

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

**THE TRUSTEES OF COLUMBIA
UNIVERSITY IN THE CITY OF NEW YORK**

Employer,

and

Case 02-RC-143012

**GRADUATE WORKERS OF
COLUMBIA –GWC, UAW**

Petitioner.

**BRIEF OF AMICUS CURIAE
AMERICAN FEDERATION OF TEACHERS, AFL-CIO**

David J. Strom
Daniel J. McNeil
American Federation of Teachers, AFL-CIO
555 New Jersey Avenue, NW
Washington, DC 20001
(202) 393-7472

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STATEMENT OF INTEREST OF *AMICUS CURIAE*

The American Federation of Teachers, an affiliate of the AFL-CIO, was founded in 1916 and today represents 1.6 million members in more than 3,400 local affiliates nationwide. AFT members include pre-kindergarten through 12th-grade teachers; paraprofessionals and school-related personnel (PSRPs); higher education faculty and professional staff; federal, state and local government employees; nurses and healthcare workers; and early childhood educators.

Higher education faculty have been part of the education union movement since the American Federation of Teachers was chartered by the AFL-CIO in 1916. Professors at Howard University in Washington, D.C. formed the first AFT higher education local in 1918, followed by faculty groups at colleges and universities in New York, Illinois, and California. Presently, the AFT represents over 230,000 higher education members in all types of institutions, from small community colleges to world-class research universities, across the country. AFT's Higher Education members include full-time and part-time faculty bargaining units at colleges and universities in both the private and public sector, as well as about 25,000 graduate student employees at public universities.¹

AFT has long recognized that graduate employees are part of the higher education workforce and therefore, deserve recognition and the rights that a union and a collective bargaining agreement guarantee. Collective bargaining is the surest route to achieve fair and equitable treatment of employees and thereby improve the educational environment of an institution. AFT stands committed to working with graduate employees who wish to form a union to represent their interests collectively. AFT members organized some of the first graduate employee locals, such as Teaching Assistants' Association at the University of Wisconsin,

¹ AFT Higher Education at <http://www.aft.org/highered/about-higher-education/our-members>

Madison (affiliated 1974); Graduate Employees' Organization at the University of Michigan (affiliated 1976); and Graduate Teaching Fellows Federation at the University of Oregon (affiliated 1976). These locals achieved some of the earliest collective bargaining successes in higher education and served as the model for thousands of graduate employees in the 20 graduate employee unions affiliated with AFT that are working to achieve better working and learning conditions at their institutions.

ARGUMENT

In *Brown University*, 342 NLRB 483 (2004), the NLRB majority made a policy decision to deny “employee” status to graduate students who perform instructional duties or research projects at the direction of their university in exchange for compensation. The *Brown University* decision is contrary to both the statutory definition of “employee” set forth in Section 2(3) and the common law definition of “employee” that assist in the interpretation of statutory terms. 29 U.S.C. § 152(3). The policy reasons cited by the *Brown University* majority concerning interference by graduate student collective bargaining in the academic mission of the institution are not well-founded and do not justify an exception to the statutory definition of “employee” for “graduate student assistant.” Therefore, the NLRB should overrule *Brown University* and adopt – or return to – the standard that where “the fulfillment of the duties of a graduate assistant requires performance of work, controlled by the Employer, and in exchange for consideration,” “the graduate assistants are statutory employees, notwithstanding that they simultaneously are enrolled as students.” *New York University*, 332 NLRB 1205, 1207 & 1209 (2000).

Graduate student assistants (“GSAs”) are graduate students who perform work at higher education institutions in exchange for compensation as they pursue advanced degrees. Their titles may vary, but generally include Graduate Assistant (“GA”), Research Assistant (“RA”),

Graduate Teaching Assistant (“GTA”), and Graduate Research Assistant (“GRA”). In a trend that started prior to the *Brown University* decision, higher education institutions have increasingly relied on part-time and non-tenure track faculty to deliver instruction and perform research. AFT Higher Education, “*American Academic: The State of the Higher Education Workforce 1997-2007*,” (2009).² The increased use of contingent faculty includes more reliance on graduate student assistants to perform instruction and research and for some graduate programs, a research or teaching assistantship is a degree requirement. Regardless of whether the degree requires it, if this work were not performed by GSAs, it would have to be performed by faculty. There are no sound legal or policy justifications for deciding that when faculty perform work they are “employees,” but when GSAs are instructing courses or performing research they are not.

Second, GSAs have a significant, multi-year economic relationship with their institution. Describing the student-university relationship as “primarily academic” ignores the substantial financial aspects of being a graduate student. Without the financial aid in the form of tuition waivers and stipends that GSAs receive in exchange for the work they provide, few could afford to pursue a graduate degree. Even with assistantship stipends and tuition waivers, the average GSA will have annual out-of-pocket costs in excess of \$10,000. The inadequate compensation that GSAs receive from their institutions is not properly regarded as evidence that they are not employees; rather, it highlights the need for collective bargaining to balance the disparity in bargaining power.

Third, GSAs at private institutions are seeking union representation for the same reason that GSAs at public institutions pursued collective bargaining: to amplify their collective voice to

²Report may be found at http://www.aft.org/sites/default/files/aa_highedworkforce0209.pdf

improve their economic circumstances and working conditions. AFT graduate assistant locals have been successful at increasing stipends and fee waivers, limiting health care costs and expanding coverage, and winning other benefits such as family leave and reimbursement of child care costs. The Board has accurately noted 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.” *Boston Medical Center Corp.*, 330 NLRB 152, 164 (1999).

Collective bargaining is the appropriate mechanism for GSAs in the public sector to voice their shared economic concerns to their employer and the challenges posed by the higher education environment will not “prov[e] to be insurmountable in the administration of the Act.” *Id.*

Finally, AFT’s experience in the public sector demonstrates that GSA collective bargaining is not “detrimental to the educational process.” Contrary to the speculative assertions of the *Brown University* majority, AFT locals and public universities have enhanced academic freedom by negotiating contractual language that protects faculty from interference. At the same time, the institutions have protected their right to direct the educational mission with broad management rights clauses. AFT’s experience is that the educational process is not negatively affected by GSA bargaining; rather the empirical evidence from research conducted in the public sector indicates that unionized GSAs reported more positive student-teacher relationships and more academic freedom than GSAs at nonunionized universities. Sean E. Rogers, *et al.*, “*Effects of Unionization on Graduate Student Employees: Faculty-Student Relations, Academic Freedom and Pay*,” *Industrial & Labor Relations Review*, April 2013; vol. 66, 2: pp. 487-510.

The AFT submits this Brief of *Amicus Curiae* in support of in support of Petitioner Graduate Workers Of Columbia – GWC, UAW (“GWC”) encouraging the Board to overrule *Brown University*. The AFT agrees with the legal arguments advanced by GWC and in the *amici*

curiae briefs submitted by the AFL-CIO and the American Association of University Professors (“AAUP) on each of the questions set forth in the Board’s Notice and Invitation to File Briefs dated January 13, 2015. The AFT files separately, however, to highlight the experiences and successes achieved by graduate employee locals affiliated with AFT over several decades. For these reasons, explained in more detail below, the Board should overrule *Brown University* and hold that graduate student assistants who are required to perform work, controlled or directed by the institution, in exchange for compensation as part of their course of study are statutory “employees” entitled to all the rights and protections of the National Labor Relations Act, 29 U.S.C. § 151 *et seq.* (the “Act”).

I. The NLRB Should Overrule *Brown University* And Hold that GSAs Are Statutory Employees Entitled To Collective Bargaining Rights.

A. The *Brown University* decision is contrary to both the statutory language and the policy of the Act.

In *Brown University*, the NLRB majority found that “graduate student assistants, including those at Brown, are primarily students and have a primarily educational, not economic, relationship with their university.” *Brown University*, 342 NLRB 483, 487. Consequently, the Board “concluded that the graduate student assistants are not employees within the meaning of Section 2(3) of the Act... [and] we decline to extend collective bargaining rights to them.” *Id.* at 490. In making this policy decision, the majority intentionally painted an outdated picture of employer-employee relations that evoked the labor strife of the post-World War II era, stating that employers and employees engaged in collective-bargaining “proceed from contrary and to an extent antagonistic viewpoints and concepts of self-interest” *Id.* at 488 *quoting NLRB v. Insurance Agents*, 361 U.S. 477, 488 (1960).

The passages the *Brown University* majority cited in concluding that GSAs are not

statutory employees precisely describe why Graduate Student Assistants meet the criteria of employment and why they need collective bargaining. Quoting Section 1 of the Act, the *Brown University* majority stated that the labor unrest was caused by “inequality of bargaining power between employees who do not possess full freedom of association or actual liberty of contract, and employers who are organized in the corporate or other forms of ownership. . .” 29 U.S.C. § 151. Therefore, Congress passed the Act because, as the Board noted, “ the right of employees to organize and bargain collectively restores equality of bargaining power between employers and employees and safeguards commerce from the harm caused by labor disputes.” 342 NLRB at 488, quoting *WBAI Pacifica Foundation*, 328 NLRB 1273, 1275 (1999). The *Brown University* majority used this framing to suggest that GSAs are not like workers in more traditional industries. Contrary to that view, there is overwhelming evidence to support a finding that there is an employer-employee relationship with significant economic ramifications between a higher education institution and its graduate research and teaching assistants.

Furthermore, the *Brown University* majority made a policy decision that is contrary to the statutory definition of employee. Section 2(3) states that “[t]he term ‘employee’ shall include any employee, and shall not be limited to the employees of a particular employer, unless this subchapter explicitly states otherwise.” 29 U.S.C. § 152(3). In *NLRB v. Town & Country Electric, Inc.*, 516 U.S. 85 (1995), a unanimous Supreme Court held that “[t]he ordinary dictionary definition of ‘employee’ includes any ‘person who works for another in return for financial or other compensation’” and that “[t]he phrasing of the Act seems to reiterate the breadth of the ordinary dictionary definition.” 516 U.S. at 90 quoting *American Heritage Dictionary* 604 (3d ed. 1992); See also *Sure-Tan, Inc. v. NLRB*, 467 U.S. 883 (1984) (holding that the "breadth" of the definition of "employee" in the Act is “striking”). In *Boston Medical*

Center Corp, the Board noted that the NLRA’s definition of “employee” does not contain an exclusion for “students” and that there exists no other statutory or policy reason to deny such workers the Act’s coverage. 330 NLRB 152, 164.

Simply put, the statutory language and policy considerations support the Board’s ruling that graduate student assistants are “employees” as defined in the Act.

1. Colleges and universities operate like businesses and GSAs perform work that would otherwise be performed by faculty.

In rejecting GSAs’ right to collective bargaining, the *Brown University* majority opined that the “academic reality” for graduate student assistants had not changed in the twenty-five years since the Board’s decision in *Adelphi University*, 195 NLRB 639, 640 (1972). *Brown University*, 342 NLRB 483, 486. The majority explained that the relationship between the institution and graduate student assistants is “primarily academic” because the work performed by GSAs is dependent on their status as students. Therefore, from the *Brown University* majority’s standpoint, “the basic relationship between graduate students and their university” had not changed sufficiently to justify according graduate students the protections of the NLRA. *Id.* at 492. That narrative ignored the reality of the graduate student-university relationship at the time and is even less accurate today.

Over the past 30 years, higher education institutions have increasingly relied on part-time and non-tenure track faculty to deliver instruction and perform research. The percentage of full-time tenure track faculty positions has decreased 6.9 percent (from 30.4 to 23.5 percent) while the percentage of part-time and adjunct faculty that make up instructional staff increased by 7.1 percent (from 35.2 to 42.3 percent), for the period from 2001 to 2013. U.S. Department of Education, Integrated Postsecondary Education Data System, via AFT Higher Education Data

System.³ During the same period, the total number of GSAs working as instructional staff increased by over 100,000 (from 259,458 to 360,719) and now make up 20 percent of instructional staff. Non-tenure track, contingent faculty and GSAs now are 70 percent of instructional staff. *Id.*

Graduate teaching assistants (GTAs) are assigned undergraduate courses by their departments, which may or may not be related to their course of study. In the arts, humanities and social sciences, GTAs typically are responsible for teaching 100-level courses or leading small classes that are related to larger lecture courses taught by professors. Under the supervision of the principal instructor, teaching assistants must do the readings, attend the lecture and take notes, and then create lessons, lead discussions and answer questions for the undergraduate students in their classes. Outside of the classroom, GTAs must hold office hours to meet with students and are responsible for reviewing student papers and providing feedback for students. Grading papers and exams is also a significant function of the assistantship. Although it varies by institution, generally a GTA's performance of their instructional responsibilities will be evaluated by the principal instructor, lead advisor or a committee from the department.

Graduate students enrolled in science and technology programs, on the other hand, perform academic research on behalf of their institution for compensation as part of their degree.⁴ Academic research is big business; in 2014, U.S. higher education institutions spent over \$67 million on research and development in 2014. National Center for Science and

³ AFT Higher Education Data Center at <http://www.aft.org/higher-education-data-center>

⁴ In 2013, there were 570,300 graduate enrolled in such programs and 1 of every 3 enrolled is performing research as part of their program. National Science Foundation, *NSF-NIH Survey of Graduate Students and Post doctorates in Science and Engineering*, <http://www.nsf.gov/statistics/2015/nsf15318/>

Engineering Statistics, *Higher Education R&D Survey*.⁵ The source of funds for the research could originate with grants from the federal government or private interests.⁶ Graduate research assistants (GRAs) are usually assigned to a research project as part of research team consisting of a professor, postdoctoral researchers, graduate students, and laboratory technicians. GRAs will spend 4-5 days each week in the laboratory on their assigned research projects under the supervision of the research lead; the results of this work will often become the subjects of the graduate research assistants' theses. Many GRAs spend time assembling, maintaining and fixing equipment, training new researchers on equipment, or writing protocols on how to use laboratory equipment.

Whether graduate students are acting as instructional or research staff, it is undisputed that the GSAs are performing valuable services for their institutions. Christina Collins, who in September 2004 was a doctorate student at the University of Pennsylvania, testified to the Senate Appropriations Subcommittee on Labor Health and Human Services and Education about the work of graduate students:

This semester, 77 percent of the teaching hours in large lecture classes in the History Department will be conducted by graduate employees. In the English Department, where large lecture classes are not the norm, graduate-level teachers will teach 40 percent of the introductory level seminars this semester. The tendency to rely heavily on graduate assistants to work with students in smaller groups, while also teaching their own classes, is increasing throughout the School of Arts and Sciences.⁷

This mirrors the trend at public research universities, where graduate employees teach between 22 percent (University of Illinois, Urbana-Champaign) and 42 percent (University of Florida) of

⁵ Survey at <https://ncesdata.nsf.gov/profiles/site?method=rankingBySource&ds=herd>

⁶ The source funding used to pay the wages of the GRA performing research for the university is not determinative of, employee status. The relevant question is whether the GRA is compensated for work that benefits the institution.

⁷ Transcript from September 23, 2004 hearing at <https://www.gpo.gov/fdsys/pkg/CHRG-108shrg96674/html/CHRG-108shrg96674.htm>

undergraduate courses. AFT Higher Education, *“Recognition & Respect: Standards of Good Practice in the Employment of Graduate Employees”* p. 7 (2004). The number of GSAs performing instructional and research duties at their institutions for compensation has only increased in the last decade since the *Brown University* ruling decided that the relationship was “primarily academic.”

The growth of contingent labor is fundamental to the movement to run higher education institutions "more like a business." The traditions of tenure and shared governance—which guarantee due process and academic freedom, and give faculty a major role in academic decision-making—run counter to a command-and-control business model. The fact that large numbers of academic workers are hired without effective job security, without decent salaries and benefits, and without a guaranteed role in academic decision-making is of great concern to those who value a free and independent academy. Institutions of higher education have been able to shift large proportions of the work their instructional employees perform outside the ranks of the tenure-line faculty; allowing them to also move all of this work outside the purview of collective bargaining will further deteriorate the conditions under which free inquiry can take place.

If graduate employees did not instruct and perform other work assigned by their departments and universities, those institutions would necessarily have to hire more part-time or full-time faculty to cover courses, discussion sections and labs that graduate employees currently cover. No one disputes the fact that faculty are employees. To suggest that one person doing a job is an employee while a graduate student doing the same job is not an employee is simply untenable and contrary to Board precedent and the definition of “employee” in of Section 2(3) of the Act.

2. GSAs have an economic relationship with their institutions.

At both the private and public higher education institutions, graduate students are required as part of their degree programs to perform either instructional or research duties at the direction of the university. In exchange for this work, graduate students receive compensation in the form of grants, tuition waivers, stipends, and, in some cases health insurance. This “consideration for work” creates an economic relationship between a university and graduate student, which is all the Act requires to find that GAs and RAs “employees” under Section 2(3). While the employer-employee relationship is easily understood, AFT believes the extent of the economic relationship is worth describing.

Graduate students are admitted with the expectation that they will either perform research or provide instruction in exchange for a financial aid package.⁸ However, the stipend and tuition waivers for graduate student employees typically do not cover their basic living expenses, causing many to incur significant student loan debt. The average tuition and fees at a private nonprofit university for a full-year doctoral research candidate is \$29,400; however the average cost of attendance (tuition and fees, books and other supplies, and living expenses) is \$60,700. NCES, “*Web Tables - Profile and Financial Aid Estimates of Graduate Students: 2011-12*” (NCES 2015-168) p. 42.⁹ A graduate research assistant at the average private nonprofit institution can expect to receive a teaching stipend in the amount of \$23,000 and a tuition waiver worth \$22,400. *Id.* at 56. That leaves a \$15,000 gap for the student to fill from other sources. A doctoral candidate at a public research university fares slightly better, but can still expect over

⁸ For example, English doctoral candidates at Cornell University receive a five-year financial aid package consisting of two years of fellowship and three years of teaching assistantships. Performing work for the institution, therefore, is a condition of receiving financial aid and of completing the degree.

⁹ NCES table at <http://nces.ed.gov/pubs2015/2015168.pdf>

\$10,000 in costs that are not covered by any type of financial aid. *Id.* at page 42. Consequently, GSAs must shoulder this burden themselves, which they have historically done by working additional jobs, foregoing health insurance for dependents or depleting their or their families' savings.

In a relatively recent trend, a growing number of graduate students are turning to student loans. While undergraduate students are limited to an aggregate of \$31,000 in federal student loans, graduate students have been allowed to finance the entire cost of their education since 2006. This has caused a dramatic increase in student debt incurred by graduate students. While graduate students make up only sixteen percent (16%) of all higher education students, they now shoulder forty percent (40%) of \$1 trillion in student debt incurred. Jason Delisle, "*The Graduate Student Debt Review: the State of Graduate Student Borrowing*," New America Education Policy Program (March 2004).¹⁰ In 2011-12, almost one-half (46.6%) of graduate students used loans to pay the cost of their education; the average loan for a single academic year was \$21,500. NCES 2015-168, *supra*, at pp. 48-50, 55. Over the course of several years, a graduate student is likely to accumulate significant debt.

The *Brown University* majority wrongly minimized the economic relationship between the university and graduate student employees and failed to recognize that inadequate compensation, increased workloads and the imbalance of bargaining power are the conditions that cause GSAs to seek union representation and collective bargaining.

B. Collective Bargaining is Uniquely Suited to Address GSA Working Conditions.

1. Collective bargaining for GSAs does not interfere with academic freedom or interfere with an institution's educational mission.

The *Brown University* majority's policy decision was based on erroneous speculation that

¹⁰ Study at <https://www.newamerica.org/downloads/GradStudentDebtReview-Delisle-Final.pdf>

extending collective bargaining rights to GSAs would be “detrimental to the educational process,” by threatening the quality of student-professor relationships and “infring[ing] upon traditional academic freedoms.” 342 NLRB at 490, 493. The Board rejected a similar academic freedom argument in *Boston Medical Center Corp.*, stating:

If there is anything we have learned in 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. We have no doubt that they can also adjust to accommodate the special functions of medical house staff. To assume otherwise is not only needlessly pessimistic, but gives little credit to the intelligence and ingenuity of the parties.

330 NLRB at 164. In fact, AFT’s experience representing higher education faculty and graduate student employees demonstrates that union representation and collective bargaining provide important protections for academic freedom and the educational process.

The concept of academic freedom is based on the idea that the free exchange of ideas on campus is essential to good education. Specifically, academic freedom is the right of faculty members, acting both as individuals and as a collective, to determine without outside interference: (1) the college curriculum; (2) course content; (3) teaching; (4) student evaluation; and (5) the conduct of scholarly inquiry. Academic freedom ensures that colleges and universities are “safe havens” for inquiry, places where students and scholars can challenge the conventional wisdom of any field—art, science, politics or others. AFT Higher Education, *“Academic Freedom in the 21st-Century College and University: Academic Freedom for All Faculty and Instructional Staff*, (2007).

Defending academic freedom and the free exchange of ideas on campus is central to AFT’s work in higher education because, increasingly, we see a variety of threats to the practices that support academic freedom. These include: the increasingly vocational focus of higher education; loss of financial support for colleges and universities; corporate-style management

practices; political attacks on faculty and instructional staff; the erosion of academic staffing through the loss of full-time tenured positions and the financial and professional mistreatment of contingent faculty members. These actions have the potential to chill an academic environment that thrives on a robust free exchange of ideas. *Id.* at p. 12.

One of the many ways that AFT works to protect academic freedom is by encouraging local unions to negotiate strong contract language for all faculty – full-time, part-time, adjunct and graduate student assistants - on job security, academic freedom and a role in shared governance. The following are examples of collective bargaining language protecting academic freedom:

- **Professional Staff Congress - City University of New York:** Whereas, CUNY and the PSC seek to maintain and encourage, in accordance with law, full freedom of inquiry, teaching, research and publication of results, the parties subscribe to Academic Freedom for faculty members. The principles of Academic Freedom are recognized as applicable to other members of the Instructional Staff, to the extent that their duties include teaching, research and publication of results, the selection of library or other educational materials or the formation of academic policy. Preamble, CBA (2007-2010).¹¹
- **Graduate Assistants United – United Faculty of Florida contract at University of Florida:** It is the policy of the UFBOT and GAU-UFF to encourage graduate assistants, in fulfillment of their assigned teaching responsibilities, to give their own interpretation of instructional materials used by them-whether self-chosen or prescribed by the teaching unit-within the bounds of knowledge and methodologies appropriate to the disciplinary field, under the guidance of the employing department or unit.
...
In fulfilling assigned research duties, graduate assistants will be encouraged to exercise creativity and sound judgment in carrying out the theoretical, conceptual, and methodological design of the research under the guidance of the research supervisor. Article 9 “Academic Freedom,” CBA (2014-2017).
- **United Academics, AAUP / AFT contract with University of Oregon:** As stated in the Mission Statement, the University of Oregon "strives to enrich the public that sustains it through the conviction that freedom of thought and

¹¹The PSC-CUNY agreement expired in 2010, but its terms have remained in effect while the parties have attempted to negotiate a successor agreement.

expression is the bedrock principle on which university activity is based." Academic freedom and freedom of speech are necessary conditions to teaching and research. This policy establishes a robust view of academic freedom and freedom of speech in order to ensure that faculty have the freedom to conduct research, to teach, to engage in internal criticism, and to participate in public debate. The article then continues to state that all members of the bargaining unit "shall enjoy the *benefits and responsibilities*" afforded by academic freedom. Article 5 "Academic Freedom, Free Speech and Faculty Responsibility," CBA (2015-2018).

These are only a few examples of the varied language that higher education faculty and graduate employee unions have been able to reach with their institutions through collective bargaining to protect academic freedom.

Furthermore, each of these agreements balance the employee's interest in academic freedom with broad management rights clauses to protect the university from the union intruding on its academic mission. The institution's right to fulfill its academic mission without interference is often specifically deemed off limits from the union. Several institutions with graduate employee unions, such as the University of Illinois, Michigan State University, and Wayne State University, state that the institution retains "sole and exclusive control" to:

- make all academic judgments concerning: (a) courses, curriculum, and instruction; (b) the content of courses, instructional materials, the nature and form of assignments required including examinations and other work; (c) methods of instruction; (d) class size; and (e) grading policies and practices.
- determine all academic policies, procedures, rules and regulations in regard to assistants' status as students, including, but not limited to, all questions of academic standing, intellectual integrity, and any matter relating to academic progress in a University educational program; and,
- make academic evaluations and determinations of assistants' progress as students, including the fulfillment of degree requirements.¹²

¹² Regents of the University of Michigan & Graduate Employees' Organization American Federation of Teachers, AFL-CIO Local 3550, (March 2013 – May 2017); Michigan State University and The Graduate Employees Union, Local 6196, AFT-Michigan/AFL-CIO (May 2015 - May 2019); Wayne State University and The Graduate Employees Organizing Committee, AFT (May 2015 – February 2018).

Similar to the findings of state courts and employee relations boards, AFT's experience demonstrates that collective bargaining for GSAs can support academic freedom without interfering with management rights.

2. Collective bargaining may strengthen academic freedom and student-professor relationships.

Member Liebman noted in the *Brown University* dissent, that the majority's argument that GSA collective bargaining would harm student-professor relationships and infringe on academic freedom, "was not supported by empirical evidence of any kind." 342 NLRB at 499. On the contrary, the studies that have examined this issue have found that academic freedom is compatible with collective bargaining and can actually be strengthened by contract language is supported by the studies that have looked at the issue.

A study published in the April 2013 ILR Review addressed the Brown majority's conclusion that collective bargaining graduate student assistant would be "detrimental to the educational process," by examining "the impact of collective bargaining on the quality of student-teacher relationships and on academic freedoms in light of this need for empirical evidence." Sean E. Rogers, *et al*, "Effects of Unionization on Graduate Student Employees: Faculty-Student Relations, Academic Freedom and Pay," *Industrial & Labor Relations Review*, April 2013; vol. 66, 2: pp. 487, 488. The researchers conducted statistical analysis of survey data collected from union represented, and non-represented graduate student assistants at four (4) matched pairs of large public research universities. The researchers received 516 valid responses that were almost equally divided between represented and unrepresented GSAs from the eight universities. *Id.* The survey responses indicated that "student employees in unionized universities reported more positive student-teacher relationships, more academic freedom, and greater

economic well-being than did student employees in nonunionized universities; however, most of these differences were not statistically significant.” More specifically:

- Unionized GSEs had higher mean ratings on their advisors accepting them as competent professionals, serving as a role model to them, being someone they wanted to become like, and being effective in his or her role.
- Unionized students were more likely than nonunionized students to report respect for differing opinions in their university.
- Unionized GSEs reported higher stipends, and greater pay fairness and adequacy than did nonunion GSEs (differences that were statistically significant);

Id. at 500. From the survey results, the researchers concluded that (i) Graduate students themselves view union representation as enhancing their own academic freedom, and (ii) union representation enhances graduate student employee perceptions of both pay adequacy and pay fairness. *Id.* at 507. Importantly, the researchers concluded that there was no statistical support for the Brown majority’s assertion that extending collective bargaining rights to graduate student employees would threaten the quality of student-teacher relationships or academic freedom. *Id.*

The conclusions drawn from this survey of graduate student assistants parallels an earlier study that collected data from faculty. Gordon J. Hewitt, “*Graduate Student Employee Collective Bargaining and the Educational Relationship between Faculty and Graduate Students*,” 29 *J. Collective Negotiations Pub. Sector* 153 (2000). That study surveyed faculty members at five universities with collective bargaining agreements with graduate assistant unions. Almost 90 percent of the faculty survey participants agreed that collective bargaining had not inhibited their ability to advise or instruct graduate students and had not kept them from forming mentoring relationships with graduate students. *Id.* at 161. Furthermore, 95 percent of faculty respondents believed that collective bargaining did not inhibit the free exchange of ideas between faculty members and students. *Id.* In short, faculty do not believe that graduate assistant bargaining

harms the mentor relationships or harms academic freedom.

Taken together, these two studies provide empirical evidence that that is directly contrary to the Brown majority's speculation that graduate assistant bargaining will be "detrimental to the educational process." Brown at 493.

3. Collective bargaining is an effective mechanism to address the working conditions in the GSA-university relationship.

The *Brown University* majority's speculation that collective bargaining for GSAs would harm the educational environment is not supported by evidence. Furthermore, the majority's attempt to dismiss the economic relationship between graduate assistants and their institutions ignores the economic reality for graduate assistants and their lack of bargaining power. The *Brown University* ruling that GSAs are not statutory employees is inconsistent with the Act and NLRB precedent, and runs counter the rulings of the many public sector labor boards which have examined this issue. *Temple University*, 32 PPER ¶ 32164 (Penn. PERA 2001); *Regents of the University of California*, 22 PERC ¶ 29084 (Cal. PERB 1998); *CWA-Graduate Student Employees Union, AFL-CIO*, 24 NYPER ¶ 3035 (NY PERB 1991), *aff'd*, 586 NYS.2d 662 (NY App. Div. 1992); *Regents of the University of Michigan*, Case No. C76K-370 (MPERC 1981); and *University of Oregon Graduate Teaching Fellows Association*, Case No. C-207-75 (Oregon PERB 1977). While the *Brown University* majority dismissed precedent from the public sector as fundamentally different, GSAs look to their colleagues at public universities for precedent and guidance as they continue organizing campaigns at NYU, Cornell, Columbia and many other private institutions.

As Christina Collins explained to the U.S. Senate Subcommittee in 2004, graduate assistants at University of Pennsylvania "looked to the three decades of collective bargaining experiences of graduate employees at some of the most prestigious public universities in the

United States” as a model for combatting inadequate compensation and rising health care costs. Currently, graduate assistants at Cornell University look to the accomplishments of AFT locals as they seek access to adequate child care, dependent health insurance coverage, funding for summer positions and adequate instructional training. In fact, AFT graduate employee locals have improved working conditions for thousands of GSAs and achieved some of the first significant gains through collective bargaining. For example:

- The Graduate Teaching Fellows Federation began organizing at the University of Oregon in 1975. In 1978, the GTFF and university reached a first contract which included a 14% wage increase, standardized workloads, written criteria for appointment/ reappointment, and a grievance procedure. In 1993, the GTFF and the university bargained employer-paid health insurance for all graduate teaching fellows includes prescription drug benefits, coverage for dental and vision, and the option to extend the plan to partners and dependents.
- In 1972, graduate students at the University of Florida formed the Graduate Student Union and lobbied the administration for wage increases and additional financial aid for graduate students. Later re-named Graduate Assistants United, the union affiliated with AFT in 1975 and reached its first collective bargaining agreement in 1983. GAU has successfully negotiated stipend increases, fee waivers and improvements to health insurance. In 1986, tuition for graduate assistants was waived.

In addition to the traditional compensation and insurance issues, AFT graduate employee locals have used collective bargaining to address the many issues of a diverse graduate student membership. For example:

- The Teaching Assistants Association and University of Wisconsin at Madison negotiated contract language to provide for family leave and established a fund to defray the costs of child care of bargaining unit members.¹³
- The Milwaukee Graduate Assistants Association bargained additional salary for graduate employees with off-campus or weekend assignments.
- The Graduate Employees Organization at the University of Michigan negotiated compensation for international graduate students who attend English as a Second Language training prior to beginning employment at the university.

¹³ Teaching assistants were stripped of the right to engage in collective bargaining by the Wisconsin legislature in 2011 with the enactment of Act 10. *See* 2011 Wisconsin Act 10.

These examples from the public sector would serve as a useful model to address similar working conditions for graduate assistants in the private sector.

Moreover, public sector bargaining agreements provide strong evidence that collective bargaining for graduate assistants at private universities can address wages and conditions of employment without interfering with the institution's educational mission. A review of public sector agreements indicates that GSAs and their employer reach agreement on the following terms and conditions of employment:

- Appointments –describes the details of the assignment including duration, semester, description of duties, and wage or amount of stipend. Often this provision requires that the appointment be delivered by a certain date.
- Discipline – describes grounds for discipline and termination of employment
- Tuition Waiver – addresses the amount of the waiver based on the number of hours or the level of appointment. Full tuition waivers are common for employment equal to ¼ time.
- Stipends/Wages – describes the amount of compensation based on the number of hours or level of appointment.
- Fees – describes whether student fees will be charged, identifies specific fees that may be charged or waived, if any.
- Healthcare – provides for enrollment in student or employer health plan, whether GSAs must pay for health care, amount of deductible, and family or dependent coverage.
- Evaluations- describes the evaluation process, frequency and by whom.
- Grievance procedure – describes the process for grieving violations of the collective bargaining agreement.

There is simply no evidence that collective bargaining and the Act cannot accommodate the economic and other issues that GSAs have traditionally addressed at the bargaining table in the public sector.

CONCLUSION

As described above, the *Brown University* decision is contrary to the statutory definition of the terms of Section 2(3) and the policy reasons advanced by the *Brown University* majority

do not justify an exception to the statutory definition of “employee” for “graduate student assistant.” GSAs perform work at higher education institutions in exchange for compensation in an employer-employee relationship with significant economic ramifications. GSAs at private institutions are seeking union representation for the same reason that GSAs at public institutions pursued collective bargaining: to improve their economic circumstances and working conditions. Collective bargaining is the appropriate mechanism for GSAs in the private public sector to voice their shared economic concerns to their employer. There is simply no evidence that GSA bargaining is “detrimental to the educational process.” To the contrary, AFT locals and public universities have protected faculty academic freedom with contractual language while preserving the employers’ right to direct the educational mission of the institution. Accordingly, AFT respectfully urges the Board to overrule *Brown University*, 342 NLRB 483 (2004) and hold that graduate student assistants who are required to perform work, controlled or directed by the institution, in exchange for compensation as part of their course of study are statutory “employees” entitled to all the rights and protections of the National Labor Relations Act.

February 29, 2016

Respectfully submitted,

/s/
David J. Strom
Daniel J. McNeil

American Federation of Teachers
555 New Jersey Avenue, N.W.
Washington, DC 20001

CERTIFICATE OF SERVICE


I, Daniel J. McNeil, hereby certify that on February 29, 2016, I caused to be served a copy of the foregoing brief on behalf of the American Federation of Teachers, AFL-CIO, as *Amici Curiae*, by electronic mail, and copies were deposited in the U.S. mail with the proper postage affixed thereto to the parties below:

Bernard Plum, Esq.
Proskauer Rose LLP
11 Times Square New York, NY 10036-8299
bplum@proskauer.com

Edward A. Brill, Esq.
Proskauer Rose LLP
11 Times Square
New York, NY 10036-8299
ebrill@proskauer.com

Nichole Rothgeb, Esq.
Livingston, Adler, Pulda, Meiklejohn & Kelly, PC
557 Prospect Avenue
Hartford, CT 06105-2922
nmrothgeb@lapm.org

Thomas W. Meiklejohn
Livingston, Adler, Pulda, Meiklejohn & Kelly, PC
557 Prospect Avenue
Hartford, CT 06105-2922
twmeiklejohn@lapm.org



Daniel J. McNeil