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

THE UNIVERSITY OF CHICAGO **and** **GRADUATE STUDENTS UNITED, AFFILIATED WITH THE ILLINOIS FEDERATION OF TEACHERS, THE AMERICAN FEDERATION OF TEACHERS AND THE AMERICAN ASSOCIATION OF UNIVERSITY PROFESSORS, AFL-CIO**	**Case No. 13-RC-198325**

THE UNIVERSITY OF CHICAGO'S MOTION FOR A STAY OF THE ELECTION AND ALL OTHER PROCEEDINGS ON THE PETITION, OR IN THE ALTERNATIVE, TO IMPOUND ALL BALLOTS

Petitioner seeks certification as collective bargaining representative in a unit of "all graduate students" who are full-time and regular part-time teaching assistants, research assistants, course assistants, workshop coordinators, writing interns, preceptors, language assistants, instructors, lecturers, lectors and teaching interns at the University of Chicago's School of Divinity, the School of Social Service Administration, the Division of Social Sciences, the Division of Humanities, the Physical Sciences Division and the Biological Sciences Division, at the University of Chicago ("Chicago"). Petitioner relies on the Board's controversial decision in *Columbia University,* 364 NLRB No. 90 (2016), holding that "student assistants who have a common-law employment relationship with their university are statutory employees under the Act." 364 NLRB No. 90, slip op. at 2.

Chicago hereby moves for a stay of the election presently scheduled for October 17-18, 2017, and all other proceedings on the petition, or in the alternative impounding all of the ballots

cast in an election that might be held. A stay is sought pending the Board's decision on requests for review in *Boston College*, Case No. 01-RC-194148, and in this matter, *University of Chicago*, Case No. 13-RC-198325, where the employee status issue is likely to be addressed by the Board.[1]

As demonstrated below, a stay is necessary and appropriate. The Board has before it requests for review involving Boston College's and Chicago's graduate students. The current Board has a different majority than when *Columbia* was decided, and Chicago submits that it is probable that the newly constituted Board will reverse *Columbia* and return to the analysis adopted and followed in *Brown University* that "the relationship between being a graduate student assistant and the pursuit of the Ph.D. is inextricably linked, and thus, that relationship is clearly educational," not economic. 342 NLRB 483, 489 (2004). At the very least, the Board should be afforded the opportunity to consider whether to overturn *Columbia* and return to *Brown*, or to chart another course.

Chicago therefore submits that a stay of all proceedings in this case is appropriate pending the Board's review of Boston College's and Chicago's requests for review. The Board granted just such a stay in a similar situation in 2003 in *Pratt Institute*, 339 NLRB 971 (2003), at a time when the Board was reconsidering its decision in *New York University*, 332 NLRB 1205 (2000), which held for the first time that teaching and research assistants are statutory employees. In *Pratt*, the United Auto Workers petitioned to represent a unit of graduate and undergraduate student assistants. At the time that the Pratt petition was filed, the Board was considering the employee status issue presented by a petition that had been filed in *Brown*

[1] Yale University also has indicated that it will file a request for review on the issue of whether teaching and research assistants are Section 2(3) employees, after the Board rules on a procedural issue. *See Yale University*, Case No. 01-RC-183016, *et. al, Ltr. from Executive Secretary* (Mar. 13, 2017).

University, Case No. 01-RC-21368.[2] Pratt sought a stay of the hearing on UAW's petition, which although denied in the first instance by the Regional Director, was granted on review by the Board pending decision in the *Brown* and *Columbia* cases referred to above, notwithstanding the absence of any supporting precedent at that time.

While acknowledging that representation cases normally are decided expeditiously and that stays are rarely granted, the *Pratt* Board nevertheless found that "other policy considerations outweigh[ed] the desire for expedition," and it stayed the processing of UAW's petition to represent student assistants at Pratt, explaining as follows:

> In the instant case, a hearing would be long and expensive. That hearing may prove unnecessary. That is, if, in the pending cases, the Board holds that graduate assistants are not entitled to representation through NLRB processes, a hearing herein will be unnecessary. We will have saved money and time, both for the U.S. taxpayer and for the private parties. Accordingly, on balance, we believe that it is prudent in this particular case to stay the hearing until a decision is made as to the employee status of graduate assistants. [Footnote omitted.]
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> Further, even if the decisions in *Brown* and *Columbia* uphold extant law or hold only that the graduate assistants *in those cases* are not employees entitled to representation through NLRB processes, those decisions would at least give guidance to the parties herein. [Emphasis in original.] The parties could therefore litigate with greater focus and greater expedition. For this reason as well, we believe that a stay is appropriate.

339 NLRB at 971.

Chicago submits that there is even greater reason for the Regional Director to grant a stay in this case, given the substantial likelihood of *Columbia*'s reversal, as evidenced by Chairman Miscimarra's persuasive dissenting opinion in *Columbia*, as well as the several additional

[2] The Board also had granted review in *Trustees of Columbia University*, Case No. 02-RC-22358, an earlier petition involving graduate students at Columbia University, not the case decided in August 2016, where the Board erroneously concluded that the petitioned-for students were employees within the meaning of the Act.

dissents that the Chairman has written in graduate student cases that have come before the Board in the year since *Columbia* was decided. *See Loyola University Chicago*, 13-RC-189548, 2017 WL 2963203, at *1 (July 6, 2017) (stating that the Chairman would have granted the university's request for review based on his belief that student assistants are not employees within the meaning of the Act); *The New School*, Case 02-RC-143009, 2017 WL 2963205, at *1 (July 6, 2017) (stating that the unit is inappropriate for the reasons expressed in his dissents in *Columbia University* and *Yale University*); *University of Chicago*, 13-RC-198365, 2017 WL 2402773, at *1 (June 1, 2017) (same). *See also Duke University*, 10-RC-187957, 2017 WL 971643, at *1 (Feb. 23, 2017); *Yale University*, 365 NLRB No. 40, at *1 (2017); *The New School*, 02-RC-143009, 2016 WL 7441005, at *1 (Dec. 23, 2016).

For all of the foregoing reasons, based on the NLRB's well-reasoned holding in *Pratt*, which is plainly applicable here, the Regional Director should stay the election and all other proceedings in this matter until the pending requests for review are decided. If, as anticipated, the Board finds that graduate students are not statutory employees, it will be dispositive of the issue here. At the very least, and in the alternative, any ballots cast in any election that is ordered should be impounded until the Board rules on the underlying question. Chicago submits that once the Board rules, the petition in this case must be dismissed by the Regional Director upon a finding that the Act does not apply to students who, as in this case, provide services to Chicago that are "an integral component of their academic development." *Brown*, 342 NLRB at 483.

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Respectfully Submitted,

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