

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 1

In the Matter of:)	
)	
GRADUATE EMPLOYEES OF)	
NORTHEASTERN UNIVERSITY – UAW,)	
)	
Petitioner,)	Case No. 01-RC-311566
)	
and)	
)	
NORTHEASTERN UNIVERSITY,)	
)	
Employer.)	

**NORTHEASTERN UNIVERSITY’S REQUEST FOR REVIEW OF THE REGIONAL
DIRECTOR’S DECISION AND DIRECTION OF ELECTION**

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Dated: September 20, 2023

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INTRODUCTION

Pursuant to Section 102.67 of the National Labor Relations Board's Rules and Regulations, Northeastern University ("Northeastern" or the "University") respectfully submits this Request for Review of Regional Director Laura A. Sacks's Decision and Direction of Election ("DDE").¹

Petitioner Graduate Employees of Northeastern University-UAW ("the Union") petitioned for a unit of individuals whose only connection with each other is that they are enrolled in some graduate degree program at one of three separate campuses of Northeastern. In the DDE, the Regional Director ignored the fundamental flaws in the petitioned-for unit and directed an election in the petition for unit anyhow. Northeastern requests that the Board review and reverse the DDE for the reasons set forth below.²

In the DDE, the Regional Director (over Northeastern's objection) refused to allow Northeastern to present evidence on this issue and otherwise ignored it. The Regional Director apparently wrongly believed that *Columbia* stands for the principle that all graduate students who perform research or teaching assistantships are employees as matter of law. (DDE, p. 2.) *Columbia* says no such thing. The Board in *Columbia* specifically held that students were

¹ References to the Decision and Direction of Election will be abbreviated as "DDE, p. [page number]." Citations to the transcript are identified as "Tr. ____." Citations to the Board exhibits are identified as "Bd. Ex. ____." Citations to the Union's exhibits are identified as "Pet. Ex. ____." Citations to Northeastern's exhibits are identified as "NU Ex. ____."

² Northeastern submits that the Board's decision in *Columbia University*, 364 NLRB 1080 (2016) is wrongly decided. But even under *Columbia*, the DDE cannot stand because the facts at Northeastern are distinguishable. At Northeastern, PhD students who perform research or teaching assistantships are on a so-called Stipended Graduate Assistantship or SGAs conducting research or teaching in order to satisfy one or more academic degree requirements, which is different from what was presented in *Columbia*. These facts distinguish Northeastern PhDs from those at issue in *Columbia* who, as that Board found, were employees. Unlike *Columbia*, Northeastern PhDs are not performing services for Northeastern. For example, a Northeastern students perform research to achieve their degree because their research assistantship correlates with their own dissertation topic. Accordingly, they cannot be employees under the common law test set forth in *Columbia*.

employees because they performed services for the benefit of the university. It explained that a student research assistant is *not* an employee if the research is to further the student's education and to allow the student to pursue their educational goals. *Columbia*, 364 NLRB at 1096. The Region's unwillingness to allow Northeastern to even present evidence to support this argument is clear error. *Compare Duke University*, Case 10-RC-313298 (July 10, 2023) (university permitted to present evidence on and litigate whether research or teaching assistantships were for the benefit of the students or the university) *with Massachusetts Institute of Technology*, 01-RC-304042 (March 13, 2023) (university permitted to show and demonstrated that graduate students were not employees).

Further, despite clear Board law that *the Union* bears the burden of establishing that the petitioned for is appropriate, the Region required Northeastern to present an offer of proof at the outset of the hearing to demonstrate the opposite—that students in the petitioned for unit did not share a community of interest. While the Union tried to claim that *Columbia* established a presumption that any unit of grad students is presumptively appropriate, even the Region acknowledged that this was not the case. (DDE, p. 13 n.14.) The Region allowed Northeastern to litigate this issue, but it erred in its analysis, wrongly shifting the burden to Northeastern to disprove the existence of a community of interest.

Regardless, the evidence presented at the hearing demonstrated that the students in the petitioned-for unit do not share a community of interest. The unit included PhD students on SGAs who perform research and teaching assistantships and any other graduate students hired through the University's student employment office to provide a range of services, such as yoga instructors and translation services.³ (*See* Bd. Ex. 3; Pet. Ex. 33(b).) There is no community of

³ The Union initially claimed to all seek to represent PhD students on fellowships. However,

on interest between these two groups under extant Board law. While PhD students on SGAs are offered research or teaching assistantships as part of their admission to and financial aid for their degree program (precisely why they are student and not employees), other graduate students in the proposed unit perform research or instructional services simply because they applied for and met the qualifications for some posted position on campus. Unlike students on SGAs, their positions are not part of their degree programs and are ad hoc. And as described below, these fundamental differences mean that none of the community of interest factors have been met. The Region's glossing over the actual evidence to find an appropriate unit here is error warranting Board review.

Finally, the Region disregarded established Board law in allowing a unit consisting of students at three different campuses (Boston, Burlington, and Nahant). The Board has long presumed that separate locations should be separate units. The evidence came nowhere close to rebutting this presumption.⁴

FACTS

A. General Overview of Northeastern University.

Northeastern is a private, non-profit university with its main campus located in Boston, Massachusetts. (Bd. Ex. 2; Tr. 68, 72.) The Boston campus is located at 360 Huntington Avenue, and runs for about a mile between the Prudential Center and the Museum of Fine Arts in the city of Boston. (Tr. 71-72, 103.) The University also maintains a campus in Burlington, Massachusetts, which is about 28 miles north of the Boston campus. (Tr. 96; NU Ex. 6; NU Ex. 7; NU Ex. 8; NU Ex. 9.) The Burlington location houses Northeastern's Innovation Campus,

after the hearing, but a few days before post-hearing briefs were due, the Union disclaimed interest in including students on fellowships in the unit. (DDE, p. 3.)

⁴ Northeastern also incorporates by reference its Post-Hearing Brief.

which includes start-up and early venture companies. (Tr. 97.) The Burlington campus also houses training facilities relating to pharmaceutical work, and it has workshop facilities where outside organizations have laboratories. (Tr. 98.) The Burlington campus contains the Kostas Center for Homeland Security, which, due to its nature, has specific homeland security requirements for students or other visitors to enter the building. (Tr. 100, 101.) Any graduate students with research assistantships in laboratories located in Burlington conduct their research at Burlington in those laboratories. (Tr. 101.) They do not conduct their research at any other Northeastern campus, including Boston.

Northeastern also maintains a campus in Nahant, Massachusetts, which is located about 20 miles from the Boston campus. (Tr. 101.) It houses the Marine Sciences Department, which includes the Coastal Sustainability Institute. (Tr. 101.) Any PhD student conducting a research assistantship in the marine sciences field conducts their research only in Nahant. (Tr. 102.)

Students can park for free at the Burlington and Nahant campuses. (Tr. 133.) However, students must pay for parking at the Boston campus. (Tr. 132.)

There are approximately 20,000 graduate students enrolled at Northeastern across its 15 campuses. (Tr. 72.) Those graduate students are pursuing a number of graduate degrees, including Master's degrees, professional doctorate degrees (such as a law degree), and research doctorate degrees ("PhD"). (Tr. 72, 73.)

Northeastern has 10 academic colleges. (Tr. 68.) Of those 10 academic colleges, six colleges offer PhD programs: the Bouvé College of Health Sciences; the College of Arts, Media, and Design; the College of Engineering; the College of Science; the College of Social Science and Humanities; and the Khoury College of Computer Science. (Tr. 73.) There is also a PhD program in the Provost's Office, which is multidisciplinary. (Tr. 74.) In total, Northeastern offers 36 PhD programs, in which approximately 1,700 PhD students are enrolled. (Tr. 74.)

B. Northeastern’s Commitment to Experiential Learning is Unique.

Northeastern is committed to experiential learning at all levels of its degree offerings, from undergraduate students to PhD students. (Tr. 68.) Experiential learning is fundamental at Northeastern and “is in its DNA” and is unique among universities. (Tr. 68.) Experiential learning provides students with diverse experiences that reinforce their academic learning and promote creativity, experience, and reflection. (Tr. 69.) To further its commitment to experiential learning, Northeastern focuses on providing students integrated, real world experiences in students’ academic programs. (Tr. 68.)

In the context of PhD students, Northeastern offers challenging assignments with partner organizations in industry, government, academia, and the nonprofit sector as part of their educational program. (NU Ex. 18; Tr. 70.) PhD students can, for example, study and conduct research at an outside partner to apply their research in a real-world setting. (Tr. 80, 81.) Such an opportunity teaches the PhD student how to apply his or her research and translate it into a real-world example. (Tr. 81.) In doing so, students can earn a Graduate Certificate in Experiential PhD Leadership. (Tr. 81, 82; NU Ex. 15). When earning the experiential leadership certificate, the PhD student is exposed to experiences outside of the university setting designed to challenge the student to address complex problems, equip the student with cultural agility, creativity, and professional skills, and enrich the student’s research and fields of expertise. (NU Ex. 15.) The program is complementary to and aligned with the student’s dissertation research, and is designed to deepen and further the student’s learning. (Tr. 82.)

Northeastern’s commitment to experiential learning for PhD students also includes its commitment to providing PhD students with teaching and research opportunities to permit them to become world-class researchers and instructors. (Tr. 78.) To that end, Northeastern provides a teaching certificate to ensure that PhD students learn to teach, practice teaching, and are prepared

to teach after they earn their degree. (Tr. 78.) PhD students serving on teaching assistantships can complete the required practicum and earn the graduate teaching certificate. (Tr. 78.) Northeastern also includes teaching requirements in PhD student's course curriculum. For example, the Khoury College of Computer Science has a teaching requirement in its course curriculum. (Tr. 245, 246, 247; NU Ex. 10; NU Ex. 11.)

C. Earning a PhD Degree.

PhD students earn a research doctorate degree by meeting certain milestones associated with their degree program and by completing and defending a dissertation. (*See, e.g.*, NU Ex. 10.) A dissertation is a body of knowledge that demonstrates that a PhD student has been able to sufficiently advance the boundaries of knowledge and has completed novel research that can be cited in the future in the larger scientific and academic community. (Tr. 78, 79.)

To earn a PhD, students must complete the applicable course curriculum for their respective PhD program. Typically, this includes taking academic classes in the first two years of their enrollment, passing a qualifying examination, conducting original research on their dissertation topic and working with a faculty member in a research group to conduct their research, preparing a dissertation, and defending that dissertation. (Tr. 198, 199.) It typically takes a student four to six years to earn the degree. (Tr. 75.)

PhD students are evaluated at least annually based on their academic progress. They must remain in good academic standing and must make progress on their dissertation to continue in the PhD program. (Tr. 91, 203.) The PhD student's evaluation includes how well the student performs in classes, the progress the student is making with the student's research and whether the student is meeting research milestones, and whether the student is meeting any objectives, such as publication objectives. (Tr. 91, 92.) The evaluation includes consideration of the student's service on a teaching assistantship or research assistantship as applicable. (Tr. 206, 207, 215.)

D. Financial Aid Options for PhD Students at Northeastern.

Students who are unable to fund their own PhD education can apply for financial aid.⁵

Northeastern makes financial aid decisions when it admits PhD students to the school, even though the University has not established exactly where the funding will come from for any particular student's financial aid package. (Tr. 75, 86.) Once a student is admitted to a PhD program, Northeastern sends that student an admissions letter. (Tr. 86; NU Ex. 1; NU Ex. 2.)

Students' financial aid packages are guaranteed for five years (provided the student remains in good academic standing), regardless of where the funding ultimately comes from. (Tr. 75, 76.) Thus, if Northeastern were to cease receiving any particular external grant, the University will nevertheless continue to honor the financial aid commitment it made to each student. (Tr. 75, 76.) In other words, a student's actual receipt of the committed funding is not contingent upon Northeastern's receipt of any particular funding source.

Financial aid packages for PhD students are managed by the Office of the Provost, which provides overarching leadership for Northeastern's PhD programs across the colleges. (Tr. 67, 68.) The Provost's Office is responsible for all academic functions at the University, including undergraduate, graduate, and PhD levels. (Tr. 71.)

⁵ In addition to the scenarios described below, Northeastern has Industry PhD students. Industry PhD students are PhD students who are employed by a third party, such as a company or a nonprofit organization, which pays for the Industry PhD student to pursue and complete his or her PhD degree. (Tr. 92.) The third-party company or nonprofit pays the Industry PhD student's normal salary because the Industry PhD student is employed by the third party company. (Tr. 92, 93, 116, 252.) Industry PhD students do not receive stipends or health insurance from Northeastern. (Tr. 252.) Nor do they have research assistantship or teaching assistantship requirements. (Tr. 253.) As such, Industry PhD students are not Northeastern's employees under the Act or *Columbia University*, 364 NLRB 1080 (2016). In any event, the Union disclaimed any interest in representing Industry PhD students. (Tr. 254, 255, 486.) Thus, Northeastern does not address the Industry PhD students further.

One form of financial aid is known as a Stipended Graduate Assistantship or SGA. PhD students on SGAs receive the cost of their tuition, health insurance, and an annual stipend. (Tr. 75, 76, 85.) The stipend is divided into three parts (corresponding to semesters) and is paid out in installments during each semester. (Tr. 76, 77.) The amount of the stipend is set by the individual college responsible for the particular PhD program. (Tr. 85.)

PhD students on SGAs also have a service expectation in the form of either a research assistantship or a teaching assistantship. (Tr. 77.) PhD students with research assistantships are expected to spend up to 20 hours per week on the assistantship. (Tr. 77.) However, PhD students on SGAs do not record their hours. (Tr. 77, 78.) Each semester, Northeastern sends PhD students an assignment letter. (Tr. 89; NU Ex. 3; NU Ex. 4.) The assignment letter communicates that student's specific service expectation for the semester. (Tr. 89; NU Ex. 3; NU Ex. 4.)

Northeastern works to ensure that the research assistantships for PhD students on SGAs align with the students' dissertation research. (Tr. 200.) Thus, PhD students on SGAs spend their time in the lab conducting research that relates to and advances their dissertation topic. (Tr. 200, 201, 220, 221.)

Teaching assistantships are designed to teach students how to communicate complex ideas, regardless of whether they pursue careers in academia. (Tr. 78.) In some cases, the teaching assistantship is a requirement of the degree program. (NU Exs. 10, 11.) For example, in Khoury College, a student pursuing a PhD in Computer Science must teach at least three hours of classes and prepare an assignment or quiz. (Tr. 247-48.) In some instances, PhD students fulfill their teaching assistantship by serving as the Instructor of Record, meaning that they are listed in the course catalogue as teaching the course. (Tr. 95.)

Not all PhD students receive SGAs. (Tr. 79.) Some PhD students receive financial aid in the form of fellowships. (Tr. 79.) Students apply for fellowships, and fellowships can be funded

through both internal and external sources. (Tr. 79, 136, 138.) Some PhD students on fellowships may receive stipends directly from the fellowship donor, whereas other PhD students on fellowships receive the funds from Northeastern. (Tr. 138.) PhD students on fellowships receive tuition payment, funding for health insurance, and a stipend. (Tr. 80.) However, unlike PhD students on SGAs, PhD students on fellowships are not required to perform research or teaching assistantships. (Tr. 79, 132, 201, 260.)

E. Unlike Stipended PhD Students, Hourly Undergraduate and Master’s Students Are Hired on an Ad Hoc Basis.

Northeastern offers student employment opportunities to its students, including undergraduate and graduate students. (Tr. 93, 151.) Students can perform a diverse set of tasks as hourly student employees, including jobs as varied as graders, yoga instructors, and resident hall proctors (who permit access to the resident halls). (Tr. 151, 152.) Hourly student employment jobs include work study jobs, meaning that the student’s work is part of their financial aid packages. (Tr. 152, 153.) Federal regulations apply to work study jobs, including that work study cannot exceed a semester, cannot displace full-time employees, and cannot be used for political work or, as an example, to build a church. (Tr. 155, 156.)

The Office of Student Employment, Graduate Assistantships, and Fellows (“SEGAF”)⁶ handles hourly student employment, including work study and non-work study positions. (Tr. 148, 149.) SEGAF does not manage SGAs for PhD students.⁷ (Tr. 149.) If a department needs a

⁶ Northeastern notes that the court reporter in Volume 2 of the transcript incorrectly transcribed the acronym “SEGAF” as both “CGAF” and “CGAP.” (*See, e.g.*, Tr. 148-151). It is clear from the record that both “CGAF” and “CGAP” are misnomers for “SEGAF.” (Tr. 148 (“A: I work at the Office of Student Employment, Graduate Assistantships and Fellowship. Q: Is that referred to as CGAF? A: Referred to as CGAF.”)). To avoid unnecessary confusion, Northeastern substitutes “SEGAF” for both “CGAF” and “CGAP” wherever they occur.

⁷ The court reporter mistakenly transcribed “SGA” as “CEGAF.” (Tr. 149.) It is clear based on the structure of the testimony that, at this point, the testimony is discussing graduate students on

student worker, SEGAF works with an individual in that department, typically an administrator, to review, approve, and post open jobs to the University's student job board on Workday. (Tr. 152, 155, 190, 191.) The respective department submits a job requisition request to SEGAF, which reviews the request to ensure it is appropriate for student employment. (Tr. 157.) SEGAF reviews the appropriateness based on the description, level of pay requested, and how much time is required to be committed to the role. (Tr. 152.)⁸

While the department may propose a rate of pay, SEGAF is responsible for setting the rate of pay for the job. (Tr. 153, 154.) It uses a series of levels to determine the appropriate pay range for the hourly position. (Pet. Ex. 32.) Unlike PhD students on SGAs, students who fill these hourly positions do not receive a tuition waiver, do not receive a stipend, and do not receive funding for health insurance. (Tr. 93, 94.) Rather, they are paid an hourly rate based on the number of hours they report. Students are required to keep track of their time and record their hours in a timesheet each week. (Tr. 158, 159.) If students fail to timely enter their hours, SEGAF is responsible for following up with the students. (Tr. 159.)

Hourly student positions cannot extend beyond an academic year, and many are for a semester or less. (Tr. 156, 157, 208.) The student is not provided with any commitment for employment beyond the current assignment. (Tr. 57.) They are not guaranteed five years (or any amount or duration) of funding. (Tr. 93, 94.)

SGAs, given that the discussion turns immediately to assignment and performance of assistantships. (Tr. 150.) This becomes even clearer based on the first line of questioning in cross examination. (Tr. 160.)

⁸ All SEGAF does with regard to PhD students on SGAs is process the stipend amount for payment to the student. (Tr. 149, 150.) Otherwise, SEGAF has no role with regard to PhD students: SEGAF does not handle PhD students' tuition, does not set PhD students' stipend amounts, does not play any role in providing research assistantships or teaching assistantships assignments, and does not evaluate PhD students' performance on research assistantships or teaching assistantships. (Tr. 149, 150.)

Once SEGAF approves the requisition, SEGAF posts the open position to the student job board. (Tr. 152, 154, 155.) Each hourly job is open to all Northeastern students to review and apply. (Tr. 154, 155.) To obtain an hourly job, students are required to complete Form I-9s to verify their authorization to work in the United States. (Tr. 150.) PhD students on SGAs are not required to complete Form I-9s. (Tr. 150.)

A student must meet the requirements of the position. However, there is no general requirement that a student's academic course of study be related to the subject matter of the position. For example, a political science Master's student may apply (and has) for a yoga instruction position. (Tr. 155, 156, 194.) Nor does a student's performance in the hourly role impact their academic performance in their course of study. (Tr. 208, 215.)

After students apply, the department reviews the application and makes a decision on the successful applicant. (Tr. 155.) Once a job is filled, the posting is removed. (Tr. 189.) The successful student is not given an offer or assignment letter. (Tr. 156.)

Students are, on occasion, hired on an hourly basis to perform some research-related or instructional-related tasks. As Petitioner Exhibit 33 demonstrates, SEGAF classifies a wide range of positions as Research Assistants or Teaching Assistants. For example, Petitioner Exhibit 33(b) is a posting for a "Graduate Student Research Assistant." It does not require the student to be in any particular graduate program. In fact, the role does not involve research at all. The applicant must be able to provide translation services. (Pet. Ex. 33(b).) Similarly, Petitioner Exhibit 33(d) is an "RA" position requiring the student to collect news articles on mass murders. (Pet. Ex. 33(d).) The student must be able to use news archives and have an interest in mass killings. (*Id.*) Further, while some positions require the student to be in a particular department, such as criminal justice, some postings are generic. For example, Petitioner Exhibit 33(l) is a "TA"

position, for which the student can be a graduate student in any humanities or social science field or have experience studying in such a field. (Pet. Ex. 33(1).)

Students may be hired to provide grading support for instructors. (Tr. 94, 95.) Although the Union's petition only includes graduate students, undergraduate students also fill these roles. For example, Dr. Ahmed explained at the hearing that she uses undergraduate students rather than Master's students as graders because they have recently taken the course, know the material, and are excited about it. (Tr. 244-45.) Unlike PhD students on an SGA—who may lead the class and provide lectures, develop the course materials, or teach a seminar or laboratory course—hourly undergraduate or Master's teaching assistants typically perform none of those tasks, but instead make copies or grade assignments. (Tr. 95.) Nor are hourly undergraduate or Master's teaching assistants the instructor of record for a course; unlike PhD students on SGAs, who may be an instructor of record. (Tr. 95.)

SEGAF handles complaints from hourly student employees. (Tr. 158.) These complaints range from personality conflicts with their supervisor, to availability issues, to pay issues. (Tr. 158.) SEGAF is also responsible for ensuring that students are keeping track of their hours, and SEGAF will follow up with students who forget to enter their hours to ensure the hours are entered so that SEGAF can process the payroll. (Tr. 159.)

F. Expected Graduation.

PhD students typically earn their doctoral degree within four to six years. (Tr. 75.) Master's students typically earn their degree within one to two years. (Tr. 102, 103.) Each year some students finish their studies and earn their respective degrees. Last spring, in May 2023, approximately 140 PhD students with SGAs and approximately 489 hourly-paid graduate student employees within the petitioned-for unit graduated. (Tr. 102, 233.)

ARGUMENT

The DDE should be reversed. The Board may grant review of any “action of a Regional Director delegated to him/her under Section 3(b) of the Act except as the Board’s Rules provide otherwise.” 29 C.F.R. § 102.67(c). Specifically, review may be granted where: (1) a substantial question of law or policy is raised because of the absence of, or a departure from, officially reported Board precedent; (2) the Regional Director’s decision on a substantial factual issue is clearly erroneous on the record and such error prejudicially affects the rights of a party; (3) the conduct of any hearing or any ruling made in connection with the proceeding has resulted in prejudicial error; or (4) there are compelling reasons for reconsideration of an important Board rule or policy. *Id.* at § 102.67(d). Each of the grounds for review exists here, and the DDE should be reversed.

I. The Regional Director Erred When She Held That the Union Did Not Fail to Respond to All Issues Raised in Northeastern’s Statement of Position and Thus Did Not Waive Its Right to Challenge Those Issues.

First, the Region erred in concluding that the Union was not barred from litigating some issues. Under the Board’s Rules and Regulations, “[f]ollowing timely filing and service of an employer’s Statement of Position, the petitioner shall file with the Regional Director and serve on the parties named in the petition its Statement of Position responding to the issues raised in the employer’s Statement of Position.” 29 C.F.R. § 102.63(b)(1)(ii). The petitioner must respond to each issue raised in the employer’s Statement of Position.⁹ *Id.*; *see also* NLRB Form-4812 (“A

⁹ The Board adopted the Responsive Statement of Position requirement to promote greater efficiency. As the Board explained when it published its final election rules, “[b]y requiring the petitioner to respond to the issues the employer (and other non-petitioning parties) have placed in dispute before the hearing, all parties and the Board itself will have earlier notice of what issues will require litigation at the hearing, should one prove necessary.” 84 FR 69524. The Board also found that “the responsive Statement of Position will also help Agency personnel make hearings more efficient,” by “narrow[ing] the issues and [the Board’s] investigation prior to the hearing, rather than at the start of the hearing.” *Id.* Another stated purpose of the Responsive Statement of

petitioner must file a Responsive Statement of Position in response to each party's Statement of Position addressing each issue in each Statement of Position(s).").

Here, the Union failed to meet its requirement to respond to each issue raised in Northeastern's timely-filed Statement of Position. Northeastern raised, among others, the following issues:

- Graduate students on SGAs are not employees within § 2(3) of the Act and must be excluded because the primary relationship between these students and Northeastern is educational, and thus, to the extent that *Columbia University*, 364 NLRB 1080 (2016) holds otherwise, it is wrongly decided.
- Graduate students on SGAs are not employees within § 2(3) of the Act even under *Columbia* and thus must be excluded because those students perform research assistantships and/or teaching assistantships in order to satisfy one or more academic degree requirements.
- Graduate students whose stipends are funded by third parties and/or who perform research services for such third parties do not perform services for Northeastern and thus are not employees of Northeastern under *Columbia* or § 2(3) of the Act, and must be excluded.
- Graduate students compensated on an hourly basis do not share a community of interest with graduate students on SGAs and must be excluded.
- Graduate students performing instructional or research services at campuses other than the Boston campus should be excluded because they do not share a community of interest with graduate students on SGAs at the Boston campus.
- Non-PhD graduate students must be excluded because many will graduate as early as May 2023 and thus their tenure is set to end on a date certain.
- Graduate students compensated on an hourly basis must be excluded because they are given assignments on an ad hoc basis and there is no reasonable expectation of future assignments.

Position is to “enable parties to identify circumstances where they are ‘talking past each other,’ clarify the terminology at issue, and identify or even eliminate any related disputes.” *Id.* Such benefits, of course, only accrue when the Responsive Statement of Position is actually responsive to the issues raised in the Statement of Position. Thus, the Board requires that the Union respond to each issue raised in the Statement of Position. 29 C.F.R. §§ 102.63(b)(1)(ii), 102.66(b).

(Bd. Ex. 3.) Despite Northeastern timely raising each of these issues in its Statement of Position, the Union did not respond to them. Instead, the Union only responded that employee status, the scope of the unit and who is eligible to vote “are governed by *Columbia*.”

(Bd. Ex. 4.) Thus, other than citing to *Columbia*, the Union submitted what is essentially a general denial.

This is insufficient under the plain—and mandatory—language of the rule, and it flies in the face of the spirit behind the rule. If a party could merely deny the issues raised in the Statement of Position without addressing each issue, the entire reason for requiring the Responsive Statement of Position in the first place would be vitiated.¹⁰ Here, the Union failed to respond to each issue raised in Northeastern’s Statement of Position. Accordingly, the Union should have been precluded from litigating the issues to which it failed to respond.¹¹ See *Brunswick Bowling Products, LLC*, 364 NLRB No. 96 (2016).

The Union’s reference to *Columbia* does not save it from preclusion. For example, *Columbia* did not foreclose (nor did it address) the issue raised by Northeastern that graduate students on SGAs perform research that directly correlates to their own dissertation topic and therefore are not employees under the common law test set forth in *Columbia*. See *Columbia*, 364 NLRB at 1096 (2016) (“It is theoretically possible that funders may wish to further a student’s education by effectively giving the student unconditional scholarship aid, and allowing

¹⁰ If an employer generally denied the appropriateness of the unit in its Statement of Position, the Board would find preclusion. See, e.g., *Ikea Distribution Services, Inc.*, 370 NLRB No. 109, slip op. at 1 (2021).

¹¹ The practical impact of the Union’s failure to respond to each issue raised by Northeastern became clear as the hearing progressed. During the hearing, the Union disclaimed its intent to include Industry PhD students in the proposed unit. (Tr. 486.) This was an issue raised in Northeastern’s Statement of Position and could have been resolved pre-hearing. But by providing only a general denial, the Union prevented the Region from determining whether this was in fact a real issue to be litigated before the hearing.

the student to pursue educational goals without regard to achieving any of the funder's own particular research goals.”). The Union should have been barred from litigating this issue altogether, *see* 29 C.F.R. § 102.66(d), yet incredibly the Region barred *Northeastern* from presenting any evidence on the issue, as discussed below.

Second, the Union failed to respond to all of the issues raised by *Northeastern* relating to the appropriate scope of the bargaining unit. Again, the Union simply cited to *Columbia*. But that decision did not address the many issues raised by *Northeastern* relating to the appropriate scope of the unit. In *Columbia* the Board applied the community of interest factors set forth in *Specialty Healthcare & Rehabilitation Center of Mobile*, 357 NLRB 934 (2011), to the specific facts of Columbia University's graduate student assistants. *Columbia*, 364 NLRB at 1097-98. While the Union's position was that *Columbia* established a presumption that its proposed unit was appropriate, the Region rejected the notion of any presumption. (DDE, p. 13 n.14.) Having lost on that argument, the Union should have been foreclosed from presenting any evidence and litigating the facts of whether the petitioned for unit was appropriate.

The Region's willingness to overlook the Union's obligations under the rules while at the same time barring *Northeastern* from presenting evidence on a legitimate factual question raised in its Statement of Position prejudiced *Northeastern* and underscores why the DDE cannot stand. The Region ignored the rules when the Union failed to follow them. The Union should have been barred from “raising any issue, presenting any evidence relating to any issue, cross-examining any witness concerning any issue, and presenting argument concerning any issue that the party failed . . . to place in dispute in response to another party's Statement of Position.” 29 C.F.R. § 102.66(d).

II. The Regional Director Erred When She Held That PhD Students on SGAs Are Employees Under the Act.

Northeastern submits that *Columbia* was wrongly decided and represents an unjustified departure from settled precedent. *See Adelphi Univ.*, 195 NLRB 639, 648 (1972); *Leland Stanford Junior University*, 214 NLRB 621, 623 (1974); *Brown University*, 342 NLRB 483 (2004).

Students are not employees under the Act.

A. The Regional Director Erred By Barring Northeastern From Presenting Evidence That Even Under *Columbia*, Its PhD Students Are Not Employees.

The Regional Director compounded this error and committed reversible error by barring Northeastern from presenting evidence that even under *Columbia*, Northeastern PhD students on SGAs who perform research or instructional services are not employees under the Act. While the rules permit the Regional Director to require an offer of proof on any issue, the point of the rule is to determine whether the evidence, if allowed, would be sufficient to support the argument. 29 C.F.R. § 102.66(c). But that was not the reason why the Region sought to avoid a hearing on the issue. The Region required Northeastern to provide an offer of proof on every issue in its Statement of Position. (Tr. 18.) Representatives of the Region repeatedly informed Northeastern that it sought to avoid or limit the scope of the hearing because of limited resources and because an election in another matter was taking significant time and attention. (Tr. 27.) This is reversible error that prejudiced Northeastern.

B. By Requiring Northeastern to Make an Offer of Proof and Then Denying Northeastern the Opportunity to Present Evidence, the Regional Director Deprived Northeastern of Due Process.

Putting aside the Region's improper motive for requiring the offer of proof, the blanket requirement for an offer of proof from Northeastern deprived it of due process. The Region indiscriminately applied different standards to both parties, forcing Northeastern to provide an offer of proof on whether the petitioned-for unit was appropriate along with every other issue in

its case (thereby allowing the Union a free preview of the University's evidence and arguments) even though *the Union bore the burden of proof* on whether the petitioned-for unit was appropriate. Northeastern timely objected to this. (Tr. 19-20, 22-24, 25-26.) And while the Region ultimately relented and allowed Northeastern to litigate some issues, the Region improperly used the offer of proof to deprive Northeastern of a fair hearing.

C. The Regional Director Ignored the Law and the Substance of Northeastern's Offer of Proof When It Precluded Northeastern From Presenting Evidence.

The Region ignored both the law and the offer of proof as to the issue of whether or not PhD students on SGAs are employees even under *Columbia*. In *Columbia*, the Board adopted the common law of agency to determine whether a student is an "employee" under the Act. *Columbia*, 364 NLRB at 1083. Common law employment requires that the employer have the right to control the employee's work, and that the work is performed in exchange for compensation. *Id.* at 1094 (citing *Seattle Opera Assn.*, 331 NLRB 1072, 1073 (2000)). The Board acknowledged what the Region ignored: that a graduate student on a teaching or research assistantship might not be an employee if the university did not control their work or if the assignment related to the student's educational goals. *Id.* at 1096.

Northeastern's offer of proof demonstrated that the evidence, had it been permitted to present it, raised a significant factual question in this regard. After generally describing an SGA, Northeastern provided a specific description of witnesses and what they would say (if permitted) at trial as to how the PhD students on SGA are unlike the relationships at issue in *Columbia*:

- Northeastern is a leader in experiential learning, meaning that students at all levels are getting academic credit for real world experience. In the context of PhD students on SGA, some have research assistantships where their "assignment" is off-campus at a third party.¹² (Tr. 34-35, 45.)

¹² This group of PhDs is different from the so-called Industry PhDs, who the Union later agreed should be excluded. (Tr. 35, 254, 255, 486.)

- More generally, when a PhD student is assigned a research assistantship, that “is intended to correlate with their own research in pursuing as dissertation,” meaning that it is intended to facilitate their ability to earn the degree and become a first rate researcher. (Tr. 36.) They are being provided a stipend to enable them to do research to earn their degree. (*Id.*)
- Sara Wadia-Fascetti, Vice Provost for the PhD Network, would have testified that a PhDs student’s research assignment “aligns with the student’s dissertation topic or their research goals” because “Northeastern wants the PhD student focused on research” and because the focus of the degree is the student has “demonstrated that [they]’re a first rate researcher.” (Tr. 43.)
- She also would have testified that there is a similar rationale relating to teaching assistantships, particularly given Northeastern’s focus on experiential learning, because being able to communicate complex ideas is an important skill and an essential part of graduating with the PhD degree. (Tr. 43-44.)
- Dr. Amal Ahmed would have testified that in the Khoury College of Computer Science (“Khoury”), a teaching assistantship is required to graduate with a PhD in computer science and the teaching component is intended to give them experience explaining complex ideas regardless of whether the end up in academia. (Tr. 50.)
- She also would have testified that in Khoury, research assistantships are based on the student’s research interests so that they can maximize their time on those interests and develop the skills needed to complete their dissertation. (Tr. 50-51.)
- Dr. Jennifer Kirwin, Associate Dean in Bouve College, would have testified that there is “an intentionality” to match research and teaching assistantships with the student’s own research interests and that research assistantships are directly tied to the student’s dissertation research topic. (Tr. 53-54.)
- Dr. Mark Niedre from the College of Engineering would have testified that PhDs students typically determine their dissertation topic in their first year and the College then works to assign them research assistantships that support their dissertation research goals. He would have testified that there is “no distinction” between the work for their research assistantship and the work they’re doing to support their dissertation. (Tr. 55-56.)
- Dr. Mark Williams in the College of Science would have testified that research assistantships are intended to support the student’s dissertation topic and that the work performed for the assistantship is the same as the work for the dissertation. (Tr. 57-58.)

After a lunch break, the Region concluded that it would not allow litigation on the status of the students as employees, claiming that the offer of proof did not establish that the students were different from those in *Columbia*.

But this cannot be correct. In *Columbia*, the Board expressly recognized that a research assistantship and the associated funding could be used to “further a student’s education” and allow them to pursue their own educational goals. 364 NLRB at 1096. In that instance, the student would not and could not be a common law employee. *Id.* The offer of proof was certainly sufficient to permit Northeastern to at least litigate the issue. The foregoing description makes clear that both research and teaching assistantships are intended to further the students’ research goals, academic interests and to help them earn their degree.

Silently acknowledging its error here, the Region in its DDE attempted to add to the rationale for its decision to find that the offer of proof was insufficient. But its post hoc rationalization only makes the error worse. First, the Region specifically noted that some unidentified witnesses, presumably those called by the Union, denied that their research assistantships contributed to their dissertation. (DDE, p. 2 n.4.) But having barred Northeastern to present evidence, the Region cannot rely on evidence presented by the Union to reject the substance of the offer of proof. If anything, the Region’s reliance on the Union’s evidence in this regard simply means that there should have been a full hearing.

Second, the Region attempts to claim that its decision fits within *Columbia* because a student can be an employee if work associated with a research assistantship advances the interests of both the university and the student. (DDE, p. 2-3.) But the offer of proof gave no indication that Northeastern controlled the work of a student’s research assistantship or that such work was for the benefit of Northeastern. The Region’s conclusion in this regard is based on speculation.

Third, the Regional Director’s decision barring Northeastern from even presenting evidence conflicts with how other Regions have handled the issue and demonstrates inconsistent

and arbitrary treatment and denial of due process. For example, the Regional Director's decision conflicts with Region 10's decision in *Duke University*. There, the Region permitted Duke University to litigate the issue of whether its PhD students were employees under *Columbia*. See *Duke University*, Case No. 10-RC-313298 (July 10, 2023). The Board should afford parties the same due process consistently across all Regions.

Thus, the Regional Director erred when she precluded Northeastern from presenting evidence that its PhD students on SGAs are not employees under the standard set forth in *Columbia*.

D. The Record Evidence Demonstrates That PhD Students on SGAs Are Not Employees Under *Columbia* But Are, Instead, Students.

The offer of proof combined with what is in the record demonstrates not only that the Region should have allowed litigation on this issue, but that Northeastern PhDs on SGAs are students, not employees. The primary and overwhelming goal of research assistantships is for students who receive them to pursue their own research interests, to support their dissertation research, and to develop the skills necessary to become excellent researchers. As Dr. Williams testified, there is no difference in the research conducted by a PhD student on an SGA in his lab versus a PhD student not on an SGA and without a service assignment. (Tr. 201, 202.) All of this is intended to further the student's own research goals. Moreover, Northeastern's PhD students must continue to make progress on their dissertation research in order to remain in good academic standing and in order to continue in the PhD program. (Tr. 203.)

Similarly, the primary goal of Northeastern's teaching assistantship is to further students' experiential learning and prepare students for their careers. (Tr. 78.) A PhD student with a teaching assistantship can earn a teaching certificate which demonstrates that the PhD student is an effective teacher. (Tr. 78.) And getting instruction on being an effective teacher is crucial, because, through the process of teaching, PhD students learn how to communicate complex

ideas, which is what they will need to as an advanced researcher after they graduate, whether in academia, industry, or another organization. (Tr. 78.) For this reason, a graduate student's performance in their teaching assignment is considered as part of a larger review of the student's academic progress. (Tr. 91, 92, 203, 206, 207, 215.) This is all part of Northeastern's unique focus on experiential learning that could have been more fully developed through witness testimony if the Region had allowed it.

Columbia is different. In *Columbia*, the Board focused on the faculty's "direction" of student research assistants' work. That is wholly lacking here. At Northeastern, students are encouraged to learn and appreciate the intellectual rigors of complex research projects and assignments, even through SGAs. They are not "directed" in the same way that an employer directs or controls an employee's work. Rather, the goal of the relationships between faculty and students performing research assistant duties is to benefit students intellectually and strengthen their education.

Thus, although the Region barred Northeastern from presenting evidence on this issue, the offer of proof and record evidence shows that the PhD students on SGAs in the petitioned-for unit are distinguishable from the graduate students at issue in *Columbia*. They are not students *and* employees. They are *students*. Indeed, the Union conceded at the hearing that any purported employment relationship is "overlapping" with the educational relationship; it is not distinct. (Tr. 119). While the Union tried to claim that this is consistent with *Columbia*, the Board's holding in that case is premised on the notion that a student's service to Columbia was for the benefit of the university and distinct from the educational relationship.

E. The Regional Director's Decision That Northeastern's PhD Students on SGAs Are Employees Under *Columbia* Conflicts With Her Decision in *MIT* and Results in an Inconsistent Application of the Law.

In fact, the Region's error in this regard is inexplicable in light of its decision in

Massachusetts Institute of Technology, Case No. 01-RC-304042 (2023). In that case, the Region concluded that students on fellowships were not employees under the Act or *Columbia*. The Region explained that, under *Columbia*, “the common law definition of employment requires that the students perform work, directed by the university, in exchange for compensation.” *Id.* p. 10. However, “the work performed [by graduate students on fellowships] is indistinguishable from academic work and the direction is indistinguishable from academic direction.” *Id.* Moreover, “the compensation received by the fellows is not directly tied to completing particular tasks, as directed; rather, it is tied to maintaining academic good standing.” *Id.* Students on fellowships conduct thesis research to earn their degrees, but they do not do so “under the direct supervision of a faculty member who controls their funding and makes certain that their [research] aligns with the objectives in the contract on which they are supported.” *Id.* at 10-11. Thus, the Region concluded that “[t]he fact that fellows must meet no employment responsibilities or service requirements to receive or maintain their fellowship awards supports a finding of non-employee status.” *Id.* at 11.

The logic of *MIT* applies here. Just like the graduate student fellows at issue in *MIT*—and especially combined with Northeastern’s focus on experiential learning—the research and teaching that Northeastern’s PhD students on SGAs perform is indistinguishable from their academic work and from their dissertation research. Nor does any faculty member control any PhD students’ funding or stipend; Northeastern commits five years of funding to each graduate student regardless of the source of that funding. (Tr. 75, 86.) If any particular funding does not materialize or ceases to exist, Northeastern still continues the students’ funding. (Tr. 75, 86.) Thus, just like in *MIT*, “the work performed [by graduate students on SGAs] is indistinguishable from academic work and the direction is indistinguishable from academic direction.” *MIT*, Case

No. 01-RC-304042, at 10. Indeed, during the hearing, the Union acknowledged that students on fellowships who are doing research in a lab are indistinguishable from those on SGAs doing research in a lab.

Accordingly, the Regional Director erred in barring Northeastern from litigating whether PhD students on SGAs were employees under *Columbia*, and she erred in finding that PhD students on SGAs are employees under the Act. She should have permitted Northeastern to present evidence on the issue, and she should concluded that students on SGAs are not employees within the meaning of § 2(3) of the Act or under *Columbia*.

III. The Regional Director Erred When She Found the Petitioned-For Unit Appropriate For the Purposes of Collective Bargaining.

In concluding that the petitioned for unit was appropriate, the Region misapplied Board law and made erroneous factual conclusions. Under Section 9(b) of the Act, “[t]he Board shall decide in each case whether, in order to assure to employees the fullest freedom in exercising the rights guaranteed by this Act, the unit appropriate for the purposes of collective bargaining shall be the employer unit, craft unit, plant unit, or subdivision thereof.” 29 U.S.C. § 159(b). Thus, “[t]he Board has an affirmative statutory obligation to determine the appropriate bargaining unit in each case.” *Allen Health Care Services*, 332 NLRB 1308, 1308 (2000) (citing *American Hospital Assn. v. NLRB*, 499 U.S. 606, 611, 614 (1991)). In carrying out its statutory obligation, the Board “guard[s] against truly arbitrary or irrational units by invalidating petitioned-for units that constitute haphazard groupings of random classifications, or that represent arbitrary segments of broader groups with indistinguishable interests.” *American Steel Construction, Inc.*, 372 NLRB No. 23, slip op. at 4 (2022).

In *American Steel*, the Board returned to the standard set forth in *Specialty Healthcare*¹³ for evaluating whether a petitioned-for unit is appropriate. Under *American Steel*, the Union must establish that employees in the petitioned-for unit “(1) share[] an internal community of interest; (2) [are] readily identifiable as a group based on job classifications, departments, functions, work locations, skills, or similar factors; and (3) [are] sufficiently distinct.” *American Steel*, 372 NLRB No. 23, slip op. at 17. These requirements were not met here.

A. The Regional Director Erred When She Found That the Petitioned-For Unit Shares a Community of Interest.

As the Region acknowledged, the Union had to prove that the individuals in the petitioned for unit shared a community of interest based on the Board’s long established factors. Yet the Regional Director spent less than one page of the DDE addressing the facts relevant to these factors, and absent in this section of the DDE is any actual weighing of the factors or a conclusion that the Union established that petitioned for unit shares a community of interest. (*See* DDE, pp. 10-11.) That omission is no accident. The Regional Director never found an internal community of interest with the proposed unit because the Union never proved that one existed.

The Union took the position that the Board in *Columbia* held that a unit consisting of PhD and Master’s students is presumptively appropriate. In that case, the Board determined that the students shared a community of interest only after applying the community of interest factors from *Specialty Healthcare* and only “within the context of this unit.” *Columbia*, 364 NLRB at 1099-1100.¹⁴

¹³ *Specialty Healthcare & Rehabilitation Center of Mobile*, 357 NLRB 934 (2011).

¹⁴ The Board in *Columbia* also affirmatively recognized that, even among Columbia University’s graduate student assistants, there were other potentially appropriate units: “[W]e find that—although there might potentially be other appropriate unit groupings among these student assistants—the petitioned-for classifications share a sufficient community of interest to form *an*

Here, the Region should have concluded that the Union failed to establish a community of interest, but instead it ignored the community of interest factors and even improperly shifted the burden to Northeastern. In doing so, the Regional Director failed to follow the law.

In fact, the Regional Director did not assess each of the community of interest factors and thus could not conclude that the unit actually shares an internal community of interest. Instead, she threw out the actual community of interest test and suggested that all students further Northeastern’s mission of conducting research and educating students. This generic statement cannot be used to mask what is missing here under extent Board law. Had she applied the law, and credited the evidence, she would have been forced to conclude that there is no community of interest and that the Union did not meet its burden.

Here, the record evidence demonstrates that there is no community of interest between hourly-paid Master’s and other graduate students and PhD students on SGAs. When evaluating whether a community of interest exists, the Board examines:

whether the employees are organized into a separate department; have distinct skills and training; have distinct job functions and perform distinct work, including inquiry into the amount and type of job overlap between classifications; are functionally integrated with the employer’s other employees; have frequent contact with other employees; interchange with other employees; have distinct terms and conditions of employment; and are separately supervised.

American Steel, 372 NLRB No. 23, slip op. at 2; *see also Kalamazoo Paper Box Corp.*, 136 NLRB 134, 137 (1962) (listing community of interest factors). In doing so, the Board requires that the petitioned-for unit be “homogenous”—the Board will reject a petitioned-for unit “where the petitioned-for employees represent a heterogeneous grouping of classifications with disparate

appropriate unit.” *Columbia*, 364 NLRB at 1098 (emphasis in original); *see also Yale Univ.*, Case No. 01-RC-183014 (2017) (certifying nine different graduate student units).

interests.”¹⁵ *Id.*, slip op. at 3. The Regional Director ignored this law and failed to apply the actual facts to this law.

1. The DDE failed to address how hourly-paid students and PhD students on SGAs are organized, because organization among the two is completely different.

In the DDE, the Regional Director failed to address that hourly-paid students and PhD students on SGAs are organized completely differently. But the record evidence shows the numerous differences in organization, and this factor supports a finding of no community of interest.

Hourly employees and stipended PhDs have completely different organizational structures. Student employment is administered and supported by SEGAF, which reviews and approves all postings, posts jobs to Workday, and manages the process. (Tr. 148, 149.) Student employees can get jobs either through work study, which cannot extend beyond a semester and which must comply with a host of other statutorily required conditions (all of which is managed by SEGAF), or non-work study jobs, which cannot extend beyond one academic year. (Tr. 156, 157.) Students may also be hired for less than a semester. (Tr. 208, 375 (Braconnier testifying that he worked as an hourly employee between semesters, during winter break).)

¹⁵ A heterogenous grouping can be found when the diversity of interests is greater than the common interests. *The Grand*, 197 NLRB 1105, 1106 (1972) (for a unit to be appropriate, elements of common interest must “supply a sufficient bond to overcome the diversity of interests among employees”). Factors can include mutuality of interests in wages, hours, and other working conditions, frequency of contact and interchange with other employees, and functional integration. *Turner Industries Group, LLC*, 349 NLRB 428, 430 (2007); *Yuengling Brewing Company of Tampa, Inc.*, 333 NLRB 892, 892 (2001). The determination that the skills, duties, and qualifications of an employee grouping are diverse supports a finding that a unit is inappropriate. *Tuskegee Institute*, 221 NLRB 944, 944 (1975). A heterogenous group also lacks common supervision, place of work, and performs generally unrelated work. *Hayes Aircraft Corp.*, 98 NLRB 362, 365 (1952) (establishing separate voting groups for carpenters and cabinet makers, and maintenance mechanics).

Student employees are hired on an ad hoc basis, paid hourly, and record their hours worked each week. (Tr. 155, 158, 159.) If a student employee fails to timely enter his or her hours, the student will not be paid and SEGAF is responsible for following up with the student. (Tr. 159.) Student employees are not evaluated in the same manner as PhD students on SGAs; rather, unlike a PhD student, a student employee's performance in an hourly position has no impact on that student's academic performance. (Tr. 215.)

Moreover, student employees are not limited to PhD students or even graduate students; nor are student employees limited to research- or teaching-related roles. To the contrary, SEGAF treats all student employment the same, at both the graduate and undergraduate levels. All students can apply for hourly positions relating to a diverse set of tasks, from research support, to yoga instruction, to checking in students at the resident halls, and everywhere in between—all of which is managed in the same manner by SEGAF. (Tr. 148, 149, 151, 152.)

PhD students on SGAs are organized in a completely different matter. (Tr. 212.) SEGAF is not responsible for supporting PhD students. Instead, the SGA process is managed out of the Provost's Office. (Tr. 67, 68.) PhD students on SGAs receive a funding commitment for five years with their admissions decision. (Tr. 86; NU Ex. 1). They are not required to keep track of their hours; they do not apply for positions on Workday; their performance on their research or teaching assistantship is part of their academic review and progression; and they are managed in a completely different matter.

Thus, this factor does not support a community of interest. Indeed, as mentioned, the Regional Director did not specifically address this factor in the DDE, presumably because it did not support the existence of a community of interest.

2. The DDE ignored that hourly-paid students and PhD students on SGAs have distinct skills and training.

The Regional Director ignored whether or not students in the petitioned for unit have distinct skills and training. In fact, the record establishes substantial differences between student employees hired through SEGAF and PhD students on SGAs. Students apply to open hourly positions through SEGAF, and there is no requirement that the position be connected in any way to the students' area of study. (Tr. 155, 156, 194.) Indeed, the types of positions available to students through SEGAF is incredibly diverse, ranging from graders, to yoga instructors, to resident hall proctors (permitting access to resident halls), and all manner in between. (Tr. 151, 152.)

Although the Union limited the petition to jobs involving instructional or research services, SEGAF broadly classifies jobs as teaching or research assistant positions. Even the postings selected by the Union demonstrate this: For example, Petitioner Exhibit 33(b), which is a posting for a "Graduate Student Research Assistant," does not actually require research. Rather, it requires the applicant to be able to translate written and oral Haitian Creole, Chinese, Portuguese, and Spanish. (Pet. Ex. 33(b).)

For example, Union witness Chelsea Diaz testified that she was granted a work study job as part of her financial aid package as a law student.¹⁶ (Tr. 292-93.) However, her work had nothing to do with her ability to earn a law degree. (*Id.*) Nor does she receive any credit towards

¹⁶ The law school experience—in which students are pursuing a professional degree—is very different from the PhD experience or other graduate school experience. *See, e.g., Syracuse University*, 204 NLRB 641, 643 (1973) (noting that law faculty have different interests than other university faculty, including that law faculty are "oriented more closely to their chosen field than to the academic or university world, with intellectual interests more nearly aligned with those of their brethren in practice than with their academic colleagues of the faculty"). Thus, Ms. Diaz's testimony of her experience as a part-time law student employee is not relevant or representative of PhD students' or other graduate students' experiences.

her degree through her performance of work study jobs. (Tr. 300). These were just jobs to earn extra money.

Moreover, not all hourly student employees have the same skills and training. Dr. Ahmed testified that she typically uses undergraduate students (hired hourly through SEGAF) as graders in her course rather than Master's students. (Tr. 244.) In her view, the undergraduate students have a better understanding of the course and its materials.

PhD students on SGAs, on the other hand, have the distinct skills and training necessary to conduct research and teaching assistantships. They are selected precisely because they have been admitted into an associated PhD program. Indeed, the whole purpose of Northeastern's curriculum for PhD students is to provide them with the hands-on training and skills to perfect and hone their research and teaching skills. (Tr. 68, 69, 70, 78.) In contrast, the record testimony demonstrates that graduate and other hourly-paid student employees do not have the skills to teach and perform the advanced teaching assistant roles that come with a teaching assistantship. (Tr. 207, 223.)

Northeastern also provides PhD students with an orientation program that discusses, among other things, their research experience. (Tr. 90, 91.) Thus, the record evidence shows that student employed through SEGAF and PhD students on SGAs do not have the same skills and training. Accordingly, this factor weighs against a community of interest. *See, e.g., United Operations, Inc.*, 338 NLRB 123, 123-125 (2002) (no community of interest between HVAC technicians and other employees where HVAC technicians had discrete and particular skills).

3. The DDE ignored evidence that hourly-paid students and PhD students on SGAs have distinct job functions and perform distinct work.

Hourly-paid Master's students and PhD students on SGAs do not perform the same tasks. PhD students on teaching assistantships lead the class and provide lectures, develop the course

materials, and teach a seminar or laboratory course. (Tr. 95, 202, 222.) PhD students on SGAs may also be the Instructor of Record, meaning that they are the only teacher of the course. (Tr. 95.)

Hourly-paid students are different. As a threshold issue, student employees perform a host of different tasks, depending on the specific job in question. A yoga instructor or a student translating Haitian Creole, for example, is not similar to a PhD student conducting advanced research in physics. Nor are such hourly positions similar to what was described by Union witness Max Von Hippel, who testified that he utilizes mathematical techniques and computation logic to identify vulnerabilities in computer protocols and then publishes those results in peer reviewed journals. (Tr. 450.)

To the extent a student is hired to assist with teaching, that student would almost always be asked to only grade assignments. (Tr. 95, 207, 223). Union witness Chelsea Diaz made clear that her role as a teaching assistant is different from that of a PhD student on an SGA. As the “teaching assistant” for a Constitutional Law course, she does not teach. She holds office hours by appointment and she performs an optional review in which she presents a recycled PowerPoint presentation.¹⁷ (Tr. 295-96.)

Moreover, PhD students may have teaching requirements in their course curriculum. When they do so, the PhD student is expected to perform far more than merely grading assignments. (Tr. 247, 248; NU Ex. 10; NU Ex. 11.)

The Union’s witnesses’ testimony does not change these facts. To the contrary, their testimony was largely conclusory and not based on personal knowledge. For example, Union

¹⁷ On redirect, Diaz attempted to claim that her review session is different than that of her predecessor because she provides three sessions. However, she admitted that her decision to offer multiple sessions was based on her experience as a student. (Tr. 307.)

witness Lisa Oakley testified that she does not actually know whether or not certain individuals were PhD or Master's students. Instead, she merely Googled an individual's name in anticipation of testifying at the hearing. (Tr. 355.) Similarly, Union witness Marcella Heineke testified that she does not know which students have SGAs or teaching or research assistantships. (Tr. 428-430.) And she admitted that she has only been in laboratories on occasion and does not have knowledge about what students are actually doing in those labs. (Tr. 435-37.)

Thus, the record evidence shows that student employees and PhD students on SGAs perform distinct job functions and work. In the DDE, the Regional Director suggested that there is "some overlap" between the job functions of the two groups, but this simply ignores the actual evidence. Indeed, the Regional Director acknowledged that most of the students are "assigned to specific jobs which involve unique tasks." (DDE, p. 11.)

4. The Regional Director failed to give the appropriate weight to the record evidence showing that hourly-paid students and PhD students on SGAs are not functionally integrated.

Hourly-paid students and PhD students on SGAs are not functionally integrated because they perform different tasks. Of course, there is no functional integration between PhD students on SGAs and the vast majority of student employees who perform all sorts of different functions at the University (such as checking students into resident halls). And even when student employees have marginally research- or teaching-related positions, those positions are not functionally integrated with PhD students on SGAs. For example, Dr. Williams testified that in the very limited situations where the Physics Department would hire a Master's student in an hourly role, that student would be limited to grading. (Tr. 207.) And in the even more limited situation where a student employee may be asked to cover some portion of a PhD student's duties, the student employee would not cover all of the duties; at most, they may be asked to take on some grading assignments. (Tr. 209.)

The Union witnesses' testimony supports this. For example, Union witness Chelsea Diaz, a second year law student, testified that her financial aid package included work study. Accordingly, her two jobs have nothing to do with Ms. Diaz obtaining her law degree. (Tr. 292, 293, 297, 298.) No PhD student on an SGA performs similar work as part of that student's research or teaching assistantship.

The Regional Director noted that an hourly student and a stipended student might work in the same lab. But the evidence establishes that the Master's student is not performing the same work as a PhD student on a research assistantship. Nor is the student functioning under the same operational framework. Accordingly, this factor weights against a community of interest.

5. The DDE correctly concluded that hourly-paid students and PhD students on SGAs do not have frequent contact.

The Regional Director acknowledged that there is "little to no contact" among student employees. (DDE, p. 11.) PhD students on SGAs do not, for example, have frequent contact with a Master's student who happens to teach yoga as an hourly position, except perhaps to take the yoga class. Nor is there frequent contact even between the hourly positions that contain some type of research or instructional component. For example, Dr. Williams testified that the College of Science very rarely hires Master's or other graduate students on an hourly basis. (Tr. 207.) Dr. Ahmed testified that she does not even hire graduate students on an hourly basis. (Tr. 244.)

Union witness Marcella Heineke similarly testified that she had no interaction with Master's student employees (or any other student employees) during her teaching assistantships. (Tr. 393.) And of course, there is no contact between Union witness Chelsea Diaz and any PhD students on SGAs because Ms. Diaz is a law student and there are no PhD students in the law school.

The only evidence of contact between hourly graduate students and PhDs students was through the testimony of Lisa Oakley. According to Ms. Oakley, students would make

presentations at weekly or bi-weekly meetings. However, she admitted that this was a process for students to get feedback on their research and was part of their academic progression. (Tr. 346-47.) It had nothing to do with any alleged employment. In short, there is no frequent contact, and, this factor weighs against a community of interest. Thus, the Regional Director acknowledged the lack of contact among the students in the unit, but erred in failing to conclude that there is no community of interest.

6. The DDE agreed that hourly-paid students and PhD students on SGAs do not interchange.

As the Regional Director found, “there is no evidence of interchange between hourly and stipended” students. For example, a PhD student on an SGA does not fill in for a Master’s student teaching yoga. As another example, none of the Union’s witnesses fill in for an hourly student employee translating Haitian Creole.

Moreover, even when a PhD student and a Master’s student are performing some teaching-related duties within the same department, there is no interchange. At most, a Master’s student could conceivably be hired on an ad hoc basis to cover grading, but even then the Master’s student would not be assuming all of the duties performed by a PhD student on an SGA.¹⁸ (Tr. 209. 210.) Thus, this factor weighs against a community of interest. *See, e.g., Ore-Ida Foods, Inc.*, 313 NLRB 1016, 1020 (1994) (no interchange and thus no community of interest where, although a few production employees served as maintenance assistants during plant shutdowns at times, those employees did not perform actual maintenance work).

¹⁸ While Lisa Oakley tried to claim that she and Master’s students performed the same tasks, she was not sure who was a Master’s student versus a PhD student, except that she Googled names to prepare for the hearing. (Tr. 355.)

7. The Regional Director acknowledged that hourly-paid students and PhD students on SGAs are paid differently, but she ignored and failed to give the appropriate weight to significant evidence of other distinct terms and conditions.

The terms and conditions governing student employees and PhD students on SGA are distinct as well. First, as the Regional Director acknowledged, stipended and hourly graduate students are paid differently. (*See* DDE, p. 10.) Student employees are paid by the hour at the rate set by SEGAF. SEGAF determines the rate based on factors, such as the level of responsibility the role entails. (Tr. 153, 154.) Student employees are paid on a biweekly schedule. (Tr. 154.) Student employees also receive no additional benefits beyond an hourly rate. (Tr. 295.) In contrast, PhD students on SGAs receive tuition waivers, health insurance (including dental insurance), and annual stipends, which are paid out on a semi-monthly basis. (Tr. 75, 85, 159.)

Second, the length of student employees' employment is different from PhD students' SGA term. PhD students on SGAs are provided a five-year funding commitment at the time they are admitted to Northeastern. (Tr. 75, 86.) Hourly student employees, in contrast, apply for discrete ad hoc positions through Workday as those positions become available. Those positions are no more than one year (for non-work study positions) or one semester (for work study positions), and may even be for less than a semester. (Tr. 156, 157, 208, 375.) As Union witness Chelsea Diaz explained, she has no commitment to serve as a teaching assistant in the future.¹⁹ (Tr. 299.) Similarly, Union witness Lisa Oakley explained that while she had a funding commitment through graduation, a Master's student worked on an hourly basis in a lab for only one semester. (Tr. 343-44.)

¹⁹ While she testified that the professor for whom she does case research would like her to continue in that role, she has not resumed that work because she did not have the bandwidth. That underscores how ad hoc hourly positions can be, Ms. Diaz decides for herself whether she has the time (or interest) in performing any work.

Third, hourly student employees are subject to different requirements than PhD students on SGAs. Student employees are required to keep track of their hours and record their time worked. (Tr. 158, 159.) In contrast, PhD students on SGAs have no such requirement; they do not keep track of their time. PhD students on SGAs are paid their full stipend no matter how many or how few hours the PhD students spend on their research or teaching assistantships. (Tr. 77, 78.) Rather, their performance is evaluated by their overall academic progression. (Tr. 215.)

Fourth, hourly student employees' positions may be work study positions, which require SEGAF to ensure compliance with a host of government regulations. (Tr. 152, 153.) Such federal regulations include that work study cannot exceed a semester, cannot displace a full-time employee, and cannot be used for political work or, as an example, to build a church. (Tr. 152, 156.) There are no such requirements applicable to PhD students on SGAs.

Fifth, the required qualifications for hourly student employment versus PhD students on SGAs are also very different. Hourly student employees have no requirement that their academic course of study be related to the subject matter of the position to which they apply. For example, a yoga instructor could be a Master's student studying political science. (Tr. 155, 156.) Hourly student employees must only meet the requirements of the posted job, and their applications are reviewed by the department or person who submitted the "job requisition request" to SEGAF. (Tr. 152, 155.) PhD students, in contrast, are given SGAs through the admissions process and their research or teaching assistantship is tied to their academic program and progress. (Tr. 86.)

Union witness Lisa Oakley made clear how her role as a PhD student is different from that of a Master's student. She explained that as part of her research assistantship, she was able to publish a paper based on that research, which allowed her to earn her Master's degree while working towards her PhD. (Tr. 345-46.) In contrast, a Master's student in the lab was paid an

hourly rate for one semester, and there is no evidence that his work in the lab had anything to do with his degree program. (Tr. 344.)

Sixth, the evaluation process for student employees and PhD students on SGAs is also very different. PhD students are evaluated based on their academic progress, including an evaluation of their service in a teaching or research assistantship, as applicable. (Tr. 215.) Student employees, on the other hand, are not evaluated based on their performance as an hourly employee, whether that be a teaching assistant, grader, or research assistant (or yoga instructor for that matter). (Tr. 208, 215.)

Seventh, the difference in duration of a PhD program and a Master's student means that they have different interests. While it typically takes a PhD student four to six years to earn the degree, a Master's student may complete the degree requirement within one to two years. (Tr. 75, 102, 103.) Thus, not only do Master's students work for only a semester or so at a time and on an ad hoc basis, they leave the University more frequently. The evidence demonstrates that in May 2023 fewer than 10% of the PhDs students graduated. In contrast, almost half of the hourly paid Master's students graduated. (Tr. 102, 233; Bd. Ex. 3.) This turnover underscores that it is inappropriate to merge together in a single unit students on SGAs with those who have hourly jobs on ad hoc basis.

8. The DDE ignored evidence that hourly-paid students and PhD students on SGAs have different supervision structures.

The supervision structure is vastly different between student employees and PhD students on SGAs. As explained above, PhD students are evaluated based on their academic progress, including an evaluation of their service in a teaching or research assistantship, as applicable. (Tr. 215.) Hourly student employees, however, are not evaluated at all based on their student employment. (Tr. 208, 215.) Thus, a PhD student must remain in good academic standing in

order to continue their PhD program, and therefore their role in a assistantship contributes to their receiving a degree. (Tr. 203.) However, student employees' role as an hourly employee has no bearing on those students' academic progression.

Moreover, when issues arise, the process is much different. PhD students on SGAs manage any issues directly with their faculty advisor or the Provost's Office. In contrast, hourly student employees may raise issues with their department administrator or SEGAF. (Tr. 158-59.)

Thus, given the different supervision structures between hourly-paid students and PhD students on SGAs, this factor weights against a community of interest. The Regional Director erred when she held otherwise. *See Florida Casino Cruises, Inc.*, 322 NLRB 857, 859 (1997) (no community of interest where, among other factors, employees reported to separate managers and supervisors); *see also Hebrew Home & Hosp.*, 311 NLRB 1400, 1402 (1993) (same).

* * *

In short, the Regional Director never assessed each of the community of interest factors and never concluded that the unit actually shares an internal community of interest. Had she applied the law, and credited the evidence, she would have been forced to conclude that there is no community of interest. Instead, she threw out the test altogether and suggested that all students further Northeastern's mission of conducting research and educating students. This generic statement cannot be used to mask what is missing here under extent Board law.

B. The DDE Ignored Clear Evidence That the Petitioned-For Unit Is Fractured and Not Comprised of a Readily Identifiable Group.

The petitioned-for unit is also inappropriate because it does not constitute a readily identifiable group based on job classifications, departments, functions, work locations, skills, or similar factors. *American Steel*, 372 NLRB No. 23, slip op. at 4. Here, the Regional Director erred when she found that the petitioned-for unit is readily identifiable because the Regional

Director did not apply the correct test. Instead, she stated only that all of the students in the unit are “graduate” students, and Northeastern itself distinguishes between graduate and undergraduate students. (DDE, p. 12.) But that distinction is based on their academic degree program, not their supposed “employment” status. This misunderstanding of the test and the relevant evidence lead the Regional Director to an erroneous conclusion.

In order for a petitioned-for unit to be “identifiable,” it must be “logically and reasonably [] segregated from other employees for the purposes of collective bargaining.” *American Steel*, 372 NLRB No. 23, slip op. at 3. In other words, there must be a “substantial, rational basis” for the unit’s contours, so that the petitioned-for unit “does not represent a ‘clearly arbitrary’ unit composed of random classifications and with no coherent organizing principle.” *Id.* at slip op. 3-4; see also *Johnson Controls, Inc.*, 322 NLRB 669, 672 (1996); *Champion Machine & Forging Co.*, 51 NLRB 705, 708 (1943).

In cases decided under *Specialty Healthcare*, the Board determined whether a petitioned-for unit was “readily identifiable” based on the proposed unit’s common function. *DPI Secuprint Inc.*, 362 NLRB 1407, 1410 (2015) (finding group readily identifiable where “[t]hey are all the hourly employees in the prepress, digital press, bindery, and shipping departments—in short, all the hourly employees who do not work on the offset presses.”). Further, a petitioned-for unit will be inappropriate if it does not reflect the employer’s administrative or operational lines. *The Neiman Marcus Group, Inc.*, 361 NLRB 50, 53 (2014) (finding petitioned-for unit inappropriate).

Here, the Union seeks all graduate students who perform research or instructional services. But this unit is an arbitrary one. All student employees hired through SEGAF are employed through the exact same process regardless of whether the specific duties associated with any

particular job may tangentially relate to research or instruction. Thus, there is no difference between hourly paid Master's students assisting a professor with grading compared to hourly paid undergraduate students assisting a professor with grading. Yet the Union would not include undergraduate students who perform research or teaching assistant jobs, despite that they are hired the exact same way.

There is also no difference between hourly paid Master's students providing yoga instruction compared to hourly paid Master's students checking students into residence halls. All of these positions are filled and processed through the same procedures and the same office, and yet the Union has arbitrarily carved out research or instructional services—a distinction which, in and of itself, is not readily apparent among the class of student employees employed through SEGAF. For example, Workday, on which SEGAF posts all hourly student employment positions, classifies an “NU Spiritual Life Yoga Instructor” as being similar to a student reviewing medical literature, performing data analysis, and utilizing predictive modeling, computer simulation, and linear programming. (Pet. Ex. 33(c); Tr. 194, 195.)

Similarly, the Union's inclusion of hourly paid students with PhD students on SGAs with research assistantships or teaching assistantships is arbitrary. There are no similarities between a Master's students teaching yoga or providing translation services for an hourly rate as a part-time job and a PhD student developing and delivering lecture materials to students as part of their degree program. For example, Union witness Daniel Braconnier took a part-time hourly job during winter break providing music instruction to make some extra money between semesters. (Tr. 375.) Mr. Braconnier's ad hoc part time job has no connection whatsoever with PhDs students on SGAs who perform research assistantships in order to become first-rate researchers and to develop a dissertation.

Put simply, the Union’s proposed unit is a fractured one. It would carve out all hourly-paid undergraduate students performing instructional or research services, while including all hourly-paid graduate students performing the same functions. At the same time, the Union would group the hourly-paid graduate students with PhD students who are not paid hourly, but are instead provided tuition reimbursement, healthcare, and stipended assistance in order to earn their degree. The only connection between these two groups is that they are graduate students, but that has nothing to do with any supposed employment relationship. And of course, undergraduate student workers are students too. In short, the Union is attempting to draw an artificial line in Northeastern in a manner that the Board has consistently rejected. *See, e.g., Neiman Marcus*, 361 NLRB at 52. Thus, the proposed unit is not a readily identifiable group.

Accordingly, the Union’s petitioned-for unit is not “identifiable” and is not “logically and reasonably [] segregated from other employees for the purposes of collective bargaining.” *American Steel*, 372 NLRB No. 23, slip op. at 3. When considering similar “truly arbitrary or irrational units,” the Board “invalidat[es] petitioned-for units that constitute haphazard groupings of random classifications, or that represent arbitrary segments of broader groups with indistinguishable interests.” *Id.*, slip op. at 4. For example, the Board rejected the petitioned-for unit in *Catholic Community Services*, 247 NLRB 743 (1980), because it was arbitrary and not identifiable:

The Petitioner is requesting that employees from some of the facilities be included; some facilities are completely excluded from the unit sought. Furthermore, not all employees at each specified facility are included in the requested unit. In addition, the Petitioner seeks to include some, but not all, employees in the specified job classifications. Compensation levels, duties, training, hours, and working conditions diverge widely among the members of the proposed unit. There is no common supervision for the members of the unit sought. Some employees not sought to be included in the unit share supervision with employees who are in the proposed unit.

* * *

However, the employees who the Petitioner contends would comprise this group do not share a community of interest in view of the facts stated above. We find that the unit petitioned for is an arbitrary grouping of employees inappropriate for purposes of collective bargaining.

* * *

While the Petitioner has not refused to represent employees in any other unit, it has failed to specify which alternate units would be acceptable. Furthermore, we are unable to determine, on the basis of the record, what grouping of the Employer's employees would constitute an appropriate unit. . . . Accordingly, the petition will be dismissed.

Catholic Community Services, 247 NLRB at 744.

The same result should have been reached here. But rather than providing the evidence the proper weight and other than discounting Northeastern's arguments, the Regional Director offered no real explanation for why this is anything but a fractured unit. In the DDE, the Regional Director stated only that all of the students in the unit are "graduate" students, and Northeastern itself distinguishes between graduate and undergraduate students. (DDE, p. 12.) But that distinction is based on their academic degree program, not their supposed "employment" status. Any work study student—graduate or undergraduate—can apply for an hourly position through SEGAF, and there is no required connection with their course of study. Thus, the petitioned-for unit is "truly arbitrary or irrational," and the Regional Director erred when she concluded otherwise.

C. The Regional Director Erred When She Concluded That Students at the Burlington and Nahant Campuses Share a Community of Interest with PhD Students on SGAs at the Boston Campus.

The Regional Director's conclusion that students on the Burlington and Nahant campuses share a community of interest with students on the Boston campus was also error because it misapplied both the law and facts.

Here, the testimony of Union witness Braconnier, a PhD student in the department of Mechanical and Industrial Engineering, demonstrates that there is minimal interchange between the Burlington and Boston campus. (Tr. 362.) Mr. Braconnier testified that he conducted his research in the DAPS lab, located in the Egan Research Building on the Boston campus. (Tr. 361, 362, 365.) Although the DAPS lab has satellite lab space on the Burlington campus, Mr. Braconnier testified that he would only go there for the specialized equipment, and it would only be as infrequent as “once a month if that.” (Tr. 365.) Moreover, Mr. Braconnier did not testify that he used the specialized equipment when performing a research assistantship as opposed to conducting research solely for his dissertation.

The testimony of Union witness Heineke, a PhD student in the Department of Marine and Environmental Science, also supports the lack of both contact and frequency of interchange between the Nahant and Boston campuses. (Tr. 390.) When Ms. Heineke was assigned to a teaching assistantship in her first year as a PhD student, there was no job requirement that she go to Nahant at all. (Tr. 431.) All of her teaching assistantship responsibilities were at Boston. The only time she spent in Nahant was either by personal choice, such as when she chose to hold her office hour virtually from there, on her own free time, such as when she helped a lab-mate with her dissertation work, or for academic reasons, such as meeting with her advisor. (Tr. 395, 431, 437.) None of these reasons were related to her teaching assistantship.

Moreover, there is no common supervision or place of work across the Boston, Burlington and Nahant campuses. Supervision occurs on a granular level. For PhD students, they are immediately supervised by an academic advisor who has input into whether the student is making academic progress and progress on their dissertation. (Tr. 206.) Although SEGAF handles oversight and operation of all student employment matters, the supervision of graduate (and undergraduate) students who obtain work through SEGAF is handled by the person or

department who posted the job through SEGAF. (Tr. 149, 152, 155.) SEGAF does not handle complaints between these students and their supervisors. (Tr. 158.) Supervision may even be segregated within the same lab. Union witness Lisa Oakley testified that when she worked in a lab, there were multiple lab leaders, but she only worked with one leader. (Tr. 313.)

Thus, students on the Boston campus performing research or instructional duties do not share a community of interest with students on the Burlington or Nahant campuses.²⁰

Accordingly, the Regional Director erred when she concluded otherwise.

IV. The DDE Misapplied the Law Governing Multilocation Units.

The Regional Director also erred in concluding that students at three different campus should be in the same unit. When a union petitions for a multilocation unit, the presumption in favor of a single facility unit does not apply. *Sleepy's Inc.*, 355 NLRB 132, 134 (2010). Instead the Board applies its traditional community-of-interest analysis. *Id.* “In determining whether a petitioned-for multi-facility unit is appropriate, the Board will consider the following factors: “employees’ skills and duties; terms and conditions of employment; employee interchange; functional integration; geographic proximity; centralized control of management and supervision; and bargaining history.” *Clarion Health Partners*, 344 NLRB 332, 334 (2005) (citing *Laboratory Corp. of America Holdings*, 341 NLRB 1079 (2004)). Again, the Union bore the burden of proof in this regard, and again the Regional Director disregarded the actual record. She should have concluded that only a single facility is appropriate.

The Regional Director acknowledged that “the record reveals little integration” and “reveals no evidence of [student] interchange.” (DDE, p. 8.) And for good reason. The Burlington campus is defined by the unique character of the many buildings that make up its

²⁰ Indeed, Union witness Chelsea Diaz has never been to the Burlington or Nahant campuses. (Tr. 302.)

campus, and the specialized functions and spaces they offer. There is the Innovation Campus, which is focused on inspired research, where start-up companies, and early venture companies reside. (Tr. 97; NU Ex. 6.) There is Building V, which houses a combination of training facilities related to pharmaceutical work, workshop facilities, outside organizations' laboratories, and a netted drone facility. (Tr. 98; NU Ex. 7.) There is also the Kostas Center for Homeland Security, which conducts security-related research. (Tr. 98; NU Ex. 8). And there is the stress laboratory, which is attached to the Kostas Center and the Venture Creation Center, where facilities for start-up companies are housed. (Tr. 99; NU Ex. 9.) Similarly, the Nahant campus serves as the hub for research in the area of marine studies, and the Coastal Sustainability Institute, which is located at Nahant, is specialized to that purpose. (Tr. 101, 102). There is no evidence that students perform such services at more than one campus.

The Regional Director admitted that these factors “weigh against a multi-facility unit to be appropriate,” (DDE, p. 8), and then inexplicably ignored them. *Id.*

As to the distance between the locations, the Regional Director found that Nahant is 18 miles from the Boston campus, and that Burlington is 21 miles from the Boston campus. She nonetheless concluded that these locations were close enough because Northeastern has other campuses that further away, such as London which is 3200 miles from Boston. On its face, this logic is absurd. The fact that there are other, more distant locations which are not in the petitioned for unit says nothing about the appropriateness of the unit here. By the Regional Director's logic any location on Earth could be in a single unit if Northeastern has a campus on the Moon. This is simply not the law.

In order to bolster her belief that Burlington, Nahant and Boston are close enough, the Regional Director relied on the fact that Northeastern maintains a shuttle service between them,

but conducted no analysis and relied upon no evidence to support her conclusions – because there was no evidence.. The only evidence in the record is that a shuttle exists—nothing more. In fact, the only testimony on the issue was from Union witness Marcella Heineke who admitted that she does not take the shuttle. (Tr. 412.) The Regional Director’s assertion that the existence of the shuttle demonstrates that “travel between the . . . campuses is so consistent and voluminous” is not based on any evidence actually in the record. It is rank speculation.

Finally, as to the Regional Director’s conclusion there is central administrative control over the three campuses, the Regional Director flipped the burden of proof by arguing that Northeastern failed to present evidence that Burlington and Nahant have their own administrative structure. (DDE, p. 8.) But not only was it the Union’s burden to prove otherwise, Northeastern did put on evidence explaining the specialized and unique operations at those locations.

The Regional Director erred in concluding that multilocation unit is appropriate here.

V. The Regional Director Erred in Adopting a Special Eligibility Formula.

In directing an election in an inappropriate unit, the Regional Director compounded her error by adopting a special eligibility formula. In addition to students currently in a purported unit position, she also included those who were in such positions in Fall 2022 and/or Spring 2023, unless the person graduated or withdrew from the program. While the Board adopted a special eligibility formula in *Columbia*, the facts of this case counsel against such an approach here. In *Columbia*, the Board found that special eligibility formula was warranted because student assistants at Columbia tended “to work for a substantial portion of their academic career, but not necessarily in consecutive semesters.” *Columbia*, 364 NLRB at 1100. That rationale does not and could not apply to the petitioned-for unit here.

First, a Master’s student who had a job last term, whether in the Fall or the Spring, but no job now, is not an employee under the Act and cannot vote in an election. The record establishes

that a Master's student who is hired as an hourly research or teaching assistant is typically hired for a semester with no expectation of employment beyond that particular assignment. (Tr. 156, 157, 208.) It cannot be said that such students "work for a substantial portion of their academic career." A Master's student who had a job a year ago for a semester, but has no job now is simply unemployed with no expectation of being rehired or reinstated. Such students/former employees cannot and should not be eligible to vote.

Further, it also violates the act to allow PhDs students who are currently not on SGAs to vote in an election. The Union has already agreed that a PhD student who is on fellowship is not in the unit, presumably because they cannot be employees, as they have no service commitment. But the eligibility formula adopted by the Region would allow a PhD on a fellowship to vote if they previously were on a SGA in the prior academic term. Even assuming (without conceding) that PhD students on SGAs are employees, any PhD students who formerly had an SGA but no longer do are essentially former employees, and the Board generally does not permit former employees to vote in an election. *Apex Paper Box Co.*, 302 NLRB 67, 68 (1991) ("The Board has long held, however, that employees must be employed both during the payroll eligibility period and on the election date to be eligible to vote in an election. The date-certain test for determining voter eligibility fosters predictability and stability in the election process and simplifies the process of identifying eligible voters.") (footnote omitted).

The Board has long recognized that only those individuals with a regular and continuing interest in employment should be permitted to vote in an election. *Trump Taj Mahal Casino*, 306 NLRB 294, 296 (1991) (a formula should not "permit[] individuals to vote who have no real continuing interest in the terms and conditions of employment" with the employer). The special eligibility formula here violates this basic principle because it allow individuals who have no expectation of future employment to vote.

CONCLUSION

For these reasons, Northeastern respectfully requests that the Board review the DDE in this case and reverse the decision of the Regional Director in all respects.

Dated: September 20, 2023

Respectfully submitted,

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