enhanced “the university’s ability to attract top graduate students and help ensure their success.” (Er. Ex. 39, p. 1). Thus, all of the evidence, including reports prepared by the Employer, contradicts the assumptions upon which the Brown decision was based. This affords yet another reason to overrule that decision.

4. The experience of successful graduate assistant unionization at public universities also undermines Brown’s policy rationales for denying collective bargaining rights to private sector graduate assistants.

There are “many other, established collective bargaining relationships between graduate student unions and universities” in the public sector, throughout the United States. Brown, 342 NLRB at 499 (Members Liebman and Walsh, dissenting). These schools include: the University of California, University of Florida, University of South Florida, University of Iowa, University of Kansas, University of Massachusetts, University of Michigan, Michigan State University, Rutgers, The City University of New York, the State University of New York, the University of Oregon, the University of Washington, the University of Wisconsin, and Wayne State University. Id. at 499, n.27; see, e.g., United Faculty of Fla., Local 1847 v. Bd. of Regents, 417 So.2d 1055 (Fla.

Dist. Ct. App. 1982), aff'd, 443 So.2d 982 (Fla. 1983); Kansas Ass'n of Public Employees, Case No. 75-UD-1-1992 (Kan. PERB Oct. 17, 1994); Bd. of Trustees/Univ. of Mass., 20 MLC 1453, Case No. SCR-2215 (Mass. LRC 1994); Regents of the Univ. of Mich., 1981 MERC Lab. Op. 777, Case No. C76 K-370 (Mich. ERC 1981); Mich. State Univ., 1976 MERC Lab. Op. 73, Case No. R75 D-197 (Mich. ERC 1976); State v. NY State Public Employment Relations Bd., 181 A.D.2d 391, 586 N.Y.S.2d 662 (N.Y. App. Div. 1992); Univ. of Ore. Graduate Teaching Fellows Fed'n, Case No. C-207-75, 2 PECBR 1039 (Or. ERB Feb. 1977); Univ. of Wash., Decision 8315 (Wash. PECB Dec. 16, 2003). Although these schools are state universities rather than private ones, many are comparable to NYU in the sense that they are large, tier 1 research universities.⁵ Moreover, as the Brown dissenters recognized, "there is nothing fundamentally different between collective bargaining in public-sector and private-sector universities." Brown, 342 NLRB at 499 (Members Liebman and Walsh, dissenting).

Furthermore, the Board cited widespread public sector unionization of medical residents, interns, and fellows in Boston Medical as persuasive evidence that the parade of horrors posited in St. Clare's was highly unlikely. "[T]here is no indication that any of the negative problems flowing from [finding medical residents, interns, and fellows to be employees], as predicted by the *Cedars-Sinai/St. Clare's Hospital* opinions, have occurred, or would occur. It is plain that collective bargaining by public sector house staff has been permitted and widely practiced." Boston Med., 330 NLRB

⁵ For example, when NYU commissioned an outside "Review of the Administrative Infrastructure for Research at New York University," one of the three panel members who completed the review was from the University of Michigan, where graduate assistants have been unionized for nearly thirty years. (Pet. Ex. 12); see Regents of the Univ. of Mich., 1981 MERC Lab. Op. 777, Case No. C76 K-370 (Mich. ERC 1981). Presumably, NYU would not have commissioned the advice of the University of Michigan's Director of Sponsored Programs unless it felt that Michigan was at least its peer.

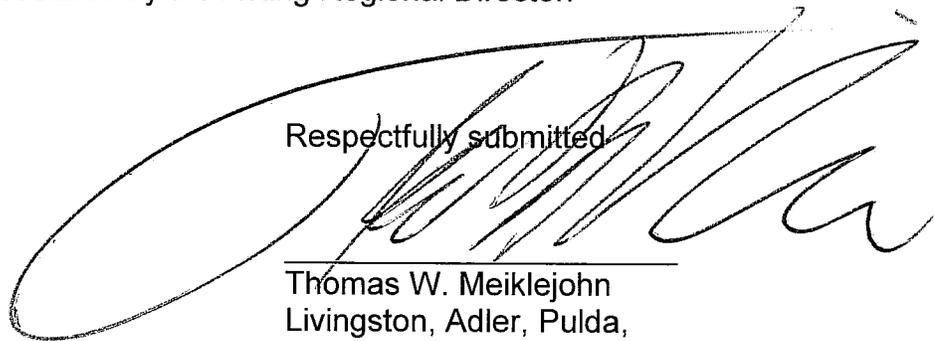
at 163. Similarly, the widespread unionization of graduate assistants at public universities throughout the country undermines Brown's assumptions about the deleterious effects of graduate student collective bargaining.

In summary, Brown is inconsistent with the broad language of the statute and the vast weight of precedent from the Board and the Supreme Court. It is based upon assumptions that are irrelevant to labor policy, contradicted by actual experience at NYU and at public sector universities, and undermined by academic research. The Board should issue a decision in which the employee status of student employees at NYU is based upon the actual relationships between those student workers and their employer.

III. CONCLUSION

The Board should grant this request for review, overrule Brown, and direct an election in the unit described by the Acting Regional Director.

Respectfully submitted,



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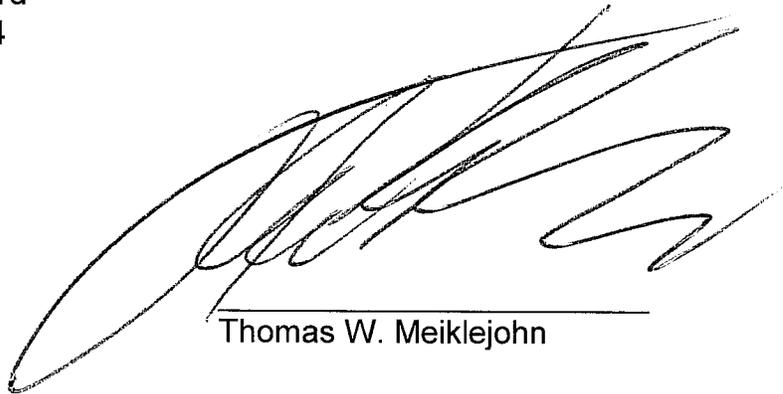
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CERTIFICATE OF SERVICE

This hereby certifies that the foregoing Petitioner's Request for Review was electronically mailed, on this 30th day of June 2011 to all counsel of record as follows:

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Thomas W. Meiklejohn

EMPLOYER EXHIBIT

4

Employer Ex.#



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August 5, 2005

Via Electronic Mail

Ms. Elizabeth Bunn, Secretary-Treasurer
International Union, UAW
8000 East Jefferson Avenue
Detroit, MI 48214

Dear Ms. Bunn:

We are disappointed by the United Auto Workers' August 4th response to our letter. As it signals to us the conclusion of any efforts - formal or informal - to reach an agreement that would be the basis for a new paradigm in our relationship, we want to take a moment to respond to that letter.

In signing an agreement with the United Auto Workers in 2001 and forgoing our right to take this matter to court, we took a leap of faith. We took the risk that you intended to abide by the language of your March 1st, 2001 letter and the contract that followed to ensure academic decision-making was honored in the context of the agreement. Unfortunately, as demonstrated by UAW grievances over who can teach and how many years graduate students can take to complete their studies, our leap of faith was not rewarded. We would be remiss if we did not learn from this experience and avoid making the same mistake twice.

In spite of this history, in the offer we outlined in the August 2nd letter, New York University moved farther than any other private university in the nation. Our proposal offered a new paradigm, a paradigm that would have provided graduate assistants with union representation on economic issues, while protecting the integrity of the academic decision-making process that is essential to graduate assistants' primary role as students.

We regret that the United Auto Workers is unable to embrace this new paradigm, and continues to resort to a traditional employer/employee labor model, which has proven to be ill-suited for an academic environment. We thought this was an opportunity to achieve a new partnership between the

Er Ex. 4

UAW and the University, and sadly, we believe your rejection of this proposal is a lost opportunity.

Your assertion about the University's unwillingness to engage with the UAW over these past months is inaccurate. Through the public and private meetings typical of any negotiation, we have remained open to all reasonable suggestions that might bridge the gap that divides us.

Your letter fails to make even a counter-proposal for our consideration. In consideration of that and the fact that a new school year is about to begin, we are informing our community today that the University will not be negotiating a new contract with the United Auto Workers as the representatives of our graduate assistants. We will implement the proposals contained in the June 16th memorandum to the community signed by Executive Vice President Jacob Lew and Provost David McLaughlin, as modified based on comments received during the notice and comment period. This approach will permit our graduate assistants to pursue their academic studies in an environment guided by academic norms and oriented to supporting their academic success, with the support of stipends and benefits that are guaranteed.

Very truly yours,



Terrance J. Nolan

Cc: Via Facsimile (860) 674-1164
Mr. Philip Wheeler
Regional Director, UAW
111 South Road
Farmington, CT 06032-2560

EMPLOYER EXHIBIT

38

Er. EX 38

FINAL REPORT OF THE SENATE ACADEMIC AFFAIRS COMMITTEE AND
SENATE EXECUTIVE COMMITTEE

MAY 2, 2005

The Senate Academic Affairs Committee and the Senate Executive Committee (jointly, "the Committee") submit this report to President John Sexton and Provost David McLaughlin in response to a request for input on whether NYU should enter into collective bargaining with the UAW as the representative of graduate students after the expiration of the existing contract on August 31, 2005. Specifically, the Committee was charged as follows:

- "Review and advise regarding the opportunities and limitations of maintaining a GA/TA union at NYU, including the academic rewards and liabilities for our University that are associated with a GA/TA union agreement in the absence of unions at peer institutions;
- [Address] any experiences of the GA/TA union at NYU that you believe are relevant for the University Leadership to consider in making a final determination as to whether to renegotiate a collective bargaining agreement with the UAW on behalf of our graduate and teaching assistants."

Although the original deadline for this report was April 25, 2005, the Committee encountered delays in obtaining the information and input it found necessary to complete its work. It therefore requested a one week extension to May 2, 2005, which was granted.

The Committee reached out to various constituencies throughout the campus. Each of the represented groups serving on the Committee – students, faculty, deans, and administrators – was asked to participate in obtaining feedback on the central questions presented, and all members of the University community were given the opportunity, through their constituent Councils, to offer input as well. In addition, the Committee invited UAW representatives and several Graduate Student Organizing

Committee (GSOC) members to speak in support of bargaining, which they did. The Committee also heard from Roberta S. Popik, Associate Dean for the Graduate School of Arts and Science (GSAS), among whose duties are to coordinate matters in GSAS related to the implementation of the union contract. The Committee also solicited and reviewed written responses to a questionnaire sent to the Directors of Graduate Studies (DGS) at all the Schools. In the questionnaire, the Committee asked the DGS about the effect, if any, of the union contract on recruitment, retention, successful completion of the graduate program, placement, quality of the relationship between faculty and GATAs, teaching, departmental morale, administrative matters (services provided, human resource needs, space, equipment, and reporting requirements), along with an open-ended section for further elaboration.

The Committee members also reviewed the Collective Bargaining Agreement; literature prepared by the UAW; demographic and economic data on covered students and comparative institution information; arbitration decisions; reactions from many individual faculty members, as well as written comments from GSAS Dean Catharine Stimpson.

Recommendation

A substantial majority of the Committee suggests that the University cease to recognize the UAW when the current contract expires and not enter into collective bargaining. We have come to this recommendation despite the agreement by a majority of the committee that unionization has yielded some positive results for GATAs. While on these points the members were not in total accord, the Committee stands together in unanimously recommending that the positive effects of unionization be maintained and that the University affirmatively embrace the following principles should it adopt the above recommendation.

Guiding Principles for Treatment of GATAs at NYU

- The University must affirm, retain, and continue to improve the working conditions and economic provisions that have been accelerated by having a union for GATAs.

- Graduate assistants and teaching assistants are predominantly students, not employees, and their assistantships are a form of financial aid that enables them to complete their doctoral programs. Future financial aid packages must be just, generous, reasonable, and competitive.
 - In addition, standards of equity across Schools (i.e., comparable pay for comparable work), tempered by relevant circumstances and conditions (such as program distinctions or market differences) should apply in this context.
- The University should strive to enhance the learning and working experiences of its GATAs and the relationships among these students and their faculty or supervisor – through, among other means:
 - shared academic values;
 - ongoing support for and attention to recruitment, retention, mentoring, completion of the graduate program, and resultant placement;
 - fair treatment at all times (including suitability of the tasks assigned for academic purposes).
- The University should use effectively its existing governance bodies that involve students (University Senate, Student Senators Council, Graduate Student Councils, etc.) in determining policies that affect students to the extent possible. It should establish appropriate and effective mechanisms to ensure robust graduate and undergraduate student voice and meaningful expression, as well as to safeguard their rights. The means of providing students with processes to voice concerns about their lives as students, including their work lives, supplement existing instruments that address at the School level grievances regarding academic issues, and augment the University's harassment policy. The Committee suggests three structures/processes that could be instituted to protect students who engage in work in various forms while they are completing their studies at NYU. The first two structures have similarities to grievance procedures, while the third mechanism has a monitoring function. Given the time constraints under which the Committee operated, none of the proposals is fully developed and

each will need additional refinement and review. The basic concepts are as follows:

- o "The Student Employment Committee" -- A student-run committee charged with handling concerns and problems affecting all students who work in some capacity at NYU.
 - While the Committee recognizes that this expands the scope of the issues it was asked to address, it sees an opportunity to set up a process for addressing the concerns or problems of both undergraduate and graduate students who engage in some form of employment at NYU (including those not covered in the existing contract).
 - The Student Employment Committee (SEC) would be a sub-committee of the University Committee on Student Life (UCSL). To ensure strong leadership, it would be chaired by the Vice-Chair of the Student Senators Council. Any student with a concern related to his/her employment would be directed to this committee, which, based on the nature of the issue, would set up a meeting with the pertinent individuals to attempt to resolve the situation. This meeting would include the student and at least one representative from the School Dean's office. It could also include the student's supervisor, faculty members, and/or other relevant individuals. The goal of the meeting would be to resolve the issue to the student's and his/her employer's satisfaction.¹

¹ Another possibility would be to have the existing Student Senators Council's Student Financial Aid and Compensation Committee expand its current charge to include jurisdiction over student employment issues, and modify its membership so as to be appropriately representative of the various interested parties (e.g., graduate affairs at the UCSL, the facilitator of the RA Council, and additional members – possibly ex officio because of the nature of the student committee structure - reflecting the views of the School deans and University administration). The chair would still be the Vice-Chair of the Students Senators Council as proposed in the main text.

- Review Process - A Facilitator designated to review appeals from the Student Employment Committee's proposed disposition of the contested matter and make alternative recommendations for action.
 - If the student or supervisor is unhappy with the SEC's resolution of the dispute, he or she could bring the matter before a Facilitator – a neutral individual who would be familiar with academic institutions, perhaps on retainer to NYU. (It might be prudent to include a provision requiring the student to return to the SEC for advice on whether proceeding to this level is warranted; however, the student could go forward with or without a recommendation from the SEC to seek review.) While this is neither a formal appeals process nor a binding procedure such as arbitration, the recommendation of the Facilitator would carry considerable weight, due to his/her independence, impartiality, and academic sensitivity.
 - As in all matters related to academic and financial aid considerations at the University, the Provost would retain the final decision-making authority.

- University Senate Oversight – A continuing responsibility to ensure accountability with respect to the needs and interests of GATAs.
 - To maintain ongoing focus on the fiscal needs and importance of competitive packages for graduate assistants and teaching assistants, the Committee recommends that the University Senate Finance Committee be obliged to review and report to the Senate on an annual basis regarding the economic terms and benefits available to GATAs.
 - To monitor and assure the academic integrity of the relationship of graduate assistants and teaching assistants with the University, the Committee recommends that the University Senate Academic Affairs Committee be charged with annually reviewing the academic provisions covering GATAs.

- If either or both Senate Committees believe that modifications are justified, they must make such recommendations to the University Senate. These monitoring functions will help ensure that the gains in working conditions and benefits attained to date are not lost with the absence of the union.
- Graduate Student Councils at all Schools -- part of their School governance structure -- could be developed or strengthened to provide a place and opportunity for all students to develop ties of community with each other, their School, and the University.

In summary, the University must take visible, concrete steps to strengthen and enhance trust between and among GA/TAs and the University, including but not limited to, a commitment to:

- retaining just, generous, and competitive financial aid;
- resolving employment issues fairly and promptly;
- assuring transparency and clarity of students' rights and obligations;
- prohibiting retaliation against students who raise concerns or complaints;
- tracking and assessing adherence to these core principles and achievement of stated goals; and
- strengthening or creating community-building venues, such as graduate student councils.

Discussion

The Committee recognized a number of positive developments that have resulted from, or been encouraged by, unionization. In particular, several respondents to the Committee mentioned the importance of increased stipends, health care benefits, stability, and clarity of work expectations. Typical of these views are the following comments from DGS:

- Impact on recruitment:
 - "It's positive – it reassures and impresses candidates."
 - "It has certainly been excellent for student morale, and has contributed positively to recruitment."

- Impact on teaching:
 - “Absolutely positive. Fair and understood rules, obligations, and responsibilities have only enhanced [teaching] relations.”
- Impact on completion of program:
 - “From the moment they are accepted, students have a clear idea regarding their teaching load and its distribution and therefore can better plan their progress toward degree.”
 - “Adequate funding has vastly improved our students’ rate of completion.”
- Impact on quality of relationship between faculty and graduate students:
 - “The union contract has definitely diminished areas of friction around these relationships – there’s a greater professional clarity.”
- Impact on departmental morale:
 - “Departmental morale much improved.”
- Overall:
 - “This cuts two ways re: graduate assistants. On the one hand, those students who have been abused by faculty in the past can no longer be abused. On the other hand, those who have been let off too lightly also get more work from a faculty who are also more aware of their rights. Overall more equality...which I think is good.”
 - “So far, nothing in the past four years of unionization suggests needed change.”
 - “It is quite possible that, on balance, the positive effects of the union far outweigh the potential negative impact of its knee-jerk attempts to encroach on academic matters in its own interests of expansion (which I am told have been consistently rebuffed by whatever parties have been arbitrating these matters)....”
 - “No direct effect. Our department has, over the years, become more attentive to grad students’ needs. If anything, the union has facilitated this, which has improved overall relations.”
 - “The health benefits are clearly very important to some of the TA/GAs.”

Several comments of the Directors of Graduate Studies articulated the balancing act observed, or stated that the contract had no effect on academic or administrative matters:

- "Insofar as contractual terms are clearer I think it has been (marginally) more helpful. Basically there is a tradeoff....Increased red tape (which is a bad thing) for more equality for students (which is a good thing)."
- "...[T]he GA/TA contract has had no lasting effect on any of the training or resource issues listed in your questionnaire."
- "I think it was clear from our conversation with students that many want the security of collective representation, but I do not think that UAW is the choice that is in the best interests of students."
- "We have always worked to have a good environment for the GAs and I do not think the contract has had an effect on any of these relationships."
- "From the management end, of course, compliance has meant some more bureaucratic labor for our staff, but they feel this is mitigated by the clarity it's brought."
- "Overall, I think the unionization is good, minus the grievances. If those could be disallowed a priori, then unionization had more benefits than disadvantages."

Notwithstanding both positive and neutral responses the committee collected about the union, it became obvious that there also have been substantial disadvantages arising from union representation by the UAW. The Committee considered that the time-consuming and heavy filing of grievances was the most serious disadvantage of the contract. Over time, a number of these grievances, if successful, have the potential to impair or eviscerate the management rights and academic judgment of the University faculty to determine who will teach, what is taught, and how it is taught (see Articles XX and XXII of the Collective Bargaining Agreement itself at the HR website [\[www.nyu.edu/hr/gainfo/\]](http://www.nyu.edu/hr/gainfo/)). In this regard, the Committee was struck by the vastly different stances taken by the UAW and GSAS, the school that is home to roughly 50% of the unionized GA and TAs. The union representatives told the Committee that they were "astounded" that the Committee could ask them to discuss the grievances they had filed. They asserted that it is to be expected with any new contract that there will be

many grievances filed in order to test the limits of the language, and that this is not unusual because "contract provisions are interpreted by the parties for the first time." The grievances pursued, they stated, all entailed employment or compensation issues, not academic issues.

However, the presentation of Roberta Popik, who spoke for GSAS on the experience of implementing the contract between the UAW and NYU, offered a stark contrast. Associate Dean Popik detailed eight major grievances directed at GSAS departments, all of which (except one still in progress) were decided favorably for the University, but would have undermined the faculty's academic decision-making dominion had an arbitrator gone the other way. She stated to the Committee:

As you consider the historical list I provided of grievances that we have experienced, you can see that chronologically, while the early ones were more technical in nature, the more recent ones have systematically tried to encroach on the University's management rights clause. The union argues against the right of the departments to hire those people who they think are best suited to teach particular courses. They also argue against the right of the Graduate School to have policies that govern who is eligible to be awarded through its financial aid program. Although every one of the grievances that has gone to arbitration has successfully been resolved in the university's favor, there is always the risk that this will not occur in the future....An arbitrator from outside the university, one who is not familiar with university policies and protocols, is making decisions that could affect our governance. This is a huge risk to our institution.

Beyond the threat and burden occasioned by these grievances, other concerns were noted:

- Impact on recruitment:
 - "...[T]he competition for the best Ph.D. students is on the rise, not to mention the competition for student funding....We need maximum flexibility to use all available resources effectively. I do not think the union representation in its current form does anything good for our efforts (I do not recall a single instance where a student would choose to come here because of extra security the union provides)....My view is that anything that hurts our competitiveness as a Ph.D. program and

stifles our ability to adapt in the long run hurts students most, by decreasing the value of their degree.”

- Impact on quality of the relationship between faculty and graduate students:
 - “On the negative side, some faculty feel less comfortable about their communications with the TAs and RAs.”
 - “By forcing us to be more legalistic, the relationship has been hurt; as far as I can tell, this legalism has brought no benefits, only costs.”
 - “Some of the faculty fear that unionization establishes too much rigidity.”
 - “Somewhat negative; this is the area of greatest concern to me. I started receiving a few questions about what faculty can and cannot ask their TAs to do; almost invariably, these were trivial matters, which could be worked out by instructors and students; now some faculty are concerned about major problems, and want official involvement.”
- Impact on human resource needs:
 - “The union has not gained any graduate student in my department anything. The frivolous grievance process (where the grievances clearly were both fanciful and wrongfully brought, given the contract) has been highly costly....”
 - “Problematic – since the union contract has been implemented, it has been impossible for faculty to hire our own graduate students to do research or translation work since we are not allowed to employ graduate students if they are already working. This means translations – and thus publication credit and of course, pay – had to be given to students not from NYU....[T]hat is a real loss in our field.”
 - “The contract has had significant cost implications for our School.”
- Impact on reporting requirements:
 - “The contract requires a non-trivial amount of additional paperwork and staff effort. The time and efforts of the staff that could be used to address all kinds of real needs are wasted on additional paperwork and processing.”
- Impact on code 100 employees:
 - One Administrative Management Council member was denied an opportunity to teach because “As it was explained to me, the current

contract with the UAW prevents all administrative code 100 employees from teaching academic classes. The teaching assignment [I had been offered] went to an outside professional.”

- Other:
 - “I have sensed a tension between the values of an industrial union and of a research university. For example, a faculty member said during one of my conversations, a union stresses seniority, a university merit. Still another tension has been over the nature of a graduate assistantship. For us, a graduate assistantship – be it a graduate assistantship, a research assistantship, or a teaching assistantship – is a form of financial aid. To be sure, graduate assistants do valuable work, but we do everything we can to relate that work to the education they are receiving and to which we are financially contributing.”
 - “I do not believe that the union representation in its current form agrees with the ideals the university supports.”

Thus, while the record is mixed, the realities and risks to maintenance of the University’s management rights and academic decision-making from the UAW’s vigorous and relentless pursuit of the grievances it has chosen to press tip the scale for the Committee majority. The Committee urges that the University endorse its proposed Guiding Principles to preserve and exceed the benefits of the bargaining process, build trust, enhance the student-faculty relationship, and ensure that NYU’s GAs and TAs have competitive financial aid packages, as well as adequate opportunities for effective voice and fair resolution of grievances.

Respectfully Submitted,

Senate Academic Affairs Committee

Helene Anderson (Faculty member, Faculty of Arts and Science)
Mary Brabeck (Dean, Steinhardt School of Education)
Bruce Buchanan (Faculty member, Stern School of Business)
Jonathan Eaton (Faculty member, Faculty of Arts and Science)
Whitney Fishman (Undergraduate student, Steinhardt School of Education)
Catherine Healey (Administrative Management Council, School of Social Work)
Justin Lee (Undergraduate Student, College of Arts and Science)
Christine Scott Hayward (Graduate Student, Graduate School of Arts and Science)
Bridget O’Connor (Chair; Faculty member, Steinhardt School of Education)

[About NYU \(http://www.nyu.edu/about.html\)](http://www.nyu.edu/about.html) / [Leadership & University Administration \(http://www.nyu.edu/about/leadership-university-administration.html\)](http://www.nyu.edu/about/leadership-university-administration.html) / [Office of the President \(http://www.nyu.edu/about/leadership-university-administration/office-of-the-president.html\)](http://www.nyu.edu/about/leadership-university-administration/office-of-the-president.html) / [Office of the Provost \(http://www.nyu.edu/about/leadership-university-administration/office-of-the-provost.html\)](http://www.nyu.edu/about/leadership-university-administration/office-of-the-provost.html) / [Communications \(http://www.nyu.edu/about/leadership-university-administration/office-of-the-president/office-of-the-provost/redirect/communications.html\)](http://www.nyu.edu/about/leadership-university-administration/office-of-the-president/office-of-the-provost/redirect/communications.html) / [GA & TA Issues \(http://www.nyu.edu/about/leadership-university-administration/office-of-the-president/office-of-the-provost/redirect/communications/ga-ta-issues.html\)](http://www.nyu.edu/about/leadership-university-administration/office-of-the-president/office-of-the-provost/redirect/communications/ga-ta-issues.html)

2001 Letter of Agreement Between NYU and Local 2110, UAW

PHILIP A. WHEELER DIRECTOR REGION 9A UAW 113 UNIVERSITY PLACE NEW YORK, NY 10003 PHONE: (212) 529-2580 FAX: (212) 529-1986 PRINTED IN U S A

INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE & AGRICULTURAL IMPLEMENT WORKERS OF AMERICA-UAW STEPHEN P. YOKICH, President RUBEN BURKS, Secretary-Treasurer

March 1, 2001

Via Facsimile

Mr. Terrance Nolan Associate General Counsel/Deputy Director of Labor Relations

Elmer Holmes Bobst Library 70 Washington Square South New York, N.Y. 10012

Dear Mr. Nolan:

This is to set forth our understandings with New York University (herein "the University") about the University recognizing and bargaining with the UAW. The UAW makes the following representations with the understanding that the University agrees to recognize and bargain collectively with the UAW in accordance with the NLRB Certification Case Number 2-RC-22082. These representations are conditioned upon the commencement of that bargaining relationship.

On commencing negotiations for a collective bargaining agreement, the UAW will seek to have withdrawn without prejudice the unfair labor practice charge filed with the NLRB concerning NYU's refusal to bargain with the UAW (Charge #2-CA-33520). The UAW will also withdraw without prejudice the amended unfair labor practice charge, dated November 30, 2000, filed with the NLRB concerning alleged threats made to graduate assistants (Item #3) and the use of the University's electronic mail system (Item #4) in Charge #2-CA-33113-1.

The UAW acknowledges and agrees that Master of Business Administration (MBA) candidates in the University's Stern School of Business who, as presently constituted, do not receive stipends as graduate assistants, are not properly included within the bargaining unit and therefore are excluded from the unit. The UAW reserves the right to re-visit this issue in the future should the conditions applicable to MBA candidates materially change. The UAW will consider excluding from the bargaining unit those research assistants funded by external grants similarly situated to those excluded by the NLRB in the Physics, Biology, Chemistry and Center for Neural Science departments.

The UAW recognizes that certain issues involving the academic mission of the University lie outside the scope of bargaining as defined by the National Labor Relations Act. The UAW recognizes that the University's bargaining obligation is limited by statute to "wages, hours and other terms and conditions of employment" of graduate assistants. Finally, the UAW recognizes that the collective bargaining obligations of the University do not encompass matters that pertain exclusively to degree requirements of any University student.

Such issues include, for example, the merits, necessity, organization, or size of any academic activity, program or course established by the University, the amount of any tuition, fees, fellowship awards or student benefits (provided they are not terms and conditions of employment), admission conditions and requirements for students, decisions on student academic progress (including removal for academic reasons), requirements for degrees and certificates, the content, teaching methods and supervision of courses, curricula and research programs and any issues related to faculty appointment, promotion or tenure. By these understandings, the UAW does not relinquish any rights it has under the National Labor Relations Act.

Sincerely,

Elizabeth Bunn Vice President

Phil Wheeler Director, Region 9A

Julie Kushner Subregional Director, Region 9A

Agreed to and signed by Terrance J. Nolan

Dated: 3/1/2001

EB:PW:JK:msr Opeiu494

EMPLOYER EXHIBIT

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RECOMMENDATION FROM THE FACULTY ADVISORY COMMITTEE ON
ACADEMIC PRIORITIES
(April 26, 2005)

NYU's Provost, David McLaughlin, charged the Faculty Advisory Committee on Academic Priorities with providing the University Administration with advice on the issue of NYU's maintaining or withdrawing recognition of the United Auto Workers in representing graduate assistants.

The Committee framed its discussions in terms of academic mission and goals, asking what is in the best long-term academic interest of the university as a whole and of its graduate programs. Over the past two decades NYU has become one of the leading research and teaching universities in the country, characterized by an impressive flow of faculty and student talent to all of its schools and a corresponding improvement in program quality. The question the Committee posed is whether, with respect to this academic trajectory, it is better to maintain recognition or withdraw recognition of the United Auto Workers, and if the latter, whether there is an alternative arrangement that would better serve the needs of students and the university.

In addressing this question, the Committee began with an overarching assumption: it is of fundamental importance to faculty, departments and programs that NYU be able to attract outstanding graduate students and create conditions in which they can flourish academically while at NYU; that which promotes these elements is to be encouraged, and that which inhibits them discouraged.

The Committee believes that the environment in which this mission is best achieved is one in which faculty across NYU's diverse departments and schools have the flexibility to tailor programs that are in the best academic interests of their students, and one that also emphasizes the mentoring relationship between faculty and students. Again, that which promotes these elements is to be encouraged, and that which inhibits them discouraged.

The Committee judges there to be compelling reasons for preserving and indeed improving the conditions in the current union contract that deal with stipend levels, health care coverage, sick leave, posting of positions, work loads, and grievance procedures. These conditions are directly related to the university's ability to attract top graduate students and help ensure their success. The Committee recognizes, moreover, that the process of negotiating a union contract facilitated progress on a number of these matters.

The Committee also observes, however, that a traditional employee/employer relationship should not be at the core of students' relationship with the university; educational and intellectual matters are. Graduate students make vital contributions to the university in their roles as teaching assistants, graduate assistants, and research assistants, but graduate students should be regarded, first and foremost, as students, apprentice

researchers, and trainees of their faculty mentors rather than employees. Similarly, assistantships should be regarded, first and foremost, as part of their professional training.

The Committee is concerned that the United Auto Workers has filed grievances over issues that have threatened to impede the academic decision-making authority of the faculty over such issues as: the staffing of the undergraduate curriculum; the appropriate measures of academic progress of students; the optimal design of support packages for graduate students; and the conditions and terms of fellowships (as opposed to graduate assistantships). The Committee is also worried by the willingness of the United Auto Workers to take such issues to arbitration and by the nature of the arbitration process, in which an outside arbitrator, who rarely has prior experience with the environment of universities, makes decisions that are legally binding on departments and programs. Although no case involving academic decision making has been decided in the favor of the United Auto Workers, this result was only achieved by a combination of vigilance and good fortune, and there are no assurances that the results will be the same in the future. Had any of the cases been decided differently, the ability of faculty to staff the curriculum and to design and implement programs in accordance with their best academic judgment would have been impaired.

The readiness of the United Auto Workers to grieve issues of academic decision-making and the nature of the arbitration process leads the Committee to conclude that it is too risky to the future academic progress of NYU for it to have graduate assistants represented by a union that has exhibited little sensitivity to academic values and traditions. The Committee therefore recommends that NYU not re-enter into negotiations with the United Auto Workers and that it replace the current contract with more appropriate arrangements for governing its relationship with graduate students and providing them the support and respect they deserve.

The Committee urges the university to formulate a set of basic principles concerning its relationships with graduate students, including principles that commit the university, its schools, its programs, and its faculty to:

- (1) the highest possible standards of teaching and research;
- (2) competitive and predictable financial aid, health insurance, and other support to enable students to concentrate on their academic work and flourish at NYU;
- (3) honest and open discussions in good faith on all matters of common concern and processes that ensure fair resolutions of disputes;
- (4) opportunities for graduate students, individually and collectively, to have a voice in the educational issues that directly affect them.

A commitment to the above principles will help ensure that the university is able to continue to attract outstanding students and maintain conditions in which they can fulfill their potential. The principles should be applicable to all graduate students at the university, not just those in the departments and schools governed by the current union contract, and should be publicly disseminated. The document articulating these principles should also contain instructions and guidance to schools and departments on

specific matters governed by the current contract (for example, minimum stipend levels for graduate assistants, posting of assistantship positions, etc.) as well as matters of importance to graduate students that cannot be addressed in a union contract governing graduate assistants, either because they concern all graduate students (for example, housing) or because they are not part of wages and benefits (for example, teacher-training programs). Finally, graduate students themselves must be involved in the university and school processes going forward that consider how best to implement the above basic principles and how best to address other matters of graduate student concern.

Members of the Faculty Advisory Committee on Academic Priorities

Jess Benhabib

Department of Economics-FAS

Ned Block

Department of Philosophy-FAS

Sylvain Cappell

Mathematics- Courant

Craig Calhoun

Department of Sociology-FAS

Suzanne Carothers

Department of Teaching and Learning-
Steinhardt

Gloria Coruzzi

Department of Biology-FAS

Richard Foley

FAS Dean

Robert Grossman

Department of Radiology-Medicine

Jonathan Hay

Institute of Fine Arts

David Heeger

Psychology and Neural Science-FAS

Ralph Katz

Department of Epidemiology & Health
Promotion-Dentistry

Paul Light

Wagner

Deborah Padgett

Social Work

Gail Segal

Department of Graduate Film-Tisch

Laura Slatkin

Gallatin

Lee Sproull

Information Systems and Management-
Stern

Richard Stewart

Law

Catherine Tamis-LeMonda

Applied Psychology-Steinhardt

Jane Tylus

Department of Italian-FAS

Srinivasa Varadhan

Mathematics-Courant

EMPLOYER EXHIBIT

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Er. Ex. 40

AMERICAN ARBITRATION ASSOCIATION
 ----- X
 In the Matter of the Arbitration X
 between X
 NEW YORK UNIVERSITY X
 "University" X
 -and- X
 LOCAL 2110, UAW, AFL-CIO X
 "Union" X
 ----- X

Case No. 13-300-00926-04
(Bargaining Unit Work)

APPEARANCES

For the University

Terrance J. Nolan, Esq., Director of Labor Relations
and Associate General Counsel

For the Union

LEVY RATNER, P.C.
Carl J. Levine, Esq.

BEFORE: Martin F. Scheinman, Esq., Arbitrator

BACKGROUND

This grievance protests the University's decision to offer Preceptor and Teaching Assistant positions in the Morse Academic Plan (MAP) and in the Philosophy Department to Graduate Students at another academic institution and to a non-student holding a Ph.D., rather than to its own Graduate Students. The Union argues the University's actions violated the Recognition Clause of the parties' Collective Bargaining Agreement. It seeks an order directing the University to apply the terms and conditions of the Agreement to all persons hired by the University to perform traditional Teaching Assistant work.

The basic facts are not disputed. For the 2003-2004 academic year, the University did hire a number of adjunct faculty, including persons who were Graduate Students at Columbia University, to teach laboratory and recitation sections of various University courses which traditionally were taught by University's Graduate Assistants. The University contends the adjunct faculty whose hiring is at issue in this case were compensated at levels different from the stipends and other benefits stated in the Agreement.¹

¹According to the University, the compensation differential is attributable to the fact the compensation package of a Teaching Assistant, because he or she is a full-time Graduate Student, must include financial aid. As the University points out, Graduate Assistants may not, under the University's rules, accept other employment or engage in any other occupation without the permission of the Department or the Dean.

When the parties were unable to resolve their dispute during the lower stages of the grievance procedure, the Union requested arbitration. A hearing was held before me on December 7, 2004, at the offices of the American Arbitration Association in New York City. At the hearing, the parties each were afforded full opportunity to present evidence and argument in support of their respective positions. They did so. The parties thereafter each filed post-hearing briefs. Following my receipt of same, the record was declared closed on February 16, 2005.

DISCUSSION AND FINDINGS

The Issues

At the December 7, 2004, hearing, the parties stipulated to the following issues:

1. Did NYU violate the Collective Bargaining Agreement by hiring NYU graduate students and/or individuals from outside NYU, to teach recitation, discussion or lab sections in the Morse Academic Plan ("MAP") and/or the Philosophy Department, and not placing such individuals in the Union's Bargaining Unit?
2. If so, what shall be the remedy?

Relevant Contract Language

ARTICLE I - RECOGNITION,

Pursuant to the Certification of Representative, issued by the National Labor Relations Board in New York University and International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, AFL-CIO, Case No. 2-RC-22082,

except as modified herein, New York University recognizes the International Union UAW, AFL-CIO and its Local 2110, Technical, Office and Professional Workers, as the sole and exclusive bargaining agent for all teaching assistants, graduate assistants, research assistants (including reaching fellows, research fellows, Metro Center tutors and preceptors), who are classified under codes 101, 130, 131 (referred collectively as graduate assistants) employed by New York University. Excluded from the unit are all other employees, graders and tutors, graduate assistants at the Sackler Institute, candidates for the Master of Business Administration degree in the University's Stern School of Business, those research assistants funded by external grants in the Physics, Biology, Chemistry and the Center for Neuroscience (CNS) Departments and guards and supervisors as defined by the National Labor Relations Act.

* * * * *

ARTICLE IV - TERMS OF APPOINTMENT OF GRADUATE ASSISTANTS

* * * * *

F. Graduate Assistants, for the term of their appointment, shall have fees waived for tuition, maintenance of matriculation, basic membership in the sports center, student activities and registration.

* * * * *

ARTICLE XVII - STIPENDS

Graduate Assistants shall receive stipends as provided in the attached Appendix to this Agreement.

* * * * *

ARTICLE XX - GRIEVANCE AND ARBITRATION PROCEDURE

* * * * *

E. Any disposition of a grievance from which no appeal is taken within the time limits specified herein shall be deemed resolved and shall not thereafter be

considered subject to the grievance and arbitration provisions of the Agreement.

* * * * *

G. The Arbitrator shall have no jurisdiction or authority to issue any award changing, modifying or restricting any action taken by the University with respect to the University's exercise of management or academic rights under Article XXII (Management and Academic Rights) of this Agreement.

* * * * *

ARTICLE XXII - MANAGEMENT AND ACADEMIC RIGHTS

A. Management of the University is vested exclusively in the University. Except as otherwise provided in this Agreement, the Union agrees that the University has the right to establish, plan, direct and control the University's missions, programs, objectives, activities, resources, and priorities; to establish and administer procedures, rules and regulations, and direct and control University operations; to alter, extend or discontinue existing equipment, facilities, and location of operations; to determine or modify the number, qualifications, scheduling, responsibilities and assignment of graduate assistants; to establish, maintain, modify or enforce standards of performance, conduct, order and safety; to evaluate, to determine the content of evaluations, and to determine the processes and criteria by which graduate assistants' performance is evaluated; to establish and require graduate assistants to observe University rules and regulations; to discipline or dismiss graduate assistants; to establish or modify academic calendars, including holidays and holiday scheduling; to assign work locations; to schedule hours of work, to recruit, hire, or transfer; to determine how and when and by whom instruction is delivered; to determine in its sole discretions all matters relating to faculty hiring and tenure and student admissions; to introduce new methods of instruction; or to subcontract all or any portion of any operations; and to exercise sole authority on all decisions involving academic

matters.

B. Decisions regarding who is taught, what is taught, how it is taught and who does the teaching involve academic judgment and shall be made at the sole discretion of the University.

C. The above enumeration of management rights is not exhaustive and does not exclude other management rights not specified herein, nor shall the exercise or non-exercise of rights constitute a waiver of any such rights by the University.

D. No action taken by the University with respect to a management or academic right shall be subject to the grievance or arbitration procedure or collateral suit unless the exercise thereof violates an express written provision of this agreement.

Positions of the Parties

The Union asserts the University seeks to diminish the bargaining unit by giving persons who perform traditional Teaching Assistant work a title other than "Teaching Assistant." The Union posits the University has resolved to reduce the bargaining unit by the simple device of placing the individuals who perform traditional Teaching Assistant work in non-represented classifications.

According to the Union, the University's actions have violated the Recognition Clause of the Agreement, and the instant grievance is, therefore, arbitrable. The Union contends the University, if given the unfettered right to pick and choose which employees will be part of the bargaining unit, effectively will be empowered to eliminate the bargaining unit altogether.

The University's "interpretation" of the Agreement makes the contract illusory, the Union argues.

According to the Union, employees hold the classification of Teaching Assistant based on the work they perform. The Union asserts an employee's membership in the bargaining unit, and hence his or her coverage under the Agreement, is not a determination subject to the whim or discretion of the University. Rather, the Union argues, there must be an inquiry into the nature of the work performed by the individual. The Union maintains if an employee is assigned to perform the "core work" of teaching Recitation or Laboratory sections in MAP or, as here, in the Philosophy Department, that employee is in the bargaining unit, and must be compensated according to the terms of the Agreement.

The Union claims such "core work" historically was performed exclusively by Teaching Assistants, even before the Union was recognized, and that exclusivity must be continued. Indeed, the Union contends the parties memorialized their commitment to that exclusivity in Appendix A-1 of the Collective Bargaining Agreement by listing the various "typical duties" covered by the graduate assistant stipend: holding office hours, grading, advising and proctoring examinations.

The Union argues its fears the bargaining unit will be endangered by an Award in the University's favor are not

hypothetical, but are grounded in raw statistics. According to the Union, prior to the representation hearing in 1999, all of the approximately one hundred fifty (150) persons hired annually to lead recitation and laboratory sections were classified as Teaching Assistants. The Union maintains by the 2003-2004 academic year, seventeen percent (17%) of the individuals teaching MAP sections were unilaterally placed by the University outside the bargaining unit, although they performed work identical to bargaining unit members. The Union contends the bargaining unit's size has diminished by more than twenty-three percent (23%) over the last three (3) years.

The Union speculates the University, if unrestrained, will ultimately be free to transfer all bargaining unit work to non-unit personnel. Further, according to the Union, in the absence of strict contract enforcement compelling the University to restore the disputed work to the bargaining unit, the University will be empowered to create low paid classifications outside the reach of the Agreement. The Union doubts the University will be compelled to keep offering positions to Graduate Students simply in order to attract applicants to NYU.

Moreover, according to the Union, the University's decision against assigning graduate assistant work to Graduate Students who are beyond their seventh (7th) year of study cannot be justified under the Agreement. Whatever policies the University

may have adopted with respect to Graduate Student eligibility for financial aid, the Union argues the University acknowledged when it entered into the Collective Bargaining Agreement it would no longer preclude advanced Graduate Students from earning Teaching Assistant stipends. The Agreement, the Union points out, simply does not exclude such students from coverage. The Union disputes the notion Teaching Assistant stipends are "financial aide" which may be distributed at the University's discretion.

The Union references arbitral decisions which acknowledge job security is an inherent element of the labor contract. These decisions, according to the Union, view transfers of work as attacks upon the employment relationship which "eviscerate" collective bargaining. The Union, thus, cites the decision of Arbitrator Ernest Weiss in a recent arbitration between these parties concerning the University's hiring of adjuncts to fill Teaching Assistant vacancies. The Union points out Arbitrator Weiss, although denying the grievance, indicated he would have reached a different result "[h]ad there been an availability of teaching assistants who were deprived of earnings or negotiated benefits." Local 2110, UAW and New York University, AAA Case No. 13-300-03227-03 (Arb. Weiss, May 17, 2004) at p. 7.

In the instant case, the Union contends its bargaining unit has been diminished as a result of the practice in dispute. It avers Graduate Students who are qualified and have even

previously served as Teaching Assistants in MAP or Philosophy, have been excluded from the assignments and thereby "deprived of earnings."

In short, the Union contends its grievance is meritorious. As such, it argues the grievance should be sustained. The Union, therefore, requests an arbitral order directing the University to adhere to the terms and conditions of the Agreement and to assign graduate assistant work to Graduate Students in the bargaining unit.

The University, on the other hand, contends the Union's grievance is without merit. The University maintains the Union's grievance is premised on its misreading of a central premise of the parties's Agreement: to be a graduate assistant, and therefore covered by the contract, an employee must be a Graduate Student. To prove this point, the University notes a basic component of the graduate assistant compensation package is a tuition waiver.

The University disputes the Union's claim certain teaching assignments are reserved for Graduate Students. According to the University, it may use non-graduate students for laboratories and recitations, just as it may subcontract the work, as expressly provided under Article XXII(A). As with persons to whom the work may be subcontracted, non-graduate students who are hired for recitations or laboratory instruction are outside the reach of

the Agreement.

The University insists the Agreement expressly reserves academic decisions, including faculty hiring and the number of Teaching Assistants, solely to its discretion. According to the University, the Agreement contains no "jurisdictional" or "bargaining unit work" provisions, and rather grants the University the unfettered right under Article XXII(A) "to recruit, hire or transfer [and] determine how and when and by whom instruction is delivered."

The University further points out, under Article XXII(B), "[d]ecisions regarding who is taught, what is taught, how it is taught and who does the teaching involve academic judgment and shall be made at the sole discretion of the University." The University maintains its exercise of these managerial functions is not subject to the grievance or arbitration procedures, as stated in Article XXII(D). So, too, under Article XX(G), I, as Arbitrator of this dispute, lack jurisdiction to restrict the University's authority with respect to the matters under review, the University argues.

The University contends the Union's reliance on the Agreement's Recognition Clause as the source of its right to compel the use of Graduate Assistants to teach recitation or perform work as preceptors is misplaced. According to the University, it alone selects who will teach its courses, and its

academic discretion to make those determinations is unlimited. The Recognition Clause, the University contends, defines the bargaining unit by reference to specific personnel codes used by the University - Codes 101, 130 and 131. The University points out adjunct and part-time faculty are in Code 112.

The University disputes the Union's reliance on the Weiss Award as a source for the alleged contractual right it seeks to enforce. According to the University, the Weiss Award rather must be read as standing for the "axiomatic" principle "if graduate students were appointed as teaching assistants, they would be covered by the Agreement." Thus, the University argues, persons hired to teach who are not Graduate Students are not covered. The University asserts "[t]here is nothing in the Agreement which could conceivable support the claim that teaching, or some particular type of teaching, is the exclusive preserve of this bargaining unit." University Brief at p. 18. It characterizes the Union's contrary claim as "fanciful." In fact, the University urges, the Union has entered into a letter of understanding which is appended to the Agreement which recognizes "any issues related to faculty appointment" are "outside the scope of bargaining." Id.

Thus, the University argues, while Teaching Assistants often, indeed customarily, teach recitation sections in MAP, others do so as well. Further, the disputed appointment in the

Philosophy Department went to a teacher with a Ph.D. who had been hired as an adjunct faculty member. According to the University, the Union simply has no claim the teaching assignments at issue here are exclusively the domain of the University's Graduate Assistants.

The University contends the Union's challenge to the University's rule against giving financial aid to Graduate Students beyond their seventh (7th) year of study is a freshly raised argument which apart from being wrong, should be rejected as an improper attempt to expand the grievance. The University contends the "subtext" of the Union's argument is the University cannot hire anyone for certain teaching positions as long a Graduate Student, even a "minimally qualified" one, is available for appointment. The University, in addition to reiterating its hiring decisions are in its sole discretion, asserts the "seven-year rule" on financial aid predates the Agreement and is within its specifically reserved management rights. Moreover, the University argues, the Union previously challenged the "seven-year rule" through a grievance which was denied. Under Article XX(E) of the Agreement, the University argues that denial was final and binding.

In sum, the University asserts the Union has not met its burden to prove a contract violation. The University maintains it has exercised its lawful and contractually permissible right

to make teaching assignments. As such, the University argues the Union's grievance is without merit. In short, the University asks the Union's grievance be denied.

Opinion

Some preliminary comments are appropriate in this case. As an arbitrator, my role is a limited one. It is to interpret the parties' Agreement as written. If the meaning of the contract is manifest, if the parties' intent is clear, then I am without authority to deviate from the parties' chosen language.

Here, the applicable contract language is susceptible of only one (1) reasonable construction: The University has complete discretion to determine when its Graduate Students will be used to teach a course, what courses they will teach and when courses will be taught by instructors who are not Graduate Students. While the Union, according to the terms of the Agreement, properly may enforce the Agreement's application when an NYU Graduate Student is designated to teach a course, the Agreement has no application when the chosen instructor is not a Graduate Assistant. The language of the Agreement compels this conclusion.

Indeed, under Article XXII(A), "the University has the right . . . to determine . . . [the] assignment of graduate assistants, . . . to hire [and] determine how and when and by whom instruction is delivered . . . or to subcontract all or any

portion of any operations." If there might be any doubt about the scope of the University's authority with respect to such matters, the parties agreed in Article XXII(B), "[d]ecisions regarding who is taught, what is taught, how it is taught **and who does the teaching** involve academic judgment and shall be made at the sole discretion of the University." (Emphasis supplied.)

Further, under the terms of the Agreement, my jurisdiction, as Arbitrator, with respect to actions taken by the University under the above-quoted provisions is non-existent. Under Article XXII(D), "[n]o action taken by the University with respect to a management or academic right shall be subject to the . . . arbitration procedure." In Article XX(G) the parties agreed, "[t]he Arbitrator shall have no jurisdiction or authority to issue any award changing, modifying or restricting any action taken by the University with respect to [its] exercise of management or academic rights under Article XXII (Management and Academic Rights) of the Agreement."

Under these contractual principles, there is no reasonable basis to dispute I lack authority to grant the Union the relief it seeks here. The Union complains the University, following recognition, has used "an increasing number" of adjuncts and other non-graduate students to perform work previously assigned exclusively to Graduate Assistants. Regardless of the factual accuracy of the Union's claim, and notwithstanding the Union's

understandable concerns about the reduction of bargaining unit positions, the Agreement expressly permits the University "to determine how and when and by whom instruction is delivered." I simply can find no contractual limitation on the University's discretion in this area.

The Union contends the University has violated the Agreement by assigning Graduate Assistant work to its own Graduate Students without following the Agreement's terms. According to the Union, the University has avoided the compensation required under the Agreement by giving these Graduate Students non-unit classifications. These are serious charges, and if, as the Union contends, the University has been utilizing Graduate Students to perform Graduate Assistant functions, yet avoiding the Agreement's economic package by placing these Graduate Students in non-unit classifications, the Union would have a worthy claim. The University fairly could not escape enforcement of the Recognition Clause simply by arbitrarily assigning a Graduate Student a code which is not enumerated in Article I of the Agreement. Neither the Management Rights language nor the contractual limitation on arbitral jurisdiction preclude me from scrutinizing the record for evidence of sham classifications.

However, the record evidence does not support the conclusions the Union would have me draw. There is no record evidence any of the University's Graduate Students have been

utilized to perform Graduate Assistant work under the guise of holding a non-covered classification.

The Union complains a decision depriving it of the ability to compel the University to assign traditional Graduate Assistant work to its Graduate Students would make the Agreement "an illusory contract, in effect, a nullity." That contention derives from the Union's fundamental misconception about the scope and application of the Agreement. Unlike industries in which the bargaining unit is determined by reference to which employees perform particular work, the bargaining unit here is not strictly defined by the work performed. By definition, covered employees must be Graduate Assistants. Their inclusion in the bargaining unit is based on the fact they are Graduate Students who provide pedagogical services to the University in exchange for a stipend and certain educational benefits, including tuition. Accordingly, non-students, and students enrolled at other institutions, who may teach alongside the University's Graduate Students, are not covered by the Agreement, and the work those persons perform - precisely because they are not NYU Graduate Students - is not bargaining unit work.

The Union's claim on behalf of Graduate Students whose course of study has extended beyond seven (7) years also must fail. In their March 1, 2001, Letter of Understanding, the parties agreed the University's decisions on academic progress -

such as whether Graduate Students who are past their seventh (7th) year of study are eligible to participate in the University pedagogical activities - are "outside the scope of bargaining as defined by the National Labor Relations Act." Accordingly, the University's decision against offering Graduate Assistantships to Graduate Students whose course of study has exceeded seven (7) years is an exercise of managerial discretion which is not subject to arbitral review. While such persons, because of their Graduate Student status, would be covered by the Agreement if they were assigned to teach courses, there is no contractual basis for me to require they be deemed eligible to teach.

Nor do I find there is a contractual requirement to establish additional qualified teaching assistantships. Simply stated, the parties agreed questions concerning which Graduate Students to utilize for teaching, how many to use, or whether any should be used at all, are to be decided by the University. These are academic concerns which the parties determined lie within the province of management.

The Union has stated its fears an adverse determination may facilitate the elimination of the bargaining unit. I do not concur with that assessment. Ultimately, the University will decide what opportunities and benefits it must offer the students in its graduate programs in order to encourage enrollment and enhance the University's reputation as an institution of advanced

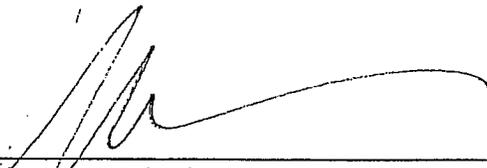
scholarship and learning. Moreover, I am not persuaded the existence of this bargaining unit is in jeopardy due to assignment decisions. In any event, I am doubtful the future size of the bargaining unit hinges on what I have decided in this case.

Thus, for all of the foregoing, I must conclude the Union has not met its burden of establishing a contractual violation. Accordingly, the grievance is denied.

AWARD

1. NYU did not violate the Collective Bargaining Agreement by hiring NYU graduate students and/or individuals from outside NYU, to teach recitation, discussion or lab sections in the Morse Academic Plan ("MAP") and/or the Philosophy Department, and not placing such individuals in the Union's Bargaining Unit.
2. Accordingly, the Union's grievance is denied.

March 23, 2005.

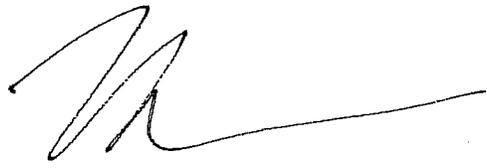


Martin F. Scheinman, Esq.
Arbitrator

STATE OF NEW YORK)
) ss.:
COUNTY OF NASSAU)

I, MARTIN F. SCHEINMAN, ESQ., do hereby affirm upon my oath as Arbitrator that I am the individual described herein and who executed this instrument, which is my Award.

March 23, 2005.



Martin F. Scheinman, Esq.
Arbitrator

PETITIONER EXHIBIT

1

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University of Wisconsin-Madison, Director, Industrial Relations Research Institute, 1993-1998, Professor, Economics and Industrial Relations, 1992-1998; Associate 1987-91, Assistant 1981-86.

University of Massachusetts-Boston, Instructor, Economics, 1978-1981.

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Harvard University, Ph.D. Economics, 1982.
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Books:

Paula B. Voos, editor, Contemporary Collective Bargaining: In the Private Sector. Madison, WI: Industrial Relations Research Association, 1994. Author of the chapter, "An Economic Perspective on Contemporary Trends in Collective Bargaining," pp. 1-23.

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Book review essay, "Progressive Perspectives on Union Renewal," of Gregory Mantsios, ed. A New Labor Movement for the New Century (New York: Monthly Review Press, 1998); Bruce Nissen, ed. Which Direction for Organized Labor (Detroit: Wayne State University Press, 1999), and Michael Yates, Why Unions Matter (New York: Monthly Review Press, 1998). For Work and Occupations, Vol 27, No. 2, May 2000, pp. 244-254.

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Levine, David I. Reinventing the Workplace: How Business and Employees Can Both Win. (Washington, DC: Brookings, 1995.) For Journal of Economic Literature, Vol. 34, No. 2, June, 1996, pp. 790-2.

Clark Kerr and Paula D. Staudohar, eds. Labor Economics and Industrial Relations: Markets and Institutions. Wertheim Publications in Industrial Relations. (Cambridge, MA and London: Harvard University Press, 1994). For Journal of Economic Literature, Vol. 33, No. 4, December, 1995, pp. 2001-2.

Bruce E. Kaufman and Morris M. Kleiner, eds. Employee Representation: Alternatives and Future Directions. (Madison, WI: IRRRA, 1993). For Industrial and Labor Relations Review,

Vol. 49, No. 1, October, 1995, pp. 172-3.

Eileen Appelbaum and Rosemary Batt, The New American Workplace: Transforming Work Systems in the United States. (Ithaca, NY: ILR Press, 1994). For Relations Industrielles, 1995.

Barry Bluestone and Irving Bluestone, Negotiating the Future: A Labor Perspective on American Business, (New York: Basic Books, 1992). For Industrial and Labor Relations Review, Vol. 47, No. 2 (January 1994), pp. 332-334.

Juliet B. Schor, The Overworked American: The Unexpected Decline of Leisure, (New York: Basic Books, 1991). For The Annals of the American Academy of Political and Social Science, March 1993, p. 234.

David Bensman and Roberta Lynch, Rusted Dreams: Hard Times in a Steel Community, (Berkeley and Los Angeles: University of California Press, 1987). For Journal of Labor Research, Vol. 10, No. 3, Summer, 1989, pp. 333-335.

Charles R. Perry, Union Corporate Campaigns, (Philadelphia: The Wharton School, University of Pennsylvania, 1987). For Industrial and Labor Relations Review, Vol. 42, No. 1, October, 1988, pp. 124-125.

Hilda Kahne, Reconceiving Part-Time Work: New Perspectives for Older Workers and Women, (Totowa, N.J.: Rowman and Allanheld, 1985). For the Journal of Economic Literature, Vol. 24, No. 4, December 1986, pp. 1841-1842.

Richard Blandy and Sue Richardson, eds., How Labour Markets Work. For the Journal of Economic Literature, Vol. 22, No. 1 (March 1984), pp. 143-144.

Other Publications:

OpEd in the Newark Star-Ledger, "Free Choice is the Backbone of a Strong Economy," March 31, 2009.

Two OpEds online at Politico.com, "Our Economy Needs Unions Now," March 31, 2009 and "Rebuttal," April 1, 2009.

"The Impact of Union Coverage on the Hourly Earnings of Represented State Government Employees," (with Dale Belman). Report submitted to the American Federation of State, County, and Municipal Employees, Washington, D.C., August 1993.

"Non-Teaching Local Government Employees: How the Proportion Represented in a Given State Influences Hourly Earnings," (with Dale Belman). Report submitted to the American Federation of State, County, and Municipal Employees, Washington, D.C., August 1993.

"The Relationship between Average Hourly Earnings of Individuals Working in the Grocery Industry and the Percent of Such Workers Organized in a Given Metropolitan Area," (with Dale Belman). Report submitted to the United Food and Commercial Workers, Washington, D.C., February 1991.

"Programs to Improve Labor Relations: Report of Major Findings from a Survey of Wisconsin Firms," Industrial Relations Research Institute, December, 1984, pp. 1-4. [Summary sent to survey participants and other interested persons.]

Legal Consulting and Outreach

Assisted National Association of Lettercarriers prepare for interest arbitration, Summer, 2007.

Testimony and expert report written on behalf of the United Automobile Workers and the United Steelworkers of America, in Dana Corporation, et al., United States Bankruptcy Court, Southern District of New York, regarding appropriate methods of determining wage comparability. March 2007.

Assisted with expert report written by Dale Belman for The Civil Service Employees Association Local 828 et al. in Scheffer v. The Civil Service Employee Association Local 828 et al., Western District of New York, regarding the whether or not expenditures on organizing by the union benefit individuals currently represented by it. June 2006.

Expert report written on behalf of the United Automobile Workers, in Delphi Corporation, et al., United States Bankruptcy Court, Southern District of New York, regarding appropriate methods of determining wage comparability. April 2006.

UAW-GM PEL Program Instructor, Linden, NJ, 2003-2004.

Testified on behalf of UNITE, March 9, 2004, in an interest arbitration regarding the rate of inflation in Northern New Jersey.

Testified on behalf of the National Association of Letter Carriers, Interest Arbitration, Washington, D.C., August, 1999 and July 1995 regarding appropriate methods of wage comparison.

Testified on behalf of Madison Teachers Incorporated, Interest Arbitration, Madison, March 26, 1996 regarding the state of Madison's economy.

Prepared two statistical reports and an affidavit on behalf of the American Federation of State, County, and Municipal Employees, for use in the case, "Richard W. Reese, et al Plaintiffs, v. City of Columbus, et al Defendants," Case No. C2-92-268, in the U.S. District Court for the Southern District of Ohio, Eastern Division, 1993.

Testified on behalf of the United Food and Commercial Workers before an Administrative Law Judge, U.S. National Labor Relations Board, Region 16, "United Food and Commercial Workers Locals 951, 588, 7, 1036 and 576," NLRB Case No. 16-CB-3850 (2-6, 9-25, 27, 33, 35-38), regarding the relationship between the percent of the supermarket workforce organized in a particular locale and the wages of represented employees, 1992.

Consulted with Madison Teachers Incorporated regarding measures of the cost-of-living, in preparation for an interest arbitration, 1983.

Professional Activities and Memberships:

Public member, Board of Ford-UAW Voluntary Employee Benefit Association, July, 2006 – December, 2009.

Member, National Advisory Council, National Workrights Institute, Princeton, NJ, Fall 2006 – 2008.

Chair, Finance and Membership Committee, Industrial Relations Research Association, January 2005-December 2007.

President, Industrial Relations Research Association, January-December 2003.

Editor-in-Chief, Industrial Relations Research Association. Chair of Publications Committee, ex officio member of the Executive Committee, Finance Committee, Program Committee, and other central working committees of the Association. Academic supervisor of copy editor and newsletter editor. Fall 1993-Fall 2002.

Member of Board of Reviewers, Industrial Relations and British Journal of Industrial Relations.

Member, Board of Reviewers, Industrial and Labor Relations Review, 1993-2003.

Referee: American Economic Review, British Journal of Industrial Relations, Industrial and Labor Relations Review, Industrial Relations, Journal of Economic History, Journal of Human Resources, Journal of Labor Economics, Journal of Labor Research, Labor Studies Journal, Land Economics, Review of Economics and Statistics, and Southern Journal of Economics.

Reviewer of proposals for National Science Foundation, 1988-1994.

National Executive Board member, Industrial Relations Research Association (IRRA), 1988-1990.

Former member of National IRRA Committees: (1) Statistics, (2) AEA-IRRA Relationships, (3) Research Volume/Editorial Advisory, and (4) Working Group on Research and Publications.

Member, American Economics Association and Committee on the Status of Women in the Economics Profession.

President of the Board of Directors, Red Caboose Day Care Center, 1989 and member of the management team negotiating a new collective bargaining agreement, 1987-88 and 1988-89.

Instructor in Labor Relations, General Motors and United Automobile Workers Paid Employee Leave Program (PEL), Delco Electronics, Milwaukee, 1990-92.

Testimony, Honorary Addresses, Presentations, Invited Conferences (Since 2000)

Testified before the U.S. Senate Health, Education, Labor and Pensions Committee, "How Unions Can Help Restore the Middle Class," March 10, 2009.

Panelist, "Impact of the Economy on Public Sector Bargaining," NJ Chapter, Labor and Employment Relations Association, New Brunswick, NJ, March 3, 2008.

Speaker, "Why Right to Work is Wrong for Michigan," Michigan Right to Work – Prevailing Wage Workshop, National Electrical Contractors Association, Lansing, MI. October 24, 2007.

Panelist, "Show us the Jobs," Central New Jersey Mensa program, July 14, 2006.

Speaker, "Pensions in the New Jersey Public Sector: Challenges for Public Policy," NJ Chapter of the Labor and Employment Relations Association, February 6, 2006.

Panelist, "The State of American Unions," Wolfson Center for National Affairs, The New School, New York, February 15, 2005.

Speaker, "Human Resources, Employment Relations and the Current Economic Outlook," SMLR Alumni Association Meeting, Nov. 5, 2003.

Speaker, "The Economic Outlook and Its Implications for Employment Relations," Hudson Valley Chapter, IRRA, Poughkeepsie, NY, May 8, 2003.

Invited Commentator, "The State of Unions at the Beginning of the Twenty-First Century: Factors Influencing Union Strength and Weakness – Presentation by Thomas Kochan," at the conference, "The Future of Labor Unions," Washington, DC, April 22-24, 2003.

Keynote speaker, "Labor Relations in Times of Tight Budgets," 8th Annual Illinois Public Sector Labor Relations Law Program, Chicago-Kent College of Law, Chicago, Illinois, October 4, 2002.

Panelist, "Perspectives on the Role of Department Chair," in session organized by the Academic

Leadership Program, Rutgers University, September 25, 2001.

Speaker, School of Management and Labor Relations Alumni Association, "Changing Workers, Changing Unions, and a Changing Department," New Brunswick, March 9, 2000.

Selected Public and University Service:

Public member, New Jersey Public Employment Relations Commission, January, 2010 – September 2012.

Member, Core Curriculum Committee, Rutgers University, Fall 2008 – Present.

Member, Academic Oversight Committee for Non-Traditional Student Undergraduate Education, Rutgers University, Fall 2010 – Present.

Member, Executive Committee of the School of Management and Labor Relations, and various preceding leadership committees within the school, Fall 1998-Present

Member, Task Force on Lifelong Learning, Rutgers University, Spring 2008 – December 2008.

Member, Ad-Hoc Core Curriculum Committee for the School of Arts and Sciences, Rutgers University, 2007-08.

Member, Working Group IV, Assessment of Undergraduate Student Learning, Self-Study for the Middle State Reaccreditation, Rutgers University, 2006-07.

Member, Task Force on Nontraditional Students, Rutgers University, 2006-07.

Member of the following transition committees and task forces involved in creating Rutgers School of Arts and Sciences: Committee on the Core Curriculum; Committee on Academic Standing; and Task Force on Nontraditional Students, Spring-Summer, 2006.

Member, Benefits Review Task Force, State of New Jersey, Appointed by Governor Codey, May-Nov. 2005.

Member, Curriculum Task Force, Subcommittee of the Rutgers Committee on Undergraduate Education, 2004-05.

Chair, Search Committee for the Librarian of the School of Management and Labor Relations, School of Management and Labor Relations, Rutgers University, 2002-2003.

Chair, Search Committee for Director of the Center for Women and Work, School of Management and Labor Relations, Rutgers University, 2001-2002.

Member, Search Committee for Director of Information Technology of the School of Management and Labor Relations, Rutgers University, 2001-2002.

Member, Search Committee for Librarian of the School of Management and Labor Relations, Rutgers University, 2001-2002.

Member, Workforce Development Coordinating Council, Rutgers University, 1999-2003.

Member, Search Committee for Dean of the School of Management and Labor Relations, Rutgers University, 1999-2000.

Member, Sunset Review Committee, Institute of Industrial Relations, University of California at Los Angeles, 2000.

Member, Social Studies Divisional Committee, University of Wisconsin, 1996-98.

Chair, Outside Review Committee, School for Workers, University of Wisconsin-Extension, July-August, 1996.

President, Institute for Wisconsin's Future, June, 1995-98.

Member, Commission on the Future of Worker-Management Relations, U.S. Departments of Labor and Commerce, March 1993 to December 1994.

Member, Special Committee on the State Collective Bargaining Process, Working with the Joint Economic Committee, Wisconsin State Legislature, 1993-94.

Minimum Wage Advisory Task Force for the State of Wisconsin. Member appointed by Gov. Thompson, April, 1991 to August, 1991.

PETITIONER EXHIBIT

2

Consequences of Union Representation of Teaching/Research Assistants

November 15, 2010

Adrienne Eaton
Sean Rogers, and
Paula Voos

Department of Labor Studies and Employment Relations
School of Management and Labor Relations
Rutgers University

Empirical evidence on two assertions

- Assertion 1: Union representation of graduate student employees at universities harms the faculty/student relationship.
- Assertion 2: Union representation of graduate student employees at universities reduces academic freedom.

Sample

- Graduate students from 20 programs with and 20 programs without union representation of PhD students who serve as TA's or RA's (40 total)
 - 5 disciplines broadly representing liberal arts, science and professional schools
 - Business
 - Computer Science
 - English
 - History
 - Psychology
 - 8 public universities (4 unionized, 4 non-unionized; matched-pairs by region and size)
 - Nationwide scope: Northeastern, South, Midwestern, Western
 - Large, doctoral research-intensive
 - Avg. 2007 R&D expenditures = \$453 million
 - Avg. 2007 total students = 35,000

Analytic method

- This was a web-based survey of PhD students using Qualtrics software.
- PhD student email listings were retrieved from department websites. For 10 programs that did not list student emails online, PhD directors were contacted and asked to send an email with a link to the survey to their PhD students. Individual student responses were completely anonymous – email addresses were not associated with individual responses.
- Union representation for graduate student employees in this study is institutional (by university) – it does not refer to the individual’s union membership.
- Rutgers’ Institutional Review Board for the Protection of Human Subjects in Research found the survey & protocol to be “exempt” on 3/3/10.
- Surveys were completed between March and July 2010.

ANALYSIS 1:
Graduate students who are currently employees
(TAs, RAs, or Both)

$n=580$

Descriptive Statistics

<i>Student Employees Union Status</i>		<i>Age</i>	
Unionized university	49%	Younger than 21	0%
Non-unionized	51%	21-25	22%
<i>Academic Discipline</i>		26-30	49%
		31-35	18%
		Older than 35	11%
		<i>Gender</i>	
		Business	17%
Computer Science	21%	Female	53%
English	22%	<i>Race</i>	
History	16%	White	75%
Psychology	24%	Black	4%
		Asian	16%
		Other	6%

MEASURES: Student-Teacher Relationships

- **PERSONAL SUPPORT/ROLE MODEL (12 items, Cronbach's $\alpha = .96$)**

- “I can freely exchange ideas with my primary advisor”

My primary advisor...

- “...is someone I can confide in”

- “...provides support and encouragement to me”

- “...is someone I can trust”

- “...thinks highly of me”

- “...accepts me as a competent professional”

- “...serves as a role model for me”

- “...represents someone I want to become like”

- “...is someone I am satisfied with”

- “...fails to meet my needs” (*reverse-coded*)

- “...disappoints me” (*reverse-coded*)

- “...has been effective in his or her role as advisor”

[1 = “strongly disagree,” 2 = “disagree,” 3 = “neutral,” 4 = “agree,” 5 = “strongly agree”]

MEASURES: Student-Teacher Relationships (cont.)

- **PROFESSIONAL SUPPORT & DEVELOPMENT (6 items, $\alpha = .91$)**

My primary advisor...

- “...uses his or her influence to support my professional development in my academic field”
- “...helps me learn about the academic profession”
- “...gives me advice on how to build a reputation in my academic field”
- “...suggests specific strategies for achieving my career aspirations”
- “...protects me from those who may be out to hinder my success”
- “...brings my accomplishments to the attention of influential people in my academic field”

- **FREEDOM TO CHALLENGE AUTHORITY**

- “I feel free to say no to my advisor if they ask me to do something I view as inappropriate”

- **ADVERSARIAL DEPARTMENT CLIMATE**

- “Students in my program or department have an adversarial relationship with faculty”
(reverse-coded)

[1 = “strongly disagree,” 2 = “disagree,” 3 = “neutral,” 4 = “agree,” 5 = “strongly agree”]

MEASURES: Student-Teacher Relationships (cont.)

- **ADDITIONAL ITEMS not loading on any factor**

- “I can freely exchange ideas with other faculty members in my department or program”
My primary advisor...

- “...gives me tasks that require me to learn new skills”

- “...and I frequently socialize informally outside the school environment”

[1 = “strongly disagree,” 2 = “disagree,” 3 = “neutral,” 4 = “agree,” 5 = “strongly agree”]

Results: Student-Teacher Relationships (1 of 3)

Means Comparison of Student-Teacher Relationship Items in Union and Nonunion Contexts - Current Employees

Variable	Union		Nonunion		Significant at .05?
	<i>n</i>	<i>M</i>	<i>n</i>	<i>M</i>	
Personal Support Scale	225	4.00	248	3.87	NO <i>p</i> = .122
<i>My primary advisor...</i>					
"...Is someone I can confide in."	231	3.82	252	3.71	NO <i>p</i> = .321
"...Provides support and encouragement to me."	231	4.07	252	3.96	NO <i>p</i> = .281
"...Is someone I can trust."	231	4.13	252	4.06	NO <i>p</i> = .478
"...Thinks highly of me."	231	4.01	252	3.85	NO <i>p</i> = .065
"...Accepts me as a competent professional."	231	3.99	252	3.79	YES <i>p</i> = .026
"...Serves as a role model for me."	231	4.03	251	3.84	YES <i>p</i> = .047
"...Represents someone I want to become like."	230	3.74	251	3.52	YES <i>p</i> = .044
"...Is someone I am satisfied with."	231	4.03	252	3.88	NO <i>p</i> = .115
"...Fails to meet my needs." (<i>reverse-coded</i>)	230	3.96	252	3.89	NO <i>p</i> = .505
"...Dissapoints me." (<i>reverse-coded</i>)	227	4.04	251	3.93	NO <i>p</i> = .308
"...Has been effective in his/her role as advisor."	229	3.97	251	3.76	YES <i>p</i> = .036
"I can freely exchange ideas with other faculty members in my department or program."	234	4.24	253	4.10	NO <i>p</i> = .169

Results: Student-Teacher Relationships (2 of 3)

Means Comparison of Student-Teacher Relationship Items in Union and Nonunion Contexts - Current Employees

Variable	Union		Nonunion		Significant at .05?
	<i>n</i>	<i>M</i>	<i>n</i>	<i>M</i>	
Professional Support Scale	228	3.71	251	3.60	NO $p=.174$
<i>My primary advisor...</i>					
"...Uses his/her influence to support my professional development in my academic field."	231	3.86	251	3.71	NO $p=.122$
"...Helps me learn about the academic profession."	231	3.97	251	3.82	NO $p=.112$
"...Gives me advice on how to build a reputation in my academic field."	231	3.77	251	3.70	NO $p=.480$
"...Suggests specific strategies for achieving my career aspirations."	231	3.65	251	3.63	NO $p=.876$
"...Protects me from those who may be out to hinder my success"	229	3.50	251	3.38	NO $p=.207$
"...Brings my accomplishments to the attention of influential people in my academic field."	230	3.53	251	3.37	NO $p=.121$

Results: Student-Teacher Relationships (3 of 3)

Means Comparison of Student-Teacher Relationship Items in Union and Nonunion Contexts - Current Employees

Variable	Union		Nonunion		Significant at .05?
	<i>n</i>	<i>M</i>	<i>n</i>	<i>M</i>	
Freedom to Challenge Authority	234	3.55	253	3.45	NO <i>p</i> = .317
Adversarial Department Climate (<i>reverse-coded</i>)	234	3.85	253	3.75	NO <i>p</i> = .277
Additional Items not loading on any factor:					
<i>My primary advisor...</i>					
"...Gives me tasks that require me to learn new skills."	230	3.90	252	3.82	NO <i>p</i> = .387
"...and I frequently socialize informally outside the school environment."	231	2.26	251	2.24	NO <i>p</i> = .903
"I can freely exchange ideas with other faculty members in my department or program."	234	3.87	253	3.84	NO <i>p</i> = .737

Notes:

For reverse-coded items, a LOWER mean score = HIGHER level of agreement on that item. In short, higher numbers are "good."

MEASURES: Academic Freedom

- **TEACHING-RELATED ACADEMIC FREEDOM (2 items, $\alpha = .79$)**
 - “As long as I restrict myself to the subject matter of the course, I am free to choose what I say or discuss with students in my courses”
 - “As long as I restrict myself to the subject matter of the course, I am free to choose how I will teach the material in my courses”
 - **ACADEMIC FREEDOM CLIMATE (2 items, $\alpha = .76$)**
 - “There is respect for differing opinions in my program or department”
 - “There is respect for differing opinions in the university”
 - **ADDITIONAL ITEMS**
 - “When it comes to my own research, I am free to choose the topics I want to work on”
- [1 = “strongly disagree,” 2 = “disagree,” 3 = “neutral,” 4 = “agree,” 5 = “strongly agree”]

RESULTS: Academic Freedom

Means Comparison of Academic Freedom Items in Union and Nonunion Contexts - Current Employees

Variable	Union		Nonunion		Significant at .05?
	<i>n</i>	<i>M</i>	<i>n</i>	<i>M</i>	
Teaching-Related Academic Freedom Scale	225	4.35	246	4.40	NO $p = .539$
"As long as I restrict myself to the subject matter of the course, I am free to choose what I say or discuss with students in my courses."	225	4.38	246	4.37	NO $p = .927$
"As long as I restrict myself to the subject matter of the course, I am free to choose how I will teach the material in my course."	225	4.38	246	4.43	NO $p = .254$
Academic Freedom Climate Scale	224	3.91	245	3.76	NO $p = .076$
"There is respect for differing opinions in my program or department."	224	3.88	245	3.78	NO $p = .318$
"There is respect for differing opinions in the university."	225	3.94	246	3.73	YES $p = .028$
Additional Items not loading on any factor:					
"When it comes to my own research, I am free to choose the topics I want to work on."	225	4.16	246	4.09	NO $p = .395$

ANALYSIS 2: RAs ONLY

$n=162$

Descriptive Statistics

<i>RA Union Status</i>		<i>Age</i>	
Unionized univeristy	59%	Younger than 21	1%
Non-unionized	41%	21-25	31%
<i>Academic Discipline</i>		26-30	39%
Business	18%	31-35	21%
Computer Science	48%	Older than 35	9%
English	2%	<i>Gender</i>	
History	11%	Male	54%
Psychology	21%	Female	46%
		<i>Race</i>	
		White	64%
		Black	3%
		Asian	27%
		Other	6%

MEASURES: Student-Teacher Relationships

- **PERSONAL SUPPORT/ROLE MODEL (10 items, Cronbach's $\alpha = .96$)**

- “I can freely exchange ideas with my primary advisor”

My primary advisor...

- “...is someone I can confide in”

- “...provides support and encouragement to me”

- “...is someone I can trust”

- “...serves as a role model for me”

- “...represents someone I want to become like”

- “...is someone I am satisfied with”

- “...fails to meet my needs” (*reverse-coded*)

- “...disappoints me” (*reverse-coded*)

- “...has been effective in his or her role as advisor”

[1 = “strongly disagree,” 2 = “disagree,” 3 = “neutral,” 4 = “agree,” 5 = “strongly agree”]

MEASURES: Student-Teacher Relationships (cont.)

- **PROFESSIONAL SUPPORT & DEVELOPMENT (6 items, $\alpha = .89$)**

My primary advisor...

- “...uses his or her influence to support my professional development in my academic field”
- “...helps me learn about the academic profession”
- “...gives me advice on how to build a reputation in my academic field”
- “...suggests specific strategies for achieving my career aspirations”
- “...protects me from those who may be out to hinder my success”
- “...brings my accomplishments to the attention of influential people in my academic field”

- **RESPECT (2 items, $\alpha = .87$)**

My primary advisor...

- “...thinks highly of me”
- “...accepts me as a competent professional”

- **FREEDOM TO CHALLENGE AUTHORITY**

- “I feel free to say no to my advisor if they ask me to do something I view as inappropriate”

[1 = “strongly disagree,” 2 = “disagree,” 3 = “neutral,” 4 = “agree,” 5 = “strongly agree”]

MEASURES: Student-Teacher Relationships (cont.)

- **ADVERSARIAL DEPARTMENT CLIMATE**

- “Students in my program or department have an adversarial relationship with faculty”
(reverse-coded)

- **ADDITIONAL ITEMS**

- “I can freely exchange ideas with other faculty members in my department or program”
My primary advisor...
- “...gives me tasks that require me to learn new skills”
- “...and I frequently socialize informally outside the school environment”

[1 = “strongly disagree,” 2= “disagree,” 3 = “neutral,” 4 = “agree,” 5 = “strongly agree”]

RESULTS: Student-Teacher Relationships (pg 1 of 3)

Means Comparison of Student-Teacher Relationship Items in Union and Nonunion Contexts - RAs Only

Variable	Union		Nonunion		Significant at .05?
	<i>n</i>	<i>M</i>	<i>n</i>	<i>M</i>	
Personal Support Scale	73	4.01	54	3.74	NO $p=.119$
My primary advisor...					
"...Is someone I can confide in."	73	3.85	54	3.67	NO $p=.400$
"...Provides support and encouragement to me."	73	4.10	54	3.93	NO $p=.344$
"...Is someone I can trust."	73	4.08	54	3.98	NO $p=.592$
"...Serves as a role model for me."	73	4.04	54	3.69	NO $p=.081$
"...Represents someone I want to become like."	73	3.78	54	3.35	NO $p=.057$
"...Is someone I am satisfied with."	73	3.99	54	3.72	NO $p=.167$
"...Fails to meet my needs." (<i>reverse-coded</i>)	73	3.92	54	3.67	NO $p=.235$
"...Dissapoints me." (<i>reverse-coded</i>)	73	4.08	54	3.76	NO $p=.111$
"...Has been effective in his/her role as advisor."	73	3.99	54	3.70	NO $p=.131$
"I can freely exchange ideas with other faculty members in my department or program."	75	4.29	55	3.98	NO $p=.099$

RESULTS: Student-Teacher Relationships (pg 2 of 3)

Means Comparison of Student-Teacher Relationship Items in Union and Nonunion Contexts - RAs Only

Variable	Union		Nonunion		Significant at .05?
	<i>n</i>	<i>M</i>	<i>n</i>	<i>M</i>	
Professional Support Scale	71	3.68	54	3.64	NO <i>p</i> = .791
<i>My primary advisor...</i>					
"...Uses his/her influence to support my professional development in my academic field."	73	3.88	54	3.83	NO <i>p</i> = .802
"...Helps me learn about the academic profession."	73	3.92	54	3.81	NO <i>p</i> = .559
"...Gives me advice on how to build a reputation in my academic field."	73	3.67	54	3.50	NO <i>p</i> = .375
"...Suggests specific strategies for achieving my career aspirations."	73	3.56	54	3.70	NO <i>p</i> = .458
"...Protects me from those who may be out to hinder my success"	73	3.38	54	3.52	NO <i>p</i> = .400
"...Brings my accomplishments to the attention of influential people in my academic field."	72	3.65	54	3.48	NO <i>p</i> = .350

RESULTS: Student-Teacher Relationships (pg 3 of 3)

Means Comparison of Student-Teacher Relationship Items in Union and Nonunion Contexts - RAs Only

Variable	Union		Nonunion		Significant at .05?
	<i>n</i>	<i>M</i>	<i>n</i>	<i>M</i>	
Respect Scale					
<i>My primary advisor...</i>	73	4.03	54	3.97	NO <i>p</i> =.695
"...Thinks highly of me."	73	4.03	54	4.02	NO <i>p</i> =.952
"...Accepts me as a competent professional."	73	4.03	54	3.93	NO <i>p</i> =.501
Freedom to Challenge Authority	75	3.56	55	3.55	NO <i>p</i> =.947
Adversarial Department Climate (reverse-coded)	75	3.89	55	3.73	NO <i>p</i> =.340
Additional Items not loading on any factor:					
<i>My primary advisor...</i>					
"...Gives me tasks that require me to learn new skills."	72	3.97	54	3.94	NO <i>p</i> =.866
"...and I frequently socialize informally outside the school environment."	73	2.27	54	2.20	NO <i>p</i> =.729
"I can freely exchange ideas with other faculty members in my department or program."	75	3.91	55	3.93	NO <i>p</i> =.891

Notes:

For reverse-coded items, a LOWER mean score = HIGHER level of agreement on that item.

MEASURES: Academic Freedom

- **TEACHING-RELATED ACADEMIC FREEDOM (2 items, $\alpha = .83$)**
 - “As long as I restrict myself to the subject matter of the course, I am free to choose what I say or discuss with students in my courses”
 - “As long as I restrict myself to the subject matter of the course, I am free to choose how I will teach the material in my courses”
- **ACADEMIC FREEDOM CLIMATE (2 items, $\alpha = .81$)**
 - “There is respect for differing opinions in my program or department”
 - “There is respect for differing opinions in the university”
- **ADDITIONAL ITEMS**
 - “When it comes to my own research, I am free to choose the topics I want to work on”

[1 = “strongly disagree,” 2= “disagree,” 3 = “neutral,” 4 = “agree,” 5 = “strongly agree”]

RESULTS: Academic Freedom

Means Comparison of Academic Freedom Items in Union and Nonunion Contexts - RAs Only

Variable	Union		Nonunion		Significant at .05?
	<i>n</i>	<i>M</i>	<i>n</i>	<i>M</i>	
Teaching-Related Academic Freedom Scale	75	4.79	52	4.61	NO <i>p</i> = .338
"As long as I restrict myself to the subject matter of the course, I am free to choose what I say or discuss with students in my courses."	75	4.73	52	4.56	NO <i>p</i> = .369
"As long as I restrict myself to the subject matter of the course, I am free to choose how I will teach the material in my course."	75	4.84	52	4.65	NO <i>p</i> = .381
Academic Freedom Climate Scale	75	4.09	52	3.77	YES <i>p</i> = .042
"There is respect for differing opinions in my program or department."	75	4.07	52	3.85	NO <i>p</i> = .198
"There is respect for differing opinions in the university."	75	4.11	52	3.69	YES <i>p</i> = .014
Additional Items not loading on any factor:					
"When it comes to my own research, I am free to choose the topics I want to work on."	75	4.03	52	3.87	NO <i>p</i> = .450

PETITIONER EXHIBIT

6

COLLECTIVE BARGAINING AGREEMENT

between

NEW YORK UNIVERSITY

and

**INTERNATIONAL UNION, UAW, AFL-CIO AND LOCAL 2110,
TECHNICAL, OFFICE AND PROFESSIONAL WORKERS, UAW**

September 1, 2001- August 31, 2005

provided that under no circumstances will the University seek or accept monetary damages of any kind.

ARTICLE XXII - MANAGEMENT AND ACADEMIC RIGHTS

A. Management of the University is vested exclusively in the University. Except as otherwise provided in this Agreement, the Union agrees that the University has the right to establish, plan, direct and control the University's missions, programs, objectives, activities, resources, and priorities; to establish and administer procedures, rules and regulations, and direct and control University operations; to alter, extend or discontinue existing equipment, facilities, and location of operations; to determine or modify the number, qualifications, scheduling, responsibilities and assignment of graduate assistants; to establish, maintain, modify or enforce standards of performance, conduct, order and safety; to evaluate, to determine the content of evaluations, and to determine the processes and criteria by which graduate assistants' performance is evaluated; to establish and require graduate assistants to observe University rules and regulations; to discipline or dismiss graduate assistants; to establish or modify the academic calendars, including holidays and holiday scheduling; to assign work locations; to schedule hours of work; to recruit, hire, or transfer; to determine how and when and by whom instruction is delivered; to determine in its sole discretion all matters relating to faculty hiring and tenure and student admissions; to introduce new methods of

instruction; or to subcontract all or any portion of any operations; and to exercise sole authority on all decisions involving academic matters.

B. Decisions regarding who is taught, what is taught, how it is taught and who does the teaching involve academic judgment and shall be made at the sole discretion of the University.

C. The above enumeration of management rights is not exhaustive and does not exclude other management rights not specified herein, nor shall the exercise or non-exercise of rights constitute a waiver of any such rights by the University.

D. No action taken by the University with respect to a management or academic right shall be subject to the grievance or arbitration procedure or collateral suit unless the exercise thereof violates an express written provision of this agreement.

ARTICLE XXIII - NOTICES

All correspondence, legal process and/or notices provided for by this Agreement may be delivered by personal delivery, regular, certified or express mail, private courier or facsimile:

To the Union:
Local 2110, UAW, Technical, Office and Professional Workers
AFL-CIO
113 University Place, 5th Floor
New York, NY 10003

PETITIONER EXHIBIT

7

DRAFT

MEMORANDUM

January 29, 2002

TO: THE UNIVERSITY COMMUNITY

FROM: Robert Berne, Vice President for Academic and Health Affairs

RE: Tentative Agreement with the Graduate Assistants Represented
by UAW

Last night, the University and UAW reached a tentative agreement with regard to graduate assistants. Tomorrow, GAs will have a ratification vote on the agreement.

From the very outset, we emphasized a number of principles that would guide us in working on a contract:

- the primacy of our fundamental academic mission, values and prerogatives
- a recognition of the importance of graduate assistants to our community
- the need to be competitive with peer institutions of excellence in recruiting graduate students
- a commitment to good faith bargaining to achieve a fair and reasonable contract.

I am pleased to say that this proposed contract achieves all these aims.

The contract provides substantial improvements for graduate assistants, not only as a recognition of their importance in the fabric of University life, but

also as a step in improving our competitiveness with other excellent institutions of higher learning:

- The minimum stipend to be paid to graduate assistants is increased
- Every graduate assistant will receive increases in his or her stipend in each year of the contract
- All graduate assistants will have full, individual health care coverage by the beginning of the next academic year (2002-2003)
- Overall spending on graduate assistants' stipends and health care will increase by 27 percent, 12 percent, 6 percent and 6 percent over the four year duration of the contract

Of critical importance to the University was the inclusion of provisions that reaffirm the sole authority of the University in academic decision-making. This concept is clearly stated in the Management Rights clause of the contract, and the March 1, 2001 letter from the UAW that enabled us to go forward with bargaining is included in the contract.

Moreover, we deemed it critical to acknowledge the distinctions among different disciplines, schools, programs and departments. This idea is embedded in two distinct stipend tiers, which will insure flexibility to deans, program heads, and department chairs.

We also placed a high value on the proposition that in signing this contract we would have an agreement in place that would ensure a stable, working relationship between the University and GAs. With the inclusion of a strong "no strike" provision that prohibits sympathy strikes, we have insured that our undergraduates' studies will not be disrupted during the term of this agreement.

This achievement was not possible without the sustained and wise input of many deans, senior administrators and faculty colleagues. They devoted a substantial number of hours to a process that was difficult and complex, providing guidance that insured that the agreement reflected the concerns of a wide range of disciplines and schools and that safeguarded the academic principles of our institution at every turn.

In particular, I would like to thank the deans at New York University, who provided sophisticated, insightful, and critical input throughout the process.

DRAFT

For Immediate Release:
Tuesday, January 29, 2002

Contact: John Beckman, NYU
212-998-6848

**STATEMENT BY NYU
ANNOUNCING A PROPOSED CONTRACT FOR GRAD ASSISTANTS,
FIRST EVER AT A PRIVATE UNIVERSITY**

New York University and the United Auto Workers (UAW) Local 2110 today announced that they have reached a settlement in the bargaining between the University and its graduate assistants (GAs). This is the first collective bargaining agreement between a private university and a union representing graduate assistants.

The agreement reaffirms fundamental academic prerogatives of the University, it provides for substantial increases in stipends and health care coverage for graduate assistants, and it insures NYU's competitiveness in attracting the highest quality graduate students in the world.

Among other provisions, the agreement will substantially raise the minimum that GAs can receive as a stipend, will provide stipend increases to every GA, and will give full health coverage to every GA by the next academic year.

Graduate assistants, who average 20 hours per week over the 30-week academic year, also receive tuition remission, valued at some \$20,000 per year.

The University and the UAW began bargaining last spring. In all, there were some 19 bargaining sessions.

Terry Nolan in our office of Legal Counsel was our lead negotiator. He deserves special praise for his expertise, patience, resolve and unflappability.

Finally we would not have reached an agreement this beneficial to the University without significant input from the faculty bargaining committee, whose contributions helped to shape the academic content of the contract. I would like to cite them by name, and I urge you all to join me in thanking them: Helene Anderson (FAS), Gabe Carras (Education), Ned Elton (Stern), Dick Foley (FAS), Philip Furmanski (FAS), Douglas Gale (FAS), Cliff Jolly (FAS), Jim Matthews (FAS), David McLaughlin (CIMS), Chuck Newman (CIMS), Dick Richardson (Education), and Gail Segal (TSOA). Numerous senior administrators including Dana Lee, Carolyn Tenney, John Beckman, Rich Stanley, Moira Kiltie, Teresa Toro, Joe Juliano, Karen Bradley, and Randy Greene, and many others in the individual schools and departments provided essential support to our efforts.

I would also like to add a personal note: as you know from some of my previous e-mails, I have been skeptical about the introduction of collective bargaining to graduate education. While I am not yet convinced that this will be positive for GAs and the University, along with the leadership of NYU, I am committed to working with our GAs and the UAW to achieve the aspirations of excellence that characterizes NYU's academic trajectory over the last two decades.

Every negotiated contract is by nature a compromise. However, this is a good contract that serves the University and its GAs well. Over the last year, both the University and the UAW have taken important steps – our recognition of the GA union, their March 1, 2001 letter to us, our decision to bargain, our mutual achievement of a good contract – that provide for an optimistic outlook and the prospect of a positive relationship going forward.

The full contract that will be the subject of a ratification vote by the UAW will be posted on the web at www.nyu.edu/publicaffairs/gradissues/agreement by the end of the day for you to examine.

The tentative agreement was approved by the bargaining committees for the University and the UAW Local 2110 on Monday, January 28. The contract will need to be ratified by graduate assistants in the bargaining unit. Ratification voting is expected to take place on the afternoon of Wednesday, January 30.

Robert Berne, NYU's Vice President for Academic and Health Affairs and the leader of the University's bargaining team, said, "From the very outset, I emphasized a number of principles that would guide us in working on a contract: the primacy of our fundamental academic mission, values and prerogatives; a recognition of the importance of graduate students to our community; the need to be competitive with peer institutions in attracting excellent graduate students; and a commitment to good faith bargaining to achieve a good, fair contract.

"I am pleased to say that this proposed contract achieves all these aims.

"There is still much room for skepticism about the place and role of organized labor in graduate education, but this much is true: we have crafted a good and fair contract that matches our primary objectives.

"I want to recognize the many members of the faculty who provided counsel, assistance, and support during this long process. They deserve the praise of our entire University community."

Dr. L. Jay Oliva, president of NYU, said, "This was *terra incognita* – no private university had faced this challenge before. The unionization of graduate assistants at public universities under state laws was not analogous. I am very pleased at the outcome of these efforts. Many members of the faculty and many administrators contributed to this achievement. However, two members of our community are deserving of particular praise: Bob Berne and Terry Nolan. Their skillful work resulted in a fine and fair contract that reaffirms our most critical academic values."

New York University has some 18,000 graduate and professional students, some 1,030 of whom are graduate assistants covered by the collective bargaining agreement. The University has some 18,000 undergraduate students.

New York University, which was established in 1831, is one of the largest and most prestigious private research universities in the U.S. It receives more applications for freshman admission and has more international students than any other private college or university in the nation. Through its 13 schools and colleges, NYU conducts research and provides education in the arts and sciences; law; medicine; dentistry; education; nursing; business; social work; the cinematic, studio and performing arts; public administration and policy; and continuing studies, among other areas.

TRANSCRIPT
PAGES

1 Number 2. I'll make copies for the parties at a later time.

2 **(Board Exhibit 2 received into evidence.)**

3 HEARING OFFICER DAVIS: Mr. Meiklejohn, if you would call
4 your first witness?

5 MR. MEIKLEJOHN: The Petitioner calls Dr. Paula Voos.

6 HEARING OFFICER DAVIS: Dr. Voos, raise your hand, please.

7 (Whereupon,

8 **PAULA VOOS,**

9 was called as a witness by and on behalf of the Petitioner and,
10 after having been duly sworn, was examined and testified as
11 follows:)

12 HEARING OFFICER DAVIS: Thank you.

13 **DIRECT EXAMINATION**

14 BY MR. MEIKLEJOHN:

15 Q Dr. Voos, by whom are you employed?

16 A Rutgers, the State University of New Jersey.

17 Q And what area of the school do you work?

18 A I'm a faculty member in the Department of Labor Studies
19 and Employment Relations, in the School of Management and Labor
20 Relations.

21 Q How long have you been a professor of labor studies at
22 Rutgers University?

23 A I joined in the fall of 1998.

24 Q And could you briefly describe your -- what is your
25 current status, are you a full professor?

1 Q And what is the status of that study?

2 A Well, the graduate student who was involved in this study
3 with us was our research assistant in the spring. And at
4 Rutgers, our graduate students are research assistants one
5 semester and teaching assistants the other semester. So he's a
6 teaching assistant this semester. So in January he will resume
7 his role as research assistant and we will take these
8 preliminary results, do more data analyses, and prepare some
9 papers for publication.

10 Q So this document that you prepared for purposes of this
11 hearing represents some preliminary analysis and data?

12 A Early data analysis, yes.

13 Q And when was the data collected?

14 A The data was collected between March of 2009 and July of
15 2009.

16 Q Can you describe how you went about collecting the data?

17 A By the way, I misspoke. I said March and July of 2009.
18 March and July of 2010, last year, the last academic year, I'm
19 sorry. In the 2009-2010 academic year between March of 2010 and
20 July of 2010, the data was collected, as is shown on Page 4.
21 I'm sorry. And I was hoping to go through how we did it.

22 Q Well, if you're going to do that with --

23 MR. MEIKLEJOHN: I do intend to take her through the
24 document, yes.

25 BY MR. BRILL:

1 Q I'm just trying to understand whether -- so this is some
2 selected data from this research that you did?

3 A These are data from some of the questions on the survey,
4 yes.

5 Q Do you have a copy of the entire survey instrument with
6 you?

7 A I do.

8 MR. BRILL: Well, I have a lot of questions about this
9 which I can either go into now or I can wait until cross. But I
10 would ask that there be a deferral of the judgment on admitting
11 it as an exhibit until we've had a chance to hear more about the
12 study.

13 MR. MEIKLEJOHN: I will take her through the study and
14 renew the motion at that point.

15 **CONTINUED DIRECT EXAMINATION**

16 BY MR. MEIKLEJOHN:

17 Q First of all could you just generally describe the
18 methodology of the survey?

19 A This was a survey of PhD students. And it was aimed at
20 getting a broad sample of such students that was representative,
21 and that had sufficient size in each university that we studied.
22 If you turn to Page 3, you will see that we selected five
23 disciplines as broadly representing the liberal arts, science,
24 and professional schools. These are all disciplines that employ
25 a large number of TA's, RA's, or a combination thereof, so there

1 would be a sufficient size within each discipline. And they are
2 common across all large research universities of the type that
3 we were studying. These are all large public universities. As
4 you know in some states graduate student employees do have
5 collective bargaining rights under state law. In other states,
6 they do not. Or they may not choose to have such
7 representation.

8 We selected eight public universities, four of which had
9 union representation of graduate student employees and four of
10 which did not. They were matched by region and by approximately
11 size in terms of number of students and amount of research and
12 development expenditures. Those support, of course, research
13 assistants, those expenditures.

14 Q And why did you match them in that fashion?

15 A Because we were attempting to control as much as possible
16 for discipline, for part of the country, to have 50/50 in terms
17 of union represented/not union represented, to have a sample
18 that controlled for some things that might affect student
19 opinions. I don't know that they do, but they might reasonably
20 be thought to affect student opinions.

21 Q So you're saying you picked from each region one union ad
22 one non-union?

23 A That's correct.

24 Q Please continue explaining your report, your methodology.

25 A So ultimately we had graduate students from 20 programs

1 with union representation of graduate student employees and 20
2 programs without. Many universities, not all, many universities
3 post the names of their PhD students on their website. They do
4 that because they want those PhD students to be able to get
5 jobs, to be able to contact one another, because undergraduate
6 students may be contacting them, and so forth. About 30 of the
7 40 programs had graduate student names on their website, in
8 which case we simply used those names for our survey.

9 Ten did not and so we had a different procedure. In those
10 10 cases, we had to contact the faculty member or the staff
11 member who directed the PhD program and ask that person to send
12 our email onto the graduate students in their departments who
13 are studying for a PhD. In other cases, we sent the email
14 directly. The email contained a link to a survey instrument
15 that was on the web. It was created using something called
16 Qualtrics software. And so students went to that web-based
17 survey and answered the questions.

18 Q Are you on Page 4 of your study now?

19 A I am no. But I can go there.

20 Q You've explained what the Qualtrics system or software is.
21 The second bullet point indicates that the student responses
22 were completely anonymous?

23 A Yes. That's important and that also relates to the next
24 to the last bullet on the page. In universities, we're
25 concerned that human subjects are informed if there is any

1 could just turn to Page 5 and explain briefly what that
2 reflects?

3 MR. BRILL: Well, before we get into the analysis, I'm not
4 sure there is a sufficient basis to allow testimony on this for
5 two reasons. Number one, the witness testified that this is
6 just a preliminary analysis. And I think we need to find out to
7 what extent it is still preliminary. For example, many
8 scholarly publications have to be peer reviewed, and without
9 peer review we don't know whether there would be professional
10 criticisms that would be made of this.

11 And, secondly, to the extent it is an analysis of teaching
12 assistants, I don't understand what relevance it has to this
13 proceeding because NYU doesn't have teaching assistants.

14 HEARING OFFICER DAVIS: I'm going to overrule the
15 objection. You'll have ample opportunity to cross-examine the
16 witness with respect to the document. And I'm sure the reader
17 of the record will give the document and the testimony related
18 to it the value of what it's worth.

19 BY MR. MEIKLEJOHN:

20 Q So turning to Page 5, can you explain what that page
21 indicates?

22 A Yes. Given our methodology, all graduates, PhD directed
23 graduate students received our email. Some of them were
24 currently graduate student employees and some were not. There
25 were approximately 798 persons who filled out the survey, of

1 whom only 580 were currently employed as either teaching
2 assistants, research assistants, or both at the same time,
3 sometimes called graduate assistants.

4 Q And when you say currently, you mean at the time they
5 filled out the survey?

6 A At the time they filled out the survey. Many of the
7 people who filled out the survey may have been a teaching
8 assistant or research assistant in the past, but we thought it
9 best to limit analysis for this case to those who are clearly
10 current employees.

11 Q Could you turn to Page 6, the demographic data of the
12 survey participants? These descriptive statistics, do these
13 relate just to the graduate students who were then currently
14 employees?

15 A Yes, it does.

16 Q Could you turn to Page 7? And I'm not going to ask you
17 any specific questions. Could you just explain what Page 7
18 reflects?

19 A On the survey, we asked a number of questions that we
20 believed were ways to discern the quality of the faculty/student
21 relationship. And we then used exploratory factor analysis,
22 principal components analysis to determine whether or not some
23 of these questions clustered together statistically in a way
24 that indicated that they all reflected an underlying opinion or
25 attitude about the faculty/student relationship. And you can

1 about, about Brown. If there is going to be reference to Brown,
2 it should be to a specific --

3 HEARING OFFICER DAVIS: Your objection is sustained.

4 MR. MEIKLEJOHN: Actually, she did indicate that the
5 reason for conducting these studies was these were assertions
6 made by the Board in Brown.

7 HEARING OFFICER DAVIS: I didn't understand that. But
8 that takes us into questions as to what her understanding of
9 Brown was. I mean I think you can reformulate the question.
10 BY MR. MEIKLEJOHN:

11 Q Leaving out the reference to Brown, did you find any
12 evidence in the survey to indicate that representation by a
13 union damages the student/teacher relationship?

14 A We found no evidence that the student/teacher relationship
15 was worse or damaged in the context of graduate student
16 representation.

17 Q If you would turn to Page 13, would you explain what the
18 questions reflected on this page were intended to get at?

19 A Well, these were questions that were intended to get at
20 the issue of academic freedom. And whether or not in some
21 respects having union representation of graduate student
22 employees would hurt academic freedom from the graduate student
23 point of view.

24 Q And did you find that there were answers to certain
25 questions clustered together?

1 A They clustered together but not as highly as they did for
2 the items in the faculty/student relationship, but clearly above
3 the cut-off. And we had two items that related to the freedom
4 the student experienced in teaching. One was about what they
5 could say in the classroom or how they could -- what they could
6 say or discuss and another related to how they do the teaching.

7 Q And you also felt the additional item when it comes to
8 research that related to academic freedom as well?

9 A Yes. And there were two items also about the general
10 respect for different opinions either in the program or
11 department, or in the university as a whole.

12 Q Those did cluster together?

13 A Those did cluster together.

14 Q And what does Page 14 reflect?

15 A Page 14 reflects the results for these items and the
16 scales for those that were done with factor analysis for the
17 entire population of graduate student employees.

18 Q And did you find a statistically significant difference
19 with respect to any of these results?

20 A There was statistically significant, one individual item.
21 If you look down the page you'll see it's the next to the last
22 item, there is respect for differing opinions in the university.
23 And there was a higher mean in the union context than in the
24 non-union context. But for most of the items and for in fact a
25 scale, the academic freedom climate scale that that one question

1 A Again, these are the items that related to the students'
2 perception of academic freedom and the results are very similar
3 with regard to the factor analysis as before in terms of the
4 clustering of items. The results are on Page 24. On the
5 teaching related academic freedom scale and the two items under
6 it, you'll notice that there's no significant difference in the
7 means. Down under the academic freedom climate scale there is a
8 significant difference both for one of the individual items and
9 for the scale as a whole and that is the item there is respect
10 for differing opinions in my university. That was significantly
11 higher at the five percent level in the union context than in
12 the non-union context. And that was a strong enough item that
13 the whole scale was found to be significantly different.

14 Q So with respect to the RA's only and that aspect of the
15 academic freedom climate, you did find a statistically
16 significant difference between the union and the non-union
17 universities?

18 A Yes, I did.

19 Q And where was it higher?

20 A It was higher in the union context.

21 Q Did you find any results that indicated for RA's that
22 unionization undermined academic freedom?

23 A Let me check.

24 Q Any statistically significant result?

25 A No, I did not.

1 Q And you don't know if that was done here?

2 A I can't say.

3 Q And you don't know whether these same questions were asked
4 in other surveys, do you?

5 A I believe that some of them are very close to items that
6 were in other surveys, yes.

7 Q Which other surveys?

8 A I can't tell you, at this time.

9 Q At what stage in this -- let me back up. Was your
10 research funded by anyone?

11 A No, it was not.

12 Q And did you or, to your knowledge, Dr. Eaton have any
13 communications with anyone from the UAW or any other union about
14 the research you were doing?

15 A No, we did not.

16 Q Going back to the communications that at least you had
17 with the UAW, when was the first time that you had any
18 communications with either a representative of the UAW or an
19 attorney for the UAW?

20 A It was last week. And I don't recall whether it was
21 Wednesday of last week or Thursday of last week. It was last
22 week.

23 Q And before that time, what was the status of the research
24 results?

25 A As I said earlier, we had gotten the survey done. The

1 data was sitting there, to be honest. Sean Rogers was working
2 on other tasks as part of his employment. And we were going to
3 come back to it in January. I believe that Professor Eaton
4 heard about this hearing and thought that our fundamental
5 results might have some value.

6 Q So you think she reached out to somebody in the UAW?

7 A Yes, that's correct. That's correct. Because we did have
8 the data and we thought that it would be of use to the NLRB.

9 Q When you started out your project, did you have in mind
10 the fact that it might assist unions in their efforts to
11 overturn the Brown decision or establish that graduate students
12 at private universities could be treated as employees?

13 A We did have in mind an empirical test of some of the
14 employer assertions in these cases, yes.

15 Q And you were setting out to show that those assertions
16 were not accurate, isn't that true?

17 A We were setting out to find out whether or not they were
18 accurate, which you really only can do once you ask questions
19 and see how people answer them.

20 Q So going back to the communications then that you had with
21 the UAW, to the extent you know, I'm asking about communications
22 Professor Eaton had as well, what documents did you give or did
23 Professor Eaton give to your knowledge to the UAW?

24 A At that time, all we had was a presentation that Sean
25 Rogers had created for some academic group that had the type of

1 Q Were you involved in the day-to-day administration of this
2 collective bargaining agreement?

3 A No.

4 Q So, you're not aware of whether what if any disputes arose
5 under the collective bargaining agreement?

6 A No.

7 Q But your understanding is that the university treated the
8 collective bargaining agreement as if it were still in effect?

9 A Yes, I'm clear on that.

10 Q Now, after the contract expired in August of 2005, I mean
11 the contract expired in August of 2005?

12 A Yes.

13 Q What happened to the relationship between the parties?

14 A At that time the university withdrew recognition and
15 refused to bargain.

16 Q And what action if any did the students take and the Union
17 take as it resulted in the withdrawal of recognition?

18 A The teaching and research assistants took a strike after
19 the university, went on strike after the university withdrew
20 recognition.

21 Q And to the best of your recollection for what period of
22 time did that strike last?

23 A I don't really remember the beginning of the strike, but I
24 know it went through most of but not all of the first semester.

25 Q Of what year?

1 A Of 2005-2006 academic year.

2 Q So, do you think the, was it, about how long did the
3 strike last?

4 A Many months.

5 Q So, the withdrawal of recognition and the loss of the
6 protection of the act resulted in a lengthy strike?

7 A Yes.

8 MR. MEIKLEJOHN: Nothing further.

9 HEARING OFFICER DAVIS: Do you want to off the record or?

10 MR. BRILL: No. I'd like to mark as Employer's Exhibit
11 Two, is that what we're up to, okay, Two a copy of the letter
12 from - actually I'd like to mark the next three exhibits all
13 together if I could?

14 HEARING OFFICER DAVIS: Sure.

15 MR. BRILL: Two would be a letter dated August 2, 2005
16 from Terrance J. Nolan to Elizabeth Bunn, secretary-treasurer of
17 the UAW.

18 Three is a letter dated -

19 MR. MEIKLEJOHN: Can you give me a copy so I can mark them
20 while you're describing them?

21 MR. BRILL: Well, let me just describe all of them, and
22 I'll give them to you.

23 MR. MEIKLEJOHN: All right.

24 MR. BRILL: Number three, Three is a letter dated August
25 4, 2005 from Ms. Bunn to Terrance J. Nolan. And Exhibit Four

1 is that considered part of the stipend support now or is that
2 something additional?

3 A The payment for teaching is separate. They are
4 compensated at the adjunct rates. Since they join the current
5 adjunct Union the stipend is the same as the ones that the
6 adjuncts receive.

7 Q So, students who choose to teach are they appointed
8 actually as adjunct faculty?

9 A Yes, they are.

10 Q As a faculty appointment.

11 A As a faculty appointment and their I'd say stipend, I
12 meant their compensation is above their stipend.

13 Q And how would that compensation compare to other adjuncts
14 who are not students doing the same thing?

15 A They are the same. I don't think there's any distinction
16 between a graduate student adjunct and non-graduate student
17 adjunct.

18 Q And are you aware of, you say that they join the Union.
19 Are you aware of the eligibility criteria to be a part of the
20 Union?

21 A I believe they have to be teaching 40 hours a year to be
22 eligible for the adjunct Union.

23 Q So, 40 classroom contact hours?

24 A Contact hours, yes.

25 Q So, a student who is appointed an adjunct and has, meets

1 MR. CONRAD: I have a standing objection to these
2 questions --

3 HEARING OFFICER EVEILLARD: Yes, yes.

4 MR. CONRAD: -- that are really answered by the document -
5 -

6 HEARING OFFICER EVEILLARD: I know, but I said I was going
7 to allow him to lay some --

8 MR. CONRAD: Okay.

9 HEARING OFFICER EVEILLARD: -- foundational questions --

10 MR. CONRAD: That's fine.

11 HEARING OFFICER EVEILLARD: -- so we can get to the heart
12 of the matter and we can't seem to get to it. Go ahead.

13 THE WITNESS: Okay. You could draw that conclusion from
14 what the arbitrator wrote. Of course I can't get into the
15 arbitrator's mind. The arbitrator need not disclose all of his
16 or her reasons.

17 BY MR. MEIKLEJOHN:

18 Q Now you testified that the university had to be vigilant
19 to protect its academic freedom?

20 A That was a statement of the Faculty Committee on Academic
21 Priorities. I think it's exhibit 37.

22 Q Do you agree with that statement?

23 A Yes.

24 Q And isn't it in fact the case that the university always
25 has to be vigilant in protecting its academic freedom?

A Yes.

Q And the language in the collective bargaining agreement provided the university with a mechanism to do that, is that right?

A Yes.

Q Now you've testified that the Weiss arbitration award, Employer exhibit 41, also involved a threat to the university's academic freedom?

A Yes.

Q Now in that case the union's position was that the terms of the collective bargaining -- the economic terms of the collective bargaining agreement had to be applied to certain people who are teaching courses, is that right?

A That would be one way to characterize it, yes.

Q Well, isn't that in fact the way the union characterized its position in that case?

A It may have been.

Q And the -- to the best of your recollection, the union wasn't trying to tell you who should teach the classes, they were trying to say this is bargaining unit work and the people who teach these classes should be compensated according to the collective bargaining agreement, is that right?

A No.

Q In what way is that statement incorrect?

A Well, in that case law students were appointed as adjuncts

1 better in the places that became union before they were
2 unionized. Then the union came in and made the place worse off
3 in this relationship way. And now it shows up as no difference.
4 You just can't know that. It would be a much more elegant
5 research design and much harder, and someone would have to be
6 pressuring you to do that - and as I understand it, the legal
7 history with unions at NYU might provide an opportunity for this
8 - you can look prior to unionization. Go in and see how things
9 are going. You can look after, see how things are going then.
10 And now either you can look later on when there isn't a union
11 again and see what happened again. And that would give you more
12 of an idea of what's going on.

13 So at the end of the day that particular criticism means
14 you can learn precisely nothing from Voos' study about what
15 would happen at a place like NYU were they to move from being
16 non union to union. So this is also -- you know, aside from
17 that -- for example, virtually all of the experience we have in
18 this country with graduate student unions is in public
19 universities. NYU is a private university, and we don't know
20 how this is going to play out really in a private university.
21 So there's just a lot of problems.

22 I mean it's an interesting descriptive tool that Voos comes
23 up with to tell us that at this point in time in these
24 universities there's no difference. That's kind of interesting.
25 But it's not going to help you here learn what's going to happen