

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

THE TRUSTEES OF COLUMBIA
UNIVERSITY IN THE CITY
OF NEW YORK

Employer

and

Case 02-RC-143012

GRADUATE WORKERS OF
COLUMBIA – GWC, UAW

Petitioner

**BRIEF *AMICUS CURIAE* OF
NATIONAL ASSOCIATION OF
GRADUATE – PROFESSIONAL STUDENTS**

Kristofferson Culmer
President
National Association of
Graduate-Professional Students
1050 K Street NW #400
Washington, DC 20001
Tel. (202) 642-8043

Samuel L. Leitermann
Chair of the Advocacy Board
National Association of
Graduate-Professional Students
1050 K Street NW #400
Washington, DC 20001
Tel. (202) 642-8043

TABLE OF CONTENTS

	<u>Page</u>
TABLE OF AUTHORITIES.....	iii
STATEMENT OF INTEREST OF AMICI CURIAE.....	1
INTRODUCTION.....	2
ARGUMENT.....	2
I. THE BOARD SHOULD OVERRULE <i>BROWN UNIVERSITY</i> , 342 NLRB 483 (2004)...	2
II. THE BOARD SHOULD DETERMINE THAT RESEARCH ASSISTANTS, INCLUDING THOSE FUNDED BY EXTERNAL GRANTS, ARE STATUTORY EMPLOYEES.....	5
CONCLUSION.....	6

TABLE OF AUTHORITIES

CASES	Page(s)
<i>Brown University</i> 342 NLRB 483.....	passim
<i>Columbia University</i> 02-RC-143012.....	29

STATUTES

National Labor Relations Act.....	passim
-----------------------------------	--------

OTHER AUTHORITIES

- Advocacy Platform, NATIONAL ASSOCIATION OF GRADUATE-PROFESSIONAL STUDENTS (2016), <http://nagps.org/about-us/advocacy-platform/> (last visited Feb 24, 2016).
- Daniel J. Julius & Patricia J. Gumpert, *Graduate Student Unionization: Catalysts and Consequences*, 26 THE REVIEW OF HIGHER EDUCATION 187–216, 187-216 (2002).
- Hewitt, Gordon J. 2000. Graduate student employee collective bargaining and the educational relationship between faculty and graduate students. *Journal of Collective Negotiations in the Public Sector* 22(2): 153–66.
- S. E. Rogers, A. E. Eaton & P. B. Voos, *Effects of Unionization on Graduate Student Employees: Faculty-Student Relations, Academic Freedom, and Pay*, 66 ILR REVIEW 487–510, 487-510 (2013).

STATEMENT OF INTEREST OF AMICI CURIAE

The National Association of Graduate-Professional Students (NAGPS) responds to the Board's Notice and Invitation to file Briefs, which invites *amici* to address the issues raised in the case of *Columbia University* 02-RC-143012, namely whether the Board should modify or overrule its decision in *Brown University*, 342 NLRB 483.

NAGPS is a student run, national, non-profit organization that is dedicated to improving the quality of life for graduate and professional students across the United States. In this role, NAGPS is the only national organization that represents the interests of graduate and professional students at public and private universities. We represent a diverse group of member institutions employing graduate and professional students as teaching and research assistants along with graduate instructors, and work to serve those students by advocating for their best interests in terms of, among other issues, employment standards and quality of life.

We currently represent more than 144,000 graduate students, graduate and professional student governments at a diverse group of institutions. NAGPS advocates on behalf of our member organizations to affirm their right to bargain collectively if they choose to do so, and supports the efforts of students to unionize at their individual institutions. RAs and TAs at several institutions with NAGPS member organizations have unionized in the recent past or are actively working on unionization campaigns, including Pennsylvania State University, University of Pittsburgh, Cornell, and the University of Missouri. Many of our private institutions have considered or are actively considering the process of unionization. Given these activities, our member institutions have a vested interest in the outcome of this case, and NAGPS continues to advocate on behalf of our member organizations to affirm their right to bargain

collectively if they choose to do so, and supports the efforts of students to unionize at their individual institutions.

INTRODUCTION

In November 2015, the assembled body of NAGPS passed a resolution to approve an advocacy platform which states in part, “NAGPS supports the rights of students to decide to organize, and supports the efforts of students to unionize at their individual universities” (2016). We continue to hold the position that graduate students are employees of their universities, that they contribute service to their institutions, and that they deserve the right to collectively bargain. NAGPS disagrees with the claim asserted in *Brown* that collective bargaining would damage academic relationships and we argue that there is empirical evidence to contradict the majority opinion in that case. We also hold that research assistants, including those funded by external grants, provide service to the university through their research activities. For the reasons that we will articulate below, we urge that the Board overturn *Brown* and affirm that both teaching and research assistants (RA’s and TA’s) are employees for the purposes of collective bargaining under the National Labor Relations Act (NLRA.)

ARGUMENT

I. THE BOARD SHOULD OVERRULE *BROWN UNIVERSITY*, 342 NLRB 483 (2004)

We hold that there is no sound stance – legal or moral – from which to question that both RAs and TAs provide and are compensated for essential service to their universities. As such, we maintain that they qualify as employees under the NLRA, and should have the basic democratic right to choose for themselves to have a union and have universities be obligated to respect that

choice. Graduate workers provide and are compensated for services that mirror those of unequivocally-recognized university employees, they teach classes, mentor students, perform services to their communities, campuses and disciplines, grade assignments, and perform research that benefits the institutions. NAGPS argues that the activities of graduate students are the same as the responsibilities of university professors. In *Columbia University* (02-RC-143012) the Region 2 Board director affirms this stating, “In many respects the duties of student assistants are the same as those of admittedly ‘employee’ counterparts on the Columbia University faculty.” The performance of these services by graduate student employees allows the business of institutions of higher education to continue, allows for the education of undergraduate students, advances the research interests of the institution, brings academic and public acclaim to the institution, and is fundamental to the ongoing functioning of the institution. Indeed, at several of our NAGPS member institutions, graduate students take on more than 30% of the teaching load.

Furthermore, NAGPS fundamentally disagrees with the assertion of the Board in *Brown University* that collective bargaining would damage the academic relationship between teacher and student. Several studies have refuted this claim. In Hewitt’s study (2000) of the attitude of faculty members towards graduate student unionization, he found that faculty members do not view their relationships with students as inhibited by unions. His empirical study found that more than 90% of faculty members held the view that graduate student collective bargaining did not inhibit the ability to advise or instruct their graduate students. He also found that 88% of faculty members felt that collective bargaining did not have a negative impact on their mentoring relationships with graduate students. He concludes that graduate collective bargaining does not negatively affect the mentor relationships between graduate students and their professors.

Indeed, the percentages indicated in his empirical findings suggest that claims to the contrary are entirely unfounded. Moreover, there is evidence to suggest that collective bargaining has a positive impact on the student-professor relationship. Studies by Julius and Gumpert (2002), and Rogers, Eaton and Voos (2013) both conclude that graduate unions may have a positive impact on student-professor relationships and that they have no negative impact on that relationship. Julius and Gumpert state that this relationship “may be improved, because of more clearly delineated expectations and enumerations of responsibilities between faculty and graduate students set forth in labor agreements.” They also conclude that “Fears that [collective bargaining] will undermine mentoring relationships...appear foundationless” and that the arguments of administrations to the contrary are demonstrably false.

The member institutions of NAGPS as well as the graduate and professional students we have consulted, have repeatedly stated that unionization at their universities has not negatively impacted their academic relationships. In fact, we have seen faculty support at institutions where graduate and professional students are working to unionize. Unionized graduate students have not reported negative impact on their academic or professional lives. NAGPS continues to hold that the assertion made in *Brown University* has been shown empirically to be false, that no data suggest that graduate student employee unionization leads to adverse effects on mentorship relationships, and in fact that data suggest the opposite may be true. For these reasons, we urge the Board to overturn that decision.

II. THE BOARD SHOULD DETERMINE THAT RESEARCH ASSISTANTS, INCLUDING THOSE FUNDED BY EXTERNAL GRANTS, ARE STATUTORY EMPLOYEES

NAGPS argues that RAs, including those funded by external grants, provide service to the university and should be classified as employees for the purpose of collective bargaining under the NLRA. Graduate students that perform research for the university contribute to the university in tangible ways. Their published research bears the name of the university, thereby enhancing the reputation of the institution as well as increasing the possibilities for grant funding and other research opportunities of scholars employed by the institution. These students also often conduct laboratory and other work for supervising professors, thereby assisting in the research that these professors perform on behalf of the institution as part of their work. We have no doubt that RAs, including those funded by external grants, provide service for their universities which warrants formal recognition of their status as university employees.

Additionally, existing graduate student unions already include RAs, including those funded by external grants, as members, and have for some time. There is no evidence that the inclusion of such RAs has or has had a negative impact on collective bargaining or the workings of the institution at large. It is common to include RAs in graduate labor unions at many institutions, including but not limited to: New York University, University of Washington, University of Massachusetts, University of Connecticut, University of Oregon and Oregon State University among others. These longstanding practices of these geographically, politically, and institutionally diverse institutions amounts to sufficient evidence that the inclusion of RAs, including those who are funded by external grants, within collective bargaining works, and that

the Board should conclude that such RAs are employees with rights to collective bargaining under the NLRA.

CONCLUSION

For the reasons stated above, the proposed *Amici* respectfully requests that the Board overturn the *Brown University* 342 NLRB 483 decision and instead hold that graduate student assistants are statutory employees under the NLRA. We also urge that the Board hold that research assistants, including those who are funded by external grants, are statutory employees under the NLRA.

Dated: February 26, 2016

Respectfully submitted,

National Association of
Graduate-Professional Students

Kristofferson Culmer
President
National Association of
Graduate-Professional Students
1050 K Street NW #400
Washington, DC 20001
Tel. (202) 642-8043

Samuel L. Leitermann
Chair of the Advocacy Board
National Association of
Graduate-Professional Students
1050 K Street NW #400
Washington, DC 20001
Tel. (202) 642-8043