

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

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NEW YORK UNIVERSITY, :
Employer, :
-and- :
GSOC/UAW, :
Petitioner. :
: :
----- X

Case No. 2-RC-23481

MOTION FOR RECUSAL

New York University (“NYU”) respectfully submits this motion requesting that Chairman Liebman recuse herself from participation in the Board’s consideration of this case. Petitioner has submitted a study through an expert witness, Dr. Paula Voos, as a key piece of evidence in support of its Request for Review, which asks the Board to reconsider and reverse its decision in *Brown University*, 342 NLRB 483 (2004). Dr. Voos testified that Chairman Liebman suggested the idea for the study to her as something that would be useful to bolster Chairman Liebman’s dissent in *Brown*. Under these circumstances, Chairman Liebman’s “impartiality might reasonably be questioned” and recusal is therefore required under the standards set forth in 28 U.S.C. § 455(a).

1. Background

The petition in this case seeks to represent graduate students at NYU who are appointed to teaching, research and other positions. On June 7, 2010, the Regional Director dismissed the petition, concluding “that it seeks an election among graduate assistants that are clearly not employees under *Brown*.” (BX 1, June 7, 2010 Order at 4). Petitioner filed a Request for Review of the Order dismissing the petition on June 21, 2010, and on October 25, 2010, the Board granted the Petitioner’s Request for Review, by a 2-1 vote, stating its belief that there were “compelling reasons for reconsideration of the decision in *Brown University*,” 356 NLRB No. 7 at 2 (Oct. 25, 2010). In reaching this conclusion, the Board noted that Petitioner had offered to present “expert testimony demonstrating that, even giving weight to the considerations relied on by the Board in *Brown University*, the students are appropriately classified as employees under the Act.” *Id.* at 1. Accordingly, the Board

majority reinstated the Petition and remanded the case to the Regional Director for a hearing and issuance of a decision.

The hearing ordered by the Board was held from November 18, 2010 to March 31, 2011, and the Regional Director issued a decision on June 7, 2011, finding *Brown* applicable and dismissing the Petition. On June 30, 2011, Petitioner submitted its Request for Review of this dismissal. In support of its argument that *Brown* should be reconsidered and reversed, Petitioner relies significantly on Dr. Voos's testimony concerning a study evaluating the effects of graduate student unionization on student-university relationships conducted by Dr. Voos and Dr. Adrienne Eaton of Rutgers University. (See Pet. Request for Review at 4-7, 9-11) The study is offered by Petitioner as evidence that "directly contradicts [the *Brown* majority's] assumptions about the negative effects of collective bargaining by graduate student employees." (Pet. Request For Review at 30) As of July 14, 2011, Petitioner's Request for Review and all related submissions are before the Board for consideration.¹

2. Dr. Voos's Testimony Regarding Her Conversation With Chairman Liebman

In the course of her testimony, Dr. Voos acknowledged that she had discussions with Chairman Liebman concerning *Brown* and Chairman Liebman's view that academic research on the effect of graduate student unionization would be useful to the Board. Specifically, Dr. Voos testified that she "believed that *Brown* was [decided] on the wrong basis" and that she discussed the *Brown* decision with Chairman Liebman, in a general way. (Tr. 75, 103)² She further testified that a couple of years ago during a cocktail reception or similar event at a

¹ On June 30, 2011, NYU submitted a Conditional Request for Review taking issue with certain of the Acting Regional Director's findings should the Board grant Petitioner's Request for Review.

² The complete transcript of Dr. Voos's testimony is attached as Exhibit A.

meeting of the Labor and Employment Relations Association (LERA), Chairman Liebman suggested that she conduct research on the impact of unionization on faculty/student relationships or academic freedom in order to bolster then-Member Liebman's dissent in *Brown*. (Tr. 103-05) Dr. Voos described the conversations with Chairman Liebman in her testimony:

Q: And have you ever discussed the issue of graduate student unionization or the NYU or Brown decisions with any current or former member of the National Labor Relations Board?....

* * *

Q: And so you might have casually discussed this issue with--

A: Yes, yes, yes. I talk to people, sure.

Q: With Wilma Liebman at some point in the past?

A: Yeah, sure. Sure. In a general way.

Q: Well, when you say in a general way, did you for example discuss her dissent in the Brown case?

A: Not in detail. I think I knew about her dissent and said something to her about it in passing.

Q: ***Did you and she ever discuss the idea of doing some academic research to bolster her dissent?***

A: She has given presentations about academic research and how that could help Board decisions, and she has mentioned some things, *yes*.

Q: And what did she mention to you?

A: She has mentioned this as an area that academics needs to do research in among other areas.

(Tr. 102-03) (Emphasis added) Dr. Voos went on to explain:

Q: And other than hearing the number of suggestions from her, was there any more specific discussion with her directly with you or in a small group about researching this particular issue

of the impact of unionization on faculty/student relationships or academic freedom?

A: This was definitely one of the things that she felt would be a good matter for research.

(Tr. 105)³ Dr. Voos testified that she and Dr. Eaton then discussed Chairman Liebman's suggestion and decided that they would commence the suggested research. (Tr. 105)

Dr. Voos's testimony also indicates a connection between Chairman Liebman's suggestion that she perform this research and Dr. Eaton contacting the UAW to let the union know of this research because they "thought that it would be of use to the NLRB."⁴ (Tr. 72)

She testified:

Q: At some point several years ago Wilma Liebman suggested to you and some group that research in this area would be useful to the Board.

A: Um-hum.

Q: That you and Professor Eaton understood to do this research. And then you communicated with the UAW to let them know that you had done this research and that they might be interested in it for purposes of this proceeding?

A: That is correct except I did not communicate with the UAW. Adrienne Eaton, at some conference, heard about this hearing and then communicated with the UAW about our study which had already been completed, data had been collected but not analyzed very much, so that they knew it was available. Because we thought that our results might be of use in this hearing.

(Tr. 107)

³ Dr. Voos also testified that she spoke with Chairman Liebman shortly before her testimony in this matter for about a half-hour when Chairman Liebman was at Rutgers University regarding another matter, but stated that she did not discuss her testimony relating to this case. (Tr. 101)

⁴ Dr. Voos testified that she was not aware of what communications, if any, Chairman Liebman had had with Dr. Eaton regarding the proposed study.

3. Chairman Liebman Should Recuse Herself Pursuant to 28 U.S.C. § 455

Based on Dr. Voos's testimony, Member Liebman should recuse herself from any consideration of this case pursuant to the standards set forth in 28 U.S.C. § 455(a), as that section requires that "[a]ny justice, judge, or magistrate judge of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned." This provision "governs circumstances that constitute an appearance of partiality, even though actual partiality has not been shown." *Chase Manhattan Bank v. Affiliated FM Ins. Co.*, 343 F.3d 120, 127 (2d Cir. 2004). This is an objective standard -- that is whether a reasonable, objective observer who knows and understands all the facts would question the judge's impartiality. See *SEC v. Loving Spirit Found. Inc.*, 392 F.3d 486, 494 (D.C. Cir. 2004). A relationship with an expert witness, and especially a connection to evidence presented by that witness, would cause such an appearance of a lack of impartiality. See *Day v. United States of America, Veterans Administration Medical Center*, 1997 U.S. Dist. LEXIS 11777, 94-CV-46 (Aug. 5, 1997) (District court judge found recusal to be appropriate where she had an acquaintance with plaintiff's expert witness despite finding that she could preside over the case impartially.).

While this statute applies on its face only to federal judges, Chairman Liebman has acknowledged that these same standards apply to members of the Board. *Overnite Transp.* 329 NLRB 990, 999 (1999). Similarly, the same rationale of promoting confidence in the impartiality of the courts applies to the Board. As the Supreme Court has stated, "The very purpose of § 455(a) is to promote confidence in the judiciary by avoiding even the appearance of impropriety whenever possible." *Liljeberg v. Health Services Acquisition Corp.*, 486 U.S. 847, 864-65 (1988).

Dr. Voos's testimony makes clear that the study at issue in this matter resulted from a suggestion that Chairman Liebman *made directly to her*, either individually or in a small group, regarding the kind of evidence needed to support her dissent in *Brown*.⁵ (Tr. 104, 107) Dr. Voos's testimony that she and Dr. Eaton performed the study as a direct result of the suggestion made by Chairman Liebman creates, at a minimum, an appearance that Chairman Liebman may not be able to evaluate that study and its relevance to this case in an impartial manner. A reasonable person with knowledge of these facts would almost certainly question whether Chairman Liebman could fairly consider, in the course of deciding this case, the significance of a study that she solicited from an academic who she knew agreed with her position that *Brown* was wrongly decided.⁶

⁵ To the extent it makes any difference in evaluating the necessity for recusal, any suggestion by Petitioner that Chairman Liebman's discussion of research on graduate student unionization simply was part of a formal presentation is belied by the plain meaning of Dr. Voos's testimony. Furthermore, any uncertainty in Dr. Voos's testimony about the precise circumstances or context of her conversations with Chairman Liebman is a result of Petitioner's objection to continued questioning by counsel for NYU about these conversations and Petitioner's failure to clarify the testimony of its own witness on re-direct examination. (Tr. 106-07)

⁶ NYU communicated its concerns to Chairman Liebman in a letter dated July 20, 2011, and requested that she disclose any relevant communications she had with Dr. Voos, Dr. Eaton or other individuals directly or indirectly associated with the Voos/Eaton study, as well as any other information which she believed would be relevant in assessing whether her participation in the Board's consideration of this matter would be appropriate. (A copy of the letter, without the attached transcript, is attached as Exhibit B). To date, however, Chairman Liebman has not responded to NYU's request.

Conclusion

The testimony by Dr. Voos as to her communications with Chairman Liebman about the study relied on by Petitioner creates at least an appearance of partiality requiring Chairman Liebman to recuse herself from any consideration of this matter.

New York, New York
August 11, 2011

Respectfully submitted,

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CERTIFICATE OF SERVICE

This is to certify that copies of the within Motion for Recusal in Case No. 2-RC-23481 has been served by electronic mail on this date on:

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Brian S. Rauch

EXHIBIT A

1 Number 2. I'll make copies for the parties at a later time.

2 (Board Exhibit 2 received into evidence.)

3 HEARING OFFICER DAVIS: Mr. Meiklejohn, if you would call
4 your first witness?

5 MR. MEIKLEJOHN: The Petitioner calls Dr. Paula Voos.

6 HEARING OFFICER DAVIS: Dr. Voos, raise your hand, please.

7 (Whereupon,

8 PAULA VOOS,

9 was called as a witness by and on behalf of the Petitioner and,
10 after having been duly sworn, was examined and testified as
11 follows:)

12 HEARING OFFICER DAVIS: Thank you.

13 DIRECT EXAMINATION

14 BY MR. MEIKLEJOHN:

15 Q Dr. Voos, by whom are you employed?

16 A Rutgers, the State University of New Jersey.

17 Q And what area of the school do you work?

18 A I'm a faculty member in the Department of Labor Studies
19 and Employment Relations, in the School of Management and Labor
20 Relations.

21 Q How long have you been a professor of labor studies at
22 Rutgers University?

23 A I joined in the fall of 1998.

24 Q And could you briefly describe your -- what is your
25 current status, are you a full professor?

1 A I'm a full professor. And I also serve as the credit
2 director. So I run the credit programs including the masters of
3 labor and employment relations, and our undergraduate degree
4 programs.

5 Q Could you just briefly highlight your educational
6 background?

7 A I have a PhD in Economics from Harvard University. I
8 received that in 1982.

9 Q And I'm sorry, I was looking at my notes, did you say what
10 field that was in?

11 A I'm an economist, and I specialize in labor economics and
12 labor relations.

13 Q Are you published in the field of labor economics and
14 industrial (sic) relations?

15 A Yes, I have.

16 MR. MEIKLEJOHN: I'd like a document marked for
17 identification as Petitioner's Exhibit 1.

18 (Petitioner Exhibit 1 marked for identification.)

19 BY MR. MEIKLEJOHN:

20 Q Do you recognize the document? Do you have Petitioner's 1
21 in front of you?

22 A Yes. It is the vitae that I sent you.

23 Q And does that document accurately describe your history
24 and professional background?

25 A Yes, it does.

1 MR. MEIKLEJOHN: I would move the admission of
2 Petitioner's Exhibit 1.

3 HEARING OFFICER DAVIS: Any objection?

4 MR. BRILL: No.

5 HEARING OFFICER DAVIS: Petitioner's 1 is admitted.
6 (Petitioner Exhibit 1 received into evidence.)

7 BY MR. MEIKLEJOHN:

8 Q And if you look at Page 2 of Petitioner's 1, you'll see
9 with respect for example to the second book listing, it
10 indicates that the editors of that book were Lawrence, Michelle,
11 and blank. What does the blank space indicate?

12 A That's just a style. The blank space indicates my name.

13 Q So throughout this document where there is a publication
14 indicating where there is a blank space that indicates that you
15 are an author?

16 A That is correct.

17 Q Or editor, depending.

18 MR. MEIKLEJOHN: I would request that the witness be
19 qualified as an expert in the field of labor studies.

20 HEARING OFFICER DAVIS: I don't know that I need to
21 necessarily rule on that.

22 MR. MEIKLEJOHN: Okay. Then I'll withdraw the request and
23 proceed with my questions.

24 MR. BRILL: I am not sure. Just for the record, she seems
25 to be qualified as a labor economist. I don't know what labor

1 studies means.

2 MR. MEIKLEJOHN: Labor economist is what I had intended to
3 say. Thank you for correcting me. I did misspeak.

4 BY MR. MEIKLEJOHN:

5 Q Have you also held any government positions relevant to
6 the field of labor relations?

7 A I have been appointed to some government bodies and
8 commissions. I haven't been an employee. I currently serve as
9 the commissioner of the Public Employment Relations Commission
10 in the State of New Jersey, which is a board like the NLRB that
11 hears cases regarding public sector representation or
12 representation disputes, or unfair labor practice, things like
13 that. I have been a member of other commissions or public
14 bodies. I was on a state board studying the public benefits in
15 the State of New Jersey. I was on the Dunlop Commission at the
16 federal level, appointed by President Clinton, on the future of
17 labor management relations. I was on several bodies when I was
18 in the State of Wisconsin, one on the minimum wage, one on the
19 state collective bargaining process and relationship.

20 Q Moving back to your service on the Public Employment
21 Relations Board in New Jersey, are you on that as a
22 representative of a particular side?

23 A I'm on that as a public or neutral member. There are
24 union representatives and management representatives on that
25 body as well.

1 Q Now have you participated in conducting a survey of the
2 impact of collective bargaining on graduate students' relations
3 with universities and faculties?

4 A Yes, I have.

5 Q And before I present you with the precise study, well,
6 first of all, did you work with anyone else in performing this
7 study?

8 A Yes, I did. The principal investigator was my colleague,
9 Professor Adrienne Eaton, and our research assistant, who is a
10 PhD student, Sean Rogers also worked with us on it. And it
11 contained a number of purposes, some of which related to his
12 research interests and some of which related to our own
13 regarding the impact of representation of graduate student
14 employees on the faculty/student relationship and on academic
15 freedom.

16 Q And did you prepare at my request a report summarizing the
17 results of that study?

18 A Yes, I did.

19 MR. MEIKLEJOHN: This will be Petitioner's 2, 24-page
20 version.

21 (Petitioner Exhibit 2 marked for identification.)

22 MR. MEIKLEJOHN: Did you want a copy?

23 HEARING OFFICER DAVIS: Yes, if you have an extra.

24 MR. MEIKLEJOHN: I'll have to share one with the witness.

25 HEARING OFFICER DAVIS: That's okay.

1 MR. MEIKLEJOHN: No, no, we've got enough. I just have to
2 remember to get this one back so that we have one for our
3 records. My colleagues don't trust me to keep track of our
4 documents.

5 HEARING OFFICER DAVIS: Okay. Petitioner's 2.

6 BY MR. MEIKLEJOHN:

7 Q Can you tell me what Petitioner's Exhibit 2 is?

8 A This is a presentation. It was a PowerPoint presentation
9 that I prepared based on the first data analysis that we did at
10 your request.

11 MR. MEIKLEJOHN: I would move the admission of
12 Petitioner's Exhibit 2?

13 HEARING OFFICER DAVIS: Any objection?

14 MR. BRILL: Can I have voir dire?

15 HEARING OFFICER DAVIS: Sure.

16 VOIR DIRE EXAMINATION

17 BY MR. BRILL:

18 Q Dr. Voos, the document that's been marked as Petitioner's
19 Exhibit 2, when was this prepared?

20 A It was prepared earlier this week.

21 Q And this was prepared at the request of who?

22 A At the request of Mr. Meiklejohn.

23 Q And the study that you said you conducted, has that been
24 published?

25 A It has not yet been published.

1 Q And what is the status of that study?

2 A Well, the graduate student who was involved in this study
3 with us was our research assistant in the spring. And at
4 Rutgers, our graduate students are research assistants one
5 semester and teaching assistants the other semester. So he's a
6 teaching assistant this semester. So in January he will resume
7 his role as research assistant and we will take these
8 preliminary results, do more data analyses, and prepare some
9 papers for publication.

10 Q So this document that you prepared for purposes of this
11 hearing represents some preliminary analysis and data?

12 A Early data analysis, yes.

13 Q And when was the data collected?

14 A The data was collected between March of 2009 and July of
15 2009.

16 Q Can you describe how you went about collecting the data?

17 A By the way, I misspoke. I said March and July of 2009.
18 March and July of 2010, last year, the last academic year, I'm
19 sorry. In the 2009-2010 academic year between March of 2010 and
20 July of 2010, the data was collected, as is shown on Page 4.
21 I'm sorry. And I was hoping to go through how we did it.

22 Q Well, if you're going to do that with --

23 MR. MEIKLEJOHN: I do intend to take her through the
24 document, yes.

25 BY MR. BRILL:

1 Q I'm just trying to understand whether -- so this is some
2 selected data from this research that you did?

3 A These are data from some of the questions on the survey,
4 yes.

5 Q Do you have a copy of the entire survey instrument with
6 you?

7 A I do.

8 MR. BRILL: Well, I have a lot of questions about this
9 which I can either go into now or I can wait until cross. But I
10 would ask that there be a deferral of the judgment on admitting
11 it as an exhibit until we've had a chance to hear more about the
12 study.

13 MR. MEIKLEJOHN: I will take her through the study and
14 renew the motion at that point.

15 CONTINUED DIRECT EXAMINATION

16 BY MR. MEIKLEJOHN:

17 Q First of all could you just generally describe the
18 methodology of the survey?

19 A This was a survey of PhD students. And it was aimed at
20 getting a broad sample of such students that was representative,
21 and that had sufficient size in each university that we studied.
22 If you turn to Page 3, you will see that we selected five
23 disciplines as broadly representing the liberal arts, science,
24 and professional schools. These are all disciplines that employ
25 a large number of TA's, RA's, or a combination thereof, so there

1 would be a sufficient size within each discipline. And they are
2 common across all large research universities of the type that
3 we were studying. These are all large public universities. As
4 you know in some states graduate student employees do have
5 collective bargaining rights under state law. In other states,
6 they do not. Or they may not choose to have such
7 representation.

8 We selected eight public universities, four of which had
9 union representation of graduate student employees and four of
10 which did not. They were matched by region and by approximately
11 size in terms of number of students and amount of research and
12 development expenditures. Those support, of course, research
13 assistants, those expenditures.

14 Q And why did you match them in that fashion?

15 A Because we were attempting to control as much as possible
16 for discipline, for part of the country, to have 50/50 in terms
17 of union represented/not union represented, to have a sample
18 that controlled for some things that might affect student
19 opinions. I don't know that they do, but they might reasonably
20 be thought to affect student opinions.

21 Q So you're saying you picked from each region one union ad
22 one non-union?

23 A That's correct.

24 Q Please continue explaining your report, your methodology.

25 A So ultimately we had graduate students from 20 programs

1 with union representation of graduate student employees and 20
2 programs without. Many universities, not all, many universities
3 post the names of their PhD students on their website. They do
4 that because they want those PhD students to be able to get
5 jobs, to be able to contact one another, because undergraduate
6 students may be contacting them, and so forth. About 30 of the
7 40 programs had graduate student names on their website, in
8 which case we simply used those names for our survey.

9 Ten did not and so we had a different procedure. In those
10 10 cases, we had to contact the faculty member or the staff
11 member who directed the PhD program and ask that person to send
12 our email onto the graduate students in their departments who
13 are studying for a PhD. In other cases, we sent the email
14 directly. The email contained a link to a survey instrument
15 that was on the web. It was created using something called
16 Qualtrics software. And so students went to that web-based
17 survey and answered the questions.

18 Q Are you on Page 4 of your study now?

19 A I am no. But I can go there.

20 Q You've explained what the Qualtrics system or software is.
21 The second bullet point indicates that the student responses
22 were completely anonymous?

23 A Yes. That's important and that also relates to the next
24 to the last bullet on the page. In universities, we're
25 concerned that human subjects are informed if there is any

1 possible adverse event that could happen to them as a result of
2 participating in a research study. And that's what the Rutgers
3 Institutional Review Board for the Protection of Human Subjects
4 in Research is about. And so you need to give your protocol,
5 the sample of your survey, and your methodology to that review
6 board so that they can determine that there is no possible
7 adverse consequence to the individual student because using the
8 Qualtrics software, there is no way to identify the person later
9 on. The academic program that they are a part of could not
10 retaliate against them if they had a negative comment or
11 something like that.

12 So the institutional review board approved our protocol
13 and our survey and our methodology. We were then classified as
14 exempt, not having to have informed consent from each individual
15 subject, a special kind of procedure. And we went for it after
16 that.

17 Q Rolling back to Page 2 for a moment, which lists two
18 empirical or it says empirical evidence on two assertions. Are
19 those the only assertions or did all of the questions on this
20 questionnaire relate to those two assertions?

21 A No, they did not.

22 Q Is this report limited to the questions that relate to
23 those two issues?

24 A Yes, it is.

25 Q And I don't have any other questions on Page 2. If you

1 could just turn to Page 5 and explain briefly what that
2 reflects?

3 MR. BRILL: Well, before we get into the analysis, I'm not
4 sure there is a sufficient basis to allow testimony on this for
5 two reasons. Number one, the witness testified that this is
6 just a preliminary analysis. And I think we need to find out to
7 what extent it is still preliminary. For example, many
8 scholarly publications have to be peer reviewed, and without
9 peer review we don't know whether there would be professional
10 criticisms that would be made of this.

11 And, secondly, to the extent it is an analysis of teaching
12 assistants, I don't understand what relevance it has to this
13 proceeding because NYU doesn't have teaching assistants.

14 HEARING OFFICER DAVIS: I'm going to overrule the
15 objection. You'll have ample opportunity to cross-examine the
16 witness with respect to the document. And I'm sure the reader
17 of the record will give the document and the testimony related
18 to it the value of what it's worth.

19 BY MR. MEIKLEJOHN:

20 Q So turning to Page 5, can you explain what that page
21 indicates?

22 A Yes. Given our methodology, all graduates, PhD directed
23 graduate students received our email. Some of them were
24 currently graduate student employees and some were not. There
25 were approximately 798 persons who filled out the survey, of

1 whom only 580 were currently employed as either teaching
2 assistants, research assistants, or both at the same time,
3 sometimes called graduate assistants.

4 Q And when you say currently, you mean at the time they
5 filled out the survey?

6 A At the time they filled out the survey. Many of the
7 people who filled out the survey may have been a teaching
8 assistant or research assistant in the past, but we thought it
9 best to limit analysis for this case to those who are clearly
10 current employees.

11 Q Could you turn to Page 6, the demographic data of the
12 survey participants? These descriptive statistics, do these
13 relate just to the graduate students who were then currently
14 employees?

15 A Yes, it does.

16 Q Could you turn to Page 7? And I'm not going to ask you
17 any specific questions. Could you just explain what Page 7
18 reflects?

19 A On the survey, we asked a number of questions that we
20 believed were ways to discern the quality of the faculty/student
21 relationship. And we then used exploratory factor analysis,
22 principal components analysis to determine whether or not some
23 of these questions clustered together statistically in a way
24 that indicated that they all reflected an underlying opinion or
25 attitude about the faculty/student relationship. And you can

1 see here the 12 items that were highly correlated with one
2 another in terms of how each individual answered the questions
3 and the statistical measure of how much they clustered together.
4 It's called Chrome Box Alpha. That's a measure that goes from
5 zero to one. And .96 is a very high measure by which these
6 items correlate. So we termed this first underlying opinion or
7 attitude the personal support and degree to which the student
8 felt the faculty member was a role model. And you can see those
9 items listed.

10 There are some which were very positive. My primary
11 advisor is someone I can trust. And there were some that were
12 very negative. My primary advisor, third from the bottom, fails
13 to meet my needs. For the ones that were negative, we reverse
14 quoted those items so that a large number, a five reflected a
15 strongly disagreeing with the statement because it's good. In
16 other words, a large number reflects a positive end of the
17 scale, the cluster.

18 Q I think it's clear but these 12 items that are listed on
19 this page, these are all questions that were on the survey,
20 correct?

21 A That's correct. And we do have results for both the scale
22 that was created from this set of items and for each individual
23 question.

24 Q Now you say the answers to these questions correlated.
25 That may be obvious to everybody, but I just want to make it

1 clear. What you mean by that is that people who answered the
2 first question, I can freely exchange my ideas, would tend to
3 give the same answer to the second, third, and fourth.

4 A That's correct. If the first, if they said I strongly
5 agree with that, they tended to say they strongly agreed with
6 each and every one of these items, not perfectly, not 100
7 percent, but very, very high correlation.

8 Q And that's with respect to all 12 of these questions.

9 A That's correct.

10 Q Except for the two that are reverse coded, in which case
11 most people would strongly disagree.

12 A Correct.

13 Q And what does this strong correlation indicate?

14 A It just indicates that these 12 questions that we had on
15 the survey seemed to be all getting at the same thing, the same
16 opinion or attitude on the part of the response.

17 Q Did you say if it was an Alpha of 1, that means they would
18 answer all 12 -- every survey participant would answer all 12
19 questions exactly the same?

20 A Yeah, that's right.

21 Q So .96 is pretty close.

22 A Good.

23 Q Is there a certain level that is considered to be
24 statistically significant?

25 A The question is not, that is not something I can answer.

1 That's not the way we use significance. There is a convention.
2 A cut off of .7 is a high enough degree of inter-correlation as
3 to form a valid factor from much social science researching.

4 Q Okay. In other words --

5 A .7 or more is kind of a rule of thumb. It's not really a
6 measure.

7 Q Could you turn to Page 8?

8 A Yes. Another set of six items which we've termed
9 Professional Support & Development seem to be getting at a
10 second aspect of the relationship between the student and their
11 primary advisor. And you'll see these are things like helps me
12 learn about the academic profession, suggests specific
13 strategies for achieving my career efforts. They're all so
14 positive, indicative of a positive relationship with the
15 academic advisor. But they are just a little bit different in
16 terms of the nature of the relationship.

17 Q And these again were highly correlated?

18 A Yes, that's right.

19 Q And what about the freedom to challenge authority?

20 A This was an individual item. It was not a factor. And
21 you can see the statement I feel free to say no to my advisor if
22 they ask me to do something I view as inappropriate.

23 Q But even though it wasn't correlated with the other
24 answers, why did you include it in this report?

25 A Because it's something that we might want to know about in

1 terms of the faculty/student relationship.

2 Q And then finally adverse department climate, what does
3 that indicate?

4 A Well, this indicates obviously a negative situation.
5 Students in my program or department have an adversarial
6 relationship with faculty.

7 Q So you reverse coded that one?

8 A Yes. So again saying I strongly disagree with that is a
9 positive answer.

10 Q So that strongly disagree would get a five on that one
11 rather than a one?

12 A That's correct.

13 Q And turn to Page 9 and explain what that page was like?

14 A Well, these were other items that we had on the survey
15 that we thought might have been included with those factors but
16 empirically were not. These were different attitude items about
17 the student/faculty relationship. And we have results for those
18 individual items, but they were not part of any of the factors.

19 Q Now turn to Page 10. Is this the first page that contains
20 the actual results of the survey?

21 A Yes. And I think I better put on my glasses to see the
22 little numbers. This is a simple set of means or numerical
23 averages. For the two groups, the graduate students in programs
24 where there is union representation of graduate student
25 employees and those who are in context where there is not union

1 representation. Let me just walk you through the table say with
2 the first line. I won't worry about doing each and every one.
3 But you'll see --

4 Q Well, if you could start with the first question, my
5 primary advisor is someone I can confide in, go across that line
6 first.

7 A Yes, okay. Right, let's do that one. That's the first
8 individual item in the overall personal support scale for which
9 we have at the top. So it's the second line of numbers in the
10 chart. My primary advisor is someone I can confide in. 231
11 students in departments where there is union representation of
12 graduate student employees answered the question. Their average
13 response was 3.82 on a scale from 1 to 5. So that's --

14 Q That's close to agree.

15 A That's close to agree but not quite at agree, right. But
16 for the non-union group, there were 252 individuals who answered
17 that same question and their average response was 3.71, which is
18 as you can see a smaller number.

19 Q Smaller than for the union employees?

20 A Right. In the last column, however, we test the
21 significance of that difference in means. So we want to know
22 whether that might arise by chance or whether it is something
23 that we should indicate, you know, is clearly evidence that the
24 union context is a better one with regard to being able to
25 confide in your faculty advisor. And the answer is no, it is

1 not significant at the five percent level on a two-tail (ph.)
2 test. What that means is that at the five percent level, again
3 this is a rule of thumb, is that in one time out of 20 it might
4 happen by chance. And usually economists use .05 to say that's
5 good enough. If it's less than 1 in 20 that would be happening
6 by chance, then we're pretty sure that's a significant
7 difference. And you can see that in fact it did not meet that
8 test. It said that, well, it was .32, 32 percent of the time
9 that difference could arise by chance; so, no, it is not
10 significant.

11 Q So the results were higher for the union represented
12 institutions but not high enough for you to regard it as
13 statistically significantly?

14 A Right. If you look down the columns on this page, you
15 will see that each and every number -- I want to be sure I'm on
16 the right page here, yes -- each and every number has a
17 slightly, there is a slightly higher mean on the union column
18 than in the non-union column. Only some of those, however, are
19 significant, four of them. Most of them are not significant,
20 that is there is no difference in the union represented context
21 and the non-union context, indicating that the union doesn't
22 hurt the faculty/student relationship in this regard. It may
23 help on some individual areas. There are four yeses. However,
24 taking them all as a whole, taking them as one attitude --

25 Q That would be the top?

1 A That would be the top scale. What we could say is there
2 is no significant difference.

3 Q And if you could turn to Page 11 and I don't know as you
4 need to go through this in quite as much -- well, actually,
5 before you leave Page 10, just to make sure it's clear for the
6 record with respect to the reverse coded items, the score was
7 higher under the question marked fails to meet my needs?

8 A That's correct.

9 Q Not statistically significant but it was higher at the
10 union institutions.

11 A Right. And that means the graduate students in the
12 universities with graduate student employees who are represented
13 were more likely to disagree or strongly disagree with that
14 statement.

15 Q So it has a higher number because it is reverse coded.

16 A Right.

17 Q Okay. If you can move to Page 11 and just explain what
18 that page reflects?

19 A Well, this one is fortunately much simpler because just if
20 you look down this, this is the professional support scale.
21 You'll see that the means in each and every of the six items in
22 that scale are insignificant in terms of the union and the
23 non-union means and the overall scale is not different.

24 Q But again the numbers did happen to be higher for the
25 union institutions in all respects.

1 A Let me just check. Yes, that's correct.

2 Q But you don't regard that difference as statistically
3 significant?

4 A I would not, no.

5 Q Could you turn to Page 12 and explain what those results
6 reflect?

7 A These are individual results that get at particular
8 questions that we thought might be worth asking. You'll see the
9 graduate students in the union context are more likely to say
10 that they feel free to challenge authority, to say no if the
11 faculty member asks them to do something inappropriate, but that
12 is not significant at the five percent level. In terms of the
13 nature of the climate in the department, as you know, it is
14 sometimes alleged that unions cause an adversarial climate.
15 Actually, the graduate students in the union context are more
16 likely to disagree with that statement. But, again, it was not
17 significantly different. You'll see that's true for all the
18 other items on the page. There is nothing significant here.

19 Q So did you find any support in this data for the assertion
20 made in Brown that representation by a union damages the
21 student/teacher relationship?

22 MR. BRILL: Objection to the form of the question with
23 respect to referring to Brown. She never mentioned Brown I
24 don't think in her description of what she was doing in this
25 survey. And I'm not sure what specifically counsel is asking

1 about, about Brown. If there is going to be reference to Brown,
2 it should be to a specific --

3 HEARING OFFICER DAVIS: Your objection is sustained.

4 MR. MEIKLEJOHN: Actually, she did indicate that the
5 reason for conducting these studies was these were assertions
6 made by the Board in Brown.

7 HEARING OFFICER DAVIS: I didn't understand that. But
8 that takes us into questions as to what her understanding of
9 Brown was. I mean I think you can reformulate the question.

10 BY MR. MEIKLEJOHN:

11 Q Leaving out the reference to Brown, did you find any
12 evidence in the survey to indicate that representation by a
13 union damages the student/teacher relationship?

14 A We found no evidence that the student/teacher relationship
15 was worse or damaged in the context of graduate student
16 representation.

17 Q If you would turn to Page 13, would you explain what the
18 questions reflected on this page were intended to get at?

19 A Well, these were questions that were intended to get at
20 the issue of academic freedom. And whether or not in some
21 respects having union representation of graduate student
22 employees would hurt academic freedom from the graduate student
23 point of view.

24 Q And did you find that there were answers to certain
25 questions clustered together?

1 A They clustered together but not as highly as they did for
2 the items in the faculty/student relationship, but clearly above
3 the cut-off. And we had two items that related to the freedom
4 the student experienced in teaching. One was about what they
5 could say in the classroom or how they could -- what they could
6 say or discuss and another related to how they do the teaching.

7 Q And you also felt the additional item when it comes to
8 research that related to academic freedom as well?

9 A Yes. And there were two items also about the general
10 respect for different opinions either in the program or
11 department, or in the university as a whole.

12 Q Those did cluster together?

13 A Those did cluster together.

14 Q And what does Page 14 reflect?

15 A Page 14 reflects the results for these items and the
16 scales for those that were done with factor analysis for the
17 entire population of graduate student employees.

18 Q And did you find a statistically significant difference
19 with respect to any of these results?

20 A There was statistically significant, one individual item.
21 If you look down the page you'll see it's the next to the last
22 item, there is respect for differing opinions in the university.
23 And there was a higher mean in the union context than in the
24 non-union context. But for most of the items and for in fact a
25 scale, the academic freedom climate scale that that one question

1 is a part, the difference was not significant.

2 Q And if you turn to Page 15 and from Page 15 on, what does
3 this portion of the report reflect?

4 A This portion of the report reflects students who are
5 currently employed as an RA. These students may have been TA's
6 in the past. When they got to that portion of the survey, they
7 were asked about any other experience they had in former
8 employment. It didn't ask just about their current employment,
9 but that currently they are employed as RA's.

10 Q So there were 162 students who were RA's at the time they
11 answered the survey?

12 A That's correct.

13 MR. BRILL: I'm sorry, where do you see that?

14 MR. MEIKLEJOHN: Page 15.

15 MR. BRILL: No.

16 MR. MEIKLEJOHN: No?

17 HEARING OFFICER DAVIS: Yes.

18 MR. MEIKLEJOHN: No, it's not on his copy. Do you have
19 the 24-page version in front of you?

20 MR. BRILL: Yeah.

21 THE WITNESS: You mean this page?

22 MR. BRILL: Can I see the witness with the official --

23 THE WITNESS: Sure, sorry.

24 MR. BRILL: What page are you looking for?

25 MR. MEIKLEJOHN: Fifteen. Yeah, this is the right page.

1 MR. BRILL: Okay, thank you. You're on 16.

2 MR. MEIKLEJOHN: You had me worried that I messed up
3 copying. It's not like it would be the first time it ever
4 happened.

5 MR. BRILL: I'm sure we'll catch you at some point.

6 BY MR. MEIKLEJOHN:

7 Q And did you conduct a separate study of the students who
8 were RA's at the time they completed the study at my request?

9 A Yes, I did.

10 Q And Page 16, does that reflect the demographic
11 characteristics of the RA respondents?

12 A Yes. And if you compare those, they are very slightly
13 different to all current graduate student employees but not
14 terribly imbalanced or terribly different. They're a little bit
15 more male, for example.

16 Q What I notice is there happens to be one who is under the
17 age of 21.

18 A Yes.

19 Q That was less than one percent apparently of the larger
20 group.

21 A Yes.

22 Q If you could turn to Page 17, this reflects a slightly
23 different clustering result with respect to the answers to these
24 questions?

25 A Yes. We conducted the factor analysis all over again for
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1 this group alone. It turns out quite similar but not precisely
2 similar. For this group of employees, these 10 items all
3 clustered together still the Chrome Box Alpha is .96, so they
4 are tightly clustered together, but there are only 10 items in
5 the personal preferred role model. You'll see the items listed.

6 Q You're turning to Page 18 now?

7 A Yeah. Let me just because in a way they go back and
8 forth.

9 Q No, no, that's fine. I just want to make sure that
10 everybody knows when they turn to Page 18.

11 A Right. The professional support and development factor
12 turned out exactly the same, but there is a new factor which we
13 termed respect. Those two items, my primary advisor thinks
14 highly of me and accepts me as a competent professional, were in
15 the first factor in the other analysis. That is that's the
16 difference between 10 and 12. For some reason, these didn't
17 cluster with the others exactly the same way. And I don't know
18 why. And we still have that freedom to challenge authority,
19 turning to Page 19, the adversarial climate questions, and these
20 other items that we had as possible elements in these attitudes
21 that didn't cluster with anything else.

22 Q That was Page 19 you were on?

23 A That's correct.

24 Q Can you turn to Page 20? Does this reflect the results of
25 the survey?

1 A Yes. For those who are currently serving as RA's, it was
2 set up precisely the same way as the other tables. First you'll
3 see the results for the personal support scale and the
4 individual 10 items in that scale.

5 Q And was there any statistically significant evidence that
6 the unionization adversely affects the student/teacher
7 relationship among RA's?

8 A There was none.

9 Q Were any of the result differences statistically
10 significant for this group?

11 A None of the individual items were significantly different
12 and none were in fact higher for the non-union group.

13 Q And turn to Page 21, what does that page reflect?

14 A Page 21 reflects the responses to the professional support
15 scale, the 6 items. Again just summarizing quickly, you'll see
16 that the means between the union and the non-union context, none
17 of those meanings were significantly different.

18 Q Turning to Page 22, would this page reflect the results of
19 the rest of the questions related to the student/teacher
20 relationship?

21 A Yes. And again boring but very clear, nothing was
22 statistically significant in terms of differences in responses
23 to those items in the union or non-union context.

24 Q If you would turn to Page 23 and what did you find with
25 respect to the answers that clustered together in that area?

1 A Again, these are the items that related to the students'
2 perception of academic freedom and the results are very similar
3 with regard to the factor analysis as before in terms of the
4 clustering of items. The results are on Page 24. On the
5 teaching related academic freedom scale and the two items under
6 it, you'll notice that there's no significant difference in the
7 means. Down under the academic freedom climate scale there is a
8 significant difference both for one of the individual items and
9 for the scale as a whole and that is the item there is respect
10 for differing opinions in my university. That was significantly
11 higher at the five percent level in the union context than in
12 the non-union context. And that was a strong enough item that
13 the whole scale was found to be significantly different.

14 Q So with respect to the RA's only and that aspect of the
15 academic freedom climate, you did find a statistically
16 significant difference between the union and the non-union
17 universities?

18 A Yes, I did.

19 Q And where was it higher?

20 A It was higher in the union context.

21 Q Did you find any results that indicated for RA's that
22 unionization undermined academic freedom?

23 A Let me check.

24 Q Any statistically significant result?

25 A No, I did not.

1 MR. MEIKLEJOHN: I have, I'll have to check my notes, but
2 I have nothing further for this witness.

3 MR. BRILL: Just before --

4 MR. MEIKLEJOHN: Oh, I would want to renew my motion to
5 admit Petitioner's Exhibit 2.

6 HEARING OFFICER DAVIS: I think I've already admitted
7 Petitioner's Exhibit 2.

8 MR. MEIKLEJOHN: Oh, you did?

9 HEARING OFFICER DAVIS: Yes.

10 (Petitioner Exhibit 2 received into evidence.)

11 MR. MEIKLEJOHN: As long as that's reflected in the
12 record, I'm happy.

13 HEARING OFFICER DAVIS: Before turning it over to counsel,
14 did you, Professor Voos, read Brown University?

15 THE WITNESS: I read it some time ago at the start of this
16 project. I haven't re-read it for this presentation.

17 HEARING OFFICER DAVIS: Okay, thank you. Mr. Brill, do
18 you want to start your cross now or would this be a good time to
19 take a break?

20 MR. BRILL: Well, it would. I'd just like just a very few
21 preliminary questions and then I'd like to take the break, but
22 there are some things I need to understand before going into my
23 cross.

24 HEARING OFFICER DAVIS: Okay.

25

1 BY MR. BRILL:

2 Q Can you identify the institutions that you surveyed?

3 A Yes, I can.

4 Q If you can go through them slowly?

5 A Yes. In the Northeast region, Rutgers University was the
6 institution with union representation. Penn State University
7 was the institution without. In the Midwest, the University of
8 Wisconsin was the institution with union representation. The
9 University of Minnesota was the university without. In the
10 West, the University of Oregon was the institution with union
11 representation. Washington State University was the institution
12 without. In the Southern census region, the University of
13 Florida was the institution with union representation. The
14 University of Georgia was the institution without.

15 Q And the only other thing I'd like to have if I could
16 before the break, the witness said she had a copy of the survey
17 instrument with her. And we'd like to look at the survey
18 instrument.

19 MR. MEIKLEJOHN: And again I would, well, it doesn't
20 directly go to the petition to revoke, but we would ask that
21 that be returned at the conclusion of the cross-examination and
22 be kept confidential so that Mr. Rogers can have access to the
23 information to protect his efforts to get this published and not
24 become disseminated for someone else to be able to use it.

25 MR. BRILL: I don't see how the survey instrument could
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1 possibly be confidential. They sent that out to almost 1,000
2 students around the United States.

3 MR. MEIKLEJOHN: Yeah, I'm sorry. There's no problem,
4 sir.

5 MR. BRILL: Okay. So if we could get that, then we'll
6 maybe resume at 2:00.

7 HEARING OFFICER DAVIS: You'll produce that for counsel?

8 MR. MEIKLEJOHN: I don't have it. But I'm told that she
9 has it. And we'll arrange for her to, yeah, I'll serve as a
10 go-between on that.

11 THE WITNESS: I need to return to Rutgers to teach and I
12 need to be done by 3:00. So could we come back a little earlier
13 than that?

14 MR. BRILL: I can't guarantee. I mean I need to review
15 this.

16 HEARING OFFICER DAVIS: Let's resume at 1:30. And if you
17 are not ready then you let me know, we'll go from there.

18 MR. BRILL: We'll do our best.

19 HEARING OFFICER DAVIS: So with that we are adjourned
20 until 1:30.

21 Off the record.

22 (Whereupon, at 12:15 p.m., a luncheon recess was taken.)

23

A F T E R N O O N S E S S I O N

(Time Noted: 1:32 p.m.)

HEARING OFFICER DAVIS: On the record.

BY MR. BRILL:

Q Good afternoon. How were you first contacted about testifying in this case?

A Adrienne Eaton, a principal investigator and my colleague had sent preliminary results to Catherine, is that correct? And it turned out that she was traveling and unable to testify, so the Union contacted me. I'm one of the co-investigators.

Q And do you know when anybody at the UAW first talked to Dr. Eaton?

A I'm sorry, I do not.

Q Have you ever seen any written communications between the UAW and Dr. Eaton?

A I don't believe I've seen there.

MR. BRILL: Well, we served a subpoena and I got some communications in the last couple of weeks between Mr. Meiklejohn and Dr. Voos, but nothing with Dr. Eaton, so we may have to pursue that.

MR. BRILL: So when was the first time that you spoke to --

MR. MEIKLEJOHN: I would just note for the record that the subpoena calls for the production of communications between the UAW and Paula Voos. I think there is something in the

1 disclosures that included the initial contact with Dr. Eaton.

2 BY MR. BRILL:

3 Q So do you know when Dr. Eaton was first contacted?

4 A I don't know precisely.

5 Q When did you and Dr. Eaton first start working on this
6 project?

7 A A little more than a year ago.

8 Q In the fall of?

9 A 2009.

10 Q And how did the idea for the research come about?

11 A We primarily do empirical research and we try to help or
12 teach these students learn how to do empirical research, to do
13 surveys and data analysis related to labor relations questions.
14 And I believe that the idea for this study was originally
15 Professor Eaton's. And we thought that more empirical evidence
16 was needed on these matters. We had seen some surveys of
17 professors regarding student/teacher relationships subsequent to
18 representation of graduate students, but we're not aware of any.
19 And I am so not aware of any research in which the students were
20 asked about those relationships. And also of course we were
21 interacting with a PhD student who had his own ideas about
22 things he would like to ask other graduate students about. He
23 was concerned about whether graduate students continue with
24 their education, whether they have adequate financial support.
25 You may know a large proportion of PhD students do not finish

1 their degree, some of their problems as research assistants or
2 teaching assistants. So he has his own concerns as well.

3 Q And what's the name of that PhD student?

4 A Sean Rogers.

5 Q Is he --

6 A He's the second, co-investigator. He's listed on --

7 Q He's a co-investigator?

8 A Yes.

9 Q And what year of study is he in at Rutgers?

10 A What year of study is he in? I believe this is his third
11 year maybe. I believe this is his third year, this year.

12 Q Does he have a dissertation proposal yet?

13 A I'm not on his committee. I think he is defending a
14 master's thesis. I saw that an email went out of his master's
15 thesis defense. I'm not on that committee, either.

16 Q You don't know whether this research is being used for his
17 master's thesis or dissertation?

18 A This research is not being used for his master's thesis.
19 I originally thought that it would be. I was surprised to see
20 that he had done another study. I think the delay in writing up
21 the results and analyzing the data was a problem and he went
22 onto use one of his other projects.

23 Q And you don't know whether he's using it for his
24 dissertation or not?

25 A I don't know.

1 Q And so what steps did you and Dr. Eaton and the graduate
2 student take from the time the idea first was conceptualized?

3 A We asked him to do a literature review and to summarize
4 articles for us that were empirically grounded and related to
5 these questions, and to make copies of the best articles. We
6 particularly asked him to look for other surveys where similar
7 types of items had been developed to use in the construction of
8 questions. We sat around and brainstormed survey items based on
9 what we had seen from other surveys and what the issues were.
10 He went through multiple drafts of those survey questions.

11 Professor Eaton and Sean Rogers mostly did the preparation
12 of the submission to the Human Subjects Review Committee. That
13 has to all be together for them. I did read it over and made
14 comments, corrections. But that's how it was developed.

15 Q And at some point did you do any testing to validate the
16 survey questions?

17 A I am not entirely certain, but I believe he did some
18 testing with graduate students in other departments at Rutgers,
19 not ones that would answer the survey. I suggested he do that,
20 but I am not 100 percent sure that he did that.

21 Q Isn't that a normal step in doing an empirical survey to
22 validate the questions before the research is done?

23 A It's a good idea. It's not always done especially if some
24 of the instruments have been used in other surveys, have been
25 used before.

1 Q And you don't know if that was done here?

2 A I can't say.

3 Q And you don't know whether these same questions were asked
4 in other surveys, do you?

5 A I believe that some of them are very close to items that
6 were in other surveys, yes.

7 Q Which other surveys?

8 A I can't tell you, at this time.

9 Q At what stage in this -- let me back up. Was your
10 research funded by anyone?

11 A No, it was not.

12 Q And did you or, to your knowledge, Dr. Eaton have any
13 communications with anyone from the UAW or any other union about
14 the research you were doing?

15 A No, we did not.

16 Q Going back to the communications that at least you had
17 with the UAW, when was the first time that you had any
18 communications with either a representative of the UAW or an
19 attorney for the UAW?

20 A It was last week. And I don't recall whether it was
21 Wednesday of last week or Thursday of last week. It was last
22 week.

23 Q And before that time, what was the status of the research
24 results?

25 A As I said earlier, we had gotten the survey done. The

1 data was sitting there, to be honest. Sean Rogers was working
2 on other tasks as part of his employment. And we were going to
3 come back to it in January. I believe that Professor Eaton
4 heard about this hearing and thought that our fundamental
5 results might have some value.

6 Q So you think she reached out to somebody in the UAW?

7 A Yes, that's correct. That's correct. Because we did have
8 the data and we thought that it would be of use to the NLRB.

9 Q When you started out your project, did you have in mind
10 the fact that it might assist unions in their efforts to
11 overturn the Brown decision or establish that graduate students
12 at private universities could be treated as employees?

13 A We did have in mind an empirical test of some of the
14 employer assertions in these cases, yes.

15 Q And you were setting out to show that those assertions
16 were not accurate, isn't that true?

17 A We were setting out to find out whether or not they were
18 accurate, which you really only can do once you ask questions
19 and see how people answer them.

20 Q So going back to the communications then that you had with
21 the UAW, to the extent you know, I'm asking about communications
22 Professor Eaton had as well, what documents did you give or did
23 Professor Eaton give to your knowledge to the UAW?

24 A At that time, all we had was a presentation that Sean
25 Rogers had created for some academic group that had the type of

1 information you see here but only for the 798 people who were
2 all PhD students. None of the work that I presented this
3 morning on the graduate student employees only or the RA's had
4 been done at that time.

5 Q So you completed this analysis in the last week or so?

6 A That is correct.

7 Q And before this research is -- is it your goal to publish
8 the research in some academic journal?

9 A Our goal is definitely to publish it in a peer review
10 academic journal and one or more papers. There probably will be
11 papers that Sean Rogers writes by himself and one that the three
12 of us write.

13 Q So what steps would be necessary before the papers are
14 published?

15 A Well, I think that further data analysis would be useful.
16 You have a copy of the survey. You see that there are more
17 background questions. There may be some regression analysis or
18 other types of models that are run. Certainly there would be an
19 extensive literature review that would need to be written.
20 Sometimes with empirical papers, you might repeat the survey for
21 another group of people. So, for example, one could imagine
22 surveying professors and combining the two sets of data in a
23 single article. I'm not entirely sure what will be necessary.

24 Q And whatever you do before it is published would have to
25 be peer reviewed?

1 A Yes, that's correct.

2 Q Could you explain the peer review process?

3 A Certainly. I have served as a peer reviewer on many
4 academic journals. When you send a paper for publication to an
5 academic journal like the Industrial and Labor Relations Review,
6 they then send it out to three professors of other universities,
7 typically, who are specialists in the field and are
8 knowledgeable. They read the paper, write comments, often
9 suggestions for improvement. That would be call a revise and
10 resubmit. Or they might say accepted, practically perfect,
11 there are these minor things need to be done. Or they might say
12 rejected for these reasons. And if it's rejected for these
13 reasons, those reasons are sent to the person who is submitting
14 the publication. They have a chance to correct them and submit
15 that paper to another journal.

16 Q And that process has not occurred yet with respect to this
17 research?

18 A No paper has been written. So, no, it has not occurred.

19 Q So we don't know whether these outside experts would find
20 some flaws in your research or suggest things that you could do
21 to improve the survey.

22 A That is correct.

23 Q Prior to today, who have you discussed your potential
24 testimony in this hearing with?

25 A I discussed it with Professor Eaton and Sean Rogers.

1 Q And I assume you discussed it with Mr. Meiklejohn?

2 A Oh, yes, of course.

3 Q And anybody else?

4 A Oh, let's see, have I discussed it with anyone else? I
5 think my husband has heard about it.

6 Q In the past, have you expressed any opinion either orally
7 or in writing regarding the NLRB decisions in either the NYU or
8 the Brown University cases?

9 A I am quite sure I have expressed them orally, though I
10 can't tell you the time and place. I don't believe I've
11 expressed them in writing.

12 Q And what do you recall saying about those decisions?

13 A I believe they were made on the wrong basis.

14 Q Which one, because they went in opposite directions.

15 A I believe the Brown decision was on the wrong basis. My
16 experience as a faculty member, although it is only one data
17 point, is that there has been no effect whatsoever on the
18 faculty/student relationship of having represented graduate
19 students as RA's or TA's working under me, and that's been at
20 two universities. I realize that that's only one data point.
21 And that's why a survey of many people is necessary.

22 Q In fact at Rutgers -- you were at Rutgers University?

23 A Um-hum.

24 Q What's the union at Rutgers?

25 A The American Federation of Teachers.

1 Q And in fact there is a single bargaining unit at Rutgers
2 that includes both graduate student employees and faculty,
3 correct?

4 A That is correct.

5 Q Adjunct faculty as well as full-time faculty?

6 A Adjunct faculty have a separate bargaining unit, but they
7 are represented by the same union.

8 Q And the research assistants at Rutgers are not in that
9 bargaining unit, are they?

10 A I don't think you are correct. I believe they are. I
11 have to say I may be wrong. Our graduate students are both TA's
12 and RA's at our school. I believe research assistants are
13 included. But I may be in error on that.

14 Q Have you seen any problems with the graduate students
15 being in the same bargaining unit with the faculty?

16 A It has been advantageous to the graduate students because
17 they have gotten somewhat higher pay and presence at the expense
18 of the faculty. But the faculty and the union made the decision
19 that that was necessary given their poor economic circumstances.

20 Q Now have you ever signed any petition or anything like
21 that with respect to the question of whether graduate students
22 are entitled to union representation?

23 A No.

24 Q And you were president of the Industrial Relations
25 Research Association?

1 A Yes, now known as the Labor and Employment Relations
2 Association.

3 Q And where were you president of that organization?

4 A I think it is '94, something like that. I'm not great at
5 dates. Okay, December 2003, on page -- I better put my glasses
6 on, Page 11.

7 Q And you've been involved with that organization in other
8 leadership capacities?

9 A Yes, I've been involved. I was on the board. I was
10 editor in chief. I've been associated with it in a leadership
11 role since the early 90's, even though I was quite wrong as to
12 when I was president.

13 Q Did that organization ever take a position as an
14 organization on the question of unionization of graduate
15 students?

16 A No, it does not.

17 Q Now you have testified in a number of other proceedings,
18 is that right?

19 A I've testified in some other proceedings, yes.

20 Q I think they are listed, at least some of them, on your
21 resume?

22 A All that I have testified in are on my resume. None have
23 been omitted.

24 Q You have something called legal consulting and outreach on
25 your CV.

1 A That's correct.

2 Q And you've given testimony in several proceedings on
3 behalf of the United Automobile Workers, is that correct?

4 A Yes, that's correct.

5 Q And also for the National Association of Letter Carriers?

6 A Yes.

7 Q And for the Civil Service Employees Association?

8 A I helped to write a report for that. I did not testify.

9 Q And you testified on behalf of UNITE?

10 A Yes.

11 Q Is that right?

12 A Yes. It was a small arbitration.

13 Q You've also prepared reports and an affidavit on behalf of
14 the American Federation of State, County, and Municipal
15 Employees?

16 A Correct.

17 Q And you've also testified on behalf of the United Food and
18 Commercial Workers.

19 A Yes.

20 Q And you've also done work for the Madison Teachers.

21 A Correct.

22 Q Have you ever testified for any employer or employer
23 group?

24 A I have not. It's now they're like attorneys, people
25 specialize.

1 Q And your specialty is on the union side?

2 A That's correct.

3 Q And you've written a fair number of articles and books
4 about the issue of unionization, and its impact on various
5 industries and the economy, is that correct?

6 A That's correct.

7 Q And would it be fair to say that the thrust of your
8 writing is to demonstrate that unions have a positive effect on
9 the economic conditions of various industries and businesses?

10 A Some of my writings come to that conclusion. Others are
11 about other matters.

12 Q Is there anything you've written that you can point me to
13 where you've reached the conclusion that unionization was bad in
14 any respect for either a business or for the economy?

15 A Many of my writings are not about whether unions are good
16 or bad. They are about other things. Economists are very
17 interested in quantifying different things. So, for example,
18 let me give you an example. If you look on Page 2, articles,
19 chapters, and books, Steven E. Abraham (ph.) and Paula Voos,
20 Investors Assessment of California's Health Insurance Act of
21 2003. This article was about how the stock market and the
22 shares of healthcare related corporations move in response to a
23 particular piece of legislation. So some of my work is about
24 unions. Some of my work is not about unions. Many and much of
25 my work about unions is not about whether they are good or bad,

1 but about various things related to labor economics and
2 collective bargaining.

3 Q And in any of your work that relates to unions, have you
4 reached the conclusion that unionization has had negative
5 consequences for the U.S. economy or any particular business?

6 A I haven't assessed the effect of unions on the U.S.
7 economy either good or bad. That's not, you know, on the
8 economy as a whole. I'm more of a micro economist. It's more
9 about particular things.

10 Q And have you reached the conclusion that unionization in
11 any particular industry or business has had a negative
12 consequence?

13 A Yes, I have.

14 Q In what respect?

15 A If you would like to look at Page 5?

16 HEARING OFFICER DAVIS: This is Petitioner's Exhibit 1.

17 THE WITNESS: And midway of the page you see Paula Voos
18 and Lawrence R. Michelle, the union impact on profits in the
19 supermarket industry.

20 BY MR. BRILL:

21 Q No, I don't see that.

22 A It's one, two --

23 Q I've got it, okay.

24 A And then the one below that, the union impact on profits
25 evidenced from industry price cuts margin data. Both of those

1 articles reached the conclusion that unions reduced profits,
2 which --

3 Q In that industry.

4 A Yeah, either in the supermarket industry or in the economy
5 as a whole in that particular data set. So that might be
6 considered a negative outcome.

7 Q Is there anything similar that you can point to more
8 recently than that article that was written 26 years ago, 24
9 years ago?

10 A Most of my recent articles have not been about that.

11 Q Well, would it be fair to characterize your views as
12 someone who is an advocate for unionization?

13 A I think it would be fair to characterize me as a person
14 who believes that American employees have the right to choose
15 whether or not to be union represented.

16 Q That's not my question, Dr. Voos.

17 A I am pro-union. But I don't know that most of my articles
18 are an advocate for unionization.

19 Q And when you discussed your views about the Brown decision
20 and your disagreement with the Brown decision, was that one of
21 the things that motivated you to do the research in this case?

22 A I thought that some of the assertions in the Brown
23 decision were unrealistic and were made in whole cloth without
24 any evidence whatsoever given my experience as a faculty member
25 and so I thought that they should be empirically tested.

1 Q Do you know incidentally if Professor Eaton has taken any
2 position about the Brown decision?

3 A She, like me, thinks that many of the assertions are
4 untrue.

5 Q That's something you've discussed with her?

6 A Yes.

7 Q Now you are being compensated for your time, testimony?

8 A Yes, I am.

9 Q How much are you being compensated?

10 A \$300 an hour.

11 Q And that includes your time preparing?

12 A Yes.

13 Q And how much time in total have you given?

14 A So far before today it has been a little bit more 10
15 hours. And we're racking up the time.

16 Q Now with respect to the survey, itself, how did you
17 choose, well, first of all, were you involved in choosing the
18 eight institutions that were surveyed?

19 A I was involved, yes.

20 Q And how did you choose those eight schools?

21 A We, you know, as professors, we know about some large
22 public institutions that have union representation. And we sat
23 around and brainstormed the ones that we thought we could find a
24 decent non-union match for in the same region. And when I say
25 decent, I mean not perfect, but about the same size both in

1 terms of total number of students and in terms of their
2 research, whether it's a research university. So I think, for
3 example, probably our best match was the University of Wisconsin
4 and University of Minnesota. Those are very highly similar
5 institutions in two adjacent states in terms of their prestige,
6 research, student size, and so on. So we were trying to find
7 good matches. So, for example, we rejected most of the
8 California institutions that had collective bargaining because
9 they were hard to find a match for. They're just so big. And
10 that's why we decided to go with University of Oregon. We
11 didn't go with the University of Washington because it's much
12 bigger, but Washington State, and we had Sean do some research,
13 some data collection on universities that might be good matches
14 within different areas. So he looked at how many research
15 dollars were at different institutions, how large they, made
16 sure they had these departments. Virtually every university has
17 these five departments. But that's the type of process we went
18 through trying to find some things where we could reasonably
19 control for these important factors.

20 Q Now are you aware of whether or not the faculty are
21 unionized for those institutions that you --

22 A Actually I'm not sure I know about all of them. I used to
23 work at the University of Wisconsin. The faculty are not
24 unionized there. I don't know about the University of Oregon or
25 the University of Florida. At Rutgers, the faculty are

1 unionized. So we did not look at that systematically or try to
2 control for that.

3 Q Isn't that something you think could affect the attitudes
4 between graduate students and faculty as to their experience
5 with unions?

6 A I think it would affect the faculty perception of the
7 relationship a lot. I doubt very much it affects the graduate
8 student perception of the relationship. Many of our graduate
9 students might or might not even know whether faculty are
10 unionized.

11 Q But if it affected the faculty's view, then in turn that
12 could be reflected in the way the faculty deal with the students
13 and therefore the way the students perceive the faculty,
14 wouldn't that be true?

15 A I can't rule that out. But I have to tell you as a
16 faculty member at Rutgers University, I have spoken to other
17 faculty members who did not know whether they were a union
18 member or not. This is not something that everyone is highly
19 aware of and it affects all their relationships. That's one
20 reason why I find these assertions about the effect on the
21 relationship to be just not very credible.

22 Q So if I told you that faculty are in fact union
23 represented at Oregon and Florida, that wouldn't make you second
24 guess the schools that you selected for the survey?

25 A No.

1 Q And did you do any testing to see whether there was a
2 difference in results between Wisconsin and the other three
3 schools that might be attributable to the unionization of
4 faculty?

5 A No. But we probably should for publication.

6 Q Now if it turns out that the RA's at Rutgers are in fact
7 not in the bargaining unit that would affect your results,
8 wouldn't it?

9 A The RA's in the School of Management Labor Relations are
10 in the bargaining unit. I have trouble believing that they are
11 not in other parts of the university. But our RA's are in the
12 bargaining unit.

13 HEARING OFFICER DAVIS: You're referring to Rutgers?

14 THE WITNESS: To Rutgers, yes. I have direct knowledge of
15 this. This person who is my RA is in the bargaining unit. If
16 there are some sets who are not, it's --

17 BY MR. BRILL:

18 Q So in each of the schools that you studied as far as you
19 knew there are both TA's and RA's in the bargaining unit?

20 A That's my understanding, yes, that's correct.

21 Q And that included science RA's?

22 A That's correct. And our results had TA's and RA's from
23 each of the schools that were union. The surveys came back that
24 they were.

25 (Pause.)

1 HEARING OFFICER DAVIS: Petitioner Exhibit 1, which is the
2 curriculum vitae of Professor Voos, and if I haven't it is
3 admitted now.

4 MR. CONRAD: I think you did. I recall Mr. Brill having
5 no objection to it. I'm sure you admitted it after you heard
6 that.

7 HEARING OFFICER DAVIS: Thank you.

8 (Pause.)

9 BY MR. BRILL:

10 Q What does the term graduate student refer to at Rutgers?

11 A That is a term that often covers people who might be
12 called RA's at other places. It's an amorphous term that means
13 different things at different locations. It is used differently
14 for example at Rutgers than at the University of Wisconsin where
15 I once was.

16 Q I'm asking about Rutgers in particular.

17 A I'm saying that a graduate student could be a person who
18 does RA duties, TA duties, or both.

19 Q And are there students at Rutgers who are classified as
20 RA's specifically as opposed to just graduate assistants?

21 A I don't know.

22 Q Now you said that you're studying only surveyed students.

23 A That's correct.

24 Q And not faculty.

25 A That's correct.

1 Q So you have no, your survey provides no basis for any
2 conclusion about these issues from the faculty perspective?

3 A It does not.

4 Q Or from the perspective of the university-wide view?

5 A What do you mean by that?

6 Q Well, from the administration of the university, from the
7 deans or --

8 A No, it does not.

9 Q And did you think that the issues of the relationships
10 between students and faculty was only significant to look at it
11 from the students' point of view?

12 A No, I did not. But there have been other studies that
13 surveyed faculty and there have been certainly articles that
14 would look at it from the administration point of view. This
15 was an area that had not been looked into. And so it was an
16 area ripe for research.

17 Q And what studies have looked at it from the faculties'
18 point of view?

19 A I think Hewitt, I think Gordon Hewitt was one, 2000,
20 Journal of Collective Negotiations I think is one that is a
21 survey of faculty. There have been some older studies survey as
22 a faculty.

23 Q Is that something that you said you might want to do
24 before the research is published?

25 A We might want to do it. Certainly some time has passed

1 since those earlier studies.

2 Q That would certainly give a more complete picture of the
3 issue, wouldn't it?

4 A I think that would be worth doing.

5 Q Now the only thing, and just so I understand, the only
6 thing you did for purposes of this study was send out the
7 questionnaire that you described to the doctoral students?

8 A That's correct.

9 Q In other words, you didn't do investigation for example to
10 see whether there were instances of strikes or unfair labor
11 practice or arbitrations.

12 A We did not do that.

13 Q But one of the questions you asked in your survey was
14 whether the individual doctoral student had ever filed a
15 grievance, right?

16 A Yes, we did ask that question.

17 Q And you also asked -- let me see the survey. You also
18 asked if they knew if anybody had filed a grievance about
19 something that happened in the course of their graduate school.

20 A That's correct.

21 Q And you did not report the results of that question in the
22 study that you put in this morning, right?

23 A I don't have the numbers at hand, but I remember they were
24 very small.

25 Q Very few.

1 A Very few. Larger for those who said they had heard of it
2 than had done it. But I don't have the numbers at hand.

3 Q And for those who had, did you correlate that to their
4 views about their experience?

5 A We asked that question with the idea that that might be an
6 important thing to do. But there were so few responses that I
7 doubt there would be enough for statistical investigation.

8 Q But you're aware that one of the concerns that was
9 expressed in Brown and generally in this area by universities is
10 that the potential for filing grievances by students against
11 their faculty instructors is likely to lead to a rupture or at
12 least a lessening of those relationships.

13 A I am aware of that. And it's just the same reason we
14 asked about the adversarial nature of the climate in the
15 department. We tried to ask some questions to get at issues
16 where there might be a negative consequence to see whether that
17 was prevalent or more prevalent in the union context, or
18 something like that. In non-union situations in higher
19 education, although there may not be grievance procedures of the
20 type that we have with union representation, there are often
21 other complaint procedures.

22 Q So you didn't do anything for example to independently
23 check whether there were history of grievances or unfair labor
24 practices?

25 A No, sir, we did not.

1 Q And did you look into, for example, whether there had been
2 a history of strikes or work disruptions at any of the
3 institutions?

4 A No, we didn't.

5 Q And so you didn't look into the experiences of either TA's
6 or RA's who might have gone on strike.

7 A We did not.

8 Q Now interestingly one of the questions that you asked that
9 is not reflected either in your -- I'm going to actually ask to
10 put this in evidence, your survey instrument.

11 MR. BRILL: Can we mark this as University Exhibit 1.

12 (Pause.)

13 MR. BRILL: There is an issue about whether we're an
14 employer. If we can have an understanding that there is no --

15 HEARING OFFICER DAVIS: Generally, in R-case hearings,
16 it's Petitioner and Employer. So I understand your legal
17 petition -- I understand your position that you prefer not to be
18 designated as the Employer, but that's generally what we do and
19 that's what we are going to do here. So it will be marked as
20 Employer Exhibit 1.

21 (Employer Exhibit 1 marked for identification.)

22 BY MR. BRILL:

23 Q So one of the questions you asked on the bottom of Page 1
24 was how easy is it to distinguish between the duties you perform
25 as part of working on your assistantship and doing your own

1 doctoral study and research. That's one of the questions?

2 A Correct.

3 Q And did you get data that was sufficient to analyze that
4 answer?

5 A I can't recall what the distribution of responses was to
6 that question. I didn't bring it and I can't recall.

7 Q And you didn't correlate that at all with the survey
8 results that you prepared for purposes of this hearing?

9 A We have done no correlation, or multiple regression, or
10 any other type of more advance data analysis to date.

11 Q So as you said this is just a preliminary analysis.

12 A That's correct, just the means.

13 Q Now based on your own experience as an academic, would you
14 expect that the answer to that question would be for research
15 assistants that in many cases they would say it's very difficult
16 to distinguish between their duties and their doctoral study and
17 research?

18 MR. MEIKLEJOHN: I'm going to object at this point. This
19 is way beyond the scope of direct and really is calling for her
20 speculate about -- it's calling for her to speculate about
21 something she has no database for and that has got nothing to do
22 with her testimony.

23 MR. BRILL: This was part of her study.

24 HEARING OFFICER DAVIS: The question I think is or should
25 be based on the study that was done, do you recall whether or

1 not --

2 THE WITNESS: I don't recall.

3 HEARING OFFICER DAVIS: Rather than a general answer.

4 THE WITNESS: I don't recall.

5 BY MR. BRILL:

6 Q Well, let me ask you this as a labor economist. In a
7 situation where a research assistant at a university is
8 performing research in connection with his or her dissertation
9 and a research assistant goes on strike, wouldn't you agree it
10 would be difficult if not impossible to separate out the
11 academic consequences of the research assistant stopping work on
12 the research assistantship from economic consequences? Do you
13 understand the question?

14 A It's such a rare occurrence that I really can't answer
15 that question. It's speculation utterly beyond my experience.

16 Q You've never experienced that.

17 A I have never been at a university where there was a strike
18 by graduate students, no.

19 Q But you're aware there have been strikes by graduate
20 assistants?

21 A There have been infrequently, yes.

22 Q Have you studied those? Have you studied literature about
23 those?

24 A I have certainly read some things in passing, but I can't
25 say that I have studied that.

1 Q Have you looked at any situation where research assistants
2 have gone on strike as opposed to teaching assistants?

3 A I really have not.

4 Q And in fact in the states where you have worked, you've
5 worked at public institutions in Wisconsin and New Jersey where
6 graduate students were unionized, correct?

7 A That's correct.

8 Q And that was under state law in each of those states,
9 correct?

10 A That's correct.

11 Q And those state laws prohibit strikes by public employees,
12 is that right?

13 A That's correct.

14 Q And you understand that's not the case under the National
15 Labor Relations Act.

16 A That is correct.

17 Q Did you consider the effect of state laws in your
18 research, state laws that would have prevented or restricted
19 strikes by graduate students at those public universities?

20 A I don't know how I would have considered that. There
21 weren't universities that we looked at that were in states that
22 permitted strikes, so there's no way for me to respond to that.

23 Q So every university that you're aware of where graduate
24 students are unionized strikes are prohibited?

25 A I haven't done a study of the matter, but I am not aware

1 of university where it is permitted, let's put it that way.

2 A Do you think the experience of a strike at a university,
3 significant strike at a university by graduate students might
4 well be something that could affect the relationship between
5 students and faculty members?

6 MR. MEIKLEJOHN: Objection. Speculative and far beyond
7 the scope of her direct testimony.

8 THE WITNESS: Who knows?

9 HEARING OFFICER DAVIS: I'm sorry. The objection is
10 overruled.

11 THE WITNESS: Do I think it could affect the relationship?
12 It could or it could not. It depends.

13 BY MR. BRILL:

14 Q So it could?

15 A It could.

16 Q And in that respect private universities would be
17 significantly different than public universities, right?

18 A (No audible answer)

19 Q And did you consider the effect of state laws in many
20 states which limit the subjects of bargaining between public
21 universities and graduate assistants?

22 A We did not in this study.

23 Q And you are aware, however, that there are such laws in
24 many states?

25 A Right. And that they vary between states, that's true.

1 Q So that was not a factor that you looked at in your study?

2 A No, it was not.

3 Q And I think you already said you did not consider the
4 effects of whether faculty at an institution were unionized or
5 not?

6 MR. MEIKLEJOHN: Objection. Asked and answered more than
7 once.

8 HEARING OFFICER DAVIS: She can answer the question.

9 THE WITNESS: We did not consider that in the study.

10 BY MR. BRILL:

11 Q And I don't think I asked this. Did you consider the
12 effect of whether faculty were in the same bargaining unit as
13 the graduate assistants?

14 A We have not done that yet, but we will do that when we
15 look at say Rutgers where that's true versus the others. We
16 have the data that that can be done in the future.

17 Q But that's not part of the analysis that you've done so
18 far?

19 A Not to date.

20 Q Now do you know and did you consider whether the laws of
21 states applicable to the public schools that you studies
22 provided any procedures for the filing of unfair labor practice
23 charges or their equivalent?

24 A Ask the question again. I'm not sure I understand.

25 Q You asked in your survey instrument about grievances that

1 have been filed.

2 A Yes.

3 Q And did you consider whether some or all the states where
4 the public schools were located that you studied, in other
5 words, Oregon, Wisconsin, Florida, and New Jersey, whether any
6 or all those states had procedures for the filing of unfair
7 labor practice charges or their equivalent.

8 A I believe that all of those states do have procedures,
9 though we did not look at that in a systematic way for this
10 study. I just based on my knowledge of public sector collective
11 bargaining, I believed all those states have such procedures.

12 Q So you didn't examine --

13 A We certainly do in New Jersey and I know they do in
14 Wisconsin. I'm sorry to interrupt you. But I'm sure from
15 living in those two states that I know they do and I would
16 assume Florida and Oregon would have that.

17 Q So your study didn't look at the effect of any possibly
18 situations where students had filed unfair labor practice
19 charges against faculty either on their own behalf or someone
20 else had filed them on their behalf?

21 A That was not the purpose of our study, no. We didn't look
22 at that.

23 Q Well, the purpose of your study was to see whether there
24 was an impact on the relationship from the student point of view
25 on, among other things, faculty/student relationships, right?

1 Wasn't that one of the purposes of your study?

2 A The purposes of the study was to determine whether the
3 representation of graduate student employees, itself, affected
4 that relationship, not these other factors you are bringing up.

5 Q My question to you, you didn't look to see, for example,
6 if there had been a situation at one or more of the schools
7 where some number of students had filed unfair labor practice
8 charges against their faculty --

9 MR. MEIKLEJOHN: Objection.

10 THE WITNESS: Correct.

11 HEARING OFFICER DAVIS: Wait, hold it. Let him finish the
12 question. I didn't hear the rest of the question.

13 MR. BRILL: You didn't look to see whether that is
14 something that might have correlated to the difference in
15 attitudes between students and faculty?

16 HEARING OFFICER DAVIS: Okay, hold up.

17 MR. MEIKLEJOHN: I'm objecting on the grounds that she's
18 already established she didn't look at whether --

19 THE WITNESS: I did not.

20 MR. MEIKLEJOHN: Oh, she just answered.

21 THE WITNESS: I did not. I did not. Let's just go on. I
22 didn't.

23 BY MR. BRILL:

24 Q Apart from the survey results, have you looked at any
25 literature that examined the attitudes from either the student

1 or faculty respective in a situation where unfair labor practice
2 charges had been filed?

3 MR. MEIKLEJOHN: Objection. She's testified she didn't
4 look at where there unfair labor practices.

5 MR. BRILL: Excuse me. I'm asking a different question
6 now, Mr. Meiklejohn. I'm asking her apart from the study that
7 she did. In connection for the study, she testified that she
8 did a survey of literature in this area. And I'm asking her if
9 in connection with that survey she looked at any studies or
10 literature looking at the effect on student/faculty
11 relationships as a result of students having filed unfair labor
12 practice charges against faculty members.

13 HEARING OFFICER DAVIS: The objection is overruled.

14 THE WITNESS: Okay. You're giving me lots of good ideas
15 for further studies. As an academic in the area of collective
16 bargaining, I'm unaware of any studies that have evaluated the
17 effects of unfair labor practice charges in any context. That
18 doesn't mean there aren't any. But I don't know of them. They
19 certainly are not numerous or prominent.

20 BY MR. BRILL:

21 Q So the answer would be no?

22 A No.

23 Q Do you think it's a reasonable assumption that if a
24 student filed unfair labor practice charges against his or her
25 faculty mentor that that might lead to some dimolution (ph.) in

1 the relationship between the student and the faculty member?

2 MR. MEIKLEJOHN: Objection. Speculation.

3 THE WITNESS: Yes.

4 MR. BRILL: She's answered yes.

5 HEARING OFFICER DAVIS: Overruled.

6 THE WITNESS: Yes.

7 BY MR. BRILL:

8 Q And do you know for example that at Yale University,
9 unfair labor practice charges were filed by the graduate
10 employees and student organization against Yale alleging that
11 numerous members of the Yale faculty had made threats against
12 students.

13 A I didn't know that.

14 Q So just to be clear on the record, your study provides no
15 basis for concluding that unfair labor practice charges filed by
16 or on behalf of the student against a faculty member would not
17 adversely affect the student/faculty relationship?

18 MR. MEIKLEJOHN: I'm going to object.

19 HEARING OFFICER DAVIS: Sustained. By the way, the
20 witness was put on to testify about a particular study that she
21 was involved in. She wasn't asked for an opinion generally
22 about other matters. And --

23 MR. BRILL: No, no, my last question was about the study,
24 whether there is anything in this study that provides a basis
25 for that.

1 HEARING OFFICER DAVIS: Yes, I know.

2 MR. BRILL: This was one of the issues that was raised in
3 Brown. So I don't think this is far afield.

4 HEARING OFFICER DAVIS: No, no. I sustained the objection
5 because it is almost virtually identical to the question you
6 asked before. But I made that comment because I don't want to
7 get us too far afield from asking the witness questions which
8 really don't relate to the subject matter she specifically
9 testified about.

10 MR. BRILL: Right.

11 BY MR. BRILL:

12 Q Now you did another version of this study or another
13 version of the report for purposes of your testimony here today,
14 is that right?

15 A Yes. An earlier version included three data sets rather
16 than two, and the third data set was the one that I referenced
17 at the outset. That was the data that involved all graduate
18 students who answered the questionnaire, not just the ones who
19 were currently employees. And I gave all three sets of data to
20 the Union and I recommended to them that we just go through two
21 data sets in the hearing because the data for all the graduate
22 students did not seem to me to be germane to the case. But we
23 had that data and I forwarded it to Mr. Meiklejohn.

24 Q And in fact you asked Mr. Meiklejohn to tell you which
25 data or asked for his opinion as to which one of the data sets

1 would be more helpful to his case, isn't that true?

2 A I asked him which ones he wanted me to present, yes.

3 Q Because it would be more helpful to the Union's case.

4 A Do you want me to present all three or just two, yeah.

5 Q And incidentally you've told Mr. Meiklejohn at some point
6 you were meeting with one of the members of the National Labor
7 Relations Board?

8 A That's correct.

9 Q And who is that?

10 A Wilma Liebman. She was up at Rutgers on another matter
11 and I was just talking to her for about a half an hour while she
12 was there at our school.

13 Q And you didn't talk to her about anything relating to your
14 testimony in this case, did you?

15 A I did not mention it in any way.

16 Q What was the subject of your conversation with her?

17 A She was meeting our new dean. She was a friend of our old
18 dean, John Burton. I know her from the Labor and Employment
19 Relations Association. She was talking to our dean and the
20 faculty about the direction of the Center for Women who Work,
21 which is a unit in our school that has lost a couple of leading
22 researchers and were reconsidering its mission and its
23 direction. And we were talking to her about whether we should
24 be doing more work with regard to union issues pertaining to
25 women. They have mostly been working on low wage women and

1 workforce development strategies, and other kinds of things
2 besides labor management issues. So we were talking to her
3 about other things. And I just happened to mention to him I was
4 meeting with her, but I was very careful not to say anything
5 about this case.

6 Q And have you ever discussed the issue of graduate student
7 unionization or the NYU or Brown decisions with any current or
8 former member of the National Labor Relations Board?

9 A Gee, I'm not sure if I -- no, what's his name? Sorry,
10 this is a senior moment. There is a Republican appointee who is
11 active in the association who has left the board, is now at a
12 Chicago law firm, who I know in the Labor and Employment
13 Relations Association, and I may have talked about it with him.
14 I can't think of his name. I'm sorry. I'm sure I have talked
15 about this casually with other people. I may have talked about
16 it with Wilma Liebman or other members of the Board in the past,
17 but I have never sat down and had, you know, focused exchange on
18 this. Yeah, I've had conversations about various legal matters
19 with those few members of the NLRB I've had the pleasant
20 opportunity to know.

21 Q And in addition to Wilma Liebman, who would that be?

22 A I can't think of his name. I'm sorry.

23 Q Somebody who is on the Board now?

24 A No, no. He left. No, he's not on the Board now.

25 Q Oh, he left the Board.

1 A He is a Republican appointee and he's an attorney in
2 Chicago. I'm sorry. I can't think of his name. I'm sure I
3 talked to him about it.

4 Q John Raudabaugh?

5 A Yes, I think that might be it. Good job.

6 Q What's that?

7 A Good job, good memory.

8 Q And so you might have casually discussed this issue
9 with --

10 A Yes, yes, yes. I talk to people, sure.

11 Q With Wilma Liebman at some point in the past?

12 A Yeah, sure. Sure. In a general way.

13 Q Well, when you say in a general way, did you for example
14 discuss her dissent in the Brown case?

15 A Not in detail. I think I knew about her dissent and said
16 something to her about it in passing.

17 A Did you and she ever discuss the idea of doing some
18 academic research to bolster her dissent?

19 A She has given presentations about academic research and
20 how that could help Board decisions, and she has mentioned some
21 things, yes.

22 Q And what did she mention to you?

23 A She has mentioned this as an area that academics needs to
24 do research in among other areas.

25 Q And when did she mention that?

1 A I'm not sure. This would be probably a presentation of
2 the Labor Employment Relations Association. That's where I
3 would normally see her.

4 Q Was this a conversation between the two of you or was it
5 just a general?

6 A Probably more other people would be there.

7 Q Excuse me?

8 A I think other people were there.

9 Q Like how many other people.

10 A It would be at the Labor and Employment Relations
11 Association, there are various events. There are cocktail
12 parties. There are various events. And there are numbers of
13 people around in conversation.

14 Q Well, I'm not necessarily suggesting there is anything
15 nefarious here, Dr. Voos, but I'm really trying to find out
16 whether at some point you and Wilma Liebman talked about the
17 idea of you doing research that would support the dissent that
18 she made in the Brown case.

19 A She has suggested that academics do more research on
20 unanswered questions. So for example one idea I've heard from
21 her involved the economics of universities and their use of
22 graduate student employees as low wage labor. That was a
23 suggestion that I decided not to follow-up on. I have heard her
24 make numerous suggestions about possible research that might
25 help the Board in its decisions.

1 Q And other than hearing the number of suggestions from her,
2 was there any more specific discussion with her directly with
3 you or in a small group about researching this particular issue
4 of the impact of unionization on faculty/student relationships
5 or academic freedom?

6 A This was definitely one of the things that she felt would
7 be a good matter for research.

8 Q And did you engage in that? I mean was this just a
9 one-way presentation by her or did you have some back and forth
10 with her about it?

11 A I never said to her I'm going to do it or anything like
12 that. Professor Eaton and I talked about, yeah, that would be a
13 good idea, we should do that.

14 Q And to the best of your knowledge, when did you have this
15 encounter?

16 A A couple of years ago.

17 HEARING OFFICER DAVIS: Let's go off the record.

18 (Discussion off the record.)

19 HEARING OFFICER DAVIS: Back on the record.

20 BY MR. BRILL:

21 Q Are there any written communications between you and Wilma
22 Liebman on doing any research?

23 A No, there is not.

24 Q You didn't send her any -- you didn't tell her you were
25 doing this research?

1 A We didn't tell he about the study. We didn't send her the
2 survey. I have not discussed, you know, there are no written
3 communications about this research with her.

4 Q I didn't hear the last thing.

5 A There are no written communications, no.

6 Q How about oral conversations?

7 A I have not talked to her about this study.

8 Q At all? Do you know if Professor Eaton has talked to her
9 about it?

10 A I don't know. I don't think so.

11 Q I'm sorry.

12 MR. MEIKLEJOHN: What was the last part of that answer?

13 THE WITNESS: I don't think so. But I don't know.

14 BY MR. BRILL:

15 Q Is there any reason why you didn't discuss it with Wilma
16 Liebman?

17 A Why would I?

18 Q I'm just asking if there was a specific reason why you did
19 not. Did you think it would be improper to do that?

20 MR. MEIKLEJOHN: I'm going to object at this point. He's
21 explored pretty thoroughly her communications with Chairman
22 Liebman and she's testified --

23 MR. BRILL: Well, I think this is a sensitive area. She's
24 going to be sitting in judgment on this case and we need --

25 HEARING OFFICER DAVIS: But you have asked her a dozen

1 questions at least about her possible communication with
2 Professor Liebman about academic research and about this study,
3 and she has indicated she's already testified to it. So I'm
4 going to sustain the objection unless you have a more specific
5 question.

6 MR. BRILL: Well, let me just see if I understand the
7 sequence of events then.

8 BY MR. BRILL:

9 Q At some point several years ago Wilma Liebman suggested to
10 you and some group that research in this area would be useful to
11 the Board.

12 A Um-hum.

13 Q That you and Professor Eaton understood to do this
14 research. And then you communicated with the UAW to let them
15 know that you had done this research and that they might be
16 interested in it for purposes of this proceeding?

17 A That is correct except I did not communicate with the UAW.
18 Adrienne Eaton, at some conference, heard about this hearing and
19 then communicated with the UAW about our study which had already
20 been completed, data had been collected but not analyzed very
21 much, so that they knew it was available. Because we thought
22 that our results might be of use in this hearing.

23 Q Now I want to ask you about the aspect of your study
24 having to do with what you call academic freedom from the
25 students' point of view. Did you understand that one of the

1 concerns expressed in Brown and one of the concerns expressed by
2 universities on this issue is the impact of unionization on
3 academic freedom from either the university's perspective as an
4 institution or from the faculty member's perspective?

5 MR. MEIKLEJOHN: I object to question the witness about
6 her understanding of Brown.

7 MR. BRILL: I don't really care about her understanding of
8 Brown. I want to know about her understanding that there's
9 other perspectives of academic freedom.

10 MR. MEIKLEJOHN: The survey addresses certain topics. And
11 if counsel has arguments that there are other issues that the
12 survey doesn't address, he can make those arguments.

13 HEARING OFFICER DAVIS: I'm inclined to agree with counsel
14 because she's already testified what the survey measures and
15 what it does not measure. She hasn't offered any general type
16 of opinion as to the implications of the survey other than what
17 the survey answers are. So asking her questions about what
18 wasn't asked, about the perspective that wasn't measured is I
19 don't think probative since she hasn't offered an opinion about
20 those subjects. She has readily admitted that it measures the
21 attitudes or opinions of students toward the issue so
22 establishing a negative that which you've already done I think
23 is going a bit afar. So I'm going to sustain the objection.

24 BY MR. BRILL:

25 Q Are you aware, for example, that in New York University,
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1 two separate faculty committees studied the impact of the
2 relationship, the bargaining relationship between NYU and the
3 UAW with respect to graduate assistants and the impact that that
4 had on academic freedom?

5 A I was not aware of that.

6 Q Now I want to go back to the survey, itself, for a minute.
7 Your response rate was what did you say?

8 A Twenty-five percent.

9 Q And would that be considered a low response rate?

10 A Twenty percent is probably about as low as you get in a
11 general mail survey, a written survey that would be acceptable
12 for publication. So 20, 25 percent is not unusual. It is not
13 as high as I would have liked.

14 Q Did you differentiate on the response rate either between
15 union and non-union institutions or between different groups of
16 students?

17 A I don't have that data. I believe that Sean Rogers looked
18 at it and that it was not markedly different. And I will also
19 point out that you'll see in most of our description statistics
20 there are about 50 percent union and about 50 percent non-union.
21 Sometimes it's 51 and sometimes it's 53, but that would indicate
22 that the two groups which were about the same size to start with
23 ended up in about the same place, right. I'm saying I don't
24 have any detailed data with me to show the response rate was
25 exactly the same. But it wasn't real different. That's my

1 testimony.

2 Q Well, it only indicates that if the group started out the
3 same size, isn't that correct, professor?

4 A And they were selected to be about the same size.

5 Q And we don't know from the data you presented this morning
6 at least whether there were differences in response rates among
7 the different groups, in other words, the business school versus
8 the computer science.

9 A I don't have that, no.

10 Q Excuse me.

11 A I don't have that, no.

12 Q Was that studied?

13 A We haven't looked at that in detail.

14 Q But you have that data?

15 A We have the fund mail data and it should be looked at.

16 Q And with respect to the psychology departments that were
17 surveyed, are those social science psychology departments or
18 natural science?

19 A Well, what you're asking is an administrative question,
20 not an academic question. So our Department of Psychology at
21 Rutgers has both natural scientists and social scientists in one
22 department. And it's in the School of Arts and Sciences. Most
23 psychology departments aren't entirely one or the other.

24 Q And so that's your understanding of the schools you
25 surveyed, it would be mixed, the psychology department?

1 A That's my understanding. That's true at the University of
2 Wisconsin as well. I didn't look at that specifically at the
3 other schools.

4 (Pause.)

5 MR. BRILL: I was looking for the survey. I think I have
6 it.

7 BY MR. BRILL:

8 Q Oh, yeah. So in Employer 1, if you can help me, there is
9 a block of questions about relationships which faculty -- it
10 seems like there is a lot more questions here, I haven't had
11 time to compare them, that are asked than you analyze in your
12 study. I'm looking --

13 Q Which questions are you looking at?

14 A It's unnumbered, but on the third page of your survey,
15 that's Employer Exhibit 1, under relationships with faculty,
16 there is 1, 2, 3, 4, 5, 6, and then primary graduate advisor
17 there's another 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14,
18 15, 16, 17, 18, 19.

19 A Yes.

20 Q Are all of those questions included in the summary
21 analysis that you included in your survey today?

22 A Well, as you'll recall, again I have to look at it, if you
23 look for example at -- let's look at Page 7, so you have 12 --

24 Q This is of the report, of Petitioner's 2?

25 A Right. There are 12 items in personal support, 6 items in

1 professional support and development, that's 18; 19 and 20
2 bottom of the page, 23. Now there may be some items that --
3 there were some items besides that here, would you like to pull
4 any out? There's some that didn't go into any of those factors,
5 didn't load in any factor, right? So all of these items were
6 put in that factor analysis. Some of them didn't load in any
7 factors and in fact didn't seem to show very much, so I didn't
8 see them as germane to the report. Let's see if I can find one
9 that isn't there. Most of them are there. I think, okay, I
10 don't know the students in my program feel free change advisors.
11 I'm not sure that made it into this version of the report.
12 There weren't any big differences between union or non-union.
13 There certainly weren't any significant differences. And I
14 think that might not be in the report because it isn't really
15 indicative very much about the student/faculty relationship.
16 It's more a question whether the student can escape the
17 relationship if it's bad. So there may be some questions like
18 that. If there's any you'd like to ask about, I can talk about
19 them.

20 Q Well, I haven't had a chance to cross-reference them.

21 A Most of them are there.

22 Q Generally, was there any specific question where the data
23 showed that there was a significant difference between the union
24 and non-union institutions that you did not include in the
25 summary.

1 A No, there is not. They were all insignificant if they
2 were not included in these blocks of questions.

3 Q What are the types of things that you might do if you
4 were, for example, to do a regression analysis on the data?

5 A Well, one of the reasons you do a factor analysis is
6 you're trying to reduce a large number of items to a single
7 measure so that you would have then as a dependent variable this
8 scale of the relationship, rather than having 12 separate
9 regressions. And you might look to see whether or not as you
10 suggest a field affected that, or whether being male or female
11 affected that. I don't know. I think that's something that
12 should be done. But in my experience, as an economist who has
13 done many regressions, typically what happens when you have a
14 regression is that something gets less significant because you
15 are controlling for other factors. In our results, the basic
16 thing that happened was that most of the items are insignificant
17 in the simple means. Adding explanatory variables is very
18 unlikely to make the difference significant in my experience.
19 Normally what would happen is that you have something that looks
20 like a significant difference with the simple means, but then in
21 controlling for other factors that really explain the difference
22 it ends up being insignificant. That's the usual thing that
23 happens. So that's going to be a fundamental thing that we need
24 to do in terms of further research. But I wouldn't expect, it's
25 not common that something that's insignificant turns significant

1 when you control for other factors.

2 Q Would you look at something other than the mean that
3 you're using now? For example, would you look at the median or
4 core tile distribution?

5 A This is a score. You'd be looking at the score for each
6 individual, a number from 1, 2, 3, or 4, or 5. You'd be looking
7 at one of those numbers as a dependent variable. You wouldn't
8 be a median. You'd be looking at individual data, so the
9 individuals, there are three or there are four as a function of
10 these things.

11 Q Maybe I'm not understanding your answer or you're not
12 understanding my question. I'm off the regression analysis
13 question now.

14 A Oh, I'm sorry.

15 Q And my question is in addition to perhaps doing a
16 regression analysis, would you also look at the data either by
17 median results rather than mean or by core tile results?

18 A I don't think so with five answers like this. I don't
19 think you're going to get any difference between the median and
20 the mean with this type of number. We could look at that, but I
21 would not expect an academic -- to ask us to do that.

22 MR. BRILL: Can we take a short break? I want to see if
23 there is anything more I want to --

24 HEARING OFFICER DAVIS: Yes, let's go off the record.

25 (Whereupon, a brief recess was taken.)

1 HEARING OFFICER DAVIS: Back on the record.

2 BY MR. BRILL:

3 Q Dr. Voos, do you know how the respondents broke down by
4 institution for example whether there was a higher percentage
5 response from Rutgers, for example, than University of Oregon or
6 Wisconsin, or whether the distribution response rate was more or
7 less the same across all of the institutions?

8 A I have seen that data. I have not looked at it recently.
9 There was some variation in response rate, but again nothing
10 extreme. It's not like we had 5 percent at some institution and
11 40 percent at another. I cannot speak precisely about it. I
12 haven't looked at it in some time.

13 Q And just so we understand, the table, the exhibit that was
14 put into evidence, I think it was Petitioner's Exhibit 2, which
15 was your chart that was prepared for this hearing.

16 A You're talking about the research assistants only?

17 Q Consequences of union representation of teaching research
18 assistants.

19 A Yes. What is the question?

20 Q This is not a document in this form that you would
21 consider to be publishable in an academic journal?

22 A No. This is something that would be a PowerPoint
23 presentation at a seminar.

24 MR. BRILL: I don't have anything else.

25 HEARING OFFICER DAVIS: Mr. Meiklejohn?
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1 MR. MEIKLEJOHN: I just have one quick area.

2 REDIRECT EXAMINATION

3 BY MR. MEIKLEJOHN:

4 Q You were asked about your review of the literature and you
5 mentioned the study by Gordon Hewitt.

6 A Yes.

7 Q That's a published study?

8 A Yes, it is.

9 Q Do you recall what the results of that study were?

10 MR. BRILL: Objection. The document speaks for itself.
11 And for her to summarize a study that is published --

12 MR. MEIKLEJOHN: I'll withdraw the question and we can
13 introduce the study if we want to follow it through.

14 BY MR. MEIKLEJOHN:

15 Q And can you just explain what LERA is now, which was
16 formerly IERA when you were the --

17 A The Labor and Employment Relations Association is the main
18 professional, nationwide professional group for people in the
19 field of labor and employment relations. It includes academics,
20 neutrals, government officials, members of management or the
21 management bar, labor. It's the professional association in my
22 field.

23 Q And so representatives of management do attend meetings of
24 this organization and participate in them?

25 A Yes. That's how I met John Raudabaugh.

1 Q Okay.

2 MR. MEIKLEJOHN: Nothing further?

3 MR. BRILL: I don't have anything else.

4 HEARING OFFICER DAVIS: Okay, thank you. You are excused.

5 (Witness excused.)

6 HEARING OFFICER DAVIS: Just for the record, I don't
7 recall and it's a continuing problem whether you offered --

8 MR. BRILL: Employer 1. I might not have. And if not, I
9 will offer it now.

10 HEARING OFFICER DAVIS: Is there any objection to
11 admission of Employer Exhibit 1?

12 MR. MEIKLEJOHN: No objection.

13 HEARING OFFICER DAVIS: Employer Exhibit 1 is admitted.
14 (Employer Exhibit 1 received into evidence.)

15 HEARING OFFICER DAVIS: Let's go off the record.
16 (Discussion off the record.)

17 HEARING OFFICER DAVIS: Back on the record.

18 During an off the record discussion, Mr. Meiklejohn
19 indicated he wanted to admit exhibits at this time. So the
20 first one you have given us has been marked Petitioner
21 Exhibit 3. The first page says fiscal 2011 budget. Second page
22 is entitled operating budget detail.

23 (Petitioner Exhibit 3 marked for identification.)

24 HEARING OFFICER DAVIS: You have represented to counsel
25 that this document was extracted from the University's website.

1 Is that correct?

2 MR. MEIKLEJOHN: That's correct.

3 HEARING OFFICER DAVIS: And you are offering it at this
4 time?

5 MR. MEIKLEJOHN: Yes.

6 HEARING OFFICER DAVIS: Mr. Brill, do you have an
7 objection?

8 MR. BRILL: Well, I object to it on relevance without some
9 connection. Sponsored research representing six percent of the
10 total may have very little to do with how much, you know,
11 anything to do with research assistants.

12 HEARING OFFICER DAVIS: You may be correct. But it seems
13 to me somewhat relevant and for whatever it is worth, I'm going
14 to admit it as Petitioner's Exhibit 3.

15 (Petitioner Exhibit 3 received into evidence.)

16 HEARING OFFICER DAVIS: I did note that during our off the
17 record discussion you particularly pointed out to the sixth item
18 under major categories of revenue, the second page, sponsored
19 research accounts for six percent of total revenue while
20 sponsored educational program accounts for six percent of the
21 total --

22 MR. BRILL: Stop, stop, stop, I'm looking --

23 (Pause.)

24 HEARING OFFICER DAVIS: So to the extent that that may
25 turn out to be a fact in controversy, then obviously the

1 Employer will be in a position to address it.

2 MR. MEIKLEJOHN: Are we still on?

3 HEARING OFFICER DAVIS: Yes, we are on the record.

4 MR. MEIKLEJOHN: With respect to Petitioner's Exhibit 4,
5 first of all, I'll represent this was also located on the
6 University's website. We are offering this as a report
7 presented by the University's executive vice president to the
8 senate of the University regarding the financial condition of
9 the university. I don't know whether you want me to point to
10 all the specific statements in here that refer to the importance
11 of funded research to the finances of the University. But I'll
12 take for example on Page 4, the second full paragraph, the
13 little paragraph, Dr. Alfano (ph.) noted that all aspects of the
14 University's budget with possible exception of sponsored
15 research are under threat. There are statements in the report
16 about steps being taken to turn the University into a world
17 class research institution.

18 HEARING OFFICER DAVIS: And that's the relevance, that's
19 why you're offering it?

20 THE WITNESS: That's what we're offering it for.

21 (Petitioner Exhibit 4 marked for identification.)

22 HEARING OFFICER DAVIS: Is there any objection, Mr. Brill?

23 MR. BRILL: I'm not suggesting it was not on the internet,
24 although I'm wondering why it doesn't reflect the -- typically
25 when something is printed off a website, it has --

1 MR. MEIKLEJOHN: I'm informed that it was downloaded as a
2 PDF file, rather than as a web page.

3 MR. BRILL: I mean ordinarily I'd have to take the time to
4 look at something to see if I have an objection. I don't know
5 what else is -- are there other parts of this that you are
6 contending are relevant, because I see there's all kinds of
7 attachments from Crane's New York Business (ph.).

8 HEARING OFFICER DAVIS: Is this one download, one
9 document?

10 MR. MEIKLEJOHN: Yes.

11 HEARING OFFICER DAVIS: Well, it has been represented to
12 me that it was one document downloaded from the University's
13 website. I'm inclined to admit it. If you determine at some
14 point that that representation is not accurate, then I'll
15 certainly give you leeway to either substitute a document or
16 have the document stricken from the record.

17 MR. BRILL: Well, the only thing I'd ask, this document is
18 50 pages apparently. There's numbers at the top. I think that
19 as one judge said rather than requiring us to sniff through this
20 like pigs sniff going through, you know, trying to sniff out
21 truffles, it would be useful if the Union could identify the
22 portions of this document that they are relying on so both the
23 reader of the record and the Employer are not required to read
24 through 50 pages to try and figure out what it is they think is
25 relevant. Updates from President John Sexton (ph.).

1 MR. MEIKLEJOHN: Right. So I take it there isn't any -- I
2 mean I will point to Exhibit B, Page 15, where it notes that at
3 that time sponsored research represented only 4 percent of the
4 University's budget. Also, on Page 16 of Exhibit B. I won't go
5 through this and do this. I would normally save my argument for
6 brief.

7 HEARING OFFICER DAVIS: I'm going to admit the document.
8 I hope that we don't have a lot of these in the future. Counsel
9 does have a point. And I don't want to burden the record with a
10 lot of irrelevant material. But on the other hand it is there
11 for us all to see. If you find out that there are things that
12 are not relevant, you can point them out to me. And I may ask
13 you to just put in the pages you think is relevant. But at the
14 current time it's really hard to separate out. It appears to me
15 what's relevant and what isn't. And if you had offered it as a
16 partial document, I would imagine there might be an objection
17 it's not the whole document, we can't understand. So certainly
18 if they didn't raise it, I might have because it might not be a
19 document you can understand without the entire context of it.
20 So I'm going to admit Petitioner's Exhibit Number 4.

21 (Petitioner Exhibit 4 received into evidence.)

22 HEARING OFFICER DAVIS: You have one more document, Mr.
23 Meiklejohn?

24 MR. MEIKLEJOHN: Did I? I don't think so.

25 HEARING OFFICER DAVIS: No, that's it?

1 MR. MEIKLEJOHN: No, that's two. I said two, didn't I?
2 We'll try to bring you some more tomorrow.

3 HEARING OFFICER DAVIS: Okay. We are adjourned until -- I
4 assume there's no problem starting at 9:30 tomorrow?

5 MR. MEIKLEJOHN: That's fine.

6 HEARING OFFICER DAVIS: We are adjourned until 9:30
7 tomorrow. Counsel has represented that there will probably be
8 one witness. I believe he has identified that to the Employer,
9 Julie Cushner (ph.). So that's it for today. Thank you.
10 (Whereupon, at 3:25 p.m., the hearing in the above-entitled
11 matter adjourned, to reconvene on Friday, November 19, 2010, at
12 9:30 a.m.)

13

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EXHIBIT B

July 20, 2011

BY UPS OVERNIGHT

Hon. Wilma B. Liebman
Chairman
National Labor Relations Board
1099 14th Street, N.W.
Washington, DC 20570

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**Re: New York University and GSOC/UAW
Case No. 2-RC-23481**

Dear Chairman Liebman:

This firm represents New York University ("NYU") in the above-referenced matter.

I am writing to call your attention to a concern NYU has regarding your involvement in the Board's consideration of this case. Specifically, as discussed below, Petitioner has submitted a study through an expert witness, Dr. Paula Voos, as a key piece of evidence in its Request for Review, which asks the Board to reconsider and reverse its decision in *Brown University*, 342 NLRB 483 (2004). Dr. Voos testified that you had suggested the idea for the study to her as something that would be useful to bolster your dissent in *Brown*. While NYU is not making a motion for your recusal at this time, as discussed below, we ask that you provide additional information in order for NYU to more fully evaluate the circumstances of your involvement with Dr. Voos and the study.

By way of background, the petition in this case seeks to represent graduate students at NYU who are appointed to teaching, research and other positions. On June 7, 2010, the Regional Director dismissed the petition, concluding "that it seeks an election among graduate assistants that are clearly not employees under *Brown*." (BX 1, June 7, 2010 Order at 4). Petitioner filed a Request for Review of the Order dismissing the petition on June 21, 2010, and on October 25, 2010, the Board granted the Petitioner's Request for Review, by a 2-1 vote, stating its belief that there were "compelling reasons for reconsideration of the decision in *Brown University*," 356 NLRB No. 7 at 2 (Oct. 25, 2010). In reaching this conclusion, the Board noted that Petitioner had offered to present "expert testimony demonstrating that, even giving weight to the considerations relied on by the Board in *Brown University*, the students are appropriately classified as employees under the Act." *Id.* at 1. Accordingly, the Board majority reinstated the Petition and remanded the case to the Regional Director for a hearing and issuance of a decision.

The hearing ordered by the Board majority has now been completed, and the Regional Director issued a decision on June 7, 2011, finding *Brown* applicable and dismissing the

Petition. On June 30, 2011, Petitioner submitted its Request for Review of this dismissal. In support of its argument that *Brown* should be reconsidered and reversed, Petitioner relies significantly on Dr. Voos's testimony concerning a study evaluating the effects of graduate student unionization on the student-university relationship conducted by Dr. Voos and Dr. Adrienne Eaton of Rutgers University. (See Pet. Request for Review at 4-7, 9-11) The study is offered by Petitioner as evidence that "directly contradicts [the *Brown* majority's] assumptions about the negative effects of collective bargaining by graduate student employees." (Pet. Request For Review at 30) As of July 14, 2011, Petitioner's Request for Review and all related submissions are before the Board for consideration.¹

In the course of her testimony, Dr. Voos acknowledged that she had discussions with you concerning *Brown* and your view that academic research on the effect of graduate student unionization would be useful to the Board. Specifically, Dr. Voos testified that she "believed that Brown was [decided] on the wrong basis" and that she discussed the *Brown* decision with you, in a general way. (Tr. 75, 103)² She further testified that a couple of years ago during a cocktail reception or similar event at a meeting of the Labor and Employment Relations Association you suggested that she conduct research on the impact of unionization on faculty/student relationships or academic freedom in order to bolster your dissent in *Brown*. (Tr. 103-05) Dr. Voos described the conversations with you in her testimony:

Q: And have you ever discussed the issue of graduate student unionization or the NYU or Brown decisions with any current or former member of the National Labor Relations Board?....

* * *

Q: And so you might have casually discussed this issue with--

A: Yes, yes, yes. I talk to people, sure.

Q: With Wilma Liebman at some point in the past?

A: Yeah, sure. Sure. In a general way.

¹ On June 30, 2011, NYU submitted a Conditional Request for Review taking issue with certain of the Acting Regional Director's findings should the Board grant Petitioner's Request for Review.

² The complete transcript of Dr. Voos's testimony is attached hereto as Exhibit A.

Q: Well, when you say in a general way, did you for example discuss her dissent in the Brown case?

A: Not in detail. I think I knew about her dissent and said something to her about it in passing.

Q: Did you and she ever discuss the idea of doing some academic research to bolster her dissent?

A: She has given presentations about academic research and how that could help Board decisions, and she has mentioned some things, yes.

Q: And what did she mention to you?

A: She has mentioned this as an area that academics needs to do research in among other areas.

(Tr. 102-03) Dr. Voos went on to explain:

Q: And other than hearing the number of suggestions from her, was there any more specific discussion with her directly with you or in a small group about researching this particular issue of the impact of unionization on faculty/student relationships or academic freedom?

A: This was definitely one of the things that she felt would be a good matter for research.

(Tr. 105)³ Dr. Voos testified that she and Dr. Eaton then discussed your suggestion and decided that they would commence the suggested research. (Tr. 105)

Dr. Voos's testimony also indicates a connection between your suggestion that she perform this research and Dr. Eaton contacting the UAW to let the union know of this research because they "thought that it would be of use to the NLRB."⁴ (Tr. 72) She testified:

³ Dr. Voos also testified that the two of you spoke shortly before her testimony in this matter for about a half-hour when you were at Rutgers meeting with Dean John Burton regarding another matter, but stated that she did not discuss her testimony relating to this case. (Tr. 101)

⁴ Dr. Voos testified that she was not aware of what communications, if any, you have had with Dr. Eaton regarding the proposed study.

Q: At some point several years ago Wilma Liebman suggested to you and some group that research in this area would be useful to the Board.

A: Um-hum.

Q: That you and Professor Eaton understood to do this research. And then you communicated with the UAW to let them know that you had done this research and that they might be interested in it for purposes of this proceeding?

A: That is correct except I did not communicate with the UAW. Adrienne Eaton, at some conference, heard about this hearing and then communicated with the UAW about our study which had already been completed, data had been collected but not analyzed very much, so that they knew it was available. Because we thought that our results might be of use in this hearing.

(Tr. 107)

Based on the information currently available to us through Dr. Voos's testimony, NYU believes that there is a serious question as to whether you should recuse yourself from any consideration of this case pursuant to the standards set forth in 28 U.S.C. § 455. That section provides that "[a]ny justice, judge, or magistrate judge of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned." This provision "governs circumstances that constitute an appearance of partiality, even though actual partiality has not been shown." *Chase Manhattan Bank v. Affiliated FM Ins. Co.*, 343 F.3d 120, 127 (2d Cir. 2004). The question of whether such an appearance of impartiality exists "is an objective one based on what a reasonable person knowing all the facts would conclude." *Id.* (internal citations omitted). While this statute applies on its face only to federal judges, you have agreed that these standards should apply to members of the Board. *See Overnite Transp.* 329 NLRM 990, 999 (1999).

Dr. Voos's testimony indicates that the study at issue in this matter resulted directly from a suggestion that you made to her regarding the kind of evidence needed to support your dissent in *Brown*. This could create at least an appearance that you may have an interest in the validity of Professor Voos's study and its relevance to this proceeding, which would cause a reasonable person to question your impartiality.

Based on the foregoing, NYU respectfully requests that you disclose any communications you have had about *Brown* or a study of the impact of graduate

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student unionization with Dr. Voos, Dr. Eaton or other individuals directly or indirectly associated with the Voos/Eaton study, as well as any other information which you believe would be relevant in assessing whether your participation in the Board's consideration of this matter would be appropriate. NYU reserves its right to make a recusal motion depending on your response to this letter.

Respectfully submitted,

A handwritten signature in black ink that reads "Edward A. Brill". The signature is written in a cursive, flowing style.

Edward A. Brill

cc: Thomas W. Meiklejohn, Esq. (by UPS Overnight)