

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

THE UNIVERSITY OF CHICAGO

and

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

Case No. 13-RC-198325

UNIVERSITY OF CHICAGO'S OFFER OF PROOF (INAPPROPRIATE UNIT)

Pursuant to Section 102.66 of the Rules and Regulations of the National Labor Relations Board, 29 C.F.R. § 102.66, The University of Chicago ("Chicago" or the "University"), by its attorneys Proskauer Rose LLP, submits this Offer of Proof in support of its position that, even if the petitioned-for graduate students are found to meet the definition of "employee" under Section 2(3) of the National Labor Relations Act, the petition nevertheless should be dismissed because Graduate Students United, Affiliated with The Illinois Federation Of Teachers, The American Federation of Teachers and The American Association of University Professors, AFL-CIO (the "Union") seeks certification of an inappropriate unit by combining PhD students with: (1) Master's students; (2) Workshop Coordinators; (3) non-lab Research Assistants; and (4) PhD students teaching in excess of their teaching requirements, all of whom lack a community of interest with the PhD students.

Inclusion of the 169 Master's students with teaching or research assignments, 111 Workshop Coordinators, 305 non-lab Research Assistants, and 498 students teaching in excess of their teaching requirements in the same bargaining unit as the PhD students at Chicago who are Teaching Assistants and/or Research Assistants as part of their academic requirements is no mere question of voter eligibility or unit placement that can be deferred to post-election procedures.¹ The composition of the petitioned-for unit is an issue that goes directly to its appropriateness.² That is as true here as it was in *Columbia University*, 364 NLRB No. 90 (2016), where the inclusion of Master's and undergraduate students together with PhDs was the subject of a pre-election hearing. Plainly, the time to resolve this issue is now, before an election may be held. Students need to know the composition of the unit when they cast a ballot, not at some later point in time after they already have voted. *See* Memorandum GC 15-06, Guidance Memorandum on Representation Case Procedure Changes Effective April 15, 2015, at p. 12-13, 15-16.³ This is clear from Memorandum GC 15-06, in which NLRB General Counsel Griffin analyzed the new Representation-Case Rules and provided the Agency's official interpretation of those rules for the processing of petitions in NLRB Regional Offices. The General Counsel's Memo states that "[a] finding of an appropriate unit must always be made before conducting an

¹ The aggregate total of Master's Students, Workshop Coordinators, non-lab Research Assistants and students teaching in excess of their academic requirement is 1,083 students. That figure, when de-duplicated against the PhD students who are Teaching Assistants and/or Research Assistants in Spring 2017, is reduced to 1,024 excluded students.

² The number of PhD students who are Teaching Assistants and/or Research Assistants and the 1,024 excluded students also takes into account the University's position that the proper eligibility formula for this case is the Board's standard eligibility formula, which would only render eligible those students holding covered positions during the Spring 2017 quarter.

³ Although the petition in *Columbia University* was processed under the rules in effect prior to April 15, 2015, this has no bearing whatsoever on the proper characterization of the issue; it was and is a question of unit appropriateness based on the absence of community of interest among different categories of graduate student assistants.

election. Accordingly, the hearing officer must be sure that the record will enable a finding to be made that a unit is appropriate for the purposes of collective bargaining.” *Id.* at p. 15. To this end, the General Counsel’s Memorandum contemplates hearing evidence on multiple eligibility/inclusion issues and aggregating them to get to the twenty percent of the bargaining unit requirement for a hearing. *Id.* at p. 13.

We also call the Regional Director’s attention to *Associated Builders and Contractors of Texas, Inc. v. National Labor Relations Board*, 826 F. 3d 215 (5th Cir. 2016), in which the Court upheld the Board’s new Representation-Case rules, finding that they violated neither the NLRA nor the Administrative Procedure Act. Notably, in defense of the rules -- and presumably in agreement with the Board’s arguments in that case -- the Court stated that “[t]he rule does not speak to the inclusion of groups or classifications of employees; it provides only that disputes concerning ‘individual’s’ eligibility or inclusion will be deferred. 29 C.F.R. § 102.64(a).” 826 F. 3d at 222 (emphasis added). Any inclination to leave this issue to post-election procedures is flatly inconsistent with the Fifth Circuit’s observation, which is directly on point here.

As we demonstrate below, PhD students fulfilling their academic requirements do not share a community of interest with the above-described groups of students the University seeks to exclude from the petitioned-for unit. If permitted, the University is prepared to present testimony and other evidence on this issue through members of the University’s administration, including: (1) Beth Niestat, Executive Director, UChicagoGRAD Administration and Policy, Office of the Provost; (2) William Rando, Associate Dean in the College and Director, The Chicago Center for Teaching; (3) Miranda Swanson, Dean of Students, Division of Physical Sciences; (4) Michael Hopkins, Deputy Dean, Division of the Physical Sciences; (5) David Nirenberg, Dean, Division of Social Sciences; (6) Anne Robertson, Dean, Division of the

Humanities (7) Christopher Wild, Collegiate Master, Division of the Humanities; and (8) Teresa Owens, Dean of Students, School of Divinity. The proof would show as follows:

I. Masters' Students

(1) Unlike students in Chicago's PhD programs, students in the University's Master's programs who hold teaching and/or research assistantships do so purely by choice. Although virtually all PhD students are Teaching Assistants and/or Research Assistants at some point in their academic careers, only about 0.72% of the 1,391 Master's students currently enrolled at Chicago in petitioned-for Divisions or Schools have assistantships this quarter. There is no academic requirement that they take on such responsibilities. Rather, they seek out and accept these assignments on their own to enhance their learning experience, for the income derived and other personal reasons known only to them, not as part of their academic program. Indeed, the teaching and research that they voluntarily undertake can be and often is completely unrelated to their educational pursuits. This is in contrast to the facts in *Columbia University, supra*, where the Regional Director noted in her October 30, 2015, Supplemental Decision and Order Dismissing the Petition ("SD&O"), that Columbia's Master's programs "sometimes included instructional or research requirements in addition to coursework." SD&O at 5. That is not the case at Chicago.

(2) By contrast, Chicago's PhD students teach and research exclusively as part of their educational program. Chicago expects doctoral students to learn pedagogy skills and critical research skills to prepare them for careers in academia, a research-focused industry or government work. This is in contrast to Chicago's expectations for students in Master's programs. Masters' programs are one or two-year programs intended for professionals who very

likely will never have an academic teaching career. Nor are many Master's programs necessarily intended for professionals seeking to lead or conduct groundbreaking research upon graduation. Many of the Master's degrees offered at the University are terminal professional programs for individuals desiring a basic understanding of a topic to advance professional careers that do not require the intensive knowledge required of PhD students. Obtaining a Master's degree does not require that students learn to teach or conduct doctoral level research as part of the degree requirements or in their professional career. [Witnesses: David Nirenberg and Miranda Swanson.]

(3) Unlike the University's PhD students, who are fully funded and receive (i) full tuition remission, (ii) an annual stipend, (iii) paid health insurance premiums under the U-SHIP, and (iv) student life fees while earning their degrees – a package valued at approximately \$500,000 over 6 or 7 years – Masters students are typically self-funded, *i.e.*, they pay full tuition for their education, costing at or more than \$70,000 per annum, or must apply for competitive internal and external financial aid fellowships and programs.⁴ There is no guaranteed tuition remission or stipend for Master's students as there is for PhD students. [Witness: Beth Niestat.] To the extent they choose to teach or conduct research, they are compensated by the hour and are paid bi-weekly or monthly. Master's students are paid only if they work, as distinguished from Chicago's PhD students who receive their full educational package as part of their educational program. [Witness: Beth Niestat.] By contrast, in *Columbia*, the Regional Director found that students pursuing a Master's degree “receive a combination of tuition remission and a stipend.” SD&O at 7; *see also Columbia University*, 364 NLRB No. 90 at 19 (where the Board noted on review that most student assistants (including Master's students) “are paid in part through a

⁴ See Attachment 1.

tuition remission and in part via a bimonthly stipend”). We repeat that Chicago’s Master’s students receive neither tuition remission nor stipend in any amount – other than through merit-based awards – distinguishing Chicago’s Masters’ students from *Columbia*.

(4) Chicago’s Master’s programs have little in common with the University’s PhD programs. As a result, Master’s and PhD students have at most incidental educational and social interactions with one another. These two groups of graduate students have markedly different goals, objectives and reasons for attending Chicago. Master’s students do not share the educational experience of PhD students and their courses of study are not designed to prepare them to become college faculty members; instead, their course of study prepares them to obtain positions in industry and government at a level commensurate with their Master’s level education.

(5) Master’s students rarely participate in any of the several programs offered at Chicago to sharpen and enhance pedagogical skills. [Witness: William Rando.] And, it is notable that Master’s students typically complete their studies in one or two years, while PhD students spend anywhere from six to twelve years pursuing their degrees. In addition, the “overlap of job duties” between Master’s and PhD students that was found in *Columbia University*, see 364 NLRB No. 90 at 19, is not present at Chicago. [Witnesses: William Rando, Miranda Swanson, Victoria Prince and David Nirenberg.]

II. Workshop Coordinators

(6) PhD students from the Divinity School, Humanities Division, and Social Sciences Division can become a Workshop Coordinator. Workshop Coordinators assist faculty members plan academic workshops. Workshop Coordinators curate the external speakers and PhD presenters for an upcoming event. During the workshops, Workshop Coordinators facilitate

discussions and manage the administrative logistics of the event. When a student acts as a Workshop Coordinator, he or she receives a nominal stipend each quarter. Acting as a Workshop Coordinator is entirely voluntarily and does not satisfy any academic requirement for the student. The role of a Workshop Coordinator differs greatly from that of a PhD Teaching Assistant or Research Assistant. Indeed, Workshop Coordinators receive a separate stipend above and beyond any funding that student would normally be entitled to. Moreover, while PhD students receive extensive training designed to enhance a student's pedagogical skills, Workshop Coordinators do not. [Witness: Beth Niestat.]

III. Non-Lab Research Assistants

(7) A non-lab Research Assistant conducts research, generally directly for a faculty member, for a publication or faculty member's project. The non-lab RA is remunerated by the hour. The source of the funding is generally a faculty member's personal research budget from the University or from an external funding source. It is not tied to a student's doctoral fellowship funding. A student's decision to accept an opportunity as a Non-Lab RA is entirely voluntarily and does not satisfy any academic requirement. These facts are the exact converse of the situation for traditional PhD Research Assistant appointments. Traditional PhD RAs conduct research, generally in a lab or similar setting, in furtherance of their dissertation. Unlike the voluntary experience of a non-lab RA, this research is an academic requirement for which the student receives no remuneration. Moreover, when conducting research for an academic requirement, the student is pursuing research aimed at his or her ultimate dissertation. This differs from that of a non-lab RA who is pursuing research for a topic selected by the faculty member, which has no material relation to the student's dissertation topic. Further, a student conducting research pursuant to his or her academic requirement receives exhaustive training,

mentorship and advice from a faculty advisor. The non-lab RA is not guaranteed any training, mentorship or advice from the assigning faculty member. [Witnesses: Anne Robertson, David Nirenberg and Beth Niestat.]

IV. Teaching In Excess of Academic Requirement

(8) Most doctoral students are subject to an academic teaching requirement because pedagogical training is an integral part of doctoral training. When PhD students teach to meet an academic requirement, faculty members work closely with the student and both mentor and train the student on the skills necessary to be an effective teacher. [Witnesses: Michael Hopkins, Christopher Wild, Anne Robertson, David Nirenberg and Victoria Prince.] Moreover, PhD students are provided with extensive pedagogical training within their Divisions or Schools and through the Chicago Center for Teaching. [Witness: William Rando.] When students teach to meet an academic requirement they are not compensated for doing so. Instead, they are provided with their regular stipend. This is very different from students who teach in excess of their academic requirement. These PhD students volunteer to continue teaching. Sometimes, these students have applied for and accepted Prize Lectureships, where they obtain funding to design and teach their own course. These students also often take on additional teaching appointments to further improve their resumes and teaching experience by acting as standalone Lecturers. Students teaching beyond their requirement no longer are guaranteed close mentorship and guidance from faculty members nor are they generally required to obtain additional formal pedagogical training. Moreover, these students receive additional funding, above and beyond the funding they are receiving as part of their academic program. Additionally, students teaching for an academic requirement are often given priority over students teaching in excess of their

requirement. [Witnesses: Michael Hopkins, Christopher Wild, Anne Robertson and David Nirenberg.]

Conclusion

For these reasons, Chicago's PhD student TAs and RAs fulfilling their academic requirements do not share a community of interest with Master's students who teach or research, Workshop Coordinators, non-lab Research Assistants or PhD students teaching in excess of an academic requirement. As such, students holding any of the aforementioned classifications should be excluded from the unit based on the Board's long-standing policy that a single unit is not appropriate where employees in one group are dissimilar from those in another group. *See, e.g., Swift & Co.*, 129 NLRB 1391, 1394 (1961). Indeed, Board precedent is clear that to determine the appropriate scope of a bargaining unit, the Board will not certify a grouping of employees that is "arbitrary" or "heterogeneous." *Am. Cyanamid Co.*, 110 NLRB 89, 95 (1954). The Board has also articulated the importance of being "especially watchful in guarding the rights of minority groups whose . . . interests differ in kind from the bulk of the [bargaining unit]." *Syracuse Univ.*, 204 NLRB 641, 643 (1973) (excluding faculty at a law school from a unit of academic faculty because they are "oriented more closely to their chosen field than to the academic or university world....").

The Regional Director should therefore grant the University's Offer of Proof and permit a record to be made at this pre-election hearing that would show that the unit sought is inappropriate for purposes of collective bargaining inasmuch as it includes PhD students as well as Master's students, Workshop Coordinators, non-lab Research Assistants and PhD students teaching in excess of an academic requirement, who do not share a community of interest.

We stress, finally, that this is no mere question of voter eligibility or unit placement that can be deferred to post-election procedures. (See discussion of the Fifth Circuit's ruling in *Associated Builders and Contractors of Texas*, at p. 2, above.) As in *Columbia University*, the inclusion of the Master's students in the same unit with Chicago's PhD students goes directly to the appropriateness of the bargaining unit. Plainly, the stage of the proceeding at which to resolve such an issue is **now**, before an election is held.

Respectfully submitted

PROSKAUER ROSE LLP
ELEVEN TIMES SQUARE
NEW YORK, NY 10036-8299
(212) 969-3000 (tel)
(212) 969-2900 (fax)

Attorneys for The University of Chicago

By: 

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