

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD

THE NEW SCHOOL  
Employer

and

Case 02-RC-143009

STUDENT EMPLOYEES AT THE  
NEW SCHOOL—SENS UAW  
Petitioner

ORDER

The Employer Request for Review of the Regional Director's Second Supplemental Decision and Direction of Election is denied as it raises no substantial issues warranting review.<sup>1</sup>

MARK GASTON PEARCE,

MEMBER

LAUREN McFERRAN,

MEMBER

Dated, Washington, D.C., July 6, 2017.

Chairman Miscimarra, dissenting:

I dissent from the denial of the Employer's Request for Review. I would grant review on the basis that substantial issues exist regarding the extent to which the bargaining unit consists of students whose positions are closely related to their education, similar to unit members in *Columbia University*, 364 NLRB No. 90 (2016) (Board majority approves single, university-wide bargaining unit consisting of student assistants), and *Yale University*, 365 NLRB No. 40 (2016) (Board majority approves nine bargaining units, each consisting of student assistants in a single academic department). To the extent that the students are similar to the unit members in *Columbia University* and *Yale University*, I believe the Board should find that the unit is inappropriate for the reasons expressed in my dissenting opinions in *Columbia University*, slip op. at 22-34, and *Yale University*, slip op. at 1-2.

Moreover, I believe the Board should grant review based on substantial issues that exist regarding material differences between the petitioned-for student assistants in this case and the bargaining-unit members in *Columbia University* (involving a university-wide unit of student

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<sup>1</sup> Contrary to our dissenting colleague, we agree with the Regional Director's finding that the petitioned-for employees, all of whom perform similar duties for the Employer and are employed for a finite period of time, share a community of interest and constitute a stable bargaining unit that is capable of engaging in meaningful collective bargaining. See *Columbia University*, 364 NLRB No. 90, slip op. at 20-21 (2016).

assistants) and *Yale University* (involving nine separate units of student assistants). Specifically, this case raises substantial issues regarding petitioned-for individuals whose student assistant work was temporary or casual to a degree that warrants their exclusion from the unit. For example, the unit found appropriate by the Regional Director includes many individuals who occupy student assistant positions on an irregular basis, some with “semester-long gaps between assignments,”<sup>1</sup> and others who held a student assistant position for one semester without *ever* holding another.<sup>2</sup> More than any other case in which the Board has permitted an election among student assistants, the instant case involves a bargaining unit that errs on the side of placing everybody in, with the Employer bearing the burden of challenging and litigating, ballot by ballot, student voters who “have graduated or are pending graduation, definitively have no prospect of future employment,” or “have not actually performed teaching, instructionally-related or research services.”<sup>3</sup> As I stated in *Columbia University*, “I do not believe the Board can appropriately recognize a single bargaining unit that combines course assistants who work a few intermittent hours with doctoral candidates who may teach for several years.”<sup>4</sup> I believe the Board poorly serves all parties by refusing even to pass on the standards that should govern eligibility questions among disparately situated students like those in the instant case.

Accordingly, I respectfully dissent.

PHILIP A. MISCIMARRA,

CHAIRMAN

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<sup>1</sup> Second Supplemental Decision and Direction of Election (Second Supplemental D&DE) at 7.

<sup>2</sup> The unit includes individuals who held a student assistant position for only *a single semester* over a four-semester period.

<sup>3</sup> Second Supplemental D&DE at 7 fn. 5.

<sup>4</sup> *Columbia University*, 364 NLRB No. 90, slip op. at 33 (Member Miscimarra, dissenting).