

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

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POLYTECHNIC INSTITUTE OF NEW YORK :
UNIVERSITY, :
Employer, :
-and- : Case No. 29-RC-12054
INTERNATIONAL UNION/UAW, :
Petitioner :
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REPLY BRIEF OF
POLYTECHNIC INSTITUTE OF NEW YORK UNIVERSITY

The principal arguments made by Petitioner and its amici relevant to this case have been fully addressed in the Reply Brief submitted by New York University. Rather than repeat the same points here, Polytechnic Institute adopts the arguments made by NYU, and submits this brief reply in order to correct a few significant misstatements in Petitioner's brief as to the factual record and the Regional Director's findings in this case.

1. RAs at Polytechnic Are Performing Research for their Dissertations

Petitioner seeks to minimize the fact that the research performed by Research Assistants is almost always identical to their thesis research, stating that while “much of the work coincides with their dissertation research . . . their work is not limited to their dissertation research (Poly Dec. 11).” (Pet. Br. at 11) The Regional Director's decision, at the page referred to, mentions in a footnote only the “uncommon” experience of a single doctoral student who diversified his research beyond his dissertation because he still had research credits to satisfy after he published his dissertation thesis. But even this student's unique experience supports the Regional Director's finding that “the research work [RAs] perform is required for the receipt of the degree and they receive academic credit for engaging in this research.” (Dec. at 16) It is uncontroverted that the principal purpose and day-to-day work of RAs is – for virtually all students – nothing more than the completion of their doctoral thesis. (*See* Poly Br. at 16-18)

Contrary to Petitioner's statement, furthermore, the Regional Director did not state that “RAs perform duties that are similar to those performed by salaried post-doctoral researchers (Poly Dec. at 11).” (Pet. Br. at 11) The Regional Director stated only that an RA “normally works on a team, which includes the PI, possibly a co-principle[sic] investigator, post-doctoral fellows or associates.” The record makes clear that the roles of RAs and post-doctoral fellows

on a research project are significantly different. As described by Dr. Bruce Garetz, Head of the Department of Chemical and Biological Sciences:

. . . a post-doctoral fellow is someone who has already a PhD degree, someone who has already had PhD training, and therefore the expectations, the knowledge and skills that I would expect from a post-doctoral fellow are considerably greater than those I would expect from a PhD student. So, for example, in the case of a post-doctoral fellow, I may ask him or her to carry out a particular measurement, and I don't have to go into details of how to do that. They would know how to do it and they would go carry out the measurement. If I asked the same of a graduate student, I might have to sit down with them and go into some detail about what the measurement entails and what some of the pitfalls might be, basically training them in the process for understanding how to carry out this measurement.

(Tr. 485-86)

2. RAs Do Not Perform a Service for Polytechnic

In seeking to distinguish this case from *Leland Stanford* and *NYU I*, Petitioner relies heavily on the Regional Director's supposed finding that RAs "perform services" for Polytechnic. (Pet. Br. at 27-28) What the Regional Director actually said, however, was only that "*the argument could be made* that the RA is providing a valuable service to the Employer insomuch as they assist faculty members in research projects that benefit the University." (Decision at 15) (emphasis added) That exact same argument was expressly rejected in *NYU I*, in which the Board affirmed the Regional Director's finding RAs were *not* performing services for NYU by helping the University fulfill its obligations under research grants or by helping to increase the university's and faculty members' status and reputation. 332 NLRB at 1230-31. There is no other basis for finding that the research performed by Polytechnic RAs is a service for the school or that they have an "economic relationship" with Polytechnic any different from the RAs found not to be employees in *Leland Stanford* and *NYU I*.

3. TAs and GAs Are Temporary Employees

In support of its argument that Teaching Assistants and Graduate Assistants should not be excluded as temporary employees, Petitioner says that “there is natural progression from GA through TA to RA” (Pet. Br. at 43). While it is true that TAs do progress to RA positions, typically after completing their first-year of study, there is absolutely no basis for the claim that GAs, who are all Masters’ students, normally go on to become TAs. Petitioner stretches beyond recognition evidence that “some of Poly’s masters students go on to complete a PhD at Poly or other [schools].” (Tr. 424) There is no testimony whatsoever that it is common for Masters’ students with GA appointments to continue on as PhD students at Poly, or that those doing so necessarily receive TA appointments. Indeed, this obviously is not the case, as there are approximately 2100 Masters’ students at Poly, and only 25 PhD students are appointed as TAs each year. The record is clear that most GAs are appointed for one or two semesters, and that they have no expectation of any continuing or different appointment at Polytechnic beyond that limited time.

CONCLUSION

The Petition should be dismissed in its entirety.

New York, New York
August 6, 2012

Respectfully Submitted,

PROSKAUER ROSE LLP

A handwritten signature in blue ink, appearing to read "Ed Brill", is written over a solid black horizontal line.

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CERTIFICATE OF SERVICE

This is to certify that copies of the within Reply Brief of Polytechnic Institute of New York University in Case No. 29-RC-12054 has been served by electronic mail on this date on:

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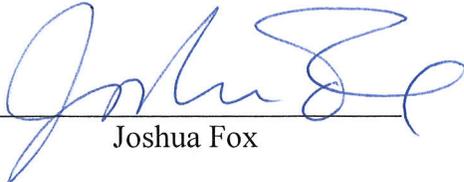
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