

UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD
STATEMENT OF POSITION

DO NOT WRITE IN THIS SPACE	
Case No. 13-RC-198325	Date Filed May 8, 2017

INSTRUCTIONS: Submit this Statement of Position to an NLRB Office in the Region in which the petition was filed and serve it and all attachments on each party named in the petition in this case such that it is received by them by the date and time specified in the notice of hearing.
Note: Non-employer parties who complete this form are NOT required to complete items 8f or 8g below or to provide a commerce questionnaire or the lists described in item 7. In RM cases, the employer is NOT required to respond to items 3, 5, 6, and 8a-8e below.

1a. Full name of party filing Statement of Position University of Chicago	1c. Business Phone: Contact Auth'd Rep	1e. Fax No.: Contact Auth'd Rep
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1b. Address (Street and number, city, state, and ZIP code) 5801 South Ellis Avenue, Chicago, IL 60637	1d. Cell No.: Contact Auth'd Rep	1f. e-Mail Address Contact Auth'd Rep
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2. Do you agree that the NLRB has jurisdiction over the Employer in this case? Yes No
(A completed commerce questionnaire (Attachment A) must be submitted by the Employer, regardless of whether jurisdiction is admitted)

3. Do you agree that the proposed unit is appropriate? Yes No (If not, answer 3a and 3b.)

a. State the basis for your contention that the proposed unit is not appropriate. (If you contend a classification should be excluded or included briefly explain why, such as shares a community of interest or are supervisors or guards.)
See Attached Rider

b. State any classifications, locations, or other employee groupings that must be added to or excluded from the proposed unit to make it an appropriate unit. Added See Attached Rider	Excluded See Attached Rider
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4. Other than the individuals in classifications listed in 3b, list any individual(s) whose eligibility to vote you intend to contest at the pre-election hearing in this case and the basis for contesting their eligibility.
See Attached Rider

5. Is there a bar to conducting an election in this case? Yes No If yes, state the basis for your position.
N/A

6. Describe all other issues you intend to raise at the pre-election hearing.
See Attached Rider

7. The employer must provide the following lists which must be alphabetized (overall or by department) in the format specified at <http://www.nlr.gov/what-we-do/conduct-elections/representation-case-rules-effective-april-14-2015>.
(a) A list containing the full names, work locations, shifts and job classification of all individuals in the proposed unit as of the payroll period immediately preceding the filing of the petition who remain employed as of the date of the filing of the petition. (Attachment B)
(b) If the employer contends that the proposed unit is inappropriate the employer must provide (1) a separate list containing the full names, work locations, shifts and job classifications of all individuals that it contends must be added to the proposed unit, if any to make it an appropriate unit, (Attachment C) and (2) a list containing the full names of any individuals it contends must be excluded from the proposed unit to make it an

State your position with respect to the details of any election that may be conducted in this matter. 8a. Type: Manual Mail Mixed Manual/Mail

8b. Date(s) See Attached Rider	8c. Time(s) 9am-9pm	8d. Location(s) See Attached Rider
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8e. Eligibility Period (e.g. special eligibility formula) Standard Eligibility Period	8f. Last Payroll Period Ending Date May 6, 2017	8g. Length of payroll period <input type="checkbox"/> Weekly <input checked="" type="checkbox"/> Biweekly <input type="checkbox"/> Other (specify length)
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9. Representative who will accept service of all papers for purposes of the representation proceeding **Ted Stamatakos**

9a. Full name and title of authorized representative Proskauer Rose LLP by Steven J. Porzio	9b. Signature of authorized representative 	9c. Date 5/16/17
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9d. Address (Street and number, city, state, and ZIP code) 70 West Madison, Suite 3800, Chicago, IL 60602	9e. e-Mail Address sporzio@proskauer.com
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9f. Business Phone No.: 2129693079	9g. Fax No.	9h. Cell No.
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WILLFUL FALSE STATEMENTS ON THIS STATEMENT OF POSITION CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. Code, Title 18, Section 1001)

PRIVACY ACT STATEMENT

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. Section 151 et seq. The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing representation proceedings. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (December 13, 2006). The NLRB will further explain these uses upon request. Failure to supply the information requested by this form may preclude you from litigating issues under 102.66(d) of the Board's Rules and Regulations and may cause the NLRB to refuse to further process a representation case or may cause the NLRB to issue you a subpoena and seek enforcement of the subpoena in federal court.

Rider to Statement of Position

University of Chicago: Case No. 13-RC-198325

3(a) -- Basis for Contention That Proposed Unit is Inappropriate:

1. The “graduate students” whom Petitioner seeks to represent are not “employees” as defined in Section 2(3) of the NLRA.
2. There is no employment component in the relationship between the university and its graduate students.
3. See responses in Section 3(b) below for additional support that the petitioned for unit is inappropriate.

3(b) -- Other Employee Groupings that Must Be Added to or Excluded from the Proposed Unit to Make it an Appropriate Unit:

Added- None

Excluded- Assuming *arguendo* that the graduate students whom Petitioner seeks to represent are “employees” within the meaning of Section 2(3) of the NLRA, the following “employees” must be *excluded* from any unit found appropriate by the Board:¹

- Any and all Masters students in any of the petitioned-for schools or divisions because these students lack a community of interest with the petitioned-for Ph.D. students.

- Any and all students in any of the petitioned-for schools or divisions who seek and receive opportunities to continue to learn through additional teaching experiences beyond any academically required levels because these students lack a community of interest with the petitioned-for Ph.D. students.

¹ The sum total of the students within the excluded categories (as well as those graduate students who do not meet the Board’s standard eligibility formula) is 1,075. The total size of the petitioned-for unit is 2,082. Thus, the percentage of excluded students represents 52% of the overall petitioned-for unit, which exceeds the 20% threshold called for in General Counsel Memo 15-06 to warrant a pre-election hearing on eligibility. Therefore, the University is entitled to a pre-election hearing to resolve such eligibility issues.

- Any and all student Workshop Coordinators should be excluded because these students lack a community of interest with the other Ph.D. students.

- Any and all non-laboratory research assistants should be excluded because they lack a community of interest with all petitioned-for students.

4 -- Other Individuals Whose Eligibility is Contested:

1. The University contests voter eligibility of all graduate students encompassed by the petition on the ground that none of the graduate students with teaching or research appointments is an “employee” within the meaning of Section 2(3) of the NLRA.
2. Any and all graduate students who held instructional or research appointments in any quarter prior to the current quarter, but who do not currently have an instructional or research appointment in the Spring 2017 quarter.

6 -- Other Issues That the University Intends to Raise at the Pre-Election Hearing

1. *Columbia University*, 364 NLRB No. 90 (2016), was wrongly decided; *Brown University*, 342 NLRB 483 (2004), was wrongly overruled.
2. The graduate students whom Petitioner seeks to represent are non-employees based on the NLRB’s holding in *Brown University*.
3. While the University submits that *Columbia* was wrongly decided, it recognizes that *Columbia* represents current Board law. However, even under *Columbia*, the University’s graduate students are not employees, as defined by the Act due to a number of material factual differences between *Columbia* and those facts at issue here regarding Chicago graduate students, including but not limited to the following:
 - Unlike *Columbia*, teaching at Chicago is part and parcel of the Ph.D. educational program, and practicing to teach is an integral part of a Chicago

Ph.D. student's curriculum in most programs. Indeed, in most divisions and departments Ph.D. students are required to teach as an academic requirement to ensure all students are prepared to become future faculty.

- Unlike *Columbia*, teaching performed by the University's Ph.D. students is not based on an unrelated curriculum (i.e., a core curriculum), but is closely connected to their principal areas of study. Indeed, some Ph.D. students are permitted to actually create and teach a class of their own devising.
- Students holding teaching appointments are not treated like a source of labor. In fact, teaching past the limited academic training requirement is purely voluntary, and in many programs is actively discouraged.
- In some programs, teaching credit can be obtained by acting as an instructor outside of the University (e.g., in public programs run by the Museum of Science and Industry), or by taking pedagogical training within the University instead of teaching.
- Unlike students in *Columbia*, Chicago students are not "compensated" for their academic training. Instead, students receive a funding package to support their academic or pedagogical training, and not as payment for instructional services.
- Unlike *Columbia*, where students were subject to "corrective counseling or removal" for poor teaching performance, students at Chicago are not subject to such action.
- Unlike graduate research assistants in *Columbia* who are not permitted to simply pursue their educational goals at their own discretion, Chicago's Ph.D.

students do just that; they choose to engage in research that is, at a minimum, intertwined with their doctoral studies, and the research that they learn and elect to conduct furthers their individual Ph.D. dissertations.

If required by the Regional Director, the above-referenced differences and others will be fully described in the University's Offer of Proof it intends to submit on the first day of the hearing.

4. Teamsters Local 743 has an interest in this case given that there is an overlap of the petitioned-for unit filed in NLRB Case 13-RC-198365 and the petitioned-for unit in this case.
5. Should an election be ordered in this case, the proper eligibility formula to use is the Board's standard eligibility formula – specifically, students who hold instructional or research appointments in the Spring 2017 quarter.²
6. The proper method for conducting an election, if one is to occur, is by manual ballot. Mail ballot elections are disfavored by the Board and such an election would be inappropriate here. None of the three factors that the Board typically relies on to support a mail ballot election is present in this case: (1) eligible voters are not “scattered” based on job duties performed over a wide geographic area. The graduate students here perform their teaching or research assignments on University of Chicago's campus in Chicago, Illinois; (2) eligible voters are not “scattered” based on significant variations in their work schedules, i.e., where individuals are not present contemporaneously at a common location. Here, graduate students are on the same or similar academic schedules and all would be available to participate in a manual ballot election if one was conducted

² See NLRB Order dated February 23, 2017 in NLRB Case No. 10-RC-187957 (Duke University)- the Board found that where the petitioner proposed using a look back eligibility formula, the employer should be “allowed to litigate the propriety of the Petitioner's proposed eligibility formula at the pre-election hearing...” and that the Region “erred” by refusing to permit the university to do so.

on Chicago's campus; and (3) no strike, lockout or picketing is in progress. Thus, an on-campus manual ballot election should be conducted. Additionally, to maximize voter turnout, if an election cannot be completed by May 31, such election should not take place until September 25, 2017, the commencement of the Fall 2017 quarter.

Moreover, a mail ballot election in this case would disenfranchise eligible voters, a result that is clearly contrary to the purposes of the Act. Graduate student classes end for the Spring 2017 quarter on May 31. Beginning at that point, many eligible voters are free to -- and do -- leave campus for the summer, to pursue their studies or research away from the Chicago campus and/or to take vacation. They are, in effect, on vacation.³ Reaching graduate students by mail, particularly over the summer, is highly problematic.

8(b) –Date(s)

25 days after the issuance of the DDE (one or two polling days) but no sooner than the start of the Fall 2017 semester.

8(d) –Election Polling Locations

The University proposes the following election polling locations:

1. Stuart Hall, 5835 South Greenwood Avenue, Chicago, Illinois
2. Biological Sciences Learning Center, 924 East 57th Street, Chicago, Illinois
3. Kent Chemical Laboratory, 1020-24 East 58th Street, Chicago, Illinois

³ The Board has consistently declined to use mail ballots for employees who may be on vacation at the time of an election.

NATIONAL LABOR RELATIONS BOARD

QUESTIONNAIRE ON COMMERCE INFORMATION

Please read carefully, answer all applicable items, and return to the NLRB Office. If additional space is required, please add a page and identify item number.

CASE NAME University of Chicago	CASE NUMBER 13-RC-198325
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1. EXACT LEGAL TITLE OF ENTITY (As filed with State and/or stated in legal documents forming entity)
University of Chicago

2. TYPE OF ENTITY

<input checked="" type="checkbox"/> CORPORATION	<input type="checkbox"/> LLC	<input type="checkbox"/> LLP	<input type="checkbox"/> PARTNERSHIP	<input type="checkbox"/> SOLE PROPRIETORSHIP	<input type="checkbox"/> OTHER (Specify)
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3. IF A CORPORATION or LLC

A. STATE OF INCORPORATION OR FORMATION Illinois	B. NAME, ADDRESS, AND RELATIONSHIP (e.g. parent, subsidiary) OF ALL RELATED ENTITIES
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4. IF AN LLC OR ANY TYPE OF PARTNERSHIP, FULL NAME AND ADDRESS OF ALL MEMBERS OR PARTNERS
N/A

5. IF A SOLE PROPRIETORSHIP, FULL NAME AND ADDRESS OF PROPRIETOR
N/A

6. BRIEFLY DESCRIBE THE NATURE OF YOUR OPERATIONS (Products handled or manufactured, or nature of services performed).
Not-for-profit research and teaching university

7. A. PRINCIPAL LOCATION: Chicago, IL	B. BRANCH LOCATIONS: N/A
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8. NUMBER OF PEOPLE PRESENTLY EMPLOYED

A. Total: Approx. 9,000 Faculty and Staff	B. At the address involved in this matter:
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9. DURING THE MOST RECENT (Check appropriate box): CALENDAR YR 12 MONTHS or FISCAL YR (FY dates)

	YES	NO
A. Did you provide services valued in excess of \$50,000 directly to customers outside your State? If no, indicate actual value. \$	X	
B. If you answered no to 9A, did you provide services valued in excess of \$50,000 to customers in your State who purchased goods valued in excess of \$50,000 from directly outside your State? If no, indicate the value of any such services you provided. \$		
C. If you answered no to 9A and 9B, did you provide services valued in excess of \$50,000 to public utilities, transit systems, newspapers, health care institutions, broadcasting stations, commercial buildings, educational institutions, or retail concerns? If less than \$50,000, indicate amount. \$		
D. Did you sell goods valued in excess of \$50,000 directly to customers located outside your State? If less than \$50,000, indicate amount. \$		
E. If you answered no to 9D, did you sell goods valued in excess of \$50,000 directly to customers located inside your State who purchased other goods valued in excess of \$50,000 from directly outside your State? If less than \$50,000, indicate amount. \$		
F. Did you purchase and receive goods valued in excess of \$50,000 from directly outside your State? If less than \$50,000, indicate amount. \$	X	
G. Did you purchase and receive goods valued in excess of \$50,000 from enterprises who received the goods directly from points outside your State? If less than \$50,000, indicate amount. \$		
H. Gross Revenues from all sales or performance of services (Check the largest amount): <input type="checkbox"/> \$100,000 <input type="checkbox"/> \$250,000 <input type="checkbox"/> \$500,000 <input type="checkbox"/> \$1,000,000 or more If less than \$100,000, indicate amount.		
I. Did you begin operations within the last 12 months? If yes, specify date: _____		

10. ARE YOU A MEMBER OF AN ASSOCIATION OR OTHER EMPLOYER GROUP THAT ENGAGES IN COLLECTIVE BARGAINING?
 YES NO (If yes, name and address of association or group).

11. REPRESENTATIVE BEST QUALIFIED TO GIVE FURTHER INFORMATION ABOUT YOUR OPERATIONS

NAME Jake M. Rubinstein	TITLE Executive Director, ELR	E-MAIL ADDRESS jakerubenstein@uchicago.edu	TEL. NUMBER 773-834-2657
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12. AUTHORIZED REPRESENTATIVE COMPLETING THIS QUESTIONNAIRE

NAME AND TITLE (Type or Print) Steven Porzio, Attorney	SIGNATURE 	E-MAIL ADDRESS sporzio@proskauer.com	DATE 5/16/17
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