

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 2**

**ICAHN SCHOOL OF MEDICINE AT
MOUNT SINAI**

Employer

and

Case 02-RC-319437

SINAI STUDENT WORKERS-UAW

Petitioner

DECISION AND DIRECTION OF ELECTION

Icahn School of Medicine at Mount Sinai (the Employer) is a private institution of higher education. On June 6, 2023, Sinai Student Works-UAW (the Petitioner) filed a representation petition with Region 2 of the National Labor Relations Board (the Board) under Section 9(b) of the National Labor Relations Act (the Act) to represent certain employees of the Employer. The Petitioner sought a bargaining unit that includes all Ph.D. graduate students in the Biomedical Sciences, Neuroscience, and dual degree MD/Ph.D. programs who provide research or instructional services.¹ There are approximately 312 employees in the petitioned-for unit.

In this decision, I address two issues. The primary issue is whether Ph.D. graduate students in the Biomedical Sciences, Neuroscience Ph.D. and dual degree MD/Ph.D. programs at the Employer provide research “services” to the University in Employer laboratories and are therefore statutory employees under the Board’s test in *Columbia University*, 364 NLRB 1080 (2016). The second issue is, if the graduate students who perform research are statutory employees, whether the graduate students who provide instructional services share a community of interest with them.

The Employer contends that its Ph.D. graduate students and dual degree MD/Ph.D. students are not employees under Section 2(3) of the Act. First, it asserts that *Columbia University*, 364 NLRB 1080 (2016), in which the Board held that student assistants are statutory employees, was wrongly decided. It further contends that, in any event, the facts of this case distinguish the Employer’s Ph.D. students from the student assistants at issue in *Columbia*. I permitted the Employer to litigate the latter issue. The Employer also contends that should graduate students in Stipend-Granting Ph.D. programs be deemed to be employees, first year Ph.D. graduate students who perform research during laboratory rotations are not employees and should be excluded from the unit. The Employer further contends that Ph.D. students who

¹ The Petitioner clarified in its Responsive Statement of Position and on the record that it seeks to include dual degree students during the Ph.D. portion of their academic program and exclude them from the unit during the M.D. portion. Additionally, Petitioner seeks to include Ph.D. students in the Clinical Research Ph.D. program who provide instructional services, but not self-funded students or those who do not receive compensation from the Employer.

provide instructional services do not share a community of interest with the graduate students who perform research and therefore should not be included in the unit.

Pursuant to Section 102.63(b)(3) of the Board's Rules and Regulations, the Employer timely submitted a Statement of Position. In response, the Petitioner submitted a Responsive Statement of Position. On July 6-7 and July 10-13, 2023, a hearing officer of the Board held a hearing in this matter. The parties were provided an opportunity to call, examine, and cross-examine witnesses; to introduce into the record evidence of the significant facts that support their contentions; and to orally argue their respective positions. After the close of the record, the parties submitted post-hearing briefs that have been duly considered.

Under Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned. Based upon the entire record in this matter and consistent with relevant Board law, I find that the Employer has failed to carry its burden of proving that the Ph.D. students who perform research are not employees under Section 2(3) of the Act. The Employer has failed to demonstrate that its Ph.D. students are sufficiently distinct from the student assistants found to be employees in *Columbia* to warrant a different result. Additionally, the Ph.D. students who perform instructional services share a community of interest with Ph.D. students who perform research services. Accordingly, I am directing an election in an appropriate unit as set forth below.

I. FACTS

A. Employer's Operations and Graduate School Programs

The Employer is a private, nonprofit medical school and graduate school located in New York City. The Employer's mission is "to train the next generation of leaders in scientific and clinical discovery, innovation, education, health policy, clinical care, and advocacy, in a diverse, equitable, and inclusive learning environment." The graduate student handbook further states that the Employer "engages in basic and applied research for the purpose of advancing healthcare and wellbeing, to further understanding of the mechanisms of disease, and to improve the diagnosis, prevention, prognosis, and treatment of disease" and "encourages member of its community to publish, disclose and discuss the results of such research to serve the public interest and advance knowledge in their respective fields."

The Employer offers Ph.D. programs in Biomedical Sciences, Neuroscience, Clinical Research, and a dual degree MD/Ph.D. program. There are 312 students enrolled in the Ph.D. programs in Biomedical Science and Neuroscience, including MD/Ph.D. students in the Ph.D. portion of their studies. Of those Ph.D. students, 66 are first year students. Applicants apply to the graduate school as a whole and upon admission are not assigned to a particular research lab, faculty member, or research topic. Applicants to the dual degree program apply to the graduate school through a separate process.

Ph.D. students propose, research, and write a dissertation with guidance from a Thesis Advisory Committee of faculty members. To graduate and earn their degree, Ph.D. students deposit and successfully defend their dissertation once receiving approval from their Thesis

Advisory Committee. The maximum time allowed for completing degree requirements is 7 years, but most students complete their degrees in 5 years. All graduate students must maintain a minimum grade point average, complete coursework on time, and make timely progress toward a degree. Any issues pertaining to academic progress are brought to a student's Thesis Advisory Committee.

The Thesis Advisory Committee is responsible for not only evaluating the student's thesis, but also hearing issues pertaining to the student's academic progress, including, when necessary, disciplinary proceedings.

B. Lab Research in Ph.D. Programs

The Employer operates numerous research laboratories (labs), each overseen by a faculty Principal Investigator (PI) who uses the facilities to conduct research in their area of expertise. Dean of the Graduate School Marta Filizola testified that the Ph.D. program is an apprenticeship program for students to learn how to perform research. This is primarily accomplished through student research in the Employer's labs, which receive most of their funding from National Institutes of Health (NIH) grants. These grants are awarded based on a lab's proposed research plan and budget. To qualify for and receive NIH grant funding, the labs identify how funds will be spent, which may include compensation to Ph.D. students who will work on the research. Labs list Ph.D. students on grant applications by category (i.e., graduate students), or sometimes by name, as personnel conducting research to fulfill the grant. Stipends or compensation paid to graduate students are considered direct costs under NIH grants. Labs awarded grants are responsible for ensuring that all work funded by the grant furthers its objectives. The Employer requires an annual time and effort report from anyone who was paid fully or partially from a sponsored project including non-faculty employees. Ph.D. student Bremy Albuquerque testified that he is required to complete the annual report.

In the first year of the Ph.D. program, students take core curriculum classes and a lab rotations course that each comprise approximately 50% of their time in the program. Labs may participate in lab rotations if they have sufficient funds available to support a Ph.D. student for at least two years of their thesis research beginning in the second year of the student's program. The graduate student handbook states that students should not rotate to a lab that cannot support their financial package. First year students choose from among those qualified labs to spend a 6-to-8-week rotation becoming familiar with the lab's research focus and expertise as well as the culture of the lab. A lab may list an opening for a graduate student on their website along with positions for postdoctoral fellows² and other staff.

During a rotation, students may observe or work alongside postdocs and research assistants employed in the lab as well as perform discrete tasks for research in progress while faculty assess their interests and aptitude. At the end of a rotation, a student may accept a lab's

² As the name implies, postdoctoral fellows (postdocs) have completed a Ph.D. degree and have skills and training relevant to the lab's research.

offer to join if one is made or may elect to rotate to another qualified lab. By the end of the first year in the program, students must have completed their rotations by choosing a lab and declaring the PI in charge of that lab as their thesis advisor.

All lab assignments are mutually agreed upon between the lab and the student with a signed agreement memorializing expectations including requirements for overseeing a student's research. In addition to joining a lab, students must declare a Multidisciplinary Training Area (MTA) by the end of their first year. Students select a lab because of the research expertise of the PI leading it but are not assigned to a specific research project.

In the second year of the Ph.D. program, students generally spend approximately 75% of their time in the lab and 25% of their time completing classroom coursework. By the end of the second year in the program, students must select three faculty members to join their thesis advisory committee and present a thesis proposal. The PI leading the student's lab is a non-voting member of the student's advisory committee.

Following successful completion of the thesis proposal process, students spend the remainder of their time in the Ph.D. program researching, writing, and defending their thesis.³ Students do not have a set schedule or number of hours per week in the lab. The expectation is that they spend as much time as possible on their research to complete their thesis. Students must provide advance notice of absences to their labs to ensure that the flow of experimental work can be planned and discussed.

If a student changes their research topic, the student must find another lab to join that is willing and able to take on the student's research and funding. If one lab suggests that a student transfer to a different lab, that process is overseen by the thesis advisory committee. If a student is asked to leave a lab, they have to opportunity to remediate and find a new lab.

Ph.D. student research leads to published findings in scientific journals and students are required to produce a significant, publishable body of work.⁴ Professor Scott Russo, a PI, testified that "our value is our research publications." For a researcher, including a student, to be listed as an author on a publication the individual must make "significant contributions" to "conceiving," "design[ing]," or "conducting" experiments and/or "reporting of experiments"

³ Students enrolled in the dual-degree MD/Ph.D. program receive both degrees simultaneously. The proposed bargaining unit includes dual-degree students who are currently working on the Ph.D. portion of their program. To choose a lab, dual-degree students begin their first lab rotation in the summer prior to the start of their first academic year and complete lab rotations during the following summer (after their first year of medical school). Dual-degree students join a lab full time for their Ph.D. thesis research in years three through five of their academic program.

⁴ The student's work must be ready for publication but does not have to be accepted for publication to earn their degree.

including “produc[ing] the paper’s text and figures.” The 63 students who graduated with a Ph.D. in 2022 produced 900 publications. Mr. Albuquerque, a fifth-year student in Biomedical Sciences, testified that work he did during a first-year lab rotation, injecting mice with mRNA and writing a program to analyze the data, led to his name being included on the published article for the study.

The Employer’s technology transfer office partners with faculty, graduate students, and other non-faculty researchers to “pursue optimal commercialization of intellectual property” so that “discoveries and innovations” can ultimately benefit the public. Marta Filizola, Dean of the Graduate School of Biomedical Sciences and professor in the Department of Pharmacological Sciences, testified that any intellectual property generated by Ph.D. student research is the property of Mount Sinai.

C. Graduate Student Funding

A Ph.D. student’s funding package includes tuition, health insurance, access to subsidized housing, and, for the 2023-2024 academic year, payments totaling \$47,000.⁵ The funding package is the same for all years of study toward the student’s Ph.D., except the monetary payment amount may uniformly increase for all students in a given academic year. Letters of admission detail this “comprehensive funding and benefits package” including “direct compensation” that continues for the duration of their program “so long as [they] continue to make satisfactory progress in [their] education and research training.”

During the first year in the Ph.D. program, the graduate school provides 100% of the cost of the student’s funding package. After students join a lab in their second year, the graduate school provides 25% of the cost and the lab provides the remaining 75%. In subsequent years, the lab covers 100% of the student’s funding package and is responsible for covering the cost of research performed by the student including equipment, supplies, and other lab tools.

In addition to the pay and benefits package, students may apply for external grants or fellowships to fund their research. When a student is successful in obtaining supplemental external funding, the student receives an additional \$2,000 from the graduate school and a matching amount from their lab.

Ph.D. students may also receive funding from an NIH training grant that provides partial support of U.S. citizens and permanent residents to conduct their research. The additional funds for their compensation and benefits come from the Employer or their lab.

If a student is receiving funding from a lab but is no longer interested in researching under the lab’s grant topic, the lab may assist the student in finding alternate funding to pursue a

⁵ The Employer’s witnesses consistently referred to this monetary amount as a “stipend.” The graduate student handbook states that the payment is “direct compensation” and then adds: “(Note that this direct compensation is sometimes referred to informally as a ‘stipend.’).”

new research topic. A student may change labs and research topics by finding another lab, which has funding to support their research, and whose PI would then become the at student's thesis adviser. If a lab loses funding, the graduate school will cover the student's funding in the interim while they find and join another lab.

MD/Ph.D. students are primarily focused on their MD degree during the first, second, sixth, and seventh years of the MD/Ph.D. program. When MD/Ph.D. students are pursuing their Ph.D. degree (i.e., Years 3 – 5) they receive funding similar to that of a Ph.D. student in Biomedical Science and Neuroscience and are subject to the exact same funding conditions and procedures as Ph.D. Students in Biomedical Science and Neuroscience.⁶

The graduate student handbook refers to students as “employees” and payments to Ph.D. students are referred to as “direct compensation.” Students have access to their funding information through the Mount Sinai Health System Portal known as Sinai Cloud, which is accessible to all staff and students of Mount Sinai. In Sinai Cloud, bi-weekly payments to Ph.D. student “Graduate Assistants” are listed as “salary.”⁷ The Employer withholds income tax from payments and issues W-2 forms to students at the end of the year. All students have a start date that corresponds to the month they began their Ph.D. program. For paid Graduate Assistants, that date is listed as their “Hire” date. Upon request, the Employer will provide Ph.D. students with a statement confirming their “employment” as a “Graduate Assistant” indicating their bi-weekly “Rate of Pay.”

The graduate student handbook states that students are entitled to 2 weeks' vacation. The record reflects that students do not submit formal requests for vacation time and some students may take substantially more than 2 weeks in consultation with their lab.

The graduate student handbook includes an “Alcohol and Drugs” policy that requires graduate students to pass a drug-screening test when entering the program. Students are also subject to the Employer's Business Conflict of Interest policy.

During the relevant period, there were 70 international students enrolled in the Ph.D. program in biomedical science or neuroscience and no international students enrolled in the MD/Ph.D. program. Senior Associate Dean for International Personnel Hamel Vyas testified that international MD/Ph.D. students are not required to complete an I-9 employment form when they start their degree at Mount Sinai but must do so to working as a Teaching Assistants.

⁶ The Petitioner agrees with the Employer that student employees in the joint MD/Ph.D. program should be excluded from the Unit during the MD portion of their studies.

⁷ While unpaid graduate students also have access to Sinai Cloud for certain purposes, such students are listed as “non-workers” with a “Job” and “Business Title” of “Medical Student (No Stipend Paid).”

D. Instructional Services in Ph.D. Programs

Ph.D. students who are paid to perform instructional services are referred to as teaching assistants (TAs). TAs are required to be students in good standing who have the required knowledge for a course as determined by the course director who selects and trains the TA. Teaching assistant duties may include facilitating in-class discussions, holding review sessions or office hours, tutoring students, assisting with the preparation of problem sets, and other tasks as assigned by the course director. In the 2022-2023 academic year, approximately 64 Ph.D. students served as TAs including 40 students in the Biomedical Sciences or Neuroscience Ph.D. programs and 15 students in the MD/Ph.D. program. Additional TAs are Ph.D. students in the Clinical Research program.

TAs are paid through the Employer's payroll system at the end of the course for the number of hours worked or, less frequently, a flat rate for the semester. TA payments are listed as "Domestic Stipend", and the Employer withholds income tax from the payments. Ph.D. students in Biomedical Science and Neuroscience are limited to spending not more than 30 hours per term as a TA. Additionally, Ph.D. students must have permission from their PI to serve as a TA. Ph.D. students in Clinical Research are limited to 50 hours per term. TAs do not receive academic credit for their work.

II. ANALYSIS

A. Ph.D. Students Performing Research are Employees under the Act

In *Columbia University*, 364 NLRB 1080 (2016), the Board addressed the employee status of graduate students, specifically teaching assistants and research assistants. The Board held that both groups of students are statutory employees when, in connection with their studies, they provide services under the direction of the university in exchange for compensation. The Board declined to inquire into whether an employment relationship is secondary to or coextensive with an educational relationship, finding that the dual nature of a research assistant's work—serving both their own educational interests and the University's interests—does not preclude a finding of statutory-employee status. *Id.* at 1096.

In concluding that Columbia University student assistants were employees under the Act, the Board applied the common law doctrine of agency, which "generally requires that the employer have the right to control the employee's work, and that the work be performed in exchange for compensation." *Id.* at 1094. While acknowledging that funders could offer unconditional scholarships, the Board found that the "work performed by the [Columbia University] research assistants, while advancing the assistants' doctoral theses, also met research goals associated with grants from which the university received substantial income." *Id.* Columbia University maintained the requisite control over students' work because financial awards were conditioned on defined work being performed under the direction of their departments, ensuring that grant specifications were met. The university oversaw and directed the research assistants who received the grants by receiving revenue from the grants and was charged with ensuring the research assistants receive appropriate training. The Board reasoned that the university was incentivized to ensure the proper completion of the work in accordance

with grant specifications because it receives a portion of the grant as revenue and was spared the necessity of sourcing alternative funding for graduate students under a research grant. Id. at 1096-1097, footnotes omitted.

The Employer contends that *Columbia University* was wrongly decided. As I am bound to apply existing Board precedent, I do not reach or pass on that question. Applying, therefore, that controlling Board precedent, the Employer, as the party seeking to exclude otherwise eligible employees from the coverage of the Act, bears the burden of proof. See, e.g., *NLRB v. Kentucky River Community Care, Inc.*, 532 U.S. 706, 711-712 (2001); *BKN, Inc.*, 333 NLRB 143, 144 (2001); *Montefiore Hospital and Medical Center*, 261 NLRB 569, 572 fn. 17 (1982). On the record presented, and giving due consideration to the Employer's burden, the Ph.D. students in the petitioned-for unit perform are employees within the meaning of the Act.

The Employer views its Ph.D. students as analogous to the hypothetical students contemplated by the *Columbia* Board who receive unconditional scholarship aid and have no requirements other than pursuing their own educational goals. The Employer asserts that the only necessary requirement for a Ph.D. student to maintain funding is satisfactory academic progress. After a student completes their first-year coursework and lab rotations, the only academic requirement consists entirely of performing research. The Employer submits that, where a student is not required to engage in specific research activities over and above the student's core academic requirements, the student does not meet the common law employee test. Thus, while its graduate students receive payment for conducting research in its labs, they are not employees because the research is solely in furtherance of their education. See *Leland Stanford Junior University*, 214 NLRB 621 (1974). However, in *Columbia*, the Board rejected the argument that a student's paid research in service of their education cannot support a finding of employee status:

The premise of *Columbia's* argument concerning the status of its research assistants is that because their work simultaneously serves both their own educational interests along with the interests of the university, they are not employees under *Leland Stanford*. To the extent *Columbia's* characterization of *Leland Stanford* is correct, we have now overruled that decision. We have rejected an inquiry into whether an employment relationship is secondary to or coextensive with an educational relationship. For this reason, the fact that a research assistant's work might advance his own educational interests as well as the University's interests is not a barrier to finding statutory-employee status.

364 NLRB at 1096 (overruling *Leland Stanford*). See also *Boston Medical Ctr.*, 330 NLRB 152, 160-161 (1999) (finding medical residents and interns to be statutory employees even though their work was for their medical education).

The record here shows that the petitioned-for Ph.D. students are employees under the common-law test because they provide services for the benefit of, and under the control and direction of, the Employer. The Ph.D. graduate students in the Biomedical Sciences, Neuroscience, Clinical Research, and dual degree MD/Ph.D., as part of the entire community of researchers at the school, conduct research that fulfills the mission of the Employer to conduct groundbreaking research in support of healthcare. The Employer provides all researchers,

whether faculty, postdocs, or graduate students, with facilities and opportunities for collaboration to in furtherance of its mission to conduct “groundbreaking research.”

The Employer directs the work of Ph.D. students through the training and guidance of PIs who lead the labs where the students perform their research and through the Employer’s policies and regulations. The Employer expects PIs to provide mentoring, guidance, direction, and oversight to graduate students. As in *Columbia University*, the work is for the benefit of the Employer and the Employer possesses a significant interest in maintaining such control. As Dean of the Graduate School of Biomedical Sciences Filizola testified, any intellectual property generated by Ph.D. student research is the property of the Employer. Moreover, the Employer exercises control over graduate students serving as by its requirement that they will comply with its policies and requirements set forth in its Graduate Student handbook, as well as the various institutional policies linked from it, including vacation, business conflict of interest, and drug testing policies.

The Employer asserts that this supervision is indistinguishable from academic direction. While the graduate students may perform their research for pedagogical purposes, this does not negate the presence of a common-law employment relationship between the students and the Employer. *The Rand Corporation*, Case 31-RC-308974, Order Denying Request for Review dated August 9, 2024; not reported in bound volumes, 2024 WL 3741320. In *Columbia*, the same faculty members supervised the work of students in their labs and served as academic advisors. The Board nonetheless found that the students worked under the direction and supervision of the university. In any event, here the Employer assigns each student an academic advisor who is distinct from the faculty member running the lab, who serves as a mentor and research supervisor.

The fact that students may choose the laboratory for which they apply in the Employer’s internal labor market does not change the fact that they are performing work for the Employer. *The Rand Corporation*, supra. In this regard, while students decide whether the lab is the right fit for them, the labs engage in a similar assessment when deciding whether to extend an offer to a graduate student to join the lab. While not assigning specific tasks, a PI guides a student’s research by giving “feedback on what they should be doing.” As Senior Associate Dean Matthew O’Connell testified, graduate students require more mentoring than postdocs because they are earlier on in their training.

The Employer emphasizes that virtually all of a student’s time performing research is in furtherance of their thesis. This is research that benefits the Employer and PI as well as the student, often leading to published findings from the lab with a PI listed as a coauthor on all research that comes out of their lab. While the Employer hires other employees, including postdocs and research assistants, to perform specified research on a PI’s grant, graduate students serve a different function in the lab that accrues benefits to the Employer and its mission. Furthermore, a student’s thesis research must further the objectives of any grant that provides funds for the student’s research.

Additionally, the record shows that students perform research on other topics and may be named on publications for their contributions to that research. The Employer asserts that if PIs assign work unrelated to a student's thesis, the thesis committee would step in and request that the research focus be redirected. The record indicates that while a PI may be asked to stop assigning work that is not thesis related, there is no indication that anyone would or could direct the PI to make that change. There is no written policy or procedure disallowing research unrelated to a thesis. As an example, one student testified that his thesis research was interrupted to perform research on SARS-CoV2 in March 2020. The student was additionally listed as a contributor on a non-pandemic related publication in which he checked computations unrelated to his thesis.

The Employer compensates Ph.D. students for their services separate from funding to cover the cost of tuition. The Employer's documentation provided to students states that the payments are "direct compensation" that are "sometimes referred to informally as a 'stipend.'". The method of payment is consistent with compensation for performing service, in this case research. *Columbia University*, 364 NLRB at 1094 ("[S]tipend portion of the financial package given to assistants is generally treated as part of university payroll and is subject to W-2 reporting and I-9 employment verification requirements.") Ph.D. students are also entitled to two weeks of "paid vacation" each year, an emolument reflective of employee status. *Boston Medical Center*, 330 NLRB 152, 160 (1999). While international MD/Ph.D. students are not required to complete an I-9 employment form when they start their degree at Mount Sinai, the question in this case is whether the Ph.D. students are employees under Section 2(3) of the Act, not under other federal statutes or regulations with different language and purposes. *Columbia*, 364 NLRB at 1084 fn. 49 (rejecting argument that Board should evaluate student employee status under analysis applied to Fair Labor Standards Act or Department of Labor regulations).

Additionally, students are enrolled in the Employer's human resources system as "Graduate Assistants" and receive payments (with income tax withheld) through payroll on the same schedule as other employees. Upon request, the Employer will provide a letter confirming their employment as Graduate Assistants with a date of hire corresponding to their date of enrollment in the Ph.D. program. Additionally, Ph.D. students are awarded monetary bonuses for obtaining their own research funds. Ph.D. students may also be funded by NIH training grants. See *Columbia*, 364 NLRB at 1097 (explicitly finding students paid from NIH training grants to be statutory employees).

The Employer notes that equating research with employment could have unintended consequences for international students. For example, the Employer cites immigration visa rules regarding a 20-hour cap per week for on-campus employment during academic terms. If all thesis research performed by graduate students constitutes service to the Employer, then hours previously deemed academic in nature could be counted against the 20-hour employment caps set by federal immigration regulations. However, as previously stated, the question in this case is whether the Ph.D. students are employees under Section 2(3) of the Act and any potential conflicts the parties may have with other federal statutes or regulations are beyond the scope of this decision.

The Employer asserts that Ph.D. student funding is not in exchange for services performed and is instead a stipend to assist students with the cost of living during their studies. The Employer relies on the Regional Director's decision in *Massachusetts Institute of Technology*, Case 01-RC-304042 (March 13, 2023), request for review denied in order dated July 17, 2024, not included in bound volumes 2024 WL 3455477, to support its argument that its Ph.D. students are not employees. The facts in *MIT* are distinguishable from those in this case. In *MIT*, the employer stipulated that its research assistants and teaching assistants are employees under Section 2(3) of the Act but presented evidence at a hearing that its graduate fellows do not meet the definition of a common-law employee. Like the Ph.D. students in the petitioned-for unit, the MIT research assistant employees perform work that is "usually suitable" to be used in their theses under the supervision of a faculty member who funds the student's research out of a lab's research budget. However, MIT fellows are not funded by faculty research grants. The record here shows that, unlike the MIT fellows, the Ph.D. students may contribute to research that is unrelated to their theses. Further, while MIT fellows receive outside funding whether or not they switch labs, Ph.D. students who switch labs receive temporary bridge funding from the graduate school until they secure another lab that has funding to support their compensation and research. The Employer compensates its Ph.D. students for performing research in the same manner that MIT compensates its statutory employee research assistants (including tuition, a stipend paid twice monthly with income tax withheld, and health insurance). In contrast, payments to the MIT fellows who were found not to be employees was paid in a lump sum with no income tax withholding and did not constitute compensation.

The Employer seeks to distinguish the Regional Director's Decision and Direction of Election in *Duke University*, Case 10-RC-313298, (July 10, 2023). In *Duke University*, the Regional Director determined that Ph.D. students in the petitioned-for unit are employees under Section 2((3) of the Act. The petitioned-for unit *Duke* included "[a]ll Ph.D. students...who are working toward Ph.D. degrees offered by the...Graduate School and who are employed...to provide instructional services...or research services." The Employer asserts that, unlike in *Duke*, its Ph.D. students are not required to meet expectations of outside sources that provided funds to the university for research, do not perform services also performed by paid faculty members, staff, and non-Ph.D. students, and cannot face discipline from their PI if they fail to perform well. The *Duke University* decision was not reviewed by the Board and therefore has no precedential value. See *Rental Uniform Service*, 330 NLRB 334, 336 fn. 10 (1999). However, the record indicates that many Ph.D. students here perform research funded by outside entities through grants specifying the nature of the research and that lab grant applications may include classifications of students working on the grant.

The Employer also asserts that its first year Ph.D. students are not statutory employees because they do not perform research. However, the first-year students perform work at the direction of lab advisers and postdocs during their lab rotations, which comprise about 50% of their time while they are also taking classes.⁸ During rotations, students perform work in the lab

⁸ According to the graduate student handbook, a rotation can be shortened if the student is not taking classes because the student can "work full time in the lab."

assisting other employees by, for example, preparing specimens, performing procedures and behavioral tests, and conducting calculations or other analyses. This is work that would otherwise be performed by other members of the lab, including other Ph.D. students. Two students testified that during their lab rotations the PI gave them discrete tasks to perform on a weekly basis. The record reflects that a first-year student performed duties under a grant to study causes of DNA damage. PIs evaluate student performance and may immediately end the rotation after a few weeks if the PI does not want the student in their lab. During rotations, students receive the same direct compensation and benefits as other Ph.D. students. See *Columbia*, 1080 NLRB at 1093 (Departmental Research Assistants funded by university instead of grants are employees under the Act). As a requirement of receiving that compensation and remaining in the Ph.D. program, students must do at least one rotation and obtain an offer from a PI to work in a lab by the end of the second semester.

B. The Petitioned-For Unit is appropriate

In a unit determination case, “the Board’s inquiry will ‘consider only whether the requested unit is an appropriate one even though it may not be the optimum or most appropriate unit for collective bargaining.’” *American Steel Construction, Inc.*, 372 NLRB No. 23, slip op. at 3 (2022) (quoting *Black & Decker Mfg. Co.*, 147 NLRB 825, 828 (1964)). The Board will find a petitioned-for unit to be appropriate where the grouping of employee classifications: (1) shares an internal community of interest; (2) is readily identifiable as a group based on job classifications, departments, functions, work locations, skills, or similar factors; and (3) is sufficiently distinct. *American Steel*, slip op. at 13. In this regard, the Board’s “central inquiry is...whether the petitioned-for employees share a community of interest, which renders the unit appropriate for the purposes of collective bargaining (and therefore appropriate for the purposes of the Act).” *Id.*, slip op. at 4. Applying that formulation here,⁹ I find that the petitioned-for unit of graduate students is appropriate for the purposes of collective bargaining.

First, I find the petitioned-for unit is readily identifiable as a group because it contains all Ph.D. graduate students in the Biomedical Sciences, Neuroscience, and dual degree MD/Ph.D. programs who provide research or instructional services and all Ph.D. graduate students in the Clinical Research program who provide instructional services. The unit therefore has a coherent organizing principle, such that the petitioned-for employees can “logically and reasonably be segregated from other employees.” See *id.*, slip op. at 3-4, 13.

Second, I find that the evidence is sufficient to establish that the employees in the petitioned-for unit, including those providing instructional services as TAs, share an internal community of interest. When deciding whether a group of employees shares a community of interest, the Board considers whether the employees sought: (1) are organized into a separate department; (2) have distinct skills and training; (3) have distinct job functions and perform distinct work, including inquiry into the amount and type of job overlap between classifications; (4) are functionally integrated with the employer's other employees; (5) have frequent contact

⁹ While the Employer the Employer does not contend that the smallest appropriate unit contains additional employees, the petitioned-for unit is not a wall-to-wall unit.

with other employees; (6) interchange with other employees; (7) have distinct terms and conditions of employment; and (8) are separately supervised. Id., slip op. at 2 (citing *United Operations, Inc.*, 338 NLRB 123 (2002)).

With respect to functional integration, all students Biomedical Sciences, Neuroscience, and dual degree MD/Ph. Programs provide research services to the Employer. They may also function as instructors, making the classroom an integrated experience. As in *Columbia*, “all of the student assistants here are performing a supplemental educational service...their duties are functionally integrated into a system designed to meet the university’s teaching and research missions in non-faculty roles.” 364 NLRB at 1098. Thus, this factor weighs in favor of finding that the students share a community of interest while performing the respective tasks.

Regarding interchange, interchangeability refers to temporary work assignments or transfers between two groups of employees. Frequent interchange “may suggest blurred departmental lines and a truly fluid work force with roughly comparable skills.” *Hilton Hotel Corp.*, 287 NLRB 359, 360 (1987). As a result, the Board has held that the frequency of employee interchange is a critical factor in determining whether employees who work in different groups share a community of interest sufficient to justify their inclusion in a single bargaining unit. *Executive Resources Associates*, 301 NLRB 400, 401 (1991). Here, the record reflects that individual Ph.D. students in the Biomedical Sciences, Neuroscience, and dual degree MD/Ph.D. Programs concurrently periodically provide both research and instructional services during a single academic term. During the relevant time period, approximately 86% of TAs were also performing research for the graduate school and only the nine Clinical Research Ph.D. students served only as TAs. While TAs work in classrooms and hold office hours at the graduate school, some, but not all, TAs perform TA work in labs at the graduate school including preparation, supervision, and clean-up. This factor favors a shared community of interest.

As to skills and training, while the graduate students become progressively more skilled through instruction and experience, it is beyond dispute that they are highly skilled employees whose job duties are consistent with the type of work necessary for groundbreaking scientific research and discovery and graduate level instruction of related topics. This factor weighs in favor of finding a shared community of interest.

Regarding common supervision, Ph.D. students who provide research or instructional services are supervised by faculty members acting as PI or course director. The record reflects that faculty both teach and serve as PIs. Thus, whether performing research or rendering instruction, students are supervised by members of the Employer’s faculty. However, while 86% of TAs were also performing research, the record does not reveal whether the graduate students performed both tasks for the same immediate supervisor. Further, the record does not show the number and identities of faculty supervising research rather than instructing. Due to the lack of detail in this evidence, the factor of common supervision weighs against a finding that the classifications share a community of interest, but only slightly.

Regarding frequency of contact between employees who provide research or instructional services, while individual students provide both services the record shows no contact between Ph.D. students. I find this factor weighs against a community of interest.

As to distinct job functions and perform distinct work, instructional and research services are distinct functions with different duties. I find this factor weighs against a community of interest. However, “some differences in the nature of work assignments, do not negate the shared community of interest of employees ... given the many other relevant similarities.” *Columbia University*, 364 NLRB at 1098.

With respect to terms and conditions, while all Ph.D. students in the Biomedical Sciences, Neuroscience, and dual degree MD/Ph.D. programs are compensated for their research services through an individual funding package, TAs work on individual courses for limited hours and are paid at the end of a course rather than on a bi-weekly basis. Ph.D. students in the Biomedical Sciences, Neuroscience, and dual degree MD/Ph.D. programs performing research and instructional services concurrently would share common terms and conditions of employment for their research work and the wage rate for the supplemental instructional work. While the petitioned-for unit includes only those Clinical Ph.D. students who provide instructional services and the record does not reveal their wage rates, as the Board determined in *Columbia*, “differences in level and type of compensation ... do not negate the shared community of interest of employees ..., given the many other relevant similarities.” *Columbia University*, 364 NLRB at 1098 (finding unit of undergraduate, master’s degree, and Ph.D. students with varying employment lengths at different university campuses to be an appropriate unit). Accordingly, I find this factor weighs against but does not preclude a community of interest.

Based on the foregoing, I conclude that the petitioned-for Unit shares a community of interest. More specifically, notwithstanding the fact that students work across various departments, performing different functions under different terms and conditions and separate supervision, these factors are outweighed in the context of this case by the fact that they are functionally integrated, interchangeable, and have similar skills and training. Here, as in *Columbia University*, all student-employees in the petitioned-for unit perform overlapping and adjacent duties which furthers the University’s teaching and research goals. Finally, as in *Columbia University*, they are likely to have similar concerns about balancing their academic and job responsibilities.

Third, the petitioned-for employees are “sufficiently distinct” under *American Steel*. See 372 NLRB No. 23, slip op. at 6, 13. They all work in the Employer’s classrooms and/or research laboratories providing instructional or research services. Further, in this regard, the Employer has not contended that the appropriate unit must contain additional employees.

Accordingly, I conclude that the petitioned-for classifications share a sufficient community of interest to constitute an appropriate unit.

III. CONCLUSIONS

Based upon the entire record in this matter and in accordance with the discussion above, I find that Ph.D. graduate students in the Biomedical Sciences, Neuroscience, Clinical Research, and dual degree MD/Ph.D. programs who provide research or instructional services who are compensated by and subject to the direction and control of the Employer are employees within the meaning of Section 2(3) of the Act. I further conclude and find as follows:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction herein.¹⁰

3. The Petitioner is a labor organization within the meaning of Section 2(5) of the Act and claims to represent certain employees of the Employer.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

5. The following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

Included: All Ph.D. graduate students in the Biomedical Sciences and Neuroscience programs who provide research or instructional services for the Employer; all Ph.D. graduate students in the Ph.D. portion of the MD/Ph.D. program who provide research or instructional services for the Employer; and all Ph.D. graduate students in the Clinical Research Ph.D. program who provide instructional services for the Employer.

Excluded: All other employees, guards, and supervisors as defined in the National Labor Relations Act.

DIRECTION OF ELECTION

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. Employees will vote whether or not they wish to be represented for purposes of collective bargaining by the **Sinai Student Workers-UAW**.

¹⁰ The parties stipulated that the Employer, a State of New York corporation, is a private institution of higher education. Annually, the Employer in the course and conduct of its business operations purchased and received goods and services valued in excess of \$5,000 directly from suppliers located outside the State of New York. The parties also stipulated that the Employer annually derives gross annual revenues in excess of \$1,000,000.

A. Election Details

The election will be held on **Wednesday, September 25, 2024**, from 10 a.m. to 2 p.m. and from 3 p.m. to 7 p.m. in an available room in the Patricia and Robert Levinson Student Center, on Mount Sinai's campus located at 1468 Madison Avenue, New York, New York. The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. Employees will vote whether or not they wish to be represented for purposes of collective bargaining by Sanai Student Workers - UAW.

B. Voting Eligibility

Eligible to vote are those in the unit who were employed during the payroll period ending **Saturday, September 7, 2024**, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off.

Employees engaged in an economic strike, who have retained their status as strikers and who have not been permanently replaced, are also eligible to vote. In addition, in an economic strike that commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements, are eligible to vote. Unit employees in the military services of the United States may vote if they appear in person at the polls.

Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

C. Voter List

As required by Section 102.67(l) of the Board's Rules and Regulations, the Employer must provide the Regional Director and parties named in this decision a list of the full names, work locations, shifts, job classifications, and contact information (including home addresses, available personal email addresses, and available home and personal cell telephone numbers) of all eligible voters.

To be timely filed and served, the list must be *received* by the Regional Director and the parties by **Friday, September 13, 2024**. The list must be accompanied by a certificate of service showing service on all parties. **The Region will no longer serve the voter list.**

Unless the Employer certifies that it does not possess the capacity to produce the list in the required form, the list must be provided in a table in a Microsoft Word file (.doc or docx) or a file that is compatible with Microsoft Word (.doc or docx). The first column of the list must begin with each employee's last name and the list must be alphabetized (overall or by department) by last name. Because the list will be used during the election, the font size of the list must be the equivalent of Times New Roman 10 or larger. That font does not need to be

used but the font must be that size or larger. A sample, optional form for the list is provided on the NLRB website at www.nlr.gov/what-we-do/conduct-elections/representation-case-rules-effective-april-14-2015.

The list must be filed electronically with the Region and served electronically on the other parties named in this decision. The list may be electronically filed with the Region by using the E-filing system on the Agency's website at www.nlr.gov. Once the website is accessed, click on **E-File Documents**, enter the NLRB Case Number, and follow the detailed instructions.

Failure to comply with the above requirements will be grounds for setting aside the election whenever proper and timely objections are filed. However, the Employer may not object to the failure to file or serve the list within the specified time or in the proper format if it is responsible for the failure.

No party shall use the voter list for purposes other than the representation proceeding, Board proceedings arising from it, and related matters.

D. Notices of Election

Pursuant to Section 102.67(k) of the Board's Rules, the Employer must post copies of the Notice of Election in conspicuous places, including all places where notices to employees in the unit found appropriate are customarily posted. The Notice must be posted so all pages of the Notice are simultaneously visible. In addition, if the Employer customarily communicates electronically with some or all of the employees in the unit found appropriate, the Employer must also distribute the Notice of Election electronically to those employees. The Employer must post copies of the Notice at least 3 full working days prior to 12:01 a.m. of the day of the election and copies must remain posted until the end of the election. For purposes of posting, working day means an entire 24-hour period excluding Saturdays, Sundays, and holidays. However, a party shall be estopped from objecting to the nonposting of notices if it is responsible for the nonposting, and likewise shall be estopped from objecting to the nondistribution of notices if it is responsible for the nondistribution.

Failure to follow the posting requirements set forth above will be grounds for setting aside the election if proper and timely objections are filed.

RIGHT TO REQUEST REVIEW

Pursuant to Section 102.67 of the Board's Rules and Regulations, a request for review may be filed with the Board at any time following the issuance of this Decision until 10 business days after a final disposition of the proceeding by the Regional Director. Accordingly, a party is not precluded from filing a request for review of this decision after the election on the grounds that it did not file a request for review of this Decision prior to the election. The request for review must conform to the requirements of Section 102.67 of the Board's Rules and Regulations.

A request for review must be E-Filed through the Agency's website and may not be filed by facsimile. To E-File the request for review, go to www.nlr.gov, select E-File Documents, enter the NLRB Case Number, and follow the detailed instructions. If not E-Filed, the request for review should be addressed to the Executive Secretary, National Labor Relations Board, 1015 Half Street SE, Washington, DC 20570-0001, and must be accompanied by a statement explaining the circumstances concerning not having access to the Agency's E-Filing system or why filing electronically would impose an undue burden. A party filing a request for review must serve a copy of the request on the other parties and file a copy with the Regional Director. A certificate of service must be filed with the Board together with the request for review.

Neither the filing of a request for review nor the Board's granting a request for review will stay the election in this matter unless specifically ordered by the Board. If a request for review of a pre-election decision and direction of election is filed within 10 business days after issuance of the decision and if the Board has not already ruled on the request and therefore the issue under review remains unresolved, all ballots will be impounded. Nonetheless, parties retain the right to file a request for review at any subsequent time until 10 business days following final disposition of the proceeding, but without automatic impoundment of ballots.

Dated at New York, NY
September 11, 2024

A handwritten signature in black ink that reads "John D. Doyle, Jr." with a stylized flourish at the end.

John D. Doyle, Jr., Regional Director
National Labor Relations Board, Region 2
Federal Plaza, Suite 41-120
New York, NY 10278-3699