

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

UNIVERSITY OF CHICAGO,

Employer

and

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

Case 13-RC-198325

Petitioner

PETITIONER'S RESPONSE IN OPPOSITION TO REQUEST FOR REVIEW

INTRODUCTION

The Regional Director directed an election in a unit of employees who are graduate students at the University of Chicago and who work for the University as teaching assistants, research assistants, course assistants, workshop coordinators, writing interns, preceptors, language assistants, instructors, lecturers, lectors and teaching interns. The Employer has filed a petition for review, asking the Board to reconsider its decision in *Columbia University*, 364 NLRB No. 90 (2016). The Employer also asserts that the facts of this case are distinguishable from those in *Columbia*; that the record does not support the eligibility formula found appropriate by the Regional Director; and that the Regional Director incorrectly ordered the Employer to file a timely voter list.

The record and applicable precedent fully support the Regional Director's finding that the graduate students who are employed by the University in the petitioned-for positions have a common-law employment relationship with the University and are employees under Section 2(3) of the Act. Documents prepared and published by the University, including admission letters, financial

aid statements, job announcements and appointment letters, clearly show that graduate students who hold teaching and research assistant positions are compensated by the University for performing the work of such positions and that the University views such positions as positions of employment. Indeed, as the Regional Director found, the University did not contest the employment status of the Master's students who hold teaching positions, graduate students who work in positions in the petitioned-for unit beyond academic requirements, workshop coordinators, and "non-laboratory" research assistants, but rather asserted that such employees do not share a community of interest with the other teaching and research assistants. DDE at 21, fn. 40.

The record and applicable precedent also fully support the Regional Director's findings with respect to the appropriate eligibility formula, a formula which is consistent with the factors the Board has applied for more than 50 years in industries where intermittent employment is common.

The Regional Director's direction that the Employer provide a timely voter list is in accordance with Section 102.67(l) of the Board's Rules and Regulations. While the Employer on the record at the hearing requested that an election, if one were directed, be scheduled after the start of the autumn 2017 quarter, the Employer did not, prior to the issuance of the Decision and Direction of Election, raise any extraordinary circumstances that warranted the Regional Director's excusing the Employer from complying with the voter list requirement.

The Request for Review should therefore be denied.

ARGUMENT

I. The Employer has presented no compelling reasons for the Board to reconsider its decision in *Columbia University*.

The Board's decision in *Columbia University* resulted from a careful, deliberative process.

The decision is based on the language of the Act, Supreme Court and Board precedent, a consideration of the policies embodied in the Act, economic realities of university employment, and academic studies. The Board invited and considered the views of a wide range of interested parties.

The University of Chicago filed its request for review in this case six and one-half weeks after the issuance of the Decision and Direction of Election and filed a motion for stay of the election or to impound the ballots several days later, and three weeks prior to the election. As is evident from the timing of the filing of these documents and their contents, the Employer candidly relies on a change in the composition of the Board in support of its request for Board action.

Hastily granting review on the issue of whether *Columbia* should be reconsidered would undermine respect for the Board and encourage the belief that the Board's actions are based on political considerations rather than on an analysis and consideration of factors relevant to statutory interpretation. The Employer has presented no reasons why the Board should not allow the development of collective bargaining relationships that follow the *Columbia* decision, which issued just over a year ago.

II. The Regional Director's finding that graduate teaching and research assistants are employees under the Act because they are compensated for their work and work under the direction and control of the University is overwhelmingly supported by the record.

A. Graduate teaching and research assistants are compensated for their teaching and research work and perform the work under the University's supervision and control.

The University in its request for review repeats a fiction it asserted in its offer of proof, at the hearing and in its post-hearing brief to the Regional Director, contending that its graduate teaching and research assistants are not compensated for their work. RFR at 27. At the hearing and in its post-

hearing brief, the Employer asserted that its graduate teaching and research assistants “do not receive compensation for services.” Employer post-hearing brief at 2. However, the record in this case overwhelmingly establishes that graduate students are required to perform teaching or research work as a condition of receiving funding and are specifically compensated for performing such work.

Documents prepared and published by the University, including admission letters, financial aid statements, appointment letters, teaching handbooks, job announcements, and job descriptions clearly show that graduate students who hold teaching and research positions are compensated by the University for performing the work of such positions. Indeed, the evidence in this case establishes that the University views the graduate teaching and research assistants as University employees. A memo from the University Provost stated that, “*There are many ways graduate student teachers are employed at the University of Chicago. Because of this diversity there is a great range of work expectations for every job category,*” and set out proposed “job descriptions” and “weekly work hour expectations” for the graduate teaching assistant positions. Pet. Ex. 72, p. 2 (emphasis added); Tr. 1426-8. The University’s UChicago Grad Doctoral web page, under the caption “Student Employment,” identifies “teaching and research positions” as among the types of “*employment opportunities*” available to graduate students. Pet. Ex. 29, p. 2 (emphasis added).

A notice sent to Biological Sciences Division graduate research assistants informed them that “*since the RA positions are an employment status, pay is subject to state and federal withholding*” and that the Research assistants would receive a W-2 form. Pet. Ex. 87 (emphasis added). A financial aid terms statement sent to Social Sciences Division graduate students informed them that their “teaching requirement may be met with *compensated service* as a teaching assistant (TA), as a lecturer (equivalent to two TAships) or as a preceptor (equivalent to one TAship for each quarter

served)” and that “[s]tudents are responsible to apply for and secure acceptable teaching positions within the university through standard application procedures ...” Pet. Ex. 74, p. 3 (emphasis added). Similarly, Humanities Division graduate students are informed in financial aid statements that: “Students who receive part of a fellowship in the form of *teaching remuneration* must follow the standard procedure to apply for such positions.” Pet. Ex. 99 (emphasis added). In the Humanities and Social Sciences Divisions and at the Divinity School, Ph.D students’ stipends are reduced in the years they are expected to teach and they receive separate teaching compensation biweekly through the University’s Human Resources payroll system during the quarters in which they teach. Er. Ex. 20; Pet. Exs. 74, 79, 97, 98; Tr. 1462-3.

Appointment letters appointing graduate students to lecturer positions caution them that: “*The policy that restricts the weekly workload of graduate students to 20 hours may affect your ability to accept this offer if you are employed by the University in any other capacity, including but not limited to other teaching appointments, research assistantships, administrative positions, and ad hoc opportunities.*” Pet. Ex. 3, 4 (emphasis added). Humanities Division appointment letters state that they are “*offer[s] of employment*” and conditioned on proof of “authorization to work.” Pet. Exs. 3, 4 (emphasis added).

In the Physical Sciences Division, graduate students must work either as teaching assistants or as research assistants to receive funding. Tr. 1091-4 (Dean Swanson). Teaching assistant and research assistant funding in such division is run through Workday, the University’s Human Resources payroll system, with taxes withheld. Tr. 1098-9 (Dean Swanson). A Statistics Professor and former Chair of the Statistics Department testified that: “The support system for graduate students in the statistics department is such that they are required to TA for two quarters a year in

order to satisfy their – to be supported [paid] fully.” Tr. 1261.

Contrary to the University’s assertion that graduate students in the biological and physical sciences are simply funded to work on their dissertations, the evidence established that in the Biological and Physical Sciences Divisions, graduate research assistants are most commonly funded through grants held by the faculty member who is the principal investigator in a lab. The grants pay the “personnel costs” of the graduate research assistants. Tr. 722-24 (Dean Prince); Tr. 1273-4 (Professor Amit). The principal investigator in the lab is responsible for ensuring that the work performed by the personnel, including the graduate research assistants, is consistent with the scope of the grant. Tr. 722-24 (Dean Prince). The principal investigators are listed as co-authors on the papers published by the research assistants based on the research conducted in the labs, and the research performed by graduate research assistants furthers the University’s mission of conducting original research. The principal investigators and the University thus benefit from the research performed by the research assistants. Tr. 729 (Dr. Prince); Tr. 941-3 (Dr. Hopkins).

Contrary to the University’s assertion that graduate research assistants freely select their own research topics, the record evidence shows that graduate research assistants’ research topics must be aligned with the research conducted in the lab in which they are working. Tr. 934 (Dr. Hopkins); Tr. 667-8 (Dr. Prince). In the Chemistry Department, a graduate research assistant was assigned a research topic by his faculty advisor, who is the principal investigator in the lab. Tr. 1913-14. Under University policy, the University owns the patents that result from any research conducted by graduate research assistants. Pet. Exs. 36, 37. The Regional Director’s finding that “RAs perform many tasks that faculty and non-student staff would otherwise do” (DDE at 20) is fully supported by the record.

Graduate teaching and research assistants are required to comply with the University's Human Resources policies that govern employees. Thus, Biological Sciences Division graduate research assistants are required to acknowledge that as "employees" they agree to abide by employer policies, including those governing business conduct; conflict of interest; treatment of confidential information; smoking/no-smoking; substance abuse; workplace harassment, discrimination and sexual misconduct; mandatory reporting of child abuse; and information technology use and access. Pet. Ex. 87. Humanities Division appointment letters state that the graduate teaching assistant during the term of an appointment "will be subject to ... *the administrative policies of the University applicable to your academic appointment.*" Pet. Ex. 4 (emphasis added).

B. The University depends on its graduate teaching assistants as a source of labor for teaching Core curriculum and other courses to undergraduate students.

Contrary to the University's assertion otherwise, the record evidence overwhelmingly establishes that the University's graduate students are thrust wholesale into many of the core duties of teaching, including planning and giving lectures, grading exams and papers, holding discussion sections, supervising weekly lab sessions, and holding office hours. The University of Chicago graduate students are essential to the University's ability to provide small writing seminars for its Humanities Core courses which all undergraduates are required to take. Such writing seminars are taught primarily by graduate students who work as writing interns. Graduate students also are employed as lecturers – stand-alone instructors of record – in Core sequence courses and Civilization sequence courses in the Social Sciences – both part of the University's general education requirements for undergraduates, and are relied on to serve as teaching assistants in introductory science classes, as stand-alone instructors in lower level mathematics courses and as instructors in

foreign language courses.

The University requires all undergraduates to take Core curriculum courses in the humanities, social sciences and natural sciences. Pet. Ex. 82; Tr. 1938, 1947-8. The College's "Apply for Jobs in the Social Sciences Collegiate Division" web page solicits applications for intern and lecturer positions and "provides information regarding ... *job descriptions, job responsibilities, and the application process.*" Pet. Ex. 95, p. 1 (emphasis added). The site explains the teaching intern's role:

Interns are apprentices to the faculty in whose course they have been appointed. They are expected to learn from the supervising faculty member how to teach a course in the Core curriculum to a small number of students in a seminar-style discussion class. They are being trained by the supervising faculty in order to assure a steady supply of advanced graduate students who are qualified to teach the University of Chicago's Core curriculum in keeping with the traditions of the College and the standards demanded by the faculty.

Pet. Ex. 95, pp. 2-3 (emphasis added). Lecturers in Core curriculum courses are hired from both the pool of qualified graduate students and from the pool of outside applicants who have obtained their Ph.D degrees. Pet. Ex. 95, p. 4.

The University relies on Ph.D students as a source of labor to staff Humanities Core sequence courses, which are required courses for all undergraduate students. Tr. 1938, 1947 (Professor Kenneth Warren). According to the Writing Program's "working as a writing intern" web page:

Graduate students from all the divisions and professional schools are eligible – and eagerly sought – for this position. Here's why: writing interns are responsible for providing writing instruction to ALL University of Chicago first-years, whether those students will be majoring in the humanities, the social sciences, or the sciences.

...

Each intern is assigned to a Humanities Common Core class of no more than seventeen to nineteen students.

Pet Ex 58, p. 1 (emphasis in capital letters in original; emphasis in italics added).

An English Department Professor testified that the department relies on graduate teaching

assistants to work in department “gateway courses” so that a faculty member can “focus more on the delivery of my lectures than I might otherwise if I had to spend more time grading all of the papers. It would be impossible to do.” Tr. 1946. Graduate students are also relied on to teach freestanding courses that would otherwise be lacking in instructors because faculty members are on research leaves. Tr. 1952. Graduate students teach sections of all levels of foreign language courses offered to undergraduate students. Tr. 386-7.

A Statistics Professor testified that due to a “huge increase in enrollment” in the department without a comparable increase in faculty, graduate students are relied on to teach stand-alone sections of undergraduate courses (Tr. 1262), and, due to the “heavy load of grading homework,” are relied on to grade homework, and are also relied on to hold study sessions and office hours, in all undergraduate courses in the department. Tr. 1256-7.

The Chemistry Department’s “Guide for Teaching Assistants” states that: “As a Teaching Assistant, you are given a very serious responsibility. *A large portion of the individual attention and instruction for undergraduates in chemistry classes depends on the knowledge, concern, and dedication of the Teaching Assistant.* You have the closest contact with students and will most directly influence their attitude toward the department and their performance in their courses. It is vital that you take this responsibility seriously. *You will be the face of the Chemistry Department to your students.* Er. Ex. 42, p. 3 (emphasis added).

Mathematics is the third largest undergraduate major and teaches about ten percent of the undergraduate enrollments in the College. Tr. 1315. The Mathematics Department relies heavily on graduate students to teach courses in the department. Starting in their third year and continuing until they finish graduate school, Ph.D students are required most quarters to teach classes as stand-alone

instructors in lower level undergraduate courses such as calculus and discrete mathematics. Tr. 1312-13 (Professor Hirschfeldt). As the Regional Director found, “These are courses that the University does not have to pay faculty to teach.” DDE at 16.

The record fully supports the Regional Director’s finding that:

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

DDE at 18. The record also fully supports the Regional Director’s finding that:

The record also establishes that the Employer benefits from this work. ... [G]raduate students reduce the faculty member’s workload by performing duties that a faculty member or non-student employee would otherwise have to perform and advance the Employer’s mission of providing the highest quality of education for its undergraduate students.

DDE at 19.

C. That the University of Chicago offers training to its graduate teaching assistants so that they can further the University’s mission of providing a high quality education to undergraduates supports the finding that the graduate teaching assistants are employees.

The Employer asserts, remarkably, that the fact that it offers teacher training to its graduate teaching assistants casts doubt on their employee status. If such were the case, it would undermine the employee status of large numbers of workers whose employers train them in the performance of their job duties. The Employer’s assertion that its graduate students are trained to teach for their own benefit is unsupported by the record.

The Employer repeatedly takes out of context a quotation from the Regional Director’s

Decision regarding the training of graduate students to teach. What the Regional Director found was that: “Every faculty witness acknowledged the importance of training the University’s PhD students in pedagogy so that, among other things, undergraduates received high quality instruction and educational support....” DDE at 16. Since the University heavily relies on its graduate students to teach Core and other undergraduate courses, it is not unreasonable for the University to offer training so that the graduate students help fulfill the University’s mission of providing a high quality education to its undergraduate students.

Moreover, that the University offers training, much of it optional, to its graduate student employees does not distinguish it from *Columbia*. Rather, the Regional Director in *Columbia* found – and the Board did not disagree with such finding of the Regional Director – that, at Columbia, “there is significant pedagogical training and assistance provided to graduate students by the Graduate School of Arts and Sciences’ Teaching Center.” *Columbia University*, Case 02-RC-143012, Supplemental Decision and Order Dismissing Petition (2015) at 9-10. While the Board in *Columbia* found that the graduate students at issue there were “thrust wholesale into many of the core duties of teaching,” the Board notably did not find that they were thrust into such duties without being offered training. Here, the graduate students at issue, with varying degrees of training, are thrust wholesale into many of the core duties of teaching, including teaching stand-alone courses, grading homework, leading writing workshops, leading lab sessions, and holding office hours.

The University cites no Board precedent for the proposition that an employer’s action in training its employees so that they can be effective in carrying out their job duties casts doubt on their status as employees under Section 2(3) of the Act. Indeed, in some instances the employees at issue here are paid for their training because it is considered part of their employment. Thus, a

handout given to Chemistry graduate students at their teaching assistant training session answered the question, “Is the attendance of the TA at training mandatory,” with the following answer: “Yes, it is absolutely mandatory! The TA training is not only preparing you to be an effective teaching assistant, but also part of your *employment*. You are *paid* for the two weeks TA training.” Pet. Ex. 84 (emphasis added).

D. The University encourages graduate students to work in teaching positions after they fulfill teaching requirements.

The record evidence clearly contradicts the University’s assertion that graduate students are discouraged from teaching beyond the teaching required as academic and funding package requirements. The student employment policy, which applies to graduate students, provides that:

The University will not employ full-time students for more than 20 hours per week during quarters of full-time registration without the express permission of the area dean of students or their designee ... Students may request authorization from their area dean of students or designee to work more than 20 hours per week, and exceptions are governed by the policies of individual divisions and schools. *Teaching and research are critical to the University’s academic enterprise and will therefore be prioritized in considering exceptions.*

Pet. Ex. 2 (emphasis added). Social Sciences Division Ph.D students are informed on the Division’s Dean of Students web page that: “Students with a teaching component as part of their fellowship must fulfill the requirement by the end of the fellowship period. Many students who are beyond the fifth year seek teaching positions as a means of financial support.” Er. Ex. 16, p. 1. Biological Sciences Division graduate students are informed that after fulfilling the two teaching assistant position requirement of their funding packages, “students may hold teaching assistantships for *additional pay* in courses with unfilled TA positions.” Er. Ex. 28, p. 6 (emphasis added). The Social Services Administration web page for Doctoral Program Funding and Research Support informs

doctoral students that to receive their funding they must “work as a research assistant with an SSA faculty member for 10-12 hours each week” in their first two years and “for three years as a teaching assistant.” Pet. Ex. 38. Thereafter, “Advanced doctoral students wishing to supplement their aid packages have access to opportunities to teach in the master’s program” Pet. Ex. 38.

Department of Romance Languages and Literature graduate students are informed in their handbook that after fulfilling the teaching required for their funding, they may have the opportunity to do additional teaching for “supplementary compensation” during their first five years. Pet. Ex. 48, p. 20.b. The Department of Philosophy web page, after outlining the teaching obligations required of Ph.D students as a condition of their funding, informs the students that, “*Doctoral students in the program are encouraged to do more teaching than this.*” (Pet. Ex. 49, p. 1, emphasis added). The Art History Department Handbook, after discussing the teaching required as a condition of graduate student funding, states with respect to teaching positions that: “*More advanced students who have completed the fellowship-related teaching ... may also apply.*” Pet. Ex. 56, pp. 19-20 (emphasis added).

Graduate students from all graduate divisions and schools, including those who have fulfilled teaching requirements, work for compensation as Lectors in the Writing Program. Tr. 1383-5, 2016-17. In departments in which the time to degree is longer than five years, graduate students commonly teach beyond their required teaching and are not discouraged by faculty members from doing so. Tr. 1866-7. Indeed, in the Divinity School, Humanities Division and Social Sciences Division, Ph.D students who have fulfilled their teaching requirements are paid higher teaching salaries than those who are teaching as a requirement of funding packages. Tr. 1036-7 (Dean Owens).

E. The University allows graduate students to fulfill teaching required by their funding packages by teaching in areas unrelated to their fields of study.

Contrary to the University's assertion that graduate students are required to teach because teaching is related to their academic studies, graduate students can fulfill the teaching required as a condition of funding by teaching outside of their fields of study. In the Department of Cinema and Media Studies, "[t]eaching outside the department is counted toward GAI [financial aid] obligations." Pet. Ex. 47, p. 31. The Department of South Asian Languages and Civilizations web page informs graduate students that as part of their funding they must "fulfill a teaching obligation (also known as 'service requirement') (Pet. Ex. 53, p. 1) and that "since SLC can offer only a limited number of teaching assignments, students are also encouraged to pursue teaching opportunities outside the department." Pet. Ex. 52, p. 1. Divinity School Ph.D students can fulfill the teaching required as a condition of their funding by teaching in the Humanities Division, the Social Sciences Division and the Writing Program even if such courses do not involve the study of religion. Tr. 1037-8 (Dean Owens). Graduate students from outside the Humanities Division work as Language Assistants. Tr. 1687.

F. Teaching performance affects graduate students' future teaching opportunities.

The University incorrectly asserts that graduate students receive no adverse consequences for unsatisfactory teaching performance. The record shows that unsatisfactory teaching performance can affect a graduate student's future employment with the University and salary. For example, the Chemistry Department teaching assistant handbook states that:

The faculty will be presented every quarter with a full teaching evaluation for every TA during faculty meeting. If your performance is determined to be unsatisfactory, a mid-quarter meeting with the Executive Officer and the Chair of the Department

may be scheduled. The teaching evaluations may be used to determine future employment and salary.

Er. Ex. 42, p. 6. The Department of Romance Languages and Literature handbook states that: “Teaching performance is reviewed regularly and subsequent course assignments are contingent upon the successful completion of previous teaching responsibilities.” Pet Ex 48, p. 20.

II. The eligibility formula found appropriate by the Regional Director is supported by applicable precedent and the factual record.

The Regional Director’s finding that a one-year look-back formula for voter eligibility is appropriate in this case is fully supported by the facts in the record and Board precedent, and the Employer has presented no compelling reasons for review of such finding.

The Regional Director found that: “Due to the variance of how unit employees are paid, instead of the payroll date concept used in many circumstances, a better descriptor is the particular quarter at issue.” DDE at 24. He also found that: “The fact that a graduate student is not serving in a unit position during the quarter, or even the academic year, is not an indication that they will not do so in the future.” Such findings are in accordance with the factual record.

For example, writing interns often work two quarters per academic year “because the third quarter there are fewer sections and there’s a much less demand for interns.” Tr. 1562 (Writing Program Director McEnerney). That is because undergraduates are not required to take a third quarter of the Humanities Core courses. Tr. 1586 (McEnerney). Moreover, a third of writing interns teach for more than one year. Tr. 1562 (McEnerney). Ph.D students in the biological sciences who are required to teach one quarter each year as a condition of receiving divisional funding may fulfill such requirement in either the fall, winter or spring quarter of each academic year. Tr. 2009-12. Ph.D students in other divisions and schools also have held teaching assistant and lecturer positions in one

quarter only of several successive years. Tr. 1687-91, 1852, 1895-6. Moreover, as discussed in Section II.D above, graduate students who have fulfilled the teaching requirements of their funding packages are encouraged to continue teaching in unit positions.

Eligibility formulae are appropriately based on looking at “the patterns of employment within a job or industry” and at “what amount of past employment serves as an approximate predictor of the likelihood of future employment.” *Columbia*, 364 NLRB No. 90 at 22. An eligibility formula should be “inclusive - not exclusive - ... to permit optimum employee enfranchisement and free choice, without enfranchising individuals with no real continuing interest in the terms and conditions of employment offered by the employer.” *Trump Taj Mahal Casino*, 306 NLRB 294, 296 (1992) (finding that stagehands and technicians employed at an entertainment venue are considered to have a sufficient interest in terms and conditions of employment if they have worked an average of four hours per week for the calendar quarter preceding the eligibility date). *See Steiny and Co.*, 308 NLRB 1323 (1992) (finding that construction industry employees who are not on the payroll at the time of an election are permitted to vote if they have worked for the employer for at least 30 days within the year preceding the eligibility date or 45 days within two years before the eligibility date); *C.W. Post Center of Long Island University*, 198 NLRB 453 (1972) (finding that adjunct faculty members may vote if they have been employed in at least two out of three previous academic years and have a contract with the university).

The Board throughout its history has established formulae incorporating a minimum work requirement and a look-back period in numerous other industries. *See Seaboard Terminal and Refrigeration Co.*, 109 NLRB 1094 (1954) (longshore workers); *Hondo Drilling Co.*, 164 NLRB 416 (1967) (roughnecks); *Berlitz School of Languages of America*, 231 NLRB 766 (1977) (on-call

language teachers). The work requirements range from as little as two days for the teachers in *Berlitz* to as much as two full semesters for the adjunct faculty in *C.W. Post*. The look-back periods range from three months for stagehands to three years for adjunct faculty. Both elements are determined by the nature of the industry and by the relationship between the amount of work performed and the likelihood of an ongoing interest in the terms and conditions of unit employees.

The eligibility formula found appropriate by the Regional Director here is based upon the nature of the Employer's operations. A period of one quarter is related to the work of the University. The University provides services and conducts its operations on the basis of quarterly units. Employees are generally appointed to unit positions for a period of at least a quarter. Graduate students who have worked in at least one quarter in the recent past share interests with student employees currently working. Graduate students working to fulfill the work requirements of a funding package or for continued funding beyond five years may have a break in employment of one or two quarters or one year because of an outside grant. Thus, the Regional Director's finding that a single year look-back period is appropriate is supported by the record and Board precedent. Similar eligibility formulae have been consistently found appropriate at other universities where the issue has been litigated.¹

The Regional Director's finding that a one-year look-back period for voter eligibility is appropriate is fully supported by the factual record and is consistent with the factors the Board has

¹ On remand in *Columbia*, the Regional Director found that student employees who had worked one semester in the past year should be permitted to vote. (Case No. 02-RC-143012, Regional Director's Supplemental Decision and Direction of Election (2016). A similar formula was adopted for student employees in *The New School* (Case No. 02-RC-143009, Second Supplemental Decision and Director of Election (2017)) and in *President and Fellows of Harvard College* (Case No. 01-RC-186442, Regional Director's Decision and Direction of Second Election (2017) (Request for Review pending)).

applied for more than 50 years in industries where intermittent employment is common.

III. The Regional Director's direction that the Employer file a timely voter list is in accordance with the Board's Rules and Regulations

The Employer asserts that the Regional Director “inexplicably” directed that the Employer provide a voter list by August 17, 2017. Section 102.67(l) of the Board’s Rules provides, in part, that: “Absent extraordinary circumstances specified in the direction of election, the employer shall, within 2 business days after issuance of the direction” provide the Regional Director and the parties with a voter list. The Employer at the hearing in this case requested that an election, if one were to be directed, be held after the September 25, 2017 start of the autumn 2017 quarter. Tr.1611:15-22. The Employer in its post-hearing brief requested that an election, if one were to be directed, be conducted no sooner than October 17 and 18, 2017. Employer post-hearing brief at page 101. The Employer did not, however, either at the hearing or in its post-hearing brief, assert to the Regional Director that any “extraordinary circumstances” warranted an extension of the time for providing the voter list. The Regional Director’s Decision and Direction of Election thus includes no finding of any extraordinary circumstances warranting an exception to the two-day time period in which to file the voter list. Nonetheless, after the issuance of the Decision and Direction of Election, the Employer, with the agreement of the Petitioner, requested and the Regional Director allowed a seven-day extension of time, to August 17, 2017, in which to provide the voter list. The Regional Director’s direction that the Employer comply with the requirement in Section 102.67(l) of the Board’s Rules that it provide a timely voter list does not constitute grounds for review.

CONCLUSION

For the foregoing reasons, the request for review should be denied.

s/Melissa J. Auerbach

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CERTIFICATE OF SERVICE

Melissa J. Auerbach, an attorney, hereby certifies that on October 2, 2017, she caused a copy of the foregoing **Petitioner's Response in Opposition to Request for Review** to be served by email on the following:

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s/Melissa J. Auerbach

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