UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 13

University of Chicago,
Employer

and

Graduate Students United,
IFT, AFT, AAUP, AFL-CIO,

Petitioner

Case 13-RC-198325

BRIEF OF THE PETITIONER

Melissa J. Auerbach
Dowd, Bloch, Bennett, Cervone,
Auerbach & Yokich
8 S. Michigan Ave., 19th Floor
Chicago, IL 60603
312-372-1361
312-372-6599 (fax)
mauerbach@laboradvocates.com

Attorneys for the Petitioner
Subject Index

Introduction ................................................................................................................. 1

I. Graduate students in Ph.D programs are required to teach as a condition of receiving funding and are thus compensated for carrying out their teaching responsibilities. .................................................................................. 2

A. Social Sciences Division 2
B. Humanities Division 10
C. Biological Sciences Division 12
D. Physical Sciences Division 14
E. Divinity School 18
F. School of Social Services Administration 19

II. Graduate students who hold teaching positions work under the direction and control of the University and have a common-law employment relationship with the University............................................. 20

III. Graduate students who hold research assistant positions are compensated for their work and work under the direction and control of the University and have a common-law employment relationship with the University. ................. 45

IV. The petitioned-for unit is an appropriate unit for collective bargaining. ........ 54

A. Teaching and research assistants who are Master’s students share a community of interest with teaching and research assistants who are Ph.D students. ........................................................................... 54

B. Research assistants who do not work in labs and workshop coordinators share a community of interest with the other employees in the petitioned-for unit. ......................................................... 55

C. Employees in the petitioned-for unit who work beyond teaching or research requirements share a community of interest with the other employees in the petitioned-for unit. .......................... 58

V. Graduate students who have worked in any of the petitioned-for positions in the autumn 2016 quarter, the winter 2017 quarter or the spring 2017 quarter should be found eligible to vote. ......................................................... 61

Conclusion .................................................................................................................. 68
Table of Cases

<table>
<thead>
<tr>
<th>Case Description</th>
<th>Page(s)</th>
</tr>
</thead>
<tbody>
<tr>
<td><em>Berlitz School of Languages of America</em>, 231 NLRB 766 (1977)</td>
<td>65</td>
</tr>
<tr>
<td><em>Columbia University</em>, 364 NLRB No. 90 (2016)</td>
<td>1, 2, 4, 6, 52, 53, 54, 61, 62, 63, 64, 65, 66, 67</td>
</tr>
<tr>
<td><em>Columbia University</em>, Case 02-RC-143012, Regional Director’s Supplemental Decision and Order Dismissing Petition (2015)</td>
<td>2</td>
</tr>
<tr>
<td><em>Columbia University</em>, Case No. 02-RC-143012, Regional Director’s Supplemental Decision and Direction of Election in (2016)</td>
<td>66</td>
</tr>
<tr>
<td><em>C.W. Post Center of Long Island University</em>, 198 NLRB 453 (1972)</td>
<td>64, 65</td>
</tr>
<tr>
<td><em>Harvard University</em>, Case No. 01-RC-186442, Hearing Officer’s Report on Challenged Ballots and Objections and Recommendation (2017)</td>
<td>66</td>
</tr>
<tr>
<td><em>Hondo Drilling Co.</em>, 164 NLRB 416 (1967)</td>
<td>65</td>
</tr>
<tr>
<td><em>New School</em>, Case No. 02-RC-143009, Second Supplemental Decision and Direction of Election (2017)</td>
<td>66</td>
</tr>
<tr>
<td><em>Roy Lotspeich Publishing Co.</em>, 204 NLRB 517 (1973)</td>
<td>62</td>
</tr>
<tr>
<td><em>Seaboard Terminal and Refrigeration Co.</em>, 109 NLRB 1094 (1954)</td>
<td>64</td>
</tr>
<tr>
<td><em>Seattle Opera Assn.</em>, 331 NLRB 1072 (2000), enf’d, 292 F.3d 757 (D.C.Cir. 2002)</td>
<td>53</td>
</tr>
<tr>
<td><em>Steiny and Co.</em>, 308 NLRB 1323 (1992)</td>
<td>64</td>
</tr>
<tr>
<td><em>Trump Taj Mahal Casino</em>, 306 NLRB 294 (1992)</td>
<td>64, 67</td>
</tr>
</tbody>
</table>
Introduction

The Union through its petition in this case seeks an election in a unit of employees who are graduate students at the University of Chicago and who work for the University as teaching assistants, research assistants, course assistants, workshop coordinators, writing interns, preceptors, language assistants, instructors, lecturers, lectors and teaching interns.

Despite the Board’s holding in *Columbia University*, 364 NLRB No. 90 (2016), that teaching assistants and research assistants who have a common-law employment relationship with their university are statutory employees entitled to the protections of the Act, the University of Chicago asserts that its graduate students who are employed in the petitioned-for positions are not employees under the Act. The University’s assertions that its graduate student employees are different from those at issue in *Columbia* are unsupported by the record in this case and should be rejected.

The University asserts that the facts of this case are distinguishable from those in *Columbia* because teaching at the University of Chicago is an academic requirement of its Ph.D programs. However, the Board in *Columbia* found that: “Most Ph.D candidates are required to take on teaching duties for at least one semester as part of their academic requirements, although many departments require additional semesters of teaching as a condition for obtaining a degree.” 364 NLRB No. 90, sl. op. at 61. The Board also found that: “[T]he fact that teaching may be a degree requirement in many academic programs does not diminish the importance of having students assist in the business of universities by providing instructional services for which undergraduate students pay tuition.” 364 NLRB No. 90, sl. op. at 74.

The University asserts that its graduate students are distinguishable from those at issue in *Columbia* because the University of Chicago offers pedagogical training to its graduate students. However, the Regional Director in the *Columbia* case found that, at Columbia, “there is significant
pedagogical training and assistance provided to graduate students by the Graduate School of Arts and Sciences’ Teaching Center.” Columbia University, Case 02-RC-143012, Supplemental Decision and Order Dismissing Petition (2015) (attached hereto as Attachment A) at 9. The Regional Director found further that:

The Teaching Center provides written materials about teaching and hosts separate one-day orientations for first-time Teaching Fellows in the Social Sciences and Humanities and in the Natural Sciences. During the orientation students are introduced to campus resources and policies. They are also briefed on active learning principles and provided with ideas for activities to employ during their first week of teaching.

Within each department, the Director of Graduate Student Teaching is responsible for training and advising Teaching Fellows. Many departments provide particularized training for Fellows or Assistants serving in their department. For instance, all first-semester math doctoral students must take a weekly course called, “The Teaching of Mathematics,” in which the students are taught the technical aspects of being an instructor, including preparing and presenting a lecture and syllabus. Class instructors further train and guide Teaching Fellows in how to write and grade exams and homework.

Supra at 9-10.

The University asserts that whereas at Columbia some graduate students taught courses that were part of Columbia’s Core Curriculum, University of Chicago graduate students teach in areas related to their areas of study. The Board in Columbia, however, did not find that Columbia graduate students taught in areas unrelated to their areas of study, but rather found that “the fact that teaching assistants are thrust wholesale into many of the core duties of teaching – planning and giving lectures, writing exams, etc., including for such critical courses as Columbia’s Core Curriculum – suggests that the purpose extends beyond the mere desire to help inculcate teaching skills.” 364 NLRB No. 90, sl. op. at 74. Here, similarly, University of Chicago graduate students are thrust wholesale into many of the core duties of teaching, including planning and giving lectures, grading
exams and papers, holding discussion sections, supervising weekly labs, and holding office hours. The University of Chicago graduate students are essential to the University’s ability to provide small writing seminars for its Humanities Core courses which all undergraduates are required to take. Such writing seminars are taught primarily by graduate students who work as writing interns. Graduate students also are employed as lecturers – stand-alone instructors of record – in Core sequence courses and Civilization sequence courses in the Social Sciences – both part of the University’s general education requirements for undergraduates, and are relied on to serve as teaching assistants in introductory science classes and as stand-alone instructors in lower level mathematics courses. University of Chicago graduate students also have worked in teaching positions outside of their academic departments and outside of their divisions or schools.

The University asserts that its graduate students who teach are not treated like a source of labor, and that teaching past academic requirements is voluntary and sometimes discouraged. However, at the University of Chicago, as at Columbia, the University’s reliance on graduate student labor to carry out the University’s function of educating undergraduates compels the conclusion that the University’s purpose in requiring its graduate students to teach extends beyond the mere desire to help inculcate teaching skills. Moreover, the University actively encourages advanced graduate students to apply for positions it needs to fill, including positions as lecturers of stand-alone courses and as preceptors, who are hired for nine-month periods to guide undergraduate students through the writing of their senior theses.

The University asserts that its graduate students who hold teaching positions are not compensated for such work, but rather are given funding packages that are not payment for instructional services. At the University of Chicago, however, as at Columbia, taking on teaching
or research duties is a condition of full receipt of the graduate students’ funding packages. In the Humanities and Social Sciences Divisions and at the Divinity School, Ph.d students’ stipends are reduced in the years they are expected to teach and they receive separate teaching compensation biweekly through the University’s Human Resources payroll system during the quarters in which they teach. The University posts job descriptions and associated salaries for many of the teaching positions filled by graduate students, and the hours spent on teaching duties count toward the 20-hour per week limit on the number of hours full-time resident students are permitted to work for the University.

The University asserts that its graduate students in the Biological Sciences and Physical Sciences Divisions engage in research that furthers their Ph.D dissertations. However, the Board in *Columbia* “rejected an inquiry into whether an employment relationship is secondary to or coextensive with an educational relationship” and found that “the fact that a research assistant’s work might advance his own educational interests as well as the University’s interests is not a barrier to finding statutory-employee status.” *Columbia*, 364 NLRB No. 90, sl. op. at 79-80. At the University of Chicago, as at Columbia, the research of the research assistants, “while advancing the assistants’ doctoral theses, also meets research goals associated with grants from which the University receives substantial income.” 364 NLRB No. 90, sl. op. at 81. The research assistants’ salaries are listed as personnel line items in their faculty advisors’ grant applications, and the grants also include payment to the University of indirect costs, calculated as a percentage of direct costs, including personnel costs. The faculty advisor, who is the principal investigator under the grant, is responsible for ensuring that research conducted under the grant is in accordance with the scope of the grant. The research assistants’ faculty advisors are listed as co-authors on the papers published
by the research assistants based on the research conducted in their advisors' labs, and the research performed by graduate students furthers the University's mission of conducting original research. The research assistants' advisors and the University thus benefit from the research performed by the research assistants. At the University of Chicago, as at Columbia, the University exerts control over the research assistants' work, and the work is performed as a condition of receiving funding, and research assistants are thus employees under the Act.

At the University of Chicago, as at Columbia, the graduate students who are employed by the University in the petitioned-for positions have a common-law employment relationship with the University, and are employees under Section 2(3) of the Act.

The University also asserts that Master's students who hold teaching positions, graduate students who work in positions in the petitioned-for unit beyond academic requirements, workshop coordinators, and "non-laboratory research assistants" should be excluded from the petitioned-for unit because they lack a community of interest with the other employees in the petitioned-for unit. The University has failed to show that Master's students who work in any of the petitioned-for positions have any different job responsibilities than Ph.D students who work in such positions. The University has failed to show that the job responsibilities of graduate students who work in petitioned-for positions such as lecturer and preceptor after they have fulfilled any teaching required for their degree differ in any way from the job responsibilities of employees in similar positions who have not yet fulfilled the teaching requirements of their degrees. The University failed to show that any position called "non-laboratory research assistant" exists, and has in any case failed to show that graduate students who work as research assistants for faculty members outside of science laboratories lack a community of interest with the other petitioned-for positions. The position of
workshop coordinator is a position held solely by graduate students and involves coordinating a series of interdisciplinary workshops on scholarly topics. The University failed to show that workshop coordinators lack a community of interest with the other petitioned-for positions. A petitioned-for unit need only be an appropriate unit (*Columbia University*, 364 NLRB No. 90, sl. op. at 85 and fn. 114, citing *American Hospital Assn.*, 499 U.S. 606, 610 (1991)), and not necessarily the most appropriate unit, and the University has failed to show that the petitioned-for unit is not an appropriate unit. As the Board found in *Columbia* in rejecting an argument that Master’s and undergraduate student workers lacked a community of interest with Ph.D student workers, “the unit’s overarching interest in addressing issues pertaining to one’s simultaneous employment and enrollment as a student provides ample basis on which to pursue a common bargaining agenda.”

*Columbia University*, 364 NLRB No. 90, sl. op. at 20.

The Regional Director should therefore direct an election in the petitioned-for unit.

The University witnesses asserted that Ph.D students who work in teaching positions and in research assistant positions are not compensated for such work. However, as shown in Section I below, documents prepared and published by the University, including admission letters, financial aid statements, and appointment letters, clearly show that graduate students who hold teaching and research positions are compensated by the University for performing the work of such positions.

Some of the University’s witnesses asserted that the primary purpose of requiring Ph.D students to teach is to provide them with pedagogical training and experience to further their future careers and that any benefit to undergraduates from the graduate students’ teaching is solely a byproduct of the University’s efforts to train its graduate students to teach. However, as shown in Section II below, the record in this case, including numerous documents prepared and published by
the University, clearly establishes that the graduate students who work in teaching positions perform services that benefit the University and that the University describes such positions as jobs. Such documents include admission letters, appointment letters, teaching assistant handbooks, and job announcements and job descriptions posted throughout the University’s web site.

Some of the University’s witnesses asserted that research assistants in the natural sciences perform research for the purpose of writing their dissertations and obtaining their degrees. However, as shown in Section III below, the record in this case, including the procedures published by the University that govern grant applications, clearly shows that research assistants in the natural sciences work under the direction and control of principal investigators and that their research benefits the University.

As set forth in Section IV below, the University has failed to show that Master’s students, workshop coordinators, research assistants who do not work in labs, and graduate students who work in positions in the petitioned-for unit beyond University requirements lack a community of interest with the other employees in the petitioned-for unit.

I. Graduate students in Ph.D programs are required to teach as a condition of receiving funding and are thus compensated for carrying out their teaching responsibilities.

A. Social Sciences Division

The University informs potential applicants visiting the web page for “Financing your education” in the Social Sciences Division that:

We offer Divisional fellowships that provide support for up to five years, and are contingent on good progress and are renewed annually. Teaching is a requirement of all of our doctoral programs. Doctoral students must complete the equivalent of five teaching assistant appointments. For students receiving divisional fellowships, the annual support of $24,000 incorporates the teaching component, configured as two teaching assistantships in the third year, two teaching assistantships in the fourth
year and one teaching assistantship in the fifth year.

Er Ex 14, pp. 9-10.

An admission letter from the Dean of Students to a Social Sciences Ph.D applicant states that “five appropriate teaching assistantships” are required of doctoral students and that:

You may fulfill your total teaching component according to circumstances and opportunities, provided you do so before the beginning of your sixth year. Since university fellowship awards are a combination of stipend and compensation and the standard pattern of teaching assignments is two courses in each of years three and four and one course in year five, the stipend portion of your award will be disbursed according to the standard pattern: that is, $23,000 less the standard teaching assistant compensation for two courses in each of years three and four and $23,000 less the compensation for one course in year five. You will receive the compensation portion of your award according to your actual pattern of teaching.

Pet Ex 74 (emphasis added); Tr. 1686 (Danya Lagos). The accompanying Admission Reply Form characterizes the financial award as “a combination of stipend and teaching salary.” Pet Ex 74, p. 2 (emphasis added). The accompanying Financial Aid Terms for Admitted Students state that:

“Divisional policy limits the amount of compensation from employment for students with fellowships. Combined stipend and salary cannot exceed annual guidelines.” Pet Ex 74, p. 3. The Financial Aid terms also state that: “The teaching requirement may be met with compensated service as a teaching assistant (TA), as a lecturer (equivalent to two TAships) or as a preceptor (equivalent to one TAship for each quarter served). Students are responsible to apply for and secure acceptable teaching positions within the university through standard application procedures ...” Pet Ex 74, p. 3 (emphasis added). See also Pet Ex 123.

Social Sciences Division Ph.D students are informed on the Division’s Dean of Students web page that:

Students with a teaching component as part of their fellowship must fulfill the
requirement by the end of the fellowship period. Many students who are beyond the fifth year seek teaching positions as a means of financial support.

Er Ex 16, p. 1.

The Social Sciences Division Doctoral Teaching Requirement can be fulfilled through positions as teaching assistants, lecturers, preceptors, graders, language lectors, and writing interns.

Er Ex. 20, ¶ 2. The requirement is described as follows:

The standard configuration for the teaching component is 2 assignments in the 3rd year of study, 2 in the 4th year of study, and 1 in the 5th year. However, students are free to discharge the teaching requirement on a different schedule, according to their needs and opportunities. Students are remunerated for teaching assignments as they take them.

Er Ex. 20, ¶ 4 (emphasis added).

Divisional/University fellowships incorporate the standard teaching configuration. The fellowship stipend amount in the student’s 3rd and 4th years of study will be the fellowship’s prescribed level of support for the year less the amount then standard for remuneration for 2 TA assignments in each year. In the student’s 5th year of study, the stipend amount will be the fellowship’s prescribed level of support for the year less the amount then standard for remuneration for 1 TA assignment. Fellowships will be disbursed on this schedule regardless of the student’s actual TA assignment and remuneration.

Er Ex 20, ¶ 5 (emphasis added).

Graduate students “must have taken the equivalent of at least 3 TA assignments to be eligible for financial aid for the 5th year of study, including fellowship stipends, travel and research grants and dissertation write-up fellowships. ... Students must have fulfilled the entire teaching requirement to be eligible for grants and fellowship support, including dissertation fellowships, beyond the fifth year of study.” Er Ex 20, ¶ 8. Students who have not met the teaching requirement by the beginning of the 6th year “will not be eligible for the standard provision of advanced residence aid without an approved plan to discharge the requirement.” Er Ex 20, ¶ 10.
For students with external fellowships, “the teaching requirement (with remuneration) is still a condition of both good progress and any divisional support after the tenure of the external fellowship.” Er Ex 20, ¶ 7 (emphasis added).

Teaching remuneration is paid separately and the University withholds taxes from the teaching remuneration. Tr. 541-4 (Dr. Anne Walters Robinson).

B. Humanities Division

The Humanities Division standard admission letter informs admitted applicants that “from the Division of the Humanities you will receive a stipend and teaching remuneration of $25,000 a year for five years,” and tuition and health insurance. Pet Ex. 97 (emphasis added). The financial aid statement given to admitted students informs them that “your award will require practical teaching experience during the tenure of the award – typically accomplished by serving as a course assistant five times or as a course assistant three times and as a lecturer (i.e., a stand-alone instructor) one time.” Pet Ex 98 (emphasis added). The financial aid terms state that: “Students who receive part of a fellowship in the form of teaching remuneration must follow the standard procedure to apply for such positions.” Pet Ex 99 (emphasis added). See also Pet Ex 13. Continuing students receive an annual letter notifying them of their continuing support and that “[y]early renewal of awards is contingent upon satisfactory academic progress, satisfactory performance of teaching responsibilities, and departmental recommendation.” Pet Ex 14 (emphasis added).

A Humanities Division statement of Graduate Aid Initiative Teaching Requirement 2016-2017 Academic year states that: “The 5-year fellowship that was awarded when you were admitted to the University assumes that you remain in good academic standing, meet your course requirements and examination deadlines, and fulfill the requirement of 5 teaching units.” Pet Ex 79, p. 1. A
summer 2016 notice of financial aid terms to continuing graduate students states that: “Students who receive part of a fellowship as teaching remuneration must follow the standard departmental procedures to apply for such positions.” Pet Ex 78 (emphasis added).

The English Department’s Teaching Opportunities web page informs graduate students of their “Teaching Obligations,” as follows:

Each student who is admitted to the Department of English PhD program currently receives a generous five-year fellowship, which requires the fulfillment of 3-5 quarter-long teaching obligations (depending on the type of teaching) within the five years of the fellowship.

Pet Ex. 43, p. 3.

The Department of Linguistics on its web page for Funding and Aid in the First 5 Years and in its Graduate Student Handbook states that graduate students receive “5 years of financial support” which “includes a yearly stipend and teaching remuneration,” and that during their five years of funding support, students “must fulfill a ‘5 unit’ teaching obligation.” Pet Ex 44 (emphasis added).

The Department of Cinema and Media Studies Graduate Student Handbook, in the section on “Teaching Obligations Explained,” states that:

Teaching in the department (course assisting or teaching a freestanding course) counts toward the fulfillment of the teaching obligations. Teaching outside of the department (in the writing program, in the College Core, or as a MAPH CA or preceptor) does not fulfill any departmental obligations. However, teaching outside the department is counted toward GAI obligations.

Pet Ex 47, p. 31 (emphasis added). The Handbook states that “Century Fellowships require that recipients serve as a CA three times and as a lecturer twice” and are compensated for the teaching positions with “salaries.” Pet Ex 47, p. 31 (emphasis added). The Handbook states that students with GAI fellowships “must teach classes that equal five ‘points’ during the five years of their GAI
fellowship” and that such students’ stipends will be reduced in the years they are expected to receive teaching “salaries.” Pet Ex 47, pp. 31-2 (emphasis added).

The Department of Philosophy web page for Graduate Program Teaching Requirements states that:

The initial guaranteed funding for five years awarded to students admitted to the program includes a teaching obligation. That obligation standardly takes the form of the student serving four times as an instructor – usually three times as a course assistant and once as an instructor of a stand-alone course. ...

Pet Ex 49, p. 1.

The Department of South Asian Languages and Civilizations web page states that graduate students as part of their GAI must “fulfill a teaching obligation (also known as ‘service requirement’).” Pet Ex 53, p. 1. The page states that “since SLC can offer only a limited number of teaching assignments, students are also encouraged to pursue teaching opportunities outside the department.” Pet Ex 52, p. 1.

The Department of Comparative Literature web page states that “Students are paid for their teaching duties, but because teaching is part of the requirements for fellowship aid, that pay is offset by equivalent reductions in the stipend, until the five-unit teaching requirement is fulfilled.” Pet Ex 53 (emphasis added).

The Art History Department Handbook states that: “Most graduate student fellowships entail the requirement that students teach in some of these positions. ... More advanced students who have completed the fellowship-related teaching ... may also apply.” Pet Ex 56, pp. 19-20.

C. Biological Sciences Division

Ph.D students in the Biological Sciences Division (BSD) are required to serve as teaching
assistants at least two times. Er Ex 28, p. 1. The two TA positions are a requirement of their funding. “After TAing twice to fulfill the requirement, students may hold teaching assistantships for additional pay in courses with unfilled TA positions.” Er Ex 28, p. 6 (emphasis added). Additional pay refers to pay beyond the student’s guaranteed funding. Tr. 695 (Dr. Victoria Prince).

The Biology Teaching Assistant Handbook states that: “Only courses with significant student contact and a high level of teaching-related activities will qualify to fulfill the TA requirement. These kinds of teaching assistantships generally carry a stipend level of $1200 or above.” Pet Ex 85, p.4. The handbook also provides that: “After teaching twice to fulfill the requirement, students may hold Teaching Assistantships for extra remuneration in courses with unfilled TA positions.” Pet Ex. 85, p. 5 (emphasis added) The number of TAs required for a course in BSD is determined based on enrollment in the course. Tr. 692 (Dr. Prince).

The Department of Organismal Biology and Anatomy Graduate Program in Integrative Biology Graduate Student Handbook states that BSD “currently requires that students serve as course assistants for a minimum of two approved undergraduate, graduate, or medical school courses. Students receive no additional pay for their teaching in meeting this requirement. ... The requirement to TA two courses is part of the BSD’s guarantee of tuition and stipend support for five years....” Pet Ex 57, p. 8 (emphasis added). The handbook states that: “If a student requires stipend support from the BSD (DU, Divisional Unendowed, support) beyond their first two years, the BSD currently requires the student to TA additional courses. To receive DU funding after year two, you must TA one course per year without additional remuneration.” Pet Ex 57, p. 8 (emphasis added). BSD students in programs where research involves substantial field components who are funded by BSD divisional unendowed funding rather than from research grants “are required to perform one
additional teaching assistantship in each year of support” after they have fulfilled their two BSD TA requirements. Tr. 686-7 (Dr. Prince); Tr. 2008 (Shane DuBay). BSD graduate students funded by GAANN training in quantitative ecology grants also are required to TA one quarter each year of the grant beyond the initial two BSD TA requirements as a condition of receiving the grant funding. Tr. 1105 ((Dr. Prince).

According to the Department of Public Health Sciences PhD Program Student Handbook, students are required to fulfill the BSD two TA requirements and, beginning in their second or third year, “work for a year or more as a formal research assistant.” Pet Ex 120, p. 11. The handbook states that: “Importantly, research assistantships will often form part of tuition and stipend fellowship awards from the Department.” Pet Ex 120, p. 11 (emphasis added). The handbook also states that “[a] two-week vacation is allowed during the summer” and that “[t]he Biological Sciences Division’s parental leave policy for doctoral students allows one quarter of paid leave for a new parent or a modified schedule...” Pet Ex 120, p. 20.

D. Physical Sciences Division

In the Physical Sciences Division, students are generally funded either as TAs or RAs. In quarters in which the student is funded as a TA or lecturer, the student must fulfill the TA or lectureship requirements as a condition of receiving funding. In quarters in which the student is funded as an RA, the student must fulfill the requirements of the research assistantship as a condition of receiving funding. Tr. 1091-4 (Dean Swanson). TA and RA funding in the Physical Sciences Division is run through Workday, the University’s Human Resources payroll system, with taxes withheld. Tr. 1098-9 (Dean Swanson).

The Physical Sciences Division terms and conditions for admitted applicants states that

14
“Continuation of financial awards is contingent upon good academic progress, satisfactory performance of teaching responsibilities, and faculty recommendation.” Pet Ex 101 (emphasis added).

The Chemistry Department admission letter to admitted students informs them that:

Our offer to you includes a Teaching Assistantship for the first nine-month academic year. This includes a full-tuition merit scholarship and a yearly stipend of $30,000. ...We will help you to become acquainted and comfortable with your duties as a Teaching Assistant by offering a training program two weeks before the start of classes. Your appointment as a Teaching Assistant will begin at that time. As a Teaching Assistant your duties will involve an assignment either in our freshman chemistry course or our undergraduate organic course. These assignments usually involve five laboratory contact hours per week plus another ten hours devoted to grading, recitations, and office hours.

Pet Ex. 22 (emphasis added). See also Pet Ex 109. A handout given to Chemistry graduate students at their TA training session answered the question, “Is the attendance of the TA at training mandatory,” with the following answer:

Yes, it is absolutely mandatory! The TA training is not only preparing you to be an effective teaching assistant, but also part of your employment. You are paid for the two weeks TA training.

Pet Ex 84 (emphasis added); Tr. 1900 (Andrew Phillips). Graduate students in Chemistry each quarter are designated either as a TA or as doing research, and are given a stipend for being a TA or for doing research. Tr. 925 (Dr. Michael Hopkins).

The Mathematics Department admission letter to admitted Ph.D students informs them of their financial award of $34,000 plus tuition remission, and that:

In the first year of your Mathematics Assistantship, you will be appointed a University Fellow and will have no teaching duties. In your second year you will be appointed a College Fellow and will be an apprentice teacher (TA) assisting a senior member of faculty. Beginning in your third year, after satisfactory completion of the College Fellow Program, you will be appointed Lecturer in the College and will be
responsible for teaching one undergraduate mathematics course each quarter during the academic year.

Pet Ex 105, p. 2. Math Department Ph.D students after the first year who do not have an outside fellowship are required to be either a TA or instructor or an RA each quarter as a condition of receiving their stipends. Tr. 1089-90 (Dean Swanson).

An admission letter for a graduate student in the Computer Science Department informed him that: “After your first year, you will be supported as a research assistant (RA) or as a teaching assistant (TA) at the standard rate ($2500 per month). Generally, we continue to fund students through their sixth year of study, usually as TAs or RAs, as long as they make satisfactory progress towards their degree and meet the obligations of their support.” Pet Ex 62 (emphasis added); Tr. 1118 (William Kong). See also Pet Ex. 102.

Each quarter, all Ph.D students in the Computer Science program are notified by email of the source of “Graduate Student Support” for all students. See Pet Ex 112. All students are assigned as either a TA or an RA. Pet Ex. 63- 68; Tr.1133-39. In quarters in which students are funded as RAs under faculty advisors’ grants, the RAs are paid to conduct research. Tr. 1122 (William Kong). In quarters in which they do not have RA funding, they are required to TA, in which case they are responsible for attending lectures; grading projects, homework assignments and exams; hosting office hours and lab hours; and helping the undergraduates with their projects. Tr. 1123-32; 1140-50 (William Kong).

An admission letter from the Statistics Department informs admitted doctoral students that the financial award includes “$24,225 for the academic year either by stipend or pay in assistantships” Pet Ex 108 (emphasis added). The letter states that:
All doctoral students participate in teaching, research and our consulting seminar as part of the Ph.D degree program. In most cases, these training aspects of the program include serving as a teacher or research assistant for two out of three quarters during the academic year and sometimes as a research assistant over the summer.

Pet Ex 108. Professor Yali Amit, Professor of Statistics and Computer Science, who from 2010 to 2016 was Chair of the Statistics Department, testified that:

The support system for graduate students in the statistics department is such that they are required to TA for two quarters a year in order to satisfy their – to be supported fully. One quarter they get off unless their advisor or some other faculty hires them as an RA, and then they are excused from the TA requirement for that quarter.

HEARING OFFICER MOLS: What do you mean when you say supported?
THE WITNESS: What do I mean? Getting their pay...

Tr. 1261. Professor Amit testified that:

[I]f an advisor wants to hire their student for three quarters as an RA, they’re allowed to do that. And then that student is doing work in that advisor’s group and nothing else. However, because we have such a need for TAs, we actually try to discourage advisors from hogging their students for the entire year.

Tr. 1261-2. He testified that:

[I]n the statistics and in general in ... the stem fields, there’s been a huge increase in enrollment. Faculty hasn’t increased hardly for the past decades. So we hire some lecturers, what are called other academic appointees to help teach the increasing load. But we do not have enough lecturers, faculty, ...assistant professors, professors to teach all the sections of our undergraduate classes. And so we need TAs to actually fill in and teach some of these sections, so actually be teachers. And then of course we need a huge number of TAs to help grade and do the office hours.

Tr. 1262.

A “Teaching Assistant Statement of Financial Assistance” for a Physics Department graduate student provides that the TA will receive a stipend of $8,075 quarterly and $24,225 annually and a summer research position of $5,383, for a total financial support of $29,608, in addition to tuition remission, health insurance and the student service fee. With respect to the TA
responsibilities, the statement states that “A member of the faculty will have primary responsibility for teaching courses, while the Teaching Assistants will work with students in laboratory experiments or discussion sections.” Pet Ex 100.

An admission letter to a graduate program in the Department of Geophysical Sciences states that the admission offer includes a Graduate Assistantship for the first year which includes “a full-tuition merit scholarship, salary, and health insurance” and that beginning with the second year, “students generally choose their research advisors and are then supported on a combination of Research and Teaching Assistantships. These appointments cover tuition and pay a similar salary.” Pet Ex 103 (emphasis added). See Pet Ex 104 (statement of financial assistance from the Department of Geophysical Sciences, identifying the funding offered as a “combination of Teaching Assistant and/or Research Assistant”). Pet Ex 104.

The Committee on Computational and Applied Mathematics admission letter informs admitted doctoral students of their financial award and that “their financial support for future years comes from a combination of teaching and/or research assistantships.” Pet Ex 106.

The Astronomy Department admission letter informs admitted doctoral candidates of their financial awards and that the “annual stipend will be funded by a combination of teaching and research assistantships.” Pet Ex 107.

E. **Divinity School**

The Divinity School’s web site contains an FAQ - Financial Aid for Doctoral Students page which contains the question “Am I required to render service to the University as part of the fellowship program?” Pet Ex 27, p. 1. Such question is answered that students “are expected to accrue five teaching points” and that: “In most cases satisfying the fellowship’s teaching requirement
is easily managed, and the burden of work is substantially less than in graduate assistantship programs at other universities.” Pet Ex. 27, p. 1 (emphasis added). The Divinity’s school admission letter informs admitted applicants that: “As part of the Graduate Aid Initiative (GAI), through which you receive the University of Chicago Fellowship detailed above, doctoral students are required to complete a series of teaching appointments.” Pet Ex. 28, p. 2. Divinity School Ph.D students can fulfill the teaching required as a condition of their funding by teaching in courses in the Humanities Division, the Social Sciences Division and the Writing Program even if such courses do not involve the study of religion. Tr 1037-8 (Dean Owens). Divinity School Ph.D students have their stipends reduced when they teach and they receive separate paychecks with payroll taxes withheld as compensation for teaching duties. Tr. 1462-3 (Matthew Vanderpoel).

F. School of Social Services Administration

The Social Services Administration web page for Doctoral Program Funding and Research Support informs doctoral students that:

As part of their financial aid packages, students are expected in their first two years to work as research assistant with an SSA faculty member for 10-12 hours each week and for three years as a teaching assistant (usually during years three through five). Advanced doctoral students wishing to supplement their aid packages have access to opportunities to teach in the master’s program and to serve as university resident heads.

Pet Ex. 38. The standard admission letter sent to admitted applicants to SSA informs applicants that they are awarded a scholarship for full tuition, fees and health insurance for five years, and that:

In addition to the scholarship award you have also been awarded a $26,000 stipend for five years. To qualify for this stipend you must be a full-time student and work with a faculty member as a research assistant for approximately 10 to 12 hours week during the first two academic years. Additionally in years 3, 4 and 5, you must serve as a teaching assistant in an SSA class for a minimum of three courses.
II. Graduate students who hold teaching positions work under the direction and control of the University and have a common-law employment relationship with the University

The University on its web site, including on the web pages of the graduate divisions, academic departments, and the College; in graduate student and teaching assistant handbooks; in appointment letters; and in employment rules, clearly communicates to graduate students that teaching positions are positions of employment. The University in such communications to graduate students makes it clear that the employment positions are under the supervision and control of the University and serve the University’s need to fill teaching positions to carry out the University’s mission of educating undergraduate, and in some cases Master’s, students.

The University’s UChicago Grad Doctoral web page, under the caption “Student Employment,” identifies “teaching and research positions” as among the types of “employment opportunities” graduate students can find. Pet Ex 29, p. 2 (emphasis added).

A June 3, 2009 memorandum from then-Provost Tom Rosenbaum to the Subcommittee on Roles, Responsibilities, and the Monitoring of Teaching of the Committee on Graduate Student Teaching – which was shared with faculty members at the time it was written and was posted on the Provost’s web site at the time of the hearing in this case (Tr. 1426-8) – states that:

*There are many ways graduate student teachers are employed at the University of Chicago. Because of this diversity there is a great range of work expectations for every job category. Accordingly, we offer the following job descriptions, along with weekly hourly work expectations, to help guide course instructors regarding what they should expect of their graduate teaching apprentices and to enumerate for graduate students exactly what is expected of them and of instructors.*

Pet Ex 72, p. 2 (emphasis added). The memorandum sets forth proposed job descriptions for positions, including those of lecturer, preceptor, course and teaching assistant, laboratory teaching
assistant, Social Sciences core intern, and Humanities writing intern. The job descriptions include the expected number of work hours and compensation associated with each position. Pet Ex 72, pp. 2-7.

The University requires all undergraduates to take Core courses in the humanities, social sciences and natural sciences. Tr. 1938, 1947-8. The University’s web site explains the College Core Curriculum as follows:

All students in the College begin their undergraduate education at the University of Chicago by taking courses from the Common Core curriculum, an integrated, often interdisciplinary, sequence of courses that are designed to establish the habits of mind and the critical, analytic, and writing skills that are expected of an educated, well-informed member of modern society.

Pet Ex 82.

The University relies on Ph.D students as a source of labor to staff Humanities Core sequence courses which are required courses for all undergraduate students. Tr. 1938, 1947 (Professor Kenneth Warren). All Humanities Core sequence courses use writing interns, most of whom are Ph.D students, who have completed a training course at the Writing Program designed specifically to train interns to work in Core courses. Tr. 1937-8 (Professor Warren); Tr. 1552-3 (Lawrence McEnerney). There are seven courses that constitute the Humanities Core, with 65 to 70 writing interns assigned to work in 90 different course sections. Tr. 1556 (Lawrence McEnerney). About 50 of such writing interns are graduate students, with the others being individuals who have already obtained their Ph.D or other individuals who do not hold a Ph.D, such as Lawrence McEnerney, the Director of the Writing Program. Tr. 1583-4 (Lawrence McEnerney). Such courses are taught as discussion courses of no more than 19 students taught by a faculty member with the assistance of a writing intern. The writing interns attend the discussion sections and run independent writing workshops that meet
outside of the regular class meetings. The writing interns also grade papers, with the faculty member and the writing intern dividing the grading responsibilities after initial discussion of the faculty member’s grading expectations. Tr. 1939-41 (Professor Warren). Professor Warren testified that:

[T]he writing instruction and the humanities core is basically the closest we have to freshman composition at the University of Chicago because we don’t really have a freestanding freshman composition program in the way that other universities do so that the intent to focus on writing provided in the core courses is central to the university’s project of improving undergraduate writing. ... [T]he teaching of writing is very labor intensive, and with the graduate student as writing intern, we’re actually able to provide an intensity of focus that would be impossible if I were doing it on my own.

Tr. 1942-3.

Graduate students from any graduate division or school can apply to work as writing interns or lectors. According to the Writing Program’s “working as a writing intern” page:

*Graduate students from all the divisions and professional schools are eligible – and eagerly sought – for this position. Here’s why: writing interns are responsible for providing writing instruction to ALL University of Chicago first-years, whether those students will be majoring in the humanities, the social sciences, or the sciences. ... Each intern is assigned to a Humanities Common Core class of no more than seventeen to nineteen students.*

Pet Ex 58, p. 1 (emphasis in italics added; emphasis in capital letters in original). Graduate students must complete “Job Application Packets” to apply for positions as writing interns and lectors in the Writing Program. Pet Ex 60 (emphasis added). Lawrence McEnerney, Director of the Writing Program, testified that applicants for writing intern positions are interviewed and that in the interviews: “[W]e’re looking primarily for the graduate student’s ability to interact well with undergrads and particularly to see whether they’re interested in working with undergrads.” Tr. 1551.

The College maintains a web site called “Apply for Humanities Core Lectureships.” Pet Ex
The site "provides job descriptions and application instructions for lectureship positions in the Humanities Collegiate Division general education (Core) sequences." Pet Ex 94, p. 1 (emphasis added). Applicants must either be University Ph.D students who have attained ABD status or have a Ph.D. Pet. Ex 94, p. 1. The site states that "Hiring decisions will be made by faculty committees during the early summer quarter, and scheduling is done based on the scheduling requirements of the Humanities Collegiate Division." Pet Ex 94, p. 1 (emphasis added). The site explains that: "Lecturers are chosen on the basis of their qualifications as teachers and scholars and the progress of their academic work." Pet Ex 94, p. 2.

The English Department’s Teaching Opportunities web page informs graduate students that they can fulfill their teaching obligations by holding positions as course assistants and lecturers in English Department courses, preceptor positions, MAP preceptors, and writing interns and lectors in the Writing Program and the Common Core. The page states that:

The Writing Program ... hires graduate students as writing interns for the University of Chicago’s famous Common Core first-year college program, as undergraduate writing tutors, and as lectors in the University Writing Program. Writing Interns provide writing instruction in one of the year-long humanities Common Core courses taken by all college freshmen at Chicago. For these courses, interns attend the classes and do the readings, lead a sequence of writing seminars that teach advanced academic writing and help the faculty member mark and grade papers. ... Lectors in advanced academic and professional writing courses attend weekly lectures and meet with a few students once a week in a seminar format. Lectors read students’ weekly papers, lead the seminar discussion and write extensive critiques on the papers each week....

Pet Ex. 43, p. 3.

Dr. William Rando, the Associate Director of the Chicago Center for Teaching (CCT), testified that the CCT offers a half-day orientation to teaching in the Core for faculty members, postdocs and graduate students. Dr. Rando testified that such orientation is given because “when you
teach in the core, you’re often teaching material that is not your speciality by design.” Tr. 791.

A Philosophy Department web page encourages graduate students to teach in the Humanities Core:

In order that freshmen in the College receive extensive writing instruction and have ample opportunity to improve their writing skills, each section of each Humanities Core course is assigned a Writing Intern. Writing Interns provide a for-credit seminar sequence, Humanities 19100, in which students peer critique each other’s work and develop their skills at academic writing and argumentation at the University level. Graduate students in Philosophy typically work as writing interns in any one of the following three Humanities Core Sequences: Greek Thought and Literature, Human Being and Citizen, or Philosophical Perspectives.

Pet Ex. 50, p. 2.

The Division of Humanities on its PhD Student Teaching web page describes teaching positions as follows:

**Course Assistants**

*Graduate students serving as course assistants are expected to aid faculty members in courses in which the undergraduate enrollment is too large for faculty to effectively perform all aspects of the instruction.* Course assistants may be expected to attend class, read all assigned materials, hold office hours with students, lead a discussion regularly, review and comment on students assignments, and recommend grades.

**Language Assistants**

Each language assistant is responsible for up to 12 total students and works a maximum of 10 hours per week for an 11-week quarter. This may include:
1. Up to 10 hours per week in group drills and/or private conversation drills.
2. Up to 4 hours per week in homework checking, assisting the lecturer in class.
3. Language assistants may check and grade homework assignments ...
4. In cooperation with the class lecturer, language assistants may help with class prep (photocopying, etc.) class AV, cultural programming, and field trips ...

**Lecturers**

Lecturers teach stand alone courses, including elementary language courses, generally
in the College. They are often in charge of every aspect of the teaching experience, including proposing the course, designing the syllabus, devising appropriate evaluation and testing methods, guiding discussion, meeting with students regularly, and recording and reporting grades. Advanced graduate students can apply to teach in the Humanities Collegiate Division General Education (Core) sequences.

**Preceptors**

Some departments hire advanced graduate students as preceptors to help students in the College who are in the process of developing, researching, and writing their B.A. thesis. Preceptors generally work with a group of undergraduate concentrators during a nine-month period - three quarters. The first set of duties of a preceptor may be helping students decide on a topic, working with students to develop a reasonable research strategy, and reviewing early outlines of the proposed thesis. Some preceptors also hold seminar sessions and workshops on topics such as methodology, research design, and writing. As graduating seniors progress in their research, preceptors are expected to read and comment on numerous drafts of the thesis.

**Preceptors in MAPH**

The Master of Arts Program in the Humanities hires preceptors for ten-month appointments. Together with the faculty and staff, each preceptor guides a group of twelve to fourteen students throughout the academic year. Responsibilities include academic advising and program approval, weekly discussion groups and grading in connection with the required MAPH colloquium and core course in autumn quarter, and thesis writing workshops during the winter and spring quarters.

Er Ex. 24; Pet Ex 10 (emphasis added).

English is the largest Humanities major for undergraduate students. Tr. 1937 (Professor Warren). The English Department relies on graduate students to teach sections of all English Department gateway courses for English majors. Such courses are structured as lecture courses taught by faculty members. “And because of the relatively large numbers of students, the presumption is that we will have sections taught by course assistants drawn from the graduate students in the program.” Tr. 1943-6 (Professor Warren). The course assistants run independent weekly discussion sections, after the faculty member meets with them weekly to go over points of
emphasis for the course. Tr. 1944, 1948-9 (Professor Warren). The course assistants also hold office hours and grade papers, with the faculty member initially relaying to the course assistants the grading expectations and then reviewing a sample of graded papers to ensure consistency in grading. Tr. 1945 (Professor Warren). In some courses, there is a web component in which students are required to post comments online and such component is overseen by the course assistant. Tr. 2029 (Eric Powell). Professor Warren testified that the use of course assistants in the gateway courses allows the faculty member “to focus more on the delivery of my lectures than I might otherwise if I had to spend more time grading all of the papers. It would be impossible to do.” Tr. 1946. He also testified with respect to the use of course assistants:

Our curriculum benefits. That is to say we have defined the curriculum in such a way such that we’re able to deliver the content and the skills in a manner that I think makes sense to the students. So by being able to offer these large introductions to genre courses, with the use of course assistants, we’re able to reach a broader number of potential majors.

Tr. 1946.

Graduate students also teach as lecturers in freestanding courses in the English Department.

Tr. 1951-2 (Professor Warren); Tr. 2032-3 (Eric Powell). Professor Warren testified with respect to the use of graduate students as lecturers that:

I want to stress the benefit to the department because in any given year we will have a certain number of our faculty who are on research leave and during that year they won’t be teaching. The fact that we have freestanding courses taught by our graduate students means that we’re able to populate the curriculum of our major during the year, during the time when we have faculty who aren’t available.

Tr. 1952.

In the Philosophy Department, which is second to the English Department in the number of undergraduate majors in the Humanities Division (Tr. 1417, Professor Anton Ford), Ph.D students
work as course assistants in lecture courses. The course assistants run discussion sections, grade assignments and exams and hold office hours. Tr. 1412-15 (Professor Ford). Professor Ford testified with respect to the work of the course assistants that: "I benefitted [sic] because the CA was doing grading and meeting with students and leading discussions that otherwise I would be responsible for doing, so it saves me a tremendous amount of time." Tr. 1416. He testified that "the main beneficiary ... is the undergraduates who they're teaching." Tr. 1416. Due to increasing numbers of undergraduate enrollments in courses in the Philosophy Department, the Department has had difficulty staffing CA positions from the pool of graduate students in the Department and has therefore drawn students from other departments to staff the positions. Tr. 1411-12 (Professor Ford).

Ph.D students in the Philosophy Department also serve as lecturers and preceptors. Graduate students in their fifth year and beyond are instructors of record for tutorials, small seminars for juniors and seniors in the major. They have full responsibility for teaching the course, including the submission of final grades to the Registrar. Tr. 1419-20, 1422 (Professor Ford). The instructors submit proposed courses to teach, and courses are selected with an eye to making sure that the curriculum offered to undergraduates is appropriate. Tr. 1420-2 (Professor Ford). The teaching of the tutorials by the graduate students benefits the undergraduates:

[T]hey benefit the undergraduate program in that we don't have enough faculty. We don't have enough faculty to teach those classes as well as the big lecture courses that we're responsible for doing. So if it weren't for these graduate students, the majors would not have access to small seminars.

Tr. 1422-3 (Professor Ford). Graduate students with teaching experience are hired and paid as preceptors, who are responsible for running thesis writing workshops for seniors writing their B.A. theses. Tr. 1423-5 (Professor Ford). The graduate student preceptors perform the same duties as
faculty members who also run thesis writing workshops. Tr. 1424-5 (Professor Ford).

Graduate students in the Humanities Division are in some cases given appointment letters setting forth the position to which they are appointed, the course, the term, the job duties, and the salary of the position. Pet Ex 3 (3/17/17 lecturer appointment letter), Pet Ex 4 (12/16/16 lecturer appointment letter). Such letters inform the graduate students that: "This offer of employment is conditional, subject to satisfactory presentation of documented evidence of personal identification and authorization to work in the United States...” Pet. Ex. 3, 4 (emphasis added). The appointment letter also states that:

*The policy that restricts the weekly workload of graduate students to 20 hours may affect your ability to accept this offer if you are employed by the University in any other capacity, including but not limited to other teaching appointments, research assistantships, administrative positions, and ad hoc opportunities.*

Pet Ex. 3, 4 (emphasis added). The appointment letter states further that:

**Applicable University policies:**
*During the term of your appointment, while you are enrolled as a student, you will be subject to both:*

1. the policies and standards of conduct set forth in the Student Manual and any related policies adopted by your academic program, and
2. *the administrative policies of the University applicable to your academic appointment.*

*Inside and outside the classroom, you should maintain the professional behavior and attitude that the University expects from all employees.*

Pet Ex 4 (emphasis added). See also Pet Ex 3.

The Humanities Division has a “Graduate Student Employment Policy” that provides that:

*Graduate students in the division of the Humanities who are registered full-time may not work for the University more than twenty (20) hours per week, including teaching and research appointments, in accordance with the University student employment policy. ...
Fulltime students may work up to twenty-six (26) hours/week in a single quarter*
without approval of the Dean of Students if they hold a formal teaching position.

Pet Ex 11, p. 2 (emphasis added).

A May 10, 2017 job offer letter for a preceptor position in the English Department informed the doctoral student offered the position that:

During the Autumn Quarter, preceptors organize and hold mandatory colloquia for their students. Generally these include writing assignments that you will review ... The Winter Quarter is when the bulk of the writing happens ... [T]he preceptor should be receiving and reviewing drafts from their students. The Spring Quarter is very quick - the completed rough draft is due the end of week two and the final project is due the beginning of week five. Preceptors are then required to submit letters on behalf of each of their students by mid-week six.

Pet Ex. 110.

The Classics Department advertises “Classics Teaching Opportunities” on its web site. Such positions include course assistant and lecturer positions in introductory and intermediate Greek and Latin and in other courses, including a position as a course assistant in the Ancient Mediterranean World general education course sequence, course assistant and language instructor positions for the summer language program, and course assistant positions for a study abroad program. Pet Exs 41, 42. A March 15, 2017 memorandum from the Classics Department Chair to graduate students in Classics and related programs announced the teaching positions available to graduate students for the 2017-2018 academic year. The memorandum stated that: “Depending on enrollments, up to 16 slots will be available as Course Assistant and up to 19 as Instructor in Introductory and Intermediate Greek and Latin classes.” Pet Ex 116 (emphasis added).

In the Germanic Studies Department, doctoral students teach sections of all Elementary, Intermediate and third year German, which comprise most of the courses offered to undergraduates. Tr. 383-6 (Dr. Wild); Pet Ex. 7. Graduate students teaching such courses are appointed as lecturers,
and are expected to carry out the same responsibilities to students in the class as are carried out by
lecturers who are not graduate students. Tr. 386-7 (Dr. Wild).

The Department of Linguistics on its web page for Funding and Aid in the First 5 Years page
states that:

CAs are assigned each year to the core undergraduate major courses ... and,
depending on enrollment levels, to other courses covering central topics of linguistics ...
*Individual students are assigned to particular CAships based on Department needs*, but whenever possible, we try to assign students as CAs to courses that
complement their particular areas of research and interest.
The default courses for graduate lecturers are Introduction to Linguistics, which is
taught every quarter, and Languages of the World, which is usually taught in the
spring. Students who wish to serve as lecturers for these courses are expected to serve
as CAs for them in advance. ...

Pet Ex 44 (emphasis added). See also Pet Ex 45, pp. 17-18.

The Department of Cinema and Media Studies graduate student job application form for
teaching positions for the 2017-2018 school year states, with respect to lecturer positions, that:

“Though we are hoping to obtain funds for a student-designed course(s), *there are strong
departmental needs* for sections of Introduction to Film and Film and the Moving Image....” Pet Ex
118, p. 2 (emphasis added).

The Department of History web page for Teaching Assistantships lists teaching opportunities
as including those in the “civilization sequences, part of the general education requirement of the
College curriculum,” the “five Social Sciences core sequences,” individual courses when course
enrollment exceeds 25 undergraduates, Writing Program interns and tutors, and foreign language
teaching. Pet Ex. 54.

The Art History Department Handbook sets out job descriptions and salaries for the positions
of course assistantships, writing internships, lectureships, and preceptorships. Pet Ex 56, pp. 20-23.
An appointment letter in the Department of Art History noted that the appointment was “contingent
on appropriate enrollment for the courses in question” and that: “Graduate students, like faculty,
have professional responsibility as teachers of the college students and to their faculty and graduate
student teaching colleagues. You are therefore expected to fulfill this appointment, barring
emergency circumstances.” Pet. Ex. 15 (emphasis added); Tr. 1351 (Katerina Korola). The
appointment letter was accompanied by a verification of acceptance of position form that the
graduate student was asked to sign. Pet Ex 72; Tr. 1351-2 (Katerina Korola). The Art History
Department has sought graduate students outside the Department to fill course assistant positions
in courses when there have not been enough graduate students within the Department to fill such
slots. Tr. 1372 (Katerina Korola).

The Department of Near Eastern Languages and Civilizations Teaching Assistant Application
for 2017-2018 states that “all placements are contingent on funding and enrollment.” Pet Ex 117,
p. 1.

Graduate students work as interns and lecturers in social sciences College Core courses and
Civilization courses. The SSD Dean of Students web page on Intern and Lecturer positions states
that:

Interns serve in the College’s Social Sciences Core or Civilization sequences. Interns
are apprentices to the faculty in whose course they have been appointed. ... Graduate students who have completed internships in SSCD Core courses are eligible
to apply for appointment as freestanding lecturers in the sequence in which they
interned. Lecturers have full responsibility for teaching one or more sections of an
SSCD Core course in the social sciences or civilization studies for one or more
quarters. Within limits established by tradition, faculty consensus, and a syllabus of
shared readings, lecturers have discretion to teach the course as they prefer. In order
to maintain the intellectual and pedagogical cohesion of the curriculum, lecturers
are expected to participate in the meetings of the staff teaching the course once they
have been appointed.
Er Ex 17, pp. 1-2 (emphasis added). The same description of SSCD lecturer positions appears on the College’s “Apply or Jobs in the Social Sciences Collegiate Division” web page. Pet Ex 95, p. 4 (emphasis added).

The College’s “Apply for Jobs in the Social Sciences Collegiate Division” web page solicits applications for intern and lecturer positions for the 2017-2018 academic year and “provides information regarding course curriculum, sequence and job descriptions, job responsibilities, and the application process.” Pet Ex 95, p. 1 (emphasis added). The site explains the teaching intern’s role as follows:

Interns are apprentices to the faculty in whose course they have been appointed. They are expected to learn from the supervising faculty member how to teach a course in the Core curriculum to a small number of students in a seminar-style discussion class. They are being trained by the supervising faculty in order to assure a steady supply of advanced graduate students who are qualified to teach the University of Chicago’s Core curriculum in keeping with the traditions of the College and the standards demanded by the faculty.

Pet Ex 95, pp. 2-3 (emphasis added). With respect to lecturer positions, the site explains that for applicants who are current University of Chicago Ph.D students: “Lecturers are chosen on the basis of their qualifications as teachers and scholars, the progress of their dissertation, and their willingness to participate actively in the affairs of the staff.” Pet Ex 95, p. 3-4 (emphasis added). Applicants who are from outside the University and who will have completed their Ph.D prior to assuming the lecturer position are chosen on the same basis. Pet Ex 95, p. 4.

The site explains the lecturer’s responsibilities as including the following:

- Attend the Teaching@Chicago workshop offered by the Chicago Center for Teaching
- Attend all weekly and quarterly staff meetings
• Order books and put readings on reserve well in advance of the beginning of the quarter

• Prepare a syllabus that clearly states the objectives of the course, the requirements that students will be expected to fulfill, and the basis on which they will be graded

• Announce clear policies on grading, attendance, class participation, and cheating, and adhere to those policies

• Grade and comment on papers and examinations on a timely basis

• Maintain office hours

• Give students feedback on their performance

• Submit final grades by the Registrar’s published deadline.

Pet Ex 95, p.4.

The Political Science Department on its web site advertises teaching opportunities for graduate students:

TEACHING ASSISTANTSHIPS AND INTERNSHIPS

... Students serve as teaching assistants in political science undergraduate lecture courses and in the department’s methodology sequence, where they are given responsibility for leading discussion sections and grading written assignments. Students serve as interns in the college Core or Civilization courses; the primary purpose of internships, unlike teaching assistantships, is to prepare students to serve as Lecturers in a given Core or Civilization course. The current salary for teaching assistants and interns is $3,000 per course.

Department Courses

The department announces its teaching assistant needs in the spring quarter for the following academic year. ... Unexpected needs frequently arise at the beginning of each quarter and the department announces and makes appointments at the last minute. ...

Social Science Core Sequences

Teaching interns are needed for five Social Sciences core sequences: “Power,
Identity, and Resistance" ...; “Self, Culture, and Society” ...; “Social Science Inquiry” ...; “Mind” ...; and “Classics of Social and Political Thought” ....

Civilization Sequences

The civilization sequences, part of the general education requirement of the College curriculum, introduces undergraduates to primary sources and significant documents in one of the world’s civilizations. There are about a dozen civilization sequences in which Political Science students may be qualified to teach. ...

College Writing Program Interns and Tutors

A writing intern is a graduate student who provides a writing instruction component in one of the year-long humanities core courses. A thorough and well-organized teacher-training is required before interning. ...

Foreign Language Teaching

If you possess fluency in a Romance, Germanic, Middle Eastern, East Asian, or South Asian language, you may find opportunities to TA or teach ...

GRODZINS PRIZE LECTURESHIPS

Advanced graduate students in political science, selected as Grodzins Prize Lecturers, offer their own undergraduate courses. Course proposals should be aimed at the educational objectives of the undergraduate majors...

COLLEGE CORE AND CIVILIZATION LECTURESHIPS

Lecturers teach, guide discussion, and grade papers and exams. The Core and Civilization sequences generally follow a set syllabus. The College appoints advanced graduate students to teach their own sections of Core or Civilization courses. To be eligible, students must have interned in the Core or Civilization courses and have their dissertation proposals approved prior to the application deadline. ... The positions pay a salary of $5,000 for a one-quarter course section...

PRECEPTORSHIPS

Preceptors guide upper-level undergraduates or students in one-year master’s programs who are writing bachelor’s or master’s theses. ... These positions usually require a nine-month commitment ... Currently undergraduate preceptors receive a salary of $2,500 per quarter and master’s program preceptors receive a salary of $20,000 or more.
**Political Science BA Preceptorships**

The department requires some undergraduate political science majors to participate in the BA Colloquium ... The department has designed the colloquium ... to help students carry out their BA thesis research .... The department will appoint at least four advanced (beyond the MA) graduate students to act as preceptors who will direct the colloquium and to help students organize their papers and comment on drafts. ...

Pet Ex 93 (emphasis added). See Pet Ex 114 (appointment letter to Political Science Preceptor position).

Approximately 20 to 25 sections of the Core social sciences course Power, Identity, and Resistance are offered each quarter, with about one quarter of the sections being taught by graduate student lecturers, one quarter being taught by faculty members and the rest being taught by postdocs. Graduate student teaching interns are assigned to sections taught by faculty members and postdocs. All instructors of record, including the faculty members, postdocs and graduate student lecturers, attend weekly staff meetings at which the readings and teaching techniques for the shared syllabus are discussed. Tr. 1847-52 (Yaqub Hilal).

Graduate students who work as lecturers, or instructors of record for a course, are listed in the online course catalog as the instructor of record in the same manner as is a faculty member who is an instructor of record for a course. Tr. 1858 (Yaqub Hilal). See Pet Ex 83. Student evaluations of both faculty and graduate student lecturers are available online to undergraduate students. Tr. 1896-7 (Yaqub Hilal).

A job posting on the Department of Anthropology web site encouraged graduate students to apply for positions of Environmental Studies Undergraduate preceptorships. The posting stated that:

The preceptors will be responsible for coordinating and conducting the two quarter
B.A. Colloquium sequence in Environmental Studies in close consultation with the Environmental Faculty and Program Director. The preceptors will be responsible for guiding students in all aspects of their preparation of a B.A. Thesis. In addition, preceptors will assist undergraduates earlier in the program, providing thesis advice and program support. ... Advanced graduate students who specialize in Environmental topics, regardless of academic discipline or Division, are encouraged to apply. ... The successful applicant will be appointed by the Social Sciences Collegiate Division as Environmental Studies Preceptor for the 2015-2016 Academic Year. The stipend is $7,500.

Pet. Ex. 88. A similar announcement solicited applications for the position of BA Preceptorship in Latin American Studies:

The successful candidate will be an advanced graduate student in the Social Sciences or Humanities with the ability to advise undergraduate students with diverse disciplinary interests... Advanced graduate students in the Divinity School with a historical concentration are also encouraged to apply. The graduate preceptor will receive a salary of $7500 from the College for the Academic Year. The position is contingent on funding at the expected levels.

Pet Ex 89 (emphasis added). See also Pet Ex. 91 (job posting for the position of BA preceptorship for the 2017-2018 school year); Pet Ex 90 (announcement for position of Undergraduate Preceptorship in Anthropology); Pet Ex 92 (announcement for position of BA Preceptorship at the Center for the Study of Race, Politics and Culture); Pet Ex 113 (appointment letter to preceptor position in the Department of History).

The Center for the Study of Race, Politics and Culture posted an announcement soliciting applications for CSRP Graduate Lectureships:

Description: The College and the Center for the Study of Race, Politics and Culture are calling for applications by advanced graduate students to teach one undergraduate course of their own design on topics related to race and ethnic studies. ... *The Center is especially interested in* courses that posit race and processes of racialization in comparative and transnational frameworks; highlight the intersection of race and ethnicity with other identities (gender, class, sexuality and nationality); and/or interrogate social and identity cleavages within racialized communities.
Eligibility: Advanced graduate students (Ph.D candidates with at least one chapter of the dissertation written) in any discipline at the University of Chicago are encouraged to apply. The stipend is $5,000 and is available for one quarter only.

Pet Ex 92.

An appointment letter to a position as a Neugarten Lecturer in the Department of Comparative Human Development informed a successful applicant that:

Each year the Neugarten courses form an important part of our undergraduate curriculum and we are delighted you will be able to contribute your course. This lectureship includes a stipend of $5,000 and a tuition grant. ... We would like to be sure that at least one or two Neugarten courses are offered in the Spring next year because our offerings are very few during that quarter....

Pet Ex 111 (emphasis added).

The Psychology Department publishes a “Request for Teaching Assistant Positions” listing “the TA positions that will be available” for the following academic year “with an estimate of the number of TAs needed for each course.” Pet Ex 115 (emphasis added).

Graduate students teaching in the Social Sciences Division receive appointment letters to teaching positions. Such letters set forth the position (i.e. teaching assistant, lecturer), the course, the salary, the academic quarter, and the job duties. Pet. Exs. 75, 124, 125. The appointment letters specify that:

Please be aware that your appointment is contingent upon course enrollment and your eligibility to work. ** Policies restricting the weekly workload of graduate student employees may affect your ability to accept this offer if you are employed by the University in any additional capacity....

Pet Ex 75 (emphasis added). See also Pet Ex 124, 125.

Teaching Assistants and Course Assistants in the Humanities and Social Sciences Division are paid a salary of $3000, or $3600 if they are teaching past their GAI requirements. Lecturers are
paid a salary of $5000, or $6000 if they are teaching past their GAI points. Preceptors are paid a salary of $7500. Language Assistants are paid a salary of $1500. Tr. 396-7 (Dr Wild); Pet Exs. 54, 55. Graduate students are paid teaching compensation biweekly through the Workday payroll system with taxes withheld from their paychecks and receive W-2 forms from the University. Tr. 2033-4 (Eric Powell); Tr. 1704-5 (Danya Lagos); Tr. 1757-8, 1771-4 (Nicole Morse); Tr. 1853-4 (Yaqub Hilal). Workday is a payroll software program that manages payroll, paystubs and withholding for University employees. Tr. 1774 (Nicole Morse).

The Divinity School’s Guidelines for Faculty Supervising Teaching Assistants provides that the “[t]asks and responsibilities of teaching assistants include:

1. Course administrative tasks such as ordering books, photocopying, administering a course webpage, overseeing library reserves, etc.
2. Attending all class sessions ... and completing all reading assignments associated with the course.
3. The opportunity to lecture in a course, in either planned or emergency situations.
...
4. Commenting on and assessing course assignments ...
5. Leading discussion sections and/or review sessions ...
6. Holding regular office hours to aid students with questions and assignments ...

Er. Ex. 47, p. 2.

Teaching assistants and course assistants in the Humanities and Social Sciences Divisions and in the Divinity School lead discussion sections, lead lab sections, hold office hours and grade papers, homework, projects and exams. The faculty member conveys to the TA or CA the general expectations as to what quality of paper or project warrants a particular grade, and the TA or CA then devotes considerable time to grading, with the faculty member sometimes reviewing samples of the graded work to ensure consistency in grading. See, eg. Tr. 1352-6 (Katerina Korola); Tr. 1464-9 (Matthew Vanderpoel); Tr. 1845-53 (Yaqub Hilal); Tr. 1758-72 (Nicole Morse); Tr. 1688-1704
(Danya Lagos); Tr. 2029-32 (Eric Powell). The teaching assistants and course assistants have also substituted for faculty members for whom they are TAing by presenting lectures when the faculty members are sick or out of town for a conference. Tr. 1467-8 (Matthew Vanderpoel); Tr. 1701 (Danya Lagos). Graduate students have held lecturerships in which they have been instructors of record in courses that they designed. In such cases, the graduate student submits a proposed syllabus and if offered the position the graduate student lecturer has full responsibility as instructor of the course, including entering final grades. Tr. 1859-61, 1863-5 (Yaqub Hilal).

Ph.D students in the Biological Sciences Division are required to serve as teaching assistants at least two times. Er Ex 28, p. 1. Students are informed that:

The number of TAships listed for any course is based on a projection of the number of students who will enroll in that course. If the enrollment is very different from the projection, this may decrease or increase the number of TAs required for the course. Students should be aware that even though they may already have made arrangements with the course director to serve as a TA for a particular course, there is no guarantee that their services will be required if the number of students enrolled in the course is less than initially anticipated.

Er Ex. 28, p. 5 (emphasis added). TA responsibilities include holding discussion sections, grading assignments and exams and holding office hours. Tr. 1387-92 (Kamil Ahsan).

The Chemistry Department provides TAs with a 20-page “Guide for Teaching Assistants.” Er Ex 42; Tr. 824 (Dr. Michael Hopkins). The guide informs TAs that:

As a Teaching Assistant, you are given a very serious responsibility. A large portion of the individual attention and instruction for undergraduates in chemistry classes depends on the knowledge, concern, and dedication of the Teaching Assistant. You have the closest contact with students and will most directly influence their attitude toward the department and their performance in their courses. It is vital that you take this responsibility seriously. You will be the face of the Chemistry Department to your students.

Er Ex 42, p. 3 (emphasis added). The TA duties include attending mandatory weekly TA meetings,
running one lab section each week, leading one review/discussion section each week, grading assignments for the lab section, proctoring and/or grading the midterms and final exams, being available for office hours for two hours a week, attending class lectures, and being on-call one week each quarter to fill in for a sick TA or help the Lab Director with extra duties. Er Ex 42, p. 1; Tr. 1901-1911 (Andrew Phillips). A “Personnel chart” in the handbook shows TAs reporting to Lab Directors and Faculty. Er Ex 42, p. 2 (emphasis added). The handbook informs graduate students that:

The faculty will be presented every quarter with a full teaching evaluation for every TA during faculty meeting. If your performance is determined to be unsatisfactory, a mid-quarter meeting with the Executive Officer and the Chair of the Department may be scheduled. The teaching evaluations may be used to determine future employment and salary.

Er Ex. 42, p. 6. Chemistry graduate student TAs primarily TA in two large undergraduate course sequences, General Chemistry and Organic Chemistry. Tr. 899-900, 910 (Dr, Hopkins). The TAs lead weekly lab sections, discussion sections and office hours. Tr. 901-907.

TAs are used in all undergraduate courses in the Statistics Department and in all introductory graduate courses. Tr. 1256-7; 1272 (Professor Amit). TAs are required “[b]ecause of the heavy load of grading homework, and additional office hours and study sections with students.” Tr. 1257 (Professor Amit). Thus, in an introductory statistics for economists course in the winter 2017 quarter, five Ph.d TAs and one undergraduate TA were hired. The TAs were given a basic rubric of criteria and then graded all of the homework, with the undergraduate grader handling the grading of easier questions. Professor Amit testified that he reviewed the grading “a bit just to see if there’s something, you know, significantly wrong” but that “it’s really the responsibility of the graduate students. I don’t have much involvement in that part.” Tr. 1259-60. The graduate student TAs also
held weekly office hours at which they help students with homework and help clarify course materials. Tr. 1256, 1260-1.

In the Statistics Department, graduate students are hired to teach stand-alone sections of the introductory level Statistics courses that have large enrollments. Several sections of each such course are offered, with a faculty member teaching one section and graduate students teaching one or two other sections. Tr. 1263-4 (Professor Amit). Graduate students are hired to teach “sections that remain empty” after faculty members and other academic appointees have been assigned to teach courses. Tr. 1264. The graduate students who teach stand-alone sections of courses are paid an extra $2000 to teach such courses. Tr. 1264-5. In such courses, the responsibilities of the graduate student lecturers “are essentially the same” as those of the faculty member teaching another section of the course. Tr. 1265. The graduate students are responsible for the reporting of the final grades of students in their sections. Tr. 1289-90. However, the faculty member meets weekly with the graduate student lecturers: “[T]he faculty will play a much bigger role in those meetings in determining the pace of the course and determining homework problems and so on. So I would say in that regard the faculty plays a supervisory role for that course.” Tr. 1265. When a graduate student is hired to teach a section of a course, another graduate student TA will be hired to do grading and hold office hours. Tr. 1266-7. Graduate students are hired to teach courses in the Statistics Department primarily for the benefit of the Department to staff the courses. Tr. 1267. Professor Amit testified that having the graduate student TAs grade homework and hold office hours in undergraduate Statistics courses “saves me a huge amount of work. If I had to grade all that homework, I wouldn’t have time to do my research.” Tr. 1263.

The Department of Mathematics Information for Current Graduate Students web page, under
the caption “Teaching Responsibilities,” states that:

Here is a general outline of the teaching responsibilities of graduate students:

... \[ \text{...} \]

- All second-year students ... serve as College Fellows (apprentice teachers) in an undergraduate mathematics course each quarter under the direction of a member of the faculty. Duties include class attendance, grading homework, holding office hours, conducting problem sessions, aiding in constructing and grading exams, and giving supervised lectures. ...
- Upon approval of the mentor and the recommendation of the Director of Undergraduate Studies, third-year students are approved by the College to assume the position of Lecturer in the College; this means they will be responsible for teaching stand-alone courses.
- Qualified graduate students may continue as Lecturers, with a stipend furnished by the College, until the end of the fifth year of graduate study.

Pet Ex 39.

In the Mathematics Department, second year Ph.D students serve three semesters as College Fellows, in which position they function as TAs. Tr. 1303-4 (Professor Denis Hirschfeldt). They are assigned to TA in upper level undergraduate mathematics courses. The College Fellows grade homework and sometimes exams, hold office hours and hold problem sessions at which the College Fellow helps groups of students with homework problems. Tr. 1303-8. Professor Hirschfeldt testified that “it’s a lot more work for me if I don’t have a college fellow” and that it saves him about ten hours per week in work if he has a College Fellow assigned to help him with a class. Tr. 1309.

Ph.D students in the Mathematics Department, starting in the third year and continuing until they finish graduate school, are required most quarters to teach classes as stand-alone instructors in lower level undergraduate courses such as calculus and discrete mathematics. Last year, approximately 54 classes in the Mathematics Department were taught by Ph.D students. Tr. 1312-13 (Professor Hirschfeldt). The graduate student instructors in such classes carry out the same responsibilities, including instruction of the class, grading homework and exams, holding office
hours, and issuing the final grades, as do the faculty teaching other sections of the same course. Tr. 1313-15. Professor Hirschfeldt testified that: "[O]ur undergraduate mathematics program could not possibly run anywhere near the way it is run without graduate student work." Tr. 1315. The Mathematics Department is the third largest major at the University and teaches about ten percent of the undergraduate enrollments in the College. Tr. 1315. Having graduate students teach classes allows the Department to have small classes and allows senior faculty to teach upper level classes. Tr. 1315. The Mathematics Department also teaches inquiry-based learning classes, which require two people to staff a course and which are typically taught by a faculty member and a graduate student. Tr. 131, 1318-20. Professor Hirschfeldt testified with respect to the use of graduate students to staff classes in the Mathematics Department:

\[N\]one of it possibly gets done if we didn’t have the numbers of, you know, workers provided by graduate student labor. ...[I]t’s absolutely essential to the running of our department. ...[B]ecause we teach 10 percent of the enrollments, it’s absolutely essential to the running of the college.

Tr. 1316-17. The use of graduate students to teach stand-alone sections of lower level courses helps the University attract top level faculty candidates for whom the flexibility of not having to teach lower level courses is a selling point. Tr. 1317-18 (Professor Hirschfeldt).

Graduate students are covered by the student employment policy in the University’s Student Manual. Such policy provides that:

The University will not employ full-time students for more than 20 hours per week during quarters of full-time registration without the express permission of the area dean of students or their designee ... Students may request authorization from their area dean of students or designee to work more than 20 hours per week, and exceptions are governed by the policies of individual divisions and schools. Teaching and research are critical to the University’s academic enterprise and will therefore be prioritized in considering exceptions.
Pet Ex 2 (emphasis added). Such policy applies to graduate students who work in teaching positions such as those of teaching assistants and lecturers. Tr 406-8 (Dr Wild).

The University’s Policy on Harassment, Discrimination, and Sexual Misconduct provides that:

[S]ome University employees (referred to as “Responsible Employees”) are required to report all incidents of sexual misconduct (including sexual harassment), dating violence, domestic violence and stalking to the Title IX Coordinator for the University. Responsible employees include (among others) faculty and instructors, TAs, preceptors, ... and other university employees.

Pet. Ex 9, p. 6 (emphasis added); Tr 410 (Dr Wild).

An email sent to graduate students in the Department of Cinema and Media Studies in October 2015 stated that: “The University requires that employees, including graduate students who work as CAs, writing interns, etc., receive Title IX training” and notified them of a scheduled mandatory training. Pet Ex 76 (emphasis added).

An email sent to a graduate student in the Department of Cinema and Media Studies in April 2016 stated that:

You are receiving this email because you have been recommended to the Collegiate Division of Humanities for an appointment as a Course Assistant, Language Assistant, and/or Preceptor during the 2016 Spring quarter.

Since my records indicate you have worked for the University in the past all you need to do is respond to this email ... to confirm your appointment. The e-mail must include verification that you are accepting the position(s) ... Once I receive your confirmation email ... I will initiate your payroll in Workday. ...

Also, since you have been on the university payroll within the past year you probably already know that the university transitioned to a new HR/Payroll information system called Workday. Through Workday employees can complete their onboarding paperwork, sign up for direct deposit, update personal information, view paystubs and update their W-4 withholding elections. ...
Pet Ex 77 (emphasis added).

Graduate students are employed as lectors in the Writing Program. Lectors “do ... the bulk of the teaching in the writing course.” Tr. 1574 (Lawrence McEnerney). The Writing Program courses are taught as a combination of lectures and writing workshops. After the first week, half of the sessions are writing workshops led by lectors. The lectors, in addition to leading the writing workshops, are charged with commenting on writing detailed comments on student papers and with grading the papers and submitting final grades for the course. Tr. 1574-6 (Lawrence McEnerney).

III. Graduate students who hold research assistant positions are compensated for their work and work under the direction and control of the University and have a common-law employment relationship with the University

In December 2016, the Associate Dean of the Office of Graduate and Postdoctoral Affairs of the BSD sent an email to all BSD graduate students to “explain the process of receiving fellowship support through payroll.” Pet Ex 86; Tr. 2014-15 (Shane DuBay). The email stated that: “Standard pay for BSD graduate students is stipend +fees + insurance, divided over the pay periods that most closely match Autumn, Winter and Spring quarters.” Pet Ex 86. Attached to the email was a document called “Fellowship support through Research Assistant Type A/B positions 2016-17.” Such document states that:

Students begin to receive their fellowship support as a RA Type A or RA Type B (RA) after selecting a thesis lab, usually in year 3. The funding is provided by the faculty advisor and this can take the form of research grants, endowments, and institutional funds ...

With very few exceptions, students begin graduate study with quarterly fellowship support. ... Quarterly fellowship support provides a stipend at the beginning of the quarter; RA funding is paid through payroll every 14 days. ...

The assignment of either RA Type A or RA Type B is irrelevant to the student; this is a function of the rules of the funding source. Both types of appointments pay the
student a standard stipend payment over bi-weekly pay periods consisting of a proportion of the annual stipend and, because of rules regarding how research grants can be charged, a proportion of the required quarterly health center and student insurance (unless waived). ... 

Paperwork: if a student has not previously been on payroll, the following online forms are required and completed through Workday in advance of the relevant start date. ...

Compliance form - BSD form proving compliance with federal regulations on health care programs ...
I-9, including documentation of proof of eligibility for employment ...
International students will be responsible for the UPP192 and supporting documentation ...
State and federal tax forms ...

Students are also required to acknowledge a series of policies on acceptable behavior in the workplace:

Acknowledgment Form – New Staff * Employees

I acknowledge that I understand how to access the University of Chicago Human Resources policies that are housed on the University’s website ... including the policies listed below. ...

I have read and understand the terms and procedures of the University’s Human Resources Policies, including those listed below, and agree to abide by them.

• 104 - Business Conduct
• 600 - Conflict of Interest Policy
• 601 - Treatment of Confidential Information
• 603 - Smoking/Non Smoking
• 604 - Substance Abuse
• 606 - Workplace Violence
• 609 - UC Policy on Harassment, Discrimination and Sexual Misconduct
• 1009 - Mandatory Reporting of Child Abuse
• Policy on Information Technology Use and Access

Taxes: since the RA positions are an employment status, pay is subject to state and federal withholding. Students supported as a RA will receive a W-2 statement by January 30 following the close of the tax year (December 31).
Pet Ex 87 (emphasis added). The prior year’s version of such document is included as an appendix in the Department of Ecology and Evolution Graduate Student Handbook. Pet Ex 119.

Most Ph.D students in the BSD and Ph.D students in the Chemistry Department in the Physical Sciences Division, after their first year, join a research lab team and are funded by grants through their research advisors who are the principal investigators in the labs. While graduate students may do rotations in several labs to help them decide in which lab they would be interested in working, the faculty advisor must also agree to accept a graduate student as a research assistant in his or her lab. Tr. 665-666, 731 (Dr. Prince); Tr. 934 (Dr. Hopkins). “The PI is not forced to take in students that they don’t feel is a good fit to their lab.” Tr. 666 (Dr. Prince).

The Chemistry Department admission letter to admitted students informs them that they will be funded for their first nine months as a Teaching Assistant and that: “Beginning with the Summer Quarter 2016, you will be appointed as a Research Assistant with your chosen research sponsor. The Research Assistant appointment also covers tuition and stipend, and will normally continue until you receive your degree....” Pet. Ex 22.

Part of the mission of the University is to perform original research and graduate students working in research labs further that mission. Tr. 729 (Dr. Prince); Tr. 941-3 (Dr. Hopkins). When selecting dissertation topics in biology and chemistry labs, Ph.D research assistants perform research involving the topics of research interest of their faculty advisors. Tr. 934 (Dr. Hopkins). “The overarching interest of the research advisor and the kind of laboratory they run is going to define the broad parameters of the research proposal.” Tr. 667-8 (Dr. Prince).

In the Chemistry Department, a graduate student research assistant was assigned a research
topic by his faculty advisor, who is the principal investigator in the lab. Tr. 1913-14 (Andrew Phillips). In the Biological Sciences Division, a Ph.D student’s research plans “were completely upended” when he joined the lab of Dr. Prince as a research assistant. He changed research topics to align his topic with those of Dr. Prince’s lab. Tr. 1393-4 (Kamil Ahsan).

The research performed by Ph.D students results in published papers in which the student’s faculty advisor is listed as a co-author. Thus, a substantial number of the published papers listed on the web site of the Prince lab list Dr. Prince as a co-author with one or more of her graduate students or former graduate students. The research which formed the basis for such papers was performed under Dr. Prince’s supervision in her lab. Un. Exs 16-18; Tr. 716-720. Dr. Prince testified that in her sub-field “it’s standard for the senior author who mentored the work to be listed as the last author and the individual who did the largest proportion of the experimental work to be listed as the first author.” Tr. 718. Most of the primary research in Dr. Prince’s lab is conducted by the research assistants with Dr. Prince providing oversight. Tr. 1399. Similarly, a substantial number of published papers listing Dr. Hopkins as a co-author since he has been at the University of Chicago were co-authored with researchers who performed their research as graduate students is his lab. Pct Exs 23-26; Tr. 945-956 (Dr. Hopkins).

When current graduate research assistant Kamil Ahsan publishes a paper based on his research in Dr. Prince’s lab, he will be listed as the first author, Dr. Prince will be listed as the last author, and others who have worked in the lab, including a technician and an undergraduate research assistant, both of whom assisted on his project, will also be listed as authors. Tr. 1396-7.

The publication of papers by Dr. Prince and her research assistants, and the level of journal in which the papers are published, affects her ability to get grants and affects the University’s
research rankings and reputation. Tr. 1398-9 (Kamil Ahsan). The research performed by graduate
research assistants also affects the University’s promotion and tenure decisions with respect to the
faculty members in whose lab the research is performed. Tr. 940-1 (Dr. Hopkins). Such published
papers are listed by a faculty member on his CV and on grant applications. Tr. 972 (Dr. Hopkins).

Research grant applications are governed by University policy and overseen by the University
Research Administration (URA). Tr. 722 (Dr. Prince); Pet Ex 19 (University Research
Administration Proposal Submission & Acceptance Policy); Pet Ex 34 (Award Management). The
University Research Association’s web page for Proposal Budget Development states that research
projects for which grants are requested are broken down into direct and indirect costs. “Indirect costs
are those costs incurred by an institution for facilities and administration of sponsored projects that
can not be directly attributable to a specific project.” Pet Ex. 30, p. 1. The indirect costs are
calculated as a percentage, ranging from 20% to 40%, of direct costs. Pet Ex 31. The amounts
received from indirect costs in grants go to the University and not directly to the lab that is working
under the grant. Tr. 725-6 (Dr. Prince); Tr. 932-4 (Dr. Hopkins).

The URA office publishes internal budget templates for grant applications. The budget
includes line items for direct costs and for indirect costs. Direct costs include “salaries or wages,”
including salaries for “faculty, technical staff, other professional staff, clerical staff, research
assistants, etc.” Pet Ex 21, p. 1 (emphasis added). The URA office publishes required budget
justification statements for grant applications. It provides that for graduate research assistants
(GRAs) in the physical sciences division, the following language should be used in grant
applications:

Graduate student tuition remission is requested in accordance with the University of
Chicago Physical Sciences Division’s established policy of requesting tuition support at the rate of 45% of graduate student salaries. The amount partially covers the graduate student’s actual tuition cost.

*GRA compensation* in the Physical Sciences consists of $36,295 (FY17) as a 12-month 100% effort GRA and $16,333 tuition remission for a calendar year GRA appointment, for a total *compensation* of $52,628. Per NOT-OD-16-134, the projected level postdoctoral scholar compensation for FY17 (effective December 1, 2016) is $47,484. The federally approved fringe benefits rate at the University of Chicago is 23.2% of postdoctoral compensation, for a total of $58,500. *We believe the total compensation for the GRA is reasonable in light of this comparison with a first-year postdoctoral fellow’s compensation and should be fully funded.*

Pet Ex 20, pp. 1-2 (emphasis added).

The URA budget justification statement policy provides that for graduate research assistants in the Biological Sciences Division, the following language should be used in grant applications:

*GRA compensation* at the Biological Sciences Division of the University of Chicago consists of $36,508 (FY18) as a 12-month 100% effort GRA and $9,600 tuition remission for a calendar year GRA appointment. A first year Postdoctoral Scholar of the (fill in the department/program) receives a salary based upon the NRSA Zero Level (FY17 Level 0 rate applies: $47,484) and a 23.2% federal fringe benefit rate, for total compensation of $58,500. *We believe the total compensation for the GRA is reasonable in light of this comparison with a first-year postdoctoral fellow’s compensation and should be fully funded.*

Pet Ex. 20, p. 2 (emphasis added). Such policy also provides faculty salary and effort statements to be included on grant proposals because: “It is expected that investigators will recover reasonable and appropriate salary support from grants and contracts proportionate to the fraction of their time and effort devoted to the project. BSD faculty appointments are made on a twelve-month basis and the requested salary is based upon the investigator’s total University compensation.” Pet Ex. 20, p. 2. See Pet Ex 121 (BSD grant application) at p. Bates-Stamped 947 (showing graduate student salary listed under “other personnel” and Pet Ex 122 (BSD training grant application) at p. Bates-Stamped

50
1233, showing stipends and tuition/fees listed for pre-doctoral student RAs.

In accordance with University policy, in both the BSD and the Physical Sciences Division, personnel line items for salaries or wages are included in all grant applications. In grant applications, the term “graduate research assistant” is used for Ph.D students who are doing research in labs. The lab principal investigators in the personnel costs section of grant applications request amounts equal to graduate students’ annual stipends, including health insurance costs, and tuition remission, for the graduate research assistants in their labs. The faculty principal investigators also include in the personnel section of grant applications a portion of the amount of their own salaries to cover their efforts associated with the studies that are the subjects of the grants. Tr. 722-9 (Dr. Prince); Tr. 931-2 (Dr. Hopkins). In the Statistics Department, grant applications include personnel cost line items for TA pay and partial tuition remission. Tr. 1273-4 (Professor Amit).

Under URA policies:

Responsibility for setting the course of research at the University of Chicago is vested with the faculty. A principal investigator is a member of the academic staff or faculty who bears responsibility for the intellectual leadership of a project. The principal investigator accepts overall responsibility for directing the research, the financial oversight of the award’s funding, as well as compliance with relevant University policies and federal regulations as well as sponsor terms and conditions of an award.

Pet Ex. 35, p. 1. Dr. Prince testified that as the principal investigator in her lab she is responsible for ensuring that the work performed by all of those listed under the personnel section on a grant are performing research consistent with the grant proposal. Tr. 724. She helps graduate students troubleshoot when they experience failures in their experiments, and such troubleshooting benefits the lab by “moving the research ahead.” Tr. 730-1. See also Tr. 742. All employees in the lab, including both graduate research assistants and technicians, take safety training, training in working
with animals if applicable, OSHA training, and informal training provided by the principal investigator. Tr. 743. The principal investigator, by training graduate students to use laboratory equipment, benefits the entire lab team. The principal investigator assists graduate students with their writing, which helps the quality of the publications that the students and principal investigator co-author. Tr. 720-1 (Dr. Prince).

In Dr. Prince’s lab in BSD, everyone who works in the lab puts his or her weekly research plans on an online platform available to Dr. Prince and all others working in the lab. Tr. 1676-7. Dr. Prince meets weekly with Ph.D students in her lab to discuss the development of a research program. Tr. 640-2. Dr. Prince testified that the research performed by graduate students in her lab “is part of a broader lab team activity” and that her individual meetings with students benefit the lab as a whole. Tr. 649-50.

In the lab of Professor Bozhi Tian, everyone in the lab, including Professor Tian, seven graduate research assistants, and five postdocs, works similar hours, starting at 9:30 am and working for 12 hours or more each week day and a lesser amount of hours on weekends. Weekly lab meetings are held and graduate research assistants also meet individually with Professor Tian weekly to discuss research progress and plans. Tr. 1012, 1914-17 (Andrew Phillips).

Under University policy, “[a]ny invention, discovery or device-like software which results from activities carried out at the University or with substantial aid of its facilities or funds must be disclosed to the University, will become the property of the University and will be assigned to the University or a University-designated organization.” Pet Ex 37. See also Pet Ex 36 (Patents and software).

The Board in Columbia rejected an attempt to frame the issue as “whether some other
relationship between the employee and the employer is the primary one” rather than “in terms of the existence of an employment relationship.” 364 NLRB No. 90, sl. op. at 5. Rather, the Board found that “student assistants who have a common-law employment relationship with their university are statutory employees entitled to the protections of the Act.” 364 NLRB No. 90, sl. op. at 13. The evidence in the record, discussed above, overwhelmingly shows that the University directs and oversees the work performed by graduate students working in teaching positions and in research assistant positions, and that the University has the right to control such employees’ work.

The evidence discussed above also clearly shows that the work of such employees is performed in exchange for compensation. The University’s characterization of the compensation paid to its graduate students who hold teaching positions and research assistant positions is not determinative of the issue of whether the University compensates its graduate students for such work. See Seattle Opera Assn., 331 NLRB 1072 (2000), enf’d, 292 F.3d 757 (D.C.Cir. 2002) (finding opera company’s auxiliary choristers to be statutory employees even though they were paid only a stipend of $214 for an entire production, including all rehearsals and performances, and even though the employer characterized the stipend as intended to defray transportation and parking costs rather than as compensation). Moreover, as demonstrated above, the evidence shows that the University has repeatedly described the financial stipends given graduate students as compensation, salary, and pay for carrying out teaching and research work.

Accordingly, the record establishes that the graduate students who work in teaching and research positions have a common-law employment relationship with the University and are employees under Section 2(3) of the Act.
IV. The petitioned-for unit is an appropriate unit for collective bargaining.

A. Teaching and research assistants who are Master’s students share a community of interest with teaching and research assistants who are Ph.D students.

While the University presented evidence that Master’s students are generally not required to hold teaching assistant or research assistant positions, it presented no evidence to show that those Master’s students who do hold such positions lack a community of interest with Ph.D students who hold the same positions.

In the Statistics Department, Master’s students have been hired as graders, which is work also performed by Ph.D student TAs in the Department. Tr. 1270-1 (Professor Amit). In the Computer Science Department, in the spring 2017 quarter, one of five TAs in an Introduction to Computer Systems course was a Master’s student who is in the Master’s program in the Department and who fulfilled the same TA responsibilities as did the other TAs with respect to overseeing labs, holding office hours and grading. Tr. 1150-1 (William Kong). There is no record evidence of any Master’s students holding the same teaching or research positions held by Ph.D students but not performing the same duties for the same pay in such positions.

In Columbia, the Board, in rejecting the argument that teaching and research assistants who are Master’s students lack a community of interest with teaching and research assistants who are Ph.D students, found that “classifications in a unit need not have complete identity of interests for the unit to be appropriate.” 364 NLRB No. 90, sl. op. at 19. The Board found that, “[w]hile Ph.D assistants, as longer-term students, may be somewhat more concerned with certain types of remuneration, ... their interests are certainly not at odds with those of shorter-term employees,” and that, applying traditional community of interest factors, teaching and research assistants who are
Master’s students are appropriately included in a unit with teaching and research assistants who are Ph.D students. 364 NLRB No. 90, sl. op. at 20.

B. Research assistants who do not work in labs and workshop coordinators share a community of interest with the other employees in the petitioned-for unit.

The Department of Romance Languages and Literature Graduate Student Handbook informs graduate students of the teaching obligations of their funding packages and provides that: “Graduate students can also receive funding as research assistants for faculty projects, preceptors for the undergraduate language program, and as workshop organizers, as the need arises.” Pet Ex 48 p. 18.

The University at the hearing did not define what it means by a “non-lab research assistant,” and evidence showed that such term had not been used by the University prior to this hearing. Tr. 1529 (Matthew Vanderpoel). A Biological Sciences Division graduate student who testified performs much of his research in the field rather than in a lab. Tr. 2019-20 (Shane DuBay). A graduate student in Sociology held a research assistant position for the Knowledge Lab of the Computation Institute, where her responsibilities were “to take research projects that the lab was working on and write python code for their projects and to attend lab meetings and to work with other lab employees to come up with solutions.” Tr. 1705-6 (Danya Lagos).

Graduate students are hired on an hourly basis by faculty members to work as research assistants. The research assistants have worked up to ten hours per week and are paid through the University’s Workday payroll system, with hourly pay ranging from $10 to $15. Tr. 1952-3 (Professor Warren); Tr. 1470 (Matthew Vanderpoel); Tr. 1706-8 (Danya Lagos); Tr. 1782-5 (Nicole Morse). The work performed by research assistants has included tracking down obscure references for purposes of annotation of a book being edited by a faculty member (Tr. 1952-3, Professor
Warren); doing class preparation such as compiling book lists and putting materials on reserve at the library; reading texts in languages other than English to find citations for relevant information related to a book being written by a faculty member; gathering articles and books; compiling bibliographies for courses; preparing dossiers of research for presentations given by a faculty member; and designing and conducting surveys for a project. Tr. 1473-4 (Matthew Vanderpoel); Tr. 1783-4 (Nicole Morse); Tr. 1706-8 (Danya Lagos).

Workshop coordinator positions are held by advanced Ph.D students. The workshop coordinators coordinate Council on Advanced Studies (CAS) inter-disciplinary workshops at which faculty members and graduate students from multiple divisions and schools meet to discuss papers related to the workshop topics. Tr. 83-4 (Beth Niestadt). Each workshop has one or more faculty advisors and has either one workshop coordinator or two co-coordinators. Each workshop meets between five and eight times per quarter. The workshop coordinators are responsible for developing a set of intellectual themes that tie the workshop discussions together; seeking faculty members, outside scholars, and graduate students who want to present their work; setting a schedule for such presentations at workshop sessions; distributing the papers to be discussed to workshop participants; arranging for the catering of food and drinks at workshop meetings; and moderating the discussion at the workshop sessions. With respect to moderating the discussion, the workshop coordinator is responsible for closely reading the paper to be presented and preparing questions to begin the discussion of the paper, calling on others to speak to keep the discussion going, and asking questions to animate the discussion if it lags. Tr. 1360-1, 1378 (Katerina Korola); Tr. 1472-5 (Matthew Vanderpoel); Tr. 2034-6 (Eric Powell).

A workshop coordinator is paid $1500 per year for being the sole coordinator of a workshop
and $750 for being a co-coordinator of a workshop. Tr. 2037-8 (Eric Powell); Tr. 1475 (Matthew Vanderpoel).

One graduate student who testified held the workshop coordinator position for two consecutive years. Tr. 2034 (Eric Powell).

While the workshop coordinators carry out some administrative duties, such as arranging the catering of the workshop, their responsibilities also include developing the intellectual themes of the workshop and animating the workshop discussions. Moreover, to the extent that workshop coordinators perform some administrative duties, the job descriptions of teaching assistants also state that such positions may involve some administrative duties. Thus, the Divinity School’s Guidelines for Faculty Supervising Teaching Assistants provides that the “[t]asks and responsibilities” of teaching assistants include “[c]ourse administrative tasks such as ordering books, photocopying, administering a course web page, overseeing library reserves, etc.” Er. Ex. 47, p. 2.

The Board in Columbia, in rejecting an argument that differences in the petitioned-for positions warranted a finding of a lack of community of interest, found that all of the positions at issue in that case “are performing a supplemental educational service. That is, their duties are functionally integrated into a system designed to meet the university’s teaching and research missions in non-faculty roles.” 364 NLRB No. 90, sl. op. at 19. Here, the University failed to show that research assistants who do not work in labs and workshop coordinators lack a community of interest with the other employees in the petitioned-for unit. The research assistants who do not work in labs and the workshop coordinators are compensated by the University for performing work under the supervision and control of the University, and are thus employees under the Act. The duties they perform, together with those performed by graduate assistants holding teaching positions and
research assistant positions, are functionally integrated into a system designed to meet the university’s teaching and research missions in non-faculty roles. Such research assistants and workshop coordinators are thus appropriately included in the unit.

C. Employees in the petitioned-for unit who work beyond teaching or research requirements share a community of interest with the other employees in the petitioned-for unit.

Graduate students who have fulfilled the obligations of their initial funding packages are encouraged to apply for teaching positions. The Social Sciences Division’s Dean of Students web page informs students that:

Students with a teaching component as part of their fellowship must fulfill the requirement by the end of the fellowship period. Many students who are beyond the fifth year seek teaching positions as a means of financial support.

Er Ex 16, p. 1 (emphasis added). SSD graduate students are also told that:

With the exception of lectureships and preceptorships, students must petition the Dean of Students in the Social Sciences to hold a teaching position that will exceed the total of 5 points altogether before the beginning of the 6th year of study. Students may take lectureships and preceptorships without petitioning.

Er Ex 20, ¶ 6 (emphasis added).

The Department of Philosophy web page, after outlining the teaching obligations required of Ph.D students as a condition of their funding, informs the students that: “Doctoral students in the program are encouraged to do more teaching than this.” Pet Ex 49, p. 1 (emphasis added). The page states that students may teach beyond the requirements with permission during their first five years, and that: “Students do not need departmental permission to seek extra teaching assignments after their fifth year of residence.” Pet Ex 49, p. 2. The Philosophy Department’s “Teaching Opportunities” web page states that: “Graduate Students in the Philosophy Department are required
to do a certain minimum amount of teaching in the Humanities Division with the opportunity to do considerably more.” Pet Ex 50, p. 1 (emphasis added). In the Philosophy Department, graduate student lecturers who are beyond their five years of funding and who teach tutorials fulfill the same responsibilities as those who are in their fifth year and teach tutorials. Tr. 1419-20, 1422 (Professor Ford).

The Art History Department Handbook, after discussing the teaching required as a condition of graduate student funding, states with respect to teaching positions that: “More advanced students who have completed the fellowship-related teaching ... may also apply.” Pet Ex 56, pp. 19-20 (emphasis added).

Students in the BSD are encouraged to TA beyond their requirements for additional pay: “After TAing twice to fulfill the requirement, students may hold teaching assistantships for additional pay in courses with unfilled TA positions.” Er Ex 28, p. 6 (emphasis added). The Biology Teaching Assistant Handbook similarly provides that: “After teaching twice to fulfill the requirement, students may hold Teaching Assistantships for extra remuneration in courses with unfilled TA positions.” Pet Ex. 85, p. 5 (emphasis added). The Dean of BSD was not aware of any instances in which a graduate student who applied for an extra TAship was denied one. Tr. 740 (Dr. Prince).

The Department of Romance Languages and Literature Graduate Student Handbook, after setting forth the 8 teaching points which Ph.D students in the Department must satisfy, states that some students may be approved to teach up to 10 teaching points for “supplementary compensation” during their first five years. Pet Ex 48, p. 20. The Handbook states that: “Teaching performance is reviewed regularly and subsequent course assignments are contingent upon the successful
completion of previous teaching responsibilities.” Pet Ex 48, p. 20.

The Department of History web page for Teaching Assistantships states that “The current salary for TAs is $3,000. Students in Advanced Residence generally receive a tuition remission for the quarter in which the TAship is held ...” Pet Ex 54, p. 1. The Department of History’s web page for Lectureships states that the salary for lecturers is $5,000 per course and that “Students in Advanced Residence generally receive a tuition remission for the quarter in which they lecture...” Pet Ex 55, p. 1.

Chemistry graduate students who TA beyond their three quarter requirements are paid as a TA for the additional quarters in which they TA. Tr. 925 (Dr. Hopkins).

The Social Services Administration web page for Doctoral Program Funding and Research Support informs doctoral students that:

Advanced doctoral students wishing to supplement their aid packages have access to opportunities to teach in the master’s program and to serve as university resident heads.

Pet Ex. 38.

Graduate students from all graduate divisions and schools, including those who have fulfilled teaching requirements, work for compensation as Lectors in the Writing Program. Tr. 1383-5 (Kamil Ahsan); Tr. 2016-17 (Shane DuBay). Graduate students from outside the Humanities Division have worked as Language Assistants. Tr. 1687 (Danya Lagos).

In departments in which the time to degree is longer than five years, graduate students commonly teach beyond their required teaching and are not discouraged by faculty members from doing so. Tr. 1866-7 (Yaqub Hilal). In the Divinity School, Humanities Division and Social Sciences Division, Ph.D students who have fulfilled their teaching requirements and are no longer receiving
a stipend receive greater compensation for teaching than do students who are receiving a stipend. TA positions pay $3000 per quarter to students who are on stipends and $3600 per quarter to students who are no longer receiving stipends, and lecturer positions pay $5000 per quarter to students who are receiving stipends and $6000 per quarter to students who are no longer receiving stipends. Tr. 1036-7 (Dean Owens).

However, graduate students who have already fulfilled their teaching requirements perform the same job duties and have the same responsibilities when they hold teaching positions as do graduate students who have not fulfilled their teaching requirements who hold the same teaching positions. Tr. 389-90 (Dr Wild); Tr. 561-2 (Dr. Robertson); Tr. 1852-3 (Yaqub Hilal).

All of the employees in the petitioned-for unit, regardless of whether they are working to fulfill teaching or research requirements of their funding packages or are receiving additional compensation for taking on additional jobs, are performing the same functions as others holding the same positions. “[T]heir duties are functionally integrated into a system designed to meet the university’s teaching and research missions in non-faculty roles,” Columbia University, 364 NLRB No. 90, sl. op. at 19, and they are appropriately included in the same unit.

V. Graduate students who have worked in any of the petitioned-for positions in the autumn 2016 quarter, the winter 2017 quarter or the spring 2017 quarter should be found eligible to vote.

The Board in Columbia University, 364 NLRB No. 90, held that “the unique circumstances of student assistants’ employment manifestly raise potential voter eligibility issues.” sl. op. at 21 (emphasis added). The Board explained that, because student employees frequently receive “intermittent semester appointments” to bargaining unit jobs, some student employees should be
permited to vote who would not be eligible "under the Board's traditional eligibility date approach."

364 NLRB No. 90 at 21.¹

The student assistants here tend to work for a substantial portion of their academic career, but not necessarily in consecutive semesters; thus, during any given semester, individuals with a continuing interest in the terms and conditions of employment of the unit may not be working. The Board has long recognized that certain industries and types of employment, particularly those with patterns of recurring employment, may necessitate rules governing employee eligibility. The Board attempts to strike a balance between the need for an ongoing connection with a unit and concern over disenfranchising voters who have a continuing interest notwithstanding their short-term, sporadic, or intermittent employment. Setting such rules on a pre-election basis by use of eligibility formulas also serves the efficiency goal of avoiding protracted post-election litigation over challenges to individual voters.

364 NLRB No. 90 at 21-22 (footnote omitted). An eligibility formula was thus deemed appropriate in Columbia based upon the finding that student employees worked "a substantial portion of their academic career, but not necessarily in consecutive semesters."

The undisputed evidence establishes that the same is true at the University of Chicago. Writing interns often work the autumn and winter quarters but not the spring quarter "because the third quarter there are fewer sections and there's a much less demand for interns." Tr. 1562 (Lawrence McEnerney). That is because undergraduates are not required to take a third quarter of the Humanities Core courses. Tr. 1586 (Lawrence McEnerney). Moreover, a third of writing interns teach for more than one year. Tr. 1562 (Lawrence McEnerney). Ph.D students in BSD who are required to TA one quarter each year as a condition of receiving divisional funding may fulfill the

¹ The Board's "traditional eligibility date approach" is that, to be eligible to vote, an employee must have been hired and be working in the payroll period immediately preceding the direction of election. Roy Lotspeich Publishing Co., 204 NLRB 517 (1973).
TA requirement in either the fall, winter or spring quarter of each academic year. Tr. 2009-12 (Shane DuBay). Ph.D students in other divisions and schools also have held teaching positions in one quarter of an academic year and then again the following year. Tr. 1687-91 (Danya Lagos). Graduate student lecturers have also held lectureship positions in one quarter only of several successive years. Tr. 1852, 1895-6 (Yaqub Hilal). Moreover, as discussed in Section IV.C above, graduate students who have fulfilled the teaching requirements of their funding packages, including those in advanced residency, have been encouraged to continue teaching, and have continued teaching, in positions in the petitioned-for unit.

The Employer argues that there should be no eligibility formula in this case, but the Board decision in Columbia leaves no room for doubt that a formula is necessary. Neither party in Columbia argued that there should be an eligibility formula. Nevertheless, because it found the employment of graduate assistants to be intermittent, the Board remanded the case to the regional director to establish such a formula. Since employment by doctoral students at the University of Chicago is similarly intermittent, the precedent of Columbia requires an eligibility formula in this case.

The Board further explained in Columbia: “We have traditionally devised these formulae by examining the patterns of employment within a job or industry, and determining what amount of past employment serves as an approximate predictor of the likelihood of future employment.” 364 NLRB No. 90 at 22. The formula proposed by the Union in this case is based upon these criteria and on the precedent cited by the Board in Columbia. The Board cited three cases in which the Board established an eligibility formula for employees in a particular field. In the construction industry,
employees who are not on the payroll at the time of an election are nevertheless permitted to vote if they have worked for the employer for at least 30 days within the year preceding the eligibility date or 45 days within two years before the eligibility date. *Steiny and Co.*, 308 NLRB 1323 (1992). Stagehands and technicians employed at an entertainment venue are considered to have a sufficient interest in terms and conditions of employment if they have worked an average of four hours per week for the calendar quarter preceding the eligibility date. *Trump Taj Mahal Casino*, 306 NLRB 294 (1992). The Board in *Trump* emphasized that an eligibility formula should be “inclusive - not exclusive - … to permit optimum employee enfranchisement and free choice, without enfranchising individuals with no real continuing interest in the terms and conditions of employment offered by the employer.” 306 NLRB at 296. Finally, the Board in *Columbia* discussed the eligibility formula for adjunct faculty members. Adjuncts may vote if they have been employed in at least two out of three previous academic years and have a contract with the university. *C.W. Post Center of Long Island University*, 198 NLRB 453 (1972).

The eligibility formula in each of these three cases contains two essential elements: a minimum amount of work required for eligibility (a “work requirement”), and a period of time during which the employee must have performed that amount of work (a “lookback period”). The Board throughout its history has established formulae incorporating these same two factors in numerous other industries. *Seaboard Terminal and Refrigeration Co.*, 109 NLRB 1094 (1954) (longshore workers\(^2\)), *Hondo Drilling Co.*, 164 NLRB 416 (1967) (roughnecks); *Berlitz School of Languages of America*, 231 NLRB 766 (1977) (on-call language teachers). The size of each of these

\(^2\) Formerly known as “longshoremen.”
factors varies widely, depending on the industry, but reliance on these two factors is a constant. The work requirements can range from as little as two days for the teachers in Berlitz to as much as two full semesters for the adjunct faculty in C.W. Post. The lookback periods can be as short as three months for stagehands or as long as three years for adjunct faculty. Both elements are determined by the nature of the industry and by the relationship between the amount of work performed and the likelihood of an ongoing interest in the terms and conditions of unit employees.

The Petitioner's proposed eligibility formula requires that the student employee have worked in at least one academic quarter (autumn, winter or spring) during the 2016-2017 academic year. This standard is based upon the nature of the Employer’s operations. A period of one quarter is related to the work of the University. The University provides services and conducts its operations on the basis of quarterly units. Employees are generally appointed to unit positions for a period of at least one quarter. Doctoral students who have worked in at least one quarter in the recent past share interests with student employees currently working. A student may receive outside funding for a quarter or more that excuses him or her from working after only one quarter in the unit. Such a student would be likely to return to the unit when the outside funding expires.

The Union proposes a lookback period of one academic year. A three-year lookback period is used for adjunct faculty in higher education, C.W. Post, supra, but the employment pattern for adjuncts is very different from the pattern for graduate assistants. Adjuncts may work for extended periods of time, often many years, but only when there is work available. Doctoral students working to fulfill the work requirements of a funding package are unlikely to cease working for an extended period. There may be a break of one or two quarters or one year because of an outside grant. A
longer break in service is an indication that a doctoral student is no longer relying upon unit employment for financial support during his or her studies. The longer a student employee is out of the bargaining unit, the less likely he or she will return. Therefore, a single year lookback period is appropriate.

Similar eligibility formulas have consistently been found to be appropriate at other universities where the issue has been litigated. On remand in Columbia, the Regional Director found that student employees who had worked one semester in the past year should be permitted to vote (see the copy of the Regional Director’s Supplemental Decision and Direction of Election in Case No. 02-RC-143012, attached hereto as Attachment B). She adopted a similar formula for student employees at the New School (Second Supplemental Decision and Direction of Election in Case No. 02-RC-143009, attached hereto as Attachment C). The Hearing Officer who heard evidence regarding challenged ballots at Harvard University similarly found that student employees who had worked in one semester during the previous year were eligible to vote (Hearing Officer’s Report on Challenged Ballots and Objections and Recommendation in Case No. 01-RC-186442, attached hereto as Attachment D, at pp. 9-17).\(^3\) Thus, evidence regarding patterns of employment in the industry supports a formula that includes a lookback period of one year.

The Regional Director should, therefore, adopt the Union’s proposed eligibility formula. It is based upon the criteria and precedent cited by the Board in Columbia. The evidence establishes that, as in other elite schools, graduate student employees at the University of Chicago are employed intermittently. This formula is also reflective of employment patterns of graduate student employees

\(^3\) The Hearing Officer’s Recommendations are currently pending before the Regional Director on the Employer’s Exceptions.
at other universities. The Board in *Columbia* noted that “patterns of employment within [the] industry” are a factor in setting an appropriate eligibility formula. Sl. op. at 22. The Union’s proposed formula is “inclusive - not exclusive - … to permit optimum employee enfranchisement and free choice, without enfranchising individuals with no real continuing interest in the terms and conditions of employment offered by the employer.” *Trump Taj Mahal, supra* at 296. Therefore, it is an appropriate formula for graduate student employees at the University of Chicago.
Conclusion

For the foregoing reasons, the Regional Director should find that (1) the petitioned-for teaching assistants, research assistants, course assistants, workshop coordinators, writing interns, preceptors, language assistants, instructors, lecturers, lectors and teaching interns are employees under Section 2(3) of the Act; (2) the petitioned-for unit is an appropriate unit; and (3) a one-year lookback period is an appropriate eligibility formula, such that employees who held positions in the petitioned-for unit during the autumn 2016, winter 2017 or spring 2017 quarter should be eligible to vote in the election.

Respectfully submitted,

[Signature]

Melissa J. Auerbach
Attorneys for the Petitioner,
Graduate Students United, IFT, AFT, AAUP, AFL-CIO

Dated: June 15, 2017

Dowd, Bloch, Bennett, Cervone, Auerbach & Yokich
8 S. Michigan Ave., 19th Floor
Chicago, IL 60603
312-372-1361
312-372-6599 (fax)
mauerbach@laboradvocates.com
CERTIFICATE OF SERVICE

Melissa J. Auerbach, an attorney, hereby certifies that on June 15, 2017, she caused the foregoing Brief of the Petitioner to be filed electronically with Region 13 of the National Labor Relations Board and that on the same day she caused a copy of such document to be served electronically on the following:

Steven J. Porzio
sporzio@proskauer.com

Paul Salvatore
psalvatore@proskauer.com

Zachary D. Fasman
zfasman@proskauer.com

Allan H. Weitzman
aweitzman@proskauer.com

Steven Pearlman
sp Pearlman@proskauer.com

Alex Weinstein
aweinstein@proskauer.com

Melissa J. Auerbach